
By Mr. Ames, a petition of Franklin N. Cunningham for legislation relative to depositions in civil cases. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Sixty-Four.

AN ACT TO PROVIDE FOR DEPOSITIONS IN CIVIL CASES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter two hundred and thirty-three of the general laws
2 as presently amended is hereby further amended by inserting
3 therein after section forty-five thereof the following new
4 sections:

5 SECTION 45A. DEPOSITIONS PENDING ACTION.

6 (a) *When Depositions May Be Taken.* Any party may take
7 the testimony of any person, including a party, by deposition
8 upon oral examination or written interrogatories for the pur-
9 pose of discovery or for use as evidence at the trial or for both
10 purposes. After entry of the case the deposition may be taken
11 without leave of court, except that leave, granted with or with-
12 out notice, must be obtained if notice of the taking is served
13 by the plaintiff before 21 days from the return day of the
14 process first served upon defendant. The attendance of wit-
15 nesses may be compelled by the use of a summons issued and
16 served in the form and manner used to compel attendance of
17 witnesses at a trial. Depositions taken pursuant to this Sec-
18 tion shall be taken in accordance with its provisions and the
19 provisions of Section 45B. The deposition of a person confined
20 in prison may be taken only by leave of court on such terms
21 as the court prescribes.

22 (b) *Scope of Examination.* Unless otherwise ordered by
23 the court as provided by section forty-five B, the deponent
24 may be examined regarding any matter, not privileged, which

25 is relevant to the subject matter involved in the pending action,
26 whether it relates to the claim or defense of the examining
27 party or to the claim or defense of any other party, including
28 the existence, description, nature, custody, condition and loca-
29 tion of any books, documents, or other tangible things and the
30 identity and location of persons having knowledge of rele-
31 vant facts. It is not ground for objection that the testimony
32 will be inadmissible at the trial if the testimony sought appears
33 reasonably calculated to lead to the discovery of admissible
34 evidence.

35 (c) *Examination and Cross-Examination.* Examination and
36 cross-examination of deponents may proceed as at a trial.

37 (d) *Use of Depositions.* At the trial or upon the hearing of
38 a motion or an interlocutory proceeding, any part or all of a
39 deposition, so far as admissible under the rules of evidence, may
40 be used against any party who was present or represented at
41 the taking of the deposition or who had due notice thereof,
42 in accordance with any one of the following provisions:

- 43 (1) Any deposition may be used by any party for the
44 purpose of contradicting or impeaching the testi-
45 mony of deponent as a witness.
- 46 (2) The deposition of a party or of any one who at the
47 time of taking the deposition was an officer, direc-
48 tor, or managing agent of a public or private corpo-
49 ration, partnership, or association which is a party
50 may be used by an adverse party for any purpose.
- 51 (3) The deposition of a witness, whether or not a party,
52 may be used by any party for any purpose if the
53 court finds: 1, that the witness is dead; or 2, that
54 the witness is at a greater distance than 30 miles
55 from the place of trial or hearing, or is out of the
56 Commonwealth unless it appears that the absence
57 of the witness was procured by the party offering
58 the deposition; or 3, that the witness is unable to
59 attend or testify because of age, sickness, infirmity,
60 or imprisonment; or 4, that the party offering the
61 deposition has been unable to procure the at-
62 tendance of the witness by summons; or 5, upon

63 application and notice, that such exceptional
64 circumstances exist as to make it desirable, in the
65 interest of justice and with due regard to the
66 importance of presenting the testimony of witnesses
67 orally in open court, to allow the deposition to be
68 used.

69 (4) If only part of a deposition is offered in evidence
70 by a party, an adverse party may require him to
71 introduce all of it which is relevant to the part
72 introduced, and any party may introduce any other
73 parts. Substitution of parties does not affect the
74 right to use depositions previously taken; and,
75 when an action in any court of the Commonwealth,
76 of the United States or of any other State of the
77 United States has been dismissed and another action
78 involving the same subject matter is afterward
79 brought between the same parties or their repre-
80 sentatives or successors in interest, all depositions
81 lawfully taken and duly filed in the former action
82 may be used in the latter as if originally taken
83 therefor.

84 (e) *Objection to Admissibility.* Objection may be made at
85 the trial or hearing to receiving in evidence any deposition or
86 part thereof for any reason which would require the exclusion
87 of the evidence if the witness were then present and testifying.

88 (f) *Effect of Taking or Using Depositions.* A party shall
89 not be deemed to make a person his own witness for any pur-
90 pose by taking his deposition. The introduction in evidence of
91 the deposition or any part thereof for any purpose other than
92 that of contradicting or impeaching the deponent makes the
93 deponent the witness of the party introducing the deposition,
94 but this shall not apply to the use by an adverse party of a
95 deposition as described in paragraph (2) of subsection (d) of
96 this section. At the trial or hearing any party may rebut any
97 relevant evidence contained in a deposition whether introduced
98 by him or by any other party.

99 SECTION 45B. DEPOSITION UPON ORAL EXAMINATION

100 (a) *Notice of Examination: Time and Place.* A party

101 desiring to take the deposition of any person upon oral ex-
102 amination shall give reasonable notice in writing to every
103 other party to the action. The notice shall state the time and
104 place for taking the deposition and the name and address of
105 each person to be examined, if known, and if the name is not
106 known a general description sufficient to identify him or the
107 particular class or group to which he belongs. On motion of
108 any party upon whom the notice is served, the court may for
109 cause shown enlarge or shorten the time.

