

HOW TO SUBPOENA A WITNESS

A subpoena (pronounced "suh PEEN uh") is a court order that requires a person to appear and testify in court (or at a deposition).¹ If you believe a witness may not come to court when you ask, you should have a subpoena issued by the court. If you do not subpoena a witness and the witness does not appear at the hearing, you may be required to present your side of the case without that witness.

Types of Subpoenas

There are three types of subpoenas. The first two can be used to order a witness to appear in court. The third is used to order a witness to appear at a deposition. See pages 4 - 6 for copies of all three.

1. The ***Subpoena to Appear*** (CIV-111) is used to order a witness to appear in court to testify. It may not be used to order a witness to bring documents or anything else to court. If you want a *Subpoena to Appear*, do the following:
 - a. Go to the clerk's office and get the subpoena form.
 - b. Fill in the blanks on the form. See sample on page 4.
 - c. Make sure the clerk has signed and sealed the subpoena (which usually will have been done before giving the subpoena form to you).
 - d. Have the subpoena served on the witness as explained in the "Service of Subpoenas" section on the next page.

2. The ***Subpoena to Appear and Produce*** (CIV-110) orders the witness to bring along certain documents or other tangible things when the witness appears in court to testify in a case. If you want this type of subpoena, do the following:
 - a. Go to the clerk's office and get the subpoena form.
 - b. Fill in the blanks on the form. See sample on page 5.
 - c. Have the clerk sign and seal the subpoena.
 - d. Have the subpoena served on the witness as explained in the "Service of Subpoenas" section on the next page.

3. The ***Subpoena For Taking Deposition*** (CIV-115) is used to order a person to testify at a deposition. A "deposition" is a proceeding at which the sworn testimony of a witness is taken outside of court.² This subpoena may also order the person being deposed (questioned at the deposition) to bring documents or other evidence to the deposition. To get one of these subpoenas, do the following:
 - a. Serve a "notice of deposition" on every other party in the case. See Civil Rules 30(b) and 31(a) for what the notice must contain.

¹ The court rule on subpoenas in civil cases is Civil Rule 45.

² See Civil Rules 26 – 37 about depositions and other methods of obtaining evidence.

- b. Show the court clerk proof that the "notice of deposition" has been given, and ask the clerk for a CIV-115 subpoena form. (Note: Do not file the proof with the court, just show it to the clerk.³)
- c. Fill in the blanks on the form. See sample on page 6.
- d. Have the clerk sign and seal the subpoena.
- e. Have the subpoena served on the witness as explained in the "Service of Subpoenas" section below.

Witness Fees

You must pay a witness fee to each witness you subpoena. Witness fees are \$12.50 if it will not take more than 3 hours of the witness' time to attend the trial or hearing (including travel time). The witness fee is \$25.00 if it will take more than 3 hours of a witness' time to attend the trial or hearing (including travel time). In addition, witnesses who travel more than 30 miles from their residence must also be paid round trip mileage at the rate allowed for state employees.⁴ Witnesses attending from a point so far away that they cannot return to their residence day-to-day also receive a per diem for meals and lodging.⁵ However, the per diem fees do not need to be paid to the witness when the subpoena is served.

A check made payable to the witness for the correct fee must be attached to the subpoena when it is served on the witness.

Service of Subpoenas

A subpoena can be served by one of the following methods:

1. Certified Mail.

A subpoena can be served by registered or certified mail only if it is mailed by the court. To have a subpoena served by certified mail, you will need to provide the following to the court clerk:

- a. the original and one copy of the subpoena
- b. the witness fee check or postal money order
- c. an envelope addressed to the witness with sufficient postage to cover the Postal Service charge for certified mail (including first class postage, the certified mail fee, the restricted delivery fee and the return receipt fee)
- d. completed certified mail forms from the Postal Service
 - (1) Check the "restricted delivery" box to restrict delivery of the subpoena only to the witness.
 - (2) Address the return delivery receipt (green card) so that it will be returned to you (the party requesting the subpoena).
- e. cash or check made payable to the clerk of court for the fee charged by the clerk's office to serve the subpoena (currently \$4.00)⁶

³ Civil Rule 5(d)(2)

⁴ Administrative Rule 7; Go to www.state.ak.us/courts and click on "mileage rate" under the Court System Information heading.

⁵ Administrative Rule 7

⁶ Administrative Rule 9(e)(6)(i)

The clerk will mail the original subpoena to the witness and retain a copy for the court file. After the witness picks up the certified mail, the Post Office will return the green card (return delivery receipt) to you. You should bring the green card receipt with you when you come to court in case you need to prove that the witness was served with the subpoena. If the witness does not pick up the certified mail, you must try personal service, described below.

NOTE: You will need to contact the post office to determine the current postage required for certified mail. You will also need to contact the clerk's office to determine the current fee charged by the court to serve the subpoena by certified mail.

2. Personal Service

A subpoena can be served on a witness by any person who is at least 18 years old and who is not a party to the action. This includes licensed process servers and police officers.

