

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-09-0035
PETITION TO AMEND RULES 45 AND)
84, ARIZONA RULES OF CIVIL)
PROCEDURE) **FILED 09/02/2010**
)
)
_____)

ORDER
Rules 45 and 84, Rules of Civil Procedure

A petition having been filed proposing to amend Rules 45 and 84, Rules of Civil Procedure, and to adopt a new Form 9, Rule 84, Rules of Civil Procedure, and comments having been received, upon consideration,

IT IS ORDERED that Rule 45, Rules of Civil Procedure, be amended, and new Form 9, Rule 84, Rules of Civil Procedure be adopted, in accordance with the attachment hereto, effective January 1, 2011.

DATED this _____ day of September, 2010.

REBECCA WHITE BERCH
Chief Justice

TO:
Rule 28 Distribution
John A Furlong
Casey W Cullings

ATTACHMENT*

ARIZONA RULES OF CIVIL PROCEDURE

Rule 45. Subpoena

(a) Form; issuance.

(1) **General Requirements.** Every subpoena shall:

(A) state the name of the Arizona court from which it is issued;~~and~~

(B) state the title of the action, the name of the court in which it is pending, and its civil action number;~~and~~

(C) command each person to whom it is directed to do the following at a specified time and place:

(i) attend and give testimony ~~or to~~ at a hearing, trial, or deposition; or

(ii) produce and permit inspection, copying, testing, or sampling of designated ~~books,~~ documents, electronically stored information, or tangible things in ~~the~~that person's possession, custody or control ~~of that person;~~ or ~~to~~

(iii) permit the inspection of premises, ~~at a time and place therein specified;~~

and

(D) ~~set forth the recipients' rights and obligations under the subpoena as follows:~~

be substantially in the form set forth in Rule 84, Form 9.

~~Your Duties In Responding To This Subpoena~~

~~You have the duty to produce the documents requested as they are kept by you in the usual course of business, or you may organize the documents and label them to correspond with the categories set forth in this subpoena. See Rule 45(d)(1) of the Arizona Rules of~~

* Changes and additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

~~Civil Procedure.~~

~~If this subpoena asks you to produce and permit inspection and copying of designated books, papers, documents, tangible things, or the inspection of premises, you need not appear to produce the items unless the subpoena states that you must appear for a deposition, hearing or trial. See Rule 45(c)(2)(A) of the Arizona Rules of Civil Procedure.~~

Your Right To Object

~~The party or attorney serving the subpoena has a duty to take reasonable steps to avoid imposing an undue burden or expense on you. The Superior Court enforces this duty and may impose sanctions upon the party or attorney serving the subpoena if this duty is breached. See Rule 45(c)(1) of the Arizona Rules of Civil Procedure.~~

~~You may object to this subpoena if you feel that you should not be required to respond to the request(s) made. Any objection to this subpoena must be made within 14 days after it is served upon you, or before the time specified for compliance, by providing a written objection to the party or attorney serving the subpoena. See Rule 45(c)(2)(B) of the Arizona Rules of Civil Procedure.~~

~~If you object because you claim the information requested is privileged or subject to protection as trial preparation material, you must express the objection clearly, and support each objection with a description of the nature of the document, communication or item not produced so that the demanding party can contest the claim. See Rule 45(d)(2) of the Arizona Rules of Civil Procedure.~~

~~If you object to the subpoena in writing you do not need to~~

~~comply with the subpoena until a court orders you to do so. It will be up to the party or attorney serving the subpoena to seek an order from the court to compel you to provide the documents or inspection requested, after providing notice to you. See Rule 45(c)(2)(B) of the Arizona Rules of Civil Procedure.~~

~~If you are not a party to the litigation, or an officer of a party, the court will issue an order to protect you from any significant expense resulting from the inspection and copying commanded. See Rule 45(c)(2)(B) of the Arizona Rules of Civil Procedure.~~

~~You also may file a motion in the superior court of the county in which the case is pending to quash or modify the subpoena if the subpoena:~~

~~(i) does not provide a reasonable time for compliance;~~

~~(ii) requires a non-party or officer of a party to travel to a county different from the county where the person resides or does business in person; or to travel to a county different from where the subpoena was served; or to travel to a place farther than 40 miles from the place of service; or to travel to a place different from any other convenient place fixed by an order of a court, except that a subpoena for you to appear and testify at trial can command you to travel from any place within the state;~~

