

TITLE 1
LUMMI NATION CODE OF LAWS
TRIBAL COURT ESTABLISHMENT AND ADMINISTRATION

Enacted: Resolution S-13 (10/7/74)

Amended: Resolution 93-45 (3/24/93)
Resolution 2003-092 (8/4/03)

**TITLE 1
LUMMI NATION CODE OF LAWS
TRIBAL COURT ESTABLISHMENT AND ADMINISTRATION**

Table of Contents

Chapter 1.01 Establishment of Courts

1.01.010 Establishment of Courts 1

Chapter 1.02 Jurisdiction and Sovereign Immunity

1.02.010 Lummi Tribal Court Jurisdiction Defined 1
1.02.020 Sovereign Immunity 1
1.02.030 Implied Consent 1
1.02.040 Means to Carry Jurisdiction into Effect 1
1.02.050 Limited Waiver of Sovereign Immunity 1

Chapter 1.03 Appointment and Removal of Judges

1.03.010 Number of Judges 2
1.03.020 Appointment, Compensation, and Terms 2
1.03.030 Eligibility 2
1.03.031 Eligibility for Chief Judge 2
1.03.032 Eligibility for Associate Judge 2
1.03.040 Conflict of Interest 2
1.03.050 Judicial Cooperation 2
1.03.060 Removal of Judges 2

Chapter 1.04 Court Administration

1.04.010 Sessions of Court 3
1.04.020 Official Station 3
1.04.030 Location for Filing 3
1.04.040 Copies of Documents 3
1.04.050 Acting Chief Judge 3
1.04.060 Disqualification of Judge 3
1.04.070 Rules of Conduct 3

Chapter 1.05 Spokespersons

1.05.010 Spokesperson Appearing in Tribal Court 3
1.05.020 Tribal Court Bar – Admissions 4
1.05.030 Spokesperson’s Oath 4
1.05.040 Tribal Court Bar Roster 4
1.05.050 Tribal Court Bar Admission Fee 4
1.05.060 Spokesperson Not Eligible as Security 4
1.05.070 Spokesperson Disqualified as a Witness 4
1.05.080 Tribal Court Bar-Disbarment 4
1.05.090 Appeal 5

Chapter 1.06 Tribal Court Clerk and Records

1.06.010 Tribal Court Clerk.....5
1.06.020 Records5
1.06.030 Copies of Code of Laws.....5

Chapter 1.07 Lummi Nation Court of Appeals

1.07.010 Tribal Court of Appeals5
1.07.020 Appointment, Compensation, and Terms of Appellate Judges.....5
1.07.030 Type of Review.....6
1.07.040 Notice of Appeal.....6
1.07.050 Stay of Execution.....6
1.07.060 Appellate Hearing.....6
1.07.070 Standard of Review.....6
1.07.080 Conflict of Interest.....7
1.07.090 Tax Appeals7
1.07.100 Decision7

Chapter 1.08 Definitions

1.08.010 Police.....7
1.08.020 Signature7
1.08.030 Business Council.....7
1.08.040 Agency7
1.08.050 Tribe.....7
1.08.060 Court7
1.08.070 Person.....7
1.08.080 Court Fee Schedule.....7

**TITLE 1
LUMMI NATION CODE OF LAWS
TRIBAL COURT ESTABLISHMENT AND ADMINISTRATION**

Chapter 1.01 Establishment of Courts

1.01.010 Establishment of Courts

There is hereby established for the Lummi Nation on the Lummi Reservation in the State of Washington a court to be known as the Lummi Tribal Court, hereafter referred to as the Tribal Court, and Lummi Tribal Court of Appeals, hereafter referred to as the Tribal Court of Appeals. It is the duty of all courts established under this Code to review, interpret, and enforce the laws of the Lummi Nation.

