

**PROPOSED REVISIONS TO THE CIVIL FORMS  
PROPOSAL 2020-012**

**March 3, 2020**

The Rules of Civil Procedure for State Courts Committee has recommended amendments to Forms 4-503, 4-504, 4-505, and 4-505A NMRA for the Supreme Court’s consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court’s web site at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

Joey D. Moya, Clerk  
New Mexico Supreme Court  
P.O. Box 848  
Santa Fe, New Mexico 87504-0848  
[nmsupremecourtclerk@nmcourts.gov](mailto:nmsupremecourtclerk@nmcourts.gov)  
505-827-4837 (fax)

**Your comments must be received by the Clerk on or before April 2, 2020**, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court’s web site for public viewing.

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**4-503. Subpoena.**

[For use with Magistrate Court Rule 2-502 NMRA and  
Metropolitan Court Rule 3-502 NMRA]

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_

[No. \_\_\_\_\_]

\_\_\_\_\_ COURT

\_\_\_\_\_, Plaintiff,

v. \_\_\_\_\_ No. \_\_\_\_\_  
\_\_\_\_\_, Defendant,

**SUBPOENA<sup>1</sup>**

**SUBPOENA**

FOR APPEARANCE OF PERSON FOR  TRIAL  HEARING  
 TO PRODUCE DOCUMENTS OR OBJECTS AT A HEARING OR TRIAL<sup>2</sup>  
 FOR INSPECTION OF PREMISES OF A PARTY<sup>2</sup>

TO: \_\_\_\_\_

YOU ARE HEREBY COMMANDED TO APPEAR as follows:

Place: \_\_\_\_\_

Before Judge: \_\_\_\_\_

Date: \_\_\_\_\_, \_\_\_\_\_. Time: \_\_\_\_\_ (a.m.) (p.m.)

to:

testify at trial

produce the following described books, documents or tangible things:

\_\_\_\_\_

\_\_\_\_\_

permit the inspection of the premises of a party located at:

\_\_\_\_\_ (address).

YOU ARE ALSO COMMANDED to bring with you the following: *(describe document or objects to be produced)*

\_\_\_\_\_

IF YOU DO NOT COMPLY WITH THIS SUBPOENA, you may be held in contempt of court and punished by fine or imprisonment.

\_\_\_\_\_, \_\_\_\_\_ (date).

\_\_\_\_\_<sup>3</sup>  
Judge, clerk or attorney

### USE NOTES

#### TO BE PRINTED ON EACH SUBPOENA

1. If a person's attendance is commanded, one full day's per diem must be tendered with the subpoena.

2. If a person is ordered to produce books, documents, or tangible things in the person's possession for a hearing or trial, the person, unless ordered to personally appear, may have a custodian of the books, documents, or tangible things to the hearing or trial produce them for trial. If a party is ordered to permit the inspection of the party's premises before trial, the party need not appear in person at the time of the inspection.

3. The judge or clerk may issue a pro se party a subpoena duces tecum ordering the production of books, documents or tangible things for trial only if the subpoena is completed before issuance by the court. See Rules 2-502 and 3-502 NMRA.

4. A copy of the subpoena must be served on each party in the manner provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.

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

**RETURN FOR COMPLETION BY SHERIFF OR DEPUTY<sup>4</sup>**

I certify that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_ County, I served this subpoena on \_\_\_\_\_ by delivering to the person named a copy of the subpoena, the statutory witness fee and mileage in the amount of \$ \_\_\_\_\_.

\_\_\_\_\_  
Deputy sheriff

**RETURN FOR COMPLETION BY OTHER PERSON  
MAKING SERVICE<sup>4</sup>**

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_ County, I served this subpoena on \_\_\_\_\_ by delivering to the person named a copy of the subpoena, the statutory witness fee and mileage in the amount of \$ \_\_\_\_\_.

\_\_\_\_\_  
Person making service

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_ (date).

