

**1999 DRAFTING REQUEST**

Bill

Received: **01/26/1999**

Received By: **nelsorpl**

Wanted: **As time permits**

Identical to LRB:

For: **Robert Ziegelbauer (608) 266-0315**

By/Representing: **Luanne K.**

This file may be shown to any legislator: NO

Drafter: **nelsorpl**

May Contact:

Alt. Drafters:

Subject: **Courts - civil procedure**

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Issuance of subpoenas in criminal cases

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Reauired</u>
/P1	nelsorp 1 03/18/1999	chanaman 03/26/1999	ismith 03/31/1999	_____	lrb_docadmin 03/31/1999		
	nelsorp 1 03/26/1999	gilfokm 03/29/1999		_____			
/1	nelsorp 1 04/26/1999	gilfokm 04/26/1999	mclark 04/27/1999	_____	lrb_docadmin 04/27/1999	lrb_docadmin 11/02/1999	

FE Sent For:

*Not Needed*

<END>

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	nelsorp 1 03/26/99	gilfokm 03/29/99		_____			
/1	nelsorp 1 04126199	gilfokm 04/26/99	mclark 04/27/99	_____	lrb-docadmin 04/27/99		
		03/26/99	03/31/99	_____	03/31/99		

*Jacketed* (circled)  
 → for Assm Per RPN

FE Sent For:

<END>

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	nelsorp 1 03/26/99	gilfokm 03/29/99		_____			
FE Sent For:		1-4/26/99 King	MRC 4-26	MRC/JF 4-27 <END>			

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I?	nelsorp 1	1/01-3-29-99 King.	IS 3/31/99	IS/CMH 3/31/99	YES- subn.		

FE Sent For:

<END>

LEGISLATIVE REFERENCE BUREAU

BILL REQUEST FORM

Legal Section, 5th Floor, 100 N. Hamilton St.  
(608) 266-3561

In: Robert P. Nelson

Use of this form is optional. It is often helpful to talk directly with the LRB attorney who will draft the bill.  
Use this form only for BILL drafts. Attach more pages if necessary.

Date of request: <b>JAN 25 1999</b>	Legislator or agency requesting this draft: <b>Ziegelbauer - 207-North</b>
Name/phone number of person submitting request: <b>Wanne Kostelic - 266-0315</b>	
Persons to contact for questions about this draft (names and phone numbers please):	
Describe the problem, including any helpful examples. How do you want to solve the problem? <b>See attached letter</b>  <b>Copy of JED, Check annotations under s. 305. see 972.01? d 972.11</b> <span style="float: right;">D-1 to th</span>	
If you know of any statute sections that might be affected, please list them or provide a marked (not re-typed) copy.	

Please attach a copy of any correspondence or material that may help us. You may also attach a marked (not re-typed) copy of any LRB draft, or provide its number (e.g., 1997 LRB-234% or 1995 AB-67):

Requests are confidential unless stated otherwise.

May we tell others that we are working on this for you?  YES  NO  
If yes, anyone who asks?  YES  NO  
Any legislator?  YES  NO  ONLY the following persons:

Do you consider this urgent?  YES  NO If yes, please indicate why:

Is this request of higher priority than other pending request(s) you have made?  
 YES  NO If yes, please sign your name here:

1234



**KAMINSKI & POZORSKI**

Attorneys and Counselors

846 North Eighth Street - P.O. Box 609

Don A. Kaminski  
Joseph M. Pozorski, Jr.  
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Troy R. Schneider

Manitowoc, Wisconsin 54221-0609

Telephone 920 684-6694

Fax 920-684-6598

January 20, 1999

Representative Robert Ziegelbauer  
P.O. Box 325  
Manitowoc, WI 54221-0325

Dear Mr. Ziegelbauer:

I write this letter to ask you to consider proposing some **legislation** as it relates to procedure in Circuit Courts. At the present time, private lawyers are authorized to issue subpoenas in civil cases. In criminal cases, however, it is still required that the Clerk of Court issue **subpoenas**. This requires the private attorney to prepare the subpoenas, travel to the Courthouse to secure the Clerk of Court's signature, or that of the Judge, then return to the office and prepare the subpoenas for service. This seems to be a **waste** of time not only for the private attorneys that **are** involved, but also for the Clerk of Court and the Judge. Obviously, this procedure could be streamlined, much in the **same way** that civil litigation was streamlined, by simply authorizing private attorneys who are licensed and authorized to practice law in the State of Wisconsin, the same right to compel the attendance of witnesses in criminal cases, that they **currently** have in civil **cases**.

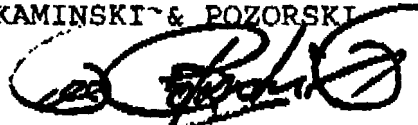
If you *agree* that this simple amendment would help streamline the procedures and create **more** efficiency in the administration of justice in our Courts, I would appreciate it if you would propose the **legislation** to help this along.

