

## Title 6. CRIMINAL PROCEDURE

### Appendix

#### SUQUAMISH TRIBAL COURT RULES OF CRIMINAL PROCEDURE \*

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\* Res. 94-152, passed Oct. 10, 1994, adopted the Suquamish Tribal Court Rules of Criminal Procedure.

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1.0. General; Interpretation.

1.1. These rules are made pursuant to authority conferred by §3.8.28 of the Suquamish Tribal Code and shall apply to all criminal actions brought in the Suquamish Tribal Court.

1.2. In the event of irreconcilable conflict between these rules and express provisions of the Tribal Code, the Tribal Code shall govern. The Court shall have discretion to determine whether such a conflict exists. The decision of the Court in such cases shall be final and binding in the absence of manifest abuse of discretion.

1.3. The Court shall have discretion to modify these rules in a particular matter when the interest of justice requires, subject, however, to the express requirements of the Tribal Code.

1.4. These rules may be cited as the Tribal Court Rules (TCR).

2.0. Procedures prior to Arraignment.

2.1. Complaint; Citation. (a) All criminal actions shall be initiated by issuance of a complaint or citation.

(b) Charges brought by the tribal prosecutor shall be initiated by filing and serving upon each defendant a written complaint which shall be a plain, concise, and definite written statement, signed by the prosecuting attorney or a tribal attorney, setting forth the essential facts which constitute the offense(s) charged and a citation to the provision(s) of the Tribal Code which define the offense(s) charged. (See STC §6.1.1.)

(c) Charges brought by the tribal police shall be initiated by serving upon the defendant a citation in standard printed form on which all information called for by the form shall be provided, including but not limited to the provision(s) of the Tribal Code which define the offense(s) charged. Each such citation shall include an appearance date and time which shall be the next scheduled regular court date which is at least fourteen (14) days but no more than forty (40) days from the date of the citation. Regular court dates shall be the second and fourth Tuesdays of each calendar month at 9:00 a.m. unless the police have been advised otherwise in writing by the court clerk. (See STC §6.1.19(a)–(b).)

2.2. Warrant of Arrest or Summons upon Complaint. (a) Issuance of Arrest Warrant. If a complaint has been filed and the penalty for the offense charged may include a jail sentence, the Court, on its own motion or on motion of the tribal prosecutor, may direct the clerk to issue a warrant for the arrest of the defendant unless the defendant has already been arrested by the tribal police on any charge pursuant to the Tribal Code. Such warrant must be supported by an affidavit of circumstances which, in the opinion of the Court, establish (1) probable cause that a charged offense has been committed and (2) probable cause to believe either that the defendant will not appear in response to a summons or that arrest is appropriate in order to prevent bodily harm to the accused or to any other person. The finding of probable cause may be based in whole or in part on evidence which is hearsay or otherwise inadmissible under the rules of evidence, and the ultimate admissibility of such evidence at trial shall not be cause for objection to the warrant. A warrant may be issued without affidavit if a defendant has failed to appear in response to a summons previously issued in the same cause. A warrant may also be issued upon affidavit by the tribal police that it has not been possible to serve an earlier summons because the defendant's whereabouts are unknown or the defendant appears to be evading service of process. Each warrant shall be accompanied by a true copy of the complaint on which it is based.

(b) Arrest at Time of Citation. A tribal law enforcement officer may arrest a person for violation of the Tribal Code without a warrant if the alleged offense is committed in the presence of the officer or if the officer has probable cause to believe the person has committed the offense and would be likely to flee the jurisdiction before a warrant could be issued and served. A tribal law enforcement officer may also arrest a person without citation or warrant pursuant to STC §6.1.6. (See STC §§6.1.5–6.)

(c) Summons in Lieu of Warrant. Unless a warrant is issued pursuant to paragraph 2.2(a), the court clerk shall, within three (3) business days after filing of the complaint, issue a summons instead of a warrant to each defendant directing him or her to appear for arraignment on a date and at a time specified in the summons, which shall be not less than fourteen (14) days from date of issuance of the summons. Each summons shall be accompanied by a true copy of the complaint on which it is based.

(d) Form of Warrant. Every arrest warrant shall be in writing in the name of the Tribal Court, signed by the Tribal Court judge, and dated the date of issuance. It shall name the defendant and the nature of the charge, recite that the Court has found

probable cause to believe that the defendant has committed the alleged offense, and direct the tribal police or any authorized law enforcement agency to arrest and hold in custody any defendant pending arraignment pursuant to §3 of these rules.

(e) Form of Summons. Every summons shall be in writing in the name of the Tribal Court, signed by the court clerk, and dated the date of issuance. It shall name the defendant and the nature of the charge and shall summon the defendant to appear before the Court at a stated time and date not less than fourteen (14) days from the date of issuance. The summons shall advise the defendant that failure to appear as commanded may result in issuance of a warrant of arrest.

