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RULES OF THE COURT

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TITLE 4

RULES OF THE COURT

Chapter 4.01 General Rules

4.01.01 Conduct

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

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section deleting the "Shall rise" language.]

4.01.02 Time

All trials, criminal and civil, shall commence as scheduled by the Court with reasonable notice being given to all parties. When a time period is designated by the Court or the Law and Order Code, the day of the act or event from which the time begins to run is not included. The last day of the period shall be included unless it is a Saturday, Sunday, or holiday in which case the period runs until the next business day.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section to include a method for computation of time.]

4.01.03 No Discussion With Jurors

No person, including parties, witnesses, and members of the Court's staff, shall discuss with any known juror any case pending before a juror, or which may come before a juror either before or during the trial. Any juror who has personal knowledge of the case or who has discussed the case with any other party, witness or Court official shall be excused by the Judge.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84.]

4.01.04 No Discussion With the Judge

No witness or party to any case shall, under any circumstances before or during trial, attempt to discuss any case pending before the Court with any Judge hearing the case except when in open Court.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section to simplify the language.]

Chapter 4.02 Juries

4.02.01 Jury Pools

A Clerk of the Court shall maintain a current list of eligible jurors, and the Clerk shall update the list from time to time, but no less than once in each year. The list shall reflect a fair cross-section of the community, and it shall not systematically exclude any distinctive group in the community, including non-Indians. Jurors shall be twenty-one (21) years of age or older, and notwithstanding any other law of the Tribe or any of its agencies, shall be chosen from the following classes of persons:

- a) Tribal members living on the Port Gamble S'Klallam reservation or in Kitsap County;
- b) Permanent residents who have lived on the Port Gamble S'Klallam reservation for at least one continuous year; and
- c) Employees of the Tribe who have been employed by the Tribe for at least one continuous year prior to being called as a juror.

A person may be excused from jury duty only upon good cause shown to the trial judge.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84, amended this section to place responsibility for the jury list to the Court Clerk. Cross Reference - Section 11.01.03 Eligible Voters. Resolution No. 18-A-99, passed 8/27/18, amended this section to expand the tribe's jury pool population by including tribal employees as part of jury pools. In doing so, along with Title 15 Domestic Violence, the Port Gamble S'Klallam Tribe exercises special domestic violence criminal jurisdiction over all persons within the Tribe's jurisdiction. Special DV jurisdiction is defined under 25 U.S.C. §§ 1302 through 1304 (2013). Res. No. 18-A-99 also changed the name of this section from Eligibility of Voters to Jury Pools.]

4.02.02 Number of Jurors

A jury shall consist of six (6) jurors and at least one alternate drawn from the current list of eligible jurors by the Judge or the Court Clerk.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 18-A-99, passed 8/27/18, amended this section to include the requirement to draw at least one alternate juror.]

4.02.03 Jury Selection

The parties shall be permitted alternately to question the potential jurors as to their impartiality and fairness. The parties may excuse up to two (2) jurors without showing cause, commencing with the

complainant and alternating thereafter. The parties may challenge any juror for cause and the Judge shall excuse any juror he or she feels would not be completely fair and impartial. There shall be no limit to challenges for cause.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section integrating former section 1.5.03 and 4.2.01. The composition of the jury panel was at least 2/3 enrolled members was enacted to see that tribal members are adequately represented on juries. Formerly, more non-members than members served on juries although members compose the majority of reservation residents. Resolution No. 18-A-99, passed 8/27/18, amended this section to repeal the percentage requirements explained above from Res. No 84 A 03. The Tribe is exercising Special Domestic Violence Criminal Jurisdiction under 25 U.S.C. §§ 1302 through 1304 (2013), so the tribe requires that a jury pool reflects a fair cross-section of the community and the tribe requires that no distinctive group in the community is systematically excluded, including non-Indians. Cross-reference Title 15 Domestic Violence.]

4.02.04 Conflict of Interest

No person shall be eligible to sit on a jury panel in any case in which he or she:

- 1) has a direct interest or,
- 2) is related to a party by blood or marriage in the first or second degree.

This section shall not be construed as the sole basis upon which a juror may be challenged for cause.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section to simplify the language.]

4.02.05 Fees

Any person required to attend court as a potential juror shall be entitled to a fee of fifteen dollars (\$15.00) per day. Those who actually serve as jurors shall be entitled to an additional forty dollars (\$40.00) per day for each day he or she sits on a jury.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section to increase the fee for jurors who are impaneled to ten dollars per day. Resolution No. 18-A-99, passed 8/27/18, amended this section to increase payments to potential jurors from \$5 to \$15 a day, and to increase payments to actual jurors from \$5 to \$40 a day.]

4.02.06 Jury Note Taking

In all cases, the Court shall allow jurors to take written notes regarding the evidence presented to them and to keep these notes with them during their deliberation. The Court may allow jurors to keep these

notes with them in their jury room during recesses and in such cases jurors may review their own notes but may not share or discuss the notes with other jurors until they begin deliberating. A juror's notes are confidential and shall not be shared with other fellow jurors and the Court shall destroy all juror notes immediately after the verdict is rendered.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 18-A-99, passed 8/27/18, created this section to guide the Tribal Court on the issue of jury note-taking.]

