

## **Rule 17. Subpoena**

(a) For attendance of witnesses; form; issuance. A subpoena shall be issued by the Clerk under the seal of the Court. It shall state the name of the Court and the title, if any, of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The Clerk shall issue a subpoena, signed and sealed but otherwise in blank to a party requesting it, who shall fill in the blanks before it is served.

(b) Respondents unable to pay.

(1) For respondents represented either by counsel appointed under the District of Columbia Criminal Justice Act, by staff attorneys of the Public Defender Service, or by law students admitted to the limited practice of law under SCR-General Family M, an application may be made to the Clerk for witness subpoenas where the witness involved will be served within 25 miles of the place of the factfinding or other hearing specified in the subpoena. The Clerk shall issue such subpoenas to said defense counsel in blank, signed and sealed and designated in forma pauperis, but not otherwise filled in. No subpoena so issued in blank may be served outside a radius of 25 miles from the place of the factfinding or other hearing specified in the subpoena. The filling in by such defense counsel of a subpoena issued in blank shall constitute a certificate by said defense counsel that, in the defense counsel's opinion, the presence of the witness is necessary to an adequate defense. In the case of a respondent represented by a law student, the application shall be signed by the law student's supervising lawyer. Where the witness to be subpoenaed will be served outside a radius of 25 miles from the place of the factfinding or other hearing specified in the subpoena, an application for the issuance of such subpoena shall be made to the Judge-in-Chambers and shall follow the procedure required by subsection (b)(2) of this Rule.

(2) For respondents represented by counsel other than those counsel listed in subsection (b)(1) of this Rule, the Court shall order at any time that a subpoena be issued for service on a named witness upon an ex parte application of a respondent upon a satisfactory showing that the respondent is financially unable to pay the fees of the witness and that the presence of the witness is necessary to an adequate defense.

(3) If the Court orders the subpoena to be issued pursuant to subsection (b)(2) of this Rule or if the Clerk issues a subpoena pursuant to subsection (b)(1) of this Rule, the costs incurred by the process and the fees of the witness so subpoenaed shall be paid in the same manner in which similar costs and fees are paid in case of a witness subpoenaed in behalf of the prosecuting authority.

(c) For production of documentary evidence and of objects. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The Family Court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The Court may direct that books, papers, documents or objects designated in the subpoena be produced before the Court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

(d) Service. A subpoena may be served by the Marshal, by a deputy marshal or by any other person who is not a party and who is not less than 18 years old. Service of a subpoena shall be made by delivering a copy thereof to the person named and by

tendering to that person the fee for one day's attendance and the mileage allowed by law. Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the prosecuting authority or in behalf of defendants unable to pay.

(e) Place of service.

(1) In general. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the District of Columbia or at any place outside the District of Columbia that is within 25 miles of the place of the hearing or trial specified in the subpoena.

(2) Exception. A subpoena directed to a witness in a case in which a felony is charged may be served at any place within the United States upon order of a judge of the Court.

(f) For taking deposition; place of examination.

(1) Issuance. A commission to take a deposition authorizes the issuance by the Clerk of the Superior Court of subpoenas for the persons named or described therein.

(2) Place. The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the trial court, taking into account the convenience of the witness and the parties.

(g) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the Court.

## COMMENT

This Rule is substantially similar to *FRCrP 17* except as indicated in this Comment. The reference to a commissioner is deleted from the last sentence of section (a); the language substituted therefor assures the right to subpoena witnesses for all judicial hearings. (This new language must be read in conjunction with section (b) to determine entitlement to subpoenas at government expense.) In the last sentence of section (d), "Corporation Counsel [now Attorney General for the District of Columbia] or in behalf of respondents unable to pay" is substituted for "United States or an officer or agency thereof". The new language makes the timing of payment of fees by the government the same regardless of whether the witness will appear for the Corporation Counsel [now Attorney General for the District of Columbia] or for the respondent. Subsection (e)(1) is pursuant to the statutory range for subpoenas set out in *D.C. Code § 11-942(a)*. *FRCrP 17(e)(2)* (subpoenas abroad) was omitted. The language substituted therefor makes the juvenile subpoena range coextensive with that of the Criminal Division under *D.C. Code § 11-942(b)*. References to federal districts have been deleted from section (f). "Personally" has been added to section (g), and references to different courts have been deleted since all subpoenas under these Rules will be issued by the Superior Court.