

March 27, 2003

**H 785. RULES OF CIVIL PROC/REWRITE RULE 45. TO REWRITE RULE 45 OF THE NORTH CAROLINA RULES OF CIVIL PROCEDURE.** Completely rewrites Rule 45 of the North Carolina Rules of Civil Procedure, GS 1A-1, by reorganizing rule, making technical changes and adding the following new provisions: Revised 45(a) provides that a subpoena to produce evidence may be combined with a command to appear at trial or a deposition, or may be issued separately. Adds requirement that the subpoena shall include the name of court in which action is pending, the civil action number, and notice of protections and requirements imposed by Rule 45(d1) and (d2). Rule 45(a1) requires that subpoena issue from court in which action is pending. Deletes option of tendering certain business records to court in lieu of personal appearance. Adds new Rule 45(d1)(1) requiring that issuing party take measures to avoid imposing undue burden or expense on subpoena recipient and providing for sanctions, including reasonable attorney's fees and compensation for lost earnings, for violation of this requirement. Deletes Rule 45(d)(1) concerning subpoena for taking depositions and adds new Rule 45(d1)(3) which outlines the procedure and grounds for making written objections to subpoenas. Clarifies in Rule 45(d1)(4) that if objection is made to subpoena, issuing party may not compel responsive party to appear at deposition and that motion to compel appearance or production must be filed in the court in which the action is pending. New Rule 45(d1)(5) outlines the procedure for filing a motion to quash or modify subpoena within ten days after service and Rule 45(d1)(8) authorizes court to award reasonable expenses, including attorney's fees, upon granting motion to quash. Rule 45(d1)(6) authorizes court issuing an order compelling production to protect responsive party from incurring significant expense, including requiring the party issuing the subpoena to advance the reasonable costs of production. Rule 45(d1)(7) provides that a court may quash or modify issuance of subpoena where it requests disclosure of trade secrets or other confidential information, or impose conditions on production of materials if issuing party demonstrates substantial need for the information. New Rule 45(d2)(2) requires that objections to subpoenas include nature of objection and general description of responsive materials sufficient for requesting party to contest the objection. New Rule 45(e)(2) requires that copy of subpoena be served upon each party to action.

**Intro. by Haire.**

Ref. to Judiciary IV
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GS 1A
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April 28, 2003

**H 785. RULES OF CIVIL PROC/REWRITE RULE 45.** Intro. 3/27/03. House committee substitute makes the following changes to 1st edition: (1) totally reorganizes rule into an engrossed edition with various stylistic and editorial changes, including new captions, but incorporating most of the provisions in original bill; (2) provides in subsection (a) (Form, Issuance) that any judge of the superior court, judge of the district court, magistrate, or attorney, as officer of the court may issue and sign a subpoena, in addition to the clerk of court; and (3) adds in subsection (e) a reorganized subsection entitled "Contempt" and providing that failure by any person without adequate excuse (was adequate objection) to obey a subpoena served upon the person may be deemed a contempt of court (was, is a contempt of court).

April 29, 2003

**H 785. RULES OF CIVIL PROC/REWRITE RULE 45.** Intro. 3/27/03. House amendment makes the following changes to 1st edition. Provides that act is effective Oct. 1, 2003, and applies to actions pending or filed on or after that date.

June 10, 2003

**H 785. RULES OF CIVIL PROC/REWRITE RULE 45.** Intro. 3/27/03. Senate committee substitute adopted 6/9/03 makes the following changes to 3rd edition. Amends GS 1A-1, Rule 45(a)(1)a. to require that subpoena state the name of the party issuing subpoena. Amends Rule 45(c)(6) to authorize court to order that person to whom subpoena is addressed be reasonably compensated for production costs (was, required that party issuing subpoena advance reasonable costs). Adds new Rule 45(e)(2) authorizing court to award costs and attorney's fees to party issuing subpoena if person to whom subpoena was directed files an unreasonable motion to quash or to limit subpoena or if motion is made for an improper purpose. Makes technical changes.

July 7, 2003

**SL 2003-276 (H 785). RULES OF CIVIL PROCEDURE/REWRITE RULE 45. AN ACT TO REWRITE RULE 45 OF THE NORTH CAROLINA RULES OF CIVIL PROCEDURE.** Summarized in *Daily Bulletin* 3/27/03, 4/28/03, 4/29/03, and 6/10/03. Enacted June 26, 2003. Effective October 1, 2003.