SELF-SERVICE CENTER

HOW TO OBTAIN AND SERVE A SUBPOENA OR SUBPOENA DUCES TECUM

CHECKLIST

You may use the forms and instructions in this packet if . . .

- ✓ You want a legal order summoning a witness to testify or submit evidence, or
- ✓ You want a legal order for someone to produce or make documents, records or objects, *or* a physical location available for your inspection, AND
- ✓ You have already filed and have a case open in the Superior Court, OR
- ✓ You have already registered a foreign (out of state) case with the Maricopa County Clerk of the Court, AND
- ✓ The person (or company or organization, etc.) to whom the subpoena is to be given is NOT a party to the case, AND
- ✓ The person (or company or organization, etc.) to whom the subpoena is to be given will be served within the state of Arizona.

WARNING: There are additional requirements for requesting **MEDICAL RECORDS** by subpoena. Those requirements and additional forms that may be needed for that purpose are **NOT** included in this packet. Refer to Arizona Revised Statutes (online at www.azleg.gov) **§ 12-2294.01** or consult an attorney for additional information.

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READ ME: Consulting a lawyer before filing documents with the court may help prevent unexpected results. A list of lawyers you may hire to advise you on handling your own case or to perform specific tasks, as well as a list of court-approved mediators can be found on the Self-Service Center website at www.superiorcourt.maricopa.gov/SSC

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COSTS TO PERSON SENDING THE SUBPOENA

WARNING: **You** are responsible for the other person's reasonable costs of compliance with the subpoena. The amount of reimbursement that person is entitled to for his or her costs is governed by Arizona Revised Statutes (A.R.S.) § 12-351 and §12-303 as well as Arizona Rule of Civil Procedure 45(c). The full text of the statutes and rule are available online at www.azleg.gov or at the Court's Law Library.

A.R.S. § 12-351 describes costs of compliance with a subpoena for production of documents. A.R.S. §12-351 says in part:
1. The witness submits an itemized statement to the requesting party stating the reproduction and clerical costs incurred by the witness.
2. If a subpoena is subsequently withdrawn, quashed, modified or limited other than by the witness, the witness is entitled to reimbursement for all reasonable costs incurred in compliance with the subpoena to the time that the requesting party has notified the witness that the subpoena has been withdrawn, quashed, modified or limited.
3. The requesting party is not required to pay the reasonable costs before the documents are available for delivery as required by the subpoena. **The witness may demand payment of the costs at the time of the actual delivery of the subpoenaed documents**.
4. The requesting party may petition the court in which the case is pending to recover from the witness all or part of the costs paid or to reduce the costs charged by the witness if these costs were excessive.
5. "Reasonable costs" means ten cents for each page of standard reproduction of documents and the actual costs for reproduction of documents which require special processing **plus** the reasonable clerical costs incurred in locating and making the documents available billed at the rate of ten dollars per hour per person.

WARNING: A.R.S. §12-303 describes the costs of compliance with a subpoena for witness testimony. Persons subject to subpoenas to appear as witnesses in a civil law suit (anything other than a criminal law suit) must be paid **$12 for each day's attendance as well as mileage at 20 cents per mile** from the witness's residence to the place of trial, hearing, or deposition. The mileage reimbursement is one way only from their home to the place of trial or hearing and does not include reimbursement for travel home.

WARNING: Persons subject to subpoenas are protected. Rule 45(c) of the Arizona Rules of Civil Procedure protects a person subject to a subpoena from undue burden or expense. Rule 45(c) says in part:
1. If the requesting party fails to comply with this requirement, sanctions may include lost earnings and a reasonable attorneys' fee.
2. A person commanded to produce and permit inspection, copying, testing, or sampling of designated books, papers, documents, electronically stored information or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.
3. A person receiving a subpoena can object to the subpoena in writing through the Court within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service. If objection is made, the party serving the subpoena shall not be entitled to see the documents or materials except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, file a motion with the Court at any time for an order to compel the production.

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INSTRUCTIONS:
HOW TO COMPLETE THE SUBPOENA

- **A subpoena is a legal order summoning a witness to testify or submit evidence.**
- **A subpoena *duces tecum* is a legal order requiring:**
  1. **the production or documents, records or objects, *or***
  2. **making documents, records or objects, or a physical location available for inspection.**

     (This packet may be used for either or both types of subpoena.)

