

**WYANDOTTE NATION**  
**TITLE 8**  
**EVIDENCE CODE**  
(APPROVED BY THE BOARD OF DIRECTORS 07-09-2024)

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**WYANDOTTE NATION  
TITLE 8  
EVIDENCE CODE**

**CHAPTER ONE  
GENERAL PROVISIONS**

**Section 101. Citation.**

This Title may be cited as the “Evidence Code” of the Wyandotte Nation.

**Section 102. Scope and Applicability.**

(a) This title governs evidentiary questions in all civil, criminal and juvenile proceedings in the Courts of the Wyandotte Nation, except as may be otherwise specifically provided by the law of the Nation, provided, that the Court may in its discretion relax the requirements regarding leading questions contained in Section 611(c), the requirements regarding hearsay contained in Sections 801-806, and the requirements concerning use of original documents contained in Section 1002 herein, when such relaxation of standards will serve the interests of justice and will not be unduly prejudicial to the other party in cases tried by a jury, in the following circumstances: to facilitate the resolution of civil disputes in cases in which neither party is represented by an attorney; to allow the introduction of evidence by a party unrepresented by an attorney in a civil case in which the other party is represented by an attorney; and to allow the introduction of evidence by a defendant who is unrepresented by an attorney in a criminal case.

(b) This Title applies to all criminal and civil controversies arising from any transaction or circumstance occurring on land which lies within the reservation of the Nation and to all other criminal or civil controversies which are subject to the lawful jurisdiction of the Courts of the Nation.

(c) This Title applies generally to civil actions and proceedings, to criminal actions and proceedings, and to contempt proceedings except those in which the Court may act summarily.

(d) Chapter Five of this Title pertaining to privileges applies to all stages of actions, cases and proceedings.

(e) This Title (other than with respect to privilege) does not apply in the following situations:

(1) When the Court must make preliminary findings of fact in order to rule on the admissibility of evidence under Section 104.

(2) Proceedings for extradition, preliminary examinations and arraignments in criminal cases, sentencing, granting or revoking parole or probation, issuance of warrants for arrest, criminal summonses, and search warrants, the dispositional phase of juvenile proceedings, and proceedings with respect to release on bail or otherwise.

(f) Any evidentiary questions not herein addressed in this Title, other laws of the Wyandotte Nation or the Rules of the Court, shall be resolved by use of the Federal Rules of Evidence.

### **Section 103. Purpose and Construction.**

This Title shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence, to the end of ascertaining the truth and securing a just determination.

### **Section 104. Rulings on Evidence.**

(a) Error may not be predicated, nor a judgment reversed or modified, upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and:

(1) In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) In case the ruling is one excluding evidence, the substance of the evidence was made known to the Court by offer of proof, or was apparent from the context within which questions were asked.

(b) Once the Court rules definitively on the record – either before or at trial – a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

(c) The Court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(d) In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury. Questions on evidentiary matters known to be in issue prior to trial may be determined by a hearing prior to trial, and the matter does not have to be raised at the trial by the party whose evidence is ruled inadmissible in order to preserve the error so long as the error is apparent from the transcript of the hearing. Questions which arise concerning the admissibility of evidence during the trial may be resolved in one of the following ways: (1) at a hearing in open court, if practicable; (2) at a hearing at the bench out of the hearing of the jury, if practicable; or (3) at a hearing held out of the hearing of the jury during recess.

(e) Nothing in this Section precludes the Court from taking notice of plain errors affecting a substantial right, even if the claim of error was not properly preserved.

### **Section 105. Preliminary Questions.**

(a) Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the Court, subject to the provisions of subsection (b). In making its determination the Court is not bound by this Title except those provisions with respect to privileges.

(b) When the relevancy of evidence depends upon the fulfillment of a condition of fact, the Court shall admit it upon, or may admit it subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) Hearings on the admissibility of confessions in a criminal case shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require or, when an accused in a criminal case is a witness, if he so requests.

(d) The accused in a criminal case does not, by testifying upon a preliminary matter, or other matter which would be heard outside the hearing of the jury, if any, subject himself to cross-examination as to other issues in the case. The accused in a criminal case waives his right against self-incrimination as to all issues in the case by testifying upon any fact pertaining to any element of the charge against him during the actual trial of the case before the jury or other finder of fact.

(e) This Section does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

#### **Section 106. Limited Admissibility.**

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the Court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

#### **Section 107. Remainder or Related Writings or Recorded Statements.**

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

## **CHAPTER TWO JUDICIAL NOTICE**

#### **Section 201. Judicial Notice of Law.**

The courts shall take judicial notice of the Constitution and laws of the Wyandotte Nation, of all applicable precedential written legal opinions by the highest court of the Wyandotte Nation, and of all applicable Federal statutes and regulations. The courts may take judicial notice of foreign laws, including the laws of other Indian tribes, states, or foreign countries, if found by the Court to be directly applicable to the case under consideration. The determination by judicial notice of the applicability and the tenor of the Constitution of the Wyandotte Nation or of any law, regulation or precedential legal opinion shall be a matter for the judge and not for the jury.

