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Depositions

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DEPOSITIONS

It is important that the legal practitioner be familiar with how and when to take depositions, since at times they have to be used. Their use is purely statutory, and such provisions must be substantially followed. Strict adherence is not essential. *Bulwinkle & Co. v. Cramer* (1889), 30 S. C. 153, 8 S. E. 689; *Adams v. Willis* (1954), 225 S. C. 518, 83 S. E. 2d 171.

Chapter 8, page 638, Volume 3 of 1952 Code provides how one may be taken before a Commission for use in a Common Pleas or County Court. The very few and old citations clearly show that this chapter is seldom, if ever, used now. It is too unwieldy. Chapter 9 is the one generally used. This chapter is also used in cases in the Probate Court. Section 15-453. As indicated by lack of annotations under Sections 26-701 thru 26-703, depositions are seldom taken before a Clerk of Court.

The Sections generally used now are 26-704 thru 26-709. It will be noted that the annotations thereunder are much more numerous and up-to-date. Depositions in criminal cases can be taken in a court of record only in rape cases and the accused must be present. Sections 16-73 thru 16-79. In a magistrate court only the deposition of the master of a vessel or other transient person can be taken in a prosecution for harboring a seaman. Section 54-356. There also the accused must be present.

Besides the chapters above noted in Volume 3 of the 1952 Code, there are other sections relative to quasi-judicial bodies, for example, Section 32-674 concerning the State Board of Health, and Section 44-204 as to Military Courts. Also, Rules and Regulations, as found in Volume 7 of the 1952 Code, should be checked. For instance, Rule 26 as to Carriers, at page 761 of Volume 7, when read along with the Sections of the Code relative to depositions, appears to reduce the ten day notice to six days. So before taking a deposition, be sure and carefully check not only the Code Sections as indicated under the heading "Depositions" in the General Index, but also the tribunal before whom the matter is to be tried or heard and the Rules and Regulations relative to the administrative body, if the hearing is to be before it.

STATE OF SOUTH CAROLINA } IN THE COURT OF
COUNTY OF _____ } COMMON PLEAS

John Doe, }
Plaintiff }
-vs- }
Richard Roe, }
Defendant }

NOTICE TO
TAKE DEPOSITION

To _____, attorney for _____:

PLEASE TAKE NOTICE that the deposition of _____,
a witness on behalf of the _____ will be taken before
_____, a Notary Public, at his office, 1212
Columbus Street, in Cleveland, Ohio, at 10:00 a.m., Monday,
May 11, 1953, the reason for taking said deposition being that
the witness lives more than 100 miles from the place of trial.

April 30, 1953 _____
Attorney for _____

(Note: Always use legal paper.)
(Note: Above Notice must be served or acknowledgment of
service must be obtained not less than 10 days prior to date
set in such Notice for taking the deposition. If it is to be
taken across the U. S. or in some foreign county, more than
10 days should be allowed. Check your Code provisions.)

To take a deposition in a court of record, no authorization
or order by a judge is ever necessary. However, in a magis-
trate's court one must obtain an *order* from the magistrate.
Section 43-133. Also, the time of notice is not specified; a
reasonable time would seem to comply with the foregoing sec-
tion, and the section is not as strict and doesn't require the
formalities which are provided for relative to depositions
in courts of record, such as how it is to be sent to the clerk,
and, that the notary's certificate must accompany the depo-
sition which must be sent under seal, and remain under "his
seal" until opened in Court. Other than these strict limita-
tions, the deposition in a magistrate's court, once Section
43-133 has been complied with, follows in the taking of it
the usual pattern of one taken under Section 26-704 *et seq.*

It is also advisable, before taking a deposition for use before a quasi-judicial or administrative body, to ascertain from someone connected with it what is the usual method which is to be followed.

A helpful guide for taking a deposition, and one that is sorely needed if it is to be taken before a notary in another state who would not be familiar with the South Carolina procedure, is the following:

INSTRUCTIONS FOR TAKING DEPOSITIONS

Every person deposing shall be cautioned and sworn to testify the whole truth and carefully examined. The following caption may be used:

(Caption)

THE STATE OF SOUTH CAROLINA	}	
County of Richland		
John Doe,	}	
Plaintiff		
-vs-		
Richard Roe,		
Defendant.		DEPOSITION

Deposition of A. B., a witness of lawful age, taken before me, a Notary Public, in and for the County of , State of , at my office, Street, in the City of , in the County of , in the State of , at the hour of , pursuant to the annexed Notice and to be read as evidence in behalf of the in the entitled action.

Appearances:

Attorney for Plaintiff
Attorney for Defendant

A. B., being by me first duly sworn and cautioned to testify the truth, the whole truth, and nothing but the truth, deposes and says as follows:

The following statutory requirements should be carefully observed:

The testimony of the person deposing "shall be reduced to writing by the officer taking the deposition, or by himself, in the officer's presence, and by no other person, and shall, after it has been reduced to writing, be subscribed by the deponent: PROVIDED That this shall not be construed to prevent the use of stenographers for the purpose of taking such testimony, but the testimony so taken by such stenographers shall be reduced to writing or typewritten, and read over to such witness."

