

FALLON PAIUTE-SHOSHONE TRIBE



LAW AND ORDER CODE

Title 3

Rules of Evidence

Approved by FBC Resolution No.: 19-F-158 on August 27, 2019.
Effective on September 27, 2019.

Fallon Paiute-Shoshone Tribe Law & Order Code

LAW & ORDER CODE TITLE 3 RULES OF EVIDENCE

TABLE OF CONTENTS

3-10 Rules of Evidence

- 3-10-010 Applicability
- 3-10-020 General Rules
- 3-10-030 Relevance
- 3-10-040 Personal Knowledge
- 3-10-050 Lay Opinion
- 3-10-060 Unfair Prejudice
- 3-10-070 Presumptions in Civil Cases
- 3-10-080 Character Evidence
- 3-10-090 Proof of Character
- 3-10-100 Evidence of Habit
- 3-10-110 Subsequent Remedial Measures, Compromise, Offers, Liability Insurance
- 3-10-120 Inadmissibility of Pleas, Offers, and Related Statements
- 3-10-130 Authentication and Identification
- 3-10-140 Requirement of Original
- 3-10-150 Hearsay
 - (a) General Prohibition
 - (b) Non-hearsay – Admissions
 - (c) Reliability Exceptions
 - (d) Unavailability Exceptions
 - (e) Document Exceptions
 - (f) Other exceptions
- 3-10-160 Witness Testimony; Oath
- 3-10-170 Presence of Witnesses
- 3-10-180 Admissibility
 - (a) Questions of Admissibility Generally
 - (b) Relevancy Conditioned on Fact
- 3-10-190 Limited Admissibility
- 3-10-200 Judicial Notice of Adjudicative Facts
- 3-10-210 Testimony of Judge and Counsel Prohibited
- 3-10-220 Mode and Order of Interrogation and Presentation
 - (a) Control of Court
 - (b) Scope of Cross-Examination
 - (c) Leading Questions
- 3-10-230 Calling and Interrogation of Witnesses

- (a) Calling by Court
- (b) Interrogation by Court
- (c) Objections
- 3-10-240 Writing Used to Refresh Memory
- 3-10-250 Prior Statements of Witnesses
- 2-10-260 Who May Impeach
- 3-10-270 Evidence of Character and Conduct of Witness
- 3-10-280 Impeachment by Evidence of Conviction of a Crime
 - (a) General Rule
 - (b) Time Limit
 - (c) Effect of Pardon, Annulment, or Certificate of Rehabilitation
 - (d) Juvenile Adjudications
- 3-10-290 Rulings on Evidence
 - (a) Effect of Erroneous Ruling
 - (b) Record of Offer and Ruling
 - (c) Hearing of Jury
 - (d) Plain Error
- 3-10-300 Sworn Written Testimony

FALLON PAIUTE-SHOSHONE TRIBE
Law and Order Code
TITLE 3
RULES OF EVIDENCE

3-10 Rules of Evidence

3-10-010 Applicability

These rules apply to both civil and criminal proceedings in the Fallon Paiute-Shoshone Tribal Court. These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, to seek to ascertain the truth and to secure a just determination.

3-10-020 General Rules.

- (a) Where there is more than one kind of evidence about the same subject, the judge shall give each item of evidence the importance (weight) which, according to the judge's common sense and sense of fairness, that particular type of evidence deserves. For example, in oral testimony, the testimony of persons who testify from their personal knowledge, such as first-hand observation of, or participation in, the event described shall be given more weight than the testimony of persons who only have knowledge of the event that they gained from other persons.
- (b) Evidence admitted in the Tribal Court must be related either to the issues before the court, or to the weight and credibility which should be given to other evidence. When questioned by the judge or another party as to why certain evidence should be allowed, the party who wishes to present the evidence shall:
 - (1) State the issue which he or she will use the evidence to resolve; and
 - (2) Explain how the evidence is relevant to the issue.
 - (3) When the relevance or reliability of evidence is challenged, the judge shall decide whether or not to use the evidence, and explain the decision.

3-10-030 Relevance

All evidence that is relevant is admissible unless otherwise provided by these this Title. Evidence which is not relevant is not admissible. "Relevant evidence" means evidence having a 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. Evidence is relevant if it has a tendency to prove or disprove a material issue in dispute.

