

I.R.C.P. 45.i.3. Issuance of Subpoena for Interstate Depositions and Discovery.

Idaho Rules of Civil Procedure Rule 45(i)(3). Issuance of Subpoena for Interstate Depositions and Discovery.

(A) To request issuance of a subpoena under this rule, a party must submit a foreign subpoena to a clerk of court in the county in which discovery is sought to be conducted in this state. A request for the issuance of a subpoena under this rule does not constitute an appearance in the courts of this state. It does create the necessary jurisdiction in the

State of Idaho to:

(i) enforce the subpoena;

(ii) quash or modify the subpoena;

(iii) issue any protective order or resolve any other dispute relating to the subpoena;

(iv) impose sanctions on the attorney requesting the issuance of the subpoena for any action which would constitute a violation of the Idaho Rules of Civil Procedure.

(B) When a party submits a foreign subpoena to a clerk of court in this state, the clerk shall promptly issue a subpoena for service upon the person to whom the foreign subpoena is directed.

(C) A subpoena under subsection (B) must:

(i) conform to the requirements of the Idaho Rules of Civil Procedure, including Rule 45, and conform substantially to the form provided in 45(c) but may otherwise incorporate the terms used in the foreign subpoena so long as they conform to the Idaho Rules of Civil Procedure;

(ii) advise the person to whom the subpoena is directed that such a person has a right to petition the Idaho court to quash or modify the subpoena under Rule 45(i)(6); and

(iii) contain or be accompanied by the names, addresses, and telephone numbers of all counsel of

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record in the proceeding to which the subpoena relates and of any party not represented by counsel.

Comment

Submitting a subpoena to the clerk of court in Idaho, so that a subpoena is then issued in the name of Idaho, is the necessary act that invokes the jurisdiction of Idaho, which in turn makes the newly issued subpoena both enforceable and challengeable in Idaho.

The standard procedure under this section will become as follows, using as an example a case filed in Kansas (the trial state) where the witness to be deposed lives in Idaho (the discovery state):

A lawyer of record for a party in the action pending in Kansas will issue a subpoena in Kansas (the same way lawyers in Kansas routinely issue subpoenas in pending actions). The lawyer will then prepare an Idaho subpoena so that it conforms to the requirements of the Idaho Rules of Civil Procedure and may also incorporate the same terms of the Kansas subpoena ó so long as they conform to the Idaho Rules of Civil Procedure. The lawyer will then hire a process server (or local counsel) in Idaho, who will take the completed and executed Kansas subpoena and the completed but not yet executed Idaho subpoena to the clerk's office in Idaho. In addition, the lawyer might prepare a short transmittal letter to accompany the Kansas subpoena, advising the clerk that an Idaho subpoena is being sought pursuant to Idaho Rule 45(i)(3). The clerk of court, upon being given the Kansas subpoena, will then issue the Idaho subpoena ('issue' includes signing and stamping). The process server (or other agent of the party) will then serve the Idaho subpoena on the deponent in accordance with Idaho law (which includes any applicable local rules).

The act of the clerk of court is ministerial, yet is sufficient to invoke the jurisdiction of Idaho over the deponent. The only documents that need to be presented to the clerk of court in Idaho are the subpoena issued in the trial state and the draft subpoena of Idaho. There is no requirement to hire local counsel to have the subpoena issued in Idaho, and there is no need to present the matter to a judge in Idaho before the subpoena can be issued. However, the rule requires that the Idaho subpoena 'conform to the requirements of the Idaho Rules of Civil Procedure, including Rule 45, and conform substantially to the form provided in Rule 45(c)' In effect, the clerk of court in Idaho issues the new subpoena which is then served on the deponent in accordance with the laws of Idaho. The process is simple and efficient, costs are kept to a minimum, and local counsel and judicial participation are unnecessary to have the subpoena issued and served in Idaho. The rule requires that, when the subpoena is served, it contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record and of any party not represented by counsel. This requirement imposes no significant burden on the lawyer obtaining the subpoena, given that the lawyer already has the obligation to send a notice of deposition to every counsel of record and any unrepresented parties. The benefits to Idaho, by contrast, are substantial. This requirement makes it easy for the deponent (or, as will frequently be the case, the deponent's lawyer) to learn the names of and contact the other lawyers in the case. This requirement can easily be met, since the subpoena will contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record and of any party not represented by counsel (which is the same

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information that will ordinarily be contained on a notice of deposition and proof of service).

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