

Title 3 – Tribal Court
Chapter 1 – Establishment and Authority

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Legislative History

Enacted:

- Ordinance 415 Amending STC Title 3, Chapter 1 (3/16/21).
- Ordinance 408 Amending STC Title 3, Chapters 1 & 3, STC Title 4, Chapters 1 & 2 and STC Title 7, Chapters 11 & 12 (9/15/20).
- Ordinance 400 Amending STC Title 3 Tribal Court, Chapter 1 Establishment and Authority (4/7/20).
- Establishing Swinomish Tribal Courts, Ord. 198 (11/10/03), BIA (11/25/03).

Amended:

- Selection of Jurors, Ord. 242 (11/8/05), BIA (11/22/05).

Repealed and Superseded:

- Extension of Criminal Jurisdiction to Treaty Rights off Reservation, Ord. 154 (6/4/02), BIA (6/6/02) (amending Ord. 75).
- Excusing Senators from Jury Duty, Res. 95-2-17 (2/7/95).
- Establishing the Court of Appeals and Appellate Procedure, Ord. 94 (5/5/92), BIA (5/15/92).
- Creating Rules of Criminal Procedure, Ord. 89 (2/6/92), BIA (2/18/92) (superseding and replacing any conflicting provisions of all prior criminal procedure ordinances).
- Amending Jurisdiction of Court, Ord. 87 (1/7/92), Enacting Res. 92-1-7, BIA (2/3/92).

Adopting Rules of Civil Procedure, Ord. 74 (5/5/88), Enacting Res. 88-5-25, BIA (11/29/90).

Amending Jurisdiction of Tribal Court, Res. 87-6-61 (6/2/87) (revised Res. 87-2-5 (2/3/87) disapproved by BIA).

Amending Qualifications of Tribal Court Judges, Res. 78-8-540 (8/4/78), BIA (9/18/78).

Redefining Jurisdiction of Tribal Court, Res. 77-3-431 (3/9/77).

Swinomish Law and Order Ordinance, Ord. 32 (3/4/75), BIA (5/30/75).

The Swinomish Law and Order Code, Ord. 7 (3/23/38), BIA (3/24/38).

Approving Adoption of Swinomish Law and Order Code, Ord. 1 (undated).

[Ed. Note. Ordinance 1 is undated, and adopts the Law and Order Regulations approved by the Secretary of the Interior November 27, 1935 as part of the fundamental law governing the Swinomish Reservation. The referenced “regulations” are not located in Tribal records.]

[Ed. Note. The Swinomish Indian Senate consented to the application of state laws and regulations to the Indians of the Swinomish Indian Reservation in Swinomish Indian Senate Resolution 96A (12/2/55). The Swinomish Indian Senate requested the exercise of limited criminal and civil jurisdiction by the State of Washington over the Swinomish Indian Reservation pursuant to Congressional Public Law 280, in Swinomish Indian Senate Resolution 125 (6/5/62); the request was revised by Swinomish Indian Senate Resolutions 130 (8/21/62) and 141 (3/26/63). Retrocession of criminal jurisdiction was completed by Swinomish Indian Resolutions 88-3-12 (3/17/88) and 88-3-13 (3/17/88).]

3-01.010 Authority.

This Chapter is enacted pursuant to authority provided by Article VI, Section 1(b), (i), (k), (l), (o), (p), (r) and (s), Article VI, Section 3, and Article IX of the Swinomish Constitution.

[History] Ord. 400 (4/7/20); Ord. 198 (11/10/03).

3-01.020 Definitions.

Unless specifically stated elsewhere in this Chapter, the meaning of the terms used in this Chapter shall be as follows:

- (A) **“Judge Pro Tempore”** means an individual qualified to serve and assigned to a judicial position of the Swinomish Tribal Court on a temporary basis.
- (B) **“Person”** means any natural person, corporation, trust, unincorporated association, partnership, and federal, state or local governments, agencies or subdivisions thereof.
- (C) **“Police,” “tribal police” and “officer”** means qualified tribal police personnel or police officers of the Bureau of Indian Affairs as established in Title 2, Chapter 8 of the Swinomish Tribal Code.

