

1 **1-045. Subpoena.**

2 A. **Form; issuance.**

3 (1) Every subpoena shall[:]

4 (a) state the name of the court from which it is issued;

5 (b) state the title of the action and its civil action number;

6 (c) command each person to whom it is directed to attend and
7 give testimony or to produce and permit inspection, copying, testing, or sampling of
8 designated documents, electronically stored information, or tangible things in the
9 possession, custody, or control of that person, or to permit inspection of premises, at a time
10 and place therein specified; and

11 (d) be substantially in the form approved by the Supreme Court.

12 A command to produce evidence or to permit inspection, copying, testing, or
13 sampling may be joined with a command to appear at trial or hearing or [a] deposition, or
14 may be issued separately. A subpoena may specify the form or forms in which
15 electronically stored information is to be produced.

16 (2) All subpoenas shall issue from the court for the district in which the
17 matter is pending.

18 (3) The clerk shall issue a subpoena, signed but otherwise in blank, to a
19 party requesting it, who shall complete it before service. An attorney authorized to practice
20 law in New Mexico and who represents a party, as an officer of the court, may also issue
21 and sign a subpoena on behalf of the court.

1 B. **Service; place of examination.**

2 (1) A subpoena may be served any place within the state.

3 (2) A subpoena may be served by any person who is not a party and is
4 not less than eighteen (18) years of age. Service of a subpoena ~~upon~~ on a person named
5 therein shall be made by delivering a copy thereof to ~~such~~ that person or as provided in
6 Rule 1-004(E)(3) NMRA, and, if that person's attendance is commanded[;]

7 (a) if the witness is to be paid from funds appropriated by the
8 legislature to the administrative office of the courts for payment of state witnesses or for
9 the payment of witnesses in indigency cases, by processing for payment to ~~such~~ the
10 witness the fee and mileage prescribed by regulation of the administrative office of the
11 courts;

12 (b) for all persons not described in Subparagraph (2)(a) of this
13 paragraph, by tendering to that person the full fee for one day's expenses provided by
14 ~~[Subsection A of Section 10-8-4]~~ Section 10-8-4(A) NMSA 1978 as per diem for
15 nonsalaried public officers attending a board or committee meeting and the mileage
16 provided by ~~[Subsection D of Section 10-8-4]~~ Section 10-8-4(D) NMSA 1978. The fee for
17 per diem expenses shall not be prorated. If attendance is required for more than one day, a
18 full day's expenses shall be paid prior to commencement of each day attendance is
19 required. When the subpoena is issued on behalf of the state or an officer or agency thereof,
20 fees and mileage need not be tendered. Prior to or at the same time as service of any
21 subpoena commanding production of documents and things or inspection of premises

1 before trial, notice shall be served on each party in the manner prescribed by Rule 1-005
2 NMRA.

3 (3) A person may be required to attend a deposition within one hundred
4 (100) miles of where that person resides, is employed, or transacts business in person, or
5 at ~~[such]~~ any other place as is fixed by an order of the court.

6 (4) A person may be required to attend a hearing or trial at any place
7 within the state.

8 (5) Proof of service when necessary shall be made by filing with the
9 clerk of the court a return substantially in the form approved by the Supreme Court.

10 (6) A subpoena may be issued within this state in an action pending
11 outside the state ~~[pursuant to]~~ under Rule 1-045.1 NMRA upon the filing of a
12 miscellaneous proceeding in the judicial district in which the subpoena is to be served.
13 Upon the docketing of the miscellaneous proceeding, the subpoena may be issued and shall
14 be served as provided by this rule.

15 (7) A subpoena may be served in an action pending in this state on a
16 person in another state or country in the manner provided by law or rule of the other state
17 or country.

18 **C. Protection of persons subject to subpoenas.**

19 (1) ***In general.*** A party or an attorney responsible for the issuance and
20 service of a subpoena shall take reasonable steps to avoid imposing undue burden or
21 expense on a person subject to that subpoena. The court on behalf of which the subpoena

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

4 (2) *Subpoena of materials or inspection of premises.*

5 (a) A person commanded to produce and permit inspection,
6 copying, testing, or sampling of designated electronically stored information, documents,
7 or tangible things, or inspection of premises[±]

8 (i) need not appear in person at the place of production,
9 inspection, copying, testing, or sampling unless commanded to appear for deposition,
10 hearing, or trial;

11 (ii) absent a court order, shall not respond to the
12 subpoena prior to the expiration of fourteen (14) days after the date of service of the
13 subpoena;

14 (iii) if a written objection is served or a motion to quash
15 the subpoena is filed, shall not respond to the subpoena until ordered by the court;

16 (iv) may condition the preparation of any copies upon
17 payment in advance of the reasonable cost of inspection and copying.

