

## TITLE 3. TRIBAL COURT

### Chapter 3.9

#### RULES OF EVIDENCE

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**3.9.101. Scope.** (a) Scope. These rules apply to proceedings in the Suquamish Tribal Courts. The specific courts and proceedings to which the rules apply, are set out in STC §3.9.1101.

(b) Definitions. In these rules:

- (1) "Civil case" means a civil action or proceeding;
- (2) "Criminal case" includes a criminal proceeding;
- (3) "Public office" includes a public agency;
- (4) "Record" includes a memorandum, report, or data compilation;

(5) A “rule prescribed by the Court” means a rule adopted by the Suquamish Tribal Court; and

(6) A reference to any kind of written material or any other medium includes electronically stored information. (Res.)

**3.9.102. Purpose.** These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination. (Res.)

**3.9.103. Rulings on Evidence.** (a) A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:

(1) If the ruling admits evidence, a party, on the record:

(A) Timely objects or moves to strike; and

(B) States the specific ground, unless it was apparent from the context; or

(2) If the ruling excludes evidence, a party informs the Court of its substance by an offer of proof, unless the substance was apparent from the context.

(b) 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) 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) 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) A Court may take notice of an error affecting a fundamental right, even if the claim of error was not properly preserved. (Res.)

**3.9.104. Preliminary Questions.** (a) The Court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the Court is not bound by evidence rules, except those on privilege.

(b) 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) The Court must conduct any hearing on a preliminary question so that the jury cannot hear it if:

- (1) The hearing involves the admissibility of a confession;
- (2) A defendant in a criminal case is a witness and so requests; or
- (3) Justice so requires.

(d) 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) 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. (Res.)

**3.9.105. 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, must restrict the evidence to its proper scope and instruct the jury accordingly. (Res.)

**3.9.106. Remainder of Related Statements.** If a party introduces all or part of a statement, an adverse party may require the introduction, at that time, of any other part – or any other statement – that in fairness ought to be considered at the same time. The adverse party may do so over a hearsay objection. (Res.)

**3.9.107. Illustrative Aids.** (a) The Court may allow a party to present an illustrative aid to help the trier of fact understand the evidence or argument if the aid's utility in assisting comprehension is not substantially outweighed by the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, or wasting time.

(b) An illustrative aid is not evidence and must not be provided to the jury during deliberations unless:

- (1) All parties consent; or
- (2) The Court, for good cause, orders otherwise.

(c) When practicable, an illustrative aid used at trial must be entered into the record.

(d) A summary, chart, or calculation admitted as evidence to prove the content of voluminous admissible evidence is governed by STC §3.9.1006.

(e) An “illustrative aid” is any presentation offered not as evidence but rather to assist the trier of fact in understanding evidence or argument. (Res.)

**3.9.201. Judicial Notice.** (a) This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) The Court may judicially notice a fact that is not subject to reasonable dispute because it:

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

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

(c) The Court:

(1) may take judicial notice on its own; or

(2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

(d) The Court may take judicial notice at any stage of the proceeding.

(e) 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. If the Court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

(f) 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. (Res.)

**3.9.301. Presumptions in Civil Cases.** (a) In a civil case, unless the Tribal Code or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption.

(b) This rule does not shift the burden of persuasion, which remains on the party who had it originally. (Res.)

**3.9.401. 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. (Res.)

**3.9.402. General Admissibility of Relevant Evidence.** (a) Relevant evidence is admissible unless any of the following provides otherwise:

- (1) The Constitution of the Suquamish Tribe;
- (2) An applicable statute;
- (3) These rules;
- (4) The Indian Civil Rights Act; or
- (5) Other rules prescribed by the Tribal Court.

(b) Irrelevant evidence is not admissible. (Res.)

**3.9.403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons.** 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, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence. (Res.)

**3.9.404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes, Wrongs, or Acts.** (a) Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same, or evidence of the aberrant sexual propensity of the accused or a civil defendant pursuant to STC §3.9.404(c);

(2) Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(3) Evidence of the character of a witness, as provided in STC §3.9.607, STC §3.9.608, and STC §3.9.609.

