

## Subpoenas

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### Subpoenas - General

Subpoenas are legal documents requesting:

- an individual testify in court; and/or
- documents/records (subpoena will say "duces tecum") for court.

Failure to respond to a subpoena can result in fines and/or imprisonment. Subpoenas may be issued by anyone involved in a legal proceeding in any court.

All subpoenas must be **personally served** to the person listed on the subpoena, except for subpoenas from the District Attorney (DA) and the Public Defender (PD). The DA and PD can email the subpoena to the SW. If the DA or PD needs additional assistance in locating a SW they can contact Legal Support Services (LSS). Upon receipt of the subpoena, the SW will scan and email a copy of the subpoena to LSS at [cwslegalservices.HHSA@sdcounty.ca.gov](mailto:cwslegalservices.HHSA@sdcounty.ca.gov).

SWs must **not** bring their CWS case files to criminal, civil or family court. If these external courts want the CWS case files, an 827 petition will need to be filed and once granted the redacted records will be sent directly to the court by the LSS with a copy of the 827 protective order. Family Court is privy to CWS records and will receive those records from LSS, properly redacted, please see 827 - Petition for Disclosure of Juvenile Case File.

CWS records are not subject to subpoena per California Rules of Court 5.552 (b)(4).

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**Subpoenas -  
General**

When...	And...	Then...
the person listed on the subpoena no longer works for the county	the person serving the subpoena is a county employee (i.e. DA, PD, etc...)	<ul style="list-style-type: none"> <li>refer the server to human resources.</li> </ul> <p><b>NOTE:</b> Even when no longer working for the County, former staff must send a copy of the Subpoena to LSS. LSS will assist to get the former employee any necessary paperwork and if needed County Counsel (CC) will assist them in their testimony. SWs who are no longer employed with the County are still under a duty to keep the information they received and investigations/cases they were involved in as a SW confidential. They must adhere to laws surrounding the Confidentiality of CWS records per WIC 827, please see 827 - Petition for Disclosure of Juvenile Case File. The SW is not the custodian of the records.</p>
the person listed on the subpoena no longer works for the county	the person serving the subpoena is not a county employee	<ul style="list-style-type: none"> <li>Refer the server to Human Resources</li> </ul>
the SW is subpoenaed to an out-of-state Juvenile Dependency court	<p>the SW has verified that the juvenile dependency court is that state's version of CWS Juvenile Dependency court</p> <p><b>NOTE:</b> LSS can help with verification.</p>	<ul style="list-style-type: none"> <li>The SW will testify by phone (may be done without a granted 827 order).</li> </ul> <p><b>NOTE:</b> This tends to occur often with ICPC workers. If the out-of-state court wants in-person testimony they must pay CWS in advance for travel and accommodation fees.</p>

**Subpoenas -  
General**

When...	And...	Then...
the SW is subpoenaed to an out-of-state family or probate court		<ul style="list-style-type: none"> <li>The SW will testify by phone (may be done without a granted 827 order).</li> </ul> <p><b>NOTE:</b> If the out-of-state court wants in-person testimony, they must pay CWS in advance for travel and accommodation fees.</p>
the SW is subpoenaed to an out-of-state criminal court	an 827 order has been granted	<ul style="list-style-type: none"> <li>The SW will testify by phone to the information released in the granted order.</li> </ul>
the subpoena says "to the parent or guardian" of a child on the SW's caseload		<ul style="list-style-type: none"> <li>The SW will contact the person who sent the subpoena to clarify what they are requesting.</li> </ul> <p><b>NOTE:</b> Most times, subpoenas addressed this way (or sent to foster parents) mean that the child's testimony is needed and they want the child to be brought to court.</p>
the SW is subpoenaed to a hearing	the original date of the subpoena has changed and the court has requested the SW return on a new/continued date, a new subpoena is not necessary	<ul style="list-style-type: none"> <li>show up on the new date and testify.</li> </ul>
the SW is subpoenaed to a hearing	the hearing is not going forward and/or the SW testimony was called off	<ul style="list-style-type: none"> <li>no testimony is to be given without a new subpoena for SW testimony on a new date as needed</li> </ul>

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**Grand Jury Subpoenas**

When staff receive a subpoena from the Grand Jury, they will:

- notify their supervisor, **and**
- document the date and time received in email to LSS,
- scan and e-mail the subpoena to [cwslegalservices.HHSA@sdcounty.ca.gov](mailto:cwslegalservices.HHSA@sdcounty.ca.gov).

