
WEST VIRGINIA CODE CHAPTER 57
ARTICLE 4

WV Legislature

§57-4-1. Taking and certification of depositions -- Generally.

In any pending case the deposition of a witness, whether a party to the suit or not, may, without commission, be taken in or out of this state by a justice, or notary public, or by a commissioner in chancery, or before any officer authorized to take depositions in the county or state where they may be taken. However, a deposition may not be taken by any person who is a relative or employee or attorney of any of the parties, or is a relative or employee of the attorney, or a relative or employee or attorney of one who has a financial interest in the outcome of the case, or who is otherwise financially interested in the action. Any deposition taken by an interested party, as described above, shall be considered void. For purposes of this article, an employee includes a person who has a contractual relationship with a party litigant to provide reporting or other court services and also includes a person employed part or full time under contract or otherwise by a person who has a contractual relationship with a party litigant to provide reporting or other court services. A party litigant does not include federal, state or local governments and the subdivisions thereof. Depositions may be taken in shorthand, or stenographic characters or notes, and shall be written out in full and transcribed into the English language by the stenographer taking the same, and certified by the officer before whom the depositions are taken; and if certified by such officer under his hand and if further certified by him that such stenographic characters and notes were correctly taken and accurately transcribed by him or under his direction and supervision, and that the witnesses were duly sworn, such depositions may be received and read in evidence without proof of the signature to such certificate and without the signature of the witness to such depositions. And in case the stenographer taking such depositions is not the officer before whom the same are being taken, then such stenographer, before proceeding to take any of said depositions, shall be sworn to take correctly and accurately transcribe the same, and the certificate of the officer before whom the depositions are taken shall state that the stenographer was so sworn.

§57-4-2. Taking and certification of depositions -- Out-of state and in foreign countries.

On affidavit that a witness resides out of this state, or is out of it in the service thereof, or of the United States, or is out of this state and for justifiable reasons will probably be out of this state until after the trial of the case in which his or her testimony is needed, his or her deposition may be taken by or before any justice, notary public or other officer authorized to take depositions in the state wherein the witness may be, or, if the deposition is to be taken in a foreign country, by or before such commissioner or commissioners as may be agreed upon by the parties or appointed by the court, or, if there be none such, by or before any American minister, plenipotentiary, charge d'affaires, consul general, consul, vice consul, consular agent, vice deputy consular agent, commercial agent or vice commercial agent, appointed by the government of the United States, or by or before the mayor or other chief magistrate of any city, town or corporation in the country or any notary public therein. Any person or persons taking the deposition may administer an oath to the witness and take and certify the deposition with his or her official seal annexed, and if he or she have none, the genuineness of his or her signature shall be authenticated by some officer of the same state or country, under his or her official seal.

§57-4-3. Notice of taking of depositions; when deposition may be read in equity.

Reasonable notice shall be given to the adverse party of the time and place of taking every deposition. And in a suit in equity a deposition may be read if returned before the hearing of the cause, although after an interlocutory decree, if it be as to a matter not thereby adjudged, and be returned before a final decree.

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§57-4-4. Circumstances under which deposition may be read in case at law; attendance of deponent out of county may be required.

A deposition in a case at law, taken on such notice under the three preceding sections, may be read in such case, if when it is offered, the deponent be dead, or out of this state, or one of its judges, or in any public office or service the duties of which prevent his attending the court, or be unable to attend it from sickness or other infirmity, or be out of the county in which the case is pending, or, because of lapse of time or mental infirmity, be unable to remember any material part of what he had deposed to. But when the only ground of reading a deposition is that the deponent is out of the county, on motion to the court, before the commencement of the trial, the court may, for good cause shown, require such deponent to attend in person.

§57-4-5. When deposition may be read by adverse party.

When a deposition has been filed, if not read on the trial by the party taking it, it may be read by the other party.

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§57-4-6. Taking deposition after judgment, decree or order; reading thereof in future trial.

In any case wherein there has been a judgment, decree or order from or to which an appeal, writ of error or supersedeas has been or might be allowed, a deposition may be taken for any party to such case, or for or against his or her husband or wife, personal representatives, heirs or devisees in like manner and by such persons as it is before prescribed for pending cases; and it may be read in any future trial that may be directed, if the same could properly be read, had there been no such judgment, decree or order.

§57-4-7. How testimony perpetuated.

A person desirous of perpetuating the testimony of witnesses as to a matter, whether a suit be pending in relation thereto or not, may file with a commissioner in chancery of a court wherein, if there were a bill to perpetuate the testimony, such bill might be filed, a petition stating such matter, and what persons may be affected by the testimony. Whereupon the commissioner shall appoint for proceeding on the petition a time and place, whereof reasonable notice shall be given to the persons who may be so affected. If any of them be an infant or insane person, the commissioner shall appoint a guardian ad litem who shall attend on his behalf and who shall be a practicing attorney in this state. At such time and place the commissioner shall take in writing the evidence of any witness adduced in respect to said matter by the petitioner or by the person so affected. He may adjourn from time to time, and shall return a report of his proceedings, with the testimony taken by him to the clerk's office of the court by which he was appointed, and such testimony shall have the same effect as if it had been taken on a bill to perpetuate testimony. Such court may make such order as to the costs as may seem to it right.