

RULE 147. SUBPOENAS

(a) In General:

(1) *Form and Contents:*

(A) *Requirements--In General:* Every subpoena must:

- (i) state the name of the Court;
- (ii) state the title of the action and the docket number;
- (iii) command each person to whom it is directed to do one or more of the following at a specified time and place; attend and testify or produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; and
- (iv) set out the text of Rule 147(d) and (e).

(B) *Command To Produce; Specifying the Form for Electronically Stored Information:* Any command to produce documents, electronically stored information, or tangible things must be included in a subpoena commanding attendance at a deposition, hearing, or trial. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(C) *Command To Produce; Included Obligations:* A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding person to permit inspection, copying, testing, or sampling of the materials.

(2) *Issued by Whom:* The Clerk or a duly authorized representative must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service. A subpoena can be downloaded from the Court's website. See Form 14 (Subpoena) shown in the Appendix.

- (3) *Notice to Other Parties Before Service:* If the subpoena commands the production of documents, electronically stored information, or tangible things, then before it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served on each party.

(b) Service:

- (1) *By Whom and How; Tendering Fees:* Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person and tendering to that person the fees for one day's attendance and the mileage allowed by law. See Rule 148 for fees and mileage payable. Fees and mileage need not be tendered when the subpoena issues on behalf of the Commissioner.
- (2) *Service in the United States:* A subpoena may be served at any place within the United States.
- (3) *Proof of Service:* Proving service, when necessary, requires filing with the Court the completed return of service appearing on the subpoena or a certified statement by the server showing the date and manner of service and the names of the persons served.

(c) Place of Compliance: A subpoena may command a person to attend a trial, hearing, or deposition as provided in Code section 7456.

(d) Protecting a Person Subject to a Subpoena; Enforcement:

- (1) *Avoiding Undue Burden or Expense; Sanctions:* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The Court will enforce this duty and impose an appropriate sanction, which may include an award of lost earnings and reasonable attorney's fees, against a party or attorney who fails to comply.

- (2) *Command To Produce Materials:*
- (A) *Release from Attendance:* If a person has complied with a command in a subpoena to produce documents, electronically stored information, or tangible things, the serving party may excuse the person from attending and giving testimony at the time and place specified in the subpoena.
 - (B) *Objections:* A person commanded to produce documents or tangible things may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials, or to producing electronically stored information in the form or forms requested. The objection must be served within 15 days after the subpoena is served or within the time specified for compliance, if earlier. If an objection is made, the following rules apply:
 - (i) At any time, on notice to the commanded person, the serving party may move the Court for an order compelling production or inspection.
 - (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.
- (3) *Quashing or Modifying a Subpoena:*
- (A) *When Required:* On timely motion, the Court must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
 - (ii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iii) subjects a person to undue burden.
 - (B) *When Permitted:* To protect a person subject to or affected by a subpoena, the Court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or
 - (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
 - (C) *Specifying Conditions as an Alternative:* In the circumstances described in Rule 147(d)(3)(B), the Court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
 - (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.
- (e) Duties in Responding to a Subpoena:**
- (1) *Producing Documents or Electronically Stored Information:* These procedures apply to producing documents or electronically stored information:
 - (A) *Documents:* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
 - (B) *Form for Producing Electronically Stored Information Not Specified:* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
 - (C) *Electronically Stored Information Produced in Only One Form:* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information:* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the Court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 70(c)(1). The Court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection:*

(A) *Information Withheld:* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced:* If 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, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the Court for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

- (f) **Contempt:** The Court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.