

1 **4-503. Subpoena.**

2
3 [For use with Magistrate Court Rule 2-502 NMRA and
4 Metropolitan Court Rule 3-502 NMRA]

5
6 STATE OF NEW MEXICO

7
8 COUNTY OF _____ [No. _____]

9
10 _____ COURT

11
12 _____, Plaintiff,

13
14 v. _____ No. _____
15 _____, Defendant.

16
17 **SUBPOENA¹**

18
19 **SUBPOENA**
20 **FOR APPEARANCE OF PERSON FOR TRIAL HEARING**
21 **TO PRODUCE DOCUMENTS OR OBJECTS AT A HEARING OR TRIAL²**
22 **FOR INSPECTION OF PREMISES OF A PARTY²**

23 TO: _____

24 YOU ARE HEREBY COMMANDED TO APPEAR as follows:

25 Place: _____

26 Before Judge: _____

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

28 To:

29 testify at trial

30 produce the following described books, documents or tangible things:

31 _____
32 _____
33 _____.

34 permit the inspection of the premises of a party located at:

35 _____
36 _____ (address).

37 YOU ARE ALSO COMMANDED to bring with you the following: (*describe*
38 *document or objects to be produced*)

39 _____
40 _____
41 _____

1 IF YOU DO NOT COMPLY WITH THIS SUBPOENA, you may be held in
2 contempt of court and punished by fine or imprisonment.
3 _____, _____ (date).

4
5 _____³
6 Judge, clerk, or attorney

7
8 **USE NOTES**

9
10 **TO BE PRINTED ON EACH SUBPOENA**

11
12 1. If a person's attendance is commanded, one full day's per diem must be
13 tendered with the subpoena.

14 2. If a person is ordered to produce books, documents, or tangible things in the
15 person's possession for a hearing or trial, the person, unless ordered to personally appear,
16 may have a custodian of the books, documents, or tangible things to the hearing or trial
17 produce them for trial. If a party is ordered to permit the inspection of the party's premises
18 before trial, the party need not appear in person at the time of the inspection.

19 3. The judge or clerk may issue a pro se party a subpoena duces tecum
20 ordering the production of books, documents, or tangible things for trial only if the
21 subpoena is completed before issuance by the court. See Rules 2-502 and 3-502 NMRA.

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

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

30
31 **RETURN FOR COMPLETION BY SHERIFF OR DEPUTY⁴**

32
33 I certify that on the _____ day of _____, _____, in
34 _____ County, I served this subpoena on _____ by
35 delivering to the person named a copy of the subpoena, the statutory witness fee, and
36 mileage in the amount of \$ _____.

37
38 _____
39 Deputy sheriff
40

**RETURN FOR COMPLETION BY OTHER PERSON
MAKING SERVICE⁴**

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 \$_____.

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 [øf] or party

Address

Telephone

CERTIFICATE OF SERVICE BY ATTORNEY⁴

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)

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Attorney

Signature

Date of signature

[TO BE PRINTED ON EACH SUBPOENA]

- ~~1. If a person's attendance is commanded, one full day's per diem must be tendered with the subpoena.~~
- ~~2. If a person is ordered to produce books, documents, or tangible things in the person's possession for a hearing or trial, the person, unless ordered to personally appear, may have a custodian of the books, documents or tangible things to the hearing or trial produce them for trial. If a party is ordered to permit the inspection of the party's premises before trial, the party need not appear in person at the time of the inspection.~~
- ~~3. The judge or clerk may issue a *pro se* party a subpoena duces tecum ordering the production of books, documents or tangible things for trial only if the subpoena is completed prior to issuance by the court. See Rules 2-502 and 3-502 NMRA.~~
- ~~4. A copy of the 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.~~

~~PROTECTION OF PERSONS SUBJECT TO SUBPOENAS~~

~~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 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's fee.~~

