

PROPOSED AMENDEMENT TO SDCL 15-6-45 (a) TO REQUIRE THAT SUBPOENAS INCLUDE BRIEF LANGUAGE ADVISING THE RECIPIENT OF THEIR RIGHTS

**15-6-45 (a). Subpoena for attendance of witnesses and for production of documentary evidence--Form--Issuance.**

Clerks of courts, judges, magistrates, notaries public, referees, and any other public officer or agency so empowered by § 1-26-19.1 or otherwise authorized by law in any matter pending before them, upon application of any person having a cause or any matter pending in court or before such agency, officer or tribunal, may issue a subpoena for a witness or witnesses, or for the production of books, papers, documents or tangible things designated therein pursuant to the provisions of § 15-6-45 (b) .

Any attorney of record who has been duly admitted to practice in this state and is in good standing upon the active list of attorneys of the State Bar of South Dakota may issue a subpoena for a witness or witnesses, and for production, inspection and copying of records and exhibits, in any action or proceeding, or collateral hearing, civil or criminal, in which the attorney is the attorney of record for any party. When an attorney issues a subpoena, the attorney must contemporaneously transmit a copy thereof to the clerk of the court, or to the secretary or other filing officer of the board or tribunal in which the matter is pending, for filing. Such officer shall file such copy as one of the public records of the action or proceeding.

A subpoena shall state the name of the court, or tribunal, the title of the action or proceeding, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. It shall state the name of the person or party for whom the testimony of the witness is required. The seal of the court or officer, or tribunal, shall be affixed to the original and all copies, if issued by a court or officer having a seal. If the subpoena is issued by an attorney, it shall be issued in the name of the presiding officer of the court, or tribunal in which the matter is pending and shall be attested and signed by the attorney, designating the party for whom the attorney is attorney of record. A subpoena shall also include the following text in bold, capitalized type immediately above the signature of the individual signing the subpoena:

YOU SHOULD TREAT THIS DOCUMENT AS YOU WOULD A COURT ORDER.  
IF YOU FAIL TO COMPLY WITH THE COMMAND(S) IN THIS DOCUMENT  
WITHOUT ADEQUATE EXCUSE, THE COURT MAY FIND YOU IN CONTEMPT AND  
ASSESS MONETARY OR OTHER SANCTIONS AGAINST YOU.

YOU HAVE CERTAIN OBLIGATIONS AND RIGHTS AS IT CONCERNS THIS  
DOCUMENT, INCLUDING THOSE SET FORTH IN SDCL § 15-6-45.

YOU SHOULD CONSIDER CONTACTING AN ATTORNEY REGARDING YOUR  
RIGHTS AND OBLIGATIONS.