

# **RULES OF THE SKOKOMISH TRIBAL COURT**

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### **3.01.001 Clerk (Rule 1)**

(a) Before taking office, the court clerk shall state in the presence of the judge 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 influence the course of court proceedings, and will not reveal confidential matters which the clerk learns in the course of official duties.

(b) Duties of the court clerk include:

(1) Making and keeping records of all 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;

(2) Keeping a calendar of court hearing dates and deadlines, and helping with scheduling of court proceedings;

(3) Notifying the judges and parties, as required in these rules, of actions taken, hearings scheduled, and other developments requiring their attention during cases filed in tribal court;

(4) Receiving and recording money for fines and costs charged to parties in court cases; and keeping records of property seized, held for use as evidence, disposed of, and returned in the course of court proceedings;

(5) Participating in training programs identified as necessary by the court administrator;

(6) Maintaining for the use of court personnel and parties an up-to-date set of Rules of the Skokomish Tribal Court and the Skokomish Tribal Code;

(7) Maintaining a list of persons who are permitted to appear in tribal court as representatives for parties and witnesses;

(8) Maintaining a list of persons eligible to serve on juries, and summoning jurors as provided in these rules.

(c) The court clerk shall have authority to do the following:

(1) Administer oaths of persons who make out complaints and affidavits;

(2) Prepare and certify the official record of a court hearing;

(3) Sign and issue summonses for potential jurors and witnesses, as long as such summonses will be served within the Skokomish Reservation.

### **3.01.002 Court Records (Rule 2)**

(a) Official records of the Tribal Court shall be kept on the Skokomish Reservation in the clerk's office, and these records shall not be removed except with the permission of the chief judge or the administrator.

(b) All testimony and arguments given in open court shall be recorded electronically, stenographically, or by both means. Such records shall be part of the official record of each case and shall be kept by the clerk with other official records. A transcript shall be made of such record upon request of a judge, when a case is appealed, or at the request of a party. A party who requests a transcript shall bear the costs of

preparing it unless the judge excuses the party from paying.

(c) Records kept by the clerk shall include:

- (1) A calendar of scheduled court hearings;
- (2) A list of representatives permitted to appear in the tribal court;
- (3) A separate file for each lawsuit and criminal prosecution brought in the tribal court, with a copy of every document submitted in the case;
- (4) A payment ledger showing all funds received and disbursed in the course of each lawsuit or prosecution brought in tribal court;
- (5) A docket book which shows, 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.

(d) All official records of the tribal court shall be public records, available for inspection by any interested person, unless a tribal ordinance or an order of the court requires that a record be kept confidential.

### **3.01.003 Court Sessions (Rule 3)**

(a) All sessions of the tribal court shall be held on the Skokomish Reservation unless otherwise agreed by the parties.

(b) The court shall set and publish a schedule for regular court sessions. The schedule may include a regular time that the judge will consider motions.

(c) Unless otherwise provided in these rules, the time for trials and other hearings shall be set and recorded by the clerk, who shall consult with the court administrator and the judge, as appropriate.

(d) A police officer who serves a criminal summons or makes an arrest and a party who requests court action at a time other than a regularly scheduled court session shall have responsibility 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 in this section shall be mailed or delivered to all parties at least five days before the scheduled hearing.

### **3.01.004 Filing and Notice (Rule 4)**

(a) A copy of every complaint, summons, warrant, motion, written argument, agreement, order, or other document which records action taken by the parties and by the court during a case in tribal court shall be filed with the clerk.

(b) The clerk shall give a copy of every document filed in a court case to the judge who has responsibility for the case.

(c) A party who files any document with the court clerk in a lawsuit or criminal prosecution shall give a copy of the same document to every other party in the case. If a party is represented by an attorney or spokesperson, the document shall be given to that representative. Delivery of a copy as required by this rule may be made either by giving it to the party in person or by putting it in the mail.

(d) 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 written down, and the clerk shall give or send a copy of each such ruling to each party in the case.

#### **3.01.005 Timing (Rule 5)**

(a) Whenever a rule, an ordinance, or an order of the court requires that an action be taken within a certain number of days, the day of the event from which the time limit runs should not be counted; but the last day should be counted unless it is a Saturday, Sunday, or tribal holiday. When the last day is a Saturday, Sunday, or tribal holiday, the deadline shall be the first work day following the day that is not counted. Where the time limit is less than seven days, Saturdays, Sundays, and tribal holidays shall not be counted at all.

(b) When a time limit is counted from or to the time that notice is delivered to a person and the notice is delivered by mail rather than given directly to the person, it shall be presumed that delivery takes place three days after the notice is mailed.

(c) On request of a party, the judge may allow an extension of any time limit described in this rule, as long as the right to a speedy trial in criminal cases is not denied.

#### **3.01.006 Form of Pleadings (Rule 6)**

(a) Unless otherwise specified by the judge or in 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.

(b) 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.

#### **3.01.007 Court Behavior (Rule 7)**

(a) 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 make loud noises or speak out during a court session unless called as a witness.

(b) 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.

(c) Persons who violate this rule or any court orders intended to maintain order in the courtroom may be found in contempt of court.

#### **3.01.008 Absence of Judge (Rule 8)**

(a) In the event that the chief judge is disqualified from hearing a case, ill, or otherwise unavailable, the court administrator shall designate an associate judge to hear a particular case or to hear all cases during the chief judge's absence.

(b) In the event that all judges of the tribal court are unavailable, the tribal council shall appoint a judge or judges to serve temporarily as associate judges. The appointment shall be for a specified period no longer than six months.

#### **3.01.009 Compelling Witnesses to Appear (Subpoena) (Rule 9)**

- (a) Any party to a lawsuit or proceeding in Skokomish Tribal Court shall have the right to compel witnesses to appear in court on his or her behalf.
- (b) Upon request of a party or of a judge, the court shall issue a summons which commands a named person to appear in court and/or to bring certain evidence or documents to court.
- (c) The clerk may sign and issue summonses for witnesses if they are to be served within the Skokomish Reservation. In all other situations, the summonses shall be issued by and include the signature of a judge.
- (d) Every summons commanding a witness to appear shall be in writing and shall include the name of the court, the names of all parties, the time and place that the witness must appear, and a clear and detailed description of any documents or evidence which the witness is required to bring.
- (e) A summons issued as provided in this rule shall be delivered to the witness by a person named by the court for that purpose. The summons may be delivered either by giving it to the witness directly or by leaving it at the witness's residence or place of employment with a person at least 14 years old who lives or works there.
- (f) A person who delivers a summons to a witness shall promptly file with the clerk a copy of the summons and a written signed statement describing where, when, and how delivery was made.
- (g) Failure of a witness to obey a summons shall be grounds for holding the witness in contempt of court.
- (h) A witness who responds to a summons 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 the witness be paid reasonable travel and living expenses incurred in responding to the summons.

