

Lower Elwha Judicial Code and Court Procedures

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LOWER ELWHA JUDICIAL CODE AND COURT PROCEDURES

I. ESTABLISHMENT OF LOWER ELWHA TRIBAL COURT

1.1 - AUTHORITY

The Lower Elwha Tribal Community's Constitution and Bylaws, and the inherent sovereignty of the Tribe, authorize the Tribe to create a tribal court and enact this title.

1.2 - PURPOSE

The purpose of this title is to: provide justice and due process, to the full extent permitted by law, to all persons and property subject to the authority of the Tribe; to safeguard individual rights; and to secure the rights and powers that are inherent in the Tribe's sovereign status, guaranteed to the Tribe by treaty and the laws of the United States, and provided for by intergovernmental agreements.

1.3 - AUTHORITY TO AMEND

The Business Committee is authorized to amend this title as the need may arise in the Business Committee's determination.

1.4 - ESTABLISHMENT OF TRIBAL COURT

The Tribe hereby establishes the Lower Elwha Tribal Court. The Court shall have two divisions, a trial court and an appeals court; the trial court shall have such sub-divisions as may be established by written action of the Business Committee. The offices and facilities of the Court shall be maintained on the Lower Elwha Reservation or on other property of the Tribe, unless otherwise provided by written action of the Business Committee.

1.5 - POWERS OF THE COURT

The Lower Elwha Tribal Court shall have only those powers granted to it by the Lower Elwha Tribal Community Council or Business Committee in this title and other tribal laws.

1. The Tribal Court shall specifically have the power to:
 - a. Interpret and apply tribal law in the cases that come before it; and

- b. Take all necessary and proper actions to ensure that the intent of the Community Council and Business Committee is fulfilled, and that the jurisdiction of the Tribal Court to interpret and apply that intent is preserved and protected.
- 2. Except as expressly provided in this title or in other specific enactments of the Tribe, the Court shall not have the power to:
 - a. Declare actions of the Community Council or the Business Committee to be contrary to the Tribal Constitution, or determine the power, authority, or legality of actions of the Community Council, Business Committee, or their agents or delegates;
 - b. Establish any rule of court, other than procedural rules within the scope of the procedures set out in this title, which would have the effect of creating new substantive law or policy for the Tribe;
 - c. Determine issues concerning the structure or authority of the Community Council or Business Committee;
 - d. Issue advisory opinions on questions of law in the absence of a case or actual controversy properly brought before the Court.
- 3. As long as there is an actual controversy, the tribal court may hear a case and pass judgment for the sole purpose of declaring the legal rights and responsibilities of the parties under the applicable tribal law.
- 4. Nothing in this section shall prohibit the court from enforcing the rights of criminal defendants under article VII of the tribal Constitution or any provision of the Indian Civil Rights Act consistent with this title and other tribal law, or from communicating with the Business Committee regarding administration, infrastructure, and budget of the court, or its concerns regarding the administration of justice.

1.6 - JURISDICTION

The Tribal Court shall be a court of general subject matter jurisdiction and exercise all judicial authority of the Tribe, except as limited by the Community Council or the Business Committee in this and other tribal laws or by federal law. The court's jurisdiction shall extend to all persons and property to the full extent permitted by federal and tribal law.

1.7 - JUDGES

- 1. For the tribal court division, the Business Committee may appoint a chief judge, associate judges, temporary judges, and administrative judges of the Tribal Court. The chief judge and all associate judges shall each be appointed for a term of four

years. The Business Committee may appoint a temporary judge or judges to serve for a specified period, which shall not be longer than one year.

2. For the appeals court division, the Business Committee may appoint justices to a term to be established by the Business Committee. The Business Committee may appoint and as appropriate contract with individual appellate justices or it may contract with an outside entity for the provision of appellate justices as authorized in section 1.11 below.

1.8 - QUALIFICATION OF JUDGES

To serve as a judge of the Tribal Court, a person must be: (a) at least 21 years old; (b) of good moral character; (c) able to read and write English well; (d) knowledgeable of tribal law, customs, and traditions, or willing to become knowledgeable; and (e) trained in or willing to undergo training in law and legal procedures. Preference will be given to those who are a member of a tribe or have lived in a tribal community. Codes establishing other divisions of the Tribal Court may set forth additional qualifications for judges of those divisions.

1.9 - REMOVAL OF JUDGES

1. The Business Committee may remove a judge of the Tribal Court only for good cause. Good cause for removing a judge shall include: conviction of a felony or an offense including dishonesty during the judge's term; a violation of the Rules of Conduct for Judges; sanction by a court, bar association, or any other entity that oversees the conduct of lawyers or judges; failure to perform the duties of the judge's office; failure to complete required training; incompetence; dishonesty, false representation, or a failure to disclose relevant information regarding the judge's qualifications, licensing, or any other requested information before, at, or after the time of appointment; and health or psychological conditions that interfere with performance of the judge's duties. The Business Committee may not remove a judge because it disagrees with actions the judge has taken in an official capacity.
2. Before removing a judge, the Business Committee shall give the judge written notice of the charges against him or her. This notice shall be provided at least ten days before a meeting at which the judge shall have a fair opportunity to hear and confront the witnesses against him or her and to present evidence on his or her behalf. A judge shall not be removed unless a majority of all members of the Business Committee votes for such removal.

1.10 - OTHER PERSONNEL

1. The Lower Elwha Business Committee may appoint a court administrator who shall be responsible for overseeing the operation of the court system and for administering funds appropriated by the Business Committee for the court's operation.
2. There shall be a clerk of the Tribal Court, who may be appointed by the Business Committee. The clerk shall be responsible for maintaining all records of the court. The role of court administrator and court clerk may be consolidated and performed by the same person.

1.11 - INTERTRIBAL COURT SYSTEM

By written resolution, the Tribal Court may enter into an agreement with other Indian tribes to establish and participate in an organization that makes court personnel and administrative services available to all participating tribes. In this event, the Business Committee shall appoint as judges and administrator of the Lower Elwha Tribal Court, those persons who are hired as judges and the administrator of such intertribal court system, and such persons shall be appointed, compensated, and removed as provided in the intertribal agreement.

1.12 - FUNDS

The Lower Elwha Business Committee may provide for maintenance of the Tribal Court, as necessary, by annual appropriations.

1.13 - COURT RULES

The chief judge, in consultation with other tribal judges, the Tribe's Office of General Counsel, the tribal prosecutor, the defense bar, and the Law and Order Committee or Business Committee, may adopt rules of procedure that are not in conflict with this title or any other tribal law. A copy of the final version of any adopted Court Rule must be provided to the Office of General Counsel. The Business Committee may revoke or modify any rule so adopted by the chief judge.

1.14 - MEASURES IN AID OF JURISDICTION

In the absence of an applicable ordinance or rule, the Tribal Court shall have the power to take any measures reasonably necessary to carry out and protect its jurisdiction, so long as such measures are consistent with the overall powers of the court as provided by the Business Committee.

1.15 - INFORMAL DISPUTE RESOLUTION

Nothing in this ordinance or in the rules of the Tribal Court shall prevent persons who are involved in a dispute from submitting their dispute to persons, organizations, or agencies outside the Tribal Court for resolution in an informal manner.

1.16 – SOVEREIGN IMMUNITY PRESERVED

Nothing in this title or in the rules of the Tribal Court is or shall be construed as a waiver of the immunity of the Tribe or any entity of the Tribe from unconsented lawsuit.

II. GENERAL RULES

2.1 - ADMINISTRATION AND RECORDS; GENERAL RULES

2.1.1 CLERK

1. Before taking office, the court clerk shall state in the presence of the Business Committee that he or she will perform the clerk's duties faithfully and honestly, will not let personal views and relationships affect the performance of the clerk's duties, will not attempt to improperly influence the course of court proceedings, and will not reveal confidential matters that the clerk learns in the course of official duties.
2. Duties of the court clerk include:
 - a. Making and keeping records of all civil lawsuits and criminal prosecutions brought in the tribal court, all actions taken by the parties or the court during such cases, and all court hearings;
 - b. Keeping a calendar of court hearing dates and deadlines, and helping with scheduling of court proceedings;
 - c. Notifying the judges and parties, as required by these rules, of actions taken, hearings scheduled, and other developments requiring their attention during cases in tribal court;
 - d. Keeping records of monies paid for fines, restitution, and costs, and property and contraband seized, held for use as evidence, disposed of, or returned in the course of court proceedings;
 - e. Participating in training programs identified as necessary by the court administrator;
 - f. Maintaining for the use of court personnel and parties an up-to-date set of the rules of the Tribal Court and the Tribal Code;
 - g. Maintaining a list of persons who are permitted to appear in tribal court as representatives for parties and witnesses; and
 - h. Assembling a list of persons eligible to serve on juries as necessary, and summoning jurors as provided in these rules.
3. The court clerk shall have authority to do the following:
 - a. Administer oaths of persons who make out complaints and affidavits;
 - b. Prepare and certify the official record of a court hearing;
 - c. Sign and issue summons for potential jurors and subpoenas for witnesses;
 - d. Certify documents as true and correct copies contained in the court file;
 - e. Transmit protection and other tribal court orders as necessary to criminal justice agencies in other jurisdictions; and
 - f. Other duties as authorized or directed by the Business Committee.

2.1.2 COURT RECORDS

1. Official records of the Tribal Court shall be maintained at the clerk's office, which shall be located at the court's facilities, and these records shall not be removed except with the permission of the chief judge or the administrator.
2. The official court records referred to in paragraph 1 of this section, shall consist of the following:
 - a. A calendar of scheduled court hearings;
 - b. A list of representatives permitted to appear before the Tribal Court;
 - c. A separate file for each: civil lawsuit; fish and game violation; child dependency action; other civil prosecutions brought by the Tribe, which includes housing matters; juvenile offender action; criminal prosecution; and any other action brought in the Tribal Court, with a copy of every document submitted in the case;
 - d. A file for all traffic infractions compiled by calendar year;
 - e. A ledger showing all funds paid and authorized to be disbursed in the course of each action brought in Tribal Court;
 - f. A copy of all current tribal laws and codes enforceable by the Tribal Court; and
 - g. A docket book that shows, with separate categories for civil lawsuits, child dependency actions, fish and game violations, juvenile offender actions, other civil prosecutions brought by the Tribe, criminal prosecutions, and traffic infractions for each case filed in Tribal Court, the case file number, the parties' names, and a short description of every document filed and every order issued in the case, including the date of the order or filing.
3. All testimony and arguments given in open court shall be recorded and shall be part of the official record of each case to be kept by the clerk. A transcript shall be made of the record upon request of an appellate judge when a case is appealed, or at the request of a party. A party who requests a transcript shall bear costs of preparing it unless upon a showing of good cause the judge excuses the party from paying.
4. All official records of the Court identified in this section, except for child dependency actions, juvenile offender cases, or cases implicating federal HIPAA privacy issues, shall presumptively be public records, available for inspection by any person, unless a tribal ordinance or an order of the court requires that any such record be confidential. Records presumed to be public records may be released to any member of the public on request with the approval of the judge presiding over the matter, unless a tribal ordinance or prior order of the court requires that any such record be confidential. In the absence of such an order or ordinance, and notwithstanding anything in this paragraph 4, when records contain information that, in the judgment of court personnel, may be private or culturally sensitive, that information may be withheld from public disclosure, but

not from any party to the case in question, pending consultation with, and if appropriate issuance of an order by, the judge presiding over the case in question, or by the chief judge if the records sought are not from the file of a particular case.

5. Any party to a case may move the court to seal or redact any portion of the file in a particular case, but that party shall have the burden to demonstrate that the material in question should be sealed.
6. Any party to a child dependency case, juvenile offender case, or case implicating federal HIPAA privacy issues, may petition the court to release the file upon any condition, as the court may consider necessary to protect the privacy of juveniles or incompetents.

