

Simpla Phi Lex's
Family Court Evidence Manual

EVIDENCE FIELD MANUAL
Child Support

**The Evidence You Need
How to Get It
How to Present It in Court**

NOTE TO EVIDENCE FIELD MANUAL USERS:

In most child support cases following the steps in this Evidence Field Manual should allow you to use the evidence needed for your hearing or trial. There are instances (and we hope very few), however, when confidentiality or other over-riding concerns will keep some evidence from being considered by the judge.



These forms must not be used to engage in the unauthorized practice of law. The court is not responsible for (1) actions taken by the users of these forms or (2) the user's reliance upon the instructions or information provided.

What is evidence?

Evidence is any proof legally presented at trial. Evidence may be testimony from witnesses, forms, or other written material. You may already have everything you need in your possession. If not, there are a number of simple ways to obtain it. You may also collect evidence by "discovery" or "subpoena." These will be further explained below in the section titled "How do I get evidence?"

What kind of evidence do I need?

Required

- 3-5 most recent paystubs
- 3 years of federal tax returns and W-2s
- The financial affidavit form
- Health insurance premium for the child only from your Human Resources (HR) department or insurance company
- Proof of childcare expenses such as receipts, canceled checks, or a letter from the childcare provider
- Proof of spousal maintenance (alimony) actually paid
- Any child support order for a child not of this relationship
- Proof of child support paid for a child not of this relationship, if no court order



Suggested Additional Evidence

- Calendar of parenting time with a calculation of the number of days per year of parenting time
- Extraordinary child expenses such as ongoing expenses for children with special needs or medical conditions
- Private school tuition and ongoing tutoring costs
- Significant ongoing expenses for extracurricular activity
- Witnesses who have relevant information

How do I present my evidence?

Evidence, other than testimony, presented to the court is called an **exhibit**. To organize your exhibits use the coversheets provided at the end of this packet to assemble those exhibits into a sequence that makes sense. This will help you easily find your exhibits and ensure that you do not forget to gather any of them. Be prepared to explain to the judge what each exhibit is and why it helps your case.

Copies of Your Exhibits



In addition to the original, always bring three copies of all exhibits. (One copy for you, one copy for the other party, one copy for the Judge, and the original to be placed into evidence). Provide one copy to the other party at least 4 days prior to your court date. **Time limits apply.** Do NOT file your exhibits with the Clerk of the Court. Bring your originals and the other three copies to your

hearing.

Marking Exhibits

Always check before the hearing with the courtroom clerk to see how they want you to mark your exhibits. You can use the attached coversheets for organizing your exhibits with A, B, C, etc., or 1, 2, 3, etc. The courtroom clerk will officially mark each exhibit for you.

“Laying Foundation” (Showing Why it is Trustworthy)

Your exhibits must be **trustworthy** and contain information **relevant** to the issue you are trying to prove or disprove. Information is relevant if it helps the court determine the issue. For every exhibit you would like to present at trial, you must show that the document or item is **reliably** what it appears to be. This means that you must present enough background information for the judge to find that the exhibit is trustworthy and can be relied on when making a decision. Some items are considered self-authenticating, meaning that there is nothing more that you need to show to prove its trustworthiness. These include birth certificates or other public records, as well as medical records and other business records.

If you cannot provide the foundation for the exhibit and it is not self-authenticating, it may not be allowed into evidence or considered by the judge at trial.

How Do I Get Evidence?

