

HOW TO SUBPOENA WITNESSES AND DOCUMENTS

This publication is a summary of law contained in Codes, Statutes and Court Cases. For those who want to do further research we have included citations-that is the place where the information summarized can be found.

When do I need this packet?

If you are going to an evidentiary hearing or trial and need to make sure that a witness shows up, or that someone brings documents or other items, you can have the person served with a subpoena issued by the court clerk. If you need the attendance of a person, you may use a subpoena. If you want to require a person to bring documents or other items, you will need a "subpoena duces tecum." Special rules may apply when you want a health care provider to bring health care information. RCW 70.02.060.

What is in this packet?

This packet has the forms and instructions for the following:

- Motion and Declaration for Issuance of Subpoena
- Order for Issuance of Subpoena
- Subpoena
- Subpoena Duces Tecum
- Affidavit of Service

How do I use a subpoena?

If you are not an attorney, the subpoena or subpoena duces tecum must be issued by the court clerk. You need to do all of the following:

1. fill out the forms as instructed in this packet;
2. have the order for issuance of subpoena signed by a judge or court commissioner;
3. have the court clerk issue the subpoena;
4. make a copy of the subpoena for the witness you are serving;
5. keep the original for yourself;
6. serve the subpoena on the witness; and
7. bring the original subpoena form to court on the day the witness is supposed to be there.

How do I fill out the forms?

Which form to use – If you only need the person to come to the hearing or trial and testify, use the subpoena (Latin for "under penalty") form. If you need the person to bring documents or other items, whether the person will testify or not, use the subpoena duces tecum (Latin for "bring with you under penalty") form.

Caption – First, fill out the caption which is at the top of the first page. You should copy the information for the caption from one of the other forms you or the other party has filed in the case, filling in the county, the names of the parties, and the case number.

"TO:" – After the caption, you will see the word "TO:". After that word, write in the name and address of the witness you are serving with the subpoena.

Date and Time Blanks – Fill in the date and time for the witness to attend. If this is for a short evidentiary hearing, you may want all of your witnesses there at the time the hearing is scheduled to start. If this is for a trial, you should probably not have all of your witnesses there at the time the trial is scheduled to start because the court will usually take up other matters before any witnesses testify. Other matters may include marking exhibits that will be placed in evidence and allowing each side to make an opening statement. You should allow at least one half-hour for these preliminary matters. After that, you may want to schedule your witnesses 15 to 30 minutes apart depending on how long you think it will take you to ask them questions. You should also remember that your hearing or trial may not begin at the time it is scheduled. You may want to send your witnesses a letter or note explaining that there may be a delay in putting them on as witnesses if the hearing or trial does not start on time.

With some people like counselors, teachers, doctors, or other professionals, you may want to make special arrangements to notify them by telephone when the trial starts and give them a better estimate of when you will actually need them. Another hint to help you schedule your witnesses is this: If you are the plaintiff/petitioner, then you will call your witnesses first, so you can begin scheduling your witnesses for the first day of trial. If you are the defendant/respondent, then your witnesses will be called after the witnesses of the plaintiff/petitioner have finished testifying. This is why it is helpful for you to know how many witnesses the plaintiff/petitioner plans to call. You can ask the plaintiff/petitioner how long the testimony of his or her witnesses is expected to take. Try to schedule your witnesses immediately after the plaintiff's/petitioner's witnesses are expected to finish.

Location Information – Fill in the name and address of the Superior Court for your county, as well as the room number, if the case has been assigned to a specific judge. You can call the court clerk to get this information. The final blank in this paragraph tells the witness which party he or she will be testifying for. Fill in "plaintiff"/"petitioner" or "defendant"/"respondent." If you do not know which one you are, look for your name in the caption.

Items to be Brought – This appears only on the subpoena duces tecum form, so you don't have to read this paragraph if you are only requesting that a person come to trial without any documents. Fill in the name or description of each document or item that you want that witness to bring. Be as specific as possible. For example, if you are asking for a letter, state the names of the people sending and receiving the letter, as well as the date of the letter. If you do not know the specific names of documents you need, or you want to be sure you get everything you want, you can add "and all other documents concerning _____," filling in the name or event for which you are requesting the documents.

Date and Signature Lines – Do not fill out these lines. This is where the judge or court commissioner will date and sign the order for issuance of subpoena.

How do I get the forms signed and the subpoenas issued?

In King County, you can have a judge or court commissioner sign your form at the ex parte department in Seattle. The ex parte department is located in room W-325, King County Courthouse, 501 James Street, Seattle, Washington 98104. You can go to the ex parte courtroom any weekday, Monday through Friday, between 9:00 and 12:00 or between 1:30 and 4:15.