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

THIS SUBPOENA issued by or at request of:

\_\_\_\_\_  
Name of attorney of party

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

**CERTIFICATE OF SERVICE BY ATTORNEY<sup>4</sup>**

I certify that I caused a copy of this subpoena to be served on the following persons or entities by *(delivery)* *(mail)* on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(1) \_\_\_\_\_  
*(Name of party)*

\_\_\_\_\_  
*(Address)*

(2) \_\_\_\_\_  
*(Name of party)*

\_\_\_\_\_  
*(Address)*

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date of signature

**[TO BE PRINTED ON EACH SUBPOENA**

1. \_\_\_\_\_ If a person's attendance is commanded, one full day's per diem must be tendered with the subpoena.
2. \_\_\_\_\_ If a person is ordered to produce books, documents, or tangible things in the person's possession for a hearing or trial, the person, unless ordered to personally appear, may have a custodian of the books, documents or tangible things to the hearing or trial produce them for trial. If a party is ordered to permit the inspection of the party's premises before trial, the party need not appear in person at the time of the inspection.
3. \_\_\_\_\_ The judge or clerk may issue a *pro se* party a subpoena duces tecum ordering the production of books, documents or tangible things for trial only if the subpoena is completed prior to issuance by the court. See Rules 2-502 and 3-502 NMRA.
4. \_\_\_\_\_ A copy of the subpoena must be served on each party in the manner provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.

**PROTECTION OF PERSONS SUBJECT TO SUBPOENAS**

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

~~On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it~~

- ~~(1) — fails to allow reasonable time for compliance;~~
- ~~(2) — requires a person who is not a party or an officer of a party to travel outside the county in which the person resides or is employed or regularly transacts business in person, except as provided below, such a person may in order to attend a hearing or trial be commanded to travel from any place within the county in which the hearing or trial is held, or~~
- ~~(3) — requires disclosure of privileged or other protected matter and no exception or waiver applies, or~~
- ~~(4) — subjects a person to undue burden.~~

~~If a subpoena~~

- ~~(1) — requires disclosure of a trade secret or other confidential research, development, or commercial information, or~~
- ~~(2) — requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or~~
- ~~(3) — requires a person who is not a party or an officer of a party to incur substantial expense to travel,~~

~~the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.~~

#### **DUTIES IN RESPONDING TO SUBPOENA**

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

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

### **INFORMATION FOR PERSONS RECEIVING SUBPOENA**

Subject to Rules 2-502(D)(2) and 3-502(D)(2) NMRA, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena and all parties to the lawsuit identified in the certificate of service by attorney written objection to inspection or copying of any or all of the designated materials or of the premises or within fourteen (14) days after service of the subpoena may file and serve on all parties a motion to quash the subpoena. If an objection is served or a motion to quash is filed and served on the parties, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(1) fails to allow reasonable time for compliance,

(2) requires a person who is not a party or an officer of a party to travel outside the county in which the person resides or is employed or regularly transacts business in person, except as provided below, such a person may in order to attend a hearing or trial be commanded to travel from any place within the county in which the hearing or trial is held,

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

(4) subjects a person to undue burden.

If a subpoena

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

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

(3) requires a person who is not a party or an officer of a party to incur substantial expense to travel,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**DUTIES IN RESPONDING TO SUBPOENA**

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

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

[Approved, effective May 1, 2002; as amended, effective January 20, 2005; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**4-504. Subpoena.**

[For use with Metropolitan Court Rule 3-501.1 NMRA]

STATE OF NEW MEXICO  
\_\_\_\_\_ COUNTY

METROPOLITAN COURT [No. \_\_\_\_\_]

\_\_\_\_\_, Plaintiff,

v. No. \_\_\_\_\_

\_\_\_\_\_, Defendant.

**SUBPOENA<sup>1</sup>**

**SUBPOENA FOR APPEARANCE OF PERSON FOR A STATEMENT:**

TO: \_\_\_\_\_

YOU ARE HEREBY COMMANDED TO APPEAR as follows:

Place: \_\_\_\_\_  
Date: \_\_\_\_\_, \_\_\_\_\_. Time: \_\_\_\_\_ (a.m.) (p.m.)  
to give a statement in the above case.

