

ten notice on the opposing party not later than two days before the date of the examination. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined. A copy of such notice, together with proof of such service thereof, shall be attached to the deposition when it is filed with the Clerk.

**(b) Testimony by stipulation**

By written stipulation of the parties, the deposition of a witness may be taken without notice. A copy of such stipulation shall be attached to the deposition when it is filed with the Clerk.

**(c) Testimony by affidavit; time for filing**

By written stipulation of the parties, the testimony of any witness of either party may be filed in the form of an affidavit by such witness or the parties may agree what a particular witness would testify to if his deposition were taken. Such testimonial affidavits or stipulations shall be filed within the time limits prescribed for the taking of testimony in section 386 of this title.

(Pub. L. 91-138, § 8, Dec. 5, 1969, 83 Stat. 287.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 386 of this title.

**§ 388. Subpena for attendance at deposition**

**(a) Issuance**

Upon application of any party, a subpena for attendance at a deposition shall be issued by:

- (1) a judge or clerk of the United States district court for the district in which the place of examination is located;
- (2) a judge or clerk of any court of record of the State in which the place of examination is located; or
- (3) a judge or clerk of any court of record of the county in which the place of examination is located.

**(b) Time, method, and proof of service**

Service of the subpena shall be made upon the witness no later than three days before the day on which his attendance is directed. A subpena may be served by any person who is not a party to the contested election case and is not less than eighteen years of age. Service of a subpena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fee for one day's attendance and the mileage allowed by section 389 of this title. Written proof of service shall be made under oath by the person making same and shall be filed with the Clerk.

**(c) Place of examination**

A witness may be required to attend an examination only in the county wherein he resides or is employed, or transacts his business in person, or is served with a subpena, or within forty miles of the place of service.

**(d) Form**

Every subpena shall state the name and title of the officer issuing same and the title of the contested election case, and shall command each person to whom it is directed to attend and give testimony at a time and place and before an officer specified therein.

**(e) Production of documents**

A subpena may also command the person to whom it is directed to produce the books, papers, documents, or other tangible things designated therein, but the committee, upon motion promptly made and in any event at or before the time specified in the subpena for compliance therewith, may (1) quash or modify the subpena if it is unreasonable or oppressive, or (2) condition denial of the motion upon the advancement by the party in whose behalf the subpena is issued of the reasonable cost of producing the books, papers, documents, or tangible things. In the case of public records or documents, copies thereof, certified by the person having official custody thereof, may be produced in lieu of the originals.

(Pub. L. 91-138, § 9, Dec. 5, 1969, 83 Stat. 288.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 386 of this title.

**§ 389. Officer and witness fees**

(a) Each judge, clerk of court, or other officer who issues any subpena or takes a deposition and each person who serves any subpena or other paper herein authorized shall be entitled to receive from the party at whose instance the service shall have been performed such fees as are allowed for similar services in the district courts of the United States.

(b) Witnesses whose depositions are taken shall be entitled to receive from the party at whose instance the witness appeared the same fees and travel allowance paid to witnesses subpoenaed to appear before the House of Representatives or its committees.

(Pub. L. 91-138, § 10, Dec. 5, 1969, 83 Stat. 288.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 388 of this title.

**§ 390. Penalty for failure to appear, testify, or produce documents**

Every person who, having been subpoenaed as a witness under this chapter to give testimony or to produce documents, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the contested election case, shall be deemed guilty of a misdemeanor punishable by fine of not more than \$1,000 nor less than \$100 or imprisonment for not less than one month nor more than twelve months, or both.

(Pub. L. 91-138, § 11, Dec. 5, 1969, 83 Stat. 288.)

**§ 391. Certification and filing of depositions**

**(a) Sealing of papers; deposit with clerk**

The officer before whom any deposition is taken shall certify thereon that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition, together with any papers produced by the witness and the notice of deposition or stipulation, if the deposition was taken without notice, in an envelope endorsed with the title of the contested election case and marked "Deposition of (here