(b) Except as provided in STC §3.9.404(c) evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. This evidence may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(c) In all criminal cases in which the Tribe intends to offer evidence of other crimes, wrongs, or acts under §3.9.404(b), the Tribe must:

(1) Make disclosure to the defendant as to such acts no later than forty-five (45) days before the final trial setting or at such later time as the Court may allow for good cause; and

(2) Articulate in the disclosure the permitted purpose for which the Tribe intends to offer the evidence and the reasoning that supports the purpose. The defendant must make disclosure as to rebuttal evidence pertaining to such acts no later than twenty (20) days after receipt of the Tribe's disclosure or at such other time as the Court may allow for good cause.

(d) In a criminal case in which a defendant is charged with having committed a sexual offense, or a civil case in which a claim is predicated on a party's alleged commission of a sexual offense, evidence of other crimes, wrongs, or acts may be admitted by the Court if relevant to show that the defendant had a character trait giving rise to an aberrant sexual propensity to commit the offense charged. In such a case, evidence to rebut the proof of other crimes, wrongs, or acts, or an inference therefrom, may also be admitted.

(1) In all such cases, the Court will admit evidence of the other act only if it first finds each of the following:

(A) The evidence is sufficient to permit the trier of fact to find that the defendant committed the other act.

(B) The commission of the other act provides a reasonable basis to infer that the defendant had a character trait giving rise to an aberrant sexual propensity to commit the crime charged.

(C) The evidentiary value of proof of the other act is not substantially outweighed by danger of unfair prejudice, confusion of issues, or other factors mentioned in STC §3.9.403. In making that determination under STC §3.9.403, the Court will also take into consideration the following factors, among others:

(i) Remoteness of the other act;

(ii) Similarity or dissimilarity of the other act;

(iii) The strength of the evidence that defendant committed the other act;

(iv) Frequency of the other acts;

(v) Surrounding circumstances;

(vi) Relevant intervening events;

(vii) Other similarities or differences;

(viii) Other relevant factors.

(D) The Court will make specific findings with respect to each of (A), (B), and (C) of STC §3.9.404(d)(1).

(2) In all cases in which evidence of another act is admitted pursuant to this subsection, the court will instruct the jury as to the proper use of such evidence.

(3) In all criminal cases in which the Tribe intends to offer evidence of other acts pursuant to this subsection, the Tribe will make disclosure to the defendant as to such acts no later than forty-five (45) days prior to the final trial setting or at such later time as the Court may allow for good cause. The defendant will make disclosure as to rebuttal evidence pertaining to such acts no later than twenty (20) days after receipt of the Tribe's disclosure or at such other time as the Court may allow for good cause. In all civil cases in which a party intends to offer evidence of other acts pursuant to this subsection, the parties will make disclosure no later than sixty (60) days prior to trial, or at such later time as the Court may allow for good cause shown.

(4) As used in this subsection the term "sexual offense" is as defined in STC §7.29.5(r). (Res.)

**3.9.405. Methods of Proving Character.** (a) 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) When a person's character or character trait is an essential element of a charge, claim, or defense, or pursuant to STC §3.9.404(c), the character or trait may also be proved by relevant specific instances of the person's conduct. (Res.)

**3.9.406. Habit.** 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. (Res.)

**3.9.407. Subsequent Remedial Measures.** (a) When measures 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:

(1) Negligence;

- (2) Culpable conduct;
- (3) A defect in a product or its design; or
- (4) A need for a warning or instruction.

(b) The Court may admit this evidence for another purpose, such as impeachment or – if disputed – proving ownership, control, or the feasibility of precautionary measures. (Res.)

**3.9.408. Compromise Offers and Negotiations.** (a) 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, or offering – or accepting, promising to accept, or offering to accept – a valuable consideration in compromising or attempting to compromise the claim; and

(2) Conduct or a statement made during compromise negotiations about the claim.

(b) 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 criminal investigation or prosecution. (Res.)

