

1 **4-505. Subpoena.**

2  
3 [For use with District Court Civil Rule 1-045 NMRA]

4  
5 STATE OF NEW MEXICO

6  
7 COUNTY OF \_\_\_\_\_ [No. \_\_\_\_\_]  
8 \_\_\_\_\_ JUDICIAL DISTRICT

9  
10 \_\_\_\_\_, Plaintiff,

11  
12 v. \_\_\_\_\_ No. \_\_\_\_\_

13  
14 \_\_\_\_\_, Defendant.

15  
16 **SUBPOENA<sup>1</sup>**

17  
18 **SUBPOENA FOR APPEARANCE OF PERSON FOR<sup>2</sup>**

19 **[ ] DEPOSITION [ ] TRIAL**

20 TO: \_\_\_\_\_

21 YOU ARE HEREBY COMMANDED TO APPEAR as follows:

22 Place: \_\_\_\_\_

23 Date: \_\_\_\_\_, \_\_\_\_\_ Time: \_\_\_\_\_ (a.m.) (p.m.)

24 to:

25 [ ] testify at the taking of a deposition in the above case.

26 [ ] testify at trial.

27  
28 YOU ARE ALSO COMMANDED to bring with you the following document(s) or  
29 object(s): \_\_\_\_\_

30  
31  
32 IF YOU DO NOT COMPLY WITH THIS SUBPOENA you may be held in  
33 contempt of court and punished by fine or imprisonment.

34 \_\_\_\_\_, \_\_\_\_\_.

35  
36  
37 \_\_\_\_\_  
38 Judge, clerk, or attorney

39  
40  
41 **USE NOTES**

**TO BE PRINTED ON EACH SUBPOENA**

1  
2  
3  
4       1. This subpoena must be served on each party in the manner provided by Rule  
5 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a  
6 certificate of service.

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

9       3. If a person's attendance is commanded, one full day's per diem must be  
10 tendered with the subpoena, unless the subpoena is issued on behalf of the state or an officer  
11 or agency thereof. See NMSA 1978, Section 38-6-4 (1983) for per diem and mileage for  
12 witnesses. See NMSA 1978, Section 10-8-4(A) (2009) for per diem and mileage rates for  
13 nonsalaried public officers. Mileage must also be tendered at the time of service of the  
14 subpoena as provided by the Per Diem and Mileage Act. Payment of per diem and mileage  
15 for subpoenas issued by the state is made pursuant to regulations of the Administrative  
16 Office of the Courts. See NMSA 1978, Section 34-9-11 (2017) for payments from the jury  
17 and witness fee fund.

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

23  
24       **RETURN FOR COMPLETION BY SHERIFF OR DEPUTY**

25  
26       I certify that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in  
27 \_\_\_\_\_ County, I served this subpoena on \_\_\_\_\_  
28 by delivering to the person named a copy of the subpoena, a witness fee in the amount of  
29 \_\_\_\_\_ and mileage in the amount of \$ \_\_\_\_\_<sup>3</sup>.

30  
31 \_\_\_\_\_  
32 Deputy sheriff  
33

34  
35  
36  
37  
38       **RETURN FOR COMPLETION BY OTHER PERSON**  
39       **MAKING SERVICE**  
40

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

6  
7 \_\_\_\_\_  
8 Person making service  
9

10 SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
11 (date).

12 \_\_\_\_\_  
13 Judge, notary, or other officer  
14 authorized to administer oaths  
15

16 THIS SUBPOENA issued by or at request of:

17 \_\_\_\_\_  
18 Name of attorney [øf] or party

19 \_\_\_\_\_  
20 Address

21 \_\_\_\_\_  
22 Telephone  
23

24 **CERTIFICATE OF SERVICE BY ATTORNEY**

25  
26 I certify that I caused a copy of this subpoena to be served on the following persons  
27 or entities by (delivery) (mail) on this \_\_\_\_\_ day of \_\_\_\_\_,  
28 \_\_\_\_\_.

29  
30 (1) \_\_\_\_\_  
31 (Name of party)

32 \_\_\_\_\_  
33 (Address)

34 (2) \_\_\_\_\_  
35 (Name of party)

36  
37 \_\_\_\_\_  
38 (Address)  
39  
40 \_\_\_\_\_

1 Attorney

2  
3 \_\_\_\_\_  
4 Signature

5 \_\_\_\_\_  
6 Date of signature

7 **~~[TO BE PRINTED ON EACH SUBPOENA~~**

- 8
- 9 1. ~~This subpoena must be served on each party in the manner provided by Rule 1-~~  
10 ~~005 NMRA. If service is by a party, an affidavit of service must be used instead~~  
11 ~~of a certificate of service.~~
- 12
- 13 2. ~~A command to produce evidence or to permit inspection may be joined with a~~  
14 ~~command to appear for a deposition or trial.~~
- 15
- 16 3. ~~If a person's attendance is commanded, one full day's per diem must be~~  
17 ~~tendered with the subpoena, unless the subpoena is issued on behalf of the state~~  
18 ~~or an officer or agency thereof. See Section 38-6-4 NMSA 1978 for per diem~~  
19 ~~and mileage for witnesses. See Paragraph A of Section 10-8-4 NMSA 1978 for~~  
20 ~~per diem and mileage rates for nonsalaried public officers. Mileage must also~~  
21 ~~be tendered at the time of service of the subpoena as provided by the Per Diem~~  
22 ~~and Mileage Act. Payment of per diem and mileage for subpoenas issued by the~~  
23 ~~state is made pursuant to regulations of the Administrative Office of the Courts.~~  
24 ~~See Section 34-9-11 NMSA 1978 for payments from the jury and witness fee~~  
25 ~~fund.~~

