

## TITLE 3. TRIBAL COURT

### Chapter 3.8

#### RULES OF COURT

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**3.8.1. Court Sessions.** Regular sessions of the Court will be held as needed in the Suquamish Tribal Court located in the village of Suquamish, Washington. All trials, both civil and criminal, will begin at a designated time and place that the Court determines. The parties will receive reasonable notice of the time and place. (Prior code Ch. X, Art. I, §§1, 5)

**3.8.2. Official Station.** Current records of the Suquamish Tribal Court will be kept at the Grace Duggan Justice Center, Suquamish, Washington, which is the official station of the clerk of the court. (Prior code Ch. X, Art. I, §2)

**3.8.3. Location for Filing.** All pleadings, motions, and other papers must be filed with the clerk of the court at the Grace Duggan Justice Center. (Prior code Ch. X, Art. I, §3)

**3.8.4. Copies of Documents.** (Repealed) (Prior code Ch. X, Art. I, §4; repealed by Res. 2017-202, passed Oct. 9, 2017)

**3.8.5. Notice to Parties.** (Repealed) (Prior code Ch. X, Art. I, §5; repealed by Res. 2017-202, passed Oct. 9, 2017)

**3.8.6. Extension of Time.** (Repealed) (Prior code Ch. X, Art. I, §6; repealed by Res. 2017-202, passed Oct. 9, 2017)

**3.8.7. Court Decorum.** (a) All court proceedings will be conducted in a dignified and respectful manner. All persons addressing the Court must rise and speak clearly and courteously.

(b) There may be no interference or disturbance with the proceedings before the Court. The following rules will govern court decorum:

(1) The judge will appoint a law enforcement officer as court bailiff, and the bailiff will open each session of court and be present to keep order in the courtroom at all times.

(2) Spectators are permitted in the courtroom during trial sessions, except that the judge may prohibit spectators from entering the courtroom while testimony is being taken.

(3) All persons in the courtroom must remove their hats, and must be dressed cleanly, neatly, and appropriately. No person may smoke, use tobacco products, or vape in the courtroom.

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

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

(6) Respect and courtesy must be shown to the judge at all times.

(7) A flag of the United States and a Suquamish tribal flag, if available, will be displayed in the courtroom at all times. (Prior code Ch. IV, Art. IV, §1; Ch. X, Art. I, §7; amended by Res. 2017-202, passed Oct. 9, 2017)

**3.8.8. No Discussion with Jurors.** No person, including Court staff members, any of the parties or witnesses, or any other person, may discuss with any known juror any case

pending before that juror or which may come before that juror, either before or during the trial; and the judge may excuse any juror who has any personal knowledge about the case or who has discussed it with any of the parties, witnesses, or court officials. (Prior code Ch. IV, Art. IV, §2)

**3.8.9. No Discussion with Judge.** No witness or party to any case may under any circumstances, either before or during trial, attempt to discuss any case pending before the Court with any of the judges except in open court and with either the clerk of the court or one of the other judges present, or may attempt to influence the Court's decision unless in the course of regular court proceedings. (Prior code Ch. IV, Art. IV, §3)

**3.8.10. Contempt of Court.** (Repealed) (Prior code Ch. IV, Art. IV, §4; repealed by Res. 2017-202, passed Oct. 9, 2017)

**3.8.11. Exhibits.** All separate documents, photographs, papers, and written or printed instruments of any nature must have separate exhibit numbers, with exhibits for the plaintiff numbered numerically and exhibits for the defendant marked alphabetically. In civil cases, the clerk will deliver or mail all exhibits in his or her custody after judgment becomes final or after final disposition of the action to the party, offering the same or to his or her counsel. The clerk may destroy or otherwise dispose of any exhibits refused by a party or counsel. (Prior code Ch. X, Art. I, §8)

**3.8.12. Rules of Evidence.** Except as this code or federal law otherwise expressly provides, the rules governing the introduction of evidence under the Federal Rules applies to this Court's criminal or civil proceedings. (Prior code Ch. X, Art. I, §9: amended by Res. 94-151, passed Oct. 3, 1994)

**3.8.13. Jury Demand.** When a demand for trial by jury is contained within a pleading instead of being separately filed, the demand must be brought to the attention of the clerk of the court, either orally or in writing, at the time the pleading is filed. (Prior code Ch. X, Art. I, §10)

**3.8.14. Jury Trial.** The rules governing trial by jury are as follows:

(a) A jury will consist of six (6) persons and one (1) alternate, drawn randomly from a list of eligible jurors, consisting of Suquamish tribal members who reside in Jefferson, King, Kitsap, Mason, Pierce, and Snohomish counties, Washington. Jurors must be eighteen (18) years of age or older. The tribal enrollment officer will certify the list as to tribal membership to the clerk of the court. The list will be revised from time to time.

