

**IN THE
SUPREME COURT OF PENNSYLVANIA**

IN RE: Amendment of Rules of	:	No.
Civil Procedure Governing	:	Civil Procedural Rules
Subpoena to Attend and Testify	:	Docket No.

O R D E R

PER CURIAM:

AND NOW, this 24th day of November, 1998, the Note to Pennsylvania Rule of Civil Procedure 234.1 is amended to read as attached hereto.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective January 1, 1999.

NOTE: Underscored material is added.

Rule 234.1. Subpoena to Attend and Testify

(a) A subpoena is an order of the court commanding a person to attend and testify at a particular time and place. It may also require the person to produce documents or things which are under the possession, custody or control of that person.

NOTE: See Discovery Rule 4009.1 et seq. for a request upon a party and a subpoena upon a person not a party for the production of documents and things other than at a deposition or a trial.

The twenty-day notice requirement of Rule 4009.21(a) is not applicable to a subpoena issued under Rule 234.1 in connection with a deposition. The provision of Rule 4007.1(d)(2) that materials subpoenaed in connection with a deposition “shall be produced at the deposition and not earlier, except upon the consent of all parties to the action”, serves the same purpose as the notice requirement under Rule 4009.21(a).

...

Explanatory Comment

Several comments from attorneys have indicated that there is confusion as to whether the twenty-day notice requirement prior to service of a subpoena under Rule 4009.21 applies also to a subpoena under Rule 234.1. Rule 4009.21(a) provides for a twenty-day written notice prior to the service of a subpoena for the production of documents or things upon a person who is not a party to an action. Rule 234.1 providing for a subpoena duces tecum in connection with a deposition contains no such requirement. However, Rule 4007.1(a) requires that the party desiring to take the deposition of any person upon oral examination “shall give reasonable notice in writing to every party to the action...”

It was not the intent of the Committee that the twenty-day notice requirement be applied to a subpoena issued under Rule 234.1. Upon the adoption of Rule 4009.21, the Supreme Court also amended Rule 4007.1 to provide that materials subpoenaed may not be produced prior to a deposition except upon consent of the parties. The purpose of this amendment was twofold. First, the amendment eliminated the possibility of circumventing the notice provision of Rule 4009.21 by means of a subpoena duces tecum issued in connection with a deposition. Second, the amended rule provided a period of time, i.e. the “reasonable notice,” during which other parties to the action could object to the production of the records sought, thereby accomplishing the same function as the notice period under Rule 4009.21. The amended note to Rule 234.1(a) explicitly states this intention.

By the Civil Procedural
Rules Committee

Edwin L. Klett, Esquire
Chairman