18 (b) Subject to [~~Subparagraph (2) of Paragraph D~~] Subparagraph
19 (D)(2) of this rule[±]

20 (i) a person commanded to produce and permit
21 inspection, copying, testing, or sampling or a person who has a legal interest in or the legal

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1 right to possession of the designated material or premises may ~~file~~ serve a written
2 objection on all parties to the lawsuit or file a motion to quash the subpoena with the court;

3 (ii) any party ~~may~~ who objects to the subpoena shall,
4 within fourteen (14) days after service of the subpoena, serve [upon] on the person served
5 with the subpoena and all parties written objection to or a motion to quash inspection,
6 copying, testing, or sampling of any or all of the designated materials or inspection of the
7 premises.

8 (iii) If objection is served on the party serving the
9 subpoena or a motion to quash is filed with the court and served on the parties, the party
10 serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or
11 inspect the premises except ~~[pursuant to]~~ under an order of the court by which the subpoena
12 was issued. The court may award costs and attorney fees against a party or person for
13 serving written objections or filing a motion to quash which lacks substantial merit.

14 (3)

15 (a) On timely motion, the court by which a subpoena was issued
16 shall quash or modify the subpoena if it[is]

17 (i) fails to allow reasonable time for ~~[compliance,]~~
18 compliance;

19 (ii) requires a person who is not a party or an officer of a
20 party to travel to a place more than one hundred (100) miles from the place where that
21 person resides, is employed, or regularly transacts business in person, except that, subject

1 to the provisions of Subparagraph (3)(b)(iii) of this paragraph, ~~[such a]~~ that person may in
2 order to attend trial be commanded to travel from any such place within the state in which
3 the trial is ~~[held, or]~~ held;

4 (iii) requires disclosure of privileged or other protected
5 matter and no exception or waiver applies; or

6 (iv) subjects a person to undue burden.

7 (b) If a ~~[subpoena:]~~ subpoena

8 (i) requires disclosure of a trade secret or other
9 confidential research, development, or commercial ~~[information,]~~ information;

10 (ii) requires disclosure of an unretained expert's opinion
11 or information not describing specific events or occurrences in dispute and resulting from
12 the expert's study made not at the request of any party; or

13 (iii) requires a person who is not a party or an officer of a
14 party to incur substantial expense to travel more than one hundred (100) miles to attend
15 trial,

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

1 D. **Duties in responding to subpoena.**

2 (1)

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

6 (b) If a subpoena does not specify the form or forms for
7 producing electronically stored information, a person responding to a subpoena must
8 produce the information in a form or forms in which the person ordinarily maintains it or
9 in a form or forms that are reasonably usable.

10 (c) A person responding to a subpoena need not produce the
11 same electronically stored information in more than one form.

12 (d) A person responding to a subpoena need not provide
13 discovery of electronically stored information from sources that the person identifies as not
14 reasonably accessible because of undue burden or cost. On motion to compel discovery or
15 to quash, the person from whom discovery is sought must show that the information sought
16 is not reasonably accessible because of undue burden or cost. If that showing is made, the
17 court may order discovery from [~~such~~] those sources if the requesting party shows good
18 cause, considering the limitations of [~~Subparagraph (3) of Paragraph B of~~] Rule 1-
19 026(B)(3) NMRA. The court may specify the conditions for the discovery.

20 (2)

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

6 (b) If information is produced in response to a subpoena that is
7 subject to a claim of privilege or of protection as trial-preparation material, the person
8 making the claim may notify any party that received the information of the claim and the
9 basis for it. After being notified, a party must promptly return, sequester, or destroy the
10 specified information and any copies it has and may not use or disclose the information
11 until the claim is resolved. By motion, a receiving party may promptly present the
12 information to the court for in camera review and a determination of the claim. If the
13 receiving party disclosed the information before being notified, it must take reasonable
14 steps to retrieve it. The person who produced the information must preserve the information
15 until the claim is resolved.

