

# Drafting and Issuing Discovery Subpoenas: Washington

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A Q&A guide to drafting, issuing, serving, and enforcing a discovery subpoena in a Washington civil proceeding. This Q&A addresses the state statutes and rules governing discovery subpoenas, the types of discovery subpoenas available, the requirements for drafting and serving a discovery subpoena, and the methods of enforcing a discovery subpoena. Answers to questions can be compared across a number of jurisdictions (see [Drafting and Issuing Discovery Subpoenas: State Q&A Tool](#)).

## OVERVIEW OF DISCOVERY SUBPOENAS

### 1. What are the laws or rules in your jurisdiction that generally govern subpoenas to non-party witnesses in discovery?

The primary body of law governing subpoenas in Washington is the Washington Superior Court Civil Rules. The rules relating to subpoenas are:

- Wash. Super. Ct. Civ. R. 30 (oral depositions, subpoenas for depositions).
- Wash. Super. Ct. Civ. R. 31 (written depositions, subpoenas for depositions).
- Wash. Super. Ct. Civ. R. 37 (motions to compel and sanctions).
- Wash. Super. Ct. Civ. R. 45 (subpoenas generally).

The following provisions of the Washington Revised Code also govern subpoenas:

- RCW 2.43.010 to 2.43.090 (providing for interpreters for non-English speaking persons served with subpoenas).

- RCW 5.51.010 to 5.51.902 (Uniform Interstate Depositions and Discovery Act).
- RCW 5.56.010 to 5.56.100 (use of subpoenas to compel attendance of witnesses in civil actions and proceedings).

Certain courts and judicial bodies are governed by other statutes and court rules, including:

- RCW 12.16.015 to 12.16.050 (subpoenas in district courts).
- WA R CIV LTD JURIS CRLJ 45 (subpoenas in courts of limited jurisdiction).
- Local rules of superior courts in various counties in Washington.

### 2. Please identify and describe the different types of discovery subpoenas available in your jurisdiction (for example, document subpoenas, subpoenas for deposition only, or combined deposition and document subpoenas).

The following types of subpoenas may be combined or served separately in Washington:

- Deposition subpoena (see Deposition Subpoena).
- Document subpoena (see Document Subpoena).
- Inspection subpoena (see Inspection Subpoena).

(Wash. Super. Ct. Civ. R. 45(a)(1)(c).)

Wash. Super. Ct. Civ. R. 45(h) provides a form for all types of subpoenas.

#### DEPOSITION SUBPOENA

A deposition subpoena may command a person to appear and provide testimony at a specific time and place for:

- A deposition.
- A trial.
- A hearing.

(Wash. Super. Ct. Civ. R. 45(a)(1)(C), (a)(3).)

## DOCUMENT SUBPOENA

A document subpoena may command a person to produce and permit inspection and copying of the following items in the person's possession, custody, or control:

- Books.
- Papers.
- Documents.
- Tangible things.

(Wash. Super. Ct. Civ. R. 30(b)(1) and 45(a)(1)(C), (c)(2)(A).)

## INSPECTION SUBPOENA

An inspection subpoena may command a person to permit inspection of premises at a specified time and place (Wash. Super. Ct. Civ. R. 45(a)(1)(C)).

### 3. Who has the authority to issue a discovery subpoena?

In Washington, a subpoena may be issued and signed by:

- The court in which a civil action or proceeding is pending, under its seal.
- One of the court's judges, commissioners, or referees.
- The clerk of the court, in response to a *praecipe* (a written request).
- An attorney of record who represents a party in the case (Wash. Super. Ct. Civ. R. 45(a)(4)). This is the most common method of issuing a subpoena in Washington.
- Any other person otherwise authorized by statute.

(RCW 5.56.010; Wash. Super. Ct. Civ. R. 45(a)(4).)

