

Oneida Tribe of Indians of Wisconsin



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.



UGWA DEMOLUM YATEHE
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

BC Resolution 04-23-14-A Oneida Judiciary Rules of Evidence

- WHEREAS,** the Oneida Tribe of Indians of Wisconsin is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America, and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Tribe of Indians of Wisconsin, and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council, and
- WHEREAS,** on January 7, 2013 the General Tribal Council adopted the Judiciary Law, and
- WHEREAS,** with the adoption of the Judiciary Law, the General Tribal Council directed that an Evidence Code be adopted by the Oneida Business Committee or by the General Tribal Council, and
- WHEREAS,** Resolutions BC-8-14-13-E: Amendment to the Family Court Law Transition Plan and BC-5-8-13-A: Adoption of the Family Court reiterate the GTC directive that an Evidence Code be adopted by the Oneida Business Committee or General Tribal Council, and
- WHEREAS,** the attached Oneida Judiciary Rules of Evidence were developed to enable the Tribe's trial courts to administer civil cases and proceedings fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, by obtaining the truth and securing a just determination, and
- WHEREAS,** a public meeting on the proposed Oneida Judiciary Rules of Evidence was held on March 13, 2014 in accordance with the Legislative Procedures Act.

NOW THEREFORE BE IT RESOLVED, the attached Oneida Judiciary Rules of Evidence are hereby adopted and shall be effective when the Judiciary goes into effect November 1, 2014.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum; 8 members were present at a meeting duly called, noticed and held on the 23rd day of April 2014; that the forgoing resolution was duly adopted at such meeting by a vote of 6 members for; 0 members against; and 1 member not voting; and that said resolution has not been rescinded or amended in any way.


Patricia Hoeft, Tribal Secretary
Oneida Business Committee

Chapter 155

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155.1. Purpose and Policy

155.1-1. *Purpose.* The purpose of this Law is to establish rules of evidence to apply in proceedings held in the trial courts of the Oneida Judiciary and the Family Court of the Oneida Tribe.

155.1-2. *Policy.* It is the policy of the Tribe to administer Court proceedings fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, by obtaining the truth and securing a just determination.

155.2. Adoption, Amendment Repeal

155.2-1. This Law was adopted by the Oneida Business Committee by resolution BC-04-23-14-A.

155.2-2. This Law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

155.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Law which are considered to have legal force without the invalid portions.

155.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law shall control.

155.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

155.3. Definitions

155.3-1. This Section shall govern the definitions of words and phrases used within this Law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Advocate" shall mean an Oneida nonattorney advocate as provided by law and other advocate who is admitted to practice law and is presented to the Court as the representative or advisor to a party.

(b) "Adjudicative Fact" shall mean a fact that concerns the parties to a judicial or administrative proceeding that helps the Court determine how the law applies to the parties.

(c) "Attorney" shall mean a person trained and licensed to represent another person in Court, to prepare documents and to give advice or counsel on matters of law.

(d) "Attorney-client privilege" shall mean confidential communication between the attorney and client that is protected by applicable law.

(e) "Character Evidence" shall mean proof or attestations about an individual's moral standing, general nature, traits, and reputation in the community.

(f) "Civil case" shall mean a civil action or proceeding.

(g) “Clergyman” shall mean a minister, priest, rabbi, accredited Christian Science Practitioner, Native American Church Roadman, properly authorized traditional band or society headman 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.

(h) “Client” shall mean a person, public officer, or corporation, association, or other organization or entity, either public or private, who has rendered professional legal services by an attorney or advocate, or who consults an attorney or advocate with a view to obtaining professional legal services from the attorney or advocate.

(i) “Confidential Communication” shall mean communication that is not intended to be disclosed to any person other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(j) “Court” shall mean the trial courts of the Oneida Judiciary, including the Family Court.

(k) “Declarant” shall mean the person who made the statement.

(l) “Duplicate” shall mean a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

(m) “Hearsay” shall mean, notwithstanding the exceptions listed in 155.11, a statement that:

(1) the declarant does not make while testifying at the current trial or hearing; and

(2) a party offers in evidence to prove the truth of the matter asserted in the statement.

(n) “Judicial Notice” shall mean the Court recognizes a fact to be true without introducing any evidence of such because the fact is so notorious, well known or indisputable, that it cannot reasonably be doubted.

(o) “Legislative Fact” shall mean a fact that explains a law’s rationality that helps the Court determine the law’s context or application.

(p) “Original” shall mean a writing or recording or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, “original” means any printout, or other output readable by sight, if it accurately reflects the information. “Original” of a photograph includes the negative or a print from it.

(q) “Photograph” shall mean a photographic image or its equivalent stored in any form.

(r) “Plain Error” shall mean an error that is so obvious and prejudicial that the Court of Appeals shall address it despite the party’s failure to object to it at trial.

(s) “Public office” shall mean a public agency or tribal office or department.