You do not need to give the other side notice or an opportunity to attend when you go to the ex parte department. Take your prepared subpoenas and the motion, declaration, and order to the ex parte judge or court commissioner and he or she will sign the order for issuance of subpoena. Take the order and prepared subpoenas to the Superior Court clerk so the subpoenas can be issued. In King County, the Superior Court clerk is on the 6th floor of the King County Courthouse. The Superior Court clerk may charge a fee for issuing the subpoena. The fee in King County is \$20.00.

In other counties, call the Superior Court clerk to find out what you should do to get the order signed by a judge or court commissioner and get the subpoenas issued.

How do I serve the subpoena once the clerk has issued it?

A subpoena must be served personally by someone over 18 who is not a party to the lawsuit. You may not serve the subpoena yourself since you are a party (plaintiff/petitioner or defendant/respondent). You can use a sheriff or professional process server, but it is easiest and least expensive to use an adult friend or family member. The server must do one of the following:

1. personally hand the witness a copy of the subpoena, wherever the witness can be found; or
2. leave a copy of the subpoena at the witness's residence with another adult who lives there.

The person who serves the subpoena must then fill out and sign a paper describing the service of the subpoena. A sheriff or professional process server usually provides this proof of service form as part of serving the person. You may want to ask first to be sure the proof of service is included. If it is not, give the server the form in this packet to complete and return to you. If you have a friend or family member serve the subpoena, he or she will need to complete the "Affidavit of Service" form in this packet. You can fill in the caption for the server, but he or she must complete the rest. After you get the completed form back, make a copy for yourself and save the original to bring with you to court (along with the original subpoena) in case the witness does not come to trial or bring the requested documents.

Does it cost money to subpoena witnesses or documents?

If you use a sheriff or professional process server to serve the subpoena, there is a charge for service. Check with the server first to find out the amount of the charge.

If you are asking that a witness bring documents, pictures, or other evidence, the witness may ask the court to make you pay the reasonable cost of getting or copying the documents or other evidence. Witnesses can, by law, request a witness fee for attending the hearing or trial. In King County, the witness fee is \$10.00 plus round trip mileage at 34.5 cents a mile. Your "expert" witnesses such as counselors, doctors, or therapists may require you to pay them for their time at their usual hourly rate if they must testify. You will need to negotiate this with them ahead of time. There is no fee for testimony by court appointed special advocates (CASA) and Family Court Services workers.

What about witnesses who live further away?

Additional fees must be paid if you want to subpoena a witness who lives outside the county or lives more than 20 miles from the place where the hearing or trial will be held. For those witnesses, when the judge or court commissioner signs the order for issuance of subpoena, it may include an allowance for meals, lodging, and travel expenses. Those amounts will be written on the subpoena and must be presented to the witness at the time the subpoena is served. The judge or court commissioner may add additional amounts for meals, lodging, and travel at the time of the hearing or trial.

How long does the witness have to stay?

The witness must stay until he or she has given testimony and been cross-examined (questioned by the other side) unless the court orders that the witness remain longer. Either party may ask the court to order the witness to remain, for example, to respond to the testimony of a later witness.

What if the witness doesn't obey the subpoena?

If a witness does not come to the hearing or trial or bring items requested in the subpoena and there is no good excuse, then the court may hold the witness in contempt of court, which could result in a fine and/or jail time. This is why you save the original of the subpoena, along with the proof of service. If the person does not come to the hearing or trial or bring the requested items, give the original subpoena form and the proof of service to the judge or court commissioner. After the hearing or trial is over, file the original subpoenas and affidavits of service with the court clerk.

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This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of the date of its printing, May 2002.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF _____

_____,
Plaintiff/Petitioner,
vs.
_____,
Defendant/Respondent.

NO.
MOTION AND DECLARATION FOR ISSUANCE
OF [SUBPOENA] [SUBPOENA DUCES TECUM]

MOTION

The [plaintiff/petitioner] [defendant/respondent] moves the court for issuance of a [subpoena] [subpoena
duces tecum] to _____ for [hearing][trial] on _____ at
_____ [a.m.][p.m.]. This motion is supported by the declaration of _____.

