

Serial: 238592

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99001-SCT

FILED

JAN 23 2023

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

***IN RE: THE RULES OF CIVIL
PROCEDURE***

EN BANC ORDER

Before the en banc Court is the Motion to Amend M.R.C.P. 45 (Motion No. 2019-3488) filed by the Supreme Court of Mississippi's Advisory Committee on Rules.

The Advisory Committee moves to amend Rule 45 of the Mississippi Rules of Civil Procedure to allow attorneys to issue subpoenas. And it seeks approval of three new form subpoenas.

The motion was posted for comment from November 20, 2019, to December 20, 2019. John B. Gillis and Winn Davis Brown Jr. filed comments.


After due consideration, we find that the motion should be granted in part.

IT IS, THEREFORE, ORDERED that the Advisory Committee's Motion to Amend M.R.C.P. 45 is granted in part. Rule 45 of the Mississippi Rules of Civil Procedure is amended as set forth in the attached Exhibit A. The amendments will be effective within 30 days after entry of this order.

IT IS FURTHER ORDERED that, from and after the amendments' effective date, the form subpoenas—attached as Exhibits B, C, and D—shall be posted on the Mississippi Judicial College's website.

IT IS FURTHER ORDERED that the Clerk of this Court must spread this order upon the minutes of the Court and send a certified copy to West Publishing Company for publication in the advance sheets of *Southern Reporter, Third Series (Mississippi Edition)*, and in the next edition of the *Mississippi Rules of Court*.

SO ORDERED, this the 23 day of January, 2023.



JOSIAH DENNIS COLEMAN, JUSTICE
FOR THE COURT

ALL JUSTICES AGREE.

EXHIBIT A

RULE 45. SUBPOENA

(a) Form; Issuance.

(1) Every subpoena shall: ~~be issued by the clerk under the seal of the court;~~

(A) shall state the name of the court from which it was issued;

(B) state and the title of the action;

(C) , and shall command each person to whom it is directed to attend and give testimony, or to produce and permit inspection and copying 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;

(D) set forth the text of subdivisions (d) and (e) of this rule; and

(E) include a certificate of service.

~~The clerk shall issue a subpoena signed and sealed, but otherwise in blank, to a party requesting it, who shall fill it in before service.~~ A command to produce or to permit inspection 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.

(2) Subpoenas for attendance at a trial or hearing, for attendance at a deposition, and for production or inspection shall issue from the court in which the action is pending.

(3) In the case of discovery to be taken in foreign litigation, the subpoena shall be issued by a clerk of a court for the county in which the discovery is to be taken. The foreign subpoena shall be submitted to the clerk of court in the county in which discovery is sought to be conducted in this state. When a party submits a foreign subpoena to a clerk of court in this state, the clerk, in accordance with that court's procedure, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

The subpoena under subsection (3) must incorporate the terms used in the foreign subpoena and it must 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 any party not represented by counsel.

A subpoena issued by a clerk of court under subsection (3) must otherwise be issued and served in compliance with the rules of this state. An application to the court for a protective order or to enforce, quash or modify a subpoena issued by a clerk of court under subsection (3) must comply with the rules of this state and be submitted to the issuing court in the county in which discovery is to be conducted.

(4) The clerk shall issue a subpoena signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service. An attorney, as an officer of the court, may also issue and sign a subpoena in any action pending in a court of this State if the attorney is: (i) admitted to practice in this State or has been admitted *pro hac vice* in the pending action; and is (ii) counsel of record in the pending action. A subpoena issued by an attorney as the officer of the court shall include the attorney's name, address, email address and phone number and shall indicate whether the attorney represents the plaintiff, defendant or third-party defendant.

(5) Once a subpoena has been issued and filled out, a copy of such subpoena shall be immediately served upon each party in accordance with M.R.C.P. 5, even though the subpoena itself has not yet been served.

(b) Place of Examination. A resident of the State of Mississippi may be required to attend a deposition, production or inspection only in the county wherein he resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of the court. A non-resident of this state subpoenaed within this state may be required to attend only in the county wherein he is served, or at such other convenient place as is fixed by an order of the court.

(c) Service.