(t) “Record” shall mean a memorandum, report, or data compilation.

(u) “Recording” shall mean letters, words, numbers, or their equivalent recorded in any manner.

(v) “Representative of the attorney or advocate” shall mean a person employed to assist the attorney or advocate in the rendition of professional legal services.

(w) “Statement” shall mean a person’s oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

(x) “Tribal law” shall mean a code, act, statute, rule, regulation, policy or ordinance enacted by the Oneida General Tribal Council or the Oneida Business Committee.

(y) “Work-product protection” shall mean the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial.

(z) “Writing” shall mean letters, words, numbers, or their equivalent set down in any form.

(aa) “Written material” shall mean a writing or any other medium which includes electronically stored information.

155.4. General Provisions

155.4-1. *Scope.* This Law shall apply to:

(a) civil cases and proceedings; and

(b) contempt proceedings, except those in which the court may act summarily.

155.4-2. *Rules on Privilege.* The rules on privilege apply to all stages of a case or proceeding.

155.4-3. *Sanctions.* The Court shall use 153.8 and/or 153.20 of the Rules of Civil Procedure for violations of this Law, including but not limited to failure to comply, misrepresentation and fraud.

155.4-4. Other Tribal Law or applicable federal statute may provide for admitting or excluding evidence independently from these rules.

155.4-5. *Rulings on Evidence*

(a) *Preserving a Claim of Error.* A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:

(1) if the ruling admits evidence, a party, on the record:

(A) timely objects or moves to strike; and

(B) states the specific ground, unless it was apparent from the context; or

(2) if the ruling excludes evidence, a party informs the Court of its substance by an offer of proof, unless the substance was apparent from the context.

(b) *Not Needing to Renew an Objection of Offer of Proof.* Once the Court rules definitively on the record, whether before or at trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

(c) *Court’s Statement about the Ruling; Directing an Offer of Proof.* The Court may make any statement about the character or form of the evidence, the objection made, and the ruling. The Court may direct that an offer of proof be made in question and answer form.

(d) *Taking Notice of Plain Error.* A Court may take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved.

155.4-6. *Preliminary Questions.*

(a) *In General.* The Court shall decide any preliminary question about whether a witness shall be qualified, a privilege exists or evidence shall be admissible. In so deciding, the Court shall not be bound by evidence rules, except those on privilege.

(b) *Relevance that Depends on a Fact.* When the relevance of evidence depends on whether a fact exists, sufficient proof shall be introduced to support a finding that the fact does exist. The Court may admit the proposed evidence on the condition that the proof be introduced later.

155.4-7. *Remainder of or Related Writings or Recorded Statements.* If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part, or any other writing or recorded statement that in fairness ought to be considered at the same time.

155.5. Judicial Notice

155.5-1. *Judicial Notice of Adjudicative Facts.* This section governs judicial notice of an adjudicative fact only, not a legislative fact.

155.5-2. *Facts that May Be Judicially Noticed.* The Court may judicially notice a fact that shall not subject to reasonable dispute because it:

- (a) is generally known within the Court's territorial jurisdiction; or
- (b) may be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

155.5-3. *Taking Judicial Notice.* The Court:

- (a) may take judicial notice on its own; or
- (b) shall take judicial notice if a party requests it and the Court is supplied with the necessary information.

155.5-4. *Timing.* The Court may take judicial notice at any stage of the proceeding.

155.5-5. *Opportunity to be Heard.* On timely request, a party shall be entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the Court takes judicial notice before notifying a party, the party, on request, shall still be entitled to be heard.

155.6. Presumptions

155.6-1. *Generally.* Unless other applicable Tribal law or this Law provides otherwise, the party against whom a presumption is directed shall have the burden of producing evidence to rebut the presumption. This section does not shift the burden of persuasion, which remains on the party who had it originally.

155.7. Relevance and Its Limits

155.7-1. *Test for Relevant Evidence.* Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

155.7-2. *General Admissibility of Relevant Evidence.* Irrelevant evidence is not admissible. Relevant evidence is admissible unless the Tribal Constitution, this Law or other applicable law provided otherwise.

155.7-3. *Excluding Relevant Evidence.* The Court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one (1) or more of the following:

- (a) unfair prejudice;
- (b) confusing the issues;
- (c) undue delay;
- (d) wasting time; or
- (e) needlessly presenting cumulative evidence.

155.7-4. *Character Evidence.* This section governs character evidence.

(a) **Prohibited Uses.**

(1) Evidence of a person's character or character trait shall not be admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

(2) Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(b) *Exceptions for a Witness.* Evidence of a witness's character may be admitted under 155.9-6 (Impeachment of a Witness); 155.9-7 (A Witness' Character for Truthfulness or Untruthfulness); or 155.9-8 (Impeachment by Evidence of a Criminal Conviction).

155.7-5. *Methods of Proving Character.*

(a) *By Reputation or Opinion.* When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person's conduct.

