

INSTRUCTIONS FOR ISSUING A SUBPOENA IN SUPPORT OF AN ACTION OUTSIDE THE STATE OF COLORADO

These standard instructions are for informational purposes only and do not constitute legal advice about your case. If you choose to represent yourself, you are bound by the same rules and procedures as an attorney.

GENERAL INFORMATION

- ◆ Colorado Revised Statutes §13-90.5-103, provides the authority to any district court in Colorado to issue a subpoena for the appearance and deposition testimony of a witness who resides or can be found in Colorado where such deposition has been authorized by a court of record in the United States.
- ◆ Colorado Revised Statutes §13-90.5-103, provides the authority to any district court in Colorado to issue a subpoena duces tecum commanding a person to produce documents.
- ◆ The Request can be filed by an attorney (licensed in Colorado or licensed out-of-state) or by any party not represented by counsel.
- ◆ The Request must be filed in the county where the deposition/discovery will be conducted.
- ◆ A Foreign Subpoena must be filed along with the Request. A Foreign Subpoena is a subpoena issued under authority of a court of record of a foreign jurisdiction.
- ◆ A Subpoena to Appear, in this context, is a document issued by the clerk at the request of one of the parties to require the appearance of a witness at a deposition.
- ◆ A Subpoena to Produce (Subpoena Duces Tecum) is a document issued by the clerk at the request of one of the parties to require a person to bring certain documents or evidence in their possession with them to a specified location.
- ◆ A Subpoena issued pursuant to §13-90.5-103, C.R.S. must be served in compliance with section §13-90-115, C.R.S. and Rule 45 of the Rules of Civil Procedure.
- ◆ For additional information, please review §§13-90.5-102 – 107, C.R.S.
- ◆ If you have a disability and need a reasonable accommodation to access the courts, please contact your local ADA Coordinator. Contact information can be obtained from the following website:
http://www.courts.state.co.us/Administration/HR/ADA/Coordinator_List.cfm

FEES

A filing fee of \$224.00 is required. If you are unable to pay, you must complete the Motion to File without Payment and Supporting Financial Affidavit (JDF 205) and submit it to the Court. Once you submit the completed JDF 205 form and a blank Order (JDF 206), the Court will decide if you need to pay the filing fee. In addition, you are required to compensate the witness for mileage. **See Step 3.**

Other fees that a party to the case may encounter are as follows:

- | | |
|--|---|
| <input type="checkbox"/> Copies of Documents (Documents on File) | \$.75 per page or \$1.50 if double-sided |
| <input type="checkbox"/> Copies of Documents (Documents not on File) | \$.25 per page or \$.50 if double-sided |
| <input type="checkbox"/> Service Fees | Varies (payable to process server) |

FORMS

To access a form online go to www.courts.state.co.us and click on the “Forms” tab. The packet/forms are available in PDF or WORD by selecting **District Civil – Issuing an Out-of-State subpoena**. You may complete a form online or you may print it and type or print legibly in black ink.

- | | |
|---------------------------------|---|
| <input type="checkbox"/> JDF 87 | Request to Issue Subpoena/Subpoena Duces Tecum in Support of Action Outside the State of Colorado |
| <input type="checkbox"/> JDF 90 | Subpoena to Appear for Deposition or Produce |

STEPS TO FILING THE MOTION

Step 1: Complete Appropriate Forms.

The caption needs to be completed on all forms filed. The Request should list the name of the Plaintiff(s)/Petitioner(s) and Defendant(s)/Respondent(s) exactly as they are listed in the originating state case.

Request to Issue Subpoena (JDF 87):

- Complete all necessary information on the form.
- Attach any supporting Order proposed from the out-of-state court to establish jurisdiction.
- Make a copy for your records.

Foreign Subpoena must be submitted along with this Request.

Complete Subpoena (JDF 90).

- A Subpoena must incorporate the terms used in the Foreign Subpoena and must contain or be accompanied by the names, addresses, and telephone number of all counsel of record in the proceeding to which the Subpoena relates and of any party not represented by counsel.
- Each witness must be served a Subpoena, so prepare as many as necessary.
- When requesting a witness to bring certain items, be specific and clear when identifying the items.
- You will need two copies in order to complete personal service.
- You can make your own copies or the Court can make the copies and charge you for each copy.

Step 2: You are Ready to File your Documents with the Court.

Provide the Court with the Request (JDF 87), Foreign Subpoena(s) and Subpoena(s) (JDF 90). Make sure you have two copies of every Subpoena you are requesting the Court to issue.

