

APPENDIX E – Subpoena Procedures

A subpoena is a document issued by the court ordering a person to appear as a witness to testify in a court proceeding or at a deposition. It may also be used to order a witness to bring (produce) evidence, such as documents, books, records, or other objects, to court or to the deposition. This type of subpoena is called a "subpoena to appear/produce". The formal legal term for a subpoena requiring production of documents, etc., is **subpoena duces tecum**. Failure to comply with a subpoena without adequate excuse may be deemed a contempt of court.

Note: For information on coroner subpoenas, see the Coroner's Manual.

I. Criminal Subpoena

Includes subpoenas in criminal cases and children's proceedings involving a petition for delinquency. Criminal Rule 17, Delinquency Rule 1(e) and Administrative Rule 7.

A. Subpoena to Appear/Produce in Court. Criminal Rule 17(a) & (c).

Criminal subpoenas to appear and to produce are issued in blank. This means that it is not required that the subpoena form be completed by the requesting party before it is signed and sealed by the clerk of court.

To issue a criminal subpoena to appear/produce in court, the clerk must do the following:

1. Sign a blank subpoena form (CR-340).
2. Affix the court seal to the subpoena.
3. Give the subpoena to the party requesting it. The party is responsible for arranging to have the subpoena served on the witness.

Larger courts have subpoenas which are pre-printed with the court seal and clerk's signature.

B. Subpoena to Appear/Produce at Deposition. Criminal Rule 17(f).

An order authorizing a deposition must be signed by the judge before a subpoena to appear/produce at deposition can be issued in a criminal case. Additionally, the subpoena must be completely filled in by the party requesting it before being issued by the clerk.

To issue a criminal subpoena to appear/produce at deposition, the clerk must do the following:

1. Check the file to verify that an order to take deposition has been signed by the judge.

2. Check to see that the subpoena form (CIV-115) is completely and correctly filled out as follows:
 - a. Court and location
 - b. Case caption
 - c. Case number
 - d. Name and address of witness
 - e. Date, time and place where deposition is to be taken.
 - f. The words "not required per CrR 17(f)" should be written on the line that reads "Notice, as required by Civil rule 45(d), has been served upon..."
 - g. Evidence to be produced, if applicable. If not applicable, the word "None" should be inserted.
3. Date and sign the subpoena.
4. Affix the court seal to the subpoena.
5. Give the original subpoena and all copies to the person requesting it.

II. **Civil Subpoena**

Includes subpoenas in civil, probate, and children's proceedings involving a petition for a child in need of aid. Civil Rule 45, Child in Need of Aid Rule 1(e) and Administrative Rule 7.

A. Subpoena to Appear In Court.

Civil subpoenas to appear are issued in blank which means that it is not required that the subpoena form be completed by the party before it is signed and sealed by the clerk.

To issue a civil subpoena to appear in court, the clerk must do the following:

1. Sign a blank subpoena form (CIV-111).
2. Affix the court seal to the subpoena.
3. Give the subpoena to the party requesting it.

Larger courts have subpoenas which are pre-printed with the court seal and clerk's signature.

B. Subpoena to Appear/Produce in Court.

A civil subpoena to appear/produce may not be issued in blank. The subpoena must be completely filled in by the party requesting it before being issued by the clerk.

To issue a civil subpoena to appear/produce in court, the clerk must do the following:

1. Check to see that the subpoena form (CIV-110) is completely and correctly filled out as follows:
 - a. Court and location
 - b. Case caption
 - c. Case number
 - d. Name and address of witness
 - e. Date, time and place of court proceeding
 - f. Evidence to be produced.
2. Date and sign the subpoena.
3. Affix the court seal to the subpoena.
4. Give the subpoena to the person requesting it.

C. Subpoena to Appear/Produce at Deposition

Proof of service that a notice of deposition was served on all parties must be shown to the clerk before a civil subpoena to appear/produce at deposition can be issued. Additionally, the subpoena must be completely and correctly filled in by the party requesting it before being issued by the clerk. Civil Rule 45(d)(1).

