

West's Annotated Mississippi Code Currentness
Mississippi Rules of Court State
 ▣ Mississippi Rules of Civil Procedure
 ▣ Chapter VI. Trials
 →→ **Rule 45. Subpoena**

(a) Form; Issuance.

(1) Every subpoena shall be issued by the clerk under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony, or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified. The clerk shall issue a subpoena signed and sealed, but otherwise in blank, to a party requesting it, who shall fill it in before service. A command to produce or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately.

(2) Subpoenas for attendance at a trial or hearing, for attendance at a deposition, and for production or inspection shall issue from the court in which the action is pending.

(3) In the case of discovery to be taken in foreign litigation, the subpoena shall be issued by a clerk of a court for the county in which the discovery is to be taken. The foreign subpoena shall be submitted to the clerk of court in the county in which discovery is sought to be conducted in this state. When a party submits a foreign subpoena to a clerk of court in this state, the clerk, in accordance with that court's procedure, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

The subpoena under subsection (3) must incorporate the terms used in the foreign subpoena and it must contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and any party not represented by counsel.

A subpoena issued by a clerk of court under subsection (3) must otherwise be issued and served in compliance with the rules of this state. An application to the court for a protective order or to enforce, quash or modify a subpoena issued by a clerk of court under subsection (3) must comply with the rules of this state and be submitted to the issuing court in the county in which discovery is to be conducted.

(b) Place of Examination. A resident of the State of Mississippi may be required to attend a

deposition, production or inspection only in the county wherein he resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of the court. A non-resident of this state subpoenaed within this state may be required to attend only in the county wherein he is served, or at such other convenient place as is fixed by an order of the court.

(c) Service.

(1) A subpoena may be served by a sheriff, or by his deputy, or by any other person who is not a party and is not less than 18 years of age, and his return endorsed thereon shall be prima facie proof of service, or the person served may acknowledge service in writing on the subpoena. Service of the subpoena shall be executed upon the witness personally. Except when excused by the court upon a showing of indigence, the party causing the subpoena to issue shall tender to a non-party witness at the time of service the fee for one day's attendance plus mileage allowed by law. When the subpoena is issued on behalf of the State of Mississippi or an officer or agency thereof, fees and mileage need not be tendered in advance.

(2) Proof of service shall be made by filing with the clerk of the court from which the subpoena was issued a statement, certified by the person who made the service, setting forth the date and manner of service, the county in which it was served, the names of the persons served, and the name, address and telephone number of the person making the service.

(d) Protection of Persons Subject to Subpoenas.

(1) In General.

(A) On timely motion, the court from which a subpoena was issued shall quash or modify the subpoena if it (i) fails to allow reasonable time for compliance; (ii) requires disclosure of privileged or other protected matter and no exception or waiver applies, (iii) designates an improper place for examination, or (iv) subjects a person to undue burden or expense.

(B) If a subpoena (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or (ii) 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, the court may order appearance or production only upon specified conditions.

(2) Subpoenas for Production or Inspection.

(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or to permit inspection of premises need not appear in person at the place of production or inspection unless commanded by the subpoena to appear for deposition, hearing or trial. Unless for good cause shown the court shortens the time, a sub-

poena for production or inspection shall allow not less than ten days for the person upon whom it is served to comply with the subpoena. A copy of all such subpoenas shall be served immediately upon each party in accordance with Rule 5. A subpoena commanding production or inspection will be subject to the provisions of Rule 26(d).

(B) The person to whom the subpoena is directed may, within ten days after the service thereof or on or before the time specified in the subpoena for compliance, if such time is less than ten days after service, serve upon the party serving the subpoena written objection to inspection or copying of any or all of the designated materials, or to inspection of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the material except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move at any time upon notice to the person served for an order to compel the production or inspection.

(C) The court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (i) quash or modify the subpoena if it is unreasonable or oppressive, or (ii) condition the denial of the motion upon the advance by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(e) 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.

(f) Sanctions. On motion of a party or of the person upon whom a subpoena for the production of books, papers, documents, or tangible things is served and upon a showing that the subpoena power is being exercised in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the party or the person upon whom the subpoena is served, the court in which the action is pending shall order that the subpoena be quashed and may enter such further orders as justice may require to curb abuses of the powers granted under this rule. To this end, the court may impose an appropriate sanction.

(g) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued.

CREDIT(S)

[Amended effective March 13, 1991; July 1, 1997; July 1, 1998; amended effective July 1, 2009 to provide a procedure for foreign subpoenas. This provision shall take effect and be in force from and after July 1, 2009, and applies to requests for discovery in cases pending on July 1, 2009.]

Current with amendments received through 06/01/2012

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