

1 **2-502. Subpoenas.**

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 the action number;

6 (c) command each person to whom it is directed to attend a trial

7 or hearing and give testimony or to produce for trial or hearing designated books,

8 documents, or tangible things in the possession, custody, or control of that person, or to

9 permit inspection of premises of a party, at a time and place therein specified;

10 (d) state the time and date of the hearing or trial[;] and the name

11 of the judge before whom the witness is to appear or produce documents; and

12 (e) be substantially in the form approved by the Supreme Court.

13 (2) All subpoenas shall issue from the court in which the matter is

14 pending.

15 (3) The judge or clerk shall issue a subpoena, other than a subpoena

16 duces tecum, signed but otherwise in blank, to a party requesting it, who shall fill it in

17 before service. The judge or clerk may issue a subpoena duces tecum to a party only if the

18 subpoena duces tecum is completed by the party prior to issuance by the judge or clerk. An

19 attorney authorized to practice law in New Mexico and who represents a party, as an officer

20 of the court, may also issue and sign a subpoena on behalf of the court in which the case is

21 pending.

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

3           **B. Service.**

4           (1) A subpoena may be served by any person who is not a party and is  
5 not less than eighteen (18) years of age. Service of a subpoena ~~upon~~ on a person named  
6 therein shall be made by delivering a copy thereof to ~~such~~ that person and, if that person's  
7 attendance is commanded, by tendering to that person the full fee for one day's expenses  
8 provided by ~~[Subsection A of Section 10-8-4]~~ Section 10-8-4(A) NMSA 1978 as per diem  
9 for nonsalaried public officers attending a board or committee meeting and the mileage  
10 provided by ~~[Subsection D of Section 10-8-4]~~ Section 10-8-4(D) NMSA 1978. The fee for  
11 per diem expenses shall not be prorated. If attendance is required for more than one (1)  
12 day, a full day's expenses shall be paid prior to commencement of each day attendance is  
13 required. When the subpoena is issued on behalf of the state or an officer or agency thereof,  
14 fees and mileage need not be tendered. Prior to or at the same time as service of any  
15 subpoena commanding production of documents and things or inspection of premises of a  
16 party before trial, notice shall be served on each party in the manner prescribed by Rule 2-  
17 203 NMRA.

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

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

1           (1)     A party or an attorney responsible for the issuance and service of a  
2 subpoena shall take reasonable steps to avoid imposing undue burden or expense on a  
3 person subject to that subpoena. The court on behalf of which the subpoena was issued  
4 shall enforce this duty and impose upon the party or attorney in breach of this duty an  
5 appropriate sanction, which may include, but is not limited to, lost earnings and [a]  
6 reasonable ~~[attorney's fee]~~ attorney fees.

7           (2)  
8           (a)     Unless specifically commanded to appear in person, a person  
9 commanded to produce and permit inspection and copying of designated books, papers,  
10 documents, or tangible things, or inspection of premises of a party need not appear in  
11 person at the hearing or trial.

12           (b)     Subject to Subparagraph ~~[(2) of Paragraph D]~~ (D)(2) of this  
13 rule, a person commanded to produce and permit inspection and copying may, within  
14 fourteen (14) days after service of the subpoena or before the time specified for compliance  
15 if ~~[such]~~ that time is less than fourteen (14) days after service, serve ~~[upon all parties written~~  
16 ~~objection to inspection or copying of any or all of the designated materials or inspection of~~  
17 ~~the premises of a party]~~ a written objection on all parties to the lawsuit or file a motion to  
18 quash the subpoena with the court. If objection is made, the party serving the subpoena  
19 shall not be entitled to inspect and copy the materials or inspect premises except ~~[pursuant~~  
20 ~~to]~~ under an order of the court by which the subpoena was issued. If objection has been  
21 made, the party serving the subpoena may, upon notice to the person commanded to

1 produce, move at any time for an order to compel production. ~~[Such an]~~ The order to  
2 compel production shall protect any person who is not a party or an officer of a party from  
3 significant expense resulting from the inspection and copying commanded.

4 (c) Absent a court order, a person commanded to produce and  
5 permit inspection and copying shall not respond to the subpoena before the expiration of  
6 fourteen (14) days after the date of service of the subpoena.

7 (3)

8 (a) On timely motion, the court by which a subpoena was issued  
9 shall quash or modify the subpoena if it[:]

10 (i) fails to allow reasonable time for compliance,

11 (ii) requires disclosure of privileged or other protected  
12 matter and no exception or waiver applies, or

13 (iii) subjects a person to undue burden.

14 (b) The court may, to protect a person subject to or affected by  
15 the subpoena, quash or modify the subpoena if a subpoena[:]

16 (i) requires disclosure of a trade secret or other  
17 confidential research, development, or commercial information,

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

1 (iii) requires a person who is not a party or an officer of a  
2 party to incur substantial expense to travel more than one hundred (100) miles to attend  
3 trial.

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

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

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

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

17 **E. Contempt.** Failure by any person without adequate excuse to obey a  
18 subpoena served ~~upon~~ on that person may be deemed a contempt of the court from which  
19 the subpoena issued.

**MAGISTRATE COURT CIVIL  
RULE 2-502**

**Supreme Court Approved  
November 1, 2020**

- 1 [As amended, effective January 1, 1994; May 1, 1994; May 1, 2002; as amended by
- 2 Supreme Court Order No. 20-8300-005, effective for all cases pending or filed on or after
- 3 December 31, 2020.]