- (D) **“Reservation”** means all the lands and waters within exterior boundaries of the Swinomish Indian Reservation.
- (E) **“Senate”** means the Swinomish Indian Senate, the governing body of the Swinomish Indian Tribal Community.
- (F) **“Tribe”** or **“Tribal Community”** means the Swinomish Indian Tribal Community, a federally recognized Indian Tribe organized pursuant to Section Sixteen of the Indian Reorganization Act of 1934.
- (G) **“Tribal Court”** or **“Court”** means the Swinomish Tribal Court.

[History] Ord. 400 (4/7/20); Ord. 198 (11/10/03).

Subchapter I - Tribal Court

3-01.030 Power Vested.

The judicial power of the people of the Swinomish Reservation shall be vested in the Swinomish Tribal Court and any other lower courts of special jurisdiction, including forums for traditional dispute resolution, as the Senate shall establish by ordinance. When jurisdiction is vested in the courts, all the means necessary to exercise judicial power is also given. In the exercise of this jurisdiction, if the course of proceeding is not specified in this Title, any suitable process may be adopted which may appear most in keeping with the spirit of tribal law.

[History] Ord. 400 (4/7/20); Ord. 198 (11/10/03); Ord. 32 (3/4/75).

3-01.040 Scope.

The Judicial powers shall extend to all cases and controversies within the jurisdiction of the Tribe, in law or equity, arising under the Swinomish Constitution, the laws or customs of the Tribe, or which are vested in the courts under federal law or by virtue of the Tribe’s inherent sovereignty.

[History] Ord. 400 (4/7/20); Ord. 198 (11/10/03); Ord. 32 (3/4/75).

3-01.050 Jurisdiction.

Except as limited or defined elsewhere by the Swinomish Constitution or the Swinomish Tribal Code, the jurisdiction of the Tribal Court shall be as follows:

(A) Subject Matter Jurisdiction.

- (1) **Generally.** Subject to the territorial limits set forth below, the Court’s subject matter jurisdiction shall be limited only by express restrictions in the

Constitution and Bylaws of the Swinomish Indians of the Swinomish Reservation and Federal law applicable to the Tribe.

(2) **Territorial Limits.**

- (a) **Civil Matters.** The Court's subject matter jurisdiction shall be limited to civil matters that arise within the exterior boundaries of the Reservation or lands outside the boundaries of the Reservation held in trust by the United States for the Tribe or tribal members.
- (b) **Criminal Matters.** The Court's subject matter jurisdiction shall be limited to criminal matters that arise within the exterior boundaries of the Reservation.
- (c) **Fishing/Hunting Matters.** Notwithstanding subsections (a) and (b) above, the Court's subject matter jurisdiction in criminal and civil matters that involve or are related to fishing, hunting and gathering activities, shall be limited to all usual and accustomed fishing grounds and stations of the Tribe, all open and unclaimed lands reserved by treaty for hunting or gathering and on such other lands and waters as is necessary for access to such fishing, hunting and gathering sites.

(B) **Personal Jurisdiction.**

- (1) The Court's personal jurisdiction shall be limited only by express restrictions in the Constitution and Bylaws of the Swinomish Indians, the Swinomish Tribal Code, and Federal laws applicable to the Tribe.
- (2) The Tribal Court shall have criminal jurisdiction on the Reservation over:
 - (a) All tribal members;
 - (b) All other Indians in accordance with applicable Federal law; and
 - (c) Any other person subject to the Tribe's jurisdiction pursuant to Swinomish or federal law.
- (3) **Implied Consent to Jurisdiction.** Entrance by any person or his or her property into the Reservation or Tribal Court jurisdiction as defined in this Code, shall be deemed equivalent to and construed to be a consent to the civil jurisdiction of the Tribe and the Tribal Court, and shall further be deemed a consent to service of summons or process by registered mail with return receipt requested at his or her last known address.

- (4) **Acts Submitting Person to Jurisdiction of Tribal Court.** Subject to any express limitations of jurisdiction stated in the Swinomish Constitution or Swinomish Tribal Code, the Court shall have jurisdiction over:
- (a) Any person residing or present within the Reservation or lands outside the boundaries of the Reservation held in trust by the United States for the Tribe or tribal members;
 - (b) Any person who transacts, conducts, or performs any business or activity within the Reservation by being present on the Reservation or by mail, phone, broadcast, or cable either in person or by an agent or representative;
 - (c) Any person who owns, uses, leases or possesses any real or personal property situated within the Reservation, for any civil cause of action arising from such ownership, use or possession;
 - (d) Any person who commits a tortious act or engages in tortious conduct within the Reservation;
 - (e) Any person who damages a natural resource of the Tribe or any individual member of the Tribe; and
 - (f) Any person who commits a civil infraction as currently defined in the Swinomish Tribal Code, or as may otherwise be adopted by the Tribe.

