

PROCEDURE TO SUBPOENA WITNESS

If you know someone who will shed light on some issue of importance to your position, you will need to insure his/her presence at this trial/hearing. You have the right to have a subpoena issued to require a witness to appear at the trial/hearing. (You may, at your own risk, not use a subpoena [Law 277] if you are confident the person will appear voluntarily.) However, you must make sure the witness is there on time.

All witnesses who are subpoenaed must be given adequate notice of the date, time and location of the trial/hearing. If you have witnesses to incidents or conversations, it is essential that you have them present at your trial/hearing. You cannot testify as to what they would have or might have said or witnessed. If the witness has been subpoenaed and fails to appear the Judge can take appropriate action. If no subpoena has been served on the witness the Judge will take no action against such witness and may well proceed with the trial/hearing.

In addition to having to pay a fee to sign and seal and serve the subpoena [Law 277], you will have to pay witness and travel fees.

To subpoena a witness you must:

1. Obtain a Subpoena [Law 277] from the Clerk of Court;
2. Complete the Subpoena. The Clerk will sign and seal the Subpoena for a fee;
3. Send or take the Subpoena to the Sheriff yourself or request the Clerk send the Subpoena to the Sheriff. If you ask the Clerk to send it, you also provide the correct payment for the Sheriff's service. Personal checks are not accepted, only cashier's checks or money orders. If the witness being Subpoenaed resides outside of Brevard County, you must find out the Sheriff's fee in that county, give the Clerk a proper payment for service, along with two (2) stamped, addressed envelopes (one addressed to the Sheriff where service is to be made, and one addressed to the Clerk of Court here so the Sheriff can return the served Subpoena to the Clerk to place in your file);
4. The Sheriff will also have to give the witness the money order for the witness fee and travel at the time the witness is served. If you are serving your former spouse who is the other party to the action, no witness fee or travel is required.
5. You will need to monitor the subpoena to know if the Sheriff was able or unable to serve the witness. You are responsible for providing addresses for your witness as well as new addresses if a witness is not found.