

1 **4-504. Subpoena.**

2
3 [For use with Metropolitan Court Rule 3-501.1 NMRA]

4
5 STATE OF NEW MEXICO
6 _____ COUNTY

7
8
9 METROPOLITAN COURT [No. _____]

10
11 _____, Plaintiff,

12
13 v. No. _____

14
15 _____, Defendant,

16
17 **SUBPOENA¹**

18
19 **SUBPOENA FOR APPEARANCE OF PERSON FOR A STATEMENT:**

20 TO: _____

21 YOU ARE HEREBY COMMANDED TO APPEAR as follows:

22 Place: _____

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

24 to give a statement in the above case.

25
26
27 _____
Judge² or attorney

28
29 **USE NOTES**

30
31 **TO BE PRINTED ON EACH SUBPOENA**

32
33 1. If a person's attendance is commanded, one full day's per diem must be

34 tendered with the subpoena.

35 2. The judge may issue a pro se party a subpoena for a statement only if the

36 subpoena is completed before issuance by the court. See Rules 2-502 and 3-502 NMRA.

37 3. A copy of the subpoena must be served on each party in the manner

38 provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be

39 used instead of a certificate of service.

40 4. A party or an attorney responsible for the issuance and service of a subpoena

41 shall take reasonable steps to avoid imposing undue burden or expense on a person subject

42 to that subpoena. The court on behalf of which the subpoena was issued shall enforce this

1 duty and impose on the party or attorney in breach of this duty an appropriate sanction,
2 which may include, but is not limited to, lost earnings and reasonable attorney fees.

3
4 **RETURN FOR COMPLETION BY SHERIFF OR DEPUTY³**

5
6 I certify that on the _____ day of _____, _____, in
7 _____ County, I served this subpoena on _____ by
8 delivering to the person named a copy of the subpoena, the statutory witness fee, and
9 mileage in the amount of \$_____.

10
11 _____
12 Deputy sheriff

13
14 **RETURN FOR COMPLETION BY OTHER PERSON**
15 **MAKING SERVICE³**

16
17 I, being duly sworn, on oath say that I am over the age of eighteen (18) years and
18 not a party to this lawsuit, and that on the _____ day of _____,
19 _____, in _____ County, I served this subpoena on
20 _____ by delivering to the person named a copy of the subpoena,
21 the statutory witness fee, and mileage in the amount of \$_____.

22
23 _____
24 Person making service

25
26 SUBSCRIBED AND SWORN to before me this _____ day of
27 _____, _____ (date).

28
29 _____
30 Judge, notary, or other officer
31 authorized to administer oaths

32 THIS SUBPOENA issued by or at request of:

33 _____
34 Name of attorney [øf] or party

35
36 _____
37 Address

38 _____
39 Telephone

40 **CERTIFICATE OF SERVICE BY ATTORNEY³**

1
2 I certify that I caused a copy of this subpoena to be served on the following persons
3 or entities by (delivery) (mail) on this _____ day of _____,
4 _____.

5
6 (1) _____
7 (Name of party)

8 _____
9 (Address)

10 (2) _____
11 (Name of party)

12 _____
13 (Address)

14 _____
15 Attorney

16 _____
17 Signature

18 _____
19 Date of signature

20
21 ~~[TO BE PRINTED ON EACH SUBPOENA~~

22
23 ~~1. _____ If a person's attendance is commanded, one full day's per diem must be~~
24 ~~tendered with the subpoena.~~

25
26 ~~2. _____ The judge may issue a pro se party a subpoena for a statement only if the~~
27 ~~subpoena is completed prior to issuance by the court. See Rules 2-502 and 3-~~
28 ~~502 NMRA.~~

29
30 ~~3. _____ A copy of the subpoena must be served on each party in the manner provided~~
31 ~~by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be~~
32 ~~used instead of a certificate of service.~~

33
34
35 ~~PROTECTION OF PERSONS SUBJECT TO SUBPOENAS~~

36
37 ~~A party or an attorney responsible for the issuance and service of a subpoena shall~~
38 ~~take reasonable steps to avoid imposing undue burden or expense on a person subject to~~
39 ~~that subpoena. The court on behalf of which the subpoena was issued shall enforce this~~

1 ~~duty and impose upon the party or attorney in breach of this duty an appropriate sanction,~~
2 ~~which may include, but is not limited to, lost earnings and a reasonable attorney's fee.~~

3
4 On timely motion, the court by which a subpoena was issued shall quash or modify
5 the subpoena if it:

6
7 (1) ~~fails to allow reasonable time for compliance;~~

8
9 (2) ~~requires a person who is not a party or an officer of a party to travel outside the~~
10 ~~county in which the person resides or is employed or regularly transacts business~~
11 ~~in person, except as provided below, such a person may in order to attend a hearing~~
12 ~~or trial be commanded to travel from any place within the county in which the~~
13 ~~hearing or trial is held, or~~

14
15 (3) ~~requires disclosure of privileged or other protected matter and no exception or~~
16 ~~waiver applies, or~~

17
18 (4) ~~subjects a person to undue burden.~~

19
20 If a subpoena

21
22 (1) ~~requires disclosure of a trade secret or other confidential research, development, or~~
23 ~~commercial information, or~~

24
25 (2) ~~requires disclosure of an unretained expert's opinion or information not describing~~
26 ~~specific events or occurrences in dispute and resulting from the expert's study made~~
27 ~~not at the request of any party, or~~

28
29 (3) ~~requires a person who is not a party or an officer of a party to incur substantial~~
30 ~~expense to travel, the court may, to protect a person subject to or affected by the~~
31 ~~subpoena, quash or modify the subpoena or, if the party in whose behalf the~~
32 ~~subpoena is issued shows a substantial need for the testimony or material that~~
33 ~~cannot be otherwise met without undue hardship and assures that the person to~~
34 ~~whom the subpoena is addressed will be reasonably compensated, the court may~~
35 ~~order appearance or production only upon specified conditions.~~

36
37 **DUTIES IN RESPONDING TO SUBPOENA**
38

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

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

10
11 **INFORMATION FOR PERSONS RECEIVING SUBPOENA**

12
13 On timely motion, the court by which a subpoena was issued shall quash or modify
14 the subpoena if it

15
16 (1) fails to allow reasonable time for compliance,

17
18 (2) requires a person who is not a party or an officer of a party to travel outside
19 the county in which the person resides or is employed or regularly transacts business in
20 person, except as provided below, the person may in order to attend a hearing or trial be
21 commanded to travel from any place within the county in which the hearing or trial is held,

22
23 (3) requires disclosure of privileged or other protected matter and no exception
24 or waiver applies, or

25
26 (4) subjects a person to undue burden.

27
28 If a subpoena

29
30 (1) requires disclosure of a trade secret or other confidential research,
31 development, or commercial information,

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

36
37 (3) requires a person who is not a party or an officer of a party to incur
38 substantial expense to travel,

1 the court may, to protect a person subject to or affected by the subpoena, quash or modify
2 the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial
3 need for the testimony or material that cannot be otherwise met without undue hardship
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15 privileged or subject to protection as trial preparation materials, the claim shall be made
16 expressly and shall be supported by a description of the nature of the documents,
17 communications, or things not produced that is sufficient to enable the demanding party to
18 contest the claim.

19
20 [Approved, effective May 1, 2002; as amended, effective January 20, 2005; as amended
21 by Supreme Court Order No. 20-8300-005, effective for all cases pending or filed on or
22 after December 31, 2020.]