

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
6714 MAIL SERVICE CENTER  
RALEIGH, NC 27699-6700  
FILE NO. \_\_\_\_\_

**SUBPOENA**  
(N.C. Gen. Stat. § 150B-27)

\_\_\_\_\_, ) \_\_\_ To appear in person \_\_\_ To produce document or object  
Petitioner, )  
 )  
v. ) **Party requesting subpoena:**  
 ) \_\_\_\_\_ Petitioner \_\_\_\_\_ Respondent  
 ) **[NOTE TO PARTIES NOT REPRESENTED BY COUNSEL:**  
\_\_\_\_\_, ) Subpoenas may be produced at your request, but must be signed and  
Respondent. ) issued by the Office of Administrative Hearings]

**TO:**

\_\_\_\_\_  
Name of person being served

\_\_\_\_\_  
Street address/post office box

\_\_\_\_\_  
Alternate address

\_\_\_\_\_  
City/State/Zip/Telephone

\_\_\_\_\_  
City/State/Zip/Telephone

**YOU ARE COMMANDED TO:** (check all that apply)

- \_\_\_\_\_  
Appear and testify in the above-entitled contested case at the place, date, and time indicated below.  
\_\_\_\_\_  
Appear and testify, in the above-entitled contested case, at a deposition at the place, date and time indicated below.  
\_\_\_\_\_  
Produce, permit inspection and copying of the following items at the place, date, and time indicated below.

Name and Location of Hearing:

Name of Person or Agency Requesting Subpoena:

\_\_\_\_\_  
Name Title

\_\_\_\_\_  
Date and Time to Appear/Produce

\_\_\_\_\_  
Street/Post Office Box

\_\_\_\_\_  
Date

\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_  
Signature of person issuing subpoena  
\_\_\_\_ Chief Hearings Clerk \_\_\_\_\_ Administrative Law Judge  
\_\_\_\_ Assistant Hearings Clerk \_\_\_\_\_ Attorney

\_\_\_\_\_  
Telephone Number

=====

DELIVER "RETURN OF SERVICE" TO  
PARTY NAMED ABOVE

**RETURN OF SERVICE**

I certify that this subpoena was received and served as follows:

\_\_\_\_\_  
Date received by authorized server

\_\_\_\_\_  
By delivering a copy of this subpoena to  
the person named above

\_\_\_\_\_  
By telephone communication with the person  
named above (For use only by the Sheriff's office  
for witness subpoenaed to appear and testify)

\_\_\_\_\_  
This subpoena WAS NOT served for the  
following reasons:

\_\_\_\_\_  
By registered or certified mail, return receipt  
requested, on the party named above

Service Fee \_\_\_\_\_ Paid  
\$ \_\_\_\_\_ Due

\_\_\_\_\_  
Date Served

\_\_\_\_\_  
Signature and Title of Authorized Server

**NOTE TO PERSON REQUESTING SUBPOENA:** A copy of this subpoena must be delivered, mailed or faxed to the attorney for each party in this case. If a party is not represented by an attorney, the copy must be mailed or delivered to the party.

(Please See Reverse Side)

**NOTE: Rule 45, North Carolina Rules of Civil Procedure, Parts (c) and (d).  
(c) Protection Of Persons Subject To Subpoena**

(1) Avoid undue burden or expense. - A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing an undue burden or expense on a person subject to the subpoena. The court shall enforce this subdivision and impose upon the party or attorney in violation of this requirement an appropriate sanction that may include compensating the person unduly burdened for lost earnings and for reasonable attorney's fees.

