

FAMILY SUBPOENA

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**HOW TO OBTAIN AND SERVE
A FAMILY SUBPOENA OR
SUBPOENA DUCES TECUM**

(FORMS & INSTRUCTIONS)

HOW TO OBTAIN AND SERVE A FAMILY SUBPOENA OR SUBPOENA DUCES TECUM

CHECKLIST

You may use the forms and instructions in this packet if . . .

- ✓ You want a legal order summoning a witness to testify or submit evidence, or
- ✓ You want a legal order for someone to produce or make documents, records or objects, or a physical location, available for your inspection, AND
- ✓ You have already filed and have a case open in the Superior Court, OR
- ✓ You have already registered a foreign (out of state) case with the Maricopa County Clerk of Superior Court, AND
- ✓ The person (or company or organization, etc.) to whom the subpoena is to be given is NOT a party to the case, AND
- ✓ The person (or company or organization, etc.) to whom the subpoena is to be given will be served within the state of Arizona.

WARNING: There are additional requirements for requesting **MEDICAL RECORDS** by subpoena. Those requirements and additional forms that may be needed for that purpose are **NOT** included in this packet. Refer to Arizona Revised Statutes **§12-2294.01** or consult an attorney for additional information.

READ ME: Consulting a lawyer before filing documents with the court may help prevent unexpected results. A list of lawyers you may hire to advise you on handling your own case or to perform specific tasks, as well as a list of court-approved mediators can be found on the Law Library Resource Center website.

FAMILY SUBPOENA

This packet contains court forms and instructions to file a civil subpoena. Items in **BOLD** are forms that you will need to file with the Court. Non-bold items are instructions or procedures. Do not copy or file those pages!

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The documents you have received are copyrighted by the Superior Court of Arizona in Maricopa County. You have permission to use them for any lawful purpose. These forms shall not be used to engage in the unauthorized practice of law. The Court assumes no responsibility and accepts no liability for actions taken by users of these documents, including reliance on their contents. The documents are under continual revision and are current only for the day they were received. It is strongly recommended that you verify on a regular basis that you have the most current documents.

PROCEDURES:

HOW TO OBTAIN AND SERVE A SUBPOENA-FAMILY

NOTE

- **NOT Party to the Case:** The subpoena is used to obtain information (testimony, or to produce documents, electronically stored information, records or objects, or to inspect premises) from persons or companies, organizations, etc., who are NOT parties to the case.
- **YOU PAY COSTS:** You are responsible for the receiving party's costs of complying with the subpoena. (See "Costs to Person Sending Subpoena" in this packet for more information.)
- **OPEN CASE:** To request a subpoena from the Clerk of Superior Court, you must already have an OPEN case in the Superior Court of Arizona, or have already registered the order of a foreign (out of state) court for a deposition.
- **SERVICE INSIDE ARIZONA only:** You must be able to serve the subpoena within the state of Arizona.
- **WARNING:** There are additional requirements for a subpoena of **MEDICAL RECORDS**. Those requirements and additional forms that may be needed for that purpose are NOT included in this packet. Refer to **A.R.S. § 12-2294.01** or consult an attorney for additional information.

STEP 1: COMPLETE THE SUBPOENA. (See separate instructions inside this packet about "How to Complete the Subpoena".)

STEP 2: PHOTOCOPY: Make (1) copy of the original completed subpoena for your records, *plus* (1) copy for every party in the case.

STEP 3: GO to the Clerk of Superior Court. Take the original subpoena and photocopies with you. The Clerk of Superior Court is open between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, at any of the locations listed below.

Locations of the Clerk of Superior Court in Yuma County

250 W. 2nd Street
Yuma, Arizona 85364

At the office of the Clerk of Superior Court, you will 1) **SUBMIT** the subpoena, and 2) **PAY** the issuance fee to the Clerk of Superior Court.

- **SUBMIT:** Hand the subpoena original and copies to the Clerk of Superior Court. The Clerk of Superior Court will sign and date your documents, take one copy, and return the original and other photocopies to deliver to the receiving person, parties to the case, and keep one for you.
- **PAY ISSUANCE FEE:** A list of current fees is available from the Law Library Resource Center and from the Clerk of Superior Court's website.
 - If you cannot afford the issuance fee and/or the fee for having the papers served by the Sheriff or by publication, you may request a deferral (payment plan) when you file your papers with the Clerk of Superior Court.
 - Deferral Applications are available at no charge from the Law Library Resource Center.
 - **NOTE:** You must **complete** the Fee Deferral **Application before you go to the office of the Clerk** of Superior Court. Hand the Clerk of Superior Court the Fee Deferral Application at the same time you hand over the subpoenas.

