

Rule 45 Subpoenas

Using Subpoenas to Obtain Testimony and Evidence

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Preparing and Serving Third Party Subpoenas

- Rules for subpoenas
- Required contents
- Issuing a subpoena
- Notice of subpoena
- Serving the subpoena
- Witness fees

Rules for Subpoenas & Domestic Relations

- Civil Litigation – Rule 45
- Criminal Litigation – Criminal Rule 17
- Juvenile Procedure – Juvenile Rule 17

Required Contents of Subpoenas

- (1) Every subpoena shall do all of the following:
 - (a) state the name of the court from which it is issued, the title of the action, and the case number;
 - (b) command each person to whom it is directed, at a time and place specified in the subpoena, to:
 - (i) attend and give testimony at a trial or hearing at any place within this state;
 - (ii) attend and give testimony at a deposition in the county where the deponent resides or is employed or transacts business in person, or at such other convenient place as is fixed by an order of the court;
 - (iii) produce documents, electronically stored information, or tangible things at a trial, hearing, or deposition;
 - (iv) produce and permit inspection and copying of any designated documents or electronically stored information that are in the possession, custody, or control of the person;
 - (v) produce and permit inspection and copying, testing, or sampling of and tangible things that are in the possession, custody, or control of the person; or
 - (vi) permit entry upon designated land or other property that is in the possession or control of the person for the purposes of described in Civ.R.34(A)(3).
 - (c) Set forth the text of division (C) and (D) of this rule

Subpoenas May Not Be Used Against Parties in a Case

- Only use against third-parties
- Civ. Rule 30 compels a person's attendance at a deposition
- Civ. Rule 34 compels the production of documents or electronically stored information

Notice of Subpoenas on Parties

- Civ. Rule 45(A)(3) requires prompt written notice, including a copy of its subpoena on all parties
- Rule does not require you to disclose documents received pursuant to a subpoena but these may be obtained by Civ.R.34

Signatures

- Civ. Rule 45(A)(2) permits an attorney to sign and issue a subpoena on behalf of the court in which its action is pending

Form of Subpoena – Lucas County

- Available online at the Clerk of Courts website
- Fillable PDF form
- Used for both Civil and Criminal cases
- www.co.lucas.oh.us/documentcenter/view/58770

Form

COURT OF COMMON PLEAS, LUCAS COUNTY, OHIO GENERAL DIVISION SUBPOENA - CIVIL

Plaintiff -VS- Defendant	CASE NO. _____ This subpoena is issued upon application of the: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant TYPE OF SERVICE: <input type="checkbox"/> Attorney <input type="checkbox"/> Process Server <input type="checkbox"/> Sheriff <input type="checkbox"/> Certified Mail
TO:	
YOU ARE HEREBY COMMANDED to be and appear before the Common Pleas Court, Lucas County Ohio or at the place, date, and time specified below in the above-entitled case.	
PLACE:	COURTROOM: FLOOR:
JUDGE:	DATE AND TIME:
<input type="checkbox"/> ATTEND AND GIVE TESTIMONY AT A TRIAL, HEARING, OR DEPOSITION ON THE DATE, TIME, AND AT THE PLACE SPECIFIED ABOVE. <input type="checkbox"/> ATTEND AND PRODUCE DOCUMENTS, ELECTRONICALLY STORED INFORMATION, OR TANGIBLE THINGS AT A TRIAL, HEARING, OR DEPOSITION ON THE DATE, TIME, AND AT THE PLACE SPECIFIED ABOVE. <input type="checkbox"/> PRODUCE AND PERMIT INSPECTION AND COPYING, ON THE DATE AND AT THE TIME AND PLACE SPECIFIED ABOVE, OF ANY DESIGNATED DOCUMENTS OR ELECTRONICALLY STORED INFORMATION THAT ARE IN YOUR POSSESSION, CUSTODY OR CONTROL. <input type="checkbox"/> PRODUCE AND PERMIT INSPECTION AND COPYING, TESTING OR SAMPLING, ON THE DATE AND AT THE TIME AND PLACE SPECIFIED ABOVE, OF ANY TANGIBLE THINGS THAT ARE IN YOUR POSSESSION, CUSTODY OR CONTROL. <input type="checkbox"/> PERMIT ENTRY UPON THE FOLLOWING DESCRIBED LAND OR OTHER PROPERTY, FOR THE PURPOSES DESCRIBED IN CIVIL RULE 34(A)(3), ON THE DATE AND AT THE TIME SPECIFIED ABOVE.	
DESCRIPTION OF ITEMS TO BE PRODUCED:	DESCRIPTION OF LAND OR OTHER PREMISES:
Witness my hand	ATTORNEY'S NAME, ADDRESS, AND PHONE: Erik J. Wineland Wineland Legal Services, LLC 445 Earlwood Ave., Suite 107 Oregon, OH 43061 419-469-5961 ewineland@winelandlegal.com
Deputy Clerk or Attorney Signature (pursuant to Civ. R. 45A(2))	Date: _____

NOTE: READ ALL INFORMATION ON THE SECOND PAGE OF THIS SUBPOENA.

