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2 **RULE NRCP 45. SUBPOENA – Proposed**

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3 **(Substantially revised to provide for notice of subpoena, for**  
4 **objection by a non-party with a proprietary interest, and for**  
5 **production of electronically stored documents)**

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6 **Rule 45. Subpoena**

7 (a) **Form; Issuance and Contents.**

8 (1) **Requirements—In General.** Every subpoena shall:

9 (A) state the name of the court from which it is issued; ~~and~~

10 (B) state the title and case number of the action; ~~and~~ the name and  
11 address of the ~~court in which it is pending, and its civil case number; and~~ party or  
12 attorney responsible for issuing the subpoena;

13 (C) command each person to whom it is directed to ~~attend~~ appear  
14 and give testimony at a trial, hearing, or deposition, or to produce and permit  
15 inspection and copying of designated books, documents or tangible things in the  
16 possession, custody or control of that person, or to permit inspection of premises, at  
17 a time and place therein specified; and

18 (D) set forth the text of subdivisions (c) and (d) of  
19 this rule.

20 **(2) Combining or Separating a Command to Produce or to Permit**  
21 **Inspection.** A command to produce evidence or permit inspection may be joined  
22 with a command to appear at trial or hearing or at deposition, or may be issued  
23 separately.

24 ~~(2) A subpoena commanding attendance at a trial or hearing shall issue from~~

1 ~~the court for the district in which the hearing or trial is to be held. A subpoena for~~  
2 ~~attendance at a deposition shall issue from the court for the district in which the~~  
3 ~~action is pending. If separate from a subpoena commanding the attendance of a~~  
4 ~~person, a subpoena for production or inspection shall issue from the court for the~~  
5 ~~district in which the action is pending. If the action is pending out of the state, a~~  
6 ~~subpoena may be issued by the clerk of any district court, and the court in the district~~  
7 ~~in which the deposition is being taken or in which the production or inspection is to~~  
8 ~~take place shall, for the purposes of these rules, be considered the court in which the~~  
9 ~~action is pending.~~

9 ~~\_\_\_\_\_ (3) **Issuing Court.** A subpoena must issue from the court~~  
10 ~~in which the action is pending. If the subpoena commands attendance at a deposition~~  
11 ~~it must state the method for recording the testimony.~~

12 ~~\_\_\_\_\_ (4) **Issued by Whom.** The clerk shall issue a subpoena, signed but~~  
13 ~~otherwise in blank, to a party requesting it, who shall complete it before service. An~~  
14 ~~attorney as officer of the court may also issue and sign a subpoena on behalf of the~~  
15 ~~court if the attorney is authorized to practice therein.~~

16 ~~\_\_\_\_\_ (5) **Notice to Other Parties Before Service.** If the subpoena~~  
17 ~~commands the production of documents, electronically stored information, or~~  
18 ~~tangible things or the inspection of premises before trial, then at least 5 days before~~  
19 ~~it is served on the person to whom it is directed, a notice and a copy of the subpoena~~  
20 ~~must be served on each party to permit a party to object to the subpoena during that~~  
21 ~~time. If an objection is made, the subpoena shall not be served until the court issuing~~  
22 ~~the subpoena has ruled on the objection in response to a motion that the objecting~~  
23 ~~party must file not more than 3 days after serving the objection.~~

24 (b) **Service.**

1 (1) By Whom and How; Tendering Fees. A subpoena may be served  
2 by any person who is not a party and is not less than 18 years of age. Service of a  
3 subpoena upon ~~at~~ the person ~~named therein to whom it is directed~~ shall be made ~~by~~  
4 ~~delivering a copy thereof to such person and, if~~ as provided in Rule 4(d). If the  
5 person's attendance is commanded, by tendering to that person the fees for one day's  
6 attendance and the mileage allowed by law. When the subpoena is issued on behalf  
7 of the State or an officer or agency thereof, fees and mileage need not be tendered.  
8 Prior notice, not less than 15 days, of any commanded production of documents and  
9 things or inspection of premises before trial shall be served on each party in the  
10 manner prescribed by Rule 5(b).

11 (2) Service in Nevada. Subject to the provisions of clause (ii) of  
12 subparagraph (c)(3)(A) of this rule, a subpoena may be served at any place within the  
13 state.

14 ~~(3)~~ (3) Service in Another State or Territory. A subpoena  
15 may be served in another state or territory of the United States as provided by the  
16 law of that state or territory.

17 (4) Service in a Foreign Country. A subpoena may be served in a  
18 foreign country as provided by federal law.

19 (5) Service of a Subpoena from Another State or Territory in  
20 Nevada. A subpoena issued by a court in another state or territory of the United  
21 States may be served in Nevada as provided by NRS Chapter 53.