4.02.07 Right to Jury Trial

A defendant charged in the Port Gamble S'Klallam Tribal Court has a right to a trial by jury of six fair and impartial jurors drawn from the community. A defendant may waive the right to a jury trial in a written, voluntary statement to the Court. All jury verdicts must be unanimous.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 18-A-99, passed 8/27/18, created this section to clarify that a defendant charged in the Port Gamble S'Klallam Tribal Court has a right to a trial by jury.]

Chapter 4.03 Witnesses

4.03.01 Subpoenas

A judge or judicial officer shall issue subpoenas for the attendance of witnesses upon his or her own motion or upon request of the tribal police or any other party to the case. Failure to obey a subpoena shall be punishable as contempt of court. Service of subpoenas shall be made by tribal police officer or other person designated by the Court.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section to make failure to obey a subpoena punishable by contempt. This section was formerly numbered 1.8.01.]

4.03.02 Swearing in Witnesses

All witnesses shall be administered the following oath by the Court, "Do you solemnly swear to tell the truth in the matter now pending before this Court."

[HIST: Source - Port Gamble S'Klallam Law and Order Code.]

4.03.03 Witness Fees

Each witness answering a subpoena shall be entitled to a fee of ten (\$10.00) dollars per day for each day his services are required in court. The fees of witnesses in civil actions shall be paid by the party calling them.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section, deleting the portion on voluntary witness expenses. This section was formerly numbered 1.8.02.]

Chapter 4.04 Trial Procedure

4.04.01 Conduct of Trial

The complainant shall make an opening statement setting forth the criminal charge or civil complaint against the defendant. The defendant shall then have an opportunity to make a statement of his position. The complainant shall then call witnesses and produce evidence as he or she may see fit.

The defendant shall then have an opportunity to call witnesses and produce evidence. All parties shall have the right to cross examine witnesses produced by the other side.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section for clarity.]

4.04.02 Final Argument

Upon conclusion of all the evidence, the defendant, then the complainant shall be given an opportunity to argue their cases. Each party, commencing with the defendant shall then be given an opportunity to make a closing argument. Further argument may be allowed in the Court's discretion.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section altering the order of argument. This section was formerly numbered 4.2.04.]

Chapter 4.05 Jury Instruction

4.05.01 Jury Instructions - Civil

In a civil jury case, the Court shall instruct the jury as to the complainant's burden of proof, that if the complainant has met his burden of proof that their judgment shall be for the complainant. The Court shall state to the jury that if the complainant fails to meet the burden of proof, judgment should be rendered for the defendant.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section slightly for clarity. Cross References - Standard of Proof, Section 3.06.03.]

4.05.02 Jury Instructions - Criminal

In a criminal jury case, the Court shall instruct the jury that the defendant is presumed to be innocent and that the jury should find the

defendant guilty only if they believe the defendant is guilty beyond a reasonable doubt.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section to emphasize the presumption of innocence and simplify the language. This section was formerly 4.3.04.]

4.05.03 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.

[HIST: Source - Port Gamble S'Klallam Law and Order Code.]

4.05.04 Jury Instructions - Deliberation

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

[HIST: Source - Port Gamble S'Klallam Law and Order Code.]

Chapter 4.06 Judgment

4.06.01 Jury Decision

After the jury has announced its decision in open court with the parties present, the Court shall enter judgment in accordance with their decision.

[HIST: Source - Port Gamble S'Klallam Law and Order Code.]

Chapter 4.07 Rules of Evidence

4.07.01 Rules of Evidence

The Federal Rules of Evidence shall be applicable in all actions brought before the Tribal Court unless the parties stipulate in writing that the Washington Rules of Evidence apply. Federal case law, or in the alternative Washington case law, interpreting the applicable Rules of Evidence may be cited as persuasive authority. Regardless of what Rules of Evidence are used, the Court reserves the right to independently interpret the rules in accordance with the laws, customs, and traditions of the Port Gamble S'Klallam Tribe. In criminal matters the applicable Rules of Evidence shall be those current at the time of filing the criminal complaint(s). In civil matters the applicable Rules of Evidence shall be those current at the time of filing the civil

complaint or petition. In both civil and criminal matters, the parties may stipulate to using the Washington Rules of Evidence provided that a written stipulation is filed with the court at least 14 days prior to the trial.

In criminal cases, for purposes of attacking the credibility of a witness under the Federal Evidence Rule 609 or the Washington Evidence Rule 609, evidence of convictions of a crime in Tribal Court may be admitted if the conviction was for a crime punishable by imprisonment of 31 days or more.

[HIST: Source – Resolution 14-A-046, passed 3/25/14, adopted this Chapter into the Port Gamble S’Klallam Law and Order Code.]