2.3. Execution of Warrants and Summonses. (See STC §§6.1.3–4.) (a) Service of Warrants. Each warrant shall be directed to the chief of the tribal police and may be executed by him or her or by any other officer of the tribal police or fisheries police.

(b) Delivery of Summons. A summons may be served at any place within the jurisdiction of the Tribal Court. A summons may be served by an officer of the tribal police or fisheries police or by certified mail, postage prepaid, from the court clerk to the defendant's last known address. For this purpose unless the clerk has actual knowledge of a different address, the defendant's last known address shall be considered to be the one on the defendant's tribal membership roll.

(c) Return of Service. Every person who effects personal service of a warrant or summons issued pursuant to these rules shall make a written return thereof to the Tribal Court affirming under penalty of perjury that the warrant or summons was duly served upon the defendant at the place and on the date and time set forth in the return. In the case of a summons by certified mail, the court clerk shall file a written affirmation under penalty of perjury that the summons was duly mailed to defendant on the indicated date and in accordance with these rules.

2.4. Search and Seizure. (Reserved; see STC §6.1.9.)

3.0. Arraignment; Bail.

3.1. Persons in Custody. A person in custody following arrest shall be arraigned before a judge of the Tribal Court within seventy-two (72) hours, excluding weekends and tribal holidays, unless released on standard bail as provided below. All other persons arrested but not in custody shall be arraigned within forty (40) days. (See STC §6.1.20.)

3.2. Release on Standard Bail. A person in custody may be released upon deposit of cash bail or posting of a surety bond in the standard amount established for the offense for which he or she was arrested. Standard bail is hereby established as ten percent (10%) of the maximum bail prescribed by Chapter 7.32 of the Tribal Code. If more than one offense has been charged, the standard bail shall be fifteen percent (15%) of the maximum bail prescribed for the most serious charged offense. The Court shall have discretion, prior to arraignment, to order release of a person in custody without posting bail or to authorize a reduction in bail from the standard amount. The pre-arraignment

release of a defendant on standard bail or reduced bail shall not prejudice the authority of the Court to establish a higher bail and/or conditions of release at the time of arraignment. On application of the tribal prosecutor, the Court may impose conditions of release in addition to the requirement of bail. (See STC §6.1.14.)

3.3. Procedure at Arraignment. (a) Instruction Regarding Rights. At the arraignment hearing, the Court shall first satisfy itself that the defendant understands the nature of the charge(s) brought by the Tribe, the potential penalties if guilty, and the defendant's basic rights protected under the Suquamish Tribal Code and the Indian Civil Rights Act. The Court may request the defendant to sign a written statement thereof.

(b) Representation by Counsel. The Court shall next determine whether the defendant wishes to consult an attorney or representative before entering a plea on the charges. If the defendant wishes to exercise this right, the Court shall then determine whether the defendant is eligible for a court-appointed attorney pursuant to §3.8.15 of the Tribal Code. In either event, the arraignment shall be continued to a specified later date to allow reasonable time for the retention or assignment of counsel and for the defendant's initial consultation with counsel. In such case, the "speedy trial" period shall not commence until the continuation date or such earlier date as the defendant may enter a "not guilty" plea. The defendant shall then be returned to custody or released on such conditions, including bail, as the Court deems appropriate. A defendant may request that a plea of "not guilty" be entered at the initial hearing and that counsel be retained or appointed thereafter. In such case, the "speedy trial" period shall commence with such initial hearing. (See STC §3.8.15.)

(c) The Court shall reserve the defendant's right to a jury trial until the pretrial or thirty (30) days before trial, whichever occurs first, at which time the defendant must demand a jury or the right is waived. (See STC §3.8.13.)

3.4. Release Pending Trial. (a) Following arraignment, a defendant may be released pending trial or further proceedings on such terms and conditions, including bail, as the Court deems appropriate. The amount of bail shall not exceed the cumulative maximum monetary fine leviable upon conviction for the offense(s) charged and may be in the form of cash or bond or cash only, at the Court's discretion. The Court shall have discretion to modify the conditions of any pre-arraignment release and may increase or decrease any temporary bail established pursuant to §3.2 of these rules.

(b) A defendant shall be released on personal recognizance, without bail, unless the Court finds or has found that probable cause exists to believe that the defendant committed the offense charged and that either (1) release without bail will not reasonably assure the defendant's appearance at further proceedings or (2) there is a likely danger that the defendant will commit a violent crime, intimidate witnesses, or otherwise interfere with the administration of justice.

(c) The conditions of release may, without limitation, include any or all of the following:

(1) A requirement that the defendant remain in physical custody of a designated person or organization.

(2) A restriction on travel, association, and/or place of abode.

