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.

887.015 Uniform unsworn foreign declarations act. (1) SHORT TITLE. This section may be cited as the Uniform Unsworn Foreign Declarations Act.

(2) DEFINITIONS. In this section:

(a) "Boundaries of the United States" means the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

(b) "Law" includes the federal or a state constitution, a federal or state statute, a judicial decision or order, a rule of court, an executive order, or an administrative rule, regulation, or order.

(c) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(d) "Sign" means, with present intent to authenticate or adopt a record, either of the following:

1. To execute or adopt a tangible symbol.

2. To attach to or logically associate with the record an electronic symbol, sound, or process.

(e) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(f) "Sworn declaration" means a declaration in a signed record given under oath or affirmation. Sworn declaration includes a sworn or affirmed statement, verification, certificate, or affidavit.

(g) "Unsworn declaration" means a declaration in a signed record that is not given under oath, but is given under penalty of false swearing.

(3) APPLICABILITY. This section applies to an unsworn declaration by a declarant who at the time of making the declaration is physically located outside the boundaries of the United States, whether or not the location is subject to the jurisdiction of the United States. This section does not apply to a declaration by a declarant who is physically located on property that is within the boundaries of the United States and subject to the jurisdiction of another country or a federally recognized American Indian tribe.

(4) VALIDITY OF UNSWORN DECLARATIONS. (a) Except as provided in par. (b), and notwithstanding s. 906.03, if a law of this state requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of this section has the same effect as a sworn declaration.

(b) This section does not apply to any of the following:

1. A deposition.

2. An oath of office.

3. An oath required to be given before a specified official other than a notary public.

4. A declaration to be recorded pursuant to s. 706.06, 706.07, or 706.25.

5. An oath required under s. 853.04.

(5) REQUIRED MEDIUM. If a law of this state requires that a sworn declaration be presented in a particular medium, an unsworn declaration must be presented in that medium.

(6) FORM OF UNSWORN DECLARATION. An unsworn declaration under this section must be in substantially the following form:

I declare under penalty of false swearing under the law of Wisconsin that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

Executed on the .... day of ...., ...(year), at ....(city or other location, and state), ...(country).

....(printed name)

....(signature)

(7) UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

(8) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. (a) Except as provided in par. (b), this section modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 USC 7001, et seq.

(b) This section does not modify, limit, or supersede 15 USC 7001 (c) or authorize electronic delivery of any of the notices described in 15 USC 7003 (b).

History: 2009 a. 166.

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 services, the department of corrections, the state superintendent of public instruction 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.

(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); 1997 a. 27, 252; 2007 a. 20 s. 9121 (6) (a).

887.24 Depositions and discovery; for use in other states. (1) SHORT TITLE. This section may be cited as the Uniform Interstate Depositions and Discovery Act.

(2) DEFINITIONS. In this section:

(a) "Foreign jurisdiction" means a state other than Wisconsin.

(b) "Foreign subpoena" means a subpoena issued in a civil action under authority of a court of record of a foreign jurisdiction.

(c) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(d) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(e) "Subpoena" means a document, however denominated, issued under authority of a court of record requiring a person to do any of the following:

1. Attend and give testimony at a deposition, either oral or upon written questions.

2. Produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person.

3. Permit inspection of premises under the control of the person.

(3) REQUEST FOR ISSUANCE OF SUBPOENA. (a) *Submission of foreign subpoena to clerk.* To request issuance of a subpoena under this section by a clerk of circuit court, a party must submit the foreign subpoena to the clerk for the county in which discovery is sought to be conducted in this state, accompanied by the appropriate Wisconsin subpoena form which shall do all of the following:

1. List the Wisconsin county in which discovery is to be conducted as the court from which the subpoena is issued. Discovery is to be conducted in the county in which the person to whom the subpoena is directed resides. If the person is not a natural person, discovery is to be conducted in a county in which the person does substantial business. The subpoena shall list the address, including county of residence, for the witness.

2. Use the title of the action and its docket number from the foreign jurisdiction.

3. Incorporate the terms used in the foreign subpoena and include a copy of the foreign subpoena as an attachment.

4. Contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

5. Advise the person to whom the subpoena is directed as follows: "You have a right to petition the Wisconsin circuit court for a protective order to quash or modify the subpoena or provide other relief under s. 805.07 (3)."