### 4. Are there any situations when a discovery subpoena must be issued from a court?

In Washington, a court order or a court-issued subpoena is required for a subpoena:

- Sought by a *pro se* party (see RCW 5.56.010; 4 Wash. Prac., Rules Practice CR 45 (6th ed.)).
- Directed to a person in Washington but issued by a court in another state. This type of subpoena must be issued by the clerk of court in the county in which discovery is sought. (RCW 5.51.020.)
- For a witness who resides either outside of the county in which the action or proceeding is pending, or more than 20 miles from the court's location. The party seeking this type of subpoena must apply *ex parte* to the court or to one of its:
  - judges;
  - commissioners;
  - referees; or
  - clerks.
- (RCW 5.56.010.)
- Requiring a deposition of a person confined in prison (Wash. Super. Ct. Civ. R. 30(a) and 31(a)).
- When the plaintiff seeks to take a deposition within the 30 days following service of the summons and complaint, except when either:

- the defendant served notice of taking a deposition or otherwise sought discovery; or
- the plaintiff served notice stating that the person to be deposed is about to go out of state and will be unavailable unless the deposition is taken within the 30 day period following service of the summons and complaint.

■ (Wash. Super. Ct. Civ. R. 30(a), (b)(2).)

■ When the place of examination, production, or inspection is outside of Washington, where required by the laws of the foreign state, territory, or country (Wash. Super. Ct. Civ. R. 45(e)(3)).

## DRAFTING A DISCOVERY SUBPOENA

### 5. What information must be included in each type of discovery subpoena?

#### GENERAL REQUIREMENTS

In Washington, every subpoena must contain:

- The name of the issuing court.
- The title of the action.
- The name of the court in which the action is pending.
- The case number.
- The time and place for:
  - producing and inspecting documents or tangible things;
  - inspecting premises; or
  - providing testimony.
- The text of Wash. Super. Ct. Civ. R. 45(c)-(d).

(Wash. Super. Ct. Civ. R. 45(a)(1) and (h).)

#### DEPOSITION SUBPOENA

A deposition subpoena must include:

- The method for recording the testimony (Wash. Super. Ct. Civ. R. 45(a)(2), (h)).
- If the subpoenaed party is a governmental agency, a public or private corporation, or a partnership or association:
  - a reasonably specific description of the matters on which examination is requested; and
  - a statement that the non-party organization must designate one or more of its officers, directors, or managing agents or other persons who consent to testify on its behalf, and may set out the matters on which the person will testify.
- (Wash. Super. Ct. Civ. R. 30(b)(6) and 45(h).)

#### DOCUMENT SUBPOENA

A document subpoena must designate the books, papers, documents, or tangible things to be produced (Wash. Super. Ct. Civ. R. 30(b)(1) and 45(a)(1)(C), (h)).

A document subpoena that is joined with a deposition subpoena and directed to a party must both:

- Describe the items or categories of items to be produced with reasonable particularity.

- Specify a reasonable time, place, and manner of producing the items and performing the related acts.

(Wash. Super. Ct. Civ. R. 34(b)(2)(A) to (B) and 45(a)(3).)

### INSPECTION SUBPOENA

An inspection subpoena must specify the premises to be inspected (Wash. Super. Ct. Civ. R. 45(h)).

#### 6. Are there any official forms for any of the different types of discovery subpoenas?

Wash. Super. Ct. Civ. R. 45(h) provides a form subpoena.

Counsel should also check the website of the superior court in the county where a subpoena is sought to determine whether the court has its own form subpoena.

### SERVING A DISCOVERY SUBPOENA

#### 7. Who may serve a discovery subpoena?

In Washington, any individual over the age of 18 may serve a subpoena. However, when service is made by any person other than an officer authorized to serve process, that person must make proof of service by affidavit. (Wash. Super. Ct. Civ. R. 45(b)(1).)

#### 8. Are there any restrictions on who may be served with a discovery subpoena?

Washington subpoenas in civil matters cannot be served out of state (*In re Det. of Stout*, 150 P.3d 86, 97 (Wash. 2007); *Young v. Key Pharm., Inc.*, 819 P.2d 814, 816 (Wash. Ct. App. 1991)).

