

CHAPTER 887

DEPOSITIONS, OATHS AND AFFIDAVITS

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887.01 Oaths, who may administer. (1) WITHIN THE STATE. An oath or affidavit required or authorized by law, except oaths to jurors and witnesses on a trial and such other oaths as are required by law to be taken before particular officers, may be taken before any judge, court commissioner, resident U.S. commissioner who has complied with s. 706.07, clerk, deputy clerk or calendar clerk of a court of record, court reporter, notary public, town clerk, village clerk, city clerk, municipal judge, county clerk or the clerk's deputy within the territory in which the officer is authorized to act, school district clerk with respect to any oath required by the elections laws; and, when certified by the officer to have been taken before him or her, may be read and used in any court and before any officer, board or commission. Oaths may be administered by any person mentioned in s. 885.01 (3) and (4) to any witness examined before him or her.

(2) WITHOUT THE STATE. Any oath or affidavit required or authorized by law may be taken in any other state, territory or district of the United States before any judge or commissioner of a court of record, master in chancery, notary public, justice of the peace or other officer authorized by the laws thereof to administer oaths, and if the oath or affidavit is properly certified by any such officer to have been taken before the officer, and has attached thereto a certificate of the clerk of a court of record of the county or district within which the oath or affidavit was taken, under the seal of his or her office, that the person whose name is subscribed to the certificate of due execution of the instrument was, at the date thereof, the officer as is therein represented to be, was empowered by law as such officer to administer the oath or affidavit, and that he or she believes the name so subscribed is the signature of the officer, the oath or affidavit may be read or used in any court within this state and before any officer, board or commission authorized to use or consider the oath or affidavit. Whenever any such oath or affidavit is certified by any notary public or clerk of a court of record and an impression of his or her official seal is thereto affixed no further attestation shall be necessary.

(3) OFFICER IN ARMED FORCES. In every instance where an officer in the armed forces is authorized by s. 706.07 (5) to take an acknowledgment, the officer may administer an oath.

History: 1971 c. 41 s. 11; 1977 c. 305; 1979 c. 110; 1983 a. 484; 1983 a. 492 s. 3; 1989 a. 141; 1993 a. 486.

887.02 Duty to administer official and election oaths; no fees. (1) Every person thereto authorized by law shall administer and certify, on demand, any official oath and any oath required on any nomination paper, petition or other instrument used in the nomination or election of any candidate for public office, or in the submission of any question to a vote of the people.

(2) No fee shall be charged by any officer for administering or certifying any official oath, or any oath to any person relative to the person's right to be registered or to vote.

History: 1993 a. 486.

887.03 Oath, how taken. Any oath or affidavit required or authorized by law may be taken in any of the usual forms, and every person swearing, affirming or declaring in any such form shall be deemed to have been lawfully sworn.

887.17 Deposition, use of in other actions. When a deposition shall have been lawfully taken in any action it may be used in any trial, inquiry or assessment therein, and it may also be used in any other action between the same parties, including their respective legal representatives, involving the same controversy, if it shall have been duly filed in the first mentioned action and have since remained in the custody of the clerk of the court where the same was pending, subject to the same objections as if originally taken for such other action.

887.18 Deposition may be used on appeal. When an action or proceeding shall have been appealed from one court to another all depositions lawfully taken to be used in the court below may be used in the appellate court; but if any such deposition was offered in the court below, then subject to the same objections for informality or irregularity, and none other, which were duly taken in writing in such court below.

887.20 Deposition in municipal court. The municipal judge before whom any civil cause is pending may, on any day on which a trial may be had, after an application has been made for adjournment and before making an order for an adjournment, on the application of either party, showing any cause provided by law therefor, proceed to take the deposition of any witness then in attendance before the municipal judge; and no prior notice shall be required.

History: 1977 c. 305 s. 64.

887.23 Deposition relative to public institutions. (1) WHO MAY REQUIRE. The department of health and family services, the department of corrections, the department of education or the board of regents of the university of Wisconsin system may order the deposition of any witness to be taken concerning any institution under his, her or its government or superintendence, or concerning the conduct of any officer or agent thereof, or concerning any matter relating to the interests thereof. Upon presentation of a certified copy of such order to any municipal judge, notary public or court commissioner, the officer shall take the desired deposition in the manner provided for taking depositions to be used in actions. When any officer or agent of any institution is concerned and will be affected by the testimony, 2 days' written notice of the time and place of taking the deposition shall be given him or her. Any party interested may appear in person or by counsel and examine the witness touching the matters mentioned in the order. The deposition, duly certified, shall be delivered to the authority which ordered it.

