

CHAPTER 597

DEPOSITIONS

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597.01 DEPOSITIONS, ON NOTICE TO ADVERSE PARTY. The deposition of a witness whose testimony is wanted in any civil cause pending in this state before a court, magistrate, or other person authorized to examine witnesses, or in a controversy submitted to arbitrators, may be taken, upon notice to the adverse party of the time and place of such taking, by or before any officer authorized to administer an oath in the state or territory in which the same may be taken, when the witness:

(1) Is within the state and lives more than 30 miles from the place of trial or hearing; or is about to go out of the state, not intending to return in time for the trial or hearing; or is so sick, infirm, or aged as to make it probable that he will not be able to attend at the trial or hearing;

(2) Is without this state, and within any state or territory of the United States.

[R. L. s. 4666] (9820)

597.02 SERVICE; ORDER; DEFENDANT IN DEFAULT. Such notice shall be in writing, shall state the reason for taking the deposition, and shall be served in the same manner as other notices in civil actions, and so as to allow the adverse party sufficient time, at the rate of one day for every 100 miles of distance by the usual route of travel between the place of service and the place of taking the deposition, and one day for preparation, exclusive of Sundays and the day of service; provided, a justice of the peace before whom, or a judge of the court before which, or a court commissioner of the county in which, the action is pending, on motion, may, by order, designate the time and place of taking the testimony and the time within which a copy of the order shall be served on the adverse party; but no notice or order need be served upon a defendant who is in default for want of an answer or other defense.

[R. L. s. 4667] (9821)

597.03 EXAMINATION OF WITNESS. The examination shall commence at the time and place specified in the notice or order, or within one hour thereafter, and, if so stated in the notice, may be adjourned from day to day until closed. Either party may appear in person, or by his agent or attorney, and take part in the examination.

[R. L. s. 4668] (9822)

597.04 UNDER COMMISSION. The deposition of a witness without the state may be taken under a commission issued by a court of record to any competent person in any state or country, in the following cases:

(1) When an issue of fact has been joined in an action pending in such court, or when a controversy has been submitted to arbitrators and the award is required to be filed in such court, on the application of either party made upon eight days' notice, if it appears that the testimony of such witness is material;

(2) When the time for answering the complaint in an action pending in such court has expired, and the defendant has not answered or demurred, on application of the plaintiff without notice to the other party, if it appears that the testimony of such witness is necessary to establish the cause of action alleged.

[R. L. s. 4669] (9823)

597.05 INTERROGATORIES. When such application is by the plaintiff, and there has been no appearance by the defendant, the deposition may be taken upon interrogatories filed by the plaintiff and annexed to the commission. In all other cases such depositions shall be taken upon written interrogatories, served upon the adverse party or his attorney, and cross-interrogatories to be served and filed by him if he desires.

[R. L. s. 4670] (9824)

597.06 BY STIPULATION. The parties to any action or proceeding, by stipulation in writing, may agree upon any other mode of taking depositions, either within or without the state and, when taken pursuant to such stipulation, they may be used upon a trial with like force and effect in all respects as if taken upon notice or under commission.

[R. L. s. 4671] (9825)

597.07 DEPOSITION, HOW WRITTEN. In all cases the deposition shall be written by the officer, or by some disinterested person in his presence and under his direction. The officer must carefully read over to the witness his testimony, and he may thereupon add thereto or qualify the same as he may desire.

[R. L. s. 4672] (9826)

597.08 SIGNING AND CERTIFYING. When the deposition is completed, the witness shall sign his name or make his mark at the end thereof, as well as upon each piece of paper upon which any portion of his testimony is written. Thereupon the officer shall annex to such deposition the notice, order, or the commission, and a certificate, under his hand and his official seal, if he have one, which certificate shall be prima facie evidence of the matters therein stated, and shall be substantially in the following form:

"State of..... }
County of } ss.

Be it known that I took the annexed depositions pursuant to the annexed notice (or order or commission); that I was then and there (state title of officer); that I exercised the power of that office in taking such deposition; that by virtue thereof I was then and there authorized to administer an oath; that each witness, before testifying, was duly sworn to testify to the whole truth and nothing but the truth relative to the cause specified in said notice (or order or commission); that the testimony of each witness was carefully read over to him by me before he signed the same (if the examination was oral); that the examination was conducted on behalf of the plaintiff by, and on behalf of the defendant by; and (if the deposition was taken within the state) that the reason for taking said deposition was (here state the reason).

