

## **SUBPOENA IN AN ADVERSARY PROCEEDING**

### **Instructions for Subpoena**

#### **Caption**

1. Identify the judicial district in which the bankruptcy case was filed. Example: “Eastern District of California.”
2. “In re”: Insert the name of the debtor as it appears in the bankruptcy petition.
3. “Plaintiff”: Insert the name of the plaintiff as it appears in the caption of the complaint.
4. “Case No.”: Insert the bankruptcy case number assigned by the court when the case was filed.
5. “Chapter”: Insert the chapter of the Bankruptcy Code under which the case is pending.
6. “Defendant”: Insert the name of the defendant as it appears in the caption of the complaint.
7. “Adv. Proc. No.”: Insert the adversary proceeding number assigned by the court when the complaint was filed.

#### **To**

Insert in this box the complete name and address of the person to whom the subpoena is directed. (The clerk may issue a subpoena, signed but otherwise in blank, but the form must be filled in, including the name and address, before the subpoena is served.)

#### **Check boxes followed by “YOU ARE COMMANDED”**

Check the appropriate box or boxes.

#### **Place of Testimony (below first checkbox)**

Insert the complete address of the place where the witness is to appear and testify. The address should include the name of the building, street number and name, city, state, and zip code. If this is not a subpoena for trial testimony, indicate that this box is not applicable.

#### **Courtroom**

Insert the number or name of the courtroom in which the witness is to testify. If this is not a

Form 255 – Instructions 12/06

subpoena for trial testimony, indicate that this box is not applicable.

**Date and Time**

Insert the date and time of the trial. If this is not a subpoena for trial testimony, indicate that this box is not applicable.

**Place of Deposition (below second checkbox)**

Insert the complete address of the place where the witness is to be deposed. The address should include the name of the building, room number, street number and name, city, state, and zip code. If this is not a subpoena for deposition testimony, indicate that this box is not applicable.

**Date and Time**

Insert the date and time of the deposition. If this is not a subpoena for deposition testimony, indicate that this box is not applicable.

**You Are Commanded to Produce (third checkbox)**

Insert the exact description of any and all books, documents, electronically stored information, or tangible things the witness is required to produce. If no evidence is to be produced, enter “NONE.”

**Place**

Insert the complete address of the place where the witness is to produce the books, documents, electronically stored information, or tangible things. The address should include the name of the building, the room number, street number and name, city, state, and zip code. If no evidence is to be produced, enter “Not Applicable.”

**Date and Time**

Insert the date and time at which the witness is to produce the books, documents, electronically stored information, or tangible things. If no evidence is to be produced, enter “Not Applicable.”

**Premises (below fourth checkbox)**

Insert the complete description of the premises to be inspected. The address should include the name of the building and the room number (if applicable), street number and name, city, state, and zip code or other information sufficient to identify the premises with particularity. If this is not a subpoena for inspection of premises, enter “Not Applicable.”

**Date and Time**

Insert the date and time at which the premises are to be inspected. If this is not a subpoena for inspection of premises, enter “Not Applicable.”

**Issuing Officer’s Signature and Title (bottom of front of form)**

The person who issues the subpoena signs here, states his or her title (for example, “deputy clerk” or “attorney”), and dates the signature.

**Date**

Insert the date the subpoena was issued.

**Issuing Officer's Name, Address, and Phone Number**

If an attorney issues the subpoena, insert the attorney's name, street address, city, state, zip code, and telephone number, including area code. If the subpoena is issued by the clerk, insert the information for the clerk's office.

**Instructions for Proof of Service**

The proof of service and declaration on the reverse of the form are to be completed, under penalty of perjury, by the person who serves the subpoena.

**Served**

Insert the date and place the subpoena was served. Specify the street address, city, state, and zip code of the place service of the subpoena was made.

**Served On**

Insert the full (printed or typed) name of the person who received the subpoena.

**Manner of Service**

Describe the manner of service.

**Served By**

Insert the full (printed or typed) name of the person who served the subpoena and specify the person's title.

### **Declaration of Server**

The declaration is to be completed as follows:

“Date”: Insert the month, day and year the certificate is signed.

“Signature of Server”: This must be the ORIGINAL signature of the person who served the subpoena.

“Address of Server”: Print or type the address of the person who signs the declaration

### **Protection of Persons Subject to Subpoenas**

In order to protect persons subject to subpoenas, Rule 45(a)(1)(D) requires that every subpoena set forth the text of subdivisions (c) and (d) of the rule. Subdivision (e) is set out on the subpoena form to inform the person served that failing to obey a subpoena without adequate excuse may be deemed contempt of court. Furthermore, Rule 45(c)(1) provides that a party or attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena and that the court on behalf of which the subpoena was issued shall enforce this duty.

### **Applicable Law and Rules**

- A subpoena may be served by any person who is not a party and is not less than 18 years of age. Rule 45(b)(1) Federal Rules of Civil Procedure.
- Service of a subpoena upon a person named therein is made by delivering a copy of the subpoena to the person and, if the person's attendance is commanded, by tendering to that person the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the United States or an officer or agency thereof, fees and mileage need not be tendered. Rule 45(b)(1).
- Computation of the fees and allowances to be paid a witness for attending a trial, hearing, or deposition is governed by 28 U.S.C. Section 1821.
- The witness fee is \$40 per day, 28 U.S.C. Section 1821(b), and the mileage rate for an automobile is 48.5 cents per mile, 41 C.F. R. Section 301-10.303. Computation of mileage is set by a uniform table of mileage maintained by the General Services Administration 18 U.S.C. Section 1821(c)(2). **The witness fee and mileage rate are subject to change and should be verified.** (Updated July 1, 2007)
- Subject to the restrictions in Rule 45(c)(3)(A)(ii), a subpoena may be served at any place within the district of the court by which it is issued, at any place without the district that is within 100 miles of the place of examination, or at any place within the state where a state statute or court rule permits service of a subpoena issued by a state court of general jurisdiction sitting at the place of the examination. IN addition, when provided by a federal statute, the court may, for cause, authorize the service of a subpoena at any other place. Rule 45(b)(2).