TITLE IV – CIVIL PROCEDURE

CHAPTER 1. PRETRIAL PROCEEDINGS

Sec. 101. Commencement of Civil Action

(a) A civil action is commenced by filing a written complaint with the Clerk of the Tribal Court and by service of copies of the complaint on the defendants.

(b) A complaint is a concise written statement of the essential facts constituting the claim.

(c) A complaint shall be accompanied by payment of the applicable fees as set by the Court.

(d) The complaint shall be verified before the Judge, Clerk or any notary public.

(Revised by Ordinance #4-98; Adopted: June 18, 1998; Effective: June 18, 1998)

Sec. 102. Service of process

(a) Each defendant shall be served with a copy of the complaint.

(b) Service shall be made in one of the following ways:

(1) to the defendant personally;

(2) to a person of suitable age and discretion at the defendant's residence or usual place of business who also resides or works there;

(3) to an agent authorized by appointment or by law to receive service of process;

(4) by registered or certified mail, return receipt requested, to the defendants' usual residence or principal place of business;

(5) if the Court orders, by certified mail to a Tribal member defendant at their last-known mailing address on file with the Tribe; ~~or~~

(~~5~~6) if the Court orders and the defendant lives on the Reservation, by publication of the complaint and notice of hearing in the tribal newsletter or a local newspaper of general circulation on the Reservation designated by the Court at least once per week for four (4) consecutive weeks; or

(~~6~~7) if the Court orders and the defendant lives off the Reservation, by publication of the complaint and notice of hearing in the local newspaper of general circulation in the defendant's place of residence at least once per week for four (4) consecutive weeks.

(c) Service of process upon the Tribe or an officer of the Tribe named as a party defendant shall be made by delivering a copy of the complaint to the Tribal Chairman, the tribal attorney and the officer named in the manner prescribed in Subsection (b) above, except that service by publication is not permitted.

(d) Service in person shall be made by any law enforcement officer or by any adult not a party to the case.

(e) Where the Court has jurisdiction of the cause of the action, service may be made anywhere within the United States.

(f) The return postal receipt shall be filed in the case record and shall constitute proof of service by mail. The affidavit of service by the person making service shall be filed in the case record and shall constitute proof of service.

(g) If a defendant is two or more persons associated in business together and transacting such business under a common name, service of process need be made on only one of the associates; each associate need not be served.

(h) If a defendant is a corporation, service of process may be made on any officer, person in charge of any office, or registered agent thereof.

(i) If a defendant is a minor, service of process may be made on a parent, person having custody of such minor, or the legally appointed guardian of such minor. If a guardian ad litem has been appointed, service shall also be made on the guardian ad litem.

(j) If a defendant has been judicially declared to be of unsound mind, and is either an inmate of an institution for the mentally incompetent, or has a legally appointed guardian, service of process may be on the superintendent of such institution or on such guardian.

Sec. 103. Hearing

(a) At the time the verified complaint is filed, the Clerk shall schedule a hearing on the complaint not less than fifteen (15) days after the complaint is filed. The Clerk shall furnish the plaintiff with a copy of the notice showing the time and place of the hearing and shall affix such notice to the copy of the complaint to be served on each defendant. At the hearing, the presiding Judge shall ascertain whether:

(1) the defendant has any defenses to the claim or wishes to present any counterclaim against the plaintiff or cross-claim against any other party or person concerning the same transaction or occurrence;

(2) any party wishes to present evidence to the Court concerning the facts of the transaction or occurrence;

(3) the interests of justice require any party to answer written interrogatories, make or answer requests for admissions, produce any documents or other evidence, or otherwise engage in pre-trial discovery considered proper by the Judge;

(4) some or all of the issues in dispute can be settled without a formal adjudication; and

(5) the claim is ready for trial.

(b) if the claim is ready for trial, the Judge may try it immediately or set a subsequent date for trial.

(c) If the claim is not ready for trial, the Judge shall set a subsequent date for trial and order such preparation or other actions to be undertaken by the parties as the Judge deems necessary.

Sec. 104. Issuance of subpoenas

(a) Upon request of any party or upon the Court's own initiative, the Court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence relevant to the determination of the case that does not impose an undue burden on the person possessing the evidence.

(b) A subpoena shall bear the signature of the Chief Judge or his/her designee, and shall state the name of the Court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

(Revised by Ordinance #4-93; Adopted: May 10, 1993; Effective: May 10, 1993)

Sec. 105. Service of subpoenas

A subpoena may be served in the manner prescribed in Section 102, except that service by publication is not permitted. A subpoena must ordinarily be served at least five (5) days in advance of the time set for appearance and must be served sufficiently in advance of the date when the appearance of the witness is required to enable the witness to reach the appearance place by the ordinary or usual method of transportation.

Sec. 106. Failure to obey subpoena

In the absence of a justification satisfactory to the Court, a person who fails to obey a subpoena issued and served in accordance with the provisions of this Code may be cited and held in contempt of court.

Sec. 107. Witness Fees

(a) Each witness answering a subpoena shall be entitled to a fee as set by the Court for each day the witness' services are required.

(b) The fees and expenses provided in this section shall be taxed as court costs and assessed against the parties in the judgment in the case.

(Revised by Ordinance #4-98; Adopted: June 18, 1998; Effective: June 18, 1998)

Sec. 108. Intervention

Upon timely application, any person shall be permitted to intervene in an action if the Court determines that justice cannot otherwise be granted or that without such intervention the rights of the person cannot be properly protected. Any person desiring to intervene shall serve a motion to intervene upon the parties. A motion to intervene shall state the grounds for intervention and shall be accompanied by a pleading setting forth the claim or defense for which intervention is ought. Upon hearing or stipulation of the parties, the Court shall determine whether or not intervention will be allowed.

CHAPTER 2. TRIALS

Sec. 201. Trial procedure

(a) The time and place of court sessions, and all other details of judicial procedure may be set out in rules of court.

(b) All testimony of witnesses shall be given orally under oath in open court and subject to the right of cross-examination. Documentary and tangible evidence shall also be received in open court.

(c) Civil cases shall be tried before a Judge and not a jury, except that the Court in its discretion may grant a jury trial upon timely request of a party where the amount in controversy is more than Twenty Thousand

($20,000.00) Dollars. Within ten (10) days from the execution of the Jury Order, a bond as specified and determined by the Court must be posted with the Clerk of Court by the party requesting same. If the bond is not received within the required time the jury request shall be considered waived. If a jury trial is granted, the Court shall follow the provisions of Section 507 of Title II, and the compensation and expenses of the jurors shall be taxed as court cost, and assessed against the parties in the final judgment.

(d) The case of the plaintiff shall be presented first, followed by the case of the defendant. If rebuttal is required, the plaintiff shall proceed first, followed by the defendant.

(e) At the conclusion of the evidence, the plaintiff, and the defendant may, in turn, summarize the proof and make final argument.

(Revised by Ordinance #4-98; Adopted: June 18, 1998; Effective: June 18, 1998; Revised by Ordinance #02-09; Adopted: December 3, 2009; Effective: December 3, 2009)

Sec. 202. Consolidated and separate trials

(a) Consolidation. The Court may, upon motion of any party or upon on its own motion, order some or all of the issues raised in separate actions tried together when there is a common issue of fact or law relating to the actions and consolidation would tend to avoid unnecessary cost or delay.

(b) Separate trials. The Court may, to avoid prejudice or in furtherance of convenience, order a separate trial of a claim or issue.

Sec. 203. Substitution of parties

If a party dies, becomes incompetent, or transfers his interest, a substitute or successor party may be joined or substituted as justice requires.

