

Practice Note DC (Civil) No. 8

Early Return of Subpoenas

This Practice Note supersedes and replaces the previous Practices Notes referable to early return of subpoenas.

1. Introduction

- 1.1 The issuing of subpoenas and the inspection of documents is vital to the proper preparation of cases. The Court provides a system for the early production of documents so that parties can meet the time standards imposed by Practice Note 1.
- 1.2 The power to deal with subpoenas is delegated to the registrar by a direction under section 13 of the Civil Procedure Act 2005.

2. System for Early Return of Subpoenas

- 2.1 The Court aims to allocate a return date within 6 weeks of the issue of a subpoena for production.
- 2.2 The Court has adopted the following system for the early return of subpoenas and access to documents to give effect to the powers in rule 33.9 of the Uniform Civil Procedure Rules 2005
 - (a) In Sydney the issuing party will select a return date from the dates published on the Sydney court list (available from the Court website) and endorse it on the subpoena. The return dates for Sydney are Mondays at 11am and Thursdays at 9am.
 - (b) The issuing party must endorse the proposed access order on the subpoena as well as the subpoena notice and declaration (Form 28). If the issuing party does not propose an access order on the subpoena notice or subpoena the following access orders will apply:

“The issuing party to have first access for 7 days; thereafter, in the absence of further application, access to all parties.”

Where a different proposed access order is sought the issuing party must state his or her reasons in the notice. If there is a dispute over the proposed access the parties must appear on the return date.

- (c) The Subpoena Notice and declaration (Form 28) is to be attached at the front of the subpoena and the addressee (subpoena recipient) is required to complete the declaration as to whether the documents produced are copies of documents, original documents or a mix of copies of documents and original documents. If the material produced is declared to be copies of documents the registrar may, without further notice to you, destroy the copies after the expiry of a period of 4 months from the conclusion of the proceeding or, if the documents become exhibits in the proceeding, when they are no longer required in connection with the proceeding, including on any appeal. If the material produced is declared to be original documents or a mix of original and copies of documents the Court will return all of the material to the producer at the address specified in the declaration.
- (d) The issuing party must file only one subpoena and declaration in the registry per addressee (subpoena recipient). The subpoena and declaration will be stamped and returned for service on the addressee (subpoena recipient). The issuing party is to make copies of the filed subpoena and declaration.
- (e) A clear photocopy of the original subpoena must be served on all other parties who have an address for service within 7 days of issue. If the return date is less than 2 weeks away, a clear photocopy of the subpoena must be served within 24 hours.
- (f) Parties are advised that if they consent to the proposed access orders the Court will generally make the proposed access order. There is no need for the parties to appear on the return date if all parties consent to the orders sought thereby saving parties the cost of an attendance.
- (g) The issuing party must appear on the return date if it has not notified all parties of the issue of the subpoena. The Court may make costs orders against parties who have not complied with the rules and this practice note.
- (h) Any party, or the producer, may object to the issuing party about the proposed access order. The issuing party must notify all other parties of the objection. Parties who wish to contest the proposed access order must appear on the return date and argue the question before the registrar.
- (i) Any application by a producer for costs of production should be determined on the return date.

- (j) If the subpoena has not been served, the issuing party should appear on the return date and ask the registrar for a new return date.
- (k) If documents have not been produced the issuing party may obtain a further return date from the registry. In Sydney, the further return date may be obtained by emailing the registry with the request and the following details:
- Case number and names of parties
 - Name of producer/subpoena recipient and return date missed
 - Proposed access orders
 - If there is a hearing within one month and an earlier return date is required.
- (l) Practitioners should wait at least one day after the return date before seeking any further dates in case the documents have been received late and are awaiting registration. If the subpoena recipient has advised you that they will not be producing on the return date please advise the registry when seeking a further return date.
- (m) The party seeking a further return date must inform all other parties of the new return date and advise the subpoena recipient/addressee to endorse the new date on the subpoena or documents before producing. This is to ensure that access to documents is granted on the correct return date.

3. Access to documents

- 3.1 When the proposed access order takes effect, parties may inspect documents in the registry in accordance with that order. The other parties may inspect the documents produced as soon as the first access order has expired.
- 3.2 Practitioners should be aware that, if the party with first access does not inspect documents in accordance with the proposed access order, other parties may inspect privileged documents and the privilege may be lost.
- 3.3 The Court has broad discretionary powers under rule 33.8 of the Uniform Civil Procedure Rules 2005 with respect to access to and copying of documents.

- 3.4 If seeking to view or copy documents in the registry legal practitioners (their staff, agents or photocopy firms) are requested to supply a copy of the Justicelink eServices court item printout for each case (highlighting the packet numbers they require) and endorse their full name, firm and contact number on the printout.
- 3.5 In Sydney, bulk copy firms, agents or legal practitioners requiring more than five sets of documents to be copied are requested to email or fax the Justicelink eServices court item printouts to the registry (prior to 9am) to enable staff to prepare documents in advance. This will save waiting time at the registry in obtaining the documents.
- 3.6 Uplift of documents or items produced by a party require approval by the registrar. Parties should seek consent of all parties and the producer prior to making an application.
- 3.7 Photocopy facilities (A4 colour/ black and white) are available in the Sydney District Court Civil Registry.
- 3.8 The Sydney District Court Civil Registry contact details are:
Email: ag_sdc_civil@agd.nsw.gov.au Fax: 93775800
- 3.9 For Sydney, the available subpoena return dates may be viewed on the District Court website by clicking on **Daily lists** at:
- <http://www.districtcourt.justice.nsw.gov.au/districtcourt/courtlists.html,c=y>
- 3.10 For information on how to register with Justicelink eServices contact the Sydney registry for a brochure or phone 9377 5588 and ask for Justicelink eServices.

The Hon. Justice R.O. Blanch A.M.
Chief Judge
15 June 2011