

Policy Title:	Responding to Subpoenas, Summons and Court Order – Policy		
Policy Number:	I-B.1.2		Effective Date: 01-02-1996

Approved By: *on file*

Date Approved:

Policy

Forms, etc.

References

Contact

Reference(s):

- Child Welfare policy I-A.3.1, Procedures for Maintaining Confidentiality
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-a31.pdf
- Child Welfare policy I-A.3.2, Confidentiality of Client Information
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-a32.pdf

Form(s) that apply:

- None referenced.

Policy:

Purpose

This procedure provides guidance when a Child Welfare employee, a case record, or a child in the legal custody of the agency is the subject of a summons, subpoena or other court order. Certain steps must be followed to assure appropriate access to information in client records and the protection of client rights.

Definitions

(1) "**Counsel**" is agency legal advice and representation provided through the Department of Justice and accessed through Child Welfare supervisory channels.

(2) "**In Camera**" means alone in the judge's chambers.

(3) "**Show Cause Order**" is an order to appear and explain to the court why an order, such as contempt of court, should not take effect or be confirmed.

(4) "**Subpoena**" is an order requiring a person's attendance at a particular time and place to appear and testify or present records.

(5) "**Subpoena duces tecum**" is an order requiring the custodian of a record to bring certain documents.

(6) "**Summons**" is an order requiring the person to respond or appear before the court within a certain time and on a certain day and place to answer questions or charges.

Procedure

(1) Expected Response

(a) Any *subpoena*, *summons* or other order received in a Child Welfare office is to be date stamped and immediately delivered to the person designated to review and decide what follow-up is needed.

(b) Staff must respond to orders within the time allotted. If there is a question about an order, legal *counsel* should be requested.

(c) Juvenile courts often informally order or notify Child Welfare staff to attend hearings. Staff are expected to comply with informal notice in juvenile proceedings.

(d) Child Welfare staff will usually receive a formal serving of a *summons* or *subpoena* in non-juvenile civil matters and criminal proceedings. Staff must also notify their supervisor of any non-juvenile court matter that requires the presence of Child Welfare records, staff or a child in the Department's care.

(e) All orders including juvenile orders for access to Child Welfare client records must be reported to the supervisor. Before testifying or presenting records to the court, the person who is the subject of the order must respond to the court according to Oregon Laws, rules and procedures for confidentiality (see Child Welfare policies # I-A.3.1 and # I-A.3.2).

(f) Any fees received by an employee for travel must be surrendered to the agency if the employee claims personal mileage or uses a state car for the same travel.

(2) When to Seek Counsel

(a) Whenever a Child Welfare employee is served with a motion and order to show cause why the person should not be held in contempt of the court, the employee must immediately seek *counsel*, sending copies of all court orders, papers served, and any additional information related to the order, and respond to the order within the time specified.

(b) When questions of child rights, confidentiality, proper service or court authority arise, legal advice from the Department's general *counsel* in the Attorney General's Office may be requested through Child Welfare supervisory channels.

(c) When the time to respond is less than 24 hours or otherwise is unreasonable (i.e., travel distance or other major scheduling problems), the court should be notified immediately of the problem and asked to reschedule. If the scheduling problem cannot be resolved, *counsel* should be requested.

(d) Agency confidentiality procedures in Child Welfare policies # I-A.3.1, #I-A.3.2 and Oregon Laws must be followed regarding the release of information from client records, and reasonable time must be allowed before records are released. In the event any order requires unusual or immediate records release, legal *counsel* must be sought before any release.

(e) Out-of-state orders must go through a serving process different from Oregon court orders. However, the person served may be just as accountable to respond. *Counsel* must be notified whenever an out-of-state court order is served.

(f) A *subpoena* for a deposition does not apply to juvenile court proceedings. If a Child Welfare employee is served with notice to appear and give a deposition, they must contact legal *counsel* immediately.

(g) An arrest warrant is issued through authority of a court and is served by a police officer. At any time a child in the Department's custody is to be arrested, the person serving the warrant must show proof of being a police officer and the warrant should be examined to determine if it is valid on its face. (The warrant should be complete, certified as a true copy and authorized by the court.) If the warrant or the person serving the warrant seems questionable, the District Attorney's Office should be contacted for advice before the child is released.

(3) Non-Juvenile Civil Court Matters

Staff should limit their participation in non-juvenile civil matters to cases that involve the defense of actions taken by the agency or to provide essential information requested by the court to determine what is in the best interest of a child (see Child Welfare policy # I-B.2.1 for limitation). If a *subpoena* or *summons* is served on the Department in situations that do not meet this criteria, staff are to attempt to get relief from the order. The following facts from Oregon law about process service is provided to help staff assess the legitimacy of documents served on the Department.

