

TITLE 1. TRIBAL COURTS

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Chapter 1.1 ESTABLISHMENT OF COURTS

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1.1.1 Purpose.

1.1.2 Authority. Authority shall be vested in the Hoh Tribal Court to the fullest extent of all applicable law. The Court shall be a court of General Jurisdiction, unless limited hereafter in subsequent Tribal Codes.

1.1.3 Power Vested. The judicial power of the people of the Hoh Reservation shall be vested in the Hoh Tribal Courts.

1.1.4 Trial Court. The trial court of the Hoh Tribal Court shall consist of one chief judge and one or more associate judges.

1.1.5 Youth Court. There shall be established a Youth Court which shall hear, in confidence, all matters related to dependencies, guardianships, adoptions and any criminal or civil matters involving persons under the age of eighteen (18).

1.1.6 Court of Appeals. The Hoh Tribal Court of Appeals shall consist of appeals judges appointed by the Hoh Tribal Business Committee. A panel of the court of appeals to hear any appeal shall consist of a chief judge and two associate judges who shall decide appeals on the record by a majority vote of the three-member appeals panel.

1.1.7 Intertribal Court System. The Hoh Tribe may elect to participate in an Intertribal Court System, such as the Northwest Intertribal Court System (NICS), which shall provide judges and prosecutors pursuant to a written agreement.

Chapter 1.2 JURISDICTION AND APPLICABLE LAW

1.2.1 Subject Matter Jurisdiction.

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1.2.6 Appellate Jurisdiction.

1.2.1 Subject Matter Jurisdiction. The Hoh Tribal Court shall be a court of general jurisdiction. Its subject matter jurisdiction shall extend to all cases and controversies within the territorial jurisdiction of the Hoh Tribe, including but not limited to:

- (a) All crimes committed by Indians;
- (b) All actions under the civil regulatory laws of the tribe;
- (c) All civil actions involving any Indian person, tribe, organization, or property;
- (d) All other matters placed within the jurisdiction of the tribal court by action of the Hoh Tribal Business Committee or the Congress of the United States.

1.2.2 Jurisdiction Over Persons. (1) The tribal courts of the Hoh Tribe shall have personal jurisdiction over all members of the Hoh Tribe, over all persons who are domiciled or residents within, or served with process within, or conduct continuous and substantial business within, the territorial jurisdiction of the courts, and also over all persons who consent to the jurisdiction of the tribal courts.

(2) The tribal courts shall also have personal jurisdiction over any person, for any actions arising from the commission by that person, personally or through an agent, of any of the following acts within the territorial jurisdiction of the court:

- (a) The transaction of any business;
- (b) The commission of a tortious act;
- (c) Ownership, use, or possession of any real or personal property, situated within said territory;
- (d) Conceiving a child;
- (e) Living in a marital relationship, so long as either the petitioning party or the respondent is domiciled within the territorial jurisdiction of the court at the time the action is commenced; or
- (f) Any violation of a tax law, or licensing or other civil regulatory law, of the tribe; or
- (g) Any crime.

(3) The Hoh Tribal Courts shall also have personal jurisdiction over any person, for any actions arising from the commission by that person, in any place, of any of the following acts:

- (a) Contracting for the delivery of any goods into the territorial jurisdiction of the court, or for the performance of any services or with respect to any person or property therein;
- (b) Any act that causes injury to a person or property located within the territorial jurisdiction of the court at the time the injury occurs; or
- (c) Any other act or series of acts that establish minimal contacts with the territorial jurisdiction of the court, or that are otherwise sufficient to confer personal jurisdiction consistent with due process.

