

**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: Criminal Law Advisory Committee
Hon. Steven Z. Perren, Chair
Joshua Weinstein, Committee Counsel, 415-865-7688,
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DATE: August 31, 2006

SUBJECT: Criminal and Juvenile Law: Subpoena and Subpoena Duces Tecum (adopt form CR-125/JV-525; repeal form 982(a)(16)) (Action Required)

Issue Statement

The current subpoena form in criminal and juvenile cases, *Subpoena and Proof of Service* (form 982(a)(16)), is not easily understood by those unfamiliar with the criminal justice and juvenile delinquency systems. Both the format of the form and the language used in the form make it difficult to understand what its purpose is and what is required of the witness or custodian of records.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2007, adopt mandatory form *Order to Attend Court or Provide Documents (Subpoena/Subpoena Duces Tecum)* (form CR-125/JV-525) and revoke *Subpoena and Proof of Service* (form 982(a)(16)), to make the subpoena more easily understood.

The proposed new form is attached at pages 3–4. The form proposed to be repealed is attached at pages 5–6.

Rationale for Recommendation

The proposed form uses a more logical format and plain, more understandable, language. It does not change the substance or legal requirements for subpoenas and subpoena duces tecum in criminal or juvenile cases.

The new form will be located in the criminal and juvenile form series rather than in the miscellaneous form series, as was form 982(a)(16).

Alternative Actions Considered

The Criminal Law Advisory Committee considered leaving the subpoena form as it is but decided against it, as the form is confusing and not user friendly.

Comments From Interested Parties

The form was circulated for 10 weeks in the spring cycle. Fifteen comments were received. Of those, 10 agreed with the proposal, 4 agreed if amended, and 1 did not agree. There were no substantive suggestions regarding changing the purpose or legal framework of the form. The committee adopted several of the suggested stylistic changes in the proposed form, as they clarified existing provisions.

The circulated version of the form was limited to criminal and juvenile delinquency cases. However, form 982(a)(16) applies to juvenile delinquency and dependency cases. As noted above, the new form is not intended to result in any substantive changes. Therefore, this form was renamed as a criminal and juvenile subpoena, to allow its use in dependency proceedings as well.

A chart summarizing the comments is attached at pages 7–12.

Implementation Requirements and Costs

Implementation would impose costs on parties for copying new forms.

Attachments

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> TELEPHONE NO.: _____ FAX NO. <i>(Optional)</i> : _____ E-MAIL ADDRESS <i>(Optional)</i> : _____ ATTORNEY FOR <i>(Name)</i> : _____	FOR COURT USE ONLY DRAFT 9/12/06 sl
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
ORDER TO ATTEND COURT OR PROVIDE DOCUMENTS: Subpoena/Subpoena Duces Tecum	CASE NUMBER:

You must attend court or provide to the court the documents listed below. Follow the orders checked in item 2 below. If you do not, the judge can fine you, send you to jail, or issue a warrant for your arrest.

1. To: *(name or business)* _____

2. You must follow the court order(s) checked below:

- a. Attend the hearing.
- b. Attend the hearing *and* bring all items checked in d. below.
- c. Provide a copy of these items to the court (Do not use this form to obtain Juvenile Court records):
 - (1) _____
 - (2) _____
 - (3) _____
- If this box is checked, provide all items listed on the attached sheet labeled "Provide These Items."*
- d. If someone else is responsible for maintaining the items checked in c. above, that person (the Custodian of Records) must also attend the hearing.
- e. If this box is checked and you deliver all items listed above to the court **within 5 days of service of this order**, you do not have to attend court if you follow the instructions in item 5.

3.

Court Hearing Date: Date: _____ Time: _____ Dept.: _____ Rm.: _____	The court hearing will be at <i>(name and address of court)</i>: _____ _____ _____
Call the person listed in item 4 below to make sure the hearing date has not changed. If you cannot go to court on this date, you must get permission from the person in item 4. You may be entitled to witness fees, mileage, or both, in the discretion of the court. Ask the person in item 4 after your appearance.	

4. The person who has required you to attend court or provide documents is:

Name: _____ Phone No.: _____

Title: _____

Address: _____
 Number, Street, Apt. No.

City _____ State _____ Zip _____

Date: _____ Signature

CASE NAME: _____	CASE NUMBER: _____
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- 5 a. Put all items checked in item 2c and your completed *Declaration of Custodian of Records* form in an envelope. (You can ask the person in item 4 where to get this form.) Attach a copy of page 1 of this order to the envelope.
- b. Put the envelope inside another envelope. Then, attach a copy of page 1 of this form to the outer envelope or write this information on the outer envelope:
 - (1) Case name
 - (2) Case number
 - (3) Your name
 - (4) Hearing date, time, and department
- c. Seal and mail the envelope to the Court Clerk at the address listed in item 3. You must mail these documents to the court within five days of service of this order
- d. If you are the Custodian of Records, you must also mail the person in item 4 a copy of your completed *Declaration of Custodian of Records*.

