

Chapter 4

Pokagon Band of Potawatomi Indians

Rules of Evidence

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Section 1. Purpose. The purpose of this Chapter of Court Rules is to ensure that the Tribal Court is able to determine the truth of the matter with a minimum of delay, confusion, and uncertainty for the parties.

Section 2. Simple By Design. These *Rules of Evidence* are intentionally written in a short and simple format to make them community friendly and for use by the high number of unrepresented parties anticipated to be involved in Tribal Court proceedings. If more detailed rules are needed or desired by the parties or Court, Section 4 below provides an opportunity to opt out of these simple *Rules* into rules which may be more appropriate for complex litigation.

Section 3. Scope. These *Rules of Evidence* shall govern the admissibility and use of evidence in all civil and criminal matters, except as otherwise provided by the Pokagon Band of Potawatomi Indians Constitution, Tribal law or other Tribal Court Rules.

Section 4. Application of Michigan Rules of Evidence. Upon motion of any party, or upon the Court's own initiative, the presiding judge has discretion to apply the Michigan *Rules of Evidence* or any portion thereof in any proceeding.

Section 5. General Rules.

- A. **Weight to be Given to Different Types of Evidence.** When the Court must consider more than one type of evidence about the same subject, the judge shall determine the weight to be given to each type of evidence according to common sense and a sense of fairness. Testimony regarding facts or events of which the witness has personal knowledge obtained from first hand observations shall be preferred over other kinds of evidence.
- B. **Relevance.** Evidence admitted in the Tribal Court must relate to either the issues before the Court, or the weight and credibility that should be given to other evidence before the Court. When questioned by the judge or another party as to why certain evidence should be admitted, the party who wishes to present the evidence shall:
1. state the issue that the party will use the evidence to resolve; and

2. explain how the evidence relates to the issue, noting the manner in which the evidence is likely to establish a fact.
- C. **Evidence of Tribal Custom and Tradition.** Evidence of Tribal custom or tradition that is relevant to issues before the Court may be admitted in the Court's discretion.
- D. **Sworn Written Testimony.** Testimony may be presented in sworn written form if the written form establishes who gave the testimony, when it was given and the witness is unable to appear to testify in person. The Court may require a party to prove that the party made efforts to obtain a witness's attendance.
- E. **Copies of Documentary Evidence.** Copies of written records, photographs, and other documentary evidence may be admitted if there is a reasonably reliable method to identify the items and the manner in which they were prepared.
- F. **Challenges to Admissibility.** When the admissibility of evidence is challenged based on the evidence's relevance or reliability, the Court shall decide whether to admit the evidence.

Section 6. Truthful Testimony. Before allowing testimony, the Court shall first require the proposed witness to swear or affirm that he or she will testify truthfully.

Section 7. Questioning Witnesses.

- A. **Leading Questions Prohibited.** Unless a witness was called by an opposing party, or is clearly hostile to the person asking questions, the witness shall not be asked a question in a way that suggests the answer.
- B. **Order of Questioning.** The Court shall determine the order in which parties or their counsel shall be allowed to question witnesses.
- C. **Prohibited Questioning.** The Court may prohibit harassing or unnecessarily repetitious or irrelevant questioning of a witness.
- D. **Court's Questioning of Witnesses.** The Court may call and/or question any witnesses on its own initiative.
- E. **Exclusion of Non-Party Witnesses.**
1. **Upon Request of Any Party or in the Court's Discretion.** Upon the request of any party or in the Court's discretion, the Court may exclude from the courtroom any witnesses who are not parties, and have not yet testified, if the Court deems it necessary to ensure that all witnesses will give truthful testimony.

2. **Court's Direction to Excluded Witnesses.** The Court shall direct the witnesses, who are excluded from the courtroom, not to discuss the case or the testimony of a witness, including his or her own testimony, with anyone other than the attorney's of the parties or any unrepresented party.

Section 8. Short Title, Effective Date, Citation Format and Certificate of Adoption.

- A. **Short Title.** These *Rules* are titled "Rules of Evidence."
- B. **Effective Date.** These *Rules* become effective when adopted by the members of the Court of Appeals of the Pokagon Band of Potawatomi Indians.
- C. **Citation.** The official abbreviated citation form to these *Rules* is: PBCR Chapter 4.
- D. **Certificate of Adoption.** The Justices of the Court of Appeals unanimously adopted the above *Rules* on June 1, 2009.

JUDICIAL HISTORY

On June 1, 2009: *The Rules of Evidence* were unanimously adopted by the Justices of the Court of Appeals.

On August 11, 2011: A technical revision was made to re-number the Chapter from 3 to 4.

On August 29, 2012: To correct the *Judicial History*, also on August 11, 2011, technical revisions were made to Section 8 to: (1) incorporate the *Certificate of Adoption* provision into Section 8; (2) eliminate the signature lines under the *Certificate of Adoption*; and (3) add the words "Certificate of Adoption" to the title of Section 8.

On January 3, 2013: A technical revision was made to Section 5(A) to remove the word "to" from the last sentence of that Section because it is unnecessary.