

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 of the action, the name of the court from which it is issued, the name  
6 and address of the party or attorney serving the subpoena, and its civil action number;

7 (a)(1)(C) command each person to whom it is directed to appear to give testimony at trial, or  
8 at hearing, or at deposition, or to produce or to permit inspection and copying of documents or  
9 tangible things in the possession, custody or control of that person, or to permit inspection of  
10 premises, at a time and place therein specified; and

11 (a)(1)(D) set forth the text of Notice to Persons Served with a Subpoena, in substantially  
12 similar form to the subpoena form appended to these rules.

13 (a)(2) A command to produce or to permit inspection and copying of documents or tangible  
14 things, or to permit inspection of premises, may be joined with a command to appear at trial, or  
15 at hearing, or at deposition, or may be issued separately.

16 (a)(3) The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it,  
17 who shall complete it before service. An attorney admitted to practice in the court in which the  
18 action is pending may also issue and sign a subpoena as an officer of the court.

19 (b) Service; scope.

20 (b)(1) Generally.

21 (b)(1)(A) A subpoena may be served by any person who is not a party and is not less than 18  
22 years of age. Service of a subpoena upon a person named therein shall be made as provided in  
23 Rule 4~~(e)~~(d) for the service of process and, if the person's appearance is commanded, by  
24 tendering to that person the fees for one day's attendance and the mileage allowed by law. When  
25 the subpoena is issued on behalf of the United States, or this state, or any officer or agency of  
26 either, fees and mileage need not be tendered. Prior notice of any commanded production or  
27 inspection of documents or tangible things or inspection of premises before trial shall be served  
28 on each party in the manner prescribed by Rule 5(b).

29 (b)(1)(B) Proof of service when necessary shall be made by filing with the clerk of the court  
30 from which the subpoena is issued a statement of the date and manner of service and of the  
31 names of the persons served, certified by the person who made the service.

32 (b)(1)(C) Service of a subpoena outside of this state, for the taking of a deposition or  
33 production or inspection of documents or tangible things or inspection of premises outside this  
34 state, shall be made in accordance with the requirements of the jurisdiction in which such service  
35 is made.

36 (b)(2) Subpoena for appearance at trial or hearing. A subpoena commanding a witness to  
37 appear at a trial or at a hearing pending in this state may be served at any place within the state.

38 (b)(3) Subpoena for taking deposition.

39 (b)(3)(A) A person who resides in this state may be required to appear at deposition only in  
40 the county where the person resides, or is employed, or transacts business in person, or at such  
41 other place as the court may order. A person who does not reside in this state may be required to  
42 appear at deposition only in the county in this state where the person is served with a subpoena,  
43 or at such other place as the court may order.

44 (b)(3)(B) A subpoena commanding the appearance of a witness at a deposition may also  
45 command the person to whom it is directed to produce or to permit inspection and copying of  
46 documents or tangible things relating to any of the matters within the scope of the examination  
47 permitted by Rule 26(b), but in that event the subpoena will be subject to the provisions of Rule  
48 30(b) and paragraph (c) of this rule.

49 (b)(4) Subpoena for production or inspection of documents or tangible things or inspection of  
50 premises. A subpoena to command a person who is not a party to produce or to permit inspection  
51 and copying of documents or tangible things or to permit inspection of premises may be served  
52 at any time after commencement of the action. The scope and procedure shall comply with Rule  
53 34, except that the person must be allowed at least 14 days to comply as stated in subparagraph  
54 (c)(2)(A) of this rule. The party serving the subpoena shall pay the reasonable cost of producing  
55 or copying the documents or tangible things. Upon the request of any other party and the  
56 payment of reasonable costs, the party serving the subpoena shall provide to the requesting party  
57 copies of all documents obtained in response to the subpoena.

58 (c) Protection of persons subject to subpoenas.

59 (c)(1) A party or an attorney responsible for the issuance and service of a subpoena shall take  
60 reasonable steps to avoid imposing undue burden or expense on a person subject to that  
61 subpoena. The court from which the subpoena was issued shall enforce this duty and impose

62 upon the party or attorney in breach of this duty an appropriate sanction, which may include, but  
63 is not limited to, lost earnings and a reasonable attorney's fee.

64 (c)(2)(A) A subpoena served upon a person who is not a party to produce or to permit  
65 inspection and copying of documents or tangible things or to permit inspection of premises,  
66 whether or not joined with a command to appear at trial, or at hearing, or at deposition, must  
67 allow the person at least 14 days after service to comply, unless a shorter time has been ordered  
68 by the court for good cause shown.

