

DOUGLAS COUNTY SHERIFF'S OFFICE		Policy and Procedure
Specific Policies		P&P-B-130
Subpoena Duces Tecum		
Effective Date: 03-22-10	Approval: Sheriff	Number of Pages: 2
References: 13-90.5-102 CRS; P&P-G-101	Reevaluation Date: Annually or as needed	Standards:

I. RELEVANT STATUTE

13-90.5-102 *Definitions. As used in this article, unless the context otherwise requires: . . .*
 (5) "Subpoena" means a document, however denominated, issued under authority of a court of record requiring a person to: . . .
 (b) Produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person . . .

II. DEFINITION

Subpoena Duces Tecum

A subpoena that requires the production of papers, documents or other tangible items of evidence in a court of law. (Also called a Subpoena to Produce.)

III. PROCEDURE

A. General Subpoena Duces Tecum Guidelines.

There are a number of legal requirements regarding compliance with a subpoena duces tecum. In general, it may not be used as a 'fishing expedition' to gather large numbers of documents. Rather, it must be sufficiently detailed so that the recipient can reasonably identify the documents ordered to be produced. Additionally, the person served with the subpoena is ordinarily only required to produce documents in their possession or under their control and supervision. To be valid, a subpoena duces tecum must be served no less than 48 hours prior to the scheduled court appearance.

B. Records Procedures

In the case of the Sheriff's Office, the person to be served with a subpoena duces tecum will normally be the designated Records custodian. Under certain circumstances, a subpoenaed document may need to have certain information redacted or may not be releasable. Those decisions / actions will be taken by Records personnel and, if necessary, the Records custodian or designee may need to personally present the document(s) in court and/or testify. In the event that the ordered documents can be provided to another Office member, Records will notify the affected member so that they can make arrangements to take possession of the document(s).

C. Processed by Professional Standards.

Certain types of document requests will be processed by Professional Standards. These include, but are not limited to, requests for personnel or internal affairs records and Office policies or procedures. Those types of subpoenas duces tecum may either

be served directly on a member of Professional Standards or forwarded by the Records custodian if served there.

D. Personal Service on Office Members.

If an Office member is named and personally served with a subpoena duces tecum, they should advise the issuing individual / law firm that the subpoena would better be served on the Records custodian or Professional Standards because the requested document(s) are not in their *possession, custody, or control* and that per Office policy, they are not permitted to provide the ordered documents without authorization. (The member will not, however, refuse service.) The member is then to immediately contact Professional Standards and advise them of the service of the subpoena. Professional Standards will then determine if the requested document(s) are releasable and, if not, may make arrangements with the County or District Attorney's Office to contest the subpoena, or may appear in court to provide testimony as to the reason for the decision not to release the document(s). The member will produce any documents or records that are approved for release in the designated courtroom at the date and time specified on the subpoena.

This is done for several reasons. First, to avoid the perception that the Sheriff's Office is unwilling to cooperate with the defendant or plaintiff's attorney. Second, if the member appears in court without the document(s), they may state on the record that they did give opposing counsel advance notice that they might not be able to provide the document(s) because they were not in their *possession, custody, or control*, as well as demonstrating that they did attempt to provide assistance by informing them as to the proper entity to serve. And, thirdly, that the member did confer with the an individual within the Sheriff's Office that has the authority to approved the release of the document(s) but that authorization was not granted.

In some instances members receive subpoenas ordering both their appearance in court to provide testimony as well as an order to produce official Office records or documents. The member will comply with the subpoena to testify, regardless of the decision regarding the subpoena duces tecum. Office members will not make a copy of the subpoena they were given and 'serve' it on Records.

By Order of the Sheriff