

CPLR ARTICLE 23:
SUBPOENAS/OATHS/AFFIRMATIONS.

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**** NOTE: THIS SECTION DOES NOT APPLY TO SUBPOENAS ISSUED PURSUANT TO NEW YORK STATE LABOR RELATIONS BOARD PROCEEDINGS ****

SUBPOENAS: Require a person to appear and testify.

SUBPOENAS DUCES TECUM: Require the production of books/papers.

CHILD SUPPORT SUBPOENAS: Are issued pursuant to Social Services Law Section 111(P), or by another states' Support Enforcement Agency pursuant to Social Security Act Title IV-D.

“TRIAL” Subpoena Duces Tecum shall state that papers delivered to a court thereupon be accompanied by a *copy* of the subpoena.

Subpoenas may be issued *without* Court order by: Clerk (or Judge, if no Clerk); Attorney General; Attorney of Record for a Party; Arbitrator; Referee; a Board/Commission/Committee [if authorized by law for matters requiring proof or witnesses];

EXCEPT: Clinical records maintained pursuant to Mental Health Law *require* accompanying court order.

Subpoenas must be JUDICIAL (Court Issued) for: original documents **IF** a copy would be legally sufficient); **OR** for production of INMATES.

Motions for Court Ordered (Judicial) Subpoenas shall be on at least 1 day's notice to the custodian of the record/inmate.

Motions for Subpoenas to Produce Inmates shall be heard by any Court which would have the jurisdiction for a Writ of Habeas Corpus regarding that inmate [see CPLR Article 70]; **OR**: (if actions are proceeding therein) Court of Claims Judge; Surrogate; Family Court Judge or Support Magistrate.

A New York City Lower Civil Court Judge shall have authority to issue subpoenas for production of inmates **ONLY** in cases removed from the Supreme Court.

Subpoenas shall be served in the same manner as summonses.

Subpoenas served by SAD service or NAIL & MAIL are complete upon delivery/affixing, or mailing (whichever is later); there is no need to file proof of service with the Court.

Payment in advance of 1 day's witness fee and authorized travel expenses shall be provided with the subpoena. [Article 80: currently \$15, and 23 cents per mile (not counting travel wholly in a city)].

If there is a pending "civil judicial proceeding", the subpoena shall be served upon each APPEARING party (or attorney), so that it be "received promptly" after service upon the witness, and BEFORE time of production.

Child Support Subpoenas may be served upon PUBLIC UTILITIES (as specified in Public Service Law) by REGULAR MAIL or AUTOMATED PROCESS [electronic].

[EFFECTIVE JANUARY 2008: TRIAL SUBPOENAS DIRECTED TO A PARTY MAY BE SERVED BY DELIVERY TO THE ATTORNEY OF RECORD]

Motions to QUASH (not "squash") or FIX a subpoena shall be made "promptly" in the Court where the subpoena is returnable. If the subpoena is NOT returnable in court, a request to quash/fix shall first be made to the issuer, may thereafter be brought in the Supreme Court.

Motions to quash/fix Child Support subpoenas may also be brought in the Family Court.

The Court may impose "reasonable conditions" upon granting or denying the motion to quash/fix.

Subpoenas may provide that persons appearing pursuant thereto be required to return on each adjourn date. If the person so directed is then "reasonably noticed" of the adjourn date, no further process (service) upon them is required. A witness may demand the fee for the next appearance, and is deemed DISCHARGED if not paid.

Subpoenas for attendance, and subpoenas DUCES TECUM may be JOINED together, or issued separately.

Any person can comply with a subpoena duces tecum by Producing, Identifying, and Testifying to the records.

Any Government Office entitled by law to issue subpoenas may possess the material for a "reasonable time". Consideration of reasonable time shall be based on "good cause"; the rights of parties; and feasibility of copying. Costs of copying shall be borne by the subpoena's issuer, unless Court orders otherwise in the interests of justice.