TO COMPLETE THIS FORM YOU WILL NEED:

- ✓ Your case number.
- ✓ The name and address of the person you want to appear as a witness in court or at a deposition, or who is in charge of the documents, records, or place you want to examine (who is NOT a party to the case).

INSTRUCTIONS: PRINT CLEARLY. USE BLACK INK. If you have access to the Internet and a printer, **you may also fill out the subpoena form for free online** at the Self-Service Center's web site at www.superiorcourt.maricopa.gov/ssc to print out a more legible typed copy.

- Fill in the information requested at top left for the person who is ***sending*** the subpoena. If there is a current court order declaring your address is protected, write "protected" on the line provided for your address. Make sure the Clerk of Court has valid contact information on file.)

- Fill in the "case caption" where it says "**In the Matter of**" and "**Case Number"** exactly as it appears on your original court papers.

- Fill in the name and address of the person (or company, organization, etc.) to receive the subpoena.

Check one or more of the boxes for sections "1", "2", and/or "3" to indicate whether the subpoena is being sent:

1. To order someone to appear to testify at a court trial or hearing.
2. To order someone to appear for a *deposition* at an attorney's office (or other location) to answer questions or give testimony that will be recorded for possible use at trial, **and/or**
3. As a ***subpoena duces tecum*** to order someone to produce or allow inspection of documents, objects, or of a specified location.

Fill in the information requested for each section you indicated. Then refer to the "Procedures" document in this packet for information getting the subpoena, including the "Your Duties in Responding" section, delivered or "served" as required by law.

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Person Requesting Subp: _____
Mailing Address: _____
City, State, Zip Code: _____
Telephone: _____

FOR CLERK'S USE ONLY

SUPERIOR COURT OF ARIZONA
IN MARICOPA COUNTY

In the Matter of

_____
Petitioner(s) /Plaintiff(s)

_____
Respondent /Defendant(s)

Case No. _____

SUBPOENA

Arizona Rules of Civil Procedure, Rules 45, 84
Arizona Rules of Family Law Procedure, Rule 52

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

(Check the box(es) to indicate one **or** **more** of "1", "2", and/or "3", below.)

1. ☐ For Attendance of Witnesses at Hearing or Trial:

YOU ARE ORDERED TO APPEAR in the Superior Court of Arizona in Maricopa County, at the time and place specified below to testify at a ☐ Hearing ☐ Trial in the case named above, before:

Judicial Officer: _____

(at) Address:

Floor:		**Room #**	
Date:		**Time:**	

Request for reasonable accommodation for persons with disabilities must be made to the Court at least 3 working days in advance of a scheduled court proceeding.

YOUR RIGHTS AND DUTIES CONCERNING THIS SUBPOENA FOLLOW.

2. ☐ For Taking of Depositions:

YOU ARE ORDERED TO APPEAR at the place, date and time specified below to testify at the taking of a deposition in the case named above:

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Place of Deposition: _____

(at) Address:

Floor:		**Room #**	
Date:		**Time:**	

Method of Recording: _____

SUBPOENA DUCES TECUM

3. ☐ For Production of Documentary Evidence or Objects or Inspection of Premises:

YOU ARE ORDERED to produce and permit inspection, copying, testing, or sampling of the following designated documents, electronically stored information or tangible things, or to permit inspection of the premises at the place, date, and time specified below**:**

_____ _____

_____ _____

_____

☐ **ADDITIONAL DOCUMENTS LISTED ON ATTACHED PAGE(S)**

☐ **TO BRING WITH YOU TO THE COURT PROCEEDING OR DEPOSITION LISTED ABOVE, OR**

Place of Production or Inspection: _____

(at) Address:

Floor:		**Room #**	
Date:		**Time:**	

YOUR APPEARANCE IS NOT REQUIRED *if* the items ordered to be produced are delivered to the requesting party within the time allowed <u>AND</u> you are not otherwise ordered to appear.

Issued this date: _____ **Clerk of Superior Court**

By: _____
Deputy Clerk

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Case No._____

Your Duties In Responding To This Subpoena*

***See Arizona Rules of Civil Procedure** (**A.R.C.P.**), **Rules 45(b), (c), and (e)**, and **Rule 45(e)**, and the "**Your Right to Object to this Subpoena**" section below.

