



SUBJECT: SUBPOENA PROCEDURES

REVISED: July 2011

I. PURPOSE / DESCRIPTION

The following guidelines have been established for receiving subpoenas at San José State University (SJSU). SJSU is often served with subpoenas in civil lawsuits, criminal cases, and other kinds of formal proceedings. Under state and federal law, SJSU must comply with all valid subpoenas. These guidelines are intended to provide general information about subpoenas where San Jose State University is **not a party** to the proceeding. Where SJSU **is a party**, the lawyer assigned to the matter, or the Office of General Counsel in the CSU Chancellor's Office, should always be consulted (refer to Section II. D. before accepting a subpoena).

II. DEFINITIONS / Scope

A. What is a subpoena?

A subpoena is a legal document that commands a person or entity to attend at a particular time and place to testify as a witness (at a deposition, trial, or other hearing) and/or to produce documents or other tangible objects in a legal proceeding. It is equivalent to a direct order from a court. Subpoenas are time-sensitive documents with court-imposed deadlines. Therefore, the campus has designated the following procedure for handling subpoenas that specifically designates the location where they may be served and the "Custodian(s) Of Records" who will handle them for each department.

B. What are the different types of subpoenas?

In general, there are three different types of subpoenas:

1. An "appearance only" subpoena, requiring only the personal attendance of a witness.
2. A "records only" subpoena, requiring only the production of documents, and not a witness.
3. An "appearance and records" subpoena, requiring both the personal attendance of a witness and the production of documents.

A subpoena seeking production of documents, with or without a witness, is sometimes referred to as a “subpoena duces tecum.”

C. Who may issue a subpoena?

A **civil** subpoena may be issued by a judge, court clerk, or attorney. A **criminal** subpoena may be issued by a judge, magistrate, court clerk, district attorney, public defender, investigator, or attorney of record for the defendant. All subpoenas must be signed. The use of “/s/” as a signature substitute is inappropriate. A photocopied signature is acceptable.

D. To whom should a subpoena be addressed?

A subpoena commanding a **person** to appear, testify, and/or produce documents must name that person on the subpoena.

A subpoena commanding an **entity**, such as SJSU, to produce an employee to appear, testify, and/or produce documents must name that entity and reasonably describe the person whose testimony is desired.

A subpoena seeking records only should name the “custodian of records” or whoever else is authorized to respond to subpoenas.

E. Who may accept service of a subpoena at SJSU?

- The Custodian of Records in Human Resources shall have the charge to validate the “records only” subpoena by submitting to the Chancellor’s Office for direction or by utilizing the CSU Handbook.
- Upon receiving a subpoena, you should either instruct the courier to submit the subpoena to Human Resources or accept the subpoena and forward it to Human Resources (0046).
- After thorough examination of the subpoena and contacting parties, Human Resources shall forward the subpoena to the Custodian of Records in the appropriate department.

Custodian of Records

- For faculty records, Hannah Israel, (408) 924-2452, hannah.israel@sjsu.edu. Faculty Affairs, Administration Building 150, Ext. Zip 0021.
- For student academic records, Lisa Beltran, (408) 924-2057, lisa.beltran@sjsu.edu. Registrar Services, Student Services Center, Ext. Zip 0009.

- For student health records, Paula Hernandez, (408) 924-6110, paula.hernandez@sjsu.edu. Student Health Center, Ext. Zip 0037.
- For library records, Mary Somerville, (408) 808-2383, mary.somerville@sjsu.edu. King 2043, Ext. Zip 0028.
- For manager/staff employment and benefits records, Kim Ko, (408) 924-2282, kimberly.ko@sjsu.edu. Human Resources, UPD Building 3rd Floor, Ext. Zip 0046.
- For University Police records, Claire Kotowski, (408) 924-2174, claire.kotowski@sjsu.edu. UPD, Ext. Zip 0012

A subpoena to a particular **person** can only be accepted by that person. There are two important **exceptions** to this requirement:

