

Senate Bill 688

Sponsored by Senator MANNING JR (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows witness to waive personal service of subpoena by electronic mail.

A BILL FOR AN ACT

Relating to waiver of personal service of subpoena; amending ORCP 55 B.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORCP 55 B, as amended by the Council on Court Procedures on December 10, 2022, is amended to read:

B Subpoenas requiring appearance and testimony by individuals, organizations, law enforcement agencies or officers, prisoners, and parties.

B(1) Permissible purposes of subpoena. A subpoena may require appearance in court or out of court, including:

B(1)(a) Civil actions. A subpoena may be issued to require attendance before a court, or at the trial of an issue therein, or on the taking of a deposition in an action pending therein.

B(1)(b) Foreign depositions. Any foreign deposition under Rule 38 C presided over by any person authorized by Rule 38 C to take witness testimony, or by any officer empowered by the laws of the United States to take testimony; or

B(1)(c) Administrative and other proceedings. Any administrative or other proceeding presided over by a judge, justice or other officer authorized to administer oaths or to take testimony in any matter under the laws of this state.

B(2) Service of subpoenas requiring the appearance or testimony of nonparty individuals or nonparty organizations; payment of fees. Unless otherwise provided in this rule, a copy of the subpoena must be served sufficiently in advance to allow the witness a reasonable time for preparation and travel to the place specified in the subpoena.

B(2)(a) Service on an individual 14 years of age or older. If the witness is 14 years of age or older, the subpoena must be personally delivered to the witness, along with fees for one day's attendance and the mileage allowed by law unless the witness expressly declines payment, whether personal attendance is required or not.

B(2)(b) Service on an individual under 14 years of age. If the witness is under 14 years of age, the subpoena must be personally delivered to the witness's parent, guardian, or guardian ad litem, along with fees for one day's attendance and the mileage allowed by law unless the witness expressly declines payment, whether personal attendance is required or not.

B(2)(c) Service on individuals waiving personal service. If the witness waives personal service, the subpoena may be mailed **or electronically mailed** to the witness, but mail **or electronic mail** service is valid only if all of the following circumstances exist:

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 B(2)(c)(i) Witness agreement. Contemporaneous with the return of service, the party's attorney
2 or attorney's agent certifies that the witness agreed to appear and testify if subpoenaed;

3 B(2)(c)(ii) Fee arrangements. The party's attorney or attorney's agent made satisfactory ar-
4 rangements with the witness to ensure the payment of fees and mileage, or the witness expressly
5 declined payment; [and]

6 B(2)(c)(iii) Signed mail receipt. **If the subpoena was mailed,** the subpoena was mailed more
7 than 10 days before the date to appear and testify in a manner that provided a signed receipt on
8 delivery, and the witness or, if applicable, the witness's parent, guardian, or guardian ad litem,
9 signed the receipt more than 3 days before the date to appear and testify[.]; **and**

10 **B(2)(c)(iv) Signed mail receipt. If the subpoena was electronically mailed, the electronic**
11 **mail was sent before the date to appear and testify and the witness sent an electronic mail**
12 **response before the date to appear and testify verifying that the witness received the elec-**
13 **tronic mail.**

14 B(2)(d) Service of a deposition subpoena on a nonparty organization pursuant to Rule 39 C(6).
15 A subpoena naming a nonparty organization as a deponent must be delivered, along with fees for
16 one day's attendance and mileage, in the same manner as provided for service of summons in Rule
17 7 D(3)(b)(i), Rule 7 D(3)(c)(i), Rule 7 D(3)(d)(i), Rule 7 D(3)(e), Rule 7 D(3)(f), or Rule 7 D(3)(h).

18 B(3) Service of a subpoena requiring appearance of a peace officer in a professional capacity.

19 B(3)(a) Personal service on a peace officer. A subpoena directed to a peace officer in a profes-
20 sional capacity may be served by personal service of a copy, along with fees for one day's attend-
21 ance and mileage as allowed by law, unless the peace officer expressly declines payment.

22 B(3)(b) Substitute service on a law enforcement agency. A subpoena directed to a peace officer
23 in a professional capacity may be served by substitute service of a copy, along with fees for one
24 day's attendance and mileage as allowed by law, on an individual designated by the law enforcement
25 agency that employs the peace officer or, if a designated individual is not available, then on the
26 person in charge at least 10 days before the date the peace officer is required to attend, provided
27 that the peace officer is currently employed by the law enforcement agency and is present in this
28 state at the time the agency is served.

29 B(3)(b)(i) "Law enforcement agency" defined. For purposes of this subsection, a law enforcement
30 agency means the Oregon State Police, a county sheriff's department, a city police department, or
31 a municipal police department.

32 B(3)(b)(ii) Law enforcement agency obligations.

33 B(3)(b)(ii)(A) Designating representative. All law enforcement agencies must designate one or
34 more individuals to be available during normal business hours to receive service of subpoenas.

35 B(3)(b)(ii)(B) Ensuring actual notice or reporting otherwise. When a peace officer is subpoenaed
36 by substitute service under paragraph B(3)(b) of this rule, the agency must make a good faith effort
37 to give the peace officer actual notice of the time, date, and location specified in the subpoena for
38 the appearance. If the law enforcement agency is unable to notify the peace officer, then the agency
39 must promptly report this inability to the court. The court may postpone the matter to allow the
40 peace officer to be personally served.

41 B(4) Service of subpoena requiring the appearance and testimony of prisoner. All of the follow-
42 ing are required to secure a prisoner's appearance and testimony:

43 B(4)(a) Court preauthorization. Leave of the court must be obtained before serving a subpoena
44 on a prisoner, and the court may prescribe terms and conditions when compelling a prisoner's at-
45 tendance;

1 B(4)(b) Court determines location. The court may order temporary removal and production of the
2 prisoner to a requested location, or may require that testimony be taken by deposition at, or by
3 remote location testimony from, the place of confinement; and

4 B(4)(c) Whom to serve. The subpoena and court order must be served on the custodian of the
5 prisoner.

6 B(5) Service of subpoenas requiring the appearance or testimony of individuals who are parties
7 to the case or party organizations. A subpoena directed to a party who has appeared in the case,
8 including an officer, director, or member of a party organization, may be served as provided in Rule
9 9 B, without any payment of fees and mileage otherwise required by this rule.

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