

**Title 4**  
**COURT SYSTEM**

Chapters:

**4.04 Squaxin Island Tribal Court Established**

**4.08 Administrative Rules**

**4.12 Rules Governing Representatives**

**4.16 Rules for Conduct of Judges**

**4.20 Rules of Evidence**

**4.24 Rules of Civil Procedure**

**4.28 Rules of Criminal Procedure**

**4.32 Rules of Appellate Procedure**

**4.36 Petition for Release of Custody**

**4.40 Informal Tribal Court**

**4.52 Arbitration Code**

**4.56 Squaxin Island Tort Claims Ordinance**

**Chapter 4.04**

**SQUAXIN ISLAND TRIBAL COURT ESTABLISHED**

Sections:

**4.04.010 Authority.**

**4.04.020 Purpose.**

**4.04.030 Squaxin Island Tribal Court.**

**4.04.040 Powers of the Court.**

**4.04.050 Jurisdiction.**

**4.04.060 Judges.**

**4.04.070 Qualification of judges.**

**4.04.080 Removal of judges.**

**4.04.090 Other personnel.**

**4.04.100 Intertribal court system.**

**4.04.110 Funds.**

**4.04.120 Court rules.**

**4.04.130 Measures in aid of jurisdiction.**

**4.04.140 Informal dispute resolution.**

**4.04.010 Authority.**

The Squaxin Island Tribal Council's authority to adopt the ordinance codified in this title is found in the Squaxin Island Tribal Constitution and in the inherent sovereign authority of the Squaxin Island Tribe over reservation land and activities.  
(CPO § 1)

#### **4.04.020 Purpose.**

The purpose of this title is to ensure peace and order on the Squaxin Island Reservation, to promote the welfare of members of the Squaxin Island Community, to safeguard individual rights, and to secure rights and powers which are both inherent in the Squaxin Island Tribe's sovereign status and guaranteed to the tribe by treaty and by the laws of the United States.  
(CPO § 2)

#### **4.04.030 Squaxin Island Tribal Court.**

A. There is created a Squaxin Island Tribal Court. The Squaxin Island Tribal Court shall have three divisions, a Trial Court, an Employment Court and an Appeals Court.

B. The Employment Court shall have exclusive jurisdiction over all claims arising from employment relations on the Squaxin Island Reservation, including but not limited to hiring, discipline, grievances, discharge, harassment of whatever nature, retaliation, and preference. The remedies available in the Employment Court are limited to injunctive relief and awards of employment, reassignment, reinstatement, back pay and/or benefits. Damage awards shall be limited to five thousand dollars (\$5,000.00). Access to the Employment Court requires that the plaintiff exhaust all tribal administrative grievance or disciplinary procedures. A judge of the Squaxin Island Tribal Court will sit as the presiding judge in the Employment Court. Decisions of the Employment Court may be appealed to the Appeals Court. The Appeals Court shall remand the case if it determines that the decision of the Employment Court was arbitrary or capricious or not supported by substantial evidence.  
(Res. 97-53 (part): CPO § 3)

#### **4.04.040 Powers of the Court.**

The Squaxin Island Tribal Court shall have only those powers granted to it by the Tribal Council in this and other tribal laws. The Tribal Court shall not have powers of judicial review of Tribal or General Council actions.

A. The Tribal Court shall have the power to:

1. Interpret and apply tribal law; and
2. Take all necessary and proper actions to insure that the intent of the Tribal Council is fulfilled, and that the jurisdiction of the Tribal Court to interpret and apply that intent is preserved and protected.

B. The Tribal Court shall not have the power to:

1. Declare actions of the Tribal or General Council to be contrary to the Tribal Constitution, or determine the power, authority or legality of actions of the Tribal or General Council;
  2. Set its own rules of court, the same being under the authority of the Tribal Council; and
  3. Address issues about the structure and/or authority of the Tribal or General Council.
- C. The Tribal Court shall, in addition, have the power to direct advisory opinions to the Tribal Council setting forth its concerns with tribal laws, Tribal or General Council actions, or other appropriate matters.

(CPO § 4)

#### **4.04.050 Jurisdiction.**

The Squaxin Island Tribal Court's jurisdiction shall extend to the territory set forth in the Squaxin Island Constitution. The Court shall have such jurisdiction over persons and subjects as the Tribal Council gives it by ordinances or resolution.

(CPO § 5)

#### **4.04.060 Judges.**

The Tribal Council may appoint a chief judge and associate judges of the Squaxin Island Tribal Court. Judges shall be appointed for a term to be established by the Tribal Council. When no judge of the Tribal Court is available, the Tribal Council may, by written resolution, appoint a temporary judge to serve for a specified period, which shall not be longer than six months.

(CPO § 6)

#### **4.04.070 Qualification of judges.**

To serve as judge of the Squaxin Island Tribal Court, a person must be an Indian who is (a) at least 21 years old, (b) of good moral character, (c) able to read and write English well, and (d) trained in or willing to undergo training in law and legal procedures. In the event that no qualified Indian applicants are available, the "Indian" qualification may be waived by the Council in making this appointment.

(CPO § 7)

#### **4.04.080 Removal of judges.**

A. The Tribal Council may remove a judge of the Tribal Court only for good cause. Good cause for removing a judge shall include, but need not be limited to: conviction of a felony or an offense involving dishonesty during the judge's term, serious violation of the Rules for Judges' Conduct, failure to perform the duties of the judge's office, failure to complete required training, incompetence, and health or psychological conditions which interfere with performance of the judge's duties. The Tribal Council may not remove a judge because it disagrees with actions the judge has taken in an official capacity.

B. Before removing a judge, the Council shall give the judge written notice of the charges against

him or her. This notice shall be provided at least ten (10) days before a Council meeting at which the judge shall have a fair opportunity to hear and confront the witnesses against him or her and to present evidence on his or her behalf. A judge shall not be removed unless a majority of all members of the Tribal Council vote for such removal.  
(CPO § 8)

#### **4.04.090 Other personnel.**

A. The Squaxin Island Tribal Council may appoint a court administrator, who shall be responsible for overseeing the operation of the court system and for administering funds appropriated by the Tribal Council for the court's operation.

B. There shall be a clerk of the Tribal Court, who shall be appointed by the Tribal Council. The clerk shall be responsible for maintaining all records of the court. Compensation of the clerk shall be provided for in the annual budget adopted pursuant to Section 4.04.110.  
(CPO § 9)

#### **4.04.100 Intertribal court system.**

By written resolution, the Tribal Council may enter into an agreement with other Indian tribes in Western Washington to establish and participate in an organization which makes court personnel and administrative services available to all participating tribes. In this event, the Tribal Council shall appoint as judges and administrator of the Squaxin Island Tribal Court, those persons who are hired as judges and the administrator of such intertribal court system, and such persons shall be appointed, compensated, and removed as provided in the intertribal agreement.  
(CPO § 10)

#### **4.04.110 Funds.**

The Squaxin Island Tribal Council may provide for maintenance of the Tribal Court, as necessary, by annual appropriations.  
(CPO § 11)

#### **4.04.120 Court rules.**

Procedures of the Squaxin Island Tribal Court shall be governed by rules adopted by the Tribal Council. Tribal judges or the court administrator may recommend rules for adoption by the Tribal Council.  
(CPO § 12)

#### **4.04.130 Measures in aid of jurisdiction.**

In the absence of an applicable ordinance or rule, the Squaxin Island Tribal Court shall have the power to take any measures reasonably necessary to carry out and protect its jurisdiction, so long as such measures are consistent with the overall powers of the court as provided by the Tribal Council.  
(CPO § 13)

#### **4.04.140 Informal dispute resolution.**

Nothing in this title or in the rules of the Squaxin Island Tribal Court shall prevent persons who are involved in a dispute from submitting their dispute to persons, organizations, or agencies outside the Tribal Court for resolution in an informal manner.  
(CPO § 14)

### **Chapter 4.08**

#### **ADMINISTRATIVE RULES**

##### Sections:

- 4.08.010 Clerk.**
- 4.08.020 Court records.**
- 4.08.030 Sessions.**
- 4.08.040 Filing and notice.**
- 4.08.050 Timing.**
- 4.08.060 Form of pleadings.**
- 4.08.070 Court behavior.**
- 4.08.080 Absence of judge.**
- 4.08.090 Compelling witnesses to appear (subpoena).**
- 4.08.100 Costs.**
- 4.08.110 Contempt of court.**
- 4.08.120 Achieving the court's purpose.**

#### **4.08.010 Clerk.**

A. Before taking office, the court clerk shall state in the presence of the Tribal Council 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 course of official duties.

B. Duties of the court clerk include:

1. Making and keeping records of all lawsuits and criminal prosecutions brought in the Tribal Court, all actions taken by the parties or the Court during such cases, and all court hearings;
2. Keeping a calendar of court hearing dates and deadlines, and helping with scheduling of court proceedings;
3. Notifying the judges and parties, as required in these rules, of actions taken, hearings scheduled, and other developments requiring their attention during cases in Tribal Court;
4. Receiving and recording money for fines and costs charged to parties in court cases; and keeping records of property seized, held for use as evidence, disposed of, and returned in the course of court proceedings;
5. Participating in training programs identified as necessary by the court administrator;

6. Maintaining for the use of court personnel and parties an up-to-date set of Rules of the Squaxin Island Tribal Court and the Squaxin Island Tribal Code;
  7. Maintaining a list of persons who are permitted to appear in Tribal Court as representatives for parties and witnesses; and
  8. Maintaining a list of persons eligible to serve on juries, and summoning jurors as provided in these rules.
- C. The court clerk shall have authority to do the following:
1. Administer oaths of persons who make out complaints and affidavits;
  2. Prepare and certify the official record of a court hearing; and
  3. Sign and issue summons for potential jurors and witnesses, as long as such summons will be served within the Squaxin Island Reservation.

(CPO (part))

#### **4.08.020 Court records.**

A. Official records of the Tribal Court shall be kept on the Squaxin Island Reservation in the clerk's office, and these records shall not be removed except with the permission of the chief judge or the administrator.

B. All testimony and arguments given in open court may be recorded and if recorded 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 such record upon request of a judge when a case is appealed, or at the request of a party. A party who requests a transcript shall bear the costs of preparing it unless the judge excuses the party from paying.

- C. Records kept by the clerk shall include:
1. A calendar of scheduled court hearings;
  2. A list of representatives permitted to appear in the Tribal Court;
  3. A separate file for each lawsuit and criminal prosecution brought in the Tribal Court, with a copy of every document submitted in the case;
  4. A payment ledger showing all funds received and disbursed in the course of each lawsuit or prosecution brought in Tribal Court; and
  5. A docket book which shows, for each case filed in Tribal Court, the case file number, the parties' names, and a short description of every document filed and every order issued in the case, including the date of the order or filing.