~~(iii) requires the disclosure of privileged or protected information and no waiver or exception applies; or~~

~~(iv) subjects you to an undue burden. See Rule 45(c)(3)(A) of the Arizona Rules of Civil Procedure.~~

~~If this subpoena:~~

~~(i) requires disclosure of a trade secret or other confidential~~

~~research, development, or commercial trade information; or~~

~~(ii) 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~~

~~(iii) requires a person who is not a party or an officer of a party to incur substantial travel expense;~~

~~The court may either quash or modify the subpoena, or the court may order you to appear or produce documents only upon specified conditions, if the party who served the subpoena shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that you will be reasonably compensated. See Rule 45(c)(3)(B) of the Arizona Rules of Civil Procedure.~~

~~A command to produce evidence or to permit inspection, copying, testing, or sampling, may be joined with a command to appear at trial or hearing or at deposition or may be issued separately. A subpoena may specify the form or forms in which electronically stored information is to be produced.~~

~~(2) A subpoena commanding attendance at a trial or hearing shall issue from the superior court for the county in which the hearing or trial is to be held. A subpoena for attendance at a deposition shall issue from the superior court for the county in which the case is pending. If separate from a subpoena commanding the attendance of a person, a subpoena for production, inspection, copying, testing, or sampling shall issue from the superior court for the county in which the production or inspection is to be made.~~

~~(3)(2) **Issuance by Clerk.** The clerk shall issue a signed but otherwise blank subpoena to a party requesting it, and that party shall complete the subpoena before service. The State Bar of Arizona may also issue signed subpoenas on behalf of the clerk through an online subpoena~~

issuance service approved by the Supreme Court of Arizona.

(b) — Service

~~(1) — A subpoena may be served by any person who is not a party and is not less than eighteen years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and if the person's attendance is commanded, by tendering to that person the fees for one day's attendance and the mileage allowed by law.~~

~~(2) — When the subpoena commands the appearance of a party at a trial or hearing, or is issued on behalf of the state or an officer or agency thereof, fees and mileage need not be tendered.~~

~~(3) — Copies of all subpoenas shall be served on each party.~~

~~(4) — A subpoena may be served anywhere within the state.~~

~~(5) — Proof of service when necessary shall be made by filing with the clerk of the court of the county in which the case is pending a statement of the date and manner of service and of the names of the persons served, certified by the person who made service.~~

(b) For Attendance of Witnesses at Hearing, Trial or Deposition; Objections.

(1) *Issuing Court.* A subpoena commanding a person to attend and give testimony at a hearing or trial shall issue from the superior court for the county in which the hearing or trial is to be held. A subpoena commanding a person to attend and give testimony at a deposition shall issue from the superior court for the county in which the case is pending.

(2) *Combining or Separating a Command to Produce or to Permit Inspection.* A command to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, may be joined with a command to attend and give testimony at a hearing, trial, or deposition, or may be set out in a separate subpoena.

(3) *Place of Appearance.*

(A) *Trial Subpoena.* Subject to Rule 45(e)(2)(B)(iii), a subpoena commanding a person to attend and give testimony at a trial may require the subpoenaed person to travel from anywhere within the state.

(B) *Hearing or Deposition Subpoena.* A subpoena commanding a person who is neither a party nor a party's officer to attend and give testimony at a hearing or deposition may not require the subpoenaed person to travel to a place other than:

(i) the county in which the person resides or transacts business in person;

(ii) the county in which the person is served with a subpoena, or within forty miles from the place of service; or

(iii) such other convenient place fixed by a court order.

(4) *Command to Attend a Deposition—Notice of Recording Method.* A subpoena commanding a person to attend and give testimony at a deposition shall state the method for recording the testimony.

(5) *Objections; Appearance Required.* Objections to a subpoena commanding a person to attend and give testimony at a hearing, trial, or deposition shall be made by timely motion in accordance with Rule 45(e)(2). Unless excused from doing so by the party or attorney serving a subpoena, by a court order, or by any other provision of this Rule, a person who is properly served with a subpoena is required to attend and give testimony at the date, time and place specified in the subpoena.