(b) *Duties of clerk of court.* When a party submits a foreign subpoena to a clerk of circuit court in this state in compliance with par. (a), the clerk shall promptly sign and issue the Wisconsin sub-

poena for service upon the person to which the foreign subpoena is directed.

(c) *Issuance by an attorney.* Alternatively, a party may retain an attorney who is licensed or otherwise authorized to practice law in Wisconsin to sign and issue the Wisconsin subpoena as an officer of the court pursuant to s. 805.07. The subpoena must comply with par. (a) 1. to 5.

(d) *Appearance.* Requesting issuance of a subpoena under this subsection does not constitute an appearance in the courts of this state.

(4) SERVICE AND ENFORCEMENT OF SUBPOENA. A subpoena issued under sub. (3) must be served and enforced in compliance with ch. 885. In issuing the subpoena, the clerk of circuit court may not collect a fee and should not create a case file, but the clerk may keep a record of the subpoenas issued. The individual responsible for service shall deliver a certificate of service or affidavit to the party that requested the subpoena. The party must retain the certificate of service or affidavit and furnish a copy to any party or to the deponent upon request.

(5) DEPOSITION, PRODUCTION, AND INSPECTION. When a subpoena issued under this section commands a person to attend and give testimony at a deposition; produce designated books, documents, records, electronically stored information, or tangible items; or permit inspection of premises, the time and place and the manner of the taking of the deposition, the production, or the inspection must comply with Wisconsin's rules and statutes relating to discovery, including ch. 804.

(6) APPLICATION TO COURT. (a) *Special proceedings.* An application to the circuit court for a protective order or to enforce, quash, or modify a subpoena issued under this section will commence a special proceeding. Applications and all other filings in the special proceeding must comply with the applicable rules or statutes of this state, including service under s. 801.14 (2), and must be filed with the circuit court in the county in which discovery is to be conducted. Applications to enforce a subpoena must include proof of service of the subpoena.

(b) *Fees; assignment of case number.* 1. On filing an application under this section, a petitioner shall pay a fee as specified in ch. 814.

2. The circuit court in which the application is filed shall assign it a case number.

(c) *Reasonable attorney fees and expenses.* The court in its discretion may award any prevailing party its reasonable attorney fees and expenses.

(d) *Appeals.* A final order granting, denying, or otherwise resolving an application under this subsection is a final order for purposes of filing an appeal in accordance with s. 808.03 (1).

(7) UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

(8) APPLICATION TO PENDING ACTIONS. This section applies to requests for discovery in cases pending on or filed after January 1, 2016.

History: 1993 a. 486; Sup. Ct. Order No. 13−16A, 2015 WI 70, filed 7−7−15, eff. 1−1−16; s. 35.17 correction in (3) (c).

NOTE: Sup. Ct. Order No. 13−16A states "that the Uniform Comments (Comments to the Uniform Interstate Depositions and Discovery Act) and the Judicial Council Committee Notes are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule."

2015 Judicial Council Committee Note (Sub. (2)): The definition of "Foreign subpoena" was modified to add the phrase "in a civil action." This language was added to clarify that this act only applies to civil cases.

The definition of "Subpoena" was modified to make it expressly applicable to subpoenas not only for oral depositions, but those upon written questions as permitted by Wis. Stat. § 804.06.

2015 Uniform Comment (Sub. (2)): This Act is limited to discovery in state courts, the District of Columbia, Puerto Rico, the United States Virgin Islands, and the territories [or insular possessions] of the United States. The committee decided not to extend this Act to include foreign countries including the Canadian provinces. The committee felt that international litigation is sufficiently different and is governed by different principles, so that discovery issues in that arena should be governed by a separate act.

The term "Subpoena" includes a subpoena duces tecum. The description of a subpoena in the Act is based on the language of Rule 45 of the FRCP.

The term "Subpoena" does not include a subpoena for the inspection of a person (subsection (3)(C) is limited to inspection of premises) [*sic*]. Medical examinations in a personal injury case, for example, are separately controlled by state discovery rules (the corresponding federal rule is Rule 35 of the FRCP). Since the plaintiff is already subject to the jurisdiction of the trial state, a subpoena is never necessary.

2015 Judicial Council Committee Note (Sub. (3)): The committee added the term circuit" to subsections (a) and (b) to clarify that the circuit court has jurisdiction of issuing subpoenas under this act.

