

Section 14

Subpoena Policy

Overview

Introduction

San Bernardino County Board of Supervisors (BOS) policy is for all agencies and departments to cooperate to the fullest extent possible in support of law enforcement and other judicial proceedings as required by law, but not infringe on an individual's right to privacy.

The designated authority in each office is authorized to accept non-personal subpoenas (Subpoenas Duces Tecum). All employees in the office should be aware of who is approved to accept subpoenas.

In the event of a personal subpoena, efforts should be made to protect the individual's identity.

This section provides a general understanding of a subpoena and outlines a policy and procedure for the acceptance of subpoenas by Workforce Development Department (WDD).

Reference

The policy and procedures included in this section, implement requirements listed in:

- San Bernardino County [Policy 07-11](#) , Subpoenaing of Employees.
- San Bernardino County [Policy 14-02](#), Non-Public Personally Identifiable Information.
- Workforce Innovation and Opportunity Act Section 116(i)(3.).
- Leave Provisions Article, "Witness Leave," in the current consolidated Memorandum of Understanding (MOU).

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General Information on Subpoenas

Introduction

A subpoena is either an order directed to a person requiring attendance at a particular time and place to testify as a:

- Witness in a:
 - Civil,
 - Criminal, or
 - Administrative proceeding, or
- Request for records.

Subpoenas may be received through the mail or delivered by process server. A subpoena may also require the person to appear at a particular time for taking a deposition (sworn testimony) used in lieu of testimony at the proceeding.

All inquiries concerning the serving of subpoenas to an employee of the County shall be directed to the appointing authority. All inquiries concerning personal information shall be treated as confidential except when disclosure is required by law.

Subpoena Administration

The employee's supervisor is responsible to check the credentials of a process server before entering into a discussion concerning an employee who is to be served with a personal subpoena. A supervisor may release only the following employee information to a process server:

- Branch/office
 - Working days/hours
 - Subpoena service areas
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Service areas

Service area is any area (inside or outside of County buildings) where an employee is conducting work for the County, except areas where it is generally understood to be off limits to unauthorized staff (i.e. Hospital, Jail, Computer room, etc.).

Process servers shall be allowed to serve an employee in an area other than a public area (i.e. supervisor's office, conference room, etc.). Process servers should be discouraged from serving the employee in the presence of the public or fellow workers.

Types of Subpoenas

Introduction	This section provides information on the specific definitions and subpoena types.								
Types of subpoenas	<p>There are four (4) types of subpoenas:</p> <ul style="list-style-type: none">• Subpoena• Deposition subpoena• Personal appearance, and• Subpoenas Duces Tecum								
Subpoena	Subpoena is a legal document seeking records and/or requiring a person to appear and testify in court or in an administrative proceeding as a witness.								
Deposition subpoena	<p>A deposition subpoena is a document requiring either:</p> <ul style="list-style-type: none">• Copies of business records, and/or• Testimony at a deposition. <p>A deposition subpoena focuses on the production of records and/or testimony in connection with the fact-finding process <u>prior</u> to trial.</p>								
Personal appearance subpoena	A personal appearance subpoena requires the person named on the subpoena to appear and give oral testimony at a specific time and place in a particular pending action or proceeding. Only the person subpoenaed may make the appearance.								
Subpoena Duces Tecum	A Subpoena Duces Tecum is a subpoena for the custodian of records to produce the documents, case records, or other things under his/her control at a specific time and place. In order for the subpoena Duces Tecum to be valid, it must be accompanied by an affidavit or declaration specifying the exact documents, case records, or other matters to be produced and declaring that such matters are within the possession or control of the person subpoenaed.								
Deposition requirements	<p>The following chart differentiates requirements of deposition subpoenas by type:</p> <table><tr><th>Deposition Subpoena Type</th><th>Requirements</th></tr><tr><td>Testimony only</td><td>Attendance/testimony of the person being subpoenaed.</td></tr><tr><td>Business records</td><td>Production of identified business records for copying without attendance at a deposition.</td></tr><tr><td>Records and testimony</td><td><ul style="list-style-type: none">• Production of identified business records, and• Attendance/testimony at a deposition.</td></tr></table>	Deposition Subpoena Type	Requirements	Testimony only	Attendance/testimony of the person being subpoenaed.	Business records	Production of identified business records for copying without attendance at a deposition.	Records and testimony	<ul style="list-style-type: none">• Production of identified business records, and• Attendance/testimony at a deposition.
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Types of Subpoenas, Continued

