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Seven Things to Note About Federal Rule of Civil Procedure 45, As Amended

1. **Issuing Court** – Subpoena must issue from the court where the action is pending. See FED. R. CIV. P. 45(a)(2). An attorney is authorized to issue/sign a subpoena provided that she is authorized to practice in the issuing court. See FED. R. CIV. P. 45(a)(3).
2. **Service Anywhere in the United States** – Under the amended rule, a subpoena may be served at any place within the United States. See FED. R. CIV. P.45(b)(2).
3. **Non-Party Witness Subject to 100-Mile Rule for Hearing or Deposition** -- A non-party may be compelled to attend a deposition or hearing (not a trial) only if same is within 100 miles of where the person resides, is employed, or regularly transacts business in person (the "100 mile' rule"). If a subpoena seeks to compel the presence of a non-party for trial, the non-party may be compelled to appear within the state in which the non-party resides, is employed, or regularly transacts business in person if the non-party would not incur substantial expense (the "statewide rule"). The Advisory Committee notes suggest that, if substantial expense is involved, that the issuing party offer to pay the costs and that the issuing court may condition compliance upon such payment. See FED. R. CIV. P.45(c).
4. **Party and Party Officer Witnesses Subject to 110-Mile Rule/Statewide Appearance** – A party and party officer witness may be compelled to appear for a trial, hearing or deposition only subject to the "100 mile" rule or statewide rule. See FED. R. CIV. P. 45(c).
5. **Compliance Court Presumptively Responsible for Hearing Motions to Modify/Quash** – The court for the district where compliance with the subpoena is required – not the issuing court – determines motions to quash/modify the subpoena. See FED. R. CIV. P. 45(d)(3).

Motions to modify/quash a subpoena may be transferred to the issuing court if (i) the person subject to the subpoena consents or (ii) the court finds exceptional circumstances. If such a transfer occurs, the lawyer for the non-party witness is automatically admitted to the issuing court for the purpose of filing papers and appearing on the motion. See FED. R. CIV. P. 45(f). Advisory committee note further indicates that telecommunications methods are encouraged to minimize the expense on non-parties when a transfer of the motion to the issuing court occurs.
6. **Judges in Issuing/Compliance Courts Encouraged to Communicate** – Advisory committee notes encourage the judges in the issuing/compliance courts to communicate with each other when addressing subpoena-related motions.
7. **Noncompliance May Lead to Contempt of Two Courts** – Both the compliance court and the issuing court (after a motion is transferred) may hold in contempt a witness who fails without adequate excuse to obey a subpoena or an order related to same. See FED. R. CIV. P.45(g).