

**TITLE 31
JUDICIAL PROOF**

**CHAPTER 31-01
WITNESSES, THEIR QUALIFICATIONS, RIGHTS, AND DUTIES**

31-01-01. Persons competent to testify as witnesses generally - Exception. Superseded by N.D.R.Ev. 601.

31-01-02. Competency of husband or wife as witness - Communications made during marriage - Exceptions. Superseded by N.D.R.Ev. 501, 504.

31-01-03. Competency of party or officers of corporate party as to transactions or conversations with decedent - Exceptions. Superseded by N.D.R.Ev. 601.

31-01-04. When husband or wife may testify to transactions and conversations had with deceased spouse. Superseded by N.D.R.Ev. 601.

31-01-05. When transactions or conversations with decedent may be testified to by party to action. Superseded by N.D.R.Ev. 601.

31-01-06. Public officers cannot testify regarding confidential communications. A person cannot be examined as a witness in the following cases:

1. Superseded by N.D.R.Ev. 501, 502.
2. Superseded by N.D.R.Ev. 501, 505.
3. Superseded by N.D.R.Ev. 501, 503.
4. A public officer cannot be examined as to communications made to the public officer in official confidence when the public interests would suffer by the disclosure.

31-01-06.1. Counselors shall be immune from disclosing information given by pupils. For the purpose of counseling in a school system, any elementary or secondary school counselor possessing a valid North Dakota guidance credential from the department of public instruction, and who has been duly appointed a counselor for a school system by its proper authority, shall be legally immune from disclosing any privileged or confidential communication made to such counselor in a counseling interview. Such communication shall be disclosed when requested by the counselee.

31-01-06.2. Disclosure of news sources and information required only on court order. No person shall be required in any proceeding or hearing to disclose any information or the source of any information procured or obtained while the person was engaged in gathering, writing, photographing, or editing news and was employed by or acting for any organization engaged in publishing or broadcasting news, unless directed by an order of a district court of this state which, after hearing, finds that the failure of disclosure of such evidence will cause a miscarriage of justice.

31-01-06.3. Addiction counselor - Client privilege - Definitions. As used in sections 31-01-06.3 through 31-01-06.6:

1. "Client" means a person who consults or is examined or interviewed by a counselor.
2. "Confidential communication" means a communication which is not intended to be disclosed to third parties, except persons present to further the interest of the client in the consultation, examination, or interview, persons reasonably necessary for the

transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the counselor, including members of the client's family.

3. "Counselor" means an addiction counselor who has been licensed under chapter 43-45 or who is reasonably believed by the client so to be, while engaged in the diagnosis or treatment of a physical, mental, or emotional condition, including alcohol or any addiction.
4. "Privilege" means the counselor-client privilege authorized under sections 31-01-06.3 through 31-01-06.6.

31-01-06.4. General rule of privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of the client's physical, mental, or emotional condition, including alcohol or drug addiction, among the client, the client's counselor, and persons who are participating in the diagnosis or treatment under the direction of the counselor, including members of the client's family.

31-01-06.5. Who may claim the privilege. The privilege may be claimed by the client, the client's guardian or conservator, or the personal representative of a deceased client. The person who was the counselor at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

31-01-06.6. Exceptions to the privilege.

1. There is no privilege under sections 31-01-06.3 through 31-01-06.6 for communications relevant to an issue in proceedings to hospitalize the client for mental illness, including alcohol or drug addiction, if the counselor in the course of diagnosis or treatment has determined the client is in need of hospitalization.
2. If the court orders an examination of the physical, mental, or emotional condition of a client, whether a party or a witness, communications made in the course thereof are not privileged under sections 31-01-06.3 through 31-01-06.6 with respect to the particular purpose for which the examination is ordered unless the court orders otherwise.
3. There is no privilege under sections 31-01-06.3 through 31-01-06.6 as to a communication relevant to an issue of the physical, mental, or emotional condition of the client in any proceeding in which the client relies on a condition as an element of the client's claim or defense or, after the client's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense.

31-01-07. Act constituting consent to disclosure of confidential communications.
Superseded by N.D.R.Ev. 510.

31-01-08. When conviction of perjury or subornation thereof disqualifies witness - Effect on innocent rights if received. Repealed by S.L. 1973, ch. 116, § 41; 1975, ch. 106, § 673.

31-01-09. Privilege against self-incrimination - Grant of immunity. No person may be compelled to be a witness against himself or herself in a criminal action. Notwithstanding any provision of law to the contrary, in any criminal proceedings before a court or grand jury or state's attorney's inquiry, if a person refuses to answer a question or produce evidence of any kind on the ground that the person may be incriminated thereby, and if the prosecuting attorney, in writing and with approval of the attorney general, requests the court to order that person to answer the question or produce the evidence, the court after notice to the witness and hearing may so order, and that person shall comply with the order. In the case of a state's attorney's inquiry, such application must be made to the district court. No testimony or other information

compelled under the order, or any information directly or indirectly derived from the testimony, may be used against the witness in any criminal proceeding, except a prosecution for perjury, giving a false statement, or contempt committed in answering, or failing to answer, or in producing, or failing to produce, evidence in accordance with the order.

31-01-10. Presiding judge or any juror may be called as a witness. Superseded by N.D.R.Ev. 605, 606.

