



SAMPLE MOTION TO QUASH GRAND JURY SUBPOENA

This document serves as a sample motion to be submitted by a domestic violence program that has received a subpoena in a grand jury proceeding, ordering it to disclose confidential information. This motion is specifically designed for use in the grand jury proceeding. Grand juries consist of 12 to 23 people called by the criminal courts to review the complaints and charges brought by the State against persons suspected of committing crimes. The grand jury has the responsibility to review the evidence to decide whether it demonstrates that probable cause exists that a crime has been committed. If the grand jury finds sufficient evidence to establish probable cause exists, it returns an indictment against the person suspected of the criminal activity. A grand jury may also refuse to indict if there is insufficient evidence presented. A grand jury serves as the body that initiates, or declines to initiate, criminal proceedings. Once it has fulfilled that function, the members of the grand jury are dismissed. Grand jury proceedings are usually confidential and not available to the public.

This sample motion outlines how to invoke State statutory privileges protecting confidential information that may be in the possession of a domestic violence program. It also outlines how you can explain to the grand jury why your program should be permitted to uphold the duty of confidentiality created by the state statute and your program's policy.

This sample motion contains suggested language only. Your legal counsel or program attorney will be able to help you decide what is useful and applicable and what sections should be written differently to be consistent with your State's statutes and case law.



State/People of [State],)
)
 vs.)
)
 [Name of Defendant],)
 Defendant.)

Crim. Case No. [if available]

MOTION TO QUASH GRAND
JURY SUBPOENA

COMES NOW, the [Program's Name] and its Executive Director, [Name], by and through its counsel, [Name of Attorney], and hereby moves the Court to quash a grand jury subpoena *duces tecum* directed to [Name of person or program listed on subpoena]. The subpoena was originally returnable for [time and date to submit to subpoena] at [located to appear to submit to subpoena]. In support of its Motion, the [Program's Name] states as follows:

1. On [date], a subpoena was served on [Program's Name] which demanded that [Name of person ordered to respond] testify before the grand jury and that the program produce all records pertaining to [Name of battered woman listed in subpoena].
2. [If there were any problems with the service of the subpoena, either under state law or local rules, include a paragraph here that discusses those deficiencies as a basis for quashing the subpoena. For example: "The subpoena was not personally served upon the individual named as a witness in the subpoena, as required by State law." "The subpoena was served less than three days before the date the testimony is demanded, contrary to State law."]
3. [Name of person ordered to respond] is a [position/title of person] at [Program's Name], which provides assistance to battered women and their families through crisis intervention, medical and legal accompaniment, counseling, and shelter provision. Counselors/Advocates at [Program's Name] receive information from battered women solely in the course of a confidential relationship, which is a necessary prerequisite to providing essential services, assistance and counseling. [Describe requirements for maintaining confidentiality as set forth by State statute or case law.] [If there is no State statute protecting confidentiality, refer to your program's policy regarding confidentiality: "On [date policy adopted], the Board of Directors of [Program's Name] adopted a policy of maintaining absolute confidentiality of communications between program staff and the battered women they serve. Battered women are advised of [Program's Name]'s confidentiality policy from the time they begin to receive services; as a result, [Program's Name]



has a duty of confidentiality to its service participants.”] [Attach a copy of the program’s confidentiality policy as an appendix at the end of your motion.]

4. The subpoena in this matter seeks to compel [Name of person ordered to respond] to appear as a witness and/or produce certain records obtained in the course of a confidential counseling/advocacy relationship. All information contained in the records of [Program’s Name] was taken from [Name of battered women listed in subpoena] with the express agreement and understanding that such information was to be kept private and remain confidential. Furthermore, any such information is maintained by [Program’s Name] solely as a means of furthering the ability of [Program’s Name] to offer appropriate services to her as a victim of domestic violence.
5. The [Program’s Name] does not have the consent of [Name of battered woman listed in subpoena] to the release of her records, nor does [Program’s Name] have her consent to allow any staff from the program to present testimony concerning her communications with the program. [If State statute or case law exists that requires the maintenance of confidentiality, add a sentence such as: “Without the consent of [name of battered woman listed in subpoena], release of the information sought under the subpoena is prohibited by [cite State statute or case].”] [If no State statute to protect confidentiality exists, add sentence such as: “Without the consent of [name of battered woman listed in subpoena], release of information sought under the subpoena will cause the [Program’s Name] to violate its duty of confidentiality to [name of battered woman listed in subpoena].”]
6. The [Program’s Name] is financed by funds secured through [name funding source with confidentiality requirement, e.g., Family Violence Prevention and Services Act, 42 USC 10104 et seq.]. The receipt of these funds is conditional upon the [Program’s Name] assuring and maintaining the confidentiality of information received from victims of domestic violence. [Cite specific provision in funding statute, e.g., FVPSA, 42 USC 10401(a)(2)(e).] Disclosure of any confidential information would result in the termination of funding, and other possible penalties under federal law, to the [Program’s Name].
7. Disclosure of such information as sought in this subpoena would effectively eliminate the [Program’s Name] as a referral agency and service provider for victims of domestic violence. If such victims thought that their information could be revealed to third parties, even in court proceedings, they would be distrustful of the [Program’s Name], inhibited from revealing information and less likely to turn to the [Program’s Name] for vitally needed assistance.



8. The subpoena in this matter is an unwarranted interference with the confidential relationship between the counselor/advocate and the battered woman. Compliance with this subpoena would undermine the confidential relationship and [cite any supporting language from statute/rules/cases prohibiting or limiting discovery, e.g., “it would cause unreasonable annoyance and oppression” as it “relates to matter which is privileged.”].
9. [If the subpoena uses very broad, “catch-all” language to describe the information being requested (e.g., “all records relating to any communications or activities undertaken by with [name of battered woman] at the [Program’s Name]”), add a paragraph stating the following: “Furthermore, the request within the subpoena is overbroad because it seeks information irrelevant to the matters before this Court or the grand jury, and is not designed to lead to the discovery of any admissible information.”]
10. The Court should not allow the release of any information or compel any testimony regarding the address of the domestic violence shelter [if there is a specific State statute or case that protects shelter addresses, cite here], the names of other battered women who may have contacted the program for services, or the names of counselors/advocates. Release of this specific information may jeopardize the functioning of the program and the safety of all participants and staff.
11. The absolute need of domestic violence programs to be free from the invasive, destructive, and harassing effects of subpoenas is a matter of public policy and overwhelming public importance, which must be protected by this Court.

WHEREFORE, the [Program’s Name] respectfully requests that the Court enter an Order quashing the subpoena in this matter.

Respectfully submitted,

[Name of Attorney]

Original filed.

Copy to: Prosecutor