

Drafting and Issuing Discovery Subpoenas: Alabama

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A Q&A guide to drafting, issuing, serving, and enforcing a discovery subpoena in an Alabama 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?

Alabama's primary bodies of law governing subpoenas in civil matters are the Alabama Rules of Civil Procedure and the Alabama Code. The provisions relating to subpoenas are:

- Ala. R. Civ. P. 45 (subpoenas generally).
- Ala. R. Civ. P. 45 with District Court Modifications (subpoenas in Alabama district courts, identical to Rule 45).
- Ala. R. Civ. P. 30 (oral depositions).
- Ala. Code §§ 12-21-400 to 12-21-407 (Alabama Uniform Interstate Depositions and Discovery Act).
- Ala. Code § 12-21-180 (subpoenas for witnesses subpoenaed within the state).
- Ala. R. Civ. P. 26 (Discovery, including subpoenas, must be relevant to the subject matter involved in the pending action and proportional to the needs of the case, considering several factors set out in Rule 26.).

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).

Subpoena for Production or Inspection of Premises

A subpoena for production or inspection in Alabama may command a person to either:

- Produce and permit inspection, copying, testing, or sampling of the following items within the person's possession, custody, or control:
 - books;
 - documents;
 - electronically stored information; or
 - tangible things.
- Permit inspection of premises at a specified time and place.

(Ala. R. Civ. P. 45(a)(1)(C).)

A subpoena for production or inspection does not require a person to appear at the place of production

or inspection unless the subpoena also commands the person to appear for deposition (Ala. R. Civ. P. 45(c)(2)(a)). A subpoena for production or inspection can be served jointly with a subpoena for testimony or served separately (Ala. R. Civ. P. 45(a)(1)).

A subpoena may specify the form or forms of in which electronically stored information is to be produced (Ala. R. Civ. P. 45(a)(1)).

Subpoena for Testimony

A subpoena for testimony commands a person to appear and provide testimony at a specific time and place for a deposition. A subpoena for testimony can be served jointly with a subpoena for production or inspection. (Ala. R. Civ. P. 45(a)(1), (2); Ala. Code § 12-21-180.)

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

The clerk of the court where the action is pending generally issues a subpoena in Alabama (Ala. R. Civ. P. 45(a)(2), (3)). The exception is a subpoena for production or inspection separate from a subpoena for testimony, which the court issues after certain procedural requirements are met. These procedural requirements include, but are not limited to:

- Filing a Notice of Intent to Serve Subpoena for Production or Inspection (with a copy of the proposed subpoena attached to the notice).
- Any person or party having an opportunity to serve an objection to the Notice of Intent.

(Ala. R. Civ. P. 45(a)(3).)

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

The clerk of the court where the action is pending issues all subpoenas in Alabama (Ala. R. Civ. P. 45(a)(2), (3)). The exception is a subpoena for production or inspection separate from a subpoena for testimony, which the court issues after certain procedural requirements are met. These procedural requirements include, but are not limited to:

- Filing a Notice of Intent to Serve Subpoena for Production or Inspection (with a copy of the proposed subpoena attached to the notice).

- Any person or party having an opportunity to serve an objection to the Notice of Intent.

(Ala. R. Civ. P. 45(a)(3).)

Drafting a Discovery Subpoena

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

General Requirements

In Alabama, every subpoena must contain:

- The name of the court issuing the subpoena.
- The title of the action.
- The name of the court where the action is pending.
- The civil action number.
- The time and place for the recipient to:
 - produce books, documents, electronically stored information, or tangible things for inspection;
 - permit the inspection of premises; or
 - provide testimony.
- The text of Ala. R. Civ. P. 45(c) and (d).

(Ala. R. Civ. P. 45(a)(1).)

Subpoena for Production or Inspection of Premises

A subpoena for production or inspection of premises must also include:

- The name and address of the person to whom the subpoena is directed, or, if the name is unknown, a general description sufficient to identify the person or the particular class or group to which the person belongs.
- A reasonably particular description of the items to be produced, inspected, copied, tested, or sampled.
- A stated reasonable time for compliance of at least 15 days after service, unless the court orders otherwise.
- The required procedure for the inspection, production, copying, testing, or sampling requested.
- Notice that the recipient has the right to object any time before the date set for compliance.