2.1.3 SESSIONS

1. All sessions of the Tribal Court shall be held at the court facilities. The Court may, however, conduct arraignments and other proceedings at a jail facility where a prisoner is located. For good cause and with the consent of the parties, the chief judge may provide for sessions of the court to be held at other locations, and the Court of Appeals may provide for appellate arguments to be held at other locations.
2. A presiding judge in a proceeding of the court may permit participation by telephone for good cause and if the interests of justice would be served thereby.
3. The court may set and publish a schedule for regular court sessions. The schedule may include a regular time that the judge will consider motions.
4. Unless otherwise provided in these rules, the clerk, after consulting with the court administrator and appropriate judge, shall set and record the times for trials and other hearings.
5. A police officer who serves a criminal summons and a party who requests court action at a time other than a regularly scheduled court session is responsible for getting a hearing date from the clerk and for providing all other parties with written notice of the time, place, and nature of the hearing. In all other cases, unless a court hearing is scheduled in court when all parties or their representatives are present, the clerk shall send the parties written notice of the hearing. Notice required by this section shall be mailed or delivered to all parties at least seven days before the scheduled hearing.

2.1.4 FILING, NOTICE, AND SERVICE

1. A copy of every complaint, summons, warrant, motion, written argument, agreement, order, or other document that records action taken by the parties and by the court during a pending case in Tribal Court shall be filed with the clerk and placed in the court file.
2. Before a case is heard, the clerk shall provide the responsible judge with a copy of every document filed in the case.
3. A party who files any document with the court clerk in a lawsuit or criminal prosecution shall serve a copy of the same document on every other party in the case. If a party is represented by an attorney or spokesperson, the document shall be served on that representative. Service of a copy as required by this rule shall be made either by delivering it to the party in person or by mailing it to the person's last known address. Proof of service shall be filed with the clerk and placed in the court file. The court may authorize filing by fax, e-mail, or other electronic means upon motion by a party or otherwise.
4. Unless the judge issues an order or makes a decision in open court when all parties are present, decisions and orders of the court shall be in writing, and the clerk shall serve a copy of each such ruling on each party in the case.

2.1.5 TIMING

1. Whenever a rule, ordinance, order of the court, or anything else prescribing a time period related to an action before the court requires that an action be taken by a certain date or within a certain number of days, the day of the event from which the time limit runs shall not be counted. When the time limit is seven days or longer, Saturdays, Sundays, and tribal holidays for which the Court is closed shall be counted except that the last day shall not be counted if it is a Saturday, Sunday, or tribal holiday for which the court is closed, in which case the deadline shall be the first business day following the day that is not counted. When the time limit is fewer than seven days, Saturdays, Sundays, and tribal holidays for which the court is closed shall not be counted.
2. When a person is provided notice via mail, or when a time limit is otherwise based on receipt via mail, it shall be presumed that delivery occurs and notice is received three days after the notice is mailed.
3. On request of a party, the judge may for good cause allow an extension of any time limit affected by this subsection, as long as the right to a speedy trial in criminal cases, if not waived, is preserved, except that the court may not extend the limitations period within which a civil or criminal action must be commenced, or the period within which a notice of appeal must be filed.

2.1.6 FORM OF PLEADINGS

1. Unless otherwise specified by the judge or by these rules, defenses, motions, arguments, and other requests made to the court do not have to be in writing. Parties are encouraged, however, to put such requests and arguments in writing, especially where the matters to be considered by the judge are complex. Where parties are required to submit something in writing, the clerk may assist any party in putting his or her statements in writing.
2. There shall be no required form for written material filed with the court. All pleadings should be clear and legible and shall contain the name of the court, the names of all parties, the court file number of the case, the signature of the party filing it or of the party's representative, and any other information required by these rules. For convenience, the administrator and clerk may develop standard forms for pleadings and notices.

2.1.7 COURT BEHAVIOR; CONTEMPT

1. All persons who attend tribal court hearings as parties, witnesses, or spectators shall be quiet and orderly while court is in session. No spectator shall speak out during a court session unless called as a witness.
 - a. The judge may appoint a person to keep order in the courtroom. Persons who disrupt the court proceedings or are disrespectful of the court may be ordered to leave the courtroom.
 - b. All parties and witnesses shall be respectful of the tribal court and courteous and civil to other parties and witnesses.
 - c. No party or witness shall direct a personal attack on another person, including exposure of a secret fact that is not directly relevant to the matter at issue in court that may subject that person to hatred, contempt, or ridicule. The Judge shall determine whether a party or witness has violated this subsection.
 - d. Persons who willfully disrupt court proceedings may be found in contempt of court. When contempt is committed in the courtroom, the presiding judge may impose a penalty of up to five days in jail, a fine of up to \$1,000, or both, at that time or schedule a hearing to consider the penalty.
 - e. When it comes to the attention of the court that a party has disregarded, disobeyed, or otherwise violated an order or process of the court, the court may on motion of a party or on its own motion issue an order directing the offending party to appear at a hearing to show cause why it should not be

found in contempt. If such party is found in contempt, the Court may fine that party an amount not to exceed \$1,000 for each instance of contempt and may order that party incarcerated for a period not to exceed 180 days.

2. If a person willfully refuses to comply with a lawful order of the court to provide evidence or testimony, the court may find such person in contempt and order that person incarcerated until that person complies, except that the court may not order the person incarcerated for a period exceeding 180 days.

2.1.8 ASSIGNMENT OF CASES

1. All cases before the court shall be heard by the chief judge unless the chief judge is unavailable for any reason, including absence, recusal, illness, or disqualification.
2. If the chief judge is unavailable or otherwise unable to hear a case, the court administrator shall designate an associate judge to hear a particular case or to hear all cases during the chief judge's absence.
3. In the event that the chief judge and all associate judges of the tribal court are unavailable, the court administrator shall designate a temporary judge or judges to hear a particular case or to hear all cases that begin during the unavailability of the chief judge and associate judges.
4. All associate and temporary judges shall remain the judge on that case until the conclusion of the case unless the court administrator determines that the case should be transferred to another judge.
5. During the absence of the court administrator, designations under this section 2.1.8 shall be made by the chief executive officer of the Tribe.

2.1.9 COMPELLING WITNESSES TO APPEAR; SUBPOENAS

1. Any party to a lawsuit or proceeding before the Tribal Court shall have the right to compel witnesses to appear in court on his or her behalf.
2. The court clerk or a judge may sign and issue subpoenas, which command a named person to appear in court, bring certain evidence or documents to court, or both.
3. Every subpoena commanding a witness to appear shall be in writing and shall include the name of the court, the names of all parties, the identity of the party issuing or requesting the subpoena, the time and place that the witness must

appear, and a clear and detailed description of any documents or evidence that the witness is required to bring.

4. A subpoena issued under this rule shall be personally delivered to the witness at least seven days before the court proceeding at which the witness or evidence is sought. In the alternative, a subpoena may be delivered to a person at least 14 years of age at the witness's residence or place of employment provided the person accepting delivery lives at the residence or works at that place of employment.
5. A person who delivers a subpoena to a witness shall promptly file with the clerk a copy of the subpoena and a written statement describing where, when, and how delivery was made. If service cannot be made after repeated attempts, the person charged with delivering the subpoena shall return the subpoena to the issuer with notification that service could not be made.
6. Failure of a witness to obey a subpoena shall be grounds for holding the witness in contempt of court under section 2.1.7.
7. Any person receiving a subpoena may move the court for an order quashing the subpoena for good cause, including inadequate service or lack of jurisdiction.
8. A witness who responds to a subpoena shall be entitled to a fee of \$10 for each day that he or she must appear in court. The judge may, in addition, order that a witness who resides outside of Clallam County be paid reasonable travel and living expenses incurred in responding to the subpoena.

2.1.10 COSTS

1. Upon judgment, the judge shall order the losing party to pay the prevailing party the costs of the lawsuit or prosecution, unless the applicable ordinance provides otherwise, or the judge determines that such an order would be unjust. But costs shall not be imposed on the Tribe or any branch of the Tribe unless specifically permitted by an applicable tribal law or agreement.
2. Costs shall include: civil filing fees; postage for court notices sent to the parties; fees and expenses paid to witnesses and jurors; and fees and expenses incurred in the reproduction and delivery of copies of pleadings, other than the original summons, and service of process, to parties. Costs shall not include attorney's fees.
3. No person shall be jailed because he or she is unable to pay costs.

2.1.11 MEANS TO CARRY JURISDICTION INTO EFFECT

1. Whenever the tribal court has jurisdiction over a person and subject, it shall also have the power to use reasonable means to protect and carry out its jurisdiction. If the means to enforce its jurisdiction are not spelled out in these rules or in the tribal code, the court may use any appropriate procedure that is fair and consistent with the spirit of the tribal law that is being applied.
2. The rules of procedure for the Tribal Court shall be liberally interpreted and applied to achieve the following purposes: achieving justice, revealing the truth, resolving disputes efficiently, treating all parties fairly and without prejudice, and protecting individual rights guaranteed by the Indian Civil Rights Act and the tribal Constitution.
3. As long as a party does not unknowingly waive a right or protection guaranteed by tribal law, the parties and the court may agree to depart from procedures established in these rules to save time and expense while achieving the purpose of these rules and the tribal laws.
4. In a situation where the rules of the Tribal Court do not prescribe a procedure, the parties and the judge may agree on a procedure, or the judge may determine the procedure to be followed.
5. Judges and the administrator of the Tribal Court have a duty to advise the Business Committee which additional rules are needed to govern common procedural questions faced by the Court.

2.2 - REPRESENTATIVES AND REPRESENTATION

2.2.1 RIGHT TO REPRESENTATION

1. Any party or person who appears before the Tribal Court may be represented by a lawyer or a spokesperson at their own expense as long as the representative has applied for and been granted permission to represent persons in the court. In criminal cases with the possibility of incarceration, the judge shall appoint someone to represent a party or a witness at the Tribe's expense if that person would be seriously prejudiced or handicapped by appearing without a representative and cannot afford to hire a representative.
2. For the purposes of subsection one above, it shall be presumed that those whose income is greater than 125% of the federal poverty level or who have substantial assets can afford to hire a representative.
3. Appointed representatives, like all other representatives before the court, need not be licensed to practice law in or by any other jurisdiction.

2.2.2 PERMISSION TO APPEAR AS REPRESENTATIVE

1. Any person at least 18 years old who is of good moral character may appear as a representative in the Tribal Court as long as he or she has applied in writing for permission, been certified by the chief judge as qualified to appear, and been granted permission by the chief judge to appear. Before admission, a legal representative, attorney, or spokesperson must first pay the admission fee, certify that he or she has read the Constitution and ordinances of the Tribe and the rules of the Tribal Court, and take an oath to uphold the tribal Constitution.
2. Before a person is permitted to appear as a representative before the Tribal Court, he or she shall state before the chief judge the following “Spokesperson’s Oath”:

Spokesperson’s Oath

Lower Elwha Indian Reservation, ss.

I, _____ do so solemnly swear:

1. I have read and understand the Lower Elwha Tribal Constitution and Laws and am familiar with their contents.
2. I will support the Constitution of the Lower Elwha Indian Community in all respects.
3. I will abide by the rules established by the Lower Elwha Business Committee, the Community Council, and the Tribal Court.
4. I will at all times maintain the respect due the Tribal Court and its officers.
5. I will not counsel or speak for any suit or proceeding that shall appear to me to be unjust, or any defense except such as I believe to be honestly debatable under the law of the Lower Elwha Community, unless it is in defense of a person charged with a public offense.
6. I will employ such means only as are consistent with truth and honor and will never seek to mislead a judge by any false statements.
7. I will abstain from all offensive conduct in the Tribal Court.

Signature

Subscribed and sworn to before me this ____ day of _____, 20__.

Judge: _____

3. Any attorney employed as an attorney in the Tribe’s Office of General Counsel or Office of the Prosecutor shall be deemed to be certified as qualified to appear and to be granted permission to appear in the Lower Elwha Court by the Chief Judge. Said attorneys shall be deemed to have taken the “Spokesperson’s Oath” and shall be subject to the same.

