MIAMI TRIBE OF OKLAHOMA

RULES OF EVIDENCE

Article I: General Provisions

Rule 1. Authority. These Rules of Evidence are adopted pursuant to the authority vested in the Miami Tribe of Oklahoma Business Committee, as the governing body of the Miami Tribe of Oklahoma, by virtue of its inherent tribal sovereignty and the Constitution and Bylaws of the Miami Tribe of Oklahoma.

Rule 2. Reservation of Rights. The Miami Tribe Business Committee reserves the right to amend or repeal all or any part of these Rules at any time. Nothing in this Ordinance shall be construed to constitute a waiver of the sovereign immunity of the Miami Tribe of Oklahoma or consent to the jurisdiction by any government or forum not expressly authorized to exercise jurisdiction under this Ordinance.

Rule 3. Scope and Construction. These Rules govern the admissibility and use of evidence in all criminal and civil matters before the Miami Tribe District Court, except that these Rules shall not apply to any petition, hearing, claim, or other action that arises under the Tribe's Children's Code. These Rules must be applied to enable the Court to determine the truth and make sound decisions without delay, confusion, and uncertainty for the parties. These Rules should be read liberally in order for justice to be served.

Rule 4. Application of Federal Rules of Evidence and Advisory Committee Notes. The Court may apply the Federal Rules of Evidence, as they now or hereafter exist, to resolve the evidentiary issue only after the Court determines that neither these Rules nor Tribal Law assist the Court in resolving the evidentiary issue. The Court may also refer to the advisory notes of the Federal Rules of Evidence in interpreting any ambiguities arising from these Rules to the extent that such advisory notes are not inconsistent with these Rules or Tribal Law.

Rule 5. Definitions. In these Rules,

(a) "Court" means the Miami Tribe of Oklahoma District Court.

(b) "Tribal Constitution" means the Miami Tribe of Oklahoma Constitution approved by the United States Secretary of the Interior on August 16, 1939.

(c) "Tribal Law" means the law of the Miami Tribe of Oklahoma unless otherwise specified.

Rule 6. Rulings on Evidence

(a) Preserving a Claim of Error. A party cannot claim error on a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) In a case in which the ruling is one admitting evidence, a timely objection or motion to strike is made and appears on the record, stating the specific ground for the objection, if such is not obvious from the context; or

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

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

(c) 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) Preventing the Jury from Hearing Inadmissible Evidence. To the extent practicable, the Court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.

(e) 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.

Rule 7. Preliminary Questions.

(a) In General. The Court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. The Court is not bound by evidence rules, except those on privilege, in making such a determination.

(b) Relevance That Depends on a Fact. When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient 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.

(c) Conducting a Hearing So That the Jury Cannot Hear It. The Court must conduct any hearing on a preliminary question so that the jury cannot hear it if the hearing involves the admissibility of a confession, a defendant in a criminal case is a witness and so requests, or justice so requires.

(d) Cross-Examining a Defendant in a Criminal Case. By testifying on a preliminary question, a defendant in a criminal case does not become subject to cross-examination on other issues in the case.

(e) Evidence Relevant to Weight and Credibility. This Rule does not limit a party's right to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.

Rule 8. Limiting Evidence That Is Not Admissible Against Other Parties or for Other Purposes. If the Court admits evidence that is admissible against a party or for a purpose—but not against another party or for another purpose—the Court, on timely request or on its own motion, must restrict the evidence to its proper scope and instruct the jury accordingly.

Rule 9. 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.

Article II: Judicial Notice

Rule 10. Judicial Notice of Adjudicative Facts

(a) Generally. The Court may take judicial notice of an adjudicative fact at any time and at during any stage of a proceeding if such fact is not subject to reasonable dispute because it:

(1) is generally known within the Court's territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(b) Taking Notice. The Court shall take notice of an adjudicative fact if a party requests it and the Court is supplied with the necessary information to satisfy the conditions under subsection (a) of this Rule. The Court may take judicial notice on its own motion.

(c) Opportunity to Be Heard. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed.