### **Section 202. Judicial Notice of Adjudicative Facts.**

- (a) This section governs only judicial notice of adjudicative facts.
- (b) A judicially noticed fact must be one not subject to reasonable dispute in that it is either:
  - (1) Generally known within the territorial jurisdiction of the court; or
  - (2) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
- (c) The courts may take judicial notice, whether requested or not.
- (d) The courts shall take judicial notice if requested by a party and supplied with the necessary information, or when required to do so by any law of the Wyandotte Nation.
- (e) Judicial notice may be taken at any stage of the proceeding.
- (f) In a civil action or proceeding, the Court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the Court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

### **Section 203. Determining the Propriety of Taking Judicial Notice.**

- (a) In determining the propriety of taking judicial notice of a matter, the Court may consult and use any source of pertinent information, whether or not furnished by a party.
- (b) A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

## **CHAPTER THREE PRESUMPTIONS**

### **Section 301. Presumptions Generally in Civil and Criminal Actions and Proceedings.**

In all civil and criminal actions and proceedings, a presumption imposes upon the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift the risk of non-persuasion, which remains upon the party on whom it was originally cast.

## **CHAPTER FOUR RELEVANCY AND ITS LIMITS**

### **Section 401. Definition of "Relevant Evidence".**

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

**Section 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible.**

All relevant evidence is admissible, except as otherwise provided by the Constitution or laws of the Nation or other rules prescribed by the Wyandotte Nation Supreme Court. Evidence which is not relevant is not admissible.

**Section 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time.**

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence, or if it is inadmissible pursuant to any provision of this Title.

**Section 404. Character Evidence Not Admissible to Prove Conduct: Exceptions: Other Crimes.**

(a) Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

(1) Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same after the accused has offered such character evidence;

(2) Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same after the accused has offered such character evidence, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor; or

(3) Evidence of the character of a witness, as provided in Sections 607, 608, and 609 of this title.

(b) Evidence of Other Crimes, Wrongs or Acts.

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. On request by a defendant in a criminal case, the prosecutor must provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial; and must do so before trial - or during trial if the Court, for good cause, excuses lack of pretrial notice.

#### **Section 405. Methods of Proving Character.**

(a) In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

#### **Section 406. Habit; Routine Practice.**

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

#### **Section 407. Subsequent Remedial Measures.**

When after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event, in order to encourage additional safety measures to be taken for the protection of the public whether or not the previous measures were sufficient to prevent a finding of negligent or culpable conduct. This section does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

#### **Section 408. Compromise and Offers to Compromise.**

In order to encourage the non-judicial settlement of disputes, evidence of (a) furnishing or offering or promising to furnish, or (b) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This section does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This section also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

#### **Section 409. Payment of Medical and Similar Expenses.**

In order to encourage non-judicial settlement of disputes and to encourage persons to assist one another for their joint benefit, evidence of furnishing or offering or promising to pay, or the payment of medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury. Evidence of payment of such charges may be introduced by the person making such payment for the purpose of reducing a judgment for damages.

**Section 410. Inadmissibility of Pleas, Offers of Pleas, and Related Statements.**

(a) Except as otherwise provided in this section, evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of any offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, a plea of nolo contendere, or an offer to plead guilty or nolo contendere to the crime charged or any other crime, is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

(b) A plea of guilty which has not been withdrawn, and statements made in connection therewith are admissible if relevant in any criminal or civil proceeding.

**Section 411. Liability Insurance.**

(a) Evidence that a person was or was not insured against liability is not admissible upon the issue whether he acted negligently or otherwise wrongfully. This section does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

(b) In the sound discretion of the Wyandotte Nation District Court, and subject to any exclusionary rule promulgated by the Wyandotte Nation Supreme Court, evidence that a person was or was not insured against liability and the limits of coverage and other relevant factors is admissible in a bifurcated jury or judge trial sounding in tort, or otherwise, in the second phase of the trial upon the issue of the amount of actual and consequential damages to be awarded, after liability has been determined in the first phase of the trial, as provided in applicable laws governing civil procedure.

**Section 412. Sex-Offense Cases: The Victim's Sexual Behavior or Predisposition.**

(a) The following evidence is not admissible in a civil or criminal proceeding involving alleged sexual misconduct:

(1) evidence offered to prove that a victim engaged in other sexual behavior; or

(2) evidence offered to prove a victim's sexual predisposition.

(b) There shall be exceptions for admissibility of the victim's sexual behavior or predisposition. They are:

(1) The Court may admit the following evidence in a criminal case:

A. evidence of specific instances of a victim's sexual behavior, if offered to prove that someone other than the defendant was the source of semen, injury, or other physical evidence;

B. evidence of specific instances of a victim's sexual behavior with respect to the person accused of the sexual misconduct, if offered by the defendant to prove consent or if offered by the prosecutor; and

C. evidence whose exclusion would violate the defendant's constitutional rights.

(2) In a civil case, the Court may admit evidence offered to prove a victim's sexual behavior or sexual predisposition if its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. The Court may admit evidence of a victim's reputation only if the victim has placed it in controversy.

(c) Procedure to Determine Admissibility.