Chapter 1.02 Jurisdiction and Sovereign Immunity

1.02.010 Lummi Tribal Court Jurisdiction Defined

The jurisdiction of the Tribal Court and the effective area of this Code shall include all territory within the Lummi Reservation boundaries, including fee patented lands, allotments, assignments, roads, waters, bridges, and lands used for agency purposes, and lands outside the boundaries of the Reservation held in trust by the United States for individual Lummi Indians or for the Lummi Tribe of the Lummi Reservation, and it shall be over all persons found therein. It shall include jurisdiction over members of the tribe when fishing at usual and accustomed grounds and stations recognized by the Treaty of Point Elliott of 1855, and when hunting or gathering roots and berries on open and unclaimed lands as guaranteed by the Treaty.

1.02.020 Sovereign Immunity

Nothing in this code shall be construed as a waiver of the sovereign immunity of the Lummi Nation or any of its subordinate entities, organizations, agencies, or instrumentalities, unless such waiver is explicitly stated.

1.02.030 Implied Consent

Entrance, actions, or activities by any person on the Lummi Reservation or lands within Tribal Court jurisdiction as defined in Section

1.02.010 of this Code shall be deemed equivalent to and construed to be an acceptance of the jurisdiction of the Tribal Court and a consent to such jurisdiction over his person concerning any legal action pursuant to this Code and shall further be deemed a consent to a service of summons or process by registered mail with return receipt requested at his last known address.

1.02.040 Means to Carry Jurisdiction Into Effect

When jurisdiction is vested in the Court, all the means necessary to carry it into effect are also given, and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this code, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of Tribal Law.

1.02.050 Limited Waiver of Sovereign Immunity

The Lummi Nation, Lummi Indian Business Council, any subdivision, instrumentality, wholly owned entity, or affiliate of the Tribe or any of their respective officers, employees, or agents acting within the scope of their authority, shall be immune from suit in any civil action except as specifically waived by a Lummi Indian Business Council resolution or ordinance referring to the sovereign immunity of the Nation. This immunity from suit is waived for the limited purpose of providing declaratory and prospective injunctive relief for actions brought in the Lummi Tribal Court or Court of Appeals to protect rights guaranteed under Article VIII of the Constitution of the Lummi Nation; provided, however, that the immunity of the Lummi Nation is not waived with respect to damages, costs, or attorneys fees, except with respect to any claim for which the Lummi Nation carries an active and enforceable insurance policy up to the amount of coverage provided in the policy; provided further, that no judgment on any claim may be for more than the amount of the insurance policy; and, provided further, that any judgment against the

Lummi Nation may only be satisfied pursuant to the provisions of the policy of insurance applicable.

Chapter 1.03 Appointment and Removal of Judges

1.03.010 Number of Judges

The Tribal Court shall consist of one chief judge whose duties shall be regular and permanent and associate judges who may be called into service when the occasion arises. The Clerk of the Tribal Court shall maintain a list of qualified persons to sit as pro tem Judges.

1.03.020 Appointment, Compensation, and Terms

The Chief Judge, the Associate Judges, and Pro tem Judges shall be appointed by the Business Council and shall be compensated on a basis to be determined by the Council. Each judge appointed by the Council shall hold office for a period of six (6) years, unless sooner removed for cause as provided in this chapter, but shall be eligible for reappointment. The Chief Judge of the Tribal Court will select Pro tem Judges from a list of qualified judges approved by the LIBC. The Chief Judge of the Tribal Court is responsible for ensuring that the judges serving by his selection are qualified and competent to hear any case that may come before them.

1.03.030 Eligibility

To be eligible to serve as a judge of the Lummi Nation Tribal Court, a person must, unless stated otherwise in the qualifications for a particular position,

- (a) be over twenty-one (21) years of age;
- (b) never have been convicted of or found guilty of a felony, or within one year past, of a misdemeanor involving moral turpitude; and
- (c) be of high moral character and physically sound.

