

**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 DONA ANA  
IN THE MAGISTRATE COURT

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

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

v.

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

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

**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 reasonable attorney fees.

**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 or 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

### **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 that time is less than fourteen (14) days after service, serve on 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 under an order of the court by which the subpoena was issued. The 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, the 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. 20-8300-005, effective for all cases pending or filed on or after December 31, 2020.]