The appropriate statutory provisions involves the interplay of Section 885.01 (the general **statute** requiring subpoenas to be issued by the judges, clerk of court's, court commissioners, etc.) and Section 805.07 **(1)**, authorizing attorneys of record in civil actions or special proceedings to compel attendance of witnesses by use of **subpoenas**. Again, this interplay of the statutes creates a situation in which lawyers in private practice are not authorized to issue the subpoena in a criminal case, although they are

authorized to do so in a civil case. Can we get this cleaned up?

Sincerely yours,

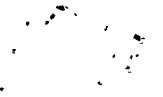
KAMINSKI & POZORSKI



Joseph M. Pozorski, Jr.

JMP/smg





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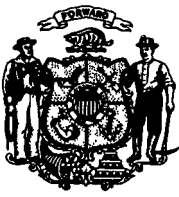


**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2019/P1dn  
RPN.....

Please review this draft carefully to ensure that it complies with your intent.

Robert P. Nelson  
Senior Legislative Attorney  
Phone: (608) 267-7511



*D-Note*

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

*A counsel is not represented*

1 AN ACT . . . . **relating to** <sup>*the*</sup> authority to issue a subpoenas.

*unless otherwise specified*

**Analysis by the Legislative Reference Bureau**

Current law allows various public offkials, including judges, court commissioners, arbitrators, the attorney general, district attorneys, coroners and chairpersons of local elected bodies, to issue a subpoena to require the attendance of a witness at a proceeding, hearing or trial. Under current law, an attorney of record in a civil action or proceeding also has the power to issue a subpoena to require the attendance of a witness at a deposition, hearing or trial in the civil action. Although current law provides that the rules of practice in civil actions applies in criminal actions, because there is specific authority giving attorneys representing criminal defendants the power to issue subpoenas, those attorneys currently do not have that authority. (no)?

This bill gives attorneys representing criminal defendants the same power to issue subpoenas as is provided to attorneys in civil actions.

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

2 SECTION 1. **805.07** (1) of the statutes is amended to read:

3 **805.07 (1) ISSUANCE AND SERVICE.** Subpoenas shall be issued and served in

4 accordance with ch. 885. ~~A subpoena may also be issued by any attorney of record~~

1 ~~in a civil action or special proceeding to compel attendance of witnesses for~~  
2 ~~deposition, hearing or trial in the action or special proceeding.~~

History: Sup. Ct. Order, 67 W (2d) 585,697 (1975); 1979 c. 110; Sup. Ct. Order, 141 W (2d) xiii (1987); 1987 a. 155; 1993 a. 112; Sup. Ct. Order, No. 95-09, 195 W (2d) xiii (1996); 1997 a. 250.

3 SECTION 2. 885.01 (6) of the statutes is created to read:

4 885.01 (6) By an attorney of record in a civil action, criminal action or special  
5 proceeding, to require the attendance of a witness for a deposition, hearing or trial  
6 in the action or special proceeding.

*If want state fee to pay for witness fee under s 885.01, must to obtain*

7 SECTION 3. Initial applicability.

8 (1) This act ~~first~~ applies to actions or special proceedings pending on the  
9 effective date of this subsection.

10 (END)

*(95 522 11)*

*(11/14/11)*

*This bill Allow to sub. at writ /  
ind defendant in a civil case  
If needs to pay witness  
fee; ind can expect witness  
fee, & person may need  
to request in court / under 885.01  
of state ex rel Dressler v Civ. Court for Racine  
County Branch 1 (App. 1991) 163 W2d  
622, 472, NW 2d 332. & Payment of  
Witness Fees in State v Heisen, 167  
Wis. 2d 67 (1992)*



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-2019/P1

RPN...:king

D-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT <sup>Gen. Cat.</sup> relating to: the authority of attorneys to issue subpoenas.

**Analysis by the Legislative Reference Bureau**

Current law allows various public officials, including judges, court commissioners, arbitrators, the attorney general, district attorneys, coroners and chairpersons of local elected bodies, to issue a subpoena to require the attendance of a witness at a proceeding, hearing or trial. Under current law, an attorney of record in a civil action or proceeding also has the power to issue a subpoena to require the attendance of a witness at a deposition, hearing or trial in the civil action. Attorneys representing defendants in criminal matters are not listed in the statutes as having authority to issue subpoenas. Although current law provides that the rules of practice in civil actions apply in criminal actions, unless otherwise specified, because there is no specific authority giving attorneys representing criminal defendants the power to issue subpoenas, there is some question as to whether those attorneys currently ~~do not~~ have that authority. <sup>apply</sup>

<sup>specifically</sup> This bill gives attorneys representing criminal defendants the same power to issue subpoenas as is provided to attorneys in civil actions. <sup>currently</sup>

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

2 SECTION 1. 805.07 (1) of the statutes is amended to read:

3 805.07 (1) ISSUANCE AND SERVICE. Subpoenas shall be issued and served in

4 accordance with ch. 885. <sup>strike space</sup> A subpoena ~~shall~~ be issued by any attorney of record

1 ~~in a civil action or special proceeding to compel attendance of witnesses for~~  
 2 ~~deposition, hearing or trial in the action or special proceeding.~~

History: Sup. Ct. Order, 67 W (2d) 585,697 (1975); 1979 c.110; Sup. Ct. Order, 141 W (2d) xiii (1987); 1987 a. 155; 1993 a. 112; Sup. Ct. Order, No. 95-09, 195 W (2d) xiii (1996); 1997 a. 250.

