

SUBPOENAS - Frequently asked questions

What is the difference between a 42A and 42AA subpoena?

A Form 42A is a subpoena to produce documents and / or give evidence (See Rule 42). It may require a person to attend to give evidence, to produce documents or to give evidence and produce documents. The date for production or appearance is the date of the court hearing. The material produced under a 42A subpoena cannot be viewed without an order of a Judge. Form 42B 'Notice to addressee and declaration' must accompany a Form 42A subpoena when it is issued and served. (except when the subpoena is to give evidence)

A Form 42AA is a subpoena for production to the registrar (See Rule 42A). A 42AA subpoena can be issued when a party who has a solicitor in the proceedings seeks to require a person not a party to produce a document for evidence before either an interlocutory hearing or the trial date. The documents produced can be inspected and photocopied by other parties to the same proceeding, unless an objection is filed. A Form 42AB 'Notice to addressee and declaration' must accompany a Form 42AA subpoena when it is issued and served.

What is the last day for service of a subpoena?

The last day for service of a 42A or 42AA subpoena is 5 working days before the date for production.

Can I issue a subpoena when a case has been finalised?

No. Once a proceeding is finalised, all subpoenaed material is to be returned to the addressee of that subpoena. Under Rule 42A, a subpoena enables a party by service of a subpoena to compel a person not a party to produce documents for evidence *before* the hearing of an interlocutory or other application in a *proceeding*, or the trial of a *proceeding*. If there is no pending hearing, a subpoena cannot be issued.

The subpoena documents are in, why can't I book in to see them even though the production date has not passed?

The ability to view subpoenaed material is governed by a strict set of Rules.

(Refer to Order 42A.08 and 42A.09) Before the production date, an objection may be filed by a party to the proceeding or any other interested party in writing to the Court.

For medical files, 'If a subpoena has been issued by a party other than the plaintiff and relates to ..'production of any hospital or medical file or record concerning the plaintiff or his or her condition' then the plaintiff has 14 days exclusively to view and copy the file and, if necessary, make an objection within that period to the Registrar. If no objections are filed, then any other party can view and photocopy the documents.'

So the Court needs to ensure all time periods for objections have lapsed before making an appointment to view and or copy subpoenaed material.

How can I look at material provided under a 42A subpoena ?

Only with the order of a Judge.

What is the date for production and last date for service of a 42AA subpoena?

The compliance date must be at least 21 days from the date the subpoena was issued, to allow sufficient time for service. The last day for service is five working days before the production date. (See Rule 42.03(8) and Rule 3.01(4))

What do I need to file with a 42A or 42AA subpoena? How many copies do I need to file?

When filing a Form 42A subpoena, a form 42B ‘Notice to addressee and declaration’ must accompany the subpoena at the time of issue(except when the subpoena is to give evidence)

When filing a Form 42AA subpoena, a form 42AB ‘Notice to addressee and declaration’ must accompany the subpoena at the time of issue.

At least three copies of each subpoena (and accompanying Form 42B or Form 42AB) should be filed at the time of issue. One to be retained by the court, a copy for yourself and a copy to be served on the addressee.

Has the subpoenaed material been received by the Court?

Court connect is a link through the County Court website www.countycourt.vic.gov.au and allows parties to view when subpoenaed documents have been received by the Court.

Court Connect is a ‘mirror image’ of the court computer system. If the subpoenaed documents are not viewable on Court Connect, they have yet to be received by the Court.

Go to www.countycourt.vic.gov.au

Click on the ‘Court Connect’ icon (right hand side of the screen under Quick links)

Click on display case information

Enter Case ID

Submit

Scroll down to Subpoenas received – Includes the date received, the location, subpoenaed party, description (i.e. whether documents are medical MDRD or other documents DOCT) and whether they are 42A or 42AA subpoenas.

When do I get my documents back which have been subpoenaed?

Unless a Court order is made by a Judge or a subpoena has been withdrawn by the issuing party , subpoenaed material is retained by the Court until the conclusion of the proceedings.

Why do I need to file two different affidavits of service?

There are two different affidavits that need to be filed when subpoenas have been issued and served. The first is an Affidavit of Service on addressee (See Rule 42A.04). This affidavit should indicate that the subpoena has been served personally on the addressee and include details of that service. The affidavit of service should then be filed by the party who served the subpoena, with the Court. This affidavit should also make reference to Form 42AB (i.e. Notice to addressee & declaration) being served.

The second affidavit that needs to be filed is an Affidavit of Service pursuant to Rule 42A.04. Once a subpoena has been served on an addressee, the issuing party must serve a copy of that subpoena on all other active parties. Service of the copies of these subpoenas (as opposed to service of a Subpoena on an addressee which must be personal service) can be personal, by mail or faxed. An ‘Affidavit of service pursuant to Rule 42A.04’ must then be sent to the Court as soon as practicable.

Appointments for inspection and photocopying of subpoenaed documents cannot be made until an Affidavit of Service pursuant to Rule 42A.04 has been filed

How can I apply to have the subpoena records released to me? On what grounds?

Applications by solicitors to remove subpoenaed material (See Rule 42A.11).

Documents may only be removed from the custody of the Registrar after an application is made in writing to the Registrar and a written undertaking signed by the solicitor for a party is given to the Registrar. In accordance with the Rules, a party to the proceeding or an addressee of a subpoena may apply to remove subpoenaed material from the Registry to inspect and/or photocopy the documents.

The grounds for such an application are as follows –

- That the subpoenaed material is on CD and is unable to be viewed in the registry; or
- That the documents received are too voluminous to copy in the registry;

The determination of these applications are at the discretion of the Court and once granted, must be returned by the date in the order.

Applications by an addressee to remove subpoenaed material (See Rule 42A.12)

This rule refers to addressees who require the documents filed under a subpoena to be temporarily returned to them. The common applicants include medical centres, doctors and hospitals who require their files for ongoing medical treatment or to refer to their file under subpoena to prepare medical reports for Court. These applications are made in writing by the addressee under the subpoena.

Can I make an appointment at the counter?

Because of all the checking that needs to be done each time a request to inspect / copy subpoenaed material is made, its best to call or email requests for appointments.

Our direct phone number is 8636 6525

Our email address is civil.counter@countycourt.vic.gov.au

What information do I need when I call up to make an appointment?

When calling to make an appointment you will need to know –

Case number;

Parties names;

Which party you act for;

The production / compliance of the subpoena;

Whether your firm issued the subpoenas;

Any relevant court orders that relate to the subpoenaed material

What are the appointment times?

The County Court Registry has two inspection areas for inspection of subpoenaed documents. There are four photocopiers available to copy documents upon appointment. The appointment times are as follows and are in 90 minute blocks –

9:30 am, 11:00 am, 12:30 pm, 2:00 pm and 3:30 pm

The Court will advise of the next available appointment time.