

**39-6-42 Depositions -- Procedure.**

- (1) After charges have been signed under Section 39-6-23, any party may take oral or written depositions unless the military judge hearing the case, or if the case is not being heard, an authority competent to convene a military court for the trial of those charges prohibits the depositions for good cause.
- (2) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.
- (3) Depositions may be taken before and authenticated by any military or civil officer authorized under state law or the law of the jurisdiction where the deposition is taken to administer oaths.
- (4) An authenticated deposition, taken upon reasonable notice to the other parties, may be read in evidence, to the extent it is admissible under the rules of evidence, before any military court or any proceeding before a court of inquiry, if it appears to the court:
  - (a) the witness resides or is beyond the state in which the military court or court of inquiry is ordered to sit, or beyond the distance of 100 miles from the location of the trial or hearing;
  - (b) the witness due to death, age, illness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the location of the trial or hearing;
  - (c) the present location of the witness is unknown; or
  - (d) the deposition was taken in the physical presence of the accused.

Amended by Chapter 15, 1989 General Session