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4 885.01 (6) By an attorney of record in a civil action, criminal action or special  
 5 proceeding, to require the attendance of a witness for a deposition, hearing or trial  
 6 in the action or special proceeding.

7 SECTION 3. Initial applicability.

8 (1) This act first applies to actions or special proceedings pending on the  
 9 effective date of this subsection.

10 (END)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2019/P1dn

RPN...:.....

Please review this draft carefully to ensure that it complies with your intent. This bill allows the attorney representing a criminal defendant to issue subpoenas. However, if the criminal defendant is not able to pay the fee of a witness subpoenaed, including expert witness fees, the defendant may need to request the court under s. 885.10 to approve the issuance of the subpoena and of the payment of the fees. See State ex rel. Dressler v. Circuit Court for Racine County Branch I, 163 Wis. 2d. 622 (App. 1991) and Payment of Witness Fees in State v. Huisman, 167 Wis. 2d. 168 (1992).

Robert P. Nelson  
Senior Legislative Attorney  
Phone: (608) 267-7511

① - no seeing

**DRAFTERS NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2019/P1dn  
RPN:kmg:ijs

March 31, 1999

Please review this draft carefully to ensure that it complies with your intent. This bill allows the attorney representing a criminal defendant to issue subpoenas. However, if the criminal defendant is not able to pay the fee of a witness subpoenaed, including expert witness fees, the defendant may need to request the court under s. 885.10 to approve the issuance of the subpoena and of the payment of the fees. See *State ex rel. Dressler v. Circuit Court for Racine County Branch I*, 163 Wis. 2d. 622 (App. 1991) and *Payment of Witness Fees in State v. Huisman*, 167 Wis. 2d. 168 (1992).

Robert P. Nelson  
Senior Legislative Attorney  
Phone: (608) 267-7511



## **Nelson, Robert**

---

**From:** Ziegelbauer, Bob  
**Sent:** Friday, April 23, 1999 1:32 PM  
**To:** Nelson, Robert  
**Subject:** LRB-2019/P1

DATE: April 23, 1999

TO: Robert P. Nelson  
Senior Legislative Attorney

FROM: Bob Ziegelbauer

RE: LRB-2019/P1; relating to the authority of attorneys to issue subpoenas.

I reviewed the draft and it seems to be right on the mark.

Please take it to the next step. Thank you.

Call with any questions.

### **Office of Rep. Bob Ziegelbauer**

#### **Staff**

Luanne Wavrunek Kostelic  
Thomas M. Kelly III

#### **State Capitol**

207-North, PO Box 8953; Madison, WI 53708-8953  
Phone: (608) 266-0315  
Toll Free: 1-888-529-0025  
Fax: (608) 266-0316  
Website: [www.legis.state.wi.us](http://www.legis.state.wi.us)

#### **In the District**

1213 S. 8th Street, PO Box 325  
Manitowoc, WI 54221-0325  
Office: (920) 684-6783  
Home: (920) 684-4362



SOON

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

1999 Bill

Gen. Act.

1 AN ACT to amend 805.07 (1); and to create 885.01 (6) of the statutes; relating  
2 to: the authority of attorneys to issue subpoenas.

However,

**Analysis by the Legislative Reference Bureau**

Current law allows various public officials, including judges, court commissioners, arbitrators, the attorney general, district attorneys, coroners and chairpersons of local elected bodies, to issue a subpoena to require the attendance of a witness at a proceeding, hearing or trial. Under current law, an attorney of record in a civil action or proceeding also has the power to issue a subpoena to require the attendance of a witness at a deposition, hearing or trial in the civil action. Attorneys representing defendants in criminal matters are not listed in the statutes as having authority to issue subpoenas. Although current law provides that the rules of practice in civil actions apply in criminal actions, unless otherwise specified, because there is no specific authority giving attorneys representing criminal defendants the power to issue subpoenas, there is some question as to whether those attorneys currently have that authority.

This bill specifically gives attorneys representing criminal defendants the same power to issue subpoenas as is currently provided to attorneys in civil actions.

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

3 SECTION 1. 805.07 (1) of the statutes is amended to read:



**-Barman, Mike**

---

**From:** Barman, Mike  
**Sent:** Monday, November 01, 1999 4:22 PM  
**To:** Hillmer, Carla  
**Subject:** 99-2019/1 (per your request)



99-2019/1

*Mike Barman*

Mike Barman - Program Asst. (PH. 608-266-3561)  
(E-Mail: [mike.barman@legis.state.wi.us](mailto:mike.barman@legis.state.wi.us)) (FAX: 608-264-6948)

State of Wisconsin  
legislative Reference Bureau - Legal Section - Front Office  
100 N. Hamilton Street - 5th Floor  
Madison, WI 53703