1.2.3 Territorial Jurisdiction. The territorial jurisdiction of the Hoh Tribal Courts shall embrace:

- (a) All land and property within the exterior boundaries of the Hoh Indian Reservation;
- (b) All land, wherever located, in which the Hoh Tribe owns an interest subject to a federal restriction against alienation, or in which the United States owns an interest in trust for the use and benefit of the Hoh Tribe;
- (c) All land within Jefferson and/or Clallam County, Washington, in which a member of the Hoh Tribe owns an interest which is subject to a federal restriction against alienation, or in which the United States owns an interest in trust for a member of the Hoh Tribe;
- (d) All usual and accustomed fishing grounds and stations of the Hoh Tribe, for actions arising under Hoh laws that regulate the exercise of treaty fishing rights;
- (e) All of the State of Washington and any other place which was within Washington Territory on March 8, 1855, for actions arising under the Hoh laws that regulate the exercise of treaty hunting and gathering rights; and
- (f) Any other place which is Indian country within the meaning of 18 U.S.C. §1151 and in which members of the Hoh Tribe hold a significant property interest, or constitute a significant portion of the Indian people residing on, doing business on, or using, such place

1.2.4 Exclusive and Concurrent Jurisdiction.

(1) Unless provided otherwise by federal law, the Hoh Tribal Court shall have exclusive jurisdiction over the following matters:

- (a) All claims against the Hoh Tribe, tribal officers, branches and agencies of the tribal government, and tribally owned enterprises, unless the Tribal Business Committee has explicitly consented by formal resolution or ordinance to suit in another forum; and
- (b) Actions in which the validity of the tribal constitution or a tribal law or regulation is questioned, or in which tribal law provides the rule of decision; provided, that this section shall not be construed as a waiver of the sovereign immunity of any tribal defendant.

(2) Where state, federal, or other tribal courts have jurisdiction over matters which also fall within the jurisdiction of the Hoh Tribal Courts, the jurisdiction of the Tribal Court shall be concurrent with that of the other tribal, federal, or state court.

1.2.5 Jurisdiction in Aid of Powers. The tribal court of the Hoh Tribe shall have power to issue any order or writ necessary and proper to the complete exercise of its jurisdiction.

1.2.6 Appellate Jurisdiction. The court of appeals shall have jurisdiction to hear and determine appeals from final judgments of the trial court of the Hoh Tribe, and all such appeals shall be tried on the record. The chief appellate judge shall have power to issue any order or writ necessary and proper to the complete exercise of the jurisdiction of the court of appeals.

Chapter 1.3 JUDGES

- 1.3.1 Qualifications.
- 1.3.2 Appointment and Term of Office.
- 1.3.3 Removal.
- 1.3.4 Salaries.
- 1.3.5 Other Duties.
- 1.3.6 Powers.
- 1.3.7 Rules of Court.
- 1.3.8 Disqualification.
- 1.3.9 Assignment of Cases.
- 1.3.10 Youth Court Judges.
- 1.3.11 Judges Pro Tem.

1.3.1 Qualifications. Each judge of the Hoh tribal courts shall be thirty-five years of age or over, of good moral character, and shall not have ever been convicted of a felony or convicted of a gross misdemeanor within the year immediately preceding appointment. Each judge shall be a graduate of an accredited law school, or shall have a high school diploma or G.E.D. and sufficient training or experience to be capable of performing the duties of the office. Training or experience is sufficient if it has resulted in a working knowledge of the law, including tribal, state, and federal jurisdiction, due process, civil and criminal procedure, evidence, and legal research and writing. Native preference shall apply.

1.3.2 Appointment and Term of Office. Each judge, including judges pro tem, shall be appointed by the Hoh Tribal Business Committee. Each judge, not including pro tem judges, shall hold office for a term of three years.

1.3.3 Removal. Judges may be removed from office only after due notice and a hearing, at which a judge may be represented by counsel, by two-thirds vote of the Hoh Tribal Business Committee. A judge may be removed only if there is reasonable cause to believe the judge to be guilty of malfeasance in office, neglect of duty, mental or physical

incapacity to perform the duties of the office, or if the judge has been convicted of a gross misdemeanor or felony in a Tribal, state or federal court since entering office.

