

BONDURANT MIXSON & ELMORE ^{LLP}

Responding to Subpoenas

Including Requests for Client Records in
Domestic Violence Cases

Christopher T. Giovinazzo
December 16, 2015

PROBONO[™]
PARTNERSHIP / ATLANTA

Mission of Pro Bono Partnership of Atlanta:

To maximize the impact of pro bono engagement by connecting a network of attorneys with nonprofits in need of free business legal services.

Pro Bono Partnership of Atlanta Eligibility & Other Information

- In order to be a client of Pro Bono Partnership of Atlanta, an organization must:
 - ✓ Be a 501(c)(3) nonprofit.
 - ✓ Be located in or serve the greater Atlanta area.
 - ✓ Serve low-income or disadvantaged individuals.
 - ✓ Be unable to afford legal services.
- *Visit us on the web at www.pbpatl.org*
- We host free monthly webinars on legal topics for nonprofits
 - ✓ To view upcoming webinars or workshops, visit the [Workshops Page](#) on our website
 - ✓ Join our mailing list by emailing rla@pbpatl.org

Legal Information:

- ✓ This webinar presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.
- ✓ All rights reserved. No further use, copying, dissemination, distribution or publication is permitted without express written permission of Pro Bono Partnership of Atlanta.

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What is a Subpoena?

- A legal command issued by a litigant, prosecutor, or other government agency
- Commands you or your nonprofit to testify and/or to produce documents
- Enforceable by contempt-of-court

First Steps

- **Read the subpoena carefully**
 - Who issued the subpoena? For what case or matter?
 - Who is the subpoena directed to? (Your nonprofit, or a specific person?)
 - What do they want?
- **DO NOT:**
 - Send documents (yet)
 - Ignore the subpoena altogether (only ten days to object!)

Case and Court

IN THE SUPERIOR COURT OF HOUSTON COUNTY
STATE OF GEORGIA

FLINT ELECTRIC MEMBERSHIP)
CORPORATION and UPSON)
ELECTRIC MEMBERSHIP)
CORPORATION,)
Plaintiffs,) CIVIL ACTION
v.) FILE NO. 2011-V-103973-N
WINDSTREAM GEORGIA)
COMMUNICATIONS, LLC,)
Defendant.)

To Whom?

To: UTILITY SUPPORT SYSTEMS, INC.
c/o David Thompson
2976 Chapel Hill Road
Suite 100
Douglasville, Georgia 30135

“Subpoena duces tecum”
means they want documents

SUBPOENA DUCES TECUM

YOU ARE HEREBY COMMANDED, pursuant to the provisions of O.C.G.A. §§ 9-11-34, to make available for inspection and copying at the law office of Bondurant, Mixson & Elmore, LLP, 1201 West Peachtree Street, Suite 3900, Atlanta, Georgia, 30309, on or before, March 23, 2012, for all purposes permitted by the Georgia Civil Practice Act and other applicable law, the following: **All documents listed on the attached Exhibit A** and made a part hereof.

Refers to an attached list of
the document categories

YOUR FAILURE TO COMPLY WITH THIS SUBPOENA WILL SUBJECT YOU TO
PUNISHMENT FOR CONTEMPT OF THIS COURT.

WITNESS MY HAND AND THE SEAL OF THIS COURT, this 7 day of March, 2012.


Clerk, Superior Court of Houston County,
State of Georgia

rec'd 9/3/15

Says "subpoena"
and identifies case

To Whom?

This one seeks
testimony *and* records
(i.e. documents)

Signed by clerk of court
OR an attorney

Who to contact:

STATE OF GEORGIA
COUNTY OF GWINNETT

WITNESS SUBPOENA
TRIAL OR HEARING

COURT: SUPERIOR COURT
 STATE COURT
 MAGISTRATE COURT

TO WITNESS:
NAME: Sharon Hill
ADDRESS: Apple Seed Center For Law
400 Peachtree St. Suite 2800
Atlanta, Georgia, 30309
CASE NO.: 15-A-00540-B

DIVISION: CIVIL
 CRIMINAL

YOU ARE COMMANDED that, laying all business aside, you be and appear at the time set forth below to testify at a trial or hearing in this case. You are required to attend from day to day and from time to time until the matter is disposed of. Your testimony will be on behalf of:
 Defendant State of Georgia Plaintiff

PLACE: Superior Court
P.O. Box 870
Lithia Springs, GA 30056

DATE AND TIME: September 27, 2015 at 1:30 PM

Production: You must also bring with you to the trial or hearing the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material, or those set forth in an attachment: Please bring any & all documents or information pertaining to the faculty of Deagan's Judgment Review System.



HEREIN FAIL NOT UNDER PENALTY OF LAW.

