

1       **Rule 45. Subpoena.**

2       (a) Form; issuance.

3       (a)(1) Every subpoena shall:

4       (a)(1)(A) issue from the court in which the action is pending;

5       (a)(1)(B) state the title and case number of the action, the name of the court from  
6 which it is issued, and the name and address of the party or attorney responsible for  
7 issuing the subpoena;

8       (a)(1)(C) command each person to whom it is directed

9       (a)(1)(C)(i) to appear and give testimony at a trial, hearing or deposition, or

10       (a)(1)(C)(ii) to appear and produce for inspection, copying, testing or sampling  
11 documents, electronically stored information or tangible things in the possession,  
12 custody or control of that person, or

13       (a)(1)(C)(iii) to copy documents or electronically stored information in the  
14 possession, custody or control of that person and mail or deliver the copies to the party  
15 or attorney responsible for issuing the subpoena before a date certain, or

16       (a)(1)(C)(iv) to appear and to permit inspection of premises;

17       (a)(1)(D) if an appearance is required, specify the date, time and place for the  
18 appearance; and

19       (a)(1)(E) include a notice to persons served with a subpoena in a form substantially  
20 similar to the subpoena form appended to these rules. A subpoena may specify the  
21 form or forms in which electronically stored information is to be produced.

22       (a)(2) The clerk shall issue a subpoena, signed but otherwise in blank, to a party  
23 requesting it, who shall complete it before service. An attorney admitted to practice in  
24 Utah may issue and sign a subpoena as an officer of the court.

25       (b) Service; fees; prior notice.

26       (b)(1) A subpoena may be served by any person who is at least 18 years of age and  
27 not a party to the case. Service of a subpoena upon the person to whom it is directed  
28 shall be made as provided in Rule 4(d).

29       (b)(2) If the subpoena commands a person's appearance, the party or attorney  
30 responsible for issuing the subpoena shall tender with the subpoena the fees for one  
31 day's attendance and the mileage allowed by law. When the subpoena is issued on

32 behalf of the United States, or this state, or any officer or agency of either, fees and  
33 mileage need not be tendered.

34 (b)(3) If the subpoena commands a person to copy and mail or deliver documents or  
35 electronically stored information, to produce documents, electronically stored  
36 information or tangible things for inspection, copying, testing or sampling or to permit  
37 inspection of premises, the party or attorney responsible for issuing the subpoena shall  
38 serve each party with notice of the subpoena by delivery or other method of actual  
39 notice before serving the subpoena.

40 (c) Appearance; resident; non-resident.

41 (c)(1) A person who resides in this state may be required to appear:

42 (c)(1)(A) at a trial or hearing in the county in which the case is pending; and

43 (c)(1)(B) at a deposition, or to produce documents, electronically stored information  
44 or tangible things, or to permit inspection of premises only in the county in which the  
45 person resides, is employed, or transacts business in person, or at such other place as  
46 the court may order.

47 (c)(2) A person who does not reside in this state but who is served within this state  
48 may be required to appear:

49 (c)(2)(A) at a trial or hearing in the county in which the case is pending; and

50 (c)(2)(B) at a deposition, or to produce documents, electronically stored information  
51 or tangible things, or to permit inspection of premises only in the county in which the  
52 person is served or at such other place as the court may order.

53 (d) Payment of production or copying costs. The party or attorney responsible for  
54 issuing the subpoena shall pay the reasonable cost of producing or copying documents,  
55 electronically stored information or tangible things. Upon the request of any other party  
56 and the payment of reasonable costs, the party or attorney responsible for issuing the  
57 subpoena shall provide to the requesting party copies of all documents, electronically  
58 stored information or tangible things obtained in response to the subpoena or shall  
59 make the tangible things available for inspection.

60 (e) Protection of persons subject to subpoenas; objection.

61 (e)(1) The party or attorney responsible for issuing a subpoena shall take reasonable  
62 steps to avoid imposing an undue burden or expense on the person subject to the

63 subpoena. The court shall enforce this duty and impose upon the party or attorney in  
64 breach of this duty an appropriate sanction, which may include, but is not limited to, lost  
65 earnings and a reasonable attorney fee.

66 (e)(2) A subpoena to copy and mail or deliver documents or electronically stored  
67 information, to produce documents, electronically stored information or tangible things,  
68 or to permit inspection of premises shall comply with Rule 34(a) and (b)(1), except that  
69 the person subject to the subpoena must be allowed at least 14 days after service to  
70 comply.

71 (e)(3) The person subject to the subpoena [or a non-party affected by the subpoena](#)  
72 may object if the subpoena:

73 (e)(3)(A) fails to allow reasonable time for compliance;

74 (e)(3)(B) requires a resident of this state to appear at other than a trial or hearing in  
75 a county in which the person does not reside, is not employed, or does not transact  
76 business in person;

77 (e)(3)(C) requires a non-resident of this state to appear at other than a trial or  
78 hearing in a county other than the county in which the person was served;

79 (e)(3)(D) requires the person to disclose privileged or other protected matter and no  
80 exception or waiver applies;

81 (e)(3)(E) requires the person to disclose a trade secret or other confidential  
82 research, development, or commercial information;

83 (e)(3)(F) subjects the person to an undue burden or cost;

84 (e)(3)(G) requires the person to produce electronically stored information in a form or  
85 forms to which the person objects;

86 (e)(3)(H) requires the person to provide electronically stored information from  
87 sources that the person identifies as not reasonably accessible because of undue  
88 burden or cost; or

89 (e)(3)(I) requires the person to disclose an unretained expert's opinion or information  
90 not describing specific events or occurrences in dispute and resulting from the expert's  
91 study that was not made at the request of a party.

