



# Federal Pro Se Clinic

CENTRAL DISTRICT OF CALIFORNIA: WESTERN DIVISION

## ▣ Guide to Discovery: The Subpoena Duces Tecum ▣

### What is a Subpoena Duces Tecum?

A subpoena duces tecum is a request to a non-party to produce or permit the inspection of documents or things related to the claims or defenses in your case. A subpoena duces tecum is useful for obtaining documents and things like the following:

- Phone records
- Emails and other electronically stored information
- Income tax records
- Medical records
- Computer files
- Employment Records



#### **Warning!**

A subpoena duces tecum is not the right way to obtain documents or things from a party to your case. If you are seeking documents or things from a party, you should instead request the production of documents and things under Federal Rule of Civil Procedure 34(a). See Public Counsel's Guide to Requests for Production.

A subpoena duces tecum is governed by Federal Rule of Civil Procedure 45 and Central District Local Rules 37 and 45.

### Timing: When Can You Issue a Subpoena Duces Tecum?

You may issue a subpoena duces tecum only after the discovery period has begun in your case. Please read Public Counsel's Guide to Initial Discovery Obligations to learn more about how to begin the discovery period in your case. Additionally, subpoenas are subject to the same deadlines as all other kinds of discovery in your case.

### Steps You Must Take in Order To Issue a Subpoena Duces Tecum

#### **1. Determine Which District Court Must Issue the Subpoena**

A subpoena duces tecum must issue "from the court where the action is pending." If you filed your case in the District Court for the Central District of California, your subpoena will issue from this court, even if you are seeking documents that are located in another jurisdiction.

#### **2. Provide Notice of the Subpoena to All Parties in the Case**

You must provide written notice that you are serving a subpoena duces tecum to all the parties in your case. This requirement provides the other parties with the opportunity to object to the subpoena. Although you do not need to file this notice with the Court, it should provide the other parties with notice about the subpoena recipient's name and the time and location where the requested documents or thing

should be produced. The notice of subpoena should also include a copy of the actual subpoena and the requests you will attach to the subpoena.

Although there is no rule about when you should provide notice of subpoena to the opposing party prior to serving it, we suggest that you give the opposing party at least 3 days of notice prior to service of the subpoena. If the opposing party is represented by an attorney, you should provide their attorney with the notice of subpoena. A form notice of subpoena is included with this guide.

### 3. Prepare the Subpoena Duces Tecum

First, obtain form AO-88B, which is the Court’s form for preparing the subpoena duces tecum. Form AO-88B is available on the Court’s website. This form requires you to state the name of the subpoena’s recipient, the case caption, and the date the production or inspection is due.

Second, attach your specific requests for documents or things to the form AO-88B. The preparation of a request attached to a subpoena duces tecum is similar to preparing a request for the production of documents. Like a request for production, the requests attached to the subpoena duces tecum should include definitions and instructions. Be careful to draft your requests as narrowly as possible because courts are more willing to uphold objections made by a third party for being overly broad or overly burdensome.

Read Public Counsel’s Guide to Requests for Production for an in depth discussion of how to draft requests for production.

In the area of the form that indicates when the response is due, make sure to give the recipient enough time to respond to your subpoena. You should give the recipient at least 10 days from service to comply with the subpoena, but preferably longer. If you are combining your subpoena with a deposition notice, then you must serve the notice at least 30 days in advance.

Lastly, obtain the signature or stamp of the clerk of the court on the form AO-88B. Although an attorney may sign the subpoena, a *pro se* litigant must obtain the clerk of the court’s signature or stamp before they can issue the subpoena.

