

CHAPTER 887

DEPOSITIONS, OATHS AND AFFIDAVITS

887.01	Oaths, who may administer.	887.20	Deposition in municipal court.
887.02	Duty to administer official and election oaths; no fees.	887.23	Deposition relative to public institutions.
887.03	Oath, how taken.	887.24	Deposition; for use in other states.
887.17	Deposition, use of in other actions.	887.25	Witnesses sent to other states.
887.18	Deposition may be used on appeal.	887.26	Depositions outside state.

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 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 Deposition; for use in other states. Any witness may be subpoenaed and compelled to attend and give the wit-

ness'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 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 wit-

ness, 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 subs. 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).

(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.

(8) TRANSLATIONS. When the witness is unable to speak the English language, the judge of the court from which the commis-

sion 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, 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, filed 7–25–08.