3-10-040 Personal Knowledge

A witness is only permitted to testify to matters within his or her personal knowledge, and, when appropriate under these rules, may provide an opinion on a matter. "Personal knowledge" means that the witness must have personally observed the matter and must have a present recollection of his or her observation.

3-10-050 Lay Opinion

Lay opinions are admissible only where it is based on the perception of the witness and where it is likely to help the finder of fact determine a fact in issue. In general, a lay witness may testify as to the general appearance and condition of a person.

3-10-060 Unfair Prejudice

The Court has the discretion to exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice. Evidence is excludable if it is inflammatory, will result in confusion of the issues, will result in misleading the finder of fact, is cumulative or an undue consumption of time.

3-10-070 Presumptions in Civil Cases

In a civil case, unless a statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. But this rule does not shift the burden of persuasion, which remains on the party who had it originally.

3-10-080 Character Evidence

Character evidence is inadmissible unless character is directly at issue (e.g., defamation). Character evidence may be offered as substantive evidence to prove character when it is the ultimate issue in the case, or serve as circumstantial evidence of how the person probably acted.

3-10-090 Proof of Character

Proof of character is made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

3-10-100 Evidence of Habit

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

3-10-110 Subsequent Remedial Measures, Compromise, Offers, Liability Insurance

Evidence of subsequent remedial measures, of compromise and offers of compromise, of offers or promises to pay medical expenses occasioned by an injury, or liability insurance, is not admissible to prove liability or invalidity of the claim or its amount, or whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of such evidence if offered for another purpose.

3-10-120 Inadmissibility of Pleas, Offers, and Related Statements

Evidence of a plea of guilty that was later withdrawn, or a plea of *nolo contendere*, or of an offer to plead guilty or *nolo contendere* to a crime charged or any other crime or any statements made in connection with, or relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer.

3-10-130 Authentication and Identification

- (a) Any documentary evidence may, in the discretion of the Court, be deemed authenticated if no objection is raised as to its admissibility.
- (b) The requirement of authentication or identification of a document 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. The testimony of a subscribing

witness is not necessary to authenticate a writing. Extrinsic evidence of authenticity is not required with respect to:

- (1) A document bearing the seal purporting to be that of the Tribe, the United States, or any other State, territory or possession of the United States, or any other political subdivision, department, or agency thereof, and a signature purporting to be an attestation or execution.
- (2) A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in subsection (1) hereof, having no seal, if a public officer having a seal and having official duties certifies under seal that the signer has the official capacity and that the signature is genuine.
- (3) A copy of an official record or report, or of a document authorized by law to be recorded and filed which has been actually recorded and filed.
- (4) Books, pamphlets, or other publications purported to be issued by public authority; printed material purporting to be newspapers or periodicals; documents acknowledged.
- (5) Any other document, or copy thereof, which in the opinion of the trial court, is not subject to reasonable dispute as to its identification or genuineness.

3-10-140 Requirement of Original

- (a) To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required.
- (b) A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original which cannot be resolved by the Court, or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.
- (c) The original is not required if the original is lost or destroyed, unless the proponent lost or destroyed them in bad faith; or no original can be obtained by any available judicial process or proceeding; or the original is under the control of the party against whom offered and that party has been put on notice that the contents would be subject to proof at the hearing, and the party does not produce the original at the hearing.
- (d) The contents of an official record or of a document authorized to be recorded or filed and actually recorded or filed, may be proved by copy, certified as correct or testified to be correct by a witness who has compared it with the original.

3-10-150 Hearsay

- (a) General Prohibition. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing (an out of court statement), offered in evidence to prove the truth of the matter asserted. Hearsay is inadmissible unless there is an exception to the rule that allows the statement in.
- (b) Non-hearsay – Admissions. The following statements are not hearsay and are admissible.
 - (1) Admissions by a Party Opponent: The statement offered against a party and is the party's own statement, in either an individual or a representative capacity, or
 - (2) Judicial and Extrajudicial Admissions: The declarant testifies at the trial or hearing and is subject to cross-examination;

