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Practice Note 8: Attendance of a Witness to an Arbitration Hearing by Summons

If you need a witness to attend an arbitration hearing you must arrange four things: advanced notification to the potential witness, the summons, an affidavit attesting to the summons, and the correct attendance fees.

First, you must notify a potential witness of your intention to call him or her to give evidence at the hearing at least **30 days** before the first day of your arbitration hearing.

Next, the witness must receive a summons (called a ***Summons to Witness***) to the hearing and payment for attending at least 5 business days before the first day of the hearing.

Finally, the person who delivers the summons must file an affidavit (swearing that the summons and witness fees were delivered in person) with FSCO.

SUMMONING A WITNESS

Step 1: Notice of intention to call witness to attend the arbitration

The Dispute Resolution Practice Code requires each party to identify the expert and lay witnesses they intend to call to the hearing, as part of the pre-hearing process. In addition, **Rule 41 of the Code** requires every party to notify a potential witness of the intention to call him or her to give evidence at the hearing at least **30 days** before the first day of the hearing. A failure to provide proper notice to a potential witness may result in the arbitrator excusing the witness from attending at the hearing.

Step 2: Getting the proper forms

If you wish to summon a witness, get a **Summons to Witness** form (**Form N** found in **Section G** of the **Code**) from FSCO. FSCO can mail or fax the form to you, or it can be picked up in person. If you wish to have a witness at your hearing, you should start this process as early as possible before the hearing date.

Step 3: Filling out the form

Be sure you include all necessary information on the **Summons to Witness** form before you pass it to your witness:

- FSCO's file number;
- your name;
- the name of the insurance company;
- the name and address of the person receiving the summons (witness);
- the date, time and place of the hearing;
- a list of the documents the witness should bring to the hearing.

Step 4: Delivering the Form

The summons must be delivered to the witness in person not less than 5 business days before the first day of hearing. (**Rule 73** of the Dispute Resolution Practice Code). You or your representative can deliver the summons, or you can hire a process server (check the Yellow Pages of your telephone directory). You must also be sure to pay the witness at this time. Remember, you must deliver the ***Summons to Witness*** at least 5 business days before the commencement of the hearing.

CALCULATING PAYMENT TO THE WITNESS

The standard witness fee is \$50 a day for each day of the hearing the witness attends. But an expert witness, like a doctor or an accountant, often charges more. You should speak directly to your doctor or other expert witness to determine any additional fees they may charge in connection with their attendance at the hearing. You are also responsible for paying travel expenses to the witness. These vary:

- If a witness lives in the city where the hearing is held, you are responsible for \$3 per day in traveling expenses;
- If a witness lives outside of the city but within 300 kilometres, you must pay 24 cents a kilometre each way;
- If the witness lives more than 300 kilometres from the hearing, you must pay travel expenses equalling the minimum return air fare, plus 24 cents a kilometre, each way, from the witness's home to the airport and from the airport to the hearing;
- Overnight accommodation and meals can be up to \$75 per day.

Remember, the witness must receive this payment when he or she receives the summons.

IMPORTANT

Be sure you keep your copies of the summons and of the money order or cheque that goes to the witness for fees and expenses. At the end of your hearing, you can ask the arbitrator to award you your costs for witness fees, travel expenses and swearing the ***Affidavit of Service for a Summons to Witness***. (For more information, see **Schedule to Expense Regulation** found in **Section F** of the **Code**).

GETTING AN AFFIDAVIT OF SERVICE

Before the hearing, FSCO must receive a signed affidavit (called an ***Affidavit of Service for a Summons to Witness, Form O***, found in **Section G** of the **Code**) swearing that the witness was handed the summons in person and paid to attend the hearing. The affidavit can be delivered to FSCO in person or by regular, registered or certified mail. It can also be faxed to FSCO as long as the original is mailed to FSCO.

In the ***Affidavit of Service for a Summons to Witness***, the person who delivered your summons swears an oath that he or she has personally handed the summons and required witness fee to the witness. Swearing, or affirming, is done in front of a commissioner of oaths such as a lawyer, notary public, or a designated law clerk or paralegal. Forms will be available wherever you find a designated commissioner of oaths. You may have to pay the commissioner of oaths for this service.

WHAT HAPPENS IF A WITNESS DOESN'T SHOW UP FOR THE HEARING?

Having your witness attend the hearing may be critical to your case. It is vital that your witness is properly summoned and that you keep copies of all documents. If your witness does not attend the hearing, fails to stay, or does not bring the documents listed on the summons, you may not be able to prove your case.

What happens next depends largely on whether the summons, the affidavit and witness fees were properly prepared and delivered a minimum of 5 business days before the first day of the hearing. The arbitrator will review the affidavit to ensure that everything that needed to be done was properly done. If your copies of the documents show that the witness was summoned properly, the arbitrator may grant an adjournment and set another hearing date, or a sheriff's warrant may be obtained through the courts, to have the witness brought to the hearing.

HOW DO I GET MORE INFORMATION?

Our telephone numbers are:

- from Toronto, call (416) 250-6714
- from outside Toronto, phone 1-800-517-2332

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