

RULE CrR 4.8  
SUBPOENAS

a) For Attendance of Witnesses at Hearing or Trial. A subpoena commanding a person to attend and give testimony at a hearing or at trial ("a subpoena for testimony") shall be issued as follows:

(1) Form; Issuance.

(A) A subpoena for testimony shall (i) state the title of the action, the case number, the name of the court in which the action is pending, and, if different, the name of the court from which the subpoena is issued; and (ii) command each person to whom it is directed to attend and give testimony at a specified time and place.

(B) The court in which the action is pending or before which attendance is required may issue a subpoena for testimony under the seal of that court, or the clerk may issue the subpoena for testimony in response to a praecipe. An attorney for a party also may sign and issue a subpoena for testimony.

(C) A command to a person to produce evidence or to permit inspection may be joined with a subpoena for testimony or may be issued separately under section (b) of this rule.

(2) Notice. Notice to each party of the issuance of a subpoena for testimony is not required; provided that, when a subpoena for testimony also commands the person to whom it is directed to produce evidence or to permit inspection of things, the serving party shall give advance notice of such subpoena in the manner described in subsection (b) of this rule.

(3) Service-How Made. A subpoena for testimony may be served by any suitable person over 18 years of age, by giving the witness a copy thereof, or by leaving a copy at the witness's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. When service is made by any person other than an officer authorized to serve process, proof of service shall be made by affidavit or declaration. A subpoena for testimony may also be served by first-class mail, postage prepaid, together with a waiver of personal service and instructions for returning such waiver to the attorney of record of the party to the action in whose behalf the witness is required to appear. Service by mail shall be deemed complete upon the filing of the returned waiver of personal service, signed in affidavit or declaration form.

(4) When Witness Excused. A witness subpoenaed to attend a hearing or trial is excused from further attendance as soon as the witness has given testimony in chief and has been cross-examined thereon, unless a party moves in open court that the witness remain in attendance and the court so orders. Witness fees will not be allowed any witness after the day on which the witness's testimony is given, except when the witness has in open court been required to remain in further attendance, and when so required the clerk shall note that fact in the minutes.

(b) For Producing Evidence or Permitting Inspection. A subpoena commanding a person to produce and permit inspection and copying of designated documents, tangible things, or premises in the possession, custody, or control of that person ("a subpoena for production") shall be issued as follows:

(1) Form; Issuance.

(A) A subpoena for production shall (i) state the title of the action, the case number, the name of the court in which the action is pending, and, if different, the name of the court from which the subpoena is issued;

(ii) command each person to whom it is directed to produce and permit inspection and copying of documentary evidence, tangible things, or premises in the possession, custody, or control of that person at a specified time and place; and (iii) set forth the text of subsection (b) (4) of this rule.

(B) The court in which the action is pending or before which attendance is required may issue a subpoena for production under the seal of that court or the clerk may issue the subpoena in response to a praecipe. An attorney for a party also may sign and issue a subpoena for production.

(C) A subpoena for production may be joined with a subpoena for testimony, or it may be issued separately, provided that a subpoena to inspect premises may not be combined with other subpoenas issued pursuant to this rule.

(2) Notice. Notice to parties of the issuance of a subpoena for production is not required; provided that, whenever a party intends to serve a subpoena for production seeking evidence or inspection of things or premises belonging or pertaining to a defendant who is not the party seeking or issuing the subpoena, then the serving party must give all parties advance notice; and provided that, whenever any party intends to serve a subpoena for production seeking evidence or inspection of things belonging or pertaining to an alleged victim or complaining witness, then the serving party shall provide advance notice to all parties and to the alleged victim or complaining witness; and provided that a subpoena for inspection of premises must be signed by the court and only after good cause is shown and advance notice is provided to all parties and the owner or occupier of the premises.

(A) Time and Manner. If advance notice is required under this rule, then no fewer than five days prior to service on the person named in the subpoena for production, notice shall be provided in the manner prescribed by CR 5(b). The parties may agree to shorten the time for advance notice when a subpoena seeks solely evidence or tangible things belonging or pertaining to a defendant. The court may shorten the time for advance notice upon a showing of good cause by a party; provided that, any alleged victim or complaining witness whose evidence, tangible things, or premises are sought shall receive notice and an opportunity to be heard on any motion to shorten time.

(B) Court May Excuse Notice. A court on ex parte motion may excuse compliance with the advance notice requirement upon the serving party's showing of good cause; any such court order, along with a copy of the subpoena for which notice is excused, shall be filed under seal pursuant to GR 15.

(3) Service-How Made. A subpoena for production shall be served in the manner prescribed in CR 5(b); provided that, if the subpoena for production is joined with a subpoena for testimony, then subsection (a) (3) of this rule shall govern service.

(4) Protection of Persons Subject to Subpoena for Production. On timely motion, the court may quash or modify a subpoena for production if it (A) fails to allow reasonable time for compliance; (B) requires disclosure of privileged or other protected matter and no exception or waiver applies; (C) is unreasonable, oppressive, or unduly burdensome; or (D) exceeds the scope of discovery otherwise permitted under the criminal rules. The court may condition denial of a motion to quash or modify upon the advancement by the party on whose behalf the subpoena for production is issued of the reasonable cost of producing the books, papers, documents, tangible things, or premises.

(5) Applicability of Other Notice and Privacy Provisions. The provisions of this rule do not modify or limit privacy protections and notice requirements provided by court rule, statute, regulation, or other applicable law.

(c) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued.

[Adopted effective July 1, 1973; amended effective December 28, 2010.]

