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TITLE 13
EVIDENCE CODE

CHAPTER ONE
GENERAL PROVISIONS

Section 101. Title.

This Title may be known and cited as the Rules of Evidence, or the Evidence Code of the Seminole Nation of Oklahoma.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 102. Scope.

This Title governs evidentiary questions in all proceedings in the Courts of the Seminole Nation of Oklahoma, whether civil, criminal, juvenile, or otherwise except as may be otherwise specifically provided by applicable law.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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 that the truth may be ascertained and proceedings justly determined.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 104. Definitions.

This Title incorporates all terms defined in Section 2 of Title 5 (Courts) unless indicated otherwise.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 105. Rulings on Evidence.

(a) Effect of Erroneous Ruling. 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) Objection. 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) Offer of Proof. 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) Record of Offer and Ruling. 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.

(c) Hearing of Jury. 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 open Court, if practicable, at a hearing at the bench out of the hearing of the jury, if practicable, or a recess may be taken and a hearing held upon the admissibility of the evidence at issue.

(d) Plain Error. Nothing in this Section precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 106. Preliminary Questions.

(a) Questions of Admissibility Generally. 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 subdivision (b). In making its determination it is not bound by this Title except those provisions with respect to privileges.

(b) Relevancy Conditioned on Fact. 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) Hearing of Jury. Hearings on the admissibility of confession in a criminal case shall in all cases be conducted out of the hearing of the jury. Hearing 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) Testimony by Accused. 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) Weight and Credibility. This Section does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 107. 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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 108. 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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

CHAPTER TWO
JUDICIAL NOTICE

Section 201. Judicial Notice of Adjudicative Facts.

(a) Scope of Chapter. This Chapter governs only judicial notice of adjudicative facts.

(b) Kinds of Facts. 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) When Discretionary. The Court may take judicial notice of a fact, whether requested or not.

(d) When Mandatory. The Courts shall take judicial notice if requested by a party and supplied with the necessary information, or when required to do so by applicable law.

(e) Opportunity to be Heard. 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.

(f) Time of taking notice. Judicial notice may be taken at any stage of the proceeding.

(g) Instructing jury. 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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

CHAPTER THREE
PRESUMPTIONS

Section 301. Presumptions in General in Civil 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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 402. Relevant Evidence Generally Admissible, Irrelevant Evidence Inadmissible.

All relevant evidence is admissible, except as otherwise provided by applicable law or court rule. Evidence which is not relevant is not admissible.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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 some Section of this Title.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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

(a) Character Evidence Generally. 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) Character of Accused. 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) Character of Victim. 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;

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

(4) 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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 405. Methods of Proving Character.

(a) Reputation or Opinion. 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) Specific Instances of Conduct. 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 be offered of specific instances of the person's conduct.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 407. Subsequent Remedial Measure.

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 measure 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 these matters are a matter of controversy or impeached by either party.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 408. Compromise and Offers to Compromise.

(a) In order to encourage the non-judicial settlement of disputes, evidence is not admissible to prove liability for or invalidity of the claim or its amount if valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount is offered in the following ways:

(1) furnishing or offering or promising to furnish, or

(2) accepting or offering or promising to accept.

(b) Evidence of conduct or statements made in compromise negotiations is likewise not admissible.

(c) This Section does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations.

(d) 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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 410. Inadmissibility of Plea 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.

(b) 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.

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

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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.

1. In the sound discretion of the District Court, and subject to any exclusionary rule enacted by 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 the Civil Procedure Code.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

CHAPTER FIVE
PRIVILEGES

Section 501. Privileges Recognized Only as Provided.

Except as otherwise provided by applicable law, including federal law, or as may be required by federal law, no person has a privilege to:

(a) refuse to be a witness;

(b) refuse to disclose any matter;

(c) refuse to produce any object or writing; or

(d) prevent another from being a witness or disclosing any matter or producing any object or writing.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 502. Lawyer-Client Privilege.

(a) Definitions. As used in this Section:

(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 him.

(2) A "representative of the client" is one 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 pursuant to rules enacted by the Supreme Court of the Seminole Nation, or, in the absence of such rules, an attorney licensed to practice by any state.

(4) A "representative of the lawyer" is one employed by the lawyer to assist the lawyer in the offering 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 reasonable 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.

(6) General Rule of Privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client

a. between himself or his representative and his lawyer or his lawyer's representative;

b. between his lawyer and the lawyer's representative;

c. 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;

d. between representatives of the client or between the client and a representative of the client; or

e. among lawyers and their representatives representing the same client.

(7) Who May Claim the Privilege. 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.