ATTENDANCE AT A TRIAL: If this subpoena commands you to appear at a trial, you must appear at the place, date and time designated in the subpoena unless you file a timely motion with the court and the court quashes or modifies the subpoena. Unless a court orders otherwise, you are required to travel to any part of the state to attend and give testimony at a trial.

ATTENDANCE AT A HEARING OR DEPOSITION: If this subpoena commands you to appear at a hearing or deposition, you must appear at the place, date and time designated in this subpoena unless either:

(1) you file a timely motion with the court and the court quashes or modifies the subpoena; or

(2) you are not a party or a party's officer and this subpoena commands you to travel to a place other than: (a) the county in which you reside or you transact business in person; or

(b) the county in which you were served with the subpoena or within forty (40) miles from the place of service; or

(c) such other convenient place fixed by a court order.

PRODUCTION OF DOCUMENTARY EVIDENCE, TANGIBLE OBJECT, OR INSPECTION OF PREMISES: If this subpoena commands you to produce and permit inspection, copying, testing or sampling of designated documents, electronically stored information, or tangible things, you must make the items available at the place, date and time designated in this subpoena, and in the case of electronically stored information, in the form or forms requested, unless you provide a good faith written objection to the party or attorney who served the subpoena. Similarly, if this subpoena commands you to make certain premises available for inspection, you must make the designated premises available for inspection on the date and time designated in this subpoena unless you provide a good faith written objection to the party or attorney who served the subpoena.

You should note that a command to produce certain designated materials, or to permit the inspection of premises, may be combined with a command to appear at a trial, hearing or deposition. You do not, however, need to appear in person at the place of production or inspection unless the subpoena also states that you must appear for and give testimony at a hearing, trial or deposition.

If the subpoena commands you to produce documents, you have the duty to produce the designated documents as they are kept by you in the usual course of business, or you may organize the documents and label them to correspond with the categories set forth in the subpoena.

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Case No._____

YOUR RIGHT TO OBJECT TO THIS SUBPOENA

Generally, if you have concerns or questions about this subpoena, you should first contact the party or attorney who served the subpoena. The party or attorney serving the subpoena has a duty to take reasonable steps to avoid imposing an undue burden or expense on you. The superior court enforces this duty and may impose sanctions upon the party or attorney serving the subpoena if this duty is breached.

PROCEDURE FOR OBJECTING TO A SUBPOENA FOR ATTENDANCE AT A HEARING, TRIAL OR DEPOSITION:

- You must file a motion to quash or modify the subpoena with the court to obtain a court order excusing you from complying with this subpoena.*****
- The motion must be filed in the superior court of the county in which the case is pending or in the superior court of the county from which the subpoena was issued.*****
- The motion must be filed **before the time specified for compliance or within 14 days after the subpoena is served**, whichever is earlier.*****
- You must send a copy of any motion to quash or modify the subpoena to the party or attorney who served the subpoena.

The court *must* quash or modify a subpoena *if* . . .

(1) the subpoena does not provide a reasonable time for compliance;

(2) the subpoena commands your attendance at a trial **and** if the subpoena commands you to travel to a place ***other than:***
- (a) the county in which you reside or transact business in person;
- (b) the county in which you were served with a subpoena, or within forty (40) miles from the place of service; or
- (c) such other convenient place fixed by a court order; or

(3) **the subpoena requires disclosure of privileged or other protected matter,** if no exception or waiver applies; or

(4) **the subpoena subjects you to undue burden.**

The court **MAY** quash or modify a subpoena ***if*** . . .

(1) **the subpoena requires you to disclose a trade secret or other confidential research, development or commercial information;**

(2) **you are an unretained expert and** the subpoena requires you to disclose your opinion or information resulting from your study that you have not been requested by any party to give on matters that are specific to the dispute;

(3) **you are not a party or a party's officer and the subpoena would require you to incur substantial travel expense;** or

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(4) **the court determines that justice requires the subpoena to be quashed or modified.**

In these last four circumstances, a court may, instead of quashing or modifying a subpoena, order your appearance or order the production of material under specified conditions if:

(1) the serving party or attorney shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; **and**

(2) if your travel expenses or the expenses resulting from the production are at issue, the court ensures that you will be reasonably compensated.