31-01-11. Interpreter for witness - When required - How subpoenaed - Oath or affirmation. When a witness does not understand the English language or speak the English language, or is deaf or unable to talk, an interpreter must be sworn to interpret for the witness. Any person who is a qualified interpreter may be subpoenaed by any court or judge to appear before such court or judge to act as an interpreter in any action or proceeding. The subpoena must be served and returned in like manner as a subpoena for a witness. Any person so subpoenaed who fails to attend at the time and place named in the subpoena is guilty of contempt. The oath or affirmation of the interpreter shall be as follows:

You do solemnly swear [affirm] that you will justly, truly, and impartially interpret to the witness, _____, the oath [affirmation] about to be administered to the witness; and the questions which may be asked the witness, and the answers that the witness shall give to such questions, relative to the cause now under consideration before this court (or officer). So help you God.

Any interpreter who has conscientious scruples as to taking the oath above described shall be allowed to make affirmations, substituting for the words "So help you God" at the end of the oath the following:

This you do affirm under the pains and penalties of perjury.

31-01-12. Fees for interpreters. Interpreters may be allowed such compensation for their services as the court shall certify to be reasonable and just, to be paid and collected as other costs, but the same shall not exceed five dollars per day.

31-01-13. Places where persons may be compelled to attend as witnesses in civil matters. Superseded by N.D.R.Civ.P. 45(d)(3), now 45(c)(3).

31-01-14. Places where persons may be compelled to attend as witnesses in criminal matters. No person is obliged to attend as a witness in a criminal action or proceeding in this state before a court or magistrate outside of the county in which the person resides or is served with the subpoena, unless the committing magistrate before whom the defendant is brought, or the judge of the court in which the offense is triable, or a judge of the district court, or a judge of the supreme court, upon an affidavit of the state's attorney or prosecutor, or of the defendant, or the defendant's counsel, stating that the affiant believes the evidence of the witness is material, and the witness's attendance at the examination or trial necessary, shall endorse upon the subpoena an order for the attendance of the witness.

31-01-15. Witness exempt from suit out of county. A person shall not be liable to be sued in a county in which that person does not reside by being served with a summons in such county while going, returning, or attending as a witness in obedience to a subpoena.

31-01-16. Compensation and mileage and travel expense of witness. A witness in a civil or criminal case is entitled to receive:

1. A sum of twenty-five dollars for each day necessarily in attendance before the district court or before any other board or tribunal, except municipal court.
2. A sum for mileage and travel expense reimbursement equal to the reimbursement rates provided for state employees in sections 44-08-04 and 54-06-09.

In all criminal cases in district court, the attorney general shall pay prosecution witness fees and expenses and the commission on legal counsel for indigents shall pay witness fees and expenses for witnesses in those cases in which counsel has been provided by the commission. Prisoners may not be compensated as witnesses under this section.

31-01-16.1. Witness fees and expenses of municipal police officers. Police officers of municipalities in this state shall be entitled to and be paid the witness fees and expenses allowed by law for other witnesses, when such officers are off duty and are subpoenaed to testify in actions in which a plea of guilty was not entered. Police officers of municipalities in this state, appearing as witnesses while on duty, shall be compensated by their employer at the regular rate for their position.

31-01-16.2. Compensation of municipal court witnesses. A witness in municipal court is entitled to receive compensation for time necessarily spent in municipal court. The governing body of the city shall establish the amount of compensation, but in no instance may compensation be more than twenty-five dollars, or less than five dollars, for each day necessarily spent in municipal court.

31-01-17. Duplicate witness fees not permissible. A witness who is subpoenaed in two or more cases by the same party shall be entitled to one compensation only from such party for the same day's attendance or travel.

31-01-18. Expenses of witness paid by city or state upon court order in criminal or municipal court action. When a person, as a witness in a criminal or municipal court action, appears before a magistrate, grand jury, or court, upon a subpoena or in pursuance of an undertaking and it appears that the person:

1. Has come from a place outside the county; or
2. Is poor and unable to pay the expenses of such attendance,

the court, if the attendance of the witness is upon a trial, by order upon its minutes, or in any other case, the judge, by a written order, may direct the state in district court cases or the city in municipal court cases to pay the witness a reasonable sum to be specified in the order for the necessary expenses of the witness's attendance. Upon the production of the order or a certified copy thereof, the state or city, to whichever entity the order is directed, must pay the witness the sum specified. In district court cases, the attorney general shall pay prosecution witness expenses and the supreme court shall pay other witness expenses.

31-01-19. Witness for indigent defendants subpoenaed and paid by city, county, or state under court order in criminal or municipal court action. If it appears to the court before which a criminal action or municipal ordinance violation is about to be tried that the defendant is unable to pay the witnesses to appear on the defendant's behalf, such court shall make an order that such witnesses as may be deemed reasonable, naming them, be subpoenaed to attend at such trial at the expense of the city, the county, or the state, whichever is liable to pay the costs of the prosecution of such action, and such witnesses must be paid accordingly.

31-01-20. Advance payment of fees - Return of service of subpoena to state demand and nonpayment. Superseded by N.D.R.Civ.P. 45(c)(3), now 45(b).

31-01-21. Fees may be demanded daily by witness. Superseded by N.D.R.Civ.P. 45(c)(3), now 45(b).

31-01-22. Oath of witness. Superseded by N.D.R.Civ.P. 43(d).