

Judicial Proof

CHAPTER 595

WITNESSES

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NOTE: For rules of civil procedure, district court, see Volume 9.

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.

History: *RL s 4654 (9808)*

595.02 TESTIMONY OF WITNESSES.

Subdivision 1. **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 provided in this subdivision:

(a) 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 or against a child of either, nor to a criminal action or proceeding in which one is charged with homicide or an attempt to commit homicide and the date of the marriage of the defendant is subsequent to the date of the offense, nor to an action or proceeding for non-support, neglect, dependency, or termination of parental rights.

(b) 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 the attorney be examined as to the communication or advice, without the client's consent.

(c) 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 the person.

(d) A licensed physician or surgeon, dentist, or chiropractor 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 the 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 the deceased person for the purpose of waiving this privilege, and no oral or written waiver of the privilege shall have any binding force or effect except when made upon the trial or examination where the evidence is offered or received.

(e) 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.

(f) Persons of unsound mind, persons intoxicated at the time of their production for examination, and children under ten years of age, if any of them lack capacity to remember or to relate truthfully facts respecting which they are examined, are not competent witnesses. A child describing any act of sexual contact or penetration performed on or with the child by another may use language appropriate for a child of that age.

(g) A registered nurse, psychologist or consulting psychologist shall not, without the consent of his client, be allowed to disclose any information or opinion based thereon which he acquired in attending the client in a professional capacity, and which was necessary to enable him to act in that capacity.

(h) An interpreter for a person handicapped in communication shall not, without the consent of the person, be allowed to disclose any communication if the communication would, if the interpreter were not present, be privileged. For purposes of this section, a "person handicapped in communication" means a person who, because of a hearing, speech or other communication disorder, or because of the inability to speak or comprehend the English language, is unable to understand the proceedings in which he is required to participate. The presence of an interpreter as an aid to communication does not destroy an otherwise existing privilege.

(i) A parent or his minor child may not be examined as to any communication made in confidence by the minor to his parent. A communication is confidential if made out of the presence of persons not members of the child's immediate family living in the same household. This exception may be waived by express consent to disclosure by a parent entitled to claim the privilege or by the child who made the communication, or by failure of the child or parent to object when the contents of a communication are demanded. This exception does not apply to a civil action or proceeding by one spouse against the other or by a parent or child against the other, nor to a proceeding to commit either the child or parent to whom the communication was made or to place the person or property or either under the control of another because of his alleged mental or physical condition, nor to a criminal action or proceeding in which the parent is charged with a crime committed against the person or property of the communicating child, the parent's spouse, or a child of either the parent or the parent's spouse, or in which a child is charged with a crime or act of delinquency committed against the person or property of a parent or a child of a parent, nor to an action or proceeding for termination of parental rights, nor any other action or proceeding on a petition alleging child abuse, child neglect, abandonment or nonsupport by a parent.

(j) Sexual assault counselors may not be compelled to testify about any opinion or information received from or about the victim without the consent of the victim. However, a counselor may be compelled to identify or disclose information in investigations or proceedings related to neglect or termination of parental rights if the court determines good cause exists. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the treatment relationship, and the treatment services if disclosure occurs. Nothing in this clause exempts sexual assault counselors from compliance with the provisions of sections 626.556 and 626.557.

“Sexual assault counselor” for the purpose of this section means a person who has undergone at least 40 hours of crisis counseling training and works under the direction of a supervisor in a crisis center, whose primary purpose is to render advice, counseling or assistance to victims of sexual assault.

(k) A person cannot be examined as to any communication or document, including worknotes, made or used in the course of or because of mediation pursuant to an agreement to mediate. This does not apply to the parties in the dispute in an application to a court by a party to have a mediated settlement agreement set aside or reformed. A communication or document otherwise not privileged does not become privileged because of this paragraph. This paragraph is not intended to limit the privilege accorded to communication during mediation by the common law.

Subd. 2. Exceptions. (a) The exception provided by paragraphs (d) and (g) of subdivision 1 shall not apply to any testimony, records, or other evidence relating to the abuse or neglect of a minor in any proceeding under chapter 260 or any proceeding under section 245.801, to revoke a day care or foster care license, arising out of the neglect or physical or sexual abuse of a minor, as defined in section 626.556, subdivision 2.

(b) The exception provided by paragraphs (d) and (g) of subdivision 1 shall not apply to criminal proceedings arising out of the neglect or physical or sexual abuse of a minor, as defined in section 626.556, subdivision 2, if the court finds that:

(1) there is a reasonable likelihood that the records in question will disclose material information or evidence of substantial value in connection with the investigation or prosecution; and

(2) there is no other practicable way of obtaining the information or evidence. This clause shall not be construed to prohibit disclosure of the patient record when it supports the otherwise uncorroborated statements of any material fact by a minor alleged to have been abused or neglected by the patient; and

(3) the actual or potential injury to the patient-health professional relationship in the treatment program affected, and the actual or potential harm to the ability of the program to attract and retain patients, is outweighed by the public interest in authorizing the disclosure sought.

No records may be disclosed under this paragraph other than the records of the specific patient suspected of the neglect or abuse of a minor. Disclosure and dissemination of any information from a patient record shall be limited under the terms of the order to assure that no information will be disclosed unnecessarily and that dissemination will be no wider than necessary for purposes of the investigation or prosecution.