Paragraph (a) 1.−5. was added to clarify the procedure for obtaining a Wisconsin subpoena to obtain discovery from a witness in this state for use in a proceeding pending in another jurisdiction. For the benefit of the party seeking the subpoena and the court issuing it, the procedure is designed to be simple and expeditious. It is also the intent of the committee to minimize the burden on the clerk of circuit court. It also includes a requirement that the subpoena state on its face that a receiving person has the right to object to the subpoena. This protection is contained in Wis. Stat. § 805.07 (3). If there is insufficient space on the subpoena form, the subpoena can be supplemented with additional material.

Paragraph (c) contains an important addition to the Uniform Rule. It provides that if a party to the out−of−state proceeding retains an attorney licensed to practice in Wisconsin, and that attorney receives the original or a true copy of the out−of−state subpoena, the attorney may issue the subpoena. This is consistent with s. 805.07 (1) which permits a subpoena to be issued by, among others, an attorney of record of any party in a civil action or special proceeding.

The committee envisions the standard procedure under this section will become as follows, using as an example a case filed in Kansas (the trial state) where the witness to be deposed lives in Wisconsin (the discovery state): A lawyer of record for a party in the action pending in Kansas will issue a subpoena in Kansas (the same way lawyers in Kansas routinely issue subpoenas in pending actions). That lawyer may then check with the clerk's office, in the Wisconsin county in which the witness to be deposed lives, to obtain a copy of its subpoena form. The lawyer will then prepare a Wisconsin subpoena so that it has the same terms as the Kansas subpoena. The lawyer will then submit the completed and executed Kansas subpoena and the completed but not yet executed Wisconsin subpoena to the clerk's office in Wisconsin. In addition, the lawyer might prepare a short transmittal letter to accompany the Kansas subpoena, advising the clerk that the Wisconsin subpoena is being sought pursuant to Wis. Stat. § 887.24 (3). The clerk of court, upon being given the Kansas subpoena, will then issue the identical Wisconsin subpoena.

The process server (or other agent of the party) will then serve the Wisconsin subpoena on the deponent in accordance with Wisconsin law.

Neither the Uniform Interstate Deposition and Discovery Act nor Wis. Stat. § 887.24 use the term "presented." Both rules use the term "submit," but the Judicial Council drafting committee considers the terms synonymous in this context.

2015 Uniform Comment (Sub. (3)): The term "Court of Record" was chosen to exclude non−court of record proceedings from the ambit of the Act. The committee concluded that extending the Act to such proceedings as arbitrations would be a significant expansion that might generate resistance to the Act. A "Court of Record" includes anyone who is authorized to issue a subpoena under the laws of that state, which usually includes an attorney of record for a party in the proceeding.

The term "Presented" to a clerk of court includes delivering to or filing. Presenting a subpoena to the clerk of court in the discovery state, so that a subpoena is then issued in the name of the discovery state, is the necessary act that invokes the jurisdiction of the discovery state, which in turn makes the newly issued subpoena both enforceable and challengeable in the discovery state.

The advantages of this process are readily apparent. The act of the clerk of court is ministerial, yet is sufficient to invoke the jurisdiction of the discovery state over the deponent. The only documents that need to be presented to the clerk of court in the discovery state are the subpoena issued in the trial state and the draft subpoena of the discovery state. There is no need to hire local counsel to have the subpoena issued in the discovery state, and there is no need to present the matter to a judge in the discovery state before the subpoena can be issued. In effect, the clerk of court in the discovery state simply reissues the subpoena of the trial state, and the new subpoena is then served on the deponent in accordance with the laws of the discovery state. The process is simple and efficient, costs are kept to a minimum, and local counsel and judicial participation are unnecessary to have the subpoena issued and served in the discovery state.

This Act will not change or repeal the law in those states that still require a commission or letters rogatory to take a deposition in a foreign jurisdiction. The Act does, however, repeal the law in those discovery states that still require a commission or letter rogatory from a trial state before a deposition can be taken in those states. It is the hope of the Conference that this Act will encourage states that still require the use of commissions or letters rogatory to repeal those laws.

The Act requires that, when the subpoena is served, it contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record and of any party not represented by counsel. The committee believes that this requirement imposes no significant burden on the lawyer issuing the subpoena, given that the lawyer already has the obligation to send a notice of deposition to every counsel of record and any unrepresented parties. The benefits in the discovery state, by contrast, are significant. This requirement makes it easy for the deponent (or, as will frequently be the case, the deponent's lawyer) to learn the names of and contact the other lawyers in the case. This requirement can easily be met, since the subpoena will contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record and of any party not represented by counsel (which is the same information that will ordinarily be contained on a notice of deposition and proof of service).

