
UCLA Procedure 120.1: Producing Records Under Subpoena Duces Tecum and Deposition Subpoenas

Issuing Officer: Administrative Vice Chancellor

Responsible Dept: Records Management & Information Practices

Effective Date: April 23, 1999

Supersedes: UCLA Procedure 020.1, dated 9/1/1977

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I. REFERENCES

1. State of California, Code of Civil Procedure, Sections 416.50; 1013, 1985, 1986, 1987, 1992, and 2020; California Evidence Code 1561, 1563, 1564 and 1565;
2. UCLA Policy 120, Legal Processes – Summonses, Complaints, and Subpoenas, 04/23/1999;
3. UC Business & Finance Bulletin RMP-10 Instructions for Responding to a Subpoena Duces Tecum, 6/15/1989.

II. DEFINITIONS

Custodian of Records: University administrator responsible for the safekeeping of the records for their department. When served with a Subpoena, the Custodian of Records should contact the designated Legal Process Coordinator for employment, medical or student records who will ensure that all legal requirements are fulfilled.

Declaration of Authenticity: Affidavit signed by the Custodian of Records certifying the authenticity of the business records. The declaration should be stapled to the outside of the sealed envelope which contains copies of the records used for evidence in the case. (See Attachment A.)

Deposition Officer: A professional photocopier employed by an attorney who will provide copies of the records to be used as evidence. The records should not be released to the Deposition Officer prior to the Due Date listed on the Subpoena. Deposition Subpoenas include the following statement: “Do not release the requested records to the Deposition Officer prior to the date and time stated above.”

Deposition Subpoena: An order for a non-party to appear at a deposition before a Subpoenaing Party and produce business records listed in the Subpoena for copying.

Due Date: The date required by the Subpoena for the witness to appear and/or provide the records. The production of records shall not be less than 15 days from the date the Subpoena is issued. The Subpoenaing Party is required by law to serve the Named Individual a Notice to the Consumer (See Attachment B) not less than 10 days prior to the date for the production of records, plus the additional time provided in Section 1013 of the Code of Civil Procedure if service is by mail. The Subpoena should be served in sufficient time to allow the witness a reasonable time to locate and produce the records or copies thereof.

Legal Process Coordinator: Designated administrators in various campus departments who facilitate the processing of the Subpoenas to ensure that the requests for records are complied with in accordance with the policies and procedures of the University as well as the laws of the State of California. Records Management

& Information Practices has been designated to receive and process Subpoenas for the University pertaining to requests for employment and payroll records. (Please see UCLA Policy 120, Attachment A for a list of Legal Process Coordinators who deal specifically with medical and student records.)

Motion to Quash: In accordance with Section 1987.1 Code of Civil Procedure, the consumer or Named Individual whose records are being Subpoenaed may, prior to the date for production of their records, bring a Motion to Quash or modify the Subpoena; and this notice shall be given to the Custodian of Record (or Legal Process Coordinator) and the Deposition Officer prior to production. Except upon order of the court, the custodian or Deposition Officer will no longer be required to produce the records.

Notice to Consumer: The Subpoenaing Party is required to send a copy of the Subpoena to the Named Individual (or their attorney) not less than 10 days prior to the date for production of the records, plus additional time if service is by mail in accordance with Section 1985.3 of the California Evidence Code. (See Attachment B.)

Process Server: City officials (including employees of the FBI, Secret Service, police or sheriff's department); or persons employed by an attorney or attorney service who serve a Subpoena who are also known as Deposition Officers.

Proof of Service: An affidavit setting forth the exact title of the document served and filed in the cause, showing the name and residence or business address of the person making the service, showing that he or she is a resident of or employed in the county where the mailing occurred, over the age of 18 and not a party to the cause, and showing the date and place where mailed, the name and address of the person served as shown on the envelope, that the envelope was sealed and deposited in the mail with the postage prepaid. (See Attachment C.)

Subpoena: A writ or order directed to a person requiring their attendance to appear at a particular time and place to testify as a witness, which may also require that the witness bring with them specified records. (The appearance of a witness may not always be required so long as they produce the specified records at the time and place indicated on the Subpoena.)

Subpoena Duces Tecum: An order for a witness to appear at court and bring with them copies of records listed in the Subpoena.