D. All official records of the Tribal Court shall be public records, available for inspection by any interested person, unless a tribal ordinance or an order of the Court requires that a record be kept confidential.  
(CPO (part))

#### **4.08.030 Sessions.**

A. All sessions of the Tribal Court shall be held on the Squaxin Island Reservation unless otherwise agreed by the parties.

B. The Court may set and publish a schedule for regular court sessions. The schedule may include a regular time that the judge will consider motions.

C. Unless otherwise provided in these rules the times for trials and other hearings shall be set and recorded by the clerk, who shall consult with the court administrator and the judge, as appropriate.

D. A police officer who serves a criminal summons and a party who requests court action at a time other than a regularly scheduled court session shall have responsibility for getting a hearing date from the clerk and for providing all other parties with written notice of the time, place, and nature of the hearing. In all other cases, unless a court hearing is scheduled in court when all parties or their representatives are present, the clerk shall send the parties written notice of the hearing. Notice required in this section shall be mailed or delivered to all parties at least seven days before the scheduled hearing.  
(CPO (part))

#### **4.08.040 Filing 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 case in Tribal Court shall be filed with the clerk.

B. The clerk shall give a copy of every document filed in a court case to the judge who has responsibility for the case.

C. A party who files any document with the court clerk in a lawsuit or criminal prosecution shall give a copy of the same document to every other party in the case. If a party is represented by an attorney or spokesperson, the document shall be given to that representative. 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.

D. 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 such ruling to each party in the case.  
(CPO (part))

#### **4.08.050 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 shall not be counted; but the last day

shall be counted unless it is a Saturday, Sunday, or tribal holiday, the deadline shall be the first work day following the day that is not counted. When the time limit is less than seven days, Saturdays, Sundays, and tribal holidays shall not be counted at all.

B. When a time limit is counted from or to the time that notice is delivered to a person and the notice is delivered by mail rather than given directly to the person, it shall be presumed that delivery takes place three days after the notice is mailed.

C. On request of a party, the judge may allow an extension of any time limit described in this rule, as long as the right to a speedy trial in criminal cases is not denied.  
(CPO (part))

#### **4.08.060 Form of pleadings.**

A. Unless otherwise specified by the judge or in these rules, defenses, motions, arguments, and other requests made to the Court do not have to be in writing. Parties are encouraged, however, to put such request and arguments in writing, especially where the matters to be considered by the judge are complex. Where parties are required to submit something in writing, the clerk may assist any party in putting his or her statements in writing.

B. There shall be no required form for written material 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 it or of the party's representative and any other information required by these rules. For convenience, the administrator and clerk may develop standard forms for pleadings and notices.  
(CPO (part))

#### **4.08.070 Court behavior.**

A. All persons who attend Tribal Court hearings as parties, witnesses, or spectators shall be quiet and orderly while Court is in session. No spectator shall 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.  
(CPO (part))

#### **4.08.080 Absence of judge.**

A. In the event that the chief judge is disqualified from hearing a case, ill, or otherwise unavailable, the court administrator shall designate an associate judge to hear a particular case or to hear all cases during the chief judge's absence.

B. In the event that all judges of the Tribal Court are unavailable, the Tribal Council shall appoint a

judge or judges to serve temporarily as associate judges, as provided in Section 4.04.060.  
(CPO (part))

#### **4.08.090 Compelling witnesses to appear (subpoena).**

A. Any party to a lawsuit or proceeding in Squaxin Island Tribal Court shall have the right to compel witnesses to appear in court on his or her behalf.

B. Upon request of a party or of a judge, the Court shall issue a summons 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 summons for witnesses if they are to be served within the Squaxin Island Reservation. In all other situations, the summons shall be issued by and include the signature of a judge.

D. Every summons commanding a witness to appear shall be in writing and shall include the name of the court, the names of all parties, the time and place that the witness must appear, and a clear and detailed description of any documents or evidence which the witness is required to bring.

E. A summons issued as provided in this rule shall be delivered to the witness by a person named by the Court for that purpose. The summons may be delivered either by giving it to the witness directly or by leaving it at the witness's residence or place of employment with a person at least fourteen (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 statement describing where, when and how delivery was made.

G. Failure of a witness to obey a summons shall be grounds for holding the witness in contempt of court.

H. A witness who responds to a summons shall be entitled to a fee of ten dollars (\$10.00) for each day that he or she must appear in court. The judge may, in addition, order that the witness be paid reasonable travel and living expenses incurred in responding to the summons.  
(CPO (part))

#### **4.08.100 Costs.**

A. Upon judgment the judge shall 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 determines that such an order would be unjust. Costs shall not be imposed on the Squaxin Island Tribe or any branch of the Tribe unless specifically permitted by an applicable tribal law or agreement.

B. Costs shall include civil filing fees, any costs of delivering complaints and summons, postage for court notices sent to the parties, and fees and expenses paid to witnesses and jurors but shall not include attorney's fees and the costs to each party of reproducing and delivering to other parties copies of pleadings other than the original summons.

C. No person shall be jailed because he or she is unable to pay costs.

D. As long as there is an actual controversy, the Tribal Court may hear a case and pass judgment for the sole purpose of declaring the legal rights and responsibilities of the parties under the tribal law.  
(CPO (part))

#### **4.08.110 Contempt of court.**

A. Any person who is found by a tribal judge to have committed one of the following acts may be declared in contempt of court and punished by a fine no greater than five hundred dollars (\$500.00) or by imprisonment no longer than six months or both:

1. Disobedience of a lawful court order, including a summons to appear as a witness and a summons to serve as a juror;
2. Violent or disorderly conduct in the courtroom while court is in session;
3. Repeated wilful disregard of court procedure demonstrating significant lack of respect for the Court's authority and function.

B. If a person who is charged with contempt of court commits the acts on which the charge is based in the presence of the judge, the person may be immediately removed from the courtroom. Criminal contempt charges shall be prosecuted according to the Rules of Criminal Procedure for the Squaxin Island Tribal Court.  
(CPO (part))

#### **4.08.120 Achieving the court's purpose.**

A. Whenever the Tribal Court has jurisdiction over a person and subject, it shall also have the power to use reasonable means to protect and carry out its jurisdiction. 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 of the tribal law which is being applied.

B. The rules of procedure for the Squaxin Island Tribal Court shall be liberally interpreted and applied to achieve the following purposes: revealing the truth, treating all parties fairly and without prejudice, protecting individual rights guaranteed by the Indian Civil Rights Act and the Squaxin Island Tribal Constitution, and resolving disputes efficiently.

C. As long as a party does not waive unknowingly a right or protection guaranteed by tribal law, the parties and the Court may agree to depart from procedures established in these rules in order to save time and expense while achieving the purposes of these rules and the tribal laws.

D. In a situation where the rules of the Tribal Court do not prescribe a procedure, the parties and the judge may agree on a procedure or the judge may determine the procedure which will be followed.

E. Judges and the administrator of the Tribal Court have a duty to tell the Squaxin Island Tribal Council which additional rules are needed to govern common procedural questions faced by the Court.

(CPO (part))

## Chapter 4.12

### RULES GOVERNING REPRESENTATIVES

Sections:

**4.12.010 Right to representation.**

**4.12.020 Permission to appear as representative.**

**4.12.030 Admission fee.**

**4.12.040 Revocation of permission to appear.**

#### **4.12.010 Right to representation.**

A. Any party or person who appears in Squaxin Island Tribal Court may be represented by a lawyer or a spokesperson as long as the representative has applied for and been granted permission to represent persons in the Court. The judge may appoint someone to represent a party or a witness if that person would be seriously prejudiced or handicapped by appearing without a representative and cannot afford to hire a representative.

B. No individual licensed as an attorney in any state of the United States, nor any individual licensed as an attorney in any foreign country, shall perform any of the following services, directly or indirectly, for a party to an action in any division of the Squaxin Island Tribal Court, including the Appellate Court, without immediately disclosing to the Court and all parties his or her identity and the performance of such services: writing, reviewing or editing pleadings or other materials filed with the Court; assisting in the development of legal strategy or arguments; otherwise providing assistance to the party that would tend to provide the party with an advantage he or she would not have as a true pro se party.  
(Res. 00-01 (part); CPO (part))

#### **4.12.020 Permission to appear as representative.**

A. Any person at least eighteen (18) years old who is of good moral character may appear as a representative in the Squaxin Island Tribal Court as long as he or she has applied in writing for permission, has paid the admission fee, has read the Constitution and ordinances of the Squaxin Tribe and the rules of the Squaxin Island Tribal Court, has been certified by the chief judge as qualified to appear and has taken an oath to uphold the tribal constitution.

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

C. No individual who has sat as a judge in any division of the Squaxin Island Tribal Court, including the Court of Appeals, or on a NICS appellate panel for any member Tribe, whether in a regular, part-time, pro tem or other capacity, during the previous twenty-four (24) months shall be eligible to appear as a representative in any division of the Squaxin Island Tribal Court, including the Appellate Court, on behalf of any party other than himself or herself.

(Res. 00-01 (part); CPO (part))

#### **4.12.030 Admission fee.**

In order to cover the cost of maintaining a list of representatives permitted to appear in the Tribal Court, every person who is permitted to appear as a representative shall be charged an admission fee of ten dollars (\$10.00).

(Res. 99-33: CPO (part))

#### **4.12.040 Revocation of permission to appear.**

A. Any representative who breaks the promises which he or she made upon admission to practice in the Tribal Court may be barred from appearing in Court either permanently or for a period set by the judge.

B. When a representative is accused of violating his or her oath, the charges shall be written up in a complaint signed by the person who makes the accusation. The complaint shall be given or mailed to the accused representative and filed with the Court. The representative shall be summoned to appear at a hearing before a judge of the Tribal Court who is not the complaining witness. The hearing shall be held no sooner than ten (10) days and no longer than thirty (30) days after the complaint and summons are delivered to the spokesperson. The decision of the judge after such hearing shall be final.

(CPO (part))

### **Chapter 4.16**

#### **RULES FOR CONDUCT OF JUDGES**

Sections:

**4.16.010 Scope of rules.**

**4.16.020 Contacts outside court.**

**4.16.030 Conflicts of interest.**

**4.16.040 Fairness and diligence.**

**4.16.050 Independence.**

#### **4.16.010 Scope of rules.**

The following rules shall govern all judges of the Squaxin Island Tribal Court, including associate and temporary judges.

(CPO (part))

#### **4.16.020 Contacts outside court.**

A. Except in open court, a judge shall not discuss a case or any judicial business related to a case which the judge is responsible for or assigned to with a party in that case, a party's representative or any person who has an interest in the case.

