



ADMINISTRATIVE BULLETIN NO. 12

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SUBJECT: CIVIL SUBPOENAS

County Counsel issued a legal Bulletin on January 12, 1993 regarding subpoenas calling for testimony of employees in civil proceedings not involving the County of Kern. The following is general guidance for responding to such civil process. **QUESTIONS ON THE HANDLING OF A PARTICULAR SITUATION INVOLVING A CIVIL PROCESS SHOULD BE DIRECTED TO THE OFFICE OF COUNTY COUNSEL.**

Subpoenas

Subpoenas are orders issued under authority of a court or administrative agency to require the appearance and testimony of an identified witness at a hearing, trial, or discovery proceeding. Subpoenas may be issued by the attorney for any party to an action.

With the exception of testimony on subjects deemed by statute to be confidential and privileged from disclosure (i.e., medical, employment, welfare and juvenile records, and other confidential information in the possession of the County), most County information is subject to disclosure. If an employee is subpoenaed to testify about a confidential matter or is unsure whether a matter is confidential, County Counsel should be consulted concerning the duty to assert a claim of privilege based on confidentiality.

Method of Service and Witness Fees

All subpoenas must be personally served on the person whose appearance is sought (Code of Civil Procedures § 1987) and an appropriate witness fee and mileage (20¢ per mile) must be delivered with the subpoena. A person is ordinarily entitled to a witness fee of \$35 per day to testify as a witness in a proceeding (Government Code § 68093). These fees may be demanded in advance in a civil case (Government Code § 68097) but not in a criminal case. A subpoena duces tecum for the appearance of the custodian of records of a public office may be served on the person apparently in charge of or responsible for the operation of the office.

If the subpoena requires an employee of a governmental entity to appear concerning “an event or transaction which he or she perceived or investigated in the course. . . of duties”, and the case is **not** one where the County of Kern is a party, the subpoena must be accompanied by a deposit of \$275 for each day of expected testimony against the “full cost incurred by the . . . county in paying . . . salary or other compensation (hourly wages, fringes, and employer contributions) and traveling expenses.” For Peace

officers the deposit is paid to the Court as a precondition to issuance of the subpoena. For non-peace officer employees the deposit is paid to the employee's department and tendered upon service of the subpoena. It is the employee's responsibility to demand the witness fee.

Costs in excess of \$275 per day must be paid by the subpoenaing party. If total County costs are less than \$275 per day, the difference in costs is to be refunded to the subpoenaing party. If the "full cost" of the employee's appearance is more than \$275 per day, the subpoenaing party is to be billed by the employee's department for payment. Such bills should be prepared on an itemized daily basis (Government Code §§ 68096.1 - 68097.5).

The failure to tender witness fees when demanded in a civil proceeding excuses the duty of the witness to appear (Government Code § 68097). Witness fees are not usually tendered in advance in criminal cases ((Government Code § 68098) or cases within the jurisdiction of the Juvenile Court (Welfare and Institutions Code § 341). Application for fees in such cases should be made to the trial court.