§ 1405. When court may dispense with testimony of witness

1. The death, absence from the state or incompetency of an attesting witness required to be examined as prescribed in this or the preceding section or the fact that the witness cannot with due diligence be found within the state or cannot be examined as an attesting witness by reason of his physical or mental condition may be shown by affidavit or by any competent evidence and when so shown to its satisfaction, the court may by the decree on probate or by order either in writing or entered in the minutes dispense with the testimony of such attesting witness. Where the testimony of an attesting witness has been dispensed with as provided in this section and 1 attesting witness has been examined the will may be admitted to probate upon the testimony of the attesting witness who has been examined without further or additional proof.

2. Where an attesting witness is absent from the state and it is shown that his testimony can be obtained with reasonable diligence the court may and shall upon the demand of any party require his testimony be taken by commission.

3. Where an attesting witness has forgotten the occurrence or testifies against the execution of the will and at least 1 other attesting witness has been examined the will may be admitted to probate upon the testimony of the other witness or witnesses and such other facts as would be sufficient to prove the will.

4. If all of the attesting witnesses are dead or incompetent or unable to testify by reason of physical or mental condition or are absent from the state and their testimony has been dispensed with as provided in this section the will may nevertheless be admitted to probate upon proof of the handwriting of the testator and of at least one of the attesting witnesses and such other facts as would be sufficient to prove the will.