

**SWINOMISH TRIBAL COURT
LOCAL COURT RULES (“LCR”) – August 2005**

The Swinomish Tribal Court hereby adopts the following local court rules (LCR) pursuant to STC 3-01.060:

LCR 1 -- Tribal Court Local Rules.

- 1.1 Scope of Rules:** These rules are promulgated on an interim basis and govern procedures in the Swinomish Tribal Court. All proceedings in Swinomish Tribal Court, civil and criminal, in law or in equity, shall be conducted in accordance with the applicable sections of the Swinomish Tribal Code, except as modified or supplemented by these local court rules. These rules shall become effective August 1, 2005.
- 1.2 Mandatory Compliance:** Compliance with these rules is mandatory, unless waived by the Court for good cause. Should any party, attorney or spokesperson fail to follow these rules, the Swinomish Tribal Code or orders issued by the court, the court may sanction such party, attorney or spokesperson by including, but not limited to, a monetary penalty, striking a trial date and resetting the trial, paying a jury fee, paying a witness fee, or such other applicable fees, dismissal of the cause, limitations in filing of exhibits, witnesses or other pleadings, striking of pleadings or other filings, and such other relief as may be appropriate in the circumstances.
- 1.3 Publication of Rules:** These rules shall be published as Appendix A to Title 3 of the Swinomish Tribal Code.

LCR 2 -- Court schedule.

During the first week of each month, the Clerk of the Court will make available to the public a calendar showing the hearing dates for the following 90 days. Motions and other hearings shall be scheduled according to the following calendar unless otherwise set by the court.

2.1 Criminal Court:

- 2.1 (A) Arraignments and Pretrial hearings:** 1st and 3rd Wednesday of the month starting at 9:00 a.m. with citations scheduling arraignments on the 1st Wednesday of the month at 9:00 a.m.
- 2.1 (B) Criminal Motions:** 1st Monday of the month at 10:00 a.m. If the first Monday of the month is a holiday, motions will be scheduled on the following Friday.
- 2.1 (C) Trials:** 2nd and 4th Tuesday-Wednesday of the month.
- 2.1 (D) Probation Review and Revocation:** 1st and 3rd Tuesday of the month beginning at 10:00 a.m.

2.1 (E) Juvenile citations: Every Thursday at 1:30 p.m.

2.2 Civil Court:

2.2 (A) Traffic infraction hearings: 2nd Thursday of the month beginning at 9:30a.m.

2.2 (B) Landlord/tenant hearings: 4th Thursday of the month beginning at 9:30 a.m.

2.2 (C) Civil motions: 3rd Monday of the month beginning at 10:00 a.m. If the third Monday is a holiday, motions will be scheduled on the following Friday.

2.2 (D) Trials: 2nd and 4th Tuesday-Wednesday of the month.

2.2 (E) Civil Fishing Contested hearings: 2nd Friday of the month.

2.2 (F) Restraining Order Reviews: 1st and 3rd Thursday of the month beginning at 9:30 a.m.

2.3 Swinomish Youth Wellness Court: Every Thursday at 3:30 p.m.

2.4 Ex parte Hearings: Requests for ex parte relief that do not require personal presentation shall be delivered to the Clerk of the Court for transmission to the Court. Ex parte matters requiring personal presentation may be presented at the beginning of any motion calendar only after the party has first notified the Clerk of the Court who shall set the matter for the Court's review. These rules do not apply to emergency law enforcement issues.

2.5 Special set hearings: Parties may request, and the court may set, hearings on days and at times other than are provided herein or the calendar published monthly by the clerk of the court. Requests for special hearings may be made orally in open court during a regular court calendar, or in a written request submitted to the Clerk of the Court.

LCR 3 -- Rules of Court Administration.

3.1 Filing Stamp Required: All documents or other papers or pleadings filed with the Court must bear the stamp of the Clerk of the Court before such documents are considered "filed" as may be required by these rules or applicable provisions of the Swinomish Tribal Code.

3.2 Hours of Filing: Documents and pleadings may only be filed with the Clerk of the Court between the hours of 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding court holidays. The Clerk of the Court will provide a filing "in-box" for

criminal and civil matters. Time sensitive matters should be filed personally with a clerk of the court. Matters to be presented for Ex Parte consideration and/or agreed orders should be filed in the appropriate “in-box” to assure timely distribution to the Court.