2.2.3 ADMISSION FEE

To cover the cost of maintaining a list of representatives permitted to appear before the Tribal Court and the cost of reproducing the tribal code, every person who is permitted to appear as a representative shall be charged an admission fee of \$50. After written request, the court shall have discretion to reduce the annual admission fee upon a showing of good cause. All persons requesting a copy of the tribal code or any part thereof shall be charged a reproduction fee of \$50. After written request, the court shall have discretion to reduce the reproduction fee upon a showing of good cause. Any attorney employed as an attorney in the Tribe's Office of General Counsel or Office of the Prosecutor shall not be required to pay any admission fee.

2.2.4 REVOCATION OR SUSPENSION OF PERMISSION TO APPEAR

1. Any representative who breaks the promises that he or she made upon admission to practice before the Tribal Court, or commits other misconduct, may be barred from appearing in court either permanently or for a period set by the judge.
2. When a representative is accused of violating his or her oath, the charges shall be written up in a complaint signed by the person who makes the accusation. The complaint shall be given or mailed to the accused representative and filed with the court. The representative shall be summoned to appear at a hearing before a judge of the Tribal Court who is not the complaining witness. The hearing shall be held no sooner than ten days and no later than 30 days after the complaint and summons are delivered to the spokesperson. The decision of the judge after such hearing shall be final.
3. In the event that an attorney licensed in any state of the United States has had his or her permission to appear in the Tribal Court revoked or suspended, notice of such revocation or suspension shall be sent to the appropriate state licensing authority.

III. RULES OF CONDUCT FOR JUDGES

3.1 - SCOPE OF RULES

The following rules shall govern all judges of the Tribal Court.

3.2 - CONTACTS OUTSIDE COURT

1. Except in open court, in the presence of all parties, or as otherwise permitted by law, a judge assigned or who may be assigned to a case shall refrain from discussing with a party, a party's representative, or any person who has an interest in the case, the merits or any judicial business of the case.
2. A judge shall not seek advice or opinions from other persons, including judges and lawyers, regarding the merits of a particular case. A judge may, however, discuss general principles affecting cases and hypothetical examples with other judges and lawyers, and may seek specific advice from a law clerk employed to give such advice.

3.3 - CONFLICTS OF INTEREST

1. A judge should disqualify himself or herself from hearing a case in which a close relative is a party or a witness.
2. A judge should disqualify himself or herself from hearing a case in which the judge has interests that may be affected by the outcome, has formed an opinion about the merits of the case, or has a personal knowledge of the facts that would prevent him or her from considering all sides impartially.
3. A judge should disqualify himself or herself from hearing a case in which he or she has had a close personal or professional relationship outside of the Tribal Court with a the party such that it raises a reasonable question of the judge's independence or impartiality in a particular case.
4. A judge should disqualify himself immediately upon learning that he or she has a conflict of interest. Failure to do so shall be considered a gross violation of judicial conduct.

3.4 - FAIRNESS AND DILIGENCE

1. A judge shall respect and comply with tribal, federal, and state law and always conduct him or herself in such a way as to promote respect for the law.

2. A judge shall not let social relationships, his or her political or religious views, or criticism or praise influence the decisions he or she makes in the court.
3. A judge shall be patient, courteous, careful, and conscientious in the performance of all official duties.
4. A judge shall maintain order in the courtroom.

3.5 - INDEPENDENCE

1. A tribal judge shall not engage in outside activity that would be inconsistent with the Tribal Court's status as an independent forum for impartial consideration of cases and controversies. In particular, the judge shall not participate in legislative or administrative activities of the tribal government.
2. A judge shall not be swayed by public criticism or clamor regarding his or her official actions.
3. A judge shall make no public comment on matters pending before the court except in the course of official proceedings.

3.6 - DISQUALIFICATION OF JUDGE

A party may seek the disqualification of a particular judge from a case by filing an Affidavit of Prejudice setting out sufficient grounds for disqualification of the judge, such as bias, an interest in the outcome, or other grounds. The affidavit must be filed before the commencement of any trial activity and shall be referred to another judge for decision. Disqualification is not automatic nor an entitlement, it shall be granted only on sufficient grounds. Denial of a request to disqualify a judge may be appealed under section 7.2.2 below for appeal of non-final orders of the trial court, and the court of appeals has the discretion to decline to accept the appeal.

IV. RULES OF EVIDENCE

4.1 - PURPOSE

The purpose of these rules of evidence is to ensure that the Tribal Court is able to determine the truth of a matter with a minimum of delay, confusion, and uncertainty.

4.2 - GENERAL RULES

1. The rules of evidence used in state and federal courts shall not apply to hearings in the Tribal Court.
 - a. If a rule of these Rules of Evidence does not specifically address a question, the court shall be guided by the principle of section 4.1.
 - b. Rules, exceptions, and procedures adopted by other jurisdictions do not apply to proceedings before the Tribal Court. Procedures or actions taken by the tribal police or any party shall not be deemed inadequate merely because they are different or less rigorous than the procedures or requirements of other jurisdictions.
 - c. The Tribal Court is not bound by the interpretations of other courts, including determinations made by those courts regarding the consequences of violating a right held by a criminal defendant.
2. Where there is more than one kind of evidence about the same subject, the judge should give greater weight to the most reliable evidence. In oral testimony, persons who testify from personal knowledge shall be preferred as witnesses over persons who have second-hand knowledge of the event, although all may be heard.
3. Evidence admitted in the Tribal Court must be related either to the issues before the court or to the weight and credibility that should be given to other evidence. When questioned by the judge or another party, the party who wishes to present certain evidence shall explain why he or she thinks the evidence is relevant.

4.3 - SELF-INCRIMINATION

1. A person in a criminal case shall not be compelled to be a witness against himself or herself. But incriminating statements that a defendant made voluntarily may be presented in court.
2. If a defendant in a criminal prosecution chooses to testify on matters other than those related to his or her guilt or innocence, cross-examination shall be limited to the areas of defendant's testimony and to matters that indicate defendant's credibility.

4.4 - OATHS

Before testifying in the tribal court, a witness shall first swear or affirm before the judge, parties, and spectators that he or she will answer with the whole truth and nothing but the truth under penalty of perjury under the laws of the Lower Elwha Klallam Tribe.

When providing written testimony to the Tribal Court, the witness shall swear or affirm under penalty of perjury under the laws of the Lower Elwha Klallam Tribe that the written testimony is correct. Such affirmation shall be included with the testimony and must be signed.

4.5 - QUESTIONING WITNESSES

1. When questioning a witness, the judge and parties or their representatives shall not ask questions in such a way as to suggest the answer desired, unless the witness is being cross-examined or the judge has found that the witness is clearly hostile to the person asking questions.
2. The judge shall determine the order in which parties or their representatives may question witnesses. The judge shall protect the witnesses from harassment or unnecessarily repetitive questioning, and, to the extent possible while still ensuring a criminal defendant's right to confront witnesses under the Indian Civil Rights Act, shall protect witnesses who are vulnerable due to young age, disability, or fragility, or who are victims of the crime being prosecuted, from being intimidated, harassed, or further victimized during questioning.
3. During the questioning of a witness, the judge shall exclude from the courtroom witnesses who have not yet testified, unless the Court and all parties agree it is unnecessary to do so.
4. The judge may call and question any witness at any time on his or her initiative.

4.6 - WRITTEN TESTIMONY

1. Testimony of a witness may be considered in written or recorded form if: 1) the testimony is not contradicted by other parties; 2) the testimony is offered to support a motion or an uncontested request for relief; 3) the witness is unable to appear in person to testify and the other party has otherwise had the opportunity to question the witness in which case the party may offer evidence resulting from such questioning to the court for consideration; 4) the testimony is offered for the purpose of sentencing in a criminal case and the defendant has been offered the opportunity to review and rebut that testimony; or 5) other circumstances exist such that justice and fairness require the admission of the testimony and the admission of the testimony would not

violate a criminal defendant's right to confront witnesses against him or her. Written testimony shall show clearly who gave it and when the witness gave it, and shall include verification that it was given under penalty of perjury. The judge may assign such weight to written evidence as he or she deems appropriate in any individual case.

2. Copies of written records, photographs, and other documentary evidence may be presented as long as there is a reasonably reliable way to identify the items.

V. RULES OF CIVIL PROCEDURE

5.1 - LIMITATION ON ACTIONS

1. A civil lawsuit in Tribal Court must be started no later than one year after the injury, breach of agreement, or other event that gives the plaintiff a basis for the suit.
2. The one-year period within which a civil lawsuit may be filed shall be counted from the date on which the plaintiff first knew of the event giving rise to the claim, or in the exercise of reasonable diligence should have known of the event. If the plaintiff was under 18 years of age or under another legal disability at the time of the event giving rise to the claim, the one-year period shall begin to run on the date when the legal representative of the plaintiff knew or in the exercise of reasonable diligence should have known of the event. If the legally disabled plaintiff had no legal representative or in cases where the legal representative may have a conflict of interest, the one-year period shall begin to run on the date when the plaintiff is no longer under a legal disability.
3. For claims brought by the Tribe for money or property due from a former employee, the one-year period shall begin to run from the date the employee's employment with the Tribe terminated.
4. For the purpose of meeting the deadline set in this rule, a civil suit is started when the complaint is filed with the clerk of the court.

5.2 - JURISDICTION AND LAW TO BE APPLIED

1. The court's civil jurisdiction shall be consistent with section 1.6 of this title, which is intended to be the maximum jurisdiction permitted by tribal and federal law. Every person in a suit must receive notice of the suit, either by service as provided in subsection 5.3, or by substitute or publication service as approved by the court for good cause shown. Any party may file a motion challenging the jurisdiction of the court over the lawsuit. The court on its own initiative may also raise the question of its jurisdiction.
2. In the absence of law enacted by the Community Council or Business Committee, the court may adopt and develop common law to be applied to the adjudication of private causes of action, and shall be guided, in the following order, by traditional law of the Tribe, decisions of other tribal courts, the federal courts, and the courts of the state of Washington.
3. In the case of contrary procedure for certain actions set forth in the Lower Elwha Klallam Family Protection Code, the procedure set forth in that code shall apply.

5.3 - COMMENCEMENT OF A LAWSUIT

1. A person who wishes to bring a civil lawsuit in Tribal Court shall first file with the clerk a written complaint. The complaint shall state in ordinary and clear language: the title of the case; the name of the court; the names of the plaintiff and defendant; a statement of the facts constituting the cause of action, which describes the injury or breach at issue and names or describes the persons responsible for such injury or breach; and the relief requested, including the amount of monetary damages if any. Plaintiff shall sign the complaint, witnessed by a member of the court staff or licensed notary public, and verify that all allegations therein are true to the best of plaintiff's knowledge. The clerk may provide technical assistance to plaintiffs in putting their complaints in writing, but may not provide legal advice.
2. Within 30 days after plaintiff files a civil complaint, plaintiff must deliver or cause to be delivered to all defendants named in the complaint a copy of the complaint together with a summons. The complaint and summons must be delivered by an adult who has no stake in the outcome of the lawsuit. It may be delivered directly to the person of the defendant, or, in the alternative, to the defendant's residence or place of employment to a person at least 14 years old who lives at the residence or works at the place of employment. If the plaintiff fails to deliver or cause to be delivered a copy of the complaint and a summons to a defendant named in the complaint, the claims against that defendant will be dismissed without prejudice. Upon filing of an affidavit or declaration that the plaintiff has made diligent efforts to serve the defendant and has been unable to do so, the defendant may be served by mailing a copy of the complaint and summons, by both first class mail and certified mail, to the last known residence of the defendant. If service is made under the process provided by the preceding sentence, it is not necessary that the certified mail be accepted and delivered, only that the certified mailing has been made.
3. The summons shall include a short, plain statement notifying defendant that the lawsuit has been filed, that defendant must file and serve a written answer or response within 20 days, or within 30 days if the defendant is the Tribe, in accordance with section 5.4 below, and that failure to file an answer or response is grounds for default. The summons shall also provide plaintiff's name and address for purposes of delivery of documents in the lawsuit, or the name and address of any spokesperson or attorney who represents plaintiff.
4. Every person who files a civil complaint, crossclaim or counterclaim shall pay a filing fee of \$275.00 and an administrative fee of \$50.00. Upon written request, the Court in its discretion may reduce the filing fee. The Tribe shall not be required to pay any filing or administrative fee.

