

## **CAO Cv INSTRUCTIONS 5-1 INSTRUCTIONS FOR SUBPOENAS**

As you prepare for a court hearing, you may realize that you need to have a witness appear to testify at your hearing. You may also need this individual to bring particular documents or other items to the court at this time. If you want to assure that the witness will appear in court along with those documents and items, you will need to have a subpoena served upon that person. The service of a subpoena can be made by an officer authorized by law to serve process or by any other person who is at least eighteen years of age and not a party to your case. This person must fill out an Affidavit of Service verifying that service was made in accordance with the law. Included with these instructions are the subpoena and the affidavit of service.

### **Step 1 – Writing and Issuance of the Subpoena**

Some information on the subpoena must be filled in before you take it to the courthouse to be issued. Before you begin to fill in the subpoena, make sure you have all your legal documents in front of you for easy reference. Make sure you type or print neatly and legibly in black ink the following information in the designated areas.

1. In the upper left hand corner, your name, address, telephone number, and email address (if you have one).
2. In the heading directly below your personal information, the name of the judicial district and the county where your case is being heard. (This should be the same as on your other court papers.)
3. Fill in the name of the Plaintiff. Refer to your other legal documents in the matter and make sure to type in the same name as it appears there.
4. Fill in the name of the Defendant. Again, make sure it appears as it is in the other legal documents.
5. Fill in the case number in the section provided. Once again, refer to your other legal documents and make sure the number is the same.
6. In the first line of the subpoena, after the words “The State of Idaho to,” fill in the full name of the person you wish to testify in court.
7. Fill in the name of the judge assigned to your case.
8. Fill in the location of the courthouse where the hearing will take place.
9. Fill in the day of the month on which the hearing has been set.
10. Fill in the particular month in which the hearing has been set.
11. Finish completing the year in which the hearing will take place.
12. Fill in the time of day when the hearing will take place, be sure to include an “a” or “p” next to the “m” to indicate morning or afternoon.

13. As mentioned earlier, you may want the individual named in the subpoena to bring particular documents or items with him or her when testifying. List the documents, papers, or other items you want the individual to bring with him or her to court. Be as specific as possible in your description of the documents.

After you have completed the above information, you are ready to go to the courthouse and have the court clerk “issue” the subpoena. The clerk will sign the subpoena and place the court stamp on it.

## **Step Two – Serving the Subpoena**

Make two copies of the subpoena. You are now ready to have the subpoena personally served on the individual named in the document. There are two ways in which a subpoena may be personally served. Remember you cannot personally serve the papers yourself, nor can any other person who is a party in your case.

1. One method to serve a subpoena is through a professional process server. Professional servers will charge a fee. You can find the names of professional process servers in your local phone book or through the sheriff’s department. Another way to serve a subpoena is to have it done by someone who is over the age of 18, resides in the state of Idaho, and is not a party to the action.
2. If you choose to have service made by a professional process server, provide him or her with a copy of the subpoena. The individual being subpoenaed must be offered the fees for one day’s attendance at court, which is \$20 plus mileage of \$0.30 per mile, one way, from the place of residence to the courthouse (IRCP 45 & 54(d)(1)). Give this money to the process server when you provide him or her with a copy of the subpoena. The process server should provide you with an affidavit of service once the subpoena has been served. After you have received the affidavit of service, make a copy. Bring the original subpoena, the original affidavit and a copy to the courthouse and file them with the clerk. You will keep a copy of the affidavit for your own records.
3. If you choose to have someone who is not a professional serve the subpoena, give that person a copy of the subpoena. Make sure that person knows the subpoena must be served on the person named in the subpoena. The subpoena can also be served on a person of suitable age and discretion, residing at the home of the person named in the subpoena. Again, the individual named in the subpoena must be offered the fees for one day’s attendance at court, which is \$20 plus mileage of \$0.30 per mile, one way, from the place of residence. The person who has served the subpoena must swear to the delivery in an affidavit of service. If you have a non-professional serve the subpoena, make sure you fill out the affidavit of service in the manner outlined in Step 3.

## **Step Three – Completing and Filing the Affidavit of Service**

If you choose to have a professional serve the subpoena, he or she will provide you with an affidavit of service for you to file with the court. If you choose to have a non-professional serve the subpoena, use the following instructions to prepare the affidavit of service. The affidavit of service from the non-professional must be signed.

1. In the upper left hand corner complete your name, address and daytime telephone number.
2. In the heading directly below your personal information, fill in the name of the judicial district and the county where your case is being heard. (This should be the same as on your other court papers.)
3. Fill in the name of the Plaintiff. Refer to your other legal documents in the matter and make sure to it matches.
4. Fill in the name of the Defendant. Again, make sure it appears as it is in the other legal documents.
5. Fill in the case number in the section provided. Once again, refer to your other legal documents and make sure the number is the same.
6. In the line after the word "I" fill in the name of the person who served the subpoena.
8. In the line after the word "upon" fill in the name of the person who was served.
9. Fill in the time of day when the subpoena was served, be sure to include an "a" or "p" next to the "m" to indicate morning or afternoon.
10. Fill in the date, including the day, month and year when the subpoena was served.
11. Fill in the address where the subpoena was served.
12. Fill in the name of the person to whom the subpoena was directed.
13. If the subpoena was delivered to a person of suitable age who resides at the home of the person named in the subpoena, type their name in the space provided.
14. Do not fill in the date or signature lines at the end of the affidavit. The person who served the subpoena will need to date and sign the document certifying that the information in the document is true and accurate, subject to the penalty of perjury if it is not.

Make two copies of the affidavit of service. Bring the original and a copy to the courthouse and have it filed by the clerk. Keep a copy of the affidavit for your own records.