- 3.3 Pleadings must contain all necessary substantive information:** The clerk of the court shall not be requested to complete any pleadings presented for filing with the court, except for the inclusion of the date and time of scheduled hearings. If the parties need to include substantive information in pleadings that is contained exclusively in court files (i.e. jail costs, judgment balances, etc.), the parties may submit a written request to the clerk’s office asking the court to provide the information before the pleadings may be filed.
- 3.4 Clerk’s Action Documents:** Pleadings or other papers requiring action on the part of the clerk, other than file stamping, docketing and placing in the file, shall be considered action documents. Action documents shall include a special caption directly below the case number on the first page, such as “Clerk’s Action Required.”
- 3.5 Motions to Continue Hearings or Trials:** Any request for a continuance of a hearing or trial set on the Court’s calendar shall be made by motion for good cause shown.
- 3.5 (A) Time for Filing:** A motion to continue shall be filed at least three (3) days prior to the hearing or seven (7) days prior to a trial, except with good cause shown for the need to file a motion with fewer days notice.
- 3.5 (B) Consultation Required:** All motions to continue must contain the signature of the opposing party and/or spokesperson, or documentation that the moving party discussed the motion with the opposing party and/or spokesperson, and must indicate if the opposing party either consents to or opposes the motion. If the moving party is unable to contact the opposing party and/or spokesperson, the moving party shall provide documentation of attempts made to contact the opposing party.
- 3.5 (C) Denial of Request:** Delay in filing the motion to continue, failure to contact the opposing party, or failure to identify adequate cause may result in denial of the motion.
- 3.5 (D) Terms Allowed:** If the motion is granted, the Court may assess such costs, terms or such other relief as is appropriate in the circumstances. In the event a jury trial is continued for good cause shown, the Court may impose a jury fee of \$75.00, which must be satisfied prior to setting a new hearing date.

LCR 4-- Motion Practice.

- 4.1 Requests for relief:** All requests for preliminary action by the Court shall be by written motion, except those made during a hearing or trial that is being properly recorded into the court record. Filing a motion does not create any presumption that the relief requested has been granted. A motion is not “granted” by the agreement of the parties. The court will not consider a motion and relief will not be granted until the matter is properly set for hearing or presented for ex parte consideration.
- 4.1 Setting a Hearing:** All contested motions must be set for hearing by filing a written “Note for Hearing” as described in LCR 4.2 below.
- 4.2 Noting matters for hearing.** The procedure for setting hearings shall be as follows:
- 4.2 (A)** The party setting a hearing shall select a date for hearing appropriate for the nature of the matter to be heard and consistent with the calendar published by the Clerk of the Court. Before filing a note for hearing, the filing party must confirm the proposed date and time to be set with the Clerk of the Court. The Clerk of the Court is authorized to ask that the matter be set on an alternate date and time to accommodate the Court calendar.
- 4.2 (B)** The party requesting the hearing shall prepare and file a “Note for Hearing” on a form in substantial compliance with the form adopted as Appendix 1 of these rules, and shall serve the note for hearing, with the motion and all supporting documents, upon any other party consistent with the rules of civil or criminal procedure.
- 4.2 (C)** Oral argument will be allowed when requested by a party, or at the discretion of the court. All other motions will be decided by the court on the basis of the record, including timely filed briefs and any supporting or opposing documents filed therewith.
- 4.3 Time for filing:** Unless the Swinomish Tribal Code or Tribal Court Order provides a longer period, all motions, supporting briefs, affidavits or other exhibits must be filed at least fourteen (14) court days before the scheduled hearing date. All responses, including supporting materials, must be filed at least seven (7) days before the scheduled hearing. Any final reply, if allowed by applicable rules, shall be filed three (3) days before the scheduled hearing.
- 4.4 Summary Judgment:** Motions for summary judgment and any supporting affidavits, memoranda of law, or other documentation shall be filed and served no later than twenty-eight (28) calendar days before the hearing. The adverse party may file and serve opposing affidavits, memoranda of law or other documentation no later than eleven (11) calendar days before the hearing. The moving party may file and serve any rebuttal documents no later than five (5) calendar days prior to the hearing. If the date for filing falls on a Saturday, Sunday or holiday, then the filing date shall

be extended to the next day nearer the hearing that is not a Saturday, Sunday or legal holiday. Summary judgment motions shall be heard more than fourteen (14) calendar days before the date set for trial unless leave of court is granted to allow otherwise.

