
WASHOE TRIBE OF NEVADA AND CALIFORNIA

LAW & ORDER CODE

TITLE 6

"EVIDENCE"



WASHOE TRIBE OF NEVADA AND CALIFORNIA

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TITLE 6 - EVIDENCE

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WASHOE TRIBE OF NEVADA AND CALIFORNIA

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TITLE 6 - EVIDENCE

6-10 DEFINITIONS

6-10-010 Evidence

Statements and answers given by a witness, documents, objects, or anything else presented to the senses of the jury, or the judge, or which is judicially noticed.

6-10-020 Impeachment Evidence

Evidence introduced for the purpose of showing that a witness's testimony or other evidence is not to be believed. It may take the form of further evidence contradicting what the witness has said, or evidence that raises questions about the witness's reliability or credibility in general.

6-10-030 Relevant Evidence

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.

6-10-040 Natural Person And Person

A human being. The term "person" may also include, when appropriate, a corporation, association, or other organization.

6-10-050 Presumption

A conclusion required by law to be drawn from certain evidence, in the absence of any conflicting evidence. Any presumption rebutted by a preponderance of the evidence disappears.

6-10-060 Representative

A person who has been asked by a client to provide legal, financial, or accounting advice, or help in representing the client in front of any official body such as a court or a hearing officer. The work may also include any employee or assistant of such a person.

6-20

ADMISSIBILITY IN GENERAL

6-20-010

Relevance

- (a) All relevant evidence is admissible, except:
 - (1) as otherwise provided by provisions of the United States Constitution or Federal law that are applicable to the Tribal Court; or
 - (2) when excluded by this Title 6.
- (b) Evidence which is not relevant is not admissible.

6-20-020

Objections To Evidence

- (a) Any party may object to a question asked a witness, or an answer of a witness, or any other piece of evidence presented. If the judge finds that the evidence is admissible, he shall overrule the objection. If the judge finds that the evidence is inadmissible, he shall sustain the objection, exclude the evidence, and when appropriate, instruct the jury to disregard any inadmissible evidence that has already been introduced, presented, or otherwise disclosed to the jury.
- (b) If no objection is made during trial, a ruling of the trial judge as to whether or not to admit a piece of evidence may not be questioned on appeal unless otherwise provided by this Code.

6-20-030

Appeals

If evidence is offered by one party and objected to by another, the trial judge's decision on whether or not to admit the evidence may be appealed after trial except that:

- (a) A prosecutor in a criminal case may not appeal if the defendant is found not guilty.
- (b) No party may appeal a ruling by the trial judge as to the admissibility of evidence unless they are aggrieved by the final decision in the case and assert that the ruling in question is responsible for the final decision complained of.

6-20-040

Effect Of Decision On Appeal

If the appeal court decides:

- (a) That the trial judge's ruling was in error,

- (b) That the error may have affected the outcome of the case; and
- (c) That the error was not harmless, it may, in a civil case, and shall, in a criminal case, declare the verdict or judgment to be void and without effect. The case shall then be returned to the trial court for a new trial.

6-20-050

Judicial Notice

In addition to the evidence presented by the parties, the judge may consider any matter of law or fact which is so generally known in the territorial jurisdiction of the court that it is not subject to reasonable dispute, or any matter of law or fact capable of ready determination from a source whose accuracy cannot reasonably be disputed. The judge may take judicial notice of any matter of law or fact on the motion of a party or on his own initiative.

6-30

WITNESSES

6-30-010

Judge And Jurors As Witnesses

- (a) The judge presiding at the trial and the jurors hearing testimony in the trial shall not testify as witnesses in that trial. If any of them testifies at trial, no objection need be made in order to preserve the point for appeal; the appeals court shall follow the rules set out in Section 6-20-040 above.
- (b) If a party requires the testimony of the judge in order to properly present his case, he shall request, before trial, that another judge hear the case. If this request is denied, the party may assert that this denial was in error in an appeal after trial.
- (c) No person who may be called as a witness in a case shall be seated as a juror in that case. Any juror who is discovered to have relevant evidence after being seated shall be disqualified from continuing as a juror.

