

Instructions For CJA Panel Attorneys, District of Minnesota
Regarding Subpoena Procedures on Court Appointed Cases
Updated January 1, 2015

Prepared by Office of the Federal Defender, 612-664-5858 for use by attorneys appointed under the Criminal Justice Act (CJA) in the District of Minnesota.

Your requests concerning subpoenaing of witnesses are entitled to be kept under seal from the attorney for the United States and to be heard ex parte by the District Court or U.S. Magistrate Judge.

1. Prepare Ex Parte Application (with s/signature in .pdf format) and proposed Order (in word processing format) and forward both via e-mail to U.S. Magistrate Judge assigned to your case. Do not file in the Electronic Case Filing (ECF) system.
2. If approved, the Court will have the documents filed with the Clerk who will forward a certified copy of the Order to the U.S. Marshals.

The party who filed the Application and chambers are the only ones who will be noticed via e-mail, the only parties to see the docket entries, and the only parties who will be able to open the documents (the USM are cc'd on the filing entry). The public and the AUSA will be restricted from viewing those entries as well.

3. You prepare subpoenas and either have the U.S. Marshals serve them or serve them yourselves or by use of a private investigator. Remember, the CJA Guidelines will not reimburse private investigators hired for the sole purpose of serving subpoenas as the US Marshals will serve subpoenas without charge. However, if your investigator is interviewing the witness and serves the subpoena at the same time, that is acceptable.
4. When the witness is done testifying, follow the instructions on the enclosed sheet regarding how they can obtain payment for their witness fee and expenses.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. _____

UNITED STATES OF AMERICA,) Filed under Seal
))
 Plaintiff,))
) EX PARTE APPLICATION FOR
) ISSUANCE OF SUBPOENAS ON
) BEHALF OF DEFENDANT
))
))
))
 Defendant.))

Defendant, _____, through his attorney, hereby requests the Court pursuant to Rule 17(b), Federal Rules of Criminal Procedure, for the issuance of subpoenas to compel the attendance of persons whose testimony is favorable to the defendant. The Court has previously made a determination that the defendant is indigent and has appointed the undersigned attorney.

The defendant requests that subpoenas be issued to the following witnesses:

1. _____ [insert name of witness]
2. _____

It is necessary for the defendant to have the appearances of the aforementioned witnesses.

Dated: _____

Respectfully submitted,

Attorney ID No.
Attorney for Defendant
[address]

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. _____

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
)
)
 Defendant.)

Filed Under Seal

ORDER

Upon petition by the defendant and pursuant to Rule 17(b), Federal Rules of Criminal Procedure,

IT IS HEREBY ORDERED that subpoenas shall issue and they shall be served according to law to the following persons:

1. _____ [name of witness]
2. _____

IT IS FURTHER ORDERED that the U.S. Marshals shall pay witness attendance fees and reasonable travel expenses necessary for the appearances of the above named witnesses.

[next two paragraphs are optional]

IT IS FURTHER ORDERED THAT this petition and order shall be sealed by the Court and be disclosed to no person other than the United States Marshal.

IT IS FURTHER ORDERED THAT advance travel funds are authorized.

Dated: _____

U.S. Magistrate Judge

Date

Honorable [*]

Re: United States v. _____
Criminal No. _____

Dear Magistrate Judge _____:

Enclosed for your consideration is the original ex parte application and proposed Order in the above case. These witnesses are requested for the upcoming _____ proceeding scheduled for _____ date before _____ judge.

If these documents meet with your approval, please sign and date the Order and forward all documents to the Clerk of Court for filing under seal. These documents are not filed electronically.

Please contact me if you have any questions.

Sincerely,

Attorney Name

Enclosures

Fact Witness Voucher
Instructions for Completion
by CJA Panel Attorneys

Witness Claim Forms

1. After witness is done testifying and ready to go home, prepare a witness claim form. These forms may be requested from the Office of the Federal Defender at 612-664-5858 or the U.S. Attorney's Office at 612-664-5600 or at <http://www.usmarshals.gov/prisoner/obd3.pdf>

Form OBD-3 revised 6-2014 or later. See attached sample.