NOTE: Sub. (1) is shown as amended by 1995 Wis. Act 27. The treatment by Act 27, s. 7210, was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–0A. Sub. (1) as not affected by Act 27 s. 7210 reads as follows:

(1) WHO MAY REQUIRE. The department of health and family services, the department of corrections, the state superintendent or the board of regents of the university of Wisconsin system may order the deposition of any witness to be taken concerning any institution under his, her or its government or superintendence, or concerning the conduct of any officer or agent thereof, or concerning any matter relating to the interests thereof. Upon presentation of a certified copy of such order to any municipal judge, notary public or court commissioner, the officer shall take the desired deposition in the manner provided for taking depositions to be used in actions. When any officer or agent of any institution is con-

cerned and will be affected by the testimony, 2 days' written notice of the time and place of taking the deposition shall be given him or her. Any party interested may appear in person or by counsel and examine the witness touching the matters mentioned in the order. The deposition, duly certified, shall be delivered to the authority which ordered it.

(2) FEES. Every officer who takes a deposition, and every witness who appears and testifies under this section, shall be paid the fees allowed on the taking of other depositions, and the account of the expenses incurred in taking any such deposition, being duly certified, shall be paid out of the state treasury and charged to the appropriation of the authority which ordered the deposition.

History: 1971 c. 100 s. 23; 1977 c. 305; 1989 a. 31; 1995 a. 27 ss. 7210, 9126 (19).

887.24 Deposition; for use in other states. Any witness may be subpoenaed and compelled to attend and give the witness's deposition before any person authorized to take depositions in this state, or before any commissioner appointed under the authority of any other state, territory or country, or any court thereof, in any action, cause or proceeding pending in such other state, territory or country; provided, its laws contain provisions similar to this section, requiring persons within its borders to give their testimony by deposition in actions pending in Wisconsin.

History: 1993 a. 486.

887.25 Witnesses sent to other states. (1) Upon presentation to any judge of a court of record in Wisconsin of the certificate of the judge or the clerk of any foreign court of record, under seal, stating that any person being or residing in Wisconsin is believed to be a necessary witness in any civil action pending in that court, the judge, if satisfied by such proof as the judge shall require that the testimony of the witness is necessary to the trial of the action, shall issue and attach to the certificate a subpoena commanding the witness to appear in the court where the action is pending, at the time and place stated therein, or show cause, before the judge, at a time and place fixed in the subpoena, why the witness should not appear as therein commanded. The judge may refuse to issue a subpoena or may vacate the subpoena after it is issued, if it appears that compliance will cause undue hardship to the witness.

(2) If any person on whom the subpoena has been served, and to whom has been tendered the sum of 10 cents for each mile to be traveled to and from the court, together with the sum of \$5 for each day that his or her attendance is required, neglects to attend and testify at the trial, the person shall be punished as for contempt of court unless the subpoena is vacated.

(3) This section shall not apply to any action pending in any state, territory or country whose laws do not contain provisions similar to this section, requiring persons within their borders to attend for the purpose of testifying in any civil or criminal action pending in this state.

History: 1979 c. 257; 1993 a. 486.

Cross-reference: For extradition of prisoners as witnesses, see s. 976.01 and for extradition of witnesses in criminal actions, see s. 976.02.

887.26 Depositions without this state by commission.

(1) HOW TAKEN. In any civil action, proceeding or matter in which depositions may be taken within this state, the deposition of any witness without the state may be taken upon written interrogatories as provided in this section.

(4) COMMISSION TO TAKE. A commission may issue from any court of record to take the deposition of any witness without the state, where an issue of fact has been joined or the time therefor has expired, for any cause which shall be deemed sufficient by the court, or when required for use on any trial or hearing or upon any motion or proceeding. The commission shall be signed by the clerk and sealed and shall be accompanied by a copy of subs. (4), (5) and (6).

(5) PROCURING COMMISSION. (a) The party desiring a commission shall prepare interrogatories and state in the caption thereof the name of the commissioner proposed by the party, the name of the witness and the residence of each with particularity, and shall serve a copy thereof on the opposite party, with a notice that, at the

expiration of 10 days from the date of such service, a commission will be issued to take the deposition of the witness, specifying the reason for taking the same. Within such time the opposite party may file with the clerk and serve upon the other his or her objections, to the interrogatories proposed and to the competency of the witness and to the issuance of the commission and serve his or her cross-interrogatories; and state the name and residence of any person whom the opposite party desires to act as an additional commissioner, who must reside in the county in which the commissioner first named resides.