(b) *By Specific Instances of Conduct.* When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.

155.7-6. *Habit; Routine Practice.* Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The Court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

155.7-7. *Subsequent Remedial Measures.* When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures shall not be admissible to prove:

- (a) negligence;
- (b) culpable conduct;
- (c) a defect in a product or its design; or
- (d) a need for a warning or instruction.

But the Court may admit this evidence for another purpose, such as impeachment or, if disputed, proving ownership, control, or the feasibility of precautionary measures.

155.7-8. *Compromise Offers and Negotiations.*

(a) *Prohibited Uses.* Evidence of the following is not admissible, on behalf of any party, either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

- (1) furnishing, promising, or offering, or accepting, promising to accept, or offering to accept, a valuable consideration in compromising or attempting to compromise the claim; and
- (2) conduct or a statement made during compromise negotiations about the claim.

(b) *Exceptions.* The Court may admit this evidence for another purpose, such as proving a witness's bias or prejudice or negating a contention of undue delay.

155.7-9. *Offers to Pay Medical and Similar Expenses.* Evidence of furnishing, promising to pay, or offering to pay medical, hospital, or similar expenses resulting from an injury shall not be admissible to prove liability for the injury.

155.7-10. *Liability Insurance.* Evidence that a person was or was not insured against liability shall not be admissible to prove whether the person acted negligently or otherwise wrongfully. The Court may admit this evidence for another purpose, such as proving a witness's bias or prejudice or proving agency, ownership, or control.

155.8. Privileges

155.8-1. *Privilege in General.* The common law, as interpreted by the Court in the light of reason and experience, governs a claim of privilege unless any of the following provides otherwise:

- (a) the Tribal Constitution;
- (b) rules prescribed by Tribal Court;

- (c) this or other Tribal Law; or
- (d) other applicable law.

155.8-2. *General rule of Attorney-Client 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: between the client or the client's representative and the client's attorney or advocate or the attorney's or advocate's representative; or between the client's attorney or advocate and the attorney's or advocate's representative; or by the client or the client's attorney or advocate to a attorney or advocate representing another in a matter of common interest; or between representatives of the client or between the client and a representative of the client; or between attorneys or advocates representing the client.

(a) *Who may claim the privilege.* The privilege may be claimed by the client, the client's guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the attorney or advocate at the time of the communication may claim the privilege but only on behalf of the client. The attorney's or advocate's authority to do so is presumed in the absence of evidence to the contrary.

(b) *Exceptions.* There is no privilege under this rule:

(1) *Furtherance of crime or fraud.* If the services of the attorney or advocate 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; or

(2) *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; or

(3) *Breach of duty by attorney, advocate or client.* As to a communication relevant to an issue of breach of duty by the attorney or advocate to the attorney's or advocate's client or by the client to the client's attorney or advocate; or

(4) *Document attested by attorney.* As to a communication relevant to an issue concerning an attested document to which the attorney or advocate is an attesting witness; or

(5) *Joint clients.* As to a communication relevant to a matter of common interest between 2 or more clients if the communication was made by any of them to a attorney or advocate retained or consulted in common, when offered in an action between any of the clients.

(c) *Limitations on Waiver.* The following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the attorney-client privilege or work-product protection:

(1) When the disclosure is made in a Tribal proceeding or to a Tribal office or agency and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in a Tribal proceeding only if:

(A) the waiver is intentional;

(B) the disclosed and undisclosed communications or information concern the same subject matter; and

(C) they ought in fairness to be considered together.

(2) When made in a Tribal proceeding or to a Tribal office or agency, the disclosure does not operate as a waiver in a Tribal proceeding if:

(A) the disclosure is inadvertent;

(B) the holder of the privilege or protection took reasonable steps to prevent disclosure; and

(C) the holder promptly took reasonable steps to rectify the error, including (if applicable) following Oneida Judiciary Rules of Civil Procedure 153.14-9.

(3) The court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court.

(4) An agreement on the effect of disclosure in a Tribal proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

155.8-3. *Physician-patient, registered nurse-patient, chiropractor-patient, psychologist-patient, social worker-patient, marriage and family therapist-patient, podiatrist-patient and professional counselor-patient privilege.*

(a) *General Rule of Privilege.* A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made or information obtained or disseminated for purposes of diagnosis or treatment of the patient's physical, mental or emotional condition, among the patient, the patient's physician, the patient's podiatrist, the patient's registered nurse, the patient's chiropractor, the patient's psychologist, the patient's social worker, the patient's marriage and family therapist, the patient's professional counselor or persons, including members of the patient's family, who are participating in the diagnosis or treatment under the direction of the physician, podiatrist, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor.

(b) *Who May Claim the Privilege.* The privilege may be claimed by the patient, by the patient's guardian or conservator, or by the personal representative of a deceased patient. The person who was the physician, podiatrist, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor may claim the privilege but only on behalf of the patient. The authority so to do is presumed in the absence of evidence to the contrary.

