AMERICAN ASSOCIATION FOR JUSTICE®
The Association for Trial Lawyers

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Carolyn A. Dubay,
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, DC 20544
RulesCommittee_Secretary@ao.uscourts.gov

Re: Proposed Amendments to Rule 45(b) Subpoena Service

Dear Members of the Committee on Rules of Practice and Procedure:

The American Association for Justice ("AAJ") submits this comment regarding the proposed amendments to Rule 45(b) on Subpoena Service by the Advisory Committee on Civil Rules ("Advisory Committee"). AAJ is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world's largest plaintiff trial bar. AAJ members primarily represent plaintiffs in personal injury and wrongful death actions, employment rights cases, consumer cases, class actions, and other civil actions, and regularly require subpoenas to be served on named parties. AAJ supports the proposed amendments and, through extensive conversations with members as well as the helpful discussion of issues during the public hearing, recommends some additional edits to the proposed text and committee note.

I. Expanded Methods of Delivery Facilitate Subpoena Service

When AAJ members initially learned that the Advisory Committee was in the early stages of considering whether there were sufficient difficulties with the current Rule 45(b) that necessitated amendment, they shared no shortage of frustrating stories of their own challenges with the existing rule.[1] Many of the examples involving evasion of service shared a common theme: wealthy individuals residing in gated communities (or other places with similar physical barriers) that made hand-delivery of subpoenas either impossible or prohibitively expensive. Moreover, in an age where the uber-wealthy often privately employ armed security, it is just a matter of time

[1] Some of these stories were shared directly with Judge Godbey and the members of the Discovery Subcommittee during an informal discussion with members of AAJ in May 2023.

before a process server is injured or killed while during their job.[2]

The proposed amendments provide much-needed optionality that can be tailored to the proclivities of the parties and witnesses involved in each case, in addition to accounting for regional differences. In the south and southwest, for example, gated communities are more common than in the northeast.

The proposed additional methods of service are already familiar to courts and parties, as they are often used by courts today and are very similar to the rules for service of summons found in Rule 4(e).[3] Each of the additional methods of service would reduce questions regarding the sufficiency of service by providing alternatives to hand-delivery. For example, at one gated and guarded property of a prominent hedge fund CFO, package deliveries are directed to the property manager's house, a small building easily located at the front of a multi-building compound after a person enters the property through electronically controlled gates.[4] A process server would never be allowed near the main property where the CFO resides, and hand-delivery would be obstructed. However, under the amended rule, the property manager could sign for a subpoena delivery at the separate structure, regardless of whether the delivery was by a process server or commercial carrier.

Importantly, the proposed amendments provide an additional method of service that is authorized by the court for good cause and is reasonably calculated to give notice. This sensible addition would address the very frustrating circumstances that occasionally occur when someone continually evades service,[5] which is not only expensive for the party trying to serve the subpoena, but also wastes the court's time and resources.

II. Expanded Flexibility for Tendering Fees Will Facilitate Subpoena Service

AAJ supports the proposed revisions to Rule 45(b)(1)(B), which provide an alternative for tendering witness fees at the time and place that the witness is to appear, rather than at the time of service. There is no practical or policy reason for subpoena service to be bogged down by failure to deliver the witness fee simultaneously with the subpoena. Indeed, the current rule's solitary option is completely impractical given the modern methods of subpoena delivery, especially since it is not feasible for the postal service or commercial carriers to tender fees as part of their delivery

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[2] While reclusive tycoons or business moguls are the examples most frequently provided by AAJ members, famous people—including actors, entertainers, and prominent sports figures—frequently employ private security. *See, e.g.*, Jessica Schladebeck, *Man Attempting to Serve Taylor Swift Papers Arrested at Travis Kelce's Home*, THE GUARDIAN (Sept. 23, 2025).

[3] LCJ's assertion that "[t]he current methods of serving subpoenas that Rule 45 permits are working well" is surprising, as it is not reflective of the experience of AAJ members who often struggle to serve persons determined to evade service by "hiding" behind the gated fortresses of their properties. Lawyers for Civ. Just., Comment Letter on Proposed Amendments to Rule 45(b), at 2 (Oct. 10, 2025) [hereinafter LCJ Comment].

