

Chapter 45

1993 EDITION

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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, 419B.315, 419C.411
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- Uniform Law on Notarial Acts, 194.505 to 194.595
- Witness, testimony under hypnosis, 136.675 to 136.695

EVIDENCE AND WITNESSES

MODES OF TAKING TESTIMONY**45.010 Testimony taken in four modes.**

The testimony of a witness is taken by four modes:

- (1) Affidavit.
- (2) Deposition.
- (3) Oral examination.
- (4) Telephone examination under ORS 45.400. [Amended by 1993 c.425 §2]

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45.030 [Repealed by 1979 c.284 §199]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45.050 [Amended by 1961 c.461 §1; 1979 c.284 §82; repealed by 1981 c.898 §53]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45.110 [Repealed by 1979 c.284 §199]

45.120 [Repealed by 1979 c.284 §199]

45.125 [Formerly 45.180; repealed by 1977 c.404 §2 (194,500 to 194,580 enacted in lieu of 45.125)]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45.140 [Repealed by 1979 c.284 §199]

45.150 [Repealed by 1955 c.611 §13]

45.151 [1955 c.611 §1; repealed by 1979 c.284 §199]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

45.180 [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 is unable to attend or testify because of age, sickness, infirmity or imprisonment; or

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

(d) 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

(e) 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; 1989 c.980 §4]

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]

INTERPRETERS

45.273 Policy. (1) It is declared to be the policy of this state to secure the constitutional rights and other rights of persons who are unable to readily understand or communicate in the English language because of a non-English speaking cultural background or a disability, and who as a result cannot be fully protected in legal proceedings unless qualified interpreters are available to provide assistance.

(2) It is the intent of the Legislative Assembly in passing ORS 45.275, 45.285, 45.288, 45.291, 45.294 and 45.297 to provide a procedure for the qualification and use of court interpreters. Nothing in ORS 45.273, 45.275, 45.285, 45.288, 45.291, 45.294 or 45.297 abridges the rights or obligations of parties under other laws or court rules. [1993 c.687 §1]

45.275 Appointment of interpreter for non-English speaking party or witness; substitution; payment of costs; qualifications. (1) In any civil or criminal proceeding in which an indigent person who is in need of an interpreter is a party, the court shall appoint a qualified interpreter whenever it is necessary:

(a) To interpret the proceedings to a non-English speaking party;

(b) To interpret the testimony of a non-English speaking party; or

(c) To interpret the testimony of any non-English speaking witness testifying on behalf of the indigent party.

(2) No fee shall be charged to an indigent party for the appointment of an interpreter under this section. No fee shall be charged to any person for the appointment of an interpreter if appointment is made to determine whether the person is indigent or non-English speaking for the purposes of this section.

(3) A party shall be considered indigent for the purposes of this section if:

(a) The party makes a verified statement and provides other information in writing under oath showing financial inability to pay for a qualified interpreter, and provides any other information required by the court concerning the inability to pay for such an interpreter; and

(b) It appears to the court that the party is in fact indigent and unable to pay for a qualified interpreter.

(4) Fair compensation for the services of an interpreter appointed under this section shall be paid:

(a) By the county, subject to the approval of the terms of the contract by the governing body of the county, in a proceeding in a county or justice court.

(b) By the city, subject to the approval of the terms of the contract by the governing body of the city, in a proceeding in a municipal court.

(c) By the state in a proceeding in a circuit or district court. Amounts payable by the state shall be from funds available to the court other than the State Court Indigent Defense Account established by ORS 151.465, except that fees of an interpreter necessary for the purpose of communication between appointed counsel and a client or witness in a criminal case shall be payable from that account.

(5) Where a party or witness is dissatisfied with the interpreter selected by the court, the party or witness may use any certified interpreter. However, if the substitution of another interpreter will delay the proceeding, good cause must be shown for the substitution. Any party may object to use of any interpreter for good cause. Unless the court has substituted interpreters for cause, the party using any interpreter other than the interpreter originally appointed by the court shall bear any additional costs beyond the amount required to pay the original interpreter.

(6) A court acting in its sole discretion and the interests of justice may order that the reasonable costs of providing the services of an interpreter in civil proceedings, including depositions, be taxed as costs if the prevailing party is unable to pay and requires interpreter's services and the nonprevailing party is financially able to pay those costs. The procedure for seeking costs under this subsection shall be as provided in ORCP 68 C(4).

