

# EXHIBIT 1

## The Tulalip Tribes of Washington

**TTC 4.25.030 General jurisdiction.**

Jurisdiction over domestic and family violence matters shall be in accordance with TTC [Title 2](#). In addition, the Tulalip Tribal Court shall retain jurisdiction over members of Federally recognized Indian tribes and any violations of orders of protection entered pursuant to this chapter which are alleged to have occurred outside of the boundaries of the Tulalip Indian Reservation where such orders are entitled to recognition outside Reservation boundaries as a matter of full faith and credit. [Res. 2013-379; Ord. 117 § 1.2, 11-5-2001 (Res. 2001-365). Formerly 4.25.020].

**TTC 4.25.040 Special domestic violence criminal jurisdiction.**

(1) The Tulalip Tribes hereby exercises "special domestic violence criminal jurisdiction" as a "participating tribe," as defined within 25 U.S.C. 1304(2013), subject to applicable exceptions defined therein, in the Tulalip Tribes Domestic Violence Court.

(2) In all proceedings in which the Tribal Court is exercising special domestic violence criminal jurisdiction as a participating tribe, all rights afforded by Chapter 2.25 TTC shall apply and those enumerated in the Indian Civil Rights Act, 25 U.S.C. 1302 to all defendants. Should there be any inconsistency between Chapter 2.25 TTC and 25 U.S.C. 1302, those of 25 U.S.C. 1302 shall apply.

(3) Every defendant has the privilege of the writ of habeas corpus to test the legality of his or her detention by order of the Tulalip Tribes and may petition the Court to stay further detention pending the habeas proceeding.

(a) A court shall grant a stay if the court:

(i) Finds that there is a substantial likelihood that the habeas corpus petition will be granted; and

(ii) After giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.

(4) The Tulalip Tribes hereby declares its special domestic violence criminal jurisdiction over any person only if he or she:

(a) Resides within the jurisdiction of the Tulalip Tribes; or

(b) Is employed within the jurisdiction area of the Tulalip Tribes; or

(c) Is a spouse, intimate partner, or dating partner of:

(i) A member of the Tulalip Tribes; or

(ii) A member of another Indian tribe who resides within the jurisdiction of the Tulalip Tribes. [Res. 2013-379].

**TTC 2.25.070 Rights of the defendant in a criminal proceeding.**

(1) Presence of the Defendant. Unless otherwise set forth in this chapter, a defendant shall be present at all stages of the proceedings. The Court in its discretion may allow the defendant to appear through counsel.

(2) Rights of the Defendant. In all criminal proceedings, the defendant shall have the following rights:

- (a) To be free from excessive bail and cruel punishment;
- (b) To defend in person or by counsel;
- (c) To be informed of the nature of the charges pending against him or her and to have a copy of those charges;
- (d) To confront and cross-examine all prosecution or hostile witnesses;
- (e) To compel by subpoena:
  - (i) The attendance of any witnesses necessary to defend against the charges; and
  - (ii) The production of any books, records, documents, or other things necessary to defend against the charges;
- (f) To have a speedy and public trial by Judge or a jury, unless the right to a speedy trial is waived or the right to a jury trial is waived by the defendant;
- (g) To appeal any final decision of the Tribal Court to the Tribal Court of Appeals;
- (h) To be tried only once by the Tribal Court for the same offense;
- (i) Not to be required to testify, and no inference may be drawn from a defendant's exercise of the right not to testify; and
- (j) To petition for a writ of habeas corpus.

(3) Right to Counsel. During the initial appearance before the Court, every defendant must be informed of the right to have counsel at his or her own expense or the right to apply for appointment of counsel. If the defendant wishes to obtain counsel, or is found to be ineligible for appointed counsel, the Court shall grant a reasonable time prior to arraignment for defendant's attorney to enter an appearance in the cause. If the defendant is being charged with a felony crime, with potential sentencing in excess of one year:

- (a) The defendant shall have the right be represented by an attorney who is a member of the Tulalip Tribal Bar and who is licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys; and

(b) If the defendant is indigent, the Court shall, at the Tribes' expense, provide the defendant with an attorney meeting the qualifications in subsection (3)(a) of this section at all critical stages of the criminal proceeding.

(4) Right to a Jury Trial. A defendant charged with a crime for which jail is a penalty has a right to a trial by jury of six fair and impartial jurors. A defendant may waive the right to a jury trial in a written voluntary statement to the Court.

