FAIRFAX CIRCUIT COURT

ATTORNEY ISSUED SUBPOENA

GUIDELINE PROCEDURES

AND

FORMS

ATTORNEY ISSUED SUBPOENAS

If attendance is desired in a civil proceeding pending in a court or at a deposition in connection with such proceeding, including medical malpractice review panels, and a claim before the Workers Compensation Commission, a summons may be issued by an attorney-at-law who is an active member of the Virginia State Bar at the time of the issuance, as an officer of the court. (§8.01-407)

An Attorney Issued Subpoena shall be on a form approved by the Supreme Court, signed by the attorney and include the attorney's address.

The Attorney Issued Summons and any Transmittal Letter shall be deemed to be a pleading to which the provisions of §8.01-271.1 shall apply. A copy of the summons and, if served by sheriff, all service of process fees shall be mailed or delivered to the Clerk's Office of the court in which the case is pending or with the Workers Compensation Commission, as applicable on the date of issuance by the attorney.

It is the responsibility of counsel to send the original Attorney Issued Subpoena and Transmittal Letter with the appropriate copies to the Sheriff or Private Process Server. ***The Clerk's Office is not responsible for sending Attorney Issued Subpoenas to the appropriate Sheriff or Private Process Server.***

Checklists to assist in compliance with the statute are included in this packet of information. Counsel shall follow the checklists and prepare a Transmittal Sheet to the specific Sheriff's office. It is recommended that you check with the specific Sheriff's Office regarding the information that they require for this procedure.

Any summons issued for ***Medical Records*** requires a ***Notice to Providers and a Notice to Patient*** in accordance with §32.1-127.1:03.

All summons received for filing will be placed in the appropriate case file. Upon receipt of the service return by the Sheriff or Private Process Server, the Circuit Court will update the information on the service screen of the Courts case management system.

Included in this packet is the following:

- Attorney issued subpoena checklist
- Sheriff Transmittal sheet checklist
- Subpoena for Witness DC497
- Subpoena Duces Tecum DC498
- Notice to Patient DC 348 - Medical Records
- Notice to Providers DC 350 - Medical Records.
- Transmittal letter to the Sheriff
- Letter to the Clerk or Workers Compensation Commission

The Attorney Issued Subpoena forms can be accessed through the Web Site of the Virginia's Judicial System:

WWW.COURTS.STATE.VA.US

GUIDELINES AND REQUIREMENTS:

The applicable Attorney Issued Subpoena must be fully completed and signed by the attorney at law.

Any Subpoena Duces Tecum for medical records must include the Notice to Providers and Notice to Patient.

The Circuit Court receives a copy for filing of the Attorney Issued Subpoena as a pleading. If an original is received for filing the Clerk's Office will return it to counsel as the original must be submitted to the Sheriff or Private Process Server for a return of service to be made on the original.

- Counsel will mail the ***"original"*** Attorney Issued Subpoena and one copy for each person being served to the Sheriff or Private Process Server. If service by Sheriff, must include a Sheriff Transmittal Sheet with the subpoena.

- File a ***"copy"*** of the Attorney Issued Subpoena and Transmittal Sheet with the Clerk of Court where the case is pending or the Workers Compensation Commission. It is recommended that when filing an Attorney Issued Subpoena that counsel of record submit a cover letter to the Circuit Court stating that they are filing an Attorney Issued Subpoena which will be served by the Sheriff of (specific jurisdiction) or by Private Process Server.

- The copy of the Attorney issued Subpoena and Transmittal Sheet may be filed at either the Civil Intake or Court Services counter on the third floor of the Judicial Center or mailed to:

  Clerk of the Circuit Court
  4110 Chain Bridge Road
  Third Floor - Civil Records
  Fairfax, Virginia 22030

FEES:

Fees are required for service by the sheriff.

- Sheriff's fee is $12.00 for each person being served.
  - Make check payable to:
    Clerk of the Circuit Court

FOR SERVICE BY THE SHERIFF:

- Counsel is required to send a Transmittal Sheet with the original and one (1) copy of the subpoena to the specific Sheriff's Office.

- Attached to the Transmittal Sheet must be a copy of the check filed with the Clerk's Office or a copy of the receipt from the Clerk's Office as proof of tender or payment of fees to the Clerk of the Court where the case is pending.

SERVICE BY SHERIFF

The Sheriff will give the person that is being subpoenaed a copy of the Attorney Issued Subpoena. The Sheriff will execute the '*return of service*' on the original subpoena and return the executed subpoena to the Clerk of Court for filing.

A Transmittal Sheet must be submitted with the original Attorney Issued Subpoena when filing with the Sheriff's Office. Please refer to the Sheriff Transmittal Sheet Checklist to assure compliance with the statute.

If the subpoena is not submitted with a Sheriff's Transmittal Letter completed with all required information the Sheriff's Office will not serve the documents and will return all documents to counsel.

SERVICE BY PRIVATE PROCESS SERVER

Who to Serve process - §8.01-293 - "Any person of age eighteen years or older and who is not a party or otherwise interested in the subject matter or controversy."

Return by person serving process §8.01-325 – "If service by any other person qualified under §8.01-293, whether service made in or out of the Commonwealth, his affidavit of such qualifications; the date and manner of service and the name of the party served; and stamped, typed or printed on the return of process, an annotation that the service was by a private server, and the name, address, and telephone number of the server."

The Private Process Server will give the person that is being subpoenaed a copy of the Attorney Issued Subpoena. An executed Affidavit of Service is attached to the Original Attorney Issued Subpoena and shall be filed with the Clerk of the Court where the matter is pending or the Workers Compensation Commission as applicable within seventy-two (72) hours of service.