\_\_\_\_\_  
Judge<sup>2</sup> or attorney

**USE NOTES**

**TO BE PRINTED ON EACH SUBPOENA**

1. If a person's attendance is commanded, one full day's per diem must be tendered with the subpoena.
2. The judge may issue a *pro se* party a subpoena for a statement only if the subpoena is completed before issuance by the court. See Rules 2-502 and 3-502 NMRA.
3. A copy of the subpoena must be served on each party in the manner provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.
4. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose on the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

**RETURN FOR COMPLETION BY SHERIFF OR DEPUTY<sup>3</sup>**

I certify that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_ County, I served this subpoena on \_\_\_\_\_ by delivering to the person named a copy of the subpoena, the statutory witness fee and mileage in the amount of \$\_\_\_\_\_.

\_\_\_\_\_  
Deputy sheriff

**RETURN FOR COMPLETION BY OTHER PERSON  
MAKING SERVICE<sup>3</sup>**

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_ County, I served this subpoena on \_\_\_\_\_ by delivering to the person named a copy of the subpoena, the statutory witness fee and mileage in the amount of \$\_\_\_\_\_.

\_\_\_\_\_

Person making service

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_ (date).

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

THIS SUBPOENA issued by or at request of:

\_\_\_\_\_  
Name of attorney of party

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

**CERTIFICATE OF SERVICE BY ATTORNEY<sup>3</sup>**

I certify that I caused a copy of this subpoena to be served on the following persons or entities by (delivery) (mail) on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(1) \_\_\_\_\_  
(Name of party)

\_\_\_\_\_  
(Address)

(2) \_\_\_\_\_  
(Name of party)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date of signature

**~~[TO BE PRINTED ON EACH SUBPOENA~~**

1. ~~If a person's attendance is commanded, one full day's per diem must be tendered with the subpoena.~~

2. ~~The judge may issue a pro se party a subpoena for a statement only if the subpoena is completed prior to issuance by the court. See Rules 2-502 and 3-502 NMRA.~~

3. ~~A copy of the subpoena must be served on each party in the manner provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.~~

### **~~PROTECTION OF PERSONS SUBJECT TO SUBPOENAS~~**

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

~~On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:~~

- ~~(1) fails to allow reasonable time for compliance;~~
- ~~(2) requires a person who is not a party or an officer of a party to travel outside the county in which the person resides or is employed or regularly transacts business in person, except as provided below, such a person may in order to attend a hearing or trial be commanded to travel from any place within the county in which the hearing or trial is held, or~~
- ~~(3) requires disclosure of privileged or other protected matter and no exception or waiver applies, or~~
- ~~(4) subjects a person to undue burden.~~

~~If a subpoena~~

- ~~(1) requires disclosure of a trade secret or other confidential research, development, or commercial information, or~~
- ~~(2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or~~
- ~~(3) requires a person who is not a party or an officer of a party to incur substantial expense to travel, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.~~

## **DUTIES IN RESPONDING TO SUBPOENA**

- (1) ~~———— A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.~~
- (2) ~~———— When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.]~~

## **INFORMATION FOR PERSONS RECEIVING SUBPOENA**

On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

- (1) fails to allow reasonable time for compliance,
- (2) requires a person who is not a party or an officer of a party to travel outside the county in which the person resides or is employed or regularly transacts business in person, except as provided below, such a person may in order to attend a hearing or trial be commanded to travel from any place within the county in which the hearing or trial is held,
- (3) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (4) subjects a person to undue burden.

If a subpoena

- (1) requires disclosure of a trade secret or other confidential research, development, or commercial information,
- (2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (3) requires a person who is not a party or an officer of a party to incur substantial expense to travel,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the

person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**DUTIES IN RESPONDING TO SUBPOENA**

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

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

[Approved, effective May 1, 2002; as amended, effective January 20, 2005; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**4-505. Subpoena.**

[For use with District Court Civil Rule 1-045 NMRA]

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_ [No. \_\_\_\_\_]  
\_\_\_\_\_ JUDICIAL DISTRICT

\_\_\_\_\_, Plaintiff,

v. \_\_\_\_\_ No. \_\_\_\_\_

\_\_\_\_\_, Defendant.

**SUBPOENA<sup>1</sup>**

**SUBPOENA FOR APPEARANCE OF PERSON FOR<sup>2</sup>**

DEPOSITION  TRIAL

TO: \_\_\_\_\_

YOU ARE HEREBY COMMANDED TO APPEAR as follows:

Place: \_\_\_\_\_

Date: \_\_\_\_\_, \_\_\_\_\_ Time: \_\_\_\_\_ (a.m.) (p.m.)

to:

testify at the taking of a deposition in the above case.

testify at trial.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s) \_\_\_\_\_

IF YOU DO NOT COMPLY WITH THIS SUBPOENA you may be held in contempt of court and punished by fine or imprisonment.

