

# Responding to a Subpoena for Client Records

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There are many reasons that a CPA may receive a subpoena requesting information about the CPA's client. For example, a party in civil litigation or a civil arbitration may seek records from a CPA in order to prove its case against the CPA's client. The prosecutor in a criminal case may attempt to utilize a CPA's records in a criminal charge against a CPA's client. An administrative agency, board, commission or another entity may wish to utilize a CPA's records for some purpose.

A CPA has an ethical duty to keep client information confidential. Pursuant to 21 NCAC 08N .0205 of the Board's Ethics Rules, a "CPA shall not disclose any confidential information obtained in the course of employment or a professional engagement except with the consent of the employer or client."

However, the CPA's duty of confidentiality is not absolute and is inferior to a validly issued subpoena. According to 21 NCAC 08N .0205(b), the confidentiality rule shall not be interpreted "to affect in any way the CPA's compliance with a validly issued subpoena or summons enforceable by this Board or by order of a court."

So, what should a CPA do to determine if he or she must comply with a subpoena for client records?

The CPA should first review the subpoena to determine if it was signed by a judge or an administrative law judge ("Judge"). If the subpoena was signed by a Judge, then the CPA must comply with the subpoena. The CPA should inform his or her client that he or she has received a subpoena for client records and that the CPA intends to turn over the requested information. Once informed, the client can make a motion with the Court if he or she believes that the subpoena should not have been issued. Although not required by the Ethics Rules, the CPA should also make an attempt to obtain the client's written consent prior to turning the documents over to the requesting party.

If the subpoena was not signed by a Judge, then the CPA should determine whether the client is the defendant in the matter referenced in the subpoena. If the client is the defendant, the CPA should contact the client or the client's attorney. Often, the client or the client's attorney will not contest the production of those records and will agree to consent to their production. It is important that the consent be made in writing.

If the client objects to the production of the documents, the CPA must make a written objection and send it to the person who obtained the subpoena. The objection should specifically reference 21 NCAC 08N .0205.

If the client is represented by an attorney, the CPA should allow the client's attorney to review the objection before sending it. The client's attorney may want to suggest some supplements to the objection. For example, if the subpoena is objectionable because it is irrelevant to the case and is merely a "fishing expedition," then the client's attorney will be in the best position to determine whether to fight the subpoena on those grounds.

Additionally, the CPA may call the attorney seeking the information. Once the ethical rules are explained, that attorney will often voluntarily refrain from pursuing the documents until the Court has signed an Order demanding over the production of the documents.

If, despite the above actions, the CPA is unable to come to an agreement with the involved parties, then the CPA should consider hiring an attorney. An attorney will draft an objection to the subpoena and can help identify other privileges that may apply. The attorney can also help defend against any ensuing motions and can attempt to obtain witness fees or other costs on behalf of the CPA.

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