

17.2 Subpoenas for Production of Books, Documents, or Objects.

- (a) **General.** No subpoena in a criminal case may require the production of books, documents or objects at a date, time or place other than the date, time, and place of the trial, hearing, or proceeding at which the items are to be offered in evidence, unless the court has entered an order under Federal Rule of Criminal Procedure 17(c) authorizing the issuance of the subpoena.
- (b) **Motions for Pre-Proceeding Document Production.** Motions for the issuance of a subpoena to produce documents before a trial or evidentiary proceeding under Federal Rule of Criminal Procedure 17(c) must be made to the assigned magistrate judge when the motion is filed.
- (1) **Content; Supporting Brief; Affidavit.** Except in an extraordinary case where ex parte consideration may be justified, the motion for issuance of the subpoena must be served on the opposing attorney. The requirements of Nebraska Criminal Rule 12.3(b)(3) apply. Also, motions for subpoenas duces tecum under this subsection must be supported by an affidavit or declaration, see 28 U.S.C. § 1746, establishing the following:

 - (A) the documents or objects sought cannot otherwise be reasonably obtained by due diligence in advance of the trial or evidentiary proceeding;
 - (B) the moving party cannot properly prepare for the trial or evidentiary proceeding without advance production and inspection;
 - (C) the failure to obtain advance production and inspection of the documents or objects may unreasonably delay the proceeding; and
 - (D) the application is made in good faith and is not intended for the purpose of general discovery.
- (2) **Ruling.** The magistrate judge makes a preliminary determination whether the material sought is probably relevant and probably admissible. The magistrate judge also determines if the request is specific enough to be intelligently evaluated and may place limits on the requested production.
- (3) **Return of Service.**

- (A) Return; Inventory.** A subpoena duces tecum issued under this rule must be (i) returned to the magistrate judge who authorized the subpoena and (ii) accompanied by an inventory that lists all items produced. The return and the inventory are filed with the clerk.
- (B) Possession of Produced Documents or Items.** Absent a motion for protective order filed under Nebraska Criminal Rule 17.2(b)(3)(C), the items produced must be (i) provided to and kept in the possession of the attorney who sought the subpoena or (ii) in the case of a pro se defendant, filed with the clerk.
- (C) Motion for Protective Order.** Any party, the witness or entity responding to the subpoena, or any person or entity whose interests may be affected by disclosure of the subpoenaed documents, may file a motion for a protective order. The magistrate judge reviews the documents produced and issues any appropriate protective order. The clerk then keeps the items produced and makes them available for inspection under the terms of the protective order.