

# Chapter 45

## 1987 REPLACEMENT PART

### Taking of Testimony Generally

#### MODES OF TAKING TESTIMONY

45.010 Testimony taken in three modes

45.020 Affidavit defined

45.040 Oral examination defined

#### AFFIDAVITS AND DEPOSITIONS GENERALLY

45.130 Production of affiant for cross-examination

45.250 Use of deposition

45.260 Introduction, or exclusion, of part of deposition

45.270 Use of deposition in same or other proceedings

#### CROSS REFERENCES

Compelling witness to testify in criminal proceeding, immunity, 136.617, 136.619

Evidence of communication unlawfully obtained not admissible, 41.910

Juvenile court proceeding, testimony, 419.498

Tax court proceedings, testimony and depositions, 305.420

Uniform Law on Notarial Acts, 194.505 to 194.595

Witness, testimony under hypnosis, 136.675 to 136.695

**EVIDENCE AND WITNESSES**

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**MODES OF TAKING TESTIMONY**

**45.010 Testimony taken in three modes.** The testimony of a witness is taken by three modes:

- (1) Affidavit.
- (2) Deposition.
- (3) Oral examination.

**45.020 Affidavit defined.** An affidavit is a written declaration under oath, made without notice to the adverse party.

**45.030** [Repealed by 1979 c 284 §199]

**45.040 Oral examination defined.** An oral examination is an examination in the presence of the jury or tribunal which is to decide the fact, or act upon it, the testimony being heard by the jury or tribunal from the mouth of the witness.

**45.050** [Amended by 1961 c 461 §1, 1979 c.284 §82; repealed by 1981 c 898 §53]

**AFFIDAVITS AND DEPOSITIONS GENERALLY**

**45.110** [Repealed by 1979 c.284 §199]

**45.120** [Repealed by 1979 c 284 §199]

**45.125** [Formerly 45 180, repealed by 1977 c 404 §2 (194.500 to 194.580 enacted in lieu of 45.125)]

**45.130 Production of affiant for cross-examination.** Whenever a provisional remedy has been allowed upon affidavit, the party against whom it is allowed may serve upon the party by whom it was obtained a notice, requiring the affiant to be produced for cross-examination before a named officer authorized to administer oaths. Thereupon the party to whom the remedy was allowed shall lose the benefit of the affidavit and all proceedings founded thereon, unless within eight days, or such other time as the court or judge may direct, upon a previous notice to the adversary of at least three days, the party produces the affiant for examination before the officer mentioned in the notice, or some other of like authority, provided for in the order of the court or judge. Upon production, the affiant may be examined by either party; but a party is not obliged to make this production of a witness except within the county where the provisional remedy was allowed.

**45.140** [Repealed by 1979 c.284 §199]

**45.150** [Repealed by 1955 c 611 §13]

**45.151** [1955 c.611 §1; repealed by 1979 c 284 §199]

**45.160** [Repealed by 1955 c 611 §13]

**45.161** [1955 c.611 §2, repealed by 1979 c 284 §199]

**45.170** [Repealed by 1955 c 611 §13]

**45.171** [1955 c.611 §3; repealed by 1979 c.284 §199]

**45.180** [Renumbered 45 125]

**45.181** [1955 c.611 §5; repealed by 1977 c 358 §12]

**45.185** [1959 c 354 §1, 1977 c 358 §6; repealed by 1979 c 284 §199]

**45.190** [1955 c 611 §6; 1977 c 358 §7, repealed by 1979 c 284 §199]

**45.200** [1955 c.611 §7; repealed by 1979 c.284 §199]

**45.210** [Repealed by 1955 c 611 §13]

**45.220** [Repealed by 1955 c.611 §13]

**45.230** [Repealed by 1979 c 284 §199]

**45.240** [Repealed by 1979 c.284 §199]

**45.250 Use of deposition.** (1) At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any of the following provisions of this subsection:

(a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(b) The deposition of a party, or of anyone who at the time of taking the deposition was an officer, director or managing agent of a public or private corporation, partnership or association which is a party, may be used by an adverse party for any purpose.

(2) At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party for any purpose, if the party was present or represented at the taking of the deposition or had due notice thereof, and if the court finds that:

(a) The witness is dead; or

(b) The witness's residence or present location is such that the witness is not obliged to attend in obedience to a subpoena as provided in ORCP 55 E.(1), unless it appears that the absence of the witness was procured by the party offering the deposition; or

(c) The witness is unable to attend or testify because of age, sickness, infirmity or imprisonment; or

(d) The party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(e) Upon application and notice, such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used; or

(f) The deposition was taken in the same proceeding pursuant to ORCP 39 I. [1955 c.611 §§8, 9; 1979 c 284 §83; 1987 c.275 §1]

**45.260 Introduction, or exclusion, of part of deposition.** If only part of a deposition is offered in evidence by a party, an adverse party may require the party to introduce all of it which is relevant to the part introduced and any party may introduce any other parts, so far as admissible under the rules of evidence. When any portion of a deposition is excluded from a case, so much of the adverse examination as relates thereto is excluded also. [1955 c.611 §10]

**45.270 Use of deposition in same or other proceedings.** Substitution of parties shall not affect the right to use the depositions previously taken; and when an action, suit or proceeding has been dismissed and another action, suit or proceeding involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, any deposition lawfully taken and duly filed in the former action, suit or proceeding may be used in the latter as if originally taken therefor, and is then to be deemed the evidence of the party reading it. [1955 c 611 §11]

**45.280** [1955 c 611 §12; repealed by 1979 c 284 §199]

**45.310** [Repealed by 1955 c.611 §13]

**45.320** [Repealed by 1979 c 284 §199]

**45.325** [1955 c 611 §4; repealed by 1979 c.284 §199]

**45.330** [Repealed by 1979 c 284 §199]

**45.340** [Amended by 1959 c.96 §1; repealed by 1979 c 284 §199]

**45.350** [Repealed by 1979 c 284 §199]

**45.360** [Repealed by 1979 c.284 §199]

**45.370** [Repealed by 1979 c 284 §199]

**45.380** [Repealed by 1955 c 611 §13]

**45.410** [Repealed by 1979 c.284 §199]

**45.420** [Repealed by 1979 c.284 §199]

**45.430** [Repealed by 1979 c.284 §199]

**45.440** [Repealed by 1979 c 284 §199]

**45.450** [Repealed by 1979 c 284 §199]

**45.460** [Repealed by 1979 c.284 §199]

**45.470** [Repealed by 1979 c 284 §199]

**45.510** [Repealed by 1981 c.892 §98]

**45.520** [Repealed by 1981 c 892 §98]

**45.530** [Repealed by 1981 c.892 §98]

**45.540** [Repealed by 1981 c.892 §98]

**45.550** [Repealed by 1981 c 892 §98]

**45.560** [Repealed by 1981 c 892 §98]

**45.570** [Repealed by 1981 c.892 §98]

**45.580** [Repealed by 1981 c 892 §98]

**45.590** [Repealed by 1981 c.892 §98]

**45.600** [Repealed by 1981 c 892 §98]

**45.610** [Repealed by 1981 c 892 §98]

**45.620** [Repealed by 1981 c.892 §98]

**45.630** [Repealed by 1981 c.892 §98]

**45.910** [1959 c 523 §§1, 2, 3, repealed by 1979 c.284 §199]