(1) Motion. If a party intends to offer evidence under Section 412(b), the party must:

A. File a motion that specifically describes the evidence and states the purpose for which it is to be offered;

B. Do so at least fourteen (14) days before trial unless the Court, for good cause, sets a different time;

C. Serve the motion on all parties; and

D. Notify the victim or, when appropriate, the victim's guardian or representative.

(2) Hearing. Before admitting evidence under this rule, the Court must conduct an in camera hearing and give the victim and parties a right to attend and be heard. Unless the Court orders otherwise, the motion, related materials, and the record of the hearing must be and remain sealed.

(d) In this Section, "victim" includes an alleged victim.

### **Section 413. Similar Crimes in Sexual-Assault Cases.**

(a) In a criminal case in which a defendant is accused of a sexual assault, the Court may admit evidence that the defendant committed any other sexual assault. The evidence may be considered on any matter to which it is relevant.

(b) If the prosecutor intends to offer this evidence, the prosecutor must disclose it to the defendant, including witnesses' statements or a summary of the expected testimony. The prosecutor must do so at least fifteen (15) days before trial or at a later time that the Court allows for good cause.

(c) This Section does not limit the admission or consideration of evidence under any other section.

(d) In this Section and Section 415, "sexual assault" means a crime under tribal law, Federal law or state law involving:

- (1) any conduct prohibited by 18 U.S.C. chapter 109A;
- (2) contact, without consent, between any part of the defendant's body - or an object - and another person's genitals or anus;
- (3) contact, without consent, between the defendant's genitals or anus and any part of another person's body;
- (4) deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on another person; or
- (5) an attempt or conspiracy to engage in conduct described in subparagraphs (1)–(4).

**Section 414. Similar Crimes in Child Molestation Cases.**

(a) In a criminal case in which a defendant is accused of child molestation, the Court may admit evidence that the defendant committed any other child molestation. The evidence may be considered on any matter to which it is relevant.

(b) If the prosecutor intends to offer this evidence, the prosecutor must disclose it to the defendant, including witnesses' statements or a summary of the expected testimony. The prosecutor must do so at least fifteen (15) days before trial or at a later time that the Court allows for good cause.

(c) This Section does not limit the admission or consideration of evidence under any other section.

(d) In this Section and Section 415:

- (1) "child" means a person below the age of sixteen (16); and
- (2) "child molestation" means a crime under tribal law, Federal law or under state law involving:
  - A. any conduct prohibited by 18 U.S.C. chapter 109A and committed with a child;
  - B. any conduct prohibited by 18 U.S.C. chapter 110;
  - C. contact between any part of the defendant's body — or an object — and a child's genitals or anus;
  - D. contact between the defendant's genitals or anus and any part of a child's body;
  - E. deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on a child; or

F. an attempt or conspiracy to engage in conduct described in subparagraphs (A)–(E).

**Section 415. Similar Acts in Civil Cases Involving Sexual Assault or Child Molestation.**

(a) In a civil case involving a claim for relief based on a party's alleged sexual assault or child molestation, the Court may admit evidence that the party committed any other sexual assault or child molestation. The evidence may be considered as provided in Sections 413 and 414.

(b) If a party intends to offer this evidence, the party must disclose it to the party against whom it will be offered, including witnesses' statements or a summary of the expected testimony. The party must do so at least fifteen (15) days before trial or at a later time that the Court allows for good cause.

(c) This Section does not limit the admission or consideration of evidence under any other Section.

**CHAPTER FIVE  
PRIVILEGES**

**Section 501. Privileges Recognized Only as Provided.**

Except as otherwise provided by the Constitution or laws of the Nation, or as may be required by Federal law, no person has a privilege to:

1. Refuse to be a witness;
2. Refuse to disclose any matter;
3. Refuse to produce any object or writing; or
4. Prevent another from being a witness or disclosing any matter or producing any object or writing.

**Section 502. Lawyer-Client Privilege.**

(a) As used in this section, the following definitions apply:

(1) A "client" is a person, public officer, or corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from the lawyer.

(2) A "representative of the client" is an individual having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client.

(3) A "lawyer" is a person authorized, or reasonably believed by the client to be authorized, to engage in the practice of law by any Indian tribe, or state, or nation.

(4) A "representative of the lawyer" is an individual employed by the lawyer to assist the lawyer in the rendition of professional legal services.

(5) A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the retention of professional legal services to the client or those reasonably necessary for the transmission of the communication, including close relatives who assist the client in obtaining legal counsel and whom the client requests to be present during discussions with the lawyer for the purpose of obtaining representation.

(b) A client has a privilege to refuse to disclose and to prevent any other person from disclosing the following types of confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(1) Communications between himself or his representative and his lawyer or his lawyer's representative;

(2) Communications between his lawyer and the lawyer's representative;

(3) Communications by him or his representative or his lawyer or a representative of the lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

(4) Communications between representatives of the client or between the client and a representative of the client; and

(5) Communications among lawyers and their representatives representing the same client.

(c) The privilege may be claimed by the client, his guardian or conservator or close relative who assists in obtaining legal representation, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, other organization, whether or not in existence. The person who was the lawyer or the lawyer's representative at the time of the communication is presumed to have authority to claim the privilege on behalf of the client.

