

#### **Rule 414. Evidence Depositions**

(a) If it appears to the court in which a criminal charge is pending that the deposition of any person other than the defendant is necessary for the preservation of relevant testimony because of the substantial possibility it would be unavailable at the time of hearing or trial, the court may, upon motion and notice to both parties and their counsel, order the taking of such person's deposition under oral examination or written questions for use as evidence at a hearing or trial.

(b) The taking of depositions shall be in accordance with rules providing for the taking of depositions in civil cases, and the order for the taking of a deposition may provide that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place.

(c) If a witness is committed for failure to execute a recognizance to appear to testify at a hearing or trial, the court, on written motion of the witness and upon notice to the State and defense counsel, may order that his deposition be taken, and after the deposition has been subscribed, the court may discharge the witness.

(d) Rule 207-Signing and Filing Depositions-shall apply to the signing and filing of depositions taken pursuant to this rule.

(e) The defendant and defense counsel shall have the right to confront and cross-examine any witness whose deposition is taken. The defendant and defense counsel may waive such right in writing, filed with the clerk of the court.

(f) If the defendant is indigent, all costs of taking depositions shall be paid by the county wherein the criminal charge is initiated. If the defendant is not indigent the costs shall be allocated as in civil cases.

Effective October 1, 1971.

#### **Committee Comments**

The committee chose not to include depositions for discovery purposes, but did decide to follow the unmistakable trend and provide for depositions to preserve testimony. This rule allows both the State and defense counsel to take such depositions and use the testimony as evidence at a hearing or trial in situations where the potential witness will be unable to appear at hearing or trial for any reason. The deposition is not taken by right but is subject to court approval. Notice should be taken of the fact that depositions may be taken by written questions as well as by oral examination.

Paragraph (c) provides for the taking of a deposition in circumstances which most other jurisdictions have recognized as a necessary use of depositions. In order to prevent unnecessary incarceration, a judge may permit the deposition of a witness committed for failure to execute a recognizance to appear.

Paragraphs (e) and (f) protect the defendant's constitutional rights. Paragraph (e) protects his rights of confrontation and cross-examination, and paragraph (f) assures equal protection to those indigents whose defense requires the taking of a deposition.

