

SMALL CLAIMS

HOW TO SUBPOENA A WITNESS AND DOCUMENTS

WHAT IS A SUBPOENA?

A subpoena is a writ or order to appear at a certain time and place to give testimony upon a certain matter. CCP Section 1985. It may also require a witness to produce documents under the witness's control which the witness is obligated to produce by law. CCP Section 1985. A witness who fails to follow the subpoena orders may be held in contempt of Court. CCP Section 1991. At that time, the presiding judge may issue a warrant for the arrest of that witness. CCP Section 1993.

You can get a copy of the "Small Claims Subpoena and Declaration" (SC-107 a.k.a. L-0520) in certain jurisdictions) from the Internet at www.ocsmallclaims.com or the Justice Center in which you plan to file.

NOTE: It is not a good idea to force someone to testify on your behalf, since this person probably won't make a good witness or may even testify against you. However, a subpoena may be needed to enable a witness to obtain permission from his or her employer to be absent from work to testify in Court.

HOW TO SUBPOENA A WITNESS

Obtain a copy of the "Small Claims Subpoena and Declaration" and fill-out the form. After completing the form, take it to the clerk at the proper Justice Center to have it filed. The clerk will issue the subpoena. You then need to serve a copy of the Small Claims Subpoena, IN PERSON, on the witness. Unlike the "Plaintiff's Claim and Order to Defendant" form, the party seeking the subpoena can serve it. After serving the subpoena, the original subpoena must be returned to the Justice Center with the completed Proof of Service on the back.

WITNESS FEES

A witness can ask for fees of \$35 per day plus 20 cents per mile each way. Witness fees for law enforcement officers and government employees are higher. If a witness asks for fees, the witness need not appear unless the required fees are paid to and received. The person who serves the subpoena should be prepared to pay the fees at the time of service in the event that fees are requested. If the witness does not ask for fees, you don't have to offer them.

HOW TO SUBPOENA CONSUMER RECORDS

Special notice and procedures are required for production of personal records of a consumer. This gives the consumer time so they may limit or quash the subpoena **before** the records are produced, or even before the subpoena is served on the records custodian.

First step is to determine if records are "consumer records" under CCP 1985.3. Typically, these are records maintained by a physician, psychotherapist, chiropractor, attorney, bank, etc.

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Phone (714) 571-5277 Website (<http://www.ocsmallclaims.com/>)

If so, then:

1. Prepare and issue the following documents:
 - [Notice to Consumer](#)
 - [Small Claims Subpoena and Declaration](#)
 - Declaration of Custodian of Records
 - Any other relevant supporting documents

On the “Small Claims Subpoena and Declaration” form:

- You will need to check the box requesting the witness to produce documents
- Next, you will need to fill-out the Declaration form by describing exactly which documents or papers you need and the reason for your request
- Complete the rest of the form and file it with the clerk at the proper

Justice Center to have it issued. The clerk will issue the subpoena.

NOTE: If you are filling out the (L-0520) version of the Small Claims Subpoena and declaration form you do not need the clerk to issue the form; it has already been issued for you.

2. Make 4 packets consisting of all the documents. One copy for yourself, one for the consumer, one for the records custodian, and the originals for the court.
3. Serve a copy of the “Small Claims Subpoena and Declaration” and the “Notice to Consumer” forms on the consumer whose records are being subpoenaed at least:
 - 15 days prior to the date set for production, and
 - 5 days prior to service on the records custodian.

This means that the subpoena must be served on the consumer at least 20 days prior to the date set for production. After giving the consumer a copy of the subpoena, the original subpoena must be returned to and filed with the court with the completed “Proof of Service” on the back.

4. Serve all documents on the custodian of records.

This includes the Notice to Consumer, Small Claims Subpoena, **AND** the Declaration of Custodian Records. When a records custodian receives a subpoena they should determine if the records are consumer records. If so, they should see if the Proof of Service (POS) of the “Notice to Consumer” form was served on them. If not, then they are not required to comply with the subpoena, but may. Even if POS was served, some records custodians (doctors, lawyers...) will not produce the records. The custodian may feel the records are privileged or confidential and require a court order for production.

NOTE: There is no statewide Declaration of Custodian Records form but we have created one for your convenience.

CONSUMER’S RESPONSE TO A SUBPOENA FOR CONSUMER RECORDS

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1. **Parties** to the lawsuit whose records are being sought must file a motion for a protective order.
2. **Nonparties** whose records are being sought only need to fill out the "Objection by Non-party to Production of Records" section on the notice to consumer and POS section. Serve all parties.

NOTE: Action must be taken within 5 days after service otherwise the documents may be produced.

SCENARIOS FOR CONSUMER RECORDS

1. Bill and Carol get into a car accident. Bill sues Carol for a broken arm. Bill alleges \$5,000 in medical bills. Carol may want to issue a Subpoena directing the doctor to produce Bill's medical records at the trial. Since these records are consumer records, Carol will need to give notice to Bill that his records are being sought. Carol must prepare and issue the Subpoena, the Notice to Consumer and related documents. She must serve all the documents on Bill at least 5 days prior to serving the Subpoena on the doctor.

2. Let's say the same facts as #1, yet Carol knows that a psychotherapist treats Bill. Carol may want to subpoena those records. She is vindictive and wants to embarrass Bill. Carol must serve Bill with the Notice to Consumer and related Subpoena documents 5 days prior to serving Bill's psychotherapist. Bill may not want his psychotherapist knowing that he is being sued. He would have to file a motion for a protective order. (Since Bill's mental state is not at issue in this case the protective should be granted.)

3. Bill sues Carol for defamation. Bill alleges that Carol, Bill's former girlfriend called his current girlfriend, Virginia and said many terrible and nasty things. Carol has said that she has never spoken with Virginia and does not even know who she is. Virginia says that Carol called Virginia from a number Bill recognizes as Carol's cell phone.

Bill would like Carol and Virginia's cell phone records to prove that they have spoken to each other. Bill is going to have to prepare and issue a Subpoena, Notice to Consumer, and related documents. He will have to serve Carol and Virginia with the documents at least 5 days prior to serving the cell phone provider.

- Carol is a **party** so she will have to file a motion for a protective order.
- Virginia is **not a party** and may simply complete the objection and POS section of the Notice to Consumer.

NOTE: Many phone and utility companies will comply with Subpoenas served by mail.

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