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

1 ~~(1) — fails to allow reasonable time for compliance;~~

2
3 ~~(2) — requires a person who is not a party or an officer of a party to travel outside the~~
4 ~~county in which the person resides or is employed or regularly transacts business~~
5 ~~in person, except as provided below, such a person may in order to attend a hearing~~
6 ~~or trial be commanded to travel from any place within the county in which the~~
7 ~~hearing or trial is held, or~~

8
9 ~~(3) — requires disclosure of privileged or other protected matter and no exception or~~
10 ~~waiver applies, or~~

11
12 ~~(4) — subjects a person to undue burden.~~

13
14 ~~If a subpoena~~

15
16 ~~(1) — requires disclosure of a trade secret or other confidential research, development, or~~
17 ~~commercial information, or~~

18
19 ~~(2) — requires disclosure of an unretained expert's opinion or information not describing~~
20 ~~specific events or occurrences in dispute and resulting from the expert's study made~~
21 ~~not at the request of any party, or~~

22
23 ~~(3) — requires a person who is not a party or an officer of a party to incur substantial~~
24 ~~expense to travel,~~

25
26 ~~the court may, to protect a person subject to or affected by the subpoena, quash or modify~~
27 ~~the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial~~
28 ~~need for the testimony or material that cannot be otherwise met without undue hardship~~
29 ~~and assures that the person to whom the subpoena is addressed will be reasonably~~
30 ~~compensated, the court may order appearance or production only upon specified~~
31 ~~conditions.~~

32
33
34 **DUTIES IN RESPONDING TO SUBPOENA**

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

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

6
7 **INFORMATION FOR PERSONS RECEIVING SUBPOENA**

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9 Subject to Rules 2-502(D)(2) and 3-502(D)(2) NMRA, a person commanded to
10 produce and permit inspection and copying may, within fourteen (14) days after service of
11 the subpoena or before the time specified for compliance if that time is less than fourteen
12 (14) days after service, serve on the party or attorney designated in the subpoena and all
13 parties to the lawsuit identified in the certificate of service by attorney written objection to
14 inspection or copying of any or all of the designated materials or of the premises or within
15 fourteen (14) days after service of the subpoena may file and serve on all parties a motion
16 to quash the subpoena. If an objection is served or a motion to quash is filed and served on
17 the parties, the party serving the subpoena shall not be entitled to inspect and copy the
18 materials or inspect the premises except under an order of the court by which the subpoena
19 was issued. The order to compel production shall protect any person who is not a party or
20 an officer of a party from significant expense resulting from the inspection and copying
21 commanded.

22
23 On timely motion, the court by which a subpoena was issued shall quash or modify
24 the subpoena if it

25
26 (1) fails to allow reasonable time for compliance,

27
28 (2) requires a person who is not a party or an officer of a party to travel outside
29 the county in which the person resides or is employed or regularly transacts business in
30 person, except as provided below, the person may in order to attend a hearing or trial be
31 commanded to travel from any place within the county in which the hearing or trial is held,

32
33 (3) requires disclosure of privileged or other protected matter and no exception
34 or waiver applies, or

35
36 (4) subjects a person to undue burden.

37
38 If a subpoena
39

1 (1) requires disclosure of a trade secret or other confidential research,
2 development, or commercial information,

3
4 (2) requires disclosure of an unretained expert's opinion or information not
5 describing specific events or occurrences in dispute and resulting from the expert's study
6 made not at the request of any party, or

7
8 (3) requires a person who is not a party or an officer of a party to incur
9 substantial expense to travel,

10
11 the court may, to protect a person subject to or affected by the subpoena, quash or modify
12 the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial
13 need for the testimony or material that cannot be otherwise met without undue hardship
14 and assures that the person to whom the subpoena is addressed will be reasonably
15 compensated, the court may order appearance or production only upon specified
16 conditions.

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18 **DUTIES IN RESPONDING TO SUBPOENA**

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

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

29
30 [Approved, effective May 1, 2002; as amended, effective January 20, 2005; as amended
31 by Supreme Court Order No. 20-8300-005, effective for all cases pending or filed on or
32 after December 31, 2020.]