(5) Subsequent Prosecutions. A subsequent prosecution is allowed when the previous prosecution was properly terminated under any of the following circumstances:

(a) The defendant consents to the termination or waives, by motion, an appeal upon a judgment of the Court to the termination of the prosecution;

(b) The Tribal Court finds that a termination, other than by acquittal, is necessary because:

(i) It is impossible to proceed with the trial in conformity with the law;

(ii) There is a legal defect in the proceeding that would make any judgment entered upon a verdict reversible as a matter of law;

(iii) Prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the Tribes;

(iv) The jury cannot agree upon a verdict; or

(v) A false statement of a juror on voir dire prevents a fair trial;

(c) The subsequent prosecution was for an offense which was not completed when the former prosecution began; or

(d) There was a transfer of jurisdiction to another authority.

The following actions will not constitute an acquittal of the same offense: dismissal for insufficiency in form; dismissal without prejudice upon a pretrial motion; or discharge for want of prosecution without a judgment of acquittal.

(6) Writ of Habeas Corpus.

(a) Availability of Writ.

(i) Except as provided in subsection (6)(a)(ii) of this section, every person within the jurisdiction of the Tulalip Tribes imprisoned or otherwise restrained of liberty may prosecute a writ of habeas corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from imprisonment or restraint.

(ii) The writ of habeas corpus is not available to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense by a court of competent jurisdiction and has

exhausted the remedy of appeal, nor is it available to attack the legality of an order revoking a suspended or deferred sentence. Moreover, a person may not be released on a writ of habeas corpus due to any technical defect in commitment not affecting the person's substantial rights.

(iii) When a person is imprisoned or detained in custody by the Tribes on any criminal charge for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring that fact in his petition, without alleging that he is illegally confined.

(b) Issuance of Writ.

(i) Application for a writ of habeas corpus is made by petition signed either by the party for whose relief it is intended or by some person on the petitioner's behalf, and must be filed with the Clerk of the Court. It must specify:

(A) That the petitioner is unlawfully imprisoned or restrained of liberty;

(B) Why the imprisonment or restraint is unlawful; and

(C) Where or by whom the petitioner is confined or restrained.

(ii) The parties to a writ, namely the Tulalip Prosecutor, Chief Judge of the Tribal Court, and the Tulalip Chief of Police, must be named. All parties must be named if they are known or otherwise described so that they may be identified.

(iii) The petition must be verified by the oath or affirmation or declaration under penalty of perjury that the contents of the declaration are true to the best of the declarant's belief of the party making the application.

(c) Granting of the Writ. Any Justice of the Court of Appeals may grant a writ of habeas corpus upon petition by or on behalf of any person restrained of liberty within the Justice's jurisdiction. If it appears to such Justice that a writ ought to issue, it shall be granted without delay, and may be made returnable to the Court of Appeals.

(d) Time of Issuance and Requirements for Service.

(i) A writ of habeas corpus or any associated process may be issued and served on any day at any time. The writ should be served on the Tribal Prosecutor and Chief Judge of the Trial Court.

(ii) The writ must be served upon the person to whom it is directed. If the writ is directed to a Tribal agency or employee, a copy of the writ must be served upon the Tribal Prosecutor.

(iii) The writ must be served by a Tribal Police Officer, or any other person directed to do so by the Justice or the Court, in the same manner as a civil summons, except where otherwise expressly directed by the Justice, the Court, or the employee of any correctional facility in which the petitioner is held.

(e) Return of the Writ. The Prosecutor or his or her designee shall make a return and state in that return:

(i) Whether the person is in custody or under that person's power of restraint; and

(ii) If the person is in custody or otherwise restrained, the authority for and cause of the custody or restraint; or

(iii) If the person has been transferred to the custody of or otherwise restrained by another to whom the party was transferred, the time and place of the transfer, the reason for the transfer, and the authority under which the transfer took place.

The return must be signed and verified by affirmation.

(f) Hearing. The Chief Judge commanded by the writ shall cause the petitioner to be brought before the Court as commanded by the writ unless the petitioner cannot be brought before the Court without danger to the petitioner's health. Sickness or infirmity must be confirmed. If the Court is satisfied with the truth of the writing, the Court may proceed and dispose of the case as if the petitioner were present or the hearing may be postponed until the petitioner is present. Any law enforcement officer may bring the person as directed. Unless the Court postpones the hearing for reasons of the petitioner's health, the Court shall immediately proceed to hear and examine the return. The hearing may be summary in nature. Evidence may be produced and compelled as provided by the laws governing criminal procedures and evidence.