Categories of subpoenas

There are four (4) categories of subpoenas:

Type	Description
Criminal	<ul style="list-style-type: none">• Issued when requiring personal appearance and/or Subpoena Duces Tecum for a pending criminal case.• Subpoenas for appearance must be signed by an officer of the court (judge, court clerk, attorney of record, etc.).
Civil	<p>Issued when requiring personal appearance and/or Subpoena Duces Tecum for appending civil action or proceeding</p> <p>Note: A witness in either a criminal or civil case need not respond where the place for testimony is:</p> <ul style="list-style-type: none">• More than 75 miles from the witness' residence or,• Within the county, 150 miles from the witness' residence. <p>Generally, even a court may not order the appearance of a witness to attend a proceeding held outside the above geographical limits.</p>
Administrative (Civil)	<p>Issued for personal appearance or Subpoena Duces Tecum may be issued for a pending administrative hearing regarding issues with the:</p> <ul style="list-style-type: none">• State Department of Social Services,• Workers' Compensation Board,• Housing Authority,• Parole Board, etc.
WDD (Civil)	<p>Subpoenas (other than personal subpoenas) received in WDD should be directed to the Administrative Supervisor II for ADMIN or for the America's Job Center of California (AJCC) office for handling.</p>

Service of subpoenas

The subpoena usually is served in sufficient time, generally 15 days, to allow the witness a reasonable time to locate and produce records and/or appear for the pending action or proceeding.

Personal service is obtained when a process server or a person authorized to serve subpoenas personally appears at the Department to present the subpoena to the person named therein.

Process for Handling Subpoenas

Introduction

Subpoenas received by Workforce Development Department (WDD) are handled in various ways depending on the type of subpoena received. The information given determines how each subpoena will be handled.

Process for handling Personal subpoena

All supervisors must comply with the Board of Supervisor's (BOS) Policy relating to Subpoenaing of Employees. Refer to the County of San Bernardino Policy Manual Section 7-11.

Supervisors must inform employees they are required to accept a personal subpoena during working hours.

All office staff should handle personal subpoenas as discreetly as possible to ensure other employees are not privy to the service being conducted.

The process is as follows:

Stage	Description								
1	Process Server arrives at the counter with a personal subpoena for an employee. The individual at the counter immediately contacts the employee's supervisor in a confidential manner.								
2	<table><tr><th>If the employee ...</th><th>Then the ...</th></tr><tr><td>Works in the office,</td><td><ul style="list-style-type: none">Process Servicer will be taken to:<ul style="list-style-type: none">An office,A conference room, orA non-used area.Employee is called and asked to meet him/her in the designated area. This will allow the personal subpoena to be served to the employee in a private manner.</td></tr><tr><td>Does not work in the office where the subpoena is addressed,</td><td><ul style="list-style-type: none">Supervisor attempts to obtain the location of the employee, andProcess Server is notified where the employee is located.</td></tr><tr><td>Is absent,</td><td>Supervisor arranges for another day for the Process Server to serve the subpoena.</td></tr></table>	If the employee ...	Then the ...	Works in the office,	<ul style="list-style-type: none">Process Servicer will be taken to:<ul style="list-style-type: none">An office,A conference room, orA non-used area.Employee is called and asked to meet him/her in the designated area. This will allow the personal subpoena to be served to the employee in a private manner.	Does not work in the office where the subpoena is addressed,	<ul style="list-style-type: none">Supervisor attempts to obtain the location of the employee, andProcess Server is notified where the employee is located.	Is absent,	Supervisor arranges for another day for the Process Server to serve the subpoena.
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Process for Handling Subpoenas, Continued

Personnel records subpoena

Personnel records subpoenas are referred to the County Human Resources Department.