### **3.01.010 Costs (Rule 10)**

- (a) 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. Costs shall not be imposed on the Skokomish Tribe or any branch of the tribe unless specifically permitted by an applicable tribal law or agreement.
- (b) Costs shall include civil filing fees, any costs of delivering complaints and summonses, postage for court notice sent to the parties, and fees and expenses paid to witnesses and jurors but shall not include attorney's fees and the costs to each party of reproducing and delivering to other parties copies of pleadings other than the original summons.
- (c) No person shall be jailed because he or she is unable to pay costs.

### **3.01.011 Contempt of Court (Rule 11)**

- (a) Any person who is found by a tribal judge to have committed one of the following acts may be declared in contempt of court and punished by a fine no greater than \$500 or by imprisonment no longer than six months or both:
  - (1) Disobedience of a lawful court order, including a summons to appear as a witness and a summons to serve as a juror;
  - (2) Violent or disorderly conduct in the courtroom while court is in session;
  - (3) Repeated, willful disregard of court procedures demonstrating utter lack of respect for the court's authority and function.

(b) If a person charged with contempt of court commits the acts on which the charge is based in the presence of the judge, the judge may find the person guilty of contempt at the time of the act. In all other cases, the person shall be prosecuted according to the rules of criminal procedure for the Skokomish Tribal Court.

### **3.01.012 Achieving the Court's Purpose (Rule 12)**

(a) 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 which is being applied.

(b) The rules of procedure for the Skokomish Tribal Court shall be liberally interpreted and applied to achieve the following purposes: revealing the truth, treating all parties fairly and without prejudice, protecting individual rights guaranteed by the Indian Civil Rights Act and the Skokomish tribal constitution, resolving disputes efficiently.

(c) As long as a party does not waive unknowingly a right or protection guaranteed by tribal law, the parties and the court may agree to depart from procedures established in these rules in order to save time and expense while achieving the purposes of these rules and the tribal laws.

(d) 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 which will be followed.

(e) Judges and the administrator of the tribal court have a duty to tell the Skokomish tribal Council which additional rules are needed to govern common procedural questions faced by the court.

## **Rules Governing Representatives**

### **3.01.020 Right to Representation (Rule 20)**

Any party or person who appears in Skokomish Tribal Court may be represented by a lawyer or a spokesperson as long as the representative has applied for and been granted permission to represent persons in the court. The judge may appoint someone to represent a party or a witness if that person would be seriously prejudiced or handicapped by appearing without a representative and cannot afford to hire a representative.

### **3.01.021 Permission to Appear as Representative (Rule 21)**

(a) Any person at least 18 years old who is of good moral character may appear as a representative in Skokomish Tribal Court as long as he or she has applied in writing for permission, has paid the admission fee, has read the constitution and ordinances of the Skokomish Tribe and the Rules of the Skokomish Tribal Court, has been certified by the chief judge as qualified to appear, and has taken an oath to uphold the tribal constitution.

(b) Before a person is permitted to appear as a representative in the tribal court, he or she shall state before the chief judge: I have read and understand the tribal constitution, ordinances, and rules of the Tribal Court. I will obey the rules of the court, will uphold the tribal constitution, will respect the judges and officers of the tribal court, will not raise any claims or defenses which do not appear to be honestly debatable and just, and will be truthful at all times.

### **3.01.022 Admission Fee (Rule 22)**

In order to cover the cost of maintaining a list of representatives permitted to appear in 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 \$10.00.

### **3.01.023 Revocation of Permission to Appear (Rule 23)**

(a) Any representative who breaks the promises which he or she made upon admission to practice in the tribal court may be barred from appearing in court either permanently or for a period set by the judge.

(b) 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 longer than 30 days after the complaint and summons are delivered to the spokesperson. The decision of the judge after such hearing shall be final.

## **Rules of Judges' Conduct**

### **3.01.030 Scope of Rules (Rule 30)**

The following rules shall govern all judges of the Skokomish Tribal Court, including associate and temporary judges.

### **3.01.031 Contacts Outside the Court (Rule 31)**

(a) Except in open court, a judge shall not discuss a case or any judicial business related to a case which the judge is assigned to with a party in that case, a party's representative, or any person who has an interest in the case, unless all parties are present.

(b) A judge shall avoid informal contacts with tribal police in which judicial business is discussed.

(c) 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.

### **3.01.032 Conflicts of Interest (Rule 32)**

(a) A judge should disqualify himself or herself from hearing a case in which a close relative is a party or witness.

(b) A judge should disqualify himself or herself from hearing a case in which the judge has interests which may be affected by the outcome, has formed an opinion about the merits of the case, or has personal knowledge of facts which would prevent him or her from considering all sides impartially.

### **3.01.033 Fairness and Diligence (Rule 33)**

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

(b) 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 court.

(c) A judge shall be patient, courteous, careful, and conscientious in the performance of all official duties.

(d) A judge shall maintain order in the courtroom.

### **3.01.034 Independence (Rule 34)**

- (a) A tribal judge shall not engage in outside activity which would be inconsistent with the tribal court's status as an independent government branch. In particular, the judge shall not participate as a legislator or administrator in the tribal government.
- (b) A judge shall not be swayed by public criticism or clamor regarding his or her official actions.
- (c) A judge shall make no public comment on matters pending before the court except in the course of official proceedings.

## Rules of Evidence

### **3.01.040 Purpose (Rule 40)**

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.

### **3.01.041 General Rule (Rule 41)**

- (a) The rules of evidence used in state and federal courts shall not apply to hearings in the Skokomish Tribal Court. But where there is more than one kind of evidence about the same subject, the judge should hear the most reliable kind of evidence. In oral testimony, persons who testify from their personal knowledge, such as first-hand observation of or participation in the event described, shall be preferred as witnesses to persons who have second-hand knowledge of the event.
- (b) Evidence admitted in the tribal court must be related either to the issues before the court or to the weight and credibility which should be given to other evidence. When questioned by the judge or another party, the party who wishes to present certain evidence shall explain why he or she thinks the evidence is relevant. In a jury trial, the judge may hear argument out of the jury's presence about whether to admit challenged evidence in order to avoid prejudice to the objecting party.
- (c) When the relevance or reliability of evidence is challenged and the judge decides whether or not to use the evidence, the judge shall explain the decision and, if the evidence is used, state what importance the judge assigns to the evidence.
- (d) The judge may take notice of facts which are a matter of official public record, even if no party introduces them into evidence.

### **3.01.042 Self-Incrimination (Rule 42)**

- (a) The defendant in a criminal prosecution shall not be made to testify against his or her will. However, incriminating statements which the defendant made voluntarily out of court may be presented in court.
- (b) 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 which indicate defendant's credibility.
- (c) Every person who appears as a witness in Skokomish Tribal Court has the right to refuse to answer a question if the answer may tend to incriminate the witness.

### **3.01.043 Oaths (Rule 43)**

Before testifying in the tribal court, every witness shall first state before the judge, parties and spectators that he

or she will answer with the truth and nothing but the truth.

**3.01.044 Questioning Witnesses (Rule 44)**

(a) 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 is clearly hostile to the person asking questions.