Subpoenaing Party: The person or persons causing a Subpoena to be issued or served in connection with any civil action requiring a witness to appear or records to be produced. The Subpoenaing Party is usually the attorney employed by the plaintiff or defendant in the case.

Witness Fees: Fees paid to individuals required to respond to a subpoena. For information concerning fees paid to individuals required to respond to a subpoena, such as witness mileage reimbursement, document reproduction costs, etc., contact UCLA Records Management & Information Practices, Subpoena Services at (310) 794-8960. Fees for the production of business records may not be required in criminal cases, or when the University is a party to the action (for example, cases titled "Named Individual vs. The Regents of the University of California").

III. BACKGROUND

A. California law provides for the furnishing of copies of business records by mail in lieu of personal appearance with the original records, unless:

1. The Subpoena Duces Tecum contains the following statement on its face:

“You are ordered to appear in person.”

OR

“You are ordered to appear in person and to produce the records described in the accompanying affidavit. The personal appearance of the custodian or other qualified witness and the production of the original records is required by this Subpoena. The procedure authorized by the subdivision

(b) section 1560, and sections 1561 and 1562 of the California Evidence Code will not be deemed sufficient compliance with this Subpoena.”

2. It is a criminal case titled, “The People vs. Named Individual.”
3. The University is a party to the action (with the exception of Workers’ Compensation cases).
4. The case arose from an event which took place on campus.

In the above instances, a personal appearance is still necessary. Employees served with a Subpoena which requests them to appear as a witness may not attempt to avoid the necessity of personal appearance by making private arrangements with attorneys or Process Servers to deliver Subpoenaed records in advance (see Witness Fees). Where the records are confidential, this is a violation of University policy, and is manifestly unfair to the other party in litigation who has no notice or opportunity to object to the production of these records in this manner. Therefore, the records should not be released to the Deposition Officer earlier than the date listed on the Subpoena due to the fact that the Named Individual may file a Motion to Quash which would legally prevent the University from providing the records (pending the court’s decision).

- B. The designated Legal Process Coordinator for employment, medical and student records as well as the Custodians of Records for the University are responsible for complying with subpoenas and legal requests. See UCLA Policy 120, Attachment A for a list of coordinators.
- C. Records Management & Information Practices (Records Management) is the department generally responsible for receiving Subpoenas. When served with a Subpoena, please contact Subpoena Services in Records Management for advice. If The Regents is the named party, the Process Server should be directed to the Office of the General Counsel for service. Campus personnel are not authorized to accept Subpoenas on behalf of The Regents. The Process Server should be directed to:

General Counsel of The Regents
Office of the General Counsel of The Regents
1111 Franklin Street, 8th Floor
Oakland, California 94607-5200

If a Subpoena is addressed to The Regents but asks for records that are held locally, please contact the Subpoena Services in Records Management.