CHAPTER 3. JUDGMENTS

Sec. 301. Judgments

A judgment shall be entered in each civil case. The judgment shall be for money or other relief or for dismissal. A judgment is complete and shall be deemed entered when it is signed by the Judge and filed with the Clerk.

Sec. 302. Judgment by default

(a) If a defendant, after being served with a copy of the complaint as provided in Section 102, and notice of a hearing as provided in Section 103 fails to appear at the hearing or trial or otherwise to defend the case the Court may enter a default judgment granting the relief sought in the complaint upon such showing of proof by the plaintiff as the Court deems appropriate.

(b) If a plaintiff, after being notified of the time and place of the hearing as provided in Section 103, fails to appear at the hearing or trial, or otherwise to prosecute the case, the Court may dismiss the case for failure to prosecute.

(c) The Court may, for good cause shown, set aside entry of a default judgment or dismissal for failure to prosecute.

Sec. 303. Proof of satisfaction

Proof that a judgment has been satisfied in whole or in part as to any or all judgment debtors may be executed under oath and filed by an attorney of record. The Clerk shall file all satisfactions of judgment and note the amount thereof in the judgment docket.

Sec. 304. Execution

(a) If any final judgment for money rendered by the Court is not satisfied within sixty (60) days of entry or such other time fixed by the Court, the judgment creditor may apply to the Court for an order directing the judgment debtor to appear before the Court for purposes of itemizing his property.

(b) After giving the judgment debtor an opportunity for hearing, the Court shall determine what property is available for execution and shall order tribal law enforcement officers to seize such property as may be necessary to satisfy the judgment.

Sec. 305. Judgment constitutes a lien

A judgment shall constitute a lien on any nonexempt property of the judgment debtor. Notice of this lien may be entered by the judgment creditor in the public records of any county or state where such property is located.

Sec. 306. Life of judgment

No judgment of the Court for money shall be enforceable after ten (10) years from the date of entry unless application to renew the judgment shall have been filed before the date of expiration pursuant to Section 307.

Sec. 307. Renewal of judgment

Upon application of the judgment creditor prior to the expiration of ten (10) years after the date of the entry of a judgment for money, the Court shall order the judgment renewed and extended for an additional ten (10) years.

(Revised by Ordinance#4-98; Adopted: June 18, 1998; Effective: June 18, 1998)

Sec. 308. Stay of judgment

Except as provided herein, no execution or enforcement shall issue on any judgment in a civil case until the expiration of ten (10) days after its entry. When a petition for review has been filed with the Court of Appeals following a judgment, the trial Court may stay its judgment or stay or grant an injunction during the pendency of the petition and any ensuing appeal on such terms, bond, or other conditions it considers proper to secure the rights of the adverse party as provided in Section 207 (d) of Title I of this Code.

Sec. 309. Costs and attorneys fees

In civil actions, costs shall be awarded the prevailing party as part of the final judgment unless the Court determines that the case has been prosecuted or defended solely for harassment and without any reasonable

expectation of success. No costs shall be awarded against the Tribe or against any officer of the Tribe or member of the Tribal Council sued in his official capacity. Costs shall include filing fees, reasonable and necessary expenses of involuntary witnesses, costs associated with compensation and expenses of the jury, and such other proper and reasonable expenses, exclusive of attorneys' fees.

Sec. 310. Property exempt from judgments for money

(a) Except for judgments for the support of a spouse or child, the following property of the judgment debtor or the debtor's spouse shall be exempt from execution under Section 304:

(1) provisions and fuel necessary to supply the debtor and his immediate family for one (1) year, or the monetary equivalent of such provisions and fuel;

(2) all clothing and personal effects;

(3) all household furnishings;

(4) one (1) dwelling place whether it be a house, cabin, trailer or other structure;

(5) one (1) truck or other motor vehicle valued at not more than Eight Thousand ($8,000.00) Dollars;

(6) except for a farmer or rancher, one (1) horse, one (1) saddle and bridle, one (1) wagon, two (2) cows and their calves, four (4) hogs and fifty (50) domestic fowls, and feed for such animals for three (3) months;

(7) for a farmer or rancher, livestock, farm equipment, machinery, and seed, grain or vegetables not exceeding Fifteen Thousand ($15,000.00) Dollars in value;

(8) or a mechanic or artisan, tools or implements necessary to carry on his trade;

(9) all moneys, benefits, privileges or immunities derived from life insurance on the debtor's life;

(10) all retirement allowances, benefits and pensions;

(11) all family pictures;

(12) a pew or other sitting in any house of worship;

(13) a lot or lots in any burial ground;

(14) one (1) Bible, all school books, and all other books not exceeding Two Hundred Fifty ($250.00) Dollars in value;

(15) one (1) rifle or handgun;

(16) real property held in trust by the United States; and
(17) property acquired with a loan or loan guaranty from the United States Department of Interior, Bureau of Indian Affairs.

(b) Property described in Subsection (a) of this Section may, however, be subject to execution where the judgment debtor has executed a valid and lawful mortgage or security agreement with the judgment creditor,

specifically pledging such property as collateral.

Sec. 311. Garnishment of wages for satisfaction of judgment

(a) In a civil action for garnishment filed by a judgment creditor, the Court may order garnishment of unpaid past or future wages of the judgment debtor for satisfaction of the judgment. No garnishment action shall be filed unless the judgment remains unsatisfied sixty (60) days after it was entered. In an action for garnishment the judgment debtor and the judgment debtor's employer shall be named as defendants.

(b) The maximum amount of wages subject to garnishment in any one (1) work week shall be the lesser of:

(1) twenty-five (25%) percent of the judgment debtor's disposable wages for one (1) work week, or

(2) the amount by which the judgment debtor's disposable wages for one (1) work week exceed forty (40) times the federal minimum hourly wage prescribed by Section 6(a)(1) of the Fair Labor Standards Act of 1938.

(c) A garnishment order shall lapse when the judgment is satisfied or when the judgment debtor resigns or is dismissed from his employment provided that if the judgment debtor is rehired within ninety (90) days after such resignation or dismissal, the garnishment order shall continue in effect.

(d) No employer shall discharge an employee for the reason that a judgment creditor of the employee has garnished or attempted to garnish unpaid earnings of the employee.

(e) For the purposes of this Section:

(1) "Wages" means compensation paid or payable for personal services whether denominated as wages, salary, commission, bonus or otherwise.

(2) "Disposable wages" means that part of the wages of an individual left after deduction of federal tax withholding, and any other amounts required by applicable law to be withheld by the employer.

CHAPTER 4. EXTRAORDINARY WRITS

Sec. 401. Temporary restraining orders without notice

(a) No temporary restraining order or other injunction without notice shall be granted where the Tribe or a tribal official in his official capacity is a defendant. Otherwise, except as provided in Subsection (c), no temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by oral testimony, affidavit, or the verified complaint that immediate and irreparable injury will result to the applicant before notice can be served and a hearing had thereon.

(b) Where a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set for hearing at the earliest possible time and shall take precedence over all matters except previously filed matters of the same character. When the motion is heard, the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction; if he fails to do so, the court shall dissolve the temporary restraining order. On two (2) days notice to the party who obtained the temporary restraining order without notice, or on such shorter notice to that party as the Court may prescribe, the adverse party may appear and move for dissolution or modification of the temporary restraining order and the Court shall proceed to hear and determine such motion as expeditiously as possible.

(c) Every temporary restraining order granted without notice shall include the date and hour of issuance and shall expire within such time after entry, not to exceed ten (10) days, as provided in the order.