6-30-020

Exclusion Of Witnesses

- (a) Except as otherwise provided in subsection (b), at the request of a party, the judge shall order witnesses excluded from the courtroom so that they cannot hear the testimony of other witnesses. The judge may make an order excluding witnesses of his own motion.

(b) This section does not authorize exclusion of:

- (1) A party who is a natural person;
- (2) An officer or employee of a party which is not a natural person, and who is acting for that party before the court;
- (3) The representative of a party;
- (4) A person whose continuing presence is shown by a party to be essential to the presentation of his case; or
- (5) Officers or employees of the court.

6-30-030

Control By Judge Of Questioning

The judge shall exercise reasonable control over the presentation of evidence in order to:

- (a) Determine the truth;
- (b) Avoid a waste of time; and
- (c) Protect witnesses from undue harrassment or embarrassment.

6-30-040

Order Of Questioning

- (a) After a witness has been questioned by the party or parties calling him, the adverse party or parties shall have the right to cross-examine the witness. Cross-examination is limited to the subject matter of the direct examination and matters affecting the credibility of the witness, unless the judge in the exercise of his discretion permits inquiry into additional matters as if on direct examination. At the completion of cross-examination, the party calling the witness has the right to conduct re-direct examination, limited to the matters raised in cross-examination. The adverse party may conduct a re-cross-examination limited to those matters raised on re-direct examination.
- (b) The judge may dispense with the formal order of questioning set out in subsection (a). Any party may object to this action, and raise this objection on appeal if it is overruled.

6-30-050

Form Of Questioning

- (a) Leading questions are questions that by their

form or content suggest the answer that is desired.

- (b) Leading questions shall not be used on the direct examination of a witness, except for preliminary matters not in controversy without the permission of the judge. The judge should liberally grant permission to ask leading questions to children and persons with language problems, in the interest of obtaining meaningful testimony from such persons.
- (c) Leading questions are permitted on cross-examination.
- (d) In civil cases, a party is entitled to call an adverse party or a witness identified with an adverse party, and question by leading questions. The adverse party may then use leading questions in cross-examining such a party or witness only to the extent permissible if he had called such a person on direct examination.

6-40

EVIDENCE EXCLUDED FOR POLICY REASONS

6-40-010

Character Evidence

- (a) Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity with it on a particular occasion, except:
 - (1) Evidence of his character or a trait of his character offered by an accused, and similar evidence offered by the prosecution to rebut such evidence;
 - (2) Evidence of the character or a trait of character of a victim of the crime offered by an accused, and similar evidence offered by the prosecution to rebut such evidence.
- (b) Evidence of other acts by a party or witness is not admissible to prove that such person acted in conformity with those other acts. Such evidence may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.
- (c) Evidence of the character of a witness may be offered to attack or support his credibility.

6-40-020

Subsequent Repairs

- (a) When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of these measures is not admissible to prove negligence or culpable conduct in connection with the event.
- (b) This section does not require the exclusion of evidence of subsequent remedial measures when offered to impeach a witness denying ownership, control, or feasibility of precautionary measures.

6-40-030

Compromises; Offers To Compromise

- (a) Evidence of any negotiations in compromising or offering to compromise a claim is not admissible to prove the amount of a claim or the validity or invalidity of a claim. Evidence of conduct or statements made in compromise negotiations is likewise not admissible.
- (b) This section does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, responding to a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

6-40-040

Payment Of Medical Or 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.

6-40-050

Offer To Plead "Guilty" Or "No Contest"; Withdrawn Guilty Plea

Evidence of a plea of "no contest", or a plea of "guilty", later withdrawn, or of an offer to plead "guilty" or "no contest" is not admissible in any proceeding involving the person who made the plea or offer.