92 (e)(4)(A) If the person subject to the subpoena [or a non-party affected by the](#)  
93 [subpoena](#) objects, the objection must be made before the date for compliance.

94 (e)(4)(B) ~~The person subject to the subpoena shall state the~~ The objection shall be  
95 stated in a concise, non-conclusory manner.

96 (e)(4)(C) If the objection is that the information commanded by the subpoena is  
97 privileged or protected and no exception or waiver applies, or requires the person to  
98 disclose a trade secret or other confidential research, development, or commercial  
99 information, the objection shall sufficiently describe the nature of the documents,  
100 communications, or things not produced to enable the party or attorney responsible for  
101 issuing the subpoena to contest the objection.

102 (e)(4)(D) If the objection is that the electronically stored information is from sources  
103 that are not reasonably accessible because of undue burden or cost, the person from  
104 whom discovery is sought must show that the information sought is not reasonably  
105 accessible because of undue burden or cost.

106 (e)(4)(E) The ~~person shall serve the~~ objection shall be served on the party or  
107 attorney responsible for issuing the subpoena. The party or attorney responsible for  
108 issuing the subpoena shall serve a copy of the objection on the other parties.

109 (e)(5) If objection is made, or if a party files a motion for a protective order, the party  
110 or attorney responsible for issuing the subpoena is not entitled to compliance but may  
111 move for an order to compel compliance. The motion shall be served on the other  
112 parties and on the person subject to the subpoena. An order compelling compliance  
113 shall protect the person subject to or affected by the subpoena from significant expense  
114 or harm. The court may quash or modify the subpoena. If the party or attorney  
115 responsible for issuing the subpoena shows a substantial need for the information that  
116 cannot be met without undue hardship, the court may order compliance upon specified  
117 conditions.

118 (f) Duties in responding to subpoena.

119 (f)(1) A person commanded to copy and mail or deliver documents or electronically  
120 stored information or to produce documents, electronically stored information or tangible  
121 things shall serve on the party or attorney responsible for issuing the subpoena a  
122 declaration under penalty of law stating in substance:

123 (f)(1)(A) that the declarant has knowledge of the facts contained in the declaration;

124 (f)(1)(B) that the documents, electronically stored information or tangible things  
125 copied or produced are a full and complete response to the subpoena;

126 (f)(1)(C) that the documents, electronically stored information or tangible things are  
127 the originals or that a copy is a true copy of the original; and

128 (f)(1)(D) the reasonable cost of copying or producing the documents, electronically  
129 stored information or tangible things.

130 (f)(2) A person commanded to copy and mail or deliver documents or electronically  
131 stored information or to produce documents, electronically stored information or tangible  
132 things shall copy or produce them as they are kept in the usual course of business or  
133 shall organize and label them to correspond with the categories in the subpoena.

134 (f)(3) If a subpoena does not specify the form or forms for producing electronically  
135 stored information, a person responding to a subpoena must produce the information in  
136 the form or forms in which the person ordinarily maintains it or in a form or forms that  
137 are reasonably usable.

138 (f)(4) If the information produced in response to a subpoena is subject to a claim of  
139 privilege or of protection as trial-preparation material, the person making the claim may  
140 notify any party who received the information of the claim and the basis for it. After  
141 being notified, the party must promptly return, sequester, or destroy the specified  
142 information and any copies of it and may not use or disclose the information until the  
143 claim is resolved. A receiving party may promptly present the information to the court  
144 under seal for a determination of the claim. If the receiving party disclosed the  
145 information before being notified, it must take reasonable steps to retrieve the  
146 information. The person who produced the information must preserve the information  
147 until the claim is resolved.

148 (g) Contempt. Failure by any person without adequate excuse to obey a subpoena  
149 served upon that person is punishable as contempt of court.

150 (h) Procedure when witness evades service or fails to attend. If a witness evades  
151 service of a subpoena or fails to attend after service of a subpoena, the court may issue  
152 a warrant to the sheriff of the county to arrest the witness and bring the witness before  
153 the court.

154 (i) Procedure when witness is confined in jail. If the witness is a prisoner, a party  
155 may move for an order to examine the witness in the jail or prison or to produce the  
156 witness before the court or officer for the purpose of being orally examined.

157 (j) Subpoena unnecessary. A person present in court or before a judicial officer may  
158 be required to testify in the same manner as if the person were in attendance upon a  
159 subpoena.

160 Advisory Committee Notes

161 To quash a subpoena, a party should file a motion for a protective order under Rule  
162 26 and a non-party affected by the subpoena should file an objection under this rule.  
163 The non-party might be the person subpoenaed or might be someone who has an  
164 interest in the testimony of the subpoenaed person or in the documents or other  
165 materials ordered to be produced.

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