

TITLE 4
LUMMI NATION CODE OF LAWS
TRIBAL COURT RULES OF PROCEDURE

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Chapter 4.01 General Courtroom Conduct

4.01.010 Conduct

All court proceedings shall be conducted in a dignified and respectful manner. All persons addressing the Court shall rise and speak in a clear and courteous manner.

4.01.020 Court Decorum

The following rules shall govern court decorum requiring no interference or disturbance with the proceedings before the Court:

(a) A law enforcement officer or other tribal officer may be appointed court bailiff by the judge and the bailiff will open each session of court unless opened by the court clerk or judge, and be present to keep order in the courtroom at the judge's discretion.

(b) The public will be permitted in the courtroom during open trial sessions except that spectators may be prohibited from entering the courtroom during the taking of testimony without specific permission of the judge. The judge may sequester witnesses from trial proceedings upon the motion of a party for good cause shown.

(c) All men in the courtroom shall remove their hats. All persons shall be dressed in a clean, neat manner and no person shall smoke or chew gum in the courtroom.

(d) Loud or unusual noises, the use of profane language or disturbances of any kind will not be allowed in the courtroom.

(e) No one shall be allowed in the courtroom who appears to be under the influence of intoxicating liquor or drugs.

(f) Respect and courtesy shall be shown to the judge, parties and court officers at all times.

4.01.030 No Discussion With Judge

No witness or party to any case shall under any circumstance either before or during the trial attempt to discuss any case pending before the Court with any of the judges, except in open court and with the opposing party, and either the Clerk of the Court, the Court Administrator,

or one of the other judges present.

4.01.040 Swearing-in Witnesses

All witnesses shall be administered an oath by the Court as follows: "Do you swear (or affirm) to tell the truth in the matter now before you subject to penalty of perjury under the Laws of the Lummi Nation?"

Chapter 4.02 Evidence

4.02.010 Exhibits

All separate documents, photographs, papers, written or printed instruments of any nature shall be given separate exhibit numbers, with exhibits for the plaintiff numbered numerically and exhibits for the defendant marked alphabetically. In civil cases, all exhibits in the custody of the clerk, after the judgment becomes final or after final disposition of the action, shall be delivered or mailed by the clerk to the party offering the same or to his counsel. Any exhibits refused by a party or counsel may be destroyed or otherwise disposed of by the clerk.

4.02.020 Rules of Evidence

The rules governing the introduction of evidence under the Federal Rules of Evidence shall apply to the criminal or civil proceedings of this Court, except as expressly provided under this Code.

(a) Where particular evidence would be determinative in the outcome of a case, and would be admitted at trial but for the application of common law rules of evidence, the Court shall not be bound by common law rules of evidence but shall use its own discretion as to what evidence it deems necessary and relevant to the charge and the defense.

(b) The trial court, on its own motion or upon the request of the parties, may apply state rules of evidence in a case before it.

Chapter 4.03 Jury Trials

4.03.010 Rules Governing Jury Trials

(a) In any criminal case, a trial by jury may be requested by the defendant at the preliminary hearing or by written application to the Court within seven (7) days thereafter.

(b) A jury shall consist of six (6) persons and one alternate from a list of persons approved by the Lummi Indian Business Council (LIBC).

(c) In cases to be tried to a jury, the clerk shall draw by lot twelve names from the juror's list. Seven members shall then be seated. The parties shall then be permitted alternately to question the jurors as to their impartiality and fairness and the judge may excuse any juror if he feels in his judgment that the juror would not be completely fair and impartial.

(d) Each of the parties shall then have an opportunity to excuse not more than two (2) jurors without cause and any number of jurors for cause. A challenge for cause may consist of, but is not limited to:

(1) having a physical or mental defect which renders the juror incapable of performing his duties;

(2) having been a juror, a party, or witness in any civil or criminal case involving the same facts and parties, or a law enforcement officer;

(3) such family, business, or legal relationship with the defendant, or having such an opinion of guilt or innocence of the defendant, as would impair impartiality as a juror.

(e) Each of the parties shall then have an opportunity to excuse two (2) jurors for any reason, commencing with the plaintiff and alternating until each has exercised as many challenges as he wishes, not to exceed two (2). As a juror is excused, the clerk will draw the name of another juror to take his place, and the parties will alternately have an opportunity to examine the juror as to his fairness.