Witness my hand and the seal of this court, this the 31st day of August, 2015.
Richard T. Alexander, Jr.
Richard T. Alexander, Jr., Clerk, Superior, State and Magistrate Court of Gwinnett County.

Julia Nunez
Signature of Clerk or Deputy Clerk

OR

David L. Miller (Pro Se)
Attorney of Record

If you have questions, contact:
Attorney's Name: _____
Telephone No.: _____
Address: _____

Says “subpoena”
and identifies case




The Office of Secretary of State
Securities Division
Brian P. Kemp
Secretary of State
Commissioner of Securities
Noula Zaharis
Director

August 6, 2015

IN THE MATTER OF _____ : SUBPOENA
: _____ : Case Number: _____
Respondent. _____ :
_____ :

To: _____

Pursuant to the provisions of O.C.G.A. § 43-17-11(a) of the Georgia Charitable Solicitations Act of 1988 (“Act”) the Commissioner of Securities of the State of Georgia (“Commissioner”) has instituted an investigation into the acts, practices, and transactions of _____

May refer to a list of the
documents they want
(“Exhibit A”)



Pursuant to the authority contained in O.C.G.A. § 43-17-11(b)(1) of the Act, you are hereby **COMMANDED** and **DIRECTED** that, laying all other business aside, you provide the records and documents more fully described in **Exhibit A** to my designated representative, Jeremy Jones, at 2 Martin Luther King Jr. Drive SE, Suite 313, West Tower, Atlanta, Georgia 30334, by the 31st day of August, 2015.

Pursuant to the provisions of O.C.G.A. § 43-17-11(b)(2) of the Act, the Commissioner may, in case of refusal to obey a subpoena issued under the Act, refer this matter to the Attorney General or the proper district attorney, who may apply to a superior court of appropriate jurisdiction to enforce compliance with this subpoena. Failure to obey a subpoena may be punished by the court as contempt of court.

This one issued/signed
by a government agency



Brian P. Kemp
Commissioner of Securities
By: *C. Ryan Germany*
C. Ryan Germany
Assistant Securities Commissioner

Proper Service

- Subpoena must be “served” – i.e., legally delivered – in person, or by “registered or certified mail or statutory overnight delivery.”
O.C.G.A. § 24-13-24.
- If the subpoena demands testimony outside your county, they owe you a witness/travel fee.
O.C.G.A. § 24-13-25.
- Save the envelope and everything you received!

Identify the Documents

- Do you have any documents responsive to the subpoena?
- You must check both documents “in your possession and control” and documents you have “a legal right to obtain by demand.”
- It may not matter that some documents are located somewhere besides your office.
- BUT your nonprofit may not truly “control” patient or clinical records.

Georgia's Advocate Privilege O.C.G.A. § 24-5-509(b).

- **Absent a court order or victim consent,**
- **Neither your nonprofit nor your employees/volunteers**
- **Can be forced to produce documents or evidence (i.e. testimony)**
- **“Acquired while providing services to a victim” of domestic/sexual violence.**

Federal Victim Confidentiality

- **Recipients of funds under VAWA, Family Violence Prevention and Service Act, and/or Victims of Crime Act,**
- **MAY NOT disclose any personally identifying information without victim's written release**
- **The abuser cannot consent!**
- **Sometimes state agencies distribute these funds – check!**

Privacy Under HIPAA

- Applies to “health care providers”
- Where subpoena comes from an attorney or clerk (rather than a judge),
- You cannot disclose protected information unless patient received notice and chance to object
- Notify the patient yourself!

Best Practice Basics

- **Train all employees and volunteers to immediately provide your Executive Director with any subpoena**
- **Read the subpoena carefully (see above)**
- **Figure out what you have, if anything (see above)**

Objecting (Within 10 days!)

- **Lawyer Not Required (but see below)**
- **Document Your Objections In Writing**
 - **We don't have documents or they aren't under our control**
 - **The subpoena is burdensome and unreasonable**
 - **The subpoena was improperly served or notice is insufficient (i.e. too little time)**
 - **The documents and testimony are privileged**

Calling the Issuer of the Subpoena

- Often makes sense to call before you respond
- Ask, what exactly do you want?
- Ask, has the patient been notified? Written proof.
- Inform them of the sensitivity and privileges.
- Ask for extra time.
- Don't make promises or reveal anything on the phone!

When In Doubt, Get a Lawyer

- Need a lawyer to file anything in Court.
- May feel better using a lawyer for your objections or response.
- Pro Bono Partnership can help



For More Information:

If you would like more information about the services of Pro Bono Partnership of Atlanta, contact us at:

www.pbpatl.org

info@pbpatl.org

404-407-5088