(e) — Protection of Persons Subject to Subpoenas

~~(1) A party or an attorney responsible for the service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The superior court of the county where 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 attorneys' fee.~~

~~(2)(A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated books, papers, documents, electronically stored information 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.~~

~~(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials 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, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from undue burden or expense resulting from the inspection, copying, testing, or sampling commanded.~~

~~(3)(A) On timely motion, the superior court of the county in which the case is pending or from which a subpoena was issued shall quash or modify the subpoena if it~~

~~(i) fails to allow reasonable time for compliance;~~

~~(ii) requires a person who is not a party or an officer of a party to travel to a place other than the county in which the person resides or transacts business in person or is served with a subpoena, or within forty miles from the place of service, or such other convenient place fixed by an order of court, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state, or~~

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

~~(iv) subjects a person to undue burden.~~

~~(B) If a subpoena~~

~~(i) requires disclosure of a trade secret or other confidential research,~~

~~development, or commercial information, or~~

~~(ii) 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~~

~~(iii) requires a person who is not a party or an officer of a party to incur substantial travel expense.~~

~~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.~~

(c) For Production of Documentary Evidence or for Inspection of Premises; Duties in Responding to Subpoena; Objections; Production to Other Parties.

(1) *Issuing Court.* If separate from a subpoena commanding a person to attend and give testimony at a hearing, trial or deposition, a subpoena commanding a person to produce designated documents, electronically stored information or tangible things, or to permit the inspection of premises, shall issue from the superior court for the county in which the production or inspection is to be made.

(2) *Specifying the Form for Electronically Stored Information.* A subpoena may specify the form or forms in which electronically stored information is to be produced.

(3) *Appearance Not Required.* A person commanded to produce documents, electronically stored information or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless the subpoena commands the person to attend and give testimony at a hearing, trial or deposition.

(4) *Production of Documents.* 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.

(5) *Objections.*

(A) *Form and Time for Objection.*

(i) A person commanded to produce documents, electronically stored information or tangible items, or to permit the inspection of premises, may serve upon the party or attorney serving the subpoena an objection to producing, inspecting, copying, testing or sampling any or all of the designated materials; to inspecting the premises; or to producing electronically stored information in the form or forms requested. The objection shall set forth the basis for the objection, and shall include the name, address, and telephone number of the person, or the person's attorney, serving the objection.

(ii) The objection shall be served upon the party or attorney serving the subpoena before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.

(iii) An objection also may be made to that portion of a subpoena that commands the person to produce and permit inspection, copying, testing, or sampling if it is joined with a command to attend and give testimony at a hearing, trial or deposition, but making such an objection does not suspend or modify a person's obligation to attend and give testimony at the date, time and place specified in the subpoena.

(B) *Procedure After an Objection Is Made.*

(i) If an objection is made, the party or attorney serving the subpoena shall not be entitled to compliance with those portions of the subpoena that are subject to the objection, except pursuant to an order of the issuing court.

(ii) The party serving the subpoena may move for an order under Rule 37(a) to compel compliance with the subpoena. The motion shall comply with Rule 37(a)(2)(C), and shall be served on the subpoenaed person and all other parties in accordance with Rule 5(c).

(iii) Any order to compel entered by the court shall protect any person who is neither a party nor a party's officer from undue burden or expense resulting from the production, inspection, copying, testing, or sampling commanded.

~~(d) — 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.~~

(C) Claiming Privilege or Protection.

~~(2)(A)(i)~~ 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.

~~(B)(ii)~~ If a person contends that information that is subject to a claim of privilege or of protection as trial-preparation material has been inadvertently produced in response to a subpoena, 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 and 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. If the receiving party disclosed 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.

(6) Production to Other Parties. Unless otherwise stipulated by the parties or ordered by the court, documents, electronically stored information and tangible things that are obtained in response to a subpoena shall be made available to all other parties in accordance with Rule 26.1(a) and (b).

(d) Service.

(1) General Requirements; Tendering Fees. A subpoena may be served by any person who is not a party and is not less than eighteen years of age. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance,

tendering to that person the fees for one day's attendance and the mileage allowed by law.

(2) **Exceptions to Tendering Fees.** When the subpoena commands the appearance of a party at a trial or hearing, or is issued on behalf of the state or any of its officers or agencies, fees and mileage need not be tendered.