26

27 **~~PROTECTION OF PERSONS SUBJECT TO SUBPOENAS~~**

28

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

34

35

36 **INFORMATION FOR PERSONS RECEIVING SUBPOENA**

37

38 Subject to [~~Subparagraph (2) of Paragraph D below~~] Rule 1-045(D)(2) NMRA, a  
39 person commanded to produce and permit inspection and copying may, within fourteen  
40 (14) days after service of the subpoena or before the time specified for compliance if [~~such~~]

1 that time is less than fourteen (14) days after service, serve ~~[upon]~~ on the party or attorney  
2 designated in the subpoena and all parties to the lawsuit identified in the certificate of  
3 service by attorney written objection to inspection or copying of any or all of the designated  
4 materials or of the premises or within fourteen (14) days after service of the subpoena may  
5 file and serve on all parties a motion to quash the subpoena ~~[and serve the motion on all~~  
6 ~~parties to the action]~~. If an objection is served or a motion to quash is filed and served on  
7 the parties and the person responding to the subpoena, the party serving the subpoena shall  
8 not be entitled to inspect and copy the materials or inspect the premises except ~~[pursuant~~  
9 ~~to]~~ under an order of the court by which the subpoena was issued. If objection has been  
10 made, the party serving the subpoena may, upon notice to the person commanded to  
11 produce, move at any time for an order to compel the production. ~~[Such an]~~ The order to  
12 compel production shall protect any person who is not a party or an officer of a party from  
13 significant expense resulting from the inspection and copying commanded. The court may  
14 award costs and attorney fees against a party or person for serving written objections or  
15 filing a motion to quash that lacks substantial merit.

16  
17 ~~[On timely motion, the court by which a subpoena was issued shall quash or modify the~~  
18 ~~subpoena if it:~~

19  
20 (1) ~~— fails to allow reasonable time for compliance,~~

21  
22 (2) ~~— requires a person who is not a party or an officer of a party to travel to a place more~~  
23 ~~than one hundred miles from the place where that person resides, is employed or~~  
24 ~~regularly transacts business in person, except as provided below, such a person may~~  
25 ~~in order to attend trial be commanded to travel from any such place within the state~~  
26 ~~in which the trial is held, or~~

27  
28 (3) ~~— requires disclosure of privileged or other protected matter and no exception or~~  
29 ~~waiver applies, or~~

30  
31 (4) ~~— subjects a person to undue burden.~~

32  
33 ~~If a subpoena:~~

34  
35 (1) ~~— requires disclosure of a trade secret or other confidential research, development, or~~  
36 ~~commercial information, or~~

37  
38 (2) ~~— requires disclosure of an unretained expert's opinion or information not describing~~  
39 ~~specific events or occurrences in dispute and resulting from the expert's study made~~  
40 ~~not at the request of any party, or~~

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

3  
4 ~~the court may, to protect a person subject to or affected by the subpoena, quash or modify~~  
5 ~~the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial~~  
6 ~~need for the testimony or material that cannot be otherwise met without undue hardship~~  
7 ~~and assures that the person to whom the subpoena is addressed will be reasonably~~  
8 ~~compensated, the court may order appearance or production only upon specified~~  
9 ~~conditions.~~

10  
11 **DUTIES IN RESPONDING TO SUBPOENA**

12  
13 ~~(1) — A person responding to a subpoena to produce documents shall produce them as~~  
14 ~~they are kept in the usual course of business or shall organize and label them to~~  
15 ~~correspond with the categories in the demand.~~

16  
17 ~~(2) — When information subject to a subpoena is withheld on a claim that it is privileged~~  
18 ~~or subject to protection as trial preparation materials, the claim shall be made~~  
19 ~~expressly and shall be supported by a description of the nature of the documents,~~  
20 ~~communications, or things not produced that is sufficient to enable the demanding~~  
21 ~~party to contest the claim.]~~

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 to a  
29 place more than one hundred (100) miles from the place where that person resides, is  
30 employed, or regularly transacts business in person, except as provided below, the person  
31 may in order to attend trial be commanded to travel from any such place within the state in  
32 which the trial is held,

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

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

38  
39 If a subpoena  
40

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

16  
17                                   **DUTIES IN RESPONDING TO SUBPOENA**

18  
19           (1) A person responding to a subpoena to produce documents shall produce  
20 them as they are kept in the usual course of business or shall organize and label them to  
21 correspond with the categories in the demand.

22  
23           (2) When information subject to a subpoena is withheld on a claim that it is  
24 privileged or subject to protection as trial preparation materials, the claim shall be made  
25 expressly and shall be supported by a description of the nature of the documents,  
26 communications, or things not produced that is sufficient to enable the demanding party to  
27 contest the claim.

28  
29 [Adopted, effective January 1, 1998; as amended, effective November 1, 2002; January 20,  
30 2005; as amended by Supreme Court Order No. 08-8300-002, effective March 15, 2008;  
31 as amended by Supreme Court Order No. 20-8300-005, effective for all cases pending or  
32 filed on or after December 31, 2020.]