**3.9.409. Offers to Pay Medical and Similar 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.

**3.9.410. Pleas, Plea Discussions and Related Statements.** (a) Except as otherwise provided by the Suquamish Tribal Code, in a civil or criminal case, or administrative proceeding, 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 nolo contendere or no contest plea;

(3) A statement made during a proceeding on either of those pleas in tribal or state court or a comparable federal procedure; or

(4) A statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.

(b) The Court may admit a statement described in this subsection:

(1) 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

(2) In a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present. (Res.)

**3.9.411. 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. (Res.)

**3.9.412. Victim's Sexual Behavior or Predisposition.** (a) The following evidence is not admissible in a civil or criminal proceeding involving alleged sexual misconduct:

(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:

(1) The Court may admit the following evidence in a criminal case:

(A) Evidence of specific instances of a victim's sexual behavior, if offered to prove that someone other than the defendant was the source of semen, injury, or other physical evidence;

(B) Evidence of specific instances of a victim's sexual behavior with respect to the person accused of the sexual misconduct, if offered by the defendant to prove consent or if offered by the prosecutor; and

(C) Evidence whose exclusion would violate the defendant's rights pursuant to the Tribal Constitution or the Indian Civil Rights Act.

(2) In a civil case, the Court may admit evidence offered to prove a victim's sexual behavior or sexual predisposition if its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. The Court may admit evidence of a victim's reputation only if the victim has placed it in controversy.

(c) Procedure to determine admissibility:

(1) If a party intends to offer evidence under STC §3.9.412(b), the party must:

(A) File a motion that specifically describes the evidence and states the purpose for which it is to be offered;

(B) Do so at least fourteen (14) days before trial unless the Court, for good cause, sets a different time;

(C) Serve the motion on all parties; and

(D) Notify the victim or, when appropriate, the victim's guardian or representative.

(2) Before admitting evidence under this rule, the Court must conduct an in camera hearing and give the 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.

(d) In this rule, "victim" includes an alleged victim. (Res.)

**3.9.501. Privileges in General.** The common law – as interpreted by the Suquamish Tribal Court in the light of reason and experience – governs a claim of privilege unless any of the following provides otherwise:

(a) The Indian Civil Rights Act or Suquamish Constitution; or

(b) An applicable Tribal Code provision. (Res.)

**3.9.502. Attorney-Client Privilege and Work Product.** (a) When a disclosure is made in a Suquamish proceeding and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in an Suquamish proceeding only if:

(1) The waiver is intentional;

(2) The disclosed and undisclosed communications or information concern the same subject matter; and

(3) They ought in fairness to be considered together.

(b) When made in a Suquamish proceeding, the disclosure does not operate as a waiver in a Suquamish proceeding if:

(1) The disclosure is inadvertent;

(2) The holder of the privilege or protection took reasonable steps to prevent disclosure; and

(3) The holder promptly took reasonable steps to rectify the error.

(c) When the disclosure is made in a proceeding in federal court or state court and is not the subject of a court order concerning waiver, the disclosure does not operate as a waiver in a Suquamish proceeding if the disclosure:

(1) Would not be a waiver under this rule if it had been made in a Suquamish proceeding; or

(2) Is not a waiver under the law governing the federal or state proceeding where the disclosure occurred.

(d) The Suquamish Tribal Court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the Court – in which event the disclosure is also not a waiver in any other proceeding.

(e) An agreement on the effect of disclosure in a Suquamish proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

(f) In this rule:

(1) “Attorney-client privilege” means the protection that applicable law provides for confidential attorney-client communications; and

(2) “Work-product protection” means the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial. (Res.)

**3.9.503. Legal Paraprofessional.** A communication between a legal paraprofessional and a client is privileged if it is made for the purpose of securing or giving legal advice, is made in confidence, and is treated confidentially. This privilege is co-extensive with, and affords the same protection as, the attorney-client privilege. (Res.)

**3.9.601. Competency to Testify in General.** Every person is competent to be a witness unless these rules or an applicable statute provides otherwise. (Res.)

**3.9.602. 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 this Chapter. (Res.)

**3.9.603. Oath or Affirmation.** Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness's conscience. (Res.)

**3.9.604. Interpreters.** An interpreter must be qualified and must give an oath or affirmation to make a true translation. (Res.)