(C) **Jurisdiction of Appellate Court.** The Court of Appeals shall have jurisdiction to hear and determine appeals from final judgments, rulings that substantially alter the course of trial court proceedings, sentencing and disposition orders of the Tribal Court. The Court of Appeals shall be the court of last resort for all cases filed in the Swinomish Tribal Court.

[History] Ord. 408 (9/15/20); Ord. 400 (4/7/20); Ord. 198 (11/10/03); Ord. 154 (6/4/02); Ord. 94 (5/5/92); Ord. 87 (1/7/92).

3-01.060 Rules of Court - Procedures.

The time and place of court sessions and all other details of judicial procedure not prescribed by this Title shall be governed by Rules of Court promulgated as herein provided. It shall be the duty of the judges of the Tribal Court to make recommendations to the Senate for enactment or amendment of such Rules of Court as they believe to be in the interests of improved judicial procedures. In cases of failure of the Senate to establish or approve Rules of Court, the judges shall have authority to establish such rules. Rules of Court, enacted or amended in the above manner, will be made a part of this Title.

[History] Ord. 198 (11/10/03); Ord. 32 (3/4/75).

3-01.061 Rules of Evidence.

- (A) Evidentiary matters in Tribal Court shall be governed by the Federal Rules of Evidence, and federal case law interpreting the Federal Rules of Evidence shall have persuasive authority. However, the Tribal Court has the right to independently interpret the rules in accordance with the laws, customs, and traditions of the Swinomish Indian Tribal Community.
- (B) The Tribal Court shall publish any written court opinion that adopts an interpretation of a Federal Rule of Evidence.

[History] Ord. 408 (9/15/20).

Subchapter II - Judges

3-01.070 Composition of Tribal Court.

The Tribal Court shall consist of one Chief Judge and associate judges as appointed by the Senate. The Senate may authorize the Chief Judge to temporarily assign duties and responsibilities to a judge pro tempore, as needed. A judge pro tempore shall assume the duties and responsibilities of the role to which they are temporarily assigned.

[History] Ord. 400 (4/7/20); Ord. 198 (11/10/03); Ord. 32 (3/4/75).

3-01.080 Composition of Court of Appeals.

The Tribal Court of Appeals shall consist of a panel of three (3) qualified judges. The judge whose decision is being appealed shall not select or be a member of the panel.

[History] Ord. 198 (11/10/03); Ord. 94 (5/5/92).

3-01.090 Appointment, Compensation, and Term.

Each judge shall be appointed by the Senate and shall be compensated on a basis determined by the Senate consistent with the Swinomish Constitution. Each judge appointed by the Senate shall hold office for a period of four (4) years unless sooner removed for cause as provided in this Chapter, or by reason of the abolition of the office or resignation, but shall be eligible for re-appointment.

[History] Ord. 400 (4/7/20); Ord. 198 (11/10/03); Ord. 32 (3/4/75).

3-01.100 Eligibility.

To be eligible to serve as a judge of the Swinomish Tribal Court, a person must:

- (A) Be twenty-five (25) years or older;

- (B) Have never been convicted of a felony or within one (1) year past of a misdemeanor; and
- (C) Be of high moral character.

[History] Ord. 198 (11/10/03); Ord. 32 (3/4/75).

3-01.110 Sessions of Court.

Sessions of the Tribal Court for the trial of cases shall be held by the chief judge, or in case of his disability, absence, or unavailability, by an associate judge, Provided, however, that an associate judge may be called in to hear cases at any time for any reasonable cause by the chief judge or by the Chair of the Senate.

[History] Ord. 198 (11/10/03); Ord. 32 (3/4/75).

3-01.120 Acting Chief Judge.

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

[History] Ord. 198 (11/10/03); Ord. 32 (3/4/75).

3-01.130 Recusal and Conflict of Interest.