(d) Instructing the Jury. In a civil case, the Court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the Court must instruct the jury that it may or may not accept the noticed fact as conclusive.

Article III: Presumptions in Civil Cases

Rule 11. Presumptions in Civil Cases Generally. In a civil case, unless Tribal Law or these Rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. But this Rule does not shift the burden of persuasion, which remains on the party who had it originally.

Article IV: Relevance and its Limitations

Rule 12. Admissibility of Relevant Evidence. All relevant evidence is admissible, unless otherwise prohibited by the Tribal Constitution, Tribal Law, or a specific section of these Rules. Evidence that is not relevant is not admissible.

Rule 13. 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.

Rule 14. Exclusion of Relevant Evidence. The Court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusion the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Rule 15. Character Evidence

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

(b) Exceptions for a Defendant or Victim in a Criminal Case. The following exceptions apply in a criminal case:

(1) a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;

(2) subject to the limitations in Rule 24, a defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may:

(i) offer evidence to rebut it; and

(ii) offer evidence of the defendant's same trait; and

(3) in a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

(c) Exceptions for a Witness. Evidence of a witness's character may be admitted under Rules 34, 35, and 36.

Rule 16. Crimes, Wrongs, or Other Acts

(a) Prohibited Uses. 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) Permitted Uses; Notice in a Criminal Case. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On request by a defendant in a criminal case, the prosecutor must:

(1) provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial; and

(2) do so before trial—or during trial if the Court, for good cause, excuses lack of pretrial notice.

Rule 17. 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.

Rule 18. 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.

Rule 19. Subsequent Remedial Measures. When actions are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product or its design, or a need for a warning or instruction. But the Court may admit this evidence for another purpose, such as proving ownership, control, or the feasibility of precautionary measures, if such facts are disputed.

Rule 20. 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, offering, or accepting, promising to accept, or offering to accept, 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, negating a contention of undue delay, or proving an effort to obstruct a judicial proceeding or prosecution.

Rule 21. Offers to Pay Medical or Other Expenses. Evidence of furnishing, promising to pay, or offering to pay medical, hospital, or similar expenses resulting from an injury is not admissible to prove liability for the injury.

Rule 22. Pleas, Plea Discussions, and Related Statements.

(a) Prohibited Use. In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:

(1) a guilty plea that was later withdrawn;

(2) a no contest plea;

(3) a statement made during a proceeding on a plea; or

(4) a statement made during plea discussions.

(b) Exceptions. The Court may admit a statement described in Rule 22(a)(3) or (4) in any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

Rule 23. Liability Insurance. Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the Court may admit this evidence for another purpose, such as proving a witness's bias or prejudice or proving agency, ownership, or control.

Rule 24. Sex Offense Cases

(a) Prohibited Uses. In a civil or criminal proceeding involving alleged sexual misconduct, the following evidence is not admissible:

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

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

(b) Exceptions. The Court may admit the evidence offered for the purposes described in subsection (a) if the Court determines that its value substantially outweighs the danger of any harm to any victim or unfair prejudice to any party.

(c) Procedure to Determine Admissibility. If a party intends to offer evidence under Rule 24(a), the party must file a motion that specifically describes the evidence and states the purpose for which it is to be offered at least 14 days before trial unless the Court, for good cause, sets a different time. The motion must be served on all parties and the moving party must notify the victim or alleged victim or, when appropriate, the victim's guardian or representative. Before admitting evidence under this rule, the Court must conduct an *in camera* hearing and give the victim or alleged victim and parties a right to attend and be heard. Unless the Court orders otherwise, the motion, related materials, and the record of the hearing must be and remain sealed.

Rule 25. Similar Crimes in Sexual Assault/Child Molestation Cases.

(a) Permitted Uses. In a civil case which involves a claim that the defendant committed a sexual assault or child molestation under Tribal law, or in a criminal case in which a defendant is accused of a sexual assault or child molestation under Tribal Law, the Court may admit evidence that the defendant committed any other sexual assault or child molestation. The evidence may be considered on any matter to which it is relevant.