(b) Where the Tribe is exercising Special Domestic Violence Criminal Jurisdiction under the Violence Against Women Reauthorization Act of 2013, a jury will consist of six (6) persons and one (1) alternate, consisting of Suquamish tribal members and tribal spouses who reside in Jefferson, King, Kitsap, Mason, Pierce, and Snohomish counties,

Washington; and tribal employees with a minimum of one (1) year of employment with the Suquamish Tribe. Jurors must be eighteen (18) years of age or older. The Human Resources director will certify the list as to eligible tribal employees.

(c) The clerk of the court will randomly draw the names of six (6) jurors and one alternate. Either party to a case may challenge not more than two (2) jurors without cause and any number of jurors for cause. Cause consists of but is not limited to:

(1) Noneligibility as a juror or such physical or mental defect as to make the juror unable to perform his or her duties;

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

(3) Such family or business relationship with the defendant or having such an opinion of the defendant's guilt or innocence as would make impartiality as a juror impossible.

(d) When the jury of six (6) has been seated, the judge will administer the jurors' oath.

(e) The jury's verdict must be unanimous. In the case of a non-unanimous verdict, the judgment will be entered for the defendant and the case dismissed.

(f) Each juror is entitled to a fee for each day of jury service, as the clerk of the court will determine, plus the federal per diem rate per mile for travel to and from court, payable by the Suquamish Tribe.

(g) Either party in a civil case may request a jury trial except in cases involving family law, tribal child welfare, adoption of minors, probate, youth offenders, and vulnerable adults.

(h) The Court may order a juror who becomes sick or is otherwise unable to perform his or her duty to be discharged, and will substitute the alternate juror for the discharged juror. If there is no alternate available and the parties do not stipulate to continue the trial with five (5) or fewer jurors, the jury will be discharged and a new jury will be formed to hear the case. (Prior code Ch. X, Art. I, §§11, 12; amended by Res. 89-093 (part), passed Nov. 6, 1989; amended by Res. 2017-202, passed Oct. 9, 2017; amended by Res. 2019-040, passed Mar. 11, 2019)

**3.8.15. Right to Counsel.** (a) All parties in civil cases and all defendants in criminal proceedings have the right to have counsel represent them at their own expense. Defense counsel in all criminal proceedings must be attorneys licensed in any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys, and also members of the Suquamish Tribal Bar.

(b) Indigent Defendants. (1) Right to Appointed Counsel. Indigent persons charged with crimes under this code, or persons alleged to be youth offenders under this code, are entitled to representation by licensed attorneys at the Tribe's expense, provided that sufficient funds are available and have been set aside by the Tribal Council for that purpose.

(2) No defendant may be prosecuted for felony crimes unless he or she has been appointed an attorney that meets the standards set forth in §3.8.15(a).

(3) Definitions.

(A) "Indigent person" means a person who is currently receiving Aid to Families with Dependent Children, General Assistance, Food Stamps, poverty-related veteran's benefits, Medicaid, or Supplemental Security Income; or who has income less than one hundred twenty-five percent (125%) of the federal poverty level; or who is otherwise unable to pay in full the customary fees and expenses of a licensed attorney for the defense of the charges of which he or she stands accused.

(B) "Income" means current annual total cash receipts of all persons who reside in and contribute to a household before taxes but after deduction of self-employment and business expenses.

(C) "Liquid assets" means cash, savings and bank accounts, certificates of deposit, stocks and bonds, and single items of personal property not regularly used in business or employment and having a net value of more than five thousand dollars (\$5,000).

(4) Amounts Needed for Bail. No amounts needed by an accused to post bail will be considered income or liquid assets.

(5) Determination of Indigency. (A) The Court will determine indigency at the earliest possible stage of proceedings, following the defendant's request for appointed counsel. The determination will be based upon sworn written or oral testimony. The prosecution will not cross-examine the defendant upon such testimony nor use such testimony in the matter in which the defendant seeks appointment of an attorney.

(B) The Court may find that a defendant has enough income or liquid assets to afford some of the costs of an attorney. In these circumstances, the Court may appoint an attorney for the defendant, but require him or her to execute a promissory note or take other action sufficient to ensure that the Tribe is reimbursed for the part of the attorney's costs that is within the defendant's ability to pay.

(C) The Court may redetermine indigency at any time, in its discretion. If the Court finds, after a determination of indigency, that a defendant is not then eligible for an appointed attorney, the Court will notify the defendant and his or her appointed attorney that the appointment has been terminated.

