

1 **Rule 27. Depositions before action or pending appeal.**

2 **(a) Before action.**

3 (a)(1) **Petition.** A person who desires to perpetuate testimony regarding any
4 matter that may be cognizable in any court of this state may file a verified petition in
5 the district court of the county in which any expected adverse party may reside. The
6 petition shall be entitled in the name of the petitioner and shall state: (1) that the
7 petitioner expects to be a party to an action cognizable in a court of this state but is
8 presently unable to bring it or cause it to be brought, (2) the subject matter of the
9 expected action and the petitioner's interest therein, (3) the facts to be established
10 by the proposed testimony and the reasons to perpetuate it, (4) the names or a
11 description of the persons expected to be adverse parties and their addresses so far
12 as known, and (5) the names and addresses of the persons to be examined and the
13 substance of the testimony expected to be elicited from each, and shall ask for an
14 order authorizing the petitioner to take the depositions of the persons to be
15 examined named in the petition, for the purpose of perpetuating their testimony.

16 (a)(2) **Notice and service.** The petitioner shall thereafter serve a notice upon
17 each person named in the petition as an expected adverse party, together with a
18 copy of the petition, stating that the petitioner will apply to the court, at a time and
19 place named therein, for the order described in the petition. At least ~~20~~21 days
20 before the date of hearing the notice shall be served either within or without the
21 district or state in the manner provided in Rule 4(d) for service of summons; but if
22 such service cannot with due diligence be made upon any expected adverse party
23 named in the petition, the court may make such order as is just for service by
24 publication or otherwise, and shall appoint, for persons not served in the manner
25 provided in Rule 4(d), an attorney who shall represent them, and, in case they are
26 not otherwise represented, shall cross-examine the deponent. If any expected
27 adverse party is a minor or incompetent the provisions of Rule 17(c) apply.

28 (a)(3) **Order and examination.** If the court is satisfied that the perpetuation of
29 the testimony may prevent a failure or delay of justice, it shall make an order
30 designating or describing the persons whose depositions may be taken and

31 specifying the subject matter of the examination and whether the depositions shall
32 be taken upon oral examination or written interrogatories. The depositions may then
33 be taken in accordance with these rules; and the court may make orders of the
34 character provided for by Rules 34 and 35. For the purpose of applying these rules
35 to depositions for perpetuating testimony, each reference therein to the court in
36 which the action is pending shall be deemed to refer to the court in which the petition
37 for such deposition was filed.

38 (a)(4) **Use of deposition.** If a deposition to perpetuate testimony is taken under
39 these rules or if, although not so taken, it would be admissible in evidence in the
40 courts of the state in which it is taken, it may be used in any action involving the
41 same subject matter subsequently brought in any court of this state, in accordance
42 with the provisions of Rule 32(a).

43 (b) **Pending appeal.** If an appeal has been taken from a judgment of a district court
44 or before the taking of an appeal if the time therefor has not expired, the district court in
45 which the judgment was rendered may allow the taking of the depositions of witnesses
46 to perpetuate their testimony for use in the event of further proceedings in such court. In
47 such case the party who desires to perpetuate the testimony may make a motion in the
48 district court for leave to take the depositions, upon the same notice and service thereof
49 as if the action was pending in the district court. The motion shall show (1) the names
50 and addresses of persons to be examined and the substance of the testimony which
51 expected to be elicited from each; and (2) the reasons for perpetuating their testimony.
52 If the court finds that the perpetuation of the testimony is proper to avoid a failure or
53 delay of justice, it may make an order allowing the depositions to be taken and may
54 make orders of the character provided for by Rules 34 and 35, and thereupon the
55 depositions may be taken and used in the same manner and under the same conditions
56 as are prescribed in these rules for depositions taken in actions pending in the district
57 court.

58 (c) **Perpetuation by action.** This rule does not limit the power of a court to entertain
59 an action to perpetuate testimony.

60 [Advisory Committee Notes](#)

Rule 27.

Effective Date: May 1, 2014