22 (6) Proof of Service. Proof of service when necessary shall be made by  
23 filing with the clerk of the court by which the subpoena is issued a statement of the  
24

1 date and manner of service and of the names of the persons served, certified by the  
2 person who made the service.

3 (c) **Protection of Persons Subject to Subpoena.**

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

11 ~~(2)(A)~~ **Command to Produce Materials or Permit Inspection.**

12 **(A) Appearance Not Required.** A person commanded to  
13 produce and permit inspection and copying of designated books, papers, documents  
14 or tangible things, or to permit inspection of premises need not appear in person at  
15 the place of production or inspection unless also commanded to appear for deposition,  
16 hearing or trial. If documents or tangible things are produced to the party that  
17 issued the subpoena without an appearance or tangible things are produced to the  
18 party that issued the subpoena without an appearance at the place of production, the  
19 party receiving such materials shall promptly copy the documents, photograph any  
20 tangible items not subject to copying, and serve these items on every other party  
21 together with a reasonable statement of the cost of copying and/or photographing  
22 which each recipient shall be obligated to promptly pay.

23 **(B) Objections.** Subject to paragraph (d)(2) of this rule, a person  
24 commanded to produce and permit inspection and copying, or a party or a person

1 claiming a proprietary interest in the subpoenaed documents, may, within 14 days  
2 after service of the subpoena or before the time specified for compliance if such time  
3 is less than 14 days after service, serve upon the party or attorney designated in the  
4 subpoena a written objection to inspection or copying of any or all of the designated  
5 materials or of the premises. If an objection is made, the party serving the subpoena  
6 shall not be entitled to inspect and copy the materials or inspect the premises except  
7 pursuant to an order of the court by which the subpoena was issued. If an objection  
8 has been made, the party serving the subpoena may, upon notice to the person  
9 commanded to produce, move at any time for an order to compel the production. Such  
10 an order to compel production shall protect any person who is not a party or an officer  
11 of a party from significant expense resulting from the inspection and copying  
12 commanded.

13 **(3) Quashing or Modifying a Subpoena.**

14 (A) When Required. On timely motion, the court ~~by which that~~  
15 issued a subpoena ~~was issued~~ shall quash or modify the subpoena if it:

16 (i) fails to allow reasonable time for compliance;

17 (ii) requires a person who is not a party or an officer of a  
18 party to travel to a place more than 100 miles from the place where that person  
19 resides, is employed or regularly transacts business in person, except that such a  
20 person may in order to attend trial be commanded to travel from any such place  
21 within the state in which the trial is held, ~~or;~~

22 (iii) requires disclosure of privileged or other protected  
23 matter and no exception or waiver applies; ~~or~~

24 (iv) subjects a person to undue burden.

1 (B) When Permitted. On timely motion, the court that issued  
2 a subpoena may quash or modify the subpoena if it:

3 (i) requires disclosure of a trade secret or other confidential  
4 research, development, or commercial information; or

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

9 (C) Specifying Conditions as an Alternative. In the  
10 circumstances described in Rule 45(c)(3)(B), the court may, to protect a person  
11 subject to instead of quashing or affected by the modifying a subpoena, quash order  
12 an appearance or modify the subpoena or, production under specified conditions if the  
13 serving party in whose behalf the subpoena is issued:

14 (i) shows a substantial need for the testimony or material  
15 that cannot be otherwise met without undue hardship and assures that the person  
16 to whom the subpoena is addressed will be reasonably compensated, the court may  
17 order appearance or production only upon specified conditions; and

18 (ii) ensures that the subpoenaed person will be reasonably  
19 compensated.

20 (d) **Duties in Responding to Subpoena.**

21 (1) Producing Documents or Electronically Stored  
22 Information. These procedures apply to producing documents or electronically  
23 stored information:

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

5 ~~(2) When information subject to~~ (B) Form for Producing  
6 Electronically Stored Information Not Specified. If a subpoena does not  
7 specify a form for producing electronically stored information, the person responding  
8 must produce it in a form or forms in which it is withheld or ordinarily maintained  
9 or in a reasonably usable form or forms.

10 (C) Electronically Stored Information Produced in Only  
11 One Form. The person responding need not produce the same electronically stored  
12 information in more than one form.

13 (D) Inaccessible Electronically Stored Information. The  
14 person responding need not provide discovery of electronically stored information  
15 from sources that the person identifies as not reasonably accessible because of undue  
16 burden or cost. On motion to compel discovery or for a protective order, the person  
17 responding must show that the information is not reasonably accessible because of  
18 undue burden or cost. If that showing is made, the court may nonetheless order  
19 discovery from such sources if the requesting party shows good cause, considering  
20 the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

21 (2) Claiming Privilege or Protection.