(f) When the jury has been seated, the juror's oath shall be administered by the judge.

(g) The verdict of the jury may be rendered by a majority vote of four (4) in a civil case, and a unanimous vote of six (6) jurors in a criminal

case. If, after substantial consideration, the jury is not able to reach a verdict by the majority vote required, then the jury shall be discharged, and the matter scheduled for a new trial. Alternate jurors shall not vote unless they fill a vacancy.

(h) Each juror shall be entitled to a fee for each day of jury service plus mileage for travel to and from the juror's home and the Court, according to the Court Fee Schedule.

4.03.020 Jury Duties

The Court may order the jury to view the premises where the offense or other material facts occurred. The Court may order the discharge of a juror who becomes sick or is otherwise unable to perform his duty and substitute the alternate juror. In the absence of an alternate and the failure of the parties to stipulate to continue the trial with five (5) or less jurors, the jury shall be discharged and a new jury shall be formed to hear the case.

4.03.030 Jury Instructions--Generally

In all jury cases, after final argument, the Court shall instruct the jury as to the particular section of the Lummi Code of Laws, or other applicable law that is involved in the case and read them the provisions thereof.

4.03.040 Jury Instructions--Civil

In a civil jury case, the Court shall instruct the jury that the plaintiff has the burden of proving his case by the greater weight of the evidence and that if they find that he has proved his case by the greater weight of the evidence, then their verdict should be for the plaintiff, but if, on the other hand, they find that he has not proved his case by the greater weight of the evidence, then their verdict should be for the defendant. The Court will give other instructions as are appropriate.

4.03.050 Jury Instructions--Criminal

In a criminal jury case, in addition to reading the particular section of the Lummi Code of Laws, or tribal enactment that may be involved, the Court shall instruct the jury that the defendant is presumed to be innocent and must be proven guilty beyond a reasonable doubt. If there is not a reasonable doubt that the defendant is guilty, then they should find him

guilty, but if they do not believe beyond a reasonable doubt that he is guilty, then they should find him not guilty. The Court will give other instructions as are appropriate.

4.03.060 Jury Instructions by a Party

In all jury cases, all parties shall propose instructions to the jury which may be allowed by the trial judge if he finds that such instructions further the interests of justice.

4.03.070 Jury Instructions--Final

In all jury cases, the judge shall instruct the jury that they shall retire to consider the matter and that each juror shall be given an opportunity to state his opinion, that they shall elect a foreman and that their decision shall be by a unanimous vote in criminal cases and at least a four (4) person majority in civil cases.

4.03.080 No Discussion with Jurors

No person, including members of the Court's staff, any of the parties or witnesses, or any other person, shall discuss with any known juror, any case pending before such juror, or which may come before such juror, either before or during the trial and any juror who has any personal knowledge about the case or who has discussed it with any of the parties, witnesses or court officials shall be excused by the judge.

Chapter 4.04 Counsel

4.04.010 Right to Counsel at Party's Expense

Each litigant in a civil case and every defendant in a criminal proceeding shall have the right to have counsel of his choice represent him at his own expense.

4.04.020 Right to Counsel

(a) Every defendant in a criminal proceeding shall have the right to have counsel appointed by the Court to represent the defendant at the expense of the Lummi Nation.

(b) Each parent or legal custodian of a minor child in a child dependency proceeding shall have the right to have counsel appointed by the Court to represent them at the expense of the Lummi Nation.

4.04.030 Appointment of Prosecutor

The LIBC may appoint counsel to represent the Lummi Nation in civil or criminal matters.

(a) No person shall be appointed as prosecutor unless the appointee is eligible to be admitted to practice before the Court as provided by these rules.

(b) The prosecutor is authorized to sign, file, and present any complaint, subpoena, affidavit, motion, or civil or criminal process on behalf of the Lummi Nation.

Chapter 4.05 Witnesses

4.05.010 Subpoenas

Every judge of the Lummi Tribal Court shall have the power to issue subpoenas for the attendance of witnesses either on his own motion, or by motion of any parties to the case. The subpoena shall bear the signature of the judge issuing it. Failure to obey a subpoena properly issued and served, as provided in this Code, is punishable as contempt of court.

