

Rule 27. Depositions to Perpetuate Testimony

(a) Before an Action is Filed.

(1) **Petition.** A person who wants to perpetuate testimony—including his or her own—about any matter cognizable in any court within the United States may file a verified petition in district court. The petition must ask for an order authorizing the petitioner to depose the named persons in order to perpetuate their testimony. The petition must be titled in the petitioner’s name and must show:

(A) that the petitioner expects to be a party to an action cognizable in a court within the United States but cannot presently bring it or cause it to be brought;

(B) the subject matter of the expected action and the petitioner’s interest;

(C) the facts that the petitioner wants to establish by the proposed testimony and the reasons to perpetuate it;

(D) the names or a description of the persons whom the petitioner expects to be adverse parties and their addresses, so far as known; and

(E) the name, address, and expected substance of the testimony of each deponent.

(2) **Notice and Service.** At least 21 days before the hearing date, the petitioner must serve each expected adverse party with a copy of the petition and a notice stating the time and place of the hearing. The notice may be served either inside or outside the state, or service may be waived, in the manner provided in Rules 4, 4.1, 4.2, 4.3, or 4.4. The court must appoint an attorney to represent persons who were not served in the manner provided in Rules 4.2, 4.3, or 4.4(a) or (b), did not waive or admit service, and did not appear at the hearing, and to cross-examine the deponent if the person is not otherwise represented. If any expected adverse party is a minor or is incapacitated, Rule 17(c) applies.

(3) **Order and Examination.** If satisfied that perpetuating the testimony may prevent a failure or delay of justice, the court must issue an order that designates or describes the persons whose depositions may be taken, specifies the subject matter of the examinations, and states whether the depositions will be taken orally or by written interrogatories. The depositions may then be taken under these rules, and the court may issue orders like those authorized by Rules 34 and 35. A reference in these rules to the court where an action is pending means, for purposes of this rule, the court where the petition for the deposition was filed.

(4) **Using the Deposition.** A deposition to perpetuate testimony may be used in Nevada under Rule 32(a) in any later-filed action involving the same subject matter if the deposition either was taken under these rules or, although not so taken, would be admissible under Nevada law of evidence.

(b) **Pending Appeal.**

(1) **In General.** The court where a judgment has been rendered may, if an appeal has been taken or may still be taken, permit a party to depose witnesses to perpetuate their testimony for use in the event of further proceedings in that court.

(2) **Motion.** The party who wants to perpetuate testimony may move for leave to take the depositions, on the same notice and service as if the action were pending in the district court. The motion must show:

(A) the name, address, and expected substance of the testimony of each deponent; and

(B) the reasons for perpetuating the testimony.

(3) **Court Order.** If the court finds that perpetuating the testimony may prevent a failure or delay of justice, the court may permit the depositions to be taken and may issue orders like those authorized by Rules 34 and 35. The depositions may be taken and used as any other deposition taken in a pending action.

(c) **Reserved.**

Advisory Committee Note—2018 Amendment

Rule 27 is generally conformed to FRCP 27, with modifications adapting it for use in Nevada. FRCP 27(c) has never been adopted for use in Nevada.