STEP 4: MAIL ONE COPY to every party in the case.

STEP 5: SERVE THE SUBPOENA

Have the *original* subpoena served on (personally delivered to) the named person you want to appear in court or for a deposition or who is in control of the documents, objects or location you want to examine.

- **The original subpoena may be served by any person over the age of 18 who is NOT a party to the case.**
- The person serving the subpoena must file an **Affidavit of Service** with the Court as proof of delivery.
- If you choose to have the paper served by a licensed process server or the Sheriff's Department, they will have their own **Affidavit of Service** form, *if not*, use the one included in this packet.

FREQUENTLY ASKED QUESTION (FAQ): WHEN MUST THE SUBPOENA BE SERVED? HOW FAR IN ADVANCE OF WHEN I WANT THE PERSON TO APPEAR OR THE DOCUMENTS, RECORDS, OBJECTS OR PLACE MADE AVAILABLE FOR INSPECTION MUST THE SUBPOENA BE DELIVERED?

ANSWER: The rules of court known as the Arizona Rules of Family Law Procedure (A.R.F.L.P.) do not specify any particular number of days that the subpoena must be delivered before the person is to appear or the documents or objects delivered or place made available for inspection.

The Rules do say that if the person receiving the subpoena feels that the length of time is unreasonable or otherwise objects, he or she must file an objection with the Court within 14 days of receiving the subpoena or before the date listed on the subpoena for the person to appear or to produce or provide access to the documents, records, objects, or location listed on the subpoena. A.R.F.L.P. 52 (a)(1)(D).

STEP 6: WAIT and be prepared to respond to any objection from the party being served with the subpoena, or for the date and time the items are to be produced or for the scheduled appearance.

INSTRUCTIONS: HOW TO COMPLETE THE SUBPOENA in a Family Case

- A subpoena is a legal order summoning a witness to testify or submit evidence.
- A subpoena *duces tecum* is a legal order requiring:
 1. the production of documents, electronically stored information, records or objects, or
 2. making available for inspection: documents, electronically stored information, records, objects, or a physical location.

(This packet may be used for either or both types of subpoena.)

TO COMPLETE THIS FORM YOU WILL NEED:

- ✓ Your case number.
- ✓ The name and address of the person (who is NOT a party to the case) you want to appear as a witness in court or at a deposition, or who is in charge of the documents, electronically stored information, records, objects, or place you want to examine.

INSTRUCTIONS: PRINT CLEARLY. USE BLACK INK. If you have access to the Internet and a printer, you may also fill out the subpoena form online at the Law Library Resource Center's web site to print out a more legible typed copy.

- Fill in the information requested at top left for the person who is **sending** the subpoena. If there is a current court order declaring your address is protected, write "protected" on the line provided for your address. Make sure the Clerk of Superior Court has valid contact information on file.)
- Fill in the "Party names" where it says "**In the Matter of**" and "**Case Number**" exactly as it appears on your original court papers.
- Fill in the name and address of the person (or company, organization, etc.) to receive the subpoena.

Check one or more of the boxes for sections "1", "2", and/or "3" to indicate whether the subpoena is being sent:

1. To order someone to appear to testify at a court trial or hearing.
2. To order someone to appear for a *deposition* at an attorney's office (or other location) to answer questions or give testimony that will be recorded for possible use at trial, **and/or**
3. As a **subpoena duces tecum** to order someone to produce or allow inspection of documents, electronically stored information, records, objects, or of a specified location.

Fill in the information requested for each section you indicated. Then refer to the "**Procedures**" document in this packet for information about getting the subpoena, including the "Your Duties in Responding" section, delivered or "served" as required by law.

Be sure to clearly identify in writing the information, document, record, object, or electronically stored information, or specific location, in a way that will enable the subpoenaed party to understand exactly what you want from them. If you are not specific in your request for the information, document, object, electronically stored information, or location, the other party may object to your request for the reason that you lack specificity.

Person Filing: _____

Address (if not protected): _____

City, State, Zip Code: _____

Telephone: _____

Email Address: _____

Lawyer's Bar Number: _____

For Clerk's Use Only

Representing ☐ Self, without a Lawyer or ☐ Attorney for ☐ Petitioner OR ☐ Respondent

SUPERIOR COURT OF ARIZONA IN YUMA COUNTY

In the Matter of:

Case No. _____

Petitioner / Party A

SUBPOENA For Family Cases

Respondent / Party B

Arizona Rules of Family Law
Procedure, Rule 52

TO: Name:

Address:

City, State, Zip:

(Place a check mark in one or more of the following box(es) as appropriate.)

