

Title 10

Tribal Court System and Court Rules

TRIBAL COURT SYSTEM AND COURT RULES

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TITLE 10

TRIBAL COURT SYSTEM AND COURT RULES

10.00 AUTHORITY, PURPOSE AND INTERPRETATION

10.00.010 Authority: The Tribal Council, under the authority of Article VI, Section 1(h) and (j) and Section 2(a) of the Nooksack Tribal Constitution, enacts this Tribal Court System and Court Rules.

10.00.020 Purpose: The purpose of this title is to provide for a system of criminal justice and the resolution of civil disputes for the Nooksack Indian Tribe, and all persons, property and resources subject to its jurisdiction; to safeguard individual rights and to secure rights and powers inherent in the Nooksack Indian Tribe's sovereign status, guaranteed to the Tribe by treaty and by the laws of the United States.

10.00.030 Limited Subject Matter/Personal Jurisdiction: The court shall have subject matter and personal jurisdiction over civil and criminal matters specifically enumerated in the Nooksack Tribal Code of Laws.

10.00.040 Concurrent Jurisdiction: The jurisdiction involved by this Code over any person, cause of action, or subject shall be concurrent with any valid jurisdiction over the same of the courts of the United States, any state, or any political subdivision thereof; provided, however, this Code does not recognize, grant, or cede jurisdiction to any political or governmental entity in which jurisdiction does not otherwise exist in law.

10.00.050 Exclusive Original Jurisdiction: The court shall have exclusive original jurisdiction in all matters in which the Nooksack Indian Tribe or its officers or employees are parties in their official capacities. Nothing contained in the preceding sentence or elsewhere in this Code shall be construed as a waiver of the sovereign immunity of the Tribe or its officers or enterprises unless specifically denominated as such and the court is expressly prohibited from exercising jurisdiction over the Nooksack Indian Tribe without an express waiver of sovereign immunity.

10.00.060 Long-arm jurisdiction: It has been and continues to be the intent of the Nooksack Indian Tribe that the tribal court exercise long-arm jurisdiction to the extent consistent with the due process protections provided by 25 USC Sec. 1302(8). Unless prohibited by federal law, a person, including any legal entity, who is a member or non-member of the Tribe residing outside the Tribe's territorial jurisdiction and/or not present within such territory, submits to the jurisdiction of the tribal court by doing any of the following acts:

- (a) Transacting any business within tribal territory including but not limited to contracts to supply services or tangible items within the reservation or off-reservation trust lands and conveying any interest in property located within such tribal territory;

- (b) Committing any tortuous act within the reservation or other tribal territory;
- (c) Owning, using, possessing or having an interest in any property, whether real or personal, situated within tribal territory;
- (d) Contracting to insure any person, property or risk located within the reservation or other tribal territory at the time of contracting;
- (e) Living in a marital relationship subject to the tribe's jurisdiction, notwithstanding subsequent departure from tribal territory, so long as one party to the marriage continues to reside within tribal territory;
- (f) Is the parent, custodian, or other person with a legal interest in an Indian child.
- (g) Accepts a privilege from the tribe, or entering a consensual relationship or commercial transaction with a member.

Where jurisdiction is based on an act listed in this section, the Nooksack Tribal Court may exercise personal jurisdiction over the person who does such an act, directly, or by an agent, as to any cause of action under tribal law arising from such act. If the individual commits such an act, the court's jurisdiction over the person also extends to his or her personal advocate

10.00.070 Interpretation of Rules: These rules shall be interpreted in the light of and supplemented by the traditions, customs and common understanding of the people of the Nooksack Tribe, but when such "custom law" is in conflict with provisions in the Tribal Code, the written law shall apply.

10.00.080 Liberal Interpretation: These rules shall be liberally interpreted and applied or achieve the following purposes: revealing the truth, treating all parties fairly and without prejudice, securing simplicity in proceedings, protecting individual rights guaranteed by the Indian Civil Rights Act, the Nooksack Constitution, and encouraging the application of traditions and customs of the Nooksack Indian Tribe.

10.00.090 Limitation of Remedies: When the Nooksack Indian Tribe, as a party, has consented to jurisdiction of the court, its waiver of sovereign immunity shall be limited by the following limitations on remedies that may be imposed against it:

- (a) The court shall not issue an order to the Nooksack Indian Tribe that involves the expenditure of tribal funds, without the Nooksack Indian Tribe's consent.
- (b) No emergency, temporary or preliminary restraining order may be signed or entered by the court in any action against the Nooksack Indian Tribe or its officers, employees or agents.

- (c) No relief may be awarded against the Nooksack Indian Tribe or its officers, employees or agents without actual notice to the defendant(s), nor prior to the expiration of time provided for answering complaints or orders to show cause.

10.00.100 Sovereign Immunity: In construing the Ordinance, the sovereign immunity of the Nooksack Indian Tribe shall be enforced to its fullest extent, and nothing in this Ordinance is intended or shall be construed as a waiver of the sovereign immunity of the Nooksack Indian Tribe, its officials, its entities, or employees acting within their official or individual capacities. The court shall have no jurisdiction over any suit brought against the Nooksack Indian Tribe, its officials, its entities, or employees without the consent of the Tribe.

- (a) Nothing contained within this code, or other Tribal ordinance, resolution, policy or otherwise shall be deemed to constitute a waiver or renunciation of the sovereign immunity of the Tribe to suit. Such consent or waiver must be expressly made by the Nooksack Tribal Council by majority vote through passage of an ordinance, by resolution, by entering into a written contract which provides for an express waiver, or by other means adopted by the Nooksack Tribal Council.
- (b) The Nooksack Tribe has not waived its sovereign immunity, nor consented to suit, for claims seeking writs of mandamus against the Chairman of the Nooksack Tribe, nor the members of the Tribal Council.

10.01 RULES OF CONSTRUCTION

10.01.010 Purpose: The purpose of these rules of construction is to provide guidelines to the court in the interpretation of tribal ordinances, resolutions, regulations and policies in order that the substantive intent of tribal council actions shall be accurately reflected in tribal court decisions.

10.01.020 General Rules: The Tribal Court shall interpret tribal ordinances resolutions, regulations, and policies in order that the substantive intent of the Tribal Council is ensured. The court shall not indulge in highly technical or legalistic interpretations of tribal ordinances, regulations, and policies when such interpretation would defeat the overall legislative goals of the Tribal Council.

10.02 RULES GOVERNING ADVOCATES

10.02.010 Right to be Represented by an Advocate: Any person appearing as a party in any civil or criminal action shall have the right to be represented by an advocate of his/her own choice and at his/her own expense; provided, however, that the Nooksack Indian Tribe has no obligation to provide or pay for such an advocate; provided further, that any such advocate appearing before the Courts of the Nooksack Indian Tribe shall have first obtained admission to practice before such Courts in accordance with the procedures set forth herein.

10.02.020 Obligation of an Advocate:

- (a) Any person appearing as an advocate shall be subject to the same ethical obligations of honesty and confidentiality towards his/her client and the Court as would a professional attorney; and the attorney-client testimonial privilege shall apply in appropriate circumstances. All advocates must comply with the Advocate's Code of Conduct as established by Tribal Council. Advocates shall be deemed officers of the Court for purposes of their representation of a party and shall be subject to the disciplinary authority of the Court in all matters relating to their advocate capacity.
- (b) Due to their status as officers of the Court, professional attorneys have additional responsibilities to the Court and the parties. For that reason, advocates who are professional attorneys ("Attorney-Advocates") are bound by the Advocates Code of Conduct, the Rules of Professional Conduct ("RPCs") for attorneys licensed to practice in the state of Washington, and decisions of Washington courts regarding attorney discipline.
- (c) Any advocate who prepares a pleading for an otherwise pro se litigant must disclose such assistance, including the phrase "Prepared with Assistance of Counsel" on the pleading, and identifying the advocate. Ghostwriting that represents a pleading to be pro se when it is in fact a product of the advocate is a deception on the court and a per se violation of Rule 14 of the Advocates Code of Conduct.

10.02.030 Appearance as an Advocate: Any person at least 18 years old who is of good moral character may appear as an advocate in the Nooksack Tribal Court as long as he or she has (1) applied in writing for permission, (2) paid the admission fee, (3) read the Constitution and the ordinances of the Nooksack Tribe, and the Rules of the Nooksack Tribal Court, (4) taken an oath to uphold the Constitution and obey by the ordinances of the Nooksack Tribe and the Rules of the Nooksack Tribal Court, and (5) been certified by the Court as qualified to appear.