Sec. 402. Preliminary injunctions

A preliminary injunction restrains activities of a defendant until the case can be determined on the merits. No preliminary injunction shall be issued without notice to the adverse party and an opportunity to be heard, and no preliminary injunction shall be issued absent clear and convincing proof by specific evidence that the applicant will suffer irreparable harm during the pendency of the litigation unless a preliminary injunction is issued, that the balance of equities favors the applicant over the party sought to the enjoined. The Court may dissolve or modify a preliminary injunction at any time as the interests of justice require.

Sec. 403. Security

Except as otherwise provided by law, no temporary restraining order or preliminary injunction shall issue except upon the giving of security by the applicant in such sum as the Court deems proper for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States, the Tribe, or of an agency or officer of either.

Sec. 404. Habeas Corpus

(a) **Availability.**

(1) Except as provided in Section 404(a)(2), every person within the Tribe's jurisdiction who is imprisoned or otherwise deprived of liberty may file in the Tribal Court a petition for writ of habeas corpus to inquire into the lawfulness of their imprisonment or restraint.

(2) The writ of habeas corpus is not available to attack the validity of the conviction or sentence of a person who has been convicted of an offense by a court of competent jurisdiction and has exhausted the remedy of appeal, nor is it available to attack the legality of an order revoking a suspended or deferred sentence. Moreover, a person may not be released on a writ of habeas corpus due to any technical defect in commitment that does not affect the person's substantial rights.

(b) **Issuance.**

(1) The petition for a writ of habeas corpus shall be signed by the petitioner and must be filed with the Tribal Court. It must specify:

i. That the petitioner is unlawfully imprisoned or deprived of liberty;
ii. Why the imprisonment or deprivation is unlawful; and
iii. Where or by whom the petitioner is confined or restrained.

(3) The petitioner must be verified by declaration under penalty of perjury that the contents of the petition are true to the best of the petitioner's belief.

(c) **Granting the Writ.** The Tribal Court may grant a writ of habeas corpus upon petition whenever it appears to the Tribal Court that the petitioner is unjustly imprisoned or otherwise unlawfully deprived of liberty. When the Tribal Court decides that a writ ought to issue, it shall be granted without delay.

(d) **Requirements for Service.** The writ must be served upon the person to whom it is directed in accordance with Section 102(c) of this Title IV. It must direct that person to bring the petitioner before the Tribal Court at a time and place therein specified for a hearing.

(f) **Hearing.** The Tribal Court shall proceed to hear the matter and render judgment accordingly. Evidence may be produced and compelled as provided by the laws governing criminal procedures and evidence.

(h) **Disposition of the Petitioner.** If the Tribal Court finds in favor of the petitioner, any appropriate orders must be entered as may be necessary and proper. If the Tribal Court finds against the petitioner, the petitioner must be returned to the custody of the person to whom the writ was directed.

(placeholder for revised, adopted, effective dates)

~~**Sec. 404. Habeas corpus**~~

Commented [JP1]: Needs proposed revisions

~~Relief by habeas corpus shall be granted whenever it appears to the Court that any person is unjustly imprisoned or otherwise unlawfully deprived of his liberty. Upon the filing of a petition for habeas corpus, the Court shall issue a writ directed to the defendant commanding him to bring the person alleged to be wrongfully restrained before the Court at a time and place therein specified at which time the Court shall proceed to hear the matter and render judgment accordingly.~~

CHAPTER 5. PETITIONS TO CHALLENGE THE MEMBERSHIP QUALIFICATION OF AN ENROLLED MEMBER

(Added by Ordinance #3-01; Adopted: December 18, 2001; Effective: November 8, 2002**;** Revised by Ordinance #02-09; Adopted: December 3, 2009; Effective: December 3, 2009)

Sec. 501. Petition to Challenge the Membership Qualification of an Enrolled Member

(a) Subject to a one (1) year statute of limitation, any enrolled member of the Chitimacha Tribe may file a petition challenging the eligibility for enrollment of another tribal member with the Clerk for the Tribal Court.

(b) Any such Petition shall include:

(1) Proof of the Petitioner's enrollment in the Chitimacha Tribe;

(2) A sworn affidavit stating the facts and circumstances upon which the Petition is based and any other information that the Petitioner has to substantiate his/her allegations;

(3) A statement of any relationship between the Petitioner and the person that is the subject of the Petition;

(4) Proof that a copy of the Petition was mailed First Class mail return receipt requested to the person that is the subject of the Petition; and

(5) The name and address of the Petitioner.

Any Petition not filed in accordance with these procedures shall not be accepted and shall be returned to the Petitioner with a notice from the Court clerk of its deficiencies.

(Added by Ordinance #3-01; Adopted: December 18, 2001; Effective: November 8, 2002**;** Revised by Ordinance #02-09; Adopted: December 3, 2009; Effective: December 3, 2009)

Sec. 502. Petitions challenging the Paternity of an enrolled member

If a Petition challenges the paternity of an enrolled member, the acknowledged paternal father of the person, who is the subject of the Petition, must be living in order for the Petition to be valid.

(Added by Ordinance #3-01; Adopted: December 18, 2001; Effective: November 8, 2002)

Sec. 503. Receipt of a valid petition

Upon receipt of a valid Petition, the Trial Court shall in not less than fifteen (15) days of receipt of the Petition, direct by Order of the Court, the Chitimacha Enrollment Officer to conduct an investigation of the allegations in the Petition.

(Added by Ordinance #3-01; Adopted: December 18, 2001; Effective: November 8, 2002)

Sec. 504. Enrollment Officer's Action

Within thirty (30) days of the issuance of such Order, the Enrollment Officer shall present his written findings to the Trial Court.

(Added by Ordinance #3-01; Adopted: December 18, 2001; Effective: November 8, 2002)

Sec. 505. Additional hearing

Upon receipt of the Enrollment Officer's findings, the Trial Court may adopt those findings or may conduct a hearing to take additional testimony for the record, such a hearing shall be held within not less than thirty (30) days of receipt of the Enrollment Officer's findings. Notice of the hearing shall be mailed to the Petitioner and the person, who is the subject of the Petition. Either party may present testimony and evidence.

(Added by Ordinance #3-01; Adopted: December 18, 2001; Effective: November 8, 2002)

Sec. 506. Authority to issue subpoenas

If the Trial Court elects to hold a hearing, it may issue a subpoena to compel the testimony of witnesses or the production of records, documents or any other physical evidence relevant to the Petition.

(Added by Ordinance #3-01; Adopted: December 18, 2001; Effective: November 8, 2002)

Sec. 507. Findings of Fact

Within fifteen (15) days of any hearing under Section 505 or receipt of the Enrollment Officer's findings, if no such hearing is held, the Trial Court shall issue its Findings of Fact on the Petition and shall certify these findings to the Tribal Council.

(Added by Ordinance #3-01; Adopted: December 18, 2001; Effective: November 8, 2002)

CHAPTER 6. APPLICABLE LAWS

(Revised by Ordinance #3-01; Adopted: December 18, 2001; Effective: November 8, 2002)

Sec. 601. Applicable laws

(a) In determining any case over which it has jurisdiction the Court shall give binding effect to:

(1) any applicable constitutional provision, treaty, law, or valid regulation of the United States;

(2) any applicable provision of the Tribal Constitution or law of the Tribe not in conflict with federal law;

(3) any applicable custom or usage of the Tribe not in conflict with any law of the Tribe or of the United States. Where doubt arises as to such custom and usage, the Court may request the testimony, as witnesses of the Court, of persons familiar with such custom and usage.

(b) Where appropriate, the Court may, in its discretion, be guided by statutes, common law, or rules of decision of the State in which the transaction or occurrence giving rise to the cause of action took place.

