



INSTRUCTIONS FOR SERVICE OF SUBPOENA

Subpoena available

There are three kinds of Subpoena,

- I. *Subpoena To Testify. (Ad Testificandum)*
Requires a **person** to come to the Court to testify as a witness.
- II. *Subpoena For Records. (Duces Tecum)*
Requires **documents, papers, writing, etc.** to be brought to the Court.
- III. *Information Subpoena.*
Requires the **information** be provided to the person requesting it.

Methods of Service

A *Subpoena to Testify* or a *Subpoena for Records* is **generally** served on an individual* by personal (in hand) delivery. [*For service on a corporation or on a partnership, see the Clerk.]

For service on an individual, under certain circumstances it may be appropriate to use an **alternate method** of service such as “Substituted Service” or “Conspicuous Service.”

“Substituted Service” is the personal service of the Subpoena on someone other than the person who is being subpoenaed (the witness) at the actual place of business or place of residence of the witness. The server must then mail a copy of the Subpoena to the witness by first class mail to the actual place of business or place of residence of the witness. Mark the envelop “Personal and Confidential.”

“Conspicuous Service” is the service of the Subpoena by leaving it at the residence or place of business of the witness. Prior to leaving the Subpoena, the server must make at least two attempts. If no one is found on either attempt, on the third try the Subpoena may be affixed to the door with adhesive tape, and a copy must be mailed to the residence of the witness by first class mail. Mark the envelope “Personal and Confidential.”

An *Information Subpoena* is **generally** served by Certified or Registered Mail, Return Receipt Requested, or it may **alternatively** be served by personal delivery or by using the “Substituted Service” or “Conspicuous Service” method.

Who May Serve a Subpoena

Anyone NOT A PARTY to the action, who is over the age of 18, and not a Police Officer, may serve the Subpoena.

Proof of Service

The person who serves the *Subpoena to Testify* or the *Subpoena for Records* must fill out an Affidavit of Service and have it notarized.

Procedure

The person who is going to serve the Subpoena must:

- 1) Find the person to be served.
- 2) Show that person the *original* Subpoena.
- 3) Give that person a *copy* of the Subpoena.
- 4) Fill out the Affidavit of Service on back of the *original*.
- 5) Retain the Affidavit of Service for further procedures if the person fails to comply with the Subpoena.
- 6) A copy of a Subpoena for Records (*Duces Tecum*) must also be served either 'in hand' or by mail on each party who has appeared in the action so that it is received by them promptly after service on the witness.

For an *Information Subpoena* follow the above procedure, *or*

- 1) Place a copy of the Subpoena, together with an original and copy of the questions to be answered in an envelope addressed to the witness.
- 2) Include a self-addressed, stamped envelope for use by the witness returning the answered questions to you.
- 3) Mail the envelope to the witness by Certified or Registered Mail, Return Receipt Requested.

Fees for Service

When served with a *Subpoena to Testify* or a *Subpoena for Records*, the witness must be paid a witness fee of \$15.00 per day. If the witness is served outside the City of New York s/he shall also be paid 23 cents per mile to the place of attendance, from the place where s/he was served, and return. The fee must be paid a reasonable amount of time *before* the scheduled date. Nonpayment of the witness fee voids the duty to appear.

NOTE: A subpoena for records must also be served on all parties to the action following CPLR § 2303.

Location

A subpoena from the Civil Court of the City of New York may be served only within the City of New York or in Nassau County or Westchester County, Service anywhere else may only be done if permitted by a Judge.

Restrictions

General

A Subpoena may be served on a Sunday.

A City or State agency or a public library may be subpoenaed only by order of the court.

Time

Any witness must be served a "reasonable" amount of time prior to the date of appearance. It is suggested that service be *at least 5 days before* the date of the hearing.

A City or State agency or a public library *must* be served *at least 24 hours prior* to the time of appearance.