#### FORM AO-88B

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT  
for the

\_\_\_\_\_  
Plaintiff )  
v. ) Civil Action No. \_\_\_\_\_  
\_\_\_\_\_  
Defendant )

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: \_\_\_\_\_  
(Name of person to whom this subpoena is directed)

**Production: YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Place: \_\_\_\_\_ Date and Time: \_\_\_\_\_

**Inspection of Premises: YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place: \_\_\_\_\_ Date and Time: \_\_\_\_\_

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena, and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: \_\_\_\_\_

CLERK OF COURT OR  
\_\_\_\_\_  
Signature of Clerk or Deputy Clerk Attorney’s signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) \_\_\_\_\_, who issues or requests this subpoena, are: \_\_\_\_\_

**Notice to the person who issues or requests this subpoena**  
If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

#### 4. Serve the Subpoena Duces Tecum

You must arrange to personally serve a copy of the subpoena on the recipient. However, you may not serve the subpoena yourself. Your server can be any person who is at least 18 years old and not a party to your case. You may hire a professional process server, but you may also ask a friend or family member to serve it for you.

**Your server must hand deliver the subpoena to the person named in the subpoena.**

**Your server cannot mail or leave a copy of the subpoena with a person's agent or with someone living in their home.**

If you are subpoenaing a corporate entity, your server should hand deliver the subpoena to the corporate officer or other agent authorized under Federal Rule of Civil Procedure 4 to accept service of process.

Generally, you are not required to file a proof of service with the court. However, you may be required to file a proof of service if someone raises an objection regarding service of the subpoena. You may also need to file a proof of service if you need to force compliance with the subpoena.

It is important to keep your records any written proof of service, including a certification statement by the process server of the date, manner, and name of person served.

#### 5. What if the Recipient Refuses to Comply with the Subpoena Duces Tecum?

If the recipient refuses to comply with the subpoena, consider filing a motion to compel. Please read Public Counsel's Guide to Filing a Motion to Compel for more information.



**TIP: Consider Communicating with the Witness Prior to Issuing the Subpoena.**

Try contacting the recipient of the subpoena prior to serving it. Third parties generally do not have an interest in the outcome of the underlying litigation and may be willing to accept service of the subpoena. However, the recipient is not required to waive service of the subpoena. Make sure to document all of your communications if the recipient waives service.

1 \_\_\_\_\_ (Full Name)  
2 \_\_\_\_\_ (email)  
3 \_\_\_\_\_ (Address Line 1)  
4 \_\_\_\_\_ (Address Line 2)  
5 \_\_\_\_\_ (Phone Number)

6 \_\_\_\_\_ in Pro Per  
(state Plaintiff or Defendant)

8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

11 \_\_\_\_\_,  
12 **Plaintiff,**  
13 **vs.**  
14 \_\_\_\_\_  
15 \_\_\_\_\_,  
16 **Defendant(s).**

Case No.: \_\_\_\_\_

**NOTICE OF SUBPOENA**

18 **TO ALL DEFENDANTS AND THEIR ATTORNEYS OF**  
19 **RECORD:**

20 **PLEASE TAKE NOTICE** that, pursuant to Federal Rule of Civil  
21 Procedure 45, Plaintiff is issuing the attached subpoena to the following  
22 non-party witness:  
23

24 \_\_\_\_\_  
25 \_\_\_\_\_  
26 \_\_\_\_\_  
27 \_\_\_\_\_

1           The subpoena calls for the production of documents or things  
2 specified in the subpoena and the attachment to the subpoena on the date,  
3 time, and location indicated in the subpoena.  
4

5 Date: \_\_\_\_\_ (signature) \_\_\_\_\_

6  
7 \_\_\_\_\_  
(print name)

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9 \_\_\_\_\_ in Pro Per  
(state Plaintiff or Defendant)

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**PROOF OF SERVICE**

I, \_\_\_\_\_, declare as follows:  
(print name)

My address is \_\_\_\_\_  
\_\_\_\_\_

On \_\_\_\_\_, I served the attached

**NOTICE OF SUBPOENA(S)**

on all interested parties in this action by placing a true and correct copy thereof in a sealed envelope, with first-class postage prepaid thereon, and deposited said envelope in the United States mail in **Los Angeles, CA**, addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_, at Los Angeles, CA.  
(date)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(print name)

\_\_\_\_\_ in Pro Per