2015 Judicial Council Committee Note (Sub. (4)): Subsection 4 is similar to the Uniform Act; however it clarifies that it applies not only to a subpoena issued by a clerk of circuit court, but also to a subpoena issued by local counsel.

The Wisconsin clerk of circuit court will not create a case file when discovery is initiated nor collect a fee. This rule places the obligation of retaining the original subpoena and the proof of service on the lawyer initiating the discovery. A file will be created if a special proceeding is commenced to enforce, quash, or modify the subpoena.

Subsection 4 was also modified to substitute the term "party" in place of the term "attorney" to extend the rule to pro se parties.

2015 Uniform Comment (Sub. (5)): The Act requires that the discovery permitted by this section must comply with the laws of the discovery state. The discovery state has a significant interest in these cases in protecting its residents who become non−party witnesses in an action pending in a foreign jurisdiction from any unreasonable or unduly burdensome discovery request. Therefore, the committee believes that the discovery procedure must be the same as it would be if the case had originally been filed in the discovery state.

2015 Judicial Council Committee Note (Sub. (6)): Paragraph (a) was modified to clarify that every filing in the special proceeding must also be served on all parties to the special proceeding, including the witness. A summons is unnecessary to initiate the action and service by mail or facsimile is permitted pursuant to s. 801.14 (2). Applications to enforce a subpoena must include proof of service of the subpoena on the witness.

Paragraph (b) is added to clarify procedural details for resolution of a dispute relating to discovery under this section.

Paragraph (c) is added to address the award of fees and expenses in a dispute relating to discovery under this section. This is consistent with motions to compel and for protective orders in discovery disputes under ss. 804.12 (1) (c) and 804.01 (3) (b).

Paragraph (d) is added to clarify the procedure for reviewing a decision of a circuit court on a dispute arising in connection with discovery under this article.

2015 Uniform Comment (Sub. (6)): The act requires that any application to the court for a protective order, or to enforce, quash, or modify a subpoena, or for any other dispute relating to discovery under this Act, must comply with the law of the discovery state. Those laws include the discovery state's procedural, evidentiary, and conflict of laws rules. Again, the discovery state has a significant interest in protecting its residents who become non−party witnesses in an action pending in a foreign jurisdiction from any unreasonable or unduly burdensome discovery requests, and this is easily accomplished by requiring that any discovery motions must be decided under the laws of the discovery state. This protects the deponent by requiring that all applications to the court that directly affect the deponent must be made in the discovery state.

The term "modify" a subpoena means to alter the terms of a subpoena, such as the date, time, or location of a deposition.

Evidentiary issues that may arise, such as objections based on grounds such as relevance or privilege, are best decided in the discovery state under the laws of the discovery state (including its conflict of laws principles).

Nothing in this act limits any party from applying for appropriate relief in the trial state. Applications to the court that affect only the parties to the action can be made in the trial state. For example, any party can apply for an order in the trial state to bar the deposition of the out−of−state deponent on grounds of relevance, and that motion would be made and ruled on before the deposition subpoena is ever presented to the clerk of court in the discovery state.

If a party makes or responds to an application to enforce, quash, or modify a subpoena in the discovery state, the lawyer making or responding to the application must comply with the discovery state's rules governing lawyers appearing in its courts. This act does not change existing state rules governing out−of−state lawyers appearing in its courts. (See Model Rule 5.5 and state rules governing the unauthorized practice of law.)

2015 Judicial Council Committee Note (Sub. (8)): This subsection is the same as Section 8 of the Uniform Act, except "or filed after" is inserted to improve clarity.

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 appear 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 outside state. (1) HOW TAKEN. In any civil action, proceeding, or matter in which depositions may be taken within this state, the deposition of any witness outside the state may be taken before any officer as provided in s. 804.03 (1) or (2) or as provided in the rules of the state or country where taken. Depositions outside the state may be taken orally or upon written questions 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 outside the state, after commencement of the action, except as provided in s. 804.015 or as provided in s. 804.02 (1), for any cause that is 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. (am) *Oral depositions.* 1. The person desiring a commission shall prepare a notice of intent to obtain a commission and state in the caption of the notice of intent the name of the witness and his or her residence with particularity, and shall serve a copy of the notice of intent on the opposite party, with a notice that, at the expiration of 5 days from the date of the notice of intent, a commission will be issued directed to the court of jurisdiction of the residence of the witness, requesting that a subpoena issue from that court compelling the oral deposition of the witness, and specifying the reason for taking the same. Within the 5−day period the opposite party may file with the clerk and serve upon the other party objections to the issuance of the commission.