B. A judge shall avoid informal contacts with tribal police in which judicial business is discussed.

C. 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, and may seek specific advice from a law clerk employed to give such advice.

(CPO (part))

#### **4.16.030 Conflicts of interest.**

A. A judge should disqualify himself or herself from hearing a case in which a close relative is a party or a witness.

B. A judge should disqualify himself or herself from hearing a case in which the judge has interests which may be affected by the outcome, has formed an opinion about the merits of the case, or has a personal knowledge of the facts which would prevent him or her from considering all sides impartially.

C. No individual who has appeared as a representative in any division of the Squaxin Island Tribal Court, including the Appellate Court, on behalf of any party other than himself or herself during the previous twenty-four (24) months shall be eligible to sit on the Tribal Court of Appeals.

(Res. 00-01 (part); CPO (part))

#### **4.16.040 Fairness and diligence.**

A. A judge shall respect and comply with tribal, federal, and state law and always conduct himself or herself in such a way as to promote respect for the law.

B. A judge shall not let social relationships, his or her political or religious views, or criticism or praise influence the decisions he or she makes in the 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.  
(CPO (part))

#### **4.16.050 Independence.**

A. A tribal judge shall not engage in outside activity which would be inconsistent with the Tribal Court's status as an independent government branch. In particular, the judge shall not participate in legislative or administrative activities of the tribal government.

B. A judge shall not be swayed by public criticism or clamor regarding his or her official actions.

C. A judge shall make no public comment on matters pending before the Court except in the course of official proceedings.

(CPO (part))

### **Chapter 4.20**

## **RULES OF EVIDENCE**

### Sections:

**4.20.010 Purpose.**

**4.20.020 General rule.**

**4.20.030 Self-incrimination.**

**4.20.040 Oaths.**

**4.20.050 Questioning witnesses.**

**4.20.060 Written testimony.**

### **4.20.010 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.

(CPO (part))

### **4.20.020 General rule.**

A. The rules of evidence used in state and federal courts shall not apply to hearings in the Squaxin Island Tribal Court. But where there is more than one kind of evidence about the same subject, the judge should 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 persons who have second-hand knowledge of the event, although all may be heard.

B. Evidence admitted in the Tribal Court must be related either to the issues before the Court or to the weight and credibility which should be given to other evidence. When questioned by the judge or another party, the party who wishes to present certain evidence shall explain why he or she thinks the evidence is relevant.

C. When the relevance or reliability of evidence is challenged and the judge decides whether or not to use the evidence, the judge shall explain the decision and, if the evidence is used, state what importance the judge assigns to the evidence.

(CPO (part))

### **4.20.030 Self-incrimination.**

A. The defendant in a criminal prosecution shall not be made to testify against his or her will. However, incriminating statements which the defendant made voluntarily out of court may be presented in court.

B. If a defendant in a criminal prosecution chooses to testify on matters other than those related to his or her guilt or innocence, cross-examination shall be limited to the areas of defendant's testimony and to matters which indicate defendant's credibility.

C. Every person who appears as a witness in Squaxin Island Tribal Court has the right to refuse to answer a question if the answer may tend to incriminate the witness.

(CPO (part))

#### **4.20.040 Oaths.**

Before testifying in the Tribal Court, every witness shall first state before the judge, parties and spectators that he or she will answer with the whole truth and nothing but the truth.  
(CPO (part))

#### **4.20.050 Questioning witnesses.**

A. When questioning a witness, the judge and parties or their representatives shall not ask in such a way as to suggest the answer desired, unless the witness is being cross-examined or is clearly hostile to the person asking questions.

B. The judge shall determine the order in which parties or their representatives 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 witnesses who have not yet testified from the courtroom 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 initiative.  
(CPO (part))

#### **4.20.060 Written testimony.**

A. Testimony of a witness may be presented in written form, if the witness is unable to appear in person to testify, if the evidence presented in writing is not contradicted by other parties, or if written testimony is offered to support a motion or an 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.  
(CPO (part))

### **Chapter 4.24**

## **RULES OF CIVIL PROCEDURE**

#### Sections:

**4.24.010 Limitation on actions.**

**4.24.020 Commencement of a lawsuit.**

**4.24.030 Jurisdiction.**

**4.24.040 Defenses.**

**4.24.050 Default.**

**4.24.060 Pre-trial conference.**

**4.24.070 Motions.**

**4.24.080 Order of trial.**

**4.24.090 Burden and standard of proof.**

**4.24.100 Amendment, withdrawal, dismissal of the complaint.**

4.24.110 Discovery.

4.24.120 Judgments.

4.24.130 Preliminary injunctions and temporary restraining orders.

4.24.140 Proceedings after judgment.

#### **4.24.010 Limitation on actions.**

A. A civil lawsuit in Squaxin Island Tribal Court must be started no later than one year after the injury, breach of agreement, or other event which gives the plaintiff a basis for the suit, provided that claims arising from employment relations on the Squaxin Island Reservation shall be filed within ten (10) days of the final administrative action.

B. The year within which a civil lawsuit must be filed shall be counted from the date on which the injury or breach was first known to the injured party or should have been known to a reasonably aware person.

C. For the purpose of meeting the deadline set in this rule, a civil suit is started when the complaint is filed with the clerk of the court.

(Res. 97-53 (part): CPO (part))

#### **4.24.020 Commencement of a lawsuit.**

A. A person who wishes to bring a civil lawsuit in Squaxin Island Tribal Court shall first file with the clerk a written complaint which describes the injury or breach at issue, names or describes the persons responsible for such injury or breach, and states the relief requested. Plaintiff shall sign the complaint. The clerk may assist plaintiffs in putting their complaints in writing.

B. Within thirty (30) days after plaintiff files a civil complaint, plaintiff shall cause a copy of the complaint, together with a notice that the defendants must respond within twenty (20) days, to be delivered to all defendants named in the complaint. The complaint must be delivered by a person who has no stake in the outcome of the lawsuit. It may either be delivered by giving it to the defendant directly or by leaving at defendant's residence or place of employment with a suitable person at least fourteen (14) years old who lives or works there.

C. Every person who files a civil lawsuit shall pay a fee of ten dollars (\$10.00).

(CPO (part))

#### **4.24.030 Jurisdiction.**

No civil suit shall be brought in the Squaxin Island Tribal Court unless the event which gave plaintiff a basis for the suit occurred on the reservation and all defendants live or work on the reservation, or own property on the reservation, or are personally given notice of the suit.

(CPO (part))

#### **4.24.040 Defenses.**

A. Within twenty (20) days after defendant receives a copy of a civil complaint, he or she must contact the court clerk and state whether he or she will appear in court to respond to the complaint. Defendants

are encouraged but not required to submit a written answer to the complaint. If defendant does not submit a written answer, he or she should explain to the clerk the nature of the defense which will be presented; and the clerk shall then enter in the case file a notation describing the defendant's answer.

B. In addition to or as a way of raising a defense to the complaint, defendant may counterclaim against plaintiff, where appropriate, as long as the injury which defendant complains of occurred on the Squaxin Island Reservation.  
(CPO (part))

#### **4.24.050 Default.**

A. Failure of a defendant to answer within twenty (20) days after a complaint is delivered shall be a default and provide grounds for judgment against defendant as asked for in the complaint. No judgment of default shall be made, however, unless the plaintiff makes a written motion for a default judgment and serves a copy of the motion on defendant(s) in the same manner as the complaint was served. The motion for default judgment shall state a time, no sooner than three days after service of the motion, when plaintiff will present the motion to the judge. If defendant answers at or before the time that the motion is presented, no default judgment shall be granted.

B. In granting a default judgment, the judge may refuse to grant relief requested by plaintiff if granting the relief would be contrary to tribal law or would be unjust. The judge may not grant plaintiff greater relief on default than was requested in the complaint.  
(CPO (part))

#### **4.24.060 Pre-trial conference.**

A. In the interest of saving time, simplifying issues, and avoiding unnecessary litigation, the judge may schedule a pre-trial conference with all parties in each civil case. In general, the pre-trial conference should be held early enough to aid parties in planning for trial and pre-trial discovery. Where urgent questions require that a case be heard quickly, the pretrial conference may be held just before trial.

B. The pre-trial conference shall be held in an informal setting and shall be conducted without formal procedures. The parties and the judge should discuss areas where the parties are in agreement and areas where they disagree. The discussion shall have the following purposes:

1. To identify and dispose of issues which may be resolved without trial;
2. To narrow and focus issues of law which remain to be decided and to identify central facts which are still in dispute;
3. To limit the number of witnesses and the evidence which will be presented so that testimony is not repetitious or irrelevant.

C. No offer of settlement which is made by a party during a pretrial conference may be used as evidence against that party if settlement is not then achieved. Agreements reached as a result of a pre-trial conference shall be put in writing and signed by all parties. Such agreements shall be made part of the final

judgment issued by the judge.  
(CPO (part))

#### **4.24.070 Motions.**

A. Any questions regarding procedure or the rights of the parties which arise during a lawsuit and which are neither covered by these rules nor settled by agreement of the parties may be presented to the judge in a motion.

B. Motions may be made in writing or orally. A party who makes a motion must notify other parties of the nature and basis of the motion. If the motion is not made during and as a consequence of events at a trial or other hearing, the moving party shall notify other parties of the motion and hearing time at least five days before the motion is presented in court.

1. Motions to dismiss the lawsuit because the Court lacks jurisdiction or because the plaintiff has not stated a basis for relief may be made at any time. The judge may keep a party from making a motion which could and should have been made early in the case if it appears that the moving party knew or should have known earlier about the basis for the motion and has raised it late because of negligence or an intent to harass the other party.
2. All other motions which could eliminate the need for trial of all or some issues and motions which would determine the procedures used at trial should be made at least ten (10) days before trial.

(CPO (part))

#### **4.24.080 Order of trial.**

A. At trial of a civil case, presentations shall be made in the following order unless otherwise agreed by the parties or determined at the pre-trial conference:

1. Motions by either party regarding procedure at trial, evidence to be presented, jurisdiction of the court, or the sufficiency of a claim;
2. Evidence and statements presented by the party who filed the original complaint;
3. Evidence, statements, or motions presented by defendant(s);
4. Motions of either party which are based on events at trial; and
5. Final remarks by both parties.

B. The judge may announce a final decision at the close of trial or may issue a written decision at a later time.

(CPO (part))

#### **4.24.090 Burden and standard of proof.**

A. Unless otherwise provided in the applicable ordinance, the burden of proving a civil claim shall be on the party who makes the claim.

