

# WHAT IS A SUBPOENA?

## RESPONSE AND OBLIGATIONS



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### I. WHAT IS A SUBPOENA?

- A subpoena is a court order even though it can be signed by an attorney.
  - Does not require a signature by a judge or clerk.
- A subpoena compels an individual or business entity, which is not a party in the case, to do something in connection with a lawsuit:
  - (1) Appear at a hearing, trial or deposition;
  - (2) Produce documents; or
  - (3) Both.

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### II. TYPES OF SUBPOENAS

There are five different types of subpoenas:

1. Civil Subpoena for Personal Appearance at Trial or Hearing
2. Civil Subpoena (Duces Tecum) for Personal Appearance and Production of Documents, Electronically Stored Information, and Things at Trial or Hearing
3. Deposition Subpoena for Personal Appearance
4. Deposition Subpoena for Production of Business Records
5. Deposition Subpoena for Personal Appearance and Production of Documents and Things

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### III. WHO CAN ISSUE A SUBPOENA?

Only a party in the lawsuit can issue a subpoena. Always confirm the subpoena contains the following information (top box area):

1. Attorney name and address
2. Court name and address
3. Names of Plaintiff and Defendant
4. Case number

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### IV. PROPER SERVICE OF A SUBPOENA

- Only one way – personal delivery. (CCP §1987(a).)
- Faxes are not acceptable.
- You may designate authority for someone to receive on your behalf. For example, a law firm may receive on behalf of a client if given authority to do so and communicated to person serving subpoena.
- Should be delivered to either:
  - (1) The person named
  - (2) If an entity is named, an officer, director, custodian of records, or any authorized employee may accept the service
  - (3) There is a special rule for public employees – an immediate supervisor can be served with *two copies* (Govt Code §68097.1.)
  - (3) Both.

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### V. TIME TO RESPOND

- If the subpoena is for a personal appearance, you must be given a “reasonable time” to comply. (CCP §2020.220(a).)
- Courts have held that “reasonable” is approximately 10 calendar days.
- This applies to subpoenas for either an appearance or an appearance with the production of records.
- If subpoena is for “business records” only – you must be given at *least* 15 calendar days to produce. (CCP §2020.410(c).)
- Additional time may be required when personal records are sought. Such records include employment records, financial records and student records. Additional notice to the person whose records are requested is required. Always verify that such notice was given by the attorney who issued the subpoena (see section on Notice to Consumer for more information) before producing documents.

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## VI. WITNESS FEES

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You may be owed the following fees for personal appearances:

1. Current witness fee: \$35.00 per day + \$.20 per mile, *both ways* (Government Code §68093; CCP §2020.230(a).)
2. **Depositions** – Fee has to be paid *whether or not* requested by the witness.
3. **Trials and hearings** – Witness must request fees when the subpoena is delivered (including mileage reimbursement and per diem expenditure in varying amounts depending on whether witness is a public employee).
4. If subpoena requires appearance by an employee of a public entity regarding matters related to his or her official duties, the public entity is entitled to reimbursement for the employee's salary and travel expenses. When the subpoena is delivered it must include payment to the public entity of \$275/day for each day of the appearance. If the actual salary is less, the public entity must refund the difference. If it is more, it may invoice for additional payment. (Government Code §68096.1; CCP §2020.230(a).)

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## VII. HOW FAR MUST THE WITNESS TRAVEL?

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You may be required to travel. How far depends on what type of subpoena you were issued.

### Depositions

- Individual witnesses may be required to appear either:
  - (a) Within 75 miles of the witness' residence; or
  - (b) Within the county where the case is filed and within 150 miles of the witness' residence.
- If witness lives more than 150 miles from the county where the case is filed, the (requesting) parties must take the deposition within 75 miles of witness residence.
- Business entity witnesses may be required to appear either:
  - (a) Within 75 miles of the principal office of business entity; or
  - (b) Within the county where the case is filed

### Hearings and Trials

You may be compelled to travel more than 150 miles for a hearing or trial in court if you are a resident of the state. In such cases, you may be required to travel to any court location within California.

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## VIII. DOCUMENT PRODUCTION COSTS

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The person or entity responding to the subpoena is entitled to reimbursement at the following rates:

- \$0.10 per page for regular copying.
- \$0.20 per page for copying from microfilm.
- Actual costs for oversized documents or documents requiring special processing (e.g., xrays, blueprints).
- \$24 per hour, billed in 15 minute increments for clerical work to assemble the documents.
- Postage. (Evidence Code §1563.)

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## IX. NOTICE TO CONSUMER

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The "Consumer" is the person whose records are being sought. Special notice rules exist when the subpoena asks for "personal records." "Personal records" includes "any . . . books, documents, other writings, or electronic data pertaining to a consumer and which are maintained by a . . . private or public preschool, elementary school, secondary school, or postsecondary school. . . ." (CCP §1985.3) There must be a notice to the person whose records are being sought so they have an opportunity to object.

### Procedures

A copy of the subpoena must go to the person whose records are being sought five days before the subpoena is served on the public entity. Make certain that your copy of the subpoena includes a "Notice to Consumer," which proves that the individual whose records are being sought has received a copy.

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## X. OBJECTIONS/MOTIONS TO QUASH

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Prior to the deadline to produce documents listed in the subpoena, a concerned party may object or file a motion to prevent production. It (may/will be) one of two documents :

- Objection from a third party consumer or employee. (CCP §§1985.3(g); 1985.6(f)(3).)
- Motion to quash from a party to the lawsuit.

Either relieves your obligation to comply with the subpoena until a court issues an order stating otherwise.