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Shifting Costs for Responding to Subpoenas Under FRCP 45

KT LitSmart Blog

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Subpoenas provide a necessary discovery tool for parties to obtain relevant and many times critical information for litigation, but they often burden uninvolved third parties with the hassle and distraction of investigating the subject matter of the subpoena as well as the legal costs associated with any response. Generally speaking, the presumption is that third parties will bear at least some of the costs of complying with proper subpoenas. That said, Courts often expect that a requesting party will negotiate in good faith the costs of compliance and, if those costs are significant, the requesting party would agree to cover at least some of the costs or limit its requests in light of the requirement of FRCP 45(d)(2)(B)(ii). *See, e.g., United States v. Cardinal Growth, L.P.*, No. 1:11-CV-4071, 2015 WL 850230, at *2 (N.D. Ill. February 23, 2015). As demonstrated by a recent case, though FRCP 45 provides two avenues for a third party to recover its costs for responding to a subpoena in federal litigation, such awards are the exception to the rule.