



## REQUESTING A SUBPOENA

**PLEASE NOTE:** The Commission cannot provide legal advice. This FAQ provides neutral general information to the public about how the Commission works. For example, we may provide information about Commission procedures, practices, rules, terminology, and forms, as well as community resources and services. If you have questions about how this general information applies to your situation, proceeding, or circumstance, please contact a lawyer for legal advice.

[What is a subpoena?](#)

[Can I subpoena someone to appear before the Commission?](#)

[What if I need a witness to bring something to the deposition or hearing?](#)

[Can I sign a subpoena and serve it on a witness?](#)

[Where do I get a Commission-approved subpoena form?](#)

[I need a subpoena for witness. What do I do?](#)

[I've submitted a request for issuance of subpoena, affidavit, and proposed subpoena, now what?](#)

[My subpoena has been issued, am I done?](#)

[Do I have to tell the other parties that I am subpoenaing a witness?](#)

[I've been served a subpoena to appear from the Commission. What should I do if I have reason to believe I should not be required to comply?](#)

**What is a subpoena?**

A subpoena issued by the Commission is an order requiring someone to appear as a witness or to produce documents, or both. A subpoena is most commonly requested to require the attendance of a witness at a hearing. It can also be used in connection with discovery.

There are two types of subpoenas: (a) a *subpoena ad testificandum* (commonly referred to as a subpoena), which requires someone to appear and to provide testimony, either at a hearing or at a deposition; and (b) a *subpoena duces tecum*, which requires someone to appear and to bring specified documents or records.

[Back to Top](#)

### **Can I subpoena someone to appear before the Commission?**

Yes. Much like other venues, the Commission issues subpoenas for the appearance of witnesses for discovery or hearing. The Commission derives its power to issue and to enforce subpoenas from Title 40, Article 6 of the Colorado Revised Statutes.

[Back to Top](#)

### **What if I need a witness to bring something to the deposition or hearing?**

A *subpoena duces tecum* is special type of subpoena that requires the person who is subpoenaed to produce (that is, to bring) records or documents.

[Back to Top](#)

### **Can I sign a subpoena and serve it on a witness?**

No. ALL subpoenas to appear before the Commission MUST be issued by the Commission, a commissioner, an administrative law judge (with respect to matters referred), or the director of the Commission. *See* Section 40-6-102 C.R.S. This procedure is different from court procedures that may permit attorneys to issue subpoenas.

[Back to Top](#)

### **Where do I get a Commission-approved subpoena form?**

The Commission does not have an approved or required specific subpoena form. However, it is important that you prepare and provide the subpoena that you are requesting be issued, in addition to the other information required.

[Back to Top](#)

### **I need a subpoena for witness. What do I do?**

The Commission's [Rules of Practice and Procedure](#) (which are available on the Commission's website) set out the requirements for requesting issuance of a subpoena. The Commission's process largely incorporates Rule 45(a)-(d) of the 2012 Colorado Rules of Civil Procedure, but it is not identical.

A request (typically, a request appears very similar to a motion), a supporting affidavit, and the proposed subpoena must be provided to the person you are requesting to issue the subpoena. The process is designed to be an *ex parte* process, meaning that the request for a subpoena is without notice to, or the involvement of, others when making the request. The request should not be filed with the Commission in a proceeding; you provide the request and the supporting documents directly to the person you are requesting to issue the subpoena.

The Commission will not issue subpoenas without “good cause shown.” Good cause shown is statutorily defined as an affidavit stating with specificity the testimony, records, or documents sought and the relevance of the request to the proceeding in question. Therefore, an affidavit **MUST** be submitted along with your request. Be sure the affidavit is notarized.

You may check with the administrative law judge assigned to your proceeding to find out whether he or she requires an original signature on the supporting affidavit. It is advisable to retain the original affidavit even if you do not file it with the Commission.

[Back to Top](#)

### ***I’ve submitted a request for issuance of subpoena, affidavit, and proposed subpoena, now what?***

Using the information in the request, the person issuing the subpoena (or a Commission employee) will contact you if the subpoena is issued. Typically, the subpoena will be available for pickup at the Commission reception desk.

[Back to Top](#)

### ***My subpoena has been issued, am I done?***

No. It is the responsibility of the one requesting issuance of a subpoena to pick up the subpoena and to have it -- including a complete list of any required documents and items -- personally served on the person named in the subpoena.

Unless the Commission finds good cause to order otherwise, subpoenas must be served no later than 48 hours before the time of appearance set forth in the subpoena.

A proof of service must be prepared after the subpoena has been delivered to the person named in the subpoena. Proof of service under Rule 4(h) of the 2012 Colorado Rules of Civil Procedure is either (1) a statement certified by the sheriff, marshal, or similar governmental official; or (2) a statement duly acknowledged under oath by the person who completed the service.

After service of the named witness, the best practice is to promptly file a copy of the subpoena (including a complete list of any requested documents and items) and proof of service of the subpoena upon the named witness, in addition to the proof of service of the subpoena on all parties in the proceeding.

Be sure to read Rule 45(c) of the 2012 Colorado Rules of Civil Procedure (which are available on the Commission’s website) regarding when fees must be paid.

NOTE: Service is also valid if the person named in the subpoena signs a written admission or waiver of personal service. If the witness is cooperative and willing, this can improve efficiency and save costs.

[Back to Top](#)

***Do I have to tell the other parties that I am subpoenaing a witness?***

You do not have to let other parties know that you are subpoenaing a witness until the subpoena has been issued and served on the witness. After you serve a copy of the subpoena -- including a complete list of any requested documents and items -- on the named witness, you **MUST** promptly serve a copy on all parties in the proceeding in the manner prescribed by Rule 5(b) of the 2012 Colorado Rules of Civil Procedure (which are available on the Commission's website) (*i.e.*, like other pleadings in an existing proceeding).

After service of the named witness, the best practice is to promptly file a copy of the subpoena (including a complete list of any requested documents and items) and proof of service of the subpoena upon the named witness, in addition to the proof of service of the subpoena on all parties in the proceeding.

[Back to Top](#)

***I've been served a subpoena to appear from the Commission. What should I do if I have reason to believe I should not be required to comply?***

Persons who object to, or otherwise believe they should not have to comply with, a subpoena or subpoena *duces tecum* must promptly file a motion with the Commission to modify or to quash the subpoena. As a remedy, the Commission may modify or quash the subpoena.