

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

Proposed Recommendation No. 250

**New Rule 234.10 Governing
Uniform Interstate Depositions and Discovery**

The Civil Procedural Rules Committee proposes that Rule of Civil Procedure 234.10 governing uniform interstate depositions and discovery be promulgated 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 **June 7, 2011** to:

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Rule 234.10. Uniform Interstate Depositions and Discovery (NEW)

(a) As used in this rule,

"foreign jurisdiction" means a state other than this Commonwealth;

"foreign subpoena" means a subpoena issued under authority of a court of record of a foreign jurisdiction;

"person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity;

"state" means a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States;

"subpoena" means a document, however denominated, issued under authority of a court of record requiring a person to:

(i) attend and give testimony at a deposition;

(ii) produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or

(iii) permit inspection of premises under the control of the person.

(b) The following apply to issuance of subpoenas:

(1) To request issuance of a subpoena, a party shall file a foreign subpoena with the prothonotary of the judicial district in which discovery is sought to be conducted in this Commonwealth. A request for the issuance of a subpoena

under this rule does not constitute an appearance in the courts of this Commonwealth.

(2) When a party files a foreign subpoena, the prothonotary, in accordance with that court's procedure, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

(3)(i) A subpoena issued under subdivision (b)(2) shall:

(1) incorporate the terms used in the foreign subpoena; and

(2) contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(ii) If a subpoena issued under subdivision (b)(2) is to be served upon a witness who is not a party to the action, the subpoena shall also contain a notice stating that the party serving the subpoena is required to enforce the subpoena and that the non-party witness is not required to defend against it.

(c) A subpoena issued by the prothonotary under subdivision (b) shall be served pursuant to Rule 234.2.

(d) Rules 234.1, 234.2, 234.3, 234.4, and 234.5 apply to subpoenas issued under subdivision (b).

(e) A motion to the court for a protective order or to enforce, quash, or modify a subpoena issued by the prothonotary under subdivision (b) shall comply with these rules and be submitted to the court in the judicial district in which discovery is to be conducted.

Note: See Rule 234.4 governing a motion to quash a subpoena, notice to attend, or notice to produce at trial or deposition.

(f) A notice to a non-party witness issued pursuant to subdivision (b)(3)(ii) shall be substantially in the following form:

(Caption)

NOTICE TO A NON-PARTY WITNESS

To _____

_____ (party) has served you with a subpoena in the above matter which is a legal proceeding pending outside the Commonwealth of Pennsylvania. If you do not comply with the subpoena, the party serving the subpoena may bring an action against you in court to require your compliance.

Date: _____

Attorney for _____
(party)

Explanatory Comment

The Civil Procedural Rules Committee is proposing new Rule 234.10 governing interstate depositions and discovery. The proposed rule is modeled on a rule developed by the Uniform Law Commission and is intended to streamline the process of issuing and serving foreign subpoenas. (See Uniform Interstate Depositions and Discovery Act, [http://www.nccusl.org/Act.aspx?title=Interstate Depositions and Discovery Act](http://www.nccusl.org/Act.aspx?title=Interstate%20Depositions%20and%20Discovery%20Act).) The end result is that the issuance of foreign subpoenas will become a ministerial act. The proposed rule deviates from the uniform law in only one respect. When a subpoena is to be served on a non-party witness pursuant to subdivision (b)(3)(ii), the subpoena must include a notice stating that the party serving the subpoena is required to enforce the subpoena and the non-party witness is not required to defend against it. The notice is being provided so as not to impose too heavy a burden on a witness who does not have an interest in the outcome of a case.

By the Civil Procedural
Rules Committee

Robert C. Daniels
Chair