- 4.5 Motion to Shorten time:** Before taking any action on less notice than that required by court rule, a party must present a motion and affidavit, and must obtain an order to shorten time. The documents may be presented ex parte if the motion contains written certification that the other party was notified of the time and place of the motion requesting an order shortening time.
- 4.6 Ex Parte and Un-Opposed Motions:** A request for an order that may be presented ex parte, or is otherwise unopposed, need not be noted for hearing as described above, but shall instead be accompanied by a proposed order. Except as otherwise ordered in an individual case, every such request shall be submitted to the judge through the clerk of the court.
- 4.7 Bench Copies:** Except when a party is unrepresented and the court waives said requirements, all motions requiring court review shall include the following documents:
- 4.7 (A)** If briefs, affidavits or other exhibits are filed in support of the motion, response or reply, a copy marked “Bench Copy” must be filed. The Bench Copy must also include the date and time of hearing next to the “Bench Copy” notation.
- 4.7 (B)** If any case law is cited, the party must attach a copy of the case with the Bench Copy.”
- 4.8 Proposed Orders:** A proposed form of an order, which the Court may adopt, modify, or reject consistent with the decision of the Court, shall be served with any motion, but shall not be placed in the permanent court file. Originals of proposed orders shall be retained by the parties for presentation at the hearing on the motion.

LCR 5 – Criminal Procedures

- 5.1 Arraignments:** All arraignments will be called on the record at the time set for the arraignment. The court will arraign the defendant on all complaints filed with the court at least twenty-four (24) hours prior to the hearing date, if that date was scheduled at least two days prior to the hearing. Unless the Court waives this rule for good cause, complaints filed contrary to this rule will be set for arraignment on the next available arraignment date.
- 5.2 Change of Plea:** If parties intend to present a change of plea to the Court, all parties should be prepared for the change of plea. Documentation to enter a change of plea should be prepared prior to the matter being called for hearing. All parties should have reviewed and corrected errors and signed off on the documentation. The parties

may request the matter be placed at the end of the end of the calendar to provide sufficient time to meet this requirement.

- 5.3 Probation Revocation:** Petitions for the Revocation of Probation shall be filed and served on the probationer at least seven (7) days prior to the proposed revocation hearing. The petition for Revocation shall be accompanied by an Order to Show Cause issued by the Court. This procedure will not be required for petitions accompanied by a request for the issuance of an arrest warrant, probationers taken into police custody or matters set for revocation upon the oral motion of the probation officer, or upon the court's on motion, during regularly scheduled Probation Review hearings.

Appendix 1
Note for Hearing

SWINOMISH TRIBAL COURT
SWINOMISH RESERVATION, LaCONNER, WASHINGTON

_____,
Plaintiff/Petitioner,
vs.

Defendant/Respondent

Case No.: SWI-
NOTE FOR HEARING

TO: THE CLERK OF COURT and to
OPPOSING PARTY/SPOKESPERSON(S) _____

NOTE FOR CALENDAR

_____ CIVIL _____ CRIMINAL

Please note that the issue of law in this case
will be heard on the date set out in the margin
and the Clerk is requested to note the same
on the motion calendar for that day.

DATE/TIME OF
HEARING _____
(Hour)

NATURE OF
HEARING _____
(Motion must be filed)

ORAL ARGUMENT **IS** REQUESTED

Dated this _____ day of _____, 20__ .

Signature of Noting Party/Spokesperson

Name of Noting Party/Spokesperson

Other Party (use additional page, if required)

Name: _____

Address: _____

CERTIFICATE OF MAILING: I certify that I mailed a copy of this document to the
parties listed, postage prepaid on the ____ day of _____, 200__.

Signature: _____