

The Supreme Court of South Carolina

Re: Amendments to Rule 45, South Carolina Rules of
Civil Procedure

Appellate Case No. 2019-001492

ORDER

Pursuant to Article V, § 4 of the South Carolina Constitution, Rule 45 of the South Carolina Rules of Civil Procedure is amended as set forth in the attachment to this order. This amendment shall be submitted to the General Assembly as provided in Article V, § 4A of the South Carolina Constitution.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina
January 30, 2020

Rule 45, South Carolina Rules of Civil Procedure, is amended to delete the last sentence of paragraph (b)(1) and add new paragraph (a)(4), which provides:

(4) If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served on the person to whom it is directed, a copy of the subpoena must be served on each party in the manner prescribed by Rule 5(b) at least ten days before the time specified for compliance.

Paragraph (e) of Rule 45, South Carolina Rules of Civil Procedure, is amended to provide:

(e) **Contempt.** Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a non-party to attend a deposition, permit an inspection, or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A); or if served without an adequate time to respond; or if service is made upon an individual under Rule 4(d)(1) and the individual did not receive or acknowledge the subpoena.

The following Note is added to Rule 45, South Carolina Rules of Civil Procedure:

Note to 2020 Amendment:

The amendment incorporates a version of the 2013 amendment to the Federal Rule by transferring the last sentence in paragraph (b)(1) to new paragraph (a)(4) and amending the sentence to require the issuing party serve a copy of the subpoena on each party before it is served on the person to whom it is directed. The language has also been modified, consistent with the corresponding Federal Rule and prior amendments to the South Carolina Rules of Civil Procedure involving electronic discovery, to include a reference to electronically stored information.

Paragraph (e) has been amended to delete the specific reference to former paragraph (b)(1)—now paragraph (a)(4)—with regard to an adequate time to respond. This provision controls the time to serve a subpoena on each party, and not the time to serve the subpoena on the

person to whom the subpoena is directed.

SUBMITTED TO THE GENERAL ASSEMBLY