

 <p><b>STANISLAUS COUNTY COMMUNITY SERVICES AGENCY</b></p>	Developed by/Date: Marylou Martinez per DSS Manual prior to 2002, CSA-HR 5/10, Exec 5/11	Page: 1 of 6	Number: 7.17
	Reviewed by/Reviewed Date: CSA Exec Team 5/11	Replaces:	Category: Administrative
Title: <b>Subpoena Policy</b>		Approved: 5/23/11	

**Policy** 
     
 **Procedure** 
     
 **Guideline**

**Purpose**

This policy pertains to subpoenas served for individuals or agency records which may or may not be confidential under the law.

**Definition**

The purpose of this policy is to provide procedures and consistency in accepting and responding to subpoenas served upon the Community Services Agency. Subpoenas should be served at the Community Services Agency Administration window on the second floor of the main Hackett Road facility. No subpoenas will be accepted at any outstation. Staff present at the Administration window should call the Agency’s Custodian of Records to receive the subpoena.

For the purpose of service, the Agency’s Custodian of Records is the Supervising Account Administrative Clerk (SAAC) II in the Records Management unit. The back up Custodian of Records is the SAAC II in the Imaging unit. In the case that both supervisors are unavailable, the Administrative Clerks III in Records Management and Imaging will serve as the third level backup.

If the subpoena is served to the Agency at large, or to the “Custodian of Records” rather than to an individual employee, the Agency’s Custodian of Records will determine to which Division the subpoena pertains, and notify the appropriate Manager within that Division so they can determine who will respond on behalf of the Agency. Typically, the employee who is assigned by a Manager or Supervisor to respond to a subpoena is the employee who is most familiar with the particular case. In this instance, the employee assigned to respond or to appear in court, is authorized by the Agency to be in control of the records and is, in that instance, the “Custodian of Records.”

If a process server wishes to serve an employee with a subpoena on a personal, non work-related matter, the Agency’s Custodian of Records will inform the server that CSA does not allow employees to accept personal service during their scheduled work time. The Agency’s Custodian of Records **WILL NOT** accept this type of subpoena on behalf of any employee. If the Custodian of Records receives a personal subpoena in error, the Custodian of Records will call County Counsel immediately for guidance.

Each Division will receive subpoenas from the agency's Custodian of Records. Each division will develop and maintain its own procedures regarding subpoena processing within their respective divisions and programs.

## **Procedure**

### **A. Subpoenas for Appearance by Employees:**

1. Staff may not, in an official capacity as a CSA representative, serve as a witness for a recipient of services in either a civil or criminal action unless properly subpoenaed or ordered by the court.
  - a. Whenever a staff member is subpoenaed, the subpoenaed employee may notify County Counsel directly if advice or assistance is needed.
2. The Agency's Custodian of Records will accept service of all subpoenas and shall not divulge to the server if any individual named in the action is a recipient of County services.
  - a. If appropriate, the Custodian of Records will collect service fees for appearance.
  - b. The Custodian of Records will note the date and time of receipt, and any fees collected, on the face of the subpoena.
  - c. The Custodian of Records will notify the subpoenaed employee and their supervisor of the subpoena by email. The employee or the supervisor must sign for and pick up the subpoena from the Custodian of Records within 24 hours.
  - d. The employee will accept the subpoena from the Custodian of Records.
  - e. If personal appearance is requested, County Counsel must be notified by the appropriate manager/supervisor which employee will respond to the subpoena, as per Division policy, and the supervisor may request County Counsel to be present on the court day.

The subpoenaed employee shall appear in court on the appointed day and time. The subpoenaed employee should not take agency records to court unless the subpoena requests production of records (a "subpoena duces tecum".) The subpoenaed employee's supervisor shall accompany the employee, when appropriate.

Employee should be prepared to cite the W&I code 10850 indicating the confidential nature of the information requested. ("Your honor, these matters are confidential under Welfare and Institutions Code section 10850. Is the court ordering me to testify?") If the judge requires the employee to testify, the Director of CSA has authorized staff to testify. If there are any concerns

with the procedures, County Counsel may be contacted for immediate assistance.

- f. A fee must be tendered with the subpoena, EXCEPT in child dependency cases, criminal cases, and civil cases in which the county is a party. The Custodian of Records will forward any fees collected via a Mailroom Miscellaneous Check Log to the Revenue Unit of Financial Services. (See Fee Schedule for Civil Subpoenas)
- g. If the fees are demanded but not paid at the time of serving, the subpoena is invalid and should not be accepted.