(6) Public Defender. If funds are available, the Tribal Council will employ one or more public defenders who are licensed attorneys in any jurisdiction, and members of the Suquamish Tribal Bar. The Court will appoint the public defender to represent persons entitled to appointed attorneys under this section; provided that where the public defenders cannot represent the accused for ethical or any other cause, the Court may appoint any other licensed attorney who is a member of the Suquamish Bar and who is willing to represent the accused for no more than one hundred twenty-five percent (125%) of the compensation to which the public defender would be entitled.

(c) Additional Procedures and Court Rules. The Chief Judge may implement such other procedures or rules, consistent with this section's provisions, as he or she determines is appropriate to administer this section. (Prior code Ch. X, Art. I, §§13, 14; amended by Res. 89-057, passed June 26, 1989; (b) amended by Res. 92-015, passed Feb. 19, 1992; amended by Res. 2017-202, passed Oct. 9, 2017)

**3.8.16. Admission of Counsel.** (a) All counsel who wish to be admitted to practice before the Suquamish Tribal Court may be admitted to practice upon motion in writing by order of the Chief Judge.

(b) Any person who is a member in good standing of the bar of any state or territory of the United States or the District of Columbia, is of good moral character, and demonstrates to the Court a thorough knowledge of this code, the rules of the Suquamish Tribal Court, federal laws and regulations applicable to the Suquamish Tribe, and some knowledge of the culture and traditions of its members is eligible to apply for admission to general practice as a licensed attorney in the Suquamish Tribal Court.

(c) Any person who is eighteen (18) years of age or older, has not ever been convicted of a felony nor of a misdemeanor in the past year, is of good moral character, and demonstrates to the Court a thorough knowledge of this code, the rules of the Suquamish Tribal Court, and knowledge of the culture and traditions of the Suquamish people is eligible to apply for admission to general practice in this Court as a lay counsel or lay advocate, and may represent parties in civil matters only. (Prior code Ch. X, Art. I, §15; amended by Res. 2017-202, passed Oct. 9, 2017)

**3.8.17. Restriction on Counsel Activities.** (a) No counsel admitted to practice in this Court may act as security for costs or as surety on any appeal or other bond in any pending case in which he or she is interested.

(b) No attorney in a case may testify as a witness in the trial of that case, except upon receiving permission from the Court. (Prior code Ch. X, Art. I, §§16, 17)

**3.8.18. Appointment of Prosecutor.** (a) The Suquamish Tribal Council may appoint a prosecutor for the Suquamish Tribe. No person may be appointed as prosecutor unless that person is admitted to practice before the Court as these rules provide.

(b) The prosecutor is authorized to sign, file, and present any complaint, subpoena, affidavit, motion, or civil or criminal process on behalf of the Suquamish Tribe. (Prior code Ch. X, Art. I, §18; amended by Res. 89-007 (part), passed Jan. 17, 1989)

**3.8.19. Subpoenas.** (a) Every judge of the Suquamish Tribal Court has the power to issue subpoenas for the attendance of witnesses, either on his or her own motion or on the motion of any party to the case.

(b) Service of subpoenas will be by any qualified member of the law enforcement staff or other Court officer or by any person the Court appoints for that purpose.

(c) Witnesses will be compensated at a rate that the clerk of the court will determine per day of trial and the federal per diem rate per mile for travel to and from court by the party who subpoenaed them, except in criminal cases where the defendant is found to be indigent. (Prior code Ch. X, Art. I, §19; amended by Res. 2017-202, passed Oct. 9, 2017)

**3.8.20. Disqualification of Judge.** (Removed and recodified as §3.3.8(b)) (Prior code Ch. X, Art. I, §20; recodified in chapter 3.3 by Res. 2017-202, passed Oct. 9, 2017)

**3.8.21. Contempt of Court.** (a) Any person engaging in any of the following conduct in the courtroom will be found guilty of contempt of court:

(1) Disorderly, contemptuous, or insolent behavior committed in the Court's immediate view and presence and directly tending to interrupt its proceedings or to impair the respect due to its authority;

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

(3) Willful disobedience of any process or order the Court has lawfully issued;

(4) Willful resistance of any person to the Court's lawful order or process;

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

(6) The publication of a false or grossly inaccurate report of any court's proceedings;

(7) Failure to appear on the date jury trial is scheduled after making a request for a jury trial; or

(8) Willful failure to appear at a judicial proceeding in response to any duly issued subpoena, summons, citation, notice from the clerk of the court, or court order commanding such appearance.

