



## **IRFLP 409 Subpoenas**

### **Idaho Rules of Family Law Procedure Rule 409. Subpoenas.**

#### **(a) In General.**

##### **(1) Form and Contents.**

**(A) Requirements.** Every subpoena must be substantially in the form found in Appendix B and must:

(i) state the name of the court from which it issued;

(ii) state the title of the action and the case number;

(iii) command each person to whom it is directed to appear to give testimony at trial, or at a hearing or deposition at a specified time and place. A command to produce or to permit inspection and copying of documents, electronically stored information or tangible things, or to permit inspection of premises, may be joined with a command to appear at trial, or at hearing or deposition, or may be issued separately; and

(iv) state the method of recording the testimony if the subpoena is commanding attendance at a deposition.

**(2) Issuing Court.** A subpoena must issue from the court where the action is pending.

**(3) Issued by Whom.** At the request of a party, the clerk must issue a subpoena, signed and under the seal of the court, but otherwise blank, and the party must complete it before service. An attorney licensed in Idaho as an officer of the court may also issue and sign a subpoena.

#### **(b) Service.**



(1) **By Whom and How.** Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person.

### (2) **Tendering Fees.**

(A) If the subpoena requires the person's attendance, the fees for 1 day's attendance and the mileage allowed by law must be tendered, if requested, at the time the subpoena is served.

(B) Service of a subpoena on a party to a legal action or proceeding can be made by service on the attorney of record for that party in such legal action or proceeding as provided in Rule 205 for attendance at a hearing or trial with or without the production of documents or other objects. No prepayment tender of fees and mileage is necessary to that party, but the court may, on a hearing held at any time after service on that party's attorney, determine the reasonable amount of such fees and mileage to be paid, if any, to that party.

(C) Fees and mileage need not be tendered when the subpoena is issued by the Attorney General or any prosecuting attorney or on behalf of the State or any of its officers or agencies.

(3) **Proof of Service.** When service is by an officer it must be returned with the officer's certificate of service, and when served by any other person, it must be returned with the person's affidavit stating the date and manner of service and the names of the persons served.

### (c) **Subpoena for Production or Inspection of Premises.**

(1) **Subpoena to Attend a Deposition, Trial, or Hearing.** A subpoena to attend a deposition, trial, or hearing may command the person to whom it is directed to produce or permit inspection and copying of designated books, papers, documents, electronically stored information, or tangible things. If the subpoena is for a party to attend a deposition, the scope and procedure must comply with Rule 406, and the party must be allowed at least 30 days to comply.

(2) **Subpoena to a Nonparty.** A subpoena to command a person who is not a party to produce or to permit inspection and copying of documents, electronically stored information, or tangible things, or to permit inspection of premises may be served at any time after all parties have either appeared or have been defaulted, unless otherwise ordered. The party serving the subpoena must:



(A) serve a copy of the subpoena on the opposing party at least 7 days prior to service on the nonparty, unless otherwise specified by the court;

(B) pay the reasonable cost of producing or copying the documents, electronically stored information, or tangible things; and

(C) on request of any other party and the payment of reasonable costs, provide copies of all documents obtained in response to the subpoena.

(3) **Appearance Not Required.** A person commanded to produce or permit inspection and copying of 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 also commanded to appear at trial, at hearing, or at deposition.

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

(d) **Relief from Subpoena.** The court, on timely motion, may:

(1) quash or modify the subpoena if it is unreasonable, oppressive, fails to allow time for compliance, requires disclosure of privileged or other protected matter and no exception or waiver applies, or subjects a person to undue burden; or

(2) condition compliance with the subpoena on the prepayment of the reasonable cost of producing the books, papers, documents, electronically stored information, or tangible things.

(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 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 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. 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 make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible 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 under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(f) **Subpoena for Deposition.**



(1) **Issuance.** The clerk of the district court for the county in which an action is pending or the county in which a deposition is being taken to be used in an action pending in another state or country, may issue a subpoena on proof of service of a notice to take a deposition as provided by Rules 412 or by stipulation.

(2) **Place of Examination.** A resident of the state may be required to attend an examination only in the county where the resident resides or is employed or transacts business in person. A nonresident of the state may be required to attend in any county of the state where the nonresident is served with a subpoena.

(g) **Subpoena for Hearing or Trial.** At the request of any party, subpoenas for attendance at a hearing or trial must be issued as provided by subsection (a) and may be served at any place within the state.

(h) **Witness Fees.** Witness fees and expenses must be in the amounts provided for under Rule 901.

(i) **Failure to Obey Subpoena.** Failure by any person without adequate excuse to obey a subpoena served up the person may be deemed a contempt of the court from which the subpoena issued, in addition to the penalties provided by law.

(j) **Interstate Depositions and Discovery.** The Uniform Interstate Depositions and Discovery Act adopted as Idaho Rule of Civil Procedure 45(j) governs depositions and discovery conducted in Idaho in connection with a civil lawsuit brought in another state.

(Adopted March 29, 2021, effective July 1, 2021.)

**Source URL:** <https://isc.idaho.gov/irflp409>