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References

BPC – Business and Professions Code

CC – Civil Code

LAB – Labor Code

PC – Penal Code

CCP – Code of Civil Procedure

CRC – California Rules of Court

ELEC – Elections Code

EVID – Evidence Code

FAM – Family Code

GC – Government Code

HNC – Harbors and Navigation Code

INS – Insurance Code

PROB – Probate Code

RTC – Revenue and Taxation Code

UIC - Unemployment Insurance Code

VEH – Vehicle Code

WIC – Welfare and Institutions Code

WAT – Water Code

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• 6-11/100.00 Criminal Subpoena

The service of a subpoena is the process by which the attendance of a witness before a court or magistrate is required is a subpoena. (PC 1326) Instructions for service are seldom received. An original subpoena and a copy for each witness is necessary. (PC 1328)

The following may issue subpoenas in criminal cases:

Attorney of Record for the Defendant
City Attorney (GC 41803.7)
Court Clerk

District Attorney
District Attorney Investigator
Magistrate
Public Defender
Public Defender Investigator

• 6-11/110.00 Subpoena Duces Tecum (Criminal or Juvenile)

The criminal subpoena is a multipurpose form: Order to Attend Court or Provide Documents: Subpoena/Subpoena Duces Tecum (CR-125/JV-525). if items “b”, “c” or “d” are marked, the subpoena is a subpoena duces tecum. An affidavit supporting the issuance of a subpoena duces tecum is required in criminal cases. (People v. Clinesmith 175 CA 2d Supp. 911) The subpoena orders the witness to produce records by mail, bringing the records to court or by allowing the subpoenaing party to copy the records at the witness’ business.

2. You must follow the court order(s) checked below:
   a. ☐ Attend the hearing.
   b. ☐ Attend the hearing and bring all items checked in c. below.
   c. ☐ Provide a copy of these items to the court (Do not use this form to obtain Juvenile Court records):
      (1) _____
      (2) _____
      (3) _____
      ☐ *If this box is checked, provide all items listed on the attached sheet labeled "Provide These Items."*
   d. ☐ If someone else is responsible for maintaining the items checked in c, that person (the Custodian of Records) must also attend the hearing.

• 6-11/120.00 Subpoena (Criminal or Juvenile)

If only item “a” is marked, the subpoena is for a witness for personal appearance and is not a subpoena duces tecum.

2. You must follow the court order(s) checked below:
   a. ☐ Attend the hearing.

• • 6-11/120.10 Service

No fee is to be charged for service of the subpoena. The service of criminal subpoenas is found in PC 1328 and does not mandate a fee may be charged.

All police departments in the county will serve their own criminal subpoenas, with the exception of Long Beach. Misdemeanor subpoenas for the Long Beach Police Department and any subpoena for defendants will be served by this department.

• • 6-11/120.20 Minors

Service on a minor at least 12 years of age is made by serving the minor and the parent, guardian, conservator, or similar fiduciary, or if one of them cannot be located with reasonable diligence, then by serving any person having the care or control of the minor or with whom the minor resides or by whom the minor is employed, unless that person is the defendant. The minor is not served if less than 12 years of age. (PC 1328)

• • 6-11/120.30 Peace Officers

A peace officer designated in PC 830 may be served either by delivering a copy to the peace officer personally or by delivering two copies to the witness's agent for service (immediate superior or agent designated by the witness's immediate superior to receive the service) With the consent of local agencies, the marshal's or sheriff's office may serve the subpoena by electronic means, including electronic mail, computer modem, facsimile, on the witness' agent for service. If the service is made by electronic means, the agent for service shall acknowledge receipt of the subpoena by telephone or electronic means to the sender of origin. If the agent for service will be unable to deliver the subpoena to the witness within a time which will allow the witness to comply with the subpoena, the agent may refuse to accept service. If service is attempted less than five working days before the hearing, the agent may refuse acceptance of the subpoena. If the agent is subsequently unable to timely deliver the subpoena to the witness, the agent shall notify the server not less than 48 hours prior to the hearing. The server is then responsible for preparing the written return of service and notifying the subpoenaing party. (PC 1328)

• • 6-11/120.40 Other Witness

Any person except the defendant may serve a subpoena by personally delivering a copy of the subpoena to the witness. (PC 1328)

• 6-11/200.00 Mailed Subpoena

PC 1328d (a) Notwithstanding Section 1328, except as specified in subdivision (c) of Section 1328, a subpoena may be delivered by mail, messenger, electronic mail, or facsimile transmission. Service shall be effected when the witness acknowledges receipt of the subpoena to the sender, by telephone, by mail, over the internet by email or by completion of the sender's online form, or in person, and identifies themselves by reference to their date of birth and driver's license number or Department of Motor Vehicles identification card number. The sender shall make a written notation of the identifying information obtained during any acknowledgment by telephone or in person. The sender shall retain a copy of any acknowledgment received over the internet until the court date for which the subpoena was issued or until any further date as specified by the court. A subpoena issued and acknowledged pursuant to this section shall have the same force and effect as a subpoena personally served. Failure to comply with a subpoena issued and acknowledged pursuant to this section may be punished as a contempt and the subpoena may so state; provided, that a warrant of arrest or a body attachment may not be issued based upon a failure to appear after being subpoenaed pursuant to this section.

