

**PROPOSED AMENDMENT TO THE FEDERAL
RULES OF CIVIL PROCEDURE¹**

1 **Rule 45. Subpoena**

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3 **(b) Service.**

4 **(1) ~~By Whom and How; Tendering~~ Means;**
5 **Notice Period; Fees.**

6 **(A) By Whom and How.** Any person who
7 is at least 18 years old and not a party
8 may serve a subpoena. Serving a
9 subpoena requires:

10 **(i)** delivering a copy to the
11 named person personally;

12 **(ii)** leaving a copy at the person's
13 dwelling or usual place of
14 abode with someone of

¹ New material is underlined in red; matter to be omitted is lined through.

15 suitable age and discretion
16 who resides there;
17 (iii) sending a copy to the person's
18 last known address by a
19 method of United States mail
20 or commercial-carrier
21 delivery, if the selected
22 method provides confirmation
23 of actual receipt; or
24 (iv) using another means that is
25 authorized by the court for
26 good cause and is reasonably
27 calculated to give notice.
28 (B) Time to Serve if Attendance Is
29 Required; Tendering Fees. and, if
30 the subpoena requires that the named
31 person's attendance, a trial, hearing,
32 or deposition, unless the court orders

33 otherwise, the subpoena must be
34 served at least 14 days before the date
35 on which the person is commanded to
36 attend. In addition, the party serving
37 the subpoena must tendering the fees
38 for 1 day's attendance and the
39 mileage allowed by law at the time of
40 service, or at the time and place the
41 person is commanded to appear. Fees
42 and mileage need not be tendered
43 when the subpoena issues on behalf
44 of the United States or any of its
45 officers or agencies.

46 * * * * *

47 **Committee Note**

48 Rule 45(b)(1) is amended to clarify the means of
49 serving a subpoena. Courts have disagreed about whether the
50 rule requires hand delivery. Though service of a subpoena
51 usually does not present problems—particularly with regard
52 to deposition subpoenas—uncertainty about what the rule
53 requires has on occasion caused delays and imposed costs.

54 The amendment removes that ambiguity by
55 providing that methods authorized under Rule 4(e)(2)(A)
56 and (B) for service of a summons and complaint constitute
57 effective service of a subpoena. Though the issues involved
58 with service of a summons are not identical with service of
59 a subpoena, the basic goal is to give notice and the
60 authorized methods should assure notice. In place of the
61 current rule’s use of “delivering,” these methods of service
62 also are familiar methods that ought easily adapt to the
63 subpoena context.

64 The amendment also adds another option—service
65 by United States mail or commercial carrier to the person’s
66 last known address, if the selected method provides
67 confirmation of actual receipt. The rule does not prescribe
68 the exact means of confirmation, but courts should be alert
69 to ensuring that there is reliable confirmation of actual
70 receipt. *Cf.* Rule 45(b)(4) (proving service of subpoena).
71 Experience has shown that this method regularly works and
72 is reliable.

73 The amended rule also authorizes a court order
74 permitting an additional method of serving a subpoena so
75 long as that method is reasonably calculated to give notice.
76 A party seeking such an order must establish good cause,
77 which ordinarily would require at least first resort to the
78 authorized methods of service. The application should also
79 demonstrate that the proposed method is reasonably
80 calculated to give notice.

81 The amendment adds a requirement that the person
82 served be given at least 14 days’ notice if the subpoena
83 commands attendance at a trial, hearing, or deposition.
84 Rule 45(a)(4) requires the party serving the subpoena to give
85 notice to the other parties before serving it, but the rule does
86 not presently require any advance notice to the person

87 commanded to appear. Compliance may be difficult without
88 reasonable notice. Providing 14-day notice is a method of
89 avoiding possible burdens on the person served. In addition,
90 emergency motions for relief from a subpoena can burden
91 courts. For good cause, the court may shorten the notice
92 period on application by the serving party.

93 The amendment also simplifies the task of serving
94 the subpoena by removing the requirement that the witness
95 fee under 28 U.S.C. § 1821 be tendered at the time of service
96 as a prerequisite to effective service. Though tender at the
97 time of service should be done whenever practicable, the
98 amendment permits tender to occur instead at the time and
99 place the subpoena commands the person to appear. The
100 requirement to tender fees at the time of service has in some
101 cases further complicated the process of serving a subpoena,
102 and this alternative should simplify the task.

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3 **(c) Place of Compliance.**

4 **(1) *For a Trial, Hearing, or Deposition.*** A

5 subpoena may command a person to attend a
6 trial, hearing, or deposition only as follows:

7 **(A)** within 100 miles of where the person
8 resides, is employed, or regularly
9 transacts business in person; or

10 **(B)** within the state where the person
11 resides, is employed, or regularly
12 transacts business in person, if the
13 person:

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