Papers in handwriting or in typewriting must have a blank margin of an inch and a half on the left.

Typewriting will be permitted with ordinary spacing upon linen paper weighing not less than four pounds to five hundred single cap sheets, 8x13 inches in size. The last page of a deposition so typewritten, if there be more than one, must be subscribed by the witness, and the other pages numbered and signed or initialed on the margin.

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If any paper or exhibit is produced and proved, or referred to by the witness, it ought to be described in his deposition, or marked and referred to by the deponent in such manner that it may be identified when the deposition is read, and all such papers and exhibits may be attached to, and returned with the deposition or may be sent separately.

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In taking depositions the officer can adjourn from time to time until the deposition is complete. If there are adjournments, they should be noted by the Notary or other officer, from day to day at the close of the day, and legal reasons given therefor.

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When all the witnesses who appear have been sworn and examined, and their depositions reduced to writing or typewritten, and duly subscribed by them, the officer will attach thereto his certificate, which should be substantially as follows:

(Certificate of Officer)

(Title of Court and cause as in Notice and Caption)

State of
County of

}

This is to certify that the foregoing is the deposition and testimony of _____, testifying as witness in behalf of the _____ in the above stated case, taken by me and reduced to typewriting, and read over to and signed by said _____ before me, _____, a Notary Public in and for the State of _____, duly commissioned and qualified as such, at _____ o'clock on the _____ day of, 19____, at _____, in the City of _____, County of _____, State of _____, in pursuance of the Notice hereto annexed and made a part of this Certificate, to be used as evidence in a certain cause pending in the Court of _____, for the County of Richland, State of South Carolina, in which _____ is Plaintiff, and _____ is Defendant.

These depositions are taken by me because the said witnesses live without the County of Richland and State of South Carolina, where said cause is to be tried, to wit, the City of _____, in the State of _____.

I do further certify that said witnesses were first duly sworn and cautioned to speak the whole truth, and carefully examined; their testimony was reduced to writing and read over to and signed by said witnesses in my presence.

I do further certify that I have retained the said depositions in my possession for the purpose of sealing up and directing same with this certificate, for the reasons aforesaid, and the notice given to the adverse party and mailing same in the Post Office of the City of _____, to _____ for the County of Richland, State of South Carolina.

I do further certify that I am not of Counsel, or Attorney for either of the parties to the said action nor in any way interested in the event of the said cause.

I do further certify that the cost of taking the within deposition is _____.

In witness whereof, I have hereunto set my hand and official this _____ day of _____, 19____.

(Official Character)

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The deposition shall be retained by the officer taking it until it shall, together with his certificate of the reasons as afore-

said for taking it and the Notice given to the adverse party, be by such officer sealed up and directed to such Court, and forwarded to such Court either by mail or express.

The Deposition, Notice, and Certificate shall be placed by the officer in a strong envelope, securely sealed, and should be directed to the Magistrate or the Clerk of Court, as the case may be, in the County where the cause is to be tried.

Across the end of the addressed side of envelope should be written:

(a) State, County and Court of Trial; (b) names of Plaintiffs and Defendants; (c) Deposition of whom, and in behalf of whom. This should be in form as follows:

The State of South Carolina County of Richland	}	In the Court of
John Doe, Plaintiff -vs- Richard Roe, Defendant	}	

DEPOSITIONS OF A, B AND C.

Witnesses in behalf of

Across one of the seals on the back of the envelope should be written: "Sealed up, addressed, and transmitted by me," which must be signed by officer, with official character, in form as follows:

"Sealed up, addressed, and transmitted by me

Notary Public for " "

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If both parties are not present, the terms of the statute must be strictly complied with. If both parties are represented they may, of course, agree to dispense with some of the required formalities, but in such case the agreement must be set out in full at the beginning of the deposition.

FORM OF MOTION WITH ITS NOTICE INCORPORATED:

One doesn't need a separate backed form of a *notice of a motion* and a separate one for *the motion itself* with the

grounds therein. Both are integrated as one, the notice portion being only in three words in capitals, namely, PLEASE TAKE NOTICE.

The Form Books are sadly lacking in this regard, hence the following form is given for such procedural step:

STATE OF SOUTH CAROLINA }
COUNTY OF LEXINGTON } IN THE _____ COURT

John Doe, }
Plaintiff }
-vs- } MOTION TO STRIKE
Richard Roe, }
Defendant }

To Jones & Jenkins, attorneys for plaintiff:

PLEASE TAKE NOTICE that the defendant will move before His Honor, Judge _____ at the County Court House, at 10 a.m., March _____, 195____, to strike from the answer the allegation that "plaintiff is not now, and was not at the times set forth in the complaint, a resident of Lexington County," and that said allegation is immaterial and irrelevant.

Wells & Walker

March _____, 195____

Attorneys for Defendant