

Rule 17. Subpoena

(a) **CONTENT.** A subpoena must state the court's name and the title of the proceeding, include the seal of the court, and command the witness to attend and testify at the time and place the subpoena specifies. The clerk must issue a blank subpoena--signed and sealed--to the party requesting it, and that party must fill in the blanks before the subpoena is served.

(b) **DEFENDANT UNABLE TO PAY.**

(1) *Defendant Appointed Counsel Under D.C. Code § 11-2601 (2012 Repl.).*

(A) *Application.* For a defendant represented either by counsel appointed under the District of Columbia Criminal Justice Act, by attorneys of the Public Defender Service, or by law students admitted under Rule 44-1, an application may be made to the clerk for a witness subpoena where the witness involved will be served within 25 miles of the place of the hearing or trial specified in the subpoena. In the case of a defendant represented by a law student, the application must be signed by the law student's supervising lawyer.

(B) *Issuance.* The clerk must issue the subpoena to defense counsel in blank, signed, sealed and designated in forma pauperis, but not otherwise filled in. Filling in a subpoena issued in blank shall constitute a certificate by defense counsel that, in the defense counsel's opinion, the presence of the witness is necessary to an adequate defense.

(C) *Service.* No subpoena issued in blank may be served outside a radius of 25 miles from the place of the hearing or trial. Where the witness to be subpoenaed will be served outside a radius of 25 miles from the place of the hearing or trial, an application for the issuance of the subpoena must be made to the judge to whom the case is assigned and must follow the procedure required by Rule 17(b)(2).

(2) *Other Defendants.* For a defendant represented by counsel other than counsel listed in Rule 17(b)(1), upon an ex parte application, the court must order that a subpoena be issued for a named witness if the defendant shows an inability to pay the witness's fees and the necessity of the witness's presence for an adequate defense.

(3) *Payment of Costs and Fees.* For any subpoena issued under this section, the process costs and witness fees will be paid in the same manner as those paid for witnesses the government subpoenas.

(c) **PRODUCING DOCUMENTS AND OBJECTS.**

(1) *In General.* A subpoena may order the witness to produce any books, papers, documents, data, or other objects the subpoena designates. The court may direct the witness to produce the designated items in court before trial or before they are offered in evidence. When the items arrive, the court may permit the parties and their attorneys to inspect all or part of them.

(2) *Quashing or Modifying the Subpoena.* On motion made promptly, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive.

(3) *Subpoena for Personal or Confidential Information About a Victim.* After a complaint, indictment, or information is filed, a subpoena requiring the production of personal or confidential information about a victim may be served on a third party only by court order. Before entering the order and unless there are exceptional circumstances, the court must require giving notice to the victim so that the victim can move to quash or modify the subpoena or otherwise object.

(d) SERVICE. A marshal, a deputy marshal, or any nonparty who is at least 18 years old may serve a subpoena. The server must deliver a copy of the subpoena to the witness and must tender to the witness one day's witness-attendance fee and the legal mileage allowance. The server need not tender the attendance fee or mileage allowance when the prosecuting authority or a defendant unable to pay has requested the subpoena.

(e) PLACE OF SERVICE.

(1) *In General.* A subpoena requiring a witness to attend a hearing or trial may be served at any place within the District of Columbia or at any place outside of the District of Columbia that is within 25 miles of the place of the hearing or trial.

(2) *Exception.* A subpoena directed to a witness in a case in which a felony is charged may be served at any place within the United States upon order of a judge or magistrate judge.

(f) ISSUING A DEPOSITION SUBPOENA.

(1) *Issuance.* A court order to take a deposition authorizes the clerk of the Superior Court to issue a subpoena for the person named or described in the order.

(2) *Place.* After considering the convenience of the witness and the parties, the court may order—and the subpoena may require—the witness to appear anywhere the court designates.

(g) CONTEMPT. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court.

(h) INFORMATION NOT SUBJECT TO A SUBPOENA. No party may subpoena a statement of a witness or of a prospective witness under this rule. Rule 26.2 governs the production of the statement.

COMMENT TO 2017 AMENDMENTS

This rule incorporates the 2008 amendment to *Federal Rule of Criminal Procedure 17(c)(3)*. The phrase “personal or confidential information” will continue to be developed through case law. See, e.g., *Brown v. United States*, 567 A.2d 426 (D.C. 1989). Also, as explained in the Federal Advisory Committee Note to the 2008 amendment:

The rule recognizes [] that there may be exceptional circumstances in which th[e] procedure may not be appropriate. Such exceptional circumstances would include evidence that might be lost or destroyed if the subpoena were delayed or a situation where the defense would be unfairly prejudiced by premature disclosure of a sensitive defense strategy. The Committee leaves to the judgment of the court a determination as to whether the judge will permit the question whether such exceptional circumstances exist to be decided ex parte and authorize service of the third-party subpoena without notice to anyone.

Finally, while the Federal Advisory Committee Note to the 2008 amendment specifically indicates that subsection (c)(3) does not apply to grand jury subpoenas, the question of whether the subsection applies to certain grand jury subpoenas in the District of Columbia is still unanswered. See, e.g., *Brown*, 567 A.2d at 428-429

(cautioning that the court could “think of no rational basis upon which to distinguish subpoenas issued at the behest of a grand jury from [its] holding” that judicial authorization was required prior to issuance of a subpoena for medical records).

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Paragraph (b) provides the local procedures, retained from the former rule, by which defendants who have previously qualified for Criminal Justice Act representation may obtain subpoenas issued in blank without having to file an ex parte application for waiver of the witness fee. This procedure is available only when the witness to be subpoenaed is within a 25-mile radius of the place of the hearing or trial. This paragraph has been restyled to make it more easily understood. No substantive changes are intended.

Subparagraph (c)(1) adds “data” to the list of matters that may be subpoenaed, consistent with the federal rule.

Paragraph (d) retains the phrase “the prosecuting authority” from the former Superior Court rule. It also retains the phrase “a defendant unable to pay” to reflect the requirements of D.C. Code § 23-106 (2012 Repl.).

Subparagraph (e)(2) substitutes “judge or magistrate judge” for “judge of the court.”

Paragraph (g) retains the language of the former Superior Court rule. The federal rule draws distinctions based on federal law and practice that are not locally applicable.