

University of Montana

## ScholarWorks at University of Montana

---

Faculty Journal Articles & Other Writings

Faculty Publications

---

2-2015

### Evidence Rules In Montana's Tribal Courts, Part I of II

Cynthia Ford

*Alexander Blewett III School of Law at the University of Montana*, [cynthia.ford@umontana.edu](mailto:cynthia.ford@umontana.edu)

Follow this and additional works at: [https://scholarworks.umt.edu/faculty\\_barjournals](https://scholarworks.umt.edu/faculty_barjournals)



Part of the Evidence Commons

### Let us know how access to this document benefits you.

---

#### Recommended Citation

Ford, Cynthia, "Evidence Rules In Montana's Tribal Courts, Part I of II" (2015). *Faculty Journal Articles & Other Writings*. 103.

[https://scholarworks.umt.edu/faculty\\_barjournals/103](https://scholarworks.umt.edu/faculty_barjournals/103)

This Article is brought to you for free and open access by the Faculty Publications at ScholarWorks at University of Montana. It has been accepted for inclusion in Faculty Journal Articles & Other Writings by an authorized administrator of ScholarWorks at University of Montana. For more information, please contact [scholarworks@mso.umt.edu](mailto:scholarworks@mso.umt.edu).

# Evidence rules in Montana's Tribal Courts, Part I of II

By Professor Cynthia Ford<sup>1</sup>

Happy New Year! I have spent quite a bit of time in these columns over the past couple of years discussing evidence topics and treatment in Montana's state court system under the Montana Rules of Evidence, with comparisons to the Federal Rules of Evidence. One of my New Year's resolutions (besides growing up to 5'10" and down to a proportionate weight) is to include Montana's tribal courts and their rules of evidence in this discussion. Another 2015 resolution is to shorten my columns so I don't unduly tax your valuable time and/or attention span, so this month I will discuss general concepts applicable to all the tribes and then provide more specifics for the first three tribes. Next month I will finish this two-part series by looking at the remaining four tribes.

## General information

As you know, there are seven tribal court systems in Montana. In alphabetical order, they are<sup>2</sup>:

**Blackfeet Tribal Court, Browning:**

[www.blackfeetnation.com](http://www.blackfeetnation.com)

**Chippewa-Cree Tribal Court (Rocky Boy's Reservation), Box Elder:**

[www.chippewacree.org](http://www.chippewacree.org)

**Confederated Salish and Kootenai Tribal Court, Pablo**

[www.cskt.org/gov/court.htm](http://www.cskt.org/gov/court.htm)

**Crow Tribal Court, Crow Agency:**

[www.crowtribalcourts.org](http://www.crowtribalcourts.org)

**Fort Belknap (Assiniboine and Gros Ventre Tribes),**

**Harlem:**

[www.ftbelknap.org](http://www.ftbelknap.org)

**Fort Peck (Assiniboine & Sioux Tribes), Poplar:**

[www.fortpecktribes.org](http://www.fortpecktribes.org), tribal court website: [www.fptc.org](http://www.fptc.org)

**Northern Cheyenne, Lama Deer:**

[www.Cheyennation.com](http://www.Cheyennation.com)

(The Little Shell Chippewa Tribe is recognized by the state of Montana, but has not yet obtained federal recognition, and does not yet have a tribal court. The Little Shell Tribe headquarters is in Black Eagle; its website is [www.littleshelltribe.us](http://www.littleshelltribe.us). Montana's senators both support federal recognition of this tribe.)

Each tribal court system has its own rules for admission to

practice, own constitution and ordinances, and own set of rules of evidence. **Neither the state nor federal rules of evidence necessarily apply in tribal court.** If you have, or want to have a case, in any particular tribal court, you of course must check that court's rules for admission to that tribe's bar, and then research and observe its rules of evidence. My goal here is to present an overview of each tribal court system for you to use as a starting point. Caveat: as with other court systems, these rules may change over time, so be sure to check for updates and do not rely on this brief article alone.

In every tribal court system, that system's highest court is the final arbiter of the meaning and application of its evidentiary rules. If you are filing a brief on an evidence issue in a tribal court, you should first refer to that tribe's applicable rule and then to that tribe's judicial opinions. Those are the only binding authorities in that tribe's court. For persuasive authority, you can check to see if the tribal rule emulates either a state or federal corollary, and then use that jurisdiction's comment and cases. In my view, however, the more persuasive authority would be another tribe with a similar rule, and its court's opinions. Of course, "it is not an either/or world<sup>3</sup>," so the optimal brief would start with the deciding tribe's authorities and then inform the court what other tribal systems have done on that subject, ending with a comparison to the state<sup>4</sup> and federal authorities.

