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UNDERSTANDING SUBPOENAS

By **Michael Lynch**, 13 April 2015



UNDERSTANDING SUBPOENAS

If documents, or a person (outside of the parties) is seen by either spouse as being relevant and important for the Court to consider, that information can be compelled to be presented to the Court by way of a subpoena.

Subpoenas are frequently issued and it is important to know some of the basic rules that apply to them. Most importantly, there are different protocols depending upon whether a subpoena has issued from the Family Court, or the Federal Circuit Court.

Documents:

A Subpoena seeking the production of documents must identify the document to be produced by the time and place for production. In the Family Court there is no limit on the number of subpoenas that can be issued, except in the hearing of an Application in a Case (or Interim Hearing) where it is limited to 3 subpoenas. In the Federal Circuit Court, each party is limited to issuing a maximum of 5 subpoenas. If a party seeks to issue more than 5, they must first obtain the leave of the Court.

A Person:

A subpoena requiring the attendance at Court of a person must (in addition to the above) also include a copy of the prescribed Court brochure.

Payment:

A party is also required to pay the named person conduct monies, which must be in an amount sufficient to meet the reasonable expenses of complying with the subpoena. In the Family Court, this must be at least \$10, while in the Federal Circuit Court, at least \$25.

Objecting:

A person named in a subpoena may object to it. The objection can be made to the production of the document, or to different stages of the process, (such as, the production of the document, the inspection of the document, or copying of it). The grounds for objection can include where:

- The subpoena was not issued for a bona fide purpose;
- It has been used for discovery against a third party;
- The subpoena is oppressive; or



- The subpoena has been issued as a mere fishing expedition.

If a person fails to produce documents under a subpoena, the Court may issue a warrant for the named persons arrest and order the person to pay any costs caused by their non-compliance.

ABOUT MICHAEL LYNCH



Michael has practiced for over 25years, specialising in **Family Law and De Facto Relationship Law**. He is well recognised and respected as one of Queensland's leading **Family Law Specialists** and has extensive experience in complex Family Law matters, including **Property Settlement** and Children's matters.

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