

Alabama Rules of Criminal Procedure

Rule 17. Subpoenas.

Rule 17.1. Authority to issue subpoenas.

(a) CLERK'S SUBPOENAS. The clerk of the court in which a criminal proceeding is pending shall issue subpoenas at any time for such witnesses as any party may require for attendance at trial and at hearings, for taking depositions, or for any other lawful purpose.

(b) GRAND JURY SUBPOENAS. The district attorney, the foreman of the grand jury, or the clerk of the circuit court shall issue subpoenas for any witnesses whom the grand jury may require to give evidence before it.

(c) DISTRICT ATTORNEY'S SUBPOENAS.

(1) *Grand jury witnesses.* The district attorney shall issue subpoenas for any witnesses the district attorney may require to appear before the grand jury to give evidence as to any violation of the laws of the State of Alabama.

(2) *Investigative witnesses.* At any time the grand jury is not in session, the district attorney shall issue subpoenas for any witnesses the district attorney may require to come before the district attorney for examination under oath administered by the district attorney as to any violations of the laws of the State of Alabama; if the matter being investigated is not before the grand jury, the district attorney shall have authority to issue such subpoenas when the grand jury is in session.

(d) DISTRICT ATTORNEY DEFINED. "District attorney," as used in this rule, means the duly qualified and acting district attorney, a subordinate acting under the district attorney's specific authority, or such other person appointed by the court. The term also includes the attorney general, the deputy attorney general, and an assistant attorney general acting under the attorney general's specific authority or pursuant to his supervision and direction.

Committee Comments

Rule 17.1(a) is the present Alabama law which authorizes issuance of subpoenas to any witness within the state. The "Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings" also provides for extraterritorial subpoenas. See Ala.Code 1975, § 12-21-280 et seq.

Rule 17.1(b) is taken directly from Ala.Code 1975, § 12-16-197, which requires the clerk, the district attorney, or the foreman to issue subpoenas for

witnesses the grand jury wishes to hear. Rule 17.1(c)(1) is taken from Ala.Code 1975, § 12-16-198, as to the district attorney's power to call witnesses before the grand jury. Subsection (c)(2) is taken from Ala.Code 1975, § 12-17-184(18), which gives district attorneys power to call witnesses in for investigation under oath when the grand jury is not in session. The definition of "district attorney" as used in this rule omits any reference to municipal prosecutors. Consequently, municipal prosecutors do not have subpoena powers under this rule.