(c) *Exceptions.*

(1) *Proceedings for hospitalization, guardianship, protective services, or protective placement or for control, care, or treatment of a sexually violent person.* There is no privilege under this rule as to communications and information relevant to an issue in proceedings to hospitalize the patient for mental illness, to appoint a guardian in this state, for court-ordered protective services or protective placement, for review of guardianship, protective services, or protective placement orders, or for control, care, or treatment of a sexually violent person, if the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist, or professional counselor in the course of diagnosis or treatment has determined that the patient is in need of hospitalization, guardianship, protective services, or protective placement or control, care, and treatment as a sexually violent person.

(2) *Proceedings for guardianship.* There is no privilege under this rule as to information contained in a statement concerning the mental condition of the patient furnished to the court by a physician or psychologist on the ground that a proposed ward allegedly has incompetency or is spendthrift.

(3) *Examination by order of judge.* If the judge orders an examination of the physical, mental or emotional condition of the patient, or evaluation of the patient for purposes of guardianship, protective services or protective placement, communications made and treatment records reviewed in the course thereof are not privileged under this section with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise.

(4) *Condition an element of claim or defense.* There is no privilege under this section as to communications relevant to or within the scope of discovery examination of an issue of the physical, mental or emotional condition of a patient in any proceedings in which the patient relies upon the condition as an element of the patient's claim or defense, or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense.

(5) *Abused or neglected child or abused unborn child.*

(A) There is no privilege for information contained in a report of child abuse or neglect.

(B) There is no privilege in situations where the examination of the expectant mother of an abused unborn child creates a reasonable ground for an opinion of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor that the physical injury inflicted on the unborn child was caused by the habitual lack of self-control of the expectant mother of the unborn child in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree.

(6) *Tests for intoxication.* There is no privilege concerning the results of or circumstances surrounding any chemical tests for intoxication or alcohol concentration.

(7) *Paternity proceedings.* There is no privilege concerning testimony about the medical circumstances of a pregnancy or the condition and characteristics of a child in a proceeding to determine the paternity of that child.

155.8-4. *Husband-wife and domestic partner privilege.*

(a) *General rule of privilege.* A person has a privilege to prevent the person's spouse or former spouse or domestic partner or former domestic partner from testifying against the person as to any private communication by one to the other made during their marriage or domestic partnership.

(b) *Who may claim the privilege.* The privilege may be claimed by the person or by the spouse or domestic partner on the person's behalf. The authority of the spouse or domestic partner to do so is presumed in the absence of evidence to the contrary.

(c) *Exceptions.* There is no privilege under this rule:

(1) If both spouses or former spouses or domestic partners or former domestic partners are parties to the action.

(2) In proceedings in which one spouse or former spouse or domestic partner or former domestic partner is charged with a crime against the person or property of the other or of a child of either, or with a crime against the person or property of a 3rd person committed in the course of committing a crime against the other.

(3) In proceedings in which a spouse or former spouse or domestic partner or former domestic partner is charged with a crime of pandering or prostitution.

- (4) If one spouse or former spouse or domestic partner or former domestic partner has acted as the agent of the other and the private communication relates to matters within the scope of the agency.

155.8-5. Religious Privilege

(a) *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.

b) *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.

155.8-6. *Waiver of privilege by voluntary disclosure.* A person upon whom this chapter confers a privilege against disclosure of the confidential matter or communication waives the privilege if the person or his or her predecessor, while holder of the privilege, voluntarily discloses or consents to disclosure of any significant part of the matter or communication. This section does not apply if the disclosure is itself a privileged communication.

155.9. Witnesses

155.9-1. *Competency to Testify in General.* Every person is competent to be a witness unless this Law provides otherwise. Tribal law governs the witness's competency regarding a claim or defense for which Tribal law supplies the rule of decision.

155.9-2. *Need for Personal Knowledge.* A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This section shall not apply to a witness's expert testimony under section 155.103.

155.9-3. *Oath or Affirmation to Testify Truthfully.* Before testifying, a witness shall give an oath or affirmation to testify truthfully. The oath or affirmation shall be in a form designed to impress that duty on the witness's conscience.

155.9-4. *Interpreter.* An interpreter shall be qualified and shall give an oath or affirmation to make a true translation.

155.9-5. *Judge's Competency as a Witness.* The presiding judge may not testify as a witness at the trial. A party need not object to preserve the issue.

155.9-6. *Impeachment of a Witness.* Any party, including the party that called the witness, may attack the witness's credibility.

155.9-7. *A Witness's Character for Truthfulness or Untruthfulness.*

(a) *Reputation or Opinion Evidence.* A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. Evidence of truthful character shall be admissible only after the witness's character for truthfulness has been attacked.

