

## **CHAPTER 33-22-05 EVIDENCE**

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### **33-22-05-01. Rules.**

The admissibility of evidence shall be determined generally in accordance with the practice in the district courts of this state, except to the extent that this article conflicts therewith. However the department or the hearing officer may waive the usual common law or statutory rules of evidence where such waiver is necessary to ascertain the substantial rights of the public and interested parties. When objection is made to the admissibility of evidence, the hearing officer shall receive such evidence subject to later ruling by the department.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-06, 28-32-18

### **33-22-05-02. Witnesses.**

Witnesses will be orally examined under oath before the department or hearing officer. Testimony may also be taken by deposition as provided in subdivision b of subsection 2 of section 33-22-04-02. Written testimony of any witness may be received when properly supported by the oral testimony of its author.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-02

### **33-22-05-03. Subpoena.**

Subpoenas for the attendance of witnesses or for the production of documentary evidence, unless directed by the department upon its own motion, will issue only upon application in writing to the department, or to the hearing officer, except that during a hearing such application may be made orally on the record before the hearing officer who shall have the authority to determine the relevancy and the materiality of the evidence sought and to issue such subpoenas if warranted. Written application shall specify the general relevance and materiality of the testimony or documentary evidence sought, including, as to documentary evidence, specifications as nearly as may be of the documents desired and the facts to be proved by them. The cost of serving any subpoena shall be paid by the party requesting it. Any witness who is subpoenaed under the provisions of this section and who appears at the hearing shall receive the same fees and mileage as witnesses in the district courts of this state, and such costs will be paid by the party at whose instance the witness appears. No witness fees will be allowed except on a subpoena.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-02

### **33-22-05-04. Stipulations.**

The parties to any proceeding or investigation before the department may, by stipulation in writing, filed with the department or orally entered in the record, agree upon the facts, or any portion thereof,

involved in the controversy, and any such stipulation may be received in evidence at a hearing and when so received shall be binding upon the parties with respect to the matters stipulated therein.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-02

### **33-22-05-05. Documentary evidence.**

Where relevant and material matter offered in evidence by any party is embraced in a book, paper, or a document containing other matter not material or relevant, the party must plainly designate the matter so offered. If the other matter is in such volume as would unnecessarily encumber the record, such book, paper, or document will not be received in evidence but may be marked for identification and, if properly authenticated, the relevant and material matter may be read into the record, or if the department or hearing officer directs, a true copy of such matter in proper form shall be received as an exhibit and like copies delivered by the party offering the same to all parties or their attorneys appearing at the hearing who shall be afforded an opportunity to examine the entire book, paper, or document and to offer in evidence in like manner any portions thereof found to be material and relevant. Any matter contained in a report or other official document on file with the department may be offered in evidence by merely identifying the report, document, or other file containing the matter so offered.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-06, 28-32-18

### **33-22-05-06. Exhibits.**

1. Exhibits must be on paper of good quality and so prepared as to be plainly legible and durable whether printed, typewritten, mimeographed, photographed, or otherwise, and if possible should be folded to a size not to exceed eight and one-half by fourteen inches [21.59 by 35.56 centimeters]. Whenever practicable, the sheets of each exhibit and line of each sheet should be numbered, and if the exhibit consists of five or more sheets, the first sheet or title page should contain a brief statement of what the exhibit purports to show with reference by sheet and line to illustrative or typical example contained in the exhibit. Whenever practicable, documents produced by a single witness shall be assembled and bound together suitably arranged and indexed so that they may be identified and offered as one exhibit. The source of all material contained in any exhibit should be definitely shown.
2. Two copies of each exhibit will be furnished for the use of the department whenever it shall request. Copies must also be available for all parties of record in a proceeding.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-02

### **33-22-05-07. Official notice.**

The department or the hearing officer may take notice of any fact or facts set forth in duly established regulations, annual reports, or any statistical data to which reference is made on the record at the hearing or any facts which are judicially noticed by the courts of this state.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-02