(3) **Service on Other Parties.** A copy of every subpoena shall be served on every other party in accordance with Rule 5(c).

(4) **Service within the State.** A subpoena may be served anywhere within the state.

(5) **Proof of Service.** Proving service, when necessary, requires filing with the clerk of the court of the county in which the case is pending a statement showing the date and manner of service and of the names of the persons served. The statement must be certified by the person who served the subpoena.

~~(e) **Contempt.** Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the superior court of the county from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a non-party to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3).~~

(e) Protection of Persons Subject to Subpoenas; Motion to Quash or Modify

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or an attorney responsible for the service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The issuing court shall enforce this duty and impose upon the party or attorney who breaches this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorneys' fee.

(2) **Quashing or Modifying a Subpoena.**

(A) **When Required.** On the timely filing of a motion to quash or modify a subpoena, the superior court of the county in which the case is pending or from which a subpoena was issued shall quash or modify the subpoena if:

(i) it fails to allow a reasonable time for compliance;

(ii) it commands a person who is neither a party nor a party's officer to travel to a location other than the places specified in Rule 45(b)(3)(B);

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

(iv) it subjects a person to undue burden.

(B) *When Permitted.* On the timely filing of a motion to quash or modify a subpoena, and to protect a person subject to or affected by a subpoena, the superior court of the county in which the case is pending or from which a subpoena was issued may quash or modify the subpoena if:

(i) it requires disclosing a trade secret or other confidential research, development, or commercial information;

(ii) it requires disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party;

(iii) it requires a person who is neither a party nor a party's officer to incur substantial travel expense; or

(iv) justice so requires.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(e)(2)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions, including any conditions and limitations set forth in Rule 26(c), as the court deems appropriate:

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

(ii) if the person's travel expenses or the expenses resulting from the production are at issue, the party or attorney serving the subpoena assures that the subpoenaed person will be reasonably compensated.

(D) *Time for Motion.* A motion to quash or modify a subpoena must be filed

before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.

(E) *Service of Motion.* Any motion to quash or modify a subpoena shall be served on the party or the attorney serving the subpoena in accordance with Rule 5(c). The party or attorney who served the subpoena shall serve a copy of any such motion on all other parties in accordance with Rule 5(c).

~~(f) **Failure to Produce Documentary Evidence.** Upon failure to produce documentary evidence as provided in this Rule, secondary evidence of the books, papers, documents or tangible things may be given at trial.~~

(f) **Contempt.** The issuing court may hold in contempt a person, who having been served, fails without adequate excuse to obey a subpoena. A failure to obey must be excused if the subpoena purports to require a person who is neither a party nor a party's officer to attend or produce at a location other than the places specified in Rule 45(b)(3)(B).

~~(g) **ADA Notification.** The subpoena shall state that "Requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least 3 working days in advance of a scheduled court proceeding."~~

(g) **Failure to Produce Evidence.** If a person fails to produce a document, electronically stored information, or a tangible thing requested in a subpoena, secondary evidence of the item's content may be offered in evidence at trial.

Rule 84. Form 9 (Form of Subpoena)

Name:
Address:
City:
State:
Phone:

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF _____

Plaintiff

vs.

Defendant

) Case No.:
)
) **SUBPOENA IN A CIVIL CASE**
)
)
)
)
)
)

TO: _____
(Name of Recipient)

[Select one or more of the following, as appropriate:]

For Attendance of Witnesses at Hearing or Trial

YOU ARE COMMANDED to appear in the Superior Court of the State of Arizona, in and for the County of _____, at the place, date and time specified below to testify at a hearing trial in the above cause:

Judicial Officer:
Courtroom:
Address:
Date:
Time:

For Taking of Depositions

YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above cause:

Place of Deposition:
Address:
Date:
Time:
Method of Recording:

For Production of Documentary Evidence or Inspection of Premises

YOU ARE COMMANDED, to produce and permit inspection, copying, testing, or sampling of the following designated documents, electronically stored information or tangible things, or to permit the inspection of premises:

[designation of documents, electronically stored information or tangible things, or the location of the premises to be inspected]

at the place, date, and time specified below:

Place of Production or Inspection:

Address:

