



DEPARTMENT OF REVENUE
Executive Director's Office
HEARINGS DIVISION

1881 Pierce Street
Entrance B, Room 106
Lakewood, Colorado 80214-1493
Phone (303) 205-5606
Fax (303) 205-5700

John Hickenlooper
Governor

Barbara J. Brohl
Executive Director

Michael S. Williams
Director

Subpoena Request Cover Sheet

Name of Respondent: _____

Case # _____

Is party being subpoenaed a witness to the incident? _____

Name of Requestor _____

Phone Number of Requestor _____

Preferred Return Method:

Fax Email Mail

Fax # _____

Email Address _____

Mailing Address _____



**REQUIRED STATEMENT ATTACHMENT FOR ISSUANCE OF SUBPOENA or
SUBPOENA DUCES TECUM IN DMV HEARINGS**

Pursuant to 1 CCR 211-2 (5.5), if the subpoena being issued is for anyone other than the officer who signed the Express Consent Affidavit, a separate attached statement must also be submitted. This attached statement must provide detailed responses to each of the requirements listed below.

- 5.5.1 The nature of the expected testimony or evidence;**
- 5.5.2 Why such testimony or evidence is relevant and necessary and not cumulative of other evidence;**
- 5.5.3 Why the provision of the evidence is no unduly burdensome on the entity or witness subpoenaed;**
- 5.5.4 Why compliance with the subpoena will not unreasonably delay or prolong the proceedings; and**
- 5.5.5 That the evidence sought is not otherwise available to the Hearing Officer**
- 5.6 When multiple witnesses or documents are requested for a single hearing, this attached supporting statement must clearly delineate why each witness or document is necessary, and why the evidence sought is not cumulative.**

Pursuant to 1 CCR 211-2(5.7), every request for a subpoena must be signed by the Respondent or the Respondent's attorney:

- 5.7 Every request for a subpoena (excluding that for the officer who signed the Affidavit and Notice of Revocation for hearings under C.R.S §42-2-126) shall be signed by the Respondent or the Respondent's attorney. This signature constitutes an affirmation that the request is in compliance with C.R.C.P. 26(g)(2). Any request that lacks this affirmation will be denied.**

Pursuant to 1 CCR 211-2(5.4), any request for a *subpoena duces tecum* must specifically identify each document to be produced.

Failure to comply with the above provisions may result in your Subpoena Request being denied. You must use additional pages to this attachment.

In the matter of the driving privilege of:

Respondent: _____ Case Number _____

Hearing Date: _____ Time: _____

Statement in Support of Subpoena for _____

(5.5) While *Fallon v. Colo. Dep't of Revenue*, 250 P.3d 691, 694–95 (Colo. App. 2010), passed upon the statutory authority to enact rules for the issuance of subpoenas in these hearings, it did not pass on the constitutionality of said procedure. The opinion uses the word “constitutional” only in quoting from § 42-2-126(9)(b), COLORADO REVISED STATUTES. *Richardson v. Perales*, 402 U.S. 389, 410, 91 S.Ct. 1420, 1431, 28 L.Ed.2d 842 (1971) and *Colorado Dept. of Revenue, Motor Vehicle Div. v. Kirke*, 743 P.2d 16, 20-22 (Colo. 1987)"ctg not distinguished in *Fallon*.

(5.5) This action is commenced by a Notice of Revocation which is a fill-in-the-blank and check-box form. Equal protection of the law mandates that the Respondent be entitled to use the same shortcuts available to the Department and law enforcement before the Hearing Section. Nothing in 1 CCR 211-2 (2009) precludes the use of check-boxes or fill-in-the-blank forms in applying for a subpoena.

(5.5.1) This witness’s testimony is presented in part in an unsworn recitation in the Express Consent packet (_____) and is/are incorporated herein), but **(5.5.2)** that testimony is not under oath, is incomplete as presented, and has not been clarified by cross-examination. In that the Department’s rules do not permit depositions to be taken for hearings under § 42-2-126, COLORADO REVISED STATUTES, Respondent has no way of producing clarified testimony under oath, except by subpoenaing witnesses for cross-examination pursuant to *Richardson v. Perales*, 402 U.S. 389, 410, 91 S.Ct. 1420, 1431, 28 L.Ed.2d 842 (1971) and *Colorado Dept. of Revenue, Motor Vehicle Div. v. Kirke*, 743 P.2d 16, 20-22 (Colo. 1987).

(5.5.3) Respondent has no information that would indicate any exceptional hardship in this witness appearing for hearing. It is the duty of all persons to assist the sovereign in its judicial and administrative fact-finding by complying with subpoenas to appear and testify as to matters within the witness’s knowledge.

(5.5.4) Respondent is not requesting a continuance to obtain the testimony, so the proceedings will not be unreasonably delayed.