COURT OF COMMON PLEAS, LUCAS COUNTY, OHIO CIVIL DIVISION

Plaintiff -VS- Defendant	Case No. _____ Judge _____ RETURN OF SERVICE OF SUBPOENA TYPE OF SERVICE: <input type="checkbox"/> PERSONAL <input type="checkbox"/> RESIDENCE <input type="checkbox"/> FAILURE I received this subpoena on _____ (date), and served _____ (name) by _____ (date) on _____ (date). I was unable to complete service for the following reason: _____ Served By: _____ Title: _____ Signature of Serving Party: _____
FEES Service _____ Mileage _____ Copy _____ Total _____	

RULE 45(C) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS

- (1) 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.
- (2) (a) A person commanded to produce under divisions (A)(1)(b), (ii), (iv), (v), or (vi) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.
(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b), (ii), (iv), (v), or (vi) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. 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 production commanded.
- (3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:
(a) Fails to allow reasonable time to comply;
(b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;
(c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;
(d) Subjects a person to undue burden.
- (4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.
- (5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless 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.

CIVIL RULE 45(D) DUTIES IN RESPONDING TO SUBPOENA

- (1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.
- (2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.
- (3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing, allocation of expenses and other conditions for the discovery of the electronically stored information.
- (4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation material, 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.
- (5) If information is produced in response to a subpoena that 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 receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial preparation material. If the receiving party discloses the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

Variations of Subpoenas

- Lucas County format does not provide clear guidance to a third-party of what you want from them
- The format does not provide enough space on the document to list the documents you are requesting
- Does not allow for the production of documents to occur at your law office
- Does not permit the inspection and entry upon the land of a third-party

Form

SUBPOENA (including command to produce document or object)

DISTRIBUTION (5 COPIES)
 Serve Courtroom
 Clerk Attorney
 Return

LUCAS COUNTY COMMON PLEAS COURT

Courthouse, Toledo, Ohio

Case No. _____

vs

SUBPOENA

TO PRODUCE EVIDENCE (1)
 CIVIL CRIMINAL
 DUCES TECUM

To:

YOU ARE HEREBY COMMANDED to appear in the Common Pleas Court of Lucas County, Toledo, Ohio, on the _____ day of _____ 20____

At _____ o'clock _____ M (Courtroom # _____) to attend and give testimony on behalf of _____ in the above entitled case under penalty of law.

And to bring with you (1)

_____, 20____

J. BERNIE QUILTER
 Clerk of Courts

Attorney for _____

By _____
 Deputy Clerk

Attorney Address _____

(1) Cross out if not for the production of evidence.

RECEIPT

date _____
 Received of _____
 the sum of _____
 for advance witness fee in this case

 Deputy Clerk

RETURN ON SERVICE

On the _____ day of _____
 20____ I served the above named individual by _____
 Dated _____, 20____
 Sheriff of _____ County
 By _____
 Service Fees:
 1 days' fee tendered \$ _____
 Service and Return _____
 Mileage _____
 Total _____

SUBPOENA RULE 45 AMENDMENT FOR RULES FOR CIVIL PROCEDURE PRINTED ON BACK OF ORIGINAL DOCUMENT ISSUED WITH ORIGINAL SUBPOENA

RULE 45 SUBPOENA

(C) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS

- (1) 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.
- (2) (a) A person commanded to produce under divisions (A) (1) (b) (i), (iv), or (v) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.
- (b) Subject to division (D) (2) of this rule, a person commanded to produce under divisions (A) (1) (b) (i), (iv), or (v) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objections are made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce may move at any time for an order to compel the production. 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 production commanded.
- (3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:
 - (a) Fails to allow reasonable time to comply;
 - (b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;
 - (c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. (26B) (4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;
 - (d) Subjects a person to undue burden.
- (4) Before filing a motion pursuant to division (C) (3) (d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C) (3) (d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.
- (5) If a motion is made under division (C) (3) (d) of this rule, the court shall quash or modify the subpoena unless 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.
- (D) DUTIES IN RESPONDING TO SUBPOENA
 - (1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for trial shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.
 - (2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably usable, or in any form that is reasonably usable. Unless ordered by the court or agreed to by the person subpoenaed a person responding to a subpoena need not produce the same electronically stored information in more than one form.
 - (3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing, allocation of expenses and other conditions for the discovery of the electronically stored information.
 - (4) 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.
 - (5) If information is produced in response to a subpoena that 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 receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial preparation material. If the receiving party discloses the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(July 1, 2008 Amendment)

Service of Subpoenas

- May be served by a Sheriff, Attorney or any other person designated by order of the court who is not a party and over 18 years of age
- Effectuated by:
 - Deliver a copy to the person
 - Pending the subpoena to the person
 - Leaving it at the usual place of residence
 - By certified or express mail
- Must file a return with the clerk

Witness Fee and Mileage

- For residents living in the county where the court is located fees and mileage must be tendered upon demand
- For residents living outside of the county, one days attendance and mileage must be tendered without demand
- For Civil cases, a half day attendance is \$6.00 and a full day attendance is \$12.00 ORC 52335.06
- Mileage rate cannot exceed .50.5 cents for each mile

Protection of Person's Subject to Subpoenas

- An attorney must take reasonable steps to avoid imposing an **xxxxxx** burden or expense on a person subject to a subpoena
- Person subject to a subpoena has 14 days to file a written objection with the court
 - ***xxxxxx** Tip: Always set your date to **xxxxxx** with the **xxxxxx** at 15 days prior to the date of **serving**
- If a third-party objects, you must file a motion to compel

Sanctions

- A court may hold a non-complying party in contempt
- ~~XXXXXX~~
- ~~XXXXXXXX~~