B. Unless otherwise provided in the applicable ordinance, a party shall be considered to have met the burden of proof if most of the evidence presented tends to prove that party's claim.  
(CPO (part))

#### **4.24.100 Amendment, withdrawal, dismissal of the complaint.**

A. A complaining party may change the complaint without Court permission any time before the responding party answers, as long as a copy of the changed complaint is delivered to all parties. After the defendant answers, the judge may allow plaintiff to change the complaint as long as the change does not prejudice or unreasonably burden defendant.

B. The judge shall allow plaintiff to withdraw the complaint and shall dismiss the case any time plaintiff requests unless the defendant has counterclaimed against plaintiff or dismissal of the case would otherwise prejudice the defendant. The judge shall order a plaintiff who withdraws a complaint to pay all costs of the suit.  
(CPO (part))

#### **4.24.110 Discovery.**

A. The truth will be revealed more readily if all parties in a civil case have access to all information and evidence related to the case. In preparation for trial, therefore, the parties may ask each other for and shall make available to each other all information in each other's possession or control which can be reasonably expected to lead to admissible evidence.

B. Methods of discovering and exchanging information may include but need not be limited to written questions, oral examination, requests to perform scientific or physical tests, and requests for documents. The party who makes a request under this rule shall be as clear and specific as possible in describing what he or she wants.

C. A party may refuse to make available the information requested pursuant to this rule if its release would cause the responding party or a third person undue hardship, would violate a confidence which it is tribal policy to protect, or would violate the party's right to be free from forced self-incrimination. If the parties disagree about whether the responding party is required to release the information, the judge shall decide the dispute. The judge may place conditions on the release of information in order to protect confidential material, prevent unreasonable burden or expense to one party, or otherwise ensure fairness to all parties.

D. A party who receives a request for information under this rule shall respond either with the information, with an indication where and when the information will be available, or with an objection within ten (10) days after he or she receives the request. Failure to respond is grounds for a court order requiring response.  
(CPO (part))

#### **4.24.120 Judgments.**

A judgment is a final order of court which disposes of a claim in whole or in part. The judge may announce a judgment orally or in writing, at the time of hearing or after hearing; but no judgment is final or effective until it is recorded by the clerk in the docket book.  
(CPO (part))

#### **4.24.130 Preliminary injunctions and temporary restraining orders.**

A. A party to a civil suit may ask the judge for a pre-trial order prohibiting or requiring particular action by another party, and the order shall be granted if the petitioner demonstrates a substantial chance that he or she will win the suit and further demonstrates that he or she will suffer immediate and permanent loss or injury if the order is not issued.

B. Unless otherwise stated in the injunction, a pre-trial injunction shall remain in effect until final judgment in the case.

C. Except as provided in subsection D of this section, no pre-trial injunction shall be issued unless the party affected first has notice and an opportunity to be heard in court.

D. A judge may issue a short-term restraining order prohibiting or requiring particular action by a party without prior notice to the affected party when the party who requests such an order shows by affidavit or oral testimony that he or she will suffer permanent loss or injury if the order is not issued before the opposing party can be notified and heard.

E. A short-term restraining order shall be effective only for the time period specified in the order but in no event for longer than ten (10) days. A short-term restraining order may be renewed once for good cause.

F. The judge may require a party who requests a restraining order or pre-trial injunction to provide security for any loss or injury which may be suffered by a party who is wrongfully enjoined or restrained; but the judge shall not require such security from the Squaxin Island Tribe or any of its branches.  
(CPO (part))

#### **4.24.140 Proceedings after judgment.**

A. No later than seven days after judgment is final, a party may ask the judge for a rehearing, reconsideration, correction, vacation, or modification of the judgment.

B. The judge may grant a new hearing or reconsider and change the judgment if he or she finds one of the following to be true:

1. The original judgment was based on or reached as a result of fraud or mistake;
2. There is newly discovered evidence which could have affected the outcome of the case and which could not, with reasonable effort, have been discovered in time for the hearing of the case;

3. The Court did not have jurisdiction over a party or over the subject matter.

C. No later than ten (10) days after judgment is final or after a motion made pursuant to subsection A of this section is denied, a party may appeal an adverse judgment as provided in the Rules of Appellate Procedure.

D. No civil judgment shall be carried sooner than ten (10) days after judgment is entered in the docket. A motion or appeal made pursuant to this rule shall automatically prevent enforcement of the judgment until the Court has ruled on the motion or appeal.  
(CPO (part))

## Chapter 4.28

### RULES OF CRIMINAL PROCEDURE

#### Sections:

- 4.28.010 Limitation of prosecutions.
- 4.28.020 Complaint.
- 4.28.030 Arrest warrants.
- 4.28.040 Arrest without warrant.
- 4.28.050 Extraterritorial fresh pursuit.
- 4.28.060 Summons instead of arrest warrant.
- 4.28.070 Notification of rights at arrest.
- 4.28.080 Searches without warrant.
- 4.28.090 Search warrants.
- 4.28.100 Disposition of seized property.
- 4.28.110 Amendment of the complaint.
- 4.28.120 Arraignment.
- 4.28.130 Plea.
- 4.28.140 Withdrawal of guilty plea.
- 4.28.150 Bail.
- 4.28.160 Pre-trial motions.
- 4.28.170 Time of trial.
- 4.28.180 Joining or separating defendants' trials.
- 4.28.190 Discovery.
- 4.28.200 Pre-trial motions and conferences.
- 4.28.210 Order of trial.
- 4.28.220 Burden of proof.
- 4.28.230 Presence of defendant.
- 4.28.240 Jury trials.
- 4.28.250 Verdict.
- 4.28.260 Sentencing.
- 4.28.270 Post-conviction procedures.
- 4.28.280 Extraterritorial transport and custody.

#### **4.28.010 Limitation of prosecutions.**

No person shall be prosecuted for a criminal offense in Squaxin Island Tribal Court unless the prosecution is started within three years after the offense occurred, or after it should reasonably have been discovered to have occurred. For the purpose of meeting the deadline set in this rule, a prosecution is started when a judge issues an arrest warrant or summons or when the accused is arrested or served with a summons, whichever occurs first.

(CPO (part))

#### **4.28.020 Complaint.**

A. In every prosecution, the complaint may be filed before or after the accused person is arrested. If the complaint is filed after arrest, it shall be filed promptly and not later than the time of arraignment so that the judge may review the complaint to determine whether there is a probable cause to hold the accused. If the complaint is filed before arrest, the judge shall review it in determining whether an arrest warrant or summons should be issued.

B. A written complaint must be filed with the Court. A complaint pursuant to this rule shall contain the following information:

1. The signature of the complaining witness given under oath;
2. A written description of the offense, including the time and place;
3. The name and/or description of the person accused of committing the offense;
4. The section of the Squaxin Island Tribal Code which has been violated.

C. The court clerk may help a complaining witness prepare a written complaint.  
(CPO (part))

#### **4.28.030 Arrest warrants.**

A. A tribal judge shall have authority to issue an arrest warrant when presented with a complaint which shows that probable cause exists to believe the person named in the complaint has committed an offense under tribal law.

B. Every arrest warrant shall contain the following information:

1. The name and/or description of the accused person, with his or her address if it is known;
2. The name and a brief description of the offense charged, with the section of the Tribal Code which has allegedly been violated;
3. The date that the warrant is issued; and
4. The judge's signature.

C. The judge may issue a summons to appear rather than an arrest warrant.  
(CPO (part))

#### **4.28.040 Arrest without warrant.**

No law enforcement officer shall take a person into custody on charges that he or she committed a criminal offense unless one of the following things is true:

- A. The officer has an arrest warrant or knows for sure that the warrant has been issued;
  - B. The person committed an offense in the officer's presence;
  - C. The officer has probable cause to believe that the accused has committed an offense.
- (CPO (part))

#### **4.28.050 Extraterritorial fresh pursuit.**

Any duly authorized law enforcement officer of the Squaxin Island Tribe who leaves the Squaxin Island Reservation in fresh pursuit and continues within the territorial jurisdiction of another sovereign entity in such fresh pursuit, of a person in order to arrest him on the ground that he is believed to have committed a felony within the jurisdiction of the Squaxin Island Tribe shall have the same authority to arrest and hold such person in custody as the officer would have if the arrest were made within the territorial jurisdiction of the Squaxin Island Tribe.

Fresh pursuit shall not necessarily imply instant pursuit but pursuit without unreasonable delay after the time of the occurrence of the alleged offense.

(CPO (part))

#### **4.28.060 Summons instead of arrest warrant.**

A. Whenever there is a basis for arresting a person, a judge or law enforcement officer may instead issue a written summons which orders the accused person to appear in Tribal Court at a stated time.

B. A summons issued pursuant to this rule shall contain the same information as an arrest warrant except that it may be signed by a police officer.

C. A summons may be delivered by any tribal law enforcement officer or by anyone authorized by the judge. The summons may be delivered by giving it to the accused person directly or by leaving it at the accused's residence or workplace with a suitable person at least fourteen (14) years old who lives or works there.

D. The person who delivers a summons shall promptly file with the clerk a copy of the summons and a written statement describing when, where, and how delivery was made.

E. If the accused person fails to appear in response to a lawful summons, the judge shall issue a warrant for the accused person's arrest.

(CPO (part))

#### **4.28.070 Notification of rights at arrest.**

Every person arrested by a tribal police officer shall be told immediately by the arresting officer that he

or she has the following rights:

- A. The right to remain silent; and
- B. The right to speak with and be represented by a lawyer or a representative.

The accused shall also be told that any statements he or she makes may be held against him or her in court.

(CPO (part))

#### **4.28.080 Searches without warrant.**

No tribal 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 lawful arrest;
- B. With the consent of the person whose body, property or premises are being searched;
- C. When the officer has probable cause to believe the person searched is armed and dangerous; or
- D. Of a moving vehicle and the officer has probable cause to believe it contains contraband or stolen property.

(CPO (part))

#### **4.28.090 Search warrants.**

A. The tribal judge shall have authority to issue warrants commanding tribal officers to search the premises and property and seize property of any person within the Tribal Court's jurisdiction.

B. No warrant for search and seizure shall be issued unless the judge is presented with a written, sworn statement which shows that there is probable cause to believe a search will discover stolen or contraband property, property which has been used or is being used to commit a crime, or evidence that a crime has been committed.

C. A search warrant shall order a tribal law enforcement officer to search premises and/or property, which shall be described in the warrant as fully as possible and to seize items which shall also be described as fully as possible. The warrant shall be signed by a judge.

D. Warrants for search and seizure shall be carried out only by tribal law enforcement officers. A warrant shall be carried out within a time period stated in the warrant, and this time period shall not be longer than ten (10) days. After carrying out a warrant, the officer shall file with the clerk a copy of the warrant and a written, signed statement describing the time the search was conducted and listing things seized pursuant to the warrant.