**3.9.605. Judge's Competency as a Witness.** The judge presiding at trial may not testify as a witness at the trial. A party need not object to preserve the issue. (Res.)

**3.9.606. Juror's Competency as a Witness.** (a) 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.

(b) During an inquiry into the validity of a verdict in a civil case, a juror may not testify about any statement made or incident 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.

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. (Res.)

**3.9.607. Who May Impeach a Witness.** Any party, including the party that called the witness, may attack the witness's credibility. (Res.)

**3.9.608. A Witness's Character for Truthfulness or Untruthfulness.** (a) A witness's credibility 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 that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.

(b) Except for a criminal conviction under STC §3.9.609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the Court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

(1) The witness; or

(2) Another witness whose character the witness being cross-examined has testified about.

(c) By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness. (Res.)

**3.9.609. Impeachment by Evidence of a Criminal Conviction.** (a) The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

(1) For a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one (1) year, the evidence:

(A) Must be admitted, subject to STC §3.9.403, in a civil case or in a criminal case in which the witness is not a defendant; and

(B) Must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and

(2) For any crime regardless of the punishment, the evidence must be admitted 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.

(b) **Limit on Using the Evidence After 10 Years.** This subsection (b) applies if more than ten (10) years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only 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.

(c) 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.

(d) 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.

(e) A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible. (Res.)

**3.9.610. Religious Beliefs or Opinions.** Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility. (Res.)

**3.9.611. Mode and Order of Examining Witnesses and Presenting Evidence.** (a) The Court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

(1) Make those procedures effective for determining the truth;

(2) Avoid wasting time; and

(3) Protect witnesses from harassment or undue embarrassment.

(b) A witness may be cross-examined on any relevant matter.

(c) 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. (Res.)

**3.9.612. Writing Used to Refresh a Witness's Memory.** (a) This rule gives an adverse party certain options when a witness uses a writing to refresh memory:

(1) While testifying; or

(2) Before testifying, if the Court decides that justice requires the party to have those options.

(b) 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 in camera, 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) 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. (Res.)

**3.9.613. Witness's Prior Statements.** (a) When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.

(b) Unless the Court orders otherwise, extrinsic evidence of a witness's prior inconsistent statement may not be admitted until after 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. This subsection (b) does not apply to an opposing party's statement under STC 3.9.801(d)(2). (Res.)

**3.9.14. Court's Calling or Examining a Witness.** (a) The Court may call a witness on its own or at a party's request. Each party is entitled to cross-examine the witness.

(b) The Court may examine a witness regardless of who calls the witness.

(c) 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. (Res.)

**3.9.15. Excluding Witnesses.** At a party's request, the Court must order witnesses excluded from the courtroom and prohibited from receiving trial testimony through any means, so that they cannot hear or review other witnesses' testimony. Or the Court may do so on its own. But this rule does not authorize excluding:

(a) A party who is a natural person;

(b) One officer or employee of a party that is not a natural person if that officer or employee has been designated as the party's representative by its attorney;

(c) Any person whose presence a party shows to be essential to presenting the party's claim or defense;

(d) A person authorized by the Tribal Code to be present; or

(e) A victim of crime, as defined by applicable law, who wishes to be present during proceedings against the defendant. (Res.)

**3.9.701. Opinion Testimony by Lay Witnesses.** If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

(a) Rationally based on the witness's perception;

(b) Helpful to clearly understanding the witness's testimony or to determining a fact in issue; and

(c) Not based on scientific, technical, or other specialized knowledge within the scope of STC §3.9.702. (Res.)

**3.9.702. Testimony by Expert Witnesses.** A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the Court that it is more likely than not that:

(a) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) The testimony is based on sufficient facts or data;

(c) The testimony is the product of reliable principles and methods; and

(d) The expert's opinion reflects a reliable application of the principles and methods to the facts of the case. (Res.)

**3.9.703. Basis of an Expert's Opinion Testimony.** An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But 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. (Res.)

**3.9.704. Opinion on an Ultimate Issue.** (a) An opinion is not objectionable just because it embraces an ultimate issue.

(b) Exception. 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. (Res.)

