

Proposed Amendments to Rule 27

Rule 27 is amended as follows:

Rule 27. Depositions **to Perpetuate Testimony**

(a) Before an Action or Pending Appeal Is Filed. ~~(a) Before Action.~~

(1) Petition. A person who ~~desires~~**wants** to perpetuate testimony regarding **about** any matter that may be cognizable in this court may file a verified petition. ~~The petition shall be entitled in the name of the petitioner and shall show: (1~~ **The petition must ask for an order authorizing the petitioner to depose the named persons in order to perpetuate their testimony. The petition must be titled in the petitioner's name and must show:**

(A) that the petitioner expects to be **a** party to an action cognizable in this court but ~~is~~**cannot** presently ~~unable to bring it or cause it to be brought,~~**(2;**

(B) the subject matter of the expected action and the petitioner's interest therein,**(3;**

(C) the facts ~~which~~**that** the petitioner ~~desires~~**wants** to establish by the proposed testimony and the reasons ~~for desiring to perpetuate it,~~**(4;**

(D) the names or a description of the persons **whom** the petitioner expects ~~will~~**to** be adverse parties and their addresses, so far as known, and ~~(5) the names;~~ and addresses of the persons to be examined

(E) the name, address, and ~~the~~**expected** substance of the testimony ~~which the petitioner expects to elicit from~~**of** each, and shall ask for an order authorizing the petitioner to take the depositions of the

~~persons to be examined named in the petition, for the purpose of perpetuating their testimony~~ **deponent.**

(2) Notice and Service. At least 20 days before the hearing date, the petitioner must serve each expected adverse party with a copy of the petition and a notice stating the time and place of the hearing. The notice ~~shall~~**must** be served in the manner provided in Rule 4. If that service cannot **be made** with ~~due~~ **reasonable** diligence ~~be made~~ on an expected adverse party, the court may order service by publication or otherwise. The court must appoint an attorney to represent persons not served in the manner provided by Rule 4 and to cross-examine the deponent if an unserved person is not otherwise represented. Rule 17(c) ~~applies if~~ **if** any expected adverse party is a minor or is incompetent, **Rule 17(c) applies.**

(3) Order and Examination. ~~If the court is satisfied that the perpetuation of~~ **perpetuating** the testimony may prevent a failure or delay of justice, ~~it shall make an order designating or describing~~ **the court must issue an order that designates or describes** the persons whose depositions may be taken ~~and specifying,~~ **specifies** the subject matter of the ~~examination and~~ **examinations, and states** whether the depositions shall **will** be taken ~~upon oral examination or orally or by~~ written interrogatories. The depositions may then be taken in accordance with ~~under~~ **under** these rules; and the court may ~~make~~ **issue** orders of the character prescribed **like those authorized** by Rules 34 and 35.

(4) Use of Using the Deposition. ~~If a~~ **A** deposition to perpetuate testimony ~~is~~ **may be used under Rule 32(a) in any later-filed action involving the same**

subject matter if the deposition either was taken under these rules or ~~if, although not so taken, it would be admissible in evidence in the courts of the state in which~~ **where** it is **was** taken, ~~it may be used in any other action involving the same subject matter subsequently brought, in accordance with the provisions of Rule 32(a).~~

(b) Pending Appeal.

(1) **In General.** If an appeal has been taken from a judgment or ~~before the taking of an appeal if the time therefor has not expired,~~ **or may still be taken,** the court may ~~allow the taking of depositions of~~ **permit a party to depose** witnesses to perpetuate their testimony for use in the event of further proceedings ~~in the court. In such case the.~~

(2) **Motion.** The party who desires **wants** to perpetuate ~~the~~ testimony may ~~make a motion in the court~~ **move** for leave to take **the** depositions, upon the same notice and service ~~thereof as if the action was~~ **were** pending **in court.** The motion shall **must** show ~~(1:~~

(A) the names, **address,** and ~~addresses of persons to be examined and the~~ **expected** substance of the testimony ~~which the party expects to elicit from~~ **of** each; ~~(2~~ **deponent; and**

(B) the reasons for perpetuating ~~their~~ **the** testimony.

(3) **Court Order.** If the court finds that ~~the perpetuation of~~ **perpetuating** the testimony is ~~proper to avoid~~ **may prevent** a failure or delay of justice, it may ~~make an order allowing the depositions to be taken and~~ **court** may ~~make~~ **permit** **the depositions to be taken and may issue** orders of the character

~~prescribed~~ **like those authorized** by Rules 34 and 35, ~~and thereupon the.~~ **The** depositions may be taken and used in ~~the same manner and under the same conditions as are prescribed in these rules for depositions~~ **any other deposition** taken in actions pending in court.

(c) Perpetuation by an Action. This rule does not limit ~~the~~ **this court's** power of ~~this court~~ to entertain an action to perpetuate testimony.

(As amended July 28, 1988, eff. Nov. 1, 1988; Aug. 29, 2000, eff. Jan. 1, 2001; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 27, 2007, eff. Jan. 1, 2008; _____, **2009, eff. _____, 2010.**)

Advisory Committee Note

The language of Rule 27 has been amended as part of the general restyling of these rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.