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RULE 12.410. SUBPOENA

(a) Subpoenas Generally. Subpoenas for testimony before the court, subpoenas for production of tangible evidence, and subpoenas for taking depositions may be issued by the clerk of court or by any attorney of record in an action. No subpoena issued under this rule, even if for the purpose of proof of service or nonservice of the subpoena, shall be filed with the court unless in compliance with Florida Rule of Judicial Administration 2.425.

(b) Subpoena for Testimony Before the Court.-

(1) Every subpoena for testimony before the court must be issued by an attorney of record in an action or by the clerk under the seal of the court and must state the name of the court and the title of the action and must command each person to whom it is directed to attend and give testimony at a time and place specified in it.

(2) On oral request of an attorney or party, the clerk must issue a subpoena for testimony before the court or a subpoena for the production of documentary evidence before the court signed and sealed but otherwise in blank, both as to the title of the action and the name of the person to whom it is directed, and the subpoena must be filled in before service by the attorney or party.

(c) For Production of Documentary Evidence.

(1) Generally. A subpoena may also command the person to whom it is directed to produce the books, papers, documents (including electronically stored information), or tangible things designated therein, but the court, on motion made promptly and in any event at or before the time specified in the subpoena for compliance with it, may

(A) quash or modify the subpoena if it is unreasonable and oppressive, or

(B) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

A party seeking a production of evidence at trial which would be subject to a subpoena may compel such production by serving a notice to produce such evidence on an adverse party as provided in rule 12.080(a). Such notice shall have the same effect and be subject to the same limitations as a subpoena served on the party.

(2) Compliance with Rule 2.425. Any notice to produce issued under this rule must comply with Florida Rule of Judicial Administration 2.425.

(d) Service.

~~**(1) Generally**.~~ A subpoena may be served by any person authorized by law to serve process or by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena on a person named in it shall be made as provided by law. Proof of such service shall be made by affidavit of the person making service ~~if not served by an officer authorized by law to do so~~except as applicable under rule 12.351(c) for the production of documents and things by a nonparty without deposition, if not served by an officer authorized by law to do so.

~~**(2) Notice of Subpoena to Parties.** A party issuing a subpoena through an attorney of record or clerk of the court under this rule must, on the same day as the subpoena is served, serve each party to the proceeding with a notice of issuance of subpoena and file this notice with the court. The notice of issuance of subpoena must identify the person or entity subject to the subpoena, the date the subpoena was issued, and the date and time for appearance or production, and must recite that all references to account numbers or personal identifying numbers are in compliance with Florida Rule of Judicial Administration 2.425. An unexecuted copy of the subpoena to be issued must be attached to the Notice of Subpoena.~~

(e) Subpoena for Taking Depositions.

(1) Filing a notice to take a deposition as provided in rule 12.310(b) or 12.320(a) with a certificate of service on it showing service on all parties to the action constitutes an authorization for the issuance of subpoenas for the persons named or described in the notice by the clerk of the court in which the action is pending or by an attorney of record in the action. The subpoena may command the person to whom it is directed to

produce designated books, papers, documents, or tangible things that constitute or contain evidence relating to any of the matters within the scope of the examination permitted by rule 12.280(c), but in that event the subpoena will be subject to the provisions of rule 12.280(d) and subdivision (c) of this rule. Within 10 days after its service, or on or before the time specified in the subpoena for compliance if the time is less than 10 days after service, the person to whom the subpoena is directed may serve written objection to inspection or copying of any of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. If objection has been made, the party serving the subpoena may move for an order at any time before or during the taking of the deposition upon notice to the deponent.

(2) A person may be required to attend an examination only in the county in which the person resides or is employed or transacts business in person or at such other convenient place as may be fixed by an order of court.

(f) Contempt. Failure by any person without adequate excuse to obey a subpoena served on that person may be deemed a contempt of the court from which the subpoena issued.

(g) Depositions before Commissioners Appointed in this State by Courts of Other States; Subpoena Powers; etc. When any person authorized by the laws of Florida to administer oaths is appointed by a court of record of any other state, jurisdiction, or government as commissioner to take the testimony of any named witness within this state, that witness may be compelled to attend and testify before that commissioner by witness subpoena issued by the clerk of any circuit court at the instance of that commissioner or by other process or proceedings in the same manner as if that commissioner had been appointed by a court of this state; provided that no document or paper writing shall be compulsorily annexed as an exhibit to such deposition or otherwise permanently removed from the possession of the witness producing it, but in lieu thereof a copy may be annexed to and transmitted with such executed commission to the court of issuance.

(h) Subpoena of Minor. Any minor subpoenaed for testimony has the right to be accompanied by a parent, guardian, guardian ad litem, or

attorney ad litem at all times during the taking of testimony notwithstanding the invocation of the rule of sequestration of section 90.616, Florida Statutes, except on a showing that the presence of a parent or guardian is likely to have a material, negative impact on the credibility or accuracy of the minor's testimony, or that the interests of the parent or guardian are in actual or potential conflict with the interests of the minor. The provisions of this subdivision do not alter the requirements of rule 12.407 that a court order must be obtained before a minor child may be subpoenaed to appear at a hearing.

Committee Note

2008 Amendment. The provisions of Fla. R. Civ. P. 1.410(h) do not alter the requirements of rule 12.407 that a court order must be obtained before a minor child may be subpoenaed to appear at a hearing.

2012 Amendment. This rule is amended to provide for service in accordance with Florida Rule of Judicial Administration 2.516.