

**9-217. Subpoena.**

*[For use with Rule 5-511 NMRA in the District Court]*

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ JUDICIAL DISTRICT

STATE OF NEW MEXICO

v.

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

\_\_\_\_\_, Defendant

**SUBPOENA**

**SUBPOENA FOR<sup>1</sup>**

**APPEARANCE OF PERSON FOR**

**STATEMENT**  **DEPOSITION**  **TRIAL**

**SUBPOENA FOR DOCUMENTS OR OBJECTS<sup>2</sup>**

**INSPECTION OF PREMISES<sup>2</sup>**

TO: \_\_\_\_\_

YOU ARE HEREBY COMMANDED TO APPEAR as follows: PLACE:

\_\_\_\_\_

DATE: \_\_\_\_\_, \_\_\_\_\_ TIME: \_\_\_\_\_ [a.m.] [p.m.]

to:

testify at the taking of a deposition in the above case

testify at trial

permit inspection of the following described documents or objects \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

permit the inspection of the premises located at:

\_\_\_\_\_ (*address*)

give a statement.

YOU ARE ALSO COMMANDED to bring with you the following document[s] or object[s]

\_\_\_\_\_  
\_\_\_\_\_

IF YOU DO NOT COMPLY WITH THIS SUBPOENA you may be held in contempt of court and punished by fine or imprisonment.

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

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

**RETURN FOR COMPLETION BY SHERIFF OR DEPUTY**

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, [a

witness fee in the amount of \$ \_\_\_\_\_ and mileage in the amount of \$ \_\_\_\_\_]³.

\_\_\_\_\_  
Deputy sheriff

**RETURN FOR COMPLETION BY OTHER PERSON  
MAKING SERVICE**

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, [a witness fee in the amount of \$ \_\_\_\_\_ and mileage as provided by law in the amount of \$ \_\_\_\_\_]³.

\_\_\_\_\_  
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 of 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

**TO BE PRINTED ON EACH SUBPOENA**

1. A command to produce evidence or to permit inspection may be joined with a command to appear for a deposition or trial.

2. A person commanded to produce and permit inspection and copying of designated books, papers, documents 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.
3. Payment of per diem and mileage for subpoenas issued by the district attorney, attorney general, public defender or an attorney appointed by the court, district attorney, attorney general or public defender is made pursuant to regulations of the Administrative Office of the Courts. The bracketed language should be deleted if the subpoena is issued by the state or the public defender.

A subpoena by a private party or corporation must be accompanied by the payment of one full day's per diem. Mileage must also be tendered at the time of service of the subpoena as provided by the Per Diem and Mileage Act.

4. To be completed only if the subpoena is commanding production of documents and things or inspection of premises before trial. If the subpoena is commanding production of documents and things or inspection of premises before trial, it must be served on each party in the manner provided by Rules 5-103, 5-103.1 or 5-103.2. If service is by a party, an affidavit of service must be used instead of a certificate of service.

### **PROTECTION OF PERSONS SUBJECT TO SUBPOENAS**

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 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 attorney's fee.

A person commanded to produce and permit inspection and copying of designated books, papers, documents 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.

Subject to Subparagraph (2) of Paragraph D below, 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 such time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena written objection to

inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises 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. Such 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 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 to a place more than one hundred miles from the place where that person resides, is employed or regularly transacts business in person, except as provided below, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (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, or
- (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 15, 2000.]