10.02.040 Procedure for Admission: Before a person is permitted to appear as an Advocate in the tribal court, he or she shall state before the judge: "I have read and understand the tribal constitution, tribal ordinances and the rules of the tribal court. I will uphold the Constitution, will obey by the ordinances of the Nooksack Tribe and the Rules of the Nooksack Tribal Court, will respect the judges and officers of the tribal court, will not raise any claims or defenses which do not appear to be honestly debatable and just and will be truthful at all times."

10.02.050 Admission fee: An admission fee, set by schedule passed by the Nooksack Tribal Council, shall be tendered with the application, subject to return if the application is denied. The fee shall be waived for advocates employed by the tribe and for others, with consent of the court.

10.02.060 Appeal: Any person denied admission shall have a right to appeal and have a due process hearing before the Tribal Appellate Court. There shall be a \$50.00 fee for appeals.

10.02.070 Disbarment and Discipline:

- (a) Whenever it is made to appear to the Chief Judge that any advocate that has been disbarred or suspended from the practice of law in any other tribe or state, he/she shall immediately be given notice at his/her last known address that he shall be suspended from practice before the Courts of the Nooksack Indian Tribe for an indefinite period unless he/she files a response within ten (10) days and shows good cause why such order should not be made.
- (b) Whenever the Tribal Council becomes aware that any advocate has violated the Advocate's Code of Conduct, or the advocate's behavior and/or practices reflect so poorly upon the proper administration of justice before the Nooksack Tribal Court of the Nooksack Indian Tribe, the Tribal Council may revoke any privileges provided to such person(s) and bar them from further practice in any administrative tribunal before the Nooksack Indian Tribe or proceeding before the Nooksack Tribal Court. Tribal Council may hold such hearings as necessary to ensure that such behavior and/or practices are proven; or, as may be necessary to correct such past behavior and/or practices.

10.02.080 Contempt: Any judge who finds an advocate to be in contempt of court may, in addition to any other sanction imposed, order the advocate to appear and show cause why he/she should not be suspended from practicing in the Courts of the Nooksack Indian Tribe.

10.02.090 Complaints: The court may, upon its own motion, or upon receiving a written complaint which indicates that an advocate has acted in an unethical or otherwise improper manner while functioning as an advocate, order such advocate to appear and defend him/herself at a hearing, to hear all evidence relevant to the matter, and may order the suspension of such an advocate if such appears reasonably necessary or appropriate.

10.03 RULES OF JUDICIAL CONDUCT

10.03.010 Judges: A Chief Judge and associate judges shall be appointed by the Tribal Council and shall be compensated on a basis determined by the Council. When a tribal court judge is ill, disqualified or otherwise unavailable, the Tribal Council or its delegate shall appoint a temporary judge.

10.03.020 Magistrates: In addition to judges, the Tribal Council may appoint magistrates to be on call in order exercise the powers provided for herein. Magistrates shall have the power to issue search or arrest warrants, receive bail, set the amount of bail where tribal law or Tribal Court Judge has not set an amount, and set and/or continue trial dates. Magistrates shall exercise these powers when assigned to them by a Tribal Judge or at any time a Tribal Judge is not reasonably available. Any such action of a magistrate shall be subject to review and modification by any judge of the Tribal Court.

10.03.030 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 advocate as a parent, guardian, grandparent, son, daughter, grandson, granddaughter, aunt, uncle, sister, brother, niece or nephew.

10.03.040 Ex Parte Communications: Except as authorized by law, judges may neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding.

10.03.050 Powers of Judges:

- (a) The judge(s) shall hear and decide all matters properly filed in the Tribal Court.
- (b) Whenever the Tribal Court has jurisdiction over a person and subject, the court shall have the power to use reasonable means to protect and carry out its jurisdictions. If the means to enforce its jurisdiction are not spelled out in these rules or in the Tribal Code, the court may use any appropriate procedure that is fair and consistent with the spirit and intent of the tribal law being applied, and with the fullest exercise of the Nooksack Tribe's sovereign immunity.
- (c) If these rules do not set forth a procedure, the parties and the judge may agree on a procedure or the judge may determine the procedure, which will be followed.
- (d) As long as a party does not unknowingly waive a right guaranteed by tribal law, the parties and the judge may agree to depart from procedures established in these rules in order to save time or expense as long as the purpose of these rules and the tribal laws are achieved.

10.03.060 Contacts Outside of Court:

- (a) Ex parte communications violate the right of every party to a fair hearing, undermine the reliability of the adversary process, cast doubt on the impartiality of the judge, and undermine the court's institutional legitimacy.
- (b) Except in open court, a judge shall not discuss a case or any judicial business related to a case, which the judge is assigned to with a party in that case, a party's advocate or any person who has an interest in the case, unless all parties are present.
- (c) No party, whether or not that party is represented by an advocate, shall have any ex parte communications with the judge. "Ex parte" means by, for, or on behalf of one party. In addition to in-person contacts, this rule

covers communication by telephone, letter, e-mail and any other modes. Copying the other party or the other party's advocate on the communication at the time it is sent does not remove the contact from the prohibitions of this section. An advocate who counsels a party to engage in ex parte contacts with the judge, or engages in ex parte contacts himself or herself, has committed a per se violation of this section and Advocates Code of Conduct Rule 22.

- (d) A judge shall not seek advice or opinions from other persons, including judges and lawyers, regarding the merits of a particular case. A judge may, however, discuss general principles affecting cases and hypothetical examples with other judges and lawyers

10.03.070 Conflicts of Interest: A judge should disqualify herself or himself from hearing a case in which a close relative is a party or witness, a case in which the judge has interests which may be affected by the outcome, or has personal knowledge of facts which would prevent him or her from considering all sides impartially.

10.03.080 Fairness and Diligence:

- (a) A judge shall respect and comply with tribal law and always conduct herself or himself in such a way as to promote respect for the law.
- (b) A judge shall not let social or family relationships, his or her political or religious views, or criticism or praise influence the decisions he or she makes in court.
- (c) A judge shall be patient, courteous, careful, and conscientious in the performance of all official duties.
- (d) A judge shall maintain order in the courtroom.
- (e) A judge shall make no public comment on matters pending before the court, except in the court of official proceedings.

10.04 COURT CLERK/ADMINISTRATIVE RULES

10.04.010 Clerk

- (a) Before taking office, the court clerk shall state in the presence of the judge that he or she will perform the clerk's duties faithfully and honestly, will not let personal views and relationships affect the performance of the clerk's duties, will not attempt to influence the course of court proceedings and will not reveal confidential matters which the clerk learns in the court of official duties.

- (b) The court clerk shall have authority to do the following:
- i. Administer oaths of person who make out complaints and affidavits;
 - ii. Prepare and certify the official record of a court hearing;
 - iii. Sign and issue summons for potential jurors and witnesses, as long as the summons will be served within the jurisdiction of the Nooksack Tribe; and
 - iv. Schedule trials and other hearings.

10.04.020 Court Records

- (a) Official records of the Tribal Court shall be maintained by the clerk. Such records shall be kept in an office designated by the Tribal Council and shall not be removed from that office or the courtroom except with the permission of the chief judge or the court administrator.
- (b) All testimony and arguments given in open court shall be recorded electronically, steno-graphically, or by both means. These records shall be part of the official record of each case and shall be kept by the clerk with other official records. A transcript shall be made of the recording upon request of a judge, or at the request of a party. A party who requests a transcript shall bear the cost of preparing it unless the judge excuses the party from paying.
- (c) Official Tribal Court records kept by the clerk are:
- i. A calendar of scheduled court hearings;
 - ii. A list of advocates permitted to appear in the Tribal Court;
 - iii. A separate file for each case filed in the Tribal Court, with a copy of every document submitted in the case;
 - iv. A payment ledger showing all funds received and is disbursed in the course of each case filed in Tribal Court;
 - v. A docket book which shows, for each case filed in Tribal Court, the case file number, the parties' names and short description of every document filed and every order issued in the case, including the date of the order or filing;
 - vi. Separate files for search warrants, arrest warrants and restraining order.
- (d) Unless a tribal ordinance, tribal policy, or order of the court requires that a record be kept confidential, all official records of the Tribal Court shall be available for inspection at the Tribal Court by judges, the court clerk and court administrator, and parties and their advocates only. They shall be open to other persons only by consent of the Tribal Council, consistent with the Tribal Records Policy.