4.05.020 Service of Subpoenas

Services of subpoenas shall be by any qualified member of the law enforcement staff, or other officer of the Court, or by any person qualified to serve process under this Code.

4.05.030 Witnesses

Witnesses shall be compensated for each day of trial that they are required to attend and mileage for travel to and from the witness's home and the Court, to be paid by the party who subpoenaed him, according to the Court's fee and mileage schedule approved by the LIBC or its designee. In criminal cases where the defendant is found to be indigent, the witness fees and mileage shall be paid by the Office of the Public Defender.

Chapter 4.06 Contempt

4.06.010 Contempt of Court

Any person may be charged with contempt of court for any of the following reasons:

(a) Disorderly, contemptuous, or insolent behavior, committed in immediate view and presence of the Court and directly tending to interrupt its proceedings or to impair the respect

due to its authority.

(b) Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of the Court.

(c) The unlawful refusal of any person to be sworn or affirmed, like refusal to answer any material questions except where the refusal is based on constitutional grounds.

(d) Willful disobedience of any process or order lawfully issued by the Court.

(e) Resistance willfully offered by any person to the lawful order or process of the Court.

(f) The publication of a false or grossly inaccurate report of the proceedings of any court.

(g) Any person who shall request a civil jury trial and fails to appear on the date the jury trial is scheduled.

4.06.020 Civil Contempt--Summary Process

A person violating LCL §4.06.010 (a), (b) or (e) may be summarily removed from the courtroom and is subject to immediate imposition of a civil penalty for contempt not to exceed the civil contempt penalty on the Court's fee and mileage schedule approved by the LIBC or its designee. If a civil penalty is imposed, the contempt shall not be purged until the civil penalty is paid.

4.06.030 Civil Contempt--Civil Process

A person violating LCL §4.06.010 (c), (d), (f) or (g) may be accused of civil contempt by the Tribal Prosecutor. Such an accusation must be made in a civil action. Upon a finding of liability, judgment in a matter of civil contempt may include, in addition to other orders which may be needed to remedy the contempt, an award of reasonable attorney's fees and costs incurred by the Lummi Nation in bringing the contempt action, and the imposition of a civil penalty not to exceed the civil contempt penalty limit established in the Court Fee Schedule.

4.06.040 Criminal Contempt--Disrupting Proceedings

Any person who refuses to abide by the rules of court decorum to the extent that his contempt for the proceedings is held to be immediate,

disruptive, and prevents the Court from being able to carry out its authority and duties, may be found to be in criminal contempt of court and detained by order of the judge. Civil contempt may also be found, in accordance with this Chapter.

4.06.050 Default on Fine--Order to Show Cause, Summons or Warrant, Seizure

When a defendant defaults in the payment of a fine or any installment thereof, the Court on its own motion or motion of the prevailing party shall order the defendant to show cause why he is not in contempt, and may issue a summons or an arrest warrant for the defendant's appearance. If good faith is shown, the Court may allow additional time for payment or revoke all or part of the unpaid fine; otherwise, the Court may order his imprisonment until the fine is paid. In such case, the defendant shall be credited towards the payment of the fine for each day served in confinement according to the Court Fee Schedule. The Court may order the seizure and sale of any personal property of the defendant found within the exterior boundaries of the Lummi Reservation or within the lands held in trust for the Lummi Nation by the United States regardless of location.

4.06.060 Appeal

Any person or spokesperson found guilty of contempt of court by the Tribal Court Judge may appeal in accordance with the procedures established in Chapter 1.08 of this Code. Such person or spokesperson shall have the right to a hearing on his conviction. The decision of a majority of the Appellate Panel shall be final.

Chapter 4.07 Choice of Law

4.07.010 Applicable Law

In all civil cases the Lummi Tribal Court shall apply, in the following order of priority, any applicable laws of the Lummi Nation, including, but not limited to, the Treaty of Point Elliott, the Lummi Constitution, the Lummi Code of Laws, regulations adopted pursuant to such Codes, and Tribal customary law; tribal case law; tribal custom or tradition; federal statutes; federal common law; state statutes; state common law; and international law.

