

## CHAPTER 598

## PERPETUATION OF TESTIMONY

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NOTE: For rules of civil procedure, district court, see Appendix 8.

**598.01 PERPETUATION OF TESTIMONY WITHIN THE STATE; APPLICATION.** Any person who desires to perpetuate the testimony of any witness within the state shall make a statement, in writing, setting forth briefly and substantially his title, claim, or interest in the subject concerning which he desires to perpetuate the evidence, and the names of all other persons interested or supposed to be interested, their residences, if known, and, if unknown, it shall be so stated, and the name of the witness proposed to be examined, and shall deliver such statement to the judge of the district court and request him to take the deposition of such witness.

[R L s 4685] (9839)

NOTE: Superseded to the extent applicable by Rules of Civil Procedure, Rules 27.01, 86.01 and 86.02.

**598.02 ORDER AND NOTICE.** The judge shall make an order fixing the time and place of taking such deposition, which order shall be served upon all persons mentioned in the statement as being interested in the case, in the same manner as notices of the taking of other depositions within the state are required to be served, and so as to allow the same time for appearance. If it appear that, by reason of the non-residence of any such person or other cause, it is impossible to serve such order in the manner aforesaid, the judge may direct that three weeks' published notice thereof be given.

[R L s 4686] (9840)

NOTE: Superseded to the extent applicable by Rules of Civil Procedure, Rules 27.01, 86.01 and 86.02.

**598.03 TESTIMONY, HOW TAKEN; CERTIFICATE.** The deponent shall be sworn and examined, and his deposition written, read, and signed, in the same manner as prescribed in chapter 597; and the judge shall annex thereto a certificate under his hand showing the time and manner of taking the deposition, and that it was taken in perpetual remembrance of the thing, and he shall also insert therein the names of the persons at whose request it was taken, of all those who were notified to attend, and of all those who did attend, the taking thereof.

[R L s 4687] (9841)

NOTE: Superseded to the extent applicable by Rules of Civil Procedure, Rules 27.01, 86.01 and 86.02.

**598.04 RECORD OF DEPOSITION.** Within 90 days after such taking, upon payment of the record fees by any person interested, the judge shall file the deposition, with his certificate and the statement pursuant to which it was taken, for record with the register of deeds of the county where the land lies, if the deposition relates to land; otherwise, in the county where the applicant resides.

[R. L. s. 4688] (9842)

**598.05 USE.** Such deposition, when so recorded, or the record thereof, or a certified copy of such record, may be used, in any action or proceeding wherein the title, claim, or interest set forth in the statement under which it was taken is brought in question, by the applicant or any person notified of the taking thereof, or by any person claiming under either or any of them, in the same manner and subject to the same conditions as if it had been taken for such action.

[R L s 4689] (9843)

NOTE: Superseded to the extent applicable by Rules of Civil Procedure, Rules 27.01, 86.01 and 86.02.

**598.06 WITNESS COMPELLED TO TESTIFY.** Any witness may be subpoenaed and compelled to give his deposition in such cases, in like manner, and under the same penalties, as are provided in respect to other depositions taken in this state.

[R L s 4690] (9844)

NOTE: Superseded to the extent applicable by Rules of Civil Procedure, Rules 27.01, 86.01 and 86.02.

**598.07 WITNESSES WITHOUT THE STATE.** Depositions to perpetuate the testimony of witnesses without the state may be taken in any state or foreign country upon a commission issued by any court of record, as hereinafter provided.

[R L s 4691] (9845)

NOTE: Superseded to the extent applicable by Rules of Civil Procedure, Rules 27.01, 86.01 and 86.02.

**598.08 APPLICATION, HOW AND WHERE MADE.** The person desiring to take the deposition shall apply to the judge of such court in like manner as prescribed for perpetuating the testimony of witnesses within this state and, if the subject of the proposed deposition relates to land within this state, the application shall be made in the county where the land, or some part thereof, lies; otherwise, in the county where the applicant resides.

[R L s 4692] (9846)

NOTE: Superseded to the extent applicable by Rules of Civil Procedure, Rules 27.01, 86.01 and 86.02.

**598.09 NOTICE OF APPLICATION.** The judge shall order notice of such application and statement to be served on all the persons named therein at least 14 days before the time appointed for hearing the parties. If any of these persons reside out of the state, or if their residence is unknown to the applicant, the judge shall order such service to be made upon such persons by three weeks' published notice.

[R L s 4693] (9847)

NOTE: Superseded to the extent applicable by Rules of Civil Procedure, Rules 27.01, 86.01 and 86.02.

**598.10 COMMISSION, WHEN TO ISSUE.** If, upon hearing the parties who appear, the court shall find that there is sufficient cause for taking the deposition, it shall issue a commission therefor in like manner as for taking a deposition to be used in a cause pending in such court.

[R L s 4694] (9848)

NOTE: Superseded to the extent applicable by Rules of Civil Procedure, Rules 27.01, 86.01 and 86.02.

**598.11 DEPOSITION, HOW TAKEN AND RETURNED.** The deposition shall be taken upon written interrogatories filed by the applicant, and cross-interrogatories, if any are filed by any party adversely interested; and it shall be taken, certified, and returned substantially in the same manner as in the case of a deposition taken upon interrogatories to be used in a cause pending in the same court.

[R L s 4695] (9849)

NOTE: Superseded to the extent applicable by Rules of Civil Procedure, Rules 27.01, 86.01 and 86.02.

**598.12 DEPOSITION, HOW RECORDED AND USED.** Within 90 days after the return of such deposition, the judge or clerk shall file it for record with the register of deeds, and it may thereafter be used in evidence, as in the case of such deposition taken within the state.

[R L s 4696] (9850)