

Drafting and Issuing Discovery Subpoenas: Oregon

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A Q&A guide to drafting, issuing, serving, and enforcing a discovery subpoena in an Oregon 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](#)).

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Overview of Discovery Subpoenas

1. What are the laws or rules in your jurisdiction that generally govern subpoenas to nonparty witnesses in discovery?

The primary law governing [subpoenas](#) in Oregon is the Oregon Rules of Civil Procedure. The Oregon Rules of Civil Procedure apply to all circuit courts for all civil actions and special proceedings, whether recognized as cases at law, in equity, or of statutory origin, except where a different procedure is specified by statute or rule ([Or. R. Civ. P. 1\(A\)](#)).

The rules relating to subpoenas are:

- [Or. R. Civ. P. 55](#) (subpoenas generally).
- [Or. R. Civ. P. 36](#) (discovery generally).

- [Or. R. Civ. P. 38](#) (foreign depositions and subpoenas).
- [Or. R. Civ. P. 46](#) (failure to make discovery).

The following provisions also govern subpoenas:

- [Or. Rev. Stat. § 44.415](#) (fees and mileage reimbursements for witnesses).
- Oregon's Uniform Trial Court Rules, including [UTCR 5.140](#) (addressing Oregon discovery in foreign proceedings).
- Applicable supplemental local rules in the appropriate venue (see the Oregon Judicial Department's (OJD) [website](#)).
- The individual practices of the judges.

Other statutes and regulations may also apply to subpoenas in certain courts or proceedings, including:

- Subpoenas issued by judgment debtors and creditors to examine witnesses in a debtor examination ([Or. Rev. Stat. § 18.268](#)).
- Administrative subpoenas issued by the OJD as part of the Oregon Child Support Program ([Or. Rev. Stat. § 25.082](#); [OAR 137-055-3620](#)).

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).

Testimonial Subpoena

In Oregon, a testimonial subpoena requires a witness to attend and testify at a particular time and place:

- Before a court.
- In a trial.
- At a deposition.

(Or. R. Civ. P. 55(A)(1).)

The witness must remain until the testimony is closed unless the witness is discharged (Or. R. Civ. P. 55(A)(6)(a)).

Document Subpoena

A *subpoena duces tecum* may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things in the possession, custody, or control of that person at a specified time and place. A command to produce and permit inspection of those items may be joined with a command to appear at trial, hearing, or deposition in the same subpoena. (Or. R. Civ. P. 55(C).) Requests for documents that contain "confidential health information" must meet the requirements of Or. R. Civ. P. 55(D).

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

For lawsuits pending in Oregon, the following may issue a subpoena:

- A clerk of the court, if requested by a party or attorney, may issue a subpoena "in blank." The attorney fills out the in blank subpoena before service.
- A judge, justice, or other authorized officer.
- The attorney of record.

(Or. R. Civ. P. 55(A)(3).)

The clerk is authorized to issue a subpoena to attend a deposition following proof of service of a notice of deposition or a notice of *subpoena duces tecum* or certifies that such a notice will be served contemporaneously with service of the subpoena (Or. R. Civ. P. 55(A)(3)(b)).

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

In Oregon, a court is not required to issue a subpoena unless specifically stated in the rules. Testimony from a prisoner requires a court-issued order or subpoena ([Or. R. Civ. P. 55\(B\)\(4\)](#)).

Additionally, a clerk of a court issues a subpoena:

- Related to a foreign subpoena ([Or. R. Civ. P. 38\(C\)\(2\)\(a\)](#) and [55\(A\)\(3\)\(c\)](#); see [Requesting a Foreign Subpoena](#)).
- To depose a witness located in Oregon for cases pending outside Oregon ([Or. R. Civ. P. 38\(C\)](#) and [55\(C\)](#); see [Testimony Subpoenas for Witnesses Located in Oregon](#)).

Requesting a Foreign Subpoena

To request a foreign subpoena, which is a subpoena issued under the authority of a court in any state other than Oregon, a party or attorney must submit a foreign subpoena to a clerk of court in the Oregon county in which discovery is sought. After submission, the clerk, in accordance with the Oregon court's procedure and requirements, must assign a case number and promptly issue a subpoena for service on the person to whom the foreign subpoena is directed. ([Or. R. Civ. P. 38\(C\)\(2\)\(a\), \(b\)](#).)