**3.9.705. Disclosing the Facts or Data Underlying an Expert's 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. (Res.)

**3.9.706. Court Appointed Expert Witnesses.** (a) On a party's motion or on its own, 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. But the Court may only appoint someone who consents to act.

(b) The Court must inform the expert of the expert's duties. The Court may do so in writing and have a copy filed with the clerk or may do so orally at a conference in which the parties have an opportunity to participate. The expert:

(1) Must advise the parties of any findings the expert makes;

(2) May be deposed by any party;

(3) May be called to testify by the Court or any party; and

(4) May be cross-examined by any party, including the party that called the expert.

(c) The expert is entitled to a reasonable compensation, as set by the Court. Except as otherwise provided by law, appointment of an expert by the Court is subject to the availability of funds or the agreement of the parties concerning compensation.

(d) The Court may authorize disclosure to the jury that the Court appointed the expert.

(e) This rule does not limit a party in calling its own experts. (Res.)

**3.9.801. Definitions That Apply to Hearsay.** (a) "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

(b) "Declarant" means the person who made the statement.

(c) "Hearsay" means a statement that:

(1) The declarant does not make while testifying at the current trial or hearing; and

(2) A party offers in evidence to prove the truth of the matter asserted in the statement.

(d) A statement that meets the following conditions is not hearsay.

(1) A Declarant-Witness's Prior Statement. The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

(A) Is inconsistent with the declarant's testimony;

(B) Is consistent with the declarant's testimony and is offered:

(i) 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

(ii) To rehabilitate the declarant's credibility as a witness when attacked on another ground; or

(C) Identifies a person as someone the declarant perceived earlier.

(2) An Opposing Party's Statement. The statement is offered against an opposing party and:

(A) Was made by the party in an individual or representative capacity;

(B) Is one the party manifested that it adopted or believed to be true;

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

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

(E) Was made by the party's coconspirator during and in furtherance of the conspiracy.

(F) The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

(G) If a party's claim, defense, or potential liability is directly derived from a declarant or the declarant's principal, a statement that would be admissible against the declarant or the principal under this rule is also admissible against the party. (Res.)

**3.9.802. Hearsay Inadmissible.** (a) Hearsay is not admissible unless any of the following provides otherwise:

(1) An applicable Constitutional provision or Tribal Code provision;

(2) These rules; or

(3) Other rules prescribed by the Suquamish Tribal Court or Suquamish Court of Appeals. (Res.)

**3.9.803. Exceptions to the Rule Against Hearsay – Regardless of Whether the Declarant is Unavailable as a Witness.** The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

(a) Present Sense Impression. A statement describing or explaining an event or condition, made while 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 Medical Diagnosis or Treatment. A statement that:

(1) Is made for – and is reasonably pertinent to – medical diagnosis or treatment; and

(2) Describes medical history; past or present symptoms or sensations; their inception; or their general cause.

(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) Records of a Regularly Conducted Activity. A record of an act, event, condition, opinion, or diagnosis if:

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

(4) All these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with STC §3.9.902(k) or (l) or with a legislative enactment permitting certification; and

(5) The opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

(g) Absence of a Record of a Regularly Conducted Activity. Evidence that a matter is not included in a record described in STC 3.9.803(f) 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) It sets out:

(A) The office's activities;

(B) A matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or

(C) 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 that 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 under STC 3.9.902 – that a diligent search failed to disclose a public record or statement if

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

(A) The record or statement does not exist; or

(B) 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 twenty (20) days before trial, and the defendant does not object in writing within ten (10) 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 legislative enactment 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 purport of the document.

(p) Statements in Ancient Documents. A statement in a document that was prepared before January 1, 1998, and whose authenticity 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, state, or nation.

(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.

(x) Former Testimony. Except in a criminal action or proceeding, testimony given as a witness at another hearing of the same or different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(y) Oral Traditional Evidence. Folkloric or oral traditional evidence, meaning any oral technique conveying information including, but not limited to, cultural information, past events, or legend, will be admitted as testimony if its veracity can be shown by a preponderance of the evidence. In considering the veracity of the folkloric or oral traditional evidence, the Court may rely on the following criteria:

(1) The consistency with which an individual will tell the same story about the same events on different occasions.