(3) A requirement that the defendant physically appear at the office of the court clerk at designated times or intervals.

(4) A requirement that the defendant refrain from driving a motor vehicle without proper operator's license and liability insurance.

(5) In the case of alcohol or drug related offenses, a requirement that the defendant abstain from all use of alcohol or nonprescription mind-altering or mood-altering drugs and/or a requirement that defendant attend Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) meetings pending further court proceedings.

(6) A requirement that the defendant refrain from carrying any firearm or other dangerous weapon, whether concealed or not.

(7) A prohibition against commission of any criminal offense against tribal, state, or federal law.

(d) Delay of Release. Notwithstanding the posting of bail, the Court may order a delay of not more than forty-eight (48) hours in the release of a defendant if the Court determines that the person is intoxicated to the extent that he or she is a hazard to self or others or determines that the defendant should be interviewed by a mental health professional for possible commitment to a mental treatment facility under tribal or state law.

(e) Release on Plea of Guilty. If a defendant pleads guilty to an offense, the Court may revoke any prior conditions of release and/or bail and either remand the defendant to custody or release the defendant pending sentencing on such new conditions, including bail, as the Court deems appropriate.

3.5. Order of Release. Every order of release shall clearly set forth the conditions of release, if any, and amount of bail, if any, and whether such bail is to be cash or bond or cash only.

3.6. Amendment of Order of Release. An order of release may be amended by the Court at any time upon learning of changed circumstances, new information, or other good cause.

3.7. Revocation of Order of Release. (a) Prior to Conviction. A defendant or defendant's counsel shall be given three (3) days' notice of a revocation of release conditions hearing, excluding weekends and holidays. An order of release prior to conviction may be revoked upon a showing, by clear and convincing evidence, that the

defendant has willfully violated any condition of release. The Court may revoke conditions of release if it finds immediate clear and present danger of harm to the defendant or others if the defendant were allowed to remain free pending the hearing. If the defendant was previously required to attend a hearing and failed to appear, the Court may modify the release conditions as appropriate. The order of revocation may include an order forfeiting the bail bond.

(b) Following Conviction or Plea of Guilty. An order of release following conviction or plea of guilty may be revoked at any time for good cause shown, without prior notice to the defendant, provided that in such case, the defendant shall have the right to demand a hearing and opportunity to show cause why the order of release should not be reinstated.

3.8. Trial Date. At the arraignment, the Court shall set a trial date which shall be not more than ninety (90) days following the date of arraignment unless the defendant has agreed in writing or on the record to a later date. The trial date may be deferred one or more times for cause on motion of the defendant by agreement of the parties and with consent of the Court.

3.9. Pretrial Hearings. At the arraignment, the Court may set a pretrial hearing date for the consideration of motions, deadlines for disclosure of evidence, etc. The pretrial hearing should be set, if possible, not later than thirty (30) days prior to the trial date. The parties may by agreement forgo the pretrial hearing by a written stipulation filed with the Court.

3.10. Right of Trial by Jury. (Reserved; see §3.3 of these rules; STC §§3.8.13–14.)

3.11. Joinder and Consolidation. (a) Joinder of Offenses. Two or more offenses may be joined in a single complaint when the offenses are of the same or similar character, or based on the same conduct, or parts of a single scheme or plan.

(b) Joinder of Defendants. Two or more defendants may be joined in the same complaint in any of the following circumstances:

(1) When each defendant is charged with an offense or offenses arising from the same facts and circumstances.

(2) When all defendants are charged with the same conspiracy.

(3) Where the offenses were so closely connected in time, place, and occasion that it would be difficult to separate proof of one charge from proof of another.

(c) Consolidation for Trial. The Court shall have discretion to consolidate for trial all offenses and/or defendants properly joined in a complaint pursuant to §3.11(a) and/or §3.11(b) of these rules.

(d) Severance. A party may move the Court to sever for separate trial any charge which has been consolidated pursuant to the foregoing rule. In such case, the burden shall be on the movant to demonstrate that such severance is appropriate in the interest of justice. Motions for severance must be filed not later than the date of the first pretrial hearing or stipulation in lieu thereof.

3.12. Excluded Time Periods. In computing the time periods for arraignment and/or trial, the following periods shall be excluded:

(a) The period of pendency of any competency proceeding to determine whether the defendant is competent to stand trial.

(b) The period commencing with a defendant's failure to appear pursuant to an order of the Court and ending with his or her first actual appearance after such failure to appear.

(c) The period of any continuance by agreement of the parties or granted by the Court on motion of the defendant, including but not limited to continuance of the arraignment pursuant to §3.3(b) of these rules.

(d) The period of time wherein the defendant has removed him- or herself from the jurisdiction of the Suquamish Tribal Court for purposes of avoiding such jurisdiction.

(e) The period between dismissal of a charge without prejudice and the defendant's arraignment upon a refiled charge.