(Added by Ordinance #3-01; Adopted: December 18, 2001; Effective: November 8, 2002)

CHAPTER 7. STATUTE OF LIMITATIONS

(Revised by Ordinance #3-01; Adopted: December 18, 2001; Effective: November 8, 2002)

Sec. 701. Limitations of actions

The Court shall have no jurisdiction over any action brought more than one (1) year after the occurrence or event giving rise to the cause of action, except that no statute of limitation shall bar an action commenced by the Tribe.

(Revised by Ordinance # 2-95; Adopted: January 12, 1995; Effective: January 12, 1995; Revised by Ordinance #3-01; Adopted: December 18, 2001; Effective: November 8, 2002)

CHAPTER 8. CHITIMACHA RULES OF EVIDENCE

(Added by Ordinance # 02-09; Adopted: December 3, 2009; Effective: December 3, 2009)

Section 1. General Provisions

Rule 101. Scope

These rules govern proceedings in the courts of the Chitimacha Tribe of Louisiana and before Chitimacha judges, to the extent and with the exceptions stated in Rule 1101.

Rule 102. Purpose and Construction

These rules shall be construed to secure fairness in administration, elimination of unjustifiable delay and expense, and promotion of growth and development of the Chitimacha tribal law of evidence to the end that the truth may be ascertained and proceedings justly determined. Decisional law from other jurisdictions interpreting similar rules may guide the Chitimacha courts but shall not be binding.

Rule 103. Rulings on Evidence

(a) Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and:

(1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) Offers of Proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which the questions were asked.

(b) Record of Offer and Ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form. The court shall mark as an exhibit for identification anything offered by a party.

(c) Hearing of Jury. In jury cases (criminal), proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

(d) Plain Error. Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

Rule 104. Preliminary Questions

(a) Questions of Admissibility Generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determinations it is not bound by the rules of evidence except those with respect to privileges.
(b) Relevancy Conditioned on Fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) Hearing of Jury. Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require, or when an accused is a witness and so requests.

(d) Juvenile Confession. Any confession by a juvenile must be made in the presence of a parent or guardian after advising both of the rights of the child.

(e) Testimony by Accused. The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.

(f) Weight and Credibility. This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

Rule 105. Limited Admissibility

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

Rule 106. Remainder or Related Writings or Recorded Statements

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

Section 2. Judicial Notice

Rule 201. Judicial Notice of Adjudicative Facts

(a) Scope of Rule. This rule governs only judicial notice of adjudicative facts.

(b) Kinds of Facts May Include. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When Discretionary. A court may take judicial notice, whether requested or not.

(d) When Mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to Be Heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of Taking Notice. Judicial notice may be taken at any stage of the proceeding.

(g) Instructing Jury. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

Section 3. Presumptions

Rule 301. Presumption in General in Civil Actions and Proceedings

(a) Effect. In all civil actions and proceedings, except as otherwise provided by tribal law or by these rules, a presumption imposes on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence.

(b) Prima Facia Evidence. A tribal law providing that a fact or group of facts is prima facia evidence of another fact establishes a presumption within the meaning of this rule.

(c) Inconsistent Presumptions. If two presumptions arise which are conflicting with each other, the court shall apply the presumption which is founded on the weightier considerations of policy and logic. If there is no such preponderance, both presumptions shall be disregarded.

Rule 302. Presumptions in Criminal Cases

(a) Scope. Except as otherwise provided by tribal law, in criminal cases presumptions against an accused, created by ordinance, including statutory provisions that certain facts are prima facia evidence of other facts or of guilt, are governed by this rule.

(b) Submission to Jury. The court is not authorized to direct the jury to find a presumed fact against the accused. The court may submit the question of guilt or of the existence of the presumed fact to the jury, if, but only if, a reasonable juror on the evidence on the whole, including the evidence of the basic facts, could find guilt or the presumed fact beyond a reasonable doubt.

(c) Instructing the Jury. Whenever the existence of a presumed fact against the accused is submitted to the jury, the court in instructing the jury should avoid charging in terms of a presumption. The charge shall include an instruction to the effect that the jurors have a right to draw a reasonable inferences from the facts proved beyond a reasonable doubt and may convict the accused in reliance upon an inference of fact if they conclude that such inference is valid and if the inference convinces them of guilt beyond a reasonable doubt and not otherwise.

Section 4. Relevancy and its Limits

Rule 401. Definition of "Relevant Evidence"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

All relevant evidence is admissible, except as otherwise provided by tribal law or by these rules or by other rules applicable in the Chitimacha courts or as limited by requirements of the Indian Civil Rights Act, 25 U.S.C. §1301-1303. Evidence which is not relevant is not admissible.

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 404. Character Evidence not Admissible to Prove Conduct; Exceptions; Other Crimes

(a) Character Evidence Generally. Evidence of a person's character or trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) Character of Accused. Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same;

(2) Character of Victim. 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.

(3) Character of Witness. Evidence of the character of a witness, as provided in Rules 607, 608 and 609.

(b) Other Crimes, Wrongs, or Acts. 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. It may, however, be admissible for other purposes, such a proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pre-trial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

Rule 405. Methods of Proving Character

(a) Reputation or Opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation of the individual in the individual's community or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) Specific Instances of Conduct. In cases in which character or a trait of character of a person is directly in issue, proof may be made of specific instances of that person's conduct in a similar situation.

Rule 406. Habit; Routine Practice

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

Rule 407. Subsequent Remedial Measures

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control or feasibility of precautionary measures, if controverted, or impeachment.

Rule 408. Compromise and Offers to Compromise

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability or invalidity of the claim or its amount.

Evidence of conduct or statements made in compromise negotiations, except when information communicated during compromise negotiations is asserted as a fact, is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Rule 409. Payment of Medical and Similar Expenses

Evidence of furnishing or offering or promising to pay medical, hospital or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

Rule 410. Withdrawn Pleas and Offers

Except as otherwise provided, evidence of a plea later withdrawn, or guilty or no contest, of an offer so to plead to the crime charged or any other crime, or of statements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal action, case, or proceeding against the person who made the plea or offer.

However, such a statement is admissible (1) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (2) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

Rule 411. Liability Insurance

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

Rule 412. Sex Offense Cases; Relevance of Alleged Victim's Past Sexual Behavior or Alleged Sexual Predisposition

(a) Evidence Generally Inadmissible. The following evidence is not admissible in any civil or criminal proceeding involving alleged sexual misconduct except as provided in subdivisions (b) and (c):

(1) Evidence offered to prove that any alleged victim engaged in other sexual behavior.

(2) Evidence offered to prove any alleged victim's sexual predispositions.

(b) Exceptions.

(1) In a criminal case, the following evidence is admissible, if otherwise admissible under these rules: (A) evidence of specific instances of sexual behavior by the alleged victim offered to prove that a person other than the accused was the source of semen, injury or other physical evidence; (B) evidence of

specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered by the accused to prove consent or by the prosecution; (C) evidence the exclusion of which would violate the rights of the defendant under Chitimacha tribal law or the Indian Civil Rights Act, 25 U.S.C. §1301-1303; (D) evidence tending to establish affirmative defenses which take into account the alleged victim's physical or mental incapacity and the accused's lack of knowledge thereof; and the past conduct of the victim and the accused regarding consensual cohabitation; and (E) evidence of the adjudication of the defendant as a delinquent for the offense of sexual assault, assault and/or child abuse, when the defendant is being prosecuted as an adult in a child abuse case.

(2) In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of an alleged victim's reputation is admissible only it has been placed in controversy by the alleged victim.

(c) Procedure to Determine Admissibility.