(2) The age of the oral traditional evidence.

(3) The degree to which the form or content of the folkloric or oral traditional evidence conforms with other folkloric or oral traditional evidence.

(4) The degree of formality used in conveying and preserving the oral traditional evidence.

(5) Corroboration from other documentary evidence, including histological records, recordings, photographs, or musical traditions. (Res.)

**3.9.804. Exceptions to the Rule Against Hearsay – When the Declarant is Unavailable as a Witness.** (a) A declarant is considered to be unavailable as a witness if the declarant:

(1) Is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;

(2) Refuses to testify about the subject matter despite a court order to do so;

(3) Testifies to not remembering the subject matter;

(4) Cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or

(5) Is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:

(A) The declarant's attendance, in the case of a hearsay exception under subsections (b)(1) or (5) of this section; or

(B) The declarant's attendance or testimony, in the case of a hearsay exception under subsection (b)(2), (3), or (4) of this section.

But this subsection (a) does not apply 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) Exceptions.

(1) Former Testimony in a Criminal Case. Testimony that:

(A) Was made under oath by a party or witness during a previous judicial proceeding or a deposition under Title 6 of the Suquamish Tribal Code will be admissible in evidence if:

(i) The party against whom the former testimony is offered was a party to the action or proceeding during which a statement was given and had the right and opportunity to cross-examine the

declarant with an interest and motive similar to that which the party now has (no person who was unrepresented by counsel at the proceeding during which a statement was made will be deemed to have had the right and opportunity to cross-examine the declarant, unless such representation was waived) and

(ii) The declarant is unavailable as a witness, or is present and subject to cross-examination.

(B) The admissibility of former testimony under this subsection is subject to the same limitations and objections as though the declarant were testifying at the hearing, except that the former testimony offered under this subsection is not subject to:

(i) Objections to the form of the question which were not made at the time the prior testimony was given.

(ii) Objections based on competency or privilege which did not exist at the time the former testimony was given.

(2) Statement Under the Belief of Imminent Death. In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

(3) Statement Against Interest. A statement that:

(A) A reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) If offered in a criminal case as one that tends to expose the declarant to criminal liability, is supported by corroborating circumstances that clearly indicate its trustworthiness – after considering the totality of circumstances under which it was made and any evidence that supports or undermines it.

(4) Statement of Personal or Family History. A statement about:

(A) The declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) Another person concerning any of these facts, as well as death, 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. (Res.)

**3.9.805. 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. (Res.)

**3.9.806. Attacking and Supporting the Declarant's Credibility.** When a hearsay statement, or a statement described in STC §3.9.801(d), 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. (Res.)

**3.9.807. Residual Exception.** (a) Under the following conditions, a hearsay statement is not excluded by the rule against hearsay even if the statement is not admissible under a hearsay exception in this Chapter:

(1) The statement is supported by sufficient guarantees of trustworthiness – after considering the totality of circumstances under which it was made and evidence, if any, corroborating the statement; and

(2) It is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts.

(b) The statement is admissible only if the proponent gives an adverse party reasonable notice of the intent to offer the statement – including its substance and the declarant's name – so that the party has a fair opportunity to meet it. The notice must be provided in a writing filed with the Court before the trial or hearing – or in a filing during the trial or hearing if the Court, for good cause, excuses a lack of earlier notice. (Res.)

**3.9.808. Child Hearsay.** (a) A statement made by a child younger than sixteen (16) years of age describing any act of sexual contact, trafficking, or physical abuse performed with or on such child by another or with or on another in the presence of such child is admissible in evidence by the testimony of the person to whom made if the

proponent of such statement provides notice to the adverse party fifteen (15) court days prior to trial of the intention to use such out-of-court statement and such child testifies at the trial, unless the adverse party forfeits or waives such child's testimony, or the child is unavailable per §3.9.808(c). The person to whom the child made such statement must be subject to cross-examination regarding the out-of-court statements.

(b) When a child is unavailable as a witness, the child's statement may only be admitted if the statement possesses indicia of reliability, as determined by the Court.