(f) The period during which the defendant is incarcerated by order of any court other than the Tribal Court.

(g) The period of pendency of any appellate proceeding relating to the matter(s) charged.

(h) A period of up to forty (40) days following declaration of a mistrial.

(i) When a trial is not begun on the date set because of unavoidable or unforeseen circumstances beyond the control of the Court or the parties, the Court may extend the time according to reason.

4.0. Pleas.

4.1. Types. A defendant may plead guilty or not guilty.

4.2. Pleading Guilty. If a defendant proposes to plead guilty to a charge, the Court shall review the police report and other available evidence to determine whether, if unrefuted, the evidence would be sufficient to sustain the charge. In making such determination, the Court may consider all of the facts and circumstances, whether or not they are presented in a form which would be admissible upon trial. If the Court is

satisfied beyond reasonable doubt that the evidence is sufficient to sustain the charge and that the defendant is competent and understands the charge and the consequences of the plea, it shall accept the guilty plea. If the Court is not satisfied of these matters, it shall refuse to accept the guilty plea and shall instead enter a plea of “not guilty” on the defendant’s behalf pending further proceedings. In considering whether to accept a guilty plea from a defendant who is not represented by counsel, the Court may also consider whether the plea might be different if counsel were involved, but the mere absence of counsel will not in itself require the Court to reject a guilty plea.

4.3. Plea Bargains. Nothing in this rule shall prohibit or inhibit the Court from accepting a guilty plea based upon bona fide negotiations between a defendant and the Tribe (i.e., a so-called “plea bargain”), but the Court shall not be bound by any such agreement or understanding between the defendant and the Tribe regarding the consequences of such a plea.

4.4. Statement on Plea. In every guilty plea, the defendant shall be required to sign and file a written statement of defendant on plea of guilty in such form as may be authorized by the Court, confirming his or her understanding of his or her rights, the nature of the charge, and the potential consequences.

4.5. Withdrawal of Plea. On motion of the defendant and for good cause shown, the Court may, at its discretion, allow the withdrawal of a plea of guilty and entry of a plea of not guilty.

4.6. Pleading Insanity. (Reserved)

5.0. Depositions and Discovery.

5.1. Depositions. (a) A deposition may be taken of any witness by either party on order of the Court upon a showing of any of the following:

(1) The witness may be unable to attend at the trial.

(2) The witness refuses to discuss the case with a party or counsel, and there are reasonable grounds to believe that his or her testimony would be material.

(3) There might otherwise, for any reason, be a failure of justice.

(b) A witness whose deposition is to be taken shall be given reasonable written notice of the time and place for the deposition. The notice shall identify the cause to which the deposition will relate and the name and address of the person to be deposed. If it is anticipated that the testimony may relate to documentary or electronic evidence of any kind which is in possession of the witness, the notice shall reasonably identify such evidence and require that the witness produce it at or before the deposition. A witness receiving notice of deposition may move the Court to accelerate or delay the date and time for the deposition, to change the place at which taken, or to clarify or modify any

request for documentary or electronic evidence. The Court may determine the effect any delay requested by the deponent witness has on speedy trial rights of the defendant. If the defense is calling the witness, then speedy trial modifications shall be waived until such time as the witness is available for deposition. If the prosecution is calling the witness, then speedy trial modifications shall be made on a good cause basis.

(c) A deposition shall be taken under oath before a qualified court reporter or at the discretion of the Court under oath by videotape recordation.

(d) A deposition may be used by any party to contradict or impeach the testimony of the deponent at any prior or subsequent trial or hearing in the cause, or otherwise to the extent permitted by the Federal Rules of Evidence or by ruling of the Court. However, a deposition shall not be used in any manner against the interest of a defendant who was not given a fair opportunity to be present in person or by counsel at the taking thereof.

5.2. Discovery. (a) Obligations of the Prosecution. Except as otherwise ordered by the Court, the prosecution shall disclose the following material to the defense not later than the date set for the first pretrial hearing, or two (2) days after the material becomes available or known to the prosecution, or the date of the trial, whichever first occurs.

(1) The names and addresses of all persons, including expert witnesses, known to the prosecution to have information about the case; the names of those persons whom the prosecution expects to testify in the case; copies of any written or recorded statements made by such persons or witnesses; and the general nature of the testimony expected to be given by such witnesses. In the case of expert witnesses, the prosecution shall also disclose the subject of their testimony and any reports rendered in relation thereto.

(2) Any written or recorded statements of the defendant or defendants if the trial is joint or consolidated.

(3) Any reports or statements of experts made in connection with the particular case, including physical or mental examinations and scientific tests, experiments, or comparisons.

(4) Any tangible, physical, written, printed, photographic, or electronic evidence which the prosecution may use at the trial or which were obtained from the defendant or defendants.