1. If the subpoenaed **person** is a **peace officer** who is subpoenaed to testify about an event or transaction which he/she witnessed or investigated as a peace officer, the subpoena may be served by delivering two copies to his/her immediate superior or an agent designated to receive subpoenas, who must then deliver a copy to the peace officer.
2. If the subpoenaed **person** is a **state employee** who is subpoenaed to testify about something he/she has gained expertise in during the course of his/her duties, a subpoena may be served by delivering two copies to the employee's immediate superior or an agent designated to receive subpoenas. State employees who are being subpoenaed for their everyday, percipient knowledge must be personally served. For example, if an SJSU employee in an employee relations department is subpoenaed to testify about specialized procedures for reporting, investigating, and resolving employment disputes, that employee may be served through his/her superior. On the other hand, if that same employee is subpoenaed to testify about a slip-and-fall accident that she witnessed on campus, he/she must be personally served.

Except as noted above, the law requires personal service of every subpoena. Service by less formal means, such as by fax or mail, should not be accepted.

F. Do these guidelines apply to all subpoenas?

These guidelines cover California state court civil deposition and trial subpoenas, California criminal trial and grand jury proceedings subpoenas, and federal court civil deposition and trial subpoenas.

These guidelines do not cover subpoenas issued in matters where SJSU is a party, federal criminal subpoenas, subpoenas issued to employees or students that have nothing to do with SJSU, subpoenas for police officer personnel records, subpoenas for administrative proceedings, or other subpoenas that are not commonly received by CSU. All questions regarding subpoenas involving CSU outside the scope of these guidelines should be directed to University Counsel assigned to the campus (CSU Office of General Counsel).

III. PROCESS

A. What does SJSU have to do in response to a subpoena?

Subpoenas are the equivalent of a court order and a response is therefore required by law. If a subpoena for records is directed to a specified department, it is necessary to produce only records from that department. If the subpoena is directed to SJSU, however, it may be necessary to search for records beyond the department in which the subpoena is served in order to appropriately respond.

If a student's educational records are sought, SJSU must make a reasonable effort to notify that student, unless it is a criminal subpoena and states on its face that the student should not be notified.

Even if a subpoena is not valid, it cannot be ignored. SJSU must contact the issuing attorney, preferably in writing, to address any issues in connection with the subpoena. University Counsel is available to assist in this process.

B. How soon must SJSU reply?

Both "records only" and "appearance and records" subpoenas must specify a production date that is no earlier than 20 days after the subpoena was issued or 15 days after the subpoena was served on CSU, whichever date is later. **No records should be produced prior to the date and time on the subpoena, or prior to the end of the statutory consumer notice period, where applicable.** An "appearance only" subpoena must provide reasonable notice, which generally means at least 10 days before the production date.

C. Receiving a Subpoena

1. If the subpoena is for an employee to personally appear, the server will be directed to the department of the employee. In the case of a subpoenaed campus police officer who is required to testify about an event or transaction which he/she witnessed or investigated while on duty, the Custodian of Records can accept the subpoena.

If the subpoena is for employment or benefits records, the Custodian of Records in Human Resources will accept the subpoena, make a copy, and log into the subpoena database.

Note: All out-of-state subpoenas should be directed to University Counsel at (562) 951-4469.

D. Researching a Subpoena

1. The Custodian of Records in Human Resources will determine the type of records (i.e. faculty, staff, student) and contact the appropriate department(s).
2. If the individual is not an SJSU employee/student (current or past), check with the following auxiliary departments:

Associated Students SJSU Foundation
Spartan Shops
Student Union, Inc.

If the subpoena does belong to an auxiliary, deliver it as soon as possible due to time limits. Call or send a letter to the serving agency indicating to whom the subpoena was forwarded. Make a note in subpoena log and/or keep a copy in the subpoena file.

3. If SJSU or the auxiliaries do not employ this individual, the Custodian of Records will complete the Affidavit indicating "No Records" and return it to the requesting agency.