4.07.020 Customs

Where any doubt arises as to the customs and usages of the Tribe, the Court may request the advice of persons known to be familiar with these customs and usages. Such persons shall be subject to examination and cross-examination as a witness.

Chapter 4.08 Privileges

4.08.010 Spousal Privilege--Exceptions

(a) A husband shall not be examined for or against his wife, without the consent of the wife, nor a wife for or against her husband without the consent of the husband; nor can either during marriage or afterward, be examined as to any communication made by one to the other during marriage, without the consent of the other.

(b) This privilege shall not apply in a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to a criminal action or proceeding against a spouse if the marriage occurred subsequent to the filing of formal charges against the defendant, nor to a criminal action or proceeding for a crime committed by the husband or wife against any child, if the husband or wife is the parent or guardian of the child.

4.08.020 Attorney and Client Privilege

An attorney or spokesperson shall not, without the consent of his client, be examined as to any communication made by the client to him, or to advice given to the client in the course of professional employment on behalf of the client.

4.08.030 Clergy Privilege

A member of the clergy or a priest shall not, without the consent of a person making the confession, be examined as to any confession made to him in his professional character.

4.08.040 Physician and Patient Privilege--Exceptions

(a) A physician, surgeon or osteopathic physician or surgeon, or registered nurse, shall not, without the consent of his or her patient, be examined in a civil action as to any information

acquired in attending such patient, which was necessary to enable him or her to prescribe or act for the patient.

(b) This privilege shall not apply:

(1) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse or the cause thereof.

(2) eighty-four (84) days after filing an action for personal injuries or wrongful death. In such case, the claimant shall be deemed to waive the physician-patient privilege. Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as a court may impose pursuant to court rules.

Chapter 4.09 Civil Infractions

4.09.010 Scope and Purpose of Rules

(a) Scope of Rules: These rules govern the procedure for all cases involving civil "infractions". Infractions are noncriminal violations of law defined by the Lummi Code of Laws or any other resolutions, ordinances or regulations of the Lummi Nation.

(b) Purpose: These rules shall be construed to secure the just and speedy determination of every civil infraction case.

4.09.020 Definitions

(a) Citing Officer. "Citing Officer" means a law enforcement officer or other tribal official authorized by law to issue a notice of infraction.

(b) Defendant. "Defendant" means a person named in a notice of infraction.

(c) Judgment. "Judgment" means any final decision in an infraction case, including, but not limited to, a finding entered after a hearing governed by these Rules, or after payment of a monetary penalty in lieu of a hearing.

(d) Notice of Infraction. "Notice of Infraction" means a document initiating an infraction case when issued and filed pursuant to the Lummi Code of Laws and these Rules.

(e) Plaintiff. "Plaintiff" means the government unit issuing the notice of infraction.

4.09.030 Notice of Infraction

(a) Civil Infraction Form. Civil infraction cases shall be filed on a form entitled “Notice of Infraction”.

(b) Contents. The notice of infraction shall contain the following information on the copy given to the defendant:

(1) The name, address, and phone number of the Lummi Tribal Court.

(2) The name, address, date of birth, sex, physical characteristics, and for a notice of traffic infraction, the operator’s license number of the defendant.

(3) For a notice of traffic infraction, the vehicle make, year, model, style, license plate number, and state in which licensed.

(4) The infraction which the defendant is alleged to have committed and the accompanying statutory citation or ordinance number, the date, time, and place the infraction occurred, the date the notice of infraction was issued, the name and, if applicable, the number of the citing officer.

(5) A statement that the defendant must respond to the notice of infraction within fourteen (14) days of issuance.

(6) A space for the defendant to sign a promise to respond to the notice of infraction within the time required in one of the ways provided in this Chapter.

(7) A space for entry of the monetary penalty which the defendant may pay in lieu of appearing in court.

(8) A statement that a mailed response must be postmarked not later than two (2) days prior to the day the response is due.

(9) A statement that the notice represents a determination that a civil infraction has been committed by the person named in the notice, and the determination shall be final unless contested as provided in this Chapter.

(10) A statement that a civil infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction.