6-40-060

Liability Insurance

- (a) Evidence that a person was or was not insured against liability is not admissible upon the issue of whether he acted negligently or otherwise wrongfully.
- (b) This section does not require the exclusion of evidence of insurance against liability when it

is relevant for another purpose, such as proof of agency, ownership or control, or bias or prejudice of a witness.

6-50 STATEMENTS BY PERSONS NOT PRESENT - THE HEARSAY RULE

6-50-010 Definition

Hearsay is the testimony of a witness about the statement of another person who is not available to testify and the statement is offered in evidence to prove the truth of the matter asserted.

6-50-020 Criminal Cases

(a) Hearsay evidence shall be excluded from a criminal case before a jury if the judge finds:

(1) That the usefulness of the testimony would be outweighed by its possible prejudice; that is if the likelihood of the jury's being misled is greater than the likelihood that the testimony will help them arrive at the truth; or

(2) That the admission of the testimony would deprive the defendant of the opportunity to confront the witness against him; that is, that it would be unfair to deny to the defendant his right to cross-examine the person who made the original statement.

(b) Any discussion or argument between the judge and the parties or their representatives concerning admissibility of hearsay shall take place out of the hearing of the jury.

(c) In a criminal case tried by the court, the judge may, in his discretion, permit hearsay testimony if he believes the ends of justice will be served thereby and the defendant will not be denied his right to confront the witnesses against him.

6-50-030 Civil Cases

(a) In a civil case before a jury where testimony is offered about the statement of another person not available to testify, the judge shall instruct the jury that they should realize that the person who made the statement is not there to be cross-examined and that they should consider that fact in deciding how much weight to give to the testimony.

- (b) In a civil case tried by the court, hearsay evidence, if relevant as defined in Section 6-10-030, is admissible, except as otherwise provided in this Title 6.

6-60 PRIVILEGES TO EXCLUDE EVIDENCE

6-60-010 Privileges End At Death

No person may claim a privilege on behalf of a person who is dead.

6-60-020 Representative - Client Privilege (Lawyer, Accountant, etc.)

(a) Definitions -

In this Section 6-60-020 the following terms shall have the indicated meanings.

(1) "Client" - a person, including a public officer, or a corporation, association, tribe or other organization or entity, either public or private, who is given legal or financial advice or representation, or who consults someone with a view to obtaining such advice or representation.

(2) "Confidential communication to a representative" - a communication that is not intended to be disclosed to anyone except those who would have to know about it in order for the client to receive the advice and/or representation that he is seeking.

(b) General rule of privilege - A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, any confidential communication:

(1) Between himself and his representative; or his representative's agent;

(2) Between two or more of his representatives; or

(3) Between him or his representative and another person or that person's representative in a matter of common interest between him and the other person, as long as the communication is made for the purpose of helping with the representation of the client.

(c) Who may claim a privilege -

- (1) The privilege may be claimed by the client, his guardian, or conservator, or the successor, trustee, or similar representative of a corporation, association or other organization.
- (2) The person who was the representative at the time of the communication may claim the privilege, but only on behalf of the client. His authority to do so is presumed in the absence of evidence to the contrary.

(d) Exceptions - There is no representative-client privilege:

- (1) If the services of the representative 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.
- (2) As to a communication relevant to an issue of breach of duty by the representative to his client or by the client to his representative.
- (3) As to communication relevant to an issue concerning a witnessed document which the representative signed as a witness.
- (4) As to communication relevant to a matter of common interest between two or more clients, if the communication was made by any of them to a representative retained or consulted in common, when offered in an action between any of the clients.
- (5) As to a communication between a corporation, association, or other organization and its representative, in an action against the organization which is based on an alleged breach of fiduciary duty.

6-60-030

Health Worker - Patient Privilege

(a) Definitions -

In this Section 6-60-030, the following terms shall have the indicated meanings:

- (1) "health worker" - a doctor, dentist, nurse, physical therapist, alcohol, drug, or mental

health counselor, or any other person who is employed or engaged in the examination, diagnosis, or treatment of people for physical or mental condition. It also includes any person participating in the examination, diagnosis, or treatment under the direction of the health worker, including, when appropriate, members of the patient's family.