(c) A child is unavailable to testify when the child:

(1) Is exempted by ruling of the judge on the ground of privilege from testifying concerning the subject matter of the child's statement;

(2) Persists in refusing to testify concerning the subject matter of the child's statement despite an order of the judge to do so;

(3) Testifies to a lack of memory of the subject matter of the child's statement;

(4) Is unable to be present or to testify at the hearing because of death or then-existing physical or mental illness or infirmity;

(5) Is absent from the hearing and the proponent of the child's statement has been unable to procure the child's attention by process or other reasonable means;

(6) If the Court, following an on the record examination of the child in the presence of the parties' attorneys and the legal guardian or other suitable person the Court has designated, determines that the child is unable to communicate about the abuse or sexual conduct because of fear or other similar reason or is substantially likely, as established by expert testimony, to suffer lasting severe emotional trauma from testifying.

(d) In determining whether a statement possesses indicia of reliability under this paragraph, the Court may consider, but is not limited to, the following factors:

(1) The personal knowledge of the declarant of the event;

(2) The age and maturity of the declarant or extent of disability if the declarant is a person with a developmental disability;

(3) Certainty that the statement was made, including the credibility of the person testifying about the statement and any motive the person may have to falsify or distort the statement;

(4) Any apparent motive the declarant may have to falsify or distort the event, including bias, corruption, or coercion;

(5) The timing of the declarant's statement;

(6) Whether more than one person heard the statement;

(7) Whether the declarant was suffering pain or distress when making the statement;

(8) Whether the declarant's young age or disability makes it unlikely that the declarant fabricated a statement that represents a graphic, detailed account beyond the declarant's knowledge and experience;

(9) Whether the statement has internal consistency or coherence and uses terminology appropriate to the declarant's age;

(10) Whether the statement is spontaneous or directly responsive to questions; and

(11) Whether the statement was elicited by leading questions. (Res.)

**3.9.901. Authenticating and Identifying Evidence.** (a) To satisfy the requirement of authenticating or identifying an item of evidence, the proponent 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 satisfies the 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) A particular person, if circumstances, including self-identification, show that the person answering was the one called; or

(B) 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) A document was recorded or filed in a public office as authorized by law; or

(B) 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:

(A) Is in a condition that creates no suspicion about its authenticity;

(B) Was in a place where, if authentic, it would likely be; and

(C) Is at least twenty (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 Law or Rule. Any method of authentication or identification allowed by the Tribal Code or a rule prescribed by the Suquamish Tribal Court. (Res.)

**3.9.902. Evidence that is Self-Authenticating.** The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

(a) Domestic Public Documents that are Sealed and Signed. A document that bears:

(1) A seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; a Federally Recognized American Indian Tribe or Nation; the former Panama Canal Zone;

the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and

(2) A signature purporting to be an execution or attestation.

(b) Domestic Public Documents That Are Not Sealed but Are Signed and Certified. A document that bears no seal if:

(1) It bears the signature of an officer or employee of an entity named in STC §3.9.902(a)(1); and

(2) Another public officer who has a seal and official duties within that same entity certifies under seal – or its equivalent – that the signer has the official capacity and that the signature is genuine.

(c) Foreign Public Documents. A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester – or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the Court may, for good cause, either:

(1) Order that it be treated as presumptively authentic without final certification; or

(2) Allow it to be evidenced by an attested summary with or without final certification.

(d) Certified Copies of Public Records. A copy of an official record – or a copy of a document that was recorded or filed in a public office as authorized by law – if the copy is certified as correct by:

(1) The custodian or another person authorized to make the certification;  
or

(2) A certificate that complies with STC §3.9.902(a), (b), or (c), a tribal code, or a rule prescribed by the Suquamish Tribal Court.

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

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

(g) Trade Inscriptions and the Like. An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.

(h) 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.

(i) Commercial Paper and Related Documents. Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

(j) Presumptions Under a Statute. A signature, document, or anything else that a statute declares to be presumptively or prima facie genuine or authentic.