1.3.4 Salaries. The salaries of the chief judge, associate judges and appellate judges shall be fixed at the time of appointment. The salaries of judges may be increased, but not decreased during the term of the judge. Any judge shall be a contractor with the Northwest Intertribal Court System (NICS) and shall be paid by NICS.

1.3.5 Other Duties. The chief judge, in addition to his judicial duties, shall have the authority to supervise the work of associate judges, the court clerk, and other personnel assigned to the court by the tribal Business Committee.

1.3.6 Powers. The judges shall hear and determine all matters which are duly and regularly filed in the tribal courts of the Hoh Reservation. They shall have power to issue subpoenas to compel attendance of witnesses on their own motion or on the motion of a party litigant and may punish for failure to comply with such subpoenas.

1.3.7 Rules of Court. The chief judge may adopt rules of pleading, practice, and procedure applicable to any or all proceedings in the tribal court and in the court of appeals. In addition, they may adopt uniform rules for the admission of evidence and may require the use of standard forms for pleadings, motions, and other instruments filed in court by litigants, as well as for judgments, writs, warrants, and other court orders.

1.3.8 Disqualification. No judge shall be qualified to act in any case where he or she has an interest, is or has been a material witness, or is related to any party or their counsel by marriage or blood in the first or second degree. A judge may be disqualified upon his own motion or by application by any party in the proceeding upon filing a verified motion in writing.

1.3.9 Assignment. The chief judge shall assign all cases, criminal and civil, arising under this code.

1.3.10 Youth Court Judges. In addition to other duties and powers specifically enumerated in this chapter, judges of the trial court shall have the same duties and powers as judges of the youth court of the Hoh Reservation when so assigned.

1.3.11 Judges Pro Tem. (a) The Hoh Tribal Business Committee may appoint judges pro tem and such judges may serve in the following circumstances:

(1) When any judge is unable to fulfill judicial duties due to any temporary cause, during the pendency of such cause; or

(2) When any judge is disqualified, in the matter to which the disqualification relates; or

(3) When any judge has died, resigned, or been removed from office, until a permanent replacement is appointed; and

(4) When no judge of the Hoh Tribal Court is available to act in lieu of such appointment.

(b) Judges pro tem shall be appointed only upon certification by the chief judge that circumstances described in paragraph (a) exist; or when the circumstances described in paragraph (a) exist with regard to the chief judge.

Except as provided in this section, the provisions of this title shall apply to judges pro tem in the same manner as they apply to other judges.

Chapter 1.4 (RESERVED)

Chapter 1.5 COURT ADMINISTRATION

- 1.5.1 Appointment of Clerk.
- 1.5.2 Qualifications of Clerk.
- 1.5.3 Duties of Clerk.
- 1.5.4 Bond.
- 1.5.5 Docket.
- 1.5.6 Copies of Proceedings.
- 1.5.7 Copies of Laws, Ordinances, etc.
- 1.5.8 Seal.

1.5.1 Appointment of Clerk. The clerk of the court shall be appointed by the Hoh Tribal Business Committee, utilizing the employment and personnel procedures of the Hoh Tribe.

1.5.2 Qualifications of Clerk. No person shall be appointed a clerk of the court unless the appointee is twenty-one years of age or older and of good moral character, has never been convicted of a serious offense or felony, has not been convicted of a misdemeanor within the past year, speaks, writes, and understands the English language fluently, and has demonstrated competence in the skills essential to the preparation and maintenance of court records.

1.5.3 Duties of Clerk. The clerk shall render assistance to the law enforcement office necessary to the functions of the court. The clerk shall attend and keep a record of the Hoh Tribal Court and Court of Appeals, read the complaints, administer oaths, collect all fines paid by order of the court, give receipts when fines are paid and turn money and/or checks into the Accounting Department, see 1.6 below: Schedule of Fees. The clerk shall perform other duties as provided in this code and as may be directed by the chief judge.