When subpoenaed by the Grand Jury, staff provide testimony in a closed setting and can ask to leave the Grand Jury room to speak to CC, if necessary.

Staff who testify before the Grand Jury shall not discuss their testimony with other staff. Confidentiality is of the utmost importance.

**NOTE:** The Grand Jury cannot receive copies of CWS case files without a juvenile court order.

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**Administrative Hearings**

SWs may receive a subpoena for an Administrative Hearing. An Administrative Hearing is a State Hearing conducted by a hearing officer to determine the legality of an Agency decision, please see Notices of Action . State Hearings usually occur when a third party (parent, SCP, etc.) appeals a decision made by CWS. SWs may testify in these hearings if the California Department of Social Services (CDSS) is requesting their testimony. These subpoenas are served by email.

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**Depositions**

SWs may receive a subpoena or an informal request for a deposition. A deposition is a pre-trial discovery procedure where testimony is taken orally under penalty of perjury, out of court, for use in a legal proceeding.

A deposition usually occurs in an attorney's office. There may also be a request for records at this time (which would require an 827 order). A deposition is part of the discovery phase of a lawsuit. A \$275 fee is required for SWs to attend a deposition. SW's will follow the procedures below when a request for a deposition is received.

Should you receive a summons for a lawsuit see the policy on Claims, Lawsuits, and Summons .

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**Parking Fees**

Parking fees incurred while attending court hearings can be reimbursed through the Region's Petty Cash Clerk by providing the parking receipts.

Costs incurred by former employees will be paid by the party that subpoenaed the worker.

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**Witness Fees**

By law (Gov Code 68097.1), a \$275 witness fee must accompany a subpoena from Family, Probate or Civil Court. The check should be made out to "HHSA - Child Welfare Services" and forwarded to LSS at W 473 along with a copy of the related subpoena. LSS will turn the check into the fiscal department.

No fee is required for SW testimony in Criminal or Juvenile Court (Dependency and Delinquency).

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**Subpoenas  
from the DA  
and PD**

When subpoenaed to criminal court, SWs are advised (per CC):

- To share informally with the DA’s office information from your investigation necessary to accomplish the purpose of their criminal prosecution or investigation. You must have an order from the Juvenile Court to testify to anything in the file or that you recollect independent of the file. **Juvenile** files belong to the Juvenile Court, and only the Juvenile Court has authority to allow access to its records, except as allowed by the terms of Welfare & Institutions Code section 827.

This means that a SW may discuss the case with the DA, but a granted 827 order is necessary for the SW to testify in criminal court.

See Confidentiality - General for more information regarding the DA and disclosures of information.

When the DA and/or PD wants an SW to testify in a criminal matter:

Step	Who	Action
1	DA, DA paralegal, PD & PD Investigator	<ul style="list-style-type: none"><li>• May e-mail the CWS worker on the County Outlook system to alert the SW of the desire to have their testimony.</li><li>• Ensure the SW is available on the dates needed.</li></ul>
2	SW	<ul style="list-style-type: none"><li>• Confirm availability for court dates requested.</li><li>• Give the DA/PD (by phone or e-mail) authorization that you are willing to accept the subpoena by e-mail .</li></ul>
3	DA, DA paralegal, PD & PD Investigator	When e-mailing the subpoena: <ul style="list-style-type: none"><li>• send with a read receipt</li><li>• cc: the SW's supervisor</li><li>• cc: CWS LSS</li></ul>
4	SW	<ul style="list-style-type: none"><li>• Reply to e-mail to acknowledge receipt and acceptance of subpoena.</li><li>• Follow the procedures below for Criminal or Civil Subpoenas</li></ul>

The DA and PD must obtain a read receipt for an e-mailed subpoena and the SW must respond to the e-mailed request for HHS/CWS to consider this service of the subpoena and the associated obligation for SWs to come to court for testimony.