(b) The judge shall determine the order in which parties or their representatives shall be allowed to question witnesses. The judge shall protect the witnesses from harassment or unnecessarily repetitive questioning.

(c) During the questioning of a witness, the judge may exclude witnesses who have not yet testified from the courtroom if this seems necessary to ensure that all witnesses will give truthful testimony.

(d) The judge may call and/or question any witnesses on his or her own initiative.

**3.01.045 Written Testimony (Rule 45)**

(a) Testimony of a witness may be presented in written form if the witness is unable to appear in person to testify, if the evidence presented in writing is not contradicted by other parties, or if the written testimony is offered to support a motion or an uncontested request for relief. Written testimony should show clearly who gave it and when the witness gave it. Testimony should be given under oath if possible.

(b) 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.

**Rules of Civil Procedure**

**3.01.050 Limitation on Actions (Civil Rule 50)**

(a) A civil lawsuit in Skokomish Tribal Court must be started no later than one year after the injury, breach of agreement, or other event which gives the plaintiff a basis for the suit.

(b) The year within which a civil lawsuit must be filed shall be counted from the date on which the injury or breach was first known to the injured party or should have been known to a reasonably aware person.

(c) 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.

**3.01.051 Commencement of a Lawsuit (Civil Rule 51)**

(a) A person who wishes to bring a civil lawsuit in Skokomish Tribal Court shall first file with the clerk a written complaint which describes the injury or breach at issue, names or describes the persons responsible for such injury or breach, and states the relief requested. Plaintiff shall sign the complaint. The clerk may assist plaintiffs in putting their complaints in writing.

(b) Within 30 days after plaintiff files a civil complaint, plaintiff shall cause a copy of the complaint, together with a notice that the defendants must respond within 20 days, to be delivered to all defendants named in the complaint. The complaint must be delivered by a person who has no stake in the outcome of the lawsuit. It may either be delivered by giving it to the defendant directly or by leaving it at defendant's residence or place of employment with a person at least 14 years old who lives or works there.

(c) Every person who files a civil lawsuit shall pay a fee of \$10.

### **3.01.052 Jurisdiction (Civil Rule 52)**

(a) The Skokomish Tribal Court shall have jurisdiction over all causes of action arising within the exterior boundaries of the Skokomish Indian Reservation, over all parties to such actions, and over the personal property of all parties to such actions.

(b) The Skokomish Tribal Court shall have jurisdiction over all causes of action arising outside the boundaries of the Skokomish Reservation, to the fullest extent authorized by Treaty or Federal law, at the tribe's usual and accustomed fishing grounds and stations, on open and unclaimed lands reserved to the tribe by treaty for hunting and gathering, and on lands and waters which are used for access to fishing, hunting, and gathering territories, over all parties to such actions, and over the personal property of all parties to such actions.

### **3.01.053 Defenses (Civil Rule 53)**

(a) Within 20 days after defendant receives a copy of a civil complaint, he or she must contact the court clerk and state whether he or she will appear in court to respond to the complaint. Defendants are encouraged but not required to submit a written answer to the complaint. If defendant does not submit a written answer, he or she should explain to the clerk the nature of the defense which will be presented; and the clerk shall then enter in the case file a notation describing defendant's answer.

(b) In addition to or as a way of raising a defense to the complaint, defendant may counterclaim against plaintiff, where appropriate, as long as the injury which defendant complains of occurred on the Skokomish Reservation.

### **3.01.054 Default (Civil Rule 54)**

(a) Failure of a defendant to answer within 20 days after a complaint is delivered shall be a default and provide grounds for judgment against defendant as asked for in the complaint. No judgment of default shall be made, however, unless the plaintiff makes a written motion for a default judgment and serves a copy of the motion on 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.

(b) 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.

### **3.01.055 Pre-trial Conference (Civil Rule 55)**

(a) In the interest of saving time, simplifying issues, and avoiding unnecessary litigation, the judge may schedule a pre-trial conference with all parties in each civil case. In general, the pre-trial conference should 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 just before trial.

(b) 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 are in agreement and areas where they disagree. The discussion shall have the following purposes:

(1) To identify and dispose of issues which may be resolved without trial:

(2) To narrow and focus issues of law which remain to be decided and to identify central facts which are still in dispute;

(3) To limit the number of witnesses and the evidence which will be presented so that testimony is not repetitious or irrelevant.

(c) No offer of settlement which is made by a party during a pre-trial conference 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.

### **3.01.056 Motions (Civil Rule 56)**

(a) Any questions regarding procedure or the rights of the parties which arise during a lawsuit and which are neither covered by these rules nor settled by agreement of the parties may be represented to the judge in a motion.

(b) Motions may be made in writing or orally. 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 and as a consequence of events at a trial or other hearing, the moving party shall notify other parties of the motion and hearing time at least five days before the motion is presented in court.

(c) Motions to dismiss the lawsuit because the court lacks jurisdiction or because the plaintiff has not stated a basis for relief may be made at any time. All other motions which, if granted, could eliminate the need for trial of all or some issues and motions which would determine the procedures used at trial should be made at least ten days before trial. The judge may keep a party from making a motion which could and should have been made early 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.

### **3.01.057 Order of Trial (Civil Rule 57)**

(a) 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:

- (1) Motions by either party regarding procedure at trial, evidence to be presented, jurisdiction of the court, or the sufficiency of a claim;
- (2) Evidence and statements presented by the party who filed the original complaint;
- (3) Evidence, statements, or motions presented by defendant(s);
- (4) Motions of either party which are based on events at trial;
- (5) Final remarks by both parties.

(b) The judge may announce a final decision at the close of trial or may issue a written decision at a later time.

### **3.01.058 Burden and Standard of Proof (Civil Rule 58)**

(a) Unless otherwise provided in the applicable ordinance, the burden of proving a civil claim shall be on the party who makes the claim.

(b) Unless otherwise provided in the 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.

### **3.01.059 Amendment, Withdrawal, Dismissal of the Complaint (Civil Rule 59)**

(a) 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 defendant.

(b) 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 may order a plaintiff who withdraws a complaint to pay all costs of the suit.

### **3.01.060      Discovery (Civil Rule 60)**

(a) 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 then make available to each other all information in each other's possession or control which can reasonably be expected to lead to admissible evidence.

(b) Methods of discovering the exchanging information may include but need not be limited to written questions, oral examination, requests for witnesses' names, requests for admissions, physical inspection of property, requests to perform scientific or physical tests, and requests for documents. The party who makes a request under this rule shall be as clear and specific as possible in describing what he or she wants.

(c) A party may refuse to make available the information requested pursuant to this rule if its release would cause the responding party or a third person undue hardship, would violate a confidence which it is tribal policy to protect, or would violate the party's right to be free from forced self-incrimination. 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 in order to protect confidential material, prevent unreasonable burden or expense to one party, or otherwise ensure fairness to all parties.

(d) 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 within ten days after he or she receives the request. Failure to respond is grounds for a court order requiring response.

