

Subpoena witnesses and documents

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Form and instructions if you're going to a hearing or trial where you'll be giving evidence and you need to make sure that a witness shows up or brings documents or other items.

1. Fast facts

In Washington State courts, both judges and commissioners can issue subpoenas and hold hearings and trials. To make things simpler here, we just say "judge."

You may be able to use subpoenas for either a trial or, if the judge allows it, a hearing. To make things simpler here, we mostly just say "trial."

What is a subpoena?

The word is Latin and means "under penalty." This court form, signed by a judge, orders someone to come to court to testify or bring evidence. To get someone to **testify**, you use a regular subpoena. To get someone to **bring papers or other items to a trial**, you use a "subpoena duces tecum." Subpoena duces tecum is Latin and means "bring with you under penalty." Our forms work for both types of subpoenas.

You can also subpoena someone to be questioned at a deposition. If you're representing yourself and you're trying to arrange to depose someone, you'll need to have a judge sign your subpoena. Talk to a lawyer familiar with practice in your

county to learn more about how to do this.

Does it cost to subpoena witnesses and documents?

The clerk's office will charge you a fee around \$20 to issue a subpoena. You can ask a judge to waive the fee if you can't afford it

If you use the sheriff or other professional server, they'll charge you for the service. Ask them how much before hiring them. You can also have an adult friend or relative serve the subpoena on the witness.

If you ask a witness to bring documents or other evidence, the witness can ask to be reimbursed for the reasonable cost of getting and copying what you asked for.

What is a witness fee?

Some witnesses can ask for a fee for going to the trial. "Expert" witnesses such as counselors, doctors, or therapists may require you to pay them at their usual hourly rate to testify. You must negotiate this with them ahead of time.

What about witnesses who live farther away?

You must pay to subpoena a witness who lives outside the county or more than 20 miles from the trial. Depending on the judge and the situation, this could include an allowance for the witness's meals, lodging, and travel expenses.

How do I get the witness to bring the right papers or documents?

Check the box for "Subpoena Duces Tecum" on the subpoena form and list the specific items you want the witness to bring. Be as specific as you can. For example: You want the witness to bring a letter. In the subpoena duces tecum, put the names of the people who sent and received the letter, and the date of the letter.

If you don't know the specific names of what you need, or to make sure you get everything you want, put something like "and all other documents concerning _____." Put the name of and the event you want the documents for.

What if the witness doesn't obey the subpoena?

A witness who doesn't come to trial or bring subpoenaed items without good excuse could face a fine and/or jail time. In this situation, you should give the

judge the original subpoena form and proof of service. After the trial ends, file the original subpoenas and proof of service with the court clerk.

2. Witness timing

What time should I have my witnesses arrive for the trial?

For a short hearing, you may want all witnesses there at the scheduled start time. But make sure your witnesses know beforehand that the hearing may not start right when scheduled.

For a trial, the judge will have other matters to take care of at the scheduled start time, like opening statements and marking exhibits. You should ask your first witness to show up about a half hour after the scheduled start time, and other witnesses 15 to 30 minutes apart after that, depending on how long you think your questioning will take.

What if my doctor or counselor is testifying?

Special rules may apply when you want a health care provider to bring health care information. Talk to a lawyer and read the state law about this at RCW 70.02.060 (<http://apps.leg.wa.gov/rcw/default.aspx?cite=70.02.060>).

With witnesses like counselors, doctors, teachers, or other professionals, you should make special arrangements to notify them by phone when the trial starts and give them a better idea of when you will need them.

Which witnesses testify first?

If you're the person who filed or started the case (called the plaintiff or petitioner), you'll call your witnesses first. You should schedule your witnesses for the first day of trial.

If you're the defendant or respondent, the judge will call your witnesses after the plaintiff's witnesses have finished testifying. You can ask the plaintiff before the

trial date how long their witnesses' testimony should take. Then you can try to schedule your witnesses right after you expect plaintiff's witnesses to finish.

How long should the witness stay at the trial?

The witness should stay until they've testified and been questioned by (cross-examined by) the other side, unless the judge orders them to stay longer. For example, you can ask the judge to order the witness to stay to respond to a later witness's testimony.

3. Step-by-step

Follow these steps to ask the court to issue a subpoena or subpoena duces tecum.

1. **Fill out the forms** (except for the Proof of Personal Service). You'll need a separate set of forms for each witness you want to subpoena.

Many counties require you to use their own form. Ask the facilitator or clerk in your court if they use special subpoena forms. If not, use ours.

The clerk will charge a fee around **\$20** for each subpoena they issue. You can ask a judge to waive the fee if you can't afford it.