Complete top portion of form, Parts I and II.

Block A – All dates required to travel to court, home from court, appear in court, or spent waiting for court (if they stayed on extra days for vacation, those days are not reimbursable).

Block B -- **Clerk of Court employee signs here.** CJA Attorneys cannot sign as they are not federal employees. If needed, CJA Attorney can also attach a letter to the Clerk verifying the dates of witness attendance.

Block C -- If they flew, check here.

Block D -- Fill in round trip mileage (currently \$.575/mile for auto)

Block E -- Fill in any taxi, parking or bus expenses (Must have receipts or signed statement of amount)

Block F -- Fill in number of days, attach copy of hotel receipt.

Block G -- **Witness signs and dates.**

Block H -- **Clerk of Court signs** and forwards the documents to the U.S. Marshals Office for payment. CJA Attorneys cannot sign in Block H. Forward your witness claim vouchers to the Clerk of Court's Office, to the attention of the **criminal deputy clerks** for processing.

For data integrity purposes, attorneys should either deliver, mail, or have their staff deliver the forms to the Clerk of Court. Please do not have witnesses deliver their own forms.

NOTE: YOU MUST OBTAIN A COURT ORDER FOR THE APPEARANCE OF YOUR WITNESSES. IF THERE IS NOT AN ORDER ON FILE, YOUR WITNESS WILL NOT GET PAID.

The U.S. Marshals Office, Minneapolis, 612-664-5900, will then review the voucher and issue a check to your witness.

UNITED STATES V. _____
Criminal No. _____
Parking Receipt

I, _____, hereby certify that I was subpoenaed as a
defense witness in the above entitled case. I incurred parking expenses
of \$ _____ on _____.

Date

Witness Signature

THIS IS A 3-PART FORM. FILL OUT FORM AND PRINT 4 COPIES. SIGN AS NEEDED AND ROUTE AS SPECIFIED BELOW.

Check One: (was) (was not) a United States citizen at the time of attendance.
 (was) (was not) a Federal Government employee at the time of attendance.
 (did) (did not) receive a cash or check advance. Total advance issued: \$ _____ From: _____

Witness Name: John Doe			Court Doc. No.: 15-000(1) PJS/LIB		
Social Security Number: 123-45-6789			Case Name: US v Defendant Last Name		
Address: 123 Maple Street			District: District of Minnesota		
City: Minneapolis	State: MN	Zip: 55415	Court Location: Minneapolis, MN		
Telephone No.: (612) 123-4567			GTA <input type="checkbox"/> Transportation <input type="checkbox"/> Lodging <input type="checkbox"/>		

PART I – Attendance Certification (by Government Official) <small>(Retention of these fees is considered taxable income and reportable to IRS)</small>	Object Class	Amounts (Dollars) (To be completed by US Marshals)
A. Attendance Fees	UFMS/FMIS	
Deposition Dates: _____ \$40 @ _____ days	11804 / 1126	\$ 0.00
Grand Jury/Trial Attendance Date (Including Travel): <u>01/12/15 & 01/13/15</u> \$40 @ <u>2</u> days	11804 / 1156	\$ 80.00
Pretrial Attendance Dates: _____ \$40 @ _____ days (Including Travel)	11804 / 1194	\$ 0.00
Detained Dates – Citizen/Visitor in Custody: _____ \$40 @ _____ days	11804 / 1193	\$ 0.00
Detained Dates – Deportable Alien in Custody: _____ \$1 @ _____ days	11804 / 1195	\$ 0.00
TOTAL FEES:		\$ 80.00
B. Attendance Attestation: I attest that the witness named above attended in the case or matter indicated and is entitled to the statutory allowance for attendance and travel. In proceedings before U.S. Magistrate Judges where more than four witnesses were called, the Magistrate also attests that the approval and certificate of the Litigating Trial Office were first obtained.		
_____ Signature	Clerk of Court Employee _____ Title of Authorized Government Official	_____ Date

This form is continued on Page 2

Original – USMS Trial District Office
Copy 1 – Paying Office
Copy 2 – DOJ Litigating Trial Office
Copy 3 - Witness

The Privacy Act Statement and instructions for completion of this form are contained on Page 3 of this form.

