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TITLE 7

Chapter 7.01 Scope of Appellate Rules

7.01.01 Scope

This title shall govern appeals from decisions of the Port Gamble S'Klallam Community Court in civil and criminal cases, and appeals from other tribal proceedings specifically providing for appeal under this title.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

Chapter 7.02 Composition of the Court

7.02.01 Three Judge Panel

The Tribal Council authorizes the Northwest Intertribal Court System to select a panel of three judges from the roster of the Northwest Intertribal Court System who meet the eligibility requirements under section 1.03.03 of this code to hear each appeal from a decision of the Community Court. Each panel shall be selected on an as-needed basis.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section to specify eligibility requirements. This section was formerly numbered 1.10.6. Amended by Resolution 13-A-056 on March 26, 2013, to require judges to be law-trained and licensed to practice law, clarify Orders are valid if the council fails to appoint a chief judge, and delegate authority to assign judges while the tribe is a member of NICS.]

7.02.02 Conflict of Interest

No person shall be qualified to sit on a panel of the Court of Appeals in any case in which he or she has a direct interest or wherein any relative by marriage or blood, in the first or second degree, is a party. The trial judge who heard the case appealed shall not sit on the appellate panel.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section to disqualify the trial judge from sitting on the appellate panel in the same case.]

Chapter 7.03 Scope of Review

7.03.01 Appeal as a Matter of Right

Any aggrieved party may seek review of a final order, commitment or judgment of the Port Gamble S'Klallam Community Court in the Court of

Appeals. The Tribe shall not be deemed an aggrieved party under this section as to final judgments of acquittal of a criminal defendant.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

7.03.02 Appeal by Permission

An aggrieved party may seek appellate review of acts of the Community Court which are not final by filing a notice for permission to appeal in the Court of Appeals. Permission may be granted only if:

- a) The Community Court has committed an obvious error which would render further proceedings useless; or
- b) The Community Court has committed probable error and the decision substantially alter the status quo or substantially limits the freedom of a party to act; or
- c) The Community Court has departed so far from the usual and accepted course of judicial proceedings as to call for review by the Court of Appeals.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

7.03.03 Basis for Appellate Court Decision

The Court of Appeals shall review the record of proceedings from the Community Court, appellate brief and oral argument in rendering its decision.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

7.03.04 Issues of Law and Fact

The Court of Appeals shall limit its review to issues of law except that the Court of Appeals may review findings of fact in cases tried before a judge sitting without a jury and shall set aside such findings of fact if they are clearly erroneous.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

Chapter 7.04 Commencing an Appeal

7.04.01 Notice of Appeal

A written notice of appeal must be filed with the Community Court and the Court of Appeals within twenty (20) days after the entry of the

decision of the Community Court which the party filing notice wants reviewed.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

7.04.02 Filing Fee

A filing fee of \$25.00 must accompany any notice of appeal. The filing fee may be waived by Court of Appeals upon written request of the party for good cause shown.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

7.04.03 Service of Notice

Within the time prescribed for filing a notice of appeal, the party filing shall cause a copy of the notice to be served on all parties and return an affidavit of service to the Court of Appeals.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

7.04.04 Content of Notices

The notice of appeal or notice for permission to appeal shall be titled as such and shall:

- a) Specify the party seeking review;
- b) State the grounds for appeal;
- c) Designate those parts of the decision which the party wants reviewed;
- d) Name the appellate court to which the review is taken; and
- e) Include the names and addresses of all parties and their spokespersons, if any.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

Chapter 7.05 Acceptance of Review

7.05.01 Appeal as a Matter of Right

The Court of Appeals accepts review of an appeal as a matter of right when a timely notice of appeal is filed.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

7.05.02 Appeal by Permission

The Court of Appeals accepts review of an appeal by permission upon granting a motion for permission to appeal. A party seeking permission to appeal must file a motion and accompanying order in the Court of Appeals within ten (10) days of filing a notice for permission to appeal. The Court of Appeals may hold a hearing on the motion and shall give written notice of its decision to the parties and to the Community Court. Denial of a motion for appeal by permission shall not affect a party's right to appeal under 7.03.01.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84.]

Chapter 7.06 Relief Pending Review

7.06.01 Stay of the Community Court Judgment

Petition may be made for an order to stay the judgment or order rendered by the Community Court, pending appeal. The petition shall be made first to the Community Court at the time of filing a notice of appeal or notice for permission to appeal. If the Community Court denies the petition it may be filed with the Court of Appeals. Stays shall be liberally granted.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section to clarify the procedure and to give the courts discretion in granting or denying stays.]

7.06.02 Appeal Bond

A stay may, in the Court's discretion, be conditioned on filing case or a bond in an amount set by the deciding court. The amount shall be sufficient to guarantee performance of the judgment or order plus interests and costs of appeal. Any surety on a bond must be approved by the deciding court.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

7.06.03 Release in Criminal Cases

Petition for release following a judgment of conviction shall be filed in the Community Court. If the petition is denied, a petition may be filed in the Court of Appeals. The petition shall be considered promptly upon such papers and affidavits as the parties present and after reasonable notice to all parties. The burden of establishing that the defendant will not flee or pose a danger rests with the defendant.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

Chapter 7.07 Review Process

7.07.01 Motions

An application for an order or other relief shall be made in a motion to the Court of Appeals with proof of service on all other parties. All motions shall include:

- a) A statement of the relief sought;
- b) A statement of the grounds for the relief sought; and
- c) Supporting argument.