Financial

1. Child Support Financial Affidavit
 - a. Step-by-step instructions and the forms for filling out the affidavit can all be found on the Pima County Superior Court website:
<http://www.sc.pima.gov/Portals/0/Library/Affidavit9.pdf>
(The Affidavit Form begins on **page 8** of the packet in this link.)
2. Tax Returns, Pay Stubs, and Other Records of Income
 - a. You should already have these items in your possession.
 - b. If you are not a W-2 employee: fill out the financial affidavit to show the Judge your monthly income and your monthly expenses for your self-employment. Also, bring in bank statements from your business and personal checking, and one (1) year of credit card statements.
 - c. If you do not have your tax returns, you can obtain a “Transcript of your filed 1040 tax returns” from the IRS at <https://www.irs.gov/Individuals/Get-Transcript>.
3. Human Resources Statement or Medical Insurance Premium Statement
 - a. Your HR department can provide you with documentation of what it costs for insurance for employee only as well as employee and children.
 - b. If you do not have an HR department, you can obtain this information from your insurance provider.
 - c. If the children are covered under AHCCCS, you do not need to provide proof.
4. Proof of Child Care Expenses
 - a. Daycare or babysitter receipts.
 - b. Future daycare cost sheets (for example, summer camp or summer daycare)
 - c. If you pay for the childcare services in cash, provide a letter signed by that person stating the dates and amounts charged for those services.
5. Spousal Maintenance
 - a. If you are paying spousal maintenance (alimony), bring any proof of support actually paid.
6. Child Support for Child Not of This Relationship
 - a. If you are paying child support for another child not of this relationship, bring any proof of support actually paid.

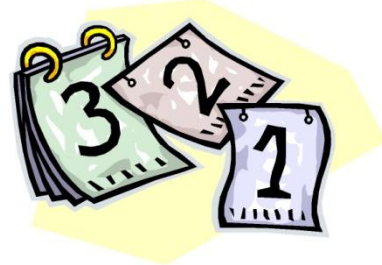


7. Child Support for Child Not of This Relationship Without a Court Order

- a. If you are paying child support for another child not of this relationship without a court order, bring any proof of support actually paid. This may be an informal agreement between you and the other parent of the child, or a formal agreement decided without the help of a Judge. Bring proof of this to your hearing. Proof may come in the form of statements, in person testimony, checks, etc.

8. Calendar of Parenting Time

- a. If you are the non-custodial parent, you may be entitled to an adjustment in child care based on parenting time.
- b. Please use the following formula to calculate parenting time **before** coming to court:



- i. First note that each block of time begins and ends when the noncustodial parent receives or returns the child from the custodial parent or from a third party with whom the custodial parent left the child. Third party includes, for example, a school or childcare provider.
- ii. Count one day of parenting time for each twenty-four (24) hours within any block of time.
- iii. Count one day for each period within the block of twelve (12) or more hours.
- iv. Count one half day for each period within the block of six (6) to eleven (11) hours.
- v. Count one quarter day for each period within the block of three (3) to five (5) hours.
- vi. Periods of less than 3 hours may count as a quarter-day if, during those hours, the noncustodial parent pays for routine expenses of the child, such as meals.
- vii. Add together all blocks of time for the year to determine annual parenting time.

- c. More information can be found at:

<https://des.az.gov/sites/default/files/2015CSGuidelinesRED.pdf>

9. Proof of Extraordinary Expenses

- a. Extraordinary expenses may include ongoing medical bills, care, or other assistance for children with special needs or medical conditions. Bring proof of these expenses to court. You may want to include letters from the child's doctor or caretaker, and receipts of expenses.

10. Ongoing Tuition and Tutoring Costs

- a. If the child is attending private school, or has ongoing tutoring sessions, bring proof of this to court. Again, you may want to include letters from teachers and tutors.



11. Extracurricular Activities Extraordinary Expenses

- a. If the child is **required** to participate in extracurricular activities in which extraordinary expenses are incurred, bring proof of this to court.

12. Witnesses with Relevant Information to the Case

The court may allow a witness to appear telephonically if you show the witness would be “unduly inconvenienced” or it would be a “burdensome expense” to attend the hearing or trial. You must request permission in writing and in advance for this. The forms are available at:

<http://www.sc.pima.gov/Portals/0/Library/Family/MotiontoAppearbyTelephone.pdf>

Business Records and Medical Records

You may obtain many records about you or your children by simply asking for these records. If you cannot obtain them by asking the business department of the school or doctor’s office for the records, you may be able to compel release of records with a subpoena. You can find further information about subpoenas and service in the last page of this section.