(b) *Specific Instances of Conduct.* Except for a criminal conviction under 155.9-8 (Impeachment by Evidence of a Criminal Conviction), extrinsic evidence shall not be admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the Court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

- (1) the witness; or

(2) another witness whose character the witness being cross-examined has testified about. By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.

155.9-8. *Impeachment by Evidence of a Criminal Conviction.*

(a) *In General.* A witness's character for truthfulness may be attacked by introducing evidence that the witness was convicted:

(1) of a crime that was punishable by death or by imprisonment for more than one (1) year. The evidence shall be subject to 155.7-3. (*Excluding Relevant Evidence.*); or

(2) of a crime regardless of the punishment if the elements of the crime required proving, or the witness's admitting, a dishonest act or false statement.

(b) *Limit on Using the Evidence after Ten (10) Years.* If more than ten (10) years have passed since the witness's conviction or release from confinement for a crime, whichever is later, evidence of the conviction shall be admissible only if:

(1) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and

(2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

(c) *Effect of a Pardon, Annulment or Certificate of Rehabilitation.* Evidence of a conviction shall not be admissible if:

(1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year; 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 a juvenile adjudication shall not be admissible under this section.

(e) *Pendency of an Appeal.* A conviction that satisfies this section shall be admissible even if an appeal is pending. Evidence of the pendency shall also be admissible.

155.9-9. *Religious Beliefs or Opinions.* Evidence of a witness's religious beliefs or opinions shall not be admissible to attack or support the witness's credibility.

155.9-10. *Mode and Order of Examining Witnesses and Presenting Evidence.*

(a) *Control by the Court.* The Court shall exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

(1) make those procedures effective for determining the truth;

(2) avoid wasting time; and

(3) protect witnesses from harassment or undue embarrassment.

(b) *Scope of Cross-Examination.* Cross-examination shall not go beyond the subject matter of the direct examination and matters affecting the witness's credibility. The Court may allow inquiry into additional matters as if on direct examination.

(c) *Leading Questions.* Leading questions shall not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the Court shall allow leading questions:

(1) on cross-examination; and

(2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

155.9-11. *Writing Used to Refresh a Witness's Memory.*

(a) *Scope.* This section gives an adverse party certain options when a witness uses a writing to refresh memory:

- (1) while testifying; or
- (2) before testifying, if the Court decides that justice requires the party to have those options.

(b) *Adverse Party's Options; Deleting Unrelated Matter.* An adverse party shall be entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony. If the producing party claims that the writing includes unrelated matter, the Court shall examine the writing in camera, delete any unrelated portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection shall be preserved for the record.

(c) *Failure to Produce or Deliver the Writing.* If a writing is not produced or is not delivered as ordered, the Court may issue any appropriate order.

155.9-12. *Witness's Prior Statement.*

(a) *Showing of Disclosing the Statement During Examination.* When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party shall, on request, show it or disclose its contents to an adverse party's attorney or advocate.

(b) *Extrinsic Evidence.* Extrinsic evidence of a witness's prior inconsistent statement shall be admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party's statement under Rule 155.11-1(b) (An Opposing Party's Statement).

155.9-13. *Court's Calling or Examining a Witness.*

(a) *Calling.* The Court may call a witness on its own or at a party's request. Each party shall be entitled to cross-examine the witness.

(b) *Examining.* The Court may examine a witness regardless of who calls the witness.

(c) *Objections.* A party may object to the Court's calling or examining a witness at that time.

155.9-14. *Excluding Witnesses.* At a party's request, the Court shall order witnesses excluded so that they cannot hear other witnesses' testimony. Or the Court may do so on its own. This section does not authorize excluding the following:

- (a) a party who is a natural person;
- (b) an officer or employee of a party that is not a natural person, after being designated as the party's representative by its attorney or advocate;
- (c) a person whose presence a party shows to be essential to presenting the party's claim or defense; or
- (d) a person authorized by statute to be present.

155.10. Opinions and Expert Testimony

155.10-1. *Opinion Testimony by Lay Witnesses.* If a witness is not testifying as an expert, testimony in the form of an opinion shall be limited to one that is:

- (a) rationally based on the witness's perception;
- (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and

(c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 155.10-2 (Testimony by Expert Witnesses).

155.10-2. *Testimony by Expert Witnesses.* A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

155.10-3. *Bases of an Expert's Opinion Testimony.* An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the Court only if their probative value in helping the Court evaluate the opinion substantially outweighs their prejudicial effect.

155.10-4. *Opinion on an Ultimate Issue.* An opinion is not objectionable just because it embraces an ultimate issue.

155.10-5. *Disclosing the Facts or Data Underlying an Expert's Opinion.* Unless the Court orders otherwise, an expert may state an opinion—and give the reasons for it—without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.

155.10-6. *Court-Appointed Expert Witnesses.*

(a) *Appointment Process.* On a party's motion or on its own, the Court may order the parties to show cause why expert witnesses shall not be appointed and may ask the parties to submit nominations. The Court may appoint any expert that the parties agree on and any of its own choosing. But the Court may only appoint someone who consents to act.