1. ☐ **For Attendance of Witnesses at Hearing or Trial:**

YOU ARE ORDERED TO APPEAR in the Superior Court of Arizona in Yuma County, at the date, time, and place specified below to testify at a ☐ Hearing ☐ Trial in the case named above, before:

Judicial Officer: _____

(at) Address:

Building:

Floor:		Room #:	
Date:		Time:	

2. ☐ **For Taking of Depositions:**

YOU ARE ORDERED TO APPEAR at the place, date and time specified below to testify at the taking of a deposition in the above-named case:

Place of Deposition: _____

(at) Address:

Building:

Floor:		Room #:	
Date:		Time:	

Method of Recording: _____

SUBPOENA DUCES TECUM3. ☐ **For Production of Documentary Evidence, Electronically Stored Information, or Objects or Inspection of Premises:**

YOU ARE ORDERED to produce and permit inspection, copying, testing, or sampling of the following designated documents, electronically stored information or tangible things in your possession, custody or control, or to permit inspection of the premises at the place, date, and time specified below:

LIST Documents, Information or Objects:

_____	_____
_____	_____
_____	_____

☐ Additional items listed on attached page(s)

☐ **TO BRING WITH YOU** to the court proceeding or deposition, OR to the following place for **Production or Inspection:**

Place of Production or Inspection: _____

(at) Address:

Building:

Floor:		Room #:	
Date:		Time:	

YOUR APPEARANCE IS NOT REQUIRED *if* the items ordered to be produced are delivered to the requesting party within the time allowed **AND** you are not otherwise ordered to appear.

Issued this date: _____

CLERK OF SUPERIOR COURT

By: _____
Deputy Clerk of Superior Court

Your Duties In Responding To This Subpoena*

*See Arizona Rules of Family Law Procedure (A.R.F.L.P.) Rule 52, and the “Your Right to Object to this Subpoena” section below.

ATTENDANCE AT A TRIAL: If this subpoena commands your attendance at a deposition, hearing, or trial, you must appear at the place, date and time designated in the subpoena unless you object (see below, procedures for objecting). Unless a court orders otherwise, you are required to travel to any part of the state to attend and give testimony at a trial.

ATTENDANCE AT A HEARING OR DEPOSITION: If this subpoena commands you to appear at a hearing or deposition, you must appear at the place, date and time designated in this subpoena unless either:

- (1) you timely object (see below, the procedures for objecting); or
- (2) you are not a party or a party's officer and this subpoena commands you to travel to a place other than:
 - (a) the county where you reside or you transact business in person; or
 - (b) the county in which you were served with the subpoena or within forty (40) miles from the place of service; or
 - (c) such other convenient place fixed by a court order.

PRODUCTION OF DOCUMENTARY EVIDENCE: If this subpoena commands you to produce and permit inspection, copying, testing or sampling of designated documents, electronically stored information, or tangible things, you must make the items available at the place, date and time designated in this subpoena, and in the case of electronically stored information, in the form or forms requested, unless you provide a good faith written objection to the party or attorney who served the subpoena. You may timely object to the production of documentary evidence (see below, the procedures for objecting).

You may object to the production of electronically stored information from sources that you identify as not reasonably accessible because of undue burden or expense, including sources that are unduly burdensome or expensive to access because of the past good-faith operation of an electronic information system or good faith or consistent application of a document retention policy.

If this subpoena does not specify a form for producing electronically stored information, you may produce it in native form or in another reasonably usable form that will enable the receiving party to have the same ability to access, search, and display the information as the responding person, but you need not produce the same electronically stored information in more than one form.

If the subpoena commands you to produce documents, you have the duty to produce the designated documents as they are kept by you in the usual course of business, or you may organize the documents and label them to correspond with the categories set forth in the subpoena.

INSPECTION OF PREMISES: If this subpoena commands you to make certain premises available for inspection, you must make the designated premises available for inspection on the date and time designated in this subpoena unless you provide a timely, good faith written objection to the party or attorney who served the subpoena.

COMBINED SUBPOENA: You should note that a command to produce certain designated materials, or to permit the inspection of premises, may be combined with a command to appear at a trial, hearing or deposition. You do not, however, need to appear in person at the place of production or inspection unless the subpoena also states that you must appear for and give testimony at a hearing, trial, or deposition.

