Rule 45. Subpoena

45.01 For Attendance of Witnesses; Form; Issuance

(a) Form. Every subpoena shall

(1) state the name of the court from which it is issued; and

(2) state the title of the action, the name of the court in which it is pending, and its court file number, if one has been assigned; and

(3) command each person to whom it is directed to attend and give testimony or to produce and permit inspection, copying, testing, or sampling of designated books, documents, electronically stored information, or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and

(4) contain a notice to the person to whom it is directed advising that person of the right to reimbursement for certain expenses pursuant to Rule 45.03(d), and the right to have the amount of those expenses determined prior to compliance with the subpoena.

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.

(b) Subpoenas Issued in Name of Court. A subpoena commanding attendance at a trial or hearing, for attendance at a deposition, or for production, or inspection, copying, testing, or sampling shall be issued in the name of the court where the action is pending.

(c) Issuance by Court or by Attorney. The court administrator shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney as officer of the court may also issue and sign a subpoena on behalf of the court where the action is pending.

(d) Subpoena for Taking Deposition, Action Pending in Foreign Jurisdiction. A subpoena for attendance at a deposition to be taken in Minnesota for an action pending in a foreign jurisdiction may be issued by the court administrator or by an attorney admitted to practice in Minnesota in the name of the court for the county in which the deposition will be taken, provided that the deposition is allowed and has been properly noticed under the law of the jurisdiction in which the action is pending. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, electronically stored information, or tangible things that constitute or contain matters within the scope of the examination permitted by the law of the jurisdiction in which the action is pending, but in that event, the subpoena will be subject to the provisions of Rules 26.03 and 45.03(b)(2).

(e) Notice to Parties. Any use of a subpoena, other than to compel attendance at a trial, without prior notice to all parties to the action, is improper and may subject the party or attorney issuing it, or on whose behalf it was issued, to sanctions.

(Amended effective January 1, 2006; amended effective July 1, 2007.)

45.02 Service

(a) Who May Serve and Method of Service; Timing of Notice. A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person or by leaving a

copy at the person's usual place of abode with some person of suitable age and discretion then residing therein 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. When the subpoena is issued on behalf of the state of Minnesota or an officer or agency thereof, fees and mileage need not be tendered. A subpoena commanding production for inspection, copying, testing, or sampling of designated books, papers, documents, or electronically stored information, tangible things, or inspection of premises, must be served on the subject of the subpoena, and notice of the required production must be served in the manner prescribed by Rule 5.02 on each party to the action, at least seven days before the required production.

(b) Statewide Service. Subject to Rule 45.03(c)(1)(B), a subpoena may be served at any place within the state of Minnesota.

(c) Proof of Service. Proof of service when necessary shall be made by filing with the court administrator of the court on behalf of which the subpoena is issued a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.

(d) Compensation of Subpoenaed Person. The party serving the subpoena shall make arrangements for reasonable compensation as required under Rule 45.03(d) prior to the time of commanded production or the taking of such testimony. If such reasonable arrangements are not made, the person subpoenaed may proceed under Rule 45.03(c) or 45.03(b)(2). The party serving the subpoena may, if objection has been made, move upon notice to the deponent and all parties for an order directing the amount of such compensation at any time before the taking of the deposition. Any amounts paid shall be subject to the provisions of Rule 54.04.

(Amended effective January 1, 2006; amended effective July 1, 2007; amended effective July 1, 2010.)

45.03 Protection of Persons Subject to Subpoenas

(a) Requirement to Avoid Undue Burden. 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.

(b) Subpoena for Document Production Without Deposition.

(1) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, 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.

(2) Subject to Rule 45.04(b), 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 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, inspection, copying, testing, or sampling. 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, copying, testing, or sampling commanded.

(c) Motion to Quash or Modify Subpoena.

(1) On timely motion, the court on behalf of which a subpoena was issued shall quash or modify the subpoena if it

(A) fails to allow reasonable time for compliance;

(B) requires a person who is not a party or an officer of a party to travel to a place outside the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of Rule 45.03(c)(2)(C), such a person may in order to attend trial be commanded to travel from any such place within the state of Minnesota, or

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

(D) subjects a person to undue burden.