(g) Refusal to Obey Writ Is Contempt. If the person commanded by the writ refuses to obey, that person must be adjudged to be in contempt.

(h) Disposition of Petitioner. If the Court finds in favor of the petitioner, an appropriate order must be entered with respect to the judgment or sentence in the former proceeding and any supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the Court finds for the prosecution, the petitioner must be returned to the custody of the person to whom the writ was directed.

(7) Right to a Speedy and Public Trial. A defendant not released from jail pending trial shall be brought to trial not later than 60 days after the date of arraignment. A defendant released from jail, whether or not subjected to conditions of release pending trial, shall be brought to trial not later than 90 days after the date of arraignment. The following extensions of time limits apply, notwithstanding the preceding time limits:

(a) Revocation of Release. A defendant whose release has been revoked by the Court shall be brought to trial no later than 60 days following the revocation or previously scheduled trial date, whichever is sooner.

(b) Failure to Appear. When a defendant fails to appear for any hearing, all future hearings shall be stricken from the Court calendar and a bench warrant will issue. Such failure to appear constitutes a waiver of the right to a speedy trial. When the defendant next appears before the Judge, the speedy trial clock begins at zero.

(c) Trial Preparation Time. The defendant is entitled to reasonable time to prepare for trial after entering a plea of not guilty.

(d) Extensions. When a trial is not begun on the date set because of unavoidable or unforeseen circumstances beyond the control of the Court or the parties, the Court, even if the time for trial has expired, may extend the time within which trial must be held in increments of no more than five judicial

days unless the defendant will be substantially prejudiced in his or her defense. The Court must state on the record or in writing the reasons for the extension.

(i) Disqualification of Judge. In the event that the trial Judge is disqualified by affidavit or by recusal under TTC [2.05.060](#), the speedy trial date shall be extended beyond its current expiration by 15 days.

(e) Continuances. The Court may continue a trial beyond the speedy trial period as follows:

(i) Upon written agreement of the parties which must be signed by the defendant or all defendants. The agreement shall be effective when approved by the Court on the record or in writing.

(ii) On motion of the Tribal Prosecutor, the Court, or a party, the Court may continue the case when required in the administration of justice and the defendant will not be substantially prejudiced in the presentation of the defense. The motion must be filed on or before the date set for trial or the last day of any continuance or extension granted pursuant to this rule. The Court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that party's objection to the requested delay.

(f) Computation of Time. The following periods shall be excluded in computing the time for arraignment and the time for trial:

(i) All proceedings relating to the competency of a defendant to stand trial, terminating when the Court enters a written order finding the defendant to be competent;

(ii) Preliminary proceedings and trial on another charge;

(iii) The time during which a defendant is detained in jail or prison by authorities other than the Tulalip Tribes and the time during which a defendant is subjected to conditions of release not imposed by a Court of the Tulalip Tribes; and

(iv) All proceedings in Juvenile Court.

(g) Waiver. A defendant may waive the right to a speedy trial. Such waiver shall be in writing and shall be signed by the defendant. The waiver shall be to a date certain. [Res. 2013-102; Res. 2012-445 § 9; Ord. 49 § 5.7, 1-8-2010 (Res. 2010-10)].



**TTC 2.05.110 Juries.**

(1) Jury Pool. A list of eligible jurors shall be prepared by the Court. The eligible juror list shall be updated from time to time, but no less than once in each year. The Court shall provide for the selection of names of persons eligible for service as jurors. Jurors shall be 18 years of age or older and, notwithstanding any other law of the Tulalip Tribes or any of its agencies, shall be chosen from the following classes of persons:

- (a) Tribal members living on or near the Tulalip Indian Reservation;
- (b) Residents of the Tulalip Indian Reservation; and
- (c) Employees of the Tulalip Tribes or any of its enterprises, agencies, subdivisions, or instrumentalities who have been employed by the Tribes for at least one continuous year prior to being called as a juror.

