

TITLE 19  
CRIMINAL PROCEDURE

CHAPTER 32  
EXAMINATION OF WITNESSES ON COMMISSION

19-3201. EXAMINATION OF NONRESIDENT WITNESS. When an issue of fact is joined upon an indictment the defendant may have any material witness, residing out of the state, examined in his behalf, as prescribed in this chapter, and not otherwise.

[(19-3201) R.S., R.C., & C.L., sec. 8176; C.S., sec. 9152; I.C.A., sec. 19-3101.]

19-3202. APPLICATION FOR ORDER. When a material witness for the defendant resides out of the state the defendant may apply for an order that the witness be examined on a commission.

[(19-3202) R.S., R.C., & C.L., sec. 8177; C.S., sec. 9153; I.C.A., sec. 19-3102.]

19-3203. COMMISSION DEFINED. A commission is a process issued under the seal of the court and the signature of the clerk, directed to some person designated as commissioner, authorizing him to examine the witness upon oath or interrogatories annexed thereto, to take and certify the deposition of the witness, and to return it according to the directions given with the commission.

[(19-3203) Cr. Prac. 1864, sec. 551, p. 280; R.S., R.C., & C.L., sec. 8178; C.S., sec. 9154; I.C.A., sec. 19-3103.]

19-3204. AFFIDAVIT TO ACCOMPANY APPLICATION. The application must be made upon affidavit, stating:

1. The nature of the offense charged.
2. The state of the proceedings in the action, and that an issue of fact has been joined therein.
3. The name of the witness, and that his testimony is material to the defense of the action.
4. That the witness resides out of the state.

[(19-3204) Cr. Prac. 1864, sec. 553, p. 280; R.S., R.C., & C.L., sec. 8179; C.S., sec. 9155; I.C.A., sec. 19-3104.]

19-3205. MAKING OF APPLICATION. The application may be made to the court during the term, or to the judge in vacation, and must be upon three (3) days' notice to the prosecuting attorney.

[(19-3205) Cr. Prac. 1864, sec. 554, p. 281; R.S., R.C., & C.L., sec. 8180; C.S., sec. 9156; I.C.A., sec. 19-3105.]

19-3206. ORDER FOR COMMISSION. If the court or judge to whom the application is made is satisfied of the truth of the facts stated, and that the examination of the witness is necessary to the attainment of justice, an order must be made that a commission be issued to take his testimony, and the court

or judge may insert in the order a direction that the trial of the indictment be stayed for a specified time, reasonably sufficient for the execution and return of the commission.

[(19-3206) Cr. Prac. 1864, secs. 555, 556, p. 281; R.S., R.C., & C.L., sec. 8181; C.S., sec. 9157; I.C.A., sec. 19-3106.]

19-3207. INTERROGATORIES, HOW SETTLED AND ALLOWED. When the commission is ordered, the defendant must serve upon the prosecuting attorney, without delay, a copy of the interrogatories to be annexed thereto, with two days' notice of the time at which they will be presented to the court or judge. The prosecuting attorney may, in like manner serve upon the defendant or his counsel cross-interrogatories, to be annexed to the commission, with the like notice. In the interrogatories either party may insert any questions pertinent to the issue. When the interrogatories and cross-interrogatories are presented to the court or judge, according to the notice given, the court or judge must modify the questions so as to conform them to the rules of evidence, and must endorse upon them his allowance and annex them to the commission.

[(19-3207) Cr. Prac. 1864, secs. 557, 560, p. 281; R.S., R.C., & C.L., sec. 8182; C.S., sec. 9158; I.C.A., sec. 19-3107.]

19-3208. DIRECTION AS TO RETURN. Unless the parties otherwise consent, by an endorsement upon the commission, the court or judge must endorse thereon a direction as to the manner in which it must be returned, and may, in his discretion, direct that it be returned by mail or otherwise, addressed to the clerk of the court in which the action is pending, designating his name and the place where his office is kept.

[(19-3208) Cr. Prac. 1864, sec. 561, p. 281; R.S., R.C., & C.L., sec. 8183; C.S., sec. 9159; I.C.A., sec. 19-3108.]