YOUR RIGHT TO OBJECT TO THIS SUBPOENA

I. GENERALLY. If you have concerns or questions about this subpoena, you should first contact the party or attorney who served the subpoena. The party or attorney serving the subpoena has a duty to take reasonable steps to avoid imposing an undue burden or expense on you. The Superior Court enforces this duty and may impose sanctions upon the party or attorney serving the subpoena if this duty is breached.

- You may object to this subpoena if you feel that you should not be required to respond. You must make any objection within 14 days after the subpoena is served upon you, or before the time specified for compliance, by providing a written objection to the party or attorney serving the subpoena.
- If you object to the subpoena in writing, you do not need to comply with the subpoena until a court orders you to do so. It will be up to the party or attorney serving the subpoena to seek an order from the court to compel you to provide the documents or inspection requested, after providing notice to you.

Unless otherwise ordered by the Court for good cause, the party seeking discovery from you must pay your reasonable expenses incurred in responding to a subpoena seeking the production of documents, electronically stored information, tangible things, or an inspection of premises.

- If you seek payment of expenses other than routine clerical and per-page costs as allowed by A.R.S. §12-351, you must object on the grounds of undue burden to producing the materials without the subpoenaing party's payment, and send an advanced estimate of those expenses to the subpoenaing party before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.
- You need not comply with those parts of the subpoena that are the subject of the objection, unless the Court orders you to do so. The court may enter an order conditioning your response to the subpoena on payment of your additional expenses, including ordering payment of those expenses in advance.

II. PROCEDURE FOR OBJECTING TO A SUBPOENA

A. Form and Time for Objection.

- (i) A person commanded to comply with a subpoena may object to the subpoena in writing on the basis that the information requested is not reasonably accessible or because complying with the subpoena would cause an undue burden or expense. The objection must state the basis for the objection, and must include the name, address, and telephone number of the person, or the person's attorney, serving the objection. The objection must be served on the party or attorney serving the subpoena before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.
- (ii) A person served with a subpoena that combines a command to produce materials or to permit inspection, with a command to attend a deposition, hearing, or trial, may object to any part of the subpoena. A person objecting to the part of a combined subpoena that commands attendance at a deposition, hearing, or trial must attend and testify at the date, time, and place specified in the subpoena, unless excused from doing so by the party or attorney serving a subpoena, by a court order, or by any other provision of Rule 52.

B. Procedure After Objecting.

- (i) A person objecting to a subpoena to produce materials or to permit inspection need not comply with those parts of the subpoena that are the subject of the objection, unless ordered to do so by the issuing court.
- (ii) The party serving the subpoena may move under Rule 65(a) to compel compliance with the subpoena. The motion must be served on the subpoenaed person and all other parties under Rule 43.
- (iii) Any court order to compel must protect a person who is neither a party nor a party's officer from undue burden or expense resulting from compliance.

C. Claiming Privilege or Protection.

- (i) A person withholding subpoenaed information under a claim that it is privileged or subject to protection as work-product material must promptly identify in writing the information, document, or electronically stored information withheld and describe it in a manner that, without revealing information that is privileged or protected, will enable other parties to assess the claim.
- (ii) If information subject to a claim of privilege was accidentally produced in response to a subpoena, the party who accidentally produced the information may notify any other party that the information was privileged. After being notified of such a claim, a party who received the information has several obligations. They must promptly return, sequester, or destroy the information and any copies they have. They must not disclose the information until the claim is resolved, and if they have already disclosed it, they must take reasonable steps to retrieve the information. They must also present the information to the court under seal for a decision as to whether it is subject to privilege. The party who accidentally disclosed the information must preserve it until the privilege claim is resolved.

III. COURT MODIFIES or VOIDS (quashes) SUBPOENA

A. The Court must quash or modify a subpoena *if* . . .

- (1) the subpoena does not provide a reasonable time for compliance;
- (2) unless the subpoena commands your attendance at a trial, if you are not a party or a party's officer and if the subpoena commands you to travel to a place *other than*:
 - (a) the county in which you reside or transact business in person;
 - (b) the county in which you were served with a subpoena, or within forty (40) miles from the place of service; or
 - (c) such other convenient place fixed by a court order; or
- (3) the subpoena requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (4) the subpoena subjects you to undue burden.

B. The Court may quash or modify a subpoena if . . .

- (1) the subpoena requires you to disclose a trade secret or other confidential research, development or commercial information;
- (2) you are an unretained expert and the subpoena requires you to disclose your opinion or information resulting from your study that you have not been requested by any party to give on matters that are specific to the dispute;
- (3) you are not a party or a party's officer and the subpoena would require you to incur substantial travel expense; or
- (4) the Court determines that justice requires the subpoena to be quashed or modified.

