

RULE 1.410 | SUBPOENA

(a) Subpoena Generally. Subpoenas for testimony before the court, subpoenas for production of tangible evidence, and subpoenas for taking depositions may be issued by the clerk of court or by any attorney of record in an action.

(b) Subpoena for Testimony before the Court.

(1) Every subpoena for testimony before the court must be issued by an attorney of record in an action or by the clerk under the seal of the court and must state the name of the court and the title of the action and must command each person to whom it is directed to attend and give testimony at a time and place specified in it.

(2) On oral request of an attorney or party and without praecipe, the clerk must issue a subpoena for testimony before the court or a subpoena for the production of documentary evidence before the court signed and sealed but otherwise in blank, both as to the title of the action and the name of the person to whom it is directed, and the subpoena must be filled in before service by the attorney or party.

(c) For Production of Documentary Evidence. A subpoena may also command the person to whom it is directed to produce the books, documents (including electronically stored information), or tangible things designated therein, but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive, or (2) condition denial of the motion on the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, documents, or tangible things. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. A person responding to a subpoena may object to discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue costs or burden. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought or the form requested is not reasonably accessible because of undue costs



or burden. If that showing is made, the court may nonetheless order discovery from such sources or in such forms if the requesting party shows good cause, considering the limitations set out in rule 1.280(d)(2). The court may specify conditions of the discovery, including ordering that some or all of the expenses of the discovery be paid by the party seeking the discovery. A party seeking a production of evidence at trial which would be subject to a subpoena may compel such production by serving a notice to produce such evidence on an adverse party as provided in Florida Rule of Judicial Administration 2.516. Such notice shall have the same effect and be subject to the same limitations as a subpoena served on the party.

(d) Service. A subpoena may be served by any person authorized by law to serve process or by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena on a person named within must be made as provided by law. Proof of such service must be made by affidavit of the person making service except as applicable under rule 1.351(c) for the production of documents and things by a nonparty without deposition, if not served by an officer authorized by law to do so.

(e) Subpoena for Taking Depositions.

(1) Filing a notice to take a deposition as provided in rule 1.310(b) or 1.320(a) with a certificate of service on it showing service on all parties to the action constitutes an authorization for the issuance of subpoenas for the persons named or described in the notice by the clerk of the court in which the action is pending or by an attorney of record in the action. The subpoena must state the method for recording the testimony. A party intending to audiovisually record a deposition must state in the subpoena that the deposition is to be audiovisually recorded and identify the method for audiovisually recording the deposition, including, if applicable, the name and address of the operator of the audiovisual recording equipment. If a party intends to take a deposition by communication technology, the subpoena must state the deposition is to be taken using communication technology, identify the specific form of communication technology to be used, and provide instructions for access to the communication



technology. The subpoena may command the person to whom it is directed to produce designated books, documents, or tangible things that constitute or contain evidence relating to any of the matters within the scope of the examination permitted by rule 1.280(b), but in that event the subpoena will be subject to the provisions of rule 1.280(c) and subdivision (c) of this rule. Within 10 days after its service, or on or before the time specified in the subpoena for compliance if the time is less than 10 days after service, the person to whom the subpoena is directed may serve written objection to inspection or copying of any of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. If objection has been made, the party serving the subpoena may move for an order at any time before or during the taking of the deposition on notice to the deponent.

(2) A person may be required to attend an examination only in the county wherein the person resides or is employed or transacts business in person or at such other convenient place as may be fixed by an order of court.

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

(g) Depositions before Commissioners Appointed in this State by Courts of Other States; Subpoena Powers; etc. When any person authorized by the laws of Florida to administer oaths is appointed by a court of record of any other state, jurisdiction, or government as commissioner to take the testimony of any named witness within this state, that witness may be compelled to attend and testify before that commissioner by witness subpoena issued by the clerk of any circuit court at the instance of that commissioner or by other process or proceedings in the same manner as if that commissioner had been appointed by a court of this state; provided that no document shall be compulsorily annexed as an exhibit to such deposition or otherwise permanently removed from the possession of the witness producing it, but in lieu thereof a photostatic copy may be annexed to and transmitted with such executed commission to the court of issuance.



(h) Subpoena of Minor. Any minor subpoenaed for testimony has the right to be accompanied by a parent or guardian at all times during the taking of testimony notwithstanding the invocation of the rule of sequestration of section 90.616, Florida Statutes, except on a showing that the presence of a parent or guardian is likely to have a material, negative impact on the credibility or accuracy of the minor's testimony, or that the interests of the parent or guardian are in actual or potential conflict with the interests of the minor.

Committee Notes

1972 Amendment. Subdivisions (a) and (d) are amended to show the intent of the rule that subpoenas for deposition may not be issued in blank by the clerk, but only for trial. The reason for the distinction is valid. A subpoena for appearance before the court is not subject to abuse because the court can correct any attempt to abuse the use of blank subpoenas. Since a judge is not present at a deposition, additional protection for the parties and the deponent is required and subpoenas should not be issued in blank. Subdivision (d) is also modified to conform with the revised federal rule on subpoenas for depositions to permit an objection by the deponent to the production of material required by a subpoena to be produced.

1980 Amendment. Subdivision (c) is revised to conform with section 48.031, Florida Statutes (1979).

1996 Amendment. This rule is amended to allow an attorney (as referred to in Fla. R. Jud. Admin. 2.060(a)B(b)), as an officer of the court, and the clerk to issue subpoenas in the name of the court. This amendment is not intended to change any other requirement or precedent for the issuance or use of subpoenas. For example, a notice of taking the deposition must be filed and served before a subpoena for deposition may be issued.

2012 Amendment. Subdivision (c) is amended to reflect the relocation of the service rule from rule 1.080 to Fla. R. Jud. Admin. 2.516.

2012 Amendment. Subdivision (c) is amended to address the production of electronically stored information pursuant to a subpoena. The procedures for dealing with disputes concerning the accessibility of the information sought or the form for its production are intended to correspond to those set out in Rule 1.280(d).

