



ELMIRA CITY COURT

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SUBPOENA INFORMATION & INSTRUCTIONS

Subpoenas available:

There are three different types of Subpoena:

1. *Subpoena To Testify (Ad Testificandum): No Court Fee, Application Attached*
Requires a **person** to come to the Court to testify as a witness. This is generally sought when a party is unable to get a witness to appear voluntarily.
NOTE: An expert witness cannot be compelled to testify by subpoena, but you have the option of paying an expert witness fee to come to Court to testify.
 - a. To request
2. *Subpoena For Records (Duces Tecum): No Court Fee, Application Attached*
Requires **documents, papers, writing, etc.** to be brought to the Court.
3. *Information Subpoena: \$3.00 Court Fee, Clerk to Provide Upon Payment*
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 person (in hand) delivery. (See CPLR §308)

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 (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 envelope "Personal and Confidential" when sending the mail copy to the witness.

"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 (2) attempts. If no one is found on either attempt, the Subpoena may be affixed to the door with adhesive tape on the third try and a copy must be mailed to the residence of the witness by first class mail. Mark the envelope "Personal and Confidential" when sending the mail copy to the witness.

An *Information Subpoena* is **generally** served by Certified or Registered Mail, with Return Receipt requested, or it may **alternatively** be served by personal delivery or by using the "Substituted Service" or "Conspicuous Service" method.
(See CPLR §308 or CPLR § 5224.a3)

Acceptable Service Time:

Service should give the witness a “reasonable” amount of time to prepare for the court appearance and/or to produce the items listed on the subpoena. Reasonable is defined at least two (2) or more days prior to the subpoenaed date.

Who May Serve a Subpoena:

Anyone who is NOT A PARTY to the action, who is over the age of eighteen (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 upon signing.

Procedure for the person who is going to serve the Subpoena:

1. Find the person to be served.
2. Show that person the *original* Subpoena.
3. Give the person a *copy* of the Subpoena.
4. Fill out the Affidavit of Service and have notarized.
5. File the Affidavit of Service with the Court (you may want to make a copy for your own records).
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.

NOTE: A Subpoena for Records must be served on all parties to the action. (See CPLR §2303).

For Information Subpoenas, follow the above procedure, or

1. Place a copy of the Information 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. .

Witness Fees (See CPLR §8001):

When served with a *Subpoena to Testify* or a *Subpoena for Records*, the witness must be paid a witness fee of fifteen dollars (\$15.00) per day. If the witness is served outside the City, they shall also be paid an additional twenty-three cents (.23) per mile, round-trip, to the place of attendance, from the place where they were served.

If the person subpoenaed is not a party, or agent or employee of a party; or is required to produce books, papers and other things, they shall receive an additional three dollars (\$3.00) per day.

Wherever the preparation of a transcript of records is required in order to comply with a subpoena, the person subpoenaed shall receive an additional fee of ten cents (.10) per folio.