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I. GENERAL

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, 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.

2. Tribal Custom and Tradition: Custom and tradition may be used as evidence. Any conflicting procedural rule shall be superseded by the specific presentation of custom and tradition. When procedural rules are superseded in accordance with this section, the custom and tradition and reasons for its use shall be included in the Findings of Fact and Conclusions of Law prepared by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. Reservation custom and tradition shall be established by testimony or affidavit of an expert or by the judge. An expert is an elder or other person recognized by the community as knowledgeable in custom and tradition.

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.

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 than it would be without the evidence, including evidence on the credibility of a witness or hearsay declarant.

5. Definitions:

A. Direct Evidence: That which proves the fact in dispute directly, without an inference 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. This proves a fact from which the fact in dispute is inferred.

C. Inference: A deduction the jury makes from the facts proved, without an express direction of the law to that effect. An inference must be founded on a fact legally proved and on such a deduction from that fact as is warranted by a consideration of the

usual propensities or passions of persons, the particular propensities or passions of the person whose act is in question, and the course of nature.

D. Presumption: An assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action or proceeding. The trier of fact must find the assumed fact in accordance with the presumption unless the presumption is overcome by a preponderance of evidence to the contrary. If presumptions are inconsistent the court shall apply the presumption that is founded upon weightier considerations of public policy. If those consideration are of equal weight, the court shall disregard both presumptions.

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

7. Instructions to Jury on Evaluation of Evidence: The jury is to be instructed 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 testimony is to be distrusted in others;

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

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. Instructions shall also include that 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.

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 court.

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.

10. Presentation and Foundation: Each party, when presenting evidence, must first show in open court, through the use of a witness, the reliability of the evidence, and the relevance of the evidence unless shown to be substantially reliable and relevant to the case.

11. Presentation of Witnesses: Each party, when calling a witness, must first show in open court, who the witness is, the witnesses' 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, credentials or relevancy using direct examination of the witness not identified, demonstrating a lack of ability or credentials to testify to relevant matters, or failing to provide relevant information.

II. JUDICIAL NOTICE

12. Evidence Subject to Judicial Notice: The Court shall take judicial notice of federal acts, statutes, and treaties, statutes of every state, and constitutional guarantees and protections, duly enacted ordinances and governmental regulations of every other reservation and other jurisdiction of 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 the fact to be judicially noticed is one not subject to reasonable dispute.

13. Procedure for Judicial Notice: The party requesting judicial notice shall furnish the Court and 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 the relevancy of that law, act or statement.

14. Jury Instruction on Judicial Notice: The Court shall direct the jury to find as relevant any fact judicially noticed.

III. HEARSAY

15. 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.

16. Rule: Hearsay is inadmissible as evidence except as stated elsewhere in these rules.

17. 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 issue 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 application and notice, 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. Where, in the Court's opinion, the questioned evidence is deserving, needed, and otherwise admissible, and the party presenting such evidence has given notice such that the other party has had fair opportunity to exercise discovery, the evidence will be allowed.

IV. PRIVILEGE

18. 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.

19. 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.

20. 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 matter already disclosed, is a basis for a

reasonable inference that a crime has been committed.

21. 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. He cannot be compelled in a criminal action to be a witness against himself. Except, a defendant in a criminal case who takes the stand to testify in his own behalf may be required to give testimony against himself. Such testimony shall be limited to the charge on trial.

22. Advocate-Client Privilege: An 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 professional employment is privileged and cannot be disclosed without the client's consent. An advocate means any person authorized, or reasonably believed by the client to be authorized to act as the client's legal representative before any Reservation, State, or Federal Court. 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 a civil offense.

23. 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, (or someone in the immediate family/extended family).

24. Clergy-Penitent Privilege: Any confession made to a clergyman or priest in his professional character in the course of discipline practiced by the church to which he belongs cannot be disclosed without the penitent's consent.

25. 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 offense.

26. Public Officer: A public officer cannot be examined as to official information communicated to him in an official confidence, when public interest would suffer by the disclosure unless the non-disclosure would result

in substantial injustice.

V. WITNESSES

27. 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.

28. 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 himself concerning the matter so as to be understood by the judge and jury either directly or through interpretation by one who can understand him or 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.

29. 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.

30. Oath: 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.

31. 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 this as an appealable error.

32. Juror 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 the determination of chance.

33. Advocate as Witness: When an advocate is a witness for his client upon any trial, except as to merely formal matters, such as the attestation or custody of an instrument or the like, he shall not further participate in such trial.

34. Exclusion of Witnesses: The court on its own motion may, 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 who is a natural person, or an officer or employee of a party, which is not a natural person 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.

35. 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.

36. 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 field of expertise.

37. 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 testimony or the determination of a fact issue.

38. Authentication of Writing: A writing offered in evidence as authentic is admissible, if sufficient evidence has been introduced to sustain a finding of its authenticity or the judge finds that the writing; (a) is at least thirty (30) years old at the time it is so offered; and (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.