(1) A party intending to offer evidence under subdivision (b) must (A) file a written motion at least fourteen (14) days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause, requires a different time for filing or permits filing during trial; and (B) serve the motion on all parties and notify the alleged victim or, when appropriate, the alleged victim's guardian or representative.

(2) Before admitting evidence under this rule the court shall conduct a hearing in camera and afford the victim and the parties a right to attend and be heard. If a victim is below the age of twelve (12) years, the testimony may be taped without the defendant being heard or seen by the victim. The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise. This rule does not prohibit the use of the testimony of a defendant given at the hearing on the motion of sexual conduct of the victim to impeach the credibility of such defendant, if the defendant elects to testify at the trial in chief.

(3) If the court determines on the basis of the hearing described in paragraph (2) that the evidence which the accused seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the court specifies evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined.

Rule 413. Evidence or Similar Crimes in Sexual Assault Cases

(a) In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant.

(b) In a case in which the Chitimacha Tribe of Louisiana intends to offer evidence under this rule, the tribal prosecutor shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.
(d) For purposes of this rule and Rule 415, "offense of sexual assault" means a crime under Chitimacha tribal law, Federal law or the law of a state that involved:

(1) any conduct proscribed by Chapter 109A of Title 18, United States Code;

(2) contact, without consent, between any part of the defendant's body or an object and the genitals or anus of another person;

(3) contact, without consent, between the genitals or anus of the defendant and any part of another person's body;

(4) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on another person; or

(5) an attempt or conspiracy to engage in conduct described in paragraphs (1)-(4).

Rule 414. Evidence of Similar Crimes in Child Molestation Cases

(a) In a criminal case in which the defendant is accused of an offense of child molestation, evidence of the defendant's commission of another offense or offenses of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.

(b) In a case in which the Chitimacha Tribe of Louisiana intends to offer evidence under this rule, the tribal prosecutor shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen (15) days before the scheduled date of trial or at such later time as the court may allow for good cause.

(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

(d) For purposes of this rule and Rule 415, "child" means a person below the age of fourteen (14), and "offense of child molestation" means a crime under Chitimacha tribal law, Federal law or the law of a state (as defined in section 513 of Title 18, United States Code) that involved

(1) any conduct proscribed by Chapter 109A of Title 18, United States Code, that was committed in relation to a child;

(2) any conduct proscribed by Chapter 110 of Title 18, United States Code;

(3) contact between any part of the defendant's body or an object and the genitals or anus of a child;

(4) contact between the genitals or anus of the defendant and any part of the body of a child;

(5) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on the body of a child; or

(6) an attempt or conspiracy to engage in conduct described in paragraphs (1)-(5).

Rule 415. Evidence of Similar Acts in Civil Cases Concerning Sexual Assault or Child Molestation

(a) In a civil case in which a claim for damages or other relief is predicated on a party's alleged commission of conduct constituting an offense of sexual assault or child molestation, evidence of that party's commission of another offense or offenses of sexual assault or child molestation is admissible and may be considered as provided in Rule 413 and Rule 414 of these rules.

(b) A party who intends to offer evidence under this rule shall disclose the evidence to the party against whom it will be offered, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

Section 5. Privileges

Rule 501. Privileges Recognized Only as Provided

Except as otherwise provided by Chitimacha tribal law, the Indian Civil Rights Act, 25 U.S.C. §1301-1303, or other rules applicable to the courts of the Chitimacha Tribe of Louisiana, no person has a privilege to:

(a) Refuse to be a witness; or

(b) Refuse to disclose any matter; or

(c) Refuse to produce any object or writing; or

(d) Prevent another from being a witness or disclosing any matter or producing any object or writing.

Rule 502. Attorney-Client Privilege

(a) Definitions. As used in this rule:

(1) A "client" is a person, public officer, or organization, either public or private, who is rendered professional legal services by an attorney, or who consults an attorney with a view to obtaining professional legal services from that attorney.

(2) A "representative of the client" is one having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client.

(3) An "attorney" is a person authorized, or reasonably believed by the client to be authorized, to practice law in the courts of any state or nation or Indian tribe.

(4) A "representative of the attorney" is one employed by the attorney to assist the attorney in the rendition of professional legal services.

(5) A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(b) General Rule of Privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(1) between the client or the client's representative and the client's attorney or the client's attorney's representative, or

(2) between the client's attorney and the attorney's representative, or

(3) by the client or the client's representative or the client's attorney or a representative of the attorney to an attorney or a representative of an attorney representing another party in a pending action and concerning a matter of common interest therein, or

(4) between representatives of the client or between the client and a representative of the client, or

(5) among attorneys and their representatives representing the same client.

(c) Who May Claim the Privilege. The privilege may be claimed by the client, his guardian or conservator or similar agent or legal representative, the personal representative of the deceased client, or the successor, trustee, or similar representative of a corporation, association or other organization, whether or not in existence. The person who was the attorney or the attorney's representative at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

(d) Exceptions. There is no privilege under this rule:

(1) Furtherance of Crime or Fraud. If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud; or

(2) Claimants Through Same Deceased Client. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction; or

(3) Breach of Duty by an Attorney or Client. As to a communication relevant to an issue of breach of duty by the attorney to the client or by the client to the attorney; or

(4) Document Attested by Attorney. As to a communication relevant to an issue concerning an attested document to which the attorney is an attesting witness; or

(5) Joint Clients. As to a communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to an attorney retained or consulted in common, when offered in an action between any of the clients.

Rule 503. Physician and Psychotherapist - Patient Privilege

(a) Definitions. As used in this rule:

(1) A "patient" is a person who consults or is examined or interviewed by a physician or psychotherapist.

(2) A "physician" is a person authorized to practice medicine in any state or nation, or is recognized by the Chitimacha Tribe of Louisiana, or another Indian nation or tribe, as a traditional healer, or reasonably believed by the patient to be such.

(3) A "psychotherapist" is (A) a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, or (B) a person licensed or certified as a psychologist or psychological examiner under the laws of any state or nation, while similarly engaged.

(4) A communication is "confidential" if not intended to be disclosed to third persons other than those present to further the interest of the patient in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient's family.

(b) General Rule of Privilege. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of the patient's physical, mental or emotional condition, including alcohol or drug addiction, among the patient, the physician or psychotherapist, and persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including member of the patient's family.

(c) Privilege of Accused. When an examination of the mental condition of an accused in a criminal proceeding is ordered by the court for the purpose of determining the accused's criminal responsibility, the accused has a privilege to refuse to disclose and to prevent any other person from disclosing any communication concerning the offense with which he is charged, made in the course of the examination.

(d) Who May Claim the Privilege. The privilege may be claimed by the patient, by his guardian or conservator or similar agent or legal representative, or by the personal representative of a deceased patient. The person who was the physician or psychotherapist at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the patient.

(e) Exceptions.

(1) Proceedings for Hospitalization. There is no privilege under this rule for communications relevant to an issue in proceedings to hospitalize the patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has determined that the patient is need of hospitalization.

(2) Examination by Order of Court. Except as otherwise provided in subdivision (c), if the court orders an examination of the physical, mental or emotional condition of a patient, whether a party or witness, communications made in the course thereof are not privileged under this rule with respect to the particular purpose for which the examination is ordered unless the court orders otherwise.

(3) Condition an Element of Claim or Defense. There is no privilege under this rule as to communications relevant to an issue of the physical, mental or emotional condition of a patient in any proceeding in which the condition of the patient is an element of the claim or defense of the patient, or of any party claiming, through or under the patient or because of the patient's condition, or claiming as a beneficiary of the patient, through a contract to which the patient is or was a party, or after the patient's death, in any proceeding in which any party puts the condition in issue.

