

## **Rule 217. Depositions for the Purpose of Perpetuating Testimony**

### **(a) Before Action.**

(1) *Petition.* A person who desires to perpetuate his own testimony or that of another person regarding any matter that is or may be cognizable in any court or proceeding may file a verified petition in the court of the county in which the action or proceeding might be brought or had or in which one or more of the persons to be examined reside. The petition shall be entitled in the name of the petitioner as petitioner and against all other expected parties or interested persons, including unknown owners, as respondents and shall show: (i) the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it, (ii) the names or a description of the persons interested or whom he expects will be adverse parties and their addresses so far as known, and (iii) the names and addresses of the persons to be examined, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition for the purpose of perpetuating their testimony.

(2) *Notice and Service.* The petitioner shall serve upon each person named or described in the petition as respondent a copy of the petition, together with a notice stating that the petitioner will apply to the court, at a time and place designated in the notice, for the order described in the petition. Unless a shorter period is fixed by the court, the notice shall be served either within or without the State at least 21 days before the date of hearing, in the manner provided for service of summons. If service cannot with due diligence be made upon any respondent named or described in the petition, the court may by order provide for service by publication or otherwise. For persons not personally served and not otherwise represented, the court shall appoint an attorney who shall represent them and cross-examine the deponent. If any respondent is a minor or a person under legal disability or not yet in being, a guardian *ad litem* shall be appointed to represent his interests. The fees and costs of a court-appointed attorney or guardian *ad litem* shall be borne by the petitioner.

(3) *Order and Examination.* If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken, specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written questions, and fixing the time, place, and conditions of the examination.

**(b) Pending Appeal.** If an appeal has been taken from the judgment of a trial court, or before the taking of an appeal if the time therefor has not expired, the court in which the judgment was rendered may on motion and for good cause shown allow the taking of depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in that court.

Amended May 28, 1982, effective July 1, 1982.

### Committee Comments

This rule is derived from former Rule 21. The language is substantially unchanged except that, in keeping with the committee's general policy, subparagraph (a)(2) requires notice to be given at least 21 days before the date of the hearing, as opposed to 20 days under former Rule 21(1)(b), and that subparagraph (a)(2) adds the requirement that petitioner pay the expenses of a court-

appointed attorney or guardian *ad litem*.