

1 **6-606. 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 action number;

6 (c) command each person to whom it is directed to attend a trial,  
7 interview, or hearing and give testimony or to produce designated books, documents, or tangible  
8 things in the possession, custody, or control of that person at a time and place therein specified;  
9 and

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

11 (2) All subpoenas shall issue from the court [~~for the court~~] in which the matter  
12 is pending.

13 (3) The judge or clerk shall issue a subpoena, signed but otherwise in blank, to  
14 a party requesting it, who shall fill it in before service. The judge or clerk may issue a subpoena  
15 duces tecum to a party only if the subpoena duces tecum is completed by the party prior to issuance  
16 by the judge or clerk. Except as provided in Paragraph B of this rule, an attorney authorized to  
17 practice law in New Mexico and who represents a party, as an officer of the court, may also issue  
18 and sign a subpoena on behalf of the court in which the case is pending.

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

21 **B. Interviews.** [~~A subpoena compelling the attendance of the witness must be signed~~  
22 ~~by the judge.~~] A subpoena to appear to give an interview under Rule 6-504(D) NMRA will be  
23 issued only after good faith efforts to secure an interview have been unsuccessful. No subpoena to

1 appear to give an interview shall be valid unless signed by the trial judge. A witness may be  
2 required to attend an interview anywhere within jurisdiction of the court.

3 C. Service.

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

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

12 (b) for all persons not described in Subparagraph (1)(a) of this  
13 paragraph, by tendering to that person the full fee for one day's expenses provided by ~~[Subsection~~  
14 ~~A of Section 10-8-4]~~ Section 10-8-4(A) NMSA 1978 as per diem for nonsalaried public officers  
15 attending a board or committee meeting and the mileage provided by ~~[Subsection D of Section 10-~~  
16 ~~8-4]~~ Section 10-8-4(D) NMSA 1978. The fee for per diem expenses shall not be prorated. If  
17 attendance is required for more than one (1) day, a full day's expenses shall be paid prior to  
18 commencement of each day attendance is required. When the subpoena is issued on behalf of the  
19 state or an officer or agency thereof, fees and mileage need not be tendered. Prior to or at the same  
20 time as service of any subpoena commanding production of documents and things or inspection  
21 of premises before trial, notice shall be served on each party in the manner prescribed by Rule 6-  
22 209 NMRA;

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

3                   **D.     Protection of persons subject to subpoenas.**

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

9                   (2)

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

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

22                   (3)

1 (a) On timely motion, the court by which a subpoena was issued shall  
2 quash or modify the subpoena if it[;]

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

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

6 (iii) subjects a person to undue burden.

7 (b) The court may, to protect a person subject to or affected by the  
8 subpoena, quash or modify the subpoena if a subpoena[;]

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

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

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

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

20 **E. Duties in responding to subpoena.**

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

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

5           F.     **Contempt.** Failure by any person without adequate excuse to obey a subpoena  
6 served [~~upon~~] on that person may be deemed a contempt of the court punishable by fine or  
7 imprisonment.

8 [As amended, effective January 1, 1987; January 1, 1994; May 1, 1994; May 1, 2002; as amended,  
9 by Supreme Court Order No. 07-8300-025, effective November 1, 2007; as amended by Supreme  
10 Court Order No. 21-8300-028, effective for all cases pending or filed on or after December 31,  
11 2021.]