

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H

D

HOUSE DRH80153-LD-38A (03/12)

Short Title: Rules of Civil Proc/Rewrite Rule 45.

(Public)

Sponsors: Representative Haire.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REWRITE RULE 45 OF THE NORTH CAROLINA RULES OF CIVIL
PROCEDURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 45, reads as rewritten:

"Rule 45. Subpoena.

(a) ~~For attendance of witnesses; issuances; form.~~ Form. – A subpoena to produce evidence may be joined with a command to appear at a trial or a hearing or to appear at a deposition, or any subpoena may be issued separately. Every subpoena for the purpose of obtaining the testimony of a witness in a pending cause shall, except as hereinafter provided, be issued at the request of any party by the clerk of superior court for the county in which the hearing or trial is to be held. A subpoena shall be directed to the witness, shall state the name of the court and the shall state all of the following:

(1) The title of the action, the name of the party at whose instance the witness is summoned, and shall command the court in which the action is pending, and the number of the civil action.

(2) A command to each person to whom it is directed to attend and give testimony at a time and place or to produce and permit inspection and copying of designated records, books, papers, documents, or tangible things in the possession, custody, or control of that person therein specified.

(3) The protections of persons subject to subpoenas under subsection (d1) of this section.

(4) The requirements for responses to subpoenas under subsection (d2) of this section.

(a1) Issuance. – A subpoena shall issue from the court in which the action is pending. The clerk of court in which the action is pending shall issue a subpoena, or a

1 subpoena for the production of documentary evidence, signed but otherwise in blank, to
2 a party requesting it, who shall fill ~~complete~~ it in ~~before~~ service. A subpoena for a
3 witness or witnesses need not be signed by the clerk, and is sufficient if signed by the
4 party or his attorney. A subpoena for the production of documentary evidence need not
5 be signed by the clerk, and is sufficient if signed by the attorney requesting the same. An
6 attorney, as an officer of the court, may also issue and sign a subpoena.

7 (b) Issuance by a judge. — Such subpoena may also be issued by any judge of the
8 superior court, judge of the district court, or magistrate.

9 (c) ~~For production of documentary evidence. — A subpoena may also command~~
10 ~~the person to whom it is directed to produce the records, books, papers, documents, or~~
11 ~~tangible things designated therein. Where the subpoena commands any custodian of~~
12 ~~public records to appear for the sole purpose of producing certain records in his custody,~~
13 ~~the custodian subpoenaed may, in lieu of a personal appearance, tender to the court by~~
14 ~~registered mail certified copies of the records requested, together with an affidavit by~~
15 ~~the custodian as to the authentication of the record tendered or, if no such records are in~~
16 ~~his custody, an affidavit to that effect. Any original or certified copy or affidavit~~
17 ~~delivered under the provisions of this rule, unless otherwise objectionable, shall be~~
18 ~~admissible in any action or proceeding without further certification or authentication.~~

19 (d1) Protection of Persons Subject to Subpoenas. —

20 (1) Avoid Undue Burden or Expense. — A party or an attorney responsible
21 for the issuance and service of a subpoena shall take reasonable
22 measures to avoid imposing an undue burden or expense on a person
23 subject to the subpoena. The court shall enforce this subdivision and
24 impose upon the party or the attorney in violation of this requirement
25 an appropriate sanction that may include compensating the person
26 unduly burdened for lost earnings and for reasonable attorney's fees.

27 (2) For Production of Public Records or Hospital Medical Records. —
28 Where the subpoena commands any custodian of public records or any
29 custodian of hospital medical records (as defined in G.S.
30 8-44.1) records, as defined in G.S. 8-44.1, to appear for the sole
31 purpose of producing certain records in his the custodian's custody, the
32 custodian subpoenaed may, in lieu of a personal appearance, tender to
33 the presiding judge or designee court in which the action is pending by
34 registered or certified mail or by personal delivery at no cost delivery,
35 on or before the time specified in the subpoena, certified copies of the
36 records requested, on or before the time specified in the subpoena,
37 together with a copy of the subpoena and an affidavit by the custodian
38 testifying to the identity and authenticity of the records, that they the
39 copies are true and correct copies, and as appropriate, copies and that
40 the records were made and kept in the regular course of business at or
41 near the time of the acts, conditions, or events recorded, and that they
42 were made by persons having knowledge of the information set forth;
43 business, or if no such records are in his the custodian's custody, an
44 affidavit to that effect. When the copies of medical records are