(d) There is no privilege under this section in the following circumstances:

(1) If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

(2) As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;

(3) As to a communication relevant to an issue of breach of duty by the lawyer to his client or by the client to his lawyer;

(4) As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness;

(5) As to a communication relevant to a matter of common interest between or among two (2) or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between or among any of the clients; or

(6) As to a communication between a public officer or agency and its lawyers unless the communication concerns a pending or contemplated investigation, claim, or action and the Court determines that disclosure will seriously impair the ability of the public officer or agency to process the claim or conduct a pending investigation, litigation, or proceeding in the public interest. Communications of or by the Nation's Attorney General or other legal counsel are not within this exception unless such communications have been released for public information by appropriate officials of the Nation.

### **Section 503. Physician and Psychotherapist - Patient Privilege.**

(a) As used in this section, the following definitions apply:

(1) A "patient" is a person who consults or is examined or interviewed by a physician or psychotherapist.

(2) A "physician" is an Indian medicine man or Indian doctor or other person authorized to practice medicine or the healing arts by any Indian tribe, or state, or nation, or reasonably believed by the patient so to be.

(3) A "psychotherapist" is:

A. An Indian medicine man or Indian doctor or other person authorized to practice medicine or the healing arts by any Indian tribe, or state, or nation, or reasonably believed by the patient so to be, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, or

B. A person licensed or certified as a psychologist under the laws of any Indian tribe, or state, or nation, while similarly engaged.

(4) A communication is "confidential" if not intended to be disclosed to third persons, except persons present to further the interest of the patient 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 physician or psychotherapist, including members of the patient's family.

(b) A patient 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 his physical, mental or emotional condition, including alcohol or drug addiction, among himself, his physician

or psychotherapist, and persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

(c) The privilege may be claimed by the patient, his guardian or conservator, or the personal representative of a deceased patient. The person who was the physician or psychotherapist at the time of the communication, and any other persons directly involved in treatment sessions, are presumed to have authority to claim the privilege but only on behalf of the patient.

(d) There is no privilege under this section for communications relevant to an issue in proceedings to hospitalize the patient for mental illness, if the physician or psychotherapist in the course of diagnosis or treatment has determined that the patient is in need of hospitalization.

(e) If the Court orders an examination of the physical, mental or emotional condition of a patient, whether a party or a witness, communications made in the course thereof are not privileged under this section with respect to the particular purpose for which the examination is ordered unless the Court orders otherwise.

(f) There is no privilege under this section as to a communication relevant to an issue of the physical, mental or emotional condition of the patient in any proceeding in which he relies upon the condition as an element of his claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of his claim or defense.

#### **Section 504. Husband and Wife Privilege.**

(a) A communication is confidential if it is made privately by any person to his or her spouse and is not intended for disclosure to any other person.

(b) An accused in a criminal proceeding has a privilege to prevent his spouse from testifying as to any confidential communication between the accused and the spouse.

(c) There is no privilege under this section in the following cases:

(1) There is no privilege in a proceeding for legal separation or divorce between the parties when the communication is relevant to the issues in such action or divorce, provided that testimony received pursuant to this exception may not be used or referred to in any other proceeding between either the husband or wife and third persons, except in an action brought by the Nation to protect a child subject to abuse, neglect, or other cause which is sufficient to maintain a juvenile court action.

(2) There is no privilege in a proceeding in which one spouse is charged with a crime against the person or property of the other, a child of either, a person residing in the household of either, or a third person committed in the course of committing a crime against any of them.

#### **Section 505. Religious Privilege.**

(a) As used in this Section, the following definitions apply:

(1) A "clergyman" is a minister, priest, rabbi, accredited Christian Science practitioner, Native American Church roadman, Indian doctor or medicine man, properly authorized traditional grounds leader or firekeeper, or other similar functionary of a religious organization of a recognized active traditional Indian religion, or an individual reasonably believed so to be the person consulting him.

(2) A communication is "confidential" if made privately and not intended for further disclosure except to other persons present or to other persons to whom disclosure would be privileged under this Title if the disclosure had been made directly to such other person in furtherance of the purpose of the communication.

(b) A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman in his professional character as spiritual adviser.

(c) The privilege may be claimed by the person, by his guardian or conservator, or by his personal representative if he is deceased. The person who was the clergyman at the time of the communication is presumed to have authority to claim the privilege, but only on behalf of the communicant.

#### **Section 506. Political Vote.**

(a) Every person has a privilege to refuse to disclose the tenor of his vote at any political election conducted by secret ballot.

(b) This privilege does not apply if the Court finds that the vote was cast illegally or determines that the disclosure should be compelled pursuant to the election laws of the Nation.

#### **Section 507. Trade Secrets.**

A person has a privilege, which may be claimed by him or his agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by him, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. If disclosure is directed, the Court shall take such protective measures as the interest of the holder of the privilege and of the parties and the interests of justice require.

#### **Section 508. Secrets of the Tribal Government and Other Official Information: Governmental Privileges.**

(a) If the law of the United States creates a governmental privilege that the courts of this Nation must recognize under the Constitution and statutes of the United States, the privilege may be claimed as provided by the law of the United States. No other special governmental privilege is recognized except as created by the Constitution or statutes of the Wyandotte Nation, including this Title.