22 (A) Information Withheld. A person withholding subpoenaed  
23 information under a claim that it is privileged or subject to protection as trial--  
24 preparation ~~materials, the claim shall be made~~ material must:

1 (i) expressly make the claim; and shall be supported by a  
2 description of

3 (ii) describe the nature of the withheld documents,  
4 communications, or tangible things not produced that is sufficient to in a manner  
5 that, without revealing information itself privileged or protected, will enable the  
6 demanding party/parties to contest/assess the claim.

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

17 (e) **Contempt; Costs.** Failure by any person without adequate excuse to obey  
18 a subpoena served upon that person may be deemed a contempt of the court from  
19 which the subpoena issued. In connection with a motion to compel brought under  
20 paragraph (c)(2)(B), the court may award the prevailing party reasonable expenses  
21 incurred in making or opposing the motion in accordance with NRCP 37(a)(4).

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23 **DRAFTER'S**

24 **ADVISORY COMMITTEE NOTE—20042018 AMENDMENT**



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2 ~~— Subdivision (a) is amended to conform to the 1991 amendments to subdivision (a) of~~  
3 ~~the federal rule with some minor revisions to tailor the provision to practice in state court.~~  
4 ~~Rule 45(a)(1) authorizes the issuance of a subpoena to compel a nonparty to produce~~  
5 ~~evidence independent of any deposition or permit inspection of premises within the~~  
6 ~~nonparty’s possession. Rule 45(a)(3) authorizes “[a]n attorney as officer of the court” to issue~~  
7 ~~and sign a subpoena on behalf of the court so long as the attorney is authorized to practice~~  
8 ~~before that court.~~

9 ~~— Subdivision (b) is amended to conform to the 1991 amendments to subdivision (b) of~~  
10 ~~the federal rule. Subdivision (b)(1) retains the text of former subdivision (c) with some minor~~  
11 ~~changes to delete reference to the sheriff or his deputy and to limit the requirement for one~~  
12 ~~day’s attendance and mileage to subpoenas that command a person’s attendance. The fourth~~  
13 ~~sentence is new and requires service of prior notice under Rule 5 of any commanded~~  
14 ~~production of documents and things or inspection of premises. Unlike its federal~~  
15 ~~counterpart, this new provision in the Nevada rule requires prior notice within a specific~~  
16 ~~period of time. (Pretrial notice of subpoenas for testimony at trial is governed by revised~~  
17 ~~Rule 16.1(a)(3)(A).) Subdivision (b)(2) retains language formerly set forth in the second~~  
18 ~~sentence of subdivision (c)(1), providing that “a subpoena may be served at any place within~~  
19 ~~the state,” but extends its application to subpoenas for depositions or production.~~  
20 ~~Subdivision (b)(3) is new to the Nevada rule and addresses what is required to demonstrate~~  
21 ~~proof of service.~~

22 ~~— Subdivision (c) is amended to conform to the 1991 amendments to the federal rule with~~  
23 ~~some minor changes to reflect practice in state court. The revised provision states the rights~~  
24 ~~of persons subject to subpoena. Subdivision (c)(1) addresses the duties and liabilities of a~~  
25 ~~party or attorney “responsible for the issuance and service of a subpoena.” Subdivision (c)(2)~~  
26 ~~retains language from former subdivision (d)(1), but it extends the 10-day period for~~  
27 ~~response to a subpoena to 14 days. Subdivision (c)(3) replaces and expands on language from~~  
28 ~~former subdivision (b), regarding the court’s authority to quash or modify a subpoena.~~  
29 ~~Subdivision (c)(3)(A) specifies the circumstances in which the court “shall” quash or modify~~  
30 ~~a subpoena. Subdivision (c)(3)(B) specifies circumstances in which a court “may” quash or~~  
31 ~~modify a subpoena or impose appropriate conditions to protect the interests of the~~  
32 ~~subpoenaed person.~~

33 ~~— Subdivision (d) is replaced in its entirety to conform to the 1991 amendments to the~~  
34 ~~federal rule. Subdivision (d)(1) extends to nonparties the duty imposed on parties by the last~~  
35 ~~paragraph of Rule 34(b), regarding the manner in which documents are produced.~~  
36 ~~Subdivision (d)(2) addresses the specificity required when information subject to the~~  
37 ~~subpoena is “withheld on a claim that it is privileged or subject to protection as trial~~  
38 ~~preparation materials.”~~

39 ~~— Subdivision (e) retains the entirety of former subdivision (f). The 1991 amendment to~~  
40 ~~the federal rule that added a second sentence to subdivision (e) regarding “adequate cause”~~  
41 ~~for failing to obey a subpoena is not included in the revised Nevada rule.~~

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