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NORTHERN CHEYENNE TRIBE LOGO HERE

TITLE VI - RULES OF EVIDENCE

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CHAPTER 1. GENERAL

SECTIONS

6.1.1 Scope, Purpose, and Construction

These rules govern all proceedings in all courts of the Northern Cheyenne Reservation. These rules shall be construed to secure fairness in administration and to eliminate unjustifiable expense and delay in court proceedings, to the end that the truth may be ascertained in a fair and speedy manner.

6.1.2 Tribal Custom and Tradition

Customs and tradition may be used as evidence. Any directly conflicting procedural rule within this Title VI which is shown by the party presenting evidence of an applicable custom or tradition shall be superseded by the specific presentation of such custom and tradition. When procedural rules are superseded in accordance with this section, the custom and tradition and reasons for its use shall be included in the Findings of Fact and Conclusions of Law prepared by the court. Northern Cheyenne custom and tradition shall be established by testimony or affidavit of an expert or by the Chief Judge of the Northern Cheyenne Courts. An expert is a Tribal elder or other person recognized by the Northern Cheyenne Tribal community as knowledgeable in Tribal custom and tradition.

6.1.3 Law and Fact Distinction

All questions of law, including but not limited to admissibility of testimony and exhibits, construction of statutes and other writings, shall be decided by the Court. Questions of fact shall be decided by the jury, in a jury trial, or by the presiding judge, if there is no jury.

6.1.4 Admissible Evidence

Only relevant evidence is admissible, unless otherwise provided by these rules, or other tribal laws. Relevant evidence means evidence making the existence of any fact consequential to the outcome of the proceeding more or less probable that it would be without the evidence, including evidence on the credibility of a witness or hearsay declarant.

6.1.5 Definitions

A. Direct Evidence

That which proves the fact in dispute directly, without an interference or presumption, and which in itself, if true conclusively establishes that fact. For example, if the fact in dispute is the existence of an agreement, the testimony of a witness who was present and witnessed the making of it is direct evidence.

B. Indirect Evidence

That which tends to establish the fact in dispute by proving another fact and which, though true, does not of itself conclusively establish that fact but affords an inference or presumption of its existence. For example, a

witness proves an admission of the party to the fact in dispute.

C. Inference

A deduction the jury makes from the facts proved, without an express direction of the law to that effect.

D. Presumption

An assumption of fact that must be made from another fact or group of facts found or otherwise established in the action or proceeding.

6.1.6 Burden of Proof

The burden of proof lies on the party who presents evidence to demonstrate that such evidence is admissible.

6.1.7 Instruction to Jury on Evaluation of Evidence

The jury is to be instructed with the following by the court on all proper occasions:

A. That evaluating the effect of evidence is not arbitrary but is to be exercised in accordance with these rules;

B. That a witness false in one part of his/her testimony is to be distrusted in others;

C. That an accomplice's testimony shall be viewed with distrust;

D. That a fact may be found contrary to the declarations of a number of non-convincing witnesses, if that fact is in accordance with a lesser number of witnesses, a presumption, or other evidence satisfactory to their minds.

E. If less satisfactory evidence is offered when it appears the party could have produced more satisfactory evidence, the offered evidence should be viewed with distrust.

6.1.8 Illegally Obtained Evidence

Evidence obtained under any condition or circumstance that would violate any law of the Northern Cheyenne Reservation shall be inadmissible in any Tribal court.

6.1.9 Objections

Unless otherwise provided for in these rules, all violations of these rules at trial must be objected to at the time of the violation, or the right to object to the violation is lost, and such violation shall not be heard on appeal.

6.1.10 Presentation and Foundation

Each party, when presenting evidence, must first show in open court, through the use of a witness, the reliability and the relevance of the evidence, unless already shown to be substantially reliable and relevant to the case in the discretion of the presiding judge.

6.1.11 Presentation of Witnesses

Each party when calling a witness must first show in open court who the witness is, the witness' ability to provide information, and the relevancy of the information to be given. Before the presenting party continues, the opposing party may then object, and if the court grants its permission, attack the ability of the witness to provide information, the credentials of the witness, or relevancy of the witness. Attacks by the opposing party may include a preliminary direct examination of the witness solely for establishment purposes.

CHAPTER 2. JUDICIAL NOTICE

SECTIONS

6.2.1 Evidence Subject to Judicial Notice

The Court shall take judicial notice of federal acts, statutes, and treaties, statutes of every state, both federal and Tribal constitutional guarantees and protections, duly enacted ordinances of a state or tribe, and governmental regulations of every other reservation and other jurisdiction within the United States, at the request of a party or on its own motion. The Court may take judicial notice of any fact that is either generally known within the territorial jurisdiction of the Court, or capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned, if that fact to be judicially noticed is one not subject to reasonable dispute.

6.2.2 Procedure for Judicial Notice

The party requesting judicial notice shall furnish the Court with the adverse party with a copy of the law, act or other statement the party wishes the Court to notice and a brief written statement of relevancy of that law, act or statement.

