

You just received a grand jury subpoena. Now what?

By Renato Mariotti, Partner, Thompson Coburn

Like pink slips, audit letters and divorce papers, it's a document you're never happy to see land in your mailbox. But if you receive a subpoena in a federal grand jury investigation, is important to be proactive because it may be the beginning of a long and drawn-out investigation that could result in you or your company facing criminal liability.

When I was an Assistant U.S. Attorney in the Northern District of Illinois, I drafted and obtained numerous indictments. But for the past five years, I've been proud to be one of the first calls made by many people on the receiving end of federal indictments.

I know from these experiences that lots of good people — people with families, people who have fought tooth and nail to build their businesses or professional careers — have faced scrutiny from law enforcement. They have survived it and moved forward with their lives. But in the beginning, everyone usually starts in the same place with the same types of questions.

Q. What does a grand jury subpoena mean?

A. It means that law enforcement believes you have evidence or could provide testimony that would help them in their criminal investigation.

Q. That's not necessarily a problem, is it?

A. Well, it depends. It very well may be the case that law enforcement is not focused on you or your company in particular, and instead wants you to help provide them information about others.

Whenever you are connected to a criminal investigation in any way, you have to proceed very carefully.

Q. Why is that?

A. If law enforcement looks closely at your practices, they may find that you have potential liability of your own. If you give prosecutors enough information and time, you never know what they'll find by the time they're done searching.

Q. Can you figure out early on whether the government is looking at potentially charging you or your company?

A. Sometimes the government will tell you up front if you ask the right questions. Otherwise, you need an experienced lawyer who's used to dealing with complex white collar investigations to help you determine whether or not you have potential liability, based in part on communications with the government.

Q. What happens if the government is looking at charging you or your company?

A. There are strategies by which we can manage the government's investigation to try to convince the government not to proceed, narrow the investigation, or help you develop potential defenses. Government investigations often drag on for years, and it's important that you actively and aggressively manage your defense throughout the course of the investigation.

If you just sit back and wait for the government to charge you, you'll be caught unprepared when they decide to seek charges. By that time, they will have all their ducks in a row and be ready to proceed, potentially with a broader and more damaging indictment than you might have seen had you actively managed the investigation.

Q. Unlike in the movies, when federal agents show up banging on your door, it's unlikely that an indictment would be a complete surprise, right?

A. It may not be a surprise; you may have heard from investigators, or your attorney may have been in contact with law enforcement. But it can be nonetheless startling when it finally happens.

First of all, a person who is charged has to deal with the public knowing about these accusations. Can you imagine telling your parents or spouse that you're about to be charged with a crime? Those are not easy conversations to have.

Before the Internet, an indictment might not be noticed unless someone was specifically asking or looking for it. But now, for the rest of your life, your indictment will pop up in search results whenever someone searches for your name online.

Q. It sounds like you really want to avoid an indictment in the first place?

A. No question. The best approach is to actively manage an investigation early on, long before the government considers indicting anyone.

Q. What are the challenges of being under investigation?

A. For one thing, you can't talk to many people about what's happening, because your conversations could be used against you in the proceedings, if those people are called as witnesses. For some defendants, the only person they can talk to is their lawyer. In this role, I frequently serve as almost a guidance counselor to my clients. I listen to their worries and concerns, and try to provide some perspective and calm.

It's rare that you can be a true confidant and advisor to a person on the precipice of a life-altering event. I'm honored to serve in this role for my clients.

Q. What are the immediate impacts of an indictment?

A. For many people, their employment can be affected right away. Especially if you're facing charges related to your actions as a licensed professional, for example as a physician or trader. There are steps you can take to mitigate these effects.

You can often expect some level of media coverage. All indictments are made public shortly after they're served, and they often contain details about the allegations. In cases of alleged fraud, indictments could contain dollar amounts, which, depending on their size, could spur significant media attention. This is difficult, because obviously a charging document only tells one side of the story. As you weigh whether or not to respond to media inquiries, that's something to consider.

These questions covered just scratch the surface. The process is complex, which is why it's always best to consult an experienced white collar defense attorney as early as possible in an investigation.

Renato Mariotti advises clients facing many types of government inquiries and enforcement actions, including accounting irregularities, directors and officer liability, whistleblower allegations, board governance and oversight and internal controls