- (3) Adoptive Admissions: A statement of which the party has manifested an adoption of belief or truth;
 - (4) Vicarious Admissions: A statement by a person authorized by the party to make a statement concerning the subject, or 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 a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.
- (c) Reliability Exceptions. The declarant need not be available at trial for admission of the following hearsay exceptions.
- (1) 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.
 - (2) 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.
 - (3) 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.
 - (4) Statement Made for Medical Diagnosis or Treatment: A statement that is made for — and is reasonably pertinent to — medical diagnosis or treatment; and describes medical history; past or present symptoms or sensations; their inception; or their general cause.
 - (5) Declaration Against Interest: A statement which was at the time of its making so contrary to the declarant's pecuniary or proprietary interest, or so 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 defendant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.
- (d) Unavailability Exceptions. The Declarant must be unavailable to testify at trial for the following exceptions to be admissible.
- (1) Dying Declaration: A statement made by a declarant while believing that the declarant's death was imminent, concerning the cause and circumstances of what the declarant believed to be impending death.
 - (2) Former Testimony: Testimony given by 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.
 - (3) Statements of Personal or Family History: 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 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 intimately associated with the other's family to be likely to have accurate information concerning the matter declared.

- (e) Document Exceptions. The Declarant need not be unavailable at trial for admission of the following hearsay exceptions.
- (1) 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 read into evidence but may not itself be received as an exhibit unless offered by an adverse party.
 - (2) Business Records; Official Records; Ancient Documents; Learned Treatises:
 - (A) A writing made in the regular course of business;
 - (B) Public records and reports of any form, of public or tribal offices or agencies, birth records, deaths, marriages;
 - (C) Statements in a document in existence twenty years or more the authenticity of which is established;
 - (D) 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 expert testimony or judicial notice.
- (f) Other exceptions. A statement not specifically covered by any of the foregoing exceptions is admissible if it is necessary and, in the opinion of the Court, has indicia of trustworthiness such that it should be allowed in.

3-10-160 Witness Testimony; Oath

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered by the Court

3-10-170 Presence of Witnesses.

During the questioning of a witness, the judge may on its own motion or on the motion of any party exclude from the Courtroom any witnesses who have not yet testified, if this seems to be necessary to ensure that all witnesses will give truthful testimony.

3-10-180 Admissibility.

- (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 section (b). In making its determination the court 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) 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.

3-10-190 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. 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.

3-10-200 Judicial Notice of Adjudicative Facts

- (a) A judicially noticed fact must be one not subject to reasonable dispute in that it is either generally known within the territorial jurisdiction of the trial court or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
- (b) The Court may take judicial notice of an adjudicative fact whether requested or not. The Court shall take judicial notice if requested by a party and supplied with the necessary information. Judicial notice may be taken at any stage of the proceeding.
- (c) A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice of an adjudicative fact. In the absence of prior notification, the request may be made after judicial notice has been taken.

3-10-210 Testimony of Judge and Counsel Prohibited

Neither the judge presiding at the trial, nor the current attorney or advocate for any party, may testify in that trial as a witness.

3-10-220 Mode and Order of Interrogation and Presentation

- (a) Control of Court. The court shall exercise reasonable control over the mode and order of questioning 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 the additional matters as if on direct examination.
- (c) Leading Questions. Leading questions should not be used on the direct examination of witnesses 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.

3-10-230 Calling and Interrogation of Witnesses

- (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.

3-10-240 Writing Used to Refresh Memory

If a person uses a writing to refresh memory for the purpose of testifying, either while testifying or before testifying, if the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, 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 it is claimed the writing contains matters not related to the subject matter of the testimony, the court shall examine and excise any portions not so related and order delivery 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 is not produced or delivered pursuant to order under this rule the court shall make any order justice requires, including striking the testimony of the witness.

3-10-250 Prior Statements of Witnesses

In examining a witness concerning a prior statement made by a witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

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 by a party opponent.

2-10-260 Who May Impeach

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

3-10-270 Evidence of Character and Conduct of Witness

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, 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.

3-10-280 Impeachment by Evidence of Conviction of a Crime

- (a) General Rule. For the purpose of attacking the credibility of a witness (1) evidence that a witness other than the accused has been convicted of a crime shall be admitted, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and such evidence 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 conviction under this rule is not admissible if a period of more than ten 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. Such evidence 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 conviction is not admissible under this rule if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, 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.

3-10-290

Rulings on Evidence

- (a) **Effect of Erroneous Ruling.** A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:
 - (1) **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) **Offer of Proof.** In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer of proof or was apparent from the context within which questions were asked.
- (b) **Record of Offer and Ruling.** The court may add any other or further statement about the character or form of the evidence, the form in which it is offered, the objection made, and the ruling thereon. It may direct the making of an offer of proof in question and answer form.
- (c) **Hearing of Jury.** Where juries are allowed, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means.
- (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.