(b) *Expert's Role.* The Court shall inform the expert of the expert's duties. The Court may do so in writing and have a copy filed with the clerk or may do so orally at a conference in which the parties have an opportunity to participate. The expert:

- (1) shall advise the parties of any findings the expert makes;
- (2) may be deposed by any party;
- (3) may be called to testify by the court or any party; and
- (4) may be cross-examined by any party, including the party that called the expert.

(c) *Compensation.* The expert shall be entitled to a reasonable compensation, as set by the Court. The compensation shall be payable as follows:

- (1) in a civil case involving just compensation under the Fifth Amendment, from any funds that are provided by law; and
- (2) in any other civil case, by the parties in the proportion and at the time that the Court directs—and the compensation shall then be charged like other costs.

(d) *Parties' Choice of Their Own Experts.* This section shall not limit a party in calling its own experts.

155.11. Hearsay

155.11-1. *Statements That Are Not Hearsay.* A statement that meets the following conditions shall not be hearsay:

(a) *A Declarant-Witness's Prior Statement.* The declarant testifies and shall be subject to cross-examination about a prior statement, and the statement:

(1) is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;

(2) is consistent with the declarant's testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or

(3) identifies a person as someone the declarant perceived earlier.

(b) *An Opposing Party's Statement.* The statement is offered against an opposing party and:

(1) was made by the party in an individual or representative capacity;

(2) is one the party manifested that it adopted or believed to be true;

(3) was made by a person whom the party authorized to make a statement on the subject;

(4) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or

(5) was made by the party's conspirator during and in furtherance of the conspiracy. The statement shall be considered but does not by itself establish the declarant's authority under (3); the existence or scope of the relationship under (4); or the existence of the conspiracy or participation in it under (5).

155.11-2. *The Rule Against Hearsay.* Hearsay is not admissible unless any of the following provides otherwise:

(a) Tribal Laws;

(c) rules prescribed by the Court; or

(d) applicable federal statute.

155.11-3. *Exceptions to the Section Against Hearsay, Regardless of Whether the Declarant Is Available as a Witness.* The following shall not be excluded by the section against hearsay, regardless of whether the declarant is available as a witness:

(a) *Present Sense Impression.* A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

(b) *Excited Utterance.* A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.

(c) *Then-Existing Mental, Emotional, or Physical Condition.* A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

(d) *Statement Made for Medical Diagnosis or Treatment.* A statement that:

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

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

(e) *Recorded Recollection.* A record that:

(1) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;

- (2) was made or adopted by the witness when the matter was fresh in the witness's memory; and
 - (3) accurately reflects the witness's knowledge. If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.
- (f) *Records of a Regularly Conducted Activity.* 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, occupation, or calling, whether or not for profit;
 - (3) making the record was a regular practice of that activity;
 - (4) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 155.12-2(k) or (l) or with a statute permitting certification; and
 - (5) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.
- (g) *Absence of a Record of a Regularly Conducted Activity.* Evidence that a matter shall not be included in a record described in paragraph (f) if:
- (1) the evidence shall be admitted to prove that the matter did not occur or exist;
 - (2) a record was regularly kept for a matter of that kind; and
 - (3) neither the possible source of the information nor other circumstances indicate a lack of trustworthiness.
- (h) *Public Records.* A record or statement of a public office if:
- (1) it sets out:
 - (A) the office's activities;
 - (B) a matter observed while under a legal duty to report; or
 - (C) factual findings from a legally authorized investigation; and
 - (2) neither the source of information nor other circumstances indicate a lack of trustworthiness.
- (i) *Public Records of Vital Statistics.* A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.
- (j) *Absence of a Public Record.* Testimony, or a certification under Rule 155.12-2 (Evidence that is Self-Authenticating), that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that:
- (1) the record or statement does not exist; or
 - (2) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.
- (k) *Records of Religious Organizations.* A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.
- (l) *Certificates of Ceremonies.* A statement of fact contained in a certificate:
- (1) made by a person who is authorized by a religious organization or by law to perform the act certified;
 - (2) attesting that the person performed a marriage or similar ceremony or administered a sacrament; and
 - (3) purporting to have been issued at the time of the act or within a reasonable time after it.