The recipient may condition the preparation of copies of documents or things on the payment in advance of the reasonable cost of making the copies. (Ala. R. Civ. P. 45(a)(3)(C).)

Subpoena for Testimony

A subpoena for testimony directed to a non-party organization must also:

- Describe with reasonable particularity the matters on which examination is requested.
- Advise the non-party organization of its duty to designate at least one officer, director, managing agent, or other person to testify on its behalf.

(Ala. R. Civ. P. 30(b)(6).)

A subpoena for witnesses must:

- Specify a time and place for their appearance.
- Specify the title of the case.
- Specify the party at whose instance they are summoned.
- Command them to appear and give testimony.

(Ala. Code § 12-21-180.)

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

[Appendix I to the Alabama Rules of Civil Procedure](#) contains form subpoenas, which a party can adapt to the specific type of discovery sought. The forms are:

- Ala. R. Civ. P. Form 73 (civil subpoena).
- Ala. R. Civ. P. Form 74 (civil subpoena *duces tecum*).
- Ala. R. Civ. P. Form 75 (subpoena to testify or produce documents or things).

The Alabama [Administrative Office of Courts](#) has an AOC E-Forms [page](#) on which Subpoena Request Forms for civil and criminal cases can be found.

Serving a Discovery Subpoena

7. Who may serve a discovery subpoena?

The following individuals may serve a subpoena in Alabama:

- The sheriff or sheriff's deputy of the county where the subpoena is served.
- An attorney, on behalf of the party (Ala. R. Civ. P. 45(b)(1) and Ala. R. Civ. P. 4(i)(2)(A)).
- Any person who is not:
 - a party to the action;
 - less than 19 years of age; or
 - related within the third degree by blood or marriage to the party seeking service of process.

(Ala. R. Civ. P. 45(b).)

A subpoena may also be served by certified mail or commercial carrier under Ala. R. Civ. P. 4.

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

Alabama generally restricts discovery subpoenas directed to:

- Law enforcement officers, except in limited circumstances (Ala. Code § 12-21-31(c)).
- Members of a state or local team investigating child abuse and neglect, unless the information is available from other sources that are not immune from subpoena (Ala. Code § 26-16-98(e)).
- Members of quality control and peer review committees for dentists, chiropractors, and physicians (Ala. Code § 6-5-333(d)).

If serving an out-of-state non-party with a discovery subpoena, the requesting party must follow both:

- The subpoena-related rules of the relevant court in Alabama.
- The procedure of the court in the place where the documents are located.

(See *In re Omni Healthcare Fin., LLC*, 393 So. 3d 487 (Ala. 2023).)

The state in which the documents are located may have enacted a law similar to Alabama's Uniform Interstate Depositions and Discovery Act and, therefore, may have a procedure in place for addressing foreign discovery requests, which must be followed.

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

Individuals

In Alabama, a party can serve a subpoena on an individual by:

- Certified mail under Ala. R. Civ. P. 4.
- Commercial carrier under Ala. R. Civ. P. 4.
- Personal delivery.
- Leaving a copy at the person's dwelling or usual place of abode with a person of suitable age and discretion residing there.

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

A subpoena for testimony requiring a non-party witness to travel more than 100 miles from their residence **must** include:

- Witness fees for one day's attendance.
- Reimbursement for mileage under Alabama law.

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

Organizations

A party can serve a subpoena on a corporation, partnership, limited liability company, or other entity by:

- Certified mail.
- Commercial carrier.
- Personal delivery to:
 - an officer;
 - a partner (other than a limited partner);
 - a managing or general agent; or
 - any agent authorized by appointment or by law to receive service.

(Ala. R. Civ. P. 4(c)(6) and 45(b)(1).)

State or Public Entities

A party can serve a subpoena on:

- The state of Alabama or any of its departments, agencies, offices, or institutions by serving:
 - the officer responsible for the administration of the department; and
 - the [Alabama attorney general](#).
- A county, municipal corporation, or any other governmental entity by serving:

- the chief executive officer, the clerk, or another person designated to receive service of process; or
- the Alabama attorney general, if the service is accompanied by an affidavit of a party or the party's attorney that all the persons described above are unknown or cannot be located.

(Ala. R. Civ. P. 4(c)(7), (8).)