___ *The server fills out the section below.* ___

Proof of Service of CR-125/JV-525

1. I personally served a copy of this subpoena on:
 Date: _____ Time: _____ a.m. p.m.
 Name of the person served: _____
 At this address: _____
 After I served this person, I mailed or delivered a copy of this Proof of Service to the person in item 4 on (date): _____
 Mailed from (city): _____
2. I received this order for service on (date): _____ and was not able to serve (name of person) _____ after (number of attempts) _____ attempts because:
 - a. The person is not known at this address.
 - b. The person moved and the forwarding address is not known.
 - c. There is no such address.
 - d. The address is in a different county.
 - e. I was not able to serve by the hearing date.
 - f. Other (explain): _____
3. Server's name: _____ Phone no. _____
4. The server (check one)
 - a. is a registered process server.
 - b. is not a registered process server.
 - c. is a sheriff, marshal, or constable.
 - d. works for a registered process server.
 - e. is exempt from registration under Business and Professional Code section 22350(b).
5. Server's address: _____
 If server is a registered process server:
 County of registration: _____ Registration no.: _____

I declare under penalty of perjury under the laws of the State of California that I am at least 18 years old and not involved in this case and the information above is true and correct.

Date: _____

▶ _____

TYPE OR PRINT NAME OF SERVER

▶ _____

SIGNATURE OF SERVER

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address):	TELEPHONE NO.:	FOR COURT USE ONLY
ATTORNEY FOR (Named):		
Insert name of court, judicial district or branch court, if any, and post office and street address:		
Title of case:		
SUBPOENA AND PROOF OF SERVICE (CRIMINAL OR JUVENILE)		CASE NUMBER:
<input type="checkbox"/> DUCES TECUM		

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 in compliance with Evidence Code sections 1560, 1561, 1562, and 1271, in the following manner: (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 SUBPOENA 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="border-bottom: 1px solid black; margin-bottom: 5px; text-align: right;">(SIGNATURE)</div> <div style="border-bottom: 1px solid black; margin-bottom: 5px; text-align: right;">(TYPE OR PRINT NAME)</div> <div style="border-bottom: 1px solid black; text-align: right;">(TITLE)</div>
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(See reverse for proof of service)

**SUBPOENA AND PROOF OF SERVICE
(CRIMINAL OR JUVENILE)**

SHORT TITLE:	CASE NUMBER:

PROOF OF SERVICE OF SUBPOENA

1. I served this Subpoena Subpoena 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 subpoena for service on (date):
3. **NON-SERVICE RETURN OF SUBPOENA**
- 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 the Subpoena Subpoena Duces Tecum in this county on the following persons (specify):
- b. Reason:
- (1) Unknown at address.
- (2) Moved, forwarding address unknown.
- (3) No such address.
- (4) Out-of-county address.
- (5) Unable to serve by hearing date.
- (6) Other reasons (explanation required):
4. Person serving:
- a. Not a registered California process server.
- b. California sheriff, marshal, or constable.
- c. Registered California process server.
- d. Employee or independent contractor of a registered California process server.
- e. Exempt from registration under Bus. & Prof. Code section 22350(b).
- f. Name, address, and telephone number and, if applicable, county of registration and number:

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)

SPR06-26

Criminal and Juvenile Delinquency Law: Subpoena and Subpoena Duces Tecum
(adopt Judicial Council form CR-125/JV-630; revoke form 982(a)(16))

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	<p>Hon. Ronald L. Bauer Chair, Rules and Forms Committee Superior Court of Orange County P.O. Box 1994 Santa Ana, CA 92702-1994</p>	AM	Y	<p>The proposal was reviewed by court staff and the Rules and Forms Committee of the Orange County Superior Court. After discussion, the following comments are submitted for consideration:</p> <p>-- The form in its current draft does not include provisions for self represented parties.</p> <p>-- No provisions are made for service by mail.</p> <p>-- Title of form in the header should match the title in the footer: ORDER TO ATTEND COURT OR PROVIDE DOCUMENTS (Subpoena/Subpoena Duces Tecum) (Criminal and Juvenile Delinquency).</p> <p>-- First line: replace the word “judge” with “judicial officer.” Many proceedings are conducted by commissioners.</p> <p>-- Item #1: include the phrase “(name or business)” under the line.</p> <p>-- Item #4: add additional title check boxes for Defendant and Magistrate.</p> <p>-- Item #5: replace current wording with the following:</p>	<p>Disagree. Self-represented litigants are acting as the defense attorney.</p> <p>The form cannot provide for this because under Penal Code section 1328(a) the witness must be personally served.</p> <p>Disagree. Judge is “plain English” and Judicial Officer is not necessary to be legally enforceable.</p> <p>Agree.</p> <p>Agree in part. Changed to blank line to allow use in dependency cases as well.</p> <p>Agree, but worded differently.</p>

SPR06-26

Criminal and Juvenile Delinquency Law: Subpoena and Subpoena Duces Tecum
(adopt Judicial Council form CR-125/JV-630; revoke form 982(a)(16))