5.4 - RESPONSE AND DEFENSES

1. Not later than 20 days after defendant is delivered a copy of a civil complaint in accordance with section 5.3.2 above, or within 30 days if the defendant is the Tribe, the defendant must file with the court a written answer or response to the complaint. The answer may be mailed and will be considered timely if postmarked by the date due. The defendant shall deliver the answer to the plaintiff at the same time, either by direct personal delivery or by mail to the address provided on the summons.
2. The answer shall be signed by the defendant or his or her representative and include: the name of the court and the title and number of the case; a general or specific response to the allegations in the complaint, including a denial or admission of any allegation; and a statement of any new matter constituting any legal defenses or counterclaims.
3. Defendant may counterclaim against plaintiff, where appropriate, as long as the injury that defendant complains of occurred within the jurisdiction of the court.

5.5 - DEFAULT

1. Failure of a defendant to answer within 20 days, or within 30 days if the defendant is the Tribe, after a complaint is delivered is a default and grounds for judgment against defendant as asked for in the complaint, unless the court has granted defendant additional time to respond and the defendant responds before the expiration of that extended period.
2. A request for default judgment may be made orally at the first court hearing that occurs after expiration of the answer period. Alternatively, a request for a default judgment may be made by a written motion for a default judgment, a copy of which shall be served upon the defendant(s) in the same manner as the complaint was served. The motion for default judgment shall state a time, no sooner than three days after service of the motion, when plaintiff will present the motion to the judge. If defendant answers at or before the time that the motion is presented, no default judgment shall be granted.
3. In granting a default judgment, the judge may refuse to grant relief requested by plaintiff if granting the relief would be contrary to tribal law or would be unjust. The judge may not grant plaintiff greater relief on default than was requested in the complaint.

5.6 - PRE-TRIAL CONFERENCE

1. In the interest of saving time, simplifying issues, and avoiding unnecessary litigation, the judge may schedule one or more pre-trial conferences with all parties in each civil

case. In general, the pre-trial conference would be held early enough to aid parties in planning for trial and pre-trial discovery. Where urgent questions require that a case be heard quickly, the pre-trial conference may be held before the trial on the first day of the trial.

2. The pre-trial conference shall be held in an informal setting and shall be conducted without formal procedures. The parties and the judge should discuss areas where the parties agree and areas where they disagree. The discussion shall have the following purposes:
 - a. To identify and dispose of issues that may be resolved without trial;
 - b. To narrow and focus issues of law that remain to be decided, and to identify central facts that are still in dispute;
 - c. To limit the number of witnesses and the evidence to be presented at trial so that testimony is not repetitious or irrelevant.
3. No offer or settlement made by a party pre-trial may be used as evidence against that party if settlement is not then achieved. Agreements reached as a result of a pre-trial conference shall be put in writing and signed by all parties. Such agreements shall be made part of the final judgment issued by the judge, unless the parties jointly move to dismiss the action.

5.7 - FILING AND SERVICE OF LATER DOCUMENTS

1. All documents and other filings must be filed with the court. Unless the Court orders otherwise, all documents other than those covered by Rules 5.3 and 5.4 may be filed via: personal delivery; certified U.S. Mail; FedEx or UPS; a licensed courier service; FAX; or e-mail. A filing submitted via FAX or e-mail shall be presumed to be received on the day the transmission is sent, but the filing party should request confirmation from the Court that the filing has been received. If the filing party does not receive confirmation from the Court, he or she should contact the Court via telephone and seek confirmation that the filing has indeed been received. If the filing party fails to request confirmation from the Court, there shall be no presumption of receipt. It shall be presumed that filings sent via certified U.S. Mail, FedEx, UPS, or licensed courier service were received on the date the delivery service shows they were delivered.
2. A copy of each filing must be sent to counsel for the other parties on the same day it is filed or sent to the Court. If a party is not represented by counsel, service should be made on the party. Unless the Court orders otherwise, all documents other than those covered by Rules 5.3 and 5.4 may be served via: personal delivery; certified U.S. Mail; FedEx or UPS; a licensed courier service; FAX; or e-mail. Service via FAX or e-mail shall be presumed to be received on the day the transmission is sent, but the filing party should request confirmation that the filing has been received. If the serving party does not receive confirmation from the other party, he or she should

make reasonable efforts to seek confirmation that service has indeed been received. If the serving party fails to make reasonable efforts to seek confirmation, there shall be no presumption of receipt. It shall be presumed that service made via certified U.S. Mail, FedEx, UPS, or licensed courier service was received on the date the delivery service shows they were delivered.

5.8 - MOTIONS

1. Any questions regarding procedure or the rights of the parties that arise during a lawsuit and are neither covered by these rules nor settled by agreement of the parties may be presented to the judge in a motion.
2. Motions may be made in writing or orally. The judge may order that a motion presented orally must be submitted in writing, the issues briefed, or both, if the issues are complex or justice otherwise requires. A party who makes a motion must notify other parties of the nature and basis of the motion. If the motion is not made during the trial or other hearing, the moving party must submit the motion in writing and serve a copy upon the other parties. The briefing schedule for motions filed outside of open court is provided in subsection 3 below. If the moving party believes the default briefing schedule is inappropriate, it should include argument as to why the briefing schedule should be modified and alert the court clerk of the request for a modified briefing schedule. The nonmoving party shall be afforded an opportunity to respond to the request to modify the briefing schedule. If the nonmoving party believes the briefing schedule should be modified, it may request modification and the moving party shall be afforded an opportunity to respond.
 - a. Motions to dismiss a claim because the court lacks jurisdiction or because the plaintiff has not stated a claim upon which relief can be granted may be made at any time. The judge may summarily deny any other motion that could and should have been made earlier in the case if it appears that the moving party knew or should have known earlier about the basis for the motion and has raised it late because of negligence or an intent to harass the other party.
 - b. All other motions that could eliminate the need for trial of all or some issues and motions that would determine the procedures used at trial should be made at least ten days before trial.
 - c. In the case of contested motions, the judge shall issue a ruling setting forth findings of fact and conclusions of law to support his or her decision and the judge, the prevailing party, or another party assigned by the judge shall draft those findings of fact and conclusions of law for entry into the written record.
3. The schedule for briefing, if any, for motions made in open court shall be set by the judge at that hearing. The briefing schedule for motions filed outside of open court shall be as follows:

- a. The nonmoving party's response brief must be submitted 15 days after receipt of the motion.
- b. The moving party's reply brief, if any, must be submitted five days after receipt of the response brief.

5.9 - ORDER OF TRIAL

1. At trial of a civil case, presentations shall be made in the following order unless otherwise agreed by the parties or determined at the pre-trial conference:
 - a. Motions by either party regarding procedure at trial, evidence to be presented, jurisdiction of the court, or the sufficiency of a claim;
 - b. Evidence and statements presented by the party who filed the original complaint;
 - c. Evidence, statements, or motions presented by defendant(s);
 - d. Motions of either party that are based on events at trial;
 - e. Final remarks by both parties.
2. The judge may announce a final decision at the close of trial or may issue a written decision later. Decisions should be issued within 45 days of the end of trial unless the complexity of the case requires more time. If a decision will not be entered within 45 days of the end of trial, the judge will issue a notice to all parties that a decision will not be issued within 45 days of the end of the trial and that includes an approximation of how much more time is needed before a decision can be issued. The judge will issue status updates to all the parties at least every 45 days until he or she issues the decision.

5.10 - BURDEN AND STANDARD OF PROOF

1. Unless otherwise provided in an applicable ordinance, the burden of proving a civil claim shall be on the party who makes the claim.
2. Unless otherwise provided in an applicable ordinance, a party shall be considered to have met the burden of proof if most of the evidence presented tends to prove that party's claim, this standard is also referred to as the preponderance of the evidence.

5.11 - AMENDMENT, WITHDRAWAL, DISMISSAL OF THE COMPLAINT

1. A complaining party may change the complaint without court permission any time before the responding party answers, as long as a copy of the changed complaint is delivered to all parties. After the defendant answers, the judge may allow plaintiff to change the complaint as long as the change does not prejudice or unreasonably burden the defendant.

2. The judge shall allow plaintiff to withdraw the complaint and shall dismiss the case any time plaintiff requests, unless the defendant has counterclaimed against plaintiff or dismissal of the case would otherwise prejudice the defendant. The judge shall order a plaintiff who withdraws a complaint to pay all costs of the suit.

5.12 - DISCOVERY

1. The truth will be revealed more readily if all parties in a civil case have access to all information and evidence related to the case. In preparation for trial, therefore, the parties may ask each other for and shall make available to each other all information in their possession or control that is, or can be reasonably expected to lead to the discovery of, admissible evidence.
2. Methods of discovering and exchanging information may include written questions, oral examination, requests to perform scientific or physical tests, and requests for documents or other physical evidence. The party who makes a request under this rule shall be as clear and specific as possible in describing what he or she wants.
3. A party may refuse to make available the information requested under this rule if its release would cause the responding party or a third person undue hardship, would violate the party's right to be free from forced self-incrimination, would violate any privilege recognized under federal or state law, or would cause the release of confidential or culturally sensitive information. If the parties disagree about whether the responding party is required to release the information, the judge shall decide the dispute. The judge may place conditions on the release of information to protect confidential or culturally sensitive material, prevent unreasonable burden or expense to one party, or otherwise ensure fairness to all parties.
4. Within 30 days after he or she receives the request, a party who receives a request for information under this rule shall respond either with the information, with an indication where and when the information will be available, or with an objection. Failure to respond is grounds for a court order requiring response and possible sanctions.

5.13 - JUDGMENTS

1. A judgment is a final order of the court that disposes of a claim completely or in part. The judge may announce a judgment orally or in writing, at the time of hearing or after the hearing. No contested judgment is final until it is entered with findings of fact and conclusions of law in the written court record, and no uncontested or default judgment is final until it is entered either in writing by the judge or in the form of a minute order by the court clerk with information as to the date of the hearing, proof of service on parties, and the presence of parties and witnesses at the time of judgment.

2. If the parties agree in writing that judgment should be entered against one party, the written agreement must be filed with the court. The parties may request in the written agreement that judgment be entered in accordance with the agreement without a hearing, but the court shall have the discretion to require a hearing before judgment is entered.

5.14 - PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS

1. A party to a civil suit may ask the judge for a pre-trial order prohibiting or requiring particular action by another party, and the order shall be granted if the petitioner demonstrates that: there is a substantial likelihood that he or she will win the suit; and he or she will suffer irreparable harm or injury if the order is not issued.
2. Unless otherwise stated in the injunction, a pre-trial injunction shall remain in effect until final judgment in the case. A party against whom an injunction is issued may request that the injunction be modified if warranted by changes in circumstances or other good cause.
3. Except as provided in subsection 4 of this rule, no pre-trial injunction shall be issued unless the party affected first has notice and an opportunity to be heard in court.
4. A judge may issue a short-term restraining order prohibiting or requiring particular action by a party without prior notice to the affected party if the party who requests such an order shows by affidavit or oral testimony that:
 - a. there is a substantial likelihood that he or she will win the suit; and
 - i. he or she will suffer irreparable harm or injury if the order is not issued; or
 - ii. a child, vulnerable adult, or other member of the Tribal Community is in danger of irreparable harm or injury; or
 - iii. there is a danger of irreparable harm or injury to property.
5. A short-term restraining order shall be effective only for the period specified in the order but in no event for longer than 30 days. The judge may renew a short-term restraining order once for good cause.
6. The judge may require a party who requests a restraining order or pre-trial injunction to provide security for any loss or injury that may be suffered by a party who is wrongfully enjoined or restrained, but the judge shall not require such security from the Tribe or any of its branches.

5.15 - PROCEEDINGS AFTER JUDGMENT

1. No later than ten days after judgment is final, a party may ask the judge for a rehearing, reconsideration, correction, vacation, or modification of the judgment.