Specific Categories of Individuals

Minors

If the person to be served is a minor, a party may serve the subpoena on:

- A parent.
- A guardian.
- An individual having care of the minor or with whom the minor lives.
- The minor's spouse.

If the minor is over the age of 16, a party must also personally serve the minor with the subpoena. (Ala. R. Civ. P. 4(c)(2).)

Incompetent Individuals

If a court has deemed the subpoena recipient legally incompetent, the party seeking discovery must complete service as follows:

- If the incompetent person is not confined, service must be made on the person and:
 - the person's guardian; or
 - if no guardian has been appointed, a person with whom the incompetent person lives or who cares for them.
- If the incompetent person is confined and has no guardian, service must be made on the institution's superintendent or person acting in a similar capacity.

(Ala. R. Civ. P. 4(c)(3), (4).)

Incarcerated Individuals

A party can serve a subpoena on an incarcerated person by serving:

- The individual.
- If a minor, on:

- the minor’s parent or guardian;
- the individual having care of the minor; or
- the minor’s spouse.

If the minor is over the age of 16, the party must also serve the minor personally. (Ala. R. Civ. P. 4(c)(5).)

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)?

Under Alabama law, a party must serve a subpoena for production or inspection at least 15 days before compliance is required (Ala. R. Civ. P. 45(a)(3)(C)).

The Alabama Rules of Civil Procedure do not provide a minimum time for serving a subpoena for testimony. However, the court can quash or modify a subpoena if it fails to allow a reasonable time for compliance (Ala. R. Civ. P. 45(c)(3)(A)(i)).

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.

Subpoena for Production or Inspection of Premises

In Alabama, a party issuing a subpoena for production or inspection on a non-party witness must:

- Serve notice on every other party 15 days before serving the subpoena on the non-party witness.
- Attach the proposed subpoena to the notice.

(Ala. R. Civ. P. 45(a)(3)(A).)

The court has discretion to allow for a shorter or longer notice period (Ala. R. Civ. P. 45(a)(3)(A)).

A party can serve notice without leave of court if the notice is served no earlier than 45 days after completing service of the summons and complaint or other mode of service on a defendant. Leave of

court is not required during the initial 45-day period if a defendant has previously sought discovery. (Ala. R. Civ. P. 45(a)(3)(A).)

A party can serve notice by electronic filing if counsel represents the opposing party. If the other party is not represented, the party can serve notice by mail or personal service. (Ala. R. Civ. P. 5(b) and 45(b)(1).)

Subpoena for Testimony

For a subpoena for testimony, the issuing party must give reasonable notice in writing to every other party to the action. The notice must state:

- The time and place for taking the deposition.
- The name and address of each person to be examined, if known. If the name is unknown, a general description sufficient to identify either:
 - the person to be examined; or
 - the particular class or group to which the person belongs.

(Ala. R. Civ. P. 30(b)(1).)

If the subpoena for testimony also includes a request for production, the designation of the materials to be produced must be attached to or included in the notice (Ala. 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

A party can serve a subpoena at any place within Alabama, but not beyond Alabama’s borders (Ala. R. Civ. P. 45(b)(2); *In re Nat’l Cont. Poultry Growers’ Ass’n*, 771 So. 2d 466, 469 (Ala. 2000)).

A party serving a subpoena for testimony that requires a non-party witness to travel more than 100 miles from its residence must also tender to the witness:

Drafting and Issuing Discovery Subpoenas: Alabama

- The fees for one day's attendance.
 - An amount to reimburse the mileage allowed by law.
- (Ala. R. Civ. P. 45(b)(1).)

A court must quash or modify a subpoena on a timely motion if the subpoena requires:

- A non-party resident of Alabama to travel more than 100 miles from the place where the person:
 - resides;
 - works; or
 - regularly transacts business in person.
- A non-party, non-resident of Alabama to travel to a place in Alabama that is:
 - more than 100 miles from the place of service; or
 - where separate from the place of service, more than 100 miles from the place where that person works or regularly transacts business in person.

(Ala. R. Civ. P. 45(c)(3)(A)(ii).)

Under the Alabama Uniform Interstate Deposition and Discovery Act (UIDDA), a foreign party can subpoena an Alabama resident by submitting a foreign subpoena to a clerk of the circuit court in the county where the foreign party seeks discovery if the foreign jurisdiction provides reciprocity (Ala. Code §§ 12-21-402(a) and 12-21-406). After the party submits the subpoena, the clerk must promptly issue a subpoena for service on the person to whom the foreign subpoena is directed under the foreign court's procedure (Ala. Code § 12-21-402(b)).