(5.5.5) The witness’s complete testimony is not otherwise available to the Hearing Officer and is necessary to a just determination and therefor will not unreasonably delay or prolong the proceedings when balanced against the requirements of due process of law as mandated by *Bell v. Burson*, 402 U.S. 535, 539 (1971).

The documents listed on the “Attachment to Subpoena Duces Tecum” are necessary to a complete understanding of the testimony of this witness and other witnesses in this case.

The “Attachment in Support of Subpoena” is incorporated herein.

Signed: _____ Dated: _____

ATTACHMENT IN SUPPORT OF SUBPOENA

ATTACHMENT TO SUBPOENA DUCES TECUM

DEPARTMENT OF REVENUE
Enforcement Group
 HEARINGS DIVISION
 1881 Pierce Street
 Entrance B, Room 106
 Lakewood, Colorado 80214-1493
 Phone (303) 205-5606
 FAX (303) 205-5700



SUBPOENA TO TESTIFY

In the matter of the driving privilege of:

Respondent _____ Case Number _____

To:	
You are hereby directed to appear <input type="checkbox"/> by telephone <input type="checkbox"/> in person at a hearing before the Colorado Department of Revenue, Hearings Division at :	
On Date:	Time:
<u>YOU MUST TAKE THE FOLLOWING ACTION:</u>	
If your appearance is by telephone, you must contact the Hearings Division at 1-855-813-5221 at least ten (10) minutes prior to the scheduled hearing and provide a telephone number where you can be reached for the hearing. A Hearing Officer will contact you at that number. Your failure to provide a contact number, or failure to be available when called, may result in a default of the case and contempt proceedings against you through the District Court.	
You are also required to produce the following documents:	
If you are appearing in person, bring the documents with you to the hearing. If you are appearing by telephone, the documents may be faxed or mailed, but must be received by the Hearings Division at least three (3) days prior to the hearing.	
This subpoena was issued on the application of:	
<i>**If this subpoena is for other than the appearance of the officer who signed the Affidavit and Notice of Revocation, complete the required statement attachment.</i>	
By: (Hearing Officer)	Date
AFFIDAVIT OF SERVICE	
_____ the Affiant, being duly sworn, says: That he/she is over the age of eighteen years and is not a party to this action: and that Affiant has personally served this within subpoena in the City of _____, County of _____, State of Colorado by handing a copy of same to _____ (name of person), who has been identified as _____ (title of person) on _____ (date), at _____ a.m./p.m., and paid the witness fee(s) as follows:	
WITNESS FEE	\$ _____
(If applicable pursuant to §24-4-105(5) C.R.S.)	
MILEAGE FEE	\$ _____
(If applicable pursuant to §13-33-103 C.R.S.)	
TOTAL	\$ _____
Subscribed and sworn to before me this ____ day of _____, 20____ in the County of _____, State of Colorado	
Notary _____	
My commission expires _____	_____ Affiant



COLORADO
 Department of Revenue
 Executive Director's Office

HEARINGS DIVISION
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SUBPOENA TO TESTIFY

In the matter of the driving privilege of:

Respondent _____ Date of Birth _____

Case Number _____ Date of Offense _____

Officer Name:	Officer Dept.:
You are hereby directed to appear <input type="checkbox"/> by telephone <input type="checkbox"/> in person at a hearing before the Colorado Department of Revenue, Hearings Division at :	
On Date:	Time:
<u>YOU MUST TAKE THE FOLLOWING ACTION:</u>	
If your appearance is by telephone, you must contact the Hearings Division at 1-855-813-5221 at least ten (10) minutes prior to the scheduled hearing and provide a telephone number where you can be reached for the hearing. A Hearing Officer will contact you at that number. Your failure to provide a contact number, or failure to be available when called, may result in a default of the case and contempt proceedings against you through the District Court.	
You are also required to produce the following documents:	
If you are appearing in person, bring the documents with you to the hearing. If you are appearing by telephone, the documents may be faxed or mailed, but must be received by the Hearings Division at least three (3) days prior to the hearing.	
Name and Signature of individual requesting the Subpoena:	
**If this subpoena is for other than the appearance of the officer who signed the Affidavit and Notice of Revocation, complete the required statement attachment.	

By: (Hearing Officer)	Date
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AFFIDAVIT OF SERVICE	
_____ the Affiant, being duly sworn, says: That he/she is over the age of eighteen years and is not a party to this action: and that Affiant has personally served this within subpoena in the City of _____, County of _____, State of Colorado by handing a copy of same to _____ (name of person), who has been identified as _____ (title of person) on _____ (date), at _____ a.m./p.m., and paid the witness fee(s) as follows:	
WITNESS FEE	\$ _____
(If applicable pursuant to §24-4-105(5) C.R.S.)	
MILEAGE FEE	\$ _____
(If applicable pursuant to §13-33-103 C.R.S.)	
TOTAL	\$ _____
Subscribed and sworn to before me this ____ day of _____, 20__ in the County of _____, State of Colorado	
Notary _____	
My commission expires _____	
_____ Affiant	