Subpoenas may be served only in the context of a pending case. Serving a subpoena before a case has been filed is unethical (4 Wash. Prac., Rules Practice CR 45 (6th ed.), citing Informal Opinion 2022 of the Washington State Bar Association (2003)).

Subpoenas are generally served only on non-parties. Although the rules do not explicitly prohibit using subpoenas to obtain discovery from parties, in practice discovery is generally obtained from parties by using notices of deposition, interrogatories, or requests for production of documents or inspection of premises (Wash. Super. Ct. Civ. R. 30, 31, 33, and 34; see 4 Wash. Prac., Rules Practice CR 45 (6th ed.)).

#### 9. How is a discovery subpoena served on a non-party witness?

In Washington, service of a subpoena is generally accomplished by either:

- Giving a copy of the subpoena to the witness.
- Leaving a copy of the subpoena at the person's home with a person of suitable age and discretion who resides there.

(Wash. Super. Ct. Civ. R. 45(b)(1).)

Service of a subpoena on a corporate entity can be accomplished in the following ways:

- Serving the corporate entity's registered agent.

- If the entity either has no registered agent or its registered agent cannot be served with reasonable diligence, then service can be made by registered or certified mail addressed to the entity at the entity's principal office.
- If service cannot be accomplished by registered or certified mail, the service may be made on an individual in charge of any regular place of business or activity of the entity, if the individual served is not a plaintiff in the action.
- If none of the previous three efforts are successful, the Washington secretary of state acts as an agent of the entity for service of process, and service can be made on the secretary of state.

(RCW 23.95.450(1) to (4).)

When the person serving the subpoena is not an officer authorized to serve process, proof of service must be made by affidavit (Wash. Super. Ct. Civ. R. 45(b)(1)).

Failure to serve a subpoena consistent with the Washington Superior Court Civil Rules nullifies the service so that the subpoena has no legal significance (*State v. Adamski*, 761 P.2d 621, 623 (Wash. 1988)).

#### 10. How far in advance must the issuing party serve a discovery subpoena on a non-party witness before the compliance date stated in the subpoena (for example, a specific number of days before the compliance date or a reasonable time before the compliance date)?

In Washington, the issuing party of a deposition subpoena must give the non-party deponent reasonable notice in writing at least five business days before the deposition. Failure to give timely notice may result in sanctions in the deponent's favor, but it is not grounds for quashing the subpoena. (Wash. Super. Ct. Civ. R. 30(b)(1).)

For document and inspection subpoenas, the issuing party must allow a reasonable time for compliance (Wash. Super. Ct. Civ. R. 45(c)(3)(A)(i)). Although the Rules do not explicitly define what a reasonable time is, Wash. Super. Ct. Civ. R. 45(c)(2)(B) provides that a person has 14 days to object to a document or inspection subpoena after it is served, or "before the time specified for compliance if such time is less than 14 days after service," suggesting that 14 days might be a reasonable time for compliance.

#### 11. When and how must the issuing party notify other parties in the case that a discovery subpoena will be or has been served on a non-party witness? If no notice of that kind is required, please state that in your answer.

### DEPOSITION SUBPOENA

In Washington, a party wishing to take the deposition of a non-party witness must give all other parties reasonable notice in writing of at least five business days (Wash. Super. Ct. Civ. R. 30(b)(1)).

### DOCUMENT OR INSPECTION SUBPOENA

Where the subpoena does not include a command to appear for deposition, parties must be served at least five days before the subpoena is served on the witness, unless the parties otherwise agree or the court orders otherwise (Wash. Super. Ct. Civ. R. 45(b)(2)).

**12. Are there any territorial limits for service of a discovery subpoena? If so, please describe:**

- Any limits on service within the state.
- Any limits on service outside the state.
- The procedure for obtaining discovery from a non-party witness located outside of the issuing court's jurisdiction.