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**SW  
Procedures  
for Criminal  
or Civil  
Subpoenas**

SWs will follow these steps when a criminal or civil subpoena is received:

If external parties that are not privy to CWS records contact a SW wanting records, they are to be directed to the Juvenile Court Business Office (at 858-634-1600) to file an 827 petition. The law provides that the appropriate judge to hear 827 petitions is a dependency judge. This means that a criminal court judge or other judge is not permitted to grant the release of CWS records.

Step	Who	Action
1	SW	<ul style="list-style-type: none"> <li>• Review the subpoena.</li> <li>• Notify supervisor (PSS) that a subpoena has been received.</li> <li>• Write on the subpoena the date and time the subpoena was received</li> <li>• Keep the original subpoena.</li> </ul>
2	SW	<ul style="list-style-type: none"> <li>• Within 24 hours of receipt of the subpoena, scan and email a copy of the subpoena to LSS at <a href="mailto:cwslegalservices.HHSA@sdcounty.ca.gov">cwslegalservices.HHSA@sdcounty.ca.gov</a></li> <li>• Include in the e-mail the name of the child related to the case and cc your supervisor on the e-mail.</li> </ul>
3	LSS	<ul style="list-style-type: none"> <li>• Check to see if the party issuing the subpoena has filed an 827 petition with the Juvenile Court.</li> <li>• If an 827 was filed and granted, send the SW a copy of the protective order (PO) and minute order (MO) which states what the court ordered.</li> <li>• If an 827 does not appear to have been granted, confirm with the attorney that there is no PO granted by court. Consult with CC to determine if a motion to quash should be filed.</li> <li>• If an 827 was <b>not</b> filed, and a motion to quash is not filed, send a copy of the Points and Authorities (P&amp;A) to the SW.</li> </ul>

**SW  
Procedures  
for Criminal  
or Civil  
Subpoenas  
(cont.)**

Step	Who	Action
4	SW, if 827 PO/MO received	<ul style="list-style-type: none"> <li>• Review PO/MO for what was specifically released by the court.</li> <li>• Contact the person issuing the subpoena to acknowledge receipt.</li> <li>• Appear at court hearing on required date and time with the 827 court order (PO and MO).</li> <li>• Do not bring any CWS case files/ record copies with you.</li> </ul> <p><b>NOTE:</b> The SW is permitted to testify <b>only</b> as to what was released in the PO and nothing beyond that. The SW may <b>not</b> testify to information gained after the 827 date.</p> <p><b>Example:</b> An 827 was granted on January 1st. A referral comes in in February. The 827 only covered and granted release of information through January 1st and nothing beyond that. The February referral information cannot be disclosed.</p> <p>If the party subpoenaing the SW wishes to have the SW reference a document, that party will need to provide the document. The party will have a copy of the redacted document that the 827 released and that is all that the SW is allowed to testify to. The party will have to wait while the SW reviews the document if they wish the SW to comment/testify on it.</p>
5	SW, if P&A received	<ul style="list-style-type: none"> <li>• You are not permitted to disclose anything (verbal or written).</li> <li>• Contact the person issuing the subpoena to acknowledge receipt. Advise them that without a granted 827 order, you will not be permitted to testify. You will attend the hearing but will not be able to provide any information. The requestor may at that point decide to file an 827 and subpoena the SW for a later date.</li> <li>• Appear at court hearing on required date and present the P&amp;A to the court.</li> </ul> <p><b>NOTE:</b> Do not bring any CWS case files/ record copies with you.</p> <p>Should you receive an order to testify with no 827 petition being granted contact LSS prior to responding,</p>

**Children  
Witnesses**

For a child's testimony, an 827 is not necessary as the child is a witness in the criminal case. Children needed for testimony in criminal cases should be referred to Kids and Teens in Court by the DA in criminal cases and their attorney in dependency cases.

**Alignment  
with SET**

This policy supports SET [Value 5](#) and the guiding principle to regularly work toward efforts to improve court processes to ensure they are supportive of mutual goals. It also supports the agency practice of understanding confidentiality with regard to legal partners.