### **3.01.061      Judgments (Civil Rule 61)**

(a) A judgment is a final order of the court which disposes of a claim in whole or in part. The judge may announce a judgment orally or in writing, at the time of hearing or after hearing; but no judgment is final or effective until it is recorded by the clerk in the docket book.

(b) 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 tribal law.

### **3.01.062      Preliminary Injunctions and Temporary Restraining Orders (Civil Rule 62)**

(a) 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 a substantial chance that he or she will win the suit and further demonstrates that he or she will suffer immediate and permanent loss or injury if the order is not issued.

(b) Unless otherwise stated in the injunction, a pre-trial injunction shall remain in effect until final judgment in the case.

(c) Except as provided in subsection (d) of this rule, no pre-trial injunction shall be issued unless the

party enjoined first has notice and an opportunity to be heard in court.

(d) A judge may issue a short-term order prohibiting or requiring particular action by a party without prior notice to the affected party when the party who requests such an order shows by affidavit or oral testimony that he or she will suffer permanent loss or injury if the order is not issued before the opposing party can be notified and heard.

(e) A short-term restraining order shall be effective only for the time period specified in the order but in no event for longer than ten days. A short-term restraining order may be renewed once for good cause.

(f) The judge may require a party who requests a restraining order or pre-trial injunction to provide security for any loss or injury which may be suffered if a party is wrongfully enjoined or restrained; but the judge shall not require such security from the Skokomish Tribe or any of its branches.

### **3.01.063 Proceedings After Judgment (Civil Rule 63)**

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

(b) 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:

(1) The original judgment was based on or reached as a result of fraud or mistake;

(2) There is new information available which 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;

(3) The court did not have jurisdiction over a party or over the subject matter.

(c) No later than ten days after judgment is final or after a motion made pursuant to subsection (a) of this rule is denied, a party may appeal an adverse judgment as provided in the Rules of Appellate Procedure.

(d) No civil judgment shall be carried out sooner than ten days after judgment is entered in the docket. A motion or appeal made pursuant to this rule shall automatically prevent enforcement of the judgment until the court has ruled on the motion or appeal.

### **3.01.064 Enforcement of Judgments (Civil Rule 64)**

A civil judgment of the tribal court awarding money or imposing a fine shall become a lien on any property of the defendant which is located within the court's jurisdiction. The lien may be foreclosed by seizure and sale of the property according to the following procedure:

(a) The judgment creditor or the tribe, as appropriate, shall ask the judge for an order of execution. The judge shall issue an order which directs a tribal law enforcement officer to seize property belonging to the judgment debtor. The property to be seized shall be described as specifically as possible in the order.

(b) The officer shall promptly carry out the order of execution by seizing any property described. The officer shall return a copy of the order to the court together with a signed statement indicating when and where the property was seized and describing the property. The officer shall deliver a copy of the order and an inventory of all property seized to the owner of the property and to the person who was in possession of the property at the time it was seized. If the owner of the property cannot be found, the officer shall post the order and inventory at the place where the property was found and at two public places on the reservation.

(c) If the judgment debtor pays the total amount of the judgment or fine plus interest of two percent each month on the unpaid balance plus the costs of enforcing the judgment within five days after the property

is seized pursuant to this rule, the property seized shall be returned to the owner. Otherwise the property shall be sold. Sale may be either by negotiation, if the sales price is at least market value of the property, or by public auction. Any money received from this sale in excess of that owed by the judgment debtor shall be returned to the debtor. The remainder shall be paid to the creditor or tribe, as required by the judgment.

### **3.01.065 Civil Forfeiture (Civil Rule 65)**

(a) The court may order forfeiture of the following kinds of property located within its jurisdiction:

- (1) Property which is made contraband by tribal law;
- (2) Property being used to violate or in violation of Skokomish tribal ordinance or regulation;
- (3) Property otherwise subject to forfeiture by specific tribal law.

(b) Forfeiture proceedings shall be in the nature of a civil suit against the property to be forfeited. The tribe shall file a petition for forfeiture and deliver a copy of the petition to all persons believed to have an ownership interest in the property at issue.

(c) Any time after a petition for forfeiture is filed, if the tribe demonstrates that there is probable cause to believe the property named is subject to forfeiture under tribal law, the judge may issue an order which directs tribal law enforcement officers to seize and hold the property pending resolution of the forfeiture suit.

(d) The tribe, through its law enforcement officers, may seize any property which is subject to forfeiture before filing a petition for forfeiture or obtaining an order of seizure in the following circumstances:

- (1) When a tribal law or regulation allows immediate seizure;
- (2) When the property presents an urgent danger to persons, property, or wildlife within the tribe's jurisdiction;
- (3) When the tribe has probable cause to believe that the property is subject to forfeiture and is likely to be removed from the tribe's jurisdiction if it is not seized immediately.

Whenever the tribe seizes property before it has filed and served a petition for forfeiture, it must file and serve the petition no later than five days after seizure takes place. At the time of filing or as soon after that as the judge can schedule a hearing, the tribe shall request an order of seizure as provided in subsection (c) of this rule.

(e) The tribal officer who seizes property pursuant to this rule shall prepare a complete list of all items seized. The officer shall attach a copy of this list to a notice which states the time and place of seizure, the name and address of the owner, if known, and the authority for seizure. The officer shall promptly deliver a copy of the notice and list to the court, to the owner of the property, and to the person in whose possession the property was found. If the owner of the property cannot be identified or located, the officer shall post the notice and list at the place where the property was found and at two other public places on the reservation.

(f) Pending the forfeiture trial, a person who presents satisfactory proof that he or she owns property which has been seized pursuant to this rule may gain possession of the property by posting a bond or cash deposit with the tribe. The bond or deposit shall be in an amount equal to the market value of the property. The amount and form of the bond shall be subject to approval of the tribal court. The court shall order the bond or cash forfeited if it is shown by a preponderance of the evidence that the owner used his or her property in violation of tribal law after posting the bond. If the court ultimately rules in the tribe's favor on the petition for forfeiture, the court shall order either the bond or the property itself

forfeited.

(g) Procedures and burdens of proof in a forfeiture proceeding shall be the same as in any civil suit, except that in cases where the property owner does not post bond and regain possession of the property trial of the principal issue in the case must be held no later than 30 days after the petition for forfeiture is filed. The property owner may voluntarily waive this right to a speedy hearing.

(h) If the court rules in favor of the property owner, all property seized or bonds deposited shall promptly be returned to the owner. If the court rules in favor of the tribe and orders the property forfeited, the court's order shall transfer title to the property to the Skokomish Indian Tribe. The tribe may then use or dispose of the property as it sees fit.

### **Rules of Criminal Procedure**

#### **3.01.070      Limitation of Prosecutions (Criminal Rule 70)**

No person shall be prosecuted for a criminal offense in Skokomish Tribal Court unless the prosecution is started within one year after the alleged offense occurred. For the purpose of meeting the deadline set in 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.

#### **3.01.071      Complaint (Criminal Rule 71)**

(a) In every prosecution a written complaint must be filed with the court. 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 arraignment 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 issue.