- (e) It shall be the court clerk's responsibility to oversee inspection of court records to insure that the records remain intact and that this rule is not abused.
- (f) Court records shall be retained in the tribal files for a period of three years. After the three year period, the clerk shall transfer the records to an archives designated by the Tribal Council.

10.04.030 Review of Filed Documents: The clerk is responsible for determining whether a document shall be accepted for filing. A document that fails to comply with the requirements of this Title shall be rejected and returned to the filing party along with a Notice of Rejection stating the basis for the rejection.

10.05 CIVIL PROCEDURE

10.05.010 Court Divisions:

- (a) There is hereby created a Nooksack Tribal Court.
- (b) The Nooksack Tribal Court shall have three divisions:
 - i. A tribal court
 - ii. An appeals court
 - iii. A supreme court
- (c) The Tribal Court shall become operative upon enactment of this chapter. The appeals division shall become operative upon enactment of chapters governing that division.

10.05.020 Jurisdiction:

- (a) The Nooksack Tribal Court's territorial jurisdiction shall include:
 - i. The territory described in Article 1 of the Nooksack Constitution.
 - ii. Off-reservation fishing grounds and open and unclaimed lands reserved for hunting and gathering as established by the treaty of Point Elliott. (12 Stat. 927)
- (b) Pursuant to Article VI, Section 2(a)(3) of the Constitution, the Nooksack Tribal Court shall have subject matter jurisdiction over:
 - i. All Indians on tribal lands;
 - ii. All civil matters concerning members of the Nooksack Indian Tribe;

- iii. All matters concerning the establishment and functions of the tribal government, provided that nothing herein shall be construed as a waiver of sovereign immunity by the tribal government;
 - iv. All cases or controversies between Indians and non-Indians where such cases are brought before it by stipulation of the non-Indian, provided that the court shall have jurisdiction over civil matters arising on tribal lands without the necessity of stipulation of any parties, and provided that jurisdiction over Indian employees of the federal government for matters concerning the duties and actions of such employees in the furtherance of their employment shall be subject to the rules and regulations prescribed by the federal government; and
 - v. such other matters the Tribal Council gives it elsewhere in this code.
- (c) Persons. The Nooksack Tribal Court shall have personal jurisdiction to the maximum extent permitted by Federal and Tribal law.
 - (d) The rules of civil procedure used in State or Federal court shall not apply to hearings in the Nooksack Tribal Court, unless agreed to by all parties and by order of the court.
 - (e) The Tribal Court is not granted the power or jurisdiction to issue writs of mandamus against the Tribe, nor against Tribal Council members or the Chairman of the Nooksack Tribe in their official capacities.
 - (f) The statute of limitations for civil actions shall be 3 years.

10.05.030 Court Sessions:

- (a) All sessions of the Tribal Court shall be held on the Nooksack Reservation or other properties owned by the Nooksack Tribe unless otherwise agreed by the parties or unless it is necessary to hold an arraignment or bail hearing at another Tribal Court in order to provide a timely proceeding for an accused person in custody.
- (b) The Court shall set and publish a schedule for regular court sessions. Motions shall be heard on the following days only:
 - i. Criminal motions shall be heard on the first and third Wednesday of the month.
 - ii. Civil motions, including Guardianships, Custody matters, and Parenting Plans, shall be heard on the second and fourth Wednesday of the month.

- iii. Minor in Need of Care motions shall be heard on the last Thursday of each month.
- (c) Motions may be heard on a special setting, but special settings shall be the exception, not the rule, and shall be permitted only under extraordinary circumstances. A party seeking to have a motion heard on a special setting must first obtain the agreement of the non-moving party before requesting a special setting from the clerk.
- (d) Unless otherwise provided in these rules, the court clerk shall set and record the time for trials and other hearings. The clerk may consult with the court administrator and the judge, as necessary, to determine the availability of the Court facilities and the judge.
- (e) In setting the time for trials and other hearings, the court's calendar shall be arranged in the following order of precedence:
 - i. Criminal cases;
 - ii. Civil cases with statutory precedence, such as Minor in Need of Care cases;
 - iii. All other civil cases.

10.05.040 Pleadings Allowed; Amended and Supplemental Pleadings:

- (a) There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross claim, if the answer contains a cross claim; a third party complaint, if a person who was not an original party is joined in the proceeding; and a third party answer, if a third party complaint is served. No other pleading shall be allowed.
- (b) A party may amend the party's pleading once as a matter of course at any time before a responsive pleading, motion to dismiss, or motion for summary judgment is served. Otherwise, a party may amend the party's pleading only by leave of court or by written consent of the adverse party, and leave shall be freely given when justice so requires; except that the court shall not grant leave to amend a complaint when there is a pending motion to dismiss or for summary judgment,

10.05.050 Filing, Time Limits, and Notice:

- (a) A copy of every complaint, summons, warrant, motion, written argument, agreement, order, or other document which records action taken by the parties and by the court during Tribal Court shall be filed with the clerk.
- (b) A defendant shall serve an answer within the following periods:

- i For a complaint filed against the Nooksack Indian Tribe or its officers, employees or agents, the answer shall be due within 60 days, exclusive of the day of service.
 - ii For a complaint filed against any individual or entity other than the Nooksack Indian Tribe or its officers, employees or agents, the answer shall be due within 20 days, exclusive of the day of service.
- (c) The clerk shall give a copy of every document filed in a case to the judge who will be hearing the case.
- (d) Except as provided in (d), a party who files any document with the court clerk in a case in Tribal Court shall give a copy of the same document to every party in the case. If an attorney or spokesperson represents a party, the document shall be given to that advocate.
 - i Delivery of a copy as required by this rule may be made either by giving it to the party in person or by putting it in the mail. Service by mail shall be deemed complete upon the third day following the day upon which the copy is placed in the mail, unless the third day falls on a Saturday, Sunday, or Tribal closure day, in which event service shall be deemed complete on the first day other than a Saturday, Sunday, or Tribal closure day.
 - ii Service under this rule may be made by delivering a copy by e-mail, as long as the parties have an agreement in advance to accept service by such means. Except for motions with a noon deadline as provided in NTC 10.05.050(e), service by e-mail is complete on transmission when made prior to 5:00 p.m. on a judicial day. Service made on a Saturday, Sunday, Tribal closure day, or after 5:00 p.m. on any other day shall be deemed complete at 9:00 a.m. on the first judicial day thereafter. Service under this section is not effective if the party making service learns that the attempted service did not reach the person to be served.
 - iii Every party shall provide the clerk with a current and updated address at which service of orders of the court or copies of documents may be made. If a party is represented by an advocate, the advocate shall provide the clerk with an address at which service may be made.
- (e) In cases involving the Nooksack Indian Tribe, or its officers, agents, or employees as a named party Defendant, the Plaintiff shall serve initial process by way of certified mail, return receipt requested upon the Chairman and the Office of Tribal Attorney.
- (f) The first hearing on any matter shall be a preliminary hearing in which the issues are to be determined and motions/trial settings are made. The preliminary hearing shall not take place until at least 14 days after the

deadline for a defendant to file an answer identified in section (b), above. The parties or the court may continue any matter at the preliminary hearing.

- (g) Unless the judge issues an order or makes a decision in open court when all parties are present, decisions and orders of the court shall be written down and the clerk shall give or send a copy of each ruling to each party in the case.
- (h) Electronic filing of documents with the court is not permitted.