[4] The physical description of the property and the challenges it presents under the existing rule was provided to AAJ by a member.

[5] Tech giants, like Elon Musk, are notorious for evading service. It has been reported Mr. Musk evaded service by the U.S. Virgin Islands in connection to its lawsuit against JP Morgan Chase for enabling Jeffrey Epstein to sex traffic women. *Elon Musk Documents Subpoenaed in Jeffrey Epstein Lawsuit*, BBC (May 16, 2023).

services and doing so would likely lead to confusion or unnecessary disagreement over whether the fees had been delivered. In an age of electronic payment (and corresponding electronic recording keeping of such payments), it makes significantly more sense to provide an option that ensures that the witness receives the fee directly.

The argument against updating the rule to allow commercial carriers to serve subpoenas because they cannot successfully tender fees is baseless. In instances where commercial carriers serve subpoenas now, fees are tendered with the subpoena frequently by check. South Carolina's Rule 45 provides for tendering fees at the time of attendance only, an option which ensures payment of fees only when a party shows up but also provides for successful delivery of fees regardless of the method of service.[6] Other states have adopted hybrid options that are focused on securing attendance.[7] Providing the additional option makes practical sense, as the fees are only tendered once the witness appears. Arguments against this additional option for tendering fees are decidedly weak with a misplaced concern on discovery costs, rather than attendance at a trial or hearing.[8]

III. Additional Methods of Service Are Already Used by the Courts

Under Rule 45(b), a subpoena must be served by a person who is not a party and is at least 18 years old. That requirement remains unchanged by the proposed amendments. Alternative methods of service are already recognized by many courts,[9] and there is no requirement in Rule 45(b)—or any other federal rule—that process servers be used to effectuate personal delivery. Indeed, courts have recognized that Rule 45(b)(1) neither requires hand-delivery nor prohibits other methods of service.[10] In a sense, the Advisory Committee's proposed amendment is a recognition of what already happens in some courts and modernizes the rule for all.

While process servers decry alternative methods of service as violations of due process and undue burdens to courts, their argument rings hollow. First and foremost, it is in the interest of the

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[6] S.C. R. Civ. P. 45(b)(1) ("If the person's attendance is commanded, then that person shall, upon his arrival in accordance with the subpoena, be tendered fees for each day's attendance of $25.00 and the mileage allowed by law for official travel of State officers and employees from his residence to the location commanded in the subpoena.").

[7] In Georgia, witness fees for in-county witnesses are tendered when they appear while a witness who resides out-of-county from court proceeding receives a fee at the time the subpoena is served. Ga. Code Ann. § 24-13-25. Texas has a hybrid model that pays the first day's fee when the subpoena is served and subsequent day's fees when the witness attends court. Tex. Civ. Prac. & Rem. Code § 22.001 (2024).

[8] It is ironic that LCJ argues that the "witness fee is an important safeguard deeply rooted in the rule's history and purpose of protecting against abuse," since corporate clients do not need their fees paid in order to attend a trial or hearing. LCJ Comment, *supra* note 3, at 4. AAJ takes a more pragmatic approach, in part because its members represent injured people, who may not have many resources unless and until their injuries are compensated. Arguments against amending this provision are crafted to benefit the corporate defense bar but have not considered the needs and realities of individual litigants.

[9] Tristan M. Ellis, *"Delivering" a Subpoena: What Constitutes "Good Service" Pursuant to Federal Rule of Civil Procedure 45?*, 103 TEX. L. REV. ONLINE 132, 142 (2025) ("A growing minority of courts no longer construe Rule 45 as requiring in-hand personal service. For example, '[d]istrict courts in the Second Circuit routinely authorize service via other means besides personal service, i.e., "alternative" service, under Rule 45.'") (quoting In re *Three Arrows Capital, Ltd.*, 647 B.R. 440, 453 (Bankr. S.D.N.Y. 2022)).