(1) A subpoena may be served by a sheriff, or by his deputy, or by any other person who is not a party and is not less than 18 years of age, and his return endorsed thereon shall be prima facie proof of service, or the person served may acknowledge service in writing on the subpoena. Service of the subpoena shall be executed upon the witness personally. Except when excused by the court upon a showing of indigence, the party causing the subpoena to issue shall tender to a non-party witness at the time of service the fee for one day's attendance plus mileage allowed by law. When the subpoena is issued on behalf of the State of Mississippi or an officer or agency thereof, fees and mileage need not be tendered in advance.

(2) Proof of service shall be promptly made by filing with the clerk of the court from which the subpoena was issued a statement, certified by the person who made the service, setting forth the date and manner of service, the county in which it was served, the names of the persons served, and the name, address and telephone number of the person making the

service. A copy of such proof of service shall be immediately served upon all parties in accordance with M.R.C.P. 5.

(d) Protection of Persons Subject to Subpoenas.

(1) In General.

(A) On timely motion, the court from which a subpoena was issued shall quash or modify the subpoena if it (i) fails to allow reasonable time for compliance; (ii) requires disclosure of privileged or other protected matter and no exception or waiver applies, (iii) designates an improper place for examination, or (iv) subjects a person to undue burden or expense.

(B) If a subpoena (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or (ii) 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, the court may order appearance or production only upon specified conditions.

(2) Subpoenas for Production or Inspection.

(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents, electronically stored information, or tangible things, or to permit inspection of premises need not appear in person at the place of production or inspection unless commanded by the subpoena to appear for deposition, hearing or trial. Unless for good cause shown the court shortens the time, a subpoena for production or inspection shall allow not less than ten days for the person upon whom it is served to comply with the subpoena. ~~A copy of all such subpoenas shall be served immediately upon each party in accordance with Rule 5.~~ Absent order of the court, production or inspection shall not be made until the tenth day after the date of service of the subpoena on the recipient and this shall be conspicuously noted on the face of the subpoena. A subpoena commanding production or inspection will be subject to the provisions of Rule 26(d).

(B) The person to whom the subpoena is directed may, within ten days after the service thereof or on or before the time specified in the subpoena for compliance, if such time is less than ten days after service, serve upon the party serving the subpoena written objection to inspection or copying of any or all of the designated materials, or to inspection of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the material except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move at any time upon notice to the person served for an order to compel the production or inspection.

(C) The court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (i) quash or modify the subpoena if it is unreasonable or oppressive, or (ii) condition the denial of the motion upon the advance by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(e) Duties in Responding to Subpoena.

(1) Producing Documents or Electronically Stored Information.

(A) Documents.

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.

(B) Form for Producing Electronically Stored Information Not Specified.

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.

(C) Electronically Stored Information Produced in Only One Form.

The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information.

The person responding 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, motion for a protective order, or motion to quash, the person responding must show that the information 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(b)(5). The court may specify conditions for the discovery, including those listed in Rule 26(b)(5).

(2) Claiming Privilege or Protection.

(A) Information Withheld.

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.

(B) Information Produced.

If information produced in response to a subpoena 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; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(f) Sanctions. On motion of a party or of the person upon whom a subpoena for the production of books, papers, documents, electronically stored information, or tangible things is served and upon a showing that the subpoena power is being exercised in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the party or the person upon whom the subpoena is served, the court in which the action is pending shall order that the subpoena be quashed and may enter such further orders as justice may require to curb abuses of the powers granted under this rule. To this end, the court may impose an appropriate sanction.

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

[Amended effective March 13, 1991; July 1, 1997; July 1, 1998; amended effective July 1, 2009 to provide a procedure for foreign subpoenas. This provision shall take effect and be in force from and after July 1, 2009, and applies to requests for discovery in cases pending on July 1, 2009; amended effective July 1, 2013 to authorize a subpoena for electronically stored information; amended effective _____ to authorize attorneys to issue subpoenas, to require immediate service of the subpoena upon parties once it has been filled out, and to prohibit production and inspection until the tenth day after service of the subpoena on the recipient.]

