

## HOW TO SUBPOENA WITNESSES AND DOCUMENTS

If you are going to an hearing or trial and need to make sure that a witness shows up, or that someone brings documents or other items, you can have the person served with a subpoena issued by the court clerk. Special rules may apply when you want a health care provider to bring health care information.

**What forms will you need?** Just a Subpoena.

**How do you use a subpoena?**

If you are not an attorney, the subpoena must be issued by the court clerk. You need to do all of the following:

1. fill out the forms;
2. have the court clerk issue the subpoena;
3. make a copy of the subpoena for the witness you are serving;
4. keep the original for yourself;
5. serve the subpoena on the witness; and
6. bring the original subpoena form to court on the day the witness is supposed to be there.

**How do you fill out the forms?**

*"TO:"*

After the caption, you will see the word "TO:". After that word, write in the name and address of the witness you are serving with the subpoena.

*Date and Time*

Fill in the date and time for the witness to attend. If this is for a short hearing, you may want all of your witnesses there at the time the hearing is scheduled to start. If this is for a trial, you should probably not have all of your witnesses there at the time the trial is scheduled to start because the court will usually take up other matters before any witnesses testify. Other matters may include marking exhibits that will be placed in evidence and allowing each side to make an opening statement. You should allow at least one half-hour for these preliminary matters. After that, you may want to schedule your witnesses 15 to 30 minutes apart depending on how long you think it will take you to ask them questions. You should also remember that your hearing or trial may not begin at the time it is scheduled. You may want to send your witnesses a letter or note explaining that there may be a delay in putting them on as witnesses if the hearing or trial does not start on time.

With some people like counselors, teachers, doctors, or other professionals, you may want to make special arrangements to notify them by telephone when the trial starts and give them a better estimate of when you will actually need them. Another hint to help you schedule your witnesses is this: If you are the plaintiff, then you will call your witnesses first, so you can begin scheduling your witnesses for the first day of trial. If you are the defendant, then your witnesses will be called after the witnesses of the plaintiff have finished testifying. This is why it is helpful for you to know how many witnesses the plaintiff plans to call. You can ask the plaintiff how long the testimony of his or her witnesses is expected to take. Try to schedule your witnesses immediately after the plaintiff's witnesses are expected to finish.

### *Place*

Fill in the name of the court, as well as the room number. You can call the court clerk to get this information.

### *Person Issuing the Subpoena*

Tell the witness which party he or she will be testifying for. Fill in "plaintiff" or "defendant." If you do not know which one you are, look for your name in the caption.

### *Items to Bring*

You don't have to fill out this portion if you are only requesting that a person come to trial without any documents. Fill in the name or description of each document or item that you want that witness to bring. Be as specific as possible. For example, if you are asking for a letter, state the names of the people sending and receiving the letter, as well as the date of the letter. If you do not know the specific names of documents you need, or you want to be sure you get everything you want, you can add "and all other documents concerning \_\_\_\_\_," filling in the name or event for which you are requesting the documents.

### **How do you serve the subpoena once the clerk has issued it?**

A subpoena must be served personally by someone over 18 *who is not a party to the lawsuit*. You may not serve the subpoena yourself since you are a party (plaintiff or defendant). You can use a sheriff or professional process server, but it is easiest and least expensive to use an adult friend or family member. The server must do one of the following:

1. personally hand the witness a copy of the subpoena, wherever the witness can be found; or
2. leave a copy of the subpoena at the witness's residence with another adult who lives there.

The person who serves the subpoena must then fill out and sign a paper describing the service of the subpoena. A sheriff or professional process server usually provides this proof of service form as part of serving the person. If you have a friend or family member serve the subpoena, he or she will need to complete the "Affidavit of Service" form. You can fill in the caption for the server, but he or she must complete the rest. After you get the completed form back, make a copy for yourself and save the original to bring with you to court (along with the original subpoena) in case the witness does not come to trial or bring the requested documents.

### **Does it cost money to subpoena witnesses or documents?**

If you use a sheriff or professional process server to serve the subpoena, there is a charge for service. Check with the server first to find out the amount of the charge. If you are asking that a witness bring documents, pictures, or other evidence, the witness may ask the court to make you pay the reasonable cost of getting or copying the documents or other evidence. Witnesses can, by law, request a witness fee for attending the hearing or trial. Your expert witnesses such as counselors, doctors, or therapists may require you to pay them for their time at their usual hourly rate if they must testify. You will need to negotiate this with them ahead of time.

### **What about witnesses who live further away?**

Additional fees must be paid if you want to subpoena a witness who lives outside the county or lives more than 20 miles from the place where the hearing or trial will be held.

### **How long does the witness have to stay?**

The witness must stay until he or she has given testimony and been cross-examined (questioned by the other side) unless the court orders that the witness remain longer. Either party may ask the court to order the witness to remain, for example, to respond to the testimony of a later witness.

### **What if the witness doesn't obey the subpoena?**

If a witness does not come to the hearing or trial or bring items requested in the subpoena and there is no good excuse, then the court may hold the witness in contempt of court, which could result in a fine and/or jail time. This is why you save the original of the subpoena, along with the proof of service. If the person does not come to the hearing or trial or bring the requested items, give the original subpoena form and the proof of service to the judge. After the hearing or trial is over, file the original subpoenas and affidavits of service with the court clerk.

*Adapted from a booklet prepared by the Northwest Justice Project.*