

7 FAM 980 SUBPOENA OF CONSULAR OFFICER OR CONSULAR RECORDS

*(CT:CON-127; 01-26-2006)
(Office of Origin: CA/OCS/PRI)*

7 FAM 981 SUMMARY

(CT:CON-127; 01-26-2006)

You may be contacted directly by attorneys in the United States or persons in the host country requesting your testimony or release of consular records. Depending on where the evidence sought will be used, in a court in the United States or in a court in the host country, specific procedures summarized in this subchapter apply. You should immediately notify CA/OCS/PRI (ASKPRI@state.gov) when you receive such an inquiry. Do not provide any oral or written testimony or release any official record without the specific Department of State permission outlined in this subchapter. CA/OCS/PRI will coordinate with the Office of the Legal Adviser (L) in the Department's response to the subpoena. Private persons who do not attempt to subpoena a consular officer, but simply inquire about how to obtain expert consular testimony and release of records should be directed to 22 CFR 172 Service Of Process; Production Or Disclosure Of Official Information In Response To Court Orders, Subpoenas, Notices Of Depositions, Requests For Admissions, Interrogatories, or Similar Requests or Demands in Connection with Federal or State Litigation; Expert Testimony.

7 FAM 982 APPEARANCE AT TRIAL

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- a. If the subpoena calls for the consular officer to appear at a trial in the U.S., the officer generally may not testify unless authorized by the Assistant Secretary of State for Consular Affairs, the Director General of the Foreign Service (see 2 FAM 510), the Legal Adviser, or their delegates. If approved the Department will provide a travel itinerary. Expenses for the consular officer's travel generally are borne by the requesting authority unless the underlying cause of the action is related to the consular function, as, for example, in a visa fraud prosecution. If

the subpoena is issued at the request of someone other than the Government, the private party must bear all expenses.

- b. If the subpoena calls for the consular officer to testify in a foreign court, the officer may be required to appear, but may not give testimony without the Department’s approval (L/DL, L/CA, and the Assistant Secretary for Consular Services). The Department may instruct the consular officer to appear and claim immunity from testimony or to appear, to waive immunity, and testify consistent with the waiver. The post should consult L/DL (Diplomatic Law) in all cases concerning subpoenas that call for the appearance or testimony of a consular officer or foreign service national employee of the consular section. For information on waiver immunity see 2 FAM 221.5.

7 FAM 983 SUBMISSION OF DOCUMENTS

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A subpoena that calls for producing documents in court must take priority over other work. In some cases, however, it may be possible to quash a subpoena, or to obtain an extension of time in which to respond. Questions concerning response to a subpoena should be raised with the appropriate office in the Legal Adviser’s Office (L). Consular Officers may contact CA/OCS/PRI (ASKPRI@state.gov) for assistance in relaying questions to L.

7 FAM 984 COURT OR OTHER OUTSIDE NOTIFICATION TO CONSULAR OFFICER

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If the consular officer receives a subpoena or request other than a subpoena directly from a foreign court or other foreign entity without notification from the Department, the officer should report at once to the Department (L/DL) by telegram, quoting the subpoena, or faxing a copy for the Department, so that it may decide whether to approve the consular officer’s appearance and/or compliance with the request for documents. If the consular officer receives a subpoena or request from a U.S. court, L/CA and CA/OCS/PRI (ASKPRI@state.gov) should be notified at once.

7 FAM 985 FOREIGN COURT PROCEEDINGS

7 FAM 985.1 Testimony of Consular Officer/Subpoena of Consular Records

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- a. Immunity of diplomatic or consular officers shall not be waived except with the express prior consent of the Department (L/DL; 2 FAM 511).
- b. In cases involving official activities of Department personnel, the key factor in determining whether immunity may be waived is the potential impact upon the U.S. government. If a consular officer or other officer at post is requested to appear as a witness in a foreign court proceeding in an official capacity or to produce evidence, forward such request to the Department (L/DL) by scanned email, telegram or FAX for determination. Likewise, forward requests for testimony of foreign service national employees or consular agents to the Department (L/DL).

7 FAM 985.2 Release of Consular Statements and Records

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No U.S. government employee should furnish affidavits, declarations, and or written testimony related to an official function unless authorized to do so by the Director General of the Foreign Service and Director of Personnel, the Assistant Secretary for Consular Affairs, or the Department's Legal Adviser (see 22 CFR 172). This proviso applies to requests from foreign officials and private individuals, such as private attorneys.

7 FAM 986 VISA RECORDS--SECTION 222(F), INA

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The records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States are considered confidential. They shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States except that, in the discretion of the Secretary of State, certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court, in the interest of the ends of justice, in a case pending before the court (see 22 CFR 40.4 and 9 FAM 40.4 Notes). Questions regarding release of visa records should be brought to the attention of CA/VO and L/CA.

7 FAM 987 THROUGH 989 UNASSIGNED