

90-050.6. COURT APPEARANCES AND SUBPOENAS

A. General Information

A subpoena is a court order to compel a person to appear at a deposition or court proceeding to testify as a witness. A subpoena duces tecum is a court order normally used to compel a person to produce all documents or records named in the subpoena.

The testimony of employees involving case records for matters not directly related to the administration of public social service programs is an inappropriate use of case records and a violation of confidentiality. To avoid violating confidentiality and/or court orders, the procedures in this section will apply. These procedures apply only to subpoenas involving HHSA records and applicants/recipients.

B. District Attorney Subpoena

Agency staff is routinely served with subpoenas issued by the District Attorney's (DA) Office. It is HHSA policy to fully cooperate with the DA in the investigation or prosecution of all matter directly related to the administration of public social services. Procedures for staff served with a subpoena issued by the DA are shown in the table below.

| Step | Action |
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| 1 | A demand for witness fees and mileage should not be made. |
| 2 | The employee will notify his/her supervisor or Assistant FRC Manager. |
| 3 | The employee named on the subpoena is expected to appear as directed. When the employee is no longer assigned to the division the supervisor or Assistant Manager will immediately contact the Deputy DA identified on the subpoena to provide the identity of the employee who will respond as a substitute. If there has been a change in the worker assigned to the case the Deputy DA should be informed so that he/she may make the decision on who will be required to appear. |
| 4 | The employee will contact the Deputy DA to discuss the case and restrictions to availability for court (planned vacation or medical leave). |
| 5 | If unsure if the subpoena relates to a matter directly connected to HHSA programs, the employee's supervisor or Manager must contact the Subpoena Liaison at ACCESS. |

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**District
Attorney
Subpoena
(continued)**

| Step | Action |
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| 6 | If the subpoena relates to a matter not directly related to the administration of public social service programs, the employee will follow the procedures outlined below for Private Attorney Subpoenas. |

**C.
Private
Attorney
Subpoena**

HHSA staff is occasionally served with subpoenas or subpoenas duces tecum initiated by private attorneys, Legal Aid Society or the Public Defender. These subpoenas normally request the presence of staff and/or case records and may deal with civil or criminal matters not directly related to the official administration of public assistance programs, such as divorce, child support, child custody, or property settlement matters. By State Law (W&I Code, Section 10850) the testimony of staff and/or use of case records for matters not related to administration of public assistance programs are considered inappropriate use of public welfare records and a violation of confidentiality.

Frequently these subpoenas will be for the case record, rather than a specific person, and are addressed to the "Custodian of Record." FRC staff is not to accept service of subpoenas addressed to the Custodian of Record. The server of the subpoena must be informed that the Custodian of Record for HHSA is the EO Director, and that service of the subpoena may be arranged by the server's contacting the HHSA Subpoena Liaison at ACCESS.

All HHSA staff served with a subpoena or subpoena duces tecum from a private attorney, addressed to the staff person rather than to the "Custodian of Record" must accept the subpoena and adhere to the procedures in the table below.

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**Private
Attorney
Subpoena
(continued)**

| Step | Action |
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| 1 | The employee must demand witness fees and mileage at the time the subpoena is served. The employee must also demand that HSA receive the fees and mileage prior to the court appearance date. State law establishes witness fees and mileage reimbursement amounts. The person delivering the subpoena may write a check and present it at the time the subpoena is served. In such cases, the employee must send the check with the subpoena to the Subpoena Liaison at ACCESS, Mail Stop W409. |
| 2 | Immediately following the serving of the subpoena, the employee's immediate supervisor will call the Subpoena Liaison who will determine if the pending legal proceedings are related to the administration of a public social services program. |
| 3 | Upon notification, the Subpoena Liaison will request that the subpoena and check for witness fees, if applicable, be delivered to him/her as soon as administratively possible, preferably on the same day. |
| 4 | Upon receipt of the subpoena, the Subpoena Liaison will contact the serving attorney and explain the legal provisions of confidentiality (W&I Code, Section 10850) and request that the subpoena be withdrawn. |
| 5 | If the attorney agrees to withdraw the subpoena, the Subpoena Liaison will notify the employee's supervisor that the employee is excused from compliance with the subpoena. |
| 6 | If the attorney refuses to withdraw the subpoena, the Subpoena Liaison will return the subpoena to the employee and provide him/her with a copy of a "Points and Authorities in Opposition to Subpoena Duces Tecum." The "Points and Authorities" is a statement prepared by the County Counsel's Office, and serves as a formal request to the court to excuse the witness and/or records on the grounds that the records are confidential. The employee must appear in court at the designated time. |

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**Private
Attorney
Subpoena
(continued)**

| Step | Action |
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| 7 | The employee must not testify or allow anyone to see the record until the "Points and Authorities" has been presented to the judge and the judge has made a determination. The "Points and Authorities" should be given to the judge at the time the employee is called to the stand to testify. If the judge rules against the "Points and Authorities," the employee must comply with the decision, submit the case record and give requested testimony. If parts of the record are introduced as evidence, the employee shall seek court approval, on the record, of substitution of photocopies so that the case record and its documents can remain intact when the employee is excused. |