(k) Certified Domestic Records of a Regularly Conducted Activity. The original or a copy of a domestic record that meets the requirements of STC §3.9.803 as shown by a certification of the custodian or another qualified person that complies with a law or a rule prescribed by the Suquamish Tribal Court. 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.

(l) Certified Foreign Records of a Regularly Conducted Activity. In a civil case, the original or a copy of a foreign record that meets the requirements of STC §3.9.902(k), modified as follows: the certification, rather than complying with law or code or Court rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of STC §3.9.902(k).

(m) Certified Records Generated by an Electronic Process or System. A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that complies with the certification requirements of STC §3.9.902(k) or (l). The proponent must also meet the notice requirements of STC §3.9.902(k).

(n) Certified Data Copied from an Electronic Device, Storage Medium, or File. Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification requirements of STC §3.9.902(k) or (l). The proponent also must meet the notice requirements of STC §3.9.902(k). (Res.)

**3.9.903. Witness Testimony to Authenticate a Writing.** A witness's testimony is necessary to authenticate a writing only if required by the law of the jurisdiction that governs its validity. (Res.)

**3.9.1001. Definitions That Apply to Sections 3.9.1002 through 3.9.1008.** (a) A “writing” consists of letters, words, numbers, or their equivalent set down in any form.

(b) A “recording” consists of letters, words, numbers, or their equivalent recorded in any manner.

(c) A “photograph” means a photographic image or its equivalent stored in any form.

(d) A “video” is an electronic visual medium for the recording, copying, playback, broadcasting, or displaying of moving images, which may or may not contain an audio recording.

(e) An “original” of a writing, recording, or video means the writing, recording, or video itself or any counterpart intended to have the same effect by the person who executed, issued, or created it. For electronically stored information, “original” means any printout – or other output perceived by sight – if it accurately reflects the information. An “original” of a photograph includes the negative or a print from it.

(f) A “duplicate” means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original. (Res.)

**3.9.1002. Requirement of the Original.** An original writing, recording, photograph, or video is required in order to prove its content unless these rules or an applicable statute provides otherwise. (Res.)

**3.9.1003. Admissibility of Duplicates.** A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate. (Res.)

**3.9.1004. Admissibility of Other Evidence of Contents.** An original is not required and other evidence of the content of a writing, recording, photograph, or video is admissible if:

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

(b) An original cannot be obtained by any available judicial process;

(c) 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

(d) The writing, recording, photograph, or video is not closely related to a controlling issue. (Res.)

**3.9.1005. 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: the record or document is otherwise admissible; and the copy is certified as correct in accordance with STC §3.9.902(d) 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. (Res.)

**3.9.1006. Summaries to Prove Content.** (a) Summaries of Voluminous Materials Admissible as Evidence. The Court may admit as evidence a summary, chart, or calculation offered to prove the content of voluminous admissible writings, recordings, photographs, or videos that cannot be conveniently examined in court, whether or not they have been introduced into evidence.

(b) Procedures. The proponent must make the underlying originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. The court may order the proponent to produce them in court.

(c) Illustrative Aids Not Covered. A summary, chart, or calculation that functions only as an illustrative aid is governed by STC §3.9.107. (Res.)

**3.9.1007. Testimony or Statement of a Party to Prove Content.** The proponent may prove the content of a writing, recording, photograph, or video by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original. (Res.)

**3.9.1008. 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 STC §3.9.1004 or STC §3.9.1005. But in a jury trial, the jury determines – in accordance with STC §3.9.104(b) – any issue about whether:

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

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

(c) Other evidence of content accurately reflects the content. (Res.)

**3.9.1101. Applicability of the Rules.** (a) These rules apply to all courts of the Suquamish Tribe, to alternative courts, and to any body or individual exercising

adjudicative authority pursuant to the Suquamish Tribal Code. These rules apply to any actions, cases, and proceedings and to the extent hereinafter set forth. The terms “judge” and “court” in these rules include magistrates, court commissioners, and justices of the peace.

(b) Proceedings Generally. These rules apply generally to civil actions and proceedings, to contempt proceedings except those in which the Court may act summarily, and to criminal cases and proceedings.

(c) Rules on Privilege. The rules on privilege apply to all stages of a case or proceeding. (Res.)