(a) *Subpoenas* and *summons* may be issued under the authority of an Oregon court by a party or an attorney of record for a party in any pending action. If properly served, the person must appear at the time and place designated and answer questions. If there is a question about required attendance, the person served should seek *counsel*. Never ignore a *subpoena* or *summons*.

(A) A person may be required to produce records and papers (see *duces tecum*).

(B) There should be reasonable time before the required appearance or examination of records. (This usually means at least 24 hours, exclusive of weekends and holidays, and generally a much longer time is allowed, (1)(G) below.)

(C) A civil *subpoena* or *summons* must be served reasonably in advance to allow time for preparation and travel.

(D) Service upon a minor in the care of the Department requires service

upon the minor in the manner required for individuals generally and for a minor under 14 years of age, the minor's parents or guardian must be served also.

(E) In Oregon a witness may be required to attend a deposition hearing only in the county where the witness resides, is employed, or transacts business in person, or at another convenient place fixed by court order.

(F) A witness may be required to attend a trial or hearing anywhere within the state. If the trial or hearing is outside the county where the witness lives or was served with the *subpoena* and is more than 100 miles from such place, the witness must be tendered extra fees. The amount of extra fees depends on the distance from the residence of the witness.

(G) A *subpoena duces tecum* requires the person to produce records, books, papers and documents at the stated time and place. Records being *subpoenaed* must be identified as pertaining to a specific person or matter rather than "all records." Most Child Welfare records are confidential and are not subject to public inspection. The release of any information must be in accordance with Oregon Laws and with Child Welfare confidentiality policies # I-A.3.1 and # I-A.3.2.

(b) The *subpoena* or *summons* must include the following minimum information. (Even if there may appear to be a defect, the order should not be ignored. Seek *counsel*.):

(A) Court title, county, case number.

(B) Name and address of person/witness being *subpoenaed*.

(C) Specific location, date and time to appear.

(D) Title of cause, parties to the action and the party in whose behalf you are to appear.

(E) Instruction on time allowed to respond.

(F) Original is signed by the issuing attorney or party and copies must be stamped "true copy" and signed by the attorney or party.

(c) Service of *summons* can be in any reasonable manner to apprise the person of when and where to appear. A true (exact) copy of the *summons* and the complaint is served.

(A) Personal Service cannot be made by:

(i) A non-resident of Oregon;

(ii) A party to the action;

(iii) An officer, director or employee of any party; not

(iv) An attorney of any party.

(B) Service by mail can be accomplished by mailing a true copy of the *summons* and complaint by certified or registered mail, return receipt requested.

(C) A true copy of the *summons* and complaint may be left with a person who appears to be in charge of the office if, as reasonably possible, a true copy of the *summons* and complaint is mailed to the person together with a statement of the date, time and place where office service was made.

(d) Service of a *subpoena* must be by direct personal service to the person. Service to a designated person is not allowed.

(A) Service by registered/certified mail is allowed if the person being served has already agreed to attend at the time and place cited in the *subpoena* and service is 10 days in advance of appearance.

(B) At the time of being served, there must be an offering of one day round trip travel.

(4) Prepared Statement for Testimony

When the employee is required to testify or present records which are confidential or exempt from disclosure, the following statement should be read to the court prior to testimony.

"Your Honor, I have been advised by legal *counsel* to inform this Court that the State Office for Services to Children and Families records on ____ (child's name) and my testimony about these records are generally exempt from disclosure, as such records are privileged under Rule 509 of the Oregon Rules of Evidence (ORS 40.270), generally exempt from disclosure under ORS 192.502 and confidential under ORS 419B.035 and 418.130."

Optional

"However, ORS 419B.035 does allow State Office for Services to Children and Families to disclose certain information for various reasons, such as the disclosure is in the best interests of the child, and it is necessary to administer child welfare services or such disclosure would prevent child abuse." (See listing in ORS 419B.035)

"I ask this Court for guidance in regard to any testimony or providing the record to the court in this matter. If the Court determines that certain records may be disclosed, I have a complete and true copy for your *in camera* inspection."

ORS 419B.035 states that, "regardless of the provisions for disclosure, the names, addresses or other identifying information about the person who made the Child Abuse Reporting Law report shall not be disclosed." The State Office for Services to Children and Families should never disclose this information unless it is court ordered.

Contact(s):

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