16 E. **Contempt.** Failure by any person without adequate excuse to obey a
17 subpoena served ~~upon~~ on that person may be deemed a contempt of the court from which
18 the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports
19 to require a non-party to attend or produce at a place not within the limits provided in
20 ~~[Subparagraph (3)(a)(ii) of Paragraph C]~~ Subparagraph (C)(3)(a)(ii) of this rule.

1 F. **Duties to make copies available.** A party receiving documents under
2 subpoena shall make them available for copying by other parties.

3 [As amended, effective January 1, 1987; August 1, 1989; January 1, 1998; November 1,
4 2002, as amended by Supreme Court Order No. 09-8300-007, effective May 15, 2009; as
5 amended by Supreme Court Order No. 09-8300-018, effective August 7, 2009; as amended
6 by Supreme Court Order No. 20-8300-005, effective for all cases pending or filed on or
7 after December 31, 2020.]

8 **Committee commentary for 2002 amendment.** —

9 Formerly, pre-trial production of documents or tangible items in the possession or
10 control of a nonparty could only be obtained by a subpoena issued in conjunction with a
11 notice of deposition of the person in possession of the documents.

12 In 1991, the federal rule was amended to allow pretrial subpoenas of documents or
13 tangible items without the necessity of noticing and scheduling a simultaneous deposition.
14 In 1997, the New Mexico Supreme Court similarly amended Rule 1-045 NMRA.

15 As amended in 1991, the federal rule required that “[p]rior notice” of any
16 commanded production shall be served on each party, ~~[F.R.]~~ Fed. R. Civ. P. ~~[45(b)-(1)]~~
17 45(b)(1). “The purpose of the notice provision is to afford other parties an opportunity to
18 object to the production~~[---]. . . .~~” Fed. R. Civ. P. ~~[Rule]~~ 45 Committee Comment.

19 The 1997 amendment of Rule 1-045 NMRA provided for notice to all parties
20 “[p]rior to or at the same time” as service of the subpoena. Rule 1-045(B)(2)(b) NMRA.
21 As demonstrated in *Wallis v. Smith*, 2001-NMCA-017, 130 N.M. 214, 22 P.2d 682, *cert.*

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1 *denied* 23 P.3d 929, the New Mexico rule could be construed to permit a party to hand
2 deliver a subpoena for documents and simultaneously mail notice to other parties with the
3 possible result that the nonparty might comply with the subpoena before other parties
4 received notice of its contents and had an opportunity to object to its contents [~~pursuant to~~
5 under Rule 1-045(C)(2)(b) NMRA.

6 The 2002 amendment to Rule 1-045(C)(2) NMRA solves this problem by providing
7 a fourteen (14) day period before responding to assure that “a person who has a legal
8 interest in or the legal right to possession of the designated material or premises” or any
9 party will have an opportunity to object to the subpoena before the witness responds.

10 The federal rule, requiring “[p]rior notice” is ambiguous, though it has been
11 construed to require “reasonable notice” prior to service of the subpoena. *Biocore Medical*
12 [~~Technologies~~] *Techs., Inc. v. Khosrowshahi*, 181 F.R.D. 660, 667 (D. Kan. 1998). The
13 committee considered but rejected this construction, preferring to set a specific time that
14 will assure prior notice, while also recognizing the possibility that a court might reduce the
15 time under appropriate circumstances.

16 **1997 Amendment of Rule 1-045**

17 **1. Introduction**

18 The New Mexico Rules of Civil Procedure for the District [Court Rules] Courts
19 were based upon the Federal Rules of Civil Procedure. Although the New Mexico rules
20 diverge from the Federal Rules when appropriate, the committee regularly reviews New
21 Mexico’s [~~District Court~~] Rules of Civil Procedure for the District Courts when the Federal

1 Rules are modified. Federal Rule 45 - Subpoenas - underwent significant change as a result
2 of amendments that went into effect in [~~December,~~] December 1991 and was further
3 modified by amendments effective in [~~December,~~] December 1995. The [~~Rules~~
4 ~~Committee's~~] committee's reevaluation of Rule 1-045 NMRA in light of the changes in
5 the federal rule prompted amendments to Rule 1-045 NMRA and the adoption of Rule 1-
6 045 NMRA in its current form.

7 **2. Overview**

8 Rule 1-045 NMRA formerly contained different provisions for subpoenas for
9 attendance at trial or hearing and for attendance at a deposition. The existing rule follows
10 the model of the current federal rule which generally eliminates that distinction. Rule 1-
11 045 NMRA formerly had the effect of barring parties from obtaining items such as
12 documents or inspecting premises except in conjunction with a subpoena setting a
13 deposition of a witness. The existing rule follows the current federal rule which allows
14 subpoenas for production of items or inspection of premises from non-parties without the
15 necessity of scheduling and conducting a deposition at the same time. The rule provides
16 procedural protections to assure advance notice to parties that a party has issued a subpoena
17 for production or inspection.

