

## **RULE 176. SUBPOENAS**

### **176.1 Form.**

Every subpoena must be issued in the name of "The State of Texas" and must:

- (a) state the style of the suit and its cause number;
- (b) state the court in which the suit is pending;
- (c) state the date on which the subpoena is issued;
- (d) identify the person to whom the subpoena is directed;
- (e) state the time, place, and nature of the action required by the person to whom the subpoena is directed, as provided in Rule 176.2;
- (f) identify the party at whose instance the subpoena is issued, and the party's attorney of record, if any;
- (g) state the text of Rule 176.8(a); and
- (h) be signed by the person issuing the subpoena.

### **176.2 Required Actions.**

A subpoena must command the person to whom it is directed to do either or both of the following:

- (a) attend and give testimony at a deposition, hearing, or trial;
- (b) produce and permit inspection and copying of designated documents or tangible things in the possession, custody, or control of that person.

### **Rule 176.3 Limitations.**

- (a) Range. A person may not be required by subpoena to appear or produce documents or other things in a county that is more than 150 miles from where the person resides or is served. However, a person whose appearance or production at a deposition may be compelled by notice alone under Rules 199.3 or 200.2 may be required to appear and produce documents or other things at any location permitted under Rules 199.2(b)(2).
- (b) Use for Discovery. A subpoena may not be used for discovery to an extent, in a manner, or at a time other than as provided by the rules governing discovery.

### **Rule 176.4**

**Who May Issue.** A subpoena may be issued by:

- (a) the clerk of the appropriate district, county, or justice court, who must provide the party requesting the subpoena with an original and a copy for each witness to be completed by the party;
- (b) an attorney authorized to practice in the State of Texas, as an officer of the court; or
- (c) an officer authorized to take depositions in this State, who must issue the subpoena immediately on a request accompanied by a notice to take a deposition under Rules 199 or 200, or a notice under Rule 205.3, and who may also serve the notice with the subpoena.

### **Rule 176.5**

**Service.**

- (a) Manner of Service. A subpoena may be served at any place within the State of Texas by any sheriff or constable of the State of Texas, or any person who is not a party and is 18 years of age or older. A subpoena must be served by delivering a copy to the witness and tendering to that person any fees required by law. If the witness is a party and is represented by an attorney of record in the proceeding, the subpoena may be served on the witness's attorney of record.
- (b) Proof of Service. Proof of service must be made by filing either:
  - (1) the witness's signed written memorandum attached to the subpoena showing that the witness accepted the subpoena; or

(2) a statement by the person who made the service stating the date, time, and manner of service, and the name of the person served.

#### Rule 176.6

##### Response.

(a) Compliance Required. Except as provided in this subdivision, a person served with a subpoena must comply with the command stated therein unless discharged by the court or by the party summoning such witness. A person commanded to appear and give testimony must remain at the place of deposition hearing, or trial from day to day until discharged by the court or by the party summoning the witness.

(b) Organizations. If a subpoena commanding testimony is directed to a corporation, partnership, association, governmental agency, or other organization, and the matters on which examination is requested are described with reasonable particularity, the organization must designate one or more persons to testify on its behalf as to matters known or reasonably available to the organization.

(c) Production of Documents or Tangible Things. A person commanded to produce documents or tangible things need not appear in person at the time and place of production unless the person is also commanded to attend and give testimony, either in the same subpoena or a separate one. A person must produce documents as they are kept in the usual course of business or must organize and label them to correspond with the categories in the demand. A person may withhold material or information claimed to be privileged but must comply with Rule 193.3. A nonparty's production of a document authenticates the document for use against the nonparty to the same extent as a party's production of a document is authenticated for use against the party under Rule 193.7.

(d) Objections. A person commanded to produce and permit inspection or copying of designated documents and things may serve on the party requesting issuance of the subpoena - before the time specified for compliance - written objections to producing any or all of the designated materials. A person need not comply with the part of a subpoena to which objection is made as provided in this paragraph unless ordered to do so by the court. The party requesting the subpoena may move for such an order at any time after an objection is made.

(e) Protective Orders. A person commanded to appear at a deposition, hearing, or trial, or to produce and permit inspection and copying of designated documents and things, and any other person affected by the subpoena, may move for a protective order under Rule 192.6(b) - before the time specified for compliance - either in the court in which the action is pending or in a district court in the county where the subpoena was served. The person must serve the motion on all parties in accordance with Rule 21a. A person need not comply with the part of a subpoena from which protection is sought under this paragraph unless ordered to do so by the court. The party requesting the subpoena may seek such an order at any time after the motion for protection is filed.

(f) Trial Subpoenas. A person commanded to attend and give testimony, or to produce documents or things, at a hearing or trial, may object or move for protective order before the court at the time and place specified for compliance, rather than under paragraphs (d) and (e).

#### Rule 176.7

##### Protection of Person from Undue Burden and Expense.

A party causing a subpoena to issue must take reasonable steps to avoid imposing undue burden or expense on the person served. In ruling on objections or motions for protection, the court must provide a person served with a subpoena an adequate time for compliance, protection from disclosure of privileged material or information, and protection from undue burden or expense. The court may impose reasonable conditions on compliance with a subpoena, including compensating the witness for undue hardship.

#### Rule 176.8

##### Enforcement of Subpoena.

(a) 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 is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both.

(b) Proof of Payment of Fees Required for Fine or Attachment. A fine may not be imposed, nor a person served with a subpoena attached, for failure to comply with a subpoena without proof by affidavit of the party requesting the subpoena or the party's attorney of record that all fees due the witness by law were paid or tendered.

(Added Aug. 5, 1998, and amended Nov. 9, 1998, eff. Jan. 1, 1999.)

#### Texas Statutes Art. 2.11 BUS. CORP. ACT. Service of Process on Corporation

A. The president and all vice presidents of the corporation and the registered agent of the corporation shall be agents of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

B. Whenever the corporation shall fail to appoint or maintain a registered agent in this State, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the Secretary of State shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Secretary of State of any process, notice, or demand shall be made by delivering to and leaving with him, or with the Assistant Secretary of State, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the Secretary of State, he shall immediately cause one of the copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office. Any service so had on the Secretary of State shall be returnable in not less than thirty (30) days.

C. The Secretary of State shall keep a record of all processes, notices and demands served upon him under this Article, and shall record therein the time of such service and his action with reference thereto.

D. Services of process, notice, or demand required or permitted by law to be served by a political subdivision of this state or by a person, including another political subdivision or an attorney, acting on behalf of a political subdivision in connection with the collection of a delinquent ad valorem tax may be served on a corporation whose corporate privileges are forfeited under Section 171.251 TAX, Tax Code, or is involuntarily dissolved under Article 7.01 of this Act by delivering the process, notice, or demand to any officer or director of the corporation, as listed in the most recent records of the secretary of state. If the officers or directors of the corporation are unknown or cannot be found, service on the corporation may be made in the same manner as service is made on unknown shareholders under law.

Notwithstanding any disability or reinstatement of a corporation, service of process under this section is sufficient for a judgment against the corporation or a judgment in rem against any property to which the corporation holds title.

Acts 1955, 54th Leg., p. 239, ch. 64, eff. Sept. 6, 1955. Sec. D added by Acts 1999, 76th Leg., ch. 1481, § 40, eff. Sept. 1, 1999.