(11) A statement of the options provided in this Chapter for responding to the notice, and the procedures necessary to exercise these

options.

(12) A statement that at any hearing to contest the determination the Lummi Nation has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the person may subpoena witnesses including the officer who issued the notice of infraction.

(13) A statement that at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction, the person will be deemed to have committed the infraction and may not subpoena witnesses.

4.09.040 Initiation of Infraction Cases

(a) An infraction case is initiated by the issuance, service, and filing of a notice of infraction in accordance with this Chapter.

(b) A notice of infraction may be issued, upon certification that the issuer has probable cause to believe, and does believe, that a person has committed an infraction contrary to law. The certification may be provided:

(1) By an enforcement officer. The infraction need not have been committed in the officer’s presence, except as provided by statute.

(2) By the prosecuting authority.

(c) A notice of infraction may be served either by:

(1) The citing officer, serving the notice of infraction on the person named in the notice of infraction, at the time of issuance.

(2) The citing officer or the prosecuting attorney, filing the notice of infraction with the Court, in which case the Court shall have the notice served either personally or by mail, postage prepaid, on the person named in the notice of infraction at his or her address. If a notice of infraction served by mail is returned to the Court as undeliverable, the Court shall issue a summons.

(d) When a notice of infraction has been issued, the notice shall be filed with the Lummi Tribal Court. The notice must be filed within forty-eight (48) hours after issuance of the notice,

excluding Saturdays, Sundays, and holidays. A notice of infraction not filed within the time limits of the section may be dismissed without prejudice.

4.09.050 Response to Notice of Infraction

(a) A person who has been served with a notice of infraction must respond to the notice within fourteen (14) days of the date the notice is personally served, or if the notice is served by mail, within twenty one (21) days of the date the notice is mailed.

(b) A person may respond to a notice of infraction by:

(1) paying the amount of the monetary penalty in accordance with the applicable law, in which case the Court shall enter a judgment that the defendant has committed the infraction;

(2) requesting a hearing to explain mitigating circumstances surrounding the commission of the infraction, in accordance with the applicable law; or

(3) requesting a hearing to contest the allegation that the defendant committed the infraction.

(c) A person may respond to a notice of infraction either personally or by mail. If the response is mailed, it must be postmarked not later than two (2) days prior to the date the response is due.

4.09.060 Failure to Respond

If the defendant fails to respond to a notice of infraction, the Court shall enter an order finding that the defendant has committed the infraction, and shall assess any monetary penalties provided for by law.

4.09.070 Scheduling of Hearing

(a) Upon receipt of a response submitted pursuant to this Chapter, the Court will schedule a hearing to determine whether there were mitigating circumstances surrounding the commission of the infraction. The hearing shall be scheduled for not less than fourteen (14) days, nor more than eighty-four (84) days from the date of written notice of the hearing date, unless otherwise agreed by the defendant in

writing.

(b) The Court shall send the defendant written notice of the time, place and date of the hearing within fourteen (14) days of the receipt of the request for a contested hearing. The notice of the hearing shall also include statements:

(1) advising the defendant of the defendant's rights at the hearing; and

(2) advising the defendant that failure to appear will result in the Court entering a judgment against the defendant finding that the defendant has committed the infraction, and assessing against the defendant any monetary penalties provided by law.

(c) The Court may schedule the mitigation hearing for the same time as the mitigation hearing of another infraction alleged to have been committed by the defendant. The Court may schedule the hearing on a mitigation infraction for the same time as the trial on a misdemeanor arising out of the same occurrence as the infraction.

4.09.080 Contested Hearings -- Preliminary Proceedings

(a) Subpoena. The defendant and the plaintiff may subpoena witnesses necessary for the presentation of their respective cases. The subpoena may be issued as provided in LCL § 4.05.020. If the subpoena is for a witness outside the jurisdiction of the Lummi Nation, a tribal judge must approve of the subpoena.

(b) Witness List. Upon request of the defendant, at least fourteen (14) days prior to a contested hearing, the plaintiff's lawyer shall provide the defendant or defendant's lawyer with a list of witnesses the plaintiff intends to call at the hearing. The list must be provided at least seven (7) days prior to the hearing. Upon request of the plaintiff, at least seven (7) days prior to a contested hearing, the defendant shall provide the plaintiff with a list of witnesses the defendant intends to call at the hearing. The list must be provided at least three (3) days prior to the hearing.