1 personally ~~delivered~~, delivered under this subdivision, a receipt shall be
2 obtained from the person receiving the records. Any original or
3 certified copy of ~~medical records, or affidavit,~~ records or an affidavit
4 delivered according to the provisions of this rule ~~shall not be held~~
5 ~~inadmissible~~ subdivision, unless otherwise objectionable, shall be
6 admissible in any action or proceeding ~~on the grounds that it lacks~~
7 ~~certification, — identification,~~ without further certification or
8 authentication, and it shall be received as evidence if otherwise
9 ~~admissible.~~ Copies of the hospital medical
10 records ~~so tendered~~ under this subdivision shall not be open to
11 inspection or ~~copy copying~~ by any ~~persons,~~ person, except to the
12 parties to the case or proceeding and their attorneys in depositions,
13 until ordered published by the judge at the time of the hearing or trial.
14 Nothing contained herein shall be construed to waive the
15 physician-patient privilege or to require any privileged
16 communications under law to be disclosed. ~~The judge, upon motion to~~
17 ~~quash or modify made promptly and in any event at or before the time~~
18 ~~specified in the subpoena for compliance therewith, may~~

- 19 (1) ~~Quash or modify the subpoena if it is unreasonable and oppressive and~~
20 ~~in such case may order the party in whose behalf the subpoena is~~
21 ~~issued to pay the person to whom the subpoena is directed part or all of~~
22 ~~his reasonable expenses including attorneys' fees or~~
23 (2) ~~Grant the motion unless the party in whose behalf the subpoena is~~
24 ~~issued advances the reasonable cost of producing the records, books,~~
25 ~~papers, documents, or tangible things.~~

26 (d) Subpoena for taking depositions.—

- 27 (1) ~~Proof of service of a notice to take a deposition as provided in Rules~~
28 ~~30(a) and 31(a) constitutes a sufficient authorization for the issuance~~
29 ~~by the clerk of the superior court for the county in which the~~
30 ~~deposition is to be taken of subpoenas for the persons named or~~
31 ~~described therein. The subpoena may command the person to whom it~~
32 ~~is directed to produce designated records, books, papers, documents, or~~
33 ~~tangible things which constitute or contain evidence relating to any of~~
34 ~~the matters within the scope of the examination permitted by Rule~~
35 ~~26(b), but in that event the subpoena will be subject to the provisions~~
36 ~~of section (c) of Rule 26 and section (c) of this rule.~~

37 ~~The person to whom the subpoena is directed~~

- 38 (3) Written Objection to Subpoenas. — Subject to subsection (d2) of this
39 rule, a person commanded to appear at a deposition or commanded to
40 produce and permit the inspection and copying of records, books,
41 papers, documents, or other tangible things may, within 10 days after
42 the service thereof ~~or on~~ of the subpoena or before the time specified
43 ~~in the subpoena~~ for compliance if such time is less than 10 days after
44 service, serve upon the party or the attorney designated in the

1 subpoena written objection to ~~inspection or copying of any or all of the~~
2 ~~designated materials.~~the subpoena, setting forth the specific grounds
3 for the objection. The written objection shall comply with the
4 requirements of Rule 11. Each of the following is sufficient grounds
5 for objecting to a subpoena:

6 (1) The subpoena fails to allow reasonable time for compliance.

7 (2) The subpoena requires disclosure of privileged or other
8 protected matter, and no exception or waiver applies to the
9 privilege or protection.

10 (3) The subpoena subjects a person to an undue burden.

11 (4) The subpoena is otherwise unreasonable or oppressive.

12 (5) The subpoena is procedurally defective.

13 (4) Order of Court Required to Override Objection. – If objection is made,
14 made under subdivision (3) of this subsection, the party serving the
15 subpoena shall not be entitled to compel the subpoenaed person's
16 appearance at a deposition or to inspect and copy the materials to
17 which an objection has been made except pursuant to an order of the
18 court from which the subpoena was issued. The court. If objection is
19 made, the party serving the subpoena may, if objection has been made,
20 move upon notice to the deponent-subpoenaed person, move at any
21 time for an order at any time before or during the taking of the
22 deposition to compel the subpoenaed person's appearance at the
23 deposition or the production of the materials designated in the
24 subpoena. The motion shall be filed in the court in the county in which
25 the deposition or production of materials is to occur.

