

SUPREME COURT OF ARIZONA

In the Matter of ) Arizona Supreme Court  
) No. R-12-0022  
PETITION TO AMEND RULE 45 )  
AND TO ADD NEW RULE 45.1, ARIZONA )  
RULES OF CIVIL PROCEDURE )  
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\_\_\_\_\_ ) **FILED 08/30/2012**

**ORDER  
DELETING RULE 30(h), AMENDING RULE 45,  
AND PROMULGATING RULE 45.1, ARIZ. R. CIV. P.**

A petition having been filed proposing to amend the rules pertaining to interstate discovery procedures, and comments having been received, upon consideration,

IT IS ORDERED that Rule 30(h), Ariz. R. Civ. P., be deleted, Rule 45, Ariz. R. Civ. P., be amended, and Rule 45.1, Ariz. R. Civ. P., be promulgated, all in accordance with the attachment hereto, effective January 1, 2013.

DATED this 30th day of August, 2012.

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REBECCA WHITE BERCH  
Chief Justice

TO:  
Rule 28 Distribution  
Timothy J Berg  
Barbara A Atwood  
Aaron Nash  
John A Furlong

## ATTACHMENT<sup>1</sup>

### ARIZONA RULES OF CIVIL PROCEDURE

#### Rule 30(h). ~~Depositions for foreign jurisdiction~~ (Deleted)

~~When an action is pending in a jurisdiction foreign to the State of Arizona and a party or a party's attorney wishes to take a deposition in this state, it may be done and a subpoena or subpoena duces tecum may issue therefor from the Superior Court of this state. The party or attorney shall file, as a civil action, an application, under oath, captioned as is the foreign action, which contains the following information:~~

~~(a) The caption of the case and the court in which it is pending including the names of all parties and the names of the attorneys for the parties;~~

~~(b) References to the law of the jurisdiction in which the action is pending which authorized the taking of the deposition in this state and such facts as, under that law, must appear to entitle the party to take the deposition and have a subpoena issued for the attendance of the witness;~~

~~(c) A certified copy of the notice of taking deposition, order of the court authorizing the deposition, commission or letters rogatory or such other pleadings as, under the law of the foreign jurisdiction, are necessary in order to take the deposition;~~

~~(d) A description of the notice given to other parties and a description of the service of the application to be made upon other parties to the action.~~

~~Upon the filing of the application, the clerk of the Superior Court of the county in which the deposition is to be taken shall forthwith issue the subpoena or subpoena duces tecum as requested by the application. An affidavit of service of the application upon all other parties to the civil action shall be filed with the clerk of the court.~~

~~No further proceedings in the Superior Court of the State of Arizona are required but any party or the witness may make such motions as are appropriate under the Arizona Rules of Civil Procedure.~~

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<sup>1</sup> Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

## **Rule 45. Subpoena**

(a) [No change in text.]

### **(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. Except as otherwise provided in Rule 45.1, 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)-(5) [No change in text.]

(c)-(g) [No change in text.]

## **Rule 45.1. Interstate Depositions and Discovery**

### **(a) Definitions. In this Rule:**

(1) Foreign jurisdiction means a state other than this state.

(2) Foreign subpoena means a subpoena issued under authority of a court of record of a foreign jurisdiction.

(3) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(4) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

(5) Subpoena means a document, however denominated, issued under authority of a court of record requiring a person to:

(A) attend and give testimony at a deposition;

(B) produce and permit inspection and copying of designated books, documents, records, electronically stored information; or tangible things in the possession, custody, or control of the person; or

(C) permit inspection of premises under the control of the person.

**(b) Issuance of Subpoena.**

(1) To request issuance of a subpoena under this rule, a party must present a foreign subpoena to a clerk of court in the county in which discovery is sought to be conducted in this state. The foreign subpoena must include the following phrase below the case number: “For the Issuance of an Arizona Subpoena Under Ariz. R. Civ. P. 45.1.” A request for the issuance of a subpoena under this rule does not constitute an appearance in the courts of this state.

(2) When a party presents a foreign subpoena to a clerk of court in this state, the clerk shall promptly issue a signed but otherwise blank subpoena to the party requesting it, and that party shall complete the subpoena before service.

(3) A subpoena under subsection (b)(2) must:

(A) state the name of the Arizona court issuing it;

(B) bear the caption and case number of the out-of-state case to which it relates, identifying (before the case number) the foreign jurisdiction and court where the case is pending;

(C) accurately incorporate the discovery requested in the foreign subpoena;

(D) contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel;

(E) comply with the form specified in Rule 45(a)(1) and otherwise required in Rule 45; and

(F) not request discovery exceeding the discovery authorized in Rule 45.

**(c) Service of Subpoena.** A subpoena issued by a clerk of court under subsection (b) of this rule must be served in compliance with Rule 45(d).

**(d) Deposition, Production, and Inspection.** Rule 45 applies to subpoenas issued under subsection (b) of this rule. Depositions and other discovery taken pursuant to this rule shall be conducted consistent with, and subject to the limitations in, the Arizona Rules of Civil Procedure, including but not limited to Rules 26, 28, 30, 31, and 32.

**(e) Motion or Application to a Court.** A motion or application to the court for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court under subsection (b) must comply with the rules or statutes of this state and be filed with the court in the county in which discovery is to be conducted. Any such motion or application must be filed as a separate civil action bearing the caption that appears on the subpoena. The following phrase must appear below the case number of the newly filed action: “Motion or Application Related to a Subpoena Issued Under Ariz. R. Civ. P. 45.1.” Any later motion or application relating to the same subpoena must be filed in the same action.

### **Comment to 2012 Amendment**

This rule derives from the Uniform Interstate Depositions and Discovery Act, 13 Pt.2 Uniform Laws Annotated 59 (West 2011 Supp.). In applying and construing this rule, consideration should be given to the need to promote uniformity of the law with respect to its subject matter among states that adopt or enact it.

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