## Tribal law research

As listed above, each tribe has its own website and most (if not all) have links to the tribe's Constitution and laws. A couple also include their court's judicial opinions. Obviously, these are primary sources and thus the most useful. I still would call the Clerk of the Tribal Court to ensure that the website has the most current version of the tribe's Evidence Rules<sup>5</sup>.

The Governor of Montana Office of Indian Affairs maintains a Tribal Nations Directory website which is a good starting point for current contact information for each court: [www.](http://www.)

<sup>3</sup> I heard this several years ago from a much wealthier friend, and it hasn't been that helpful in my retail life, but certainly it yields a better brief in a contested legal brief. And I was never very good at deferring gratification in the first place...I do own two cars now, one for fun and one for winter.

<sup>4</sup> I myself would use Montana as the state to which I referred, but there is no logical reason other than geographic proximity. Technically, Arkansas could be equally relevant inasmuch as no state has power over tribal governments, but my experience is that judges do tend to look closer to home.

<sup>5</sup> The Native American Rights Fund has an online step-by-step guide for tribes to construct a tribal legal history: [www.narf.org/nill/legalhistory/archives.html](http://www.narf.org/nill/legalhistory/archives.html).

<sup>1</sup> Copyright Cynthia Ford

<sup>2</sup> These are the official websites for the tribes and, where provided, for the tribal court. I tested each website as I wrote, but several of them lead nowhere. Hopefully, the links will be restored by the time you need them.

tribalnations.mt.gov/Portals/34/docs/Chief\_Judges.pdf.<sup>6</sup>

The site also has links to each tribe's constitution, laws and judicial opinions, although several of these don't actually lead anywhere. The State Law Library also has a useful website: <http://indianlaw.mt.gov/default.mcp.x>. This has opinions from the appellate courts for the CSK&T, Crow, and Assiniboine and Sioux (Fort Peck) systems, but the links to the other tribes' opinions show "No material at this time."

Both of these state resources are secondary, so obviously you should directly contact the tribal court itself to be sure you have the most current information.

Luckily, the UM Law School's amazing law librarian, Stacey Gordon, is an expert on researching tribal law. The Jameson Law Library has prepared a number of subject-matter research guides, including one on "Indian and Tribal Law Research<sup>7</sup>." The research guide helpfully defines "tribal law," which is what we are researching when dealing with an evidence issue in tribal court:

Tribal Law is the internal law of each sovereign tribe:

"Each Indian nation has the authority, often expressed in an organic document such as a tribal constitution or a treaty with the United States, to legislate for the general welfare of the tribe, its people, and its land... In short, every Indian nation is free to adopt its own laws and be ruled by them, to paraphrase the United States Supreme Court. *Williams v. Lee*, 358 U.S. 217 (1959)." Matthew L.M. Fletcher, *American Indian Tribal Law* xxi (Wolters Kluwer 2011).

Stacey also asked me to add some sources which are not in the current research guide:

There is a print reporter called the Indian Law Reporter that publishes tribal cases from many (but not all) tribes. Unfortunately, there is no electronic version of it. It is, however, indexed by the National Indian Law Library (NILL, from Boulder, Colorado) — I have the link (in the current UM research guide) to the National Law Library, but not a separate link to the index, which is at [www.narf.org/nill/ilr/index.html](http://www.narf.org/nill/ilr/index.html). The full text of the cases still isn't available online (some may be available on Westlaw) but if attorneys contact us with a citation, we can easily scan and send them and are happy to do so.

Since the state has a Lexis contract and most state lawyers only have access to that, you may or may not<sup>8</sup> want to mention Lexis tribal law coverage too.

<sup>6</sup> This site worked fine when I started this column, but on my final proof had been corrupted. Hopefully, the state will get it up and running again by the time you read this.

<sup>7</sup> <http://law.umt.libguides.com/content.php?pid=377901>  
The Gallagher Law Library at the University of Washington also has an Indian and Tribal Law Research Guide, which contains several references to Montana tribes: <https://lib.law.washington.edu/content/guides/indian>.

<sup>8</sup> I do, on the theory that more avenues are better.

Lexis purchased the old Montlaw, including the tribal law cases (from the same tribes that Westlaw has). But here's why you might not want to even mention it — (1) they are hard as heck to find in the new Lexis Advance; and (2) they stopped updating the tribal law cases when they bought it.