For a list of states that have adopted the UIDDA, see [Interstate Discovery Chart](#).

Foreign litigants seeking discovery in Alabama for actions pending outside of Alabama can proceed under Ala. R. Civ. P. 45 (Ala. R. Civ. P. 28(c)).

Out-of-State Limits on Service

A party cannot serve an Alabama subpoena outside the state of Alabama (Ala. R. Civ. P. 45(b)(2); *In re Nat'l Cont. Poultry Growers' Ass'n*, 771 So. 2d at 469).

Obtaining Discovery Located Outside Issuing Court's Jurisdiction

Process beyond the subpoena power of Alabama courts depends on the existence of a rule or statute

in the other state or country that allows foreign litigants to obtain discovery (Ala. R. Civ. P. 45; *In re Nat'l Cont. Poultry Growers' Ass'n*, 771 So. 2d at 469).

If the target jurisdiction is a state that has also adopted the UIDDA, Alabama litigants may be able to issue subpoenas in that jurisdiction by following procedures similar to those provided for foreign subpoenas in Alabama (see In-State Limits on Service). For a list of states that have adopted the UIDDA, see [Interstate Discovery Chart](#).

Although the procedure varies by state, most states allow for discovery using the letters rogatory or commission process. Alabama litigants may be able to compel discovery by applying to the court for judicial assistance, depending on the law of the state where the uncooperative witness is located.

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

Alabama law entitles a non-party witness to:

- Attendance fees.
- Mileage fees.

(Ala. Code § 12-19-131.)

Calculating Fees

Alabama law entitles a witness to \$1.50 for each day of required attendance. Mileage fees include:

- Five cents per mile for each mile to and from the witness's residence by the usual traveled route.
- All necessary ferriage, tolls of turnpikes, and toll bridges.

(Ala. Code § 12-19-131.)

Form of Fees

Alabama law does not specify the required form of payment.

Timing

The discovering party should pay all fees when serving the subpoena (Ala. R. Civ. P. 45(b)(1)).

Consequences for Failure to Pay

If a party does not pay witness fees, the witness is not obliged to appear again as a witness in the same case until the fees are paid (Ala. Code § 12-19-133). Failure to pay witness fees can also form the basis for an objection to a subpoena (see [State Q&A, Responding to Discovery Subpoenas: Alabama: Question 4](#)).

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)?

Good Faith Effort to Resolve Dispute Over Discovery Subpoena

If a person fails to comply with or objects to a subpoena in Alabama, the issuing party must first contact the non-party witness or their attorney to resolve any dispute informally. This meet and confer is required as a precondition to a motion to compel (Ala. R. Civ. P. 37(a)(2); Motion to Compel).

If a person fails to obey a discovery subpoena without adequate excuse, the issuing party may seek to force compliance by filing either or both:

- A motion to compel (see Motion to Compel).
- A motion for contempt (see Motion for Contempt).

Motion to Compel

If a witness or party objects to any part of the subpoena, the issuing party cannot proceed with the request without an order from the court that issued the disputed subpoena (Ala. R. Civ. P. 37(a)(1), (2) and 45(a)(3)(B), (c)(2)(B)).

Before the issuing party can apply for a motion to compel, it must first try to resolve the subject of the discovery motion through correspondence or discussions with opposing counsel or, if the opposing party is unrepresented, the opposing party (Ala. R. Civ. P. 37(a)(2)). If the issuing party cannot informally resolve the dispute, it must:

- Give reasonable notice of the motion to other parties and the witness.
- Move for an order to compel the production, inspection, copying, testing, or sampling.
- Attach a statement to the motion stating that the attorney attempted to resolve the discovery dispute informally.

(Ala. R. Civ. P. 37(a)(2) and 45(c)(2)(B).)

A trial court can issue a valid order on the sufficiency of objections to producing certain documents only if the discovering party moves to compel production under Ala. R. Civ. P. 37(a) (*Ex parte The Terminix Int'l Co. L.P.*, 897 So. 2d 280, 284 (Ala. 2004)).