2. The judge may grant a new hearing or reconsider and change the judgment if he or she finds one of the following to be true:
 - a. The original judgment was based on or reached as a result of fraud or mistake;
 - b. There is newly discovered evidence that could have affected the outcome of the case and which could not, with reasonable effort, have been discovered in time for the hearing of the case;
 - c. The court did not have jurisdiction over the subject matter.
3. No later than 30 days after judgment is final or after a motion made under subsection 5.15.1 of this rule is denied, a party may appeal an adverse judgment as provided in the rules of appellate procedure.
4. No civil judgment shall be enforced within ten days after judgment is entered in the docket. A party may file a motion to stay enforcement of the judgment pending appeal, and the filing of such motion shall stay enforcement of the judgment until the court has ruled on the motion. The court may require a bond if it grants a stay.
5. In actions by the Tribe to collect amounts due from a party, the Tribe shall be authorized to deduct amounts due the Tribe from any current or future payments owed by the Tribe to the party. Those deductions may be collected by the Tribe in a single lump sum, in periodic payments, or through a payroll deduction.

VI. RULES OF CRIMINAL PROCEDURE

6.1 - LIMITATION ON PROSECUTIONS

Except as otherwise specifically provided in another law of the Tribe, no person shall be prosecuted for a criminal offense in Tribal Court unless the prosecution is started within three years after the offense occurred, except that a prosecution for a crime against the Tribe must be brought within five years of the offense. For the purposes of this rule, a prosecution is started when a judge issues an arrest warrant or summons or when the accused is arrested or served with a summons, whichever occurs first.

6.2 - COMPLAINT

1. In every prosecution, the complaint may be filed before or after the accused person is arrested. If the complaint is filed after arrest, it shall be filed promptly and not later than the time of initial appearance so that the judge may review the complaint to determine whether there is probable cause to hold the accused. If the complaint is filed before arrest, the judge shall review it in determining whether an arrest warrant or summons should be issued.
2. A written complaint must be filed with the court. A complaint under this rule shall contain the following information:
 - a. The signature of the complaining witness given under oath under the laws of the Tribe;
 - b. A written description of the alleged offense, including the time and place;
 - c. The name, description, or both of the person accused of committing the offense;
 - d. The identification and particular section of the Tribal Code that is alleged to have been violated and the penalty that may be imposed if the defendant were to be convicted.

6.3 - ARREST WITHOUT WARRANT

No law enforcement officer shall take a person into custody on charges that he or she committed a crime unless one of the following is true:

- a. The officer has an arrest warrant issued by any jurisdiction, or knows for certain that the warrant has been issued;
- b. The person committed a crime in the officer's presence;
- c. The officer has probable cause to believe that the accused has committed a crime.

6.4 - EXTRATERRITORIAL FRESH PURSUIT

1. Any duly authorized law enforcement officer of the Tribe who leaves the Tribe's jurisdiction in fresh pursuit of a person who committed a crime or traffic offense, or is suspected of committing a crime or traffic offense, within the jurisdiction of the Tribe shall have the same authority to arrest or detain the person as the officer would have if the arrest or detention were made within the territorial jurisdiction of the Tribe.
2. Fresh pursuit shall not necessarily imply instant pursuit but pursuit without unreasonable delay after the time of the occurrence of the alleged offense.

6.5 - SUMMONS INSTEAD OF ARREST WARRANT

1. Whenever there is a basis for arresting a person, a judge, prosecutor, probation officer, or law enforcement officer may issue a written summons that orders the accused person to appear in tribal court at a stated time in lieu of an arrest warrant.
2. A summons issued under this rule shall contain the same information as an arrest warrant except that it may be signed by a judge, prosecutor, probation officer, or law enforcement officer.
3. A summons may be delivered by any tribal law enforcement officer or his or her designee. The summons may be delivered to the accused person directly or left at the accused's residence or work place with a suitable person of suitable age and discretion who lives or works there.
4. The person who delivers a summons shall promptly file with the clerk a copy of the summons and a written statement describing when, where, and how delivery was made.
5. If the accused person fails to appear in response to a lawful summons, the judge shall issue a warrant for the accused person's arrest to compel appearance.

6.6 - NOTIFICATION OF RIGHTS AT ARREST

Every person arrested by a tribal police officer shall be informed immediately by the arresting officer that he or she has the following rights:

- a. The right to remain silent;
- b. The right to speak with and be represented by a lawyer or a representative and that the court will appoint a lawyer or representative if he or she cannot afford one; and
- c. That any statements he or she makes may be used against him or her in court.

6.7 - SEARCHES WITHOUT WARRANT

No tribal officer shall search a person or property unless the officer has a search warrant issued by the tribal court or unless the search is made during and in close relation to lawful arrest or under any other exception permitting warrantless searches recognized under federal or state law.

6.8 - SEARCH WARRANTS AND ARREST WARRANTS

1. A tribal judge shall have authority to issue warrants commanding tribal officers to search premises and property and seize property of any person or to seize any person within the tribal court's jurisdiction.
2. No search warrant shall be issued unless the judge is presented with a sworn statement that shows that there is probable cause to believe a search will discover stolen property or contraband, property that has been used or is being used to commit a crime, evidence that a crime has been committed, or a fugitive or excluded person. Probable cause to search requires evidence that the specific items or person to be searched for are connected with criminal activity, and that these items or evidence will be found in the place to be searched.
3. A search warrant shall order a tribal law enforcement officer to search premises, property, or both, and the warrant shall contain a particular description of the premises to be searched and the things or person to be seized or, if the warrant is for the search of a person, the warrant shall state the person's name or a description of the person so complete that it is unlikely to apply to anyone except the suspect. The warrant shall be signed or authorized telephonically or electronically by a judge.
4. Only tribal law enforcement officers shall carry out warrants for search and seizure, although they may be assisted by officers from other jurisdictions. A search warrant shall be carried out within the period stated in the warrant, and this period shall be short enough so that there is still probable cause to believe that the items to be seized are still on the premises, but in no event shall it be longer than ten days. An arrest warrant shall be for an indefinite period unless otherwise limited by the tribal court. After carrying out a warrant, a written, signed statement shall be filed describing the time the search was conducted and listing things or persons seized under the warrant.
5. An arrest warrant or warrant for seizure of a person may issue on the court's own motion or after the court is presented with a sworn statement that there is probable cause to arrest a person. The tribal judge, the tribal police, or the tribal prosecutor shall have the authority to request that any other jurisdiction extradite a person who is subject to an arrest warrant issued by the Tribal Court.
6. Every arrest warrant shall contain the following information:

- a. The name, description, or both, of the accused person, with his or her address if it is known;
 - b. The name and a brief description of the offense charged, with the section of the tribal code that has allegedly been violated;
 - c. The date and time that the warrant is issued; and
 - d. The judge's signature.
7. Arrest warrants, like search warrants, may be issued telephonically, in which case the warrant should be signed by the requesting officer with a notation that a judge has authorized the warrant via telephone or electronic communication.
8. Any judge of the court may issue a warrant, but an associate judge may issue a warrant only if the chief judge is unavailable at the time the officer is seeking the warrant, and temporary judges may issue a warrant only if the chief judge and all associate judges are unavailable. For the purpose of this rule, a judge shall be deemed unavailable if he or she does not answer his or her telephone at the time the officer is seeking the warrant.

6.9 - MATERIAL WITNESS WARRANTS

A judge of the Tribal Court may authorize the arrest of a witness to secure the testimony of that witness in a criminal proceeding. To obtain a material witness warrant, the prosecutor must establish that the witness has information that is material to a criminal proceeding, and either the witness was subpoenaed and failed to appear or a subpoena was issued to compel the witness's appearance and the witness deliberately evaded service of the subpoena. Once arrested, a material witness may be detained for a reasonable period until his or her testimony can be secured by deposition or appearance in court.

6.10 - AMENDMENTS OF THE COMPLAINT

A complaint charging a criminal offense may be changed at any time up to arraignment. After arraignment, the complaint may be changed only with the judge's permission. The judge should permit changes in a complaint unless the defendant's right to notice of the charges would be violated or the defendant would be prejudiced in any other way.

6.11 - INITIAL APPEARANCE

1. As soon as possible after a defendant is arrested, he or she shall be brought before a judge for an initial hearing. When the defendant is in custody, the initial hearing or appearance shall be held within 72 hours after arrest. When the defendant is out on bail or is given a summons in place of being arrested, the initial appearance shall be held at the next regularly scheduled court session unless the court calendar is full, in

- which case the initial appearance may be held at the following court session or at a special session of the court. At a defendant's request, the initial appearance shall be held at the first court session. Likewise, at a defendant's request, all or part of the initial appearance may be postponed, but if the initial appearance is postponed on a defendant's request, the period of time between the initial appearance and when it would have been held had it not been postponed shall not count in determining the date by which the defendant must be tried in consideration of whatever right to a speedy trial the defendant has.
2. At the initial appearance, the judge shall first read the charges to defendant, including the section of the tribal code that the defendant is accused of violating. The judge shall ensure that defendant understands what has been read. The judge shall also inform the defendant of the maximum penalty that may be imposed if the defendant is convicted.
 3. At the initial appearance the judge shall advise defendant that he or she has the following rights:
 - a. The right to remain silent;
 - b. The right to trial by a jury of six people;
 - c. The right to be represented by a lawyer or other spokesperson and that the court will appoint a spokesperson if the defendant cannot afford his or her own representative;
 - d. The right to have the court order the witnesses against the defendant to appear and testify at trial;
 - e. The right to question all witnesses against defendant;
 - f. The right to call witnesses on defendant's behalf; and
 - g. The right to a speedy, public trial.

6.12 - CONDITIONS OF RELEASE

1. At initial appearance or at any other court appearance, the judge shall set conditions of defendant's release from custody as necessary to:
 - a. Protect the safety and welfare of the victim, the tribal community as a whole, and the defendant;
 - b. Ensure defendant's compliance with the law and court orders; and
 - c. Ensure defendant's appearance at future court hearings.
2. Any order releasing a defendant from custody before trial shall require:
 - a. Defendant to maintain sobriety;
 - b. Defendant to report to the Adult Probation Officer immediately after leaving court and sign an agreement as the dates and times of future check-ins, the agreement to

be incorporated into the court-ordered conditions of release and fully enforceable by the court;

- c. Defendant to submit to regular sobriety and legal compliance check-ins in accordance with the signed agreement;
- d. If defendant is charged with commission of an alcohol or drug-related offense, or is under active tribal probation for an alcohol or drug-related offense, defendant must submit first to a baseline urinalysis (which is not to be admissible as a basis for a new criminal charge) and later random urinalyses to monitor sobriety;
- e. Restraint on defendant's contact with alleged victims of and witnesses to the crime or particular property or premises;
- f. Restraint on defendant's movements and activities to ensure compliance with conditions of sobriety;
- g. Restraint on defendant's movements and activities as necessary to protect the safety and welfare of alleged victims, witnesses and the community; and
- h. Such other conditions as the Judge may, in his discretion, determine to be necessary to ensure public safety and welfare, compliance with court orders, and attendance at future court hearings.

6.13 - ARRAIGNMENT AND PLEA

1. At arraignment, to be held not later than the next regularly scheduled court date after the initial appearance, the accused person shall state how he or she pleads in response to the charge(s). The accused may plead "guilty" or "not guilty."
2. If the defendant pleads guilty, the judge shall make sure that the plea is made voluntarily and that the defendant understands what will happen as a result of the guilty plea. The judge may then either impose a punishment immediately or put sentencing off to allow the parties to present information that may help the judge to determine a fair sentence.
3. If the accused person pleads not guilty, the judge shall schedule pre-trial motions and discovery. The judge shall also set bail or other conditions for the defendant's release before trial.
4. If the defendant refuses to plead to the charges, the judge shall enter a plea of not guilty on the defendant's behalf.
5. The defendant shall appear at arraignment, but if the defendant is not charged with a felony the defendant's representative may appear on his or her behalf.