(b) Disclosure to the Defendant. A prosecutor or party intending to offer this evidence, including witnesses' statements or a summary of the expected testimony, must disclose it to the defendant at least 15 days before trial or at a later time that the Court allows for good cause.

Article V: Privileges

Rule 26. Privileges Generally. Confidential communications that occur within privileged relationships and/or in privileged contexts should be protected by preventing those communications from being admitted as evidence by the Court.

Rule 27. Recognized Privileges. The Court shall recognize the following non-exhaustive list of privileges: attorney-client, psychotherapist-patient, husband-wife, and communications to clergy. In determining whether or not these privileges or any additional privileges will be recognized in a particular case, the Court may look to Tribal Law, the law of other Native American tribes, state law, and any other laws applicable to the controversy.

Article VI: Witnesses

Rule 28. Witness Competence. A witness must be competent in order to provide testimony. The Court shall make determinations of competency in its sound discretion. Unless otherwise provided by Tribal Law, the Court should discern whether the person has the capacity to observe, receive, record, remember and describe in determining whether a person is competent.

Rule 29. 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 Rule does not apply to a witness's expert testimony under Rule 44.

Rule 30. Oath or Affirmation to Testify Truthfully. Before testifying in Court, every witness shall first state that he or she will testify truthfully pursuant to an oath prescribed by the Court.

Rule 31. Interpreters. All interpreters before the Court are subject to the administration of an oath or affirmation that they are qualified to interpret and that they will make a true interpretation.

Rule 32. Competency of Judge or Juror as Witness. The presiding judge may not testify as a witness at the trial, and a party need not object to preserve the issue. A juror may not testify as a witness before the other jurors at the trial. If a juror is called to testify, the Court must give a party an opportunity to object outside the jury's presence.

Rule 33. Testimony of Juror During an Inquiry into the Validity of a Verdict or Indictment.

> **(a) Prohibited Testimony or Other Evidence.** During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incidents that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The Court may not receive a juror's affidavit or evidence of a juror's statement on these matters.
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> **(b) Exceptions.** A juror may testify about whether (1) extraneous prejudicial information was improperly brought to the jury's attention; (2) an outside influence was improperly brought to bear on any juror; or (3) a mistake was made in entering the verdict on the verdict form.

Rule 34. Challenging Witness Credibility. Any party, including the party that called the witness, may attack the witness's credibility.

Rule 35. Witness's Character for Truthfulness or Untruthfulness

> **(a) Reputation or Opinion Evidence.** The truthfulness of a witness 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 the witness's character for truthfulness or untruthfulness. Evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.
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> **(b) Specific Instances of Conduct.** Except for a criminal conviction under Rule 36, specific instances of conduct of a witness, for the purpose of attacking or supporting his credibility, may only be inquired into on cross examination if they are probative of the character for truthfulness or untruthfulness of the witness or another witness whose character the witness being cross-examined has testified about. This Rule does not operate as a waiver of the privilege against self-incrimination.

Rule 36. Impeachment by Evidence of Criminal Conviction.

(a) Felony Convictions. Proof of a felony conviction under state or federal law, or the law of any Indian tribe, within 10 years of the date of testimony may be admitted for the purposes of attacking a witness's truthfulness.

(b) Non-felony Convictions. Proof of a non-felony conviction under state or federal law, or the law of any Indian tribe, within 10 years of the date of testimony may be admitted for the purposes of attacking a witness's truthfulness if the Court can readily determine that establishing the elements of the crime required proving—or the witness's admitting—a dishonest act or false statement.

(c) Limit on Using the Evidence After 10 Years. Proof of a conviction under subsection (a) or (b) of this Rule that would otherwise be admissible but for the conviction occurring later than 10 years of the date of the testimony is admissible 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.

(d) Effect of a Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is not 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.

(e) Juvenile Adjudications. Evidence of a juvenile adjudication is admissible under this Rule only if: (1) it is offered in a criminal case; (2) the adjudication was of a witness other than the defendant; (3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and (4) admitting the evidence is necessary to fairly determine guilt or innocence.

