

Drafting and Issuing Discovery Subpoenas: Kentucky

by Elisabeth Gray, Katherine Ison, and Tess Hardesty, Gray Ice Higdon, with Practical Law Litigation

Status: **Law stated as of 03 Aug 2026** | Jurisdiction: **Kentucky, United States**

This document is published by Practical Law and can be found at: content.next.westlaw.com/w-000-4486

Request a free trial and demonstration at: tr.com/practicallaw-home

A Q&A guide to drafting, issuing, serving, and enforcing a discovery subpoena in a Kentucky 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 Kentucky Rules of Civil Procedure govern subpoenas in civil litigation. In the pre-trial phase, the subpoena is the vehicle for obtaining discovery from a non-party. Section V of the Kentucky Rules of Civil Procedure governs pre-trial discovery from a party (Ky. R. Civ. P. 26.01 to 37.05).

The provisions of the Kentucky Rules of Civil Procedure focused on subpoenas include:

- Ky. R. Civ. P. 45.01 (form and issuance).
- Ky. R. Civ. P. 45.02 (production of documentary evidence).
- Ky. R. Civ. P. 45.03 (service and notice).
- Ky. R. Civ. P. 45.04 (protection of a person subject to a subpoena).
- Ky. R. Civ. P. 45.05 (subpoena for a hearing or trial; personal attendance).
- Ky. R. Civ. P. 45.06 (contempt).
- Ky. R. Civ. P. 5.06 (retention requirements after the court issues a subpoena).

These rules overlap Section V. For example, subpoenas issued under Rule 45 are subject to the requirements of Rule 26. In addition, Ky. R. Civ. P. 30.01 and 30.02 address depositions, including non-party depositions secured by subpoena.

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).

Attendance Subpoenas

In Kentucky, attendance subpoenas command the attendance of a person, including at a deposition (Ky. R. Civ. P. 30.01, 45.01, and 45.05).

Subpoenas for Production of Documentary Evidence or for Inspection of Premises

A subpoena may command:

- The inspection of premises.
- The production of:

Drafting and Issuing Discovery Subpoenas: Kentucky

- designated documents; or
- tangible things.

(Ky. R. Civ. P. 45.01(1).)

Commands to allow inspection of a premises or to produce documents or tangible things can be:

- Included in a subpoena demanding attendance at a deposition, hearing, or trial.
- Set out in a separate subpoena.

(Ky. R. Civ. P. 45.01(2).)

A person subpoenaed to produce documents or to permit the inspection of a premises need not appear at the place of production or inspection unless the subpoena also commands the person to appear for a deposition, hearing, or trial (Ky. R. Civ. P. 45.04(3)).

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

In Kentucky, a court issues subpoenas (Ky. R. Civ. P. 45.01).

However, the issuance of a subpoena does not ordinarily require a court order. Other parties may issue subpoenas on behalf of the court, including:

- The court clerk.
- An authorized court deputy.
- An attorney licensed to practice law in Kentucky.

(Ky. R. Civ. P. 45.01(2).)

When the clerk or other authorized deputy issues a subpoena, the clerk or deputy must sign the subpoena but otherwise leave it blank. The requesting party then completes the subpoena before service. (Ky. R. Civ. P. 45.01(2).)

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

A court order or a court-issued subpoena is necessary to take depositions in Kentucky for proceedings pending in other states. A district court judge where the witness resides issues the necessary subpoenas. (Ky. R. Civ. P. 28.03.)

The Kentucky legislature enacted a streamlined alternative to taking depositions for actions pending in other states by

adopting the Uniform Interstate Deposition and Discovery Act (UIDDA). Under the UIDDA, when a party to litigation in another state submits a foreign subpoena to the clerk of the Kentucky county court where discovery is sought, the clerk must promptly issue a Kentucky subpoena for service on the person to whom the foreign subpoena is directed (KRS 421.360(3)(a), (b)). This procedure applies to subpoenas for:

- Attendance and testimony at a deposition.
- Production, inspection, and copying of documents or tangible things.
- Premises inspection.

(KRS 421.360(2)(e).)

A party to litigation in another state may secure a Kentucky subpoena under either:

- Ky. R. Civ. P. 28.03.
- KRS 421.360.

A court has wide discretion in discovery matters and may order a party to issue a subpoena. For example, the Kentucky Supreme Court upheld a trial court's order requiring a financial institution to subpoena information from its own agent-lenders "or foot the bill for [its] adversary to do so" (*S. Fin. Life Ins. Co. v. Combs*, 413 S.W.3d 921, 931-32 (Ky. 2013)).

An inmate may be served with a subpoena. A party wishing to depose a person in prison must:

- File a motion for leave of the court to do so.
- Obtain the court's permission.
- Follow the terms prescribed by the court.

(Ky. R. Civ. P. 30.01.)