All motions shall be accompanied by an appropriate order prepared by the moving party. Any party may file a response in opposition to a motion within fourteen (14) days after service of the motion. The Court may shorten or extend the time allowed for responding to a motion. No motion shall be accepted for filing unless accompanied by proof of service on opposing parties.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

7.07.02 Appeal Conference - Notice

The Chief Judge of the Court of Appeals will decide if an appeal conference is appropriate in each appeal, criminal and civil. The Court Clerk will notify each party if an appeal conference is to be held. The notice shall specify the date, time and place of the conference, whether the parties are required to attend as well as their counsel, and the name of the person designated by the Chief Judge of the Court of Appeals to preside at the appeal conference.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84. The sections of the Code providing for appeal conferences are intended to provide a less formal setting for dispute resolution, limit the issues to be briefed, and allow parties representing themselves to meet with a judge and ask questions about the appellate process.]

7.07.03 Appeal Conference - Order

Parties must be prepared to consider settlement (in the case of civil appeals), limitation of the issues to be presented for review, and other matters which may promote the prompt and fair disposition of the appeal. If agreement to these matters is reached, the judge conducting the

conference shall enter an order consistent with the agreement which shall be binding on the parties during the review process.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

7.07.04 Record on Appeal - Contents and Filing

Within twenty (20) days after a notice of appeal is filed or after acceptance of review, the party making the appeal shall obtain a copy of the trial record from the Court Clerk and shall file it with the Court of Appeals. The record shall contain the original papers and exhibits filed in the Community Court, a written transcript of the proceedings, if any, three (3) copies of the tape recording of the proceedings and a copy of the docket entries prepared by the Court Clerk.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

7.07.05 Cost of Preparing the Record

The party making the appeal shall pay the costs incurred by the Community Court in preparing and transmitting the record. The Clerk of the Community Court shall submit a bill of costs to the party making the appeal for payment. The costs of preparing and transmitting the record may be waived by the Community Court upon a showing of indigence or other reason indicating substantial injustice.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

7.07.06 Statement of Proceedings Absent Transcript

If a record of the proceedings is not available, the party seeking review may prepare a statement of the proceedings using the best available means, including his recollections. The statement shall be served on the respondent who may file objections or amendments within ten (10) days after service. Settlement and approval of the statement shall be made by the Community Court.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

7.07.07 Filing of Briefs

Within thirty (30) days of filing a notice of appeal or acceptance of review by permission, the party making the appeal shall file with the Court of Appeals a written brief, memorandum or statement in support of his appeal and serve a copy on all parties. The Court of Appeals may allow a longer time for filing briefs, in its discretion. The respondent shall have

thirty (30) days after service of appellant's brief in which to file a reply brief, memorandum or statement and shall serve a copy on each party. A response shall be allowed a party on leave of court. All briefs shall be accompanied by an affidavit of service on opposing parties.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

7.07.08 Content of Appellant's Brief

The brief of the party making the appeal should be typed and organized as follows:

- a) Cover page. The front cover page shall state the name of the court and the number of the case, the title of the document (e.g. Brief for Appellant) and the names and addresses of counsel, if any, and the name and address of the appellant.
- b) Tables. A table of contents, with page references, and a table of cases cited in the brief, a list of other authorities relied upon with references to the pages of the brief where used.
- c) Assignments of Error. A separate concise statement of each error a party contends was made by the trial court, together with the issues pertaining to the assignments of error.
- d) Statements of the Case. A fair statement of the facts and procedure of the trial which are relevant to the issues presented for review, without argument.
- e) Argument. The argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record.
- f) Conclusions. A short conclusion precisely stating the relief sought.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

7.07.09 Respondent's Brief

The respondent's brief should conform to the format set forth in 7.07.08 and should answer the appellant's brief.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

7.07.10 Amicus Curiae Brief

An amicus curiae brief may be filed by a person or Tribe interested in the case by leave of the Court of Appeals. Time for filing shall be set by the court. A party may file a brief in reply of the amicus curiae brief.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

7.07.11 Oral Argument

The clerk shall advise all parties of the time and place at which oral argument shall be heard. Each side is allowed thirty (30) minutes for oral argument. Additional time may be granted by the Court where it is deemed necessary. Amicus curiae may present oral argument by leave of court.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

Chapter 7.08 Decision of the Court of Appeals

7.08.01 Form of Judgment

The Court of Appeals may reverse, affirm or modify the Community Court decision being reviewed and take any other action as the merits of the case and the interest of justice may require.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

7.08.02 Entry of Judgment

Entry of judgment shall be made by the clerk by notation in the docket at the direction of the court. The clerk shall mail notification of the entry of judgment and a copy of the opinion, if any, to the Community Court and to all parties.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

7.08.03 Costs

Costs on appeal are those incurred by a party in having the record prepared and transmitted, the premiums paid for any appeal bonds and the fee paid for filing the appeal. Costs of review shall be determined and awarded by the Court of Appeals. Appellant shall pay the costs of review if the appeal is dismissed or if the judgment is affirmed. Respondent shall pay the costs if the judgment is reversed. In any other case the costs shall be awarded only as ordered by the Court.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

7.08.04 Bill of Costs

A party desiring costs to be assessed shall submit an itemized and verified bill of costs which shall be filed with proof of service on all parties within seven (7) days of being notified of entry of judgment. Objections may be filed within seven (7) days of service.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

Chapter 7.09 Supplemental Provisions

7.09.01 Violation of Rule

Failure to comply with the rules set forth in the title may result in revocation of the party's right to participate further in the review process.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

7.09.02 Damages for Frivolous Appeal

If the Court of Appeals determines that an appeal is frivolous, it may award damages and costs to the respondent.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]