(2) For production of public records or hospital medical records. - Where the subpoena commands any custodian of public records or any custodian of hospital medical records, as defined in G.S. 8-44.1, to appear for the sole purpose of producing certain records in the custodian's custody, the custodian subpoenaed may, in lieu of personal appearance, tender to the court in which the action is pending by registered or certified mail or by personal delivery, on or before the time specified in the subpoena, certified copies of the records requested together with a copy of the subpoena and an affidavit by the custodian testifying that the copies are true and correct copies and that the records were made and kept in the regular course of business, or if no such records are in the custodian's custody, an affidavit to that effect. When the copies of records are personally delivered under this subdivision, a receipt shall be obtained from the person receiving the records. Any original or certified copy of records or an affidavit delivered according to the provisions of this subdivision, unless otherwise objectionable, shall be admissible in any action or proceeding without further certification or authentication. Copies of hospital medical records tendered under this subdivision shall not be open to inspection or copied by any person, except to the parties to the case or proceedings and their attorneys in depositions, until ordered published by the judge at the time of the hearing or trial. Nothing contained herein shall be construed to waive the physician-patient privilege or to require any privileged communication under law to be disclosed.

(3) Written objection to subpoena. - Subject to subsection (d) of this rule, a person commanded to appear at a deposition or to produce and permit the inspection and copying of records, books, papers, documents, electronically stored information, or tangible things may, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, serve upon the party or the attorney designated in the subpoena written objection to the subpoena, setting forth the specific grounds for the objection. The written objection shall comply with the requirements of Rule 11. Each of the following grounds may be sufficient for objecting to a subpoena:

- a. The subpoena fails to allow reasonable time for compliance.
- b. The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the privilege or protection.
- c. The subpoena subjects a person to an undue burden or expense.
- d. The subpoena is otherwise unreasonable or oppressive.
- e. The subpoena is procedurally defective.

(4) Order of court required to override objection. - If objection is made under subdivision (3) of this subsection, the party serving the subpoena shall not be entitled to compel the subpoenaed person's appearance at a deposition or to inspect and copy materials to which an objection has been made except pursuant to an order of the court. If objection is made, the party serving the subpoena may, upon notice to the subpoenaed person, move at any time for an order to compel the subpoenaed person's appearance at the deposition or the production of the materials designated in the subpoena. The motion shall be filed in the court in the county in which the deposition or production of materials is to occur.

(5) Motion to quash or modify subpoena. - A person commanded to appear at a trial, hearing, deposition, or to produce and permit the inspection and copying of records, books, papers, documents, electronically stored information, or other tangible things, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, may file a

motion to quash or modify the subpoena. The court shall quash or modify the subpoena if the subpoenaed person demonstrates the existence of any of the reasons set forth in subdivision (3) of this subsection. The motion shall be filed in the court in the county in which the trial, hearing, deposition, or production of materials is to occur.

(6) Order to compel: expenses to comply with subpoena. - When a court enters an order compelling a deposition or the production of records, books, papers, documents, electronically stored information, or other tangible things, the order shall protect any person who is not a party or an agent of a party from significant expense resulting from complying with the subpoena. The court may order that the person to whom the subpoena is addressed will be reasonably compensated for the cost of producing the records, books, papers, documents, electronically stored information, or tangible things specified in the subpoena.

(7) Trade secrets, confidential information. - When a subpoena requires disclosure of a trade secret or other confidential research, development, or commercial information, a court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or when the party on whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship, the court may order a person to make an appearance or produce the materials only on specified conditions stated in the order.

(8) Order to quash: expenses. - When a court enters an order quashing or modifying the subpoena, the court may order the party on whose behalf the subpoena is issued to pay all or part of the subpoenaed person's reasonable expenses including attorney's fees.

**(d) Duties In Responding To Subpoena**

1) Form of response. - A person responding to a subpoena to produce records, books, documents, electronically stored information, or tangible things 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 request.

2) Forms 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 ordinarily is maintained or in a reasonably useable form or forms.

3) Electronically stored information in only one form. - The person responding need not produce the same electronically stored information in more than one form.

4) 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 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, after considering the limitation of Rule 26(b)(2). The court may specify conditions for discovery, including requiring the party that seeks discovery from a nonparty to bear the costs of locating, preserving, collecting, and producing the electronically stored information involved.

5) Specificity of objection. - When information subject to a subpoena is withheld on the objection that it is subject to protection as trial preparation materials, or that it is otherwise privileged, the objection shall be made with specificity and shall be supported by a description of the nature of the communications, records, books, papers, documents, electronically stored information, or other tangible things not produced, sufficient for the requesting party to contest the objection.

