6-10/100.00 Civil Subpoenas

Subpoenas are issued in non-criminal (civil or administrative) cases to compel the testimony of witnesses. Generic names for the different types of subpoenas include: “subpoena,” used to compel the attendance of a witness at a hearing; “subpoena duces tecum,” used to compel the production of records or things; and, “deposition subpoena,” used for depositions. The process by which the attendance of a witness is required is the subpoena. It is a writ or order directed to a person and requiring the person’s attendance at a particular time and place to testify as a witness. It may also require a witness to bring any books, documents, electronically stored information, or other things under the witness’s control which the witness is bound by law to produce in evidence. (CCP 1985)

Testimony of witnesses is taken by:

1. By affidavit;

2. By deposition;

3. By oral examination. (CCP 2002)

Civil subpoenas differ from each other depending on the type of witness, the kind of record or thing subpoenaed, and the place of testimony (hearing or deposition). For instance, a subpoena for an ordinary citizen is served personally while service on a police officer can be made by leaving copies of the subpoena with the watch commander. Specific right to privacy rules apply to subpoenaing the personal records of a consumer or the personnel files of a peace officer or public employee. Compliance with a subpoena ranges from the witness actually appearing at a hearing to allowing an attorney to make copies of documents at the witness’ place of business. The Judicial Council mandates the use of the following subpoena forms:

Civil Subpoena (SUBP-001)

Civil Subpoena Duces Tecum (SUBP-002)

Deposition Subpoena - Personal Appearance (SUPBP-015)

Deposition Subpoena - Personal Appearance For Production of Documents and Things (SUBP-020) Deposition Subpoena – For Production of Business Records (SUBP-010)

In addition to the above Judicial Council subpoena forms, other subpoena forms are issued by various administrative bodies.

• 6-10/100.10 Who May Issue Subpoenas

A subpoena in a civil case may be issued by the clerk of court, judge or attorney of record. (CCP 1986) (CCP 1985) The clerk or judge shall issue a blank signed and sealed subpoena

which shall be filled out by the subpoenaing party. An attorney of record may issue and sign a subpoena without the court seal. (CCP 1985)

The following may also issue subpoenas:

Coroner (GC 27498)

County Retirement Board (GC 31535)

Industrial Accident Commission (LAB 130, 131, 132, 134)

Labor Commissioner (LAB 92, 93)

New Motor Vehicle Board (VEH 3050.1, 3050.3)

Political Subdivisions of the State during a state of war emergency, a state of emergency or a local emergency for the purpose of ascertaining the damage to its personnel and property (GC 8643)

Board of Supervisors of a county (GC 25170-25172)

Department of Fair Employment and Housing (GC 12930)

Water Resources Control Board (WAT 1080)

An original subpoena and a copy for each witness, or a ticket containing its substance is required. If the subpoena is issued through the court, the subpoena may be electronic and has the same legal force and effect, as paper documents signed, subscribed, or verified by a trial court or a judicial officer of the court. (GC 68150)

• 6-10/100.20 Arbitration Subpoena

In the case of a subpoena issued for attendance at an arbitration hearing, the subpoenaing party must modify the form of the subpoena to show that the appearance is before an arbitrator at an arbitration hearing. (CRC 3.823 (1))

• 6-10/100.30 Notice to Appear in Lieu of Subpoena

In lieu of a subpoena, a written notice to appear may be served on a party's attorney not less than 10 days before the hearing, unless shortened by the court. The production of books, documents and things may be compelled if the notice is served at least 20 days before the hearing. (CCP 1987(b),(c))

• 6-10/100.40 Witness Fees and Mileage

Depending on the type of subpoena, a witness may be entitled to witness fees, mileage and/or actual costs. Written instructions to serve a subpoena in civil actions should state whether witness fees are to be paid if demanded. If the deposit is sufficient to cover sheriff's fees and witness fees but the instructions are silent as to witness fees, it shall be assumed that the attorney desires to pay witness fees if demanded. Some subpoenas require payment of witness fees whether or not demanded. The subpoena must inform the witness of the availability of witness fees. (CCP 2065) A party to the action who is subpoenaed may also receive witness fees. (Beale v. Stevens, 72 C 45 1 – reference not available) (Di Napoli v. Superior Court, **252 CA APP. 2d 203)**

• • 6-10/100.41 Designated Public Employee Witness

The fee for subpoenaing a designated public employee to appear before any court or tribunal is $275, which shall be tendered to the person accepting the subpoena for each day that the witness is required to attend unless ordered waived by the court through a Fee Waiver. "Tribunal' means any person or body issuing the subpoena, including an arbitrator in arbitration proceedings. If the actual expenses should later prove to be less than the amount tendered, the excess of the amount tendered shall be refunded. If the actual expenses are more than the amount deposited, the difference shall be paid to the public entity by the subpoenaing party. If a court continues a proceeding on its own motion, no additional witness fee shall be required prior to the issuance of a subpoena or the making of an order directing the public employee to appear on the date to which the proceeding is continued. Designated public employees include: (GC 68097, 68097.2, 68097.4, 68097.5, 68097.55)

Building Inspectors,
CHP Peace Officers and Vehicle Inspection Specialists,
City Police Officers,
Department of Justice Peace Officers and Analysts,
District Attorney Inspectors,
Firefighters, ~~and~~
Marshals, Deputy Marshalls
Probation Officers,
Sheriffs, Deputy Sheriffs
State Employees,
State Fire Marshal Peace Officers
Trial court employees

• • 6-10/100.42 Other Witness

A witness, other than a designated public employee, may demand a $35 witness fee and mileage at $0.20 a mile, both ways, prior to attending. If not paid, the witness cannot be compelled to attend. If the fees are demanded but not available, the subpoena should be served and the facts

noted in the proof of service. Mileage is not paid if the witness is not required to personally attend the hearing. (GC 68093, 68097)