18 The rule provides for statewide service of both trial and hearing subpoenas and
19 deposition and production subpoenas. Rule 1-045(B)(1) NMRA.

20 Formerly, Rule 1-045 NMRA placed significant geographic limitations upon the
21 place that depositions might be conducted in the absence of a court order. Some of those

1 limitations depended upon the place of service of the subpoena. The rule eliminates the
2 significance of the place of service of the subpoena as a factor in setting the place of
3 deposition and modifies but does not eliminate other limitations in the former rule.

4 Rule 1-045 NMRA formerly authorized only the district court clerk to issue
5 subpoenas. The existing rule follows the current federal rule which allows a party's
6 attorney to issue subpoenas in the name of the court.

7 **3. Who may issue subpoenas**

8 Formerly, Rule 1-045 NMRA required that the clerk issue and sign all subpoenas.
9 Following the model of the current federal rule, Rule 1-045 NMRA now authorizes an
10 attorney for a party to issue and sign subpoenas in the attorney's capacity as an officer of
11 the court. Any attorney authorized to practice law in New Mexico who is serving as
12 attorney to a party may issue trial and hearing subpoenas as well as deposition and
13 production and inspection subpoenas.

14 The clerk continues to have power to issue subpoenas. A clerk's subpoena will be
15 of particular use to a party who is not represented by counsel. The clerk of the court for the
16 district in which the matter is pending is the appropriate person to issue subpoenas for
17 service anywhere in the state.

18 **4. Form and content of subpoenas**

19 A subpoena may~~[-1)]~~ (1) command a person to attend at trial or attend a hearing~~[-];~~,
20 [2)] (2) command a person to appear for a deposition~~[-];~~, [3)] (3) command a person to
21 permit inspection of premises~~[-];~~, [4)] (4) command a person to produce items at trial or a

1 hearing[;], or [5)] (5) command a person to produce items for discovery or inspection prior
2 to trial. A subpoena to produce items or permit inspection may, but need not, also command
3 the person to attend a trial, hearing, or deposition. Thus, Rule 1-045 NMRA now permits
4 a party to subpoena items or obtain inspection without simultaneously scheduling a
5 deposition.

6 Following the model of the current federal rule, subpoenas no longer need to
7 contain the seal of the court. They must, however, now contain the civil action number of
8 the case for which the subpoena is issued. Rule 1-045(A)(1)(d) NMRA now provides that
9 subpoenas shall be substantially in the form approved by the Supreme Court and the Court
10 has approved forms consistent with the requirements of Rule 1-045 NMRA. *See* Civil Form
11 4-505 NMRA.

12 **5. Service of subpoenas**

13 Rule 1-045 NMRA now explicitly authorizes service of process anywhere in the
14 state. When a person is beyond the subpoena power of the New Mexico District Court,
15 Rule 1-045 NMRA provides that the party to the New Mexico proceeding who seeks to
16 subpoena items, conduct inspection, or conduct a deposition in another state shall do so in
17 the manner provided by law or rule of the other state. *See, e.g.,* Mass. Gen. Laws Ann.
18 123A Sec. 11 (West 1985) (“Discovery Within Commonwealth for Proceedings Outside
19 Commonwealth”).

20 As in former Rule 1-045 NMRA, service of the subpoena normally must be
21 accompanied by the tender of designated per diem expenses and mileage except in

1 situations provided for in Rule 1-045(B)(2)(a) NMRA and when subpoenas are issued in
2 behalf of the state, a state officer, or a state agency. The rule now specifically requires that
3 the full per diem be tendered even if the party believes that the required attendance will not
4 take an entire day. Where attendance is required for more than one day, the full per diem
5 for each additional day must be paid prior to the commencement of proceedings each day.

6 Rule 1-045(B)(2) NMRA formerly provided that the failure to tender required per
7 diem expense and mileage fees did not invalidate the subpoena but merely justified the
8 imposition of appropriate sanctions. That provision has been omitted from Rule 1-045
9 NMRA. The committee intends that henceforth the failure to tender required expense and
10 mileage fees shall invalidate the subpoena and justify non-compliance with the subpoena's
11 command. The burden of compliance rests upon the person on whose behalf the subpoena
12 is served.