(f) Pendency of an Appeal. A conviction that satisfies this Rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

Rule 37. Religious Beliefs or Opinions. Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

Rule 38. Mode and Order of Examining Witnesses and Presenting Evidence.

(a) Control by the Court; Purposes. The Court shall exercise control over the mode and order of examining witnesses and presenting evidence in order to make procedures effective for determining the truth, avoid wasting time, and protect witnesses from harassment or undue embarrassment.

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

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

Rule 39. Writing Used to Refresh a Witness.

(a) Use of Writing to Refresh Memory. Subject to approval by the Court, a witness may examine a document in order to refresh his or her memory while testifying.

(b) Adverse Party's Options; Deleting Unrelated Matter. An adverse party is 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 must examine the writing independently, delete any unrelated portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must 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. But if the prosecution does not comply in a criminal case, the Court must strike the witness's testimony or—if justice so requires—declare a mistrial.

Rule 40. Witness's Prior Statement

(a) Showing or Disclosing the Statement During Examination. When examining a witness regarding a prior statement made by that witness, the statement need not be disclosed to the witness at that time, but upon request it shall be shown or disclosed to opposing counsel.

(b) Extrinsic Evidence of a Prior Inconsistent Statement. Extrinsic evidence of a witness's prior inconsistent statement is 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 subsection (b) does not apply to a Statement by Party Opponent under Rule 48(b).

Rule 41. Calling and Examining Witnesses by the Court. On its own motion or at the request of a party, the Court may call a witness. Each party is entitled to cross-examine the witness. The Court may examine a witness regardless of who calls the witness. A party may object to the Court's calling or examining a witness either at that time or at the next opportunity when the jury is not present.

Rule 42. Excluding Witnesses. At the request of a party or on its own motion, the Court shall order witnesses to be excluded from the courtroom so that they cannot hear other witness's testimony. This Rule does not apply to (1) a party who is a natural person; (2) an officer or employee of a party after being designated as the party's representative by its attorney; (3) a person whose presence a party shows is essential to the presentation of a party's case; and (4) a person authorized by Tribal Law to be present.

Article VII: Opinion and Expert Testimony

Rule 43. Opinion Testimony by a Non-Expert Witnesses. If a witness is not testifying as an expert, testimony in the form of an opinion is limited to opinions and inferences that are: (1) rationally based on the witness's personal observations; (2) helpful to clearly understanding the witness's testimony or to determining a fact at issue; and (3) not based on scientific, technical, or other specialized knowledge within the scope of Rule 44.

Rule 44. Testimony by Expert Witnesses.

(a) Qualification as an Expert. In order to qualify as an expert witness, the witness must demonstrate that he or she is qualified as an expert by knowledge, skill, experience, training, or education.

(b) Requirements for Expert Testimony. If the Court deems a witness qualified as an expert, the witness may testify in the form of an opinion or otherwise if: (1) the expert's scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue; (2) the testimony is based on sufficient facts or data; (3) the testimony is the product of reliable principles and methods; and (4) the expert has reliably applied the principles and methods to the facts of the case.

(c) Bases of an Expert Opinion. An expert may base an opinion on facts or data in the case that the expert perceived or that were made known to the expert at or before the hearing. If the facts or data are of such a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence for the opinion to be admitted. If the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

(d) Opinion on an Ultimate Issue. An opinion is not objectionable just because it embraces an ultimate issue in the case. However, in a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.

(e) Disclosing the Facts or Data Underlying an Expert 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.

Rule 45. Court-Appointed Expert Witnesses.

(a) Appointment Process. On its own motion or a request by a party, the Court may order the parties to show cause why expert witnesses should 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. The appointed expert must consent to act.

(b) Expert's Role. The Court must inform the expert of the expert's duties either in writing or orally at a conference in which the parties have an opportunity to participate. The expert must advise the parties of any findings the expert makes. The expert may be deposed by any party, called to testify by the Court or any party, and cross-examined by any party, including the party that called the expert.

(c) Compensation. The expert is entitled to a reasonable compensation, as set by the Court.

