

1     **Rule 45. Subpoena.**

2     **(a) Form; issuance.**

3     (1) Every subpoena ~~must~~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  
6         from which it is issued, and the name and address of the party or attorney  
7         responsible for issuing the subpoena;

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

9             (i) to appear and give testimony at a trial, hearing<sub>z</sub> or deposition, or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

96 **(4) Timing and form of objections.**

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

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

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

106 attorney responsible for issuing the subpoena to contest the objection.

107 (D) If the objection is that the electronically stored information is from sources  
108 that are not reasonably accessible because of undue burden or cost, the person  
109 from whom discovery is sought must show that the information sought is not  
110 reasonably accessible because of undue burden or cost.

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

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

123 (5) Response to objections and compliance.

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

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

131 (C) If the party issuing the subpoena seeks to obtain compliance with the  
132 subpoena through Rule 37(a), the person subject to the subpoena or a non-party

133 affected by the subpoena may respond as provided by Rule 37(a)(3).

134 (D) An order compelling compliance must protect the person subject to or  
135 affected by the subpoena from significant expense or harm. The court may quash  
136 or modify the subpoena. If the party shows a substantial need for the information  
137 sought by the subpoena that cannot be met without undue hardship, the court  
138 may order compliance upon specified conditions.

139 **(b) Duties in responding to subpoena.**

140 (1) A person commanded to copy and mail or deliver documents<sub>z</sub> or electronically  
141 stored information<sub>z</sub> or to produce documents, electronically stored information<sub>z</sub> or  
142 tangible things ~~shall~~must serve on the party or attorney responsible for issuing the  
143 subpoena a declaration under penalty of law stating in substance:

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

145 (B) that the documents, electronically stored information<sub>z</sub> or tangible things  
146 copied or produced are a full and complete response to the subpoena;

147 (C) that the documents, electronically stored information<sub>z</sub> or tangible  
148 things are the originals or that a copy is a true copy of the original; and

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

151 (2) A person commanded to copy and mail or deliver documents or electronically  
152 stored information or to produce documents, electronically stored information<sub>z</sub> or  
153 tangible things ~~shall~~must copy or produce them as they are kept in the usual course  
154 of business<sub>z</sub> or ~~shall~~must organize and label them to correspond with the categories  
155 in the subpoena.

156 (3) If a subpoena does not specify the form or forms for producing  
157 electronically stored information, a person responding to a subpoena must  
158 produce the information in the form or forms in which the person ordinarily

159 maintains it or in a form or forms that are reasonably usable.

160 (4) If the information produced in response to a subpoena is subject to a claim  
161 of privilege or of protection as trial-preparation material, the person making the  
162 claim may notify any party who received the information of the claim and the  
163 basis for it. After being notified, the party must promptly return, sequester, or  
164 destroy the specified information and any copies of it and may not use or disclose  
165 the information until the claim is resolved. A receiving party may promptly  
166 present the information to the court under seal for a determination of the claim. If  
167 the receiving party disclosed the information before being notified, it must take  
168 reasonable steps to retrieve the information. The person who produced the  
169 information must preserve the information until the claim is resolved.

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

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

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

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

183 Effective ~~May 1, 2021~~