13 Because Rule 1-045 NMRA already provided for service by any person not a party
14 who is at least eighteen (18) years old, specific references to the authority of sheriffs and
15 deputies to serve subpoenas was superfluous and has been omitted in this rule. This
16 modification follows the model of the current federal rule.

17 **6. Notice of service of subpoena**

18 Whenever a party schedules a deposition (whether or not a subpoena is issued
19 compelling attendance at the deposition), Rule 1-030(B)(1) NMRA requires that notice of
20 the deposition be sent to each party. When a subpoena for production or inspection is served
21 in conjunction with the notice of deposition, the party seeking production at the deposition

1 must also send notice of the issuance of the subpoena to each party along with the notice
2 of the deposition. *Id.*

3 Because Rule 1-045 NMRA formerly required that subpoenas for pre-trial
4 production or inspection could only be issued in conjunction with the taking of a
5 deposition, the notice requirement of Rule 1-030(B)(1) NMRA effectively assured that all
6 parties would receive notice of every pre-trial attempt by a party to compel production and
7 inspection against a non-party. Rule 1-045 NMRA now authorizes issuance of a subpoena
8 for pre-trial production without the necessity of a simultaneous deposition, Rule 1-
9 045(A)(1)(d) NMRA, with the result that the notice requirement in Rule 1-030(B)(1)
10 NMRA no longer assures that all parties will receive notice of pre-trial production and
11 subpoenas. To fill this notice gap, Rule 1-045(B)(2) NMRA now requires that prior to or
12 simultaneously with the service of pre-trial inspection or production subpoenas the party
13 on whose behalf the subpoena is served must give notice to all parties in the lawsuit in the
14 manner required by Rule 1-005 NMRA. This provision follows the model of the current
15 federal rule.

16 **7. Place of attendance or production**

17 Service of a subpoena may be made anywhere in the state. Rule 1-045(B)(1)
18 NMRA. As was the case under former Rule 1-045 NMRA, if the subpoena commands
19 attendance at a trial or a hearing, the person served with the subpoena must appear as
20 commanded anywhere in the state. Rule 1-045(B)(4) NMRA.

1 Rule 1-045 NMRA modifies the former rule concerning the place in which a
2 deposition of a subpoenaed witness may be scheduled. The rule formerly contained
3 separate provisions for the place of depositions, depending upon whether the person
4 subpoenaed was a resident of the judicial district in which the deposition was to be taken.
5 In the case of nonresidents of the judicial district, the former rule focused on the place of
6 service, and required that the deposition be held within forty (40) miles of the place of
7 service of the subpoena unless the court ordered otherwise.

8 Rule 1-045 NMRA eliminates the distinction between residents and nonresidents
9 of the judicial district and does not take into account the place of service in setting the
10 proper place for the deposition. Instead, Rule 1-045 NMRA provides that all persons may
11 be required to attend a deposition only within [~~40~~] one hundred (100) miles of the place
12 of their residence, their place of employment, or where they transact business unless
13 another place is fixed by order of the court. Rule 1-045(B)(3) NMRA.

14 If a person declines to honor a subpoena that is inconsistent with the geographical
15 limitations of this rule, the person cannot be held in contempt for failure to attend the
16 deposition unless the court entered an order compelling attendance at that place. Rule 1-
17 045(E) NMRA.

18 **8. Proof of service of subpoena**

19 The Supreme Court has approved a form for proof of service of a subpoena. *See*
20 [~~civil~~] Civil Form 4-505 NMRA. When proof of service of the subpoena must be filed

1 ~~[pursuant to]~~ under Rule 1-005(D) NMRA, Rule 1-045(B)(5) NMRA requires that the form
2 of the proof of service be in substantial compliance with the approved form.

3 **9. Duty to avoid misuse of subpoena authority**

4 For the first time, Rule 1-045 NMRA imposes an explicit duty on parties and
5 attorneys responsible for subpoenas to take reasonable steps to avoid undue burden or
6 expense on persons subject to the subpoenas. Rule 1-045(C)(1) NMRA. The court may
7 sanction parties or attorneys who violate this rule with appropriate sanctions including
8 imposition of an order to pay the witness lost earnings and ~~[attorney's]~~ attorney fees. *Id.*

9 **10. Subpoenas for production or inspection**

10 Subpoenas for production of tangible items or inspection of premises now may
11 issue without the necessity for setting a deposition at the same time. Rule 1-045(A)(1)(d)
12 NMRA. When ~~[sueh]~~ a subpoena for production or inspection is issued, the party
13 responsible for the issuance of the subpoena must provide timely notice to all parties of the
14 issuance of the subpoena. Rule 1-045(B)(2) NMRA.

