

1 **Rule 45. Subpoena.**

2 **(a) Form; issuance.**

3 (1) Every subpoena shall:

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

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

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

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

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

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

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

17 (D) if an appearance is required, ~~specify~~ give notice of the date, time, and place
18 for the appearance and, if remote transmission is requested, instructions for
19 participation and whom to contact if there are technical difficulties; and

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

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

26 **(b) Service; fees; prior notice.**

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

30 (2) If the subpoena commands a person's appearance, the party or attorney
31 responsible for issuing the subpoena shall tender with the subpoena the fees for one
32 day's attendance and the mileage allowed by law. When the subpoena is issued on
33 behalf of the United States, or this state, or any officer or agency of either, fees and
34 mileage need not be tendered.

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

41 **(c) Appearance; resident; non-resident.**

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

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

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

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

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

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

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

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

62 (1) The party or attorney responsible for issuing a subpoena shall take reasonable
63 steps to avoid imposing an undue burden or expense on the person subject to the
64 subpoena. The court shall enforce this duty and impose upon the party or attorney
65 in breach of this duty an appropriate sanction, which may include, but is not limited
66 to, lost earnings and a reasonable attorney fee.

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

72 (3) The person subject to the subpoena or a non-party affected by the subpoena may
73 object under Rule 37 if the subpoena:

74 (A) fails to allow reasonable time for compliance;

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

- 78 (C) requires a non-resident of this state to appear at other than a trial or hearing
79 in a county other than the county in which the person was served;
- 80 (D) requires the person to disclose privileged or other protected matter and no
81 exception or waiver applies;
- 82 (E) requires the person to disclose a trade secret or other confidential research,
83 development, or commercial information;
- 84 (F) subjects the person to an undue burden or cost;
- 85 (G) requires the person to produce electronically stored information in a form or
86 forms to which the person objects;
- 87 (H) requires the person to provide electronically stored information from sources
88 that the person identifies as not reasonably accessible because of undue burden
89 or cost; or
- 90 (I) requires the person to disclose an unretained expert's opinion or information
91 not describing specific events or occurrences in dispute and resulting from the
92 expert's study that was not made at the request of a party.

93 | **(4) Timing and form of objections.**

- 94 (A) If the person subject to the subpoena or a non-party affected by the subpoena
95 objects, the objection must be made before the date for compliance.
- 96 (B) The objection shall be stated in a concise, non-conclusory manner.
- 97 (C) If the objection is that the information commanded by the subpoena is
98 privileged or protected and no exception or waiver applies, or requires the
99 person to disclose a trade secret or other confidential research, development, or
100 commercial information, the objection shall sufficiently describe the nature of the
101 documents, communications, or things not produced to enable the party or
102 attorney responsible for issuing the subpoena to contest the objection.

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

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

110 (5) If objection is made, or if a party requests a protective order, the party or attorney
111 responsible for issuing the subpoena is not entitled to compliance but may request
112 an order to compel compliance under Rule 37(a). The objection or request shall be
113 served on the other parties and on the person subject to the subpoena. An order
114 compelling compliance shall protect the person subject to or affected by the
115 subpoena from significant expense or harm. The court may quash or modify the
116 subpoena. If the party or attorney responsible for issuing the subpoena shows a
117 substantial need for the information that cannot be met without undue hardship, the
118 court may order compliance upon specified conditions.

119 **(f) Duties in responding to subpoena.**

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

124 (A) that the declarant has knowledge of the facts contained in the declaration;

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

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

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

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

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

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

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

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

156 (i) **Procedure when witness is an inmate.** If the witness is an inmate as defined in Rule
157 6(e)(1), a party may move for an order to examine the witness in the institution or to
158 produce the witness before the court or officer for the purpose of being orally examined.

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

162

163 ~~Advisory Committee Notes~~

164 ~~The process to request a protective order is governed by Rule 37(a), Statement of~~
165 ~~discovery issues.~~

166 ~~The form subpoena formerly part of the Appendix of Forms described in Rule 81 has~~
167 ~~been replaced by forms approved by the Board of District Court Judges found on the~~
168 ~~court website at <http://www.utcourts.gov/resources/forms/subpoena/>. The website~~
169 ~~includes information and forms for domestic subpoenas and subpoenas from other~~
170 ~~states. Utah has adopted the Uniform Interstate Depositions and Discovery Act, and the~~
171 ~~act differentiates between the requirements for a subpoena issued by a state that also~~
172 ~~has adopted the uniform act and the requirements for a subpoena issued by a state that~~
173 ~~has not.~~