110 (b) *Orders for the Protection of Parties and Deponents.*

111 After notice is served for taking a deposition by oral examina-
112 tion, upon motion seasonably made by any party or by the
113 person to be examined and upon notice and for good cause
114 shown, the court in which the action is pending may make an
115 order that the deposition shall not be taken, or that it may be
116 taken only at some designated place other than that stated
117 in the notice, or that it may be taken only on written inter-
118 rogatories, or that certain matters shall not be inquired into, or
119 that the scope of the examination shall be limited to certain
120 matters, or that the examination shall be held with no one pres-
121 ent except the parties to the action and their officers or counsel,
122 or that after being sealed the deposition shall be opened only by
123 order of the court, or that secret processes, developments, or
124 research need not be disclosed, or that the parties shall simulta-
125 neously file specified documents or information enclosed in
126 sealed envelopes to be opened as directed by the court; or the
127 court may make any other order which justice requires to pro-
128 tect the party or witness from annoyance, embarrassment, or
129 oppression.

130 (c) *Record of Examination; Oath; Objections.* The officer be-
131 fore whom the deposition is to be taken shall put the witness
132 on oath and shall personally, or by some one acting under his
133 direction and in his presence, record the testimony of the wit-
134 ness. The testimony shall be taken stenographically and trans-
135 scribed unless the parties agree otherwise. All objections made
136 at the time of the examination to the qualifications of the
137 officer taking the deposition, or to the manner of taking it,
138 or to the evidence presented, or to the conduct of any party,

139 and any other objection to the proceedings, shall be noted by
140 the officer upon the deposition. Evidence objected to shall be
141 taken subject to the objections. In lieu of participating in the
142 oral examination, parties served with notice of taking a deposi-
143 tion may transmit written interrogatories to the officer, who
144 shall propound them to the witness and record the answers
145 verbatim.

146 (d) *Motion to Terminate or Limit Examination.* At any time
147 during the taking of the deposition, on motion of any party or
148 of the deponent and upon a showing that the examination is
149 being conducted in bad faith or in such manner as unreasonably
150 to annoy, embarrass, or oppress the deponent or party, the
151 court in which the action is pending (or the Superior Court
152 for the County where the deposition is being taken) may order
153 the officer conducting the examination to cease forthwith from
154 taking the deposition, or may limit the scope and manner of
155 the taking of the deposition as provided in subsection (b). If
156 the order made terminates the examination, it shall be re-
157 sumed thereafter only upon the order of the court in which the
158 action is pending. Upon demand of the objecting party or de-
159 ponent, the taking of the deposition shall be suspended for the
160 time necessary to make a motion for an order. In granting or
161 refusing such order the court may impose upon either party or
162 upon the witness the requirement to pay such costs or expenses
163 as the court may deem reasonable.

164 (e) *Submission to Witness; Changes; Signing.* When the
165 testimony is fully transcribed the deposition shall be submitted
166 to the witness for examination and shall be read to or by him,
167 unless such examination and reading are waived by the wit-
168 ness and by the parties. Any changes in form or substance
169 which the witness desires to make shall be entered upon the
170 deposition by the officer with a statement of the reasons given
171 by the witness for making them. The deposition shall then be
172 signed by the witness, unless the parties by stipulation waive
173 the signing or the witness is ill or cannot be found or refuses
174 to sign. If the deposition is not signed by the witness, the
175 officer shall sign it and state on the record the fact of the
176 waiver or of the illness or absence of the witness or the fact of

177 the refusal to sign together with the reason, if any, given
178 therefor; and the deposition may then be used as fully as
179 though signed, unless on a motion to suppress the court holds
180 that the reasons given for the refusal to sign require rejection
181 of the deposition in whole or in part.

182 (f) *Certification and Filing by Officer; Copies; Notice of*
183 *Filing.*

184 (1) The officer shall certify on the deposition that the
185 witness was duly sworn by him and that the deposi-
186 tion is a true record of the testimony given by the
187 witness. He shall then securely seal the deposition
188 in an envelope indorsed with the title of the action
189 and marked "Deposition of (here insert name of
190 witness)" and shall promptly file it with the court
191 in which the action is pending or send it by regis-
192 tered or certified mail to the clerk thereof for filing,
193 and shall notify the party taking the deposition
194 thereof.

195 (2) Upon payment of reasonable charges therefor, the
196 officer shall furnish a copy of the deposition to
197 any party or to the deponent.

198 (3) The party taking the deposition shall give prompt
199 notice of its filing to all other parties.

200 (g) *Failure to Attend or to Serve Summons; Expenses.*

201 (1) If the party giving the notice of the taking of a
202 deposition fails to attend and proceed therewith
203 and another party attends in person or by attorney
204 pursuant to the notice, the court may order the
205 party giving the notice to pay to such other party
206 the amount of the reasonable expenses incurred
207 by him and his attorney in so attending, including
208 reasonable attorney's fees.

209 (2) If the party giving the notice of the taking of a
210 deposition of a witness fails to serve a summons
211 upon him and the witness because of such failure
212 does not attend, and if another party attends in
213 person or by attorney because he expects the dep-
214 osition of that witness to be taken, the court may

215 order the party giving the notice to pay to such
216 other party the amount of the reasonable expenses
217 incurred by him and his attorney in so attending,
218 including reasonable attorney's fees.

219 (h) Depositions pursuant to section forty-five A of persons
220 residing outside the commonwealth may be taken in the man-
221 ner provided in sections 41 to 44 of this chapter, provided
222 that they shall be upon oral interrogatories unless the court
223 shall order otherwise in accordance with subsection (b)
224 hereof.

