

Judicial Proof

CHAPTER 595

WITNESSES

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NOTE: For rules of civil procedure, district court, see Appendix 8.

595.01 WITNESS. A witness is a person whose declaration under oath is received as evidence for any purpose, whether such declaration is made on oral examination, or by deposition or affidavit.

[R. L. s. 4654] (9808)

595.02 COMPETENCY OF WITNESSES. Every person of sufficient understanding, including a party, may testify in any action or proceeding, civil or criminal, in court or before any person who has authority to receive evidence, except as follows:

(1) A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent, nor can either, during the marriage or afterwards, without the consent of the other, be examined as to any communication made by one to the other during the marriage. This exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to an action or proceeding for abandonment and neglect of the wife or children by the husband;

(2) An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him or his advice given thereon in the course of professional duty; nor can any employee of such attorney be examined as to such communication or advice, without the client's consent;

(3) A clergyman or other minister of any religion shall not, without the consent of the party making the confession, be allowed to disclose a confession made to him in his professional character, in the course of discipline enjoined by the rules or practice of the religious body to which he belongs; nor shall a clergyman or other minister of any religion be examined as to any communication made to him by any person seeking religious or spiritual advice, aid, or comfort or his advice given thereon in the course of his professional character, without the consent of such person;

(4) A licensed physician or surgeon shall not, without the consent of his patient, be allowed to disclose any information or any opinion based thereon which he acquired in attending the patient in a professional capacity, and which was necessary to enable him to act in that capacity; after the decease of such patient, in an action to recover insurance benefits, where the insurance has been in existence two years or more, the beneficiaries shall be deemed to be the personal representatives of such deceased person for the purpose of waiving the privilege hereinbefore created, and no oral or written waiver of the privilege hereinbefore created shall have any binding force or effect except that the same be made upon the trial or examination where the evidence is offered or received;

(5) A public officer shall not be allowed to disclose communications made to him in official confidence when the public interest would suffer by the disclosure;

(6) Persons of unsound mind; persons intoxicated at the time of their production for examination, and children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly, are not competent witnesses.

[R. L. s. 4660; 1919 c. 513 s. 1; 1931 c. 206 s. 1] (9814)

595.03 [Superseded, Rules of Civil Procedure, Rules 43.02, 86.01 and 86.02]

595.04 CONVERSATION WITH DECEASED OR INSANE PERSON. It shall not be competent for any party to an action, or any person interested in the event

thereof, to give evidence therein of or concerning any conversation with, or admission of, a deceased or insane party or person relative to any matter at issue between the parties, unless the testimony of such deceased or insane person concerning such conversation or admission, given before his death or insanity, has been preserved and can be produced in evidence by the opposite party, and then only in respect to the conversation or admission to which such testimony relates.

[R. L. s. 4663] (9817)

595.05 MODES OF TAKING OATH. When the court before which any person is offered as a witness is satisfied that such person has a peculiar mode of swearing which is more solemn and obligatory, in the opinion of such person, than the usual mode, the court, in its discretion, may adopt such mode; and every person believing in any other than the Christian religion shall be sworn according to the peculiar ceremonies of his religion, if any there are.

[R L s 4664] (9818)

NOTE: Superseded to the extent applicable by Rules of Civil Procedure, Rules 43.04, 86.01 and 86.02.

595.06 CAPACITY OF WITNESS. When an infant, or a person apparently of weak intellect, is produced as a witness, the court may examine him to ascertain his capacity, and whether he understands the nature and obligations of an oath, and the court may inquire of any person what peculiar ceremonies he deems most obligatory in taking an oath.

[R. L. s. 4665] (9819)