- (A) No judge shall be qualified to act as such in any case wherein he or she has any direct interest, or in any proceeding in which the judge's impartiality might reasonably be questioned. A judge may be recused on motion or of their own volition. A judge may refer a recusal hearing to another eligible judge for hearing and ruling.
- (B) Should it be found that all judges, including all available pro tem judges, of the Court have a direct interest, prejudice or bias in any civil case, the Senate or a person(s) designated by the Senate shall exercise judicial power. Such designation shall be formalized by resolution.
- (C) In a criminal case, either party may by motion request recusal of a judge. A judge may be recused from a criminal case if the moving party demonstrates that sufficient factual grounds exist for a reasonable person to objectively find at least one of the following:

- (1) the judge has a direct, personal, and substantial pecuniary interest in a case; or
 - (2) where there is a strong possibility that the judge's decision will be biased.
- (D) In a criminal case in which the presiding judge has been recused, a successor judge who meets all qualifications required by Swinomish law shall be appointed.

[History] Ord. 408 (9/15/20); Ord. 198 (11/10/03); Ord. 32 (3/4/75).

3-01.140 Effect of Recusal.

An order authorizing recusal may be appealed immediately under Chapter 4 of this Title, and all further actions in such a case, except requests for emergency restraining orders, motions for bail or pretrial release modification, will be stayed pending the outcome of that appeal. Only one such change shall be allowed.

[History] Ord. 408 (9/15/20); Ord. 198 (11/10/03); Ord. 32 (3/4/75).

3-01.150 Judicial Cooperation.

All judges and personnel of the Court shall cooperate with all Federal, state, county and municipal agencies when such cooperation is consistent with tribal law, but shall ever bear in mind that their primary responsibility is to the Tribe.

[History] Ord. 198 (11/10/03); Res. 78-8-540 (8/4/78); Ord. 32 (3/4/75).

3-01.160 Removal of Judges.

- (A) Judges may be disciplined or removed for the following by the vote of seven members of the Senate:
- (1) an act or omission which would have resulted in ineligibility for appointment;
 - (2) being under the influence of intoxicants or drugs while performing official duties;
 - (3) converting tribal properties or monies for personal use;
 - (4) conviction in Swinomish Tribal Court of any misdemeanor as defined by ordinance or any equivalent conviction in a federal, state, or tribal court while serving as judge;

- (5) desertion of office; or
 - (6) violation of any applicable Judicial Code of Conduct.
- (B) Copies of a written statement setting forth the facts and the reasons for such proposed discipline or removal must be delivered to the judge and to members of the Senate at least ten (10) days before the meeting of the Senate before which the judge is to appear. A public hearing shall then be held by the Senate wherein the accused judge shall be given an adequate opportunity to answer any and all charges. A judge who is disciplined or removed may appeal directly to the Court of Appeals.

[History] Ord. 400 (4/7/20); Ord. 198 (11/10/03); Ord. 32 (3/4/75).

Subchapter III - Juries

3-01.170 Eligibility of Jurors.

- (A) A person shall be eligible to serve as a juror in Tribal Court if he or she:
- (1) Is eighteen (18) years of age or older;
 - (2) Has never have been convicted of a felony or having once been convicted of a felony has had his or her civil rights restored;
 - (3) Is not holding the office of tribal judge, tribal police officer, General Manager, or an employee within the tribal Wellness Program, didg^wálič, or Office of the Tribal Attorney, or Swinomish Indian Senator at the time the jury list is prepared or at the time of trial; and
 - (4) Is either;
 - (a) A member of the Swinomish Tribe residing in Skagit County; or
 - (b) A non-member residing within the exterior boundaries of the Reservation.
- (B) The Tribal Court judge may excuse eligible jurors from jury duty only upon good cause shown.

[History] Ord. 408 (9/15/20); Ord. 198 (11/10/03); Ord. 149 (10/2/01); Res. 95-2-17(2/7/95); Ord. 94 (5/5/92); Ord. 89 (2/6/92).

3-01.180 Selection of Jurors.