(b) A party requesting a continuance, based upon the failure of a witness to appear in court at the time and place required for their appearance or testimony pursuant to a subpoena, shall prove to the court that the party has complied with this section. That continuance shall only be granted for a period of time that would allow personal service of the subpoena and in no event longer than that allowed by law, including the requirements of Sections 861 and 1382.

A peace officer may also be served by mail pursuant to PC 1328d.

• 6-11/300.00 Teletype Subpoena

Senate Bill 471 repealed PC 1328a, PC 1328b, PC 1328c effective January 1, 2020. These sections dealt with teletype generated subpoenas. SB 471 also amended PC 1328d to include the service of a criminal subpoena by modern means.

Notwithstanding PC 1328, except as specified in subdivision (c), a subpoena may be delivered by mail, messenger, electronic mail, or facsimile transmission. Service shall be effected when the witness acknowledges receipt of the subpoena to the sender, by telephone, by mail, over the internet by email or by completion of the sender's online form, or in person, and identifies themselves by reference to their date of birth and driver's license number or Department of Motor Vehicles identification card number. The sender shall make a written notation of the identifying information obtained during any acknowledgment by telephone or in person. The sender shall retain a copy of any acknowledgment received over the internet until the court date for which the subpoena was issued or until any further date as specified by the court. A subpoena issued and acknowledged pursuant to this section shall have the same force and effect as a subpoena personally served. Failure to comply with a subpoena issued and acknowledged pursuant to this section may be punished as a contempt and the subpoena may so state; provided, that a warrant of arrest or a body attachment may not be issued based upon a failure to appear after being subpoenaed pursuant to this section. (PC 1328d)

• 6-11/400.00 Witness Fees

A witness cannot demand witness fees in advance. However, the court, at its discretion, may order the county auditor to pay witness fees to a witness. (PC 1329; GC 68093) The subpoena must include notice that the witness may be entitled to receive fees and mileage and indicate generally the manner in which a request or claim for fees and mileage should be made. (PC 1329.1)

Note: GC 72232 repealed effective January 1, 2003 due to the unification of the courts. It was replaced by GC 68093.

• 6-11/500.00 Attendance

A witness is not required to attend outside the county where the witness resides or was served unless the distance is less than 150 miles from the witness' residence unless the subpoena is endorsed with a court order compelling attendance. The 150 mile travel limitation does not apply to a subpoena duces tecum where the custodian of records is not required to attend. (PC 1330).

• 6-11/600.00 On-Call Witness

Any person who is subpoenaed to appear at a session of court, or at the trial of an issue therein, may, in lieu of appearance at the time specified in the subpoena, agree with the party at whose request the subpoena was issued, to appear at another time or upon such notice as may be agreed upon. Any failure to appear pursuant to such agreement may be punished as a contempt, and a subpoena shall so state. The facts establishing such agreement and the failure to appear may be shown by the affidavit of any person having personal knowledge of the facts and the court may grant such continuance as may be appropriate. (PC 1331.5)

• 6-11/700.00 Disobedience to Subpoena

Disobedience to a subpoena, or a refusal to be sworn or to testify as a witness, may be punished by the Court or magistrate as a contempt. A witness disobeying a subpoena issued on the part of the defendant, unless he show good cause for his nonattendance, is liable to the defendant in the sum of one hundred dollars, which may be recovered in a civil action. (PC 1331)

A failure to comply with a subpoena served by mail and properly acknowledged may be punished by contempt; however, no warrant of arrest or body attachment may be issued thereon. Upon proof that a non-appearing witness was properly served by mail, the court shall grant a continuance for a reasonable period of time to allow personal service of the subpoena. (PC 1328d)

• 6-11/800.00 Concealed Witness

If a witness is concealed in a building or vessel, so as to prevent the service of subpoena upon him, any Court or Judge, or any officer issuing the subpoena, may, upon proof by affidavit of the concealment, and of the materiality of the witness, make an order that the Sheriff of the county serve the subpoena; and the Sheriff must serve it accordingly, and for that purpose may break into the building or vessel where the witness is concealed. (CCP 1988)

• 6-11/900 Certificate of Service

Subpoenas shall be returned directly to court. However, subpoenas on peace officers may be returned, if requested, to the subpoenaing party. The certificate of service must be attached to the original subpoena. The return of a criminal subpoena received for service by telegraph or teletype must be made by telegraph or teletype certifying the actions in making the service. (PC 1328(c))

If the witness named in a criminal subpoena is a peace officer as defined in PC 830 and the service has been made upon the officer's immediate superior or an agent designated by the superior for service of such process, the certificate of service shall so indicate. The return shall be made to court immediately upon completion of the service. If notified by the immediate superior of the witness that the subpoena was not served, immediately notify the subpoenaing party. (PC 1328(f))