

## VWC Subpoena Information

### 1. SUBPOENAS ISSUED BY THE COMMISSION:

1. An attorney must prepare and request all subpoenas, except that a pro se employee, or an unincorporated and pro se employer, may request them. A carrier or corporate employer may request a subpoena only through its legal representative. An adjuster may not request a subpoena.
2. The Commission will not issue subpoenas for out-of-state medical records.
3. Rule 1.8(F) requires that the "party requesting a witness or subpoena duces tecum shall prepare the subpoena and submit it to the Commission for insertion of return date and Clerk certification; a check or money order for service fee, payable to the appropriate sheriff's office, shall accompany the request. The Commission shall forward the subpoena and service fee to the designated sheriff's office, unless requested to do otherwise."
4. At the time of the subpoena request, the Commission must be furnished with the following:
  1. A letter from the party requesting service directed to the Sheriff of the jurisdiction in which the subpoena is to be served. If subpoenas are requested from more than one jurisdiction, a letter must be furnished for the Sheriff of each jurisdiction. A letter from the party requesting service directed to the Sheriff of the jurisdiction in which the subpoena is to be served. If subpoenas are requested from more than one jurisdiction, a letter must be furnished for the Sheriff of each jurisdiction.
  2. A \$12.00 law firm check or a money order made payable to the appropriate Sheriff for each subpoena to be served. Sheriff's offices will not accept personal checks.
  3. The original and two copies of each subpoena.
  4. A letter setting forth the materiality and relevance of the witness of document for which the subpoena is requested. Exception: If the materiality and relevance is apparent on the face of the request, such as a subpoena for the records of a doctor or the carrier, an explanation does not have to be given.
5. The return date on the subpoena should be completed by the Workers' Compensation Commission.
6. The "fee to be paid" portion should be completed by the requesting party.
7. Requests for subpoenas may be filed in Richmond or in the regional office to which the case is assigned.
8. Rule 1.8(F) allows that "subpoenaed records may be made returnable to the requesting party or, at the direction of the Commission, to the Clerk of the Commission or to a regional office. If subpoenaed records contain medical reports, they must be filed with the Commission pursuant to Rule 4(K)."
9. Rule 1.8(F)(1) and (2) set forth the time for requesting subpoenas as follows:
  1. Subpoenas for Witnesses. Requests should be filed at least 10 days prior to hearing.
  2. Subpoenas Duces Tecum Requests should be filed at least 15 days before hearing and the subpoena shall describe with particularity the materiality of the documents or articles to be produced. The Commission will not issue subpoenas duces tecum for out-of-state records.

NOTE: It has been our experience that sheriffs cannot serve subpoenas in fewer than 14 days. If a subpoena is requested fewer than 14 days before a hearing, the subpoena should be issued. The requesting party must then ensure proper service, probably by a private process server.

10. Copies of the request for certification of a subpoena duces tecum must be sent to the opposing party.

11. When requests are approved, the Commission will certify the subpoenas and send them with the request letter to the appropriate Sheriff. Alternatively, subpoenas will be returned to the attorney for delivery to the Sheriff or private process server, if that is specifically requested.
2. Subpoenas for Witnesses or Documents Issued by a Circuit Court:
  1. Parties to a claim may issue a subpoena from a Circuit Court. Such subpoenas are subject to the rules of the Circuit Court.
3. Subpoenas for Witnesses Issued by a Virginia Attorney:
  1. Code § 8.01-407 was amended effective July 1, 2000, to allow an attorney, who is an active member of the Virginia Bar and an officer of the court, to issue [witness subpoenas](#) for attendance at any "civil proceeding pending in a court or at a deposition in connection with such proceedings."

NOTE: Code § 8.01-385(2) defines "court . . . to include the courts of this Commonwealth, any person or body appointed by it or acting under its process or authority in a judicial or quasi-judicial capacity, and any other judicial, quasi-judicial, or fact-finding body acting pursuant to the laws of the Commonwealth, including without limitation, the State Corporation Commission and the Virginia Workers' Compensation Commission."

2. The amended § 8.01-407 requires the attorney to mail such summons to the "clerk in whose court the case is pending," i.e., the Clerk of the Commission, on the date that the summons is issued, and to provide for necessary service, either through the court or by separate process. The amended § 8.01-407 specifically provides that the summons "shall not be issued less than five business days prior to the date that attendance is desired."
3. The amended § 8.01-407 further provides that the summons [subpoena] "shall be deemed to be a pleading to which the provisions of § 8.01-271.1 shall apply." That particular section essentially provides that the "pleading" is made in good faith, which is formed after a reasonable inquiry. However, Rule 1.12 of the Rules of the Virginia Supreme Court provides that copies of all pleadings, and subpoenas duces tecum in particular, shall be furnished to opposing parties "on or before the day of filing."
4. Code § 8.01-413 was also amended, thereby authorizing a Virginia attorney to issue [subpoenas duces tecum](#) for medical records from a claimant's health care providers. The amended § 8.01-413 incorporates the process delineated in the amended § 8.01-407 for witness subpoenas.
5. The amendments to Code §§ 8.01-407 and 8.01-413 do not appear to change any substantive process, but only serves to reduce the administrative burden on the clerks of the circuit court, and effectively on the Clerk of the Commission, by entrusting the attorney, as an officer of the courts, with that administrative task. Of course, such subpoenas may still be requested from and issued by the clerk of the circuit court of the community in which attendance is desired, or by the Commission.

## **SUBPOENA FORMS**

[Subpoena Duces Tecum--Attorney Issued](#)  
[Witness Subpoena--Attorney Issued](#)  
[Subpoena Duces Tecum--VWC Issued](#)  
[Witness Subpoena--VWC Issued](#)  
[Subpoena Duces Tecum--Requesting Party](#)  
[Letter to Sheriff](#)  
[Subpoena for the Taking of Deposition](#)