(4) Neglect or Abuse Proceedings. There is no privilege under this rule as to communications or records relevant to any investigation into or proceedings involving allegations of abuse or neglect of children, the elderly, the disabled or the incompetent.

Rule 504. Husband - Wife Privilege

(a) Definition. A communication is confidential if it is made privately by any person to his or her spouse and is not intended for disclosure to any other person.

(b) Who May Claim Privilege. The privilege may be claimed by the person who made the communication or by the spouse in his or her behalf. The authority of the spouse to do so is presumed.

(c) Exceptions. There is no privilege under this rule in a proceeding in which one spouse is charged with a crime against the person or property of:

(1) the other,

(2) a child of either,

(3) any person residing in the household of either, or

(4) a third person committed in the course of committing a crime against any of them; in a civil proceeding in which the spouses are adverse parties; or in child custody proceedings in which the minor child of either spouse is alleged to be the victim of abuse or neglect.

Rule 505. Religious Privilege

(a) Definitions. As used in this rule:

(1) A "clergy person" is (A) a priest, minister, rabbi, or practitioner of any religious denomination accredited by the religious body to which he or she belongs, or an individual reasonably believed so to be by the person consulting him or her or (B) a traditional spiritual adviser recognized by the tribe or nation to which the adviser belongs, or an individual reasonably believed so to be by the person consulting the adviser.

(2) A communication is "confidential" if it is made privately and not intended for further disclosure except to other persons present in furtherance of the communication.

(b) General Rule of Privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to the clergyperson in his or her professional character as spiritual adviser.

(c) Who May Claim the Privilege. The privilege may be claimed by the person, by the person's guardian or conservator or similar agent or legal representative, or the person's personal representative if he or she is deceased. The person who was the clergyperson at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the communicant.

Rule 506. [RESERVED]

Rule 507. Trade Secrets

A person has a privilege, which may be claimed by the person, the person's agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by the person, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. When disclosure is directed, the court shall take such protective measures as the interest of the holder of the privilege and of the parties and the furtherance of justice may require.

Rule 508. Tribal Governmental Privilege; Executive Privilege

(a) If the Chitimacha Tribal Council resolves that a matter is private, the courts of the Chitimacha Tribe of Louisiana must recognize the matter as privileged. Communications made during an announced executive session of the Chitimacha Tribal Council are privileged.

(b) Executive privilege in any matter relating to official Chitimacha tribal business shall be extended to:

(1) Present and former members of the Chitimacha Tribal Council.

(2) Staff members of the Chitimacha Tribal Council.

(3) Any employee reporting to the Chitimacha Tribal Council.

(4) Attorneys employed by the Chitimacha Tribe of Louisiana as Legal Counsel.

(5) Chitimacha Peacemakers and their direct report staff.

Persons covered by executive privilege cannot, without authorization by the Chitimacha Tribal Council, testify in a Tribal Court proceeding, including, but not limited to: court testimony, interrogatories, depositions or other discovery proceedings. Only the Chitimacha Tribal Council shall be authorized to waive executive privilege. Determinations by the Chitimacha Tribal Council as to whether executive privilege shall apply shall be conclusive and not subject to judicial review.

Rule 509. Identity of Informer

(a) Rule of Privilege. An Indian tribe or nation, the United States, a state or subdivision thereof, or any foreign country has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(b) Who May Claim. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished.

(c) Exceptions.

(1) Voluntary Disclosure; Informer a Witness. No privilege exists under this rule if the identity of the informer or his or her interest in the subject matter of his or her communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the Chitimacha Tribe of Louisiana.

(2) Testimony on Relevant Issue. If it appears in the case that an informer may be able to give testimony relevant to any issue in a civil or criminal case to which a public entity is a party and the informed

public entity invokes the privilege, the court may give the public entity an opportunity to show in camera and on the record facts relevant to determining whether the informer can, in fact, supply that testimony.

The showing may be in the form of affidavits, but the court may direct that testimony be taken if it finds that the matter cannot be resolved satisfactorily upon affidavit. If the court finds there is a reasonable probability that the informer can give relevant testimony, the court on motion of a party or on its own motion may enter a conditional order for appropriate relief, to be granted if the public entity elects not to disclose within the time specified the identity of such informer.

In a criminal case such relief may include one or more of the following: granting the defendant additional time or a continuance, relieving the defendant from making disclosures otherwise required of him or her, prohibiting the prosecuting attorney from introducing specified evidence, and dismissing the charges.

In a civil case the court may provide any relief that the interests of justice require. Evidence submitted to the court shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and a docket entry shall be made specifying the form of such evidence but not its content or the identity of any declarant. The contents shall not otherwise be revealed without consent of the informed public entity. All counsel and parties are permitted to be present at every stage of proceedings under this subdivision except at a showing in camera at which only counsel for the public entity shall be permitted to be present.

Rule 510. Waiver of Privilege by Voluntary Disclosure

A person upon whom these rules confer a privilege against disclosure waives the privilege if he or she or his or her predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter. This rule does not apply if the disclosure itself is privileged.

Rule 511. Privileged Matter Disclosed Under Compulsion Without Opportunity to Claim Privilege

A claim of privilege is not defeated by a disclosure which was:

(a) compelled erroneously or

(b) made without opportunity to claim the privilege.

Rule 512. Comment Upon or Inference From Claim of Privilege in Criminal Cases; Instruction

(a) Comment or Inference Not Permitted. The claim of privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel in a criminal case. No inference may be drawn therefrom.

(b) Claiming Privilege Without Knowledge of Jury. In criminal case tried to a jury, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.

(c) Jury Instruction. Upon request, any accused in a criminal case against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom.

Rule 513. Claim of Privilege in Civil Cases

(a) Comment or Inference Permitted. The claim of privilege by a party in a civil action or proceeding, whether in the present proceeding or upon a prior occasion, is a proper subject of comment by judge or counsel. An appropriate inference may be drawn therefrom.

(b) Claim of Privilege by Nonparty Witness. The claim of a privilege by a nonparty witness in a civil action or proceeding shall be governed by the provisions of Rule 512.

Section 6. Witnesses

Rule 601. Competency in General: Disqualification

(a) General Rule of Competency. Every person is competent to be a witness except as otherwise provided in these rules.

(b) Disqualification of Witness. A person is not qualified to be a witness if the court finds that:

(1) the proposed witness is incapable of expressing himself concerning the matter so as to be understood by the judge and jury either directly or through interpretation by one who can understand him,

(2) the proposed witness is incapable of understanding the duty of a witness to tell the truth,

(3) the proposed witness lacked any reasonable ability to perceive the matter or

(4) the proposed witness lacks any reasonable ability to remember the matter. An interpreter is subject to all the provisions of these rules relating to witnesses.

Rule 602. Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

Rule 603. Oath or Affirmation

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmations administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.

Rule 604. Interpreters

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.

Rule 605. Competency of Judge and Council Member as Witness

(a) Presiding Judge. The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

(b) Legislative Intent. No Chitimacha Tribal Council member may testify in a proceeding with respect to legislative intent or history of any Chitimacha tribal law.

Rule 606. Competency of Juror as Witness

(a) At the Trial. A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror is sitting. If the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) Inquiry Into Validity of Verdict or Indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any other outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

Rule 607. Who May Impeach

The credibility of a witness may be attacked by any party, including the party calling the witness.

Rule 608. Evidence of Character and Conduct of Witness

(a) Opinion and Reputation Evidence of Character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations:

(1) the evidence may refer only to character for truthfulness or untruthfulness, and

(2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific Instances of Conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into cross-examination of the witness:

(1) concerning the witness' character for truthfulness or untruthfulness, or

(2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination when examined with respect to matters which relate only to credibility.