Additional rules may apply to inmate depositions or subpoenas (Ky. R. Civ. P. 30.01).

Drafting a Discovery Subpoena

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

In Kentucky, all subpoenas must include:

- The Kentucky court issuing the subpoena.
- The title of the action.
- The court where the action is pending.

- The civil action number of the case.
- The name, address, telephone number, and email address of the attorney or pro se party requesting the subpoena.
- A date, time, and place for compliance.

(Ky. R. Civ. P. 45.01(1).)

If a deposition subpoena is directed to an entity, the subpoena must also:

- Describe with reasonable particularity the matters on which examination is requested.
- Advise the non-party entity of its duty to designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf.

(Ky. R. Civ. P. 30.02(b)(6).)

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

Kentucky's Administrative Office of the Courts provides a civil subpoena [form](#) on its [website](#). The form may be used to command one or more of the following:

- Appearance at a deposition or trial.
- Production of documents or things.
- Inspection of premises or objects.

(Kentucky Court of Justice: [Form AOC-025.1](#).)

The full description of documents being sought by a subpoena duces tecum seldom fits on the few lines provided. Parties typically attach an exhibit that fully describes the documents or things being sought.

Any attorney or pro se party requesting a subpoena must provide that person's:

- Name.
- Telephone number.
- Mailing address.
- Email address.

(Ky. R. Civ. P. 45.01(1).)

Serving a Discovery Subpoena

7. Who may serve a discovery subpoena?

In Kentucky, any person over the age of 18 may serve a subpoena (Ky. R. Civ. P. 45.03(1)).

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

In Kentucky, members of the police force cannot be served with a subpoena from a civil court "while actually on duty" (KRS 95.210).

In addition, a party may depose a person served with a subpoena in prison only:

- With the court's permission.
- On the terms the court prescribes.

(Ky. R. Civ. P. 30.01.)

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

In Kentucky, parties may serve a subpoena in the same manner as a summons. Rule 4 of the Kentucky Rules of Civil Procedure governs service of a summons.

Parties complete service of a subpoena by delivering or offering to deliver a copy to the witness identified in the subpoena (Ky. R. Civ. P. 45.03(1)).

Parties may serve a subpoena at any place in Kentucky and on any day of the week, including:

- Sundays.
- Holidays.

(KRS 454.135; 7 Ky. Prac. R. Civ. Proc. Ann. Rule 45.03 cmt 4.)

Valid methods of service include:

- Employing a process server over the age of 18 to deliver a copy to the person to whom the subpoena is directed (Ky. R. Civ. P. 45.03(1)).

Drafting and Issuing Discovery Subpoenas: Kentucky

- Sending a copy to the person by registered mail or certified mail with return receipt requested showing the address where delivered and the date of delivery, with instructions to deliver to the addressee only (Ky. R. Civ. P. 4.01(1)(a)).
- Employing the office of the county sheriff to effect service. The sheriff may charge a fee. (KRS 64.090.)

The server must file a certified statement with the issuing court showing:

- The date of service.
- The manner of service.
- The names of the persons served.

(Ky. R. Civ. P. 45.03(1).)

A box for this server certification is at the bottom of the Kentucky courts' civil subpoena form (see Question 6).

For subpoenas served by registered or certified mail, the return receipt is proof of:

- The time of service.
- The place of service.
- The manner of service.

The return receipt is kept with the court file. (Ky. R. Civ. P. 4.01(1)(a).)

Additional rules may apply when a party is serving an unmarried infant or person of unsound mind (Ky. R. Civ. P. 4.04(3)).

Service on a Corporation

Service is made on a corporation by serving:

- An officer or managing agent of the corporation.
- The chief agent in the county where the action is brought.
- Any other agent authorized by appointment or by law to receive service on the corporation's behalf.

(Ky. R. Civ. P. 4.04(5).)

Service on a Partnership or Unincorporated Association

Service is made on a partnership or unincorporated association by serving either:

- A partner, officer, or managing agent.

- An agent authorized by appointment or by law to receive service on behalf of the partnership or unincorporated association.

(Ky. R. Civ. P. 4.04(4).)

Service on the Commonwealth of Kentucky

Service on the commonwealth of Kentucky or one of its agencies must be made by serving the [attorney general of Kentucky](#) or any assistant attorney general (Ky. R. Civ. P. 4.04(6)).

Other Methods of Service

If an entity has no registered agent or if the agent cannot be identified or served with reasonable diligence, the entity may be served by registered or certified mail:

- With return receipt requested.
- Addressed to the entity at its principal office and to the attention of the person or office "appropriate for giving notice to the entity."

(KRS 14A.4-040(2).)

Service is deemed perfected on the earliest of:

- The date the entity receives the mail.
- The date shown on the return receipt if signed on the entity's behalf.
- Five days after the subpoena is deposited in the US mail according to the postmark, if it is correctly addressed and the postage is paid.