- (m) *Family Records*. A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.
- (n) *Records of Documents that Affect an Interest in Property*. The record of a document that purports to establish or affect an interest in property if:
- (1) the record shall be admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;
 - (2) the record is kept in a public office; and
 - (3) a statute authorizes recording documents of that kind in that office.
- (o) *Statements in Documents That Affect an Interest in Property*. A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose, unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.
- (p) *Statements in Ancient Documents*. A statement in a document that is at least twenty (20) years old and whose authenticity is established.
- (q) *Market Reports and Similar Commercial Publications*. Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.
- (r) *Statements in Learned Treatises, Periodicals, or Pamphlets*. A statement contained in a treatise, periodical, or pamphlet if:
- (1) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and
 - (2) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice. If admitted, the statement may be read into evidence but not received as an exhibit.
- (s) *Reputation Concerning Personal or Family History*. A reputation among a person's family by blood, adoption, or marriage, or among a person's associates or in the community, concerning the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.
- (t) *Reputation Concerning Boundaries or General History*. A reputation in a community, arising before the controversy, concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation.
- (u) *Reputation Concerning Character*. A reputation among a person's associates or in the community concerning the person's character.
- (v) *Judgment of a Previous Conviction*. Evidence of a final judgment of conviction if:
- (1) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;
 - (2) the conviction was for a crime punishable by death or by imprisonment for more than a year; and
 - (3) the evidence is admitted to prove any fact essential to the judgment.
- (w) *Judgments Involving Personal, Family, or General History, or a Boundary*. A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter:
- (1) was essential to the judgment; and
 - (2) could be proved by evidence of reputation.

(x) *Children's Testimony.* A statement by a child, if the court finds that it is in the child's best interest to not testify and the statement is found to be reasonably reliable.

(y) *Other Exceptions.* For other exceptions, please refer to section 155.11-7.

155.11-4. *Exceptions to the Rule Against Hearsay: When the Declarant Is Unavailable.*

(a) *Criteria for being Unavailable.* A declarant shall be considered unavailable as a witness if he or she:

(1) is exempted from testifying about the subject matter of the declarant's statement because the Court rules that a privilege applies;

(2) refuses to testify about the subject matter despite a Court order to do so;

(3) testifies to not remembering the subject matter;

(4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or

(5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:

(A) the declarant's attendance, in the case of a hearsay exception under section 155.114(b)(1) or (6); or

(B) the declarant's attendance or testimony, in the case of a hearsay exception under section 155.11-4(b)(2), (3), or (4). But this subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

(b) *The Exceptions.* The following shall not be excluded by the section against hearsay if the declarant is unavailable as a witness:

(1) *Former Testimony.* Testimony that:

(A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

(B) is now offered against a party who had, or whose predecessor in interest had, an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

(2) *Statement Under Belief of Impending Death.* A statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

(3) *Statement Against Interest.* A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness.

(4) *Statement of Personal or Family History.* A statement about:

(A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was

so intimately associated with the person's family that the declarant's information is likely to be accurate.

(5) *Other Exceptions.* For other exceptions, please refer to section 155.11-7.

(6) *Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability.* A statement offered against a party that wrongfully caused—or acquiesced in wrongfully causing—the declarant's unavailability as a witness, and did so intending that result.

155.11-5. *Hearsay Within Hearsay.* Hearsay within hearsay shall not be excluded by the section against hearsay if each part of the combined statements conforms with an exception to the rule.

155.11-6. *Attacking and Supporting the Declarant's Credibility.* When a hearsay statement—or a statement described in section 155.11-1(b)(3), (4), or (5)—has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The Court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.

155.11-7. *Residual Exception.*

(a) *In General.* A hearsay statement shall not be excluded by the rule against hearsay even if the statement is not specifically covered by a hearsay exception in section 155.11-3 or 155.11-4 if:

- (1) the statement has equivalent circumstantial guarantees of trustworthiness;
- (2) it is offered as evidence of a material fact;
- (3) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and
- (4) admitting it will best serve the purposes of these rules and the interests of justice.

(b) *Notice.* The statement shall be admissible only if, before the trial or hearing, the proponent gives an adverse party reasonable notice of the intent to offer the statement and its particulars, including the declarant's name and address, so that the party has a fair opportunity to meet it.

155.12. Authentication and Identification

155.12-1. *In General.* To satisfy the requirement of authenticating or identifying an item of evidence, the proponent shall produce evidence sufficient to support a finding that the item is what the proponent claims it is. The following are examples only, not a complete list, of evidence that satisfies the requirement:

(a) *Testimony of a Witness with Knowledge.* Testimony that an item is what it is claimed to be

(b) *Nonexpert Opinion About Handwriting.* A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.

(c) *Comparison by an Expert Witness or the Trier of Fact.* A comparison with an authenticated specimen by an expert witness or the trier of fact.

(d) *Distinctive Characteristics and the Like.* The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

- (e) *Opinion About a Voice.* An opinion identifying a person's voice, whether heard firsthand or through mechanical or electronic transmission or recording, based on hearing the voice at any time under circumstances that connect it with the alleged speaker.
- (f) *Evidence About a Telephone Conversation.* For a telephone conversation, evidence that a call was made to the number assigned at the time to:
 - (1) a particular person, if circumstances, including self-identification, show that the person answering was the one called; or
 - (2) a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.
- (g) *Evidence About Public Records.* Evidence that:
 - (1) a document was recorded or filed in a public office as authorized by law; or
 - (2) a purported public record or statement is from the office where items of this kind are kept.
- (h) *Evidence about Ancient Documents or Data Compilations.* For a document or data compilation, evidence that it:
 - (1) is in a condition that creates no suspicion about its authenticity;
 - (2) was in a place where, if authentic, it would likely be; and
 - (3) is at least twenty (20) years old when offered.
- (i) *Evidence About a Process or System.* Evidence describing a process or system and showing that it produces an accurate result.
- (j) *Methods Provided by Tribal law.* Any method of authentication or identification allowed by Tribal law or other applicable law.