(5) Any record of prior convictions of a defendant or witness which is known to the prosecution.

(6) The existence of any electronic surveillance of any utterance or communication by the defendant or in which the defendant was a participant and a true copy of any record of such surveillance.

(7) Any information known to the prosecution which suggests entrapment of the defendant.

(8) Any information known to the prosecution which tends to negate defendant's guilt. As used in this subparagraph, "prosecution" means and includes the prosecuting attorney, staff, and agents.

(b) Obligations of the Defense. Except as otherwise ordered by the Court, the defense shall disclose the following material to the prosecution not later than the date set for the first pretrial hearing, or two (2) days after the material becomes available or known to the defense, or the date of the trial, whichever first occurs.

(1) The names and addresses of persons whom the defense intends to call as witnesses at any hearing or trial.

(2) The written or recorded statements of any such witnesses.

(3) The general nature of the testimony expected to be given by each such witness. As used in this subparagraph, "defense" means the defendant and defense attorney and his or her staff and agents.

(c) Actions by Order of Court. (1) The following actions may taken by order of the Court on motion of the prosecution:

(A) The defendant may be required to appear in a lineup for identification; speak for voice identification; be fingerprinted; try on articles of clothing; permit sampling of hair, blood, or other body fluids and/or substances upon the body; provide handwriting samples; submit to reasonable physical, medical, and/or psychiatric examination; or allow inspection of physical or documentary evidence in the defendant's possession.

(B) The defense may be required to state whether any claim of incompetency or insanity will be made at the trial; whether defendant's prior convictions will be stipulated or must be proved; whether defendant will or will not rely upon alibi and if so, furnish the names and addresses of all alibi witnesses; and the general nature of the defense.

(2) The following actions may be taken by order of the Court on motion of the defense:

(A) The prosecution may be required to disclose relevant information and material relating to specified searches and seizures.

(B) The prosecution may be required to disclose the relationship of any specified persons to the prosecution.

(C) The prosecution may be required to disclose and use best efforts to obtain any relevant material or information known or suspected to be in the control of any third party which would be discoverable if in the control of the prosecution.

All motions made pursuant to §5.2(c) of these rules shall be made prior to the first pretrial hearing except on a showing of good cause for the delay.

(d) Discretionary Disclosure. The Court shall have discretionary power to require disclosure to the defense of any relevant information or materials not covered by the specific provisions of §5.2 of these rules if the interest of justice should require and the information or materials are not privileged.

(e) Conditions on Disclosure. The Court may impose reasonable conditions upon the disclosure of any material or information pursuant to §5.2 of these rules to avoid or minimize substantial risk of injury, intimidation, bribery, reprisal, annoyance, or embarrassment to any person if it finds that such risk outweighs the usefulness of such disclosure to the defense. The Court may also impose conditions on the custody of materials furnished pursuant to discovery and/or on the use or further disclosure of such materials, including but not limited to excision of nondiscoverable material which is a part of discoverable material.

(f) Hearings on Discovery Issues. On motion of either party or on its own motion, the Court may conduct in camera hearings on any issues raised in the course of discovery pursuant to these rules. The record of every such hearing shall be retained, either as a part of the trial record or as a separate sealed record, to become available to the appellate court in the event of appeal.

(g) Impeding Discovery Prohibited. Neither the prosecution nor the defense shall in any way impede the other party in the proper development of testimony and/or evidence pursuant to §5 of these rules.

(h) Continuing Duty to Disclose. Both the prosecution and the defense shall have a continuing duty upon receipt of any and all undisclosed material or information which is subject to disclosure hereunder to disclose such material promptly to the other party.

5.3. Sanctions. If and whenever it comes to the attention of the Court that a party has failed to comply with any provision of §5.2 of these rules, the Court may impose such sanctions upon the offending party as may, at the Court's discretion, be appropriate, including but not limited to discovery and/or disclosure of additional material and information, granting a continuance, or dismissal of the charges. Willful violation of any of these provisions by counsel may be grounds for disbarment or other appropriate discipline.

6.0. Subpoenas. (Reserved)

7.0. Material Witnesses. (Reserved)

8.0. Procedures at Trial.

8.1. Trial by Jury. (a) Juror Panel. The jury shall be chosen from a panel of prospective jurors chosen by lot and summoned in accordance with the jury panel rules.

(b) Number of Jurors. A jury shall consist of six (6) persons chosen by lot from the jury panel.

(c) Alternate Juror. The Court shall have discretion to require the seating of a seventh alternate juror.

(d) Juror Unable to Continue. If at any stage of the trial prior to commencement of jury deliberations a juror is unable to continue and an alternate juror has been seated, the alternate juror shall become the sixth regular juror. If more than one juror is unable to continue or if no alternate juror has been seated, the Court shall declare a mistrial unless the defendant agrees on the record to continue with less than six (6) jurors.

