

Criminal Practice Rules 1999 (rule 29)

Form 23, Version 1 - Notice to be served with form 21 subpoena

THIS IS A VERY IMPORTANT DOCUMENT - PLEASE READ IT CAREFULLY

Failure to comply with subpoena may result in arrest

Failure to comply with this subpoena without lawful excuse is contempt of court and may result in your arrest.

Not all subpoenas will specify a particular date and time to attend.

The courts often list a number of cases in the same time period. As cases are completed or adjourned others may progress up the list. The lists are constantly reviewed to maximise use of court time and to reduce the costs to the taxpayer. If you have not been given a definite date and time in the subpoena, the party serving the subpoena must, as soon as practicable, advise you when you are required to attend court or if your attendance is no longer required (rule 29 Criminal Practice Rules 1999).

Entitlement to travelling expenses

A person must comply with a subpoena only if an amount sufficient to meet the person's reasonable travelling expenses in complying with the subpoena, or a ticket or other travel document needed to comply with it, is tendered either when the subpoena is served or within a reasonable time before attendance under the subpoena is required (rule 35 Criminal Practice Rules 1999).

Application to set aside subpoena

A person who has been served with the subpoena may apply to the court for an order to set aside the subpoena. If it is a subpoena to produce documents, an application may also be made to narrow its scope (eg. by reducing the number of documents to be produced).

If the application to set aside or narrow the subpoena is successful, the applicant may apply to the court for an order that all or part of the applicant's costs incurred in applying to have the subpoena set aside or narrowed be paid by -

(a) the party who served the subpoena; or

(b) if the court finds the conduct of the party's lawyer in serving the subpoena was oppressive, vexatious or an abuse of process, the party's lawyer (rules 33 to 35 Criminal Practice Rules 1999).

The applicant must serve a copy of the application to set aside a subpoena on the person who served the subpoena (rule 33 Criminal Practice Rules 1999).

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(b) if the court finds the conduct of the party's lawyer in serving the subpoena was oppressive, vexatious or an abuse of process, the party's lawyer (rules 33 to 35 Criminal Practice Rules 1999).

The applicant must serve a copy of the application to set aside a subpoena on the person who served the subpoena (rule 33 Criminal Practice Rules 1999).

Subpoena to produce medical or hospital records or records of a department of government or a statutory authority of the Commonwealth or State

If a subpoena requires the production of a medical record, hospital record or a record of a department of government, or a statutory authority of the Commonwealth or State, the served person may comply by giving the record to the proper officer of the court in a sealed envelope clearly marked "court exhibits" or something similar. The record is to be given to the proper officer at least 1 clear day before the time stated for production in the subpoena (rule 30 Criminal Practice Rules 1999).

If you wish to object to the record or part of it being inspected or copied you must give the proper officer a written statement stating the grounds for the objection (rule 31 Criminal Practice Rules 1999).

Criminal Practice Rules 1999 (rule 29)

Form 23, Version 1 - Notice to be served with form 21 subpoena

THIS IS A VERY IMPORTANT DOCUMENT - PLEASE READ IT CAREFULLY

Failure to comply with subpoena may result in arrest

Failure to comply with this subpoena without lawful excuse is contempt of court and may result in your arrest.

Not all subpoenas will specify a particular date and time to attend.

The courts often list a number of cases in the same time period. As cases are completed or adjourned others may progress up the list. The lists are constantly reviewed to maximise use of court time and to reduce the costs to the taxpayer. If you have not been given a definite date and time in the subpoena, the party serving the subpoena must, as soon as practicable, advise you when you are required to attend court or if your attendance is no longer required (rule 29 Criminal Practice Rules 1999).

Entitlement to travelling expenses

A person must comply with a subpoena only if an amount sufficient to meet the person's reasonable travelling expenses in complying with the subpoena, or a ticket or other travel document needed to comply with it, is tendered either when the subpoena is served or within a reasonable time before attendance under the subpoena is required (rule 35 Criminal Practice Rules 1999).

Application to set aside subpoena

A person who has been served with the subpoena may apply to the court for an order to set aside the subpoena. If it is a subpoena to produce documents, an application may also be made to narrow its scope (eg. by reducing the number of documents to be produced).

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