If you want to use a process server, you can get a list of them from the court clerk's office. Or, contact the Permits and Licensing Unit of the Alaska State Troopers at (907) 269-0393 for a list of licensed process servers. Each process server sets his/her own fees for this service. For more information about process servers, see the booklet CIV-106, *How to Serve A Summons*. If you choose to have a police officer serve the subpoena, you must contact your local police department for instructions and fee information.

The person who has served the subpoena on the witness must provide proof of the service by making a written statement of the facts (such as the date and time of service, the document handed to the witness, the name of the person serving the subpoena, etc.) and signing it. The signature must be notarized. This "proof of service" requirement can be satisfied by filling out the "RETURN" section in the bottom half of the subpoena form.

You should bring this written and notarized proof of service with you when you come to your hearing or trial in case you need to prove that the witness was served with the subpoena.

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT Anchorage

Jane Austen)

Plaintiff(s),)

vs.)

Walter Scott)

Defendant(s).)

CASE NO. 3AN-01-123CI

SUBPOENA TO APPEAR

To: Elizabeth Bennet
Address: 123 Pemberly Ave., Anchorage, Alaska 99503

You are commanded to appear in court to testify as a witness in the above case at:

Date and Time: July 14, 2001 at 8:00 a.m.

Courtroom: 301 at Nesbett Courthouse, 825 W 4th Ave., Anchorage

(SEAL)

Date

Clerk of Court

Subpoena issued at request of
Jane Austen
Attorney for no attorney
Address 1216 Hampshire St., Anchorage 99501
Telephone 264-8229
If you have any questions, contact the
person named above.

This subpoena may not be used to order a
witness to produce documents, nor may it be
used to require a witness to appear for
deposition.

RETURN

I certify that on the date stated below, I served this subpoena on the person to whom it is
addressed, _____, in _____,
Alaska. I left a copy of the subpoena with the person named and also tendered mileage and
witness fees for one day's court attendance.

Date and Time of Service

Signature

Service Fees:

Service \$ _____

Mileage \$ _____

TOTAL \$ _____

Print or Type Name

Title

If served by other than a peace officer, this return must be notarized.

Subscribed and sworn to or affirmed before me at _____, Alaska
on _____.

(SEAL)

Clerk of Court, Notary Public or other
person authorized to administer oaths.
My commission expires _____

CIV-111 (8/96)(st.3)
SUBPOENA TO APPEAR

Civil Rule 45
Dist. Ct. Civ. R. 11(f)

AT Anchorage

) CASE NO. 3AN-01-456CI

_____) SUBPOENA TO APPEAR & PRODUCE

Date and Time: August 6, 2001 at 1:00 pm
Courtroom: 401 at 825 W 4th Ave., Anchorage, Alaska.

You are ordered to bring with you the cargo manifest of the ship Ark Royal on her last voyage.

Dorothy Dunnett
Attorney for Nicholas vander Poele
Address: 52 Edinburgh St., Anchorage
Telephone: 264-8229

issued and may not be used to require a witness to appear for a deposition.

I certify that on the date stated below, I served this subpoena on the person to whom it is addressed, _____, in _____,

Service Fees:
Service \$ _____
Mileage \$ _____
TOTAL \$ _____

Print or Type Name

Title

Subscribed and sworn to or affirmed before me at _____, Alaska
on _____.

My commission expires _____

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT Anchorage

Francis Crawford)

Plaintiff(s),)

vs.)

Graham Malett)

Defendant(s).)

CASE NO. 3AN-01-789CI

SUBPOENA FOR TAKING DEPOSITION

To: Philippa Somerville
Address: 628 Lymond Ave., Anchorage, Alaska 99503

You are commanded to appear and testify under oath in the above case at:

Date and Time: September 3, 2001, at 10:00 a.m.

Offices of: Dorothy Dunnett

Address: 52 Edinburgh St., Anchorage, Alaska

Notice, as required by Civil Rule 45(d), has been served upon Charles Christensen
on July 16, 2001. You are ordered to bring with you nothing

(SEAL)

Date
Subpoena issued at request of
Dorothy Dunnett
Attorney for Francis Crawford
Address: 52 Edinburgh St., Anchorage
Telephone: 264-8229

If you have any questions, contact the person
named above.

Deputy Clerk
Before this subpoena may be issued, the
above information must be filled in and
proof must be presented to the clerk that
a notice to take deposition has been served
upon opposing counsel.

RETURN

I certify that on the date stated below, I served this subpoena on the person to whom it is
addressed, _____, in _____,
Alaska. I left a copy of the subpoena with the person named and also tendered mileage and
witness fees for one day's court attendance.

Date and Time of Service
Service Fees:
Service \$ _____
Mileage \$ _____
TOTAL \$ _____

Signature

Print or Type Name

Title

If served by other than a peace officer, this return must be notarized.

Subscribed and sworn to or affirmed before me at _____, Alaska
on _____.

(SEAL)

Clerk of Court, Notary Public or other
person authorized to administer oaths.
My commission expires _____