- (A) The Clerk of the Court shall prepare a list of eligible jurors to be approved by the Senate each year.
- (B) It shall be the duty of the Chief Judge to ensure a fair and random selection of jurors from the list of eligible jurors. Each jury seated for a jury trial in Swinomish Tribal Court shall be comprised of at least one Native resident, as the term is defined in STC 4-02.220. The judge shall review the process from time to time and shall cause to be kept on file with the court clerk a description of the jury selection process. Any person who desires may inspect this description in said office.
- (C) Pursuant to the selection process established by the Court, the Clerk of the Court shall issue and cause to be served a jury summons upon each eligible juror selected. Jury summons shall be delivered to the potential juror either by United States mail or by personal service by a tribal law enforcement officer or a person of the age of eighteen (18) or more years who has no stake in the case.
- (D) The jury summons shall notify the person being summoned to appear in court on the date set for the beginning of the trial, one (1) hour before the time set for the trial. Failure of a person served with a jury summons to appear shall constitute contempt of court and the summons shall contain a warning to that effect. Any person to whom jury service would be a severe hardship may be excused from service by a judge, but such excuse from jury duty shall be disfavored.
- (E) On the day of the trial, the clerk shall deposit in a ballot box ballots containing the names of each of the summoned potential jurors who have appeared. Those persons whose names are in the ballot box shall be known as the jury panel. After the judge calls the court to order, he or she shall draw from the jury panel ballot box, at random, the names of fourteen (14) members of the jury panel, who shall then be seated in the jury area. If the ballots are exhausted before the jury is completed, the court shall order to be drawn immediately, in the manner provided for other drawings of jurors, but without notice and without the attendance of officers other than the clerk, as many qualified persons as necessary to complete the jury. The clerk shall make a list of the names in the order in which they were called.

[History] Ord. 408 (9/15/20); Ord. 242 (11/8/05); Ord. 198 (11/10/03); Ord. 149 (10/2/01); Res. 95-2-17(2/7/95); Ord. 94 (5/5/92); Ord. 89 (2/6/92).

3-01.190 Excuse From Service.

- (A) It shall be the duty of the Court to excuse from further jury service any juror who, in the opinion of the judge, has manifested unfitness as a juror by reason of bias, prejudice, indifference, inattention or any physical or mental defect or by reason of conduct or practices incompatible with proper and efficient jury service.

- (B) Any person who is closely related by blood or marriage to any of the parties, counsel or witnesses appearing in the particular matter, or has knowledge of the facts of the particular case, shall be excused from further jury service. For purposes of this section, “closely related” shall mean sibling, parent, child, grandparent and spouse. The court may presume sufficient bias exists to excuse a juror because of a relationship as a first degree cousin, aunt or uncle.

[History] Ord. 198 (11/10/03); Ord. 149 (10/2/01); Res. 95-2-17(2/7/95); Ord. 94 (5/5/92); Ord. 89 (2/6/92).

3-01.200 Impaneling Jurors.

Jurors shall be impaneled as set forth in STC 3-02.220, Rules of Civil Procedure, and 3.03.380, Rules of Criminal Procedure, or by Rule of Court. Each jury seated for a jury trial in Swinomish Tribal Court shall be comprised of at least one Native resident, as the term is defined in STC 4-02.220.

[History] Ord. 408 (9/15/20); Ord. 198 (11/10/03); Ord. 149 (10/2/01); Res. 95-2-17(2/7/95); Ord. 94 (5/5/92); Ord. 89 (2/6/92).

3-01.210 Fees.

Every person required to attend court for selection or service as a juror shall be entitled to a fee of twenty-five dollars (\$ 25.00) a day for each day his or her services are required in court, ten dollars (\$10.00) if the juror is called but his or her services are not required, plus mileage at a rate not to exceed that set by the United States Treasury Department for traveling to and from the court.

[History] Ord. 198 (11/10/03); Ord. 149 (10/2/01); Res. 95-2-17(2/7/95); Ord. 94 (5/5/92); Ord. 89 (2/6/92).

Subchapter IV - Witnesses

3-01.220 Compelling Witnesses to Appear; Subpoenas.

- (A) Any party to a lawsuit or other proceedings in Tribal Court shall have the right to compel witnesses to appear in court and testify concerning the matter.
- (B) Upon request of a party, or on the Court’s own motion, the Court may issue a subpoena commanding a named person to appear in court and/or to bring certain evidence or documents to court.
- (C) All subpoenas shall be signed by a judge, except as otherwise provided by a Rule of Court.

- (D) Every subpoena shall be in writing and shall include the name of the Court, the Court's seal, 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 that the witness is required to bring.
- (E) Subpoenas shall be delivered to the witness by a tribal law enforcement officer or by a person of the age of eighteen (18) or more years who has no stake in the case. The subpoena must be delivered by giving it to the witness directly.
- (F) A person who delivers a subpoena shall promptly file with the clerk a copy of the subpoena as proof of service.
- (G) Failure of a witness to obey a subpoena shall be grounds for holding the witness in contempt of court.
- (H) A witness who responds to a civil subpoena shall be entitled to a fee of twenty-five dollars (\$25) for each day or partial day that he or she must appear in court. The judge may, in addition, order that the party calling the witness pay the witness reasonable and necessary travel and living expenses incurred in responding to the subpoena. Witnesses shall be offered full payment of their fees for one day's service at the time they are served with the subpoena. The party requesting the issuance of a subpoena shall tender the fees to the witness upon service of the subpoena. When the subpoena is issued on behalf of the Tribe or an officer or agency thereof, fees and mileage need not be tendered.

