

## 29.9 Oath or Affirmation

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## 29.9 Oath or Affirmation

### A. Applicable Statutes

Before testifying, each witness must declare by oath or affirmation that he or she will testify truthfully. The oath or affirmation must be “administered in a form calculated to awaken his conscience and impress his mind with his duty to do so.” N.C. R. EVID. 603; *see also State v. James*, 322 N.C. 320 (1988). N.C. Rule of Evidence 603 “is designed to afford the flexibility required in dealing with religious adults, atheists, conscientious objectors, mental defectives, and children. Affirmation is simply a solemn undertaking to tell the truth; no special verbal formula is required.” N.C. R. EVID. 603 Official Commentary (quoting the Advisory Committee’s Note to the virtually identical Fed. R. Evid. 603).

**Solemnity required.** An oath or an affirmation must be taken and administered “with the utmost solemnity.” G.S. 11-1. The “solemnity” requirement applies both to the substance of the oath and to the form and manner of taking and administering it. *State v. Davis*, 69 N.C. 383 (1873).

**Form of oath.** When taking an oath, the witness is required to “lay his hand upon the Holy Scriptures.” G.S. 11-2. If a witness has a conscientious objection to laying his or her hand on the “Holy Gospel,” the witness may stand with his or her “right hand lifted up towards heaven” while taking the oath in accordance with G.S. 11-3.

There has been some controversy about the meaning of the “Holy Scriptures” and whether G.S. 11-2 allows witnesses to swear on other religious texts. The issue has not been resolved definitively, but in an appropriate case the N.C. appellate courts may rule that a witness (or juror) has the right to swear on a religious text other than the Bible. In *ACLU of N.C., Inc. v. State*, 181 N.C. App. 430 (2007), the plaintiffs sought a declaratory judgment that the term “Holy Scriptures” in G.S. 11-2 referred not only to the Bible but also to other religious texts, including the Quran. In the alternative, plaintiffs sought a declaratory judgment that the statute was unconstitutional under the U.S. and N.C. Constitutions. The trial judge dismissed the plaintiffs’ case for lack of a justiciable controversy, and the plaintiffs appealed. The Court of Appeals reversed the trial judge’s dismissal and remanded, holding that the case was justiciable under the Declaratory Judgment Act and “allowing ACLU-NC to obtain from the court an interpretation of N.C.G.S. § 11-2 and the rights of its members under the statute.” *Id.* at 435. On remand, the superior court judge declined to declare that the term

“Holy Scriptures” in G.S. 11-2 included texts other than the Bible and also declined to find that G.S. 11-2 was unconstitutional. He did find, however, that under North Carolina’s common law and precedent of the N.C. Supreme Court, oaths can be administered on sacred texts other than the Bible. See [ACLU of N.C., Inc. v. State](#), No. 05 CVS 9872 (N.C. Super. Ct., Wake County, May 24, 2007).

For further discussion of oaths to tell the truth, see Eugene R. Milhizer, *So Help Me Allah: An Historical and Prudential Analysis of Oaths as Applied to the Current Controversy of the Bible and Quran in Oath Practices in America*, 70 OHIO ST. L.J. 1 (2009).

**Form of affirmation.** A witness in a criminal case must swear that that he or she will tell “the truth, the whole truth, and nothing but the truth; so help [me] God.” G.S. 11-11. If a witness has “conscientious scruples” against taking an oath with the “Holy Scriptures” or with his or her hand lifted up towards heaven, the witness may be “affirmed” instead. The witness will “affirm” instead of “swear” and the words “so help me God” will be deleted. G.S. 11-4.

## **B. Constitutional Implications**

A defendant is entitled to have the testimony offered against him or her given under sanction of oath or affirmation as a part of his or her constitutional right of confrontation. *State v. Robinson*, 310 N.C. 530 (1984); see also *California v. Green*, 399 U.S. 149, 158 (1970) (the right to confront “insures that the witness will give his statements under oath—thus impressing him with the seriousness of the matter and guarding against the lie by the possibility of a penalty for perjury”).

## **C. Interpreters**

Interpreters are subject to the provisions of N.C. Rule of Evidence 603 and must make an oath or affirmation stating that they will make a true translation. N.C. R. EVID. 604; see also G.S. 8B-7 (specific oath for interpreters for deaf persons).

## **D. Preservation of Issue for Appeal**

If a witness (or interpreter) offers testimony without being sworn or affirmed, a defendant must object or he or she waives the right to raise the issue on appeal. *State v. Robinson*, 310 N.C. 530, 540 (1984) (noting that the rationale for this rule is that if a defendant objects, the trial judge can “correct[] the oversight by putting the witness under oath and allowing him to redeliver his testimony, if necessary” and that “it would be detrimental to public justice to allow a defendant to remain silent, awaiting the chances of an acquittal, and, if disappointed in the result, fall back upon a reserved objection.”) (citation omitted); see also *State v. Beane*, 146 N.C. App. 220, 225 (2001) (“Despite the constitutional nature of the oath requirement, our appellate courts have consistently held that where the trial court fails to administer the oath to a witness, the defendant’s failure to object waives appellate review of the court’s error.”). However, if the judge’s decision not to administer an oath is deliberate, a defendant is not completely barred from raising the issue on appeal by failing to object. An

objection under those circumstances would not have prompted the trial judge to take corrective action so plain error review is appropriate in that situation. *See Beane*, 146 N.C. App. 220.

### **E. Additional Resources**

For additional discussion of oaths and affirmations, see 1 KENNETH S. BROUN, BRANDIS & BROUN ON NORTH CAROLINA EVIDENCE § 146 (oaths of witnesses), § 147 (interpreters) (8th ed. 2018), and WALKER JAMESON BLAKEY, DEAN P. LOVEN & GLEN WEISSENBERGER, NORTH CAROLINA EVIDENCE: 2017 COURTROOM MANUAL Ch. 603, at 411–12 (oath or affirmation), and Ch. 604, at 413–15 (interpreters) (2017).