

Rule 2.506 Subpoena; Order to Attend

(A) Attendance of Party or Witness.

(1) The court in which a matter is pending may by order or subpoena command a party or witness to appear for the purpose of testifying in open court on a date and time certain and from time to time and day to day thereafter until excused by the court, and to produce notes, records, documents, photographs, or other portable tangible things as specified.

(2) A subpoena may specify the form or forms in which electronically stored information is to be produced, subject to objection. If the subpoena does not so specify, the person responding to the subpoena must produce the information in a form or forms in which the person ordinarily maintains it, or in a form or forms that are reasonably usable. A person producing electronically stored information need only produce the same information in one form.

(3) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. In a hearing or submission under subrule (H), the person responding to the subpoena must show that the information sought 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 MCR 2.302(C). The court may specify conditions for such discovery.

(4) The court may require a party and a representative of an insurance carrier for a party with information and authority adequate for responsible and effective participation in settlement discussions to be present or immediately available at trial.

(5) A subpoena may be issued only in accordance with this rule or MCR 2.305, 2.621(C), 9.112(D), 9.115(I)(1), or 9.212.

(B) Authorized Signatures.

(1) A subpoena signed by an attorney of record in the action or by the clerk of the court in which the matter is pending has the force and effect of an order signed by the judge of that court.

(2) For the purpose of this subrule, an authorized signature includes but is not limited to signatures written by hand, printed, stamped, typewritten, engraved, photographed, or lithographed.

(C) Notice to Witness of Required Attendance.

(1) The signer of a subpoena must issue it for service on the witness sufficiently in advance of the trial or hearing to give the witness reasonable notice of the date and time the witness is to appear. Unless the court orders otherwise, the subpoena must be served at least 2 days before the witness is to appear.

(2) The party having the subpoena issued must take reasonable steps to keep the witness informed of adjournments of the scheduled trial or hearing.

(3) If the served witness notifies the party that it is impossible for the witness to be present in court as directed, the party must either excuse the witness from attendance at that time or notify the witness that a special hearing may be held to adjudicate the issue.

(D) Form of Subpoena. A subpoena must:

(1) be entitled in the name of the People of the State of Michigan;

(2) be imprinted with the seal of the Supreme Court of Michigan;

(3) have typed or printed on it the name of the court in which the matter is pending;

(4) state the place where the trial or hearing is scheduled;

(5) state the title of the action in which the person is expected to testify;

(6) state the file designation assigned by the court; and

(7) state that failure to obey the commands of the subpoena or reasonable directions of the signer as to time and place to appear may subject the person to whom it is directed to penalties for contempt of court.

The state court administrator shall develop and approve a subpoena form for statewide use.

(E) Refusal of Witness to Attend or to Testify; Contempt.

(1) If a person fails to comply with a subpoena served in accordance with this rule or with a notice under subrule (C)(2), the failure may be considered a contempt of court by the court in which the action is pending.

(2) If a person refuses to be sworn or to testify regarding a matter not privileged after being ordered to do so by the court, the refusal may be considered a contempt of court.

(F) Failure of Party to Attend. If a party or an officer, director, or managing agent of a party fails to attend or produce documents or other tangible evidence pursuant to a subpoena or an order to attend, the court may:

(1) stay further proceedings until the order is obeyed;

(2) tax costs to the other party or parties to the action;

(3) strike all or a part of the pleadings of that party;

(4) refuse to allow that party to support or oppose designated claims and defenses;

(5) dismiss the action or any part of it; or

(6) enter judgment by default against that party.

(G) Service of Subpoena and Order to Attend; Fees.

(1) A subpoena may be served anywhere in Michigan in the manner provided by MCR 2.105. The fee for attendance and mileage provided by law must be tendered to the person on whom the subpoena is served at the time of service. Tender must be made in cash, by money order, by cashier's check, or by a check drawn on the account of an attorney of record in the action or the attorney's authorized agent.

(2) A subpoena may also be served by mailing to a witness a copy of the subpoena and a postage-paid card acknowledging service and addressed to the party requesting service. The fees for attendance and mileage provided by law are to be given to the witness after the witness appears at the court, and the acknowledgment card must so indicate. If the card is not returned, the subpoena must be served in the manner provided in subrule (G)(1).

(3) A subpoena or order to attend directed to a party, or to an officer, director, or managing agent of a party, may be served in the manner provided by MCR 2.107, and fees and mileage need not be paid.

(H) Hearing on Subpoena or Order.

(1) A person served with a subpoena or order to attend may appear before the court in person or by writing to explain why the person should not be compelled to comply with the subpoena, order to attend, or directions of the party having it issued.

(2) The court may direct that a special hearing be held to adjudicate the issue.

(3) For good cause with or without a hearing, the court may excuse a witness from compliance with a subpoena, the directions of the party having it issued, or an order to attend.

(4) A person must comply with the command of a subpoena unless relieved by order of the court or written direction of the person who had the subpoena issued.

(I) Subpoena for Production of Hospital Medical Records.

(1) Except as provided in subrule (I)(5), a hospital may comply with a subpoena calling for production of medical records belonging to the hospital in the manner provided in this subrule. This subrule does not apply to x-ray films or to other portions of a medical record that are not susceptible to photostatic reproduction.

(a) The hospital may deliver or mail to the clerk of the court in which the action is pending, without cost to the parties, a complete and accurate copy of the original record.

(b) The copy of the record must be accompanied by a sworn certificate, in the form approved by the state court administrator, signed by the medical record librarian or another authorized official of the hospital, verifying that it is a complete and accurate reproduction of the original record.

(c) The envelope or other container in which the record is delivered to the court shall be clearly marked to identify its contents. If the hospital wishes the record returned when it is no longer needed in the action, that fact must be stated on the container, and, with the record, the hospital must provide the clerk with a self-addressed, stamped envelope that the clerk may use to return the record.

(d) The hospital shall promptly notify the attorney for the party who caused the subpoena to be issued that the documents involved have been delivered or mailed to the court in accordance with subrule (I)(1).

(2) The clerk shall keep the copies sealed in the container in which they were supplied by the hospital. The container shall be clearly marked to identify the contents, the name of the patient, and the title and number of the action. The container shall not be opened except at the direction of the court.

(3) If the hospital has requested that the record be returned, the clerk shall return the record to the hospital when 42 days have passed after a final order terminating the action, unless an appeal has been taken. In the event of an appeal, the record shall be returned when 42 days have passed after a final order terminating the appeal. If the hospital did not request that the record be returned as provided in subrule (I)(1)(c), the clerk may destroy the record after the time provided in this subrule.

(4) The admissibility of the contents of medical records produced under this rule or under MCR 2.314 is not affected or altered by these procedures and remains subject to the same objections as if the original records were personally produced by the custodian at the trial or hearing.

(5) A party may have a subpoena issued directing that an original record of a person be produced at the trial or hearing by the custodian of the record. The subpoena must specifically state that the original records, not copies, are

required. A party may also require, by subpoena, the attendance of the custodian without the records.