1.5.4 Bond. No bond shall be required for the clerk except as required for a Notary.

1.5.5 Docket. The clerk shall keep a docket in which shall be entered the names of each plaintiff and defendant in any civil or criminal proceeding, the character of the proceeding, the date of issuance and the return date of any process issued therein, the appearance or default of parties summoned, the date and amount of any judgment, any appeal therefrom, and all other proceedings there. The clerk shall keep and maintain such other records as provided in this code and as may be directed by the chief judge.

1.5.6 Copies of Proceedings. Any party may obtain a certified copy of court proceedings from the clerk by payment of the cost thereof.

1.5.7 Copies of Laws, Ordinances, Etc. The Hoh Tribal Court of the Hoh Reservation shall be provided with copies of this code and copies of other federal and state laws and regulations and tribal ordinances deemed by the court necessary, proper, and applicable to the rights and conduct of persons subject to the jurisdiction of this court and to its judicial powers and responsibilities.

1.5.8 Seal. The court of the Hoh Reservation shall adopt a seal which shall be used by the clerk of the court when he prepares certified copies of any official documents of the court for use outside the court.

Chapter 1.6 SCHEDULE OF FEES

1.6.1 Admission Fees

1.6.2 Filing Fees

1.6.3 Fees for Copies, Certified, etc.

1.6.4 Fee Waiver Request

1.6.1 Admission Fees. Any person wishing to be admitted to the Hoh Tribal Court Bar shall pay a one-time admission fee of fifty (\$50) dollars.

1.6.2 Filing Fees. Any person wishing to file a civil action in the Hoh Tribal Court shall first pay a filing fee of twenty-five (\$25) dollars. Indigent persons may request a Fee Waiver (see 1.6.4).

1.6.3 Fees for Copies, Certifications, etc. Any person requesting copies of court documents shall pay a copying fee of ten cents (\$0.10) per page. Any person requesting to have a court order certified by the Clerk of the Court shall pay a \$10 fee. Fees for other administrative tasks requested of the Court shall be determined as appropriate.

1.6.4 Fee Waiver Request. Any person who is either indigent or who has been the victim of domestic violence may request a Fee Waiver for any of the above 1.6.1-1.6.3. The Clerk of the Court shall provide the appropriate form and instructions and aid, as much as possible without giving any legal advice, in the filling out of the request.

Chapter 1.7 (RESERVED)

Chapter 1.8 RULES OF COURT

1.8.1 Court Sessions.

1.8.2 Official Station.

- 1.8.3 Location for Filing.
- 1.8.4 Copies of Documents.
- 1.8.5 Notice to Parties.
- 1.8.6 Extension of Time.
- 1.8.7 Court Decorum.
- 1.8.8 No Discussion With Jurors.
- 1.8.9 No Discussion With Judge.
- 1.8.10 Contempt of Court.
- 1.8.11 Exhibits.
- 1.8.12 Rules of Evidence.
- 1.8.13 Jury Demand.
- 1.8.14 Jury Trial.
- 1.8.15 Right to Counsel.
- 1.8.16 Admission of Counsel.
- 1.8.17 Restriction on Counsel Activities.
- 1.8.18 Appointment of Prosecutor.
- 1.8.19 Subpoenas.
- 1.8.20 Disqualification of Judge.
- 1.8.21 Contempt of Court.
- 1.8.22 Default on Fine.
- 1.8.23 Disposition of Payments Made to the Court.
- 1.8.24 Disposition of Property Confiscated by the Court.
- 1.8.25 New Trial.
- 1.8.26 Appellate Procedure.
- 1.8.27 Terms of Probation.
- 1.8.28 Rules Governing Procedures.
- 1.8.29 Testimony.

1.8.1 Court Sessions. Regular sessions of the court shall be held as needed in the court of the Hoh Indian Reservation located in the village of Hoh, Washington. All trials, both civil and criminal, shall be commenced at a designated time and place determined by the court, with reasonable notice of such time and place being given to the parties.

1.8.2 Official Station. Hoh, Washington, is designated as the place where current records of the court shall be kept and as the official station of the clerk of the court.