(b) A complaint prepared pursuant to this rule shall contain the following information:

- (1) The signature of the complaining witness given under oath.
- (2) A written description of the offense, including the time and place:
- (3) The name and/or description of the person accused of committing the offense;
- (4) The section of the Skokomish Tribal Code which has been violated.

(c) The court clerk may help a complaining witness prepare a written complaint.

#### **3.01.072      Arrest Warrants (Criminal Rule 72)**

(a) A tribal judge shall have authority to issue an arrest warrant when presented with a complaint which shows that probable cause exists to issue an arrest warrant when presented with a complaint which shows that probable cause exists to believe the person named in the complaint has committed an offense under tribal law.

(b) Every arrest warrant shall contain the following information:

- (1) The name and/or description of the accused person, with his or her address if it is known;
- (2) The name and a brief description of the offense charged, with the section of the tribal code which has allegedly been violated;

(3) The date that the warrant is issued;

(4) The judge's signature.

(c) The judge may issue a summons to appear rather than an arrest warrant.

### **3.01.073 Arrest Without Warrant (Criminal Rule 73)**

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

(a) The officer has an arrest warrant or knows for sure that the warrant has been issued;

(b) The person committed an offense in the officer's presence;

(c) The officer has probable cause to believe that the accused has committed an offense.

### **3.01.074 Summons Instead of Arrest Warrant (Criminal Rule 74)**

(a) Whenever there is a basis for arresting a person, a judge or law enforcement officer may instead issue a written summons which orders the accused person to appear in tribal court at a stated time.

(b) A summons issued pursuant to this rule shall contain the same information as an arrest warrant except that it may be signed by a police officer.

(c) A summons may be delivered by any tribal law enforcement officer or by anyone authorized by the judge. The summons may be delivered by giving it to the accused person directly or by leaving it at the accused's residence or workplace with a person at least 14 years old who lives or works there.

(d) 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.

(e) If the accused person fails to appear in response to a lawful summons, the judge shall issue a warrant for the accused's arrest.

### **3.01.975 Notification of Rights at Arrest (Criminal Rule 75)**

Every person arrested by a tribal police officer shall be told 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 representative.

The accused shall also be told that any statements he or she makes may be used against him or her in court.

### **3.01.076 Searches Without Warrant (Criminal Rule 76)**

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 under one of the following circumstances:

(a) During and in close relation to a lawful arrest;

(b) With the consent of the person whose body, property, or premises are being searched;

(c) When the officer has probable cause to believe the person searched is armed and dangerous;

(d) Of a moving vehicle and the officer has probable cause to believe it contains contraband or stolen property.

### **3.01.077 Search Warrants (Criminal Rule 77)**

(a) The tribal judge shall have authority to issue warrants commanding tribal officers to search the premises and property and seize property of any person within the tribal court's jurisdiction.

(b) No warrant for search and seizure shall be issued unless the judge is presented with a written, sworn statement which shows that there is probable cause to believe a search will discover stolen or contraband property, property which has been used or is being used to commit a crime, or evidence that a crime has been committed.

(c) A search warrant shall order a tribal law enforcement officer to search premises and/or property, which shall be described in the warrant as fully as possible, and to seize items which shall also be described as fully as possible. The warrant shall be signed by a judge.

(d) Warrants for search and seizure shall be carried out only by tribal law enforcement officers. A warrant shall be carried out within a time period stated in the warrant, and this time period shall not be longer than ten days. After carrying out a warrant, the officer shall file with the clerk a copy of the warrant and a written, signed statement describing the time the search was conducted and listing things seized pursuant to the warrant.

### **3.01.078 Disposition of Seized Property (Criminal Rule 78)**

(a) The police shall make a written list of all things seized in a search immediately after seizure. One copy of this list shall be left with the person from whom the things are taken, and one copy shall be filed with the court.

(b) Within ten days after property has been seized by police, the tribal court shall hold a hearing to determine what will be done with the property. When the person who claims ownership of the property or the person from whom the property was seized has been arrested or summoned to answer criminal charges and the charges are related to the search and seizure, the hearing referred to in this section may be combined with the trial of the charges as long as the trial is held within the ten-day limit or the accused waives the ten-day deadline.

(c) Upon satisfactory proof of ownership, property seized by police shall be returned to the owner, unless the judge finds that the property is illegal to possess or will be used as evidence in an upcoming case. Property held as evidence which is not also contraband shall be returned to the owner after final judgment. Property which is contraband shall become the property of the Skokomish Tribe, which may destroy it, sell it, keep it, or dispose of it as the judge orders.

### **3.01.079 Amendment of the Complaint (Criminal Rule 79)**

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.

### **3.01.080 Arraignment (Criminal Rule 80)**

(a) As soon as possible after a defendant is arrested, he or she shall be brought before a judge for an initial hearing, which shall be called the arraignment. When the defendant is in custody, the arraignment shall be held no later than 48 hours after arrest. When the defendant is out on bail or is given a summons in place of being arrested, the arraignment shall be held no later than the next regularly scheduled court

session. At defendant's request, part or all of the arraignment hearing may be postponed.

(b) At arraignment the judge shall first read the charges to defendant, including the section of the tribal code which defendant is accused of violating. The judge shall make sure that defendant understands what has been read. The judge shall also tell defendant the maximum penalty which may be given if the defendant is convicted.

(c) At arraignment, the judge shall advise defendant that he or she has the following rights:

- (1) The right to remain silent;
- (2) The right to trial by jury when the crime charged carries a possible jail sentence, unless the prosecutor, prior to plea, informs the defendant that there shall be no jail time imposed in the event of a successful prosecution;
- (3) The right to be represented by a lawyer or other spokesperson at defendant's expense;
- (4) The right to have the rest of the arraignment postponed if defendant wants to talk with a representative first;
- (5) The right to have the court order any witnesses against the defendant to appear and to testify at trial;
- (6) The right to question all witnesses against defendant;
- (7) The right to call witnesses on defendant's behalf; and
- (8) The right to a speedy, public trial.

### **3.01.081 Plea (Criminal Rule 81)**

(a) At arraignment, or as soon after that as the defendant has a chance to talk with a representative, the accused person shall state how he or she pleads in response to the charge(s). The accused may plead "guilty" or "not guilty".

(b) 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 bring in information which will help the judge to determine a fair sentence.

(c) If the accused person pleads not guilty, the judge shall set a trial date and a schedule for pre-trial motions and discovery. The judge shall also set bail or other conditions for the defendant's release before trial.

(d) If the defendant refuses to plead to the charges, the judge shall enter a plea of not guilty on the defendant's behalf.

(e) A representative for the defendant may appear at arraignment in place of the defendant and may enter a plea on the defendant's behalf.

### **3.01.082 Withdrawal of Guilty Plea (Criminal Rule 82)**

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

### **3.01.083 Bail (Criminal Rule 83)**

(a) Every person charged with a criminal offense has the right to be released while waiting for trial if he or she deposits cash bail with the court or meets other reasonable conditions designed to ensure that the accused will appear in court at any time it is lawfully required. 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, and release to the custody of another person.

