

## TITLE 4. CIVIL PROCEDURE

### Chapter 4.4

#### TRIAL PROCEDURES

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**4.4.1. Standard of Proof.** The complainant in a civil case shall have the burden of proving his or her case by the greater weight of the evidence. (Prior code Ch. IV, Art. III, §1: Res. 122 §3.1, passed Dec. 18, 1972)

**4.4.2. Demand for Jury.** Except as otherwise provided in this code, civil actions shall be tried by a jury upon written request filed at least forty-five (45) days before the trial date and upon such party posting a fee or security in the amount of fifty dollars (\$50) to cover costs and disbursements in the case. Such fee may be waived by the Court upon a showing of good cause. The Tribe shall not be required to pay a fee or post security. (Prior code Ch. IV, Art. III, §2: Res. 122 §3.2, passed Dec. 18, 1972; amended by Res. 89-093 (part), passed Nov. 6, 1989; amended by Res. 94-154 (part), passed Oct. 10, 1994)

**4.4.3. Selection of Jury.** (a) A list of eligible jurors shall be prepared and certified to the chief judge by the tribal enrollment officer. The list shall be updated from time to time. Any member of the Suquamish Tribe of the Port Madison Indian Reservation at least eighteen (18) years of age and residing within Jefferson, King, Kitsap, Mason, Pierce, and Snohomish counties, Washington, shall be eligible to be a juror. A member may decline jury duty upon good cause shown to the judge.

(b) At least twenty-one (21) days before the trial, the clerk shall randomly select at least twenty-four (24) names from the jurors list. The clerk shall then notify those

whose names were drawn to be present for the trial at the time and place indicated in the notice. The jury shall then be impaneled pursuant to trial procedure.

(c) Every person who is required to attend court for selection or service as a juror shall be entitled to a fee of five dollars (\$5) per day for each day his or her services are required in court. (Prior code Ch. IV, Art. III, §3: Res. 122 §3.3, passed Dec. 18, 1972; amended by Res. 77-065, passed June 12, 1977; amended by Res. 89-093 (part), passed Nov. 6, 1989)

**4.4.4. Impaneling a Jury.** In cases to be tried by a jury, the clerk shall draw a lot of six (6) names from the jurors list. Those six (6) 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 shall excuse any juror if he or she feels in his or her judgment that the juror would not be completely fair and impartial. Each of the parties shall then have an opportunity to excuse three (3) jurors without cause commencing with the complainant and alternating until each has exercised as many challenges as he or she wishes not to exceed three (3). As a juror is excused, the clerk shall draw the name of another juror to take his or her place, and the parties shall alternately have an opportunity to examine such juror as to his or her fairness. (Prior code Ch. IV, Art. V, §1: Res. 122 §5.1, passed Dec. 18, 1972)

**4.4.5. 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?" (Prior code Ch. IV, Art. V, §2: Res. 122 §5.2, passed Dec. 18, 1972)

**4.4.6. Conduct of Trial.** Complainant shall make the opening statement setting out the claims against the defendant. The defendant shall have an opportunity to make a statement of his or her position. Upon the conclusion of such statement, the complainant shall call such witnesses and produce such exhibits as he or she may see fit. The defendant shall then have an opportunity to call such witnesses and produce such evidence as he or she may see fit. The complainant shall thereafter, in rebuttal, have an opportunity to call such witnesses and produce such evidence as he or she may see fit to rebut the evidence produced by the defendant. Both the complainant and defendant shall have the right to cross-examine witnesses produced by the other side. (Prior code Ch. IV, Art. V, §3: Res. 122 §5.3, passed Dec. 18, 1972)

**4.4.7. Evidence.** (Repealed). For evidence rules, see STC §3.8.12. (Prior code Ch. IV, Art. V, §4: Res. 122 §5.4, passed Dec. 18, 1972; amended by Res. 94-154 (part), passed Oct. 10, 1994)

**4.4.8. Final Argument.** Upon the conclusion of the evidence, the complainant shall be given an opportunity to argue his or her case. The defendant shall then be given an opportunity to argue his or her case, and the complainant shall be given an opportunity to make a closing argument. Further argument may be allowed at the Court's discretion. (Prior code Ch. IV, Art. V, §5: Res. 122 §5.5, passed Dec. 18, 1972)

**4.4.9. Judgment in Nonjury Case.** After final arguments in cases tried without a jury, the judge shall decide the case and render a judgment within a reasonable time. (Prior code Ch. IV, Art. VI, §1: Res. 122 §6.1, passed Dec. 18, 1972)

**4.4.10. Jury Instructions — Generally.** In all jury cases after final argument, the Court shall instruct the jury as to the particular ordinance, law, regulation, custom, code, or resolution that is involved in the case and read them the provisions thereof. (Prior code Ch. IV, Art. VI, §2: Res. 122 §6.2, passed Dec. 18, 1972)

**4.4.11. Jury Instructions — Civil.** In a civil jury case, the Court shall instruct the jury that the complainant has the burden of proving his or her case by the greater weight of the evidence and that if they find that he or she has proved his or her 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 or she has not proved his or her case by the greater weight of the evidence, then their verdict should be for the defendant. (Prior code Ch. IV, Art. VI, §3: Res. 122 §6.3, passed Dec. 18, 1972)

**4.4.12. Jury Instructions by a Party.** In all jury cases, either party may propose instructions to the jury which may be allowed by the trial judge if he or she finds that such instructions further the interests of justice. (Prior code Ch. IV, Art. VI, §4: Res. 122 §6.4, passed Dec. 18, 1972)

**4.4.13. 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 the opportunity to state his or her opinion, that they shall elect a foreman, and that their decision shall be by at least a five-to-one (5:1) majority in civil cases. (Prior code Ch. IV, Art. VI, §5: Res. 122 §6.5, passed Dec. 18, 1972)

**4.4.14. Verdict and Judgment.** After the jury has returned its verdict in open court with the parties present, the Court shall enter judgment upon such verdict. (Prior code Ch. IV, Art. VII, §1: Res. 122 §7.1, passed Dec. 18, 1972)

**4.4.15. Judgments.** In all civil cases, judgment shall consist of an order of the Court awarding money damages to be paid to the injured party, directing the surrender of certain property to the injured party, directing the performance of some other act for the benefit of the injured party, or any other remedy available under any ordinance or regulation of the Tribe. (Prior code Ch. IV, Art. VII, §§2, 3, 4: Res. 122 §§7.2, 7.3, 7.4, passed Dec. 18, 1972; amended by Res. 94-154 (part), passed Oct. 10, 1994)