\_\_\_\_\_ , \_\_\_\_\_.

\_\_\_\_\_  
Judge, clerk or attorney

**USE NOTES**

**TO BE PRINTED ON EACH SUBPOENA**

1. This subpoena must be served on each party in the manner provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.

2. A command to produce evidence or to permit inspection may be joined with a command to appear for a deposition or trial.

3. If a person's attendance is commanded, one full day's per diem must be tendered with the subpoena, unless the subpoena is issued on behalf of the state or an officer or agency thereof. See Section 38-6-4 NMSA 1978 for per diem and mileage for witnesses. See Section 10-8-4(A) NMSA 1978 for per diem and mileage rates for nonsalaried public officers. Mileage must also be tendered at the time of service of the subpoena as provided by the Per Diem and Mileage Act. Payment of per diem and mileage for subpoenas issued by the state is made pursuant to regulations of the Administrative Office of the Courts. See Section 34-9-11 NMSA 1978 for payments from the jury and witness fee fund.

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

**RETURN FOR COMPLETION BY SHERIFF OR DEPUTY**

I certify that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_ County, I served this subpoena on \_\_\_\_\_ by delivering to the person named a copy of the subpoena, a witness fee in the amount of \_\_\_\_\_ and mileage in the amount of \$ \_\_\_\_\_<sup>3</sup>.

\_\_\_\_\_  
Deputy sheriff

**RETURN FOR COMPLETION BY OTHER PERSON**

**MAKING SERVICE**

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_ County, I served this subpoena on \_\_\_\_\_ by delivering to the person named a copy of the subpoena, the statutory witness fee and mileage in the amount of \$\_\_\_\_\_<sup>3</sup>.

\_\_\_\_\_  
Person making service

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, (*date*).

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

THIS SUBPOENA issued by or at request of:

\_\_\_\_\_  
Name of attorney of party

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

**CERTIFICATE OF SERVICE BY ATTORNEY**

I certify that I caused a copy of this subpoena to be served on the following persons or entities by (*delivery*) (*mail*) on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(1) \_\_\_\_\_  
(*Name of party*)

\_\_\_\_\_  
(*Address*)

(2) \_\_\_\_\_  
(*Name of party*)

\_\_\_\_\_  
(*Address*)

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Signature

---

Date of signature

**~~[TO BE PRINTED ON EACH SUBPOENA~~**

- ~~1. This subpoena must be served on each party in the manner provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.~~
- ~~2. A command to produce evidence or to permit inspection may be joined with a command to appear for a deposition or trial.~~
- ~~3. If a person's attendance is commanded, one full day's per diem must be tendered with the subpoena, unless the subpoena is issued on behalf of the state or an officer or agency thereof. See Section 38-6-4 NMSA 1978 for per diem and mileage for witnesses. See Paragraph A of Section 10-8-4 NMSA 1978 for per diem and mileage rates for nonsalaried public officers. Mileage must also be tendered at the time of service of the subpoena as provided by the Per Diem and Mileage Act. Payment of per diem and mileage for subpoenas issued by the state is made pursuant to regulations of the Administrative Office of the Courts. See Section 34-9-11 NMSA 1978 for payments from the jury and witness fee fund.~~

**~~PROTECTION OF PERSONS SUBJECT TO SUBPOENAS~~**

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

**INFORMATION FOR PERSONS RECEIVING SUBPOENA**

Subject to [Subparagraph (2) of Paragraph D below] Rule 1-045(D)(2) NMRA, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena and all parties to the lawsuit identified in the certificate of service by attorney written objection to inspection or copying of any or all of the designated materials or of the premises or within fourteen (14) days after service of the subpoena may file and serve on all parties a motion to quash the subpoena [~~and serve the motion on all parties to the action~~]. If an objection is served or a motion to quash is filed and served on the parties and the person responding to the subpoena, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move

at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded. The court may award costs and attorney fees against a party or person for serving written objections or filing a motion to quash that lacks substantial merit.

