

**WARM SPRINGS TRIBAL CODE**

**CHAPTER 204**

**Table of Contents**

	<b>Page</b>
<b>I. EVIDENCE</b>	
204.010 Definitions.....	1
204.100 Scope.....	2
204.110 Burden of Presentation.....	2
204.120 Admissibility.....	2
204.130 Hearsay.....	2
204.140 Exclusion of Evidence.....	2
204.150 Judicial Notice.....	2
204.160 Expert Opinion.....	3
204.170 Suppression of Evidence.....	3
204.180 Testimonial Evidence.....	3
204.190 Depositions in Lieu of Testimony.....	3
204.200 Investigations.....	4

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## CHAPTER 204

### I. EVIDENCE

#### 204.010 Definitions.

- (1) "Common Law" means 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.
- (2) "Competent" is evidence which is reliable and relevant to the issues that are before the Court.
- (3) "Cross-Examination" is the examination of a witness by the opposing party.
- (4) "Direct Examination" is the examination of a witness by the party who has called that witness in support of their case.
- (5) "Evidence" is 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.
- (6) "Hearsay" is the presentation of oral evidence which 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.
- (7) "Judicial Notice" means the acceptance by the Court of certain facts which do not have to be proved by expert testimony because they are generally accepted and regarded as established by common knowledge.
- (8) "Material" means evidence which is important and necessary and tending to prove or disprove an issue in question before the Court.
- (9) "Oath" is the affirming of the truth of a statement.
- (10) "Preponderance of Evidence" means evidence which leads the trier of fact to be convinced that the fact in issue is more probable than not.
- (11) "Set-Over" means the rescheduling of a trial or hearing for a later time. It is granted normally upon the motion request of either or both parties.
- (12) "Sustained" means to support or approve.
- (13) "Testimony" means oral evidence which is given by a competent witness under oath.

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

**204.110 Burden of Presentation.** All cases before the Court will be decided upon the evidence. Mere argument will not be sufficient to carry the required burden of presentation of evidence.

- (1) Conviction in a criminal case requires that the Tribes prove the guilt of the defendant beyond a reasonable doubt.
- (2) In a civil action, the plaintiff or petitioner will not prevail unless they have presented a preponderance of evidence in support of their claim.

**204.120 Admissibility.** Appearance by self-representation dictates that the Court must be liberal in the admission of evidence.

- (1) All evidence may be admitted which can be shown to be relevant and material to the case.
- (2) Fairness will dictate the decision of the Judge on challenges to admissibility of evidence.
- (3) The Court may avail itself of any recognized and authoritative materials, books or documents as guidance in reaching a decision on the admissibility of evidence.
- (4) Relevant evidence of customs and traditions of the Tribes shall be freely admitted.

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

**204.140 Exclusion of Evidence.** 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.
- (2) Unfairly surprise the opposing party.

**204.150 Judicial Notice.** Upon request of a party, the Court may take judicial notice, of specific facts which are so certain as not to be subject to reasonable dispute.

- (1) Specific facts are propositions which are common, everyday knowledge on the Warm Springs Reservation and which the average person is presumed to realize, understand and know.
- (2) Specific facts which are entitled to judicial notice need not be pleaded or proved. The presiding Judge will direct the jury to find that such facts are true.

**204.160 Expert Opinion.** The 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.

**204.170 Suppression of Evidence.** Evidence shall not be suppressed on the grounds that it was the result of an illegal search or seizure.

**204.180 Testimonial Evidence.**

- (1) 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.
- (2) 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 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.

**204.190 Depositions in Lieu of Testimony.** Whenever a witness is unable to be present at a scheduled court proceeding, the testimony of that person may be taken and preserved by deposition.

- (1) Depositions may be scheduled by agreement between the parties or by order of the 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.
- (2) 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.
- (3) Objections will be made where appropriate during the taking of a deposition. The 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.
- (4) 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 material be offered and admitted at the same time.
- (5) In a jury trial, the Judge shall fully explain to the jury the procedure and necessity for a deposition.

**204.200 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.