

Rule 45. Subpoena.**(a) Form; issuance.**

(1) Every subpoena ~~shall~~must:

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

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

(C) command each person to whom it is directed

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

(ii) to appear and produce for inspection, copying, testing_z or sampling documents, electronically stored information_z or tangible things in the possession, custody_z or control of that person, or

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

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

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

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

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

(b) Service; fees; prior notice.

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

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

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

(c) Appearance; resident; non-resident.

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

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

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

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

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

(B) at a deposition, or to produce documents, electronically stored information, or

tangible things, or to permit inspection of premises only in the county in which the person is served or at such other place as the court may order.

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

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

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

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

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

(A) fails to allow reasonable time for compliance;

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

(C) requires a non-resident of this state to appear at other than a trial or hearing in

a county other than the county in which the person was served;

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

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

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

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

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

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

(4) Timing and form of objections.

(A) If the person subject to the subpoena or a non-party affected by the subpoena objects, the objection must be ~~made~~ in writing and made before the date for compliance.

(B) The objection ~~shall~~ must be stated in a concise, non-conclusory manner.

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

(D) If the objection is that the electronically stored information is from sources that

are not reasonably accessible because of undue burden or cost, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost.

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

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

(5) Response to objections and compliance.

(A) If an objection is made under this rule, or if a party requests a protective order, the party issuing the subpoena is not entitled to compliance on any topic for which an objection has been made but may request an order to compel compliance under Rule 37(a).

(B) ~~The objection or request~~ If a party requests a protective order, the party must serve the request for a protective order on the other parties and on the person subject to the subpoena.

(C) If the party issuing the subpoena seeks to obtain compliance with the subpoena through Rule 37(a), the person subject to the subpoena or a non-party affected by the subpoena may respond as provided by Rule 37(a)(3).

(D) An order compelling compliance must protect the person subject to or affected

by the subpoena from significant expense or harm. The court may quash or modify the subpoena. If the party shows a substantial need for the information sought by the subpoena that cannot be met without undue hardship, the court may order compliance upon specified conditions.

(b) Duties in responding to subpoena.

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

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

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

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

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

(2) A person commanded to copy and mail or deliver documents or electronically stored information or to produce documents, electronically stored information_z or tangible things ~~shall~~must copy or produce them as they are kept in the usual course of business_z or ~~shall~~must organize and label them to correspond with the categories in the subpoena.

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

(4) If the information produced in response to a subpoena is subject to a claim of

privilege or of protection as trial-preparation material, the person making the claim may notify any party who received the information of the claim and the basis for it. After being notified, the party must promptly return, sequester, or destroy the specified information and any copies of it and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

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

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

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

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

Effective ~~May 1, 2021~~