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**INFORMATION FOR WITNESS**

The subpoena is a legal order requiring you to appear on the day and at the time stated. You have been called (subpoenaed) to be a witness in a contested case.

**DUTIES OF A WITNESS**

- Unless you are a custodian of medical or public records, you must attend the hearing on the day and at the time stated in the subpoena.
- Unless otherwise directed by the administrative law judge, you must answer all questions asked when you are on the stand giving testimony.
- Your answers to questions must be truthful.
- If you are commanded to produce any items, you must bring them with you to the hearing.

If you have any questions about being subpoenaed as a witness, you should contact the person who requested the subpoena.

**UNDERSTAND THE QUESTIONS AND SPEAK OUT**

When you testify, listen carefully to all questions, and make sure that you understand the questions before you attempt to answer. If necessary, ask that a question be repeated before you try to answer. When you answer, speak clearly and loudly enough to be heard.

**BRIBING OR THREATENING A WITNESS**

It is a violation of state law for anyone to attempt to bribe, threaten, harass, or intimidate a witness. If anyone attempts to do any of these things concerning your involvement as a witness in a contested case, you should promptly report the incident to the administrative law judge.

**WITNESS FEE**

A witness is entitled to a small daily fee and travel expense reimbursement (if it is necessary to travel from outside the county in order to testify). Fees for "expert witnesses" are set by the administrative law judge. After you have been discharged as a witness, if you desire to collect the statutory fee, you should immediately contact the chief hearings clerk and certify your attendance as a witness so that you will be paid any amount due you.

Witness fees shall be paid by the party requesting the subpoena in accordance with N.C. Gen. Stat. § 7A-314. However, State officials or employees who are subpoenaed shall not be entitled to witness fees, but they shall receive their normal salary and shall not be required to take any annual leave for the days they serve as a witness. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in N.C. Gen. Stat. § 138-6

## SUBPOENA INFORMATION

Subpoenas are issued and served in accordance with N.C. Gen. Stat. §§ 150B-27 and 1A-1, Rule 45.

**A PARTY OR ATTORNEY RESPONSIBLE FOR ISSUING OR SERVING A SUBPOENA SHALL TAKE REASONABLE STEPS TO AVOID IMPOSING AN UNDUE BURDEN OR EXPENSE ON THE PERSON BEING SUBPOENAED.**

**NOTE:** You may **not** serve this subpoena yourself.

### **SUBPOENAS MAY BE SERVED BY THE FOLLOWING PEOPLE:**

1. The sheriff, deputy sheriff, or other state law enforcement officer.
2. A person 18 years of age or older **who is not a party**. (That would be anyone who is neither the Petitioner, the Respondent, nor an Intervenor)

### **SUBPOENAS MAY BE SERVED IN THE FOLLOWING MANNER:**

1. By telephone, but **only** by the sheriff, deputy sheriff, or other state law enforcement officer, and only where a person is being subpoenaed, not documents.
2. By delivery to the person named on the subpoena.
3. By registered or certified mail, return receipt requested.

### **PROOF OF SERVICE OF SUBPOENAS MAY BE MADE IN THE FOLLOWING MANNER:**

1. Delivery of a copy to the person being served.

The person serving the subpoena must prove delivery by filling out the return of service on the original subpoena. (The return of service form must be **notarized** if the subpoena was served by anyone other than a sheriff, deputy sheriff, or other state law enforcement officer.)

2. Service by telephone:

Proof of service must be made by the sheriff, deputy sheriff, or other state law enforcement officer by filling out the return of service on the original subpoena.

3. Mailing of a copy to the person being served by Registered or Certified Mail:

Proof of service is accomplished by filling out the return of service on the original subpoena and **attaching** to it the return receipt.

**NOTE:** **The return of service is made to the party requesting the subpoena. Therefore, the party must bring the proof of service to the hearing in the event that a subpoenaed witness does not appear.**

**A COPY OF THE SUBPOENA BEING SERVED MUST BE FILED WITH THE OFFICE OF ADMINISTRATIVE HEARINGS AND A COPY SERVED ON EACH PARTY IN THE CASE.**