2. At the expiration of the 5 days, and no objection being received or sustained, the commission shall issue as provided in sub. (4). At the noticing person's expense, the commission shall be transmitted to the court of jurisdiction of residence of the witness, for issuance of the deposition subpoena in accord with the rules applicable to that court. No commission shall issue if the witness's residence is not given as required.

(bm) *Written questions.* 1. The person desiring a commission shall prepare a notice of intent to obtain a commission and state in the caption of the notice of intent the name of the witness and his or her residence with particularity, and shall serve a copy of the notice of intent on the opposite party, with a notice that, at the expiration of 5 days from the date of the notice of intent, a commission will be issued directed to the court of jurisdiction of the residence of the witness, requesting that a subpoena issue from that court compelling the deposition upon written questions of the witness, and specifying the reason for taking the same. The notice of intent shall be accompanied by the questions. Within the 5−day period, the opposite party may file with the clerk and serve upon the other party any objections to the issuance of the commission and serve his or her cross−questions; 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, and may serve any objections to the questions and any cross−questions.

2. If cross−questions are served, within 3 days after such service the noticing person may also serve redirect questions on the opposite party, who may, within 3 days after such service, serve objections to such redirect questions.

3. At the expiration of the period under subds. 1. and 2., and if no objection to the issuance of the commission has been received or sustained the commission shall issue, with the written questions, 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 questions as provided in sub. (4). At the noticing person's expense, the commission shall be

transmitted to the court of jurisdiction of the residence of the witness, for issuance of the subpoena in accord with the rules applicable to that court. No commission shall issue if the witness's residence is not given as required.

4. Upon issuance of the commission, the noticing person shall transmit to the officer taking or transcribing the deposition, by mail or express, the direct, cross, and redirect questions, and the objections to the questions.

(c) *Before commencement of action.* When testimony is sought of a witness outside the state before commencement of an action as provided in s. 804.02 (1), the order issued under s. 804.02 (1) (c) shall also include a commission in the form provided by sub. (4) of this section.

(6) DUTY OF COMMISSIONER — EXAMINATION AND CROSS–EXAMINATION; RECORD. (am) *Oral examination.* Testimony shall be taken in the manner provided by s. 804.05 (4) to (6).

(bm) *Examination by written questions*. Testimony shall be taken in the manner provided by s. 804.06 (2).

(cm) *Certification and service by officer; exhibits; copies; notice of service.* The commissioner first named taking or transcribing the deposition shall have charge of and return the deposition, which return shall be in the same 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.

(7) FEES. The persons who take or transcribe the depositions and the witness shall be entitled to the fees allowed court reporters under s. 814.69 (1) and witnesses for similar service by the law of this state, or as may be prescribed by the law of the state or country where taken.

History: Sup. Ct. Order, 67 Wis. 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; 2001 a. 61; Sup. Ct. Order No. 05−06, 2008 WI 32, 305 Wis. 2d xix; Sup. Ct. Order No. 08−19, 2008 WI 105, 307 Wis. 2d xiii; Sup. Ct. Order. No. 09−03, 2010 WI 100, filed 7−27−10, eff. 1−1−11.

887.27 Depositions, translations of. 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, at the expense of the noticing person, the subpoena, rules, and deposition questions and answers, or any part thereof as may be necessary, from English into the language used by the witness or vice versa; and the translation shall be transcribed and maintained as part of the deposition transcript. The translator shall append to all translations the translator's affidavit that the translator knows English and the language of the witness, and that in making such translation the translator carefully and truly translated the proceedings from English into the witness's language or from the witness's language into English, and that the translation is correct. A translation under this paragraph shall have the same effect as if all the proceedings were in English, but the circuit court, upon the deposition being offered in evidence, may admit the testimony of witnesses learned in the language of the deposed witness 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 its discretion, continue the cause for the further taking of testimony.

History: Sup. Ct. Order. No. 09−03, 2010 WI 100, filed 7−27−10, eff. 1−1−11.