

## **RULE 123. SUBPOENAS**

A. **Contents.** A subpoena in a delinquency case shall:

- 1) order the witness named to appear before the court at the date, time, and place specified;
- 2) order the witness to bring any items identified or described;
- 3) state on whose behalf the witness is being ordered to testify; and
- 4) state the identity, address, and phone number of the person who applied for the subpoena.

B. **Service.**

- 1) **Method of Service.** A subpoena shall be served upon a witness by:
  - a) in-person delivery;
  - b) registered or certified mail, return receipt requested, or
  - c) by first-class mail.
- 2) **Proof of Service.** The following shall be *prima facie* evidence of service of the subpoena:
  - a) A completed return receipt;
  - b) Hand signed receipt of personal delivery; or
  - c) Affidavit of in-person delivery signed by a process server.

C. **Duration.** A subpoena shall remain in force until the end of a proceeding.

D. **Bench Warrant.** If any subpoenaed person fails to appear for the hearing and the court finds that sufficient notice was given, the judge may issue a bench warrant pursuant to Rule 140.

E. **Parental notification.**

- 1) **Generally.** If a witness is a minor, the witness's guardian shall be:
  - a)** notified that the minor has been subpoenaed; **and**
  - b)** **provided with a copy of the subpoena.**

- 2) **Exception.** Upon prior court approval and good cause shown, a subpoena may be served upon a minor without such notification to the guardian. If and when necessary, request for such prior court approval may be obtained *ex parte*.

#### **COMMENT**

Prior to issuing a bench warrant for a minor, the judge should determine if the guardian of the witness was served. Nothing in these rules gives the guardians of witnesses legal standing in the matter being heard by the court or creates a right for witnesses to have their guardians present. In addition, lack of required notice to the guardian does not prevent the minor witness from testifying. See Rule 140 for procedures on bench warrants.

For power to compel attendance, see 42 Pa.C.S. § 6333. Nothing in this rule prohibits the court from holding a contempt hearing. See *In re Crawford*, 360 Pa.Super. 36, 519 A.2d 978 (1987) for punishing juveniles for contempt.

Any person may file a motion to quash the subpoena for a witness and/or for requested items. The court is to rule on the motion prior to the production of the witness or the items.

**Official Note:** Rule 123 adopted April 1, 2005, effective October 1, 2005. Amended February 26, 2008, effective June 1, 2008. Amended May 12, 2008, effective immediately. **Amended September 16, 2009, effective immediately.**

#### *Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 123 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 123 published with the Court's Order at 38 Pa.B. 2360 (May 12, 2008). **Final Report explaining the amendments to Rule 123 published with the Court's Order at 39 Pa.B. - (- 2009).**

## **RULE 1123. SUBPOENAS**

A. **Contents.** A subpoena in a dependency case shall:

- 1) order the witness named to appear before the court at the date, time, and place specified;
- 2) order the witness to bring any items identified or described;
- 3) state on whose behalf the witness is being ordered to testify; and
- 4) state the identity, address, and phone number of the person who applied for the subpoena.

B. **Service.**

1) **Method of Service.** A subpoena shall be served upon a witness by:

- a) in-person delivery;
- b) registered or certified mail, return receipt requested; or
- c) first-class mail.

C. **Duration.** A subpoena shall remain in force until the end of a proceeding.

D. **Bench Warrant.** If any subpoenaed person fails to appear for the hearing and the court finds that sufficient notice was given, the judge may issue a bench warrant pursuant to Rule 1140.

E. **Parental notification.**

1) **Generally.** If a witness is a minor, the witness's guardian shall be:

**a)** notified that the minor has been subpoenaed; **and**

**b) provided with a copy of the subpoena.**

2) **Exception.** Upon prior court approval and good cause shown, a subpoena may be served upon a minor without such notification to the guardian. If and when necessary, request for such prior court approval may be obtained *ex parte*.

## COMMENT

A subpoena is used to order a witness to appear and a summons is issued to bring a party to the proceeding.

A *subpoena duces tecum* is to set forth with particularity, the documents, records, or other papers to be produced at the hearing. The items sought are to be relevant to the proceedings. See Rule 1340 on discovery, *In re J.C.*, 412 Pa.Super. 369, 603 A.2d 627 (1992), and *In re A.H.*, 763 A.2d 873 (Pa. Super. Ct. 2000) for production of documents necessary to prepare for a hearing.

Prior to issuing a bench warrant for a minor, the judge should determine if the guardian of the witness was served. Nothing in these rules gives the guardians of witnesses legal standing in the matter being heard by the court or creates a right for witnesses to have their guardians present. In addition, lack of required notice to the guardian does not prevent the minor witness from testifying. See Rule 1140 for procedures on bench warrants.

For power to compel attendance, see 42 Pa.C.S. § 6333. Nothing in this rule prohibits the court from holding a contempt hearing. See *In re Crawford*, 360 Pa.Super. 36, 519 A.2d 978 (1987) for punishment of contempt (children). See also *In re Griffin*, 456 Pa.Super. 440, 690 A.2d 1192 (1997) (foster parents), *Janet D. v. Carros*, 240 Pa.Super. 291, 362 A.2d 1060 (1976) (county agency), and *In re Rose*, 161 Pa.Super. 204, 54 A.2d 297 (1947) (parents) for additional guidance on contempt for other parties.

Any person may file a motion to quash the subpoena for a witness and/or for requested items. The court is to rule on the motion prior to the production of the witness or the items.

**Official Note:** Rule 1123 adopted August, 21, 2006, effective February 1, 2007. Amended May 12, 2008, effective immediately. Amended March 19, 2009, effective June 1, 2009. **Amended September 16, 2009, effective immediately.**

### *Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1123 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006). Final Report explaining the amendments to Rule 1123 published with the Court's Order at 38 Pa.B. 2360 (May 12, 2008). Final Report explaining the amendments to Rule 1123 published with the Court's Order at 39 Pa.B. 1614 (April 4, 2009). **Final Report explaining the amendments to Rule 1123 published with the Court's Order at 39 Pa.B. - (- 2009).**