

UC Davis Policy and Procedure Manual

Chapter 320, Records and Archives

Section 30, Legal Notices

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Responsible Department: Risk Management Services

Source Document: UC Business & Finance Bulletin RMP-10: Instructions for Responding to Subpoena

I. Purpose

This section outlines procedures to be followed by campus departments upon receipt of a legal notice such as a claim, summons & complaint, or subpoena. UCDHS departments should refer to UCDHS Hospital Policies & Procedures Manual Section 1503 for appropriate procedures.

II. Definitions

- A. Service of Process--delivery of legal notices to an individual or organization to provide official notice of a legal action or proceeding.
 - 1. Personal service—hand delivery of legal papers.
 - 2. Mail service—mail delivery of legal papers.
- B. Claim--a written demand for payment, sometimes received prior to a lawsuit.
- C. Summons and Complaint--the legal documents that initiate a lawsuit.
- D. Subpoena--a court or administrative order compelling a person or representative of an organization to testify or produce records on a certain date. Types of subpoenas include but are not limited to the following:
 - 1. State or federal.
 - 2. Civil, criminal, or administrative agency (e.g., Workers' Compensation Appeals Board).
 - 3. Trial, deposition, or administrative hearing.
 - 4. Production of records only, personal appearance only, or personal appearance and production of records (i.e., duces tecum).
- E. Record custodian--the person in charge of a department's records. When a subpoena has been served, this person must sign an affidavit concerning the authenticity of the records.
- F. Witness fee--compensation paid to a person who has been subpoenaed but is not a party to the lawsuit (plaintiff or defendant).

III. Policy

- A. The University's attorneys, liability insurance carriers, and administrators must receive legal notices in a timely fashion to protect the University and its employees.
- B. Departments and individuals who receive a subpoena involving University business are responsible for responding, but should seek assistance from Campus Counsel's Office or Risk Management Services.

IV. Procedures

- A. General procedures
 - 1. When received, all legal documents must be marked on the first page with the date and time of service, the method of service (mail or personal), and the name of the person who first received the papers.
 - 2. All claims and summons and complaints involving the University must be sent to Risk

Management Services the same day they are received, or as soon thereafter as practicable. The documents may be faxed (757-8385), followed by sending the originals by campus mail.

3. Requests for legal advice on service of process should be channeled through Campus Counsel or Risk Management Services.
- B. Personal service of claims, or summons and complaints, on The Regents
1. A process server attempting to serve The Regents of the University of California shall be instructed to deliver the papers to the Office of the President in Oakland.
 2. If the process server leaves a copy of the documents, the individual or department shall forward them to Risk Management Services immediately.
- C. Personal service of claims, or summons and complaints on an individual employee where the claim or lawsuit involves University business
1. If the claim or lawsuit involves University business, but the process server advises that the papers are meant for an individual, the process server should be allowed to meet briefly with the individual to deliver the papers.

If the employee is unavailable, the process server may ask to leave the papers with a person "obviously in charge" of the department or office where the employee works.
 2. The person accepting the papers should note the appropriate information on the document (see IV.A.1, above).
 3. The papers should be faxed to Risk Management Services immediately or as soon as practical.
 4. The employee named in the papers should contact Risk Management Services to discuss legal representation.
- D. Mail service of claims, or summons and complaints, on the University, or on individuals where the claim or lawsuit involves University business
1. The papers should be forwarded to Risk Management Services immediately or as soon as practical.
 2. Do not complete or return the "Notice and Acknowledgement of Receipt--Civil" form that may be included; a University attorney will complete and return the form.
- E. Personal or mail service of subpoenas involving University business
1. Subpoenas may be served on an individual, on the custodian of records by name or title, or on a department or office. A subpoena received by mail service or personal service should be accepted, then the individual or department should contact Campus Counsel for assistance.
 - a. For personal service of a subpoena addressed to an individual, the process server should be allowed to meet briefly with the individual to deliver the subpoena.
 - b. If neither the individual nor the University is named as a party to the lawsuit (plaintiff or defendant), and the individual is being subpoenaed as a witness, the individual should ask the server for the witness fee to which the witness is entitled by law
 2. A subpoena duces tecum may be addressed to "Custodian of Records" of a particular department.
 - a. If the server has brought it to some place other than the department named on the

subpoena, he/she should be directed to the correct department.

- b. If a subpoena duces tecum has been presented to the department named in the subpoena, the papers should be accepted even if the records described in the subpoena do not exist. The record custodian must respond by indicating that the records described do not exist.
 - c. If the records exist, but in a department other than the one named in the subpoena, the process server should be directed to the correct department (if known) or to the Office of Campus Counsel.
 - 1) If the process server insists on leaving the subpoena, the subpoena should be accepted and forwarded to the Office of Campus Counsel.
 - 2) Campus Counsel will forward the subpoena to the correct department.
 - d. The individual accepting the subpoena should not ask for witness fees as these are generally billed.
3. In general, the department is obligated either to provide the information described in the subpoena duces tecum, to respond saying the department has no records that fit the description in the subpoena, or to claim that the records are "privileged" and should not be released.
- a. Some medical, legal, and "confidential" records are exempt from disclosure and the University could be penalized if the information is disclosed.
 - b. All potential claims of privilege must be discussed with Campus Counsel.
- F. Personal Service on an individual employee, not involving University business
1. The process server should be allowed to meet briefly with the employee.
 2. If the employee is unavailable, the process server may want to leave the papers with someone else in the office with instructions that they be given to the person for whom they are intended. If the papers can be given to the addressee in the normal course of business, the department should comply with the request.

V. Further Information

Further information can be obtained by contacting Risk Management Services at 757-8391.

VI. References and Related Policy

- A. California Code of Civil Procedure Sections 415, 416, 1985, 2020.
- B. California Evidence Code Sections 1560-1564.
- C. California Government Code Section 68093.
- D. Business & Finance Bulletin RMP-10: Instructions for Responding to Subpoena, 6/15/89.
- E. Office of the President, Risk Management & Safety: Letters to Campus Risk Coordinators on Handling of Summons and Complaints, 6/14/76, 3/25/77, 1/17/78, 9/20/84.
- F. Personnel Policies for Staff Members, Policy 46, Administrative Leave.
- G. Policy & Procedure Manual:
 1. Section 320-10, Records Management Program.
 2. Section 320-20, Privacy of and Access to Information.
 3. Section 320-21, Privacy and Disclosure of Information from Student Records.

4. Section 320-35, Privacy of Health Information.