Foreign subpoenas must conform to the requirements of [Or. R. Civ. P. 55](#) but may incorporate the terms used in the foreign subpoena if those terms conform to Oregon's rules. The foreign subpoena must also contain the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel. ([Or. R. Civ. P. 38\(C\)\(2\)\(c\)](#).)

Testimony Subpoenas for Witnesses Located in Oregon

If a party to an out-of-state proceeding seeks to depose a witness located in Oregon, the subpoena must be issued by the clerk of a circuit court in the county where the witness is to be examined ([Or. R. Civ. P. 55\(A\)\(3\)\(c\)](#)).

Drafting a Discovery Subpoena

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

General Requirements

In Oregon, a subpoena must contain:

- The name of the court and title of the action ([Or. R. Civ. P. 55\(A\)\(1\)](#)).

- The case caption of the underlying action, including:
 - the name of the court and the venue;
 - the names of the parties;
 - the circuit court case number; and
 - the assigned judge, if applicable.

(Or. R. Civ. P. 16(A).)

- The type of subpoena being issued, which serves as the document title (UTCR 2.010(11)).
- The name and address of the individual or entity being subpoenaed (Or. R. Civ. P. 55(A)(1)).
- The time and place for:
 - the production or inspection of documents; or
 - providing testimony.

(Or. R. Civ. P. 55(A)(1).)

- The issuing attorney's:
 - signature;
 - name;
 - bar number;
 - address;
 - email address;
 - telephone number; and
 - the party that the attorney represents.

(UTCR 2.010(7) and 1.110(1).)

- The date the subpoena was signed (UTCR 2.010(6)(a)).

Requirements for Document Subpoenas

A document subpoena must include:

- A description of the books, papers, documents, or tangible things being requested.
- The time and place where the requested items are to be produced.
- Whether originals or true copies will satisfy the subpoena.

(Or. R. Civ. P. 55(A)(1)(a)(iv)(B), (C)(3)(c).)

Individually identifiable health information may not be requested unless the party seeking discovery follows the specific guidelines under Or. R. Civ. P. 55(D).

Requirements for Testimonial Subpoenas

A testimonial subpoena must include a command to require the attendance of the person to whom the subpoena is directed to testify at a specified time and place (Or. R. Civ. P. 55(A)).

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

Oregon does not have any official forms for subpoenas. Most privately published subpoena forms are good models that can be filled in or tailored to a party's specific needs. Some courts may also provide sample forms for litigants to use.

Serving a Discovery Subpoena

7. Who may serve a discovery subpoena?

In Oregon, generally the following may serve a subpoena:

- The party to the action.
- The party's attorney.
- Any person 18 years old or older.

(Or. R. Civ. P. 55(A)(4).)

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

Minors

In Oregon, for a witness who is under 14 years old, a party must serve a subpoena to the witness's parent, guardian, or guardian ad litem, along with fees for one day of attendance and mileage unless the witness expressly declines payment. (Or. R. Civ. P. 55(B)(2)(b).)

Law Enforcement

A party may serve a subpoena on a law enforcement officer or agency by serving either:

- The officer being subpoenaed.
- An individual designated to receive service by the officer's employer.
- The officer in charge in the absence of a designated individual.

(Or. R. Civ. P. 55(B)(3).)

A subpoena for a law enforcement officer may only be served by delivery to a designated individual when:

- The subpoena is served at least ten days before the date the officer's attendance is required.
- The officer is currently employed as a peace officer by the agency designating the individual for service of subpoenas.
- The officer is present within Oregon when service is made.

(Or. R. Civ. P. 55(B)(3)(b).)

Prisoners

The court must give leave for service of a subpoena on a witness in prison or jail. The court may prescribe the terms by which attendance of the witness may be compelled. The court may also determine the location of the deposition. (Or. R. Civ. P. 55(B)(4).)

Parties to the Action

Subpoenas are generally served on non-parties. The Oregon Rules of Civil Procedure do not explicitly prohibit using subpoenas to obtain disclosure from other parties to the proceeding, particularly in order to compel trial testimony.