(b) Any tribal law enforcement officer may set bail and permit an accused person to be released upon deposit of the bail. The judges shall prepare a bail schedule for offenses in the tribal code, and this bail schedule shall be used in setting the amount of cash bail required for defendants' release in all but exceptional cases.

(c) 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 shall bring the accused before a judge at the first opportunity so that the judge can determine the conditions under which accused should be released. In no event shall the bail hearing be held later than the arraignment.

(d) 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. But the judge may refuse to let a convicted person be released if it appears that release will result in danger to the community or to any person or that no conditions of release can reasonably guarantee the convicted person's reappearance.

(e) If the accused person violates any conditions set for his or her release from custody, the judge may declare any bail or security which has been deposited to be forfeited, may establish new conditions for the accused's continued freedom, and/or may order the accused person jailed. Upon conclusion of a case in which the defendant has deposited cash bail or other security, the clerk shall return such deposit to the defendant unless the court orders it forfeited.

(f) For certain kinds of minor offenses, the judges or tribal council may allow forfeiture of bail to operate as a plea of guilty, and the bail forfeited shall be recorded as a fine paid. Persons charged with such offenses shall sign a bail agreement which informs them that they have the choice of pleading guilty and paying a fine by simply forfeiting bail. Persons charged with such offenses who are given a summons in place of being arrested may enter a guilty plea by paying the amount of bail/fine set for that offense to the court clerk on or before the date they are summoned to appear. But when an accused person is charged with an offense of the kind described in this rule and has been found guilty of the same offense within the year just past, the arresting officer may deny the accused the option of forfeiting bail and may instead require accused to appear in court.

### **3.01.084 Motions During Arraignment (Criminal Rule 84)**

(a) Any defense or objection which 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 at arraignment.

(b) Motions which raise complaints about the way a prosecution was started must be made at arraignment or not at all. Such motions include motions to dismiss because of a defective complaint, a defective warrant, improper delivery of the summons, or an unnecessary delay in the arraignment.

### **3.01.085 Time of Trial (Criminal Rule 85)**

(a) Every person charged with a criminal offense in the Skokomish Tribal Court has a right to speedy trial.

(b) In no case shall trial be held more than 90 days after the arraignment unless the defendant asks for or agrees to delay and the judge approves.

### **3.01.086 Joining or Separating Defendants' Trials (Criminal Rule 86)**

(a) 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.

(b) 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.

### **3.01.087 Discovery (Criminal Rule 87)**

(a) Upon request of the defendant, at or before trial, the tribe shall give the defendant the following:

(1) The names of witnesses the tribe intends to present;

(2) Copies of or access to any documents, photographs, results and reports of examinations or tests, and objects which are within the custody and control of the tribe and which the tribe intends to use as evidence against the defendant or which may be relevant to the accused person's defense;

(3) Copies or written summaries of any statements made by defendant which the tribe intends to offer as evidence against the defendant.

(b) If the defendant requests information as provided in subsection (a) of this rule, then defendant shall give the tribe, upon the tribe's request, the names of defendant's witnesses, and copies of or access to all evidence which defendant intends to use.

(c) Nothing in this rule shall require a party to provide the other with reports, memoranda, or other internal communications which were made by the party or by his/her representative solely in preparation for trial, except items specifically listed in this rule.

(d) 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 within ten days after he or she receives the request. Failure to respond is grounds for a court order requiring response.

(e) If the parties disagree about whether a party is required to provide the information requested pursuant to this rule, the judge shall decide. The judge may impose reasonable conditions on the release of information requested under this rule.

### **3.01.088 Pre-trial Motions and Conferences (Criminal Rule 88)**

(a) Questions and disputes regarding procedure and any defenses, objections, or issues which 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 those motions which must be made at arraignment (see Rule 3.01.084) motions shall be made at the time and in the way provided in Rule 3.01.056.

(b) At any time after arraignment up to and including the beginning of trial, the judge may schedule an informal conference of the judge and all parties to consider questions of procedure and other matters which will promote a fair and efficient trial. Such pre-trial conferences shall be conducted according to Rule 3.01.055.

### **3.01.089 Order of Trial (Criminal Rule 89)**

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) After each party has presented evidence, the judge may allow the tribe to present evidence intended to rebut directly any evidence presented by defendant. The judge may then allow either side to present evidence which was mistakenly left out or unavailable earlier in the trial.

(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. Presentation of additional evidence is not appropriate at this time.

### **3.01.090 Burden of Proof (Criminal Rule 90)**

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

### **3.01.091 Presence of Defendant (Criminal Rule 91)**

The defendant shall be present at all proceedings on criminal charges unless the judge or these rules permit defendant's representative to appear on his or her behalf.

### **3.01.092 Jury Trials (Criminal Rule 92)**

(a) Every person accused of a crime which carries a possible jail sentence has the right to trial by a six-member jury unless the person is accused of a crime which is not punishable by imprisonment, or the prosecutor, prior to plea, informs the defendant that there shall be no jail time imposed in the event of a successful prosecution.. Criminal cases shall be heard by a judge unless the defendant asks for a jury trial. A request for a jury trial may be made at arraignment and must in all cases be made at least thirty (30) days before the scheduled trial.

(b) The following persons are eligible to serve as jurors in the Skokomish Tribal Court: every person at least 18 years old who lives or works within the Skokomish Reservation and is either a member of the Skokomish Tribe or a close relative of a Skokomish tribal member. Close relative means spouse, son, daughter, mother, father, brother, or sister. Skokomish tribal police officers and persons who are mentally or physically unable to perform a juror's duties are not eligible.

(c) The clerk of the court shall prepare and shall keep up to date a list of persons eligible to serve as jurors.

(d) When a defendant asks for a jury, the clerk shall draw the names of 18 persons by lot from the jury list. The clerk shall then send a summons 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. The summons shall be sent no later than five days before the trial date.

(e) 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.

(f) Of the potential jurors who are not excused from serving, the judge shall dismiss any person who is a close relative of a party 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. In order to find out whether a juror is prejudiced, the judge shall question the prospective jurors and may allow the parties to question prospective jurors. The judge shall give the parties a chance to say whether and why they think any of the prospective jurors is unqualified or prejudiced.

(g) After jurors are dismissed pursuant to Section (f) of this rule, each party shall dismiss without stating a reason half the number of jurors left over six. If an odd number of jurors is left, the judge shall dismiss the last one. If fewer than six persons are left, the trial shall be postponed until the clerk can summon twelve more persons as provided in Section (d) of this rule.

(h) 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.

(i) The jury shall discuss the case in secret until all members agree on a verdict. If a jury is unable to agree on a verdict, the judge shall dismiss the jury. If a majority of the hung jury voted to acquit defendant, the judge may dismiss the charges and forbid the tribe to refile the charges. Otherwise, upon the tribe's request, the judge shall order that a new jury be summoned and a new trial be held.

(j) Every person who is called for jury service may be paid for reasonable costs of traveling to court plus \$10 for every day that he or she sits as a juror.