(7) Any person serving as an interpreter for the court in a civil or criminal proceeding shall state or submit the person's qualifications on the record unless waived or otherwise stipulated to by the parties or counsel for the parties. An interpreter for

the court shall swear or affirm under oath to make a true and impartial translation of the proceedings in an understandable manner using the interpreter's best skills and judgment in accordance with the standards and ethics of the interpreter profession.

(8) For the purposes of this section:

(a) "Non-English speaking person" means a person who, by reason of place of birth or culture, speaks a language other than English and does not speak English with adequate ability to communicate effectively in the proceedings.

(b) "Qualified interpreter" means a person who is readily able to communicate with the non-English speaking person, translate the proceedings and accurately repeat and translate the statements of the non-English speaking person into oral English, and the statements of other persons into the language spoken by the non-English speaking person. "Qualified interpreter" does not include any person who is unable to interpret or translate fluently the dialect, slang or specialized vocabulary used by the party or witness. [1991 c.750 §2; 1993 c.687 §8]

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

45.285 Appointment of interpreter for disabled party or witness; provision of assistive communication device. (1) In any civil or criminal proceeding, including a court-ordered deposition if no other person is responsible for providing an interpreter, in which a disabled person is a party or witness, the court shall appoint a qualified interpreter and make available appropriate assistive communication devices whenever it is necessary to interpret the proceedings to the disabled person, or to interpret the testimony of the disabled person.

(2) No fee shall be charged to the disabled person for the appointment of an interpreter or use of an assistive communication device under this section. No fee shall be charged to any person for the appointment of an interpreter or the use of an assistive communication device if appointment or use is made to determine whether the person is disabled for the purposes of this section.

(3) Fair compensation for the services of an interpreter or the cost of an assistive communication device under this section shall be paid:

(a) By the county, subject to the approval of the terms of the contract by the governing body of the county, in a proceeding in a county or justice court.

(b) By the city, subject to the approval of the terms of the contract by the governing body of the city, in a proceeding in a municipal court.

(c) By the state in a proceeding in a circuit or district court. Amounts payable by the state shall be from funds available to the court other than the State Court Indigent Defense Account established by ORS 151.465, except that fees of an interpreter necessary for the purpose of communication between appointed counsel and a client or witness in a criminal case shall be payable from that account.

(4) For the purposes of this section:

(a) "Assistive communication device" means any equipment designed to facilitate communication by a disabled person.

(b) "Disabled person" means a person who cannot readily understand the proceedings because of deafness or a physical hearing impairment, or cannot communicate in the proceedings because of a physical speaking impairment.

(c) "Qualified interpreter" means a person who is readily able to communicate with the disabled person, interpret the proceedings and accurately repeat and interpret the statements of the disabled person to the court. [1991 c.750 §1; 1993 c.687 §6]

45.288 Appointment of certified interpreter required; exceptions; disqualifications. (1) Except as provided by this section, whenever a court is required to appoint an interpreter for any person in a proceeding before the court, the court shall appoint a qualified interpreter who has been certified under ORS 45.291. If no certified interpreter is available, able or willing to serve, the court shall appoint a qualified interpreter. Upon request of a party or witness, the court, in its discretion, may appoint a qualified interpreter to act as an interpreter in lieu of a certified interpreter in any case.

(2) The requirements of this section apply to appointments of interpreters for disabled persons, as defined in ORS 45.285, and for non-English speaking persons, as defined in ORS 45.275.

(3) The court may not appoint any person under this section, ORS 45.275 or 45.285 if:

(a) The person has a conflict of interest with any of the parties or witnesses in the proceeding;

(b) The person is unable to understand the party or witness, or cannot be understood by the party or witness; or

(c) The person is unable to work cooperatively with the person in need of an interpreter or the counsel for that person.

(4) For the purposes of this section, "qualified interpreter" means a person who meets the requirements of ORS 45.285 for a disabled person, or a person who meets the

requirements of ORS 45.275 for a non-English speaking person. [1993 c.687 §2]

45.291 Certification program; establishment by State Court Administrator.

(1) Subject to the availability of funding, the State Court Administrator shall establish a program for the certification of court interpreters. The program shall be established by rules adopted pursuant to ORS 1.002 and shall include, but not be limited to, provisions for:

(a) Prescribing the form and content of applications for certification;

(b) Prescribing and collecting reasonable fees for the application, examination, certification and renewal of certification for court interpreters;

(c) Establishing categories of certificates based on the nature of the interpreter services to be provided, including categories for interpreters for disabled persons, as defined in ORS 45.285, and for interpreters for non-English speaking persons, as defined in ORS 45.275;

(d) Establishing minimum competency requirements for court interpreters in the various categories of certification;

(e) Establishing teaching programs designed to educate court interpreters in ethical, substantive and procedural legal issues;

(f) Prescribing the form of and administering examinations for the purpose of testing court interpreters for competency and ethics; and

(g) Establishing grounds for renewal, suspension or cancellation of certificates.