[10] *Id.*

serving party to have the subpoenaed party show up. The serving party wants the subpoenaed party to testify at a trial, hearing, or deposition, and incomplete service defeats that goal and delays the proceeding. The plaintiff-side practitioner is especially looking for the most expeditious manner to accomplish service as repeated attempts cost both time and money. Generally, the most effective means of serving a subpoena will be through a process server. However, there are times when alternative service would be more effective, and the proposed amendments provide methods with recognized track records[11] without jettisoning current service methods, including the well-established use of process servers.

Second, process servers' arguments against updating the rule fail to recognize how technology has changed the litigation landscape.[12] A rule that only provides one option for serving a subpoena and tendering witness fees does not align with technological advances, adaptations already recognized by the courts, or changes adopted by state law or rule. For example, California law will now permit service by email or electronic media,[13] and Rule 45(b) already permits delivery by commercial carrier in South Carolina.[14] In the ordinary course of business, the additional options will not be necessary for a fact witness who has never been called to court before and will take the matter extremely seriously, but the proposed amendment ensures effective service for the person with cameras around the perimeter of their exclusive, fenced property, who doesn't want to go to court or will do everything possible to evade service.

IV. AAJ Recommended Edits to Ensure Clear Implementation

AAJ supports the new options for effecting service provided in the proposed amendment and suggests small, but important, clarifying edits to ensure clear implementation of the rule for parties and courts. A complete summary of these edits follows this comment (Attachment). AAJ does not support republication and would like to see the proposed amendments approved during this rulemaking cycle.

A. Return the text of 45(b)(1)(A)(i) to that originally proposed by the Advisory Committee

After listening to the testimony provided at the public hearing and reviewing the public comments that have been filed, AAJ believes that many of the concerns expressed regarding the proposed amendments could be alleviated by returning to the Advisory Committee's draft of the amendment approved for public comment in April 2025. That proposed text appeared in the June

[11] The proposed amendments borrow from recognized service of summons methods under Rule 4.

[12] The 2018 amendments Rule 23 recognized that first class mail was no longer the only method to provide notice and that "courts and counsel have begun to employ new technology to make notice more effective." Fed. R. Civ. P. 23 advisory committee's note to 2018 amendment.

[13] California Governor Gavin Newsom signed the service via email or electronic media into law on October 6, 2025. *See* Cal. Civ. Proc. § 413.30 (effective Jan 1, 2026).

[14] S.C. Rule 45(b)(1) permits "Service of a subpoena upon a person named therein shall be made in the same manner prescribed for service of a summons and complaint in Rule 4(d) or (j)" with Rule 4(d)(9) providing for service by commercial carrier. S.C. R. Civ. P. 45(b)(1).

2025 agenda book of the Standing Committee:[15]

> **(A) *By Whom and How.*** Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering it to the named person by:
>
> (i) delivering a copy to the named person personally;

Structuring the rule this way is clarifying, not redundant. First, it keeps the basic requirement of the rule the same: serving a subpoena requires delivering it to the named person. This requirement is widely known and recognized by parties and courts. Second, the structure provides direction to the other provisions. Although the phrase "named person personally" is awkward, it does not result in confusion over subpoena delivery. The method of subpoena delivery which parties and courts have long recognized remains in place. While it may be better drafting to use the phrase "individual personally" (as contemplated by the Advisory Committee last spring[16]) and add a provision on service of agents as discussed in AAJ's testimony provided by Navan Ward at the public hearing, this rephrasing would avoid the need for republication.[17] Finally, and most importantly, keeping the word "person" in the rule would ensure that a 30(b)(6) subpoena can be served on a non-party. The proposed rule must not create an unintended or adverse inference that only *individuals* can be served with a subpoena under the rule.

Even small word changes to a rule can result in unintended consequences. It is common to deliver subpoenas to businesses. Can a business be "personally" served if a specific witness is not named? That is a strange construction to assume. If the Advisory Committee goes with this option, it would be helpful to add a sentence to the Committee Note confirming that the amendments do not change service of subpoenas on businesses.

For the structure of the rule to be consistent, AAJ also recommends substituting "it" for "copy" in the 45(b)(1)(A) and ensuring that "copy" is part of 45(b)(1)(A)(i) as that would mirror the use of "copy" in 45(b)(1)(A)(ii) and (iii).