### **3.01.093 Verdict (Criminal Rule 93)**

(a) 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.

(b) If a verdict of not guilty is announced, the judge shall record that defendant was acquitted, and the defendant shall immediately be released from custody.

(c) If a verdict of guilty is announced, the judge shall set a time for sentencing. If all parties agree, sentencing may take place immediately.

### **3.01.094 Sentencing (Criminal Rule 94)**

(a) Within a reasonable time after defendant is convicted or pleads guilty, the judge shall set punishment within the limits established for defendant's offense in the Skokomish code. The tribal prosecutor is given the authority under this ordinance to stipulate that no jail time will be imposed on a particular defendant in the event of a successful prosecution. The judge shall abide by any such stipulation if the tribal prosecutor exercised his or her authority in accordance with Rules 3.01.080 and 3.01.092 of this ordinance.

(b) At the judge's request or on their own, the parties may give the judge any information which should be considered in setting the punishment. Relevant information may include the circumstances of the offense and defendant's previous offenses, employment history, social history, attitude, needs, potential.

(c) Upon setting a penalty, the judge shall sign and file with the clerk a written judgment. The judgment shall state the defendant's name, the offense charged, the verdict, and the punishment given. When sentence is carried out, the clerk shall make a note of that and close the file.

### **3.01.095 Post-conviction Procedures (Criminal Rule 95)**

(a) A person who is convicted by a judge or by a jury may ask for a new trial within seven days after sentencing. The judge shall grant a new trial if the interests of justice require it.

(b) 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 tell the defendant about the right to ask for a new trial, the right to appeal, and the time limits for exercising these rights.

(c) If a convicted person appeals the conviction, the punishment shall not be carried out until and unless the appeal is denied. Upon receiving a notice that defendant appeals, the judge shall set conditions for releasing a defendant who is in custody until the appeal is decided.

### **Rules of Appellate Procedure**

#### **3.01.100 Scope (Appellate Rule 100)**

The Rules of appellate Procedure apply to appeals from all judgments of the Skokomish Tribal Court, both civil judgments and criminal judgments.

#### **3.01.101 Right to Appeal (Appellate Rule 101)**

Any person who claims, in good faith, that the Skokomish Tribal Court made a mistake in interpreting the law or a mistake in procedure which affected the outcome of a case shall have the right to appeal from the final judgment. The tribe, however, may not appeal a jury verdict of not guilty.

#### **3.01.102 Notice of Appeal (Appellate Rule 102)**

(a) Any person who wishes to appeal the judgment of the tribal court shall notify the clerk within ten days after the judgment is final. If a party first asks for a new trial, rehearing, or reconsideration and the motion is denied, the ten-day limit shall be counted from the day when the motion is denied.

(b) A party may notify the clerk that he/she appeals either orally or in writing. Within the next five days the clerk shall prepare a written notice of appeal and send or give a copy of it to the trial judge and to all parties. The notice of appeal shall contain the name of the parties, the case docket number, the date and nature of the judgment appealed from, and the reasons why the party appealing thinks the court made a mistake.

#### **3.01.103 Stay of Judgment Pending Appeal (Appellate Rule 103)**

(a) When a party appeals the judgment of the trial court, the judgment shall not be carried out until and unless the appeals court upholds the judgment. Injunctions, however, shall take effect unless the trial judge suspends them.

(b) Upon receipt of a notice of appeal and after the trial judge gives the parties an opportunity to be heard, the judge may set terms and conditions governing the release of a person convicted of a crime, the disposition of property which has been used as evidence or is the subject of the judgment, and other matters necessary to preserve the court's jurisdiction while the appeal is being considered.

#### **3.01.104 Bond (Appellate Rule 104)**

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.

#### **3.01.105 Record on Appeal (Appellate Rule 105)**

(a) The record on appeal shall be made up of all papers filed in a case plus the tape recordings and/or transcript made of all court hearings in the case.

(b) 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.

### **3.01.106 Appeal Judges (Appellate Rule 106)**

(a) For each case which is appealed, a panel of three judges shall be designated to hear the appeal. None of the judges should have participated in the case at the trial level and none of them should have personal knowledge of or interest in the case. The clerk or administrator shall select the names of three judges to hear an appeal by a system of regular rotation among available judges.

(b) Of the three judges on an appeal panel, the judge who has served longest as a tribal judge shall be designated senior judge.

### **3.01.107 Sending the Record to Appeal Judges (Appellate Rule 107)**

(a) 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 each of the three judges chosen to sit on the appeal panel.

(b) No longer than ten days after the notice of appeal is delivered to the appeal judges, the clerk shall deliver a copy of the case record to each of the three judges.

### **3.01.108 Scheduling (Appellate Rule 108)**

(a) After consulting with the two associate judges and the court clerk, the senior judge of the appeal panel shall schedule a hearing at which the parties' arguments on appeal will be considered. The hearing shall be scheduled no fewer than 30 days and no more than 90 days after the judges receive the notice of appeal.

(b) The clerk shall immediately notify all parties of the time and place of the hearing on appeal.

### **3.01.109 Briefs (Appellate Rule 109)**

The parties may, but shall not be required to, make their arguments on appeal in writing. If the party who appeals wishes to submit written arguments, he or she shall tell the clerk within ten days after appealing. The judge shall then notify all parties of a schedule for the filing of written arguments. The schedule shall require the party appealing to file written arguments first, giving both sides equal time to prepare their arguments and leaving at least ten days between the deadline for completing the last arguments and the scheduled court hearing.

### **3.01.110 Additional Evidence (Appellate Rule 110)**

Cases appealed pursuant to these rules shall be decided on the basis of the trial court record and any written or oral arguments presented by the parties. But the appeal judges may allow the parties to present additional evidence at or before the hearing if refusal to consider the evidence would result in a clear injustice.

### **3.01.111 Motions (Appellate Rule 111)**

(a) A party who wishes to raise a question of procedure or request court action during an appeal shall present the issue to the judges in a written motion which the party files with the clerk. The clerk may help any party put a motion in writing.

(b) The party who makes a motion pursuant to this rule shall give or send a copy of the motion to all

other parties on the same day as the motion is filed with the clerk. Other parties may respond to the motion in the same way within five days after receiving a copy.

### **3.01.112 Dismissal of an Appeal (Appellate Rule 112)**

(a) On the request of the appealing party, an appeal shall be dismissed at any time up to submission of respondent's written arguments or five days before the scheduled hearing, whichever is sooner. The court may order the appealing party to pay all costs of a dismissed appeal.

(b) If the appealing party requests that the appeal be dismissed after the deadline set in Section (a) of this rule, the judges may dismiss the appeal subject to the condition that the appealing party pay costs, if the dismissal will not prejudice any other party.

(c) If the judges determine that an appeal was filed frivolously and without good faith, they shall dismiss the appeal and charge all costs to appellant.

### **3.01.113 Hearing (Appellate Rule 113)**

At the time set for hearing 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.

### **3.01.114 Judgment (Appellate Rule 114)**

(a) The judges shall announce their decision on an appeal after discussing the case with each other. The decision on appeal may be by a majority vote of the judges.