PROCEDURE FOR OBJECTING TO SUBPOENA FOR PRODUCTION OF DOCUMENTARY EVIDENCE, RECORD, TANGIBLE OBJECT OR INSPECTION OF PREMISES:

If you wish to object to a subpoena commanding you to produce documents, electronically stored information or tangible items, or to permit the inspection of premises, you may send a good faith written objection to the party or attorney serving the subpoena that objects to:

(1) producing, inspecting, copying, testing or sampling any or all of the materials designated in the subpoena;

(2) inspecting the premises; or producing electronically stored information in the form or forms requested.

You must send your written objection to the party or attorney who served the subpoena before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.

If you object because you claim the information requested is privileged, protected, or subject to protection as trial preparation material, you must express the objection clearly, and support each objection with a description of the nature of the document, communication or item not produced so that the demanding party can contest the claim.

If you object to the subpoena in writing, you do not need to comply with the subpoena until a court orders you to do so. It will be up to the party or attorney serving the subpoena to first personally consult with you and engage in good faith efforts to resolve your objection and, if the objection cannot be resolved, to seek an order from the court to compel you to provide the documents or inspection requested, after providing notice to you.

If you are not a party to the litigation, or a party's officer, the court will issue an order to protect you from any significant expense resulting from the inspection and copying commanded. *See* Rule 45(c)(6)(B) of the Arizona Rules of Civil Procedure.

Instead of sending a written objection to the party or attorney who served the subpoena, you also have the option of raising your objections in a motion to quash or modify the subpoena. *See* Rule 45(e)(2) of the Arizona Rules for Civil Procedure. The procedure and grounds for doing so are described in the section above entitled "Procedure for Objecting to a Subpoena for Attendance at a Hearing, Trial or Deposition."

If the subpoena *also* commands your attendance at a hearing, trial or deposition, sending a written objection to the party or attorney who served the subpoena does not suspend or modify your obligation to attend and give testimony at the date, time and place specified in the subpoena. *See* Rule 45(c)(5)(A)(iii) of the Arizona Rules of Civil Procedure. If you wish to object to the portion of this subpoena requiring your attendance at a hearing, trial or deposition, you must file a motion to quash

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or modify the subpoena as described in the section above entitled "Procedure for Objecting to a Subpoena for Attendance at a Hearing, Trial or Deposition." *See* Rule 45(b)(5) and 45(c)(5)(iii) of the Arizona Rules of Civil Procedure.

ADA Notification

Requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least 3 working days in advance of a scheduled court proceeding.

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PROCEDURES:
HOW TO OBTAIN AND SERVE A SUBPOENA

NOTE

- **The subpoena is used to obtain testimony or the production of documents, records or objects, or the inspection of premises from persons or** companies, organizations, etc., **who are NOT parties to the case.**
- **You are responsible for the receiving party's costs of complying with the subpoena.** (See "**Costs to Person Sending Subpoena**" in this packet for more information.)
- **You must already have an open case in the Superior Courts of Arizona for the Clerk to issue a subpoena, or have already registered the order of a foreign** (out of state) **court for a deposition.** (See http://clerkofcourt.maricopa.gov/faxondemand/202.pdf)
- **You must be able to serve the subpoena within the state of Arizona.**
- **WARNING:** There are additional requirements for a subpoena of **MEDICAL RECORDS**. Those requirements and additional forms that may be needed for that purpose are NOT included in this packet. Refer to **A.R.S. § 12-2294.01** or consult an attorney for additional information.

STEP 1 - **COMPLETE THE SUBPOENA**. (See separate "**How to Complete the Subpoena**" instructions)

STEP 2: **Take the original subpoena to the Clerk of the Superior Court. Pay the fee and have the form signed and dated by the Clerk** between the hours of 8:00 A.M. and 5:00 P.M., Monday through Friday, at any of the locations listed below.

