

Using a Subpoena in the Probate Court (Form 6)

This guide gives general information for the applicant or respondent who wishes

to ask the Probate Court to issue

a subpoena. It does not explain the law.

Court staff can give general information

about how the court works, and

about court rules and procedures.

Court staff can not give legal advice.

Speak to a lawyer for legal advice

about your situation.

What is a subpoena?

A subpoena is a court document that requires a person to give evidence at a court proceeding. The subpoena tells a person that they must come to court at a certain date and time to give evidence to the court. They may be required to give evidence by either coming to court to answer questions, or bringing or providing the court with documents, or both.

Why might I need a subpoena?

If a person or representative of an organization refuses to come to court or is unable of their own free will to come to court, and you will need them or documents they have to prove your case, you may ask the court to issue a subpoena.

The subpoena will require them to come to the court on a certain date. You will need to pay witness fees to anyone you subpoena.

Before you ask the court officer to issue a subpoena, you should talk to the person you want to call to court to testify or to a representative of the organization that holds the documents you want to subpoena. Find out

- if they have the desired document(s)
- how much it will cost to locate and copy the document(s)
- whether they will provide copies of the documents that you want without the need for a subpoena

Based on this information, ask for only what documents you will need to prove your case. Avoid paying to have documents produced to the court that may be irrelevant and unhelpful.

When must I serve the subpoena?

Serve the witness with a subpoena at least 4 days before the date set for the hearing.

How to subpoena a witness in the Probate Court

Step 1

Identify the need for a subpoena.

Step 2

Get a subpoena form. A subpoena for the Probate Court (Form 6) is attached. You can also find it on the Internet at www.gov.ns.ca/just/regulations/reg/prob-6.htm.

You can also get a blank copy of the forms at the court administration office in the court house.

Step 3

Fill in the subpoena form with the required information. Make 3 additional copies of the subpoena—one for the person being subpoenaed, one for you, and one for the court.

Step 4

Take the original subpoena and 3 copies to the court administration office. A designated court officer must sign a subpoena before it is valid. The court officer will decide whether the subpoena complies with the rules relevant to the court case. If the court officer is satisfied with your subpoena and signs it, they will give you back the original and all copies but one, which will be kept in the court case file. This is called “issuing” the subpoena.

Step 5

Serve (deliver) the subpoena by personal service at least 4 days before the date set for the hearing. When counting the 4 days, do not include the date of the hearing. You must arrange for it to be served personally on the person or organization that you are requiring to come to court. You cannot use registered mail or fax the person who you have subpoenaed. To serve the subpoena on a person or on an organization that you are requiring to come to court, you or a person you choose must do one of the following:

- hand a copy of the subpoena to the person
- if it is an incorporated company, hand a copy of the subpoena to a chief officer of the company or to the registered agent of the company

You must have the original subpoena with you when you are serving the witness. If the witness requests you to show them the original, you are required to do so for proper service.

You must pay witness fees to the person you have subpoenaed to court. These must be delivered with the subpoena. Give the witness a copy of the subpoena and the witness fee. Witness fees are traveling expenses to enable the witness to come to court. Pay the witness fees in cash. For further information on the fee amount, check with court staff.

If you want to hire someone to serve the subpoena, look in the yellow pages under “bailiff” and “process servers.” In order to be valid, a subpoena must be served within 10 weeks after the date it is issued by the court.

Step 6

Prove that the subpoena was served. The person who delivers the subpoena must complete the Affidavit of Personal Service. A blank affidavit is attached to this guide. It will tell the court the name and occupation of the person who served the subpoena. It will also tell the court the name of the witness who was served, and where and when they were served. The affidavit must be signed before a commissioner for taking oaths or a lawyer. Call ahead to make sure someone will be available to “take the affidavit.” There may be a small fee for this service.

File the subpoena and affidavit with the court before or at the hearing date to prove that the witness, or the documents, or both, were subpoenaed.

To subpoena a professional person to give evidence, there are special rules (Civil Procedure Rule 31). You will be responsible to pay for the expert’s time to prepare for court and to come to court.

Where can I get more information?

For more information about representing yourself in court, visit the Department of Justice website at www.gov.ns.ca/just/repselfmain.htm. For information about the courts of Nova Scotia, go to www.courts.ns.ca.

Form 6
Probate District:
Probate Court file No.:

In the Court of Probate for Nova Scotia
In the Estate of _____, Deceased

Applicant

- and -

Respondent(s)

Subpoena(s.23)

TO: _____
[name and addresses of witnesses]

You are required to attend the trial of the above proceeding in Probate Court to be held at
_____, in _____, Nova Scotia,
[court address] [place]

on _____, the _____ day of _____, 20____,
at _____ o'clock in _____noon and so on from day to day until the end of the trial
to give evidence on behalf of the _____.
[applicant/respondents]

You are also required to bring with you and to produce at the above hearing the following documents or things: [here describe the documents or things]

Your failure to obey this subpoena without adequate excuse may be deemed a contempt of court and you could be arrested and imprisoned.

Issued at _____, Nova Scotia, this ____ day of _____, 20____.

Registrar of Probate

In the Court of Probate for Nova Scotia
In the Estate of _____, Deceased

Applicant

- and -

Respondent(s)

Affidavit of Personal Service of Subpoena

I make oath and say that I personally served the subpoena on the person listed below at the place and time listed by giving that person a true copy of the subpoena.

Name of person served with subpoena

Place where subpoena was served

Date and time served

Day month year time

Name of person who served the subpoena

Occupation of person who served the subpoena

Signature of person who served the subpoena

[sign in front of Commissioner]

Sworn to before me this ____ day of _____, 20____, at

[town, county, province]

Signature of Commissioner for taking oaths etc.

Return completed subpoena to the Probate Court.