1.03.031 Eligibility for Chief Judge

To be eligible to serve as the Chief Judge for the Lummi Tribal Court, a person must meet the following qualifications:

- (a) Indian preference shall be given in

accordance with the LIBC Personnel Policy;

- (b) Be twenty five (25) years of age;
- (c) Never have been convicted or found guilty of a tribal offense that would be a felony in another jurisdiction, or federal or state felony, or within one (1) year past, of a misdemeanor involving moral turpitude, and none pending;
- (d) Be of high moral character and physically and emotionally capable of performing the job responsibilities;
- (e) Pass the Lummi Bar Examination;
- (f) Be a licensed attorney with a minimum of three (3) years experience or have substantial and demonstrated legal knowledge and experience in Lummi Tribal law and Indian law.

1.03.032 Eligibility for Associate Judge

To be eligible to serve as an Associate Judge for the Lummi Tribal Court, a person must meet the same qualifications required for the Chief Judge.

1.03.040 Conflict of Interest

No judge shall be qualified to act as such in any case wherein he has any direct interest.

1.03.050 Judicial Cooperation

All judges and personnel of the Tribal Court shall cooperate with all federal, tribal, state, county, and municipal agencies, when such cooperation is consistent with the Tribal Code, but shall ever bear in mind that their primary responsibility is to the Lummi People of the Lummi Nation.

1.03.060 Removal of Judges

During their tenure in office, judges may be suspended, dismissed, or removed for cause by the Business Council. Copies of a written statement setting forth the facts and the reasons for such a proposed action must be delivered to the judge and to members of the Council at least ten (10) days before the meeting of the Council before which the judge is to appear. A public hearing shall then be held by the Council wherein the accused judge shall be given an adequate opportunity to answer any and all

charges. Causes judged sufficient for removal shall include, by way of example and not limitation: excessive use of intoxicants; immoral behavior; conviction of any offense other than minor traffic violations; desertion of office; or failure to perform duties. The decision of the Council shall be final.

Chapter 1.04 Court Administration

1.04.010 Sessions of Court

Sessions of the Tribal Court for the trial of cases shall be held by the Chief Judge, or in case of his disability, absence, or unavailability, by an associate judge, or pro tem judge, provided, however, that an associate judge may be called in to hear cases at any time for any reasonable cause by the Chief Judge.

1.04.020 Official Station

The Lummi Reservation is designated as the place where current records of the court shall be kept and as the official station of the Clerk of the Tribal Court.

1.04.030 Location for Filing

All pleadings, motions, and other papers shall be filed with the Tribal Court on the Lummi Reservation.

1.04.040 Copies of Documents

Records or documents in the files of the court shall not be taken from the office custody of the clerk except upon consent of the clerk. Copies of documents are available, for a fee, to the parties, attorneys, or spokespersons. Only counsel for parties will be allowed the right to remove documents and only for good cause shown and after giving proper receipts.

1.04.050 Acting Chief Judge

The Chief Judge of the Tribal Court shall designate, in writing, one associate judge to act as Chief Judge whenever the Chief Judge is absent from the Reservation, is on vacation, ill, or otherwise unable to perform the duties of his office. The acting Chief Judge may exercise all the powers of the Chief Judge. The duly appointed Chief Judge may at any time change his designation of the judge empowered to act as Chief Judge. In the event that the Chief Judge fails to designate a judge to act in his

absence, the Business Council shall designate an associate judge as acting Chief Judge.

1.04.060 Disqualification of Judge

(a) Disqualification for cause: A defendant, or other party, to any legal proceeding may accomplish a change of assignment of his case from one judge to another upon filing an affidavit of prejudice with the Court, giving satisfactory reason for such change. Such affidavit shall be in written form and must be filed with the Court before any substantive legal action has been taken by the initial judge. The initial judge shall pass on the adequacy of the affidavit of prejudice and enter the appropriate order, either hearing the case or reassigning it to another judge. An order may be appealed immediately under Chapter 1.08 of this Code, and all further actions in such a case will be stayed pending the outcome of that appeal.

(b) Disqualification without cause: Every party to a case is entitled to one peremptory challenge to obtain reassignment of a judge without cause. Such party shall file an affidavit requesting the change. Such affidavit must be in written form and must be filed with the Court before any substantive legal action has been taken by the initial judge. The judge shall pass on the petition, as above, and enter an appropriate order. Only one such change shall be allowed.

