

How do I obtain documents from a third party to use in a law suit?

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People that have claims can find themselves in the situation of needing to obtain documents and records from a third party to use against the party they are suing or being sued by. The best way to go about this usually is to utilize Rule 45 of the Massachusetts Rules of Civil Procedure. This rule allows a party to a law suit to depose, and in conjunction with the deposition, to obtain documents from third parties.

Initially, you must partly draft a Subpoena *Duces Tecum* and have it issued by the court clerk, justice of the peace, or notary. Then you must choose a date and time for a deposition that is at least 30 days from the date the third party will be served. (You must be ready to supply a stenographer to record the deposition, if indeed the deposition actually occurs.) You must complete the rest of the rest of the Subpoena *Duces Tecum*. You must pay attention to the limits on the miles the deponent is supposed to travel and provide sufficient funds in advance for the attendance and the travel costs. Mass. R. Civ. P. 45(c) and (d)(1). You must serve the third party with the Subpoena. You will need to know what person or entity to make service upon and how to go about it. You may be able to send the Subpoena by certified mail, return receipt requested, and you may want to use the sheriff of the county where the service will be made to make the service.

The "*Duces Tecum*" language means "you shall bring with you." This added language makes a subpoena, which only requires the presence of the natural person (or natural person designated by a corporation), require the presence of the person plus the documents named. (If you just want to depose someone, this language is not used.)

If you are really looking for the documents (and are not interested in bothering some poor third party to appear and answer questions under oath), which is typically the case, then you can inform the third party that you are inclined to cancel the deposition in the event that you are satisfied with the documents. Upon receipt of the documents, be professional and inform the third party right away the deposition is cancelled.

In the event the documents concern information people other than the third party have an interest in. The third party is likely to inform those people that they have been served with a Subpoena *Duces Tecum* and will be

providing the information. This allows those people to contest your Subpoena in court and to try and prevent the information from being released.

You also may be asked to pay the third party the reasonable costs to produce the documents. Mass. R. Civ. P. 45(b). This is especially so if the third party is a large corporation and it has procedures in place due to the abundance of Subpoenas it receives due to its size or particular business. (Think Facebook, Microsoft, and YAHOO!)

This process can be daunting for one that has not been through it. The response, or lack thereof, of third parties can vary greatly and makes it necessary for you to be nimble and react quickly to enforce your rights. In the event you believe you have a claim but need documents or information from a third party, feel free to contact the office.

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