Motion for Contempt

A person who fails to obey a subpoena without adequate excuse may be deemed in contempt of the court from which the subpoena issued (Ala. R. Civ. P. 37(b)(1), 45(e), and 70A(a)(2)(D)).

A court can excuse a non-party for failing to obey a subpoena if the subpoena requires the non-party to attend or produce at a place not within the limits provided by Ala. R. Civ. P. 45(c)(3)(A)(ii) (Ala. R. Civ. P. 45(e)).

A court may hold a non-party in contempt for failure to permit production of documents if the requesting party complies with the requirements of Ala. R. Civ. P. 37(b). Alabama Rule of Civil Procedure 37(b)(1) provides that if a non-party fails to permit production of documents under Rule 45(a)(3) after being directed to do so by a circuit judge, or where production or entry is sought outside the state and the court where the documents are located has directed the production, the failure to produce can be considered contempt of court. (See *In re Omni Healthcare Fin., LLC*, 393 So. 3d at 490.)

Effective March 14, 2024, Ala. R. Civ. P. 30(d) explicitly permits the court to award appropriate remediation and impose sanctions for violations of Rule 30 (see [State Q&A, Responding to Discovery Subpoenas: Alabama: Question 7: Contempt](#)).

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

Discovery orders are not final judgments and parties in Alabama generally may not immediately appeal them (Ala. Code § 12-22-2). The Supreme Court of Alabama may grant *mandamus* review of discovery orders in certain exceptional cases where the petitioner shows:

- That the trial court clearly exceeded its discretion.
- The aggrieved party does not have an adequate remedy by ordinary appeal.

(*Ex parte Tucker*, 66 So. 3d 750, 752 (Ala. 2011).)

These exceptional cases include, but are not limited to, when:

- A discovery order disregards privilege.
- A discovery order compels the production of irrelevant or duplicative documents, clearly constituting harassment or imposing a burden on the producing party far outweighing any benefit the requesting party may obtain.
- The trial court either imposes sanctions effectively precluding a decision on the merits or denies discovery going to a party's entire action or defense so that, in either event, the outcome is essentially determined and the petitioner would be merely going through the motions of a trial to obtain an appeal.

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- The trial court impermissibly prevents the petitioner from making a record on the discovery issue so that the appellate court cannot review the effect of the trial court's error.

(*Ex parte Carlisle*, 26 So. 3d 1202, 1206 (Ala. 2009); *Ex parte Ocwen Fed. Bank, FSB*, 872 So. 2d 810, 813-14 (Ala. 2003).)

A contempt order relating to failure to comply with a subpoena is a final appealable order (Ala. R. Civ. P. 70A(g); see *In re Nat'l Cont. Poultry Growers' Ass'n*, 771 So. 2d at 466; see *Gladden v. Gladden*, 942 So.2d 362, 369 (Ala. Civ. App. 2005)).

An appellate court can also review discovery orders and decisions after final judgment in that same action. However, the appellate courts can only reverse judgments that injured the substantial rights of the parties, which in practice cancels out most objections to pre-trial issues involving discovery subpoenas (Ala. R. Civ. P. 61; Ala. R. App. P. 45; see *Nail v. Jeter*, 114 So. 3d 844, 849 (Ala. Civ. App. 2012)).

Timing of Appeal

An issuing party or a non-party seeking a writ of *mandamus* must file the petition within 42 days after the court's order, absent a showing of good cause (Ala. R. App. P. 4(a)(1) and 21(a)(3)). A non-party appealing a contempt order must file a notice of appeal within 42 days after entry of the order (Ala. R. App. P. 4(a)(1)).

If the issuing party or non-party appeals after the final judgment in the action, the appellant must file the notice of the appeal within 42 days of the date of entry of the judgment (Ala. R. App. P. 4(a)(1)).

Standard of Review

If an appellate court grants *mandamus* review of a discovery decision, the appellate court reviews the trial court's order under a *de novo* standard of review (*Ex parte Stewart*, 786 So. 2d 464, 467 (Ala. 2000)).

Alabama appellate courts review a trial court's decisions concerning the issuance or quashing of a subpoena under an abuse of discretion standard (Ala. R. Civ. P. 60(b); *Ex parte Tucker*, 66 So. 3d at 752; *Home Ins. Co. v. Rice*, 585 So. 2d 859, 862 (Ala. 1991)).