In these last four circumstances a court may instead of quashing or modifying a subpoena, order your appearance or order the production of material under specified conditions if:

- (1) the serving party or attorney shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (2) if your travel expenses or the expenses resulting from the production are at issue, the party or attorney serving the subpoena assures that you will be reasonably compensated.

ADA Notification

Requests for reasonable accommodation for persons with disabilities must be made to the division assigned to the case by the party needing accommodation or his/her counsel at least three (3) judicial days in advance of a scheduled proceeding.

Interpreter Notification

Requests for an interpreter for persons with limited English proficiency must be made to the division assigned to the case by the party needing the interpreter and/or translator or his/her counsel at least ten (10) judicial days in advance of a scheduled court proceeding.

SIGNED AND SEALED this date _____
CLERK OF SUPERIOR COURT

By: _____
Deputy Clerk of Superior Court

Certificate of service:

COSTS TO PERSON SENDING THE SUBPOENA-Family

WARNING: You are responsible for the other person's reasonable costs of compliance with the subpoena. The amount of reimbursement that person is entitled to for his or her costs is governed by Arizona Revised Statutes (A.R.S.) §12-351 and §12-303 as well as Arizona Rules of Family Law Procedure 52 (e). The full text of the statutes and rule are available online or at the Court's Law Library Resource Center.

A.R.S. §12-351 describes costs of compliance with a subpoena for production of documents. A.R.S. §12-351 says in part:

1. The witness submits an itemized statement to the requesting party stating the reproduction and clerical costs incurred by the witness.
2. If a subpoena is subsequently withdrawn, quashed, modified or limited other than by the witness, the witness is entitled to reimbursement for all reasonable costs incurred in compliance with the subpoena to the time that the requesting party has notified the witness that the subpoena has been withdrawn, quashed, modified or limited.
3. The requesting party is not required to pay the reasonable costs before the documents are available for delivery as required by the subpoena. **The witness may demand payment of the costs at the time of the actual delivery of the subpoenaed documents.**
4. The requesting party may petition the court in which the case is pending to recover from the witness all or part of the costs paid or to reduce the costs charged by the witness if these costs were excessive.
5. **"Reasonable costs" means** twenty-five cents for each page of standard reproduction of documents and the actual costs for reproduction of documents which require special processing **plus** the reasonable clerical costs incurred in locating and making the documents available billed at the rate of twenty-five dollars per hour per person.

WARNING: A.R.S. §12-303 describes the costs of compliance with a subpoena for witness testimony. Persons subject to subpoenas to appear as witnesses in a civil law suit must be paid **\$12 for each day's attendance as well as mileage at 20 cents per mile** from the witness's residence to the place of trial, hearing, or deposition. The mileage reimbursement is one way only from their home to the place of trial or hearing and does not include reimbursement for travel home.

WARNING: Persons subject to subpoenas are protected. Rule 52(e) of the Arizona Rules of Family Law Procedure protects a person subject to a subpoena from undue burden or expense. Rule 52(e)(1) says in part:

1. **Avoiding Undue Burden or Expense; Sanctions.** A party or an attorney responsible for serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and may impose an appropriate sanction—which may include lost earnings and reasonable attorney fees—on a party or attorney who fails to comply.

Person Filing: _____
Address (if not protected): _____
City, State, Zip Code: _____
Telephone: _____
Email Address: _____
Lawyer's Bar Number: _____

For Clerk's Use Only

Representing ☐ Self, without a Lawyer or ☐ Attorney for ☐ Petitioner OR ☐ Respondent

SUPERIOR COURT OF ARIZONA IN YUMA COUNTY

In the Matter of:

Case No. _____

AFFIDAVIT OF SERVICE for SUBPOENA in a Family Case

Petitioner(s) / Party A

Arizona Rules of Family Law Procedure, Rule 52

Respondent / Party B

I received the Subpoena addressed to: _____

which was dated: _____ I personally served the subpoena as follows:

On this date: _____ At this time: _____

At this location: _____

To: (Name) _____

Manner of Service: _____
(how served)

☐ I was over the age of 18 at the time the subpoena was served. I am not a party to the case.

UNDER PENALTY OF PERJURY:

By signing below, I state to the Court under penalty of perjury that the contents of this document are true and correct.

Date: _____

Signature

Printed Name: _____

Street Address: _____

City, State, Zip Code: _____

Telephone Number(s): _____

FEES \$ _____
MILEAGE CHARGES \$ _____
OTHER \$ _____
TOTAL \$ _____