Rule 609. Impeachment by Evidence of Conviction of Crime

(a) General Rule. For the purpose of attacking the credibility of a witness,

(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by imprisonment in excess of six (6) months under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

(b) Time Limit. Evidence of a conviction under this rule is not admissible if a period of more than ten (10) years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than ten (10) years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) Effect of Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is not admissible under this rule if:

(1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of 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) Juvenile Adjudications. Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) Pendency of Appeal. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

Rule 610. Religious Beliefs or Opinions

Evidence of the belief or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.

Rule 611. Mode and Order of Interrogation and Presentation

(a) Control by Court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) make the interrogation and presentation effective for the ascertainment of the truth,

(2) avoid needless consumption of time, and

(3) protect witnesses from harassment or undue embarrassment.

(b) Scope of Cross-Examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examinations.

(c) Leading Questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

Rule 612. Writing or Object used to Refresh Memory

(a) While Testifying. If, while testifying, a witness uses a writing or object to refresh his or her memory, an adverse party is entitled to have the writing or object produced at the trial, hearing, or deposition in which the witness is testifying.

(b) Before Testifying. If, before testifying, a witness uses a writing or object to refresh his memory for the purpose of testifying and the court in its discretion determines that the interests of justice so require, an adverse party is entitled to have the writing or object produced, if practicable, at the trial, hearing, or deposition in which the witness is testifying.

(c) Terms and Conditions of Production and Use. A party entitled to have a writing or object produced under this rule is entitled to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If production of the writing or object at the trial, hearing or deposition is impracticable, the court may order it made available for inspection. If it is claimed that the writing contains matters not related to the subject matter of the testimony the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing or object is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.

Rule 613. Prior Statements of Witnesses

(a) Examining Witness Concerning Prior Statement. In examining a witness concerning a prior statement made by him or her, whether written or not, the statement need not be shown nor its contents disclosed to him or her at that time, but on request the same shall be shown or disclosed to opposing counsel.

(b) Extrinsic Evidence of Prior Inconsistent Statement of Witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2).

Rule 614. Calling and Interrogation of Witnesses by Court

(a) Calling by Court. The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(b) Interrogation by Court. The court may interrogate witnesses, whether called by itself or by a party.

(c) Objections. Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.

Rule 615. Exclusion of Witnesses

At the request of a party or upon its own motion, the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of:

(a) a party who is a natural person, or

(b) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or

(c) a person whose presence is shown by a party to be essential to the presentation of the party's cause.

Section 7. Opinions and Expert Testimony

Rule 701. Opinion Testimony by Lay Witnesses

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inference is limited to those opinions or inferences which are:

(a) rationally based on the perception of the witness and

(b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Rule 702. Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 703. Bases of Opinion Testimony by Experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Rule 704. Opinion on Ultimate Issue

(a) Except as provided in subdivision (b), testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

(b) No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.

Rule 705. Disclosure of Fact or Data Underlying Expert Opinion

The expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

Rule 706. Court Appointed Experts

(a) Compensation. Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. Except as otherwise provided by law, the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

(b) Disclosure of Appointment. In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

(c) Parties' Experts of Own Selection. Nothing in this rule limits the parties in calling witnesses of their own selection.

Section 8. Hearsay

Rule 801. Definition

The following definitions apply under this Article:

(a) Statement. A "statement" is:

(1) an oral or written assertion or

(2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) Declarant. A "declarant" is a person who makes a statement.

(c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements Which Are Not Hearsay. A statement is not hearsay if:

(1) Prior Statement by Witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or

(2) Admission by Party-Opponent. The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

Rule 802. Hearsay Rule; Child's Statements

(a) Hearsay is not admissible except as provided by law or by these rules. The words "as provided by law" include applicable federal statutes, Chitimacha tribal ordinances, the Chitimacha Rules of Criminal Procedure and the Chitimacha Rules of Civil Procedure.

(b) In any proceeding before the court wherein it is alleged that a child is the victim of child abuse or neglect, the court may admit and consider oral or written evidence of out-of-court statements made by the child and rely on that evidence to the extent of its probative value.

Rule 803. Hearsay Exceptions: Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(a) Present Sense Impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(b) Excited Utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(c) Then Existing Mental, Emotional, or Physical Condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(d) Statements for Purposes of Medical Diagnosis or Treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(e) Recorded Recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be received as an exhibit. If a witness, when testifying uses a document to refresh his or her recollection, that document thereby shall be made available for examination by the opposing party.

(f) Records of Regularly Conducted Activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(g) Absence of Entry in Records Kept in Accordance With the Provisions of paragraph (f). Evidence that a matter is not included in the memoranda reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (f), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(h) Public Records and Reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth:

(1) the activities of the office or agency, or

(2) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or

(3) in civil actions and proceedings and against the Tribe in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

(i) Records of Vital Statistics. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(j) Absence of Public Record or Entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(k) Records of Religious Organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(l) Marriage, Baptismal, and Similar Certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(m) Family Records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(n) Records of Documents Affecting an Interest in Property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(o) Statements in Documents Affecting an Interest in Property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(p) Statements in Ancient Documents. Statements in a document in existence twenty (20) years or more the authenticity of which is established.

(q) Market Reports, Commercial Publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(r) Learned Treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence and received as exhibits.

(s) Reputation Concerning Personal or Family History. Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.

(t) Reputation Concerning Boundaries or General History. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or tribe or State or nation in which located. Before such reputation evidence is admitted the court must find:

(1) The declarant is dead;

(2) The declarant would have been qualified as a witness to testify if present, and that he or she had peculiar means of knowing the boundary;

(3) The statement was made before the controversy in question arose;

(4) The declarant had no interest in misrepresenting the declaration.

(u) Reputation as to Character. Reputation of a person's character among associates or in the community.

(v) Judgment of Previous Conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime to prove any fact essential to sustain the judgment, but not including, when offered by the Tribe in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused; provided, however, unless the Chitimacha Tribal Court, after finding good cause, previously ordered that the guilty plea be inadmissible in any subsequent civil proceeding. The pendency of an appeal may be shown but does not affect admissibility.

(w) Judgment as to Personal, Family, or General History, or Boundaries. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(x) Medical and Hospital Records.

(1) In all actions, whether, civil, criminal or juvenile, for the recovery of damages for personal injuries or death, any party offering in evidence a signed report and bill for treatment of any treating physician, dentist, chiropractor, osteopath, naturopath, physical therapist, podiatrist, psychologist, emergency medical technician or optometrist may have the report and bill admitted into evidence as a business record. It shall be presumed that the signature on the report is that of the treating physician, dentist, chiropractor, osteopath, naturopath, physical therapist, podiatrist, psychologist, emergency medical technician or optometrist and that the report and bill were made in the ordinary course of business. The use of such report or bill in lieu of the testimony of such physician, dentist, chiropractor, osteopath, naturopath, physical therapist, podiatrist, psychologist, emergency medical technician or optometrist shall not give rise to any adverse inference concerning the testimony or lack of testimony of such

treating physician, dentist, chiropractor, osteopath, naturopath, physical therapist, podiatrist, psychologist, emergency medical technician or optometrist.

This exception shall not be construed as prohibiting either party or the court from calling the treating physician, dentist, chiropractor, osteopath, naturopath, physical therapist, podiatrist, psychologist, emergency medical technician or optometrist as a witness.

