

## 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).<sup>1</sup> 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.<sup>2</sup> 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.

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<sup>1</sup> The court rule on subpoenas in civil cases is Civil Rule 45.

<sup>2</sup> 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.<sup>3</sup>)
- 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.<sup>4</sup> 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.<sup>5</sup> 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).

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<sup>3</sup> Civil Rule 5(d)(2)

<sup>4</sup> Administrative Rule 7; Go to [www.courts.alaska.gov](http://www.courts.alaska.gov) and click on "frequently asked questions" under the Court System Information heading.

<sup>5</sup> Administrative Rule 7

- 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 \$5.00)<sup>6</sup>

The clerk will mail a copy of the subpoena to the witness and retain the original 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.

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<sup>6</sup> Administrative Rule 9(e)(6)(i)



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

Nicholas vander Poele )

Plaintiff(s), )

vs. )

Gelis van Borselen )

Defendant(s). )

CASE NO. 3AN-01-456CI

SUBPOENA TO APPEAR & PRODUCE

To: Simon de St. Pol  
Address: 44 Kilmirren Ave., Anchorage, Alaska 99503

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

Date and Time: August 6, 2001 at 1:00 pm

Courtroom: 401 at 825 W 4<sup>th</sup> Ave., Anchorage, Alaska.

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

(SEAL)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Deputy Clerk

Subpoena issued at request of

Dorothy Dunnett

Attorney for Nicholas vander Poele

Address: 52 Edinburgh St., Anchorage

Telephone: 264-8229

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

This subpoena must be filled in before being issued and may not be used to require a witness to appear for a 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 required by court rule.

\_\_\_\_\_  
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-110 (8/96)(st.3)  
SUBPOENA TO APPEAR & PRODUCE

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

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 \_\_\_\_\_

CIV-115 (8/96)(st.3)  
SUBPOENA FOR TAKING DEPOSITION

Civil Rule 45(d)