Date:

Time:

[The following text must be included in every subpoena:]

Your Duties in Responding To This Subpoena

Attendance at a Trial. If this subpoena commands you to appear at a trial, you must appear at the place, date and time designated in the subpoena unless you file a timely motion with the court and the court quashes or modifies the subpoena. *See* Rule 45(b)(5) and Rule 45(e)(2) of the Arizona Rules of Civil Procedure. *See also* “Your Right To Object To This Subpoena” section below. Unless a court orders otherwise, you are required to travel to any part of the state to attend and give testimony at a trial. *See* Rule 45(b)(3)(A) of the Arizona Rules of Civil Procedure.

Attendance at a Hearing or Deposition. If this subpoena commands you to appear at a hearing or deposition, you must appear at the place, date and time designated in this subpoena unless either: (1) you file a timely motion with the court and the court quashes or modifies the subpoena; or (2) you are not a party or a party’s officer and this subpoena commands you to travel to a place other than: (a) the county in which you reside or you transact business in person; or (b) the county in which you were served with the subpoena or within forty (40) miles from the place of service; or (c) such other convenient place fixed by a court order. *See* Rule 45(b)(3)(B) and Rule 45(e)(2)(A)(ii) of the Arizona Rules of Civil Procedure. *See also* “Your Right To Object To This Subpoena” section below.

Production of Documentary Evidence or Inspection of Premises. If this subpoena commands you to produce and permit inspection, copying, testing or sampling of designated documents, electronically stored information, or tangible things, you must make the items available at the place, date and time designated in this subpoena, and in the case of electronically stored information, in the form or forms requested, unless you provide a good faith written objection to the party or attorney who served the subpoena. *See* Rule 45(c)(5) of the Arizona Rules of Civil Procedure. *See also* “Your Right To Object To This Subpoena” section below. Similarly, if this subpoena commands you to make certain premises available for inspection, you must make the designated premises available for inspection on the date and time designated in this subpoena unless you provide a good faith written objection to the party or attorney who served the subpoena. *See* Rule 45(c)(5) of the Arizona Rules of Civil Procedure. *See also* “Your Right to Object to This Subpoena” section below.

You should note that a command to produce certain designated materials, or to permit the inspection of premises, *may* be combined with a command to appear at a trial, hearing or deposition. *See* Rule 45(b)(2) of the Arizona Rules of Civil Procedure. You do not, however,

need to appear in person at the place of production or inspection unless the subpoena *also* states that you must appear for and give testimony at a hearing, trial or deposition. *See* Rule 45(c)(3) of the Arizona Rules of Civil Procedure.

If the subpoena commands you to produce documents, you have the duty to produce the designated documents as they are kept by you in the usual course of business, or you may organize the documents and label them to correspond with the categories set forth in the subpoena. *See* Rule 45(c)(4) of the Arizona Rules of Civil Procedure.

Your Right To Object To This Subpoena

Generally. If you have concerns or questions about this subpoena, you should first contact the party or attorney who served the subpoena. The party or attorney serving the subpoena has a duty to take reasonable steps to avoid imposing an undue burden or expense on you. The superior court enforces this duty and may impose sanctions upon the party or attorney serving the subpoena if this duty is breached. *See* Rule 45(e)(1) of the Arizona Rules of Civil Procedure.

Procedure for Objecting to a Subpoena for Attendance at a Hearing, Trial or Deposition. If you wish to object to a subpoena commanding your appearance at a hearing, trial or deposition, you must file a motion to quash or modify the subpoena with the court to obtain a court order excusing you from complying with this subpoena. *See* Rules 45(b)(5) and 45(e)(2) of the Arizona Rules of Civil Procedure. The motion must be filed in the superior court of the county in which the case is pending or in the superior court of the county from which the subpoena was issued. *See* Rule 45(e)(2)(A) and (B) of the Arizona Rules of Civil Procedure. The motion must be filed before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier. *See* Rule 45(e)(2)(D) of the Arizona Rules of Civil Procedure. You must send a copy of any motion to quash or modify the subpoena to the party or attorney who served the subpoena. *See* Rules 45(e)(2)(E) of the Arizona Rules of Civil Procedure.

