

RULES OF EVIDENCE

KLAMATH TRIBAL CODE

Title 2 Chapter 14

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TABLE OF CONTENTS

14.01 Purpose and Construction	1
14.02 Scope	1
14.03 Definitions	1
14.04 Federal Rules of Evidence Adopted by Reference	1
14.05 Applicability of Informal Rules of Evidence	2
14.06 Gender	3
14.07 Severability	3

**RULES OF EVIDENCE
KLAMATH TRIBAL CODE
Title 2 Chapter 14**

14.01 Purpose and Construction. The purpose of this Chapter is to provide a common system of rules to govern the admissibility of evidence in all civil and criminal actions and proceedings of the Tribal Courts. This Chapter shall be construed to secure fairness in administration, to eliminate unjustifiable expense and delay, and to promote the growth and development of a law of evidence so that truth may best be ascertained and proceedings justly determined by the Tribal Courts.

14.02 Scope. The Rules of Evidence shall consist of the Federal Rules of Evidence, which are adopted by reference herein, and Informal Rules of Evidence.

14.03 Definitions. The following words shall have the following meanings under these Rules of Evidence:

- (a) "General Council" means the General Council of the Klamath Tribes;
- (b) "Klamath Tribal Code" means the Klamath Tribal Code, as adopted by the General Council of the Klamath Tribes;
- (c) "Klamath Tribal Common Law" means the decisions of the Tribal Courts and the customs and traditions of the Klamath Tribes, as may be modified by Klamath Tribal Law;
- (d) "Klamath Tribal Law" means the Constitution and By-Laws for the Klamath Tribe, the Klamath Tribal Code and any rules promulgated thereunder, other ordinances and enactments of the General Council, and Klamath Tribal Common Law;
- (e) "Klamath Tribes" means the Klamath Tribes of Oregon, a federally-recognized Indian tribal government;
- (f) "Party" or "Parties" means a person or persons named as a participant in any action or proceeding in the Tribal Courts; and
- (g) "Tribal Court" or "Tribal Courts" means any or all of the courts established by the Klamath Tribes to enforce Klamath Tribal Law, including the Klamath Supreme Court and the Klamath Tribal Court, Klamath Juvenile Court, Klamath Peacemaker Court, and such other lower courts that the Tribes may establish from time to time.

14.04 Federal Rules of Evidence Adopted by Reference. The Federal Rules of Evidence, as they now or hereafter exist, are adopted by reference as Klamath Tribal Law and shall govern the

**RULES OF EVIDENCE
KLAMATH TRIBAL CODE
Title 2 Chapter 14**

introduction of evidence in all civil and criminal actions and proceedings of the Tribal Courts unless a different procedure is specified in this Chapter or under the Klamath Tribal Code, and to the extent such Federal Rules of Evidence are not inconsistent with Klamath Tribal Law and general principles of fairness and justice as prescribed by the Tribal Courts. Decisions of federal courts interpreting the Federal Rules of Evidence shall be merely advisory and not binding on the Tribal Courts unless the Klamath Tribal Code or any other ordinance or enactment of the General Council expressly so provides.

14.05 Applicability of Informal Rules of Evidence. In all civil actions and proceedings where the Klamath Informal Rules of Civil Procedure govern procedure in the Tribal Courts, the Informal Rules of Evidence set forth in this Section shall govern the admissibility and use of evidence, except as otherwise required by the Klamath Tribal Code, agreed to by the parties, or ordered by the judge hearing the matter to promote the purposes of this Chapter. The Informal Rules of Evidence shall apply in criminal actions and proceedings in the Tribal Courts only upon the express consent of all parties and the judge hearing the matter. The Informal Rules of Evidence are as follows:

(a) Where there is more than one kind of evidence about the same subject, the judge shall give each item of evidence the importance (weight) which, according to the judge's common sense and sense of fairness, that particular type of evidence deserves. For example, in oral testimony, the testimony of persons who testify from their personal knowledge, such as firsthand observation of, or participation in, the event described shall be given more weight than the testimony of persons who only have knowledge of the event which they gained from other persons.

(b) Evidence admitted in the Tribal Courts must be related either to the issues before the Court or to the weight and credibility which should be given to other evidence. When questioned by a judge or another party as to why certain evidence should be allowed, the party who wishes to present the evidence shall:

- (1) state the issue which he or she will use the evidence to resolve; and
- (2) explain how the evidence is relevant to the issue.

(c) When the relevance or reliability of evidence is challenged, the judge shall decide whether or not to use the evidence, and explain the decision.

(d) Before testifying in the Tribal Courts, every witness shall first state before the judge, parties, and spectators that he or she will testify truthfully. The presiding Court may prescribe an

**RULES OF EVIDENCE
KLAMATH TRIBAL CODE
Title 2 Chapter 14**

oath for this purpose by rule of court.

(e) When questioning a witness, the following rules shall apply:

(1) the judge and parties or their counsel shall not ask questions in such a way as to suggest the answer, unless the witness is one who was called by the opposing party, or is clearly hostile to the person asking questions;

(2) the judge shall determine the order in which parties or their counsel shall be allowed to question witnesses and protect the witnesses from harassment or unnecessarily repetitious or irrelevant questioning;

(3) during the questioning of a witness, at the request of a party or upon his or her own initiative, a judge may exclude from the courtroom any witnesses who have not yet testified, if necessary to ensure that all witnesses will give truthful testimony; and

(4) the judge may call and/or question any witnesses on his or her own initiative.

(f) Written testimony must show clearly which witness gave it and when. The testimony of a witness may be presented in sworn written form if and only if:

(1) the witness is unable to appear in person to testify;

(2) if the evidence presented in writing is not contradicted by other parties;

(3) if the sworn written testimony is offered to support a motion or an uncontested request for relief; or

(4) if the sworn written testimony contradicts oral testimony already given by the same witness.

(g) Copies of written records, photographs, and other documentary evidence may be presented as long as there is a reasonably reliable way to identify the items, and the methods used to prepare them.

14.06 Gender. Any noun or pronoun used in this Chapter shall refer to any gender and to any number as the context requires or permits.

**RULES OF EVIDENCE
KLAMATH TRIBAL CODE
Title 2 Chapter 14**

14.07 Severability. If any provisions of this Chapter or the application of any provision to any person or circumstance is held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remainder of this Chapter and its application to any other person or circumstances and, to this end, the provisions of this Chapter are severable.