9. How is a discovery subpoena served on a nonparty witness?

General Service of Subpoenas

In Oregon, subpoenas may be served by a party, the party's attorney, or any person 18 years of age or older (Or. R. Civ. P. 55(A)(4)). Service is made by both:

- Personal delivery of a copy to the witness.
- At the time of service, giving or offering to the witness:
 - fees to travel to and from the designated place; and
 - one day's attendance fees, whether or not personal attendance is required.

(Or. R. Civ. P. 55(B)(2).)

A corporation, partnership, association, or governmental agency must be served in the same manner as service of summons provided in Or. R. Civ. P. 7(D).

Service on an Individual

Subpoenas commanding only the production of documents and not a personal appearance may be served personally or by mail (Or. R. Civ. P. 55(C)(2)).

Testimonial subpoenas generally must be served personally. However, if the witness waives personal service, the subpoena may be mailed to the witness, but only if:

- Contemporaneous with the return of service, the party's attorney or attorney's agent certifies that the witness agreed to appear and testify if subpoenaed.
- Made arrangements to pay the witness and mileage fees.
- Mailed the subpoena more than ten days before the trial by certified mail and the signed certified mail return receipt is received at least three days before the trial.

(Or. R. Civ. P. 55(B)(2)(c).)

- If the individual is under 14 years of age, the subpoena must be served on the witness's parent, guardian, or guardian ad litem (Or. R. Civ. P. 55(B)(2)(b)).

Service on a Corporation

A corporation may be served by:

- Personal service on or at the office of a registered agent, officer, or director of the corporation.
- Personal service on a clerk on duty in the registered agent's office.

(Or. R. Civ. P. 7(D)(3)(b)(i).)

If a registered agent, officer, or director cannot be found, service may be made by:

- Substituted service on the registered agent, officer, or director as provided under Or. R. Civ. P. 7(D)(2)(b).
- Personal service on any clerk or agent of the corporation found in the county where the action is filed.
- Mail to:
 - the office of the registered agent;
 - the last registered office of the corporation;
 - the corporation's principal place of business; or

- any address that is most likely to result in actual notice.
- Service on the Oregon secretary of state.

(Or. R. Civ. P. 7(D)(3)(b)(ii).)

Service on a Limited Liability Company

A limited liability company may be served by:

- Personal service on or at the office of a registered agent, manager, or member.
- Personal service on a clerk on duty at the registered agent's office.

(Or. R. Civ. P. 7(D)(3)(c)(i).)

If the registered agent, manager, or member cannot be found, service may be made by:

- Substituted service as provided [Or. R. Civ. P. 7\(D\)\(2\)\(b\)](#) on the registered agent, manager, or member.
- Personal service on any clerk or agent of the limited liability company found in the county where the action is filed.
- Mail to:
 - the office of the registered agent;
 - the last registered office of the limited liability company;
 - the company's principal office or place of business; or
 - any address which is most likely to result in actual notice.
- Service on the Oregon secretary of state.

(Or. R. Civ. P. 7(D)(3)(c)(ii).)

Service on a Limited Partnership

A limited partnership may be served by:

- Personal service on or at the office of a registered agent or general partner.
- Personal service on a clerk on duty at the registered agent's office.

(Or. R. Civ. P. 7(D)(3)(d)(i).)

If the registered agent or general partner cannot be found, service may be made by:

- Substituted service on the registered agent or general partner, as provided under Or. R. Civ. P. 7(D)(2)(b).
- Personal service on any clerk or agent of the limited partnership found in the county where the action is filed.
- Mail to:
 - the office of the registered agent;
 - the last registered office of the limited partnership;
 - the partnership's principal office or place of business; or
 - any address which is most likely to result in actual notice.
- Service on the Oregon secretary of state.

(Or. R. Civ. P. 7(D)(3)(d)(ii).)

Service on a General or Limited Liability Partnership

A general or limited liability partnership may be served by personal service on a partner or agent authorized by appointment or law to receive the subpoena (Or. R. Civ. P. 7(D)(3)(e)).