(d) Disclosing the Appointment to the Jury. In its discretion, the Court may authorize disclosure to the jury that the Court appointed the expert.

(e) Parties' Choice of Their Own Experts. This Rule does not limit a party's ability to call its own experts.

Article VIII: Hearsay

Rule 46. Hearsay Generally. "Hearsay" means a statement that the declarant does not make while testifying at the current trial or hearing that a party offers in evidence to prove the truth of the matter asserted in the statement. A "statement" is a person's assertion, whether oral, written, or nonverbal conduct, that the person intends to be an assertion. A "declarant" means the person who made the statement.

Rule 47. Hearsay Generally Inadmissible. Hearsay is not admissible, except as provided by these Rules or by Tribal Law.

Rule 48. Statements Which Are Not Hearsay.

(a) Prior Statements by a Witness. A statement that meets the following conditions is not hearsay when declarant testifies and is subject to cross-examination about a prior statement, and the statement is:

(1) 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) 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 to otherwise rehabilitate the declarant's credibility as a witness; or

(3) one of identification of a person made by the witness at an earlier time.

(b) Statement by Party-Opponent. A statement by a party-opponent is not hearsay. A statement by a party-opponent is a statement offered against an opposing party and is:

(1) a party's own statement made in an individual or representative capacity;

(2) a statement in which the party manifested that it adopted or believed to be true;

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

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

(5) a statement made during and in furtherance of the conspiracy by the party's coconspirator

Rule 49. Hearsay Exceptions. The following statements are excepted from the definition of "hearsay" under Rule 46:

(a) Present Sense Impression. A statement describing or explaining an event or condition, made while the event or condition is occurring, 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 the Purpose of Medical Diagnosis or Treatment. A statement made by the declarant that describes his or her medical history, past or present symptoms or sensations, their inception, or their general cause, for the purposes of medical diagnosis or treatment.

(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) Regularly-Kept Records. Regularly-kept records of a business, organization, occupation, or the Miami Tribe of Oklahoma Tribal Government that record an act, event, condition, opinion, or diagnosis are admissible provided that the custodian or another qualified witness can certify through testimony or certification that:

(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) the making the record was a regular practice of that activity;

and the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record — and must make the record and certification available for inspection — so that the party has a fair opportunity to challenge them

(g) Absence of a Record of a Regularly Conducted Activity. Evidence that a matter is not included in a record described in subsection (f) of this Rule if:

(1) the evidence is 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) the opponent does not show that the possible source of the information or other circumstances indicate a lack of trustworthiness.

(h) Public Records. A record or statement of a public office if:

(1) the record or statement sets out the office's activities; a matter observed while under a legal duty to report, but excluding a matter observed by law-enforcement

personnel in a criminal case; or in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and

(2) the opponent does not show the source of information or 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 that a diligent search failed to disclose a public record or statement if:

(1) the testimony or certification is admitted to prove that

(i) the record or statement does not exist; or

(ii) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind; and

(2) in a criminal case, a prosecutor who intends to offer a certification provides written notice of that intent at least 14 days before trial, and the defendant does not object in writing within 7 days of receiving the notice, unless the Court sets a different time for the notice or the objection.

(k) Records of Religious Organizations Concerning Personal or Family History. 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 Marriage, Baptism, and Similar 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 is 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 meaning or substance of the document.

(p) Statements in Ancient Documents. A statement in a document that is at least 20 years old the authenticity of which 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 or tribe.

(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;

(3) the evidence is admitted to prove any fact essential to the judgment; and

(4) when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

The pendency of an appeal may be shown but does not affect admissibility.

(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.

Rule 51. Hearsay Exceptions When Declarant is Unavailable.

(a) When a Declarant is Unavailable. A declarant is considered to be unavailable as a witness if he or she is exempted from testifying because a privilege applies; refuses to testify; testifies to not remembering the subject matter; cannot testify due to death, or a then-existing infirmity, physical illness, or mental illness; or is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure the declarant's attendance or testimony. A declarant is not considered unavailable for the purposes of this Rule 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. If the declarant is unavailable as a witness, the following are not excluded by the rule against hearsay:

(1) Former Testimony. Prior testimony that was given by a witness at a trial, hearing, or lawful deposition, if offered against a party who had—or, in a civil case, whose predecessor in interest had—an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

(2) Dying Declaration**.** A statement that the declarant made while believing that he or she was going to die imminently about the cause or circumstances of the perceived impending death.

