

Drafting and Issuing Discovery Subpoenas: Idaho

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Status: Law stated as of 09 Aug 2023 | Jurisdiction: Idaho, United States

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A Q&A guide to drafting, issuing, serving, and enforcing a discovery subpoena in an Idaho 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 Idaho is the Idaho Rules of Civil Procedure. The provisions related to subpoenas are:

- Idaho R. Civ. P. 45 (subpoenas).
- Idaho R. Civ. P. 30 (depositions generally, including subpoenas for production of documents, subpoenas directed at a corporation, subpoenas directed at non-party witness).
- Idaho R. Civ. P. 4 (serving subpoenas).

The following laws also govern subpoenas:

- Idaho Code § 9-708 (disobedience of subpoena, penalty).
- Idaho Code § 67-409 (failure to obey subpoena, state affairs).

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).

Deposition Subpoena

A deposition subpoena commands the person to whom it is directed to give testimony at trial, a hearing, or deposition at a specified time and place (Idaho R. Civ. P. 45(a)(1)(A)(iii)).

Document Subpoena

A subpoena duces tecum (document subpoena) requires the production of one or more of the following:

- Documents.
- Electronically stored information (ESI).
- Tangible things for inspection and copying.

(Idaho R. Civ. P. 45(a)(1)(A)(iii).)

Subpoena for Inspection of Premises

An inspection subpoena commands the person to whom it is directed to permit inspection of the premises specified in the subpoena (Idaho R. Civ. P. 45(a)(1)(A)(iii)).

Combined Subpoena

A command for production of documents or inspection of premises may be joined with a command to appear at trial, or at hearing or deposition, or may be issued separately (Idaho R. Civ. P. 45(a)(1)(A)(iii)).

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

In Idaho, a subpoena may be issued by either:

- The clerk of the court where the action is pending.
- An attorney licensed in Idaho as an officer of the court.

(Idaho R. Civ. P. 45(a)(2), (3).)

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

In Idaho, foreign subpoenas must be issued by the clerk of the court in the judicial district where the requested discovery is to be conducted (Idaho R. Civ. P. 45(j)(3)(A)). A foreign subpoena is a subpoena issued under the authority of a court of record of another state (Idaho R. Civ. P. 45(j)(2)(B)).

Drafting a Discovery Subpoena

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

General Requirements

In Idaho, every subpoena must be substantially in the form found in Appendix B, Subpoenas, Idaho Rules of Civil Procedure, and must include the following:

- The name of the court from which it issued.
- The title of the action.
- The case number of the action.
- The command of the subpoena (deposition/testimony, document production, inspection).
- The place, date, and time that the command must be carried out.
- Notice that failure to comply with the subpoena's command may be in contempt of court and that the aggrieved party may recover \$100 and damages due to the failure to comply.

(Idaho R. Civ. P. 45(a)(1)(A)(i)-(iv) and Appendix B.)

Deposition Subpoena

In addition to the above general requirements, a deposition subpoena must state the method of recording the testimony if the subpoena is commanding presence at a deposition (Idaho R. Civ. P. 45(a)(1)(A)(iv)).

If the deposition subpoena is directed at an organization, the subpoena must describe with reasonable particularity the matters for examination. The subpoena must advise the organization that it is required to designate one or more officers, directors, or managing agents, or other persons to testify on its behalf. (Idaho R. Civ. P. 30(b)(6).)

Requirements for Document Subpoenas

The subpoena must list the documents, information, or objects to be produced (Idaho R. Civ. P. 45(a)(1)(A)(iii) and Appendix B). The subpoena may specify the form for producing electronically stored information (Idaho R. Civ. P. 45(e)(1)(B)).

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

Idaho subpoenas are to be substantially in compliance with the form found in Appendix B of the Idaho Rules of Civil Procedure (Idaho R. Civ. P. 45(a)(1)(A)).

Serving a Discovery Subpoena

7. Who may serve a discovery subpoena?

In Idaho, any person may serve a subpoena who is both:

- Not a party.
- At least 18 years old.

