

An employee from State A sued his former company in a federal court in State A for discrimination in violation of federal employment law.

The employee served an officer of the company with a subpoena to attend a deposition in the city where the employee now resides. The city is 175 miles away from the company's headquarters in State B and 200 miles away from where the officer resides in State A. The officer performs all her employment duties at the company's headquarters.

Must the officer comply with the subpoena?

- A. No, because the city is located 200 miles away from the officer's residence.
- B. No, because the city is located in a different state than the company's headquarters.
- C. Yes, because the city is located 175 miles away from the company's headquarters.
- D. Yes, because the city is located in the state where the officer resides.

Explanation:

Place of compliance for subpoenas

(FRCP 45(c))

Trial, hearing, or deposition

Subpoena may command person's attendance:

- within 100 miles of where person resides, is employed, or regularly transacts business *or*
- within state where person resides, is employed, or regularly transacts business when person is:
 - party or party's officer *or*
 - commanded to attend trial & would not incur substantial expense

Other discovery

Subpoena may command:

- production of documents, tangible things, or ESI within 100 miles of where person resides, is employed, or regularly transacts business *and*
- inspection of premises at place to be inspected

FRCP = Federal Rule of Civil Procedure; **ESI** = electronically stored information

A **subpoena** is a written court order that commands a person to attend a trial, hearing, or **deposition** OR to produce documents or things in his/her possession. Federal Rule of Civil Procedure 45(c) limits a subpoena's reach, so it may **command attendance** at a trial, hearing, or deposition:

- **within 100 miles** of where the subpoenaed person resides, is employed, or regularly transacts business *or*
- **within the state** where the subpoenaed person **resides**, is **employed**, or regularly **transacts business** if he/she is a **party or a party's officer** (or a person commanded to attend trial who would not incur substantial expense).

Here, the subpoena commanded an *officer* of the company (defendant) to attend a deposition in the State A city where the employee resides. The city is 175 miles away from where the officer regularly transacts business (the company's headquarters) and 200 miles away from the officer's State A residence. But since the city where the deposition will occur is in the state where the officer resides, the subpoena may command her attendance at the deposition (**Choices A & C**). Therefore, the officer must comply with the subpoena.

(Choice B) The city where the deposition will occur is located in a different state (State A) than the company's headquarters (State B)—where the officer performs all her

employment duties. However, the subpoena can still command the officer's attendance since she resides in State A.

Educational objective:

A subpoena can compel attendance at a trial, hearing, or deposition *within 100 miles* of where the subpoenaed person resides, works, or transacts business. It can also compel attendance of the parties and their officers—and persons commanded to attend trial who would not incur substantial expense—*within the state* where the person resides, works, or transacts business.

References

- Fed. R. Civ. P. 45(c) (place of compliance for subpoena).