

**ESTABLISHING A SUPPORT ORDER**  
**Subpoena and Subpoena Duces Tecum**

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**CS 405.8**

**SUPERSEDES**

CS 405.8, Subpoena and Subpoena Duces Tecum, February 1991

**Policy**

As provided by Montana Code Annotated, SS 40-5-202 and 2-4-104, the Child Support Enforcement Division (CSED) may compel the attendance of witnesses and/or the production of documentary evidence which is necessary for the orderly and just conduct of administrative hearings. Sometimes, additional information will be needed after a decision and order is issued. In either instance, this is accomplished through a subpoena or a subpoena duces tecum. The CSED's subpoena power is limited by the U.S. Constitution's protection from unreasonable searches and seizures. Thus, any information sought must be relevant to the issues before the Hearing Officer. Further, the production of the information may not be unreasonably burdensome to the person subpoenaed.

A witness may be served with a subpoena, a subpoena duces tecum, or both. Service must be made by the sheriff of the county where the witness resides, or where the documents are located.

A witness may be ordered to appear in person or by telephone. If ordered to produce documents, the witness should deliver the original documents, or clear copies of them, to the requesting party.

Any party to a proceeding may request that the CSED issue a subpoena and or a subpoena duces tecum. Witness fees, mileage expenses, and the reasonable costs of preparing, copying and transmitting the documents requested are the responsibility of the party requesting the subpoena and/or subpoena duces tecum. A witness compelled to appear in person at an administrative hearing is entitled to be represented by an attorney. The witness is responsible for their own attorney fees.

A subpoena duces tecum is not required in the normal course of agency business to release information usually released to an obligor, such as debt computations. If you are served with a subpoena, or a subpoena duces tecum, please consult a regional CSED Staff Attorney immediately. DO NOT release information without first consulting the Staff Attorney.

A person served with a subpoena or a subpoena duces tecum may object to the order. The Hearing Officer may, after considering the objection, modify or terminate the order, or impose conditions on its use.

Consult a CSED Staff Attorney for enforcement of a subpoena or a subpoena duces tecum.

For procedures governing the issuance of a blood test subpoena, see the Paternity Establishment sections of the policy manual.

**DEFINITIONS**

**Subpoena:** A legal document ordering a witness to appear at a specified time and place to testify.

**Subpoena duces tecum:** A legal document which commands the custodian of specified papers or other non-testimonial evidence to appear and produce that evidence for inspection and copying at a specified time and place.

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**Procedures**

**UPON AGENCY REQUEST:**

**Caseworker**

1. Prepares and executes CS-405.8A, "Affidavit of Necessity," checking appropriate boxes for issuance of a subpoena, a subpoena duces tecum, or both. Checks SEARCHS PRX screen for indication that information should be protected; if found, attaches note to affidavit warning OALJ, and arranges for protection of information upon receipt.

**NOTE:**

**Consults CSED Staff Attorney if questions of special usage or language arise.**

**Supervisor**

2. Reviews affidavit and case file to determine whether the requested evidence is necessary, whether the request is unduly burdensome, and whether the form and content is correct.
  - a. If the request is inappropriate, returns file to caseworker with appropriate case notes.
  - b. If the request is appropriate, makes appropriate case notes and returns file to caseworker with any necessary corrections.

**Caseworker**

3. Makes any corrections to affidavit, and prepares two copies. Prepares CS-405.8B "Subpoena," or CS-405.8C "Subpoena Duces Tecum." If appropriate, prepares CS-405.8D "Request to Testify by Telephone."

**Hearings Assistant**

4. Checks completed subpoena form(s) for completeness, form, and accuracy. Forwards acceptable packets to Hearing Officer for review and signature. If unacceptable, returns to caseworker for correction.