(b) The Court may sentence such person to confinement for a period of not more than six (6) months or to pay a fine of not more than five hundred dollars (\$500) or both, with costs, and may also issue such orders as are necessary to enable the person to remove his or her contempt charge. (Prior code Ch. X, Art. I, §21; amended by Res. 90-128, passed Nov. 6, 1990; amended by Res. 2017-202, passed Oct. 9, 2017)

**3.8.22. Default on Fine.** When a defendant defaults in paying a fine or any installment of a fine, the Court on its own motion will order the defendant to show cause why he or she 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 or her imprisonment until the fine is paid. The Court may order any of the defendant's personal property found within the exterior boundaries of the Port Madison Indian Reservation to be seized and sold. (Prior code Ch. X, Art. I, §22)

**3.8.23. Disposition of Payments Made to the Court.** Any funds paid to the Suquamish Tribal Court as a result of this code's provisions or other lawful orders of the Court must be paid to the clerk of the court who will issue a receipt for those funds and will deposit the funds into the general tribal treasury. The funds will be recorded upon the accounts of the Tribe and will be available for expenditure upon order of the judge of the Tribal Court and by appropriation of the Tribe for operating expenses of the tribal judiciary and for such other purposes as the Suquamish Tribal Council may direct. (Prior code Ch. X, Art. I, §23)

**3.8.24. Disposition of Property Confiscated by the Court.** Any property, including equipment, which has been confiscated by lawful order of the Court, after the owner of the property has notice and an opportunity to be heard, under this code's provisions will be sold at a public auction, and the clerk of the court will deposit the proceeds of the sale into the general tribal treasury. The funds will be recorded upon the accounts of the Tribe and will be available for expenditure upon order of the judge of the tribal judiciary and for such other purposes as the Suquamish Tribal Council may direct. (Prior code Ch. X, Art. I, §24; amended by Res. 2017-202, passed Oct. 9, 2017)

**3.8.25. New Trial.** The grounds for a new trial are as follows:

- (a) The jury received evidence the Court did not authorize;
- (b) The verdict was determined by lot, through intimidation, or without a fair expression of opinion;
- (c) The Court refused to instruct the jury correctly as to the law;
- (d) The defendant did not receive a fair and impartial trial; or
- (e) New evidence is discovered that was not available at the time of the original trial. (Prior code Ch. X, Art. I, §25)

**3.8.26. Appellate Procedure.** (a) Any final judgment of the trial court may be appealed by filing a notice of appeal with the clerk of the court within ten (10) days after judgment is entered.

(b) The appeal will be heard by the Suquamish Tribal Court of Appeals, and the appeals court's judgment will be final.

(c) If an appeal is taken, the case will be tried on the record. (Prior code Ch. X, Art. I, §26; amended by Res. 2017-202, passed Oct. 9, 2017)

**3.8.27. Terms of Probation.** The Court as a condition of any order granting probation to a defendant may require the defendant:

- (a) To meet his or her family responsibilities;
- (b) To devote him- or herself to a specific employment or occupation;
- (c) To undergo available medical or psychiatric treatment, to attend regular rehabilitation programs, or to enter and remain in a specified institution;
- (d) To pursue a particular course of study or vocational training;
- (e) To attend or reside in a facility established for the instruction, recreation, or residence of persons on probation;
- (f) To stay away from unlawful or disreputable places or associating with disreputable persons;
- (g) To possess no firearm or other dangerous weapon unless the Court grants written permission;
- (h) To make restitution or reparation for the loss or damage of his or her unlawful acts, as the Court may direct;

(i) To remain within the Court's jurisdiction and not to leave that jurisdiction without the Court's permission, and to notify the Court or one of its officers of any change in address or employment;

(j) To report as directed to the Court, probation officer, or other person the Court designates;

(k) To post a bond, with or without surety, subject to the performance of any of these conditions; or

(l) To satisfy any other conditions reasonably related to the defendant's rehabilitation. (Prior code Ch. X, Art. I, §27)

**3.8.28. Rules Governing Procedures.** Rules, not inconsistent with this code's provisions, governing procedures of the Suquamish Tribal Court will become effective upon the chief judge's recommendation and the Tribal Council's approval and may be amended or supplemented in the same way. (Prior code Ch. X, Art. I, §30)

Note 1: Subsections 3.8.25(1)-(5) renumbered 3.8.25(a)-(e) for consistency; subsections 3.8.27(1)-(12) renumbered 3.8.27(a)-(l) for consistency. (Res. 2016-097, Jul. 11, 2016)

Note 2: Resolution 2017-202, passed Oct. 9, 2017, made changes to the language, but not the content, of sections 3.8.1, 3.8.2, 3.8.3, 3.8.8, 3.8.9, 3.8.11, 3.8.12, 3.8.13, 3.8.17, 3.8.18, 3.8.22, 3.8.23, 3.8.25, 3.8.27, and 3.8.28.