(e) Voir Dire. Following selection of tentative jurors and an alternate if required by the Court as provided above, the selected persons shall be questioned for the purpose of disclosing any basis for a challenge for cause. The Court may establish a written procedure for preliminary general questions from the bench to the entire panel, after which each party shall be given fair opportunity to question the prospective jurors and alternate as the party sees fit.

(f) Challenge for Cause. The Court may excuse any prospective juror for cause following questioning. If the Court does not excuse a juror for cause, a party may nevertheless challenge the person for cause, based on such considerations as the party deems relevant. Such challenge shall be heard outside the presence of the jury and jury panel. If such a motion is denied, the movant may demand a trial of the issues of fact presented, in which case the Court shall forthwith try such issues and render its decision thereon. At such trial, the ordinary rules of evidence shall apply. The Court's decision following such trial shall not be appealable until conclusion of the trial upon the charges involved.

(g) Peremptory Challenge. After all jurors including the alternate, if any, have been passed by all parties for cause, each party shall have the right to challenge up to three (3) jurors without a showing of cause, in which case the Court shall excuse such juror and instruct the clerk to choose another juror by lot from the panel. Such juror shall then be questioned as provided above and shall be seated unless challenged for cause or through exercise of a peremptory challenge. Peremptory challenges shall be exercised alternately by each party, commencing with the prosecution. This process shall continue until a jury of six (6) persons and one (1) alternate, if required, has been chosen without objection by either party.

(h) Jurors' Oath and Preliminary Instructions. Prior to commencement of voir dire, the Court shall administer the following oath to all members of the panel:

“Do you solemnly swear well and truly to try the issue between the Tribe and the defendant according to the evidence and instructions from the Court?”

The Court shall also caution the jurors not to discuss the case with others at any time prior to their verdict or among themselves until after they have been fully instructed by the Court and have retired for their deliberations.

(i) Custody of the Jury. At all times during the trial and its deliberations, the jury shall be in the custody of the bailiff or the court clerk, subject to such instructions as may be given by the Court. The Court shall have authority to require sequestration of the jury if the interests of justice so require.

(j) Conduct of Jurors. Subject to prior approval by the Court, jurors may take personal notes during the trial regarding the evidence and testimony and use these notes in their deliberations. All such notes, as well as all notes and writings made by the jury or any jury person during the course of deliberations, shall be destroyed immediately following the verdict. In appropriate cases the Court may also authorize the jury to view the relevant scene or scenes in the company of a court officer.

(k) Verdict. The verdict of the jurors on each charge shall be conveyed to the Court on a form provided for this purpose. If there is more than one charge and/or more than one defendant, each charge against each defendant shall be reported on a separate form which shall clearly identify the charge.

(l) Poll of Jurors. After the verdict has been delivered, either party may require the clerk to poll each juror regarding his or her vote thereon, and the results of such poll shall become part of the record of the trial.

(m) Special Verdict. The Court shall have discretion, on its own motion or on motion of a party, to require the jury to make special findings of fact in addition to its final verdict. In such case, the jury shall be given clear instructions with respect to each such special finding. If a special finding conflicts with the general verdict, the Court may remand the jury to further deliberations.

8.2. Witnesses. (a) General. All competent persons may be witnesses in any action under these rules, subject, however, to the rules of evidence. No witness shall be disqualified on the ground of personal interest, but evidence of such interest is relevant and may be considered in evaluating the witness's testimony. A person is incompetent to be a witness if of unsound mind or intoxicated at the time the testimony would be given or if lacking in the capacity to perceive and relate the facts truthfully.

(b) Incriminating Testimony. A witness who refuses to testify on the ground that his or her testimony might tend to incriminate him or her under the laws of the State of

Washington or the United States shall be excused from giving such testimony unless the tribal prosecutor shall obtain from the United States Attorney for the Western District of Washington and the Kitsap County Prosecutor a binding commitment that no subsequent criminal action will be taken against such witness arising from matters first disclosed in such testimony or matters first discovered as a result of such testimony. A witness who refuses to testify on the ground that his or her testimony might tend to incriminate him or her under the laws of the Suquamish Tribe shall be excused from such testimony upon stipulation by the tribal prosecutor that no subsequent criminal action will be taken against such witness arising from matters first disclosed in such testimony or matters first discovered as a result of such testimony.

#### 9.0. Rules of Evidence and Criminal Procedure.

9.1. Federal Rules of Evidence Apply. The Federal Criminal Rules of Evidence shall be applicable to all criminal trials in the Tribal Court. (See STC §3.8.12.)

