

9.17 Court Subpoenas/Witnesses

Effective 10/1/80

PURPOSE

A subpoena is a formal, court sanctioned order requiring a person:

1. To appear and testify in a judicial proceeding, or
2. To appear with and/or make available records to be used in a judicial proceeding.

Subpoenas are issued by the attorneys representing the parties in the proceedings as part of their case preparation. (See Investigatory Subpoena, subsection P, regarding use of subpoenas prior to filing of petition.)

PRACTICE STANDARDS

1. Potential witnesses, especially professionals, will be informed of the hearing date as soon as the date is set to allow them time to adjust their schedules.
2. A witness is not required to appear unless he is subpoenaed.
3. Subpoena will be needed if:
 - a. Witness refuses to appear voluntarily (usually because of his professional or personal relationship with a party);
 - b. Records are needed, which would otherwise not be released;
 - c. Witness prefers to be subpoenaed to maintain neutrality;
 - d. Witness's employer requires subpoena to release witness for court appearance.
4. As soon as practical, an understanding will be reached with potential witnesses on if, how, and when they will be subpoenaed.
5. Subpoenas should be issued and served a reasonable amount of time in advance of the hearing to allow the witness time to adjust his schedule; at least three weeks notice is preferred, especially for professionals.
6. A subpoena is not binding unless it is properly served and accompanied by check for:
 - a. Basic state witness fee;
 - b. Round trip mileage at basic state rate.
7. Some professionals may require a supplemental witness fee, billed separately.
8. A witness fee may also be paid without a subpoena.

9. A state employee may not personally accept both subpoena fees and his full regular salary for a court appearance. If, in testifying, he is on duty and acting in his official capacity, it is usually to his advantage to decline the fee plus mileage; his salary would then cover his time and his expense account his mileage.

Questions about his provision will be directed to the Department of Human Services Personnel Office.

10. See Legal Billing, subsection W regarding fee schedules.

PROCEDURES

1. Notify Assistant Attorney General if subpoena is needed and why.
2. Provide Assistant Attorney General with:
 - a. Name of case;
 - b. Name and address of witness;
 - c. Directions to the address, if necessary, for deputy sheriff to make service;
 - d. Funds required:
 - (1) Fee
 - (2) Mileage
3. Assistant Attorney General will issue subpoena and accompanying check, if needed.
4. Supplemental or non-subpoenaed witness fee bills go to regional office for:
 - a. Approval, stamping, coding;
 - b. Then sent on to Assistant Attorney General for approval and routing to Accounting Services for payment.
5. See Legal Billing, subsection W, regarding billing procedures.