1.04.070 Rules of Conduct

All tribal court judges shall be held to the standards established by the Chief Judge and approved by the Tribal Court of Appeals, which standards shall meet or exceed the American Bar Association Judicial Rules of Conduct.

Chapter 1.05 Spokespersons

1.05.010 Spokesperson Appearing in Tribal Court

Any person appearing in Tribal Court shall have the right to a spokesperson, at his own expense, to assist in presenting his case, provided that such spokesperson shall first have been admitted to the Tribal Court Bar. The Court may appoint a spokesperson to assist any person if, in the discretion of the Court, it appears necessary to protect such person's rights. A spokesperson need not be

an attorney.

1.05.020 Tribal Court Bar - Admission

To be admitted to the Tribal Court Bar, a person must:

- (a) Be of good moral character;
- (b) Be approved by the Tribal Court under criteria established by the Court;
- (c) Sign and take the Spokesperson’s Oath;
- (d) Pay the Tribal Court Bar application fee and annual admission fee; and
- (f) Be at least eighteen (18) years of age.

1.05.030 Spokesperson’s Oath

The oath which all persons desiring to appear as spokespersons in the Tribal Court shall take is as follows:

“ Spokesperson’s Oath”

“I, _____, do solemnly swear;”

- 1. I will respect and obey the Lummi Code of Laws and will become familiar with its contents.”
- 2. “I will respect and obey the Constitution and By-laws of the Tribe in all respects.”
- 3. “I will abide by the rules established by the Council and the Lummi Tribal Court.”
- 4. “I will at all times maintain the respect due the Tribal Court and its officers.”
- 5. “I will not counsel or speak for any suit or proceedings which shall appear to me to be unjust, or any defense except such as I believe to be honestly debatable under the law of the Tribe, unless it be in defense of a person charged with a public offense.”
- 6. “I will employ such means only as are consistent with truth and honor and will never seek to mislead a judge or jury by

any false statements.”

7. “I will abstain from all offensive conduct in the Tribal Court.”

Lummi Reservation, ss.
Subscribed and Sworn to before me this
day of _____, _____

Judge

1.05.040 Tribal Court Bar Roster

The Clerk of the Tribal Court will maintain a roster of all spokespersons admitted to practice before the Tribal Court. The Clerk will also keep on file the signed oaths of all such persons.

1.05.050 Tribal Court Bar Admission Fee

Every person wishing to appear as a spokesperson in the Tribal Court will pay an admission fee established in the Court Fee Schedule. This fee shall be paid on an annual basis and spokespersons shall not be admitted to the Tribal Court Bar without such annual fee being paid. A judge may waive the Tribal Court Bar admission fee for good cause shown.

1.05.060 Spokesperson Not Eligible as Security

No spokesperson admitted to practice in this Court may act as security for costs or as surety on any appeal or other bond in any case in which he is representing a party in that case.

1.05.070 Spokesperson Disqualified as a Witness

No spokesperson representing a party in a case may testify as a witness in that case, except upon permission of the Court.

1.05.080 Tribal Court Bar - Disbarment

Any spokesperson violating the Spokesperson’s Oath shall be subject to disbarment. The Tribal Court Judge shall prepare in writing a

complaint against such spokesperson, including reasons for disbarment. At the next scheduled session of the Tribal Court of Appeals which is at least thirty (30) days after service of the complaint on the spokesperson, the Tribal Court of Appeals shall hold a hearing at which time the spokesperson involved may present witnesses and a defense of his actions. The decision of the Tribal Court of Appeals shall be final.

1.05.090 Appeal

Any person denied admission to the Tribal Court bar may appeal in accordance with the procedures established in Chapter 1.08 of this Code. Such person or spokesperson shall have the right to a hearing. The decision of a majority of the appellate panel shall be final.

Chapter 1.06 Tribal Court Clerk and Records

1.06.010 Tribal Court Clerk

(a) The Chief Judge with the concurrence of the Business Council shall appoint a Clerk of the Tribal Court. The Clerk of the Tribal Court shall be under the supervision of the Chief Judge.