[History] Ord. 198 (11/10/03); Ord. 74 (5/5/88).

3-01.230 Swearing in Witnesses.

All witnesses shall be administered an oath by the Court as follows: "Do you swear (or affirm) to tell the truth in the matter now before you?"

[History] Ord. 198 (11/10/03); Ord. 32 (3/4/75).

Subchapter V - Spokespersons

3-01.240 Spokespersons Appearing in Tribal Court.

- (A) Any person appearing in Tribal Court shall have the right to a spokesperson at his or her own expense to assist in presenting the case, provided that such spokesperson shall first have been admitted to the Swinomish Tribal Bar. The Court may appoint a spokesperson to assist any person if, in the discretion of the court, it appears necessary to protect such person's rights. A spokesperson need not be an attorney, except as required in subsection (B) of this Section.

- (B) Until such time as the Swinomish Tribal Bar adopts independent bar licensure and professional responsibility standards, in order to represent an individual in a criminal matter, members of the Swinomish Tribal Bar must be duly licensed members in good standing in another jurisdiction that maintains bar licensure requirements and professional responsibility standards. Upon the Swinomish Tribal Bar's adoption of independent bar licensure or professional responsibility standards, such standards shall apply in all criminal and civil matters.

[History] Ord. 408 (9/15/20); Ord. 198 (11/10/03); Ord. 32 (3/4/75).

3-01.250 Tribal Court Bar - Admissions.

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

- (A) Be of good moral character; and
- (B) Sign and take the Spokesperson's Oath.

[History] Ord. 198 (11/10/03); Ord. 32 (3/4/75).

3-01.260 Spokesperson's Oath.

The oath that all persons desiring to appear as spokesperson in Tribal Court shall take is as follows:

Spokesperson's Oath

Swinomish Indian Reservation, ss.

I, _____ do solemnly swear:

- (1) I have read the applicable provisions of the Swinomish Tribal Code and am familiar with their contents.
- (2) I will support the Constitution of the Swinomish Tribe in all respects.
- (3) I will abide by the rules established by the Senate and the Swinomish Tribal Court.
- (4) I will at all times maintain the respect due the Tribal Court and its officers.

- (5) I will not counsel or speak for any suit or proceeding that shall appear to me to be unjust, or any defense except such as I believe to be honestly debatable under the law of the Swinomish Tribe unless it be in defense of a person charged with a public offense.
- (6) I will employ such means only as are consistent with truth and honor and will never seek to mislead a judge or jury by any false statements.
- (7) I will abstain from all offensive conduct in Tribal Court.

Subscribed and sworn to before me this ____ day of _____, 20__

[History] Ord. 198 (11/10/03); Ord. 32 (3/4/75).

3-01.270 Tribal Court Bar Roster.

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

[History] Ord. 198 (11/10/03); Ord. 32 (3/4/75).

3-01.280 Tribal Court Bar Disbarment.

Any spokesperson violating the Spokesperson's Oath shall be subject to disbarment. The Tribal Court judge shall prepare in writing a complaint against such spokesperson stating reasons for disbarment. Within ten (10) days of receipt of such complaint, the Court of Appeals shall hold a hearing at which time the spokesperson involved may present witnesses and a defense of his or her actions. The decision of the Court of Appeals shall be final.

[History] Ord. 198 (11/10/03); Ord. 32 (3/4/75).

3-01.290 Contempt of Court.

Any spokesperson failing to maintain the respect due the Tribal Court or engaging in offensive conduct in the courtroom shall be deemed guilty of civil contempt of court and subject to immediate sanction by the Tribal Court judge.

[History] Ord. 198 (11/10/03); Ord. 32 (3/4/75).

3-01.300 Appeal.