IV. PROCEDURES

RESPONSIBILITY	ACTION
Custodian of Records	<p>If necessary, contacts the Subpoena Services in Records Management when served with a Subpoena for business records or attendance as a witness.</p> <ol style="list-style-type: none"> 1. Places a <i>copy</i> of the records listed in the Subpoena, with confidential portions deleted, in a sealed envelope. (<i>Original records must never be provided in this manner.</i>) <p style="margin-left: 40px;">Note: Do not exclude records considered "confidential" without seeking legal advice. (For example, the definition of records considered "confidential" in UCLA Policy 120 is different from the definition in UCLA Policy 603, Privacy of & Access to Information (Legal Requirements) and the information Practices Act of 1977.)</p> 2. Attaches to the sealed envelope a Declaration of Authenticity which is to certify the authenticity of the business records. (See Attachment A) 3. Places the sealed envelope, with the declaration attached, into an envelope addressed to: Subpoena Services in Records Management (if so instructed), who will provide the records to the attorney or court on your behalf. <p style="margin-left: 40px;">Subpoena Services is legally obligated to comply by the Due Date listed on the Subpoena; therefore it is imperative that the Custodians provide the records as soon as possible. However, if the attorney has employed an attorney service, the custodian may request that the records be copied by the attorney service who will provide the records for a deposition. Attorney services may only copy and provide records for depositions and <u>not</u> court cases. It is the responsibility of the Custodians of Records to copy records which must go directly to the court. If an attorney service is being utilized, the Deposition Officer may not copy the records before the Due Date listed on the Subpoena.</p> 4. Advises supervisor of above actions.
Legal Process Coordinator	<ol style="list-style-type: none"> 1. Receives legal requests for records and facilitates University policy and procedures in compliance with the laws of the state of California. 2. Notifies Named Individual in writing prior to release of their records at their last known home address. 3. Instructs Custodian of Records to produce records listed in the request in accordance with the Due Date listed on the Subpoena; and provides the custodian with a copy of the Subpoena as well as a Declaration of Authenticity which the Custodian of Records must complete and sign. 4. Receives fees for the production of business records and ensures that the University is reimbursed for providing the photocopied records in accordance with Section 1563 of the California Evidence Code. (see Witness Fees) 5. Provides the records to the Deposition Officer no earlier than the Due Date listed on the Subpoena unless a Motion to Quash is filed or a written objection stating that a Motion to Quash will be filed is provided by the Named Individual or their attorney. <p style="text-align: center;">OR</p> <p style="margin-left: 40px;">Sends the records to the court at least five (5) days prior to the Due Date listed on the Subpoena, ensuring that the records will arrive on time; but also ensuring that the named individual received reasonable notification prior to release of their records. (If a Motion to Quash is received prior to the Due Date listed on the Subpoena and the records have already been sent to the court, the Named Individual or their attorney may still object to the records being used as evidence or file a Motion to Quash up until the actual Due Date so that the records will not be released by the Clerk of the Court pending the court's decision.)</p>

V. ATTACHMENTS

- A. Declaration of Authenticity - per section 1561 of the California Evidence Code, should be stapled to the sealed envelope containing copies of the records.
- B. Notice to the Consumer - per Section 1985.3, 1985.4 and/or 1985.6 of the California Code of Civil Procedure.
- C. Proof of Service - per Section 1013 of the California Code of Civil Procedure.

Issuing Officer

/s/ Peter W. Blackman

Administrative Vice Chancellor

**Questions concerning this policy or procedure should be referred to
the Responsible Department listed at the top of this document.**

Declaration of Authenticity

Plaintiff

vs.

Defendant

Case No.

*Declaration Certifying the
Authenticity of Business Records
Evidence Code §1561*

I, _____, declare:
(Custodian's Name)

I am an employee of the University of California, Los Angeles and am a duly authorized and qualified witness to certify the authenticity of the attached business records for the University.

The copies of the business records of the University which are enclosed within the attached sealed envelope are true copies of all records maintained by this office as described in the subpoena.

These records were prepared by personnel of the University in the ordinary course of business at or near the time of the acts, conditions or events described in the records.

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

Executed on _____, at Los Angeles, California.
(Today's Date)

By: _____
(Signature)

Title: _____

Department: _____

Enclosures

cc: UCLA Records Management

Notice to Consumer

Plaintiff

vs.

Defendant

Case No.

*Notice to Consumer/Employee
Pursuant to CCP §1985.6*

- (1) Records about the **Consumer/Employee**, are being sought from the **Witness** named on the subpoena from:

UCLA

- (2) The **Consumer/Employee** records may be protected by a **Right of Privacy**.
- (3) If the **Consumer/Employee** objects to the **Witness** furnishing the records to the party seeking the records, the **Consumer/Employee** must file papers with the court prior to the Date specified for production of the subpoena.
- (4) If the **Party** who is seeking the records will not agree in writing to cancel or limit the subpoena, an attorney should be consulted about the **Consumer's/Employee's** interest in protecting his or her rights of privacy.

Dated: _____.

(Name of Attorney Issuing Subpoena)

By: _____
(Signature)

Title: _____

Proof of Service

I am a citizen of the United States and employed in the County of _____, California; I am over the age of eighteen years and not a party of this action; my business address is _____.

On _____, I served the within **Notice to Consumer/Employee** pursuant to CCP S1985.6 on the parties herein, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at _____, California, addressed as follows:

Name: _____
Address: _____
City, State: _____
Zip Code: _____

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

Executed on _____, at _____.
(Today's Date) *(City, State)*

By: _____
(Signature)
Title: _____