10.05.060 Timing:

- (a) Whenever a rule, an ordinance, or an order of the court requires that an action be taken within a certain number of days, the day of the event from which the time limit runs should not be counted; but the last day should be counted, unless it is a Saturday, Sunday or Tribal closure. The deadline should be the first work day following the day that is not counted.
- (b) When a time limit is counted from the date of delivery of a notice and the notice is delivered by mail, the time limit shall begin to count on the third day after the postmarked date. For example, if a notice is mailed on the 1st, the first day of the time limit will be the 4th.
- (c) Any notice or document delivered by mail will be considered to be delivered on time if the postmarked date is on or before the last day of the time limit.
- (d) The judge may allow an extension of any time limit as long as the right to a speedy trial in criminal cases is not denied.
- (e) Motions: Except for dispositive motions provided for in section (f), the moving party shall serve and file all civil motion documents no later than six court days before the date the party wishes the motion to be considered.
 - i. The time and date for hearing shall be scheduled in advance by the moving party by contacting the clerk prior to filing the motion.
 - ii. The moving party shall coordinate with the opposing party or his advocate, if he has one, prior to scheduling a hearing. Such coordination may take place by telephone or electronic communication. The mere sending of a written, electronic or voicemail communication, does not satisfy the requirement to coordinate, the moving party must receive a response to the written, electronic, or voicemail communication from the non-moving party prior to contacting the clerk. The moving party shall

- certify in the motion documents that he or she has complied with this obligation. Both parties shall cooperate and act in good faith in scheduling. If the non-moving party certifies to the court that the moving party failed to coordinate, the non-compliant motion shall be stricken.
- iii. Any party opposing a motion shall file and serve the original responsive papers in opposition to a motion, serve copies on parties, and deliver working copies to the court no later than 12:00 noon two court days before the date the motion is to be considered. For cases where the parties have agreed to electronic service in writing and in advance, the electronic service also must be completed by 12:00 noon on the date it is due.
 - iv. Any documents in strict reply shall be similarly filed and served no later than 12:00 noon on the court day before the hearing. For cases where the parties have agreed to electronic service in writing and in advance, the electronic service also must be completed by 12:00 noon on the date it is due.
- (f) Dispositive Motions: A party seeking to recover upon a claim, counterclaim, or cross claim, or to obtain a declaratory judgment; or a party against whom a claim, counterclaim, or cross claim is asserted or a declaratory judgment is sought may move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.
- i. The motion and any supporting affidavits, memoranda of law, or other documentation shall be filed and served not later than 21 calendar days before the hearing.
 - ii. The adverse party may file and serve opposing affidavits, memoranda of law or other documentation not later than 7 calendar days before the hearing.
 - iii. The moving party may file and serve any rebuttal documents not later than 3 calendar days prior to the hearing. If the date for filing either the response or rebuttal falls on a Saturday, Sunday, or legal holiday, then it shall be filed and served not later than the next day nearer the hearing which is neither a Saturday, Sunday, or legal holiday.
- (g) Prepayment Required. Any document submitted for filing for which a filing fee is required must be accompanied by the appropriate fee. The clerk will not accept for filing any document for which a filing fee is required, without prepayment.
- (h) The court clerk shall reject and shall not file any motion that fails to comply with this section.

10.05.070 Form of Pleadings:

- (a) Unless otherwise specified by the judge or in these rules, defenses, motions, arguments, and other requests made to the court have to be in writing. Parties are to put these requests and arguments in writing, especially where the matters to be considered by the judge are complex.
- (b) There is no required form for written materials filed with the court. All pleadings should be clear and legible and shall contain the name of the court, the names of all parties, the court file number of the case, the signature of the party filing the pleading, or the signature of the party's advocate, and any other information required by these rules. For convenience, the administrator and clerk may develop standard forms for pleadings and notices.

10.05.080 Court Behavior

- (a) All persons who attend Tribal Court hearing shall be quiet and orderly while court is in session. No person shall make loud noises or speak out during a court session unless called as a witness.
- (b) The judge may appoint a person to keep order in the courtroom. Persons who disrupt the court proceedings or are disrespectful of the Court may be ordered to leave the courtroom.
- (c) Persons who violate this rule or any court orders intended to maintain order in the courtroom may be found in contempt of court.

10.05.090 Compelling Witnesses to Appear (Subpoena):

- (a) Any party to a lawsuit or proceeding in the Nooksack Tribal Court shall have the right to compel witnesses to appear in court on his or her behalf.
- (b) Upon the request of a party or a judge, the court shall issue a summons (subpoena), which commands a named person to appear in court and/or to bring certain evidence or documents to court.
- (c) The clerk may sign and issue summonses for witnesses if they are to be served on the Nooksack Tribal lands. In all other situations, the summons shall be issued and signed by the judge.
- (d) Every summons shall be in writing and shall include the name of the court, the names of the all parties, the time and place that the witnesses must appear and a clear and detailed description of any documents or evidence, which the witness is required to bring.

- (e) A summons shall be delivered to the witness by a person named by the court for that purpose or by mail, return receipt requested, if the person cannot be served within the territorial jurisdiction of the court. The summons may be delivered personally, either by giving it to the witness directly or by leaving it at the witness' residence or place of employment with a person at least 14 years old who lives or works there.
- (f) A person who delivers a summons to a witness shall promptly file with the clerk a copy of the summons and a written signed statement describing where, when and how delivery was made. In the case of summonses delivered by the mail, the clerk shall file the return receipt and a written signed statement describing when and to whom the summons was mailed.
- (g) A witness' failure to appear and failure to object to a summons shall be grounds for holding the witness in contempt of court if the witness fails to object to the summons.
- (h) A witness who responds to a summons shall be entitled to a fee of \$10 and reasonable travel expenses for each day that he or she must appear in court.
- (i) The procedure in this section shall also apply to summoning jurors.

10.05.100 Costs:

- (a) Upon making his or her final decision, the judge may order the losing party to pay the prevailing party the costs of the lawsuit or prosecution, unless the applicable ordinance provides otherwise or the judge decides that requiring payment of costs would be unjust.
- (b) Costs shall not be imposed on the Nooksack Tribe or any agency or branch of the Tribe.
- (c) Costs shall include:
 - i Filing Fees
 - ii Costs of delivering summonses and complaints
 - iii Costs of postage for court notices
 - iv Costs of the transcription of records for appeal, and
 - v Fees and expenses paid to witnesses and jurors.
- (d) Costs shall not include the fees of a party's advocate.
- (e) The responsible party shall pay all court costs and fines directly to the Nooksack Tribal Accounting Department. The responsible party must then submit a paid receipt to the Nooksack Tribal Court Clerk.

- (f) No persons shall be jailed because he or she is unable to pay costs.

10.05.110 Contempt of Court:

- (a) Any person who is found by a Tribal Court judge to have committed one of the following acts may be declared in contempt of court and punished by a fine no greater than \$1,000 or by imprisonment no longer than six months or both:
- i. Violent or disorderly conduct in the courtroom while court is in session;
 - ii. Repeated, willful disregard of court procedures demonstrating utter lack of respect for the court's authority and function.
- (b) If the above acts are committed in the presence of the judge, personally observed by the judge, and the judge acts on the basis of his/her own observations, the judge may find the person guilty of contempt after allocution with the individual.

10.06 RULES OF EVIDENCE

10.06.010 Purpose: The purpose of these rules of evidence is to ensure that the Tribal Court is able to determine the truth of a matter with a minimum of delay, confusion, and uncertainty.

10.06.020 General Rules:

- (a) The rules of evidence used in state or federal courts shall not apply to hearings in the Nooksack Tribal Court, unless agreed to by all parties and by order of the court.
- (b) Where there is more than one kind of evidence about the same subject, the judge shall hear the most reliable kind of evidence. In oral testimony, persons who testify from their personal knowledge (such as first-hand observation of or participation in the event described) shall be preferred as witnesses to person who have second-hand knowledge of the event.
- (c) Evidence admitted in the Tribal Court must be related either to the issue the judge or jury is considering or to the weight and credibility, which should be given to other evidence. In a jury trial, the judge may hear arguments out of the jury's presence about whether to admit challenged evidence.
- (d) When the relevance or reliability of evidence is challenged, the judge shall explain why the evidence will or will not be used. If the evidence is used, the judge shall explain what importance he or she assigns to it.

- (e) The judge may take notice of facts, which are a matter of official public record, even if no party introduces them as evidence.
- (f) Evidence related to the customs, traditions and common understanding of the Nooksack Tribe shall be admissible as evidence of the Nooksack Tribe's "custom law".

10.06.030 Self-Incrimination:

- (a) Every person who appears as a witness in Nooksack Tribal Court has the right to refuse to answer a question if the answer may tend to incriminate or expose the witness to an accusation or charge of a crime.
- (b) The judge shall determine the order in which the parties or their advocate shall be allowed to question witnesses. The judge shall protect the witnesses from harassment or unnecessarily repetitive questioning.
- (c) During the questioning of a witness, the judge may exclude the courtroom witnesses who have not yet testified if this seems necessary to ensure that all witnesses will give truthful testimony.
- (d) The judge may call and/or question any witnesses on his or her own initiative, provided that the judge shall not act as prosecutor in criminal proceedings.