(8) Exceptions. There is no privilege under this Section if the following occurs:

f. Furtherance of Crime or Fraud. 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;

g. Claimants Through Same Deceased Client. 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

h. Breach of Duty by a Lawyer or Client. 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;

i. Document Attested by a Lawyer. As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness;

j. Joint Clients. As to a communication relevant to a matter of common interest between or among two 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;

k. Public Officer or Agency. As to a communication between a public officer or agency and its lawyer 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 between the Nation (including any agency or entity owned by or related to the Nation) or any of its officers, agents, representatives, or employees and the Attorney General to the Nation or other properly retained legal counsel are not within this exception unless such communications have been released for public information with the approval of the General Council.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 503. Physician and Psychotherapist – Patient Privilege.

(a) Definitions. As used in this Section:

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

(2) A "physician" is a 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. a 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.

c. 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, person 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.

(4) General Rule of Privilege. 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 physical or psycho therapist, 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.

(5) Who May Claim the Privilege. 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 person directly involved in treatment sessions, are presumed to have authority to claim the privilege but only on behalf of the patient.

(6) Exceptions.

a. Proceeding for Hospitalization. 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.

b. Examination by Order of Court. 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 of the examination are not privileged under this Section with respect to the particular purpose for which the examination is ordered unless the court orders otherwise.

(7) Condition an Element. of Claim or Defense. 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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 504. Husband and Wife Privilege.

(a) Definition. 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) General Rule of Privilege. 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) Exceptions. There is no privilege under this Section in a proceeding for legal separation or divorce between the parties when the communication is relevant to the issues in the

action for separate maintenance or divorce, or in which one spouse is charged with a crime against the person or property of:

(1) the other,

(2) a child of either,

(3) a person residing in the household of either, or

(4) a third person committed in the course of committing a crime against any of the above.

(d) 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, testimony received pursuant to this exception in an action for divorce or legal separate between the husband and wife may not be used or referred to in any other proceeding between either the husband or wife and third persons.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 505. Religious Privilege.

(a) Definitions. As used in this Section:

1. A "clergyman" is a minister, priest, rabbi, accredited Christian Science Practitioner, Native American Roadman, properly authorized traditional band or society headsman or firekeeper or other similar functionary of a religious organization of a recognized active traditional Tribal religion, or an individual reasonably believed so to be by 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.

3. General Rule of Privilege. 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.

4. Who May Claim the Privilege. 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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 506. Political Vote.

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

1. Exceptions. 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 Title 10 (Elections).

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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 person 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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 508. Secrets of the Nation 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.

1. No other special governmental privilege is recognized except as created by applicable law.

2. Privileges Recognized. The following governmental privileges are recognized:

3. Elected members of the General Council 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.

4. Justices, Judges and similar judicial officers have a privilege against disclosure of their mental processes and reasoning in the determination of any matter before them 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 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.

5. Governmental Officers charged with the institution of legal proceedings before any agency of the Nation or the Courts to enforce the Nation's laws 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.

6. Effect of Sustaining Claim. 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 order 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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 509. Identity of Informer.

(a) Rule of Privilege. The Nation, the United States, or a state, or a 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.

1. Who May Claim. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished.

2. Exceptions:

   a. Voluntary Disclosure; Informer a Witness. 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.

   b. Testimony on Relevant Issue. 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 courts find 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:

i. requiring the prosecuting attorney to comply with a defense request for relevant information;

ii. granting the defendant additional time or a continuance;

iii. relieving the defendant from making disclosures otherwise required of him;

iv. prohibiting the prosecuting attorney from introducing specific evidence; or

v. dismissing the charges against the defendant.

3. 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 the consent of the informed public entity.

4. 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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 510. Waiver of Privilege by Voluntary Disclosure.

A person upon whom this Chapter confers a privilege against disclosure waives the privileges 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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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: (a) compelled erroneously; or (b) made without opportunity to claim the privilege.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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

(a) Comment or Inference not Permitted. 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 from the claim of privilege.

(b) Claiming Privilege Without Knowledge of Jury. 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) Jury Instruction. 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 from the claim.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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 applicable law.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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 provisions of Section 703 of this Title, relating to opinion testimony by expert witnesses.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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 point.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 606. Competency of Juror as Witness.

(a) At the Trial. 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.

1. Inquiry into Validity of Verdict or Indictment. 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 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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 607. Who May Impeach.

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

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 608. Evidence of Character and Conduct of Witness.

(a) Opinion and Reputation Evidence of Character. 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) Special Instances of Conduct. 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 such as the following:

1. concerning the character of the witness 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) Special Rule for Criminal Cases. 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 credibility.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 609. Impeachment by Evidence of Conviction of Crime.