Advisory Committee Historical Note

Effective March 13, 1991, Rule 45(c) was amended to require the party causing a subpoena to issue to tender to a non-party witness the fee for one day's attendance plus

mileage allowed by law. Rule 45(e) was amended by deleting the provision for tendering the fee for one day's attendance plus the mileage allowed by law to certain witnesses when subpoenaed. Rule 45(d) was amended to provide that when a deposition is to be taken on foreign litigation the subpoena shall be issued by the clerk for the county in which the deposition is to be taken. 574-576 So. 2d XXIV-XXV (West Miss. Cas. 1991).

Effective July 1, 1997 a new Rule 45 was adopted.

Effective July 1, 2013, Rule 45 was amended to specifically authorize a subpoena to command the person to whom it is directed to produce and permit inspection and copying of electronically stored information. The same amendment also established a procedure to be used when privileged or trial-preparation material is inadvertently disclosed.

Effective 20XX, Rule 45(a) was amended to permit an attorney admitted to practice in Mississippi, as an officer of the court, to issue subpoenas in a Mississippi case in which he or she is counsel of record. The amendment also authorizes attorneys who have been admitted *pro hac vice* and who are counsel of record in a Mississippi case to issue subpoenas. The amended rule requires that a copy of all subpoenas be served on all parties as soon as the subpoena form has been filled out even though the subpoena itself has not yet been served at that time. Once a subpoena has been served the serving party is required to promptly file a proof of service with the clerk and immediately serve a copy of the proof of service on all parties. Rule 45(d)(2)(A) was amended to prohibit production or inspection of documents until the tenth day after service of the subpoena on the subpoena recipient. This is meant to give persons other than the subpoena recipient an opportunity to move to quash or modify the subpoena. If the documents or objects are produced before the ten days has passed, the attorney receiving said documents should hold them under seal until the ten-day period has expired.

Advisory Committee Notes

A "foreign subpoena" means a subpoena issued under authority of a court of record of a foreign jurisdiction. "Foreign jurisdiction" means a state other than this state. Litigants in a foreign jurisdiction who desire to obtain a subpoena to depose a Mississippi resident, to obtain records within Mississippi, or to inspect premises within Mississippi should follow the procedure established in Mississippi Code Annotated section 11-59-1 et. seq. See the exclusion in M.R.A.P. 46(b)(11)(i) for Admission of Foreign Attorneys Pro Hac Vice.

Rule 45(c)(1) regarding advance payment to non-parties of statutory witness fees and mileage is complementary to Mississippi Code Annotated §§25-7-47 through 25-7-59 (1972).

Rule 45(d)(2) is intended to ensure that there be no confusion as to whether a person not a party in control, custody, or possession of discoverable evidence may be compelled to

produce such evidence without being sworn as a witness and deposed. The force of a subpoena for production of documentary evidence generally reaches all documents under the control of the person ordered to produce, saving questions of privilege or unreasonableness.

Exhibit B

_____ Court of _____ County, Mississippi

Plaintiff(s))
v.) Case No. _____

Defendant(s))

SUBPOENA TO PRODUCE MATERIALS OR TO PERMIT INSPECTION OF A PREMISES (CIVIL ACTION)

To: _____
(Name of person or entity to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or things within your possession, custody or control, and to permit inspection and copying of the materials:

Place:	Date and Time:
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Inspection of Premises: YOU ARE COMMANDED to permit entry onto the premises designated below at the time, date, and location set forth below, so that the requesting party may inspect the premises:

Place:	Date and Time:
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YOU SHALL NOT PRODUCE DOCUMENTS OR THINGS OR PERMIT INSPECTION UNTIL TEN DAYS AFTER YOU WERE SERVED WITH THIS SUBPOENA.

The following provisions of M.R.C.P. 45 are attached - Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e), relating to your duty to respond to the subpoena.

Date: _____

CLERK OF COURT

OR

Signature of Clerk

Attorney's Signature

The name, email address, and telephone number of the attorney representing *(name of party)* _____ who issued or requested this subpoena are:

Notice to the person who issues or requests this subpoena:
This subpoena must first be served upon each party pursuant to M.R.C.P. 5 before it is served on the person to whom it is directed. M.R.C.P. 45(a)(5).