DECLARATION

I, _____, declare as follows:

1. I am the [plaintiff/petitioner][defendant/respondent] in this action.
2. I intend to call _____ as a witness at the [hearing][trial] scheduled for
[date] _____ at [time] _____ [a.m.][p.m.]. The witness resides at
_____. The witness [does][does not] live within 20 miles of the
court and [does][does not] live within the county. If the witness lives more than 20 miles from the court or lives

1 outside the county, then a reasonable allowance for meals, lodging, and necessary travel expenses should be set
2 pursuant to RCW 5.56.010

3 3. I want the witness to bring the documents or items identified in the proposed subpoena duces
4 tecum to the [hearing][trial](*check here if not applicable* []):

5 I declare under penalty of perjury under the laws of the state of Washington that the foregoing statement is
6 true.

7 Dated in _____, Washington on _____, 200__.

8 _____
[Plaintiff/Petitioner][Defendant/Respondent]

9 _____
Address

10 _____
11 Telephone Number

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF _____

Plaintiff/Petitioner,

vs.

Defendant/Respondent.

NO.
ORDER FOR ISSUANCE OF [SUBPOENA]
[SUBPOENA DUCES TECUM]

This matter came before the undersigned, ex parte, on the motion of the
[plaintiff/petitioner][defendant/respondent] for issuance of a [subpoena][subpoena duces tecum] to
_____ for [hearing][trial] on _____. The court having
considered the motion and being fully advised, it is

ORDERED as follows:

1. The motion is granted;
2. The clerk of the court shall issue a [subpoena][subpoena duces tecum] to
_____ directing [her][him] to appear at [hearing][trial] at the time and

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/

1 place designated in the proposed [subpoena][subpoena duces tecum], a copy of which is attached to this order.

2 Dated: _____

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Judge/Court Commissioner

5 Presented by:

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[Plaintiff/Petitioner][Defendant/Respondent]

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Address

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Telephone Number

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF _____

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|---|-----------------|
| _____ , Plaintiff/Petitioner, vs. _____ , Defendant/Respondent. | NO. SUBPOENA |
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The State of Washington to:

Name

Address

You are commanded to appear before:

Judge _____ of the Superior Court of the State of Washington for
_____ County at the _____ County Courthouse, [address]
_____ Room _____

1 on [date] _____ at [time] _____ [a.m.][p.m.] and testify in this case on behalf of the
2 [plaintiff/petitioner][defendant/respondent], and to remain in attendance until you have given your testimony or you
3 have been dismissed or excused by the court.

4 Dated: _____

5 _____
6 _____ County Superior Court Clerk

7 Applicable [] Not applicable []
8 Allowances for meals, lodging,
9 and travel expenses pursuant to
10 RCW 5.56.010:

11 Meals: _____

12 Lodging: _____

13 Travel expenses: _____

14 Person Requesting subpoena:

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16 Name

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF _____

_____,

Plaintiff/Petitioner,

vs.

Defendant/Respondent.

NO.

SUBPOENA DUCES TECUM

The State of Washington to:

Name

Address

You are commanded to appear before:

Judge _____ of the Superior Court of the State of Washington for

_____ County at the _____ County Courthouse, [address]

_____ Room _____

on [date] _____ at [time] _____ [a.m.][p.m.] and testify in this case on behalf of the

[plaintiff/petitioner][defendant/respondent], and to remain in attendance until you have given your testimony or you

have been dismissed or excused by the court, and to bring with you the following documents:

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Dated: _____

County Superior Court Clerk

Applicable [] Not applicable []
Allowances for meals, lodging,
and travel expenses pursuant to
RCW 5.56.010:

Meals: _____

Lodging: _____

Travel expenses: _____

Person Requesting subpoena:

Name

Address

Telephone Number

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF _____

| | |
|---|-----------------------------|
| _____ , Plaintiff/Petitioner, vs. _____ , Defendant/Respondent. | NO. AFFIDAVIT OF SERVICE |
|---|-----------------------------|

I [name] _____ declare as follows:

1. I am over the age of 18 years, and I am not a party to this action.
2. I served [name of person served] _____

with a subpoena subpoena duces tecum in the above-captioned case.

3. The date, time and place of service were:

Date: _____

Time: _____ [a.m.] [p.m.]

Address: _____

4. Service was made pursuant to Civil Rule 45(c)

by giving a copy to the person named in paragraph 2 above

by leaving a copy with [name of person given the subpoena]

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_____, a person of suitable age and
discretion residing at the witness's usual abode.

by leaving a copy at the witness's usual abode.

by exhibiting and reading the subpoena to the witness.

5. Other: _____

I declare under penalty of perjury under the laws of the
State of Washington that the foregoing is true and correct.

Signed: at _____, on _____.
(City and State) (Date)

Signature

Print or Type Name

Fees:
Service _____
Mileage _____
Total _____