Service on the State of Oregon

The state of Oregon may be served by:

- Personal service on the Oregon attorney general.
- Leaving the subpoena at the attorney general's office with a deputy, assistant, or clerk.

(Or. R. Civ. P. 7(D)(3)(g).)

Service on Public Bodies

A county, incorporated city, school district, or other public corporation, commission, board, or agency may be served by personal or office service on:

- An officer.
- A director.
- A managing agent.
- The organization's attorney.

(Or. R. Civ. P. 7(D)(3)(h).)

Service on Law Enforcement

Law enforcement agencies may be served by service on a designated individual. If no individual is designated, service may be made on the officer in charge of the law enforcement agency. (Or. R. Civ. P. 55(B)(3)(b); see [Question 8](#).)

10. How far in advance must the issuing party serve a discovery subpoena on a nonparty 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)?

Testimonial Subpoenas

A party issuing a subpoena requesting a non-party to provide testimony must serve the subpoena within a reasonable time before the appearance date. The Oregon Rules of Civil Procedure do not define "reasonable time," however, the time should be sufficient to allow the witness to both:

- Prepare for the appearance.
- Travel to the place of attendance.

(Or. R. Civ. P. 55(B)(2).)

A subpoena served on an enforcement agency that employs a peace officer that requires the peace officer's attendance at trial must be served at least ten days before the date of attendance (Or. R. Civ. P. 55(B)(3)(b)).

Document Subpoenas

A document subpoena must be served at least 14 days prior to the date for compliance, unless otherwise ordered by a court (Or. R. Civ. P. 55(C)(3)(b)).

A party issuing a subpoena seeking individually identifiable or protected health information must first serve a custodian or keeper of the information with a protective order or an affidavit, including documentation showing that the issuing party provided written notice to the individual or the individual's attorney that the person has 14 days from the date of the notice to object to the proposed subpoena (Or. R. Civ. P. 55(D)(1), (D)(4)). If the subpoena is directed at an institution that maintains records separate and apart from the health care practitioner, the 14-day rule may not apply (see *Mitchell v. Mt. Hood Meadows Or.*, 99 P.3d 748, 754 (Or. Ct. App. 2004)).

The best practice is to provide 14 days' notice to the subject of a subpoena requesting production of individually identifiable health information before serving any type of hospital or medical records subpoena to avoid an objection. Parties may, preferably in writing, extend these time frames by agreement.

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 nonparty witness? If no notice of that kind is required, please state that in your answer.

Notice of Document Subpoena

In Oregon, a copy of the document subpoena that does not seek attendance of a witness must be served on all parties to the action at least seven days before it is served on the subpoenaed individual or entity, unless the court orders a shorter period of time (Or. R. Civ. P. 55(C)(3)(a)).

Notice of Testimonial Subpoena

A party seeking a subpoena to depose a witness must give reasonable notice in writing to the other parties in the litigation before serving the subpoena on the witness (Or. R. Civ. P. 39(C)(1) and 55(B)(2)). The notice must state:

- The time and place for taking the deposition.
- The name and address of each person to be examined and, if the names are unknown, a general description sufficient to identify the person or particular class to which the person belongs.

(Or. R. Civ. P. 39(C)(1).)

Additionally, if a document subpoena is served with a testimonial subpoena, the materials to be produced must be attached to or included in the notice. (Or. R. Civ. P. 39(C)(1).)

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 nonparty witness located outside of the issuing court's jurisdiction.

In-State Limits on Service

A subpoena may be served at any place within Oregon (Or. R. Civ. P. 38 and 55(A)(6)(c)).

An Oregon subpoena may only require a non-party resident to attend a deposition or produce the requested documents in either:

- The county in which the resident:
 - resides;
 - is employed; or
 - transacts business in person.
- A convenient place designated by court order.

(Or. R. Civ. P. 55(A)(6)(c)(i).)

Out-of-State Limits on Service

A nonresident of Oregon may be required to attend a deposition or produce the requested documents only either:

- In the county where the resident is served.

- At a convenient place designated by court order.

(Or. R. Civ. P. 55(A)(6)(c)(ii).)

