

**REV. 5-19-97/ADM
97-7**

DEFINITIONS

HOW TO HANDLE A SUBPOENA

Subpoena

A subpoena is an order to cause a witness to appear in court and give testimony.

Subpoena Duces Tecum

A subpoena duces tecum is an order to produce a document. Such a subpoena may ask to have documents presented for copying purposes.

Note: All subpoenas must be responded to in some way by the Agency. Questions should be directed to the Bureau of Legal Affairs (517) 373-2085.

**AUTHORIZED
SIGNATURES**

A subpoena SIGNED by an attorney of record in the action or stamped by the clerk of the court in which the matter is pending has the force and effect of an order signed by the judge of that court.

**NOTICE TO
WITNESS**

If the witness is served with the subpoena less than 48 hours before the witness is to appear, contact the Bureau of Legal Affairs.

**WITNESS CANNOT
ATTEND**

If it is impossible for the witness to appear, the witness must notify the party who has subpoenaed the witness. At that time, the party may excuse the witness or notify the witness that a special hearing may be held to adjudicate the issue.

**SUBPOENA
ISSUED BY A
COURT OR
ATTORNEY**

Form of Subpoena

A subpoena must:

1. Be entitled in the name of the People of the State of Michigan;
2. Be imprinted with the seal of the Supreme Court of Michigan or approved by the Supreme Court.
3. Have typed or printed on it the name of the court in which the matter is pending;
4. State the place where the trial or hearing is scheduled;
5. **State the title of the action in which the person is expected to testify;**
6. State the file designation and number assigned by the court; and

7. State that failure to obey the commands of the subpoena or reasonable directions of the signer as to time and place to appear may subject the person to whom it is directed to penalties for contempt of court.

PROCEDURE

Comply with a valid subpoena.

Subpoena Requesting Disclosure of Confidential Information

Even though a subpoena is signed by an authorized person, confidential information must be protected. If there are any questions, contact BLA before responding to a subpoena requesting disclosure of confidential information.

Procedure-Subpoena To Appear or Produce Documents In Court MCR 2.506(H)

IF A CONFIDENTIAL RECORD IS SUBPOENAED for presentation before a court, an explanation of the confidentiality imposed by law must be made to the court, prior to the court hearing if possible, and a request made that the court excuse the Agency.

If the Agency is not excused, the record must be produced in obedience to the court's order.

IF A WORKER IS SUBPOENAED TO TESTIFY or supply confidential information, the court must be reminded of the confidentiality imposed by law. (Refer to PAM Item 310 on confidentiality for statement a worker may read in court).

Obey the order of the court.

Procedure-Subpoena To Appear or Produce Documents Outside Of The Court

If a worker is subpoenaed to appear and/or produce a confidential record to a place other than a court, (e.g., attorney's office or copying center) and the issuing attorney is NOT representing a person entitled to the record, he/she should advise the attorney that absent the client's signed release or a judicial court order, the information cannot be provided.

The worker should then request that the attorney withdraw the subpoena.

If the attorney refuses to withdraw the subpoena, staff should appear, read the PAM confidentiality statement and refuse to disclose the confidential information absent the consent of the person to whom the record relates or his representative or a judicial court order.

If the attorney notifies the Agency that a court hearing has been scheduled, then the worker should appear and follow procedures regarding appearance or production of documents in court.

Note: State and federal administrative law judges are considered state and federal officials, and as such, under state law have access to records of FIA clients for state funded programs. Administrative law

judges cannot compel disclosure of confidential information to other persons as his/her verbal or written orders are not court orders.

SUBPOENA REQUESTED BY CLAIMANT

Legal Base

Section 73. An agency authorized by statute to issue subpoenas when a written request is made by a party in a contested case, shall issue subpoenas forthwith requiring the attendance and testimony of witnesses and the protection of evidence including books, records, correspondence and documents in their possession or under their control. On written request, the agency shall revoke a subpoena if the evidence, the production of which is required, does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. Witness fees shall be paid to subpoenaed witnesses in accordance with Sec. 2552 of The Revised Judicature Act. (See Item 1115.1, page 1.)

The Michigan Administrative Code, R400.914:

(1) An agency subpoena authorized by law shall be issued to a party upon written request and a showing of need, general relevance to the issue involved, and the reasonable scope of the evidence sought requiring the attendance of witnesses and the production of identifiable records not exempt from disclosure by law.

SUBPOENA FOR ADMINISTRATIVE HEARINGS

A claimant, FIA local office, FIA Central Office unit, or representative wanting a subpoena related to an administrative hearing may request it by writing to Administrative Hearings giving the name and address of the witness and the information required by R400.914 (above). Administrative Hearings mails the original and a copy to the requestor. The original is to be served personally on the witness by a person 18 years of age or above. The witness fees must be paid at time of service from the requestor's funds. The rates described in Sec. 2552 of the Revised Judicature Act (see Item 1115.1, page 1) are the minimum, which must be paid. It is common procedure to pay a negotiated amount for an expert witness. Service must be at least two days prior to the hearing and may be made in several ways.