(2) An interpreter may be certified in Oregon by the State Court Administrator upon satisfactory proof that the interpreter is certified in good standing by the federal courts or by a state having a certification program that is equivalent to the program established under this section. [1993 c.687 §3]

Note: Section 3a, chapter 687, Oregon Laws 1993, provides:

Sec. 3a. The program for certification of court interpreters provided for in section 3 of this Act [45.291] shall be implemented no sooner than January 1, 1995. The State Court Administrator may take any action before January 1, 1995, that is necessary for the implementation of the program after January 1, 1995. [1993 c.687 §3a]

45.294 Court Interpreter Certification Account; sources; uses.

(1) The Court Interpreter Certification Account is established as an account in the General Fund of the State Treasury. All moneys received by the State Court Administrator from fees imposed under ORS 45.291 shall be paid into the State Treasury and credited to the account. All moneys in the account are appropriated con-

tinuously to the State Court Administrator to carry out the provisions of ORS 45.291.

(2) The State Court Administrator may apply for and receive funds or grants from federal, state and private sources to be credited to the Court Interpreter Certification Account and used for the purposes specified in ORS 45.291. [1993 c.687 §4]

45.297 Authority to enter into service contracts. The State Court Administrator may enter into service contracts and may establish uniform policies and procedures, subject to the approval of the Chief Justice of the Supreme Court, governing the appointment, provision and payment of interpreters in proceedings before the circuit and district courts of the state, including the provision of interpreter services utilizing telecommunications methods. [1993 c.687 §5]

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]

TELEPHONE TESTIMONY

45.400 Telephone testimony; when authorized; notice; payment of costs. (1) Upon motion of any party and for good cause shown, the court may order that the testimony of the party or any witness for the moving party be taken by telephone or by other two-way electronic communication device in any nonjury civil proceeding, juvenile dependency proceeding or termination of parental rights proceeding.

(2) A party filing a motion under this section must give written notice to all other parties to the proceeding at least 30 days before the trial or hearing at which the telephone testimony will be offered. The court may allow written notice less than 30 days before the trial or hearing for good cause shown.

(3) The court shall allow telephone testimony under this section upon a showing of good cause unless the court determines that:

(a) The ability to evaluate the credibility and demeanor of a witness or party in person is critical to the outcome of the proceeding;

(b) The issue or issues the witness or party will testify about are so determinative of the outcome that face-to-face cross-examination is necessary;

(c) A perpetuation deposition under ORCP 39 I is a more practical means of presenting the testimony;

(d) The exhibits or documents the witness or party will testify about are too voluminous to make telephone testimony practical;

(e) Facilities are not available that would permit the taking of telephone testimony;

(f) The failure of the witness or party to appear personally will result in substantial prejudice to a party to the proceeding; or

(g) Other circumstances exist that require the personal appearance of a witness or party.

(4) Notwithstanding subsection (3)(e) of this section, the court shall order that telephone testimony be taken under this section if the party filing the motion establishes that alternative procedures or technologies allow the taking of telephone testimony.

(5) A party filing a motion for telephone testimony under this section must pay all costs of the telephone testimony, including the costs of alternative procedures or technologies used for the taking of telephone testimony. No part of those costs may be recovered by the party filing the motions as costs and disbursements in the proceeding.

(6) Factors that a court may consider that would support a finding of good cause for the purpose of a motion under this section include:

(a) The witness or party might be unavailable because of age, infirmity or mental or physical illness;

(b) The party filing the motion seeks to take the telephone testimony of a witness whose attendance the party has been unable to secure by process or other reasonable means;

(c) A personal appearance by the party or witness would be an undue hardship on the party or witness; or

(d) Any other circumstances that constitute good cause.

(7) This section does not apply to a workers' compensation hearing or to any other administrative proceeding.

(8) For purposes of this section, "telephone testimony" means testimony given by telephone or by any other two-way electronic communication device, including but not limited to satellite, cellular or other interactive communication device. [1993 c.425 §1]

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]

EVIDENCE AND WITNESSES