Letters

You may provide letters to the court from professionals, such as doctors, teachers, or counselors. These letters are meant to help the court decide how to calculate child support. Generally, letters from family or friends are not considered reliable evidence.

Child Support Worksheet

Here is the worksheet: <http://www.azcourts.gov/familylaw/Child-Support-Calculator-Information>

Once you have completed the Child Support Worksheet, bring **three** copies (along with the original) with you to court. The **original** will be admitted into evidence; one copy will be given to the Judge, one copy will be given to the other party, and you will keep one copy for yourself.

Ask and Verify

With evidence, your goal is trustworthiness and verification. There are many ways to go about this. You can obtain letters from a teacher, letters from caretakers, or letters from health care providers if these letters will provide **relevant and important information** to help the court better understand your case. The letter should have some sort of **verification** either from a notary public or another symbol of verification from a trustworthy source, such as a company letterhead or signature with confirming phone number or address.

Subpoena and Service

A **subpoena** is an order that requires a witness to appear in court. There are four steps:

1. Get a subpoena form from the Clerk of the Court or use the Subpoena Form attached to this manual.
2. Fill out the subpoena form and return it to the Clerk of the Court to be signed. There is normally a fee, but ask the Clerk to see if you qualify for a fee waiver.
3. **Service** requires someone 18 or over who is not a party to your matter to serve the subpoena **in person** on the witness.
4. File a signed and notarized affidavit of service that says the **name** of the person who served the subpoena, the **date, time, and place** of the service.

Obtaining the Other Parent's Income Information:

If necessary, you can obtain information about the other parent's income by writing to their employer. By law, the employer must cooperate. (Employer Cooperation ARS § 25-513).

You can find the wording for your letter here: <http://www.azleg.gov/ars/25/00513.htm>

Obtaining a Self-Employed Parent's Income Information:

If necessary, you can obtain information about the other parent's income by meeting with an appointed tax practitioner who will review the accuracy of the self-employed parent's records. The tax practitioner will submit a written report to the court to help it determine the child support obligation. The court will determine who will pay for this service. (Self-employed parent tax assistance statute ARS § 25-320.02).

You can find the exact wording of the statute here: <http://www.azleg.gov/ars/25/00320-02.htm>

How Do I Get My Evidence Before The Judge?

For the judge to accept your evidence, you must show that it is trustworthy. This means you must show that it is:

Authentic: Can you prove that this evidence is what it claims to be?

Reliable: Can you prove that the source is trustworthy?

Relevant: Can you prove that this evidence relates to your case?



Suggested scripts for presenting evidence:

You may choose to check the boxes to the left of the scripts in order to better prepare and to remember which categories apply to your case.

Financial Evidence

“Exhibit # __ is a copy of my Financial Affidavit. This Financial Affidavit accurately shows my current financial situation. The information in the affidavit is based on _____ (for example, pay stubs for income, bank statements for expenses, etc.). I ask that Exhibit #__, be admitted into evidence.”

1. Pay Stubs and Other Income

“Exhibit # __ is a true and accurate copy of my pay stubs. I ask that Exhibit # ____, be admitted into evidence.”



2. Tax Returns

“Exhibit # __ is true and accurate copy of my tax returns for the last 3 years. [If you don't have the last three years then you should provide your most current tax return(s).] I ask that Exhibit #__ be admitted into evidence.”

3. HR statement or Insurance Premium Statement

Exhibit # __ This is a true and accurate copy of my HR statement or health insurance premium. I ask that Exhibit #__ be admitted into evidence. Based on this Exhibit, I calculate that the monthly premium for the children ONLY is \$_____.

4. Proof of Child Care Expenses

“Exhibit #__ is a true and accurate copy of my Child Care expenses. It includes _____ (for example, receipts or letter from child care provider). I ask that Exhibit #__ be admitted into evidence.”

5. Spousal Maintenance (Alimony)

“Exhibit # __ is a true and accurate copy of my Spousal Maintenance order. I ask that Exhibit #__ be admitted into evidence. I regularly pay (or receive) this Spousal Maintenance.” (If you do not regularly pay or receive Spousal Maintenance, tell the court what is happening with the payments.)