9.2. Exception for Defendants Pro Se. If a defendant is acting on his or her own behalf without the benefit of counsel, the Court may in its discretion:

(a) Allow testimony or evidence by both parties which might otherwise be forbidden by the Federal Criminal Rules of Evidence; and/or

(b) Allow reasonable deviation by both parties from the Federal Rules of Criminal Procedure and the Tribal Rules of Criminal Procedure if it determines that a miscarriage of justice might otherwise result. In exercising this discretion, the Court may consider, among other things, the degree of sophistication and education of the defendant, the extent to which the defendant has studied or become knowledgeable in the applicable law, and the extent to which an otherwise plausible defense might or might not be seriously prejudiced if the rules of evidence were not relaxed. All motions directed to the exercise or nonexercise of discretion under this rule shall be made and heard outside the presence of the jury.

#### 10.0. Post-conviction Procedures.

10.1. Sentencing. The Court may sentence a convicted defendant forthwith or may defer sentencing pending a probation report or other relevant information. If sentencing is deferred, the Court may remand the defendant to custody pending sentencing or release the defendant on such conditions, including bail, as the Court deems appropriate. All time spent in custody pending trial and/or sentencing shall be credited against any jail time imposed at sentence, but this shall not apply to time spent in custody on an offense which was not a subject of the trial.

10.2. Right of Appeal. At the time of sentencing, the Court shall advise the defendant of his or her right of appeal from the conviction and if the defendant is not represented by counsel, supply a form for this purpose. The Court shall also advise the defendant of his or her right to counsel on appeal. If the defendant can demonstrate indigency as defined by the Tribal Code, appeal counsel may be appointed by the Court.

10.3. Notice of Appeal. An appeal from conviction must be filed with the court clerk within ten (10) days following entry of judgment. The court clerk shall promptly advise the Suquamish Tribal Court of Appeals of the appeal and provide it with all documentation required under the applicable rules of appeal. Pending appeal, the defendant shall be released on such conditions, including bail, as the Court may deem appropriate, but bail shall in no case exceed the total of all fines levied against the defendant in the judgment. (See STC §3.8.26.)

11.0. Arrest of Judgment. (Reserved)

12.0. New Trial. A new trial may be granted by the Court upon its own motion or motion of the defendant, with or without a hearing, if it finds that any substantial right of the defendant was materially infringed by any of the following causes:

(a) Receipt or use by the jury of any evidence, paper, document, or book not entered in evidence or contained in testimony at the trial.

(b) Misconduct by the prosecution or the jury.

(c) Disobedience of any order or instruction given by the Court to the jury or any juror.

(d) Newly discovered evidence which the defendant could not have discovered by reasonable diligence in time for introduction at the trial.

(e) Accident or surprise.

(f) Procedural irregularity or abuse of discretion.

(g) Verdict contrary to law or evidence.

If the motion is based on matters outside the record, such matters shall be shown by affidavit. (See STC §3.8.25.)

13.0. Probation. (Reserved; STC §3.8.27)

14.0. Motion Practice.

14.1. Oral Motions. Oral motions made in open court during a hearing or trial may be heard forthwith or at a later date at the discretion of the Court. The Court may require such motions to be reduced to writing as a condition of hearing.

14.2. Written Motions. (a) Filing. A party may file written motions at any time, subject to time and delivery limitations imposed by these rules or by previous court order. Except as otherwise ordered by the Court, a written motion shall not be deemed timely

unless filed and delivered in time to allow timely response pursuant to §14.2(b) of these rules.

(b) Response. Unless otherwise ordered, a party receiving a written motion shall file a written response with the Court and deliver a copy thereof to all other parties within ten (10) days of such receipt or within three (3) days prior to the pretrial hearing for pretrial motions or within three (3) days prior to the trial date for trial motions, whichever time is shorter. A motion may include a request for a shorter time for response. In such case, any such request shall be prominently noted at the beginning of the motion and shall specify with particularity the reasons for such request. The responding party shall respond to any such request within two (2) days following receipt of the motion.

(c) Affidavits. A party may support or oppose a motion by one or more affidavits, which shall accompany the motion or response.

(d) Hearing on Motion. On its own motion or on motion of any party, the Court may set a hearing on any motion and may order production of further evidence and/or memoranda of law in anticipation of the hearing. A motion may be accompanied by a request for hearing, but no hearing shall be set until the Court has agreed to hear the motion.

#### 15.0. Jury Panel Selection.

15.1. Persons Eligible for Service. Each jury panel shall be selected by lot from a current list of enrolled members of the Suquamish Indian Tribe residing in the counties of Kitsap, King, Pierce, Jefferson, and Snohomish. For purposes of jury selection, the address of a tribal member shall be the address contained on the tribal membership roll unless the Court has actual notice of a different address.

15.2. Notice to Serve. Not less than twenty-one (21) days prior to the trial date, the court clerk shall mail to each selected panel member a summons advising that he or she has been called for possible jury service on a date and at a time specified in the notice. The notice shall be mailed in duplicate by ordinary first class mail and by first class mail, return receipt requested.

