

61-3105. Depositions. (a) Any party to an action pursuant to the code of civil procedure for limited actions may take the testimony of any person, including a party, either within or without the state, by deposition upon oral examination or written questions but only for use as evidence in the action. Unless the court orders otherwise, the parties may by written stipulation provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions. The taking of such depositions shall be governed by the provisions of K.S.A. 60-228, subsections (b) through (h) of K.S.A. 60-230, K.S.A. 60-231 and subsection (d) of K.S.A. 60-232, and amendments thereto, except that any party desiring to take a deposition shall first file with the court, and serve on all other parties to the action, a motion that the taking of such deposition be allowed due to the existence of at least one of the conditions prescribed in subsection (b) for the use of depositions as evidence. Within seven days after any such motion has been made, any other party to the action may file an objection to such motion, and in such event, the court shall hold a hearing within seven days thereof to determine the issue. No deposition shall be taken unless and until the court shall have granted the motion requesting permission therefor.

(b) At the trial, or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition of a witness, whether or not a party, so far as it is admissible under the rules of evidence, may be used for any purpose against any party who was present or represented at the taking of the deposition, or who had due notice thereof, if the court finds that:

- (1) The witness is dead;
- (2) the witness is outside of the county of the place of trial or hearing, unless it appears that the absence of the witness was procured by the party offering the deposition;
- (3) the witness is unable to attend or testify because of age, sickness, infirmity or imprisonment;
- (4) the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or
- (5) upon application and notice, that 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.

(c) In addition to the uses of depositions enumerated in subsection (b), the court on motion may permit the use of depositions as provided in subsections (b)*(1), (2) and (4) of K.S.A. 60-232, and amendments thereto, in the interest of justice and on such terms and conditions as will fairly protect the parties.

History: L. 2000, ch. 161, § 29; L. 2010, ch. 135, § 204; July 1.

* Reference to (b) should be to (a).