10.06.040 Written Testimony and Documentary Evidence

- (a) Testimony of a witness may be presented in writing if:
 - i The witness is unable to appear in person to testify and the evidence presented in writing is not contradicted by other parties, or
 - ii The written testimony is offered to support a motion or any uncontested request for relief. Written testimony should show clearly who gave it and when the witness gave it. Testimony should be given under oath if possible.
- (b) Copies of written records, photographs, and other documentary evidence may be presented as long as there is a reasonably reliable way to identify the items.

10.07 RULES OF CRIMINAL PROCEDURE

10.07.010 Scope: These rules govern the procedure in the Nooksack Tribal Court in all criminal proceedings and they supersede all procedural ordinances and rules that may be in conflict. They shall be interpreted to ensure simplicity, undue expense, and delay.

10.07.020 Subject Matter Jurisdiction: The Nooksack Tribal Court shall have jurisdiction over all crimes enumerated in this Code and committed:

- (a) Within the territory described in Article 1 of the Nooksack Constitution; and
- (b) On off-reservation fishing grounds and related to enforcement of tribal fishing ordinances or regulations; and
- (c) On open and unclaimed lands reserved for hunting and gathering, provided that the crimes are related to hunting or gathering activities.

10.07.030 Statute of Limitation: No time period is set for a statute of limitation. However, a defendant may argue that an undue delay in prosecution has prejudiced his defense.

10.07.040 Searches Without Warrants: No enforcement officer shall search a person or property unless the officer has a search warrant issued by the Tribal Court or unless the search is made:

- (a) During and in close relation to a lawful arrest or citation;
- (b) With the consent of the person who has control of the body; property and/or premises that are being searched;
- (c) When the officer has reasonable suspicion to believe that the person searched is armed and/or dangerous;
- (d) Of a vehicle, including a boat, and the officer has reasonable suspicion to believe it contains property that is illegal to possess, or that has been illegally obtained, or that the vehicle itself is stolen; or
- (e) When the officer has a lawful right to be present and the officer has reasonable suspicion to believe that what is in plain view is property that is illegal to possess or has been obtained illegally.
- (f) When the officer has reasonable suspicion to believe evidence may be concealed, lost or destroyed.

10.07.050 Search Warrants:

- (a) The tribal judge shall have the authority to issue warrants and commanding enforcement officers to search the premises and/or property and to seize property of any person within the tribal court's jurisdiction. A search warrant may be issued upon the request of an enforcement officer or the tribal prosecutor.
- (b) A warrant may be issued under this rule to search for and seize any evidence of a crime, contraband, the fruits of crime, and things otherwise criminally possessed, or weapons or other things by means of which a crime has been committed or reasonably appears about to be committed, including fish and game, fishing, boating and camping gear, vehicles, recreational equipment, and licenses and/or permits.
- (c) No warrant for search and seizure shall be issued unless the judge is presented with a written sworn statement that shows there is probable cause to believe a search will discover property that may be seized under this rule. The evidence establishing probable cause may be hearsay provided the written and sworn statement establishes that there is substantial basis for believing that there is a factual basis for the information furnished. The statement may be given to a judge telephonically with a written statement submitted later to the court.
- (d) Whenever necessary and appropriate, a tribal judge shall direct by telephone the court clerk or enforcement officer or tribal prosecutor to sign the judge's name to a search warrant. When this happens, the judge shall enter into the record of the case an affidavit acknowledging this action.
- (e) Contents of the warrant. The warrant shall be signed and dated by the judge, and shall describe with particularity the person, place or thing to be searched and property to be seized. It shall command any enforcement officer to search the person, place or thing named for the property specified. Additional terms of the carrying out of a warrant may be included in the warrant at the discretion of the judge who issues it.
- (f) How and when to execute warrant. The warrant shall be carried out promptly at a reasonable time within ten days of its issuance. A copy of the warrant and a receipt for the property seized shall be given to the person from whose possession or premises the property is seized. If no such person is present, a copy of the warrant and the receipt shall be posed in a conspicuous location on the property searched.
- (g) Return of warrant. Warrants that have been carried out shall be returned to the court clerk promptly and accompanied by an inventory of property

seized. Warrants that have not been carried out shall be returned to the court clerk immediately after they expire.

- (h) Searches shall be carried out in the manner that poses the least possible disruption to the person's residence and to the occupants of the residence and with as little property damages as possible.

10.07.060 Forfeiture:

- (a) The court may order forfeiture of the following kinds of property located within its jurisdiction:
 - i Property that is contraband by tribal or federal law;
 - ii Property being used to violate or in violation of Nooksack tribal ordinance or regulation or federal law;
 - iii Property that presents an urgent danger to persons, property, or wildlife within the Tribe's jurisdiction;
 - iv Property otherwise subject to forfeiture by tribal or federal law.
- (b) Forfeiture proceedings shall be in the nature of a civil suit against the property to be forfeited. Property held as evidence in a criminal matter may be forfeited by motion in the criminal proceeding. The tribe shall file a petition for forfeiture and deliver a copy of the petition to all persons believed to have an ownership interest in the property at issue. Any time after a petition for forfeiture is filed, if the tribe demonstrates that there is probable cause to believe the property named is subject to forfeiture under tribal law, the judge may issue an order which directs tribal law enforcement officers to seize and hold the property pending resolution of the forfeiture suit. If the owner of the property cannot be identified or located, a notice shall be posted at a public place on the reservation. The tribe, through its law enforcement officers, may seize any property that is subject to forfeiture before filing a petition for forfeiture or obtaining an order of seizure.
- (c) Whenever the tribe seizes property before it has filed and served a petition for forfeiture, it must file and serve the petition no later than ten days after seizure takes place.
- (d) Pending the forfeiture trial, a person who presents satisfactory proof that he or she owns property, which has been seized pursuant to this rule, may gain possession of the property by posting a bond or cash deposit with the court. The bond or deposit shall be in an amount equal to the market value of the property. The amount and form of the bond shall be subject to approval of the tribal court. The court shall order the bond or cash forfeited if it is shown by a preponderance of the evidence that the owner used his or her property in violation of tribal law, after posting the bond.

If the court ultimately rules in the tribe's favor on the petition for forfeiture, the court shall order either the bond or the property itself forfeited.

- (e) Procedures and burdens of proof in a forfeiture proceeding shall be the same as in any civil suit, except that in cases where the property owner does not post bond and regain possession of the property trial of the principal issue in the case must be held no later than 60 days after the petition for forfeiture is filed. The property owner may voluntarily waive this right to a speedy hearing.
- (f) If the court rules in favor of the property owner, all property seized or bonds deposited shall promptly be returned to the owner. If the court rules in favor of the tribe and orders the property forfeited, the court's order shall transfer title to the property to the Nooksack Indian Tribe. The tribe may then use or dispose of the property as it sees fit.

10.07.070 Complaint: Only the Nooksack Indian Tribe shall initiate criminal proceedings. A complaint shall contain the following:

- (a) The name of the court.
- (b) The name and/or description of the person accused of committing the offenses(s);
- (c) The name of the offense(s) charged and the section(s) of the Nooksack Tribal Code which has allegedly been violated;
- (d) A plain, concise statement of the facts constituting the offense(s);
- (e) The maximum penalties under the offense; and
- (f) The signature of the prosecutorial authority.

A citation issued under NTCL 10.07.070 shall satisfy this section.

10.07.080 Citation Instead of Arrest:

- (a) When an enforcement officer has probable cause to believe that a person has committed a criminal offense against the Tribe and the officer has reasonable grounds to believe that the defendant will appear in court and does not pose a threat of immediate harm, the officer shall issue to the accused a citation instead of keeping him or her in custody.
- (b) The citation shall include:

- i. The name of the court;
- ii. The name of the offense(s) charged and the official citation(s) of the code provision of the offense(s);
- iii. The name of the person charged, his or her address, telephone, date of birth, sex and general description, if available;
- iv. The place and time where the alleged violation occurred;
- v. The time, date and place at which the person is to appear in court;
- vi. The signature of the citing officers;
- vii. The signature of the accused, following a statement that s/he promises to appear in court at the specified time, date and place.

