

**SUPREME COURT OF PENNSYLVANIA  
CIVIL PROCEDURAL RULES COMMITTEE**

**Proposed Recommendation No. 259**

**Proposed Amendment of Rule 234.1 Governing  
Subpoenas to Attend and Testify**

The Civil Procedural Rules Committee proposes that Rule of Civil Procedure 234.1 governing subpoenas to attend and testify be amended as set forth herein. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court of Pennsylvania.

All communications in reference to the proposed recommendation should be sent no later than **February 28, 2014** to:

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### **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 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).

(b) A subpoena may be used to command a person to attend and to produce documents or things only at

- (1) a trial or hearing in an action or proceeding pending in the court, or
- (2) the taking of a deposition in an action or proceeding pending in the

court.

(c) A subpoena may not be used to compel a person to appear or to produce documents or things ex parte before an attorney, a party or a representative of the party.

**(d) A subpoena shall be served reasonably in advance of the date upon which attendance is required.**

### **Explanatory Comment**

The Civil Procedural Rules Committee is proposing the amendment of Rule 234.1 governing subpoenas to attend and testify. It was brought to the Committee's attention that a discrepancy exists between service of a subpoena on a non-party witness and service of a notice to attend on a party. Current Rule 234.3 provides that a party shall be served a notice to attend reasonably in advance of the date the party is required to attend and testify. Current Rule 234.1, on the other hand, is silent as to when a non-party witness should be served a subpoena before attendance is required. The result is that a party who is aware of and involved in litigation is entitled to reasonable notice, but a non-party witness who has no prior knowledge of a trial and no forewarning that he or she may be called to testify can be subpoenaed with no notice. To remedy this discrepancy, the proposed amendment of Rule 234.1 would require that a non-party witness be served a subpoena reasonably in advance of the date the witness is required to attend and testify.

By the Civil Procedural  
Rules Committee

Diane W. Perer  
Chair