(Idaho R. Civ. P. 45(b)(1).)

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

Idaho has special provisions for serving people under the age of 14 and incompetent persons. A person under 14 must be served by serving both:

- The minor.
- The minor's:
 - guardian;
 - parent; or
 - custodian.

(Idaho R. Civ. P. 4(d)(2)(A)(i)-(iii).)

An incompetent person must be served by service on both:

- The incompetent person.
- Either:
 - the incompetent person’s guardian;
 - an adult with whom the incompetent person resides; or
 - the CEO of the institution if the incompetent person resides in a facility.

(Idaho R. Civ. P. 4(d)(2)(B)(i)-(iii).)

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

Subpoenas must be served in compliance with Idaho Rules of Civil Procedure 4 and 5.

In general, a non-party witness may be served by:

- Handing the subpoena to the person.
- Leaving it at the person’s office:
 - with a clerk or person in charge; or
 - in a conspicuous place in the office.
- Leaving it at the person’s dwelling or place of abode with someone over 18.
- Mailing it to the person’s last known address.
- Leaving it with the court clerk if there is no last known address.
- Transmitting a copy by facsimile.
- Sending it by electronic means if the person consented in writing.
- Delivering it by any other means consented to in writing.

(Idaho R. Civ. P. 5(b)(2).)

Under Idaho law, a discovery subpoena is served by delivering a copy to the named person and, if the subpoena requires that person’s attendance, tendering the fees for one day’s attendance and the mileage allowed by law, if requested (Idaho R. Civ. P. 45(b)(1)).

A corporation must be served by delivering a copy of the subpoena to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process (Idaho R. Civ. P. 4(d)(3)(A) and 4(d)(1)(C)).

The subpoena must describe with reasonable particularity the matters for examination and advise the nonparty

organization of its duty to designate one or more officers, directors, or managing agents, or other persons who consent to testify about information known or reasonably available to the organization (Idaho R. Civ. P. 30(b)(6)).

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)?

The Idaho Rules of Civil Procedure do not specify the amount of notice the issuing party must provide the non-party witness. However, for document and inspection subpoenas, the party must be allowed at least 30 days to comply (Idaho R. Civ. P. 45(c)(1)).

A subpoena to command a non-party to produce or to permit inspection and copying of documents, electronically stored information, or tangible things, or to permit inspection of premises may be served at any time after all parties have either appeared or have been defaulted, unless otherwise ordered (Idaho R. Civ. P. 45(c)(2)).

A party who wants to depose a person by oral questions must give reasonable written notice to every other party (Idaho R. Civ. P. 30(b)(1)).

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.

A subpoena to command a non-party to produce or to permit inspection and copying of documents, electronically stored information, or tangible things, or to permit inspection of premises may be served at any time after all parties have either appeared or have been defaulted, unless otherwise ordered. The party serving the subpoena must serve a copy of the subpoena on the opposing party at least seven days prior to service on the third party, unless otherwise specified by the court. (Idaho R. Civ. P. 45(c)(2)(A).)

For deposition subpoenas, a party who wants to depose a person by oral questions must give reasonable notice to every party. The notice must state the time and place of

the deposition, and the deponent's name and address, if known, and if unknown, a general description sufficient to identify the person or group to which the person belongs. (Idaho R. Civ. P. 30(b)(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 non-party witness located outside of the issuing court's jurisdiction.

In-State Limits on Service

For a deposition subpoena, an Idaho resident may be required to attend an examination only in the county where the resident resides or is employed or transacts business in person. A nonresident of Idaho may be required to attend in any county of the state where the nonresident is served with a subpoena. (Idaho R. Civ. P. 45(f)(2).)

Out-of-state Limits on Service

Whether Idaho subpoenas can be served in a foreign jurisdiction depends on the laws of that jurisdiction. Idaho has adopted the Uniform Interstate Depositions and Discovery Act (UIDDA). If the jurisdiction where discovery is sought has adopted the UIDDA, counsel may follow a similar procedure as that provided for a foreign litigant seeking to subpoena a non-party witness in Idaho. (Idaho R. Civ. P. 45(j).)