(CPO (part))

#### **4.28.100 Disposition of seized property.**

A. The police shall make a written list of all things seized in a search immediately after seizure. One copy of this list shall be left with the person from whom the things are taken, and one copy shall be filed with the Court.

B. Within ten (10) days after property has been seized by police, the Tribal Court shall hold a hearing to determine what will be done with the property. When the person claims ownership of the property, or the person from whom the property was seized has been arrested or summoned to answer criminal charges and the charges are related to the search and seizure, the hearing referred to in this section may be combined with the trial of the charges as long as the trial is held within the ten (10) day limit or the accused waives the ten (10) day deadline.

C. Upon satisfactory proof of ownership, property seized by police shall be returned to the owner, unless the judge finds that the property is illegal to possess, prohibited contraband or will be used as evidence in an unsettled upcoming pending case. Property held as evidence which is not also contraband shall become the property of the Squaxin Island Tribe, which may destroy it, sell it, keep it, or dispose of it as the judge orders. (CPO (part))

#### **4.28.110 Amendment of the complaint.**

A complaint charging a criminal offense may be changed at any time up to arraignment. After arraignment the complaint may be changed only with the judge's permission. The judge should permit changes in a complaint unless the defendant's right to notice of the charges would be violated or the defendant would be prejudiced in any other way. (CPO (part))

#### **4.28.120 Arraignment.**

A. As soon as possible, after a defendant is arrested, he or she shall be brought before a judge for an initial hearing, which shall be called the arraignment. When the defendant is in custody, the arraignment shall be held no later than seventy-two (72) hours after arrest. When the defendant is out on bail or is given a summons in place of being arrested, the arraignment shall be held at the next regularly scheduled court session unless the court calendar is full in which case the arraignment may be held at the following court session. At a defendant's request, the arraignment shall be held at the first court session. Likewise, at a defendant's request, all or part of the arraignment may be postponed.

B. At arraignment the judge shall first read the charges to defendant, including the section of the Tribal Code which defendant is accused of violating. The judge shall make sure that defendant understands what has been read. The judge shall also tell the defendant the maximum penalty which may be given if the defendant is convicted.

C. At arraignment the judge shall advise defendant that he or she has the following rights:

1. The right to remain silent;

2. The right to be tried by a jury of six people;
  3. The right to be represented by a lawyer or other spokesperson at defendant's expense;
  4. The right to have the rest of the arraignment postponed if defendant wants to talk with a representative first;
  5. The right to have the Court order the witnesses against the defendant to appear and testify at trial;
  6. The right to question all witnesses against defendant;
  7. The right to call witnesses on defendant's behalf; and
  8. The right to a speedy, public trial.
- (CPO (part))

#### **4.28.130 Plea.**

A. At arraignment, or as soon after that as the defendant has a chance to talk with a representative, the accused person shall state how he or she pleads in response to the charge(s). The accused may plead "guilty" or "not guilty."

B. If the defendant pleads guilty, the judge 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 in information which will help the judge to determine a fair sentence.

C. If the accused person 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 guilty on the defendant's behalf.

E. A representative for the defendant may appear at arraignment in place of the defendant and may enter a plea on the defendant's behalf.

(CPO (part))

#### **4.28.140 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 it appears that otherwise an injustice will be done.

(CPO (part))

#### **4.28.150 Bail.**

A. Every person charged with a criminal offense has the right to be released while waiting for trial if he or she deposits, as ordered by the Court, cash bail or meets other reasonable conditions designed to ensure that the accused will appear in court at any time it is lawfully required. Conditions for release may include making a written promise to appear, depositing security or a bond issued by a licensed bondsman, restrictions on travel or association, and release to the custody of another person.

B. Any tribal law enforcement officer may set bail and permit an accused person to be released upon deposit of the bail. The judges may prepare a bail schedule for offenses in the Tribal Code, and this bail schedule may be used in setting the amounts of cash bail required for defendants' release in all but exceptional cases.

C. If an officer refuses to release an accused person on bail, or if the accused person is unable or unwilling to deposit the amount of bail required, the officer shall bring the accused before a judge at the first opportunity so that the judge can determine the conditions under which accused should be released. In no event shall the bail hearing be held later than the arraignment.

D. 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. But, 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 persons or that no conditions of release can reasonably guarantee the convicted person's reappearance.

E. If the accused person 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 accused's continued freedom, and/or may order the accused person 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.

F. For certain kinds of minor offenses, the judges or Tribal Council may allow forfeiture of bail to operate as a plea of guilty, and the bail forfeited shall be recorded as a fine paid. Persons charged with such offenses shall sign a bail agreement which informs them that they have the choice of pleading guilty or paying a fine by simply forfeiting bail. Persons charged with such offenses who are given a summons in place of being arrested may enter a guilty plea by paying the amount of bail fine set for that offense to the court clerk on or before the date they are summoned to appear. But when an accused person is charged with an offense of the kind described in this rule and has been found guilty of the same offense within the year just past, the arresting officer may deny the accused the option of forfeiting bail and may instead require accused to appear in court. (CPO (part))

#### **4.28.160 Pre-trial motions.**

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 in the form of a motion at arraignment or within a reasonable time thereafter.

B. Such motions include, but are not limited to, the following:

1. Defects in the complaint;

2. Defects in the notice or warrant;
  3. Separation of trials of co-defendants or charges;
  4. Admissibility or suppression of evidence;
  5. Violations of the Indian Civil Rights Act;
  6. Interpretation of the code section at issue;
  7. Failure of the complaint to state an offense;
  8. Lack of jurisdiction;
  9. Change of plea;
  10. Dismissal of the case.
- (CPO (part))

**4.28.170 Time of trial.**

A. Every person charged with a criminal offense in the Squaxin Island Tribal Court has a right to speedy trial.

B. In no case shall trial be held more than ninety (90) days after the arraignment unless the defendant asks for or agrees to delay the trial and the judge approves.

(CPO (part))

**4.28.180 Joining or separating defendants' 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.

(CPO (part))

**4.28.190 Discovery.**

A. Upon request of the defendant, at or before trial, the Tribe shall give the defendant the following:

1. The names of witnesses the Tribe intends to present;
2. Copies of or 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 accused person's defense;

3. Copies or written summaries of any statements made by defendant which the Tribe intends to offer as evidence against defendant.

B. If the defendant requests information as provided in subsection A of this section, then defendant shall give the Tribe, upon the Tribe's request, the same kinds of information in his or her possession or that he or she has knowledge of.

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 representative 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 (10) days after he or she receives the request. Failure to respond is grounds for a court order requiring response.

E. If the parties disagree about whether a party is required to provide information requested pursuant to this rule, the judge shall decide. The judge may impose reasonable conditions on the release of information requested under this rule.

(CPO (part))

#### **4.28.200 Pre-trial motions and conferences.**

A. Questions or 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. Except those motions which must be made at arraignment, (See Section 4.28.160), motions shall be made at the time and in the way provided in Section 4.24.070.

B. 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. Refer to Section 4.24.060.

(CPO (part))

#### **4.28.210 Order of trial.**

Unless the judge sets or the parties agree to a different procedure, at trial, evidence and arguments should be presented in the following general order:

- A. Opening Statements. The tribal representative shall have 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 wait 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 representative 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. This may include motions to dismiss the charges. The tribal representative may object to defense evidence and cross-examine witnesses.
- D. After each party has presented evidence, the judge may allow the Tribe to present evidence intended to rebut directly any evidence presented by defendant. The judge may then 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.

(CPO (part))

#### **4.28.220 Burden of proof.**

In all criminal prosecutions, the burden shall be on the Tribe to prove defendant's guilt beyond a reasonable doubt; and if the Tribe does not meet this standard, the accused shall be declared not guilty.

(CPO (part))

#### **4.28.230 Presence of defendant.**

The defendant shall be present at all proceedings on criminal charges unless the judge permits defendant's representative to appear on his or her behalf.

(CPO (part))

#### **4.28.240 Jury trials.**

A. Every person accused of a crime in Squaxin Island Tribal Court has the right to trial by a six-member jury. Criminal cases shall be heard by a judge unless the defendant asks for a jury trial. A request for a jury trial may be made at arraignment and must in all cases be made at least seven days before the scheduled trial.

B. All members of the Squaxin Island Tribal Council are eligible to serve as jurors in the Squaxin Island Tribal Court. Squaxin Island tribal police officers 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 twelve (12) persons, at random 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.

E. The judge may excuse any person from jury service if the person demonstrates hardship or other good reason to be excused. A juror may be excused temporarily or permanently.

F. 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 a representative in the case, any person who has already formed an opinion about the defendant's guilt or innocence, and any person who for other reasons 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 to determine if she or he is unqualified or prejudiced.

G. After jurors are dismissed pursuant to subsection F of this section, each party shall dismiss without stating a reason half the number of jurors left over six. If an odd number of jurors is left, the judge shall dismiss the last one.

H. 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.

I. The jury shall discuss the case in secret until all members agree on a verdict. If a jury is unable to agree on a verdict, the judge shall dismiss the jury. If a majority of the hung jury voted to acquit 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.

J. Every person who is asked for jury service may be paid for reasonable costs of traveling to court plus ten dollars (\$10.00) for every day that he or she sits as a juror.  
(CPO (part))

#### **4.28.250 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 defendant.

B. Degree Offenses--Conviction of Lesser Offense. When a criminal complaint charges a person with committing an offense consisting of different degrees, the judge or jury may find the defendant not guilty of the degree charged in the complaint and guilty of any degree inferior to the degree charged, or of an attempt to commit a lesser degree of the offense charged. In such a case, the judge or jury shall in its verdict specify the degree or attempt of which the defendant is guilty.

C. If a verdict of not guilty is announced, the judge shall record that the defendant was acquitted, and the defendant shall immediately be released from custody.

D. If a verdict of guilty is announced, the judge shall set a time for sentencing. If all parties agree, sentencing may take place immediately.  
(CPO (part))

#### **4.28.260 Sentencing.**

A. Within a reasonable time after defendant is convicted or pleads guilty, the judge shall set punishment within the limits established for defendant's offense in the Squaxin Island Code.

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 punishment. Relevant information may include the circumstances of the offense, and defendant's previous offenses, employment history, social history, attitude, needs, potential.

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 punishment given. When sentence is carried out, the clerk shall make a note of that and close the file.  
(CPO (part))

#### **4.28.270 Post-conviction procedures.**

A. A person who is convicted by a judge or by a jury may ask for a new trial within seven days after sentencing. The judge shall grant a new trial if the interests of justice require it.

B. All persons who are found guilty either by a judge or by a jury shall have the right to appeal the verdict, the punishment or both. 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.