15 The rule formerly provided only that the subpoenaed person “produce” the items.
16 The rule now requires that the person “produce and permit inspection and copying” of the
17 books, documents, or tangible items. Rule 1-045(A)(1)(d) NMRA.

18 The rule formerly provided that the subpoena must identify the items subject to the
19 subpoena with reasonable particularity. The committee has eliminated this explicit
20 requirement in deference to its preference to model Rule 1-045 NMRA after the federal
21 rule, but believes that the requirement that the items be ~~["designated,"]~~ “designated,” Rule

1 1-045(A)(1)(c) NMRA, incorporates the former requirement of reasonable particularity in
2 the description of the items sought. The former rule also explicitly limited the scope of
3 subpoenaed items to those within the scope of discovery permitted by Rule 1-026(B)
4 NMRA. The committee has eliminated this explicit limitation also in deference to its
5 preference to model Rule 1-045 NMRA after the federal rule, but assumes that specific
6 references to protection for trade secrets, expert opinions, and the like, now found in Rule
7 1-045(C)(3)(b) NMRA, which are rooted in Rule 1-026 NMRA, suffice to indicate that the
8 subpoena of items continues to be subject to the limitations of discovery in Rule 1-026
9 NMRA.

10 The person who receives a subpoena to produce items or permit inspection of
11 premises need not appear in person at the designated time and place unless that person is
12 also commanded in the subpoena to appear for a deposition, trial, or hearing. Rule 1-
13 045(C)(2) NMRA.

14 The person who receives a subpoena to produce items or permit inspection of
15 premises must do so unless the person or a party serves timely [~~See~~] (see Rule 1-
16 045(C)(2)(b) NMRA) objections on all parties or files a motion to quash. This modifies the
17 federal rule by requiring service on all parties.

18 If no objections are served, the person responding shall produce the documents
19 either as they are kept in the ordinary course of business or labeled and organized to
20 correspond with the categories of the demand. Rule 1-045(D)(1) NMRA.

1 If timely objections are served, the subpoenaed person need not comply with the
2 subpoena unless and until the person seeking the subpoenaed items obtains a court order
3 compelling the production. Rule 1-045(C)(2)(b) NMRA. Alternatively, the person who
4 opposes compliance with the subpoena and serves timely notice of objections may file a
5 timely motion seeking to quash or modify the subpoena. Rule 1-045(C)(3)(a) NMRA.

6 Rule 1-045 NMRA now lists grounds for seeking an order of protection from a
7 subpoena, Rule 1-045(C)(3) NMRA, and provides guidelines for the court to use in ruling
8 on ~~[such]~~ motions to quash or modify a subpoena. *Id.* These new provisions follow the
9 current federal rule.

10 **11. Taking a deposition in New Mexico for an action pending outside New Mexico**

11 A New Mexico statute authorizes New Mexico courts to order the deposition of
12 persons found in this state for use in conjunction with legal proceedings outside New
13 Mexico. ~~[Sections 38-8-1 to 38-8-3]~~ See NMSA 1978, §§ 38-8-1 to -3. Rule 1-045(B)(6)
14 NMRA makes reference to new Rule 1-045.1 NMRA, which authorizes the issuance of
15 subpoenas for depositions and other discovery in New Mexico for an action pending
16 outside of New Mexico.

17 **Committee commentary for 2007 amendment. —**

18 See the 2007 committee commentary to Rule 1-026 NMRA for additional
19 information.

20 ~~[[As amended by Supreme Court Order No. 09-8300-007, effective May 15, 2009; as
21 amended by Supreme Court Order No. 09-8300-018, effective August 7, 2009.]]~~

1 **Committee commentary for 2009 amendment. —**

2 *See* the 2009 committee commentary to Rule 1-026 NMRA for additional
3 information.

4 [As amended by Supreme Court Order No. 09-8300-007, effective May 15, 2009; as
5 amended by Supreme Court Order No. 09-8300-018, effective August 7, 2009; as amended
6 by Supreme Court Order No. 20-8300-005, effective for all cases pending or filed on or
7 after December 31, 2020.]