10.07.090 Arrest Without a Warrant: No tribal law enforcement officer shall take a person into custody on charges that he or she committed a criminal offense unless one of the following is true:

- (a) The officer has an arrest warrant or knows that the warrant has been issued; or
- (b) The person committed an offense in the officer's presence; or
- (c) The officer has probable cause to believe that the accused has committed an offense.

10.07.100 Issuance of Summons or Arrest Warrant:

- (a) If the judge finds from a complaint that there is probable cause to believe that an offense or offenses have been committed and that the person named in the complaint committed the offense(s) and if the accused person is not already in custody, the judge shall issue:
 - i A summons commanding the accused person to appear; or
 - ii A warrant for the arrest of the accused person if the judge has reasonable grounds to believe that the person will not appear in response to a summons or that he or she poses a threat of immediate harm.
 - iii If neither a summons nor an arrest warrant is issued within 90 days of the judge's receipt of the complaint, the complaint shall be deemed to be dismissed without prejudice by final order.
- (b) Arrest Warrant: every arrest warrant shall contain the following information:
 - i. The name of the accused, or if unknown, a description by which he or she can be identified with reasonable certainty;
 - ii. The defendant's address, if known;

- iii. The name of a brief description including the time and place of the offense charged, with the section of the tribal code which has allegedly been violated;
 - iv. The date the warrant is issued;
 - v. The judge's signature.
- (c) The warrant shall command any law enforcement officer to arrest accused person and bring him or her before the Court. A copy of the warrant shall be given promptly to the person arrested. Upon carrying out the warrant, the enforcement officer shall promptly file with the court clerk a written statement describing when, where and how the arrest warrant was carried out.
- (d) Summons. A summons shall be in the same form as an arrest warrant except that it shall summon the accused to appear before the Nooksack Tribal Court at a stated time, date and place.
 - i. A summons shall be delivered by any tribal law enforcement officer or by anyone authorized by the judge or, if the person cannot be served within the territorial jurisdiction of the court, by mail, return receipt requested.
 - ii. The summons may be delivered personally by giving it to the accused person directly or by leaving it at the accused's residence or workplace with a person at least 14 years old who lives or works there.
 - iii. The person who delivers a summons shall promptly file with the court clerk a copy of the summons and a written statement describing when, where and how the delivery was made.
 - iv. In the case of summonses delivered by mail, the clerk shall file the return receipt and a written signed statement describing when and to whom the summons was mailed.
- (e) Cancellation. The judge issuing the arrest warrant or summons may at any time cancel a warrant, which has not been carried out, or has not been delivered.

10.07.110 Notification of Rights and Arrest: Every person arrested by a tribal enforcement officer shall be advised immediately that s/he has the following rights:

- (a) That s/he has the right to remain silent,
- (b) That s/he has the right to obtain counsel at his own expense.
- (c) That statements made by him or her may be used against him or her in court.

- (d) That if s/he wishes to answer questions, s/he may have his counsel present with him or her.
- (e) Whether or not the person understands the rights read to him or her.

10.07.120 Amendment of the Complaint: A complaint charging a criminal offense may be amended at any time up to arraignment. The court may permit amendment to the complaint up to the day of trial, unless the defendant would be prejudiced in any way.

10.07.130 Probable Cause Determination: When a person is detained in a detention facility based on an probable cause arrest by a tribal police officer, a hearing shall be held within 48 hours of placement in the detention facility. The hearing may be held telephonically and may be *ex parte*.

10.07.140 Arraignment:

- (a) At arraignment, the judge or shall first read the charges to the defendant, including the section of the tribal code, which the defendant is accused of violating. He or she shall make sure that the defendant understands what has been read and shall also tell the defendant the maximum penalty, which may be given if the defendant is convicted.
- (b) At the arraignment, the judge shall advise the defendant that he or she has the following rights:
 - i. The right to remain silent;
 - ii. The right to be tried by a jury of six people if the offense carries the possibility of jail sentence;
 - iii. The right to be represented by a lawyer or other spokesperson at the defendant's expense;
 - iv. The right to have the rest of the arraignment postponed if the defendant want to talk with an advocate first;
 - v. The right to have the court order any witness against defendant to appear and testify at trial;
 - vi. The right to question all witnesses against the defendant;
 - vii. The right to call witnesses on the defendant's behalf; and
 - viii. The right to a fair public trial.

10.07.150 Right to a Preliminary Hearing: A defendant shall be informed of his right to a preliminary hearing at arraignment. Unless the defendant waives his right to a preliminary hearing, it shall be held as soon as practicable but in any event within five days if the defendant is in custody or within 45 days if the defendant is not in custody. The time may be extended for good cause shown.

- (a) The defendant may be represented by an advocate and may present evidence on any relevant issue. However, the hearing may not be used for purposes of discovery.

- (b) The Court shall issue subpoenas for any witness when requested by the tribal prosecutor or the defendant for the preliminary hearing.
- (c) The prosecution witnesses shall be sworn and examined in the presence of the defendant and may be cross-examined by the defendant.
- (d) The witnesses of the defendant, if the defendant produces any, shall be sworn and examined, and may be cross-examined by the tribal prosecutor. The tribal prosecutor may produce rebuttal testimony if the defendant produces any witnesses.
- (e) The Court may exclude the witnesses during examination of other witnesses, except that a victim/witness, or parent of a minor victim/witness may not be excluded.
- (f) The testimony of a witness shall be given orally in the presence of the Court, except in the case of a witness whose testimony is taken by deposition by order of the Court in pursuance of the consent of the parties.
- (g) The tribal prosecutor shall have the burden of proof in this hearing, which shall be by a preponderance of evidence.
- (h) After hearing the evidence, unless there is a showing of probable cause that a crime has been committed and that the defendant committed it, the Court shall dismiss the complaint and order the defendant to be discharged.
- (i) If, when the case is called for hearing, the defendant appears for hearing and the tribal prosecutor is not ready and does not show any sufficient cause for postponing the hearing, the Court shall order the complaint to be dismissed.
- (j) If the Court orders the complaint to be dismissed, the order is not a bar to another action for the same crime unless the Court so directs.

10.07.160 Pleas:

- (a) At arraignment, or as soon after that as the defendant has a chance to talk with an advocate, the defendant shall state how he or she pleads in response to the charge(s). The defendant may plead "guilty," "not guilty," or "no contest."
- (b) If the defendant pleads guilty, the judge or arraigning officer shall make sure that the plea is made voluntarily and that the defendant understands what will happen as a result of the guilty plea. The judge may then either impose a punishment immediately, or put sentencing off to allow the parties to bring information which will help the judge to determine a fair

sentence. When bail has been properly posted the defendant shall be released.

- (c) If the defendant pleads not guilty, the judge shall set a trial date and a schedule for pre-trial motions and discovery. The judge shall also set bail or other conditions for the defendant's release before trial.
- (d) If the defendant refuses to plead to the charges, the judge shall enter a plea of not guilty on the defendant's behalf.

10.07.170 Withdrawal of Guilty Plea: A defendant who has pleaded guilty may be allowed to withdraw that plea and substitute a plea of not guilty at any time up to sentencing. If the defendant withdraws his/her guilty plea before the time of the sentencing hearing, he/she or his or her advocate notifies the court clerk who shall notify the judge and prosecutor.

10.07.180 Bail:

- (a) Every person charged with a criminal offense may be entitled to release from custody, pending trial under the following circumstances, determined by the court:
 - i. Release on personal recognizance upon a written promise to appear at trial and all lawfully required times.
 - ii. Release after deposit of a cash bail with the court. Conditions for release may include making a written promise to appear, depositing security or bond issued by a licensed bondsman, restrictions on travel or association, and release to the custody of another person.
 - iii. Release on any condition deemed reasonably necessary to assure the appearance of the accused as required: including, but not limited to, reasonable restrictions on travel, association, or place of residence of the accused.
 - iv. Denial of release if the accused presents a flight risk or a danger to specific individual(s) or is a threat to the health, safety or welfare of the tribal community.
- (b) The Tribal Council shall prepare a bail schedule for offenses in the tribal code, and this bail schedule shall be used by the Tribal Police in setting the amount of cash bail required for defendant's release, in all but exceptional cases.
- (c) This rule shall also apply to persons convicted of an offense in Tribal Court who have filed a notice of appeal or petition for release. The judge may refuse to let a convicted person be released if it appears that release will result in danger to the community or to any person or that no

conditions of release can reasonably guarantee the convicted person's reappearance.