Witness my hand (and seal) this day of, 19....."

[R. L. s. 4673] (9827)

597.09 RETURN OF DEPOSITION. The officer shall enclose and seal the deposition, and shall deliver or mail it to the court before which the cause is pending or from which the commission issued, or, if the deposition was taken upon notice in a controversy submitted to the arbitrators, to one of them; and it shall remain sealed until opened by the court or the clerk thereof, or by the arbitrators, and shall then be subject to the inspection of either party.

[R. L. s. 4674] (9828)

597.10 PERSON GIVING DEPOSITION TO BE SWORN. Every person whose testimony is taken by deposition, before being examined or giving his evidence, shall be sworn to testify the whole truth, and nothing but the truth, relative to the cause in or for which the deposition is taken.

[R. L. s. 4675] (9829)

597.11 WITNESS COMPELLED TO GIVE DEPOSITION. Any witness may be subpoenaed and compelled to give his deposition, at any place within 20 miles of his abode, in like manner and under the same penalties as in the case of a witness in court.

[R. L. s. 4676] (9830)

597.12 DEPOSITION, HOW USED; OBJECTIONS. Every deposition may be read in evidence at the trial of the action or proceeding; but, when offered in evidence, objection may be interposed to the competency of the witness, or to any question put to him, or to the whole or any part of his testimony, in like manner, on the same grounds, and with like effect as if the witness were present and testi-

fyng in open court, except that no objection to the form of any question or interrogatory can be made unless such objection was made before, and noted by, the officer taking such deposition, if the deposition was taken upon notice, or unless the objection was made when the interrogatory was exhibited or filed, if the deposition was taken under commission.

[R. L. s. 4677] (9831)

597.13 INFORMALITIES AND DEFECTS; MOTION TO SUPPRESS. No informality, error, or defect in any proceeding shall be sufficient ground for excluding a deposition, unless the party making the objection thereto shall make it appear to the satisfaction of the court that the officer taking the same was not then and there authorized to administer an oath, or that such party was by such informality, error, or defect precluded from appearing and cross-examining the witness; and every objection to the sufficiency of the notice, order or commission, or to the manner of taking, certifying, or returning such deposition shall be deemed to have been waived, unless such objection is taken by motion to suppress the deposition, which motion shall be made within ten days after service of written notice of the return thereof.

[R. L. s. 4678] (9832)

597.14 FAILURE OF PARTY GIVING NOTICE TO APPEAR; EXPENSES. When any party serving notice of the taking of the testimony of any person fails to appear and proceed with the taking of such testimony at the time and place stated in the notice or order, and the adverse party shall appear in pursuance thereof, by himself or attorney, the court in which the cause is pending shall allow the adverse party such sum for expenses and attorney's fees incurred in so attending as it shall deem proper, which shall be collected in the same manner as other disbursements in the cause.

[R. L. s. 4679] (9833)

597.15 DEPOSITION, WHEN NOT USED. No deposition shall be used if it appears that the reason for taking it no longer exists; but, if the party producing the deposition in such case shows sufficient cause then existing for using the same, it may be admitted.

[R. L. s. 4680] (9834)

597.16 DEPOSITION USED IN SECOND ACTION. When an action is discontinued or dismissed, and another action for the same cause is afterward commenced between the same parties or their respective representatives, all depositions lawfully taken for the first action may be used in the second in the same manner and subject to the same conditions and objections as if originally taken therefor; provided, the deposition has been duly filed in the court where the first action was pending, and has ever since remained in its custody.

[R. L. s. 4681] (9835)

597.17 DEPOSITION ON APPEAL. When an action is appealed from one court to another, all depositions lawfully taken to be used in the court below may be used in the appellate court in the same manner and subject to the same objections as were made to such depositions, in writing, in the court below.

[R. L. s. 4682] (9836)

597.18 DEPOSITIONS FOR USE IN OTHER STATES. Any witness may be compelled, in the manner and under the penalties prescribed in this chapter, to give his deposition in any case pending in a court of any other state or country, which deposition may be taken before any justice of the peace or notary public, or before any commissioner appointed under the authority of the state or country in which the action is pending; and the clerk of any district court of this state may issue subpoenas to such witnesses to appear before the person taking such deposition.

[R. L. s. 4683] (9837)