(b) The following governmental privileges are recognized:

(1) Elected members of the Board of Directors have a privilege against disclosure of their mental processes and reasoning in the casting of any vote by them at a duly constituted meeting of that body, except in cases where it is alleged that unlawful influence or bribery or attempted bribery was involved in that vote. This privilege may be claimed only by the member and is waived if the member testifies as to such matters.

(2) Justices, Judges and other duly appointed judicial officials have a privilege against disclosure of their mental processes and reasoning in the determination of any matter before them and in any proceeding collateral to that matter, except in a collateral proceeding where it is alleged that unlawful influence or bribery or attempted bribery was involved in the underlying matter. The explanation and reasons for the decision of judicial officers which should appear on the record shall be sufficient. This section shall not preclude the Supreme Court of the Nation from remanding an action to a judge for further findings of fact or conclusions of law in order to obtain an adequate record for review or to determine all issues necessary to a decision in a case.

(3) Officers of the Nation charged with the institution of legal proceedings before any agency or courts of the Nation to enforce the laws of the Nation have a privilege against disclosure of their mental processes and reasoning in the determination of any matter brought before them for a decision as to whether or not to institute such legal proceedings.

(c) If a claim of governmental privilege is sustained and it appears that a party is thereby deprived of material evidence, the Court shall make any further orders the interests of justice require, including striking the testimony of a witness, declaring a mistrial, finding against the government upon an issue as to which the evidence is relevant, or dismissing the action.

#### **Section 509. Identity of Informer.**

(a) The Nation, the United States, or a state, or subdivision thereof having police powers has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(b) The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished.

(1) The following are exceptions to the informant privilege:

(2) No privilege exists under this section if the identity of the informer or his interest in the subject matter of his communication has been disclosed to those who would have cause to resent or be adversely affected by the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the government.

(3) If it appears in the case that an informer may be able to give testimony relevant to any issue in a criminal case or to a fair determination of a material issue on the merits in a civil case to

which a public entity is a party, and the informed public entity invokes the privilege, the Court shall give the public entity an opportunity to show in camera facts relevant to determining whether the informer can, in fact, supply that testimony. The showing will ordinarily be in the form of affidavits, but the Court may direct that testimony be taken if it finds that the matter cannot be resolved satisfactorily upon affidavit. If the Court finds that there is a reasonable probability that the informer can give the testimony, and the public entity elects not to disclose his identity, in criminal cases the Court on motion of the defendant, or on its own motion, shall grant appropriate relief, which may include one or more of the following: requiring the prosecuting attorney to comply with a defense request for relevant information, granting the defendant additional time or a continuance, relieving the defendant from making disclosures otherwise required of him, prohibiting the prosecuting attorney from introducing specific evidence, and dismissing charges. In civil cases, the Court may make any order the interests of justice require. Evidence submitted to the Court in camera shall be sealed and preserved to be made available to the Supreme Court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the informed public entity. All counsel and parties are permitted to be present at every stage of proceedings under this subdivision except a showing in camera at which no counsel or party shall be permitted to be present.

**Section 510. Waiver of Privilege by Voluntary Disclosure.**

A person upon whom this Title confers a privilege against disclosure waives the privilege if he or his predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter. This section does not apply if the disclosure itself is privileged.

**Section 511. Privileged Matter Disclosed Under Compulsion or without Opportunity to Claim Privilege.**

A claim of privilege is not defeated by a disclosure which was compelled erroneously or made without opportunity to claim the privilege.

**Section 512. Comment Upon and Inference From Claim of Privilege; Instruction.**

(a) The claim of a privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel. No inference may be drawn therefrom.

(b) In jury cases, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.

(c) Upon request, any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom.

**CHAPTER SIX  
WITNESSES**

**Section 601. General Rules of Competency.**

Every person is competent to be a witness except as otherwise provided in this Title or other relevant law of the Nation.

**Section 602. Lack of Personal Knowledge.**

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness himself. This section is subject to the provisions of Section 703, relating to opinion testimony by expert witnesses.

**Section 603. Oath or Affirmation.**

Before testifying, every witness shall be required to declare that he will testify truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress his mind with his duty to do so.

**Section 604. Interpreters.**

An interpreter is subject to the provisions of this Title relating to qualification as an expert and the administration of an oath or affirmation that he will make a true translation.

**Section 605. Competency of Judge as Witness.**

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the issue.

**Section 606. Competency of Juror as Witness.**

(a) A member of the jury may not testify as a witness before that jury in the trial of the case in which he is sitting as a juror. If he is called to testify the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or concerning his mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention, whether the jury determined the verdict, amount of damages, sentence or other matter relevant to a determination of the issues in the case by flipping a coin or other method determined purely by chance, or whether any outside influence was improperly brought to bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes.

**Section 607. Who May Impeach.**

The credibility of a witness may be attacked by any party, including the party calling him.

**Section 608. Evidence of Character and Conduct of Witness.**

(a) The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations:

(1) The evidence may refer only to character for truthfulness or untruthfulness; and

(2) Evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility, other than conviction of crime as provided in Section 609, may not be proved by extrinsic evidence. Specific instances of conduct may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness:

(1) Concerning his character for truthfulness or untruthfulness; or

(2) Concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

(c) The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of his privilege against self-incrimination when examined with respect to matters which relate only to credibility.