To issue a civil subpoena to appear/produce at deposition, the clerk must do the following:

1. Verify that a notice of deposition was served on all parties. The party requesting the subpoena must provide the proof of service (which is not filed but is returned to the party). Civil Rule 5(d)(2).
2. Check to see that the subpoena form (CIV-115) is completely and correctly filled out as follows:
 - a. Court and location
 - b. Case caption
 - c. Case number
 - d. Name and address of witness
 - e. Date, time and place where deposition is to be taken
 - f. To whom and the date the notice of deposition was served

g .Evidence to be produced, if applicable. If not applicable, the word "None" should be inserted.

3. Date and sign the subpoena.
4. Affix the court seal to the subpoena.
5. Give the subpoena to the person requesting it.

III. Subpoena to be issued in state other than where case is filed

Special procedures are required to subpoena a witness outside the state in which the case is filed. To be valid, a subpoena must be issued by the state in which the potential witness resides. When a person in Alaska is needed to testify in a case outside the state, our courts cooperate with the out of state court.

NOTE: The motions filed in these procedures are ex parte and normal response times do not apply. There are no fees for certifications/exemplifications or any other service. See local practice. The paperwork is taken directly to the judge for action. The judge may order a hearing or proceed immediately.

A. Civil Subpoena/Alaska case/deposition out of state.

A subpoena may be needed to compel a witness to appear in another state to give testimony at a deposition in an Alaska case. Usually the parties in a civil action agree to produce their witnesses without subpoena but on occasion there is a need to ask for a court order.

The term "Commission" is used to refer to this order of the court which asks for assistance from a court in another state.

1. Filings necessary to request issuance of a subpoena:
 - a. Copy of notice of taking deposition with proof of service on parties and witness.
 - b. Motion and memorandum for order (commission) for taking deposition.
 - c. Proposed order (commission) for taking of deposition (to be signed by Alaska judge).
 - d. Copy of proposed order for issuance of subpoena and proposed subpoena. These are presented to the court in the other state and are not required but are frequently furnished.
2. Verify the following:

- a. accuracy of court location, case number and caption.
 - b. motion and memorandum are signed by attorney.
 - 3. File stamp motion and memorandum; lodge order (commission). See Appendix E.
 - 4. Forward file immediately to the assigned trial judge; if this judge is not available, forward to presiding judge.
 - 5. When file is returned, file stamp any document signed by the judge and distribute as follows:
 - a. Original order (commission) to case file.
 - b. Certified/exemplified copy(s) as required by the requesting party. There is no charge for this service. See local practice.
- B. Civil subpoena/out of state case/deposition in Alaska.

A subpoena may be needed to compel a person in Alaska to appear for taking of testimony at a deposition in an out-of-state case. Usually parties in a civil action agree to produce their witnesses without subpoena but on occasion there is a need to ask for a court order.

Some courts keep a log and assign an out-of-state witness number to the proposed order. See local practice.

- 1. Filings necessary to request issuance of a subpoena.
 - a. Copy of notice of taking deposition showing proof of service on parties and witness.
 - b. Certified copy of order (commission) to take deposition
 - c. Proposed order for issuance of subpoena
 - d. Proposed subpoena.
 - e. Motion/petition and supporting memorandum from other state.
- 2. File stamp supporting paperwork submitted; lodge order for issuance of subpoena.
- 3. Forward to presiding judge immediately; if presiding judge is not available, forward to superior court judge.

4. When paperwork is returned, follow directions of judge. This may include file stamping order, if signed, and issuance of a subpoena.
5. If order is granted, distribute as follows:
 - a. Retain certified/exemplified copy of order (commission) from other state and original order for issuance of subpoena; retain copy of other documents.
 - b. Certified/exemplified copy(s) of order (commission) as required, to attorney, along with subpoena if issued.
6. Retain the information copies of proposed order and subpoena to be given to out-of-state court. Store in miscellaneous Out-of-State Witness file. See local practice.