PROOF OF SERVICE

(This section shall be promptly filed with the court as required by M.R.C.P. 45(c)(2).)

I received this subpoena for *(name of individual and title, if any)* _____
_____ on *(date)* _____.

I served the subpoena by delivering a copy on the named person as follows: _____

_____ on *(date)* _____.

I returned the subpoena unexecuted because: _____

_____.

I declare under penalty of perjury under the laws of the State of Mississippi that the foregoing information contained in the Proof of Service is true and correct.

Date: _____

Server's Signature

Printed Name and Title

Address of Server

Additional information regarding attempted services, etc.:

NOTICE TO PERSONS SUBJECTED TO SUBPOENAS

Mississippi Rule of Civil Procedure 45 (d) and (e)

(d) Protection of Persons Subject to Subpoenas.

(1) *In General.*

(A) On timely motion, the court from which a subpoena was issued shall quash or modify the subpoena if it (i) fails to allow reasonable time for compliance; (ii) requires disclosure of privileged or other protected matter and no exception or waiver applies, (iii) designates an improper place for examination, or (iv) subjects a person to undue burden or expense.

(B) If a subpoena (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or (ii) 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, the court may order appearance or production only upon specified conditions.

(2) *Subpoenas for Production or Inspection.*

(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents, electronically stored information, or tangible things, or to permit inspection of premises need not appear in person at the place of production or inspection unless commanded by the subpoena to appear for deposition, hearing or trial. Unless for good cause shown the court shortens the time, a subpoena for production or inspection shall allow not less than ten days for the person upon whom it is served to comply with the subpoena. Absent order of the court, production or inspection shall not be made until the tenth day after the date of service of the subpoena on the recipient and this shall be conspicuously noted on the face of the subpoena. A subpoena commanding production or inspection will be subject to the provisions of Rule 26(d).

(B) The person to whom the subpoena is directed may, within ten days after the service thereof or on or before the time specified in the subpoena for compliance, if such time is less than ten days after service, serve upon the party serving the subpoena written objection to inspection or copying of any or all of the designated materials, or to inspection of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the material except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move at any time upon notice to the person served for an order to compel the production or inspection.

(C) The court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (i) quash or modify the subpoena if it is unreasonable or oppressive, or (ii) condition the denial of the motion upon the advance by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, electronically stored information, or tangible things.

(e) Duties in Responding to Subpoena.

(1) *Producing Documents or Electronically Stored Information.*

(A) Documents. 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.

(B) Form for Producing Electronically Stored Information Not Specified.

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.

(C) Electronically Stored Information Produced in Only One Form.

The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information.

The person responding 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, motion for a protective order, or motion to quash, the person responding must show that the information 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(b)(5). The court may specify conditions for the discovery, including those listed in Rule 26(b)(5).

(2) *Claiming Privilege or Protection.*

(A) Information Withheld. 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.

(B) Information Produced. If information produced in response to a subpoena 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; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this subpoena has been served on:

Name of Counsel or Unrepresented Party

Address

If serving counsel, name of represented party

Method of Service

So certified, this the _____ day of _____.

*Signature
Counsel for*

Exhibit C

_____ Court of _____ County, Mississippi

Plaintiff(s)
v.

Defendant(s)

)
)
)
)
)

Case No. _____

DEPOSITION SUBPOENA (CIVIL ACTION)

To: _____
(Name of person or entity to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the place, date and time specified below to testify at a deposition. If you are an entity, you must designate one or more person to testify on the entity's behalf about the following matters:

The persons so designated shall testify as to matters known or reasonably available to the entity.

Place:	Date and Time:
--------	----------------

The deposition will be recorded by this method: _____

Production: You must also bring with you the following books, papers, documents, electronically stored information or tangible things, and must permit inspection, copying, testing or sampling of the materials:

YOU SHALL NOT PRODUCE DOCUMENTS OR THINGS OR PERMIT INSPECTION UNTIL TEN DAYS AFTER YOU WERE SERVED WITH THIS SUBPOENA.