**Section 609. Impeachment by Evidence of Conviction of Crime.**

(a) For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime shall be admitted if elicited from him or established by public record during cross-examination but only if the crime:

(1) Was punishable by death or imprisonment in excess of one year under a Federal or state law, under which he was convicted, and the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the defendant (if it is the defendant in a criminal case whose credibility is being questioned); or

(2) Involved dishonesty or false statement, regardless of the punishment or jurisdiction involved; or

(3) Was punishable by banishment or imprisonment for six (6) months, or is otherwise classified as a serious offense under the laws of an Indian nation in whose courts the conviction was obtained.

(b) Evidence of a conviction under this section is not admissible if a period of more than ten (10) years has lapsed since the date of the conviction or of the release of the witness from the

confinement or other punishment imposed for that conviction, whichever is the later date, unless the Court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than ten (10) years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence. Subject to subsection (c) of this Section and the discretion of the Court, such convictions are admissible if other admissible convictions not ten (10) years old as calculated herein have occurred since the conviction in question.

(c) Evidence of a conviction is not admissible under this Section if:

(1) The conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which would be admissible under subparagraph (a) above; or

(2) The conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) Evidence of juvenile adjudications is generally not admissible under this Section. The Court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness, other than the accused, if conviction of the offense would be admissible to attack the credibility of an adult and the Court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence of the accused.

(e) The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible when evidence of the underlying convictions in the case has been introduced.

#### **Section 610. Religious Beliefs or Opinions.**

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reasons of their nature his credibility is impaired or enhanced.

#### **Section 611. Mode and Order of Interrogation and Presentation.**

(a) The Court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

- (1) Make the interrogation and presentation effective for the ascertainment of the truth;
- (2) Avoid needless consumption of time; and
- (3) Protect witnesses from unnecessary harassment or undue embarrassment.

(b) Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The Court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

(c) A leading question is ordinarily a question which calls for a yes or no answer. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop his testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a child of young age, or other person who may have significant trouble understanding questions due to age, infirmity, lack of understanding of the English language, or other cause, a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

#### **Section 612. Writing Used to Refresh Memory.**

(a) If a witness uses a writing to refresh his memory either while testifying or before testifying, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness.

(b) If it is claimed that the writing contains matters not related to the subject matter of the testimony, the Court shall examine the writing in camera, excise any portions not so related and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the Supreme Court in the event of an appeal. If a writing is not produced or delivered pursuant to order of the Court under this Section, the Court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the Court may declare a mistrial.

#### **Section 613. Prior Statements of Witnesses.**

(a) In examining a witness concerning a prior statement made by him, whether written or not, the statement need not be shown nor its contents disclosed to him at that time, but on request the same shall be shown or disclosed to opposing counsel.

(b) Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded in opportunity to explain or deny the same and the opposing party is afforded an opportunity to interrogate him thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party opponent as defined in Section 801(d) (2).

#### **Section 614. Calling and Interrogation of Witnesses by Court.**

(a) The Court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(b) The Court may interrogate witnesses, whether called by itself or by a party.

(c) Objections to the calling of witnesses by the Court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present. Ordinarily, the Court should exercise its authority to call or question witnesses with great restraint in a jury trial.

**Section 615. Exclusion of Witnesses.**

At the request of a party the Court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This request may be made by a party by requesting that the Court "invoke the rule" or words of similar import. This rule does not authorize exclusion of the following:

- (1) A party who is a natural person;
- (2) An officer or employee of a party, designated as its representative by its attorney, when the party is not a natural person; or
- (3) A person whose presence is shown by a party to be essential to the presentation of his cause.

**CHAPTER SEVEN  
OPINIONS AND EXPERT TESTIMONY**

**Section 701. Opinion Testimony by Lay Witnesses.**

If the witness is not testifying as an expert, his testimony in the form of opinion or inferences is limited to those opinions or inferences which are:

- (1) Rationally based on the perception of the witness;
- (2) Helpful to a clear understanding of his testimony or the determination of a fact in issue;  
and
- (3) Upon a subject which it is presumed that the general public has sufficient knowledge to reach a reasonable opinion, conclusion, or inference.

**Section 702. Testimony by Experts.**

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

**Section 703. Bases of Opinion Testimony by Experts.**

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied

upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

**Section 704. Opinion on Ultimate Issue.**

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

**Section 705. Disclosure of Facts or Data Underlying Expert Opinion.**

(a) The expert may testify in terms of opinion or inference and give his reasons therefore without prior disclosure of the underlying facts or data, unless the Court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

(b) In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.

**Section 706. Court Appointed Experts.**

(a) The Court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The Court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the Court unless he consents to act. A witness so appointed shall be informed of his duties by the Court in writing, a copy of which shall be filed with the Clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of his findings, if any; his deposition may be taken by any party; and he may be called to testify by the court or any party. He shall be subject to cross-examination by each party, including a party calling him as a witness.

(b) Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. The compensation thus fixed is payable from the Court Fund, said fund to be reimbursed by the parties in such proportion and at such time as the Court directs, and thereafter charged in like manner as other costs.