- (d) If the defendant violates any conditions set for his or her release from custody, the judge may declare any bail or security which has been deposited to be forfeited, may establish new conditions for the defendant's continued freedom, and/or may order the defendant jailed. Upon conclusion of a case in which the defendant has deposited cash bail or other security, the clerk shall return such deposit to the defendant unless the court orders it forfeited.

10.07.190 Motions During Arraignment:

- (a) Any defense or objection which may be decided by the court without a trial of the facts and any request for change in the conditions of release until trial may be raised at arraignment.
- (b) Motions which raise complaints about the way a prosecution was started should be made at arraignment. Such motions include motions to dismiss because of the defective warrant, improper delivery of the summons or an unnecessary delay in the arraignment.

10.07.200 Pre-trial Motions and Conferences:

- (a) Questions and disputes regarding procedure and any defenses, objections, or issues which may be resolved without a trial of the facts on which the prosecution is based may be raised with the court in the form of a motion.
- (b) Motions should be made in writing. If the motion is not made during and as a consequence of events at a trial or other hearing, the party making the motion shall notify the other parties of the nature and basis of the motion and the hearing time at least 5 days before the motion is presented in court.
- (c) At any time after arraignment up to and including the beginning of trial, the judge may schedule an informal conference of the judge and all parties to consider questions of procedure and other matters, which will promote a fair and efficient trial.

10.07.210 Testing for HIV

- (a) The Tribe may motion the court, at the request of a victim, to administer to a defendant, against whom a complaint is presented for a crime in which by force or threat of force the perpetrator compels the victim to engage in

sexual activity, testing for the immunodeficiency virus (HIV) not later than 48 hours after the date on which the complaint is presented; and

- (b) As soon as practicable notification to the victim, or parent and guardian of the victim, and defendant of the testing results; and
- (c) Also request follow-up tests for HIV as may be medically appropriate, and that as soon as possible after each such test the results be made available in accordance with subparagraph (b).

10.07.220 Affidavit of prejudice:

Any party may establish such prejudice by motion, supported by affidavit that the judge before whom the action is pending is prejudiced against such party, so that such party believes that he or she cannot, have a fair and impartial trial before such judge: provided that such motion and affidavit is filed and called to the attention of the judge before he shall have made any ruling whatsoever in the case, either on the motion of the party making the affidavit, or on the motion of any other party to the action, of the hearing of which the party making the affidavit has been given notice, and before the judge has made any order or ruling involving discretion; but the arrangement of the calendar, the setting of an action, motion or proceeding down for hearing or trial, the arraignment of the accused in a criminal action or the fixing of bail, shall not be construed as a ruling or order involving discretion within the meaning of this proviso; and in any event, such motion and affidavit shall be filed not later than the day on which the case is called to be set for trial: and provided further, that notwithstanding the filing of such motion and affidavit, if the parties shall, by stipulation in writing agree, such judge may hear argument and rule upon any preliminary motions, or other matter thereafter presented: and provided further, that no party or advocate shall be permitted to make more than one such application in any action or proceeding.

10.07.230 Time of Trial:

- (a) Every person charged with a criminal offense in the Nooksack Tribal Court has a right to a speedy trial.
- (b) In no case shall trial be held more than 90 days after the arraignment unless the defendant asks for or agrees to delay and the judge approves. In the case of such a request for delay, the judge may order a continuance of the trial date telephonically.

10.07.240 Joining or Separating Defendant's Trials:

- (a) At arraignment, the judge may order two or more defendants to be tried together if they are charged with offenses based on the same event or interrelated series of events. All defendants shall be given adequate notice that they will be tried together.

- (b) Defendants shall not be tried together if a joint trial would prejudice the ability of any defendant to present a defense or would prejudice the tribe's ability to present its evidence.

10.07.250 Discovery:

- (a) Upon request of the defendant, at or before trial, the tribe shall give the defendant the following:
 - i. The names of witnesses the tribe intends to present;
 - ii. Copies of or controlled access to any documents, photographs, results, and reports of examinations or tests, and objects which are within the custody and control of the tribe and which the tribe intends to use as evidence against the defendant or which may be relevant to the defendant's defense, including any information or material which tends to negate the defendant's guilt;
 - iii. Copies of written summaries of any statements made by defendant, which the tribe intends to offer as evidence against the defendant.
- (b) If the defendant requests information as provided in section (a) of this rule, then defendant shall inform the prosecutor, upon the tribe's request, of the names of defendant's witnesses and of the general nature of the defendant's defenses.
- (c) Nothing in this rule shall require a party to provide the other with reports, memoranda, or other internal communications, which were made by the party or by his/her advocate solely in preparation for trial, except items specifically listed in this rule.
- (d) A party who receives a request for information under this rule shall respond either with the information, with an indication when and where the information will be made available, or with an objection to the request within ten days after he or she receives the request. Failure to respond is grounds for a court order requiring response, excluding the testimony under the circumstances, including imposition of reasonable conditions on the release of the information requested.

10.07.260 Order of Trial: At trial, evidence and arguments should be presented in the following general order, unless the judge sets or the parties agree to a different procedure:

- (a) Opening statements. The tribal prosecutors shall have the first opportunity to summarize evidence he or she will present and arguments he or she will make. The defendant may then make a similar summary or may want to give a summary at the beginning of the defense presentation. Either party may give up the right to make an opening statement.

- (b) Tribal Presentation. The tribal prosecutor shall present all evidence in support of the charge. Defendant shall have the right to object to evidence presented and to cross-examine witnesses but shall not present his or her own evidence at this time.
- (c) Defense presentation. The Defense council may present all evidence in opposition to the charge by the Tribe. This may include motions to dismiss the charges. The tribal prosecutor may object to defense evidence and cross-examine witnesses.
- (d) Rebuttal. After each party presents evidence, the judge may allow the tribe to present evidence intended to rebut directly any evidence presented by defendant. The judge may allow either side to present evidence, which was mistakenly left out or unavailable earlier in the trial.
- (e) Closing arguments. At the close of trial, both parties shall have the right to make closing statements in which they argue the law, interpret the evidence, and summarize the case as they see it. Presentation of additional evidence is not appropriate at this time.

10.07.270 Burden of Proof: In all criminal prosecutions, the burden shall be on the tribe to prove defendant's guilty beyond reasonable doubt.

10.07.280 Presence of Defendant: The defendant shall be present at all proceedings on criminal charges, unless the judge permits defendant's advocate to appear on his or her behalf. The defendant may testify but is not required to testify at trial. The defendant may be present through the presence of video.

10.07.290 Jury Trials:

- (a) Every person accused of a crime, which carries a possible jail sentence under the Nooksack Tribal Code, has the right to trial by a six-member jury. A judge shall hear criminal cases, unless the defendant asks for a jury trial. A request for a jury trial may be made orally in open court or in writing and it must be made at least ten days before the scheduled trial. A judge will approve a defendant's request for a jury trial unless the defendant has waived his or right to jury trial by failing to request one in a timely manner.
- (b) The following persons are eligible to serve as jurors in the Nooksack Tribal court: every Nooksack tribal member on the tribe's voting list who resides or is domiciled in Whatcom County, provided that otherwise eligible tribal members residing outside Whatcom County who wish to be included in the general jury pool will be included on the juror list by the court clerk at that person's request; non-tribal members who are closely associated with the Nooksack Tribal Community. Nooksack tribal law

enforcement officers, Tribal Council members and persons who are mentally or physically unable to perform a juror's duties are not eligible.

