

SUBPOENAS

What to do if you are issued with a subpoena

I HAVE RECEIVED A SUBPOENA ADDRESSED TO ME. WHAT DO I DO?

Regardless of whether it is a subpoena to produce evidence or a subpoena to give evidence you should **contact the Legal Policy Branch** whose solicitors represent Legal Aid in these matters.

Subpoena to produce documents

- If it is a subpoena to produce documents it should not have been addressed to you. All files are the property of Legal Aid and you may not be authorised to produce the documents listed in the subpoena. To do so could be an offence under s 26 of the Legal Aid Commission Act 1979.
- Contact the Legal Policy Branch. They will usually ask you to send them the submission and files and will take the matter from there.
- If the file is large, Legal Policy might ask you to go through the file to help identify documents covered by the subpoena.
- If you are in a regional office and the subpoena requires documents to be produced to a court in your local area, they might ask you to produce the documents to the court on behalf of Legal Aid.

Notice to produce or an order for production

- The same processes as set out above apply for all types of instruments that require the production of documents. In all cases you should contact the Legal Policy Branch.

Subpoena to give evidence

- Even though a subpoena to give evidence is a bit different in that it is personal to you, you should still contact the Legal Policy Branch.
- A solicitor from Legal Policy will take you through the confidentiality provisions in the Legal Aid Commission Act so you are clear about what information you can and cannot disclose in court.
- Legal Policy will also talk to you about legal professional privilege and how it may be waived.

Being aware of the relevant confidentiality and privilege rules will be particularly important if the person whose file the subpoena relates to is unrepresented in court, because you will not be able to rely upon the person's solicitor to object to questions where there is a risk that you will breach confidentiality or privilege provisions by answering them.

What is my duty of confidentiality if I am subpoenaed to give evidence in proceedings in which a former client is a party?

Not all information on a client file is covered by client legal privilege. While the duty of confidentiality owed to your former client requires you not to volunteer any confidential information, the Court may be able to compel you to divulge some confidential information; for example, information that is already on the public record.

It is up to the legal representatives of the party seeking the information in evidence and the former client to make submissions to the Court as to whether or not you can answer a particular question. If you want to discuss with somebody before Court what information might be confidential or privileged, contact the Legal Policy Branch.

What if I'm asked to prepare a statement or affidavit for court?

Again, talk to the Legal Policy Branch about your options. In most cases it is better not to prepare a statement or affidavit. If a party wants evidence from you, they can issue you with a subpoena to give evidence. Sometimes however, preparing an affidavit will be the best option because it will forestall a party from asking for further evidence.

If I decide to give evidence, should I take the file with me to court?

Generally no. Rely on your memory if you can. If the file is in court, you could be required to produce it.

What do I do with the conduct money?

The conduct money, provided by the person issuing the subpoena to cover our administrative costs, is the property of Legal Aid. A receipt should be provided to the person who sent it and the money, cheque or money order should be banked in accordance with the procedures of your office. All details of receipt should be sent to the finance branch.

MORE INFORMATION

For further information about subpoenas and what to do when you receive one, contact the Legal Policy Branch on (02) 9219 5034.