(c) In the exercise of its discretion, the Court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

(d) Nothing in this section limits the parties in calling expert witnesses of their own selection.

**CHAPTER EIGHT  
HEARSAY**

**Section 801. Definitions of Hearsay.**

The following definitions apply under this chapter:

(a) A "Statement" is defined as:

(1) an oral or written assertion; or

(2) Non-verbal conduct of a person, if it is intended by him as an assertion.

(b) A "declarant" is a person who makes a statement.

(c) "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. This section generally includes affidavits and notarized statements unless made admissible by one of the rules under this Title.

(d) A statement is not hearsay if:

(1) The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

A. inconsistent with his testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or

B. consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive, or

C. one of identification of a person or object made after perceiving him or it; or

(2) The statement is offered against a party and is:

A. his own statement, in either his individual or a representative capacity, or

B. a statement of which he has manifested his adoption or belief in its truth, or

C. a statement by a person authorized by him to make a statement concerning the subject, or

D. a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship, or

E. a statement by a co-conspirator of a party during and in furtherance of the conspiracy.

The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of relationship under (D); or the existence of the conspiracy or participation in it under (E).

## **Section 802. Hearsay Rule.**

Hearsay is not admissible except as provided by this Title or by other laws of the Nation.

## **Section 803. Hearsay Exceptions; Availability of Declarant Immaterial.**

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Present Sense Impression - A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter, is admissible.

(2) Excited Utterance - A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition is admissible.

(3) Then Existing Condition - A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health) is admissible, provided that a statement of memory or belief to prove the fact remembered or believed is inadmissible unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) Medical Diagnosis or Treatment - Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment are admissible.

(5) Recorded Recollection - A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect that knowledge correctly is admissible. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) Records of Regularly Conducted Activity - A memorandum, report, record, or data compilation, in any form, concerning acts, events, conditions, opinions, or diagnoses, made at or near the time by or from information transmitted by a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness is admissible, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) Absence of Entry in Records - Evidence that a matter is not included in the memoranda reports, records, or data compilations, in any form, kept in accordance with the provisions of

Subsection (6), is admissible to prove the non-occurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) Public Records and Reports - Records, reports, statements, or data compilations, in any form, of public offices or agencies, are admissible if they set forth:

A. The activities of the office or agency; or

B. Matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel; or

C. Factual findings resulting from an investigation made pursuant to authority granted by law in civil actions and proceedings and against the government in criminal cases, unless the sources of information or other circumstances indicate lack of trustworthiness.

(9) Records of Vital Statistics - Records or data compilations, in any form, of birth, fetal deaths, deaths, or marriages are admissible, if the report thereof was made to a public office pursuant to requirements of law.

(10) Absence of Public Record or Entry - To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence is admissible in the form of a certification in accordance with section 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) Records of Religious Organizations - Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood, marriage, or other similar acts of personal or family history, contained in a regularly kept record of a religious organization, are admissible.

(12) Marriage; Baptismal; and Similar Certificates - Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter, are admissible.

(13) Family Records - Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like, are admissible.

(14) Records of Documents Affecting an Interest in Property - The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have

been executed is admissible, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) Statements in Documents Affecting an Interest in Property - A statement contained in a document purporting to establish or affect an interest in property is admissible, if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) Statements in Ancient Documents - Statements in a document in existence twenty (20) years or more, the authenticity of which is established, are admissible.

(17) Market Reports Commercial Publications - Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations are admissible.

(18) Learned Treatises - To the extent called to the attention of an expert witness upon cross-examination, or relied upon by him in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science, or statements established as a reliable authority by the testimony or admission of the witness or by other expert witness or by judicial notice, are admissible. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) Reputation Concerning Personal or Family History - Reputation among members of his family by blood, adoption, or marriage, or among his associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of his personal or family history are admissible.

(20) Reputation Concerning Boundaries or General History - Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the Nation or community or the State of Oklahoma or the United States of America are admissible.

(21) Reputation as to Character - Reputation of a person's character among his associates or in the community is admissible.

(22) Judgment of Previous Conviction - Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime or offense, is admissible to prove any fact essential to sustain the judgment in the criminal case as against persons in any civil case, but not against the accused in a criminal case. The pendency of an appeal may be shown but does not affect admissibility.

(23) Judgments Involving Personal, Family, or General History, or a Boundary - A judgment that is admitted to prove a matter of personal, family or general history, or boundaries,

is admissible if the matter was essential to the judgment and could be proved by evidence of reputation.

(24) Other Exceptions - A statement not specifically covered by any of the foregoing exceptions, but having equivalent circumstantial guarantees of trustworthiness, is admissible if the Court determines that:

A. The statement is offered as evidence of a material fact;

B. The statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and

C. The general purposes of this title and the interests of justice will best be served by admission of the statement into evidence. A statement may not be admitted under this exception unless the proponent of it makes known to the adverse party in writing sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

#### **Section 804. Hearsay Exceptions; Declarant Unavailable.**

(a) "Unavailability as a witness" includes situations in which the declarant:

(1) Is exempted by ruling of the Court on the ground of privilege from testifying concerning the subject matter of his statement; or

(2) Persists in refusing to testify concerning the subject matter of his statement despite an order of the Court to do so; or

(3) Testifies to a lack of memory of the subject matter of his statement; or

(4) Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) Is absent from the hearing and the proponent of his statement has been unable to procure his attendance (or in the case of a hearsay exception under subdivision (1) (2), (3), or (4), his attendance or testimony) by process or other reasonable means.

