

Should I subpoena a voluntary witness?

This is a personal decision, which only you can decide. There is no right or wrong answer. Your witness may be offended if you subpoena him or her. Ill will or animosity should not affect testimony, but realistically it is human nature for it to do so. Alternatively, the witness may not show up when you need them in court if you do not subpoena them to testify. This is why you have to weigh the pros and cons in your unique case and make your own decision.

You should think of a subpoena as an insurance policy in case the witness does not come to court on the day of trial. If you have “subpoenaed” the witness and witness does not appear, the case can be continued. If you failed to “subpoena” the witness and the witness does not attend the judge is likely to deny your request for a continuance because you did not subpoena the witness to appear in the first place. The Court often observes countless instances where persons promise to appear in court, and then never show up, or have an unexpected “emergency” come up which prevents their appearance at court.

While acquiring and serving subpoenas can be very time consuming, it is usually the safest route.

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