(a) General Rule. 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 met one of the following criteria:

1. was punishable by death or imprisonment in excess of one (1) 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 more, or is otherwise classified as a serious offense under the laws of an Indian Tribe in whose Courts the conviction was obtained.

(b) Time Limit. 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) Effect of Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is not admissible under this Section if one of the following has occurred:

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) Juvenile Adjudications. 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) Pendency of Appeal. The pendency of an appeal 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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 611. Mode and Order of Interrogation and Presentation.

(a) Control by Court. 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) Scope of Cross-Examination. 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) Leading Questions. 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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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, exercise 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.

(c) 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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 613. Prior Statements of Witnesses.

(a) Examining Witness Concerning Prior Statements. 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 Prior Inconsistent Statements of Witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an 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) of this Title.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 614. Calling and Interrogation of Witnesses by Court.

(a) Calling by Court. 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 the party has called.

1. Interrogation by Court. The Court may interrogate witnesses, whether called by itself or by a party.

2. Objections. 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 jury trial.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 615. Exclusion of Witness.

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. The request to exclude witnesses 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:

(a) a party who is a natural person, or

(b) an officer or employee of a party, designated as its representative by its attorney, when the party is not a natural person, or

(c) a person whose presence is shown by a party to be essential to the presentation of the cause.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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 found to be the following:

(a) rationally based on the perception of the witness;

(b) helpful to a clear understanding of his testimony or the determination of a fact in issue; and

(c) upon a subject which it is presumed that the general public has sufficient knowledge to reach a reasonable opinion, conclusion, or inference.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 702. Testimony by Experts.

If scientific, technical, or other specialized knowledge will assist the Court 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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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 Court.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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

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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 706. Court Appointed Experts.

(a) Appointment. 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) Compensation. 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) Disclosure of Appointment. 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) Parties' Experts of Own Selection. Nothing in this Section limits the parties in calling expert witnesses of their own selection and to be compensated at their own expense.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

CHAPTER EIGHT
HEARSAY

Section 801. Definitions.

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 some one of these rules.

(d) A statement is not hearsay if one of the following two (2) exceptions are met:

1. Prior Statement by Witness. 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. Admission by Party-Opponent. 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 the course and in furtherance of the conspiracy.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009; Approved by BIA February 2, 2012]

Section 802. Hearsay Rule.

Hearsay is not admissible except as provided by this Title or court rule.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009; Approved by BIA February 2, 2012]

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:

(a) 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.

(b) Excited Utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement cause by the event or condition.

(c) Then Existing Mental, Emotional, or Physical 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), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(d) Statements for Purposes of 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.

(e) 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. 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.

(f) 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, 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.

(g) Absence of Entry in Records Kept in Accordance With the Provisions of Subsection (f) of This Section. Evidence that a matter is not included in the memoranda reports, records, or data compilations, in any form, kept in accordance with the provision of Subsection (f), 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.

(h) Public Records and Reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth:

1. the activities of the office or agency, or

2. 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

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

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

(j) Absence of Public Record or Entry. To prove the absence of a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence 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.

(k) 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 regularly kept record of a religious organization.

(l) 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.

(m) 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.

(n) 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, 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.

(o) Statements in Documents Affecting an Interest in Property. A statement contained in a document purporting to establish or affect an interest in property 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.

(p) Statements in Ancient Documents. Statements in a document in existence twenty (20) years or more the authenticity of which is established.

(q) 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.

(r) 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, established as a reliable authority by the testimony or admission of the witness or by other expert witness or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(s) 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 person or family history.

(t) 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 event of general history important to the Nation or community or State or nation in which located.

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

(v) 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, to prove any fact essential to sustain the judgment in the criminal case as against person in any civil case, but not against the accused in a criminal case. The pendency of any appeal may be shown but does not affect admissibility.

(w) Other Exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the Court determines that

1. the statement is offered as evidence of a material fact;

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

3. 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 meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 805. 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 (b) (2), (3), or (4), his attendance or testimony) by process or other reasonable means.

(b) A declarant is not unavailable 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.

(c) Hearsay Exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

1. Former Testimony. 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, 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. Statement Under Belief of Impending Death. In a prosecution for homicide or in 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.

3. Statement Against Interest. 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. 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.

    a. a statement concerning 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. a statement concerning 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. Other Exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, 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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 806. Attacking and Supporting Credibility of Declarant.

When a hearsay statement, or a statement defined in Section 801(d)(2)(iii), (iv), or (v), 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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

CHAPTER NINE
AUTHENTICATION AND IDENTIFICATION

Section 901. Requirement of Authentication or Identification.