C. If a convicted person appeals the conviction, the punishment shall not be carried out until and unless the appeal is denied. Upon receiving a notice that defendant appeals, the judge shall set conditions for releasing a defendant who is in custody until the appeal is decided.  
(CPO (part))

#### **4.28.280 Extraterritorial transport and custody.**

A. Any Squaxin Island tribal law enforcement officer or any federal, state or tribal law enforcement officer duly authorized by the Squaxin Island Tribe to carry out the purposes of this chapter shall have the following authority outside the territorial jurisdiction of the Squaxin Island Tribe with respect to persons in custody after a lawful arrest by a Squaxin Island tribal law enforcement officer or under a Squaxin Island Tribal Court order:

1. To transport the person and hold him in custody from the site of arrest to the Squaxin Island Reservation;
2. To transport the person and hold him in custody to and from a detention facility until arraignment in Squaxin Island Tribal Court; and
3. To transport the person to and from and to hold him in custody in a detention facility, correction institution or other such institution, pursuant to a court order of the Squaxin Island Tribal Court.

B. This section shall not be construed so as to make lawful arrest which would otherwise be

unlawful.  
(CPO (part))

## Chapter 4.32

### RULES OF APPELLATE PROCEDURE

Sections:

- 4.32.010 Scope.
- 4.32.020 Right to appeal.
- 4.32.030 Notice of appeal.
- 4.32.040 Stay of judgment pending appeal.
- 4.32.050 Bond.
- 4.32.060 Record on appeal.
- 4.32.070 Appeal judges.
- 4.32.080 Sending the record to appeal judges.
- 4.32.090 Scheduling.
- 4.32.100 Briefs.
- 4.32.110 Additional evidence.
- 4.32.120 Motions.
- 4.32.130 Dismissal of an appeal.
- 4.32.140 Hearing.
- 4.32.150 Judgment.
- 4.32.160 Costs.

#### 4.32.010 Scope.

The Rules of Appellate Procedure apply to appeals from all judgment of the Squaxin Island Tribal Court, both civil judgments and criminal judgments.  
(CPO (part))

#### 4.32.020 Right to appeal.

Any person who claims, in good faith, that the Squaxin Island Tribal Court made a mistake in interpreting the law or a mistake in procedure which affected the outcome of a case shall have the right to appeal from the final judgment. The Tribe, however, may not appeal a jury verdict of not guilty.  
(CPO (part))

#### 4.32.030 Notice of appeal.

A. Any person who wishes to appeal the judgment of the Tribal Court shall notify the clerk within ten (10) days after the judgment is final. If a party first asks for a new trial, rehearing, or reconsideration and the motion is denied, the ten (10) day time limit shall be counted from the day when the motion is denied.

B. A party may notify the clerk that he/she appeals and the grounds for the appeal either orally or in writing. Within the next five days, the clerk shall prepare a written notice of appeal and send or give a copy of it to the trial judge and to all parties. The notice of appeal shall contain the name of the parties, the case docket number, the date and nature of the judgment appealed from, and the reasons why the party appealing thinks the court made a mistake.  
(CPO (part))

#### **4.32.040 Stay of judgment pending appeal.**

A. When a party appeals the judgment of the trial court, the judgment shall not be carried out until and unless the Appeals Court upholds the judgment. Injunctions, however, shall take effect unless the trial judge suspends them.

B. Upon receipt of a notice of appeal and after the trial judge gives the parties an opportunity to be heard, the judge may set terms and conditions governing the release of a person convicted of a crime, the disposition of property which has been used as evidence or is the subject of the judgment, and other matters necessary to preserve the Court's jurisdiction while the appeal is being considered.

(CPO (part))

#### **4.32.050 Bond.**

The trial judge may require the party who appeals a judgment to deposit cash or other security with the Court while the appeal is being processed if there is a clear showing that some security is needed to guarantee that the Court's judgment will be enforceable later. The security required shall not be greater in value than the amount of the judgment or fine imposed by the trial court, plus costs.

(CPO (part))

#### **4.32.060 Record on appeal.**

A. The record on appeal shall be made up of all papers filed in a case plus the tape recordings and/or transcript made of all court hearings in the case.

B. Upon receipt of a notice of appeal, the clerk shall make sure that the case record is complete and in order and shall make the record available to all parties for inspection and for copying at the parties' expense.

(CPO (part))

#### **4.32.070 Appeal judges.**

A. For each case which is appealed, a panel of three judges shall be designated to hear the appeal. None of the judges should have participated in the case at the trial level and none of them should have personal knowledge of or interest in the case. The clerk shall select the names of three judges to hear an appeal by a system of rotation among available judges.

B. Of the three judges on an appeal panel, the judge who has served longest as a tribal judge shall be designated senior judge.

(CPO (part))

#### **4.32.080 Sending the record to appeal judges.**

A. At the same time as the clerk sends or gives a copy of the notice of appeal to the parties, the clerk shall also send a copy to each of the three judges chosen to sit on the appeal panel.

B. No longer than ten (10) days after the notice of appeal is delivered to the appeal judges, the clerk shall deliver a copy of the case record to each of the three judges.  
(CPO (part))

#### **4.32.090 Scheduling.**

A. After consulting with the two associate judges and the court clerk, the senior judge of the appeal panel shall schedule a hearing at which the parties' arguments on appeal will be considered. The hearing shall be scheduled no fewer than thirty (30) days and no more than ninety (90) days after the judges receive the notice of appeal.

B. The clerk shall immediately notify all parties of the time and place of the hearing on appeal.  
(CPO (part))

#### **4.32.100 Briefs.**

The parties may, but shall not be required to, make their arguments on appeal in writing. If the party who appeals wishes to submit written arguments, he or she shall tell the clerk within ten (10) days after appealing. The judge shall then notify all parties of a schedule for the filing of written arguments. The schedule shall require the party appealing to file written arguments first, giving both sides equal time to prepare their arguments and leaving at least ten (10) days between the deadline for submitting the last arguments and the scheduled court hearing.

(CPO (part))

#### **4.32.110 Additional evidence.**

Cases appealed pursuant to these rules shall be decided on the basis of the trial court record and any written or oral arguments presented by the parties. The appeal judges may allow the parties to present additional evidence at or before the hearing if refusal to consider the evidence would result in a clear injustice.

(CPO (part))

#### **4.32.120 Motions.**

A. A party who wishes to raise a question of procedure or request court action during an appeal shall present the issue to the judges in a written motion which the party files with the clerk. The clerk may help any party put a motion in writing.

B. The party who makes a motion pursuant to this rule shall give or send a copy of the motion to all other parties on the same day as the motion is filed with the clerk. Other parties may respond to the motion within five days after receiving a copy.

C. The clerk shall immediately send a copy of a motion made pursuant to this rule to the chief appeals judge, who may rule on the motion alone or after consulting with the associate judges.

(CPO (part))

#### **4.32.130 Dismissal of an appeal.**

A. On the request of the appealing party, an appeal shall be dismissed at any time up to submission of respondent's written arguments or five days before the scheduled hearing, whichever is sooner. The Court shall order the appealing party to pay all costs of a dismissed appeal.

B. If the appealing party requests that the appeal be dismissed after the deadline set in subsection A of this section, the judges may dismiss the appeal. Subject to the condition the appealing party pay costs, if the dismissal will not prejudice any other party.

C. If the judges determine that an appeal was filed frivolously and without good faith, they shall dismiss the appeal and charge all costs to appellant.  
(CPO (part))

#### **4.32.140 Hearing.**

At the time set for hearing on appeal, the parties may present orally any arguments relevant to the issues raised by the appeal. The party who appealed shall speak first and shall have a chance later to respond briefly to any remarks made by the other parties. The judges may set limits on the time each party is allowed to speak.  
(CPO (part))

#### **4.32.150 Judgment.**

A. The judges shall announce their decision on an appeal after discussing the case with each other. The decision on appeal may be made by a majority vote of the judges.

B. The appeals judges shall put their decision of an appeal after a copy of the decision delivered to all parties.

C. The Appeals Court may dismiss an appeal, reverse the Trial Court decision in whole or in part, order a new trial, or make any other ruling which disposes of the issues raised by the appeal, provided that on matters on appeal from the Employment Court the Appeals Court may only order a new trial and may only do so if the Appeals Court determines that the lower court's decision was arbitrary or capricious or not supported by substantial evidence.  
(Res. 97-53 (part): CPO (part))

#### **4.32.160 Costs.**

The appeals judges shall order the party who loses the appeal to pay costs, unless it appears that such an order would result in a clear injustice.  
(CPO (part))

### **Chapter 4.36**

#### **PETITION FOR RELEASE OF CUSTODY**

Sections:

**4.36.010 Right to petition.**

**4.36.020 Power to order release.**

**4.36.030 Response to petition.**

**4.36.040 Hearing date.**

**4.36.050 Evidence.**

**4.36.060 Bail.**

**4.36.070 Presence of petitioner.**

**4.36.080 Petition barred by previous decision.**

**4.36.090 Appeal.**

**4.36.010 Right to petition.**

A. Any person who is being held in the custody of tribal law enforcement officers or is confined pursuant to an order of the Squaxin Island Tribal Court or any other tribal action may petition the Squaxin Island Tribal Appeals Court for release if he or she believes that the confinement is in violation of the rights guaranteed in the Squaxin Island Tribal Constitution.

B. A petition for release made pursuant to these rules must be in writing and must be mailed or delivered to the clerk of the court. The clerk shall immediately deliver the petition to a judge of the Appeals Court selected according to Section 4.32.070.

C. A petition for release shall contain the following information:

1. Name of the petitioner;
2. Name of the person who is responsible for keeping petitioner in custody;
3. The place where petitioner is being held;
4. The authority for keeping petitioner in custody, if known;
5. The reasons why petitioner believes the confinement is illegal.

(CPO (part))

**4.36.020 Power to order release.**

Any judge of the Squaxin Island Tribal Appeals Court shall have power to order a person released from custody, as requested pursuant to this rule, if the judge finds that petitioner is held in violation of the rights guaranteed in the Squaxin Island Tribal Constitution.

(CPO (part))

**4.36.030 Response to petition.**

A. Immediately after receiving a petition for release filed according to these rules, the judge shall order the person who has custody of the petitioner to respond. The judge shall send the responding party a copy of the petition along with the order to respond.

B. No later than five days after he or she has received the judge's order and the petition for release, the person who has a petitioner in custody shall file a response by sending it or delivering it directly to the

judge. The responding party shall also send a copy of the response to the clerk and a copy to the petitioner. The response shall state the reason why petitioner is in custody.