~~[On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:~~

- ~~(1) — fails to allow reasonable time for compliance,~~
- ~~(2) — requires a person who is not a party or an officer of a party to travel to a place more than one hundred miles from the place where that person resides, is employed or regularly transacts business in person, except as provided below, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or~~
- ~~(3) — requires disclosure of privileged or other protected matter and no exception or waiver applies, or~~
- ~~(4) — subjects a person to undue burden.~~

~~If a subpoena:~~

- ~~(1) — requires disclosure of a trade secret or other confidential research, development, or commercial information, or~~
- ~~(2) — requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or~~
- ~~(3) — requires a person who is not a party or an officer of a party to incur substantial expense to travel,~~

~~the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.~~

### **DUTIES IN RESPONDING TO SUBPOENA**

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

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

On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(1) fails to allow reasonable time for compliance,

(2) requires a person who is not a party or an officer of a party to travel to a place more than one hundred (100) miles from the place where that person resides, is employed or regularly transacts business in person, except as provided below, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held,

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

(4) subjects a person to undue burden.

If a subpoena:

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

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

(3) requires a person who is not a party or an officer of a party to incur substantial expense to travel,

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

### **DUTIES IN RESPONDING TO SUBPOENA**

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

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

[Adopted, effective January 1, 1998; as amended, effective November 1, 2002; January 20, 2005; as amended by Supreme Court Order No. 08-8300-002, effective March 15, 2008; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**4-505A. Subpoena for production or inspection.**

[For use with District Court Civil Rule 1-045 NMRA]

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_

[No. \_\_\_\_\_]

\_\_\_\_\_ JUDICIAL DISTRICT

\_\_\_\_\_, Plaintiff,

v.

No. \_\_\_\_\_

\_\_\_\_\_, Defendant.

**SUBPOENA FOR PRODUCTION OR INSPECTION<sup>1</sup>**

**SUBPOENA FOR**

**DOCUMENTS OR OBJECTS<sup>2</sup>**

**INSPECTION OF PREMISES<sup>2</sup>**

TO: \_\_\_\_\_

YOU ARE HEREBY COMMANDED ON:

DATE: \_\_\_\_\_, \_\_\_\_\_ TIME: \_\_\_\_\_ (a.m.) (p.m.)

TO:

permit inspection of the following described books, papers, documents or tangible things:

\_\_\_\_\_

at \_\_\_\_\_ (address).

permit the inspection of the premises located at:

\_\_\_\_\_ (address).

ABSENT A COURT ORDER, DO NOT RESPOND TO THIS SUBPOENA UNTIL THE EXPIRATION OF FOURTEEN (14) DAYS AFTER THE DATE OF SERVICE OF THE SUBPOENA.

DO NOT RESPOND TO THIS SUBPOENA FOR PRODUCTION OR INSPECTION IF YOU ARE SERVED WITH WRITTEN OBJECTIONS OR A MOTION TO QUASH UNTIL YOU RECEIVE A COURT ORDER REQUIRING A RESPONSE.

You may comply with this subpoena for production or inspection by providing legible copies of the items requested to be produced by mail or delivery to the attorney whose name appears on this subpoena. You may condition the preparation of the copies upon the payment in advance of the reasonable cost of inspection and copying. You have the right to object to the production pursuant to this subpoena as provided below.

**READ THE SECTION “DUTIES IN RESPONDING TO SUBPOENA[?]”**

IF YOU DO NOT COMPLY WITH THIS SUBPOENA you may be held in contempt of court and punished by fine or imprisonment.

\_\_\_\_\_ , \_\_\_\_\_ .

\_\_\_\_\_  
Judge, clerk or attorney

**USE NOTES**

**TO BE PRINTED ON EACH SUBPOENA**

1. This subpoena must be served on each party in the manner provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.

2. A person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

3. If a person’s attendance is commanded, one full day’s per diem must be tendered with the subpoena, unless the subpoena is issued on behalf of the state or an officer or agency thereof. Mileage must also be tendered at the time of service of the subpoena as provided by the Per Diem and Mileage Act. See Section 38-6-4 NMSA 1978 for per diem and mileage for witnesses. See Section 10-8-4(A) NMSA 1978 for per diem and mileage rates for nonsalaried public officers. Payment of per diem and mileage for subpoenas issued by the state is made pursuant to regulations of the Administrative Office of the Courts. See Section 34-9-11 NMSA 1978 for payments from the jury and witness fee fund.

