**[Federal Criminal Referral Letter to Federal Civil Litigators, With Grand Jury Attachment]**

Dear [Colleague],

Picture this: A client calls your office in a panic, and says, “I’ve just been served with a grand jury subpoena! I have no idea what to do. Can you help me?”

How would you respond? Consider these options:

(1) “I’m sorry. That’s a federal criminal matter, and I don’t practice criminal law. I can’t help you.”

*or*

(2) “That’s a federal criminal matter. I can’t help you, but I’ll help you find someone who can.”

*or*

(3) “Let’s talk for a few minutes. I’m sure I can answer most of your initial questions and then we can work on finding an experienced federal criminal defense lawyer to help you.”

Options 1 and 2 do nothing to help your client in that moment, when he is anxious and looking for immediate guidance. Moreover, your client probably already knows that you don’t practice criminal law, *but he called you anyway*. He called you because you are a lawyer (maybe, the only lawyer) he knows and trusts. So, while you should offer to help your client find an experienced and knowledgeable federal criminal defense attorney, you can do more than that.

***You can provide a real service to your client simply by providing information.*** Ten minutes on the phone with you will go a long way toward relieving your client’s anxiety *and* strengthening your attorney-client relationship.

So, how do you do this? I can help.

Enclosed with this letter is a Special Bulletin I drafted, which contains answers to the most commonly asked questions about grand jury subpoenas. I give this Bulletin to my clients to help explain how grand juries work and the significance of the subpoena. You can use it to guide your initial conversation with your client and, if you like, make a copy for him to keep. I’m confident you will find it to be a useful tool in counseling your clients and building client relationships.

**In closing**

If you have any questions about the Special Bulletin, or if your client has other questions about the grand jury process that you can’t answer, please call me. I would be happy to talk with you.

[Attorney]

[Optional]

P.S. In addition to the Special Bulletin, I have enclosed a Letter of Introduction to myself and my practice. Please feel free to copy and distribute this letter to any of your clients who needs to talk with an experienced federal criminal defense lawyer.

**[Enclosure]**

**Special Bulletin:**

**Frequently Asked Questions About Grand Jury Subpoenas**

**Prepared for you by:**

***[Attorney]***

***[Contact Information]***

Your client has been served with a grand jury subpoena and has called you in a panic. Use this Special Bulletin to answer his questions and to ease some of the anxiety he surely is feeling.

**What is a grand jury?**

A grand jury is a large jury, made up of 16-23 average citizens who were summoned for jury duty and selected to sit on the grand jury.

**What does a grand jury do?**

The grand jury determines whether there is enough evidence against an individual to go forward with a criminal trial. (By contrast, a trial jury determines whether there is enough evidence to convict that individual). The grand jury is meant to be a check on prosecutorial power. Basically, the grand jury has to give its “okay” before the government can bring federal criminal charges against a person.

There are two types of grand juries. A charging grand jury reviews evidence in cases in which a suspect is in custody, but has not yet been charged with a crime. Typically, the grand jury will hear brief testimony from the arresting officer and then vote to indict (formally charge) the suspect.

An investigative grand jury, on the other hand, works more thoroughly and at a slower pace. These jurors investigate complex federal criminal cases, at the direction of the prosecutor. They typically will hear testimony from many witnesses, over a period of several months or years. When the investigation concludes, the prosecutor will summarize the testimony, explain the legal elements of the alleged crimes committed, and present the grand jurors with an indictment (formal charges) that he has drafted. The jurors are then left alone to vote on whether the evidence they have heard is sufficient to go to trial on those charges.

**What does a grand jury subpoena mean?**

A grand jury subpoena signals that a federal criminal investigation is underway. The prosecutor believes you have information relevant to the investigation and has called you to testify — to answer questions and to provide information — before the grand jury.

**Why does the grand jury want to hear from me?**

The answer to this question depends on whether you have been subpoened as a target, a subject, or a witness.

A “target” is someone the prosecutor wants to indict. If you are a “target” of the investigation, then you are essentially a defendant who has not yet been charged.

A “witness” is someone who has information, but has no blame or involvement in the alleged crime and faces little risk of being indicted. For example, the teller who was held up in a bank robbery might be called before the grand jury as a witness.

A “subject” is someone whose status is uncertain. This person’s conduct falls “within the scope of the grand jury’s investigation,” but the prosecutor needs more information before deciding whether to seek charges against him. For example, the following individuals might be a “subject” in a grand jury investigation:

* The billing clerk in a doctor’s office, in a billing fraud investigation.
* The siblings, parents, children or significant others of bank robbers or drug traffickers who received and spent some of the ill-gotten gain.

Whether a subject ultimately is deemed to be a target or a witness will depend on how deeply he was involved in the alleged criminal activity; the deliberateness of his involvement; the extent to which he profited from his involvement; and his level of cooperation with the grand jury’s investigation.

Prosecutors do not always neatly and precisely adhere to these three categories. Some prosecutors see only targets and witnesses. Others categorize almost everyone as a subject (until the day they seek an indictment). Moreover, your status may change as the investigation proceeds.

**What happens in the grand jury room?**

On the day of your testimony, you will go the grand jury room and wait outside, in an anteroom, to be called. Grand jury proceedings are private, so when it is your turn to testify, you will appear before the grand jury alone; your lawyer will not be allowed in the room with you.

You will sit or stand at a table in front of the jurors. A court reporter will be nearby to transcribe the proceedings. The federal prosecutor will place you under oath and advise you that if you do not tell the truth, you may be subject to criminal penalties for perjury. The prosecutor also will advise you that you can refuse to answer a question if the answer would tend to incriminate you, and that you will be allowed a reasonable opportunity to leave the room and consult with your attorney during the questioning. The prosecutor then will ask you questions about the case, seeking to elicit relevant evidence. When the prosecutor has finished, the jurors also may ask questions.

**Can I refuse to appear before the grand jury?**

No. If you refuse to appear before the grand jury you will be held in contempt of court and jailed. A better alternative is to appear before the grand jury, assert your Fifth Amendment right to silence, and refuse to answer questions that may incriminate you. Another option, depending on your situation, may be to appear and testify under a grant of immunity (protection from prosecution) by the prosecutor.