3. Other information

- a. If the subpoena is served in the name of a former employee, the Custodian of Records will notify the Manager of the former employee so they can determine who will respond on behalf of the Agency.
- b. Faxed or mailed subpoenas are not valid and will not be accepted. However, on occasion arrangements are made to fax or mail a subpoena to an employee during an ongoing case. Check with the individual named in the subpoena to determine if such arrangement has been made for convenience.

B. Subpoenas duces tecum for appearance by an employee and production of agency records

- 1. The agency's Custodian of Records will accept service of all subpoenas and shall not divulge if any individual named in the action is a recipient of services.
  - a. If appropriate, the Custodian of Records will collect service fees for appearance.
  - b. The Custodian of Records will note the date and time of receipt, and any fees collected, on the face of the subpoena.
  - c. The Custodian of Records will notify the subpoenaed employee and their supervisor of the subpoena by email. The employee or the supervisor must sign for and pick up the subpoena from the Custodian of Records within 24 hours.
  - d. The employee will accept the subpoena from the Custodian of Records.
  - e. If personal appearance is requested, County Counsel must be notified by the appropriate manager/supervisor which employee will respond to the subpoena, as per Division policy, and the supervisor may request County Counsel to be present on the court day.

The subpoenaed employee shall appear in court on the appointed day and time with the agency records. The subpoenaed employee's supervisor shall accompany the employee, when appropriate. Do not allow anyone to see the records, prior to the judge's ruling (i.e. opposing counsel or client). Copies of agency records should be taken to court. Otherwise the agency's original file may be retained by the court as evidence.

Employee should be prepared to cite the W&I code 10850 indicating the confidential nature of the information requested. ("Your honor, these matters are confidential under Welfare and Institutions Code section 10850. Is the court ordering me to testify? OR Is the court ordering me to release agency records?") If the judge requires the employee to testify, the Director of CSA has authorized staff to testify. If the court orders the employee to release the agency records, the employee should clarify to whom they should be released (usually it will be the attorney who issued the subpoena). If there are any concerns with the procedures, County Counsel may be contacted for immediate assistance.

- f. A fee must be tendered with the subpoena. (See Fee Schedule for Civil Subpoenas.) The Custodian of Records will forward any fees collected via a Mailroom Miscellaneous Check Log to the Revenue Unit of Financial Services.

C. Subpoena duces tecum for records only (deposition subpoena):

1. Without a court order, CSA may not release confidential records through the subpoena process. The Agency frequently receives "deposition subpoenas" which direct the Agency to produce records at an attorney's office or at a legal services office for copying. If someone attempts to serve the Agency with this type of subpoena, the Custodian of Records should tell him/her that due to confidentiality, the Agency cannot legally release the requested records without court order. Occasionally, a recipient of services whose records are confidential may sign an authorization to release information. Usually the individual is authorizing release of records to his/her attorney, although the release could provide for another party or business entity to be the recipient. The authorization would be attached to the subpoena. The manner in which the authorization is worded is critical to protecting the County from liability. Child welfare records may never be released pursuant to a subpoena duces tecum "for records only."
2. If the process server insists on leaving the subpoena on the counter, despite being advised of the above, then the Custodian of Records should contact the attorney listed on the upper left hand corner of the subpoena and explain that the Agency cannot comply with the subpoena, followed up with a letter to that effect. Custodian of Records will return any fees that may have accompanied the subpoena.

3. If the attorney insists that the Agency produce the records without a court order, the Custodian of Records should contact County Counsel and ask County Counsel to contact the other attorney.
4. Non-confidential records may be released through the subpoena process, but only after confidential information has been redacted. The custodian of Records should hand the person who delivers the subpoena a "Fee Schedule for Civil Subpoenas."
5. A fee must be tendered with the subpoena. (See Fee Schedule for Civil Subpoenas.) The Custodian of Records will forward any fees collected via a Mailroom Miscellaneous Check Log to the Revenue Unit of Financial Services.
6. CSA may not refuse to copy the records within the specified time awaiting fees to be paid. After the copies are made, CSA may withhold release of the documents until fees are paid. (The party requesting the copies is entitled to receive an itemized statement of fees and costs if requested.)

## **ATTACHMENT A**

### Stanislaus County Community Services Agency Subpoena Policy

#### **FEE SCHEDULE FOR CIVIL SUBPOENAS**

Subpoena for court appearance of county employee at civil proceeding in which the county is not a party:

\$150.00, tendered with subpoena. (*Government Code § 68096.1*)

Fees and costs to copy records in response to a subpoena duces tecum for “records only”  
*A flat fee of \$15.00 charged at the time of service. In addition, clerical costs will be charged of ten cents (\$0.10) per page for standard copying, plus actual postage costs, if applicable. (Evidence Code § 1563)*

Costs and fees will be due prior to delivery or pick up of requested copies.