<u>The Affidavit must include the following</u>:

- Having been duly authorized to make service in accordance with §8.01-293.
- State the Date of Birth of the process server or that the person is over eighteen years of age.
- State that the person serving the process is not a party or otherwise interested in the subject matter or controversy. (§8.01-293)
- The date and manner in which service was made.
- The name of the party served.
- If the party being served is an agent for a business, state in addition the name of the business.
- An annotation that service was by Private Process Server.
- Name, address and telephone number of Private Process Server.

ATTORNEY ISSUED SUBPOENA CHECKLIST

1. Attorney issuing subpoena is, at time of issuance, an active member of the Virginia State Bar.

2. Not being issued in connection with:

   - ❑ Habeas corpus
   - ❑ Delinquency or abuse and neglect
   - ❑ Civil forfeiture proceedings
   - ❑ Habitual offender proceedings
   - ❑ Administrative license suspension, or
   - ❑ Petition for writs of mandamus or prohibition in criminal cases.

3. If for Deposition, it is in connection with a Circuit Court civil case for which attorney-issued subpoenas are not prohibited. (***See above list***)

4. Witness Subpoenas must not be issued less than five (5) business days prior to the date that attendance is desired.

5. Subpoena Duces Tecum must not be issued less than fourteen (14) days prior to the date for production of evidence. (Rule 4:9 c)

6. The Attorney Issued Subpoena must include the date and time of hearing for which the witness is required to appear. For summons that require production of documents, must include the date and time production is required.

7. An Attorney Issued Summons shall be on a form approved by the Supreme Court.

8. Preparing at least one (1) original and four (4) copies of the forms for each person to be served:

   - ❑ To person serving subpoena original and one (1) copy
   - ❑ To clerk of court – one (1) copy
   - ❑ For attorneys file – one (1) copy
   - ❑ To counsel of record for opposing parties – one (1) for each such counsel.

9. The subpoena must contain the following information:

   - ❑ Contains name and status (registered agent, office manager, etc) if needed, of person to be served.
   - ❑ Contains street address of person being served.
   - ❑ If Subpoena *Duces Tecum* for medical records must comply with §8.01-407 and §32.1-127.1:03, including attached 'Notice to Patient' and notice to 'Health Care Provider'.
   - ❑ Contains name, address and VSB number of attorney issuing subpoena.
   - ❑ Signed by an active member of Virginia State Bar at time of issuance.
   - ❑ Certificate of Service on Attorney Issued Subpoenas must be executed on all counsel of record in accordance with Rule 1:12. Attorney Issued Subpoenas are considered a pleading.

10. On the date of issuance by the attorney; a copy of the Subpoena, Transmittal Sheet, and if served by the Sheriff, all service of process fees, shall be mailed or delivered to the Clerk's Office of the court in which the case is pending or the Workers Compensation Commission, as applicable.

SHERIFF TRANSMITTAL SHEET CHECKLIST

The Transmittal Sheet, which may be in the form of a letter, shall contain for each subpoena the following information:

- ❑ Letter from Counsel addressed to the Sheriff or Sheriff's who will be serving the subpoena.
- ❑ List of each person to be served
- ❑ For each person to be served, after the address, list city/county in parentheses in which subpoena is to be served.
- ❑ List the 'style of case' in which subpoena is being issued.
- ❑ List the Court in which the case is pending.
- ❑ List the amount of fees tendered or paid to Clerk of Court where the case is pending.
- ❑ Attach copy of proof of tender or payment of fees to Clerk of Court where the case is pending.
- ❑ If one (1) Transmittal letter is used for more than one (1) Sheriff, the persons to be served should be grouped together by city or county where the subpoena(s) is to be served.

For each person to be served the following must be submitted:

- ❑ Both original and one (1) copy of each summons are sent with the Transmittal Sheet to the Sheriff.
- ❑ If proof of receipt by Sheriff is desired; include one (1) additional copy of ***Transmittal Sheet*** and attach an envelope addressed to transmitting attorney with sufficient first class postage. Only the Transmittal Sheet will be stamped by the Sheriff.

SAMPLE DRAFT OF SHERIFF TRANSMITTAL SHEET

ATTORNEY LETTER HEAD

DATE

(Sheriff of (jurisdiction))
Address of Sheriff

Re: (Style of Case) Case Number:
(Court in which case is pending)

TRANSMITTAL SHEET

Dear Sheriff,

Please issue a subpoena on: (Specify name, address, and county in which subpoena is to be served)

(Name of person)
(Address of person)
(County in which subpoena to be served)

The fee for service has been tendered to the Clerk of the Circuit Court in the amount of $ (state amount). Attached is a copy of the (***receipt from the Clerk of the Court/ or copy of check tendered to the clerk***).

Please return the additional date stamped copy of this Transmittal Sheet showing proof of receipt by you in the enclosed self addressed stamped envelope. (***Include this paragraph if you wish a date stamped copy be returned)***

Very Truly yours,
(Print name of attorney)

(Signature of Attorney)

SAMPLE DRAFT OF LETTER TO THE CLERK

ATTORNEY LETTER HEAD

DATE

(Clerk of the Circuit Court of/or Workers Compensation Commission)
(Jurisdiction where case is pending))
Address of Clerk or Workers Compensation Commission

Re: (Style of Case) Case Number:

Dear Clerk,

Please file the enclosed Attorney Issued Subpoena(s) with the other papers in this matter. The subpoena(s) have been issued by our office, and are being served by **(private process server/ or Sheriff of (state jurisdiction)**.

(If service by sheriff)
Enclosed please find the service fees for the Sheriff in the amount of $ **(state amount of check).**

Very Truly yours,
(Print name of attorney)

(Signature of Attorney)