

4-505. Subpoena.

[For use with District Court Civil Rule 1-045 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

_____, JUDICIAL DISTRICT

_____, Plaintiff,

v.

No. _____

_____, Defendant.

SUBPOENA¹

SUBPOENA FOR APPEARANCE OF PERSON FOR²

DEPOSITION TRIAL

TO: _____

YOU ARE HEREBY COMMANDED TO APPEAR as follows:

Place: _____

Date: _____, _____ Time: _____ (a.m.) (p.m.)

to:

testify at the taking of a deposition in the above case.

testify at trial.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s): _____

IF YOU DO NOT COMPLY WITH THIS SUBPOENA you may be held in contempt of court and punished by fine or imprisonment.

_____, _____.

Judge, clerk, or attorney

USE NOTES

TO BE PRINTED ON EACH SUBPOENA

1. This subpoena must be served on each party in the manner provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.

2. A command to produce evidence or to permit inspection may be joined with a command to appear for a deposition or trial.

3. If a person's attendance is commanded, one full day's per diem must be tendered with the subpoena, unless the subpoena is issued on behalf of the state or an officer or agency

thereof. *See* NMSA 1978, Section 38-6-4 (1983) for per diem and mileage for witnesses. *See* NMSA 1978, Section 10-8-4(A) (2009) for per diem and mileage rates for nonsalaried public officers. Mileage must also be tendered at the time of service of the subpoena as provided by the Per Diem and Mileage Act. Payment of per diem and mileage for subpoenas issued by the state is made pursuant to regulations of the Administrative Office of the Courts. *See* NMSA 1978, Section 34-9-11 (2017) for payments from the jury and witness fee fund.

4. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose on the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney fees.

RETURN FOR COMPLETION BY SHERIFF OR DEPUTY

I certify that on the _____ day of _____, _____, in _____ County, I served this subpoena on _____ by delivering to the person named a copy of the subpoena, a witness fee in the amount of _____ and mileage in the amount of \$ _____.³

Deputy sheriff

RETURN FOR COMPLETION BY OTHER PERSON MAKING SERVICE

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the _____ day of _____, _____, in _____ County, I served this subpoena on _____ by delivering to the person named a copy of the subpoena, the statutory witness fee, and mileage in the amount of \$ _____.³

Person making service

SUBSCRIBED AND SWORN to before me this _____ day of _____, (*date*).

Judge, notary, or other officer
authorized to administer oaths

THIS SUBPOENA issued by or at request of:

Name of attorney or party

Address

Telephone

CERTIFICATE OF SERVICE BY ATTORNEY

I certify that I caused a copy of this subpoena to be served on the following persons or entities by *(delivery)* *(mail)* on this _____ day of _____, _____.

(1) _____
(Name of party)

(Address)

(2) _____
(Name of party)

(Address)

Attorney

Signature

Date of signature

INFORMATION FOR PERSONS RECEIVING SUBPOENA

Subject to Rule 1-045(D)(2) NMRA, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if that time is less than fourteen (14) days after service, serve on the party or attorney designated in the subpoena and all parties to the lawsuit identified in the certificate of service by attorney written objection to inspection or copying of any or all of the designated materials or of the premises or within fourteen (14) days after service of the subpoena may file and serve on all parties a motion to quash the subpoena. If an objection is served or a motion to quash is filed and served on the parties and the person responding to the subpoena, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except under an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. The order to compel production shall protect any person who is not a party or an officer of a party from significant

expense resulting from the inspection and copying commanded. The court may award costs and attorney fees against a party or person for serving written objections or filing a motion to quash that lacks substantial merit.

On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (1) fails to allow reasonable time for compliance,
- (2) requires a person who is not a party or an officer of a party to travel to a place more than one hundred (100) miles from the place where that person resides, is employed, or regularly transacts business in person, except as provided below, the person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held,
- (3) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (4) subjects a person to undue burden.

If a subpoena

- (1) requires disclosure of a trade secret or other confidential research, development, or commercial information,
- (2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (3) requires a person who is not a party or an officer of a party to incur substantial expense to travel, the court may quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

DUTIES IN RESPONDING TO SUBPOENA

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

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

[Adopted, effective January 1, 1998; as amended, effective November 1, 2002; January 20, 2005; as amended by Supreme Court Order No. 08-8300-002, effective March 15, 2008; as amended by Supreme Court Order No. 20-8300-005, effective for all cases pending or filed on or after December 31, 2020.]