Rule 237. Compelling Appearances of Witnesses at Trial

(a) Service of Subpoenas. Any witness shall respond to any lawful subpoena of which he or she has actual knowledge, if payment of the fee and mileage has been tendered. Service of a subpoena by mail may be proved *prima facie* by a return receipt showing delivery to the witness or his or her authorized agent by certified or registered mail at least seven days before the date on which appearance is required and an affidavit showing that the mailing was prepaid and was addressed to the witness, restricted delivery, with a check or money order for the fee and mileage enclosed.

(b) Notice of Parties *et al.* at Trial or Other Evidentiary Hearings. The appearance at the trial or other evidentiary hearing of a party or a person who at the time of trial or other evidentiary hearing is an officer, director, or employee of a party may be required by serving the party with a notice designating the person who is required to appear. The notice also may require the production at the trial or other evidentiary hearing of the originals of those documents or tangible things previously produced during discovery. If the party or person is a nonresident of the county, the court may order any terms and conditions in connection with his or her appearance at the trial or other evidentiary hearing that are just, including payment of his or her reasonable expenses. Upon a failure to comply with the notice, the court may enter any order that is just, including any sanction or remedy provided for in Rule 219(c) that may be appropriate.

(c) Notice of Parties at Expedited Hearings in Domestic Relations Cases. In a domestic relations case, the appearance at an expedited hearing of a party who has been served with process or appeared may be required by serving the party with a notice designating the party who is required to appear. The notice may also require the production at the hearing of the original documents or tangible things relevant to the issues to be addressed at the hearing. If the party is a nonresident of the county, the court may order any terms and conditions in connection with his or her appearance at the hearing that are just, including payment of his or her reasonable expenses. Upon a failure to comply with the notice, the court may enter any order that is just, including any sanction or remedy provided for in Rule 219(c) that may be appropriate.

Amended June 19, 1968, and amended October 21, 1969, effective January 1, 1970; amended September 29, 1978, effective November 1, 1978; amended June 1, 1995; effective January 1, 1996; amended February 1, 2005, effective July 1, 2005.

Committee Comments

(February 1, 2005)

Paragraph (c) was added to the rule effective July 1, 2005. Because of the important issues decided in expedited hearings in domestic relations cases, including temporary family support, temporary child custody, and temporary restraining orders, a trial court should have the benefit of the attendance of individuals and production of documents and tangible things on an expedited basis.

Committee Comments

(Revised June 1, 1995)

This rule conforms substantially with Rule 204(a), which deals with compelling the appearance of witnesses for depositions.

Rule 237 contains no counterpart to Rule 204(a)(1), because the authority for the issuance of subpoenas is provided by section 62 of the Civil Practice Act (Ill. Rev. Stat. 1977, ch. 110, par. 62).

Paragraph (a) of Rule 237 was added to the rule in 1969. It is identical with Rule 204(a)(2) except for the substitution of "witness" for "deponent." Together with Rule 204 it was amended in 1978 to conform its requirements to presently available postal delivery service. See the committee comments to Rule 105.

Paragraph (a) formerly provided that proof of service of a subpoena by mail may be proved by a return receipt and an affidavit of mailing. In the new rule, such proof is described as "*prima facie*" to make it clear that such proof may be rebutted. This effects no substantive change.

Paragraph (b) of this rule, except for the last sentence, which was added by amendment in 1968, was Rule 237 as adopted effective January 1, 1967. Comparable provisions applicable to depositions had been in effect since January 1, 1956, but prior to the adoption of Rule 237 it was necessary to serve a subpoena to assure the attendance of the opposing party at the trial. There was obviously no reason for such a distinction.

Paragraph (b) has been revised to clarify the fact that Rule 237(b) is not a discovery option to be used on the eve of trial in lieu of a timely request for the production of documents, objects and tangible things pursuant to Rule 214. Discovery of relevant documents, objects and tangible things should be diligently pursued before trial pursuant to Rule 214. Under the new paragraph, a Rule 237(b) request to produce at trial will be expressly limited to those documents, objects and tangible things produced during discovery. This revision will effect a change in current practice, under which a Rule 237(b) request to produce at trial is often utilized as a major discovery tool by nondiligent litigants, a practice that often causes trial delay. It is the intent of this revision to establish that due diligence for the purposes of a motion to delay the trial cannot be shown by a party who first attempts to discover documents, objects or tangible things by serving a request under Rule 237(b). See *Campen v. Executive House Hotel, Inc.*, 105 Ill. App. 3d 576, 434 N.E.2d 511 (1st Dist. 1982).