Any person denied admission to the Tribal Court Bar or any spokesperson found guilty of contempt of court by the Tribal Court judge may appeal to the Court of Appeals. Such person or spokesperson shall have the right to a hearing before such panel within ten (10) days of his denial or conviction and shall have the right to present a defense. The decision of a majority of the Court of Appeals shall be final.

[History] Ord. 198 (11/10/03); Ord. 32 (3/4/75).

Subchapter VI - General Rules of Court

3-01.310 Conduct.

All court proceedings shall be conducted in a dignified and respectful manner. All persons addressing the court shall rise if physically able and shall speak in a clear and courteous manner.

[History] Ord. 408 (9/15/20); Ord. 198 (11/10/03); Ord. 32 (3/4/75).

3-01.320 Time.

All trials shall be commenced at a designated time determined by the court with reasonable notice of such time being given to the parties.

[History] Ord. 198 (11/10/03); Ord. 32 (3/4/75).

3-01.330 No Discussion With Jurors.

No person, including members of the court's staff, any of the parties or witnesses, or any other person shall discuss with any known juror any case pending before such juror, or which may come before such juror, either before or during the trial, and any juror who has any personal knowledge about the case or who has discussed it with any of the parties, witnesses, or court officials shall be excused by the judge.

[History] Ord. 198 (11/10/03); Ord. 32 (3/4/75).

3-01.340 No Discussion With Judge.

No witness or party to any case shall under any circumstances either before or during trial attempt to discuss any case pending before the court with any of the judges except in open court and with either the clerk of the court or one of the other judges present and then shall under no circumstances attempt to influence the court's decision unless in the course of regular court proceedings.

[History] Ord. 198 (11/10/03); Ord. 32 (3/4/75).

Subchapter VII - Clerk and Records

3-01.350 Clerk.

The Chief Judge, with the concurrence of the Senate, shall appoint a Clerk of the Court. The Clerk of the Court shall be under the supervision of the Chief Judge. The clerk shall render assistance to the trial court, to the Appellate Court, and to the police force of the Reservation. The clerk, serving in a neutral capacity and refraining from offering legal advice, may assist individual members of the Tribe in the drafting of complaints, answers, subpoenas, warrants, and any other documents incidental to the lawful function of the court. It shall be the further duty of the clerk to attend and to keep a record of all proceedings of the court, to administer oaths to witnesses, and to perform such other duties as the Chief Judge shall designate. The clerk, before entering upon his or her duties, shall, at tribal expense, post bond in an amount determined by the Senate, or shall be covered by the blanket bond provided for all tribal employees.

[History] Ord. 198 (11/10/03); Ord. 32 (3/4/75).

3-01.360 Records.

The Tribal Court shall keep a record of all proceedings of the court. Such record shall reflect the title of the case, the names of the parties, the substance of the complaint, the names and addresses of all witnesses, the date of the hearing or trial, by whom conducted, the findings of the court or jury, and the judgment, together with any other facts or circumstances deemed of importance to the case.

[History] Ord. 198 (11/10/03); Ord. 32 (3/4/75).

3-01.370 Copies of Laws.

The Tribal Court shall be provided with copies of the Swinomish Tribal Code, all Ordinances of the Senate, and such regulations as may be applicable to the conduct of the business of the court.

[History] Ord. 198 (11/10/03); Ord. 32 (3/4/75).

Subchapter VIII – Court Bailiff

3-01.400 Court Bailiff.

The role of Court Bailiff is established to protect the Swinomish Tribal Court and all who appear in Swinomish Tribal Court. The Court Bailiff may be a law enforcement officer or a specially commissioned officer. The Court Bailiff shall be supervised by the Chief Judge. The Court Bailiff may perform other clerk functions as assigned by the Chief Judge. The

Court Bailiff shall render assistance to the Trial Court, lower courts of special jurisdiction, the Appellate Court, and to the police force of the Swinomish Indian Tribal Community.

[History] Ord. 415 (3/6/21).

3-01.410 Minimum Qualifications of Court Bailiff.

- (A) The minimum qualifications of a Court Bailiff shall be at least equal to those of a specially commissioned officer and shall be as follows:
 - (1) Must be twenty- one (21) years of age;
 - (2) Must have a minimum high school diploma or GED;
 - (3) Must be a U.S. Citizen;
 - (4) Must possess a valid Washington State Driver's License;
 - (5) Must have a reasonably clear driving record;
 - (6) Must have completed the Washington State Certified Reserve Academy, Corrections Academy, or Washington State Basic Law Enforcement Academy or equivalent, or be willing to acquire equivalent training within a reasonable time after commission;
 - (7) Must be able to submit to and pass a psychological examination;
 - (8) Must be able to pass a thorough background check including a criminal history background check and/or polygraph examination if deemed necessary by the Chief Judge; and
 - (9) Must possess such other qualifications as the Senate deems appropriate.
- (B) Preference in hiring shall be given to Native Americans in accordance with Swinomish Employment Rights laws.