Locations of the Clerk of Court in Maricopa County

CENTRAL COURT BUILDING	(downtown Phoenix)	201 W. Jefferson, Phoenix, AZ	85003
Old Courthouse	(downtown Phoenix)	125 W. Washington, Phoenix, AZ	85003
Downtown Justice Center	(downtown Phoenix)	620 W. Jackson, Suite 3017, Phoenix, AZ	85003
Juvenile Court Center	(east of 35th Ave.)	3131 W Durango, Phoenix, AZ	85009
N.E. Regional Court Center	(40th St & Union Hills)	18380 N. 40th St. Suite 120, Phoenix, AZ	85032
S.E. Court Complex	(Hwy 60 south to S. Mesa Dr)	222 E. Javelina, 1st floor, Mesa, AZ	85210
N.W. Court Facility	(W on Statler, off Litchfield between W. Bell & Greenway)	4264 W. Tierra Buena Lane, Surprise, AZ	85374

As of April 12, 2011, the fee for issuance of each subpoena is $26 (subject to change). Go online to http://clerkofcourt.maricopa.gov/fees.asp or ask at the Self-Service Center for a list of current fees. Cash, VISA/MasterCard/AMEX debit or credit cards, money order, or personal in-state check made payable to the "**Clerk of Superior Court**" are acceptable forms of payment.

If you cannot afford the filing fee and/or the fee for having the papers served by the Sheriff, you may request a ***deferral*** (payment plan) when you file your papers with the Clerk of the Court. **Deferral Applications** are available at **no charge** from the Self-Service Center.

STEP 3 – **MAKE COPIES:** Make (1) copy for your records, ***plus*** (**1**) for every party in the case:

STEP 4 – MAIL ONE COPY to every party in the case.

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STEP 5 - SERVE THE SUBPOENA.

Have the *original* subpoena served on (personally delivered to) the person you want to appear in court or for a deposition or who is in control of the documents, objects or location you want to examine.

- **The original subpoena may be served by any person over the age of 18 who is NOT a party to the case.**
- The person serving the subpoena must file an **Affidavit of Service** with the Court as proof of delivery.
- If you choose to have the paper served by a licensed process server or the Sheriff's Department, they will have their own **Affidavit of Service** form, *if not*, use the one included in this packet.

FREQUENTLY ASKED QUESTION (FAQ): WHEN MUST THE SUBPOENA BE SERVED? HOW FAR IN ADVANCE OF WHEN I WANT THE PERSON TO APPEAR OR THE DOCUMENTS, RECORDS, OBJECTS OR PLACE MADE AVAILABLE FOR INSPECTION MUST THE SUBPOENA BE DELIVERED?

ANSWER: The rules of court known as the Arizona Rules of Civil Procedure (A.R.C.P.) do not specify any particular number of days that the subpoena must be delivered before the person is to appear or the documents or objects delivered or place made available for inspection.

The Rules do say that if the person receiving the subpoena feels that the length of time is unreasonable or otherwise objects, he or she must file an objection with the Court within 14 days of receiving the subpoena *or* before the date listed on the subpoena for the person to appear or to produce or provide access to the documents, records, objects, or location listed on the subpoena. A.R.C.P. 45 (C)(5) Identical provisions are contained in Arizona Rules of Family Law Procedure (A.R.F.L.P.) Rule 52.

STEP 6 – WAIT and be prepared to respond to any objection from the party being served with the subpoena, or for the date and time the items are to be produced or for the scheduled appearance.

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Name of Person Filing: _____
Mailing Address: _____
City, State, Zip Code: _____
Telephone: _____

FOR CLERK'S USE ONLY

SUPERIOR COURT OF ARIZONA IN MARICOPA COUNTY

In the Matter of

_____
Petitioner(s) /Plaintiff(s)

_____
Respondent /Defendant(s)

Case No. _____

AFFIDAVIT OF SERVICE OF SUBPOENA

Arizona Rules of Civil Procedure, Rule 45 (d)
Arizona Rules of Family Law Procedure, Rule 52

I received the Subpoena addressed to: _____

which was dated: _____

I personally served the subpoena as follows:

On this date: _____

:**At this time:** _____

At this location: _____

To: (Name) _____

Manner of Service: (how served) _____

I was over the age of 18 at the time the subpoena was served. I am not a party to the case.

UNDER PENALTY OF PERJURY:

By signing below, I state to the Court under penalty of perjury that the contents of this document are true and correct.

Date: _____

_____
Signature

Printed Name: _____
Street Address: _____
City, State, Zip Code: _____
Telephone Number(s): _____

FEES	$
MILEAGE	$
CHARGES	$
OTHER	$
TOTAL	$

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