(b) The appeals judges shall put their decision in writing and have a copy of the decision delivered to all parties.

(c) 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 which disposes of the issues raised by the appeal.

### **3.01.115 Costs (Appellate Rule 115)**

The appeals judges shall order the party who loses the appeal to pay costs, unless it appears that such an order would result in a clear injustice.

## **Petition for Release from Custody**

### **3.01.120 Right to Petition (Appellate Rule 120)**

(a) Any person who is being held in the custody of tribal law enforcement officers or is confined pursuant to an order of the Skokomish Tribal Court or any other tribal action may petition the Skokomish Tribal Appeals Court for release if he or she believes that the confinement is in violation of the rights guaranteed in the Skokomish tribal constitution and the Indian Civil Rights Act.

(b) A petition for release made pursuant to 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 appeals court selected according to Rule 3.01.106 of the Rules of Appellate Procedure.

(c) A petition for release shall contain the following information:

- (1) Name of the petitioner;

- (2) Name of the person who is responsible for keeping petitioner in custody;
- (3) The place where petitioner is being held;
- (4) The authority for keeping petitioner in custody, if known;
- (5) The reasons why petitioner believes the confinement is illegal.

**3.01.121 Power to Order Release (Appellate Rule 121)**

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

**3.01.122 Response to Petition (Appellate Rule 122)**

(a) Immediately after receiving a petition for release filed according to these rules, the judge shall order the person who 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.

(b) No later than five days after he or she receives 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 copy to the petitioner. The response shall state the reason why petitioner is in custody.

(c) If the petitioner is in custody pursuant to a tribal court order or conviction, the responding party shall include a copy of the order or judgment with the response.

**3.01.123 Hearing Date (Appellate Rule 123)**

(a) 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 not be later than ten days after the judge receives the response.

(b) At or before the hearing, petitioner may submit any additional written material relevant to the petition and the response.

**3.01.124 Evidence (Appellate Rule 124)**

Statements made in written material which is submitted pursuant to this rule shall be considered true unless the parties dispute them or unless the judge finds otherwise. At the hearing the judge may take additional testimony, if necessary, or ask the parties to present additional arguments orally.

**3.01.125 Bail (Appellate Rule 125)**

The judge may order petitioner released before a hearing on the petition. The judge shall set any reasonable conditions necessary to guarantee that petitioner will appear at the hearing.

**3.01.126 Presence of Petitioner (Appellate Rule 126)**

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.

**3.01.127 Petition Barred by Previous Decision (Appellate Rule 127)**

No petition filed pursuant to this rule shall be considered if all the issues raised in the petition have already been

considered and decided finally by the Skokomish Tribal Court or a court of the United States.

### **3.01.128 Appeal (Appellate Rule 128)**

Petitioner may appeal the denial of a petition for release from custody according to the Rules of Appellate Procedure.

## **UNCLAIMED PROPERTY**

### **3.01.130 Applicability of Section (Rule 130)**

(a) The provisions of this section are applicable to all types of personal property held by the Skokomish Public Safety Department which is not subject to civil forfeiture as stated in 3.01.065.

(b) "Department" as used in this section refers to the Skokomish Public Safety Department.

(c) "Director" as used in this section refers to the Director of the Skokomish Public Safety Department.

### **3.01.131 Methods of disposition-Notice-Sale, Retention, Destruction, or Trade (Rule 131)**

Whenever any personal property shall come into the possession of the Department in connection with the official performance of his duties and said personal property shall remain unclaimed or not taken away for a period of sixty days from date of written notice to the owner thereof, if known, which notice shall inform the owner of the disposition which may be made of the property under this section and the time that the owner has to claim the property and in all other cases for a period of sixty days from the time said property came into the possession of the Director's office, unless said property has been held as evidence in any court, then, in that event, after sixty days from date when said case has been finally disposed of and said property released as evidence by order of the court, said Director may:

(a) At any time thereafter sell said personal property at public auction to the highest and best bidder for cash in the manner hereinafter provided;

(b) Retain the property for the use of the Department subject to giving notice in the manner prescribed in 3.01.132 and the right of the owner, or his or her legal representative, to reclaim the property within one year after the receipt of notice, without compensation for ordinary wear and tear if, in the opinion of the Director, the property consists of firearms or other items specifically usable in law enforcement work: PROVIDED, that at the end of each calendar year during which there has been such a retention, the Director shall provide the Tribal Council and retain for public inspection a list of such retained items and an estimation of each item's replacement value. At the end of the one-year period any unclaimed firearm shall be disposed of safely;

(c) Destroy an item of personal property at the discretion of the Director if the Director determines that the following circumstances have occurred:

(1) The property has no substantial commercial value, or the probable cost of sale exceeds the value of the property;

(2) The item has been unclaimed by any person after notice procedures have been met, as prescribed in this section; and

(3) The Director has determined that the item is unsafe and unable to be made safe for use by any member of the general public;

(d) If the item is not unsafe or illegal to possess or sell, such item, after satisfying the notice

requirements as prescribed in 3.01.132, may be offered by the Department to bona fide dealers, in trade for law enforcement equipment, which equipment shall be treated as retained property for purpose of annual listing requirements of subsection (2) of this section; or

(e) If the item is not unsafe or illegal to possess or sell, but has been, or may be used, in the discretion of the Director, in a manner that is illegal, such item may be destroyed.

### **3.01.132 Notice of Sale, Form, Contents-Conduct of Sale (Rule 132)**

Before personal property shall be sold pursuant to this section, a notice of such sale fixing the time and place thereof which shall be at a suitable place, which will be noted in the advertisement for sale, and containing a description of the property to be sold shall be published at least once in an official newspaper in said county at least ten days prior to the date fixed for said sale. The notice shall be signed by the Director or his deputy. If the owner fails to reclaim said property prior to the time fixed for the sale in such notice, the Director or his deputy shall conduct said sale and sell the property described in the notice at public auction to the highest and best bidder for cash, and upon payment of the amount of such bid shall deliver the said property to such bidder.

### **3.01.133 Disposition of Proceeds (Rule 133)**

The moneys arising from sales under the provisions of this chapter shall be first applied to the payment of the costs and expenses of the sale and then to the payment of lawful charges and expenses for the keeping of said personal property and the balance, if any, shall be paid into the county current expense fund.

### **3.01.134 Reimbursement to Owner (Rule 134)**

If the owner of said personal property so sold, or his legal representative, shall, at any time within three years after such money shall have been deposited in the county current expense fund, furnish satisfactory evidence to the county treasurer of said county of the ownership of said personal property he or they shall be entitled to receive from said county current expense fund the amount so deposited therein.

### **3.01.135 Donation of Unclaimed Personal Property to Tribal Program (Rule 135)**

In addition to any other method of disposition of unclaimed property provided under this section, the Director may donate unclaimed personal property to a suitable Tribal Program. A Tribal Program receiving personal property donated under this section must use the property, or its proceeds, to benefit needy persons.