Subpoenas on STATE HOSPITALS shall be served at least 3 days before date noticed for production. Hospitals *may* provide certified transcripts or reproductions of records instead.

A Clerk so designated may receive records delivered to the Court upon a subpoena. The clerk shall provide a receipt, and [if applicable] notify the subpoenaed individual that their appearance is no longer required.

Records shall be delivered in a sealed envelope with the title of the case indicated, the date fixed for production, as well as the name & address of the attorney specified on the subpoena (as issuer).

Records delivered to the Court will be available for inspection pursuant to the rules of the court, or specific order.

Subpoenas Duces Tecum upon a State Library or Bureau shall be by order of the court after motion with at least 1 day's notice to the Library/bureau, as well as the adverse party. If granted, the subpoena itself shall be served at least 24 hours before the time fixed for production (unless dispensed with by the Court in an emergency). Such motion may be brought in the Supreme Court of the same Judicial District as the Library or Bureau; **OR** in the Court where the underlying action is triable.

When a STIPULATION of PARTIES would suffice in place of the production of records, the Court can impose terms upon any party refusing to so stipulate; including the requirement that such party pay costs to the Library/bureau for production.

Failure to comply with a judicial subpoena (including one issued by a Clerk or Officer of the Court [attorney]) is punishable as CONTEMPT of COURT.

If the subpoenaed person is a PARTY, the Court may STRIKE that individual's PLEADINGS.

A person failing to comply with a subpoena may be liable for a PENALTY not exceeding \$50; as well as damages.

The Court may issue a WARRANT to bring a person into court. If a person still fails to comply, the Court may *forthwith* issue a warrant directing the SHERIFF to COMMIT such person to JAIL.

Such order of COMMITMENT shall state the cause for which it was issued; and insert any written question which the subpoenaed person refused to answer.

If the subpoena was *non-judicial*, motion to COMPEL COMPLIANCE may be made in the Supreme Court. A person so failing to comply may then be liable for costs,

not exceeding \$50; PENALTY, not exceeding \$50; as well as damages. The person is also subject to the issuance of a WARRANT against them, or an order of COMMITMENT upon “proof by affidavit” of their non-compliance.

In the instance of non-compliance with a CHILD SUPPORT SUBPOENA, the Commissioner of the Department of Social Services is authorized to impose a PENALTY not exceeding \$50. However the person subpoenaed shall **NOT** be liable if they respond to the subpoena *immediately* after receiving the Notice of Penalty.

A person COMMITTED to JAIL for failure to comply with a subpoena shall be produced at least every 90 days for a hearing thereon. The Clerk (or Judge, if there be no clerk) shall provide “reasonably notice” of the hearing, in writing, to each party/attorney who appeared in the proceeding that resulted in the commitment, at their *last known address*.

OATHS

Oaths may be administered by any person authorized to acknowledge deeds pursuant to Real Property Law; **OR** by any person authorized to receive evidence (such oaths for that purpose only); and by Clerk *or* DEPUTY, if to a jury.

**** THIS SECTION NOT APPLICABLE TO “OATHS OF OFFICE”. ****

The form of an oath shall “awaken the conscience” and “impress the mind” in accordance with “religious and ethical beliefs”.

An oath taken *outside* the State may be accepted if accompanied by a CERTIFICATE such as would be required to record a deed acknowledged out-of-State.

An OFFICER of the US ARMED FORCES (otherwise authorized to acknowledge deeds) may take an oath, and shall provide a CERTIFICATE specifying: Rank; Serial #; Command, that they were ENLISTED or COMMISSIONED (**OR** DEPENDANT upon or ATTACHED to such enlisted/commissioned person) at the time of the oath.

The CERTIFICATE shall also specify the serial # of the person taking the oath (or of the person to whom the oath-taker is DEPENDANT upon); but **NEED NOT** disclose the *place* where oath taken.