15.3. Proof of Receipt. It shall be presumed, subject to rebuttal by clear and convincing evidence, that a member received such notice three (3) days after mailing if the return receipt so indicates and/or the letter sent by ordinary mail is not returned undeliverable. The court clerk shall maintain a record of all such mailings and, when requested, shall certify under oath to the fact and date of such mailings.

15.4. Requests to be Excused from Service. All requests for excuses from jury service must be in writing, verified under penalty of perjury, and returned to the court clerk within seven (7) days after receipt on the form accompanying the notice. Requests not timely filed may nevertheless be considered at the discretion of the Court, but the Court shall not be required to consider a late request or any request which is not supported by

a verified writing setting forth in detail the reasons for the requested excuse. If the original explanation is inadequate, the Court may require further detail as a condition of considering the request.

15.5. Grounds for Excuse from Service. The Court shall have absolute discretion to grant or deny a requested excuse from service. In exercising such discretion, the following factors shall be considered but shall not be controlling:

- (a) Attendance at traditional tribal or Native American events;
- (b) Physical disability or infirmity;
- (c) Unavoidable responsibility for the care of a dependent person;
- (d) Inability to obtain private or public transportation;
- (e) Refusal of employer to allow time off;
- (f) Substantial loss of wages or earnings; and
- (g) Loss of open-season fishing or clamming opportunity.

In exercising such discretion, the Court shall attempt to be as fair as possible to each applicant but shall not be required to treat all similar requests in a similar manner.

15.6. Conditional Excuse from Service. Persons who are excused from jury service on a particular date may, as a condition of such excuse, be required to appear for jury service on a subsequent date or dates and shall be added to the pool of potential jurors summoned for such dates.

15.7. Permanent Excuse from Service. The Court shall have authority and discretion to grant a permanent excuse from jury service to any person above the age of seventy (70) years or whom the Court finds to be incompetent or disabled. Persons granted permanent excuse shall be removed from the computerized roll of eligible jurors.

15.8. Penalties for Failure to Appear. Any prospective juror who fails to appear for jury service at the time and on the date for which summoned may be required to show cause why contempt of the Tribal Court charges should not be filed pursuant to STC §3.8.21. The form and content of the summons shall be as set forth in §2.2(e) of these rules. If the Court finds no acceptable excuse for the failure to appear, the Court may impose a civil penalty of not more than two hundred dollars (\$200) or may refer the matter to the tribal prosecutor for prosecution as a criminal violation of STC §3.8.21.

16.0. Notices; Facsimile Documents.

16.1. A notice required to be given herein may be transmitted by first-class United States mail or by any recognized private commercial carrier or by direct personal

service on the addressee or by electronic facsimile transmitted to the facsimile telephone number, if any, of the addressee.

16.2. A notice sent by United States mail shall be presumed to be received on the third mail delivery day following mailing.

16.3. A notice sent by private carrier or direct personal service shall be evidenced by a dated, written delivery receipt which is to be filed with the Court. If no such receipt is filed, such a notice shall be presumed to be delivered as though sent by United States mail.

16.4. A notice transmitted by electronic facsimile prior to 3:00 p.m. (addressee's time) on any business day shall be presumed to be delivered on such day. If transmitted after 3:00 p.m. (addressee's time), it shall be presumed to be delivered on the following day.

16.5. The foregoing presumptions regarding delivery shall be conclusive unless a different actual delivery can be confirmed by clear and convincing evidence or unless the parties agree in writing to other presumptions.

16.6. As used in this Rule 16, "notice" shall include notices, pleadings, motions, and any other documents to be filed or delivered in accordance with these rules. Nothing herein shall be construed to alter the rules of evidence with regard to the verification or admissibility of evidentiary documents.

#### 17. Procedures Not Specified Herein.

17.1. Any procedural issue which may arise at any stage of proceedings which is not addressed by these rules, including issues within areas designated herein as "reserved," shall be resolved in a manner which, in the reasonable discretion of the Court, is most likely to be consistent with substantial justice. In exercising such discretion, the Court shall consider any relevant provisions of the Suquamish Tribal Code, may consider other tribal code procedural rules and both the federal and the Washington State procedural rules, and shall hear and consider arguments on behalf of the parties, but shall not be obligated to decide on the basis of any such rules or in consonance with the arguments of a party.

Note: Paragraphs renumbered for consistency as follows. (Res. 2016-090, Jun. 20, 2016)

5.2(c)(1)(i)-(ii) changed to 5.2(c)(1)(A)-(B); 5.2(c)(2)(i)-(iii) changed to 5.2(c)(2)(A)-(C)

12.0(1)-(7) changed to 12.0(a)-(g)

15.5(1)-(7) changed to 15.5(a)-(g)