6.14 - WITHDRAWAL OF GUILTY PLEA

A defendant who has pleaded guilty may be allowed to withdraw that plea and substitute a plea of not guilty at any time before sentencing if it appears that an injustice will be done otherwise.

6.15 - BAIL

1. Every person charged with a criminal offense shall be released while awaiting trial if he or she: deposits, as ordered by the court, cash bail; meets other reasonable conditions designed to ensure that the accused will appear in court at any time an appearance is lawfully required; and meets and agrees to other reasonable conditions the court determines are necessary to ensure the safety of the defendant and the community. The judge may decline to release a defendant if it appears that release will result in danger to the community or to any persons or that no conditions of release can reasonably guarantee the convicted person's reappearance. Conditions for release may include making a written promise to appear, depositing security or a bond issued by a licensed bondsman, restrictions on travel or association, requiring random urinalyses, and release to the custody of another person.
2. Any tribal law enforcement officer may set bail and permit an accused person to be released upon receipt of the bail and receipt of written notice of the court appearance date.
3. If an officer refuses to release an accused person on bail, or if the accused person is unable or unwilling to deposit the amount of bail required, the officer will bring the accused before a judge at the first opportunity so that the judge can determine the conditions under which the accused should be released. In no event shall the bail hearing be held later than the initial appearance. When bail is posted, it shall be held by the court pending all proceedings in the case.
4. This rule shall also apply to persons convicted of an offense in tribal court who have filed a notice of appeal or petition for release. The judge may decline to release a convicted person if it appears that release will result in danger to the community or to any persons or that no conditions of release can reasonably guarantee the convicted person's reappearance.
5. If the accused person violates any conditions set for his or her release from custody, the judge may declare any bail or security that has been deposited to be forfeited, may establish new conditions for the accused's continued freedom, may order the accused person jailed, or any combination of those options. Upon conclusion of a case in which the defendant has deposited cash bail or other security, the clerk shall return the deposit to the defendant unless the court orders it forfeited.

6. For minor offenses, the judge may in his or her discretion allow forfeiture of bail to operate as a disposition of the case, and the bail forfeited shall be recorded as a fine paid.

6.16 - PRE-TRIAL MOTIONS

1. Any defense or objection that may be decided by the court without a trial of the facts, and any request for change in the conditions of release until trial, may be raised in the form of a motion at arraignment or within a reasonable time thereafter.
2. Such motions include:
 - a. Defects in the complaint;
 - b. Defects in the notice or warrant;
 - c. Separation of trial of co-defendants or charges;
 - d. Admissibility or suppression of evidence;
 - e. Violations of the Indian Civil Rights Act;
 - f. Interpretation of the code section at issue;
 - g. Failure of the complaint to state an offense;
 - h. Lack of jurisdiction;
 - i. Change of plea;
 - j. Dismissal of the case.
3. In the case of contested motions, the judge shall issue a ruling setting forth findings of fact and conclusions of law to support his or her decision, and the judge, the prevailing party, or the party assigned by the judge shall draft those findings of fact and conclusions of law for entry into the written record.

6.17 - FILING AND SERVICE OF DOCUMENTS AFTER INITIAL APPEARANCE

The filing and service of all documents and other filings made after the initial appearance shall conform with Rule 5.7 above.

6.18 - TIME OF TRIAL

1. Every person charged with a criminal offense in the Tribal Court has a right to speedy trial.
2. In no case shall trial be held more than 100 days after the arraignment unless the Court determines the defendant has not been denied his right to a speedy trial after considering the following factors:
 - a. Length of delay;
 - b. Reason for delay, including difficulty in seating a jury;

- c. Defendant's assertion of his right to speedy trial; and
- d. Prejudice to the defendant.

6.19 - JOINING OR SEPARATING DEFENDANTS' TRIALS

1. At arraignment, the judge may order two or more defendants to be tried together if they are charged with offenses based on the same event or interrelated series of events. All defendants shall be given adequate notice that they will be tried together.
2. Defendants shall not be tried together if a joint trial would prejudice the ability of any defendant to present a defense or would prejudice the Tribe's ability to present its evidence.

6.20 - DISCOVERY

1. Upon request of the defendant, at or before trial, the Tribe shall provide the defendant the following:
 - a. The names of witnesses the Tribe intends to present;
 - b. Copies of or access to any documents, photographs, results and reports of examinations or tests, and objects that are within the custody and control of the Tribe and that the Tribe intends to use as evidence against the defendant;
 - c. Evidence that may be relevant to the accused person's defense;
 - d. Copies or written summaries of any statements made by defendant that the Tribe intends to offer as evidence against defendant.
2. Upon request of the Tribe and approval of the court, defendant shall:
 - a. Appear in a lineup;
 - b. Speak for identification by witnesses;
 - c. Be fingerprinted, palm printed, foot printed, or voice printed;
 - d. Pose for photographs not involving reenactment of an event;
 - e. Try on clothing;
 - f. Provide handwriting samples;
 - g. Permit taking of samples of defendant's hair, blood, saliva, urine, or other specified materials that involve no unreasonable bodily intrusions.
3. Upon request of Tribe, the defendant or defendant's counsel shall make available to the prosecutor for testing, examination, or reproduction:
 - a. The names, addresses, and statements of all persons, other than the defendant, whom the defendant may call as witnesses in the defense case in chief;
 - b. The names and addresses of experts whom the defendant may call at trial, together with the results of their physical examinations, scientific tests,

- experiments, or comparisons, including all written reports and statements made by these experts in connection with the particular case Speak for identification by witnesses;
- c. All papers, documents, photographs, and other tangible objects that the defendant may use at trial.
 4. Nothing in this rule shall require a party to provide the other with reports, memoranda, or other internal communications that were made by the party or by his or her representative solely in preparation for trial, or communications that are otherwise privileged attorney work product or communication or other communications subject to privileges commonly recognized under federal or state law except items specifically listed in this rule.
 5. Within ten days after he or she receives the request, a party who receives a request for information under this rule shall respond either with the information, with an indication when and where the information will be made available, or with an objection to the request. Failure to respond is grounds for a court order requiring response and possible sanctions.
 6. If the parties disagree about whether a party is required to provide information requested under this rule, the judge shall decide. The judge may impose reasonable conditions on the release of information requested under this rule.

6.21 - PRE-TRIAL MOTIONS AND CONFERENCES

1. Questions or disputes regarding procedure and any defenses, objections, or issues that may be resolved without a trial of the facts on which the prosecution is based, may be raised with the court in the form of a motion. Except for those motions that may be made at arraignment (see section 6.13), motions shall be made at the time and in the manner provided in section 5.8.
2. At any time after arraignment, up to and including the beginning of trial, the judge may schedule an informal conference to consider questions of procedure and other matters, which will promote a fair and efficient trial. (See section 5.6).

6.22 - ORDER OF TRIAL

At trial, evidence and arguments should be presented in the following general order, unless the judge sets or the parties agree to a different procedure:

- a. Opening Statements. The tribal representative shall have first opportunity to summarize evidence he or she will present and arguments he or she will make. The defendant may then make a similar summary or may wait to give a summary

at the beginning of the defense presentation. Either party may give up the right to make an opening statement.

- b. Tribal Presentation. The tribal representative shall present all evidence in support of the charge. Defendant shall have the right to object to evidence presented and to cross-examine witnesses but shall not present his or her own evidence at this time.
- c. Defense Presentation. This may include motions to dismiss the charges. The tribal representative may object to defense evidence and cross-examine witnesses.
- d. Rebuttal Presentations. After each party has presented evidence, the judge may allow the Tribe to present evidence intended to rebut directly any evidence presented by defendant, and may allow defendant to present further evidence to rebut the Tribe's rebuttal evidence. The judge may then allow either side to present evidence that was mistakenly left out or unavailable earlier in the trial, and whenever such evidence is presented the other party shall be entitled to present rebuttal evidence.
- e. Closing Arguments. At the close of trial, both parties shall have the right to make closing statements in which they argue the law, interpret the evidence, and summarize the case as they see it. The Tribe's representative shall make the first closing statement and shall be presented an opportunity to offer a short rebuttal to defendant's closing. Presentation of additional evidence is not permitted at this time.

6.23 - BURDEN OF PROOF

In all criminal prosecutions, the burden shall be on the Tribe to prove defendant's guilt beyond a reasonable doubt. If the Tribe does not meet this standard, the accused shall be declared not guilty.

6.24 - PRESENCE OF DEFENDANT

The defendant shall be present at all proceedings on criminal charges, except where absence is permitted under 6.13.5, unless the judge permits defendant's representative to appear on his or her behalf.

6.25 - JURY TRIAL

1. Every person accused of a criminal offense in which incarceration or imprisonment is a possible penalty has the right, unless it is waived, to trial by a six-member jury.

2. All voting members of the Tribe, and all persons residing on the reservation or contiguous or nearby trust lands, are eligible to serve as jurors in the Tribal Court. Tribal Police officers and persons who are mentally or physically unable to perform a juror's duties are not eligible.
3. The clerk of the court shall prepare and keep up to date a list of persons eligible to serve as jurors.
4. When a defendant asks for a jury, the clerk shall draw names of at least 24 persons at random from the jury list. The clerk shall then cause a summons to be delivered to each person whose name is drawn, ordering the person to appear in court at the time set for trial of the case. The summons shall give the names of all defendants and known victims.
5. The judge may excuse any person from jury service if the person demonstrates hardship or other good reason to be excused. A juror may be excused temporarily or permanently.
6. Of the potential jurors who are not excused from serving, the judge shall dismiss any person who is a relative in the first degree of a party, an alleged victim, or of a representative in the case; any person who has already formed an opinion about the defendant's guilt or innocence; and any person who for other reasons would not be able to decide the facts in an unprejudiced way. The judge and spokespersons shall question the prospective jurors to determine if she or he is unqualified or prejudiced.
7. After jurors are dismissed under subsection 6 of this section, each party may dismiss without stating a reason one-half of the remaining number of jurors after subtracting six. If an odd number of jurors are left, the judge shall dismiss the last one or permit him or her to serve as an alternate juror.
8. The jury shall hear all evidence about the facts of the case. At the close of presentations, the judge shall explain to the jury what the law is and shall instruct the jury to decide what the facts are in light of the law as explained. The parties may suggest to the judge the explanations, which they think the judge should give the jury.
9. The jury shall discuss the case in secret until all members agree on a verdict. Partial verdicts are permitted. If a jury is unable to agree on a verdict, the judge shall dismiss the jury. Upon the Tribe's request, the judge shall order that a new jury be summoned and a new trial be held.
10. Every person who is asked for jury service may be paid \$25 for every day that he or she sits as a juror, or \$10 if he or she appears but is not selected to sit, or such other fee as the court may set.

6.26 - VERDICT

1. At the end of the trial, the judge or the jury shall announce a verdict of guilty or not guilty on every charge against defendant for which a verdict has been reached. Partial verdicts are permitted.
2. When a criminal complaint charges a person with committing an offense consisting of different degrees, the judge or jury may find the defendant not guilty of the degree charged in the complaint and guilty of any degree inferior to the degree charged or of an attempt to commit a lesser degree of the offense charged. In such a case, the judge or jury shall in its verdict specify the degree or attempt of which the defendant is guilty.
3. If a verdict of not guilty is announced, the judge shall record that the defendant was acquitted of that charge or those charges, and the defendant shall immediately be released from custody if he or she has not been found guilty of another charge.
4. If a verdict of guilty is announced, the judge shall set a time for sentencing. If all parties agree, sentencing may take place immediately.

