



When a Clinician Receives a Subpoena

Clinicians should notify their supervisor and/or medical institution when they receive a subpoena if that is their routine practice or consistent with institutional policy.

A subpoena may be issued for a specific date and time, or it may be issued for a date range. Upon receiving the subpoena, the clinician should consult the attorney who issued the subpoena to determine:

- Who the attorney represents (particularly if the issuing attorney is not a prosecutor)
- When the clinician's is expected to testify, i.e., whether the clinician should expect to testify on the exact date of the subpoena or sometime during the days that follow.
- Whether there is flexibility in scheduling testimony to accommodate the clinician's availability
- The logistics of testifying, i.e., where the clinician should wait to be called; what the clinician should bring with them, e.g., copy of medical report, copy of CV or resume.
- Whether the clinician can discuss their testimony with other witnesses and non-witnesses.
- When the attorney is available to meet with the clinician to prepare for testimony

Subpoenaed by the Prosecution

Clinicians most often receive subpoenas from prosecutors who represent the government in criminal cases in which defendants, i.e., offenders, are charged with crimes. Victims' attorneys may also subpoena clinicians to testify in non-criminal proceedings.





Subpoenaed by the Defense

Defense attorneys who represent offenders/defendants in either criminal or civil cases may subpoena clinicians. Clinicians should follow the same practice they would follow when receiving a subpoena from the prosecutor or attorney for the victim, with additional considerations:

- The clinician should notify the prosecutor (or attorney for the victim) that they were subpoenaed by the defense. Most prosecutors would want to know that a defense attorney has subpoenaed the clinician, even if it is for civil proceedings, and even if the clinician also received a subpoena from the prosecutor.
- Even if a clinician receives a subpoena from a defense attorney, prosecutors (or attorneys for the victim) may want to meet with the clinician -- and likewise clinicians may benefit from meeting with the prosecutor.
 - Note: When a clinician is called as a defense witness in a criminal case, the prosecutor will have the opportunity to cross-examine the clinician during which the prosecutor is permitted to ask either open-ended or leading questions that could potentially strengthen the prosecution's case. That is why it is good practice for a clinician to meet with the prosecutor prior to a clinician testifying as a defense witness.
- If the defense attorney requests to meet with the clinician prior to testimony, it is the clinician's choice whether to alert the prosecutor and/or to meet with the defense attorney. The clinician may prefer the prosecutor to be present for the meeting, and if so, the clinician should advise the defense attorney.
 - Note: If the clinician refuses to meet with the defense attorney:
 - In some jurisdictions, a judge may order the clinician to sit for a deposition by the defense attorney. Because this is jurisdiction-specific, clinicians may want to consult with the prosecutor about the potential consequences of refusing to meet with the defense attorney.
 - The clinician's reluctance to speak with the defense attorney could be used by the defense attorney during the clinician's testimony to show the clinician's lack of impartiality.