

RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
RULE 1:9. SUBPOENAS

1:9-1. For Attendance of Witnesses; Forms; Issuance; Notice in Lieu of Subpoena

A subpoena may be issued by the clerk of the court or by an attorney or party in the name of the clerk or as provided by R. 7:7-8 (subpoenas in certain cases in the municipal court). It shall state the name of the court and the title of the action and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. If the witness is to testify in a criminal action for the State or an indigent defendant, the subpoena shall so note, and shall contain an order to appear without the prepayment of any witness fee. The testimony of a party who could be subpoenaed may be compelled by a notice in lieu of subpoena served upon the party's attorney demanding that the attorney produce the client at trial. If the party is a corporation or other organization, the testimony of any person deposable on its behalf, under R. 4:14-2, may be compelled by like notice. The notice shall be served in accordance with R. 1:5-2 at least 5 days before trial. The sanctions of R. 1:2-4 shall apply to a failure to respond to a notice in lieu of a subpoena.

Note: Source-R.R. 3:5-10(a)(b), 4:46-1, 6:3-7(a), 7:4-3 (second paragraph), 8:4-9(a)(b); caption and text amended November 27, 1974 to be effective April 1, 1975; amended July 13, 1994 to be effective September 1, 1994; amended January 5, 1998 to be effective February 1, 1998.

1:9-2. For Production of Documentary Evidence and Electronically Stored Information; Notice in Lieu of Subpoena

A subpoena or, in a civil action, a notice in lieu of subpoena as authorized by R. 1:9-1 may require production of books, papers, documents, electronically stored information, or other objects designated therein. The court on motion made promptly may quash or modify the subpoena or notice if compliance would be unreasonable or oppressive and, in a civil action, may condition denial of the motion upon the advancement by the person in whose behalf the subpoena or notice is issued of the reasonable cost of producing the objects subpoenaed. The court may direct that the objects designated in the subpoena or notice be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit them or portions of them to be inspected by the parties and their attorneys and, in matrimonial actions and juvenile proceedings, by a probation officer or other person designated by the court. Except for pretrial production directed by the court pursuant to this rule, subpoenas for pretrial production shall comply with the requirements of R. 4:14-7(c).

Note: Source - R.R. 3:5-10(c), 4:46-2, 6:3-7(b), 7:4-3 (second paragraph), 8:4-9(c); amended November 27, 1974 to be effective April 1, 1975; amended June 29, 1990 to be effective September 4, 1990; caption and text amended July 27, 2006 to be effective September 1, 2006.

1:9-3. Service

A subpoena may be served by any person 18 or more years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named together with tender of the fee allowed by law, except that if the person is a witness in a criminal action for the State or an indigent defendant, the fee shall be paid before leaving the court at the conclusion of the trial by the sheriff or, in the municipal court, by the clerk thereof. A subpoena which seeks only the production of documents or records may be served by registered, certified or ordinary mail and, if served in that manner, shall be enforceable only upon receipt of a signed acknowledgment and waiver of personal service.

Note: Source — R.R. 3:5-10(b) (last sentence), 3:5-10(d), 4:46-3, 5:2-2, 6:3-7(c), 7:4-6(a) (last sentence), 8:4-9(d); amended July 13, 1994 to be effective September 1, 1994; amended August 1, 2016 to be effective September 1, 2016.

1:9-4. Place of Service

A subpoena requiring the attendance of a witness at a hearing in any court may be served at any place within the State of New Jersey.

Note: Source-R.R. 3:5-10(e), 6:3-7(d), 7:4-6(b), 8:4-9(e).

1:9-5. Failure to Appear

Failure without adequate excuse to obey a subpoena served upon any person may be deemed a contempt of the court from which the subpoena issued.

Note: Source-R.R. 3:5-10(f), 6:3-7(e), 8:4-9(f); amended July 13, 1994 to be effective September 1, 1994.

1:9-6. Enforcement of Subpoena of Public Officer or Agency

(a) Ex Parte Application for Compliance. Where by statute a public officer or agency may apply ex parte to the court to compel a person to testify or to produce or file books, papers, documents or other objects in accordance with the subpoena or direction of the officer or agency, or to refrain from certain misconduct, the application may be made by motion supported by affidavit. The court may order the person to appear before the officer or agency and there to proceed as may be directed in the order.

(b) Application for Compliance on Notice. If in such a case the statute does not provide for an application ex parte, an order to show cause may issue on the motion

and supporting affidavit. The order shall be made returnable in not less than 2 nor more than 10 days, requiring such person to show cause before the court why the subpoena or other direction should not be complied with or such misconduct refrained from, and upon the return of the order the court shall afford the person an opportunity to be heard under oath. The court may order a person determined by it to have failed, without justification, to obey the subpoena or other direction, answer a proper question, produce any such thing, or to have been guilty of misconduct, to appear before the officer or agency at a time or times and place mentioned in the order and there to proceed as may be directed in the order.

(c) Application for Sanctions. Where a statute provides that failure of a person to obey a subpoena or order of a public officer or administrative agency or a receiver, to testify, to answer a proper question, or to produce books, papers, documents or other objects, or that misconduct on the part of a person attending a hearing, shall be punishable by the court in the same manner as like failure or misconduct is punishable in an action pending in the court, the matter shall be brought before the court by motion supported by affidavit stating the circumstances. Upon the motion the court may issue an order to show cause, returnable in not less than 2 nor more than 10 days, requiring the person to show cause before the court why punishment should not be ordered; or the court may issue an attachment. If the court determines that the failure or misconduct above mentioned was without justification, it may punish as for a contempt of court.

Note: Source-R.R. 4:46-5(a)(b)(c); paragraphs (b) and (c) amended July 13, 1994 to be effective September 1, 1994.