- Pay the \$224.00 filing fee.
- Provide the Court with a self-addressed stamped envelope to receive the Subpoena(s).
- If the Court approves the Request, the Clerk will issue the Subpoena(s) as requested.
 - The clerk will then return them to you for personal service on the witness. **See Step 3 and 4.**
- If the Court does not approve the Request, the clerk will not be able to issue the Subpoena(s) as requested.

Step 3: Prepare a Check for each Witness.

Pursuant to §13-33-103, C.R.S., mileage shall be compensated for each witness. The current in-state rate is \$.45 per mile.

Step 4: Complete Personal Service Pursuant to §13-90-115, C.R.S.

Helpful Hints to complete personal service:

- Service must be completed no later than 48 hours prior to the appearance date identified on the Subpoena.
- Take both copies to the sheriff, a private process server, or anyone 18 years or older and not a party to the action.
- Attach the mileage check to the copy of the Subpoena to be served on the witness.
- The process server must follow the Service of Process requirements stated in Rule 45 of the Rules of Civil Procedure.
- Be sure to direct the sheriff, private process server, or person serving the Subpoena to return the completed copy of the Subpoena/Return of Service to you as soon as possible after service has been completed. Bring the completed Subpoena(s) when you come to the deposition.

| | |
|--|---|
| District Court _____ County, Colorado Court Address: <hr/> Plaintiff(s)/Petitioner(s) v. Defendant(s)/Respondent(s) | |
| Attorney or Party Without Attorney (Name and Address): Phone Number: _____ E-mail: _____ FAX Number: _____ Atty. Reg. #: _____ | ▲ COURT USE ONLY ▲ Case Number: Division _____ Courtroom _____ |
| REQUEST TO ISSUE SUBPOENA/SUBPOENA DUCES TECUM IN SUPPORT OF ACTION OUTSIDE THE STATE OF COLORADO | |

I, _____ (name of Petitioner) request this Court, pursuant to §13-90.5-103, C.R.S. to issue the attached subpoena(s) and state that the subpoena(s) is/are necessary as the witness(es) and/or items listed are material and relevant to my case.

1. This Request seeks authorization from the District Court of _____ County for the issuance of subpoena(s)/subpoena(s) duces tecum in said county.
2. There currently exists an order by a court outside the state of Colorado for the deposition of the witness(es) and/or the production of documents. A copy of said order is attached to this Request.
3. The witness currently resides or can be found within the state of Colorado.

| Name of Witness | Type of Item |
|-----------------|--------------|
| 1. | 1. |
| 2. | 2. |
| 3. | 3. |
| 4. | 4. |
| 5. | 5. |
| 6. | 6. |
| 7. | 7. |

Date: _____

Signature

Address

City, State, Zip Code

(Area Code) Telephone Number (home and work)

| | |
|--|--|
| District Court _____ County, Colorado Court Address: <hr/> Plaintiff(s)/Petitioner(s): v. Defendant(s)/Respondent(s): | ▲ COURT USE ONLY ▲ <hr/> Case Number: Division: Courtroom: |
| SUBPOENA TO <input type="checkbox"/> APPEAR FOR DEPOSITION <input type="checkbox"/> PRODUCE PURSUANT TO §13-90.5-103, C.R.S. | |

To: _____

You are ordered to attend and give testimony at a deposition at the following location:

on _____ (Date) at _____ (Time) as a witness for the Plaintiff(s)/Petitioner(s)
 Defendant(s)/Respondent(s) in an action outside of Colorado.

At that time and place, you also shall produce the following items now in your custody or control:

Names, addresses and telephone numbers of all counsel of record in this action and of any party represented by counsel are as follows:

| Name | Address | Telephone Number |
|------|---------|------------------|
| | | |
| | | |
| | | |

Dated: _____
_____ Clerk/Deputy Clerk

AFFIDAVIT OF SERVICE

I declare under oath that, I am 18 years or older and not a party to the action and that I served this Subpoena to Appear for Deposition Produce to the Witness in _____ (County) _____ (State) on _____ (date) at the following location: _____

Check one:

- By handing it to a person identified to me as the Witness or by leaving it with the Witness who refused service.
- By leaving it with one of the following:
 - the person's usual place of abode or workplace;
 - with any person who is 18 years or older and who is a member of the person's family;
 - with the person's secretary, administrative assistant, bookkeeper, or managing agent; or
 - by delivering a copy to an agent authorized by appointment or by law to receive service of process.
- I attempted to serve the Witness on _____ occasions but have not been able to locate the Witness.
- Private process server
- Sheriff, _____ County
 Fee \$ _____ Mileage \$ _____

Signature of Process Server

Name (Print or type)

My Commission Expires: _____

Notary Public /Deputy Clerk Date