(2) Formation of Jury. Juries will be comprised of six jurors. A person may be excused from serving on a jury upon good cause shown under oath to a Judge. Jurors whose employers provide for compensated leave for jury service shall not be excused by the Court because of work-related responsibilities, except under extraordinary circumstances. The Judge shall consider the needs of the Court to maintain an adequate jury pool before allowing jurors to be excused for employment reasons. Members of the Board of Directors shall be exempt from serving on juries during their terms of office.

- (a) Random Selection. The Clerk of the Court will randomly select a minimum of 25 names from the jury pool.
- (b) Juror Summons. The Court shall issue summons and thereby notify persons selected for jury service. Persons selected for jury service shall be summoned by mail or personal service. Persons who do not appear after proper notice of jury service shall be subject to contempt of Court.

(3) Selection (Voir Dire). After summoning jurors and before trial, or at a time designated by the Court, the Clerk shall notify the Court and counsel of the names of the members of the jury pool appearing for selection. In selecting a jury from among the panel members, the initial questioning of the jurors shall be conducted by the Judge in order to determine whether each prospective juror is capable of being fair and impartial. Questions to be asked by the Court include whether a panel member:

- (a) Is directly related to any person involved in the action, including, but not limited to, the parties, counsel, alleged victims, or any prospective witness;
- (b) Is or has been involved in any business, financial, professional, or personal relationship with a party or alleged victim;
- (c) Has had any previous involvement in a civil or criminal lawsuit or dispute with a party or alleged victim;
- (d) Has a financial or personal interest in the outcome of the action before the Court; or
- (e) Has formed an opinion as to the defendant's guilt.

When the Court determines that a juror is prejudiced or cannot act impartially, the juror shall be excused. After questioning by the Judge, both parties may question the jurors using the struck jury system. Either party may

question the jurors concerning the nature of the action, including burden of proof in criminal cases and the presumption of innocence. The Judge may limit examination of jurors when the Judge believes such examination to be improper or unacceptably time consuming.

(4) Challenges. All challenges must be made to the Tribal Court before the jury is empanelled and sworn. When a potential challenge for cause is discovered after the jury is sworn, and before the introduction of any evidence, the Court may allow a challenge for cause to be made.

(a) For Cause. Each party shall have unlimited challenges for cause. Each challenge must be tried and determined by the Court at the time the challenge is made.

(b) Peremptory. Each party shall have two peremptory challenges. In criminal cases where defendants are tried together, the prosecution and defense shall each be entitled to one additional peremptory challenge. In civil cases involving multiple parties, additional challenges may be allowed at the discretion of the Court.

(5) Motion to Discharge.

(a) Venire or Jury. Any objection to the manner in which the venire or jury has been selected or drawn shall be raised by motion to discharge.

(b) Court's Ruling. It shall be the duty of the Court to conduct a hearing on any motion to discharge. The burden of proof shall be on the movant. If the Court finds that the venire was improperly selected or drawn, the Court shall order a new venire. If the Court finds that the jury was improperly selected or drawn, the Court shall order the jury discharged and the selection or drawing of a new jury.

(6) Conflicts of Interest. No person shall be qualified to sit on a jury panel in the Tribal Court in any case where that person has a direct interest or wherein any relative, by marriage or blood, in the first or second degree is a party; nor shall any party be required to use a peremptory challenge to remove a person not qualified to serve as a juror under this section. This section shall not be construed as the sole cause upon which a juror may be challenged for cause, and other conflicts of interest shall be considered by the Judge.

(7) Emergency Additions. In the event there is a shortage of jurors, the Court may call upon anyone eligible to serve as a juror in the case without giving any advance notice.

(8) Fees. Every person who is required to attend Court for selection or service as a juror shall be entitled to fees for each day, unless otherwise compensated through Tribal ordinance, as set by resolution of the Board of Directors.

(9) Juror Oath. The jury shall be sworn in by the Court. Any juror who violates the oath may be held in contempt of Court.

(10) Conduct of Jury During Trial. Once empanelled, jurors shall be instructed by the Judge that it is their duty not to converse among themselves or with anyone else on any subject connected with the trial, or to form or express any opinion thereon, until the issues of the case are finally submitted to them. Jurors may be allowed to take notes, in the discretion of the Court. At each adjournment recess prior to submission of the case to the jury, jurors' notes shall be collected by the Bailiff and the Judge shall instruct the jurors as to whether they may separate or must remain in the care of the Bailiff or other proper officer of the Court.

