

## **Rule 9. Subpoenas**

### **(a) IN GENERAL.**

(1) *Form and Content.* A subpoena must be written on a form maintained by the clerk. The subpoena must:

- (A) state the name of the court;
- (B) state the name of the parties and the case number;
- (C) command the person to whom it is directed to attend and give testimony at the time and place specified on the subpoena or to produce and permit inspection and copying of designated tangible evidence or documents in the possession, custody, or control of that person at a time and place specified in the subpoena; and
- (D) set out the text of Rule 9(d) and (e).

(2) *Issuance by Attorney.* Except as otherwise provided in Rule 9(b), an attorney authorized to practice in the District of Columbia may issue and sign a subpoena.

(3) *Issuance by Clerk or Court.* A self-represented party must submit a completed subpoena to the clerk for signature by the clerk or the court. The presiding judge may establish guidelines for signature by the clerk. If, based on the guidelines or Rule 9(b), the clerk cannot sign the subpoena, the clerk must forward the subpoena to the assigned judge.

(4) *Notice to Opposing Party.* If the subpoena commands the production of tangible evidence or documents before the hearing or trial, a notice and copy of the subpoena must be served on the opposing party in accordance with Rule 5(b) before the subpoena is served on the person to whom it is directed.

### **(b) CONFIDENTIAL COMMUNICATIONS OR INFORMATION; OPPOSING PARTY'S RECORDS.**

(1) *Confidential Communications or Information.* Confidential communications to or confidential information acquired by a physician, a mental health professional as defined in D.C. Code § 7-1201.01 (11) (2012 Repl.), a domestic violence counselor as defined in D.C. Code § 14-310 (a)(2) (2012 Repl.), a human trafficking counselor as defined in D.C. Code § 14-311 (a)(2) (2012 Repl.), or a sexual assault victim advocate as defined in § 14-312 (a)(7) (2017 Supp.) may be obtained only with:

- (A) the consent of the subject of the records or his or her legal representative; or
- (B) a subpoena authorized and signed by a judge in accordance with applicable law.

(2) *Opposing Party's Records.* A subpoena for documents or tangible objects regarding the opposing party's personal or confidential information must be submitted for judicial authorization.

### **(c) SERVICE.**

(1) *By Whom and How.* 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.

(2) *Service in the District of Columbia.* Subject to Rule 9(d)(3)(A)(ii), a subpoena may be served at any place:

- (A) within the District of Columbia;
- (B) outside the District of Columbia but within 25 miles of the place specified for the hearing, trial, production, or inspection; or
- (C) that the court authorizes on motion and for good cause, if an applicable statute so provides.

(3) *Serving in a Foreign Country.* 28 U.S.C. § 1783 governs issuing and serving a subpoena directed to a United States national or resident who is in a foreign country.

(4) *Proof of Service.* Proving service, when necessary, requires filing with the clerk a statement showing the date and manner of service and the names of the persons served. The statement must be certified by the server.

(d) PROTECTING A PERSON SUBJECT TO A SUBPOENA; ENFORCEMENT.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The 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.

(2) *Command to Produce and Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce and permit inspection and copying of designated documents or tangible evidence need not appear in person at the place of production or inspection unless also commanded to appear for hearing or trial.

(B) *Objections.* A person commanded to produce and permit inspection and copying may serve on the party or attorney designated in the subpoena a written objection to inspection or copying of any or all of the designated materials. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is not a party from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court must quash or modify a subpoena that:

(i) fails to allow reasonable time to comply;

(ii) requires a person who is not a party to travel more than 25 miles from where that person resides, is employed, or regularly transacts business in person—except that, subject to Rule 9(d)(3)(B), the person may be commanded to attend a trial by traveling from any such place to the place of trial;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court may, on motion, quash or modify the subpoena if it requires a person who is not a party to incur substantial expense to travel more than 25 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstance described in Rule 9(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

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

(e) DUTIES IN RESPONDING TO A SUBPOENA.

(1) *Producing Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation materials must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* 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 a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(f) CONTEMPT. The 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. 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 9(d)(3)(A)(ii).

## COMMENT TO 2017 AMENDMENTS

This rule no longer incorporates Civil Rule 45 or Criminal Rule 17 by reference; instead the rule now includes many of the provisions found in Civil Rule 45. However, these provisions have been modified to reflect the unique nature of the civil protection order proceedings, including the need to protect parties from harassment.

## COMMENT

SCR-Civil 45 and SCR-Criminal 17 have no restrictions regarding the Clerk distributing subpoenas to parties not represented by an attorney. SCR Dom Rel 45 states that a party not represented by an attorney may obtain from the Clerk and complete a blank subpoena, and submit it to the Clerk to be signed. That rule also provides that the Clerk may sign subpoena if it relates to a case in which action is pending; otherwise the Clerk shall refer the subpoena to a judicial officer for consideration. Section (b) of this rule requires judicial authorization before the Clerk issues a subpoena to a party not represented by an attorney. The purpose of this section is to prevent one party from harassing the other party through the subpoena process given the nature of the intrafamily proceedings before the court. This section is not intended to prevent any party from obtaining subpoenas for witnesses or other documents or records relevant to the proceeding. It is only intended to provide some judicial oversight in the issuance of subpoenas. Section (b) permits the presiding judge of the Unit to designate the Clerk or

Deputy Clerk or a court employee in the Clerk's Office to review requests for subpoenas based on guidelines established by the presiding judge of the Unit.