26 (5) Motion to Quash or Modify Subpoena. – A person commanded to
27 appear at a trial, hearing, or deposition, or commanded to produce and
28 permit the inspection and copying of records, books, papers,
29 documents, or other tangible things, within 10 days after service of the
30 subpoena or before the time specified for compliance if such time is
31 less than 10 days after service, may file a motion to quash or modify
32 the subpoena. The court shall quash or modify the subpoena if the
33 subpoenaed person demonstrates the existence of any of the specific
34 grounds for objection under subdivision (3) of this subsection. The
35 motion shall be filed in the court in the county in which the trial,
36 hearing, deposition, or production of materials is to occur.

37 (6) Order to Compel; Expenses to Comply With Subpoena. – When a
38 court enters an order compelling a deposition or the production of
39 records, books, papers, documents, or other tangible things, the order
40 shall protect any person who is not a party or an agent of a party from
41 significant expense resulting from complying with the subpoena. The
42 court may order the party on whose behalf the subpoena is issued to
43 advance the reasonable cost of producing the records, books, papers,
44 documents, or tangible things specified in the subpoena.

- 1 (7) Trade Secrets; Confidential Information. – When a subpoena requires
2 disclosure of a trade secret or other confidential research,
3 development, or commercial information, a court may, to protect a
4 person subject to or affected by the subpoena, quash or modify the
5 subpoena, or when the party on whose behalf the subpoena is issued
6 shows a substantial need for the testimony or material that cannot
7 otherwise be met without undue hardship, the court may order a person
8 to make an appearance or produce the materials only on specified
9 conditions stated in the order.
- 10 (8) Order to Quash; Expenses. – When a court enters an order quashing or
11 modifying the subpoena, the court may order the party on whose
12 behalf the subpoena is issued to pay part or all of the subpoenaed
13 person's reasonable expenses, including attorneys' fees.
- 14 (d2) Responses to subpoenas; requirements. –
- 15 (1) Form of Response. – A person responding to a subpoena to produce
16 documents shall produce the documents as they are kept in the usual
17 course of business or shall organize and label the documents to
18 correspond with the categories in the request.
- 19 (2) Specificity of Objection. – When information subject to a subpoena is
20 withheld on the objection that it is subject to protection as trial
21 preparation materials or that it is otherwise privileged, the objection
22 shall be made with specificity and shall be supported by a description
23 of the nature of the communications, records, books, papers,
24 documents, or other tangible things not produced, sufficient for the
25 requesting party to contest the objection.
- 26 (e) Service. –
- 27 (1) Manner. – ~~All subpoenas~~ Any subpoena may be served by the sheriff,
28 by his~~the~~ sheriff's deputy, by a~~coroner~~ coroner, or by any other
29 person who is not a party and not less than 18 years of age, who is not
30 a party. ~~age.~~ Service of a subpoena for the production of documentary
31 evidence may upon a person named therein shall be made only~~by the~~
32 delivery of a copy to the person named therein or~~delivering a copy~~
33 thereof to that person by registered or certified mail, return receipt
34 requested. Service of a subpoena for the attendance of a witness only
35 may also be made by telephone communication with the person named
36 therein only by an~~authorized server who shall be~~ a sheriff, his~~the~~
37 sheriff's designee who is not less than 18 years of age and not a party,
38 or coroner, or by delivery of a copy to the person named therein or by
39 registered or certified mail, return receipt requested, by any person
40 authorized by this section to serve subpoenas. Personal service shall be
41 proved by return of a sheriff, his deputy, or a coroner making service
42 and by return under oath of any other person making service. Service
43 by telephone communication shall be proved by return of the
44 authorized process server, noting the method of service. Service by

1 ~~registered or certified mail shall be proved by filing the return receipt~~
2 ~~with the return.~~ a coroner.

3 (2) Service of Copy. – A copy of the subpoena served under subdivision
4 (1) of this subsection on the person named therein shall also be served
5 upon each party in the manner prescribed by Rule 5(b).

6 (f) Punishment for failure to obey. – Failure by any person without adequate
7 ~~cause~~ objection under subdivision (3) of subsection (d1) of this section to obey a
8 subpoena served upon ~~him~~ may be deemed a the person is contempt of the court from
9 which the subpoena issued. Failure by ~~a~~ any party without adequate cause to obey a
10 subpoena served upon ~~him~~ the party shall also subject ~~such~~ the party to the sanctions
11 provided in Rule 37(d)."

12 **SECTION 2.** This act is effective when it becomes law and applies to
13 actions pending or filed on or after that date.