(b) The Clerk shall render assistance to the Court, the Court of Appeals, to the police force, and to individual tribal members regarding procedures applicable to the Court. The Clerk is limited to providing information necessary to assist in determining which documents are to be filed at what times and the type of information a document requires, but shall not include filling out documents or providing advice on the merits of particular actions.

(c) It shall be the further duty of the Clerk to attend and to keep a record of all proceedings of the Court, to administer oaths to witnesses, and to perform such other duties as the Chief Judge shall designate.

(d) The Chief Judge shall require the Clerk to be bonded or covered by tribal insurance policies in an amount determined by the Chief Judge and the Business Council Treasurer.

1.06.020 Records

The Tribal Court shall keep a record of all

proceedings of the court, including, but not limited to, the title of the case, the names and addresses of the parties and their spokespersons, all pleadings filed in the case, the names and addresses of all witnesses, the date of the recording of the trial, who conducted the trial, the findings of the court or jury, and the judgment, together with any other information filed in the case. Such records shall be open to public review except matters that are closed pursuant to this Code or sealed by order of the Court.

1.06.030 Copies of Code of Laws

The Tribal Court shall be provided with copies of the Tribal Code of Laws, all pertinent resolutions, ordinances, or enactments of the Council, and such regulations as may be applicable to the conduct of the business of the court.

Chapter 1.07 Lummi Nation Court of Appeals

1.07.010 Tribal Court of Appeals

The Lummi Nation Court of Appeals will consist of a panel of three (3) judges who will convene at such times and places as is proper and necessary for the dispatch of any appeals, to hear any appeals from final judgments, sentences, and other final orders of the Tribal Court. The Court of Appeals will consist of one (1) Chief Justice and at least two (2) Associate Justices. The Chief Justice will be responsible for convening and administering the Court of Appeals.

1.07.020 Appointment, Compensation, and Terms of Appellate Judges

The Business Council will appoint the Chief Justice and Associate Justices of the Court of Appeals and determine their compensation and terms. The Associate Justices may be called into service by the Chief Justice when the need arises. Associate Justices will be selected by the Chief Justice who will ensure that the judges serving are qualified and competent to hear any case that may come before them. The appointment of Justices for the Court of Appeals will be under the same standards as for the appointment of pro tem judges.

1.07.030 Type of Review

An aggrieved party has an appeal as of right to the Lummi Nation Court of Appeals from final decisions of the Lummi Tribal Court. The grounds for requesting an appeal are:

- (a) That the trial judge or jury made a mistake in determining a question of fact, a question of law, or a mistake with regard to an issue within the court's discretion that affected the outcome of the case;
- (b) That a decision of the trial court conflicts with a previous decision of the trial court on the same important matter;
- (c) That misconduct or irregularity in the proceedings of the court, jury, or prosecution prevented the aggrieved party from receiving a fair trial;
- (d) That relevant evidence is available at the time of appeal which was not available to the court at the time of trial and the probative value of the evidence is such that its inclusion at the time of trial may have affected the outcome of the case;
- (e) That a decision of the trial court has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the review power of the Court of Appeals; or
- (f) That substantial justice has not been done.

1.07.040 Notice of Appeal

Within fourteen (14) days from the entry of judgment, the aggrieved party may file with the trial court a written notice of appeal and, upon giving proper assurance to the court, through the posting of a bond or any other way that will satisfy the judgment if affirmed, and paying the appeal fee established in the Court Fee Schedule, shall have the right to appeal, provided the case to be appealed meets the requirements established by this Code or the rules of the Court.

The notice of appeal must:

- (a) be titled a Notice of Appeal;
- (b) identify the party seeking review;

(c) identify and attach a copy of the decision or decision(s) the party wants reviewed; and

(d) state the grounds for the appeal and relief requested.

The trial court clerk will transmit the Notice of Appeal and the record of the case to the Chief Justice of the Court of Appeals within fourteen (14) days of receipt by the trial court clerk.