Human Resources, as the custodian of records, will accept the subpoena and will review the employee's file and forward appropriate requested documents to the court or attorney.

Subpoena Duces Tecum process

A Subpoena Duces Tecum for copies of warrants or ledger data should be referred to the WDD Fiscal Administrative Supervisor I (FAS I). The WDD FAS I will submit requested copies of warrants or ledger data to the Clerk of the Board and/or the District Attorney's Office.

A Subpoena Duces Tecum for clients records, must meet the requirement of WIOA Sec. 120(i)(3). Upon receipt of the subpoena, call County Counsel immediately.

Do not provide copies of documents to anyone unless directed by County Counsel.

A Subpoena Duces Tecum received in an America's Job Center of California (AJCC) should be referred to the WDD Director (custodian of records).

All other subpoenas

All other subpoenas received should be referred to the WDD Director (custodian of records) located at WDD Administration.

Freedom of Information Act

Freedom of Information Act (FOIA) generally states any person has the right to request access to federal agency records or **information** except to the extent the records are protected from disclosure by any of nine exemptions contained in the law or by one of three special law enforcement record exclusions.

Requests for information or records under the FOIA or the State Public Records Act **must** be referred to the WDD Director. The WDD Director contacts County Counsel for appropriate action.

Subpoena log

The Clerk of the Board maintains the summons and complaint log. The log contains the following information:

- Date of Service
 - Initials of the person who accepts service
 - Date the summons and complaint was delivered to County Counsel
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Witness Leave, Fees and Mileage

Introduction

This section provides information regarding witness leave, fees and mileage for employees who are subpoenaed.

Witness leave

In accordance with the [County MOU](#), Leave Provisions, Section 12 – Witness Leave, employees in regular positions are entitled to a leave of absence from work when subpoenaed to testify as a witness. This benefit applies solely to subpoenas arising out of an employee's scope of employment.

Witness leave shall not be charged against any accumulated leave balances and shall be compensated at the employee's base hourly rate.

This benefit will be paid only if the employee has demanded witness fees at the time of service of the subpoena, and such fees are turned over to the County.

Fees and mileage

Witness fees and mileage must be claimed on all subpoenas related to work. The witness fees and mileage are issued to the witness by the party requiring his/her appearance. Fees received by the employee must endorse the check and give to the WDD Fiscal Unit for processing.

Note: The Employee Reimbursement Form should be used for mileage claims.

Summons and Complaints

Introduction

The Clerk of the Board of Supervisors is the only County Officer who should accept service of summons and complaints on behalf of the:

- County,
- County Departments, and
- Board-governed special districts.

No other County officer should accept service where the party to be served is the County, County department, or a Board-governed special district unless authorized by the Board of Supervisors. If the party named in the summons and complaint is a County officer or employee, service must be made on the individual officer or employee named.

All claims against the County, County departments, or Board-governed special districts should be filed with the Risk Manager, Risk Management Division, General Services Agency.

Definitions

The following definitions apply to summonses and complaints:

- Party: a person or entity whose name is designated as a plaintiff or defendant
 - Plaintiff: a person who files a cause of action (i.e., a lawsuit)
 - Defendant: the party who defends or denies the plaintiff's accusations. It refers to a person or an entity against which a lawsuit is brought
 - Complaint: the initial document that commences a lawsuit. It is a written statement of the plaintiff's case
 - Cross-complaint: a cross-complaint is used when a defendant files a cause of action (a lawsuit) against either a person who's already a part of the lawsuit or a new party (as long as the cross-complaint has something to do with the original lawsuit)
 - Cross-complainant: the party who files the cross-complaint
 - Cross-defendant: the party who defends or denies the cross-complainant's accusations
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Service of summons and complaint

The summons and complaints are typically the first documents served to initiate a lawsuit. When the party named in the summons and complaint is the County, a County department, or a Board-governed special district, service of the summons and complaint must be made on the Clerk of the Board of Supervisors.

A process server who attempts service on any other officer or employee, the officer or employee should advise the process server he/she is not authorized to accept the service of summons and should refer the process server to the Clerk of the Board.