1.8.3 Location for Filing. All pleadings, motions, and other papers should be filed with the court clerk at Hoh.

1.8.4 Copies of Documents. Records or documents in the files of the court shall not be taken from the office or custody of the clerk except upon consent of the clerk. Only counsel for parties will be allowed the right to copy documents and only for good cause shown and after giving proper receipts.

1.8.5 Notice to Parties. All cases at issue shall be set for trial on the merits at times and places to be designated by the court, and written notice of not less than seven (7) calendar days shall be given to counsel or to the parties.

1.8.6 Extension of Time. The court may grant an extension of time to answer or otherwise plead to a complaint or amended complaint, if a written request is timely filed.

1.8.7 Court Decorum. (a) All court proceedings shall be conducted in a dignified and respectful manner. All persons addressing the court shall arise and shall speak in a clear and courteous manner.

(b) The following rules shall govern court decorum, requiring no interference or disturbance with the proceedings before the court:

(1) A law enforcement officer shall be appointed court bailiff by the judge, and the bailiff will open each session of court and be present to keep order in the courtroom at all times.

(2) Spectators will be permitted in the courtroom during trial sessions, except that spectators may be prohibited from entering the courtroom during the taking of testimony without specific permission of the judge.

(3) All persons 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.

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

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

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

(7) A Tribal flag, if available, and a flag of the United States shall be displayed in the courtroom at all times.

1.8.8 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 may be excused by the judge.

1.8.9 No Discussion with Judge. No witness or party to any case shall 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 shall attempt to influence the court's decision unless in the course of regular court proceedings.

1.8.10 Contempt of Court. Any person failing to maintain the respect due the court or engaging in offensive conduct in the courtroom shall be deemed guilty of contempt of

court and subject to immediate sentencing by the tribal court judge to imprisonment for a period not to exceed five days or a fine not to exceed \$200 hundred dollars or both.

1.8.11 Exhibits. All separate documents, photographs, papers, and 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 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.

1.8.12 Rules of Evidence. Except as otherwise expressly provided under this code or under applicable federal law, the rules governing evidence under the Federal Rules of Evidence shall **not** apply to the criminal or civil proceedings of this court.

(a) The court shall consider the most reliable evidence offered when more than one kind of evidence is offered. That is, in oral testimony, persons who testify from their personal (first-hand) knowledge shall be preferred as witnesses to persons who have second-hand knowledge of the event, although all testimony may be heard.

(b) Evidence admitted in the tribal court must be directly related either to the issue before the court or to the weight and credibility which should be given to other evidence. When questioned by the judge or another party, the party who wishes to present certain evidence shall explain why he or she thinks the evidence is relevant.

(c) When the relevance or reliability of evidence is challenged and the judge decides whether or not to use the evidence, the judge shall explain his ruling on the record.

(d) Although hearsay is not a preferred method of offering evidence, it is not specifically prohibited.

1.8.13 Jury Demand. When a demand for trial by jury in a criminal case is contained within a pleading instead of being separately filed, the demand shall be brought to the attention of the clerk, either orally or in writing, at the time of the filing of the pleading.

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

(a) In any criminal case a defendant may request a trial by jury at the arraignment or by written application to the court within three days thereafter.

(b) A jury shall consist of six persons and one alternate selected by the chief judge from a list of tribal members and/or Tribal employees who are least eighteen years of age and who reside in Jefferson, Clallam, and Gray's Harbor counties, Washington. The list shall be certified to the chief judge by the tribal enrollment officer and shall be revised from time to time.

(c) At the direction of the chief judge, the clerk shall draw the names of six jurors by random selection. Either party to a case may challenge not more than two jurors without cause and any number of jurors for cause. Cause shall consist of but not be limited to:

(1) Non-eligibility as a juror or such physical or mental defect as to render the juror incapable of performing his duties;

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

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

(d) When the jury of six has been seated, the jurors' oath shall be administered by the judge.

(e) The verdict of the jury may be rendered by a majority vote. In case of a tie vote, the judgment shall be entered for the defendant and the case dismissed.