6.27 - SENTENCING

1. Within a reasonable time after defendant is convicted or pleads guilty, the judge shall set punishment for each charge at the maximum limit established for defendant's offense in the applicable tribal law and provide that punishment for each charge shall be served consecutively;
2. The judge has the discretion to suspend all or part of a sentence imposed for each separate conviction, but the suspended sentence or part of a sentence is subject to reimposition. If all or part of a sentence is suspended, the judge must include the following terms and conditions on the suspension, requiring that the person convicted must:
 - a) Maintain sobriety;
 - b) Immediately report to the Adult Probation Officer upon leaving Court after sentencing and:
 - i) Sign an agreement with the probation officer that provides for dates and times to regularly report to compliance monitoring; and
 - ii) If the person convicted has had any drug or alcohol history or charges during the two-year period preceding the date of the offense underlying the conviction, or if the underlying offense: is drug or alcohol related; involved an act of violence endangering persons or property; or involved an act intended to illegally gain control of property:

- 1) Submit to baseline and random urinalysis at the request of probation, law enforcement, or ICW; and
 - 2) Obtain a chemical dependency evaluation through the evaluator of her choosing within 15 days of sentencing and comply with recommendations of that evaluation. If the person does not obtain a chemical dependency evaluation within 15 days, he or she shall be required to submit to a chemical dependency evaluation from Klallam Counseling within three business days. The Court shall have the discretion to waive this requirement in limited cases upon agreement by both the defense and prosecutor.
- c) Pay restitution to any person who incurred costs or damages as a result of the crime to compensate such person in whole or part for damages or costs that may include medical or mental health care and replacement or repair of property. The judgment for restitution shall remain in effect for a period of 20 years from date of entry of judgment, and may be renewed by the Tribal Court for another period of 20 years upon motion of the Tribe, the victim, or on the Court's own motion;
 - d) Be subject to forfeiture of property obtained through an act constituting a crime or property used in commission of a crime or subsequently acquired from proceeds of any act constituting a crime. The court shall use the applicable standards and procedures set out for forfeiture in the Tribe's Motor Vehicle Code or the Seizure, Impoundment, and Forfeiture of Property Code;
 - e) Be restrained from contact with a victim of or witness to the offense, or other person aggrieved by the offense, upon the prosecutor's recommendation after investigation of the victim's, witness's, or aggrieved person's wishes;
 - i) Restraining orders shall be issued for a standard period of five years, except at the discretion of the court they may be issued for life or for a lesser period;
 - ii) The Tribal Court Clerk shall transmit all tribal restraining orders to the appropriate Clallam County agency as necessary to gain full faith and credit in other jurisdictions for that restraining order and shall also transmit any modifications to restraining orders to that agency;
 - iii) The Tribal Court Clerk shall ensure that the person protected by any restraining order issued by the Tribal Court is served with a written copy of that order and that the Tribal Police are also provided with a copy of each restraining order issued by the Tribal Court;

- f) Sign any and all releases as necessary to ensure that the probation officer may obtain information from evaluators, treatment providers, medical professionals and others as necessary to monitor an offender's compliance with provisions of court orders;
 - g) Be subject to any other terms and conditions, as appropriate in the Judge's discretion given the circumstances of each case, or as otherwise required by tribal or federal law, including those listed in Section 6.29 below.
3. A person who is found guilty of any criminal offense under tribal law that the person committed while armed with or in possession of a firearm or other dangerous weapon as defined in the Elwha Justice Code shall have his or her maximum sentence for that criminal offense increased by imprisonment for a period not to exceed 90 days and a fine for that offense increased by \$1,250, unless the definition of the crime already includes use of a weapon, and except that no maximum sentence imposed for a single offense may exceed 365 days in jail, a \$5,000 fine, or both.
- a) Any person who has been charged in Tribal Court with a criminal offense involving domestic violence, sexual assault or stalking, a tribal felony, or any offense involving a firearm or other dangerous weapon as defined under the Elwha Justice Code shall be restrained from possessing or using a firearm pending trial in her case and also restrained from residing or visiting any home in which firearms are located pending trial in his or her case.
 - b) Any person who has been convicted of a criminal offense involving domestic violence, sexual assault or stalking, a tribal felony, or any offense involving a firearm or other dangerous weapon as defined under the Elwha Justice Code shall be restrained from possessing or using a firearm for a period of at least 25 years and also restrained from residing or visiting any home in which firearms are located for a period of at least 25 years.
4. At the judge's request or on their own, the parties may give the judge any information that should be considered in setting the punishment. Relevant information may include the circumstances of the offense, the effect on the tribal community and any victim, and defendant's previous offenses, employment history, social and mental health history, attitude, needs, cultural norms, and potential for rehabilitation and reformation. This provision shall be construed so that persons convicted of a crime shall be dealt with in accordance with their individual characteristics, circumstances, needs and potentialities. Except the Court shall give primary weight to protection of the community when sentencing for the following offenses:
- a) Distribution or manufacture of a controlled substance;
 - b) Sexual offense or offense related to failure to register as a sexual offender;
 - c) Crime of violence in which the victim receives a substantial physical injury or injury to property;

- d) Crime of violence, including domestic violence, assault, intimidation, endangerment, or malicious mischief involving use of a firearm; or
 - e) Crime involving conduct that presents a serious threat to the health, safety, and welfare of the community.
5. Upon setting a penalty in a sentence, the judge shall sign and file with the clerk a written judgment and sentence. The judgment shall state: the defendant's name; the offense charged; the verdict; the punishment given and what portion is suspended, if any; conditions and period of probation; and a monetary judgment, if appropriate. When the sentence has been carried out, and the offender's period of probation has ended, the clerk shall make a note of that and close the file.
 6. Upon setting a penalty in a sentence, the judge shall have discretion to require the defendant to comply with either active or inactive probation and shall set the initial probationary period at either 12 or 24 months, subject to possible extension, except that any person convicted of a drug or alcohol related offense, a domestic violence offense, a crime of violence, or a crime against property shall be required to be on active probation.

6.28 - POST-CONVICTION PROCEDURES

1. A person who is convicted by a judge or by a jury may ask for a new trial within ten days after sentencing. The judge shall grant a new trial if the interests of justice require it.
2. All persons who are found guilty either by a judge or by a jury shall have the right to appeal the verdict, the punishment, or both. Upon sentencing a defendant, the judge shall inform the defendant of the right to ask for a new trial, the right to appeal, and the time limits for exercising these rights.
3. If a convicted person appeals the conviction, he or she may ask the trial judge to stay execution of the sentence pending resolution of the appeal. In the event the judge grants the stay completely or in part, the judge may set conditions for releasing a defendant who is in custody until the appeal is decided.

6.29 - PROBATION

1. The Tribe may appoint a probation officer to monitor and supervise those charged or convicted of an offense under the Elwha Justice Code, the Motor Vehicle Code, a juvenile offense, or other offense under tribal law, including the Lower Elwha Klallam Family Protection Code and tribal laws relating to sex offenses, registration as a sex offender, and domestic violence.
2. The Chief of Police may enter into agreements with other jurisdictions to ensure that offender(s) convicted by the courts of those jurisdictions who live or work within tribal

jurisdiction remain in compliance with court-ordered sentences and services to best protect the safety and welfare of tribal and other community members.

3. The probation officer shall be responsible for:

- a. Monitoring offenders to ensure compliance with tribal court-ordered conditions of release and terms of any sentence order upon conviction or other applicable court order;
- b. Maintaining contact with victims, families, and others as necessary to provide appropriate monitoring services and make appropriate recommendations to the Court to serve the interests and welfare of the community; and
- c. Reporting violations of probation and conditions of release to the Tribal Court along with recommendations of consequences to such violations as necessary to ensure the safety and welfare of the community.

6.30 - EXTRATERRITORIAL TRANSPORT & CUSTODY

1. Any Lower Elwha Tribal law enforcement officer or any federal, state, or other tribal law enforcement officer duly authorized by the Tribe to carry out the purposes of this section shall have the following authority outside the jurisdiction of the Tribe with respect to persons in custody after a lawful arrest by a Lower Elwha Tribal law enforcement officer or under a Tribal Court order:
 - a. To transport the person and hold him in custody from the site of arrest to the reservation;
 - b. To transport the person and hold him in custody to and from a detention facility until arraignment or other hearing in Tribal Court;
 - c. To transport the person to and from, and to hold him in custody in, a detention facility, correction institution, or other such institution, under an order of the Tribal Court;
 - d. To transport the person for any purpose ordered by the Tribal Court, including urinalysis or other testing, medical, mental health, or other evaluation, or any furlough requested by the Defendant and granted by Tribal Court;
 - e. To transport the person to and from the detention facility, correction institution, or other such institution and a place where a court-ordered or other necessary physical, chemical dependency, or other evaluation or treatment is to take place
2. This section shall not be construed to make lawful an arrest that would otherwise be unlawful.
3. Any person transported from a detention facility remains under tribal jurisdiction until he or she is otherwise released from detention by order of the Tribal Court.

6.31 - POWER TO ORDER MENTAL HEALTH EXAMINATIONS

The court may, on motion of a party or its own motion, order a mental health examination of a criminal defendant who appears to present a danger to himself or to the community. The examination may be ordered at any time before trial. If the defendant is not willing to undergo an ordered examination, the court may order that the defendant be seized and examined within a reasonable amount of time.

6.32 - PAYMENT OF DAILY INCARCERATION COSTS

The court may, on the Tribe's motion or its own motion, order that an incarcerated convict pay or be responsible for the daily cost of his or her incarceration. It shall be presumed that any defendant convicted of a crime and incarcerated should be responsible for the cost of his or her own incarceration.

VII. RULES OF APPELLATE PROCEDURE

7.1 - SCOPE

The Rules of Appellate Procedure apply to appeals from all judgments and final orders of the Tribal Court, both civil and criminal.

7.2 - RIGHT TO APPEAL

1. General: Any party who claims, in good faith, that the Tribal Court made an error in interpreting the law or a mistake in procedure that affected the outcome of a case may seek review in the Court of Appeals of any final order, commitment, or judgment of the Tribal Court. The Tribe may not appeal a not guilty jury verdict from a criminal case.
2. Appeal from Orders Not Yet Final: An aggrieved party may seek review of acts of the Tribal Court that are not final by filing a notice with the Court of Appeals for permission to appeal. Permission to appeal shall be granted only if the Tribal Court has committed an obvious error that: (a) would render further proceedings useless; or (b) substantially limits the freedom of a party to act.
3. Scope of Review: The Court of Appeals shall limit its review to: (1) the record of the proceedings from the Tribal Court, (2) errors of law and procedure raised by the appellant in his or her written brief, and (3) oral argument presented at a hearing before the Court of Appeals.

7.3 - FILING AND SERVICE OF DOCUMENTS

The filing and service of all documents and other filings other than the Notice of Appeal shall conform with Rule 5.7 above.

7.4 - NOTICE OF APPEAL

1. Any party who wishes to appeal the judgment of the trial court shall file a written notice of appeal with the clerk within 30 days after the judgment is final. In a civil case, if the Tribe is a party, the period within which the notice of appeal must be filed shall be 60 days. If a party first asks for a new trial, rehearing, or reconsideration and the motion is denied, the 30-day time limit shall be counted from the day when the motion is denied.
2. Filing Fee: A filing fee of \$35 must accompany any notice of appeal. The chief judge of the Court of Appeals may waive the filing fee for good cause shown, in his or her

discretion, upon written request of the party. The Tribe shall not be required to pay any filing fee.

3. Content of Notice of Appeal: A notice of appeal or notice for permission to appeal shall be captioned as such and shall:
 - a. Name the parties and their spokespersons, if any;
 - b. State the case number, date, and nature of the decision appealed from;
 - c. Specify those parts of the decision that the party wants reviewed; and
 - d. List each error of law or procedure that the appellant claims was committed by the Tribal Court and its effect on the outcome of the case.
4. Notice of Appeal – Service: The appellant shall have a copy of the notice served on all parties, within the 30-day time limit for filing the notice of appeal. The appellant shall be responsible for returning an affidavit of service to the Court.

7.5 - ACCEPTANCE OF REVIEW

1. Acceptance of Review of Appeals from Final Orders: The court clerk shall provide the clerk of the appellate court a copy of the notice of appeal and affidavits of service filed by the appellant. The chief judge of the appellate court shall review the documents and shall accept the appeal on behalf of the Court of Appeals provided:
 - a. The notice of appeal was filed within the required time limit, and
 - b. The notice of appeal substantially complies with the requirements listed herein regarding appeals.