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>“Put all items checked in item 2 and your completed Declaration of Custodian of Records form in an envelope. Attach a copy of page 1 of this form to the envelope or write the following information on the envelope:</p> <p>Case Name Case Number Your Name Hearing Date, Time and Dept.</p> <p>Place this envelope in another envelope for mailing.”</p> <p>-- Page 2, Proof of Service: move E and F to the beginning of the section and re-number as A and B; re-number all other sections accordingly.</p> <p>-- Add an additional check box to the new A (formerly E) to read “is at least 18 years of age and not a party to the case.”</p> <p>-- Remove this statement from the last sentence.</p>	<p>Disagree. Items are in order of importance.</p> <p>Disagree. Sufficient in declaration.</p>
2.	Ms. Mary Carnahan Criminal Division Program Manager Superior Court of Solano County 530 Union Avenue, Suite 200 Fairfield, CA 94533	A	N		
3.	Hon. Donald D. Coleman	A	Y		

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Superior Court of Ventura County 800 South Victoria Avenue Ventura, CA 93009				
4.	Ms. Christine Copeland Attorney Superior Court of Santa Clara County San Jose	N	N		
5.	Ms. Janet Garcia Manager, Planning & Research Unit Superior Court of Los Angeles County 111 North Hill Street Los Angeles, CA 90012	A	Y		
6.	Mr. Robert Hirth Chief Defense Attorney Madera Alternate Defense Madera	A	N	Especially useful on SDT's because of room to list evidence required.	
7.	Hon. Dennis B. Jones Superior Court of Sacramento County 720 9 th Street Sacramento, CA 95814	AM	Y	<p>A document titled an "order" should be signed by a judicial officer and not an attorney or investigator. In addition, the form is not clear as to requests for documents from the court as often the entire file is requested. A court order signed by a judicial officer authorizing the release of confidential/sealed documents seldom accompanies a subpoena.</p> <p>We also suggest that all signature lines have a line for the printed name to ensure legibility. In addition, the instructions are somewhat confusing, particularly with the repetitive numbers.</p>	<p>Disagree. Law provides this is an order although it can be issued by attorney or investigator.</p> <p>Not enough room to add it and still keep form to 2 pages.</p>

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
8.	Ms. Tressa Kentner Chief Executive Officer Superior Court of San Bernardino County 172 W. 3 rd Street, 2 nd Floor San Bernardino, CA 92415-0302	A	N		
9.	Mr. Tony Klein Process Server Institute Attorney Service of San Francisco San Francisco	AM	N	<p>Juvenile/Criminal Subpoena and Subpoena Duces Tecum</p> <p>The forms appearance should be more in the style of the current subpoena forms.</p> <p>The revised form is entitled, “Order to Attend Court and Produce Documents” (Subpoena/Subpoena Duces Tecum). The Subpoena/Subpoena Duces Tecum should be bolded, and the “order to Attend...” description should be in parentheses.</p> <p>Item 2d, the description of the records, should be free-form not numbered.</p> <p>Item 4. Is this an Order when signed by someone other than a judge?</p> <p>Item 5. This directs the witness producing the records to send the serving entity a copy of the declaration.</p>	<p>Disagree. Purpose is to make form easier to use and understand.</p> <p>Disagree. It is order in disjunctive.</p> <p>Yes. See response to comment by Dennis Jones.</p> <p>Disagree. Records are to be sent to court.</p>

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				<p>Many witnesses will likely also send a copy of the records they are producing which is not required or permitted. I do not believe that sending the declaration is a legal requirement. This statement should stress that only the declaration and not the records should be sent.</p> <p>Item B of the Proof of Service. This is an odd inclusion that is not a legal requirement and has never appeared on any Judicial Council proof of service form. Why would the server need to state when the proof of service was delivered or mailed to the person requesting service? The information is meaningless. The person requesting service either has it or doesn't; when the server sent it to him or her is irrelevant.</p>	<p>Agree in part. This is relevant to Item C, that the subpoena was not served. Given that, the item has been removed and the other items renumbered.</p>
10.	Ms. Sylvia Lautech Operations Manager Superior Court of Marin County San Rafael	AM	Y	Title page change to: "Order to Attend Court <i>and/or</i> Provide Documents"	Disagree. Judicial Council style lists in disjunctive.
11.	Mr. Nelson Lu Deputy Public Defender San Joaquin County Public Defender's Office Stockton	A	N	Agree with proposed changes	
12.	Ms. Debra Meyers Chief of Staff Counsel Services Superior Court of San Bernardino	A	N		

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	County 172 W. 3 rd Street, 2 nd Floor San Bernardino, CA 92415-0302				
13.	Mr. Mike Roddy Executive Officer Superior Court of San Diego County 220 West Broadway San Diego, CA 92101	A	Y		
14.	Ms. Laura Rusk, Supervising Court Clerk Superior Court of Kern County 1415 Truxtun Avenue Bakersfield, CA 93301	A	N		
15.	Hon. Deborah M. Talmage Superior Court of Santa Barbara County 118 E. Figueroa Street Santa Barbara, CA 93101	A	N		