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

**RETURN FOR COMPLETION BY SHERIFF OR DEPUTY**

I certify that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_ County, I served this subpoena on \_\_\_\_\_ by delivering to the person named a copy of the subpoena and a fee of \$\_\_\_\_\_ (*insert the amount of fee tendered or, if no fee is tendered, "none"*)<sup>3</sup>.

\_\_\_\_\_  
Deputy sheriff

**RETURN FOR COMPLETION BY OTHER PERSON MAKING SERVICE**

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_ County, I served this subpoena on \_\_\_\_\_ by delivering to the person named a copy of the subpoena and a fee of \$\_\_\_\_\_ (*insert the amount of fee tendered or, if no fee is tendered, "none"*)<sup>3</sup>.

\_\_\_\_\_  
Person making service

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (date).

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

THIS SUBPOENA issued by or at request of:

\_\_\_\_\_  
Name of attorney of party

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

**CERTIFICATE OF SERVICE BY ATTORNEY**

I certify that I caused a copy of this subpoena to be served on the following persons or entities by (*delivery*) (*mail*) on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(1) \_\_\_\_\_  
(*Name of party*)

\_\_\_\_\_  
(*Address*)

(2) \_\_\_\_\_  
(*Name of party*)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date of signature

**[TO BE PRINTED ON EACH SUBPOENA]**

1. ~~This subpoena must be served on each party in the manner provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.~~
2. ~~A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.~~
3. ~~If a person's attendance is commanded, one full day's per diem must be tendered with the subpoena, unless the subpoena is issued on behalf of the state or an officer or agency thereof. Mileage must also be tendered at the time of service of the subpoena as provided by the Per Diem and Mileage Act. See Section 38-6-4 NMSA 1978 for per diem and mileage for witnesses. See Paragraph A of Section 10-8-4 NMSA 1978 for per diem and mileage rates for nonsalaried public officers. Payment of per diem and mileage for subpoenas issued by the state is made pursuant to regulations of the Administrative Office of the Courts. See Section 34-9-11 NMSA 1978 for payments from the jury and witness fee fund.~~

**PROTECTION OF PERSONS SUBJECT TO SUBPOENAS**

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

**INFORMATION FOR PERSONS RECEIVING SUBPOENA**

A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

Subject to [Subparagraph (2) of Paragraph D below] Rule 1-045(D)(2) NMRA, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after

service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena and all parties to the lawsuit identified in the certificate of service by attorney written objection to inspection or copying of any or all of the designated materials or of the premises or within fourteen (14) days after service of the subpoena may file and serve on all parties a motion to quash the subpoena [~~and serve the motion on all parties to the action~~]. If an objection is served or a motion to quash is filed and served on the parties and the person responding to the subpoena, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded. The court may award costs and attorney fees against a party or person for serving written objections or filing a motion to quash that lacks substantial merit.

~~[On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:~~

~~(1) — fails to allow reasonable time for compliance,~~

~~(2) — requires a person who is not a party or an officer of a party to travel to a place more than one hundred miles from the place where that person resides, is employed or regularly transacts business in person, except as provided below, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or~~

~~(3) — requires disclosure of privileged or other protected matter and no exception or waiver applies, or~~

~~(4) — subjects a person to undue burden.~~

~~If a subpoena:~~

~~(1) — requires disclosure of a trade secret or other confidential research, development, or commercial information, or~~

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~~testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.~~

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~~(3) — A person commanded to produce documents or material or to permit the inspection of premises shall not produce the documents or materials or permit the inspection of the premises if a written objection is served or a motion to quash has been filed with the court until a court order requires their production or inspection.]~~

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(3) A person commanded to produce documents or material or to permit the inspection of premises shall not produce the documents or materials or permit the inspection of the premises if a written objection is served or a motion to quash has been filed with the court until a court order requires their production or inspection.

[As amended, effective November 1, 2002; as amended by Supreme Court Order No. 08-8300-002, effective March 15, 2008; by Supreme Court Order No. 09-8300-030, effective October 12, 2009, as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]