The following provisions of M.R.C.P. 45 are attached - Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e), relating to your duty to respond to the subpoena.

Date: _____
CLERK OF COURT OR

Signature of Clerk *Attorney's Signature*

The name, email address, and telephone number of the attorney representing *(name of party)* _____ who issued or requested this subpoena are:

Notice to the person who issued or requested this subpoena:
This subpoena must first be served upon each party pursuant to M.R.C.P. 5 before it is served on the person to whom it is directed. M.R.C.P. 45(a)(5).

PROOF OF SERVICE

(This section shall be promptly filed with the court as required by M.R.C.P. 45(c)(2).)

I received this subpoena for *(name of individual and title, if any)* _____
_____ on *(date)* _____.

I served the subpoena by delivering a copy on the named person as follows: _____

_____ on *(date)* _____.

Unless the subpoena was issued on behalf of the State of Mississippi or an officer or agency thereof, or unless excused by the court upon a showing of indigence, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

I returned the subpoena unexecuted because: _____

_____.

I declare under penalty of perjury under the laws of the State of Mississippi that the foregoing information contained in the Proof of Service is true and correct.

Date: _____

Server's Signature

Printed Name and Title

Address of Server

Additional information regarding attempted services, etc.:

NOTICE TO PERSONS SUBJECTED TO SUBPOENAS

Mississippi Rule of Civil Procedure 45 (d) and (e)

(d) Protection of Persons Subject to Subpoenas.

(1) In General.

(A) On timely motion, the court from which a subpoena was issued shall quash or modify the subpoena if it (i) fails to allow reasonable time for compliance; (ii) requires disclosure of privileged or other protected matter and no exception or waiver applies, (iii) designates an improper place for examination, or (iv) subjects a person to undue burden or expense.

(B) If a subpoena (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or (ii) 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, the court may order appearance or production only upon specified conditions.

(2) Subpoenas for Production or Inspection.

(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents, electronically stored information, or tangible things, or to permit inspection of premises need not appear in person at the place of production or inspection unless commanded by the subpoena to appear for deposition, hearing or trial. Unless for good cause shown the court shortens the time, a subpoena for production or inspection shall allow not less than ten days for the person upon whom it is served to comply with the subpoena. Absent order of the court, production or inspection shall not be made until the tenth day after the date of service of the subpoena on the recipient and this shall be conspicuously noted on the face of the subpoena. A subpoena commanding production or inspection will be subject to the provisions of Rule 26(d).

(B) The person to whom the subpoena is directed may, within ten days after the service thereof or on or before the time specified in the subpoena for compliance, if such time is less than ten days after service, serve upon the party serving the subpoena written objection to inspection or copying of any or all of the designated materials, or to inspection of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the material except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move at any time upon notice to the person served for an order to compel the production or inspection.

(C) The court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (i) quash or modify the subpoena if it is unreasonable or oppressive, or (ii) condition the denial of the motion upon the advance by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, electronically stored information, or tangible things.

(e) Duties in Responding to Subpoena.

(1) Producing Documents or Electronically Stored Information.

(A) Documents. 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.

(B) Form for Producing Electronically Stored Information Not Specified.

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.

(C) Electronically Stored Information Produced in Only One Form.

The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information.

The person responding 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, motion for a protective order, or motion to quash, the person responding must show that the information 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(b)(3). The court may specify conditions for the discovery, including those listed in Rule 26(b)(5).

(2) Claiming Privilege or Protection.

(A) Information Withheld. 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.

(B) Information Produced. If information produced in response to a subpoena 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; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this subpoena has been served on:

Name of Counsel or Unrepresented Party

Address

If serving counsel, name of represented party

Method of Service

So certified, this the _____ day of _____.

Signature
Counsel for _____

Exhibit D

_____ Court of _____ County, Mississippi

Plaintiff(s)
v.

Defendant(s)

)
)
)
)
)

Case No. _____

**SUBPOENA TO APPEAR AND TESTIFY
AT A HEARING OR TRIAL (CIVIL ACTION)**

To: _____
(Name of person to whom this subpoena is directed)

YOU ARE COMMANDED to appear in the _____ Court of _____ County, Mississippi at the place, date and time specified below to testify in the above case.