(KRS 14A.4-040(2).)

Parties should save evidence of the postmark and the correctly addressed mail.

Subpoenas issued under Rule 45 of the Kentucky Rules of Civil Procedure are not filed with the court unless the court orders otherwise. The party responsible for service of a subpoena:

- Retains the original.
- Is the custodian of the subpoena.
- Must provide access to all parties during the course of the action.

(Ky. R. Civ. P. 5.06(1).)

However, if a subpoena will be used at trial or is necessary for a pre-trial motion, the pertinent portions of the subpoena must be filed with the clerk either:

- At the outset of trial.
- When filing the pretrial motion.

(Ky. R. Civ. P. 5.06(2).)

Subpoenas may also be filed with the clerk for any other purpose, on motion or by stipulation of the parties (Ky. R. Civ. P. 5.06(3)).

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 Kentucky rules do not set out any minimum time frames. However, Ky. R. Civ. P. 45.04 recognizes that parties may serve a subpoena less than ten days before the compliance date.

The recipient of a subpoena duces tecum may serve written objections either:

- Within ten days of service.
- If compliance must occur in less than ten days after service, on or before the time given for compliance.

(Ky. R. Civ. P. 45.04(2).)

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.

Required Information in Notice

In Kentucky, before parties serve a discovery subpoena, they must provide notice of the subpoena to:

- All parties.
- The person or entity whose information is being sought.

(Ky. R. Civ. P. 45.03(3).)

Additionally, after a person complies with a subpoena duces tecum:

- Copies of all documents received in response to the subpoena must be provided to all parties to the action except on motion and for good cause.
- Any other tangible evidence received in response to the subpoena must be made available for inspection by all parties.

(Ky. R. Civ. P. 45.03(2).)

When and How to Serve Notice

Kentucky law does not specify how long before service the notice must be given.

Notice made on a represented party must be made on that party's attorney unless the court directly orders service of the party. With some exceptions, service on an attorney or a party is made by:

- Delivering a copy to the attorney or party.
- Mailing it to the attorney or party at their last known address.
- If no address is known, leaving it with the clerk of the court.

(Ky. R. Civ. P. 5.02(1).)

Attorneys or parties may elect to effect and receive service electronically, such as by email. The requirements to elect electronic notification are set out in Ky. R. Civ. P. 5.02(2).

After giving notice, the party may serve the subpoena on the person to whom it is directed (Ky. R. Civ. P. 5.02).

Form of Notice

Kentucky attorneys may satisfy the notice requirements in Ky R. Civ. P. 45.03 by drafting a document that:

- Includes the caption or style of the case in the form of other pleadings and filings, with a title identifying the document as a notice.
- Is titled either:
 - “Notice of Intent to Serve Subpoena”; or
 - “Notice of Intent to Serve Subpoena Duces Tecum.”
- Contains the phrase “Pursuant to CR 45.03(3), please take notice that Plaintiff intends to serve the attached Subpoena upon [NAME].”

A copy of the subpoena as issued may then be attached to the notice. Counsel signs the notice and signs and attaches a certificate of service as proof of service (Ky. R.

Drafting and Issuing Discovery Subpoenas: Kentucky

Civ. P. 5.03).

If a subpoena duces tecum is served on a person to be examined, the designation of the materials the subpoena requires to be produced must also be either:

- Attached to the notice.
- Included in the notice.

(Ky. R. Civ. P. 30.02(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

A party may serve a subpoena anywhere in Kentucky (Ky. R. Civ. P. 45.03(1)).

Out-of-State Limits on Service

Kentucky adopted the Uniform Interstate Depositions and Discovery Act (UIDDA). However, this act only applies to parties who want to take a deposition or obtain discovery in Kentucky for use in another jurisdiction. (KRS 421.360.)

For more information on the UIDDA, see Question 4.

Procedure for Non-Party Witness Discovery

Depositions may be taken out of state before:

- A commissioner appointed by the governor of the state where the deposition is held.
- Any person empowered by a commission, with the consent of the parties or by court order.
- A court judge, a justice of the peace, a city mayor, or a notary public.
- Any other person and under any other circumstances authorized by either Kentucky law or the law of the state where the deposition is taken.

(Ky. R. Civ. P. 28.02.)

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 Kentucky, the payment of fees is not consistent among practitioners, though witness fees for attendance or mileage are generally unnecessary (7 Ky. Prac. R. Civ. Proc. Ann. Rule 45.03 cmt 4).

The only reimbursement expressly provided for in Kentucky law is mileage reimbursement for a witness subpoenaed to a county other than the witness's county of residence (KRS 421.015). This statute does not specify:

- Who is responsible for the reimbursement.
- When the payment is made.
- How the payment is made.