INSTRUCTIONS FOR COMPLETING THIS FORM
To be completed by the witness

1. At the top of the form, check the appropriate word(s) to indicate if:

You were or were not a United States citizen at the time you appeared to testify. If you are not a citizen, you will be required to show proof of your resident or visitor status.

You were or were not a federal employee at the time you appeared to testify. The fees and allowances on this form do not apply to federal employees. If you are a federal employee, please request instructions for obtaining reimbursement.

You did or did not receive a check or cash advance for your expenses in traveling to court. If you received an advance, enter the amount and issuing office here.

Indicate and/or verify your name, Social Security Number, address, and telephone number to ensure that they are correct. This will be the address to which any reimbursement to you for fees or allowances will be mailed. Correct any erroneous information and enter any missing information.

SOCIAL SECURITY NUMBER/PRIVACY ACT NOTICE: Disclosure of your social security number is mandatory for Federal income tax reporting purposes under the authority of 26 CFR Section 301-6109-1, in order to ensure the accuracy of income computation by the Internal Revenue Service. This information will be used to identify an individual who is compensated by funds of the Department of Justice. Failure to provide this information may result in delay of your compensation, and the Department of Justice will be required to notify the Internal Revenue Service that your number is unknown. This information is being provided on Form 1099 to the Internal Revenue Service.

2. PART II – Allowances

Receipts are required for travel by train, bus or air, all parking, and other single items over \$25.00. If you parked at an airport or have not yet paid your hotel/motel bill or other item requiring a receipt, it will be necessary for you to mail your receipts to the trial office. Your claim for reimbursement cannot be processed until you furnish all receipts for expenses that you are claiming on this Fact Witness Voucher.

Please note: EXPENSES ASSOCIATED WITH YOUR TRAVEL BY YOUR PRIVATELY OWNED VEHICLE ARE LIMITED TO NO GREATER THAN THE COST OF COACH AIRFARE.

The remaining portion of Part II will be completed for you by the Federal government employee assigned to assist you, with the exception of the Witness Certification.

- G. Witness Certification: Verify that all items under Part II are correct. Any changes to Part II must be effected and signed by the Federal government employee assigned to assist you. Sign your full legal name and the date. If you are not a United States citizen, you will be requested to show proof of your resident or visitor status.

Falsification of an item may constitute a forfeiture of claim (28 U.S.C., Section 2514) and may result in a fine of not more than \$10,000 or imprisonment of not more than 5 years or both (18 U.S.C. 287).

Section B of Part I must be signed by an employee of the office that requested the appearance of the witness. Additionally, Section H of Part II must be signed by an employee of the requesting office attesting to the accuracy and completeness of the expenses claimed by the witness before the form is transmitted to the U.S. Marshals Service for payment. The U.S. Marshals Service will process the Fact Witness Voucher and MAIL payment to you at the address indicated on the first page of this form. If you require funds to return home, you must bring this fact to the attention of the individual assigned to assist you.

INSTRUCTIONS TO COMPLETING OFFICE

Section H of Part II must be signed by an employee of the office who requested the appearance of this witness, before the form is transmitted to the United States Marshals Service. Any revisions to Part II must be initialed by a Federal government employee. Changes made to Part II by the witness will not be honored.

All receipts for claims made in Part II must be attached to the Form OBD-3 before it is transmitted to the United States Marshals Service for payment.

Distribution of the Form OBD-3 shall be as follows: The ORIGINAL signed, completed form is retained by the U.S. Marshals Service. One COPY of the signed, completed form is provided to the Paying Office; one COPY is provided to the DOJ Litigating Trial Office; and one COPY is provided to the witness.