Place of Testimony:	Courtroom:
	Date and Time:

You must also bring with you the following documents, electronically stored information or things *(leave blank if inapplicable)*:

YOU SHALL NOT PRODUCE DOCUMENTS OR THINGS OR PERMIT INSPECTION UNTIL TEN DAYS AFTER YOU WERE SERVED WITH THIS SUBPOENA.

The following provisions of M.R.C.P. 45 are attached - Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e), relating to your duty to respond to the subpoena.

Date: _____

CLERK OF COURT

OR

Signature of Clerk

Attorney's Signature

The name, email address, and telephone number of the attorney representing *(name of party)* _____ who issued or requested this subpoena are:

Notice to the person who issues or requests this subpoena:
This subpoena must first be served upon each party pursuant to M.R.C.P. 5 before it is served on the person to whom it is directed. M.R.C.P. 45(a)(5).

PROOF OF SERVICE

(This section shall be promptly filed with the court as required by M.R.C.P. 45(c)(2).)

I received this subpoena for *(name of individual and title, if any)* _____
_____ on *(date)* _____.

I served the subpoena by delivering a copy on the named person as follows: _____

_____ on *(date)* _____.

Unless the subpoena was issued on behalf of the State of Mississippi or an officer or agency thereof, or unless excused by the court upon a showing of indigence, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

I returned the subpoena unexecuted because: _____

_____.

I declare under penalty of perjury under the laws of the State of Mississippi that the foregoing information contained in the Proof of Service is true and correct.

Date: _____

Server's Signature

Printed Name and Title

Address of Server

Additional information regarding attempted services, etc.:

NOTICE TO PERSONS SUBJECTED TO SUBPOENAS

Mississippi Rule of Civil Procedure 45 (d) and (e)

(d) Protection of Persons Subject to Subpoenas.

(1) In General.

(A) On timely motion, the court from which a subpoena was issued shall quash or modify the subpoena if it (i) fails to allow reasonable time for compliance; (ii) requires disclosure of privileged or other protected matter and no exception or waiver applies, (iii) designates an improper place for examination, or (iv) subjects a person to undue burden or expense.

(B) If a subpoena (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or (ii) 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, the court may order appearance or production only upon specified conditions.

(2) Subpoenas for Production or Inspection.

(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents, electronically stored information, or tangible things, or to permit inspection of premises need not appear in person at the place of production or inspection unless commanded by the subpoena to appear for deposition, hearing or trial. Unless for good cause shown the court shortens the time, a subpoena for production or inspection shall allow not less than ten days for the person upon whom it is served to comply with the subpoena. Absent order of the court, production or inspection shall not be made until the tenth day after the date of service of the subpoena on the recipient and this shall be conspicuously noted on the face of the subpoena. A subpoena commanding production or inspection will be subject to the provisions of Rule 26(d).

(B) The person to whom the subpoena is directed may, within ten days after the service thereof or on or before the time specified in the subpoena for compliance, if such time is less than ten days after service, serve upon the party serving the subpoena written objection to inspection or copying of any or all of the designated materials, or to inspection of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the material except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move at any time upon notice to the person served for an order to compel the production or inspection.

(C) The court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (i) quash or modify the subpoena if it is unreasonable or oppressive, or (ii) condition the denial of the motion upon the advance by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, electronically stored information, or tangible things.

(e) Duties in Responding to Subpoena.

(1) Producing Documents or Electronically Stored Information.

(A) Documents. 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.

(B) Form for Producing Electronically Stored Information Not Specified.

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.

(C) Electronically Stored Information Produced in Only One Form.

The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information.

The person responding 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, motion for a protective order, or motion to quash, the person responding must show that the information 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(b)(5). The court may specify conditions for the discovery, including those listed in Rule 26(b)(5).

(2) Claiming Privilege or Protection.

(A) Information Withheld. 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.

(B) Information Produced. If information produced in response to a subpoena 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; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this subpoena has been served on:

Name of Counsel or Unrepresented Party

Address

If serving counsel, name of represented party

Method of Service

So certified, this the _____ day of _____.

Signature
Counsel for _____