

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Administrative Office of the Courts
Kenneth Kann, Managing Attorney, Office of the General Counsel
Joshua Weinstein, Staff Attorney, 415-865-7688

DATE: November 5, 2004

SUBJECT: Criminal Procedure: Subpoena in Criminal and Juvenile Cases
(amend form 982(a)(16)) (Action Required)

Issue Statement

The Judicial Council form subpoena in criminal and juvenile delinquency cases is inconsistent with newly amended Evidence Code section 1560(e).

Recommendation

Administrative Office of the Courts staff recommends that the Judicial Council, effective January 1, 2005, amend form 982(a)(16), *Subpoena (Criminal or Juvenile)*. The proposed revised form is attached at pages 3–4.

Proposed form 982(a)(16) is attached at pages 3–4.

Rationale for Recommendation

The Judicial Council *Subpoena (Criminal or Juvenile)*, form 982(a)(16) includes checkbox at item 2d, which allows counsel to subpoena and inspect documents without prior court review. The council added checkbox 2d to the subpoena in 1991, after the Legislature adopted Evidence Code section 1560(e), which establishes such a procedure. The Legislature, effective January 1, 2005, has clarified that the procedure under Evidence Code section 1560(e) is limited to civil cases and thus not applicable to criminal or juvenile delinquency cases. (See Assem. Bill 1249 (2004); a copy of that bill is attached at pages 5-8.) As the legislative amendment makes it clear that this procedure does not apply in criminal or juvenile delinquency cases, item 2d should be removed from the form subpoena.

Additionally, the Criminal Law Advisory Committee will be reviewing the form to determine whether it would benefit from conversion to “plain English.”

Alternative Actions Considered

There is no alternative to this proposal other than to allow the conflict between the form and the statute.

Comments From Interested Parties

This proposal was not circulated for comment because it is non-controversial and is a technical amendment to comply with statute. The proposal was reviewed by the chair of the Criminal Law Advisory Committee, who agrees with the amendment.

Implementation Requirements and Costs

There are no implementation requirements or costs.

Attachments

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name and address):</i> _____ TELEPHONE NO.: _____ ATTORNEY FOR <i>(Named):</i> _____ Insert name of court, judicial district or branch court, if any, and post office and street address: _____ Title of case: _____	FOR COURT USE ONLY <h1 style="margin: 0;">DRAFT 1</h1> <h2 style="margin: 0;">10-26-04 lag</h2>
SUBPENA (CRIMINAL OR JUVENILE) <input type="checkbox"/> DUCES TECUM	CASE NUMBER: _____

THE PEOPLE OF THE STATE OF CALIFORNIA, TO *(Name):*

1. **YOU ARE ORDERED TO APPEAR AS A WITNESS in this action at the date, time, and place shown in the box below UNLESS you make a special agreement with the person named in item 3:**

a. Date: _____	Time: _____	<input type="checkbox"/> Dept.:	<input type="checkbox"/> Div.:	<input type="checkbox"/> Room:
b. Address: _____				

2. AND YOU ARE

- a. ordered to appear in person.
- b. not required to appear in person if you produce the records described in the accompanying affidavit and a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose your original declaration with the records. Seal them. (2) Attach a copy of this subpoena to the envelope or write on the envelope the case name and number, your name and date, time, and place from item 1 (the box above). (3) Place this first envelope in an outer envelope, seal it, and mail it to the clerk of the court at the address in item 1. (4) Mail a copy of your declaration to the attorney or party shown at the top of this form.
- c. ordered to appear in person and to produce the records described in the accompanying affidavit. The **personal attendance** of the custodian or other qualified witness and the production of the original records **is required** by this subpoena. The procedure authorized by subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena.

3. **IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:**

- a. Name: _____
- b. Telephone number: _____

4. **WITNESS FEES:** You may be entitled to witness fees, mileage, or both, in the discretion of the court. Contact the person named in item 3 **AFTER** your appearance.

DISOBEDIENCE OF THIS SUBPENA MAY BE PUNISHED BY A FINE, IMPRISONMENT, OR BOTH. A WARRANT MAY ISSUE FOR YOUR ARREST IF YOU FAIL TO APPEAR.

FOR COURT USE ONLY	Date: _____	<div style="text-align: right; margin-bottom: 10px;"> _____ (SIGNATURE) </div> <div style="text-align: right; margin-bottom: 10px;"> ----- (TYPE OR PRINT NAME) </div> <div style="text-align: right;"> _____ (TITLE) </div>
---------------------------	-------------	--

(See reverse for proof of service)

SHORT TITLE:	CASE NUMBER:
--------------	--------------

PROOF OF SERVICE OF SUBPENA

1. I served this Subpena Subpena Duces Tecum and supporting affidavit by personally delivering a copy to the person served as follows:

a. Person served (*name*):

b. Address where served:

c. Date of delivery:

d. Time of delivery:

2. I received this subpena for service on (*date*):

3. **NON-SERVICE RETURN OF SUBPENA**

a. After due search, careful inquiry, and diligent attempts at the dwelling house or usual place of abode or usual place of business, I have been unable to make personal delivery of this Subpena Subpena Duces Tecum in this county on the following persons (*specify*):

b. Reason:

(1) Unknown at address.

(4) Out-of-county address.

(2) Moved, forwarding address unknown.

(5) Unable to serve by hearing date.

(3) No such address.

(6) Other reasons (*explanation required*):

4. Person serving:

a. Not a registered California process server.

e. Exempt from registration under Bus. & Prof. Code section 22350(b).

b. California sheriff, marshal, or constable.

c. Registered California process server.

f. Name, address, and telephone number and, if applicable, county of registration and number:

d. Employee or independent contractor of a registered California process server.

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

(For California sheriff, marshal, or constable use only)
I certify that the foregoing is true and correct.

Date:

Date:

(SIGNATURE)

(SIGNATURE)