

**EMPLOYEE CONDUCT – LEGAL ACTIONS:  
SUBPOENAS, WITNESSES**

**HR C7.1**

**INTENT**

See “Purpose” statement below.

**INTRODUCTION**

A “Court” is a judicial body such as the BC Supreme Court. For the purpose of this Policy, the word “Court” also includes administrative tribunals or an arbitrator whose position is governed by law. It also refers to any proceeding or activity in a Court, including proceedings or activities other than trials.

An employee, Manager or Director may be “compelled” (legally required under law, regardless of their own wishes), to appear and testify in Court. The documents requiring such appearance and testimony are called “Summons” or “Subpoena”.

Alternatively, an employee, Manager or Director may *volunteer* to appear and testify in Court. One example of voluntary testimony is of an expert witness who is hired to assist the Court by providing special knowledge or judgment. Another is of a person who has information about an accident, a crime, or business dealing and feels obliged to “do the right thing”.

An employee, Manager or Director may be compelled to act as a witness or an expert witness to provide information considered to belong to the Society or to be confidential under the terms of the employee’s employment.

**COMPELLED WITNESS**

An invitation or summons to testify in Court raises special questions, places an employee in unusual circumstances, and imposes very serious legal obligations to the Court, as well as to the Society.

When employees are compelled, under the law, to testify in Court, they do not have a choice about attendance or on how much they will say. They must testify according to their legal obligations and they must tell the truth. The evidence that they give may or may not be in the best interests of the Society or of a client. However, depending on the circumstances, people and societies have a right, within the law, to ask not to testify or ask not to answer some questions or parts of some questions. These rights are part of the Law of Evidence under our system of law.

**VOLUNTARY WITNESSES**

When employees are asked to *voluntarily* act as witnesses or expert witnesses in a Court, their testimony may or may not be in the best interest of the Society or a client. The Society may decide to require the employee not to testify under those circumstances. Similarly, when an

employee is asked to *voluntarily* provide information to the police or some person or organization which is not a Court, doing so may or may not be in the best interest of the Society or a client.

The Society may decide not to permit the employee to provide such information under those circumstances, provided it is legal to do so.

#### **PURPOSE**

The purpose of this policy is to ensure that employees are aware of their responsibilities as citizens to testify when required and to tell the truth. This policy is also to make employees aware that they:

- have some rights with respect to testifying in Court;
- have a duty to the Society as their employer;
- can exercise their rights;
- must disclose any request or summons to testify to the Society through the Executive Director, well before any scheduled Court date;
- emphasize that the overarching purpose of the Society is to act in the best interests of clients.

The purpose is also, wherever legally possible, employees of the Society:

- do not consent and are not required to testify in Court regarding any question that might, in any way, compromise the Society's purpose and duty to act in the best interests of clients;
- ensure that any information that is the property of the Society is not utilized in a Court without the Society's permission, or at least its knowledge;
- ensure that any information is not used in a manner inconsistent with the best interests of clients.

Furthermore, the purpose is to ensure that:

- information that is the property of the Society is not utilized in a court of law without the Society's knowledge and permission;
- information is not used in a manner that is not in the best interests of clients unless required by a court of law.

#### **POLICY**

An employee of the Society has a duty, both during and after work hours, to act in a manner consistent with the best interests of the Society and its clients.

An employee who receives a Summons or a Subpoena has a public legal duty to the Court. However, when that happens, the employees who are requested to provide information, or requested or required to testify in Court, in any matter related to or arising out of their

employment or to the business or purposes of the Society, must notify the Executive Director. In the case of the Executive Director, he/she will inform the Board of Directors.

Employees may not agree to act voluntarily as a witness or as an expert witness in any Court proceeding which might affect, directly or indirectly, the best interests of a client or clients, unless they:

- first notify the Executive Director, in writing, of their intention
- receive his/her prior permission, in writing, to do so.

The Executive Director may not agree to act voluntarily as a witness or as an expert witness in any Court proceeding which might affect, directly or indirectly, the best interests of a client or clients, unless she/he:

- first notifies the Board of Directors, in writing, of her/his intention
- receives prior permission, in writing, to do so.

**RECEIPT OF A SUBPOENA**

Employees who become aware that information has been subpoenaed or otherwise compelled from the Society, as evidence in Court or by the police, must inform the Executive Director immediately. Only the Executive Director may provide such information or delegate the provision thereof. The Executive Director must notify the Board of Directors of all such requests before providing any information or delegating the provision thereof, where at all possible.

**LEGAL DOCUMENTS**

Employees of the Society must not witness legal documents such as Power of Attorney, Guardianship, and Advanced Directives.

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<b>REPLACES:</b> April 1, 2014	<b>MONITORING:</b> Executive Director	<b>FREQUENCY:</b> Annually