

A landowner sued a company in a federal district court in State A for violating a federal environmental statute. The landowner alleged that the company dumped chemicals into a stream, which polluted the groundwater near his home. The company denied the landowner's allegation and sought to prove that its waste system prevents chemicals from being dumped into the stream. The company's attorney signed and issued a subpoena that required the engineer who designed the waste system to testify at trial. The engineer was personally served with the subpoena, which contained the contents required by the federal rules. The courthouse where the engineer will testify is 81 miles away from where she resides.

The engineer has asked her attorney's advice as to whether she must comply with the subpoena and testify at trial.

What advice should the engineer's attorney give?

- A. The engineer must comply with the subpoena if the company's attorney is authorized to practice in State A's federal court.
- B. The engineer must comply with the subpoena if the landowner signed it.
- C. The engineer need not comply with the subpoena because she is not a party to the suit.
- D. The engineer need not comply with the subpoena because the courthouse is located more than 75 miles from where she resides.

## Explanation:

### Subpoena requirements

(FRCP 45(a))

- Contents**
- Must state (1) court from which subpoena issued, (2) title of action & civil-action number, (3) time & place for performance & (4) person's rights & duties *and*
  - Must command person to:
    - attend & testify at hearing, trial, deposition\*
    - produce documents, electronically stored information, things *and/or*
    - permit inspection of premises
- Issuance** Subpoena must issue from court where action is pending by court clerk *or* attorney authorized to practice law in issuing court
- Service** Subpoena served in U.S. must:
- be personally delivered by nonparty who is at least 18 years old *and*
  - if attendance is required, include fees for one day's attendance & mileage unless issued on behalf of federal government/agency/officer

\*Subpoena commanding attendance at deposition must also state method for recording testimony.

**FRCP** = Federal Rule of Civil Procedure.

A **subpoena** is a written court order that generally commands a person (party or nonparty) to attend and testify at a trial, hearing, or deposition. A **subpoena** is **valid and enforceable when** it:

- **contains the contents** required by the federal rules (see image above)
- is **signed and issued by** the court clerk or an **attorney** who is **authorized to practice law** in the court **where the action is pending\*** *and*
- is **properly served** in the U.S. through personal delivery by a nonparty who is at least 18 years old.

Practicing attorneys may issue subpoenas in their capacity as officers of the court because this eases the court's administrative burdens.

Here, the engineer was properly served with a subpoena containing the contents required by the federal rules. The company's attorney had the power to sign and issue that subpoena without the court clerk's participation if the attorney was authorized to practice law in State A's federal court. The attorney was presumably authorized to do so since the attorney is

representing the company in the action pending before that court. Therefore, the engineer's attorney should advise her to comply with the subpoena and testify at trial.

\*This means that parties representing themselves without the assistance of an attorney (ie, pro se litigants) must always request that the court clerk issue their subpoenas.

**(Choice B)** The opposing party (landowner) need not sign a subpoena for it to be effectively issued.

**(Choice C)** Subpoenas can be served on parties and nonparties, so the engineer must comply if the subpoena was validly issued and served.

**(Choice D)** A subpoena may command a person's attendance at a trial, hearing, or deposition within 100 miles (not 75 miles) of where that person resides, is employed, or regularly transacts business. Since the courthouse where the trial will occur is within 100 miles of where the engineer resides, the subpoena may command her attendance.

**Educational objective:**

A subpoena is valid and enforceable when it (1) contains the contents required by the federal rules, (2) is signed and issued by the court clerk or an attorney authorized to practice law in the court where the action is pending, and (3) is properly served.

**References**

- Fed. R. Civ. P. 45(a) (subpoena form and contents requirements).
- 9A Charles Alan Wright et al., Federal Practice and Procedure § 2453 (3d ed. 2020) (explaining the requirements to issue a subpoena).