Subd. 3. Certain out-of-court statements admissible. An out-of-court statement made by a child under the age of ten years alleging, explaining, denying, or describing any act of sexual contact or penetration performed with or on the child by another, not otherwise admissible by statute or rule of evidence, is admissible in evidence if:

(a) the court or person authorized to receive evidence finds, in a hearing conducted outside of the presence of the jury, that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient indicia of reliability; and

(b) the child either:

(i) testifies at the proceedings; or

(ii) is unavailable as a witness and there is corroborative evidence of the act; and

(c) the proponent of the statement notifies the adverse party of his intention to offer the statement and the particulars of the statement sufficiently in advance of the

proceeding at which he intends to offer the statement into evidence to provide the adverse party with a fair opportunity to prepare to meet the statement.

History: *RL s 4660; 1919 c 513 s 1; 1931 c 206 s 1; 1967 c 640 s 1; 1969 c 1010 s 1; 1973 c 79 s 1; 1973 c 685 s 13; 1978 c 519 s 1; 1981 c 131 s 3; 1981 c 262 s 1; 1981 c 273 s 3; 1Sp1981 c 4 art 4 s 8; 1982 c 558 s 3; 1984 c 588 s 4; 1984 c 646 s 8 (9814)*

595.021 NEWS MEDIA; PROTECTION OF SOURCES; CITATION.

Sections 595.021 to 595.025 may be cited as the Minnesota free flow of information act.

History: *1973 c 735 s 1; 1Sp1981 c 4 art 1 s 181*

595.022 PUBLIC POLICY.

In order to protect the public interest and the free flow of information, the news media should have the benefit of a substantial privilege not to reveal sources of information or to disclose unpublished information. To this end, the freedom of press requires protection of the confidential relationship between the news gatherer and the source of information. The purpose of sections 595.021 to 595.025 is to insure and perpetuate, consistent with the public interest, the confidential relationship between the news media and its sources.

History: *1973 c 735 s 2; 1Sp1981 c 4 art 1 s 182*

595.023 DISCLOSURE PROHIBITED.

No person who is or has been directly engaged in the gathering, procuring, compiling, editing, or publishing of information for the purpose of transmission, dissemination or publication to the public shall be required by any court, grand jury, agency, department or branch of the state, or any of its political subdivisions or other public body, or by either house of the legislature or any committee, officer, member, or employee thereof, to disclose in any proceeding the person or means from or through which information was obtained, or to disclose any unpublished information procured by him in the course of his work or any of his notes, memoranda, recording tapes, film or other reportorial data which would tend to identify the person or means through which the information was obtained.

History: *1973 c 735 s 3*

595.024 EXCEPTION AND PROCEDURE.

Subdivision 1. A person seeking disclosure may apply to the district court of the county where the person employed by or associated with a news media resides, has his principal place of business or where the proceeding in which the information sought is pending.

Subd. 2. The application shall be granted only if the court determines after hearing the parties that the person making application, by clear and convincing evidence, has met all three of the following conditions:

(1) that there is probable cause to believe that the source has information clearly relevant to a specific violation of the law other than a misdemeanor,

(2) that the information cannot be obtained by any alternative means or remedy less destructive of first amendment rights, and

(3) that there is a compelling and overriding interest requiring the disclosure of the information where the disclosure is necessary to prevent injustice.

Subd. 3. **Determination; appeal.** The district court shall consider the nature of the proceedings, the merits of the claims and defenses, the adequacies of alternative remedies, the relevancy of the information sought, and the possibility of establishing by other means that which the source is expected or may tend to prove. The court shall make its appropriate order after making findings of fact. The order may be appealed directly to the court of appeals according to the rules of appellate procedure. The order is stayed and nondisclosure shall remain in full force and effect during the pendency of the appeal.

History: 1973 c 735 s 4; 1983 c 247 s 204

595.025 DEFAMATION.

Subdivision 1. The prohibition of disclosure provided in section 595.023 shall not apply in any defamation action where the person seeking disclosure can demonstrate that the identity of the source will lead to relevant evidence on the issue of actual malice.

Subd. 2. Notwithstanding the provisions of subdivision 1, the identity of the source of information shall not be ordered disclosed unless the following conditions are met:

(a) that there is probable cause to believe that the source has information clearly relevant to the issue of defamation;

(b) that the information cannot be obtained by any alternative means or remedy less destructive of first amendment rights.

Subd. 3. **Determination; appeal.** The court shall make its order on the issue of disclosure after making findings of fact, which order may be appealed to the court of appeals according to the rules of appellate procedure. During the appeal the order is stayed and nondisclosure shall remain in full force and effect.

History: 1973 c 735 s 5; 1983 c 247 s 205

595.03 [Repealed, 1974 c 394 s 12]

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.

History: *RL s 4663 (9817)*

595.05 [Repealed, 1974 c 394 s 11]

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.

History: *RL s 4665 (9819)*

595.07 CONVICT AS WITNESS.

Every person convicted of crime shall be a competent witness in any civil or criminal proceeding, but his conviction may be proved for the purpose of affecting the weight of his testimony, either by the record or by his cross-examination, upon which he shall answer any proper question relevant to that inquiry; and the party cross-examining shall not be concluded by his answer thereto.

History: *RL s 4780 (9948)*

595.08 COMMITTAL OF WITNESS; DETENTION OF DOCUMENTS.

When it shall appear probable to a court of record, having general jurisdiction, that a person who has testified in an action or proceeding before it has committed perjury in any testimony so given, it may, by order or process for that purpose, immediately commit him to prison, or take a recognizance for his appearance to answer to an indictment for perjury. In such case, if the court shall deem that any paper or document produced by either party is necessary to be used in the prosecution for perjury, it may detain the same, and direct it to be delivered to the county attorney.

History: *RL s 4836 (10021)*

NOTE: See section 609.48.