(2) If a subpoena

(A) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(B) 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

(C) requires a person who is not a party or an officer of a party to incur substantial expense to travel outside the county where that person resides, is employed or regularly transacts business in person to attend trial, 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.

(d) Compensation of Certain Non-Party Witnesses. Subject to the provisions of Rules 26.02 and 26.03, a witness who is not a party to the action or an employee of a party [except a person appointed pursuant to Rule 30.02(f)] and who is required to give testimony or produce documents relating to a profession, business, or trade, or relating to knowledge, information, or facts obtained as a result of activities in such profession, business, or trade, is entitled to reasonable compensation for the time and expense involved in preparing for and giving such testimony or producing such documents.

(Added effective January 1, 2006; amended effective July 1, 2007.)

45.04 Duties in Responding to Subpoena

(a) Form of Production; Participation of Other Parties; Rescheduling.

(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) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(3) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(4) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26.02(b)(3). The court may specify conditions for the discovery.

(5) The party issuing a subpoena for production or inspection shall make available to all parties any books, papers, documents or electronically stored information obtained from any person following issuance of a subpoena to that person. If production or inspection is made at a time or place, in a manner, or to an extent and scope, different from that commanded in the subpoena, the party issuing the subpoena must give notice to all parties to the action at least seven days in advance of the rescheduled production. Any party may attend and participate in any noticed or rescheduled production or inspection and may also require production or inspection within the scope of the subpoena for inspection or copying.

(b) Claims of Privilege.

(1) 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.

(2) 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 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.

(3) For depositions taken in Minnesota under Rule 45.06 in connection with litigation pending in another jurisdiction, the procedure for assertion of claims of privilege is governed by Rule 45.04(b). The law of privilege, or other questions of substantive law, to be applied in such a deposition depends on the application of Minnesota's conflict-of-law principles.

(Amended effective January 1, 2006; amended effective July 1, 2007; amended effective July 1, 2010; amended effective July 1, 2021.)

Advisory Committee Comment - 2021 Amendments

Rule 45.04 is amended to clarify the application of privilege law in depositions taken under Rule 45.06 for depositions taken for litigation pending in a jurisdiction outside of Minnesota. The procedure for obtaining or issuance of a subpoena under Rule 45.06 is governed by Minnesota law, but the rule is amended to make it clear that in situations involving a conflict of substantive

law, such as whether a question is governed by a recognized privilege, resolution depends on the application of Minnesota's conflict-of-law principles. This analysis might, in some cases, require the application of another jurisdiction's substantive law. See, e.g., Milkovich v. Saari, 295 Minn. 155, 161-71, 203 N.W.2d 408, 414-17 (1973); see generally William B. Danforth, Developments in the Minnesota Law of Conflict of Laws, 8 Wm. Mitchell L. Rev. 785 (1982).

Rule 45.06 itself is amended to provide for the issuance of a subpoena by a Minnesota attorney of record in a case, obviating issuance of the subpoena by the court administrator. This procedure is already allowed for subpoenas in cases pending in Minnesota state courts. The rule does not modify in any way the requirements for issuance of a subpoena; it merely allows a Minnesota attorney to sign and issue it if those requirements are met.

45.05 Contempt

Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court on behalf of which the subpoena was 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 Rule 45.03(c)(1)(B).

(Added effective January 1, 2006.)

45.06 Interstate Depositions and Discovery

(a) Definitions. In Rule 45.06:

(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, 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 by the court administrator under this section, a party must submit a foreign subpoena to the district court administrator of the court in the county in which discovery is sought to be conducted in this state. A request for the issuance of a subpoena under this act does not constitute an appearance in a proceeding pursuant to Rule 5.01 of these rules, but does subject the filer to the jurisdiction of the court and to Minnesota law and rules, including the Minnesota Rules of Professional Conduct. Alternatively, an attorney admitted to practice in

Minnesota as an officer of the court may issue and sign a subpoena pursuant to this rule and Rule 45.01(c).