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

(b) Illustrations. 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 of Witness with Knowledge. Testimony that a matter is what it is claimed to be.

2. Non-expert Opinion on Handwriting. Non-expert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of litigation.

3. Comparison by Trier or Expert Witness. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

4. Distinctive Characteristics and the Like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

5. Voice Identification. 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. 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 business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

7. Public Records or Reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in 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. Ancient Documents or Data compilation. 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. Methods Provided by Statute or Rule. Any method of authentication or identification provided by applicable law or Court rules.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 902. Self-Authentication.

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

(a) Domestic Public Documents Under Seal. A document bearing a seal purporting to be that of the United States, or of any Indian Tribe, any State, District, Commonwealth, territory, or insular possession thereof, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(b) Domestic Public Documents Not Under Seal. 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.

(c) Foreign Public Documents. 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:

1. of the executing or attesting person, or

2. 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 an 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 evidence by an attested summary with or without final certification.

(d) Certified Copies of Public Records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed an 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 other applicable law or Court rule.

(e) Official Publications. Books, pamphlets, or other publications purporting to be issued by public authority.

(f) Newspapers and Periodicals. Printed materials purporting to be newspapers or periodicals.

(g) Trade Inscriptions and the Like. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(h) Acknowledged Documents. Documents accompanied by a certificate of acknowledgment executed in the manners provided by law by a notary public or other officer authorized by law to take acknowledgments or administer oaths.

(i) Commercial Paper and Related Documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(j) Presumptions under Acts or Ordinances. Any signature, documents, or other matter declared by applicable law to be presumptively or prima facie genuine or authentic.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 903. Subscribing Witness Testimony Unnecessary.

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

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

CHAPTER TEN
CONTENTS OF WRITING, RECORDINGS, AND PHOTOGRAPHS

Section 1001. Definitions.

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

(a) "Writings" and "recordings" consist of letters, words, or numbers or their equivalent, set down by handwriting, typewriting, printing, Photostatting, 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.

(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 of 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 digital or analog techniques which accurately reproduces the original or stores a digital copy thereof.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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 by applicable law.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 1003. Admissibility of Duplicates.

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

(a) a genuine question is raised as to the authenticity of the original or

(b) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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:

(a) Originals Lost or Destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or

(b) Original Not Obtainable. No original can be obtained by any available judicial process or procedure; or

(c) Original in Possession of Opponent. 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

(d) Collateral Matters. The writings, recording, or photograph is not closely related to a controlling issue.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 1008. Functions of Court and Jury.

When the admissibility of other evidence of contents and writings, recordings, or photographs under this Title depends upon the fulfillment of a condition or fact. The question whether the condition has been fulfilled is ordinarily for the Court to determine in accordance with provisions of Section 104 of this Title. However, when an issue is raised, it is the Court that determines admissibility in the case of other issues of fact in the following instances:

(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 Court to determine as in the case of other issues of fact.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

CHAPTER ELEVEN
MISCELLANEOUS RULES

Section 1101. Applicability of Rules.

(a) The Evidence Code applies to all criminal and civil controversies arising from any transaction or occurrence occurring on land which lies within the Nation's jurisdiction and to all other criminal or civil controversies which are subject to the lawful jurisdiction of the Nation's Courts.

(b) The Evidence Code 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.

(c) The Chapter with respect to privileges applies at all stages of all actions, cases, and proceedings within the Nation's Court.

(d) This Title (other than with respect to privileges) 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.

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]

Section 1102. Amendments.

The Supreme Court shall have the power to prescribe amendments to this Title except with respect to rules relating to privileges. Such amendments shall not take effect until ninety (90) days after such amendments have been submitted in writing to the General Council by the Chief Justice. If, before the expiration of such ninety (90) day period, five or more members of the General Council object in writing to the proposed amendments, such amendments shall not become effective unless thereafter approved by the General Council at a regular meeting. The effective date of any amendment so reported may also be deferred by the General Council to a later date. Any rule whether proposed or in force may be amended by the General Council. Any proposed amendment shall have no force or effect unless it shall be approved by the General Council. Upon becoming effective, all amendments made by the Supreme Court shall be incorporated into this Title and thereafter have the force and effect of law. [Note: This was existing language in the Seminole Evidence Code but contradicts the Constitution whereby the General Council enacts the Laws. The language highlighted in green as stricken and subsequent language follows the Constitution.]

[HISTORY: Law 92-5, June 6, 1992, Amended December 5, 2009;
Approved by BIA February 2, 2012]