- (c) The clerk of the court shall prepare and shall keep up-to-date a list of persons eligible to serve as jurors.
- (d) When a defendant asks for a jury, the clerk shall draw the names of 21 persons by lot from the jury list. The clerk shall then send a summons to each person whose name is drawn, ordering the person to appear in court at the time set for trial of the case. The summons shall give the names of all defendants. The summons shall be sent no later than five days before the trial date. The judge may excuse any person from jury service if the person demonstrates hardship or other good reason to be excused.
- (e) Of the potential jurors who are not excused from serving, the judge shall dismiss any person who is a close relative of a party or of an advocate in the case and any person who would not be able to decide the facts in an unprejudiced way. In order to find out whether a juror is prejudiced, the judge shall question the prospective jurors and may allow the parties a chance to question the jurors and say whether and why they think any of the prospective jurors is unqualified or prejudiced.
- (f) After jurors are dismissed under Section (f) of this rule, each party shall dismiss, without stating a reason, half the number of jurors left over six. This shall be done in a way that does not reveal which party dismissed any juror. If an odd number of jurors are left, the judge shall dismiss the last one. If fewer than six persons are left, the trial shall be postponed until the clerk can summon twelve more persons as provided in Section (d) of this rule.
- (g) Jury Instructions: The jury shall hear all evidence about the facts of the case. At the close of presentations, the judge shall explain to the jury what the law is and shall instruct the jury to decide what the facts are in light of the law as explained. The parties may suggest to the judge the explanations, which they think the judge should give the jury.
- (h) The jury shall discuss the case in secret until at least 5 of the 6 members agree on a verdict. If the jury is unable to agree on a verdict, the judge shall dismiss the jury; however, if the jury votes unanimously to acquit the defendant, the judge may dismiss the charges and forbid the tribe to refile the charges. Otherwise, upon the tribe's request, the judge shall order that a new jury be summoned and a new trial be held.
- (i) Every person who is called for jury service may be paid for reasonable costs of traveling to court plus \$10 for every day that he or she sits as a

juror. These costs may be included in the court costs awarded against a defendant who is found guilty.

10.07.300 Verdict:

- (a) At the end of the trial, the judge or the jury shall announce a verdict of guilty or not guilty on every charge against the defendant.
- (b) If a verdict of not guilty is announced, the judge shall record that defendant was acquitted, the clerk shall enter the acquittal in the official record along with the names of the jurors in the case, and the defendant shall immediately be released from custody.
- (c) If a verdict of guilty is announced, the judge shall set a time for sentencing. If all parties agree, sentencing may take place immediately.

10.07.310 Sentencing:

- (a) Within a reasonable time after defendant is convicted or pleads guilty, the judge shall declare a sentence within the sentencing guidelines established for defendant's offense.
- (b) At the judge's request or on their own, the parties may give the judge any information, which should be considered in setting the sentence. Relevant information may include the circumstances of the offense and defendant's previous offenses, employment history, social history, attitude, needs, potential, and tribal customs and traditions.
- (c) Upon setting a penalty, the judge shall sign and file with the clerk a written judgment. The judgment shall state the defendant's name, the offense charged, the verdict, and the sentence.
- (d) The clerk shall receive and record all fines paid and record the evidence of completion of any other part of the sentence. When the sentence is fully carried out, the clerk shall note that fact and close the file. If the sentence is not carried out within a timely manner, the clerk shall notify the prosecutor.

10.07.320 Motion for New Trial:

- (a) A person who is convicted by a judge or jury may ask for a new trial within seven days after sentencing. The judge shall grant a new trial if one of the following is true:
 - i. The jury's decision was materially affected by evidence it should not have considered;

- ii. A substantial right of the defendant was materially denied;
 - iii. New evidence exists which was not discoverable at or before the time of the trial;
 - iv. There was a material error in law at or before trial; or
 - v. There has otherwise been a substantial miscarriage of justice.
- (b) If a new trial is granted, the judge shall state, in writing, the legal and/or factual reasons, whether within or outside the record, upon which his or her decision is based.

10.07.330 Right to Appeal:

- (a) All persons who are found guilty by a judge or jury shall have the right to appeal the verdict, the sentence or both within 14 days after sentencing.
- (b) Upon sentencing a defendant the judge shall tell the defendant about the right to ask for a new trial, the right to appeal, and the time limits for exercising these rights.

10.08 WRIT OF HABEAUS CORPUS

10.08.010 Who May Prosecute Writ: Every person imprisoned or otherwise restrained of his liberty within the jurisdiction of the Nooksack Tribe or by order of the Nooksack Tribal Court may petition for a writ of habeas corpus to inquire into the reasons for the imprisonment or restraint. If those reasons are found to be illegal the person shall be released from custody by order of the court.

10.08.020 Application for Writ: Application for the writ is made by petition, signed either by the party for whose relief it is intended, or by some person on his/her behalf. The writ must include:

- (a) A statement that the person on whose behalf the writ is applied for is unlawfully imprisoned or restrained of his liberty and a statement specifying why the person believes the imprisonment or constraint is unlawful;
- (b) The officer or person by whom s/he is confined or restrained, naming all the parties responsible for his/her confinement if they are known, or describing them if they are not known;
- (c) The place of confinement; and
- (d) The verification by the oath or affirmation of the party making the application.

10.08.030 Issuance of Writ:

- (a) When the judge is satisfied that the writ ought to be issued, it must be issued without a delay.
- (b) The writ must be directed to the person having custody of or restraining the person on whose behalf the application is made and must command him/her to bring the person before the Tribal Court at a time and place specified in the writ.
- (c) The issue or issues to be determined upon return of the writ may be stated, either in the writ or in an order attached to the writ or in a copy of the petition attached to the writ.

10.08.040 Content of the Writ:

- (a) The writ must be served upon the person to whom it is directed and it must be served in the same manner as a summons.
- (b) The writ shall be delivered by any tribal law enforcement officer or by anyone authorized by the judge or, if the person cannot be served within the territorial jurisdiction of the court, by mail, return receipt requested.
- (c) The writ may be delivered personally by giving it to the accused person directly or by leaving it at the accused's residence or workplace with a person at least 14 years old who lives or works there.
- (d) The person who delivers the writ shall promptly file with the court clerk a copy of the writ and a written statement describing when, where and how the delivery was made.
- (e) In the case of writs delivered by mail, the clerk shall file the return receipt and a written signed statement describing when and to whom the writ was mailed.

10.08.050 What to Contain: The person upon whom the writ is served must make a return to the court and state in the return:

- (a) Whether s/he has the party in his/her custody or under his/her power or restraint and the authority for so holding the person.
- (b) If s/he had, but no longer has, the party in his/her custody or under his/her power or restraint, the return must state particularly to whom, at what time and place, for what cause, and by what authority custody was released.

- (c) S/he must sign the return, except when that person is a sworn public officer and makes the return in his/her official capacity, it may be verified under oath.

10.08.060 Hearing on Return: The detained person shall be brought before the court by the person to whom the writ is directed unless the person to whom the writ is directed is not available and delegates another person to take his/her place.

- (a) The hearing must be held on the day set and it may be summary in nature.
- (b) Evidence may be produced and compelled as in civil actions.

10.08.070 Judgment:

- (a) If the detained person is in official custody, s/he may not be released on a writ of habeas corpus for any technical defect in commitment, which does not affect his/her substantial right.
- (b) Following the hearing, the tribal judge or judicial officer shall make such judgment regarding the custody of the detained person as the facts and circumstances warrant and the order shall be effective immediately.

10.09 SEVERABILITY, AMENDMENTS, PRIOR ENACTMENTS, AND EFFECTIVE DATE

10.09.010 Severability: If a court of competent jurisdiction finds any provision of this Ordinance to be invalid or illegal under applicable Federal or Tribal law, such provision shall be severed from this Ordinance and shall not affect the validity of the remainder of this Ordinance as a whole or any part thereof other than the part so declared to be invalid. The remainder of this Ordinance shall remain in full force and effect.

10.09.020 Amendments: The Council may amend this Ordinance by a majority vote of a quorum at duly called meeting.


10.09.030 10.09.40 Effect on Prior Enactments: As of the date of the enactment of the this Code, all prior resolutions or motions enacting and/or amending Title 10, The Tribal Court System and Court Rules or any other Nooksack Tribal Council action affecting the court system, are hereby repealed and shall be of no further force and effect.

10.09.040 Effective Date: This Ordinance shall be in full force and effect following its adoption by the Council.

CERTIFICATION


I, the undersigned, as Chairman of the Nooksack Tribal Council, do hereby certify: that the Nooksack Tribal Council is composed of eight members, of which 5 () were present, constituting a quorum, at a dully called meeting thereof, duly and regularly called, noticed, convened, and held this 7 the day of Oct. 2016; that Title 10 Tribal Court System and Court Rules was adopted by resolution #16- 146a at said meeting by a vote of 4 for; 0 against; and 0 abstentions; and that since its adoption this Ordinance has not been altered, rescinded, or amended in any way.

Dated this 7 day of October, 2016.



Robert Kelly Jr., Chairman
Nooksack Tribal Council

ATTEST:



Agripina Smith, Treasurer
Nooksack Tribal Council