B. In 45(b)(1)(A)(ii), delete "who resides there"

The purpose of this rulemaking is to specify alternatives to "hand-delivery" of subpoenas for people who resist service. To make service easier, it would be appropriate to leave the subpoena with a person of suitable age and discretion even if that person does not reside at that location. Common examples include property managers, nannies, and housekeepers. While the people employed in these occupations often live on their employers' properties, some do not. Instead, they might live close-by, in an adjacent structure or smaller building, or commute to the subpoenaed person's residence according to their work schedule. Regardless, these employees would be

[15] Appendix: Civil Rules for Publication, *in* Committee on Rules of Practice & Procedure Agenda Book 332 (June 2025).

[16] Rule 45(b) (Subpoena) (For Publication), *in* Advisory Committee to Civil Rules Agenda Book 131 (Apr. 2025).

[17] AAJ is making this requested edit as an alternative to adding a provision on "authorized agents" to avoid sending the rule back for republication.

expected, in the course of their duties, to answer the doorbell and accept deliveries. The Committee Note could also be amended to clarify this issue.

> **(ii)** leaving a copy at the person's dwelling or usual place of abode with someone of suitable age and discretion ~~who resides there~~;

C. In 45(b)(1)(A)(iii), replace "actual receipt" with "delivery"

Requiring the commercial carrier to confirm "actual receipt" is confusing. Does that mean that the named party must sign for the delivery for service to be complete? If so, service could be incomplete simply because a subpoenaed person's spouse or partner answered the door and accepted the delivery, or if the subpoena is delivered to a business witness at a commercial address and delivery is accepted by a receptionist or office manager. Furthermore, the words "actual receipt" may imply that a physical receipt by the commercial carrier is required, which is likely not the literal case in an age of electronic signature. Substituting "delivery" for "actual receipt" addresses both issues, especially since a commercial carrier can easily document the date and time when subpoena delivery occurred and maintain a record of who accepted the delivery.

> **(iii)** sending a copy to the person's last known address by a form of United States mail or commercial carrier delivery, if the selected method provides confirmation of ~~actual receipt~~ delivery; or

D. Minor textual change in 45(b)(1)(B) to provide clarity

In the first sentence, the phrase "unless the court orders otherwise" should be moved to either the beginning or the end of the sentence for ease of readability. AAJ has placed it at the end of the sentence on page 8 (See Attachment) for maximum ease of readability.

V. Recommended Changes to the Committee Note

In the Attachment to this comment, AAJ has added a short paragraph to the draft Committee Note to explain the proposed text language regarding suitable age and discretion, providing clarification for why there is no residence requirement.

The attached recommendations also amend the paragraph in the Committee Note on service by a commercial carrier by substituting "delivery" for "actual receipt" and providing that either the named party or a "person of suitable age and discretion" can sign for the delivery, thus ensuring that the subparts of the rules work together.

Additionally, AAJ recommends adding language to the Committee Note regarding the additional method of service. Adding a sentence about flexibility and technology reminds courts that the rule contemplates electronic service for individuals with a known social media presence who may be able to evade service. Finally, AAJ added a sentence clarifying that the method for serving businesses remains unchanged.

VI. Conclusion

AAJ supports the proposed Rule 45(b) amendments and believes that some further refinements would ensure that the amendments are easy to understand and implement by both parties and the courts. These amendments should save time and resources for parties serving hard to locate persons, especially the uber-wealthy who have the resources to evade service. These common-sense changes are supported by AAJ members across practice areas. Please direct any questions concerning these comments to Susan Steinman, Senior Director of Policy & Senior Counsel, at susan.steinman@justice.org.

Respectfully submitted,

Bruce Plaxen
President
American Association for Justice

ATTACHMENT

Redline of Proposed Rule 45(b)

Proposed Amendment in Red
AAJ Edits in Blue

Rule 45. Subpoena.

* * * * *

(b) Service.

(1) *~~By Whom and How; Tendering~~Means; Notice Period; Fees.*

(A) *By Whom and How.* Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering it to the named person by:

Return to original construction of rule to ensure that there is no confusion or disruption when serving businesses.

Substitute "it" for "copy" here due to the use of "copy" in (i), (ii), and (iii).