2. **Make 1 copy of the completed Motion and the proposed Order with the proposed Subpoena attached.** You'll make more copies later.
3. **Go to the Court Clerk's office.** Tell them you're filing a Motion for Issuance of Subpoena. Ask the court clerk how to get a judge to sign the Order for Issuance of Subpoena. This is called getting an "ex parte" order. Follow the clerk's instructions.

Many courts have an “Ex Parte” department to hear this type of motion the same day you file, or the next day if you file later in the day.

4. **After a judge signs the Order, ask a clerk to issue the subpoena.** You may need to go back to the clerk’s office for this. Pay the clerk’s fee or show them your order waiving fees. Ask the clerk to stamp your copy of the Motion and Order to show the date you filed the originals. The clerk keeps the original Motion and Order but gives you the Subpoenas.
5. **Make copies.** You’ll need one copy of the Motion, Order, and Subpoena for each other party to your case, and one for your records.
6. **Have someone else personally serve the subpoena on the witness.** Have the server fill out the Proof of Personal Service.

Follow the rules to serve papers to start a new case. Someone age 18 or older must hand deliver the subpoena to the witness. You can get a friend to do this, or you can pay a professional process server or the county sheriff’s office to do it.

7. **Serve the other party (or parties)** with copies of the Motion, Order, and Subpoena for each witness. You can mail or hand deliver these copies to the other party. Follow the rules for service after a case starts. Whoever serves the other party should fill out a Proof of Mailing or Hand Delivery.
8. **Bring the original Subpoena, Proof of Personal Service (on the witness), and Proof of Mailing or Hand Delivery (on the other party) to court the day of the trial.** If the witness doesn’t come, show the documents to the judge and ask the clerk to file the originals.

4. Forms

Many counties require you to use their own form. Ask the facilitator or clerk in your court if they use special subpoena forms. If not, use ours.

Form attached:

Motion for Issuance of Subpoena (NJP General 021)

Form attached:

Order for Issuance of Subpoena (NJP General 022)

Form attached:

Subpoena or Subpoena Duces Tecum in a Civil Case (NJP General 023)

Form attached:

Proof of Personal Service (general civil) (NJP General 001)

Follow the general rules to format and fill out court documents.

Tips for filling out Motion for Issuance of Subpoena (NJP General 021)

Fill out the **motion** form to explain what you want the judge to do and why they should do it.

Tips for filling out Order for Issuance of Subpoena (NJP General 022)

Fill out the **order** form the way you want the judge to sign it. This is a **proposed order** you'll ask the judge to sign at the hearing. If you're not sure about something in the order, leave it blank for the judge to complete.

Attach a copy of the proposed Subpoena or Subpoena Duces Tecum to the Order for Issuance of Subpoena.

Tips for filling out Subpoena or Subpoena Duces Tecum (NJP General 023)

Fill out the **subpoena** form the way you want the clerk to issue it.

If you want the witness to bring documents or items, list them clearly in section 2 and check the box for “Subpoena Duces Tecum” on the top right of the first page. Otherwise, check the box at the top right that just says “Subpoena.”

If the witness lives outside the county or more than 20 miles from the courthouse, check the 2nd box in section 3 and ask the judge to put amounts for meals, lodging, and travel.

Don’t sign or date the subpoena — the clerk will do that. Put your information at the end under “Person Requesting Subpoena.”

Tips for filling out the Proof of Personal Service (NJP General 001)

Have your server fill out this form after they've served the other party. Follow the rules for personal service.

Check to be sure your server filled out the date of service, who the papers were delivered to, and how they were delivered. Also be sure the form lists all documents that were served. If your server leaves out a form, you won't have proof it was served

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_____ Court of Washington, County of _____

Petitioner / Plaintiff:

And Respondent / Defendant:

No. _____

Motion for Issuance of Subpoena

(No mandatory form)

Motion for Issuance of Subpoena

1. **My name is** _____.

I am the ☐ petitioner/plaintiff ☐ respondent/defendant.

2. **Motion**

I ask the court to issue a subpoena to (*name*) _____

to be a witness at a hearing or trial in this case on (*date*): _____.

The witness (*check one*):

☐ **Must bring** the documents or items listed in the proposed subpoena. I am asking for a subpoena duces tecum.

☐ Does **not** need to bring any documents or items with them.

3. **Witness' Address**

The witness lives at (*address, if known*) _____

_____.

The witness (*check one*): ☐ does ☐ does **not** live in the same county as this court.

The witness (*check one*): ☐ does ☐ does **not** live within 20 miles of this court

If the witness lives outside the county or more than 20 miles from the court, I ask the court to set a reasonable allowance for meals, lodging, and necessary travel expenses according to RCW 5.56.010.

I declare under penalty of perjury under the laws of the state of Washington that the facts I have provided on this form are true.

Signed at (*city and state*): _____ Date: _____



Person making this motion signs here

Print name

Street or mailing address

City

State

Zip

_____ Court of Washington, County of _____	
Petitioner / Plaintiff: _____	No. _____
And Respondent / Defendant: _____	Order for Issuance of Subpoena (No mandatory form)

Order for Issuance of Subpoena

1. Basis

The (*check one*) ☐ petitioner/plaintiff ☐ respondent/defendant filed a motion for issuance of a subpoena. The court has considered the motion and proposed subpoena ex parte and finds good cause to grant the motion.

2. Order

The clerk of the court shall issue a subpoena to (*name*) _____
to be a witness at a hearing or trial in this case on (*date*): _____.

The witness (*check one*):

☐ **Must bring** the documents or items listed in the subpoena duces tecum.

☐ Does **not** need to bring any documents or items with them.

A copy of the subpoena or subpoena duces tecum to be issued is attached to this order.

Ordered.

_____	► _____
<i>Date</i>	<i>Judge or Commissioner</i>

Presented by: ☐ Petitioner/Plaintiff ☐ Respondent/Defendant

► _____	_____
<i>Sign here</i>	<i>Print name</i>

_____ Court of Washington, County of _____

Petitioner / Plaintiff:

And Respondent / Defendant:

No. _____

☐ Subpoena

☐ Subpoena Duces Tecum

in a Civil Case

(No mandatory form)

Subpoena or Subpoena Duces Tecum in a Civil Case

A **Subpoena** is an order requiring a witness to come to court to testify. **Subpoena Duces Tecum** is an order that requires a witness to bring documents or something with them and possibly also give testimony. Check the box above for Subpoena Duces Tecum if you need the witness to bring something to court with them. Otherwise, check the box next to Subpoena.

The State of Washington to:

Witness (name): _____

Street or mailing address city state zip

1. You are commanded to appear in court:



on: _____ at: _____ ☐ a.m. ☐ p.m.
date time

at: _____
court's address

in: _____ before _____
room or department judge or commissioner name

to testify in this case on behalf of the (check one) ☐ 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.

2. Subpoena Duces Tecum (bring documents or items)

☐ Does not apply.

☐ You are commanded to bring with you the following documents or items (*specify*):

3. Allowance for meals, lodging, and travel expenses

☐ Does not apply.

☐ The witness lives outside the county or more than 20 miles from the courthouse. The court sets the following allowance for meals, lodging, and travel expenses according to RCW 5.56.010:

Meals: \$ _____

Lodging: \$ _____

Travel expenses: \$ _____

_____  _____
Date ☐ District ☐ Superior Court Clerk for County of _____

Person Requesting Subpoena:

Name: _____ Phone: _____

Street or mailing address *city* *state* *zip*

Important! The following page of text from Civil Rule 45 must be included in this subpoena.

Civil Rule 45, Sections (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to subsection (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce and all other parties, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

- (i) fails to allow reasonable time for compliance;
- (ii) fails to comply with RCW 5.56.010 or subsection (e)(2) of this rule;
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden, provided that the court may condition denial of the motion upon a requirement that the subpoenaing party advance the reasonable cost of producing the books, papers, documents, or tangible things.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information in camera to the court for a determination of the claim. The person responding to the subpoena must preserve the information until the claim is resolved.

[Amended effective July 1 1967; Amended effective July 1, 1972; September 1, 1983; September 1, 1993; September 1, 2007; January 12, 2010.]

_____ Court of Washington, County of _____

In re:

Petitioner/s or Plaintiff/s:

And Respondent/s or Defendant/s:

No. _____

Proof of Personal Service

(No mandatory form)

Proof of Personal Service

Server declares:

1. **My name is:** _____. I am **not** a party to this case.
I am 18 or older.

2. **Personal Service.** I served court documents for this case to (*name of person served*): _____ by (*check one*):

☐ Giving the documents directly to the person being served.

☐ Giving the documents to (*name*): _____, a person of suitable age and discretion who lives at the same address as the person being served.

3. **Date, time, and place of service**

Date: _____ Time: _____ (*check one*) ☐ a.m. ☐ p.m.

Place:

Street address

city

state

zip

4. List all documents you served (check all that apply)

(The most common documents are listed below. Check only those documents that were served. Use the "Other" box to write in the title of each document you served that is not already listed.)

☐ Petition to/for _____

☐ Summons (*attach a copy*)

☐ Notice of Hearing (*for date*) _____

☐ Motion for _____

☐ Declaration of _____

☐ Subpoena ☐ Duces Tecum

☐ Order on/for: _____

☐ Other:

5. Fees charged for service

☐ None

☐ Fees: \$ _____ + Mileage \$ _____ = Total: \$ _____

6. Other information (if any)

I declare under penalty of perjury under the laws of the state of Washington that the statements on this form are true.

Signed at (*city and state*): _____ Date: _____



Server signs here

Print name