

## Changes to FRCP 45 Effective December 1, 2013

Section	Old Rule	New Rule	Change
<b><i>Form and Contents</i></b> Rule 45(a)(1)(A)(ii)	“state the title of the action, the court in which it is pending, and its civil-action number”	“state the title of the action and its civil-action number”	Removed the requirement of stating the court in which the action is pending.
<b><i>Issuing Court</i></b> Rule 45(a)(2)	“A subpoena must issue as follows: (A) for attendance at a hearing or trial, from the court for the district where the hearing or trial is to be held; (B) for attendance at a deposition, from the court for the district where the deposition is to be taken; and (C) for production or inspection, if separate from a subpoena commanding a person’s attendance, from the court for the district where the production or inspection is to be made.”	“A subpoena must issue from the court where the action is pending.”	Simplified to require subpoena to issue from court where the action is pending.
<b><i>Issued by Whom</i></b> Rule 45(a)(3)	“The clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service. An attorney also may issue and sign a subpoena as an officer of: (A) a court in which the attorney is authorized to practice; or (B) a court for a district where a deposition is to be taken or production is to be made, if the attorney is authorized to practice in the court	“The clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service. An attorney also may issue and sign a subpoena if the attorney is authorized to practice in the issuing court.”	Changed to only allow an attorney to issue and sign a subpoena if the attorney is authorized to practice in the issuing court.

	where the action is pending.”		
<b><i>Notice to Other Parties Before Service</i></b> Rule 45(a)(4)	Previously part of Rule 45(b)(1).	“If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served on each party.”	Made this provision a separate subsection, and required that notice to parties include a copy of the subpoena.
<b><i>By Whom; Tendering Fees; Serving a Copy of Certain Subpoenas</i></b> Rule 45(b)(1)	“Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering the fees for 1 day's attendance and the mileage allowed by law. Fees and mileage need not be tendered when the subpoena issues on behalf of the United States or any of its officers or agencies. If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served, a notice must be served on each party.”	“Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering the fees for 1 day's attendance and the mileage allowed by law. Fees and mileage need not be tendered when the subpoena issues on behalf of the United States or any of its officers or agencies.”	Moved provision regarding service on other parties to another subsection: Rule 45(a)(4).
<b><i>Service in the United States</i></b> Rule 45(b)(2)	“Subject to Rule 45(c)(3)(A)(ii), a subpoena may be served at any place: (A) within the district of the issuing court; (B) outside the district but within 100 miles of the place specified for the deposition, hearing, trial, production, or inspection; (C) with the state of the issuing court if a state statute or court rule allows service at that	“A subpoena may be served at any place within the United States.”	Simplified where a subpoena may be served by allowing one to be served anywhere in the United States.

	place of a subpoena issued by a state court of general jurisdiction sitting in the place specified for the deposition, hearing, trial, production, or inspection; or (D) that the court authorizes on motion and for good cause, if a federal statute so provides.”		
<i>Place of Compliance</i> Rule 45(c)	This subsection was previously entitled, “Protecting a Person Subject to a Subpoena.”	“(1) <b>For a Trial, Hearing, or Deposition.</b> A subpoena may command a person to attend a trial, hearing, or deposition only as follows: (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person (i) is a party or a party's officer; or (ii) is commanded to attend a trial and would not incur substantial expense. (2) <b>For Other Discovery.</b> A subpoena may command: (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and (B) inspection of premises at the premises to be inspected.”	Combined multiple subsections from the previous rule and simplified where compliance with a subpoena can be required.
<i>Avoiding Undue Burden or Expense; Sanctions.</i>	This subsection was 45(c)(1), which provided: “A party or attorney responsible for issuing	“A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on	Changed which court is responsible for enforcing the duty to avoid undue burden or

Rule 45(d)(1)	and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction – which may include lost earnings and reasonable attorney’s fees – on a party or attorney who fails to comply.”	a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction – which may include lost earnings and reasonable attorney's fees – on a party or attorney who fails to comply.”	expense to the court where compliance is required.
<b>Objections</b> Rule 45(d)(2)(B)(i)	This subsection was 45(c)(2)(B)(i), which provided: “At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.”	“At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.”	Changed the court in which a serving party may seek an order compelling production or inspection to the district where compliance is required.
<b>Quashing or Modifying a Subpoena When Required</b> Rule 45(d)(3)(A)	This subsection was 45(c)(3)(A), which provided: “On timely motion, the issuing court must quash or modify a subpoena that: (i) fails to allow a reasonable time to comply; (ii) requires a person who is neither a party nor a party’s officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person, except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held; (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or	“On timely motion, the court for the district where compliance is required must quash or modify a subpoena that: (i) fails to allow a reasonable time to comply; (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c); (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or (iv) subjects a person to undue burden.”	Changed the court in which a motion to quash is brought to the district where compliance is required.

	(iv) subjects a person to undue burden.”		
<b><i>Quashing or Modifying a Subpoena When Permitted Rule 45(d)(3)(B)</i></b>	<p>This subsection was 45(c)(3)(B), which provided:</p> <p>“To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:</p> <p>(i) disclosing a trade secret or other confidential research, development, or commercial information; or</p> <p>(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or</p> <p>(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.”</p>	<p>“To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:</p> <p>(i) disclosing a trade secret or other confidential research, development, or commercial information; or</p> <p>(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.”</p>	<p>Changed the court in which a motion to quash is brought to the district where compliance is required. Removed the permissible quashing a subpoena that would cause a non-party to incur substantial expense to travel more than 100 miles.</p>
<b><i>Claiming Privilege or Protection Information Produced Rule 45(e)(2)(B)</i></b>	<p>This subsection was 45(d)(2)(B), which provided:</p> <p>“If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified;</p>	<p>“If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is</p>	<p>Changed the court in which a party may present information under seal for a determination of a claim or privilege or protection as trial material to the court where compliance is required.</p>

	and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.”	required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.”	
<b><i>Transferring a Subpoena-Related Motion</i></b> Rule 45(f)	There was previously no subsection (f), not a subsection related to transferring a subpoena-related motion.	“When the court where compliance is required did not issue the subpoena, it may transfer a motion under this rule to the issuing court if the person subject to the subpoena consents or if the court finds exceptional circumstances. Then, if the attorney for a person subject to a subpoena is authorized to practice in the court where the motion was made, the attorney may file papers and appear on the motion as an officer of the issuing court. To enforce its order, the issuing court may transfer the order to the court where the motion was made.”	Added subsection to regulate how a motion to quash is handled. Now, a court where compliance is required may transfer a motion to quash to the court that issued the subpoena. The person subject to the subpoena, and is authorized to practice in the court where the motion is made, can then appear on the motion in the issuing court. The issuing court may then transfer its order to the court where the motion was made for enforcement.
<b><i>Contempt</i></b> Rule 45(g)	This subsection was 45(e), which provided: “The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty’s failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).”	“The court for the district where compliance is required – and also, after a motion is transferred, the issuing court – may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.”	Changed to allow the district where compliance is required – or if a motion is transferred, the issuing court – to hold a noncomplying person in contempt. Removed special excuse for a nonparty.