Obtaining Discovery Located Outside Issuing Court's Jurisdiction

Counsel must follow the foreign jurisdiction's rules for obtaining discovery. Idaho has adopted the UIDDA. If a foreign jurisdiction has adopted the UIDDA or substantially similar provisions, the process for an out-of-state party obtaining an Idaho subpoena is as follows:

- A party must submit a foreign subpoena to the clerk of court in the judicial district in Idaho where discovery is sought.
- This subpoena must:
 - conform to the requirements of Idaho Rule of Civil Procedure 45(c) but may otherwise incorporate the terms used in the foreign subpoena;

- advise the person to whom the subpoena is directed of that person's right to petition the Idaho court to quash or modify the subpoena under Rule 45(j)(6);
 - contain the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates; and
 - contain the names, addresses, and telephone numbers of any party that is not represented by counsel.
- The clerk of court then issues a subpoena for service on the person to whom the foreign subpoena is directed.

(Idaho R. Civ. P. 45(j)(3)(C).)

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

If a subpoena requires a person's attendance, the person is entitled to one day's attendance fee and the mileage allowed by law (Idaho R. Civ. P. 45(b)(1)).

If a subpoena commands a person to produce or to permit inspection and copying of documents, electronically stored information, or tangible things, the party serving the subpoena must pay the reasonable cost of producing or copying the documents, electronically stored information, or tangible things (Idaho R. Civ. P. 45(c)(2)(B)).

Calculating Fees

Witness fees are \$20.00 per day for a non-party witness testifying at a deposition or trial (Idaho R. Civ. P. 54(d)(1)(C)(iii)).

Costs for document production are to be "reasonable" (Idaho R. Civ. P. 45(c)(2)(B)).

Travel expenses for a non-party witness who travels by private transportation are \$0.30 per mile, one way, from

the place or residence, whether it is in or outside the state of Idaho (Idaho R. Civ. P. 54(d)(1)(C)(iv)).

Travel expenses for a non-party witness who travels other than by private transportation are the actual travel expenses, but not more than \$0.30 per mile, one way, from the place or residence, whether it is in or outside the state of Idaho (Idaho R. Civ. P. 54(d)(1)(C)(v)).

Form of Fees

Fees are typically paid by check, but practitioners should consult local court rules.

Timing

If the subpoena requires the person's attendance, the fees for one day's attendance and the mileage allowed by law must be tendered, if requested, at the time the subpoena is served (Idaho R. Civ. P. 45(b)(2)(A)).

Consequences for Failure to Pay

Upon a timely motion, a court can condition compliance with a subpoena on the prepayment of reasonable costs of production (Idaho R. Civ. P. 45(d)(2)).

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)?

Motion to Compel

A party can file a motion to compel compliance with the subpoena but must first certify that the party has in good faith conferred, or attempted to confer, with the person failing to comply (Idaho R. Civ. P. 37(a)(1)).

Motion for Contempt

Failure to obey a subpoena without adequate excuse may be deemed a contempt of court (Idaho R. Civ. P. 45(i)).

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 Idaho, an interlocutory order involving a subpoena is not appealable as a matter of right pursuant to Idaho Appellate Rule 11, unless there is an order or judgment of contempt (I.A.R. 11(a)(4)). A party may seek a permissive appeal pursuant to Idaho Appellate Rule 12.

Timing of Appeal

A motion to appeal from an interlocutory order must be filed within 14 days of the date of entry of the order in the court issuing the order (I.A.R. 12(b)).

Standard of Review

A district court's decision to grant or deny requests for discovery is reviewed for abuse of discretion (see *Easterling v. Kendall*, 367 P.3d 1214, 1221 (2016); *Taylor v. AIA Servs. Corp.*, 261 P.3d 829, 848 (2011)). The court also reviews the sanction or penalty imposed under a contempt order under an abuse of discretion standard (*Steiner v. Gilbert*, 159 P.3d 877, 880 (2007)).

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