E. Processing the Subpoena

1. For managers and staff, the Custodian of Records will copy all requested documents within the Human Resources Service Group, which may include records from personnel and benefits files and/or Workers' Compensation information. The Custodian of Records will complete the declaration/affidavit form (see attached sample) and contact the requesting agency. The agency will either pick up the records or request that they be mailed.

Note: The University does not provide wage statements. The requesting agency will need to serve a subpoena on the State Controller's Office at:

Custodian of Records, State of California
State Controller's Office
Personnel/Payroll Services Division
300 Capitol Mall, 10th Floor
Sacramento, California 94250-5872

2. For faculty, students, or auxiliary employees, the subpoena will be forwarded to the appropriate contact person. **A copy of the completed declaration/affidavit form should be sent to the Custodian of Records in the Human Resources Service Group**

3. Fee for Processing a Subpoena

A check in the amount of \$15.00 will usually accompany each subpoena. If the subpoena is forwarded to Faculty Affairs, Student Services, or an auxiliary, the check is to be sent with the subpoena. Otherwise, the check is to be deposited into a University account at Cashiering, Window One.

A receipt will be provided and should be attached to the copy of the subpoena for reference. The copy of the subpoena will be filed by the Custodian of Records.

4. Which records should be available for inspection or copying?

A deposition subpoena duces tecum must designate the things sought either by specifically describing each individual item (i.e., "letter dated May 1, 2001,

from John Doe to Susan Jones”) or by reasonably specifying each category of item (i.e., “all collective bargaining agreements entered into by CSU between 1990 and 2000,” or even more generally, “all documents relating to the slip-and-fall accident involving Jack Smith”). Questions about the intent of the subpoena should be directed to University Counsel. For trial subpoenas, the documents requested must be identified with precision (i.e., “Contract No. CSU12345, dated May 10, 2000, between CSU and Best Construction Co.”), and general categories of documents cannot be requested (i.e., “all documents reflecting the construction project by Best Construction”).

5. How does SJSU produce the records for inspection and copying?

a. Making Records Available

If the subpoena requires making records available for inspection and/or copying, the inspection can only be scheduled during normal business hours and must be on the campus. The records should be produced in a place suitable for setting up a portable photocopying machine. If the records are originals, a campus representative should oversee the production to ensure that the originals are not lost, damaged, misplaced, or removed.

b. Delivering Copies

If the subpoena requires copies to be delivered or mailed to the subpoenaing party, they should be placed in an envelope or wrapper, sealed, with the title and number of the case, name of witness or custodian of records, and date of subpoena clearly typed on the envelope. That envelope must then be placed in another envelope or wrapper, sealed and addressed to either the deposition officer at the place designated in the subpoena, or, for a trial subpoena, to the clerk of the court or the judge.

The records must also be accompanied by an affidavit or declaration (sworn statement) containing certain representations about the documents and their mode of preparation. Sometimes a copy service or deposition officer will provide a preprinted form that contains the required representations *plus* others that are not mandated by the law. These extra statements are often promises that should not be made (see attached sample declaration for language that should be used in the declaration/affidavit).

SAMPLE

**DECLARATION OF CUSTODIAN OF RECORDS
PURSUANT TO EVID. CODE §§ 1560-1561**

1. I, [your name], am the duly authorized custodian of the records of [identify your department], and have the authority to certify the records sought in the subpoena duces tecum issued on behalf of [identify party issuing subpoena] on [date].
2. **[Either]** The copies of the records accompanying this declaration are true copies of all the records described in the subpoena duces tecum.

[Or] The copies of the records that were delivered to the subpoenaing party's attorney, the attorney's representative, or the deposition officer for copying [at the custodian's place of business] [or] [at my place of business] are true copies of all the records described in the subpoena duces tecum.
3. The records were prepared by the personnel of the California State University in the ordinary course of business at or near the time of the act, condition, or event.
4. The identity of the records is as follows: [Describe the records with specificity.]
5. The records were prepared as follows: [Describe the mode of preparation of the records.]
6. [If you have none of the records requested, or only part of them, state that here.]

I swear under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this ____ day of _____, 200__,
at _____, California.

[Your name here]