

To: New Jersey Law Revision Commission
From: Samuel M. Silver
Re.: Subpoena v. Subpena
Date: June 05, 2017

MEMORANDUM

Executive Summary

Staff has been reviewing the Alternative Procedure for Dispute Resolution Act¹ (APDRA) in connection with the decision of the New Jersey Appellate Division in *Citizens United Reciprocal Exch. v. N. NJ Orthopedic Specialists*.² An examination of the statutes revealed that the statute utilizes two different spellings of the word subpoena, often in the same code section.

APDRA

Among the statutory sections that make up APDRA is a section that permits an umpire, in a contract action, to issue a writ ordering a person to testify before a court of record.³ This section is entitled, “Hearings; Multiple Umpires; witnesses and books or instruments; subpenas; rules of evidence; factual and legal contentions; expert evidence; conduct of hearing.”⁴ The section setting forth the authority to issue such a writ is subsection c. That subsection provides,

Subpoenas shall issue in the name of and be signed by the umpire, or if there is more than one umpire, by a majority of them, and shall be directed to the person therein named and served in the same manner as a subpoena to testify before a court of record. If a person subpoenaed to testify refuses or neglects to obey a subpoena, the Superior Court, upon application, may compel his attendance before the umpire or hold the person in contempt as if the person had failed to respond to a subpoena issued by the court. (Emphasis added).

Each of the five references to the word subpoena differ from the designated statutory heading. This is not the only section of APDRA dealing with the issuance of a subpoena. And, although Staff recognizes that the titles of the statutory sections are not enacted, a preliminary review revealed differences in spelling of the word within the statutory text as well.

¹ *N.J. Stat. Ann.* § 2A:23A-1.

² *Citizens United Reciprocal Exch. v. N. NJ Orthopedic Specialists*, 445 N.J. Super. 371 (App. Div. 2016).

³ *N.J. Stat. Ann.* § 2A:23A-11.

⁴ *Id.*

An arbitrator or a party to a personal injury action may issue a subpoena.⁵ The relevant section of APDRA concerning that issue is entitled “Subpena.” The statutory section provides,

The arbitrators may, at their initiative or at the request of any party to the arbitrators, issue subpena for the attendance of witnesses and the production of books, records, documents and other evidence. subpena shall be served and shall be enforceable in the manner provided by law. (Emphasis added).

Thus, the spelling of the word subpoena differs within the context of the single act. A cursory statutory search confirmed that this phenomenon is not limited to the APDRA statute.⁶

Conclusion

Staff seeks authorization to conduct additional research and outreach regarding the inconsistent spelling and usage of the word “subpoena” in an effort to determine whether it would be of assistance to have uniformity in the spelling of the word subpoena throughout the New Jersey statutes.

This issue is of concern to Staff because although online tools for searching the New Jersey statutes are relatively sophisticated, depending on the database used, the different spellings can still lead to different results.

⁵ *N.J. Stat. Ann.* § 2A:23A-24.

⁶ *See N.J. Stat. Ann.* §56:9-9.