1.07.050 Stay of Execution

In any case where a party has perfected his right of appeal as established herein or by Rules of Court, a stay of execution of judgment may be granted as provided in Title 3 for civil cases, and the sentence shall not be carried out in criminal cases unless affirmed by the Tribal Court of Appeals.

1.07.060 Appellate Hearing

Within fifty-six (56) days from the date of the transmittal of a written notice of appeal, the appellate court shall convene, unless delay is warranted by good cause, to hear the case on appeal at such place as may be designated. A hearing shall be held to review the record of the trial, and, if requested by a party or ordered by the appellate court, to hear oral arguments. To the extent they are not inconsistent with appellate review, the court procedures shall be the same as in other cases before the Tribal Court.

1.07.070 Standard of Review

The appellate court shall review the record for errors committed during the pre-trial and trial stages. The decision of the trial court, or as much of the decision as is necessary, may be overturned where the appellate court determines that the trial court:

- (a) Made a clearly erroneous finding of fact, or one without support in the record;
- (b) Made a ruling or decision on the law that is wrong;
- (c) Made a discretionary decision that was an abuse of discretion; or
- (d) Was unable to consider relevant evidence

because it was unavailable at the time of trial.

1.07.080 Conflict of Interest

No person shall be qualified to sit on a panel of the Court of Appeals in any case wherein he has any direct interest or wherein any relative by marriage or blood, in the first or second degree, is a party.

1.07.090 Tax Appeals

Any party contesting the assessment of any taxes owed to the Tribe, or any party appealing a judgment for taxes owed or a judgment for any other remedy provided under any tax ordinance of the Tribe, must pay the assessed tax or judgment before he may appeal under this Chapter. Upon the payment of such taxes and upon the posting of a bond for costs in an amount determined by the Court, the appealing party may be granted a stay of execution as to the part of the judgment other than the taxes found to be owing, and that part of the judgment shall not be carried out unless and until affirmed by the Court of Appeals. Any forfeiture of seized goods shall be stayed pending the appeal, and the Tribe shall hold the goods seized in a safe place until the final resolution of the case. If the goods are perishable or threaten to decline speedily in value, the Tribe may sell such goods in a commercially reasonable manner and hold the amount realized until the final resolution of the case.

1.07.100 Decision

The appellate panel may either affirm the judgment as entered, modify it, remand the matter for further proceedings, or reverse the judgment by a majority vote. The decision of the Court of Appeals shall be final.

Chapter 1.08 Definitions

1.08.010 Police

The terms “police”, “tribal police”, “tribal officer”, and “officer”, as used in the Lummi Code of Laws, shall refer to qualified tribal Law Enforcement personnel or police officers of the Bureau of Indian Affairs.

1.08.020 Signature

The term “signature” as used in the Lummi

Code of Laws, shall mean the written signature, official seal, or thumb print of any individual.

1.08.030 Business Council

The term “Business Council” or “Council”, as used in the Lummi Code of Laws, shall refer to the Business Council of the Lummi Tribe of the Lummi Reservation of Washington.

1.08.040 Agency

The term “Indian Agency”, as used in the Lummi Code of Laws, shall refer to the Agency of the United States Department of the Interior, Bureau of Indian Affairs, Everett, Washington.

1.08.050 Tribe

The term “Tribe” or “Nation”, as used in the Lummi Code of Laws, shall refer to the Lummi Tribe of the Lummi Reservation.

1.08.060 Court

The terms “Court”, or “Tribal Court”, or “Reservation Court” as used in the Lummi Code of Laws, shall refer to the Lummi Tribal Court or Court of Appeals as indicated by the context of the section.

1.08.070 Person

The term “person”, as used in the Lummi Code of Laws, shall mean any natural person, corporation, trust, unincorporated association, partnership, and federal, tribal, state, or local governments, agencies, or subdivisions thereof, unless otherwise indicated.

1.08.080 Court Fee Schedule

The term “Court Fee Schedule”, as used in the Lummi Code of Laws, shall mean the fee schedule approved by the Lummi Indian Business Council or its designee.

Title1pub08