(c) Amendment of Notice. The Court may permit a notice of infraction to be amended at any time before judgment if no additional or different infraction is charged, and if substantial rights of the defendant are not prejudiced. A

continuance shall be granted if the defendant satisfies the Court that the additional time is needed to defend against the amended notice of infraction.

(d) Sufficiency. No notice of infraction shall be deemed insufficient for failure to contain a definite statement of the essential facts constituting the specific infraction, which the defendant is alleged to have committed, nor by reason of defects or imperfections which do not tend to prejudice substantial rights of the defendant.

4.09.090 Failure to Appear

(a) Entry of Judgment. If the defendant fails to appear at a requested hearing the Court shall enter a judgment against the defendant finding that the defendant has committed the infraction and assessing against the defendant any monetary penalties provided by law, including court costs.

(b) Setting Aside Judgment Upon Failure to Appear. For good cause shown and upon terms the Court deems just, the Court may set aside a judgment entered upon a failure to appear.

4.09.100 Procedure at Contested Hearing

(a) Generally. The Court shall conduct the hearing for contesting the notice of infraction on the record in accordance with applicable law.

(b) No Right to Jury Trial. A hearing held for the purpose of contesting the determination that an infraction has been committed shall be without jury.

(c) Representation by Lawyer. At a contested hearing, the plaintiff shall be represented by the prosecuting authority. The defendant may be represented by a lawyer or spokesperson at the defendant's own expense.

(d) Rules of Evidence. The rules of evidence otherwise applicable under the Lummi Code of Laws shall apply to contested hearings.

(e) Factual Determination. The Court shall determine whether the plaintiff has proved by a preponderance of the evidence that the defendant committed the infraction. If the Court finds the infraction was committed, it shall enter an appropriate order on its records.

If the Court finds the infraction was not committed, it shall enter an order dismissing the case.

(f) Admissibility of Notice of Infraction. The Court may consider the notice of infraction and any other written report made under oath submitted by the officer who issued the notice or whose written statement was the basis for the issuance of the notice in lieu of the officer's personal appearance at the hearing. The person named in the notice may subpoena witnesses, including the officer, and has the right to present evidence and examine witnesses present in court.

(g) Disposition. If the Court determines that the infraction has been committed, it may assess a monetary penalty against the defendant. The monetary penalty assessed may not exceed the monetary penalty provided for by law. The Court may waive or suspend a portion of the monetary penalty, or provide for time payments, or in lieu of monetary payment, provide for the performance of community service as provided by law. The Court has continuing jurisdiction and authority to supervise disposition for not more than one (1) year.

(h) Costs and Attorney Fees. Each party to a civil infraction case is responsible for costs incurred by that party. No costs or attorney fees may be awarded to either party in a civil infraction case.

4.09.110 Hearing on Mitigating Circumstances

(a) Generally. The Court shall conduct the hearing concerning mitigating circumstances in accordance with applicable law.

(b) Procedure at Hearing. The Court shall hold an informal hearing which shall not be governed by the Federal Rules of Evidence. Subject to the other provisions of these rules, all relevant evidence is admissible which, in the opinion of the judge, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness. The plaintiff and the defendant may each be represented by a lawyer or spokesperson. The defendant may present witnesses, but they may not be compelled to attend.

(c) Disposition. The Court shall determine whether the defendant's explanation of the events justifies reduction of the monetary penalty. The Court shall enter an order finding the defendant committed the infraction and may assess a monetary penalty. The Court may not impose a penalty in excess of the monetary penalty provided for by the law. The Court may waive or suspend a portion of the monetary penalty, or provide for time payments, or in lieu of monetary payment, provide for the performance of community service as provided by law. The Court has continuing jurisdiction and authority to supervise disposition for not more than one (1) year from the time of the hearing.

4.09.120 Appeals

A defendant may appeal a judgment entered after a contested hearing finding that the defendant has committed the infraction. The appellate procedures in Title 1 of the Lummi Code of Laws are applicable to such appeals.

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