I did a search of the NILL database for the term "Evidence" and found only one case under "Evidence" itself and two others under "Rules of Evidence." One of the cases was from CSK&T in Montana; the others were from Hopi Tribal Court and from the Juvenile Tribal Court for the Confederated Tribes of Grand Ronde (in Oregon). However, because the cases themselves are not online, there is a delay in contacting the Jameson Law Library and asking them to locate the case and then email it to you.

For money, Westlaw has a database called "West's American Tribal Law Reporter" which contains materials from a total of 21 tribes across the U.S., two of which are the Confederated Salish and Kootenai Tribes and the Fort Peck Tribes. You can search this database for specific terms in cases from all or some of these courts, and you then have immediate access not just to the citation but also to the content of each decision you find. As Professor Gordon indicated, Lexis used to have some Montana tribal materials but they are now limited and difficult to find. Fastcase, the new service accessible for free through the State Bar, "do [es] not have those Tribal Courts in our databases<sup>9</sup>."

## BLACKFEET RULES OF EVIDENCE

The Blackfeet Tribal Code was promulgated in 1999.<sup>10</sup> Chapter 1 of the code is entitled "Administration of Law and Order (Tribal Court)". Section 4 of Chapter 1 covers "Court Procedure," including a lengthy discussion of the principles of evidence<sup>11</sup>. The principles are familiar, but are not identical to either the state or federal rules of evidence. Instead, it appears that the evidence rules have been simplified and expanded explanations provided, suitable for use by those without formal legal training. For example, with regard to "Real or Physical Evidence," the code explains:

Real or demonstrative evidence is that proof which can be brought into court and exhibited to the court and jury, such as the instruments devices used in the commission of crime, and the exhibition of the person as well as objects; the use of photographs, moving pictures and xrays, and the conducting of experiments and tests either in or out of Court. It is always proper, when a fact in issue may be explained by producing an article or object to which the testimony relates, to bring such articles or objects to Court and exhibit them.

**Evidence, next page**

<sup>9</sup> Email 1/9/2015 from Fastcase Customer Service representative Lucas Allderfer.

<sup>10</sup> The website [www.indianlaw.mt.gov/content/blackfeet/codes](http://www.indianlaw.mt.gov/content/blackfeet/codes) says "circa 1999."

<sup>11</sup> The exact language may be found at <http://indianlaw.mt.gov/content/blackfeet/codes/1999/chapter01.pdf>

**Evidence**, from previous page

There are other specific provisions in Section 4 that deal with oral testimony of witnesses, privileged communications, judicial knowledge/notice, presumptions, documentary evidence (including the Best Evidence Rule), opinion evidence, relevancy, materiality, competency, evidence of other offenses and the hearsay rule (providing both the policy behind the general inadmissibility of hearsay and a set of only six exceptions).

Chapter 1 appears to be mostly about criminal actions, although it does not say so explicitly, nor are there any limitations of the evidentiary principles in Section 4. Chapter 2 of the Blackfeet Tribal Code is entitled "Civil Actions" and states, in Section 2 thereof:

Section 2. Law Applicable.

In all Civil cases and in all cases arising under Chapters 3[ ] and 7[ ], the Court shall apply any Law of the United States that may be applicable, any authorized regulations of the Interior Department, and any ordinances and customs of the Tribe, not prohibited by such Federal Law.... Any matters that are not covered by the traditional customs or by ordinances of the Tribal Court, shall be according to the law of the State.

However, there are no provisions at all in Chapter 2 about court procedure, nor are there any evidentiary rules. Thus, it appears that the evidence principles set forth in Chapter 1 under Administration (Tribal Courts), discussed above, are meant to apply to both civil and criminal actions. Finally, Chapter 9 of the Blackfeet Tribal Code is explicitly applicable to all types of cases: "Rules of Procedure, Civil and Criminal." The Chapter is divided into three parts, the first dealing with both kinds of cases and the other two confined to civil procedure and criminal procedure respectively. Rule 5 of the first part, applicable in all cases, is entitled "Evidence." It addresses how a trial is to be conducted, such as requiring that evidence come orally from witnesses in open court and that direct examination ordinarily occur by non-leading questions. A competent attorney or litigant in Blackfeet Tribal Court must be aware of the provisions of both Chapter 1 and Chapter 9.