If the state in which the nonresident resides has adopted the Uniform Interstate Depositions and Discovery Act (UIDDA), a litigant may present a subpoena issued by a court in the forum state to a clerk of the court located in the state where the discoverable materials or individual are located. The clerk will then issue a subpoena for service on the applicable individual or entity. The issuing party must comply with the rules of the non-forum state and pay any applicable fees. (Or. R. Civ. P. 38.)

If the state in which the nonresident resides has not adopted the UIDDA, the issuing party must seek an out-of-state commission or **letter rogatory** from the foreign state (Or. R. Civ. P. 38(B).) These documents must be filed in the jurisdiction where discovery is sought to request the non-forum court to issue a subpoena to be served on the individual or entity. (Or. R. Civ. P. 38(C)(2)(a).)

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

In Oregon, the issuing party must offer a subpoenaed witness payment or pay the following fees at the time of service:

- Attendance fees to attend a deposition, hearing, or trial.
- Fees for traveling to and from the place designated.

(Or. R. Civ. P. 55(A)(6)(b).)

Calculating Fees

The witness attendance fee, even if the witness is not examined, is \$30 per day. The mileage fee is \$0.25 per mile. ([Or. Rev. Stat. § 44.415\(1\)](#).)

Form of Fees

Parties generally pay witness fees by check.

Timing

The fees must be paid before the witness is to testify, typically when the subpoena is served ([Or. R. Civ. P. 55\(A\)\(6\)\(b\)](#)).

Consequences for Failure to Pay

If the issuing party does not pay the attendance and mileage fees before the subpoena's return date, service is incomplete and the witness is not required to comply. Additionally, if the issuing party does not pay the witness attendance fee at the end of each day's attendance, the witness is considered discharged ([Or. R. Civ. P. 55\(A\)\(6\)](#)).

Enforcing a Discovery Subpoena

14. What are the available methods for enforcing a discovery subpoena against a nonparty witness (for example, motion to compel, motion for contempt)?

Motion to Compel

An issuing party may seek court intervention to enforce a subpoena by filing a motion to compel compliance ([Or. R. Civ. P. 46 and 55\(A\)\(7\)\(a\)\(ii\)](#)). Oregon law treats an evasive or incomplete answer as a failure to answer ([Or. R. Civ. P. 46\(A\)\(3\)](#)).

If the court grants a motion to compel, it may require the nonresponsive party or the party's attorney to pay the moving party's reasonable expenses incurred in obtaining the order, including attorneys' fees. The court may not require payment if it finds either that:

- Opposing the motion was substantially justified.
- Awarding expenses is unjust.

([Or. R. Civ. P. 46\(A\)\(4\)](#).)

If a motion to compel is denied, the court may require that the moving party or its attorney pay reasonable expenses incurred in opposing the motion, including attorneys' fees. The court may not require payment if making the motion was substantially justified or that awarding expenses is unjust. If the motion is granted or denied in part, the court may allocate the reasonable expenses incurred among the parties and persons in a just manner. (Or. R. Civ. P. 46(A)(4).)

Failure to comply with a motion to compel may be considered contempt and is grounds for sanctions (Or. R. Civ. P. 46(B)).

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

A party may immediately appeal an order involving a subpoena by filing a petition for a writ of **mandamus** (see *Assisted Living Concepts, Inc. v. Fellows*, 260 P.3d 726 (Or. Ct. App. 2011)). Strictly speaking, a mandamus proceeding is not an appeal, but an original proceeding in the Oregon Supreme Court (Or. Const. art. VII (Amended), § 2; Or. Rev. Stat. §§ 34.110 and 34.250). Writs are granted sparingly.

Timing of Appeal

The equitable doctrine of **laches** governs the time period for a party to file a petition for mandamus relief. A party must file within the statutory limitations period, generally 30 days, required for filing an appeal. (*State v. Peekema*, 976 P.2d 1128, 1131 (Or. 1999).)

Standard of Review

In exercising its mandamus authority, the court analyzes whether the trial court either:

- Committed a fundamental legal error.

- Acted outside the permissible range of discretionary choices.

(*Longo v. Premo*, 326 P.3d 1152, 1156 (Or. 2014).)