69 (c)(2)(B) A person commanded to produce or to permit inspection and copying of documents  
70 or tangible things or to permit inspection of premises need not appear in person at the place of  
71 production or inspection unless also commanded to appear at trial, at hearing, or at deposition.

72 (c)(2)(C) A person commanded to produce or to permit inspection and copying of documents  
73 or tangible things or inspection of premises may, before the time specified for compliance with  
74 the subpoena, serve upon the party or attorney designated in the subpoena written objection to  
75 inspection or copying of any or all of the documents or tangible things or inspection of the  
76 premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and  
77 copy the materials or inspect the premises except pursuant to an order of the court. If objection  
78 has been made, the party serving the subpoena may, upon notice to the person commanded to  
79 produce, move at any time for an order to compel the production. Such an order to compel  
80 production shall protect any person who is not a party or an officer of a party from significant  
81 expense resulting from the inspection and copying commanded.

82 (c)(3)(A) On timely motion, the court from which a subpoena was issued shall quash or  
83 modify the subpoena if it:

84 (c)(3)(A)(i) fails to allow reasonable time for compliance;

85 (c)(3)(A)(ii) requires a resident of this state who is not a party to appear at deposition in a  
86 county in which the resident does not reside, or is not employed, or does not transact business in  
87 person; or requires a non-resident of this state to appear at deposition in a county other than the  
88 county in which the person was served;

89 (c)(3)(A)(iii) requires disclosure of privileged or other protected matter and no exception or  
90 waiver applies;

91 (c)(3)(A)(iv) subjects a person to undue burden.

92 (c)(3)(B) If a subpoena:

93 (c)(3)(B)(i) requires disclosure of a trade secret or other confidential research, development,  
94 or commercial information;

95 (c)(3)(B)(ii) requires disclosure of an unretained expert's opinion or information not  
96 describing specific events or occurrences in dispute and resulting from the expert's study made  
97 not at the request of any party;

98 (c)(3)(B)(iii) requires a resident of this state who is not a party to appear at deposition in a  
99 county in which the resident does not reside, or is not employed, or does not transact business in  
100 person; or

101 (c)(3)(B)(iv) requires a non-resident of this state who is not a party to appear at deposition in  
102 a county other than the county in which the person was served;  
103 the court may, to protect a person subject to or affected by the subpoena, quash or modify the  
104 subpoena or, if the party serving the subpoena shows a substantial need for the testimony or  
105 material that cannot otherwise be met without undue hardship and assures that the person to  
106 whom the subpoena is addressed will be reasonably compensated, the court may order  
107 appearance or production only upon specified conditions.

108 (d) Duties in responding to subpoena.

109 (d)(1) A person responding to a subpoena to produce documents shall produce them as they  
110 are kept in the usual course of business or shall organize and label them to correspond with the  
111 categories in the demand.

112 (d)(2) When information subject to a subpoena is withheld on a claim that it is privileged or  
113 subject to protection as trial preparation materials, the claim shall be made expressly and shall be  
114 supported by a description of the nature of the documents, communications, or things not  
115 produced that is sufficient to enable the demanding party to contest the claim.

116 (e) Contempt. Failure by any person without adequate excuse to obey a subpoena served  
117 upon that person may be deemed a contempt of the court from which the subpoena issued. An  
118 adequate cause for failure to obey exists when a subpoena purports to require a nonparty to  
119 appear or produce at a place not within the limits provided by subparagraph (c)(3)(A)(ii).

120 (f) Procedure where witness conceals himself or fails to attend. If a witness evades service of  
121 a subpoena, or fails to attend after service of a subpoena, the court may issue a warrant to the  
122 sheriff of the county to arrest the witness and bring the witness before the court.

123       (g) Procedure when witness is confined in jail. If the witness is a prisoner confined in a jail or  
124 prison within the state, an order for examination in the prison upon deposition or, in the  
125 discretion of the court, for temporary removal and production before the court or officer for the  
126 purpose of being orally examined, may be made upon motion, with or without notice, by a  
127 justice of the Supreme Court, or by the district court of the county in which the action is pending.

128       (h) Subpoena unnecessary; when. A person present in court, or before a judicial officer, may  
129 be required to testify in the same manner as if the person were in attendance upon a subpoena.

130