Although the subjects discussed in the evidentiary provisions are similar to those in the Montana and the Federal Rules of Evidence, the Blackfeet version differs markedly from both in many specifics, including the hearsay exceptions and type and number of privileges allowed. The Blackfeet Tribal Code, Chapter 11, sets forth the tribal appellate process. The Blackfeet Court of Appeals is the highest court in the tribal system, and thus is the ultimate arbiter of the interpretation and application of the rules of evidence. Unfortunately, it is difficult to search and find opinions from this court. The Montana Indian Law website link to Blackfeet tribal court decisions says only "currently we have no materials on this topic." Westlaw Next does have a searchable database for several tribes' opinions, including Fort Peck and CSK&T, but does not include Blackfeet. NILL turned up one Blackfeet Tribal Court opinion<sup>12</sup>, but it was in-

dexed under "Housing" and does not appear to have anything to do with admissibility or rules of evidence.

## CHIPPEWA-CREE (ROCKY BOY'S) RULES OF EVIDENCE

The Chippewa Cree Tribal Code now in effect<sup>13</sup> was promulgated by the Tribal Business Committee on February 4, 1987. It should be available on the Tribes' website, but as of Jan. 9, 2015, the link to that website, [www.chippewacree.org](http://www.chippewacree.org), appears to be broken. The only online access right now is through the Montana state tribal law portal, which contains a pdf version: [www.indianlaw.mt.gov/content/chippewacree/codes/law\\_order\\_code\\_1987.pdf](http://www.indianlaw.mt.gov/content/chippewacree/codes/law_order_code_1987.pdf). Note, however, this caveat from the current chief judge:

The Montana state tribal law portal copy would not be accurate as we have made changes and updates since then and have not submitted those changes to the website so I would not want anyone to depend on the legal accuracy of that information.

Title 1, Section 1.4 of the Code itself states that the Clerk of Court's office will provide copies of the Code "at cost to anyone who requests the Code<sup>14</sup>." I recommend this route to anyone practicing in any Tribal Court, particularly here where changes are afoot.

Title 1 of the code sets up the court system; Title 2 is entitled "Civil Procedure" and Title 3 "Criminal Procedure." Title 15 deals with the Court of Appeals (including Appellate Rules of Procedure<sup>15</sup>) and Title 23 is the "Attorneys and Lay Advocate Code<sup>16</sup>." Title 2, "Civil Procedure," Section 3.4 provides "The court shall establish Rules of Evidence, which shall apply in all proceedings." (Nothing in Title 3, "Criminal Procedure," discusses rules of evidence). However, I cannot find any such Rules of Evidence in my copy of the code, and the mt.gov tribal law portal shows nothing under "Chippewa Cree Court Rules<sup>17</sup>." Chippewa Cree Chief Judge Storm Olson advises me that the Tribal Court currently applies the federal Rules of Evidence, which is consistent with Code Section 1.9:

### Choice of Law

The Tribal Court and appellate court, in all actions, shall apply the laws, ordinances, customs, and traditions of the Chippewa-Cree Tribe. In the absence of Tribal Law in civil matters the court

13 I understand that the tribes are in the process of revising/amending a new version of the Code, but that has not been completed nor ratified by the Tribal Business Council.

14 I myself have a hard copy of this Code supplied by the Clerk of Court, in conjunction with my appointment as a Special Judge for the Tribal Court. I have used this version as the basis of this section of the column, rather than the online version.

15 Note, however, that Chapter 6 of Title 3, "Civil Procedure" also deals with "Procedure for Appeals." Similarly, Chapter 9 of Title 4, "Criminal Procedure," contains "Procedures for Criminal Appeals."

16 My version of the Code contains a tab for this Title, but no content; this is also true of the online version of the Code. Since writing this, I have received an electronic copy of the contents of this Title from the Chief Judge. No provisions deal with any evidentiary issues.

17 The [www.indianlaw.mt.gov](http://www.indianlaw.mt.gov) links for Chippewa Cree Court Rules, Court Forms, and Court Opinions all state: "Currently we have no materials on this topic."

12 89-API (Blkft. Tr. Ct. App., Dec. 19, 1989) 17 ILR 6036.

may apply laws and regulations of the United States or the State of Montana. Where doubt arises as to customs and traditions of the Tribe, the Tribal Court may request the advice of recognized Tribal elders.

Apparently, the Tribal Court is currently working on a Tribal Evidence Code, which it intends to apply to both civil and criminal cases.