6.2.3 Jury Instruction on Judicial Notice

The Court shall direct the jury to find as relevant any fact judicially noticed.

CHAPTER 3. HEARSAY

SECTIONS

6.3.1 Definition

Hearsay is an oral or written statement or nonverbal conduct intended as a statement, made out of court by a person who is not presently testifying, with such statement being offered to prove the truth of the matter asserted.

6.3.2 Rule

Hearsay is inadmissible as evidence except as stated elsewhere in these rules or otherwise expressly allowed in Tribal law.

6.3.3 Evidence Not Covered by the Hearsay Rule

A. Prior statements of a witness in any or all of a transcript or deposition from a prior proceeding may be used against any party who was present or represented at the taking of such prior testimony, or who had due notice in accordance with any of the following provisions:

1. The party against whom the prior testimony is presently offered was a party to the former proceeding and was afforded an opportunity to cross-examine the witness in that proceeding and the issues upon which the prior testimony is presently offered is related to the same subject matter as that in the prior case.

2. The transcript or deposition of a party or of anyone who at the time of taking such testimony, was an officer, director, managing agent or partner of a public or private corporation, partnership, or

association which is a party, may be used by any party for any purpose.

B. The transcript or deposition of a witness, whether or not a party, may be used by any party for any purpose if:

1. The Court finds that the witness is dead;

2. The Court finds that the witness is not on the Reservation (unless the absence was procured by the party offering the evidence);

3. The Court finds that the witness is unable to attend or testify because of age, sickness, infirmity or imprisonment;

4. The party offering the evidence has been unable to procure the attendance of the witness by subpoena; or

5. Upon the finding of the presiding judge, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

C. A record of a birth, death, or marriage, if recorded with a public office or governmental body.

D. A record of an act, event, condition, opinion, or diagnosis if:

1. the record was made at or near the time by — or from information transmitted by — someone with knowledge;

2. the record was kept in the course of a regularly conducted activity of a business, organization, or occupation, whether or not for profit;

3. taking the record was a regular practice of that activity.

E. A statement or record that:

1. is made for — and is reasonably pertinent to — medical diagnosis or treatment;

2. describes medical history; past or present symptoms or sensations; their inception; or their general cause; and

3. is made or proffered by a licensed medical practitioner or from the medical practice or office thereof.

F. A record or statement of a public office or law enforcement agency or representative if it sets out:

1. the office's activities;

2. a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or

3. in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation.

G. Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.

CHAPTER 4. PRIVILEGE

SECTIONS

6.4.1 Claim of Privilege

The objection that information is privileged must be made by or on behalf of the person seeking to have such information excluded from being presented as evidence. If both privileged and non-privileged information is contained in the evidence, the court may, on a party's request, exercise the privileged matter and allow presentation of the remaining information.

6.4.2 Waiver of Privilege

A person having privilege under these rules may be found by the judge to have waived the claim of privilege by voluntarily disclosing or consenting to disclosure of any part of the privileged matter unless the disclosure itself is privileged. A disclosure under compulsion or made without the opportunity to claim the privilege is not sufficient to waive the claim.

6.4.3 Definition of Incrimination

A matter will incriminate a person within the meaning of these rules if it constitutes or forms an essential part of, or taken in connection with other matters already disclosed, is a basis for a reasonable inference that a crime has been committed.

6.4.4 Self-Incrimination

Every natural person has a privilege to refuse to disclose in court proceedings or to a public official of the Tribe or any governmental agency or division, any matter that will incriminate him/her. He/she cannot be compelled in a criminal action to be a witness against him/herself. Except, a defendant in a criminal case who takes the stand to testify in his own behalf may be required to give testimony against him/herself. Such testimony shall be limited to the charge on trial.

6.4.5 Attorney-Client Privilege

An attorney cannot, without the consent of the client, be examined as to any communication made by the client to the attorney or the advice given to the client in the course of professional employment. A client cannot, except voluntarily, be examined as to any communication made by the client to the client's attorney or the advice given to the client by the attorney in the course of the attorney's professional employment. No person has this privilege if the court finds that sufficient evidence, aside from the communication, has been introduced to warrant a finding that the legal service was sought or obtained in order to enable or aid the client to commit or to plan to commit a crime or civil offense.

6.4.6 Lay Advocate-Client Privilege

A lay advocate shall not disclose any communication that is relevant to the outcome of the proceeding made by the client without the client's consent. Advice given in the course of a lay advocate's representation to a client is privileged and cannot be disclosed without the client's consent. No person has this privilege if the court finds that sufficient evidence, aside from the

communication, has been introduced to warrant a finding that the advocacy was sought or obtained in order to enable or aid the client to commit or to plan to commit a crime or civil offense.

6.4.7 Spousal Privilege

One spouse cannot be examined during or after the marriage for or against the other as to any fact, circumstance or activity involving the other spouse during marriage, without the other's consent. Neither spouse has this privilege in a civil action or proceeding by one against the other, any case involving abuse of a child by either spouse, or a criminal action or proceeding for a crime committed by one spouse against the other spouse or someone in the other spouse's immediate family.