Some Kentucky practitioners voluntarily provide fees for attendance at depositions, particularly where non-parties must travel some distance.

A Kentucky resident is required to attend a deposition examination only in the county where the witness either:

- Resides.
- Is employed.
- Transacts business in person.

A court may also order a convenient place for the examination. (Ky. R. Civ. P. 45.04(3).)

The [Kentucky Bar Association](#) issued an ethics opinion holding that the Kentucky Rules of Professional Conduct allow but do not compel a lawyer to compensate a witness

Drafting and Issuing Discovery Subpoenas: Kentucky

for reasonable out-of-pocket expenses and lost income incurred by the witness while either:

- Testifying at a deposition.
- Preparing with the attorney.

(KY ST RPC Rule 3:130(3.4); [Ky. Bar Ass'n, Ethics Op. E-400 \(1997\)](#).)

Some Kentucky practitioners provide witnesses with:

- The standard mileage reimbursement (see [Calculating Fees](#)).
- A sum intended to compensate for other actual and reasonable economic loss resulting from their testimony.
- The \$40 witness fee set out in federal statutes.

Some practitioners estimate these amounts and attach a check to the subpoena payable to the witness.

Witness fees may be recoverable as costs to the prevailing party under Ky. R. Civ. P. 54.04(2) (see *Bryan v. CorrectCare-Integrated Health, Inc.*, 420 S.W.3d 520, 525-26 (Ky. App. 2013)).

Calculating Fees

Witness mileage reimbursement is calculated using the same standard mileage reimbursement rate for Kentucky state employee travel.

Kentucky re-calculates its employee mileage reimbursement rate every quarter using the factors set out in the Kentucky Administrative Regulations (200 Ky. Admin. Regs. 2:006).

The Kentucky Finance and Administration Cabinet publishes the updated rate on its website. The rate is adjusted quarterly, with updates taking effect on January 1, April 1, July 1, and October 1 each calendar year.

Form of Fees

Kentucky law does not provide for a particular form of payment of fees.

Timing

Kentucky law does not provide for timing of the payment of fees.

Consequences for Failure to Pay

Kentucky law does not provide any consequences for failure

to pay any fees.

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)?

In Kentucky, the usual remedy when a non-party witness fails to comply with a subpoena and does not properly serve objections is for the party seeking the discovery to file a motion to compel (Ky. R. Civ. P. 37.01).

A Kentucky court may hold a non-complying person in contempt (KRS 421.110; Ky. R. Civ. P. 45.06).

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 Kentucky, parties may immediately contest a trial court's order regarding a subpoena in an appeals court with a writ of prohibition (*Claussner Hosiery Co. v. City of Paducah*, 120 S.W.2d 1039, 1040 (Ky. 1938)). This extraordinary procedure is normally reserved for situations in which the trial court compels production of non-discoverable information that is privileged or confidential (7 Ky. Prac. R. Civ. Proc. Ann. Rule 76.36 cmt 5; see *Sowders v. Lewis*, 241 S.W.3d 319 (Ky. 2007)). A petition for a writ of prohibition in Kentucky is not an appeal. It is an original action brought against a judge whose decisions may be reviewed as a matter of right by the court in which the petition is filed. In an appellate court, Ky. R. Civ. P. 76.36 and 81 govern original proceedings.

Kentucky courts regard a writ as extraordinary relief reserved for extraordinary cases (*Wal-Mart Stores, Inc. v. Dickinson*, 29

Drafting and Issuing Discovery Subpoenas: Kentucky

S.W.3d 796, 800 (Ky. 2000); *Cox v. Braden*, 266 S.W.3d 792, 796 (Ky. 2008)).

When the person contesting a subpoena is a not a party there is no remedy other than a writ of prohibition because a non-party does not have a remedy by appeal (*Carpenter v. Wells*, 358 S.W.2d 524, 527 (Ky. 1962)).

Parties may take an appeal to the Kentucky Supreme Court as a matter of right from an order by the Kentucky Court of Appeals in an original action (KY ST RAP Rule 60(A)).

Timing of Appeal

See Appealability.

Standard of Review

Kentucky courts review discovery rulings, including rulings on subpoenas, under an abuse of discretion standard. Courts have “leeway and discretion in entering and enforcing discovery orders.” (*S. Fin. Life Ins. Co.*, 413 S.W.3d at 932.)

About Practical Law

Practical Law provides legal know-how that gives lawyers a better starting point. Our expert team of attorney editors creates and maintains thousands of up-to-date, practical resources across all major practice areas. We go beyond primary law and traditional legal research to give you the resources needed to practice more efficiently, improve client service and add more value.

If you are not currently a subscriber, we invite you to take a trial of our online services at legalsolutions.com/practical-law. For more information or to schedule training, call 1-800-733-2889 or e-mail referenceattorneys@tr.com.