

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

_____,
Charging Party(ies),
vs.
_____,
Respondent(s).

Case No. _____

HEARING SUBPOENA
WITH REQUEST FOR
PRODUCTION OF DOCUMENTS

* * * * *

THE STATE OF MONTANA SENDS GREETINGS TO:

[witness name]
Under authority of Mont. Code Ann. §§ 2-4-104 and 49-2-505(2), and Rule 45 of the Montana Rules of Civil Procedure (MRCP), you are commanded to lay aside all and singular business and excuses, and attend the hearing of the above action now pending before this agency. The hearing is scheduled to convene on _____ at _____
[Hearing date and time] [hearing location and address]

You are also commanded to bring with you the following books and records:

The party or attorney requesting this subpoena is _____.
[your name]

You are entitled to certain protections and have certain responsibilities under Montana law, including Rule 45(d) and (e) of the MRCP, the text of which follows.

DATED this ____ day of _____, 20__.

DEPARTMENT OF LABOR AND INDUSTRY

(SEAL)

By: _____
Hearing Officer

Rule 45(d) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an

appropriate sanction -- which may include lost earnings and reasonable attorney fees -- on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance not Required. A person commanded to produce designated documents, electronically-stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

(B) Objections. A person commanded to produce designated materials or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the designated materials or to inspecting the premises -- or to producing electronically-stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expenses resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person -- except that, subject to Rule 45(d)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

Rule 45(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically-Stored Information. These procedures apply to producing documents or electronically-stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form of 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 or for a protective order, the person responding must show that the information is not reasonably accessible because of the 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)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly assert the claim; and
- (ii) describe the nature of the withheld documents, communications, or things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess 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.

Case No. _____

Instructions to person serving this subpoena:

1. Show the original subpoena to the person being subpoenaed.
2. Give the person being subpoenaed a copy (not the original).
3. Complete this form and return it to the Department of Labor and Industry, Office of Administrative Hearings, P.O. Box 1728, Helena MT 59624 attached to the original subpoena.

* * * * *

CERTIFICATE OF SERVICE

I, _____, do certify that I am not less than
(Name of process server)

18 years of age and not a party to this action and that I did personally serve a true and correct copy of the above SUBPOENA on

_____ at _____ on _____
[Witness name] [time a.m./p.m.] [date]

at _____:
[Location]

Signed and dated this ____ day of _____, 20__.

(Signature of process server)

(Address)

(Phone)