A declarant is not available as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying.

(b) The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding is

admissible, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that his death was imminent, concerning the cause or circumstances of what he believed to be his impending death, is admissible.

(3) A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject him to civil or criminal liability, or to render invalid a claim by him against another, that a reasonable man in his position would not have made the statement unless he believed it to be true, is admissible, provided that a statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) Statement of personal or family history is admissible if:

A. The statement concerns the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or

B. The statement concerns the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness is admissible, if the Court determines that:

A. The statement is offered as evidence of a material fact;

B. The statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and

C. The general purposes of this title and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party in writing sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

(6) A statement offered against a party that wrongfully caused – or acquiesced in wrongfully causing – the declarant's unavailability as a witness, and did so intending that result, is admissible.

### **Section 805. Hearsay Within Hearsay.**

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in this Title.

### **Section 806. Attacking and Supporting Credibility of Declarant.**

When a hearsay statement, or a statement defined in Section 801(d) (2) (C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with his hearsay statement, is not subject to any requirement that he be afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine him on the statement as if under cross-examination.

## **CHAPTER NINE AUTHENTICATION AND IDENTIFICATION**

### **Section 901. Requirement of Authentication or Identification.**

(a) The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this section:

- (1) Testimony that a matter is what it is claimed to be;
- (2) Non-expert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the current litigation;
- (3) Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated;
- (4) Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances;
- (5) Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstance connecting it with the alleged speaker;
- (6) Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if:

A. in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or

B. in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone;

(7) Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) Evidence that a document or data compilation, in any form:

A. is in such condition as to create no suspicion concerning its authenticity,

B. was in a place where it, if authentic, would be likely to be, and

C. has been in existence twenty (20) years or more at the time it is offered.

(9) Evidence describing a process or system and showing that it produces an accurate result.

(10) Any method of authentication or identification provided by law of the Nation.

#### **Section 902. Self-Authentication.**

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) A document bearing a seal purporting to be that of the United States, or of any Indian Nation, State, District, Commonwealth, territory, or insular possession thereof, the former Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency of any of these entities, and a signature purporting to be an attestation or execution;

(2) A document purporting to bear the signature in his official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine;

(3) A document purporting to be executed or attested in his official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position of the executing or attesting person or of any foreign official whose certificate of genuineness of signature and official position related to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign county assigned or

accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the Court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification;

(4) A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with subsection (1), (2), or (3) of this section or complying with any law of the Nation;

(5) Books, pamphlets, or other publications purporting to be issued by public authority;

(6) Printed materials purporting to be newspapers or periodicals;

(7) Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin;

(8) Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments or administer oaths;

(9) Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law;

(10) Any signature, document, or other matter declared by law of the Nation;

### **Section 903. Subscribing Witness's Testimony Unnecessary.**

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction governing the validity of the writing.

## **CHAPTER TEN CONTENTS OF WRITINGS, RECORDINGS AND PHOTOGRAPHS**

### **Section 1001. Definitions.**

For the purpose of this chapter the following definitions are applicable:

(a) "Writings" and "recordings" consist of letters, words, or numbers or their equivalent, set down by handwriting, typewriting, printing, photo stating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(b) "Photographs" include still photographs, X-ray films, video tapes, and motion pictures, or any photographic image or its equivalent stored in any form.

(c) An "Original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "Original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "Original".

(d) A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original.

### **Section 1002. Requirement of Original.**

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in this Title or by Act or Ordinance of the Tribal legislative authority.

### **Section 1003. Admissibility of Duplicates.**

A duplicate is admissible to the same extent as an original unless:

- (1) A genuine question is raised as to the authenticity of the original; or
- (2) In the circumstances it would be unfair to admit the duplicate in lieu of the original.

### **Section 1004. Admissibility of Other Evidence of Contents.**

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:

- (1) All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or
- (2) No original can be obtained by any available judicial process or procedure; or
- (3) At a time when an original was under the control of the party against whom offered, he was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and he does not produce the original at the hearing; or
- (4) The writings, recording, or photograph is not closely related to a controlling issue.

### **Section 1005. Public Records.**

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilation in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Section 902 or testified to be correct by a witness

who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

**Section 1006. Summaries.**

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The Court may order that they be produced in court.

**Section 1007. Testimony or Written Admission of Party.**

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by his written admission, without accounting for the non-production of the original.

**Section 1008. Remainder or Related Writings or Recorded Statements.**

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

**Section 1009. Functions of Court and Jury.**

When the admissibility of other evidence of contents of writings, recordings, or photographs under this Title depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the Court to determine in accordance with the provisions of Sections 1004 and 1005. However, when an issue is raised (a) whether the asserted writing ever existed, or (b) whether another writing, recording, or photograph produced at the trial is the original, or (c) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.