

## TITLE 2 - RULES OF PROCEDURE

### CHAPTER 2-9 EVIDENCE

#### 2-9-1 Purpose

The purpose of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians Evidence Code is to secure fairness in administration, eliminate unjustifiable expense and delay, and to promote the growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

#### 2-9-2 Short Title

2-9-1 to 2-9-13 shall be known and may be cited as the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (Tribes) Evidence Code (EC).

#### 2-9-3 Definitions

- (a) "Common Law" - law which originated in custom and use over a long period of time and which has gained its authority and acceptance by its continued use year after year.
- (b) "Competent" - evidence that is reliable and relevant to the issues that are before the Tribal Court.
- (c) "Cross-Examination" - the examination of a witness by the opposing party.
- (d) "Direct Examination" - the examination of a witness by the party who has called that witness in support of their case.
- (e) "Evidence" - anything that a party offers in Court to help prove his side of the case. It can be oral testimony or material things such as exhibits.
- (f) "Hearsay" - the presentation of oral evidence that is not within the personal knowledge of the witnesses at trial. Most often, it is merely the restatement of what a witness has heard others say.
- (g) "Judicial Notice" - the acceptance by the Tribal Court of certain facts that do not have to be proved by expert testimony because they are generally accepted and regarded as established by common knowledge.
- (h) "Material" - evidence that is important and necessary and tending to prove or disprove an issue in question before the Tribal Court.
- (i) "Oath" - the affirming of the truth of a statement.

- (j) "Preponderance of Evidence" - evidence that leads the trier of fact to be convinced that the fact in issue is more probable than not.
- (k) "Set-Over" - the rescheduling of a trial or hearing for a later time. It may be granted for good cause upon request of either or both parties.
- (l) "Sustained" - to support or approve.
- (m) "Testimony" - oral evidence which is given by a competent witness under oath.

#### 2-9-4 Scope

The Tribal Court is not bound by common law rules of evidence or the rules of evidence applied in state or federal courts.

#### 2-9-5 Burden of Presentation

- (a) All cases before the tribal Court will be decided upon the evidence. Mere argument will not be sufficient to carry the required burden of presentation of evidence.
- (b) Conviction in a criminal case requires that the Tribes prove the guilt of the defendant beyond a reasonable doubt.
- (c) In a civil action, the plaintiff or petitioner will not prevail unless they have presented a preponderance of the evidence in support of their claim.

#### 2-9-6 Admissibility

- (a) Appearance by self-representation, by Tribal Court Advocates, or Child Support Investigators dictates that the Tribal Court must be liberal in the admission of evidence.
- (b) All evidence may be admitted that can be shown to be relevant and material to the case.
- (c) Fairness will dictate the decision of the Judge on challenges to admissibility of evidence. The Tribal Court may avail itself of any recognized and authoritative materials, books, or documents as guidance in reaching a decision on the admissibility of evidence.
- (d) Relevant evidence of customs and traditions of the Tribes shall be freely admitted.

#### 2-9-7 Hearsay

Hearsay evidence will be admitted if the Court determines that it is credible.

### 2-9-8 Exclusion of Evidence

(a) At the discretion of the Judge, evidence may be excluded if its value as proof is outweighed by the risk its admission will do the following:

(1) Create a substantial risk of undue prejudice; confuse the issues; or mislead the jury; or

(2) Unfairly surprise the opposing party.

### 2-9-9 Judicial Notice

(a) Upon request of a party, the Tribal Court may take judicial notice of specific facts that are so certain as not to be subject to reasonable dispute.

(b) Specific facts are propositions which are common, everyday knowledge on the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians tribal territory and which the average person is presumed to realize, understand and know.

(c) Specific facts that are entitled to judicial notice need not be pleaded or proved. The Tribal Court Judge will direct the jury to find that such facts are true.

### 2-9-10 Expert Opinion

The Tribal Court will deny the admission of testimony offered as expert opinion where that opinion could reasonably be drawn by a person lacking expert qualifications and which would not normally be considered the subject of expert's testimony.

### 2-9-11 Testimonial Evidence and Examination

(a) Testimony offered by a witness is admissible only if offered under a sworn oath. If for any reason, a cross-examination cannot be made of a witness who testified on direct examination, the testimony of that witness will be stricken from the record.

(b) A party may use leading questions against an adverse party or hostile witness or whenever such appears reasonably necessary to elicit testimony from witnesses of tender years or poor ability to communicate.

(c) A party may call any person to be a witness and examine any witness so called on any matter relevant to the action unless a privilege applies. A party may impeach his own witness.

(d) Cross examination shall be limited to the general scope of direct examination provided, however, that full examination of all witnesses shall be allowed on direct or cross examination to assure complete development of all relevant facts.

(e) A defendant in a criminal trial may not be compelled to testify. Where a defendant elects not to testify, it shall not be taken as evidence or an indication of guilt. Where a criminal defendant does voluntarily testify, however, he is then subject to direct, cross, redirect and recross examination in the same manner as any other witness.

#### 2-9-12 Depositions in Lieu of Testimony

(a) Whenever a witness is unable, for good cause shown, to be present at a scheduled court proceeding, the testimony of that person may be taken and preserved by deposition.

(b) Depositions may be scheduled by agreement between the parties or by order of the Tribal Court. Where the need for a deposition is challenged, the party seeking the deposition has the burden to show that the testimony would be material and necessary and that the witness would be otherwise unavailable.

(c) All depositions must be taken under oath and each party or representative must be present. A defendant in a criminal case must be present personally unless he has waived that right in writing. In no instance will a deposition be taken from a criminal defendant without his consent.

(d) Objections will be made where appropriate during the taking of a deposition. The tribal Court will rule upon the objections as soon as possible after receiving a transcript or recorded tape, but in no instance, later than the time of trial. Where an objection is sustained, it will be stricken from the record.

(e) At a scheduled trial or hearing, all or any part of a deposition may be entered into evidence in the same way as if it were live testimony being offered. If only a part of a deposition is to be entered during the proceeding, the opposing party may move that all the material be offered and admitted at the same time.

(f) In a jury trial, the Tribal Court Judge shall fully explain the procedure and necessity for a deposition.

#### 2-9-13 Investigations

The production of evidence is the responsibility of the parties. Requests for set-over of a trial date pending outcome of an investigation will be granted by the Court only for a reasonable period of time.

APPENDIX A

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

## EVIDENCE

### **LEGISLATIVE HISTORY AND EDITORIAL CHANGES**

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacts the "Evidence" Ordinance, Resolution No. 04-064, Ordinance No. 058, at a business Tribal Council meeting on August 30, 2004. Vote was 7 (for), 0 (against), and 0 (abstaining).

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians approved the "Evidence" Ordinance, Resolution No. 04-033, Ordinance No. 058, at a regular Tribal Council meeting on May 16, 2004. Vote was 7 (for), 0 (against), and 0 (abstaining).