The court *must* quash or modify a subpoena:

- (1) if the subpoena does not provide a reasonable time for compliance;
- (2) unless the subpoena commands your attendance at a trial, if you are not a party or a party's officer and if the subpoena commands you to travel to a place other than: (a) the county in which you reside or transact business in person; (b) the county in which you were served with a subpoena, or within forty (40) miles from the place of service; or (c) such other convenient place fixed by a court order; or
- (3) if the subpoena requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (4) if the subpoena subjects you to undue burden.

See Rule 45(e)(2)(A) of the Arizona Rules of Civil Procedure.

The court *may* quash or modify a subpoena:

- (1) if the subpoena requires you to disclose a trade secret or other confidential research, development or commercial information;

- (2) if you are an unretained expert and the subpoena requires you to disclose your opinion or information resulting from your study that you have not been requested by any party to give on matters that are specific to the dispute;
- (3) if you are not a party or a party's officer and the subpoena would require you to incur substantial travel expense; or
- (4) if the court determines that justice requires the subpoena to be quashed or modified.

See Rule 45(e)(2)(B) of the Arizona Rules of Civil Procedure.

In these last four circumstances, a court may, instead of quashing or modifying a subpoena, order your appearance or order the production of material under specified conditions if: (1) the serving party or attorney shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and (2) if your travel expenses or the expenses resulting from the production are at issue, the court ensures that you will be reasonably compensated. See Rule 45(e)(2)(C) of the Arizona Rules of Civil Procedure.

Procedure for Objecting to Subpoena For Production of Documentary Evidence. If you wish to object to a subpoena commanding you to produce documents, electronically stored information or tangible items, or to permit the inspection of premises, you may send a good faith written objection to the party or attorney serving the subpoena that objects to: (1) producing, inspecting, copying, testing or sampling any or all of the materials designated in the subpoena; (2) inspecting the premises; or (3) producing electronically stored information in the form or forms requested. You must send your written objection to the party or attorney who served the subpoena before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier. See Rule 45(c)(5)(A)(ii) of the Arizona Rules of Civil Procedure.

If you object because you claim the information requested is privileged, protected, or subject to protection as trial preparation material, you must express the objection clearly, and support each objection with a description of the nature of the document, communication or item not produced so that the demanding party can contest the claim. See Rule 45(c)(5)(C) of the Arizona Rules of Civil Procedure.

If you object to the subpoena in writing, you do not need to comply with the subpoena until a court orders you to do so. It will be up to the party or attorney serving the subpoena to first personally consult with you and engage in good faith efforts to resolve your objection and, if the objection cannot be resolved, to seek an order from the court to compel you to provide the documents or inspection requested, after providing notice to you. See Rule 45(c)(5)(B) of the Arizona Rules of Civil Procedure.

If you are not a party to the litigation, or a party's officer, the court will issue an order to protect you from any significant expense resulting from the inspection and copying commanded. See Rule 45(c)(6)(B) of the Arizona Rules of Civil Procedure.

Instead of sending a written objection to the party or attorney who served the subpoena, you also have the option of raising your objections in a motion to quash or modify the subpoena. See Rule 45(e)(2) of the Arizona Rules for Civil Procedure. The procedure and grounds for doing so are described in the section above entitled "Procedure for Objecting to a Subpoena for Attendance at a Hearing, Trial or Deposition."

If the subpoena *also* commands your attendance at a hearing, trial or deposition, sending a written objection to the party or attorney who served the subpoena does not suspend or modify your obligation to attend and give testimony at the date, time and place specified in the subpoena. See Rule 45(c)(5)(A)(iii) of the Arizona Rules of Civil Procedure. If you wish to object to the portion of this subpoena requiring your attendance at a hearing, trial or deposition, you must file a motion to quash or modify the subpoena as described in the section above entitled "Procedure for Objecting to a Subpoena for Attendance at a Hearing, Trial or Deposition." See Rule 45(b)(5) and 45(c)(5)(iii) of the Arizona Rules of Civil Procedure.

ADA Notification

Requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least 3 working days in advance of a scheduled court proceeding.

[Optional: this form may include the provisions of Rule 64.1(b)(2) of the Arizona Rules of Civil Procedure].

SIGNED AND SEALED this date _____

_____, CLERK

By: _____
Deputy Clerk

Certificate of service: