

Subpoenaing Witnesses and Documents

Should I use this?

Yes, if both these are true:

- You are going to an evidentiary hearing or a trial.
- You need a witness to testify or bring documents or other items.

You can have the person served with a subpoena issued by the court clerk. To get someone to

- **Testify:** use a subpoena.
- **Bring papers or other items:** use a "subpoena duces tecum."

❖ Special rules may apply when you want a health care provider to bring health care info. [RCW 70.02.060](#).

Expressions you should know:

Affidavit: Written statement made under penalty of perjury.

Ex parte: Going before the court without notifying the other party. Also refers to the courtroom where you see a judge without notifying the other party.

Subpoena: Latin for "under penalty."

Subpoena duces tecum: Latin for "bring with you under penalty."

How do I use a subpoena?

If you are not a lawyer, the court clerk must issue the subpoena. You must:

1. Fill out the forms.
2. Have a judge/commissioner sign the order for issuance of subpoena.
3. Have the court clerk issue the subpoena.
4. Make a copy of the subpoena for the person you are serving.
5. Keep the original.
6. Serve the subpoena.
7. Bring the original subpoena form to court the day of the hearing/trial.

Where can I get the forms?

We have included sample forms at the end. USE THESE ONLY IF YOU HAVE CHECKED WITH THE SUPERIOR COURT CLERK FIRST. Practice varies by county. Your clerk's office may have its own forms you must use or local rules you must follow.

We divide our sample forms into sets:

Set A – Motion and Declaration for Issuance of Subpoena or Subpoena Duces Tecum, Order for Issuance, Subpoena, Subpoena Duces Tecum, Affidavit of Service

Set B – Order for Issuance of Subpoena, Subpoena in a Civil Case, Affidavit of Service

What time should I have my witnesses arrive?

It depends.

For a short hearing: you may want all witnesses there at the scheduled start time.

For a trial: you should probably not have all witnesses there at the scheduled start time. The court usually takes up other matters before witnesses testify. (Examples: marking exhibits you will each place in evidence; allowing each side an opening statement.) You should allow at least a half hour for these matters. After that, you might schedule your witnesses fifteen to thirty minutes apart, depending on how long you think your questioning will take.

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- ❖ The hearing/trial may not start right when scheduled. Send your witnesses a letter/note explaining that there may be a delay in their testimony if the hearing/trial does not start on time.
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What if my doctor is testifying?

With witnesses like counselors, teachers, doctors, 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 actually need them.

Who testifies first?

If you are the **plaintiff/petitioner**, you call your witnesses first. Start scheduling your witnesses for the first day of trial.

If you are the **defendant/respondent**, the court calls your witnesses after the other side's witnesses have finished testifying.

Ask the plaintiff/petitioner how long their witnesses' testimony should take. Try to schedule your witnesses right after you expect plaintiff's/petitioner's witnesses to finish.

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

Be as specific as possible in the subpoena.

Example: You want the witness to bring a letter. State the names of the people sending and getting the letter, and the date of the letter.

If you do not know the specific names of what you need, or to ensure you get everything you want, put something like "and all other documents concerning _____." Put the name/event you are requesting the documents for.

How do I get the forms signed and subpoenas issued?

Ask the Superior Court clerk what to do.

How do I serve the subpoena?

Someone age 18 or over who is not a party to the lawsuit must serve the subpoena. You cannot serve it yourself.

You can use a sheriff or professional process server. It is easier and cheaper to use an adult friend or relative.

Your server must do one of these:

1. Personally hand the witness a copy of the subpoena, wherever your server finds the witness.

2. Leave a copy of the subpoena at the witness's home with another adult who lives there.

Do I need to prove I had the subpoena served?

Yes. The server must fill out and sign a paper describing the service of the subpoena.

A sheriff or professional process server usually provides the proof of service form as part of their service. Ask first if they do this. If not, have the server fill out and return to you the form at the end of this publication (OR the form the clerk gives you).

A friend/relative who serves the subpoena must fill out an "Affidavit of Service" form. Use the one in this publication OR one the clerk gives you. You can fill out the caption for the server. The server does the rest.

After you get the completed form back, make a copy for yourself. Save the original to bring to hearing/trial (with the original subpoena) in case the witness does not show up or bring what you asked for.

How much does it cost to subpoena witnesses/documents?

There is a charge for using a sheriff or professional process server. Check with the server first to find out the amount.

If you are asking a witness to bring documents, pictures, or other evidence, the witness may ask the court to make you pay

the reasonable cost of getting/copying what you asked for.

What is a witness fee?

By law, some witnesses can ask for a "witness fee" for going to the hearing/trial. Your "expert" witnesses such as counselors, doctors, or therapists may require you to pay them at their usual hourly rate if they must testify. You must negotiate this with them ahead of time.

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- ❖ There is no fee for testimony by court appointed special advocates (CASA) and Family Court Services workers.
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What about witnesses who live farther away?

You must pay extra fees to subpoena a witness who lives

- Outside the county.
- More than twenty miles from the hearing/trial.

The judge/ commissioner signing the order for issuance of subpoena for that witness may include an allowance for meals, lodging, and travel expenses. Those amounts will be in the subpoena. The server must present them to the witness at the time of service. The judge/commissioner may add more for meals/lodging/travel at the time of hearing/trial.

How long should the witness stay?

Until they have testified and been cross-examined (questioned by the other side), unless the court orders them to stay longer.

Example: Either party may ask the court to order the witness to stay to respond to a later witness's testimony.

What if the witness does not obey the subpoena?

A witness who does not come to hearing/trial or bring items requested in the

subpoena without good excuse faces a contempt finding. That could include a fine and/or jail time.

If the person does not come to the hearing/trial or does not bring what you asked for, give the original subpoena form and proof of service to the judge/commissioner. After the hearing/trial ends, file the original subpoenas and affidavits of service with the court clerk.

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 July 2017.

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Sample Forms Set A

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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
pursuant to RCW 5.56.010

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

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

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

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

7 _____
Address

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

Dated: _____

Judge/Court Commissioner

Presented by:

[Plaintiff/Petitioner][Defendant/Respondent]

Address

Telephone Number

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

<p>_____, Plaintiff/Petitioner, vs. _____, Defendant/Respondent.</p>	<p>NO. SUBPOENA</p>
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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:

15 _____
16 Name

17 _____
18 Address

19 _____
20 Telephone Number

21 **CR 45, Sections (c) & (d):**

22 **(c) Protection of Persons Subject to Subpoenas.**

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

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

30 (B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and
31 copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is
32 less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to
33 inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party

1 serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except
2 pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party
3 serving the subpoena may, upon notice to the person commanded to produce and all other parties, move at any
4 time for an order to compel the production. Such an order to compel production shall protect any person who is
5 not a party or an officer of a party from significant expense resulting from the inspection and copying
6 commanded.

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

- 9 (i) fails to allow reasonable time for compliance;
- 10 (ii) fails to comply with RCW 5.56.010 or subsection (e)(2) of this rule;
- 11 (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies;

12 or

13 (iv) subjects a person to undue burden, provided that the court may condition denial of the motion
14 upon a requirement that the subpoenaing party advance the reasonable cost of producing the books, papers,
15 documents, or tangible things.

16 (B) If a subpoena

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

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

25 **(d) Duties in Responding to Subpoena.**

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

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

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

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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
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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 _____

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

CR 45, Sections (c) & (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 paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of 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

1 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.

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

- 3 (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

4 (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.

5 (B) If a subpoena

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

6 (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
7 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.

8 **(d) Duties in Responding to Subpoena.**

9 (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.

10 (2) 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

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

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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
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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]

_____, a person of suitable age and

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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 _____

Sample Forms Set B

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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

This matter came before the undersigned, ex parte, on [Plaintiff/Petitioner's]
[Defendant/Respondent's] motion for issuance of a subpoena to _____
for [hearing] [trial] on _____. The court having considered the motion and being
fully advised, it is

ORDERED as follows:

1. The court grants the motion;
2. The clerk of the court shall issue a subpoena to

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_____ directing him/her to appear at [hearing] [trial]

at the time and place designated in the proposed subpoena, a copy of which is attached to this order.

Dated: _____

Judge/Court Commissioner

Presented by:

Signature of [Plaintiff/Petitioner] [Defendant/Respondent]

Address

Phone Number

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

_____ , Plaintiff/Petitioner, v. _____, Defendant/Respondent.	NO. _____ SUBPOENA IN A CIVIL CASE
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TO: _____

YOU ARE COMMANDED to appear in the Superior Court of the State of Washington at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

You are to bring with you the following books, papers, files, documents or tangible things:

Issuing Officer Signature and Title
(Indicate If Attorney for Plaintiff Or Defendant)

Date

Print Name

Address & Phone Number

CR 45, Sections (c) & (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 paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of 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, 1972; September 1, 1983; September 1, 1993; September 1, 2007; January 12, 2010]

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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 age 18 or older, and I am not a party to this action.
- 2. I served _____

[name of person served] with a subpoena in the above-captioned case.

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

Date: _____

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

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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]

_____, 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: _____