6. Child Support for Child Not of This Relationship

“Exhibit # __ is a true and accurate copy of my Child Support Order for a Child Not of This Relationship. I ask that Exhibit #__ be admitted into evidence.” (If you do not regularly pay this child support, tell the court.)

7. Child Support for Child Not of This Relationship Without a Court Order

“While I do not have a court order, Exhibit # __ is a true and accurate copy of the child support that I regularly and consistently pay for children not of this relationship. It includes _____ (for example a check, notarized

statement, in-person testimony, etc.) I ask that Exhibit # ____ be admitted into evidence.”

8. **Proof of Extraordinary Expenses (Refer to page 7)**
“Exhibit # __ is a true and accurate copy of the extraordinary expenses I regularly pay on behalf of my children. I have _____ (for example ongoing bills or letters from the child’s therapist, doctor, etc.). I ask that Exhibit ____, be admitted into evidence.”
9. **Ongoing Tuition and Tutoring Costs**
“Exhibit # __ is a true and accurate copy of my children’s ongoing tuition (and/or) tutoring costs. I ask that Exhibit ____, be admitted into evidence.”
10. **Expenses for Extracurricular Activities**
“Exhibit # __ is a true and accurate copy of the expenses I pay for my children’s extracurricular activities. It includes _____ (for example receipts, bills, etc.). I ask that Exhibit # ____, be admitted into evidence.”
11. **Calendar of Parenting Time**
“Exhibit # __ is a true and accurate copy of my Calendar of Parenting Time. This calendar is an accurate representation of the time that I spend with my children because it is based on _____ (for example, records kept in a journal, daily planner, personal calendar, etc.) I have determined that I have ____ days of parenting time every year. I ask that Exhibit # ____, be admitted into evidence.”
12. **Child Support Worksheet**
“Exhibit # __ is my proposed Child Support Worksheet. I ask that Exhibit # ____, be admitted into evidence.”

ARIZONA SUPERIOR COURT, PIMA COUNTY

_____, Petitioner, and _____, Respondent.	Case No. _____ Assigned to the Hon. _____	TRIAL SUBPOENA
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THE STATE OF ARIZONA TO: NAME: _____
 DEPARTMENT: _____
 Address: _____
 City, State, Zip: _____

YOU ARE HEREBY COMMANDED to appear in the **Superior Court of Pima County, 110 West Congress, Tucson, Arizona** before the **Honorable(Judge)** _____, or in any judge sitting in his/her stead on the _____ day of _____, 20____ at _____ a.m./p.m. to testify on behalf of [] **Petitioner** [] **Respondent** in the above-entitled action. Please contact the Division of the Court named herein on the date set for your appearance to determine if your appearance has been changed. Requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least 3 working days in advance of a scheduled court proceeding.

YOU ARE FURTHER COMMANDED to bring with you and produce at such time and place the following CERTIFIED books, papers, document or tangible items: _____

YOUR APPEARANCE WILL BE WAIVED if the above listed documents are produced and provided to the undersigned **ON OR BEFORE THE _____ DAY OF _____, 20_____**. YOU ARE HEREBY NOTIFIED THAT ANY FAILURE TO OBEY THIS SUBPOENA WITHOUT ADEQUATE EXCUSE MAY BE DEEMED A CONTEMPT OF THIS COURT. Your rights and obligations under this subpoena are set forth in the page attached to this document.

DATED this: _____.

CLERK OF THE SUPERIOR COURT

By: _____
 Deputy Clerk

Signed: _____
 Print Name: _____
 Address: _____
 City, State, Zip: _____
 Phone No.: _____
 [] Petitioner [] Respondent

YOUR DUTIES IN RESPONDING TO THIS SUBPOENA:

You have the duty to produce the documents requested as they are kept by you in the usual course of business, or you may organize the documents and label them to correspond with the categories set forth in this subpoena. See Rule 52(D)(1) of the *Arizona Rules of Family Law Procedure*.