6.4.8 Clergy-Penitent Privilege

A member of the clergy or priest may not, without the consent of the person making the confession, be examined as to any confession made to the individual in the individual's professional character in the course of discipline enjoined by the church to which the individual belongs.

6.4.9 Physician-Patient Privilege

A. Any information acquired in attending a patient which was necessary to enable a physician, surgeon, or other regular practitioner of the healing art, to prescribe or act for the patient is privileged and cannot be disclosed without the consent of the patient.

B. No person has this privilege if the court finds that sufficient evidence, aside from the communication, has been introduced to warrant a finding that the services of the physician, surgeon, or regular practitioner of the healing art were sought or obtained to enable or aid anyone to commit or plan to commit a crime or civil offense, or to escape detection or apprehension after the commission of a crime or civil offence.

6.4.10 Public Officer

A public officer cannot be examined as to official information communicated to him in an official confidence when, in the discretion of the judge, public interest would suffer by the disclosure.

CHAPTER 5. WITNESSES

SECTIONS

6.5.1 Calling Witnesses

Each party shall have the right to call all witnesses necessary to prove evidence allowable under these rules. Each party may request the court to issue subpoenas whenever necessary.

6.5.2 Qualifications

Every person is competent to be a witness except as otherwise provided in these rules. A person shall be disqualified if the court finds that the witness is incapable of expressing him/herself concerning the matter so as to be understood by the judge and jury either directly or through interpretation by

one who can understand him/her of the witness is incapable of understanding the duty of a witness to tell the truth. A non-expert witness may only testify from personal knowledge.

6.5.3 Interpreter

Where needed, the court shall procure and appoint a disinterested person who is capable of understanding and interpreting the language or expressions of the witness to act as an interpreter, with the interpreter subject to the provisions of these rules.

6.5.4 Oath

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

6.5.5 Judge as Witness

A member of the jury shall not be called to testify as a witness before the jury in the trial of the case in which he is sitting as a juror. But, a juror may testify, and an affidavit or evidence of any kind be received, as to any matter or statement concerning only the following questions, whether occurring during the course of the jury's deliberations or not: (a) whether prejudicial information was improperly brought to the jury's attention; (b) whether outside influence was brought to bear on any juror; or (c) whether any juror has been induced to assent to any general or special verdict, or finding on any question submitted to them by the court, by a resort to determination of chance.

6.5.6 Advocate as Witness

When a lay-advocate or attorney is a witness for his/her client upon any trial except as to merely formal matters, such as the attestation or custody of an instrument of the like, he/she shall not further participate in such trial.

6.5.7 Exclusion of Witness

The court on its own motion, or a party with a showing of good cause, may request that witnesses be excluded so that they cannot hear the testimony of other witnesses. A party, or an officer or employee of a party, which is not a natural person, and such officer or employee of that party is designated as its representative by its advocate, or a person whose presence is shown by a party to be essential to the presentation of his cause, shall not be excluded for any reason.

6.5.8 Calling and Interrogation of Witnesses by the Court

The court may call witnesses, and all parties are entitled to cross-examine these witnesses. The court may interrogate witnesses, provided that in trials before a jury, the court's questions are cautiously guarded so as not to constitute express or implied comment.

6.5.9 Expert Witnesses

If 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 present opinion testimony within his/her field of expertise.

6.5.10 Opinion Testimony by a Non-Expert Witness

A non-expert witness's testimony in the form of opinions or inferences is limited to those

opinions or inferences which are rationally based on the perception of the witness and helpful to a clear understanding of his/her testimony or the determination of a fact issue.

CHAPTER 6. DOCUMENTS

SECTIONS

6.6.1 Authentication of Writing

A writing offered in evidence as authentic is admissible only if sufficient evidence has been introduced to sustain a finding of its authenticity or the judge finds the writing: (a) is at least thirty (30) years old at the time it is so offered; or (b) is in such condition as to create no suspicion concerning its authenticity; and (c) at the time of its discovery was in a place in which such a document, if authentic, would be likely to be found. In order to prove the terms or contents of a writing or document, the writing or document itself must be produced or its unavailability shown before any other evidence will be received to prove the terms or contents of such writing or document.

6.6.2 Self-Authenticated Documents

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 state, tribal, district, commonwealth, territory, or insular possession thereof, 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*. Except as otherwise provided by statute, a document purporting to bear the signature in the official capacity of an officer or employee of any entity included in Section 6.5.12(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. *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 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 Sections 6.5.12(1) or (2) or complying with any law of the United States, any tribe, or any state.

D. Books, pamphlets, or other publications purporting to be issued by public authority.

E. Printed materials purporting to be newspapers or periodicals.

F. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

G. Documents accompanied by a certificate of acknowledgement executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgements.

H. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

I. Any signature, document, or other matter declared by any law of the United States or of this state to be presumptively or prima facie genuine or authentic.

J. Photographs of any individual, occurrence, or event being currently described, so long as the photographs can be corroborated as showing the correct individual, occurrence, or event by a witness or by the photographer.