

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

Proposed Recommendation No. 235

**Proposed Amendment of Rule 234.2 Governing
the Issuance and Service of Subpoenas**

The Civil Procedural Rules Committee proposes that Rule of Civil Procedure 234.2 governing the issuance and service of subpoenas 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 **November 26, 2008** to:

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**or E-Mail to
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The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure or be officially adopted or promulgated by the Court.

Rule 234.2. Subpoena. Issuance. Service. Compliance. Fees. Prisoners

(a) Upon the request of a party, the prothonotary shall issue a subpoena signed and under the seal of the court but otherwise in blank, substantially in the form prescribed by Rule 234.6.

(b) A copy of the subpoena may be served upon any person within the Commonwealth by an adult.

(1) in the manner prescribed by Rule 402(a);

(2) by any form of mail requiring a return receipt, postage prepaid, restricted delivery. Service is complete upon delivery of the mail to the person subpoenaed or any of the persons referred to in Rule 402(a)(2). The return receipt may be signed by the person subpoenaed or any of such persons; or

(3) by ordinary mail. The mail shall contain two copies of the Notice and Acknowledgment prescribed by Rule 234.9 and a self-addressed stamped envelope.

Note: A subpoena served by ordinary mail is not enforceable unless the witness acknowledges having received it. See Rule 234.5(a).

(c) The fee for one day's attendance and round trip mileage shall be tendered upon demand at the time the person is served with a subpoena. If a subpoena is served by mail, a check in the amount of one day's attendance and round trip mileage shall be enclosed with the subpoena.

Note: See 42 Pa.C.S.[A.] § 5903 for the compensation and expenses of witnesses. See also *Evans v. Otis Elevator Co.*, 403 Pa. 13, 168 A.2d 573 (1961), regarding the right of an expert witness to refuse to testify on behalf of an adverse party.

(d) A court may compel the attendance of any person confined in jail or prison by issuing, upon motion, an order directed to the custodian of the person so confined to release the person to the custody of a sheriff or other appropriate agent.

(e)(1) For the purposes of this subdivision, “guardian” shall mean any parent, custodian, or other person who has legal custody of a minor, or person designated by the court to be a temporary guardian for purposes of a proceeding.

(2)(i) A subpoena shall be served on a minor only with prior court approval and good cause shown.

(ii) The guardian of a witness who is a minor shall be served with a copy of the subpoena in the same manner as prescribed in subdivision (b).

Note: See Rule 76 for definition of “minor.”

Explanatory Comment

To provide greater protection to minors, the Civil Procedural Rules Committee proposes the amendment of Rule 234.2 governing the issuance and service of subpoenas on a witness who is a minor. The amendment provides two specific requirements for the issuance and service of a subpoena on a witness who is a minor: (1) a court must review and grant permission before a subpoena may be issued to a witness who is a minor, and (2) the subpoena must also be served on the legal guardian of the witness.

By the Civil Procedural
Rules Committee

Stewart L. Kurtz
Chair