- (2) "confidential communication" - any communication not intended to be disclosed to anyone except for those who would have to know about it for the purpose of furthering the examination, diagnosis, or treatment.
 - (3) "patient" - a person who consults or is examined or interviewed by a health worker for purposes of diagnosis or treatment.
- (b) General rule of privilege - A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications between himself and his health worker.
- (c) Who may claim privilege - The privilege may be claimed by the patient or by his guardian or conservator. The health worker may claim the privilege but only on behalf of the patient. His authority to do so is presumed in the absence of evidence to the contrary.
- (d) Exceptions -
- (1) If the judge orders an examination of the condition of the patient, communications made in the course of that examination are not privileged with respect to the purpose for which the examination is ordered, unless the judge orders otherwise.
 - (2) There is no privilege under this Section 6-60-030 as to communications relevant to an issue of the condition of the patient in any proceeding in which the condition is an element of a claim or defense.
 - (3) There is no privilege under this Section 6-60-030 as to communications which are made as part of an effort to achieve an unlawful result. For example, there is no privilege for communications made to a health worker in an attempt to get the health worker to procure a drug illegally.

- (4) There is no privilege under this Section 6-60-030 for communications relevant to an issue in proceedings to hospitalize the patient for mental illness, if the health worker has determined that the patient is in need of hospitalization.

6-60-040 Religious Counseling Privilege

A clergyman, priest, or other religious counselor shall not, without the consent of the person being counseled, be examined as a witness to any confession made to him while he was providing counsel.

6-60-050 News Reporter's Privilege

No reporter or employee of any newspaper, periodical, press association, or radio or television station may be required to disclose in any legal proceeding or investigation any unpublished information obtained or prepared by such person in gathering, receiving, or processing information for communication to the public, or the source of any information procured or obtained by such person.

6-60-060 Political Voter's Privilege

Every person has an absolute privilege to refuse to disclose how he voted at a political election conducted by secret ballot, unless the vote was cast illegally.

6-60-070 Husband-Wife Privileges

- (a) A husband cannot be examined as a witness for or against his wife without her consent, nor a wife for or against her husband without his consent except as provided in subsection (c) below.
- (b) Neither a husband nor a wife can be examined during the marriage or afterwards, without the consent of the other, as to any communication made by one to the other during the marriage, except as provided in subsection (c) below.
- (c) Exceptions - the privileges set out in subsection (a) and (b) above do not apply: -
- (1) In a civil proceeding brought by or on behalf of one spouse against the other spouse;
 - (2) In a proceeding to commit or otherwise place spouse or the property of a spouse under the

control of another person because of the spouse's mental or physical condition;

- (3) In a juvenile proceeding;
- (4) In a proceeding brought by or on behalf of a spouse to establish his competence; or
- (5) In a criminal proceeding in which one spouse is charged with:
 - (a) A crime against the person or property of the other spouse or of a child in the custody of either spouse, whether such a crime was committed before or during marriage.
 - (b) A crime related to abandonment of a child or nonsupport of a wife or child.
 - (c) Bigamy or incest.

6-60-080

Trade Secrets

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

6-60-090

Privilege Against Self-Incrimination

- (a) Criminal defendant's privilege not to testify:
 - (1) The defendant in a criminal case has the right not to testify, and not to produce any persons records. If he testifies voluntarily, he waives this privilege, except that testifying in one hearing does not waive the privilege at another hearing, and testifying upon a preliminary question of fact so as to determine whether evidence may be admitted (for instance, on the question of whether a confession was voluntary) does not waive the privilege with respect to any other issues.
 - (2) A defendant may be compelled to submit to finger printing, to give blood or urine

samples, to speak so that a witness may identify his voice or to stand up for identification.

