

RULE 1.351 | PRODUCTION OF DOCUMENTS AND THINGS WITHOUT DEPOSITION

(a) Request; Scope. A party may seek inspection and copying of any documents or things within the scope of rule 1.350(a) from a person who is not a party by issuance of a subpoena directing the production of the documents or things when the requesting party does not seek to depose the custodian or other person in possession of the documents or things. This rule provides the exclusive procedure for obtaining documents or things by subpoena from nonparties without deposing the custodian or other person in possession of the documents or things pursuant to rule 1.310.

(b) Procedure. A party desiring production under this rule may not cause a subpoena to be issued until 10 days after notice by delivery or e-mail service (15 days after notice by mail service) on every other party of the intent to serve a subpoena. If the notice is served with original process, the subpoena shall not issue earlier than 45 days after service on the last-served party. The proposed subpoena shall be attached to the notice and shall state the time, place, and method for production of the documents or things, and the name and address of the person who is to produce the documents or things, if known, and if not known, a general description sufficient to identify the person or the particular class or group to which the person belongs; shall include a designation of the items to be produced; and shall state that the person who will be asked to produce the documents or things has the right to object to the production under this rule and that the person will not be required to surrender the documents or things. A copy of the notice and proposed subpoena shall not be furnished to the person upon whom the subpoena is to be served. If any party serves an objection to production under this rule within 10 days of service by delivery or e-mail of the notice, (15 days if service by U.S. mail), or within 45 days of service of process if the notice is served with original process, the documents or things shall not be produced pending resolution of the objection in accordance with subdivision (d).

(c) Subpoena. If no objection is made by a party under subdivision (b), an attorney of record in the action may issue a subpoena or the party desiring production shall deliver to the clerk for issuance a subpoena together with a certificate of counsel or pro se party that no timely objection has been



received from any party, and the clerk shall issue the subpoena and deliver it to the party desiring production. Service within the state of Florida of a nonparty subpoena shall be deemed sufficient if it complies with rule 1.410(d) or if (1) service is accomplished by mail or hand delivery by a commercial delivery service, and (2) written confirmation of delivery, with the date of service and the name and signature of the person accepting the subpoena, is obtained and filed by the party seeking production. The subpoena shall be identical to the copy attached to the notice and shall specify that no testimony may be taken and shall require only production of the documents or things specified in it. The subpoena may give the recipient an option to deliver or mail legible copies of the documents or things to the party serving the subpoena. The person upon whom the subpoena is served may condition the preparation of copies on the payment in advance of the reasonable costs of preparing the copies. The subpoena shall require production only in the county of the residence of the custodian or other person in possession of the documents or things or in the county where the documents or things are located or where the custodian or person in possession usually conducts business. If the person upon whom the subpoena is served objects at any time before the production of the documents or things, the documents or things shall not be produced under this rule, and relief may be obtained pursuant to rule 1.310.

(d) Ruling on Objection. If an objection is made by a party under subdivision (b), the party desiring production may file a motion with the court seeking a ruling on the objection or may proceed pursuant to rule 1.310.

(e) Copies Furnished. If the subpoena is complied with by delivery or mailing of copies as provided in subdivision (c), the party receiving the copies shall furnish a legible copy of each item furnished to any other party who requests it upon the payment of the reasonable cost of preparing the copies.

(f) Independent Action. This rule does not affect the right of any party to bring an independent action for production of documents and things or permission to enter upon land.



Committee Notes

1980 Adoption. This rule is designed to eliminate the need of taking a deposition of a records custodian when the person seeking discovery wants copies of the records only. It authorizes objections by any other party as well as the custodian of the records. If any person objects, recourse must be had to rule 1.310.

1996 Amendment. This rule was amended to avoid premature production of documents by nonparties, to clarify the clerk's role in the process, and to further clarify that any objection to the use of this rule does not contemplate a hearing before the court but directs the party to rule 1.310 to obtain the desired production. This amendment is not intended to preclude all communication between parties and nonparties. It is intended only to prohibit a party from prematurely sending to a nonparty a copy of the required notice or the proposed subpoena. This rule was also amended along with rule 1.410 to allow attorneys to issue subpoenas. See Committee Note for rule 1.410.

2007 Amendment. Subdivisions (b) and (d) were amended to permit a party seeking nonparty discovery to have other parties' objections resolved by the court.

2010 Amendment. Subdivision (a) is amended to clarify that the procedure set forth in rule 1.351, not rule 1.310, shall be followed when requesting or receiving documents or things, without testimony, from nonparties pursuant to a subpoena.

2012 Amendment. Subdivision (b) is amended to include email service as provided in Fla. R. Jud. Admin. 2.516.