(2) A district court administrator in this state, upon submission of a foreign subpoena, shall, in accordance with that court's procedure, promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

(3) A subpoena under Rule 45.06(b)(1) or (2) must:

(A) incorporate the terms used in the foreign subpoena; and

(B) 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.

(c) Service of Subpoena. A subpoena issued under Rule 45.06(b) must be served in compliance with Rule 45.02 of these rules.

(d) Deposition, Production, and Inspection. All Minnesota rules and statutes applicable to compliance with subpoenas to attend and give testimony, produce designated books, documents, records, electronically stored information, or tangible things, or permit inspection of premises apply to subpoenas issued under Rule 45.06(b). Resolution of substantive issues about privilege, competence of a witness, or the obligation of a witness to answer particular questions depends on the application of Minnesota's conflict-of-law principles under Rule 45.04(b)(3).

(e) Application To Court. An application to the court for a protective order or to enforce, quash, or modify a subpoena issued by a district court administrator under Rule 45.06(b) must comply with the rules and statutes of this state and be submitted to the district court in the county in which discovery is to be conducted.

(Added effective July 1, 2015; amended effective July 1, 2021.)

Advisory Committee Comment - 2006 Amendment

Rule 45 is replaced, virtually in its entirety, by its federal counterpart. Provisions of the federal rule that do not apply in state court practice are deleted or replaced by comparable provisions consistent with current Minnesota practice. The new rule recognizes the scope of the subpoena power in the existing rule and does not significantly change it. Portions of the federal rule not relevant to state practice have been deleted. The rule adopts the language of the federal rules referring to the court where an action is pending. Because Minnesota allows actions to be commenced by service, the action is "pending" before the court named in the caption after service even though it is not on file with the court. See Minn. R. Civ. P. 3.01. The rule is not intended to change the existing practice that permitted subpoenas to be issued even though an action had not been filed.

The most significant "new" provisions of the rule are the authorization of issuance of subpoenas by attorneys as officers of the court (Rule 45.01(c)) and the adoption of a mechanism for requiring production of documents without requiring a deposition to be conducted (Rule 45.01(a)(3)). The rule retains the provisions of former Rule 45.06, which provide for expenses of non-parties put to particular expense of complying with a subpoena. Those provisions are now bifurcated, with portions relating to notice of the right to costs in Rule 45.01, dealing with the form of subpoenas, and the provision requiring payment in Rule 45.03(d). Additionally, Rule 45.03(a) places an affirmative duty on the attorney issuing or serving a subpoena to avoid imposing undue burden or expense on the person receiving it.

Advisory Committee Comment - 2007 Amendment

Rule 45.01 is amended to add a process, in Rule 45.01(d), for issuance of a subpoena to compel attendance in Minnesota at a deposition in an action pending in another jurisdiction. The procedure in this section essentially follows that contained in former Rule 45.04(a), which was abrogated in 2005.

Rule 45.01(e) is a new rule intended to clarify the existing rule because of continuing confusion over the need to provide notice to all parties before issuance of a subpoena for pretrial discovery. Existing Rule 45.02(a) explicitly requires notice, but that provision has been overlooked in a number of instances reported to the advisory committee. Accordingly, Rule 45.01(e) is included to make the requirement of notice more prominent and to make it clearly apply to every use of a subpoena prior to trial. The rule does not specify the form of notice required, but it would normally be accomplished by providing either a copy of the subpoena at the time it is served on the non-party or by unambiguous notice in some other way that a non-party is being subpoenaed.

Rule 45.02(d) is amended to establish an explicit deadline for making arrangements for compensation by a party receiving a subpoena that requires only the production of documents without a deposition. By adding the words "commanded production or" to the first sentence, the rule applies explicitly to this situation, and establishes the same deadline as for a deposition.

Rule 45 is also amended to include provisions for use of subpoenas to obtain discovery of electronically stored information. These amendments relate to the discovery of electronically stored information, and generally just incorporate into Rule 45 for subpoena practice the procedures of Rules 26, 30, 33, 34, and 37 for discovery from parties.