Any and all parts of any hospital record or bill for treatment or copy thereof made by a hospital in connection with the treatment of a patient, if not otherwise inadmissible, shall be admissible in evidence without any preliminary testimony if there is attached thereto the certification in affidavit form of the person in charge of the record room of a hospital or his or her authorized assistant indicating that such record, bill or copy is the original record or bill, or a copy thereof, made in the regular course of the business of the hospital and that it was in the regular course of such business to make such record or bill at the time of the transaction, occurrence or event recorded therein or within a reasonable time thereafter.

(2) In all actions whether civil, criminal or juvenile, for the recovery of damages for personal injuries or death, (A) if a physician, dentist, chiropractor, osteopath, naturopath, physical therapist, podiatrist, psychologist, emergency medical technician or optometrist has died prior to the trial of the action, or (B) if a physician, dentist, chiropractor, osteopath, naturopath, physical therapist, podiatrist, psychologist, emergency medical technician or optometrist is physically or mentally disabled at the time of the trial of the action to such an extent that he is no longer actively engaged in the practice of his or her profession, the party desiring to offer into evidence the written records and reports of the physician, dentist, chiropractor, osteopath, naturopath, physical therapist, podiatrist, psychologist, emergency medical technician or optometrist concerning the patient who suffered the injuries or death shall apply to the court in which the action is pending for permission to introduce the evidence. Notice of the application shall be served on the adverse party in the same manner as any other pleading. The court shall consider the application and determine whether the person is disabled to the extent he or she cannot testify in person in the action. Upon the court finding that the person is so disabled, the matters shall be admissible in evidence as a business record when offered by any party to the action.

(y) Other Exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that:

(1) the statement is offered as evidence of a material fact;

(2) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and,

(3) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

Rule 804. Hearsay Exceptions: Declarant Unavailable

(a) Definition of Unavailability. "Unavailability as a witness" includes situations in which the declarant:

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or

(2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or

(3) testifies to a lack of memory of the subject matter of the declarant's statement; or

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

(5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b) (2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of presenting the witness from attending or testifying.

(b) Hearsay Exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former Testimony. Testimony given as a witness at another hearing of the same or a 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, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement Under Belief of Impending Death. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

(3) Statement Against Interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) Statement of Person or Family History. (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) A statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) Other Exceptions. A statement not specifically covered by any of the foregoing exceptions by having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it

is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

Rule 805. Hearsay within Hearsay

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

Rule 806. Attacking and Supporting Credibility of Declarant

When a hearsay statement, or a statement defined in Rule 801 (d) (2), (C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

Section 9. Authentication and Identification

Rule 901. Requirement of Authentication or Identification

(a) General Provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) Testimony of Witness With Knowledge. Testimony that a matter is what it is claimed to be.

(2) Nonexpert Opinion on Handwriting. Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) Comparison by Trier or Expert Witness. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) Distinctive Characteristics and the Like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) Voice Identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) Telephone Conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one

called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) Public Records or Reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) Ancient Documents or Data Compilations. Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence twenty (20) years or more at the time it is offered.

(9) Process or System. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) Methods Provided by Resolution or Rule. Any method of authentication or identification provided by Resolution of the Chitimacha Tribal Council or by other rules prescribed by this Court.

Rule 902. Self-Authentication

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(a) Domestic Public Documents Under Seal. A document bearing a seal purporting to be that of the United States, or of any State, Indian tribe or nation, district, Commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(b) Domestic Public Documents Not Under Seal. A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (a) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(c) Foreign Public Documents. A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position:

(1) of the executing or attesting person, or

(2) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them 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 report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded of filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the

certification, by certificate complying with paragraph (a), (b), or (c) of this rule or complying with any Resolution of the Chitimacha Tribal Council, law of the United States or law of the State of Louisiana.

(e) Official Publications. Books, pamphlets, or other publications purporting to be issued by public authority.

(f) Newspapers and Periodicals. Printed materials purporting to be newspapers or periodicals.

(g) Trade Inscriptions and the Like. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(h) Acknowledged documents. Documents accompanied by a certificate of acknowledgment executed in a manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(i) Commercial Paper and Related Documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(j) Presumptions Created by Law. Any signature, document, or other matter declared by any law of the Chitimacha Tribe of Louisiana, of the United States or of the State of Louisiana to be presumptively or prima facia genuine or authentic.

Rule 903. Subscribing Witness' Testimony Unnecessary

Except as provided by statute, testimony of a subscribing witness is not necessary to authenticate a writing.

Section 10. Contents of Writings, Recordings, and Photographs

Rule 1001. Definitions

For purposes of this article the following definitions are applicable:

(a) Writings and Recordings. "Writings" and "recordings" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photocopying, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(b) Photographs. "Photographs" include still photographs, X-ray films, video tapes, and motion pictures.

(c) Original. An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original".

(d) Duplicate. A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original.

Rule 1002. Requirement of Original

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by Chitimacha tribal law.

Rule 1003. Admissibility of Duplicates

A duplicate, executed at the same time as the original, is admissible to the same extent as an original unless:

(a) a genuine question is raised as to the authenticity of the original or

(b) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

Rule 1004. Admissibility of Other Evidence of Contents

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:

(a) Originals Lost or Destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or

(b) Original Not Obtainable. No original can be obtained by any available judicial process or procedure; or

(c) Original in Possession of Opponent. At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be subject of proof at the hearing, and that party does not produce the original at the hearing; or

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

Rule 1005. Public Records

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilation in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

Rule 1006. Summaries

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court.

Rule 1007. Testimony or Written admission of Party

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the nonproduction of the original.

Rule 1008. Functions of Court and Jury

When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of Rule 104. However, when an issue is raised:

(a) whether the asserted writing ever existed, or

(b) whether another writing, recording, or photograph produced at the trial is the original, or

(c) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.

Section 11. Miscellaneous Rules

Rule 1101. Applicability of Rules

(a) Rules Applicable. Except as otherwise provided in subdivision (b), these rules applies to all actions and proceedings in the Chitimacha Court of Appeals, the Chitimacha Tribal Court and before the judges of the Chitimacha Tribe of Louisiana.

(b) Rules Inapplicable. The rules other than those with respect to privileges do not apply in the following situations:

(1) Preliminary Questions of Fact. The determination of questions of fact preliminary to admissibility of evidence except as otherwise provided in Rule 104.

(2) Miscellaneous Proceedings. Proceedings for sentencing; issuance of warrants; proceedings with respect to release on bail or otherwise; proceedings for granting of probation or parole; proceedings on probation or parole violations; proceedings for determination of probable cause; proceedings for juvenile detention; and extradition matters.

(3) Contempt Proceedings. Those contempt proceedings in which the court may act summarily.

(4) Suspension of Rules of Evidence. For good cause, a court may suspend the rules of evidence upon the motion of any party to a proceeding, provided the suspension is consistent with the provisions of fairness and due process. A motion to suspend the rules may be made at any stage of the proceeding.

Rule 1102. Title and Citation

These rules may be known and cited as the CHITIMACHA RULES OF EVIDENCE. The official abbreviated citation form to these rules is: Ch.R.E.

Rule 1103. Amendments

Amendments to the CHITIMACHA RULES OF EVIDENCE may be made as provided in tribal law and these rules.

Rule 1104. Repeal of Inconsistent Laws

Any provisions in the general laws of the Chitimacha Tribe of Louisiana which are inconsistent with the provisions of these rules are repealed; provided, however, that nothing contained in these rules shall be deemed to repeal provisions in the general laws which provide for the confidentiality of records.

Rule 1105. Effective Date

These rules shall apply to all trials, hearings and depositions occurring on or after the effective date adopted by the Chitimacha Tribal Council. Any subsequent amendments shall be effective upon adoption by the Chitimacha Tribal Council.

(Added by Ordinance # 02-09; Adopted: December 3, 2009; Effective: December 3, 2009)