155.12-2. *Evidence that is Self-Authenticating.* The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

- (a) *Domestic Public Documents That Are Sealed and Signed.* A document that bears:
 - (1) a seal purporting to be that of the Tribe; United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and
 - (2) a signature purporting to be an execution or attestation.
- (b) *Domestic Public Documents that are Not Sealed but are Signed and Certified.* A document that bears no seal if:
 - (1) it bears the signature of an officer or employee of an entity named in 155.12-2(a)(1) (*Domestic Public Documents that are Sealed and Signed*); and
 - (2) another public officer who has a seal and official duties within that same entity certifies under seal—or its equivalent—that the signer has the official capacity and that the signature is genuine.
- (c) *Foreign Public Documents.* A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester, or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a

reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either:

- (1) order that it be treated as presumptively authentic without final certification; or
- (2) allow it to be evidenced by an attested summary with or without final certification.

(d) *Certified Copies of Public Records.* A copy of an official record, or a copy of a document that was recorded or filed in a public office as authorized by law, if the copy is certified as correct by:

- (1) the custodian or another person authorized to make the certification; or
- (2) a certificate that complies with 155.12-2(a), (b) or (c), Tribal Law, a federal statute, or a rule prescribed by the Supreme Court.

(e) *Official Publications.* A book, pamphlet, or other publication purporting to be issued by a public authority.

(f) *Newspapers and Periodicals.* Printed material purporting to be a newspaper or periodical.

(g) *Trade Inscriptions and the Like.* An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.

(h) *Acknowledged Documents.* A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.

(i) *Commercial Paper and Related Documents.* Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

(j) *Presumptions Under a Federal Statute.* A signature, document, or anything else that a federal statute declares to be presumptively or prima facie genuine or authentic.

(k) *Certified Domestic Records of a Regularly Conducted Activity.* The original or a copy of a domestic record that meets the requirements of 155.11-3(f)(1) – (3) (*Records of a Regularly Conducted Activity*), as shown by a certification of the custodian or another qualified person that complies with Tribal Law, a federal statute or a rule prescribed by the Supreme Court. Before the trial or hearing, the proponent shall give an adverse party reasonable written notice of the intent to offer the record—and shall make the record and certification available for inspection—so that the party has a fair opportunity to challenge them.

(l) *Certified Foreign Records of a Regularly Conducted Activity.* In a civil case, the original or a copy of a foreign record that meets the requirements of 155.12-2(k) (*Certified Domestic Records of a Regularly Conducted Activity*), modified as follows: the certification, rather than complying with Tribal Law, a federal statute or Supreme Court rule, shall be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent shall also meet the notice requirements of 155.12-2(k) (*Certified Domestic Records of a Regularly Conducted Activity*).

155.12-3. *Subscribing Witness's Testimony.* A subscribing witness's testimony shall be necessary to authenticate a writing only if required by the law of the jurisdiction that governs its validity.

155.13. Writings, Recordings and Photographs

155.13-1. *Requirement of the Original.* An original writing, recording or photograph is required in order to prove its content unless this Law or another Tribal law provide otherwise.

155.13-2. *Admissibility of Duplicates.* A duplicate shall be admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.

155.13-3. *Admissibility of Other Evidence of Content.* An original shall not be required and other evidence of the content of a writing, recording, or photograph is admissible if:

- (a) all the originals are lost or destroyed, and not by the proponent acting in bad faith;
- (b) an original cannot be obtained by any available judicial process;
- (c) the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or
- (d) the writing, recording, or photograph is not closely related to a controlling issue.

155.13-4. *Copies of Public Records to Prove Content.* The proponent may use a copy to prove the content of an official record, or of a document that was recorded or filed in a public office as authorized by law, if:

- (a) the record or document is otherwise admissible; and
- (b) the copy is certified as correct in accordance with 155.12-2(d) (Certified Copies of Public Records) or is testified to be correct by a witness who has compared it with the original. If no such copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.

155.13-5. *Summaries to Prove Content.* The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent shall make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. The court may order the proponent to produce them in court.

155.13-6. *Testimony or Statement of a Party to Prove Content.* The proponent may prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.

155.13-7. *Functions of the Court.* The court shall determine whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under 155.13-3 (Admissibility of Other Evidence of Content) or 155.13-4 (Copies of Public Records to Prove Content).

End.

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