(f) Each juror shall be entitled to a fee of \$20 dollars for each day of jury service plus the federal mileage rate for travel to and from court, payable by the Hoh Tribe.

(g) The court may order the jury to view the premises where the offense or other material facts occurred.

(h) 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 or less jurors, the jury shall be discharged and the criminal case shall be dismissed.

1.8.15 Right to Counsel. (a) Each litigant in a civil case and every defendant in a criminal proceeding shall have the right to have counsel represent him at his own expense.

(b) Indigent Defendants.

(1) Right to Appointed Counsel. Indigent persons charged with crimes under this code, or alleged to be youth offenders under this code, **may** be entitled to representation by counsel at the tribe's expense, provided that sufficient funds are available and appropriated by the tribal Business Committee for that purpose.

(2) Definitions.

(A) "Indigent person" means a person (or, where the person is a minor or incompetent, such person or his or her parent or legal guardian or custodian) 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 of the federal poverty level; or who is otherwise unable to pay in full the customary fees and expenses of counsel 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 item of personal property not regularly used in business or employment and having a net value in excess of five thousand dollars.

(3) Amounts Needed for Bail. No sums needed by an accused to post bail shall be considered income or liquid assets.

(4) Determination of Indigency.

(A) The court shall determine indigency at the earliest possible stage of proceedings, following the request of the accused for appointed counsel. The determination shall be based upon sworn written or oral testimony. The prosecution shall not cross-examine the accused upon such testimony, nor use such testimony in the matter in which the appointment of counsel is sought.

(B) The court may find that an indigent person has sufficient income or liquid assets to afford some of the costs of counsel, and may condition an order appointing counsel upon the accused's execution of a promissory note, or other action, sufficient to ensure reimbursement to the tribe of that part of the costs of counsel not in excess of the accused's ability to pay.

(C) The court may re-determine indigency at any time, in its discretion. If the court finds, after a determination of indigency, that a person is not then eligible for appointed counsel, the court shall notify the person and their counsel of the termination of the appointment.

(5) Public Defender. The tribal Business Committee **may** employ one or more public defenders. The court **may** appoint the public defender to represent persons entitled to appointed counsel under this section; provided, that where the public defender cannot represent the accused for ethical or any other cause, the court may appoint any other person who is eligible to practice before the court and willing to represent the accused for no more than one hundred twenty-five percent of the compensation to which the public defender would be entitled.

(6) Additional Procedures and Court Rules. The chief judge may prescribe such other procedures or rules, not inconsistent with the provisions of this section, as he or she deems appropriate for the administration of this section.

1.8.16 Admission of Counsel. (a) All counsel who wish to be admitted to practice before the Hoh 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 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 Hoh Tribal Court, federal laws and regulations applicable to the Hoh Tribe, and some knowledge of the culture and traditions of its members is eligible to apply for admission to general practice in this court.

(c) Any person who is eighteen years of age or older, has not been convicted of a felony or 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 Hoh Tribal Court, and knowledge of the culture and traditions of the Hoh people is eligible to apply for admission to general practice in this court as a lay counsel or lay advocate.

(d) Fees for admission. \$50 to be a member of the Hoh Tribal Court Bar.

1.8.17 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 is interested.

(b) No counsel in a case may testify as a witness at the trial thereof, except upon permission of the court.

1.8.18 Appointment of Prosecutor. (a) The Hoh Tribal Business Committee may appoint a prosecutor for the Hoh Tribe. No person shall be appointed as prosecutor unless the appointee is 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 Hoh Tribe of the Hoh Reservation.

1.8.19 Subpoenas. (a) Every judge of the Hoh Tribal Court shall have the power to issue subpoenas for the attendance of witnesses, either on his own motion or on the motion of any party to the case.

(b) Service of subpoenas shall be by any qualified member of the law enforcement staff or other officer of the court or by any person appointed by the court for that purpose.