If this subpoena asks you to produce and permit inspection and copying of designated books, papers, documents, tangible things, or the inspection of premises, you need not appear to produce the items unless the subpoena states that you must appear for a deposition, hearing or trial. See Rule 52(C)(2)(a) of the *Arizona Rules of Family Law Procedure*.

YOUR RIGHT TO OBJECT:

The party or attorney serving the subpoena has a duty to take reasonable steps to avoid imposing an undue burden or expense on you. The Superior Court enforces this duty and may impose sanctions upon the party or attorney serving the subpoena if this duty is breached. See Rule 52(C)(1) of the *Arizona Rules of Family Law Procedure*.

You may object to this subpoena if you feel that you should not be required to respond to the request(s) made. Any objection to this subpoena must be made within 14 days after it is served upon you, or before the time specified for compliance, by providing a written objection to the party or attorney serving the subpoena. See Rule 52(C)(2)(b) of the *Arizona Rules of Family Law Procedure*.

If you object because you claim the information requested is privileged or subject to protection as trial preparation material, you must express the objection clearly, and support each objection with a description of the nature of the document, communication or item not produced so that the demanding party can contest the claim. See Rule 52(D)(2) of the *Arizona Rules of Family Law Procedure*.

If you object to the subpoena in writing, you do not need to comply with the subpoena until a court orders you to do so. It will be upon the party or attorney serving the subpoena to seek an order from the court to compel you to provide the documents or inspection requested, after providing notice to you. See Rule 52(C)(2)(b) of the *Arizona Rules of Family Law Procedure*.

If you are not a party to the litigation, or an officer of a signed party, the court will issue an order to protect you from any significant expense resulting from the inspection and copying commanded. See Rule 52(C)(2)(b) of the *Arizona Rules of Family Law Procedure*.

You also may file a motion in the Superior Court of the county in which the case is pending to quash or modify the subpoena if the subpoena:

- (i) does not provide a reasonable time for compliance;
- (ii) requires a non-party or officer of a party to travel to a county different from the county where the person resides or does business in person; or to travel to a county different from where the subpoena was served or to travel to a place farther than 40 miles from the place of service; or to travel to a place different from any other convenient place fixed by an order of a court, except that a subpoena for you to appear and testify at trial can command you to travel from any place within the state;
- (iii) requires the disclosure of privileged or protected information and no waiver or exception applies; or
- (iv) Subjects you to an undue burden. See Rule 52(C)(3)(d) of the *Arizona Rules of Family Law Procedure*.

If this subpoena:

- (i) requires disclosure of a trade secret or other confidential research, development or commercial trade information; or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or
- (iii) requires a person who is not a party or an officer of a party to incur substantial travel expense;

The Court may either quash or modify the subpoena, or the court may order you to appear or produce documents only upon specified conditions, if the party who served the subpoena shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that you will be reasonably compensated. See Rule 52(C)(3)(d)(3) of the *Arizona Rules of Family Law Procedure*.

Exhibit # _____

ATTACH FINANCIAL AFFIDAVIT HERE

Exhibit # _____

ATTACH THREE (3) TO FIVE (5) PAY STUBS HERE

Exhibit # _____

ATTACH THREE (3) YEARS OF FEDERAL TAX RETURNS HERE

Exhibit # _____

ATTACH W-2 HERE

Exhibit # _____

ATTACH HEALTH INSURANCE EXPENSES HERE

Exhibit # _____

ATTACH CHILD CARE COST DOCUMENTS HERE

Exhibit # _____

ATTACH PROOF OF SPOUSAL MAINTENANCE HERE

Exhibit # _____

ATTACH PROOF OF CHILD SUPPORT FOR CHILD NOT OF THIS RELATIONSHIP HERE

Exhibit # _____

ATTACH PARENTING TIME CALCULATIONS HERE

Exhibit # _____

ATTACH EXTRAORDINARY EXPENSES HERE

Exhibit # _____

ATTACH TUITION AND TUTORING EXPENSES HERE