C. If the petitioner is in custody pursuant to a Tribal Court order or conviction, the responding party shall include a copy of the order or judgment with the response.  
(CPO (part))

#### **4.36.040 Hearing date.**

A. Upon receipt of a response to the petition for release, the judge shall set and shall notify all parties of a date for a hearing on the petition. The date shall not be later than ten (10) days after the judge receives the response.

B. At or before the hearing, petitioner may submit any additional written material relevant to the petition and the response.  
(CPO (part))

#### **4.36.050 Evidence.**

Statements made in written material which is submitted pursuant to this rule shall be considered true unless the parties dispute them or unless the judge finds otherwise. At the hearing, the judge may take additional testimony, if necessary, or may ask the parties to present additional arguments orally.  
(CPO (part))

#### **4.36.060 Bail.**

The judge may order petitioner released before a hearing on the petition. The judge shall set any reasonable conditions necessary to guarantee that petitioner will appear at the hearing.  
(CPO (part))

#### **4.36.070 Presence of petitioner.**

Unless the petitioner has been released on bail or other terms before the hearing, the responding party shall bring the petitioner to court at the time of the hearing.  
(CPO (part))

#### **4.36.080 Petition barred by previous decision.**

No petition filed pursuant to this rule shall be considered if all the issues raised in the petition have already been considered and finally decided by the Squaxin Island Tribal Court or a court of the United States.  
(CPO (part))

#### **4.36.090 Appeal.**

Petitioner may appeal the denial of a petition for release from custody according to the Rules of Appellate Procedure.

(CPO (part))

## Chapter 4.52

### ARBITRATION CODE

Sections:

**4.52.010 Authority.**

**4.52.020 Scope of Code.**

**4.52.030 Agreements to arbitrate are enforceable.**

**4.52.040 Law to be applied.**

**4.52.050 Stay of proceedings and order to proceed with arbitration.**

**4.52.060 Advice of the Court.**

**4.52.070 Time within which award shall be rendered.**

**4.52.080 Application for order confirming award--Record to be filed with Clerk of Court--Effect and enforcement of judgment.**

**4.52.090 Arbitration award not appealable.**

**4.52.100 Jurisdiction of the Tribal Court in actions to which the Tribe is a party--Qualification of Judges.**

**4.52.110 Waivers of sovereign immunity must be express and unequivocal.**

#### **4.52.010 Authority.**

The Squaxin Island Tribal Council's authority to adopt the chapter is found in the Squaxin Island Tribal Constitution and in the inherent sovereign authority of the Squaxin Island Tribe.

(Res. 01-39 (part))

#### **4.52.020 Scope of Code.**

This Code applies to any written contract, agreement or other instrument entered into (a) by the Squaxin Island Tribe (the "Tribe"), or (b) by any other person, in a transaction that is subject to the jurisdiction of the Tribe, in which the parties thereto agree to settle by arbitration (i) any claim, dispute or controversy arising out of such contract, agreement or other instrument, or (ii) any other claim, dispute or controversy existing between them at the time of the agreement.

(Res. 01-39 (part))

#### **4.52.030 Agreements to arbitrate are enforceable.**

An agreement in any written contract, agreement or other instrument, or in a separate writing executed by the parties to any written contract, agreement or other instrument to settle by arbitration any claim, dispute or controversy thereafter arising out of such contract, agreement or other instrument, or any other transaction contemplated thereunder, including the failure or refusal to perform the whole or any part thereof, or a written agreement between two or more persons to submit to arbitration any claim, dispute or controversy existing between them at the time of the agreement, shall be valid and enforceable, and shall be irrevocable except by written agreement by all parties.

(Res. 01-39 (part))

#### **4.52.040 Law to be applied.**

A. In any contract, agreement or instrument described in Section 4.52.020 of this Code, the parties may agree upon the jurisdiction whose substantive law shall govern the interpretation and enforcement of the

contract, agreement, instrument or claim, dispute or controversy. Such choice of law shall be valid and enforceable, and not subject to revocation by one party without the consent of the other party or parties thereto, provided that the subject matter of the contract, agreement, instrument or claim, dispute or controversy, or at least one of the parties thereto, shall have some contact with the jurisdiction so selected.

B. In any proceeding under this Arbitration Code, whenever the contract, agreement or other instrument sets forth a choice of law provision, the Tribal Court shall apply the procedural rules of the Tribal Court and the substantive law of the jurisdiction selected in such choice of law provision; provided that no procedural rule of the Tribal Court shall bar, delay or impair any action, proceeding or remedy where such action, proceeding or remedy would not be barred, delayed or impaired by the procedural rules of the courts of the jurisdiction whose substantive law applies.

C. In any proceeding under this Arbitration Code, whenever the contract, agreement or other instrument does not set forth a choice of law provision, the Tribal Court shall first apply the substantive law of the Tribe, including any applicable choice of law principles, and then the substantive law of the State of Washington, including any applicable choice of law principles, provided that such law does not conflict with this Arbitration Code or other applicable tribal law.

(Res. 01-39 (part))

#### **4.52.050 Stay of proceedings and order to proceed with arbitration.**

A. If any action for legal or equitable relief or other proceeding is brought by any party to any contract, agreement or instrument described in Section 4.52.020 of this Arbitration Code, the Tribal Court Judge who is presiding over the pending action or proceeding shall not review the merits of the pending action or proceeding, but shall stay the action or proceeding until an arbitration has been had in compliance with the agreement.

B. A party to any contract, agreement or instrument described in Section 4.52.020 of this Arbitration Code claiming the neglect or refusal of another party thereto to proceed with an arbitration thereunder may make application to the Tribal Court for an order directing the parties to proceed with the arbitration in compliance with their agreement. In such event, the Tribal Court shall order the parties to arbitration in accordance with the provisions of the contract, agreement or instrument and the question of whether an obligation to arbitrate the dispute at issue exists shall be decided by the arbitrator(s).

(Res. 01-39 (part))

#### **4.52.060 Advice of the Court.**

At any time during an arbitration, upon request of all the parties to the arbitration, the arbitrator(s) may make application to the Tribal Court for advice on any question of tribal or state law arising in the course of the arbitration; provided, that such parties shall agree in writing that the advice of the Court shall be final as to the question presented and that it shall bind the arbitrator(s) in rendering any award.

(Res. 01-39 (part))

#### **4.52.070 Time within which award shall be rendered.**

A. If the time within which an award is rendered has not been fixed in the arbitration agreement, the

arbitrator(s) shall render the award within thirty (30) days from the date the arbitration has been completed. The parties may expressly agree to extend the time in which the award may be made by an extension or ratification thereof in writing.

B. An arbitration award shall be in writing and signed by the arbitrator(s). The arbitrator(s) shall provide written notice of the award to each party by certified or registered mail, return receipt requested. (Res. 01-39 (part))

**4.52.080 Application for order confirming award--Record to be filed with Clerk of Court--Effect and enforcement of judgment.**

A. At any time within one (1) year after an arbitration award has been rendered and the parties thereto notified thereof, any party to the arbitration may make application to the Tribal Court for an order confirming the award.

B. Any party applying for an order confirming an arbitration award shall, at the time the order is filed with the Clerk of the Tribal Court for entry of judgment thereon, file the following papers with the Clerk (1) the agreement to arbitrate; (2) the selection or appointment, if any, the arbitrator(s); (3) any written agreement requiring the reference of any question as provided in Section 5; (4) each written extension of the time, if any, within which to make the award; (5) the award; (6) each notice and other paper used upon an application to confirm; and (7) a copy of each order of the Tribal Court upon such an application.

C. An arbitration award shall not be subject to review or modification by the Tribal Court, but shall be confirmed strictly as provided by the arbitrator(s). The judgment confirming an award shall be docketed as if it were rendered in a civil action. The judgment so entered shall have the same force and effect in all respects as, and be subject to all the provisions of law relating to, a judgment in a civil action, and it may be enforced as if it has been rendered in a civil action in the Tribal Court. When the award requires the performance of any other act than the payment of money, the Tribal Court may direct the enforcement thereon in the manner provided by law. (Res. 01-39 (part))

**4.52.090 Arbitration award not appealable.**

No further appeal may be taken from an order issued by the Tribal Court pursuant to this Code enforcing an agreement to arbitrate or an award issued by an arbitrator. (Res. 01-39(part))

**4.52.100 Jurisdiction of the Tribal Court in actions to which the Tribe is a party--Qualification of Judges.**

A. The Tribal Court shall have exclusive Tribal Court jurisdiction over any action to enforce an agreement to arbitrate, to compel arbitration pursuant to such an agreement to arbitrate, and to enforce an award made by an arbitrator pursuant to such agreement to arbitrate, contained in any contract, agreement or other instrument described in Section 4.52.020 of this Arbitration Code to which the Tribe is a party; provided that the Tribal Council ("Council") has explicitly waived the defense of tribal sovereign immunity in the contract, agreement or other instrument; and provided further that the said contract, agreement, or other instrument does not expressly prohibit the Tribal Court from exercising jurisdiction thereunder.

B. The jurisdiction of the Tribal Court under this Arbitration Code shall be concurrent with the jurisdiction of any state or federal court to the jurisdiction of which the Council shall have explicitly consented in such contract, agreement or other instrument. Any consent to the jurisdiction of a state or federal court contained in contract, agreement or other instrument described in Section 4.52.020 of this Arbitration Code to which the Tribe is a party shall be valid and enforceable in accordance with its terms.  
(Res. 01-39 (part))

#### **4.52.110 Waivers of sovereign immunity must be express and unequivocal.**

Nothing in this Arbitration Code, or in any arbitration or other provision of any contract, agreement, or other instrument, shall constitute a waiver, in whole or in part, of the sovereign immunity of the Squaxin Island Tribe, its subsidiaries, departments, affiliates, agents, officers or employees, but any such waiver must be explicit, unequivocal and in writing, and can only be enforced in accordance with its express terms.  
(Res. 01-39 (part))

### **Chapter 4.56**

#### **SQUAXIN ISLAND TORT CLAIMS ORDINANCE**

Sections:

- 4.56.010 Title.
- 4.56.020 Authority.
- 4.56.030 Purpose.
- 4.56.040 Scope.
- 4.56.050 Definitions.
- 4.56.060 Limited waiver of sovereign immunity.
- 4.56.070 Limitation on awards.
- 4.56.080 Volunteers.
- 4.56.090 Employee actions outside the scope of employment.
- 4.56.100 Liability for expenses.
- 4.56.110 Extent of liability.
- 4.56.120 Notice requirement.
- 4.56.130 Limitation on presentation of claim.
- 4.56.140 Application of law.
- 4.56.150 Attachment prohibition.
- 4.56.160 Severability.
- 4.56.170 Effective date.