The Chippewa Cree Court of Appeals opinions are not readily available. The tribal website is down as of this writing, and the NILL online link for Chippewa Cree Tribal Court Opinions shows only "none available." Similarly the Montana State Law Library's website (<http://indianlaw.mt.gov/default.mcp.x>;) entry for Chippewa Cree Tribal court opinions states: "Currently we have no materials on this topic." Thus, as with the actual code, your best bet is to contact the Clerk of Court in Box Elder and request copies of any opinions.

## CONFEDERATED SALISH AND KOOTENAI RULES OF EVIDENCE

The Confederated Salish and Kootenai Tribes of the Flathead Reservation have an active website, [www.cskt.org](http://www.cskt.org). There are links to:

- the Tribal Code (CSKT Laws Codified 2013), [www.cskt.org/gov/court-triballawcode.htm](http://www.cskt.org/gov/court-triballawcode.htm);
- the trial level court, [www.cskt.org/gov/court.htm](http://www.cskt.org/gov/court.htm) and
- the appellate court, [www.cskt.org/gov/appellate.htm](http://www.cskt.org/gov/appellate.htm).

Code section 1-2-611 sets forth the tribes' evidentiary privileges, which appear to be similar to some of the Montana statutory provisions that apply in state court and to some of the federal court privileges, established by federal common law per FRE 501. However, the CSKT statutory privileges protect some communications not privileged in state and/or federal courts, such as: an accountant-client privilege (not in either state or federal court); a privilege for licensed social workers (found in federal court, but not in Montana); complete spousal testimonial as well as communications privileges in all cases, not just criminal; and doctor-patient privilege (exists in Montana but not in the federal system). This is an excellent example of the need to research specific tribal provisions and to not rely on prior-acquired knowledge of the law of privilege in other court systems.

The Tribal Code has specific provisions regarding evidence in criminal and civil cases. For criminal prosecutions, section 2-2-1004 states:

**2-2-1004. Rules of evidence in criminal cases.** Unless otherwise directed by a specific code provision, the Federal Rules of Evidence apply in criminal actions. Privileges will be those recognized under Tribal Law.

I could not find a civil corollary to 2-2-1004, stating clearly that the FRE apply in civil actions. However, another section (located Title 3, "Domestic Relations," Chapter 2 "Child Abuse and Neglect") provides:

**3-2-111. Federal Rules of Evidence.** The Tribal Court shall apply federal rules of evidence in **all proceedings**, except where otherwise indicated.

(Emphasis added).

(The "where otherwise indicated" caveat signals the existence of some specific provisions in the code that differ substantially from the FRE (and the MRE), such as Section 3-2-303, which says that in a child abuse proceeding, "Hearsay evidence of statements made by the affected child is admissible<sup>18</sup>." A section in Title IV, Civil Proceedings, specifies the choice of law for such cases, without referring to the FRE per se:

**41104. Laws applicable in civil actions.** (1) In all civil actions, the Tribal Court shall first apply the applicable laws, Ordinances, customs and usages of the Confederated Salish and Kootenai Tribes and then shall apply applicable laws of the United States and authorized regulations of the Department of the Interior.

Similarly, a section located in the Court of Appeals section of Title 1 also provides for the application of the FRE in original proceedings for mandamus:

**1-2-819... (2) Application of rules of procedure.** Except as otherwise provided in this Ordinance or inconsistent herewith, the **federal rules of evidence** and civil procedure relative to new trials and the Rules of Appellate Procedure herein apply to the proceedings mentioned in this Part. (Emphasis added)

Based on all these sources, I would bet the farm (if I had a real one) that the Federal Rules of Evidence apply in all cases in the CSK&T Tribal Court, but I would be a lot happier if there were a clear statement to that effect located in the Civil Proceedings Title IV of the code.

The decisions of the Tribal Court of Appeals are helpful in resolving this type of statutory uncertainty. The CS&KT Court of Appeals decisions are readily available. The CS&KT Tribal Code, section 1-2-802 specifically requires organization and publication of the Court of Appeals' opinions. Although the official tribal website does not appear to have a link to the opinions, the State Law Library does, in alphabetical order, at [www.indianlaw.mt.gov/salishkootenai/decisions/default.mcp.x](http://www.indianlaw.mt.gov/salishkootenai/decisions/default.mcp.x). The State Law Library also cosponsors, with the Montana Historical Society Research Center, a website called The Montana Memory Project, which contains PDF files of CS&KT opinions: <http://mtmemory.org/cdm/ref/collection/p15018coll30/id/186>.