- (b) Witness's privilege against self-incrimination - Any witness in any proceeding has the right to refuse to disclose any matter that would directly or indirectly implicate the witness in the commission of a crime. The answer need not prove guilt, and the witness need not actually be guilty, as long as there is a reasonable possibility that the answer would be a link in a chain of evidence against the witness. If a witness testifies to a fact that tends to incriminate him, he waives his privilege not to testify as to any other facts relevant to the same transaction, unless he did not know when he disclosed the first fact that it would tend to incriminate him, or unless other circumstances exist which would make it unjust to require the witness to continue testifying against himself.

6-60-100

Waiver Of Privilege

- (a) A person who has a privilege against disclosure of a confidential matter under this Chapter 6-60 waives the privilege if he voluntarily discloses or consents to disclosure of any significant part of the matter.
- (b) This section does not apply if the disclosure is itself a privileged communication.

6-60-110

Privileged Matter Disclosed Without Opportunity To Claim Privilege

- (a) Evidence of a statement of other disclosure of privileged matter is inadmissible against the holder of the privilege if the disclosure was:
 - (1) Compelled improperly; or
 - (2) Made without giving the holder of the privilege an opportunity to claim the privilege.
- (b) Nothing in this Section 6-60-110 shall prohibit the judge from declaring a mistrial for improper disclosure of privileged information when he considers it necessary to prevent injustice.

6-60-120

Comment On Use Of Privilege

- (a) The claim of a privilege is not a proper subject of comment by a party, a representative, or by a

- judge except as authorized in this section.
- (b) No inference may be drawn from the use of a privilege.
 - (c) In jury cases, a person should be allowed to claim a privilege outside the hearing of the jury, if that is practical.
 - (d) If a party has claimed a privilege and fears that the jury might draw an inference against him because of it, he is entitled, upon request to have the judge instruct the jury that they may not come to any conclusion because of his use of the privilege.

6-70

BLOOD ALCOHOL TESTS

6-70-010

Affidavit Of Expert As To Presence, Existence Of Alcohol, Controlled Substance: Admissibility In Certain Cases

Whenever any person has qualified in a court as an expert witness for the purpose of testifying regarding the presence in the blood or urine of a person of alcohol or a controlled substance the use or possession of which is regulated by Title 5 or Title 7, or the identity of a controlled substance alleged to have been in the possession of a person, the affidavit of such person is admissible in evidence in a criminal trial in tribal court for the purpose of proving the person from whom the affiant received the blood or urine or purported controlled substance for analysis and the presence or absence of alcohol or controlled substance, as the case may be.

6-70-020

Affidavit Of Expert As To Presence, Existence Of Alcohol, Controlled Substance: Procedure For Admission

- (1) Whenever a person is charged with an offense punishable under Title 5 or Title 7 and it is necessary to prove the existence of any alcohol or the existence or identity of a controlled substance as defined in Title 5, the Tribal Prosecutor may request that the affidavit of a person qualified as provided in 6-70-010 be admitted in evidence at the trial of the offense.
- (2) Such request shall be made at least 10 days prior to the date set for such trial and shall be sent to the defendant's counsel and to the defendant, by registered or certified mail by the Tribal Prosecutor or Court Clerk.

BLOOD TESTS TO DETERMINE PARENTAGE OR IDENTITY

Whenever it is relevant in a civil or criminal action to determine the parentage or identity of any person or corpse, the court, by court order, may direct any party to the action and the person involved in the controversy to submit to one or more blood tests, to be made by qualified physicians or other qualified persons, under such restrictions and directions as the court or judge deems proper. Whenever such test is ordered and made, the results thereof may be received in evidence. The order for the blood tests also may direct that the testimony of the experts and of the persons so examined may be taken by deposition. The opinion of any expert concerning results of blood tests may be weighed in accordance with evidence, if available, of the statistical probability of the alleged blood relationship. The court shall determine how and by whom the costs of the examination must be paid.