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Summons and Complaints, Continued

Service of summons and complaint on county officer or employee

The party who is named in the summons and complaint is a County officer or employee (e.g., Sheriff, Treasurer-Tax Collector, Supervisor, etc.), service must be made on the individual employee or officer named.

When an individual employee or officer is personally served, he/she must indicate on the summons the date he/she was served and immediately forward copies of the summons and complaint to the Clerk of the Board of Supervisors and the Office of County Counsel.

Substituted service

A process server may attempt to serve an individual employee by “substituted service.” This occurs when the process server has been unsuccessful in personally serving the individual employee. The law allows substituted service if:

- A copy of the summons and complaint are left at the individual’s place of business.
 - The summons and complaint are left with a person “apparently in charge of his office or place of business,” who is at least 18 years old (i.e., Assistant Director, Administrative Supervisor II, or Manager).
 - The process server advises the recipient of the summons and complaint of their contents.
 - Copies of the summons and complaint are mailed (first class, postage prepaid) by the process server to the defendant, at the place where the copies were left. Reference: Code of Civil Procedure Section 415.20(b).
 - A good faith effort at personal service was made to find and personally serve the individual. Reference: Code of Civil Procedure Section 415.20.
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Response by jurisdiction

The County generally receives summonses and complaints from two (2) jurisdictions, which have different response requirements as explained in the table below.

If the jurisdiction is...	Then the defendant has...
State Court (usually the Superior Court of the State of California)	Thirty (30) calendar days from the date of service to respond to the summons and complaint
Federal Court (usually the United States District Court)	Twenty (20) calendar days from the date of the service to respond to the summons and complaint

Note: Generally, the summons and complaint will be assigned to an attorney in County Counsel for handling.

Conduct and Courtroom Appearances

Introduction

Workforce Development Department (WDD) staff may be given a subpoena requiring them to testify in court as a prosecution witness. WDD employees may also be called to give testimony regarding facts in a case for which he/she may have knowledge.

Employees are expected to conduct themselves in a professional manner when required to testify in a deposition or court hearing.

Conduct

Guidelines for appropriate court conduct are listed below:

- Be on time.
Telephone the Court if you are delayed while in route and ask for the particular courtroom. Identify yourself, explain the delay, and give your estimated time of arrival. Immediately upon arrival, identify yourself to court personnel (clerk or bailiff).
State your name and you are present in response to a subpoena.
 - Identify yourself to the District Attorney (DA).
 - Be attentive and quiet while waiting to be called as a witness.
 - Remain calm, civil, and cooperative at all times while in the courtroom.
Employee may be required to remain in the hallway until called as a witness.
 - Remember you not only represent San Bernardino County, but are also personally accountable to the Court for any breach of conduct.
 - Do not eat, sleep, chew gum, or read books or magazines while in the courtroom.
 - Do not communicate with members of the jury or the accused, either in or out of the courtroom.
 - Do not leave the courtroom before or after testifying without first identifying yourself and securing permission to leave from the bailiff and/or the DA.
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Preparation

Witnesses may be asked to testify to either his/her expertise or what is contained in the case record, such as:

- Budgeting methods,
- Regulations,
- Applications and forms used,
- Customer's verbal or written statements,
- Verifications provided by the customer, and/or
- Verifications provided or obtained from third parties.

Prior to the court proceedings:

- Consult with the investigator about what may be asked during the testimony, and
 - Review the case record.
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Conduct and Courtroom Appearances, Continued

Testifying

Below is a list of suggestions when WDD staff is testifying in Court:

- Remain calm; customer's case record should be available for reference.
 - Answer questions with "Yes" or "No" whenever possible.
 - Do not volunteer information; answer only the questions asked.
 - Do not respond to a question if you do not understand. Request to have the question repeated. If the employee still does not understand, say so.
 - Take your time to answer the question.
 - Look at the District Attorney for help if you are uncomfortable with a question.
 - Answer the Court (Judge) if addressed. When addressing or responding to the Judge, always address the Judge as "Your Honor".
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Courtroom appearance

WDD staff should always dress in a professional manner when he/she is required to attend Court for testifying on the County or departments behalf.