C. Criminal Subpoena for person in another state to appear in Alaska. AS 12.50.020.

Title 12 allows an Alaska subpoena to be served out of state for the purpose of securing a witness' appearance in Alaska to testify in a criminal case. The court order which requests assistance from the out-of-state court is called a "certificate".

1. The following paperwork is filed:
 - a. Motion and memorandum for court certificate.
 - b. Proposed order (certificate) requesting subpoena for out of state witness.
 - c. Unsigned waiver of hearing.
2. Verify the following:
 - a. accuracy of court location, case number and caption.
 - b. motion and memorandum are signed by attorney.
3. File stamp motion and memorandum; lodge certificate.
4. Forward file immediately to the assigned trial judge; if this judge is not available, forward to the presiding judge.
5. When file is returned, file stamp order (certificate) and distribute
 - a. Original to court file.
 - b. Certified/exemplified copy(s) to requesting party, as needed.

- c. Original waiver to requesting party and keep copy for court file.
 6. The requesting party will forward the paperwork to an attorney in the state where the witness is located. This cooperating attorney submits the order (certificate) to the local court. The witness may then have a right to a hearing before that court or may waive the hearing. If approved, the out-of-state court will issue an order for the witness to appear in Alaska as requested.
- D. Criminal subpoena for person in Alaska to appear as witness in another state.

When a certificate or similar order from an out-of-state court is presented requesting issuance of a subpoena to a person in Alaska, take paperwork immediately to the presiding judge. Other documents may include a proposed order, waiver of hearing and a subpoena. Some courts keep a log and assign an out-of-state witness number to the proposed order. See local practice.

1. Requesting party files paperwork in cooperation with another state attorney.
 - a. Certified certificate signed by judge in requesting state.
 - b. Proposed order for subpoena.
 - c. Notice/waiver of hearing.
2. File stamp certificate and other documents as appropriate; lodge order. See Appendix E.
3. Forward to presiding judge immediately; if presiding judge is not available, forward to superior court judge.
4. When paperwork is returned, follow directions of judge. This may include issuance of a subpoena, calendaring hearing, etc.
5. If order is granted, distribute as follows:
 - a. Retain certified certificate from other state and original order for issuance of subpoena; retain copy of other documents.
 - b. Give all other documents to requesting attorney. Make certified/exemplified copies as needed.
6. Store documents in miscellaneous Out-of-State Witness file. See local practice.

IV. Service

Service of a subpoena may be made at any place within the State of Alaska. The party requesting the subpoena is responsible for arranging to have it served on the witness. The return of service is sent to the requesting party. It is not filed with the court. Civil Rule 45(c).

A. Personal Service.

Service of a subpoena may be made by a peace officer or any person over the age of 18 who is not a party to the action (such as a process server).

B. Service by Certified Mail.

Service on a witness known to reside within Alaska may be made by certified mail by the clerk.

V. **Proof of Service**

Copies of subpoenas or proofs of service of subpoenas are not filed with the court. These are retained by the party requesting issuance unless they are used in the proceeding, such as when a witness fails to appear and a request for continuance or request for sanctions is made. Civil Rule 5(d)(2).

VI. **Witness Fees and Travel Expenses.**

A. Witness Subpoenaed by Private Party.

A witness, except when subpoenaed by the state, a municipality, a borough, a city, or an officer or agency thereof, may demand to be paid one day's witness fee and travel expenses in advance as provided in Administrative Rule 7.

B. Witness Subpoenaed by Governmental Entity

A witness subpoenaed by the state, a municipality, a borough, a city, or an officer or agency thereof, is paid witness fees and travel expenses by the government entity after appearing as required by the subpoena.

NOTE: Any questions regarding a witness fee should be referred to the party who requested the subpoena.