3-10-300

Sworn Written Testimony.

Subject to these rules and the rules of civil procedure, testimony of a witness in a civil proceeding may be presented in sworn written form if and only if:

- (a) The witness is unable to appear in person to testify by reason of death, or that such witness resides more than one hundred miles from the jurisdiction of the Court, and that travel for the purposes of testifying would be an undue burden;
- (b) If the evidence presented in writing is not contradicted by other parties;
- (c) If the sworn written testimony is offered to support a motion or an uncontested request for relief; or
- (d) If the sworn written testimony contradicts oral testimony already given by the same witness.

- (e) Written testimony shall be signed under oath or made by declaration under penalty of perjury, and must show clearly who gave it and when the witness gave it. Notarized documents are favored.
- (f) Copies or written records, photographs, and other documentary evidence may be authenticated by written testimony, provided there is a reasonably reliable way to identify the items and the methods used to prepare them.
- (g) When the relevance or reliability of evidence is challenged, the Court may in its discretion decline to admit the evidence, or may weigh the evidence appropriately in light of its reliability or lack thereof.



FALLON PAIUTE-SHOSHONE TRIBE

Resolution No. 19-F-158

BE IT RESOLVED BY THE GOVERNING BODY OF THE FALLON PAIUTE-SHOSHONE TRIBE, THE FALLON BUSINESS COUNCIL, THAT:

WHEREAS: the Fallon Business Council ("Council") is the recognized Governing Body of the Fallon Paiute-Shoshone Tribe ("Tribe") and was established to exercise the privileges and powers of self-government, to conserve and develop the Tribe's resources for the social and economic well-being of its members, and to preserve and protect the civil rights of its members; and

WHEREAS: the Fallon Paiute-Shoshone Tribe is federally recognized by the United States Government and the Secretary of the Interior as a Native American Tribe, and by the power vested by the Tribal Constitution and Bylaws pursuant to Article VI – Powers & Duties of the Business Council, Section 1(h), the Business Council has the power "to promulgate and enforce ordinances governing the conduct of all people within the territorial boundaries of the Tribe, as provided by Federal Law; and to provide for the maintenance of law and order and establishment of a tribal court"; and

WHEREAS: pursuant to this power, the Business Council has created a Law & Order Code and other laws and ordinances to govern the conduct of people within the Tribe's Reservation and Colony; and

WHEREAS: the Business Council has recognized the importance of reviewing and updating the Law and Order Code to ensure the Code meets the Tribe's needs and best serves to protect the interests of the Tribe, its members and persons living and working on Tribal lands; and

WHEREAS: to meet this goal, the Business Council recognized a need to adopt laws addressing evidence so prepared a new Title of the Law and Order Code titled "Rules of Evidence"; and

WHEREAS: the new Title 3 – Rules of Evidence was posted for at least thirty days to allow for public comment, but no comments were received;

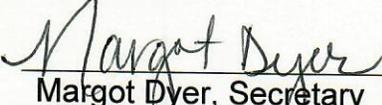
NOW THEREFORE BE IT RESOLVED the Fallon Business Council, the governing body of the Fallon Paiute-Shoshone Tribe, hereby adopts the attached version of the new Title 3 – Rules of Evidence of the Tribe's the Law and Order Code, which shall go into effect on September 27, 2019; and

BE IT FINALLY RESOLVED that the Fallon Business Council hereby directs that the Tribal Secretary make the new Title 3 – Rules of Evidence of the Tribe's Law and Order Code available to those Tribal members and attorneys/advocates who request a copy. The expense for each copy will be at the cost of the requester.

Resolution No. 19-F-158

CERTIFICATION

At a duly held meeting of the seven members of the Governing Body of the Fallon Paiute-Shoshone Tribe, five of which constitute a quorum, there were 7 members present on the 27th day of August, 2019, who **VOTED 6 FOR, 0 AGAINST, and 1 ABSTENTION(S)**, in the adoption of the foregoing resolution, in accordance with the powers vested by the Fallon Paiute-Shoshone Tribe's Constitution and By-Laws.



Margot Dyer, Secretary
Fallon Business Council