**IN-STATE LIMITS ON SERVICE**

A subpoena generally may be served anywhere within Washington. However, where the witness resides outside the county where the action is pending or more than 20 miles from the court's location, the party seeking the discovery must apply ex parte to either the court or to the judge, commissioner, referee, or clerk of the court for the issuance of a subpoena (RCW 5.56.010).

A subpoena may require a Washington resident to attend a deposition, produce documents, or allow inspection either:

- In the county where the person either resides, is employed, or transacts business in person.
- At some other convenient place fixed by court order.

(Wash. Super. Ct. Civ. R. 45(e)(2).)

A subpoena may require a non-resident of Washington to attend a deposition, produce documents, or allow inspection either:

- In the county where the person is served with the subpoena.
- Within 40 miles of the place of service.
- At some other convenient place fixed by court order.

(Wash. Super. Ct. Civ. R. 45(e)(2).)

**OUT-OF-STATE LIMITS ON SERVICE**

Washington subpoenas in civil matters cannot be served on out-of-state witnesses (*In re Det. of Stout*, 150 P.3d at 97; *Young*, 819 P.2d at 816).

**OBTAINING DISCOVERY LOCATED OUTSIDE ISSUING COURT'S JURISDICTION**

Where the place of examination, production, or inspection is outside of Washington, the issuing party must secure a subpoena in accordance with the foreign jurisdiction's laws (Wash. Super. Ct. Civ. R. 45(e)(3)).

In practice, counsel generally first seek out-of-state discovery by stipulation. If the other party refuses to stipulate, counsel should use the procedures set out in the Uniform Interstate Depositions and Discovery Act (UIDDA) provided it is applicable in the state where the discovery is sought (RCW 5.51.010 to 5.51.902). The UIDDA in Washington requires a foreign party to submit a foreign subpoena to the clerk of court in the county in which discovery is sought to be conducted in Washington. The clerk then issues a subpoena for service on the person to which the foreign subpoena is directed. (RCW 5.51.020.)

If the UIDDA does not apply, a subpoena may be sought through a court in the jurisdiction where the witness resides (Wash. Super. Ct. Civ. R. 45(e)).

**WITNESS FEES****13. What are the applicable witness fees for a deposition in your state? In particular, please describe:**

- How the fees are calculated.
- In what form fees are paid (for example, cash or check).
- When the fees must be paid.
- The consequences for failing to pay the fees.

**APPLICABLE FEES**

Under Washington law, a subpoenaed witness is entitled to receive, on demand:

- Attendance fees.
- Mileage fees for traveling to and returning from the place where their attendance is required.
- An allowance fixed by the court for meals and lodging, if any, for a witness residing:
  - outside of the county where the action or proceeding is pending; or
  - more than 20 miles from the place where the court is located.

(RCW 2.40.020 and 5.56.010.)

**CALCULATING FEES**

Washington law does not specify the method for calculating the fee. Generally, the amount is either negotiated or the witness is paid an hourly or daily rate.

However, the party or attorney responsible for the issuance and service of a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. Washington courts enforce this responsibility. (Wash. Super. Ct. Civ. R. 45(c)(1).)

**FORM OF FEES**

Washington law does not specify the required form of payment. However, witness fees are generally paid by check.

**TIMING**

Witnesses are entitled to receive their fees on demand (RCW 2.40.020). In practice, the timing of payment is negotiated.

**CONSEQUENCES FOR FAILURE TO PAY**

If the issuing party does not pay the applicable fees when the subpoena is served, the witness cannot be compelled to attend any civil action or proceeding (RCW 5.56.010).