(b) At the expiration of the time limited, the moving party may file the notice and interrogatories, with proof of service thereof and the moving party's objections to the cross-interrogatories. The moving party may also serve redirect interrogatories on the opposite party, who may, within 3 days after such service, file objections to such redirect interrogatories. Thereupon the commission shall be issued, with the interrogatories, direct, cross and redirect, and all objections, and transmitted to the commissioner first named by mail or express at the expense of the moving party. But when any defendant shall not have appeared and the time for the defendant to plead has expired, no notice is required to be given such defendant, and the commission may issue on filing the direct interrogatories. No commission shall issue if the residences are not given as required.

(6) DUTY OF COMMISSIONER. (a) The commissioner first named shall fix the time and place for executing the commission and give the other commissioner one day's notice if residing in the same place, and when not, one day's notice in addition for every 30 miles of distance between the place of residence and the place fixed for executing the commission. If the notice be by mail double time shall be allowed; but notice may be waived in writing or by appearance at the execution of the commission. If there be 2 commissioners the commission shall be executed in the county where they reside, unless they agree upon another. The commissioner first named shall have charge of and return the deposition, which return shall be in the form and manner directed by the commission or as provided by s. 804.05 (7). If either commissioner shall not attend at the time and place so fixed, the other may execute the commission with like effect as if both were present, but such commissioner must certify in the return that the other had due notice but failed to attend.

(b) One of the commissioners shall publicly administer an oath or affirmation to each witness that the answers which the witness shall make to each of the interrogatories propounded to the witness shall be the truth, the whole truth, and nothing but the truth. The witness's answers to each interrogatory shall be reduced to writing. Each witness shall subscribe the witness's name at the end of the witness's answer and the commissioners shall subscribe their names at the foot of each page of the testimony. If any exhibit is produced and proved or referred to in the answer of any witness, it shall be marked as an exhibit, either by letter or number, by a commissioner, and referred to in the testimony of the witness, and annexed to and returned with the deposition. If the paper be a record or other document not in the control of either party, it shall be sufficient to annex a copy, stated by the witness in the witness's answers to be a true copy thereof. The commissioners shall certify in their return that each witness, before giving the witness's evidence, was duly sworn or affirmed, and shall state the time when the testimony was taken.

(c) The proper commissioner shall enclose the commission, the interrogatories, and the deposition with the return annexed in a sealed envelope, with the title of the action indorsed thereon and immediately transmit the same by mail or express to the clerk of the court from which the commission issued.

(d) Upon the receipt of such package, the clerk shall indorse the time and manner in which the clerk received the same, and open it and file the contents thereof and give notice of the receipt of the same to the attorneys for the respective parties.

(7) FEES. The persons who take depositions and the witness shall be entitled to the fees allowed court commissioners under s.

814.68 (1) and witnesses for similar service by the law of this state, or such as may be prescribed by the law of the state or country where taken.

(8) TRANSLATIONS. When the witness is unable to speak the English language, the judge of the court from which the commission issues may appoint some competent and disinterested person to translate the commission, rules, interrogatories and cross-interrogatories, or such part thereof as may be necessary, from the English into the language spoken by the witness; and such translation shall be sent to the commissioner in place of the original papers that have been translated. Upon the return of the commission and deposition, such judge shall in like manner cause the answers of the witness and the exhibits to be translated into English, as well as all other proceedings in a foreign language, and

such translation to be filed. The translator shall append to all translations the translator's affidavit that the translator knows the English and such foreign language, and that in making such translation the translator carefully and truly translated such proceedings from the English into such foreign language or from the latter into English, and that such translation is correct. Such translation shall have the same effect as if all the proceedings were in English, but the trial court, upon the deposition being offered in evidence, may admit the testimony of witnesses learned in such foreign language for the purpose of correcting errors therein; and, if it shall appear that the first translation was in any respect so incorrect as to mislead the witness, the court may, in discretion, continue the cause for the further taking of testimony.

History: Sup. Ct. Order, 67 W (2d) 585, 784 (1975); 1975 c. 218; 1977 c. 187 s. 135; 1977 c. 323 s. 16; 1981 c. 317 s. 2202; 1993 a. 486.