

Excerpted from Laws, Policies, Practices and Procedures

9. Subpoenas, Summonses, and Attorney Inquiries

From time to time, faculty members may find themselves—either directly or indirectly—involved in the legal process as a result of their employment with Simmons. For those unfamiliar with the legal system, this can sometimes be intimidating, confusing, or embarrassing. What follows is a very brief overview of the ways in which you may become involved in the legal process, along with some guidelines for responding if you are served with legal papers or contacted by attorneys or others in connection with a legal matter.

In all instances, your first response should be to contact the General Counsel's Office (Main College Building, C202, X. 2276) and provide the Office with a copy of any legal paperwork you receive. Please understand that legal paperwork often requires an *immediate response*, and any delay may have significant legal consequences for you or the College, or both.

SUBPOENAS

A subpoena is a legal document that can require a person (1) to appear at a certain time and place to give testimony upon a certain matter, or (2) to produce, at a certain time and place, documents or other records regarding specific persons or issues. Subpoenas seeking to compel testimony are generally called "Deposition Subpoenas" or "Trial Subpoenas," depending on the forum in which the testimony is sought. Subpoenas seeking the production of documents or other records are generally called a "Subpoena Duces Tecum." Depending on the circumstances, the College may provide you with legal representation in connection with the subpoena.

Depending on the court in which legal proceedings are pending, subpoenas may be served by a sheriff, a constable, by any disinterested adult, or even by mail. Some people, understandably, may find it disturbing to be served with papers by a sheriff at their workplace (or at home). Please understand that receipt of a subpoena does not necessarily mean that you have been named in a lawsuit. Indeed, more often than not, when faculty members receive a subpoena, it is not an indication that they are (or are about to be) parties to a legal action.

There are many situations in which faculty members are sometimes served with subpoenas, including for example:

- A student or former student is involved in a legal action and one of the parties believes that the student's grades or class performance are relevant to the legal dispute.
- A student or former student has brought a legal action against the College, another faculty member, or an employee of the College and one of the parties believes that you have information or records that are relevant to this dispute.
- A member of the Simmons community has brought a legal action against another member of the College community and one of the parties believes that you have information or records that are relevant to the dispute; or
- An individual or business has brought a legal action against Simmons, and one of the parties believes that you have information or records that are relevant to the dispute.

Virtually any subpoena that would require you to provide records or other information about a student will implicate FERPA, the Family Educational Rights and Privacy Act, which generally prohibits the disclosure of such information subject to certain exceptions. Compliance with FERPA is just one reason that prompt consultation with the Office of the General Counsel is essential.

Although a subpoena will state that you must appear to testify and/or to produce documents or records at a certain date or time, the Office of General Counsel or your own counsel often will be able to arrange for that date to be rescheduled for your convenience, or for the production of documents or records to suffice without the need for you to appear in person.

SUBPOENAS THAT INSTRUCT YOU NOT TO DISCLOSE THE SUBPOENA TO OTHERS

It is also conceivable that you may receive a subpoena that instructs you not to disclose the subpoena to others generally, or to a specific person whose information is the subject of the subpoena. Such a subpoena may be issued under the USA Patriot Act and/or the Foreign Intelligence Surveillance Act (FISA), which generally indicates that the federal government is conducting an investigation into possible terrorist activity, ties, or suspicions. Such a subpoena also may be issued by federal or state authorities in connection with an investigation into other unlawful conduct. It is imperative that any such subpoenas be forwarded immediately to the office of the General Counsel. Although the subpoena may admonish you not to disclose the existence of the subpoena to other persons, the American Association of University Professors and most educational institutions, Simmons included, do *not* believe that this language restricts your ability to communicate with the Office of the General Counsel.

SUMMONSES

A summons is a legal document that signifies the start of a civil legal action. If you are served with a summons that specifically lists your name, this is usually (although not always) an indication that you have been made a party to a lawsuit. Generally, a summons will be accompanied by a complaint (a document which sets forth one or more legal causes of action and the facts that the plaintiff believes justify the lawsuit) and other legal documents. If the lawsuit involves actions that you took in the course of your employment, you should immediately notify the Simmons General Counsel, who will want the originals of all documents that were provided to you.

If you are served a summons on the Simmons campus for a lawsuit wholly unrelated to your employment with Simmons, you are wise to seek private legal counsel immediately. Summonses generally must be answered within twenty (20) days of service (sometimes less, depending on the circumstances), so quick consultation with legal counsel is essential.

ACCEPTANCE OF SERVICE FOR THE COLLEGE

Under no circumstances should you accept a subpoena or a summons directed at Simmons College. Individual faculty members are not authorized to accept service of process on behalf of the College. If a sheriff, constable, or other process server asks you to accept service of a subpoena or summons on behalf of Simmons, direct them instead to the Office of General Counsel. If they insist that you accept the subpoena or summons, do not relent; tell them that you are not authorized to accept it and direct them to the Office of General Counsel.

ATTORNEY INQUIRIES

Sometimes an attorney may attempt to contact you directly, either in writing or by telephone or email, in an attempt to gather information about a pending or possible lawsuit. You are under no obligation to speak with an attorney or someone working on his behalf, such as a private investigator or paralegal, and you should proceed with great caution before you decide to talk with anyone before first speaking with the General Counsel. Your best intentions to be helpful could create serious unintended consequences and problems for you or the College, or both. Your decision to speak with an investigator or attorney may compromise student confidentiality. Your statements may be considered to be admissions that can be used against the College, or against one of your colleagues, or against you.

A wiser course is to take down the name of the caller and say you will get back to her once you have had a chance to confer with the General Counsel. Do not be intimidated by threat of consequences for failing to cooperate or the threat that "if you don't talk to me over the phone, I'll be forced to send a subpoena." Don't be taken in by statements that trial is Imminent and your cooperation is "desperately needed today." Reputable lawyers and those who work for them don't threaten or intimidate people to gain their cooperation. They also prepare for trials months in advance, and it is unlikely that information you have which is so important to the outcome could have been ignored or forgotten until the eve of trial. Proceed cautiously and confer with the General Counsel. There is always time to get advice.