(c) Witnesses shall be compensated at the rate of ten (\$10) dollars per day of trial and current federal mileage 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.

1.8.20 Disqualification of Judge. In case of the death, illness, or incapacity of the judge during the course of a trial, the chief judge shall order a new trial and designate another judge, who shall have the same power, authority, and jurisdiction as the original judge.

1.8.21 Contempt of Court. (a) Any person may be charged in contempt of court for any of the following reasons:

(1) 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;

(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 lawfully issued by the court;

(4) Resistance willfully offered by any person to the lawful order or process of the court;

(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 the proceedings of any court;

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

(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 months or to pay a fine of not more than five hundred dollars or both, with costs, and may also issue such orders as are necessary to enable the person to purge himself of the contempt.

1.8.22 Default on Fine. When a defendant defaults in the payment of a fine or any installment thereof, the court on its own motion 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. The court may order the seizure and sale of any personal property of the defendant found within the exterior boundaries of the Hoh Reservation, including but not limited to seizure of said person's per capita payments to the extent necessary to pay any and all fines/restitution/judgments.

1.8.23 Disposition of Payments Made to the Court. Any funds paid to the Hoh Tribal Court as a result of the provisions of this code or other lawful orders of the court shall be paid to the clerk of the court who shall issue a receipt therefore and shall provide said funds to the Accounting Office/Finance Department which shall deposit the funds into the Hoh Tribal Court Account. The funds shall be recorded upon the accounts of the tribe and shall 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 Hoh Tribal Business Committee may direct.

1.8.24 Disposition of Property Confiscated by the Court. Any property, including equipment, which may have been confiscated and forfeited by lawful order of the court under the provisions of this code shall be sold at a public auction and the proceeds thereof deposited by the clerk of the court into the general tribal treasury. The funds shall be recorded upon the accounts of the tribe and shall be available for expenditure upon order of the judge of the tribal judiciary and for such other purposes as the Hoh Tribal Business Committee may direct.

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

- (a) Receipt by the jury of evidence not authorized by the court;
- (b) Determination of a verdict by lot, through intimidation, or without a fair expression of opinion;
- (c) Refusal by the court to instruct the jury correctly as to the law;
- (d) Failure of the defendant to receive a fair and impartial trial;
- (e) New evidence discovered and not available at time of original trial.

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

(b) The appeal shall be heard by the Hoh Tribal Court of Appeals, and the judgment of the appeals court shall be final.

(c) If an appeal is taken, the case shall be tried on the record; provided, that a proper record of the trial has been kept.

(d) While a case is on appeal, no action shall be taken on the judgment of the trial court until the appeal has been decided.

1.8.27 Terms of Probation. The court as a condition of any order granting probation to a defendant may require the defendant:

(a) To meet his family responsibilities;

(b) To devote himself 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 when required;

(d) To pursue a prescribed 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 refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;

(g) To possess no firearm or other dangerous weapon unless granted written permission by the court;

(h) To make restitution or reparation for the loss or damage of his unlawful acts, as may be directed by the court;

(i) To remain within the jurisdiction of the court and not to leave that jurisdiction without permission of the court, and to notify the court or an officer thereof of any change in address or employment;

(j) To report as directed to the court, probation officer, or other person designated by the court;

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

(l) To satisfy any other conditions reasonably related to the rehabilitation of the defendant.

1.8.28 Rules Governing Procedures. Rules, not inconsistent with the provisions of this code, governing procedures of the Hoh Tribal Court of the Hoh Reservation, shall become effective upon recommendation by the chief judge and approval by the tribal Business Committee and may be amended or supplemented in the same manner.

1.8.29 Testimony. The Court shall have the discretion to determine the manner and method of witness testimony. If a witness is not available to testify in person, the court may accept written or telephonic testimony as long as the court can be assured that the testimony is from the witness on whose behalf it is offered. The court may also allow parties to testify or participate telephonically if they are physically unavailable to the court. The same assurances must be made before the court allows telephonic participation by a party or legal representative.