The Chief Judge shall notify the parties within 45 days whether the appeal is accepted or is dismissed for failure to meet the requirements of this section.

2. Three-Judge Review of Decision to Dismiss Appeal from Final Order: A party may make a written request to the Court of Appeals that the full three-judge panel reconsider the chief judge's decision to dismiss an appeal under subsection 1 of this section. The request must be filed within five business days from the date the notice to dismiss the appeal is served on the party. The decision of the three-judge panel shall be final.
3. Acceptance of Review for Appeal by Permission: The clerk of the appellate court shall provide the chief judge of the Court of Appeals with a copy of each notice for permission to appeal filed under section 7.2.2. The chief judge shall determine whether the request to appeal shall be granted, and may convene a hearing on the motion to appeal. The chief judge shall give written notice of his or her decision to the parties within 45 days. Denial of a motion for permission to appeal shall not affect a party's right to appeal under section 7.2.1 of these Rules of Appellate Procedure.

7.6 - STAY OF JUDGMENT PENDING APPEAL

The appealing party may request that the Court of Appeals stay enforcement of the judgment appealed from pending resolution of the appeal, but only after having sought a stay from the trial judge under section 6.28 above, for stay of judgment in a criminal case, or under section 5.15.4 above, for stay of judgment in a civil case.

7.7 - BOND

The trial judge may require the party who appeals a judgment to deposit cash or other security with the court while the appeal is being processed if there is a clear showing that some security is needed to guarantee that the court's judgment will be enforceable later. The security required shall not be greater in value than the amount of the judgment or fine imposed by the trial court, plus costs.

7.8 - TRIAL COURT RECORD

1. The record on appeal shall be composed of all papers filed in a case plus the tape recordings, transcripts, or both, of all court hearings in the case.
2. Upon receipt of a notice of appeal, the clerk shall make sure that the case record is complete and in order, and shall make the record available to all parties for inspection and for copying at the parties' expense. The court may waive a party's obligation to pay copying expenses if justice would so require.

7.9 - APPEAL JUDGES AND CLERK

1. For each case that is appealed, a panel of three judges shall hear the appeal. None of the judges shall have participated in the case at the trial level and none of them shall have personal knowledge of or interest in the case. The clerk of the appellate court shall designate a three-judge panel from the appellate court judges approved by the Business Committee to hear an appeal, from which a chief judge shall be designated.
2. The Business Committee may designate a clerk of the Court of Appeals. If no clerk of the Court of Appeals has been designated, the clerk of the Tribal Court shall simultaneously serve as the clerk of the Court of Appeals. If the Tribe should contract with an intertribal court for appellate court services and that intertribal court has a clerk, that person may act as the clerk of the Court of Appeals.

7.10 - SENDING THE RECORD TO APPEAL JUDGES

1. At the same time as the clerk sends or gives a copy of the notice of appeal to the parties, the clerk shall also send a copy to the clerk of the appellate court.
2. Not more than ten days after the notice of appeal is delivered to the appeals court clerk, the Tribal Court clerk shall deliver a copy of the case record to the appeals court clerk.

7.1 - SCHEDULING

After consulting with the two associate judges and the court clerk, the chief judge of the appellate panel shall schedule a hearing at which the parties' arguments on appeal will be considered. The hearing shall be scheduled at least 45 days and not more than 90 days after acceptance of the appeal under section 7.4 above, unless the parties agree otherwise or good cause is shown for an extension of the time limit. The appeals court shall set a schedule for submission of briefs and serve it on the parties as part of the notice that it has accepted review of the appeal. The court may set a page limit for briefs. The appellant may waive oral argument.

7.12 - BRIEFS

1. The parties to an appeal shall file with the Court of Appeals written briefs or statements in support of their position on the appeal and serve a copy thereof, by mail or personal delivery, on all parties.
2. An appellant shall be permitted 28 days after service of the appeals court's acceptance of review in which to file and serve its opening brief.
3. The respondent shall be permitted 28 days after service of appellant's opening brief in which to file and serve a response brief.
4. The appeals court may in its discretion permit respondent to file a reply brief, which shall be filed and served within ten days after service of the response brief.
5. All briefs shall be filed with a certificate of service on all parties.

7.13 - RECORD ON APPEAL AS BASIS FOR DECISION

Cases appealed in accordance with these rules shall be decided on the basis of the trial court record, the written briefs filed in the appeal, and any oral arguments presented by the parties before the Court of Appeals.

7.14 - MOTIONS

1. Parties may file written motions in an appeal to address questions of procedure or request court action during an appeal. The filing of a motion shall not operate to stay any schedule set by the appeals court unless the court so orders.
2. A party who makes a motion under this section shall serve a copy of the motion on all other parties, by mail or by personal delivery, on the same day the motion is filed with the appeals court clerk. Other parties may respond to the motion within five days after receiving a copy.
3. The chief judge of the appeals court panel shall rule on all motions, and may consult with the other panelists in doing so.

7.15 - DISMISSAL OF AN APPEAL

1. On the request of the appealing party, an appeal may be dismissed at any time. The court shall order the appealing party to pay all costs of an appeal dismissed under this subsection.
2. If the appeals court determines that an appeal in a civil matter is frivolous or filed in bad faith, it shall dismiss the appeal and charge all costs to appellant.

7.16 - HEARING; ORAL ARGUMENT

1. At the time set for hearing and oral argument on appeal, the parties may present orally any arguments relevant to the issues raised by the appeal. The party who appealed shall speak first and shall have a chance later to respond briefly to any remarks made by the other parties. The judges may set limits on the time each party is allowed to speak. The hearing shall be recorded.
2. The court may order, upon motion of a party or its own motion, that a hearing or oral argument be conducted telephonically, where any participant, including the judges, may participate via telephone.

7.17 - JUDGMENT

1. The appeals court panel may deliberate as appropriate to reach a decision on the appeal. The decision may be made by a majority vote of the judges.
2. The appeals court may dismiss an appeal, reverse the trial court decision in whole or in part, order a new trial, or make any other ruling that disposes of the issues raised by the appeal.

3. The appeals judges shall produce a written decision disposing of the appeal, and provide the decision to the clerk of the appellate court. The clerk shall then deliver a copy of the decision to all parties.

7.18 - COSTS

1. Costs on appeal are those incurred by a party in having the record copied, costs of service, the premiums paid for any appeal bonds, and the fee paid for filing the appeal. Costs of review shall be determined and awarded by the Court of Appeals.
2. Appellant shall pay the costs of review if the appeal is dismissed or if the judgment is affirmed. Respondent shall pay the costs if the judgment is reversed. In any other case, the costs shall be awarded only as ordered by the Court of Appeals.
3. The chief judge of the Court of Appeals may, in his or her discretion, waive all or part of the costs incurred, if justice so requires. The Tribe shall not be assessed costs unless specifically authorized in an ordinance or resolution of the Business Committee or in a contract.

VIII. PETITION FOR RELEASE FROM CUSTODY

8.1 - RIGHT TO PETITION

1. Any person who is being held in the custody of tribal law enforcement officers or is confined under an order of the Tribal Court or any other tribal action may petition the Tribal Court for release on the ground that the confinement is in violation of the rights guaranteed in the Tribe's Constitution or the Indian Civil Rights Act.
2. A petition for release made under these rules must be in writing and must be mailed or delivered to the clerk of the court. The clerk shall immediately deliver the petition to a judge of the Tribal Court.
3. A petition for release shall contain the following information:
 - a. Name of the petitioner;
 - b. Name of the person who or entity that is responsible for keeping petitioner in custody;
 - c. The place where petitioner is being held;
 - d. The beginning date of confinement and the estimated ending date;
 - e. The authority for keeping petitioner in custody, if known; and
 - f. The reasons why petitioner believes the confinement is illegal.

8.2 - POWER TO ORDER RELEASE

Any judge of the Tribal Court shall have power to order a person released from custody, as requested under this rule, if the judge finds that petitioner is held in violation of the rights guaranteed in the Tribe's Constitution or the Indian Civil Rights Act.

8.3 - RESPONSE TO PETITION

1. Immediately after receiving a petition for release filed according to these rules, the judge shall order the person who or entity that has custody of the petitioner to respond. The judge shall send the responding party a copy of the petition along with the order to respond.
2. No later than five days after he or she has received the judge's order and the petition for release, the person who has a petitioner in custody shall file a response by sending it or delivering it directly to the judge. The responding party shall also send a copy of the response to the clerk and a copy to the petitioner. The response shall state the reason why petitioner is in custody.

3. If the petitioner is in custody under a Tribal Court order or conviction, the responding party shall include a copy of the order or judgment with the response.

8.4 - HEARING DATE

1. Upon receipt of a response to the petition for release, the judge shall set and shall notify all parties of a date for a hearing on the petition. The date shall be within ten days after the judge receives the response.
2. At or before the hearing, petitioner may submit any additional written material relevant to the petition and the response.

8.5 - EVIDENCE

At the hearing, the judge may take additional testimony, if necessary, or may ask the parties to present additional arguments.

8.6 - BAIL

The judge may, upon good cause shown, order petitioner released before hearing on the petition. The judge shall set any reasonable conditions necessary to guarantee that petitioner will appear at the hearing and that the safety of the community and the petitioner are ensured during the pendency of the appeal.

8.7 - PRESENCE OF PETITIONER

Unless the petitioner has been released on bail or other terms before the hearing, the responding party shall bring the petitioner to court at the time of the hearing.

8.8 - PETITIONER BARRED BY PREVIOUS DECISION

No petition filed under this rule shall be considered if all the issues raised in the petition have already been considered and finally decided by the Tribal Court or a court of the United States, or could have been raised and decided in a prior proceeding in the Tribal Court.

8.9 - APPEAL

Petitioner may appeal the denial of a petition for release from custody according to the rules of appellate procedure.

IX. ENFORCEMENT

9.1 - GENERAL PROVISIONS

The Business Committee may order any commissioned law enforcement officer to act on behalf of the court for enforcement of codes and court orders.

9.2 - APPOINTMENT OR CROSS-DEPUTIZATION

The Business Committee or tribal police chief shall have the authority to appoint or cross-deputize enforcement officers to act as lawful deputies to enforce the provisions, ordinances, and all statutes promulgated under tribal law in its entirety, including the criminal, traffic, and juvenile codes and all future amendments and additions to tribal law.

9.3 - REQUIREMENTS FOR APPOINTMENT OR CROSS-DEPUTIZATION

1. To be eligible for appointment or cross-deputization under section 9.2 above, an applicant:
 - a. Must be academy trained by a BIA recognized police training facility or equivalent state law enforcement training facility, and be at least 21 years of age and in the employ of fisheries enforcement as a fisheries officer or employed as a tribal police officer at the time of appointment;
 - b. Pass a background investigation, or be able to submit a background investigation acceptable to the tribal police chief with his or her application; and
 - c. When acting under or performing duties under appointment or deputization, be answerable to the tribal police chief.
2. The tribal police chief will maintain a complete file of fisheries enforcement officers and other law enforcement officers who are appointed or cross-deputized, and issue an identification card at the time of the appointment or cross-deputization.

9.4 - EXECUTION OF FOREIGN JUDGMENTS

Execution of a judgment from a court other than the Tribal Court shall be allowed in accordance with this ordinance if the judgment has been registered with the Tribal Court by filing a certified copy of the judgment with the court clerk, paying any necessary filing fee established by the court, and serving a copy on the judgment debtor. The court may conduct an inquiry regarding the validity of the foreign judgment under tribal law before giving effect to the judgment.

9.5 - COLLECTION OF MONIES DUE THE TRIBE

The court may, on the Tribe's motion or its own motion, use any method to recover monies due to the Tribe by civil and criminal defendants ordered to pay the Tribe, provided the method used does not violate a right guaranteed to the defendant. Methods the court may employ include use of a collection agency, exclusion, garnishment and seizing other payments due the defendant, eviction from tribal housing, and suspension of any privilege granted to the defendant by the Tribe, including driving privileges and privileges to hunt or fish under tribal treaty rights.