**ENFORCING A DISCOVERY SUBPOENA****14. What are the available methods for enforcing a discovery subpoena against a non-party witness (for example, motion to compel, motion for contempt)?****MEET AND CONFER**

Counsel must meet and confer to attempt to resolve any discovery disputes before a Washington court will accept any motion to enforce

a discovery subpoena. Any motion seeking an order to compel discovery must include a certification that the conference occurred or that the non-moving party willfully refused or failed to confer in good faith. (Wash. Super. Ct. Civ. R. 26(i).)

### MOTION TO COMPEL

When a witness fails to comply with an attorney-issued subpoena, the issuing party may make a motion to compel on reasonable notice to the other parties and other affected persons. A motion to compel must be made to the court in the county where the deposition is being taken or where the action is pending and include:

- A showing that the witness failed to respond to the subpoena.
- A certification of compliance with Wash. Super. Ct. Civ. R. 26(i).

(Wash. Super. Ct. Civ. R. 37(a).)

### MOTION FOR CONTEMPT

The court may find a non-party witness in contempt of court for failure to obey a subpoena without adequate excuse (Wash. Super. Ct. Civ. R. 45(g)).

Penalties for contempt of court may include the following:

- Imprisonment.
- Forfeiture of up to \$2,000 for each day the contempt continues.
- An order designed to ensure compliance with the previous order.
- Any other remedial sanction, if the court finds that the sanctions specified in RCW 7.21.030(2)(a) to (c) would not terminate the ongoing contempt.

(RCW 7.21.030(2).)

In addition to the remedial sanctions listed in RCW 7.21.030(2), a court may order a person found in contempt of court to pay a party for any losses suffered by the party due to the contempt and any costs incurred in connection with the contempt proceeding, including reasonable attorney's fees (RCW 7.21.030(2)).

## APPEALING A COURT DECISION ON A DISCOVERY SUBPOENA

### 15. May a court's decision concerning a discovery subpoena be appealed? If so, please indicate:

- Whether the decision may be appealed.
- When the decision may be appealed.
- The standard of review for an appeal.

### APPEALABILITY

In Washington, an order concerning a discovery subpoena may be appealable if it satisfies certain requirements. For example, a superior court's order may be appealed as of right if the order:

- Affects a substantial right.
- Effectively determines the action.
- Prevents a final judgment or discontinues the action

(Wash. R. App. P. 2.2.)

Typically, orders concerning discovery subpoenas may be submitted for discretionary review, unless otherwise expressly prohibited by a statute or court rule (Wash. R. App. P. 2.3(a); see *Dep't of Soc. & Health Servs. v. Latta*, 601 P.2d 520 (Wash. 1979)).

### TIMING OF APPEAL

Unless an exception under Wash. R. App. P. 3.2(e), 5.2(d), or 5.2(f) applies, notice of appeal must be filed in the trial court within the longer of either:

- 30 days after entry of the trial court's decision that the party filing the notice wants reviewed.
- If a statute states that notice of appeal must be filed within a certain time period, the number of days specified by the statute for initiating review.

(Wash. R. App. P. 5.2(a), (e).)

Unless an exception under Wash. R. App. P. 3.2(e), 5.2(d), or 5.2(f) applies, a notice of discretionary review must be filed within the longer of either:

- 30 days after entry of the trial court's act that the party filing the notice wants reviewed.
- 30 days after the entry of an order deciding a timely motion for reconsideration of that act.

(Wash. R. App. P. 5.2(b).)

### STANDARD OF REVIEW

Washington courts review decisions concerning subpoenas under an abuse of discretion standard (*Eugster v. City of Spokane*, 91 P.3d 117, 121 (Wash. Ct. App. 2004)). A court abuses its discretion when its decision is based on untenable grounds or reasoning (*Eugster*, 91 P.3d at 121).

However, Washington courts review discovery rulings based on the trial court's interpretation of a statute or judicial decision de novo (*Volkert v. Fairbank Constr. Co., Inc.*, 438 P.3d 1203, 1207 (Wash. Ct. App. 2019) (citing *Fellows v. Moynihan*, 285 P.3d 864, 868 (Wash. 2012))).

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