Neither of these is searchable, however, limiting their usefulness, although there are not very many opinions in total; a person could skim them all. This is where the NILL resource comes in, because it includes the CS&KT court opinions in its subject matter index, even though there are no images of the cases themselves: [www.narf.org/nill/tribes/confederated\\_salish\\_and\\_kootenai.html](http://www.narf.org/nill/tribes/confederated_salish_and_kootenai.html). Once you have located a citation to a CS&KT tribal court case that seems relevant, the Jameson Law Library can obtain the case from the off-line Indian Law

**Evidence, page 33**

<sup>18</sup> See also, 3-2-608, which repeats the preceding language and adds a reference to the FRE, confusing because it is not at all clear under the FRE that child hearsay is automatically admissible.

# MJF issues call for grant proposals

The Montana Justice Foundation (MJF) announces its call for grant proposals. MJF works to achieve equal access to justice for all Montanans through effective funding and leadership.

One way in which MJF strives to fulfill its mission is through its Legal Aid Grants Program. The MJF awards grants to nonprofit organizations qualified to carry out the following charitable objectives of MJF:

- Support and encourage the availability of legal services to vulnerable and underserved populations;
- Increase public understanding of the law and the legal system through education;
- Promote the effective administration of justice; &
- Raise public awareness of and access to alternative dispute resolution.
- The deadline for submission of grant proposals is Tuesday, March 31, 2015.

MJF recently moved to an electronic, paperless grants process. Organizations interested in applying for a grant will



*Making Justice Accessible  
to All Montanans*

need to contact MJF by **Tuesday, March 17, 2015**, to register for an online account. For further information on the application process, please contact the MJF at 406.523.3920, or visit us online at [www.mtjustice.org/grant-programs/](http://www.mtjustice.org/grant-programs/).

## Gaps, from page 18

From this comprehensive list, six especially vulnerable groups are highlighted: victims of domestic violence; persons with a mental illness or mental disability; Native Americans; persons with limited English proficiency or who are hearing impaired; older Montanans; and veterans. As the study states, "Some groups of people... are more intensely affected by one or more of the barriers or gaps, have some specific barriers that make accessing legal assistance even more difficult, or have a challenge that makes obtaining legal assistance even more important."<sup>8</sup>

From the beginning, ATJC has considered its priority to be

<sup>8</sup> *Gaps and Barriers*, p. 29

## Evidence, from page 17

Reporter, and scan and email it to you.

Alternatively, although expensively, WestlawNext contains a searchable database<sup>19</sup> of CS&KT opinions beginning in 1997. When I searched this database for the term "evidence," I found 24 CS&KT cases. When I searched for "Federal Rules of Evidence," I got several criminal cases (where the statute is clear: the FRE apply) and one civil case, *Lutes v. Yellow Kidney*, a negligence action. The Court of Appeals opinion addressed two evidentiary issues, resolving both by reference to the FRE:

Rule 403 of the Federal Rules of Evidence provides that 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..."

<sup>19</sup> The library, West's Tribal Law Reporter, contains decisions from several different tribal courts. The only Montana tribes represented are CS&KT and Ft. Peck. Once you navigate Westlaw to get to the Tribal Law Reporter, you can choose to search a specific tribal court or all of them.

an agent of change. Building support for access to justice is a critical part of this goal. Key to this effort is building connections between bar associations, policymakers, and other groups that support issue-specific legal needs. "Gaps and Barriers" provides a platform from which to launch a campaign of communication, outreach, education and engagement. The goal of these articles is to widen the scope of the effort to address the issues. As a community of policymakers, funders, legal services providers and local partner organizations, it is our duty to raise high the banner of Montana's commitment to ensuring access to justice that is as vast as Big Sky Country.

***Iris Marcus is an Americorps VISTA with Montana Justice Foundation.***

*Lutes v. Yellow Kidney*, No. AP 98-175-CV, 1999 WL 34964430 (Salish-Kootenai C.A. Mar. 15, 1999)<sup>20</sup> Both parties and the Court appeared to assume that the FRE applied, as there was no discussion of any alternative evidentiary scheme, and their assumptions buttress my own conclusion that the FRE apply in all cases, civil and criminal, in this tribal court system.

## CONCLUSION

That is enough (more than?) for this month. Next month, I will complete this survey of evidence law in the remaining tribal courts located in Montana. See you then.

***Cynthia Ford is a professor at the University of Montana School of Law, where she teaches Civil Procedure, Evidence, Family Law and Remedies.***

<sup>20</sup> In the interest of full disclosure, I should indicate that I was one of the Associate Justices on this case way back when, and had forgotten about it until I found it for this article.