Advisory Committee Comment - 2010 Amendment

Rule 45 is amended in several ways to prevent misuse of subpoenas. These amendments are consistent with the purpose of two provisions of the existing rule. Under Rule 45.01(e), notice of issuance of a subpoena is required in order that all parties have an opportunity to participate in the production and to curtail use of a subpoena for ex parte investigation. Rule 45.03(a) explicitly recognizes that the costs of discovery from non-parties should be borne, to the extent feasible, by the parties to the action and the burden on subpoenaed parties should be minimized. The amendment in 2010 adds language to Rule 45.02(a) that is intended to make even more explicit the proper notice for use of a subpoena for production of documents, etc.

Rule 45.04(a) is amended by the addition of paragraph (5) that is intended to reinforce that the proper use of a subpoena for production is to obtain information for use by all parties to the litigation, and not for ex parte use by a single party. Once a subpoena is issued to a non-party, information produced or testimony by that non-party must be made available to all parties. The new language also facilitates the orderly production of information. Rule 45 was amended in 2006 to permit use of subpoenas to require production of documents and other information from non-parties without requiring a deposition to be scheduled and, indeed, without even requiring a personal appearance. See Rule 45.03(b). Where the non-party and the party that issued a subpoena make alternative arrangements for production in response to the subpoena - which may be entirely proper - the potential exists that the production would occur without the knowledge of the other parties to the action. That production, without notice to the parties, is improper and essentially prevents participation by the parties who had received notice of another time of production. The amended rule places a duty on the party issuing the subpoena either to arrange production at a time agreeable to all parties and the non-party or to give notice to the other parties.

The amended rule is intended to create a streamlined process that minimizes the burdens of discovery on non-parties and reinforces the rights of all parties to participate in court-sanctioned

discovery on an equal footing. There may still be circumstances where other parties will want to serve separate subpoenas to the same non-party, either to request additional documents or inspection or copying, or to obtain documents in a different format. Ideally, the parties will coordinate their efforts to minimize the costs and other burdens of production on the person receiving a subpoena.

Notice of the intention to comply with a subpoena in some manner other than that noticed in the subpoena is important because one of the parties may have valid objections to the production taking place at all. Under the revised rule, no production can properly occur without all parties having at least seven days notice, providing any party the opportunity either to participate in the production or to seek a protective order to prevent the production from taking place. Because of the expedited hearing requirement for commitment proceedings under Minnesota Statutes, chapter 253B, subpoenas for production in those proceedings are subject to a 24-hour notice requirement as provided in a new Rule 25 added to the Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act.

Advisory Committee Comments - 2015 Amendments

Rule 45.06 is a new rule, recommended to adopt the Uniform Interstate Deposition and Discovery Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2007.

This rule allows issuance of a subpoena in Minnesota based upon the proper issuance and service of a subpoena under the authority of another state. If a Minnesota subpoena is issued, the procedures of Rule 45 apply to the service and enforcement of that subpoena and other procedures relating to it. Notice must be provided to all other parties to the action, and the form of subpoena must conform to Minnesota law. Minnesota citizens and residents are entitled to the full protection of Minnesota's rules even where the subpoena is initiated for use in foreign proceedings.

Although adopted as a rule, rather than a statute, recognizing the Minnesota Supreme Court's inherent and exclusive authority over matters of court procedure, the rule retains the operative provisions of the Uniform Act. Like uniform laws, this rule should be interpreted to accomplish uniformity among the states and should be construed to promote that purpose. See Minnesota Statutes, section 645.22. Construction of the uniform law by other states may accordingly be relevant to its interpretation in Minnesota. See generally Layne-Minn. Co. v. Regents of the Univ. of Minn., 266 Minn. 284, 123 N.W.2d 371 (1963).

Advisory Committee Comment - 2021 Amendments

Rule 45.06 is amended in two important ways. The amended rule extends the authority for Minnesota attorneys to sign and issue subpoenas to those used for discovery for cases pending in other states. The rule does not modify the procedural prerequisites for issuance of a Minnesota subpoena, other than allowing a Minnesota lawyer to take those steps and issue the subpoena. This authority to issue subpoenas is not extended to self-represented litigants.