[History] Ord. 415 (3/6/21).

3-01.420 Authority of Court Bailiff.

- (A) General Authority. A Court Bailiff shall have the authority to perform all acts authorized by this Title or that are incidental or necessary to the performance of authorized acts. The scope of authority shall extend to wherever the Swinomish Tribal Court may convene, and the surrounding areas thereto, and wherever directed by the Chief Judge or a law enforcement officer in the performance of the duties of this Title.

- (B) Authority for Search and Seizure. For actions taken within the scope of their authority under this Title, and except as may be limited by any other provision of this Title, a Court Bailiff shall have the full power and authority to lawfully detain, stop, question, and effect searches and seizures for Title 4 offenses that occur within the court bailiff's presence and while exercising his enumerated duties.

[History] Ord. 415 (3/6/21).

3-01.430 Duties of Court Bailiff.

- (A) A Court Bailiff shall protect the Swinomish Tribal Court and all who appear, and may serve other clerk functions as directed by the Chief Judge. A Court Bailiff may also perform prisoner transport duties or other duties related to inmate and court security and as ordered by the Tribal Court Judge. Necessary and related duties include but are not limited to the following:
- (1) To lend assistance to fellow officers when such assistance is consistent with the authorized duties of this Title;
 - (2) To secure Court sessions by providing protection and assistance for Court personnel and others who appear;
 - (3) To ensure proper decorum is maintained in the courtroom during proceedings and respond to violations of Court rules or Swinomish law;
 - (4) To assist and maintain chain of evidence for items admitted in court;
 - (5) To exercise responsibility for security and presence of jurors appearing in Swinomish Tribal Court;
 - (6) To assist with service of process duties as designated by the Chief Judge;
 - (7) To observe and report all violations of any law or regulations coming to his or her notice or reported for attention;
 - (8) To detain all persons remanded to custody by the Tribal Court;
 - (9) To inform himself or herself as to the laws and regulations applicable to the Swinomish Indian Tribal Community; and
 - (10) To report any action taken to protect the Court or those who appear before it to the on duty Swinomish Police Supervisor as soon as safe to do so.

- (B) Court Bailiffs shall perform their duties in accordance with accepted, contemporary law enforcement practices and Swinomish Police Department and Swinomish Tribal Court policies. All assigned duties and tasks are expected to be performed in an effective, efficient and safe manner.
- (C) Court Bailiffs shall receive training and necessary supervision from the Swinomish Police Chief or designee, who shall be responsible for providing any necessary training and supervision in the areas of de-escalation, crisis intervention, use of force, defensive tactics, and firearms and other weapons.
- (D) Court Bailiffs will receive semi-annual written performance evaluations by the Police Chief or designee regarding actions taken in service of the bailiff's law enforcement commission. Evaluations shall be submitted to the Chief Judge.

[History] Ord. 415 (3/6/21).

Subchapter IX - Repealer & Severability

3-01.500 Repealer.

This Chapter repeals and supersedes Ordinance 1, Ordinance 2, Ordinance 7, Ordinance 32, Ordinance 87 and Ordinance 154 and any inconsistent provisions of any prior ordinance or resolution.

[History] Ord. 198 (11/10/03).

*Previously codified as 3-01.380.

3-01.510 Severability.

If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of this Title, or the application of the provision to other persons or circumstances shall remain in effect.

[History] Ord. 198 (11/10/03); Ord. 32 (3/4/75).

*Previously codified as 3-01.390.

Annotations

STC 3-01.050

NOTES OF DECISIONS

Interest in trust land 1

1. Interest in Trust Land

Where non-native plaintiff and non-native defendant respectively held interest and leasehold in trust land located within the exterior boundaries of the Swinomish Indian Reservation and subject matter of suit concerned said land, civil jurisdiction in Swinomish Tribal Court was proper. *Owens v. Jackson*, CV-EV-2006-0086 (Swinomish Tribal Ct. June 27, 2006).