(3) Statement Against Interest. A statement made by a declarant that is against the declarant's proprietary or pecuniary interest to such an extent that the declarant would not have made the statement unless the declarant believed the statement to be true. If offered in the criminal case to expose the declarant to criminal liability, the statement must be supported by corroborating circumstances that clearly indicate its trustworthiness

(4) Statement of Personal or Family History. A statement about the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history. Additionally, a statement of another person concerning any of these facts 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) 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.

Rule 52. Hearsay Within Hearsay. Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

Rule 53. Attacking and Supporting the Declarant. When a hearsay statement—or a statement described in Rule 48(b)(3)-(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.

Rule 54. Residual Exception. A hearsay statement is not excluded by the rule against hearsay even if the statement is not specifically covered by a hearsay exception if the statement has equivalent circumstantial guarantees of trustworthiness, is offered as evidence of a material fact, is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts, and admitting it will best serve the purposes of these rules and the interests of justice. The proponent must give an adverse party reasonable notice under this Rule 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.

Article IX: Authentication & Identification

Rule 55. Authenticating or Identifying Evidence.

(a) In General. The proponent who seeks admission of an item of evidence must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

(b) Examples. The following are examples only—not a complete list—of evidence that can be used to satisfy the authentication requirement:

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

(2) 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.

(3) 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.

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

(5) 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.

(6) Evidence About a Telephone Conversation. For a telephone conversation, evidence that a call was made to the number assigned at the time to a particular person, if circumstances, including self-identification, show that the person answering was the one called, or to a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.

(7) Evidence About Public Records. Evidence that a document was recorded or filed in a public office as authorized by law, or that a purported public record or statement is from the office where items of this kind are kept.

(8) Evidence About Ancient Documents or Data Compilations. For a document or data compilation, evidence that it is in a condition that creates no suspicion about its authenticity, was in a place where it would likely be if authentic, and is at least 20 years old when offered.

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

(10) Methods Provided by a Statute or Rule. Any method of authentication or identification allowed by a federal statute or a rule prescribed by the Supreme Court.

Rule 56. Self-Authenticating Documents. The following non-exhaustive list of items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

(a) Certified Records. Certified copies of records of any business; organization; religious group; federal, state, or local government; and the records of any tribal government unless the certification is called into question.

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

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

(d) 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.

(e) Presumptions Under a Tribal Law. A signature, document, or anything else that a Tribal Law declares to be presumptively or prima facie genuine or authentic.

Article X: Content of Writings, Recordings, and Images

Rule 57. Proving the Content of Writings, Recordings and Images.

(a) Requirement of Original. An original writing, recording, or photograph is required in order to prove its content unless these Rules or Tribal Law provides otherwise. A duplicate of the original is admissible if the authenticity of the original is not in question and admission would be fair. An "original" of a writing or recording means the writing or recording itself 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. An "original" of a photograph includes the negative or a print from it.

(b) Exceptions. An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if:

(1) all the originals are lost or destroyed, and not by the proponent acting in bad faith;

(2) an original cannot be obtained by any available judicial process;

(3) 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

(4) the writing, recording, or photograph is not closely related to a controlling issue.

Rule 58. 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 these conditions are met:

(1) the record or document is otherwise admissible; and

(2) the copy is certified as correct 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.

Rule 59. 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 must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the Court may order the proponent to produce them in Court.

Rule 60. 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.

Rule 61. Functions of the Court and Jury. Ordinarily, the Court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 57(b) or 58. But in a jury trial, the jury determines in accordance with Rule 7(b) any issue about whether:

(a) an asserted writing, recording, or photograph ever existed;

(b) another one produced at the trial or hearing is the original; or

(c) other evidence of content accurately reflects the content.