19-3209. EXECUTION OF COMMISSION. The commissioner, unless otherwise specially directed, may execute the commission as follows:

1. He must publicly administer an oath to the witness, that his answers given to the interrogatories shall be the truth, the whole truth and nothing but the truth.

2. He must cause the examination of the witness to be reduced to writing, and subscribed by him.

3. He must write the answers of the witness as near as possible in the language in which he gives them, and read to him each answer as it is taken down, and correct or add to it until it conforms to what he declares is the truth.

4. If the witness decline answering a question, that fact, with the reason assigned by him for declining, must be stated.

5. If any papers or documents are produced before him and proved by the witness, they, or copies of them, must be annexed to the deposition subscribed by the witness and certified by the commissioner.

6. The commissioner must subscribe his name to each sheet of the deposition, and annex the deposition, with the papers and documents, proved by the witness, to the commission, and must close it up under seal, and address it as directed by the endorsement thereon.

7. If there is a direction on the commission to return it by mail, the commissioner must immediately deposit it in the nearest post-office. If any other direction is made by the written consent of the parties, or by the court or judge, on the commission, as to its return, he must comply with the direction. A copy of this section must be annexed to the commission.

[(19-3209) Cr. Prac. 1864, secs. 562, 563, pp. 281 and 282; R.S., R.C., & C.L., sec. 8184; C.S., sec. 9160; I.C.A., sec. 19-3109.]

19-3210. DELIVERY OF COMMISSION TO AGENT. If the commission and return is delivered by the commissioner to an agent he must deliver the same to the clerk to whom it is directed or to the judge of the court in which the indictment is pending, by whom it may be received and opened, upon the agent making affidavit that he received it from the hands of the commissioner, and that it has not been opened or altered since he received it.

[(19-3210) Cr. Prac. 1864, sec. 564, p. 282; R.S., R.C., & C.L., sec. 8185; C.S., sec. 9161; I.C.A., sec. 19-3110.]

19-3211. DEATH OR DISABILITY OF AGENT. If the agent is dead, or from sickness or other casualty unable personally to deliver the commission and return, as prescribed in the last section, it may be received by the clerk or judge from any other person, upon his making an affidavit that he received it from the agent, that the agent is dead, or from sickness or other casualty unable to deliver it; that it has not been opened or altered since the person making the affidavit received it; and that he believes it has not been opened or altered since it came from the hands of the commissioner.

[(19-3211) Cr. Prac. 1864, sec. 565, p. 282; R.S., R.C., & C.L., sec. 8186; C.S., sec. 9162; I.C.A., sec. 19-3111.]

19-3212. FILING OF COMMISSION. The clerk or judge receiving and opening the commission and return must immediately file it, with the affidavit mentioned in the last two sections, in the office of the clerk of the court in which the indictment is pending.

If the commission and return is transmitted by mail, the clerk to whom it is addressed must receive it from the post-office, and open and file it in his office, where it must remain, unless otherwise directed by the court or judge.

[(19-3212) Cr. Prac. 1864, secs. 566, 567, p. 282; R.S., R.C., & C.L., sec. 8187; C.S., sec. 9163; I.C.A., sec. 19-3112.]

19-3213. COMMISSION OPEN FOR INSPECTION. The commission and return must at all times be open to the inspection of the parties, who must be furnished by the clerk with copies of the same or of any part thereof, on payment of his fees.

[(19-3213) Cr. Prac. 1864, sec. 568, p. 282; R.S., R.C., & C.L., sec. 8188; C.S., sec. 9164; I.C.A., sec. 19-3113.]

19-3214. USE AND OBJECTIONS TO DEPOSITIONS. The depositions taken under the commission may be read in evidence by either party on the trial, upon it being shown that the witness is unable to attend from any cause whatever;

and the same objections may be taken to a question in the interrogatories or to an answer in the deposition, as if the witness had been examined orally in court.

[(19-3214) Cr. Prac. 1864, sec. 569, p. 282; R.S., R.C., & C.L., sec. 8189; C.S., sec. 9165; I.C.A., sec. 19-3114.]

CHAPTER 33  
INQUIRY INTO SANITY OF DEFENDANT -- [REPEALED]