

## 4. SUBPOENAS

### A. Witness Subpoenas

You may request that the Commission issue a subpoena to compel a witness to appear at the hearing to testify for you. (The witness may also want the subpoena to present to their employer for leave to attend the hearing). A subpoena is a written "Order" from the Commission directing a witness to attend the hearing at the scheduled date and time and location. To obtain a subpoena, you must submit a written request to the Commission listing your witnesses **and explaining why** each one is important and necessary to prove your case. Also **send a copy** of your request **to the appointing authority attorney**.

If the Commission approves your subpoena request, the subpoena will be prepared and mailed to you. The Commission does not serve the subpoena on the witness. It will be **your responsibility** to see the witness is personally served with the subpoena at least forty-eight (48) hours prior to the hearing. Personal service does not mean mailed to a witness, put in an office mailbox or in-box, or given to a third party to give to the witness. (A witness may agree to receive the subpoena by other than personal service, but without the witness's agreement such methods are not acceptable).

Be prepared to offer the witness a fee for appearing at the hearing, and for his/her transportation to and from the hearing. You must pay the witness the applicable fees before the hearing unless you and the witness have agreed to a different arrangement.

### B. Document Subpoenas

If you believe that the appointing authority has documents in its possession that may support your testimony or that of your witnesses, you may request that the Commission issue a subpoena to compel the agency to give you those documents. Such documents might include letters, e-mails, job descriptions, employee performance reviews, or doctor's notes.

To obtain a subpoena for a document, submit a **written** request to the Commission for a *Subpoena Duces Tecum*. In your request, describe the requested document as precisely as you can; explain why the document is necessary to support your case; explain who has the document; and specify when the document was created. (A subpoena will usually be limited to documents created within the previous three years). Also send a copy of your subpoena request to the appointing authority. See *Commission Rules Section 105.14a* for more information about Subpoenas.

If the Commission approves your request, the subpoena will be prepared and mailed to you. The Commission does not serve the subpoena. You must serve the subpoena on the person who has the documents. It is **your responsibility** to see that the *Subpoena Duces Tecum* is served at least five (5) workdays prior to the hearing.

### **§ 105.14a. Subpoenas.**

(a) *Procedure for requesting* subpoenas.

(1) Subpoenas for the attendance of witnesses or for the production of documents will be issued only upon written application to the Chairperson of the Commission or the Commissioner presiding at hearing, with a copy to the opposing party.

(2) Written application shall specify as clearly as possible the relevance of the testimony or documentary evidence sought. As to documentary evidence, the request must specify to the extent possible the documents desired and the facts to be proved thereby.

(3) Failure to adhere to the requirements of this subsection may result in the refusal by the Commission to issue the requested subpoenas.

(4) Subpoenas for new or additional witnesses will not be issued after a hearing has been commenced and continued unless orally requested on the record at the hearing and approved by the Commission, except that subpoenas issued prior to the commencement and continuance of the hearing may be reissued upon written request.

(b) *Service.*

(1) A subpoena shall be served personally upon the witness.

(2) Subpoenas for the production of documents shall be served personally or by first-class mail upon the individual in possession of the documents, if known, or the agency head, who may designate a knowledgeable alternate as custodian of the documents, or the legal counsel for the appointing authority.

(3) Service of subpoenas for the attendance of witnesses shall be made at least 48 hours prior to hearing, unless the witness agrees to waive the 48-hour requirement. Subpoenas for the production of documents shall be served no later than 5 work days prior to hearing.

(4) Failure to adhere to the requirements of this subsection may result in a ruling by the Commission denying the enforceability of the subpoena.

(c) *Compensation of witnesses.*

(1) Witnesses subpoenaed to appear before the Commission shall be paid a witness fee at the rate specified for the courts of common pleas by the party requesting the subpoena.

(2) Witnesses subpoenaed to appear before the Commission shall be paid, by the party serving the subpoena, mileage at the rate specified for the courts of common pleas for each mile actually and necessarily traveled between the place named in the subpoena and either the place of residence of the witness or the work site, whichever distance is less.

(3) At the time a witness is served with a subpoena, the witness shall, upon demand, be paid the witness fee and travel expenses provided in this subsection by the party serving the subpoena. If no demand is made by the witness at the time of service, the fee shall be tendered to the witness prior to the start of the hearing.

(4) Paragraphs (1)—(3) supersede 1 Pa. Code § 35.139 (relating to fees of witnesses).

(d) *Supplementation.* Subsections (a)—(c) supplement 1 Pa. Code § 35.142 (relating to subpoenas).

#### **Source**

The provisions of this § 105.14a adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial pages (292978) to (292979) and (228459).

If you need subpoenas for any of the witnesses identified on your **WITNESS LIST**, you may include your request for subpoenas in your Memorandum. These subpoenas will be given to you at the Conference, unless you provide other instructions with your request. If you need a subpoena for documents, the request should be submitted on a separate page and in conformity with Commission Rule 105.14a.