#### **4.56.010 Title.**

This chapter shall be known as the Squaxin Island Tort Claims Ordinance.  
(Res. 07-65 (part))

#### **4.56.020 Authority.**

The Squaxin Island Tribal Council's authority to adopt the ordinance codified in this title is found in the Squaxin Island Tribal Constitution and in the inherent sovereign authority of the Squaxin Island Tribe over land and activities in Indian country.  
(Res. 07-65 (part))

#### **4.56.030 Purpose.**

The purpose of this chapter is to ensure peace and order in Indian country, to promote the welfare of members of the Squaxin Island Community, to safeguard individual rights, and to secure rights and powers which are both inherent in the Squaxin Island Tribe's sovereign status and guaranteed to the Tribe by treaty and by the laws of the United States.

The development of the Squaxin Island Gaming Enterprise (hereafter "SIGE") has resulted in increased numbers of nonmembers coming onto the SIGE site. In some instances nonmembers are not aware that when entering the SIGE site, they are entering a jurisdiction which is separate and distinct from the state of Washington.

These visitors may not be aware that the Squaxin Island Tribe and its wholly-owned enterprises are immune from suit except to the extent that immunity has been explicitly waived by federal or tribal law. The SIGE is a wholly-owned, unincorporated division of the Tribal government and shares the sovereign immunity of the Tribe.

The Squaxin Island Tribal Council recognizes that its sovereign immunity will not permit suit against it and further recognizes this sovereign immunity doctrine may generate misunderstanding by injured parties. The Tribal Council also recognizes that the Tribe relies upon the SIGE to provide funding to support essential Tribal services and functions and that unlimited liability could disrupt the provision of such essential services and functions.

Therefore, the Tribal Council, in order to provide an equitable policy, hereby adopts a Tribal ordinance which states the expressly limited circumstances under which a person may file a claim against the SIGE. (Res. 07-65 (part))

#### **4.56.040 Scope.**

A. Application. This chapter shall apply to the full extent of the sovereign jurisdiction of the Squaxin Island Tribe in Indian country.

B. Compliance with this chapter is hereby made a condition of the use of any land or premises in Indian country.

C. Deemed to Consent. Any person who resides, works, conducts business, engages in a business transaction, receives benefits from the Tribal government including but not limited to police, fire or emergency services, acts under Tribal authority, or enters the Indian country under the jurisdiction of the Squaxin Island Tribe shall be deemed thereby to have consented to the following:

1. To be bound by the terms of this chapter;
2. To the exercise of civil jurisdiction by the Squaxin Island Tribal Court over said person in legal actions arising pursuant to tribal law; and
3. To detainment, service of summons and process, and search and seizure, in conjunction with

legal actions arising pursuant to tribal law.

D. This chapter does not constitute a general waiver of tribal sovereign immunity. This chapter applies only to those activities undertaken by the SIGE or its employees and which occur on the SIGE site as defined herein. This chapter is intended to permit only those claims which are considered actions arising in tort under tribal law or Washington state law and which are covered by the liability insurance of the SIGE. This chapter is to be strictly construed.  
(Res. 07-65 (part))

#### **4.56.050 Definitions.**

Unless otherwise required by the context, the following words and phrases shall be defined as follows:

"Actual damages" means the ascertainable loss of money or property sustained as a result of an injury, provided that such injury is covered by the liability insurance of the SIGE without regard to any deductible amount contained in the insurance policy.

"Award" means money damages which the Tribal Court determines are payable to compensate for any injury recognized under this chapter.

"Claim" means a petition for an award under this chapter. A claim may be filed with respect to any injury as defined in this chapter and which is expressly covered by the liability insurance of the SIGE without regard to any deductible amount contained in the insurance policy.

"Dangerous condition" means a physical aspect of a facility or the use thereof which constitutes an unreasonable risk to human health or safety, which is known to exist or which in the exercise of reasonable care should have been known to exist and which condition is proximately caused by the negligent acts or omissions of the SIGE in constructing or maintaining such facility. For the purposes of this subsection, a dangerous condition should have been known to exist if it is established that the condition had existed for such a period of time and was of such a nature that, in the exercise of reasonable care, such condition and its dangerous character should have been discovered. A dangerous condition shall not exist solely because the design of any facility is inadequate nor due to the mere existence of wind, water, ice or temperature by itself, or by the mere existence of a natural physical condition. Nothing in this section shall preclude an accumulation of water, snow, or ice from being found to constitute a dangerous condition when the SIGE fails to use existing means available to it for the removal of such accumulation and when the SIGE had notice of such accumulation and reasonable time to act.

"Employee" means a part- or full-time employee or an agent or contractor of the SIGE when acting during the course and within the scope of their employment. This term includes officers and directors of the SIGE when they are acting to fulfill their duties to the SIGE. This does not include agents or representatives of the United States or of the state of Washington or any of their political subdivisions.

"Injury" means death, harm to a person, or damage to or loss of property which, if inflicted by a person under tribal law or Washington state law, would constitute a tort and which is expressly covered by the liability insurance of the SIGE without regard to any deductible amount contained in the insurance policy.

"Person" means and includes any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity, or other identifiable entity.

"Squaxin Island Gaming Enterprise Site" or "SIGE site" means that area of the Squaxin Island Tribe's Indian country which has been opened to the general public for purposes of gaming, hotel accommodations, golf, and related SIGE operations or which is used by employees of the SIGE during the course of their employment provided that such area is covered by the liability insurance of the SIGE.

"Squaxin Island Tribal Council" or "Tribal Council" means the governing body of the Squaxin Island Tribe.

"Tribe" means the Squaxin Island Tribe.  
(Res. 07-65 (part))

#### **4.56.060 Limited waiver of sovereign immunity.**

A. The sovereign immunity of the Tribe and its wholly-owned enterprises shall continue in full force and effect except to the extent that it is expressly waived by this chapter. Notwithstanding any provision to the contrary herein, members of the Tribal Council remain immune from suit for actions taken during the course and within the scope of their duties as members of the Tribal Council.

B. The SIGE may be sued solely in the Squaxin Island Tribal Court. The Tribe has not waived the immunity of the SIGE from suit in state or federal court.

C. The sovereign immunity of the SIGE is waived in the following instances:

1. Injuries proximately caused by the negligent acts or omissions of the SIGE;
2. Injuries proximately caused by the condition of any property of the SIGE provided the claimant establishes that the property was in a dangerous condition;
3. Injuries caused by the negligent acts or omissions of Tribal Security Officers arising out of the performance of their duties at the SIGE site during the course and within the scope of their employment.

(Res. 07-65 (part))

#### **4.56.070 Limitation on awards.**

A. No rule of law imposing absolute or strict liability shall be applied in any claim for injuries under this chapter.

B. No award or other judgment imposing punitive or exemplary damages shall be applied in any claim for injuries under this chapter.

C. No award for loss of consortium shall be applied in any claim for injuries under this chapter.

D. No award for pain and suffering or mental anguish shall be applied except where such award does not exceed fifty (50) percent of the actual damages sustained and provided that any such award is expressly covered by the liability insurance of the SIGE without regard to any deductible amount contained in the insurance policy.

E. In no case shall an award exceed the available proceeds from the liability insurance of the SIGE.  
(Res. 07-65 (part))

#### **4.56.080 Volunteers.**

Volunteers duly authorized by the Tribe or SIGE, in performing any of their authorized functions or duties or training for such functions or duties, shall have the same degree of responsibility for their actions and enjoy the same immunities from suit as the SIGE.  
(Res. 07-65 (part))

#### **4.56.090 Employee actions outside the scope of employment.**

This chapter does not immunize employees of the SIGE from individual liability for the full measure of the recovery applicable to a claimant if it is established that their conduct exceeded the scope of their employment or authority. Claims for individual liability arising out of conduct that is found to exceed the scope of employment and that arise on the SIGE site shall be heard only in the Tribal Court.  
(Res. 07-65 (part))

#### **4.56.100 Liability for expenses.**

If the Tribal Court determines that the injuries claimed arose from an act or omission of an employee of the SIGE which was willful and wanton or otherwise outside the scope of employment or authority of the SIGE, then the SIGE may request, and the Court shall order upon SIGE's request, that the individual defendant named in the claim reimburse the SIGE for costs and attorney fees which may have been incurred in the defense of such employee.  
(Res. 07-65 (part))

#### **4.56.110 Extent of liability.**

In any claim concerning a single occurrence, the maximum amount of any award under this chapter, including damages, court costs, interest, and any other costs shall be:

- A. For any injury to one person, an amount which is in accordance with the terms of the liability insurance policy of the SIGE applicable to such claim.
- B. For any injury to two or more persons, an amount in accordance with the terms of the liability insurance policy of the SIGE applicable to such claim.

(Res. 07-65 (part))

#### **4.56.120 Notice requirement.**

A. Claims brought under this chapter must be preceded by a written notice filed with the Tribal Court by the claimant or the claimant's representative within one hundred eighty (180) days after the claim accrues. A copy must be provided to the Tribe's Legal Department, on the same date.

B. The notice shall contain the following:

1. The name and address of the claimant and the name and address of the claimant's attorney, if any;
2. A concise statement of the factual basis of the claim, including the date, time, place, and circumstances of the act, omission, or condition complained of;
3. The name of any gaming enterprise employee involved, if known;
4. A concise statement of the nature and the extent of the injury claimed to have been suffered;
5. A statement of the amount of monetary damages that is being requested;
6. When the claim is one for death by negligent act or omission, the notice may be presented by the personal representative, surviving spouse, or next of kin of the deceased.

C. All claims must be filed along with a proof of compliance with this subsection.

(Res. 07-65 (part))

#### **4.56.130 Limitation on presentation of claim.**

All claims shall be filed within one hundred eighty (180) days of the date on which they accrued. Claims brought under this chapter shall be deemed to accrue on the date when the injury is sustained.

(Res. 07-65 (part))

#### **4.56.140 Application of law.**

Any claim brought under this chapter shall be determined by the Tribal Court in accordance with tribal law. In the absence of specific tribal law, the Tribal Court may refer to principles of law applicable to similar claims arising under the laws of the state of Washington, but in no case shall Washington law be deemed or construed to have been adopted as tribal law for the purposes of this chapter.

(Res. 07-65 (part))

#### **4.56.150 Attachment prohibition.**

Neither execution nor attachment shall issue against the SIGE, the Tribe, or any of the wholly-owned enterprises of either in any claim for injury or proceedings initiated under this chapter.

(Res. 07-65 (part))

#### **4.56.160 Severability.**

If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances, is not affected.  
(Res. 07-65 (part))

**4.56.170 Effective date.**

This chapter shall become effective immediately upon approval by the Tribal Council.  
(Res. 07-65 (part))