

CHAPTER 5: PREPARING THE CLJ CASE

For a comprehensive discussion of case preparation generally, please refer to the OPD Criminal Practice Manual, Chapter A1: Preparing the Winning Case.

- Additionally, you should take note of the following points which apply to preparing cases in Montana's CLJ:
 - Shortened time lines apply in misdemeanor cases. For example,
 - Rules and procedures in place at the CLJ level often appear – and sometimes are – more informal and relaxed than those in place in district court proceedings. There are both positive and negative aspects to this reality.
 - Much more so than on the district court level, misdemeanor practice in Montana is a creature of localized, and often individually nuanced, custom. There is no substitute for discussing the “rules and practices” which prevail in your local CLJ and for taking time to learn about your justice/judge, the deputy county attorney(s) who prosecute cases in CLJ, and the policies and procedures employed by the county sheriff or city police department.
 - Whether intentionally or as a result of neglect, ignorance, lifestyle or inattention many defendants do not place the same priority on CLJ proceedings and orders as they do on orders and proceedings originating from the district court. Therefore, it is critically important that you communicate clearly with your clients regarding the importance of complying with all court dates and interview appointments. Consequences flowing from misdemeanor criminal actions, often relatively minor, can be amplified significantly by a client's failure to appear and communicate on the original charge.

Getting Witnesses

- Make sure to get the witness's true legal name and address
- Inform witness that your investigator will be calling
- When feasible re: interviewing witnesses, have investigator conduct the interview
- Remember: Witnesses belong to everyone.

Use a subpoena (26-2-101 and 46-15-101, MCA) to obtain the presence of a witness at trial.

Use a subpoena duces tecum to require a witness to produce documents at trial.

Note: Courts of limited jurisdiction may not issue investigative subpoenas.

A subpoena must state the name of the court and the title, if any, of the proceeding and must command each person to whom it is directed to attend and give testimony at the time and place specified in the subpoena.

A subpoena remains in effect unless quashed or until judgment, dismissal, or other final determination of the action by court in which the action was filed or to which the action was transferred.

A subpoena may only be served by an authorized agent: a peace officer or another person who is not a party and who is not less than 18 years of age.

Service is made by delivering a copy of the subpoena to the person named and, if ordered by the court, by tendering to those residing outside the county of trial the fee for 1 day's attendance and the mileage allowed.

Disobedience of subpoena can be punished as a contempt of court.