(i) delivering a copy to the named person personally;

(ii) leaving a copy at the person's dwelling or usual place of abode with someone of suitable age and discretion ~~who resides there~~;

Delete requirement that person of suitable age and discretion reside at the person's dwelling.

(iii) sending a copy to the person's last known address by a form of United States mail or commercial carrier delivery, if the selected method provides confirmation of ~~actual receipt~~ delivery; or

Use of "actual" receipt is confusing. Address by deleting "actual" from the phrase and add "delivery" at the end.

(iv) using another means that is authorized by the court for good cause and is reasonably calculated to give notice.

(B) *Time to Serve if Attendance is Required; Tendering Fees.* ~~and,~~ ~~i~~If the subpoena requires that the named person~~'s~~ attend~~ance,~~ a trial, a hearing, or deposition~~, unless the court orders otherwise,~~ the subpoena must be served at least 14 days before the date on which the person is commanded to attend, unless the court orders otherwise. In addition, the party serving the subpoena must tender~~ing~~ the fees for 1 day's attendance and the mileage allowed by law at the time of service, or at the time and place the person is commanded to appear. Fees and mileage need not be tendered when the subpoena issues on behalf of the United States or any of its officers or agencies.

The parenthetical "unless the court orders otherwise" should be moved to the end of the sentence (or to the beginning of the sentence) for ease of understanding.

COMMITTEE NOTE

Rule 45(b)(1) is amended to clarify the means of serving a subpoena. Courts have disagreed about whether the rule requires hand delivery. Though service of a subpoena usually does not present problems—particularly with regard to deposition subpoenas—uncertainty about what the rule requires has on occasion caused delays and imposed costs.

The amendment removes that ambiguity by providing that methods authorized under Rule 4(e)(2)(A) and (B) for service of a summons and complaint constitute effective service of a subpoena. Though the issues involved with service of a summons are not identical with service of a subpoena, the basic goal is to give notice and the authorized methods should assure notice. In place of the current rule's use of "delivering," these methods of service also are familiar methods that ought to easily adapt to the subpoena context.

In 45(b)(1)(A)(ii), while there is a requirement that the subpoena be left with someone of suitable age and discretion, there is no requirement that the person reside there. In some instances, there are people employed as nannies, housekeepers, and property managers, who may not reside on the property but who would be routinely expected in the course of their duties to take responsibility for deliveries.

The amendment also adds another option—service by United States mail or commercial carrier to the person's last known address, if the selected method provides confirmation of delivery ~~actual receipt~~. The rule does not prescribe the exact means of confirmation, but courts should be alert to ensuring that there is reliable confirmation of delivery ~~actual receipt~~, such as by the named party or a person of suitable age and discretion. *Cf.* Rule 45(b)(4) (proving service of subpoena).

Experience has shown that this method regularly works and is reliable.

The amended rule also authorizes a court order permitting an additional method of serving a subpoena so long as that method is reasonably calculated to give notice. A party seeking such an order must establish good cause, such as evasion of service, which ordinarily would require at least first resort to the authorized methods of service. The rule is intended to be flexible and accommodate electronic means of service and new technologies. The application should also demonstrate that the proposed method is reasonably calculated to give notice.

Nothing in the proposed amendment changes the method for serving a subpoena on a non-party business where service is routinely accepted at the business location.

The amendment adds a requirement that the person served be given at least 14 days' notice if the subpoena commands attendance at a trial, hearing, or deposition. Rule 45(a)(4) requires the party serving the subpoena to give notice to the other parties before serving it, but the rule does not presently require any advance notice to the person commanded to appear. Compliance may be difficult without reasonable notice. Providing 14-day notice is a method of avoiding possible burdens on the person served. In addition, emergency motions for relief from a subpoena can burden courts. For good cause, the court may shorten the notice period on application by the serving party.

The amendment also simplifies the task of serving the subpoena by removing the requirement that the witness fee under 28 U.S.C. § 1821 be tendered at the time of service as a prerequisite to effective service. Though tender at the time of service should be done whenever practicable, the amendment permits tender to occur instead at the time and place the subpoena commands the person to appear. The requirement to tender fees at the time of service has in some cases further complicated the process of serving a subpoena, and this alternative should simplify the task.