(11) View of Relevant Place or Property. Upon request by either party, the Court may allow the jury to view any place or property deemed pertinent to the just determination of the case. If viewing of a place or property is deemed appropriate, the Court shall place the jury under the custody of the Bailiff, or other proper officer of the Court, who shall then transport the jury to the viewing place. The place or property will be shown to the jury by a person appointed by the Court for that purpose, and the jurors may personally inspect the same. The Bailiff, or other proper officer of the Court, must ensure that no person speaks or otherwise communicates with the jury, on any subject connected with the trial, while viewing the place or property or traveling to or from the viewing site. After the jury has viewed the place or property, the Bailiff, or other proper officer of the Court, shall return the jurors to the courtroom without unnecessary delay or at a specified time, as directed by the Court.

(12) Jury Instructions.

(a) Submission.

(i) General. Each party shall propose jury instructions in writing as set forth by the criminal or civil procedure rules of this title. If no jury instructions are submitted to the Court, the Judge may order one or more parties to submit jury instructions.

(ii) Special. If either party desires a special instruction to be given to the jury, such proposed instruction shall be reduced to writing, signed by the party offering the instruction, and delivered to the Judge.

(b) Content. All jury instructions shall adequately inform the jurors of:

(i) Which decisions are made by the jury and which by the Presiding Judge;

(ii) The issues of fact in the case;

(iii) The rules of law to be applied to the issues of fact; and

(iv) The burden of proof with respect to each issue of fact.

(c) Disputed Instructions. A party not offering a proposed instruction shall be allowed reasonable opportunity to examine the proposed instruction and object to it. The objection must specifically state on what grounds the instruction is not an accurate statement of the law or is not an appropriate instruction for this particular case and, therefore, should not be given. A dispute regarding a proposed jury instruction must be settled during a settlement hearing outside the presence of the jury. Parties must note any objections to the jury instructions at the settlement of instructions or in writing prior to the settling hearing. A record must be made at the hearing to settle instructions.

(d) Delivery and Incorporation into the Court Record. After all evidence has been presented, and before closing arguments, the Court shall give both general and specific instructions to the jurors. For the record, but not for the jury, the Court shall mark or endorse each instruction in such a manner that shall distinctly reflect what proposed instructions were rejected, what were given in whole, and what were modified, together with the Court's reasons for giving as requested, as modified, or for refusing a proposed instruction. All proposed instructions are part of the Court record. All objections to jury instructions must be noted on the Court record, as well as the Court's reasons for either giving as requested, as modified, or for refusing a proposed instruction.

(13) Jury Deliberations. After closing arguments, the Court shall commit the jury to the care of a Bailiff or other officer of the Court who shall keep the jurors together and prevent communication between the jurors and others. Upon retiring to deliberate, the jurors shall select a juror as foreperson. After the jury has retired for deliberation, if there is any disagreement among the jurors as to the testimony or if the jurors desire to be informed on any point of law arising in the cause, they shall notify the Bailiff or the officer appointed to keep them together who shall then notify the Court. The information requested may be given, in the discretion of the Court, after consultation with the parties.

(14) Items That May Be Taken into Jury Room. Upon retiring for deliberation, the jurors shall take with them the written jury instructions read by the Court, exhibits admitted into evidence, and specific other exhibits. Jurors' notes may be taken into the jury room at the discretion of the Court. All evidence that has been admitted may be allowed in the jury room, unless the Judge finds good cause not to permit it in the jury room.

(15) Activity of the Court During Jury's Absence. While the jury is absent, the Court may adjourn or conduct other business, but it must be open for every purpose connected with the cause submitted to the jury until a verdict is returned or the jury discharged.

(16) Form of Verdict. The jury shall return a verdict as instructed by the Court and for each offense charged. The verdict must be unanimous in all criminal actions. The verdict must be by five out of six in all civil cases. The verdict must be signed by the foreperson and returned by the jury to the Judge in open Court. When two or more defendants are involved in the case before the jury, the jurors may reach a verdict regarding any one of the defendants. If the jury cannot agree with respect to all the defendants, the defendant or defendants as to whom it does not agree may be tried again.

(17) Polling the Jury. When a verdict is returned, but before it is recorded, the jury shall be polled at the request of any party or upon the Court's own motion. If the results of the poll show that the verdict does not reflect the verdict returned, the jury may be directed to return for further deliberations or may be discharged at the Court's discretion.

(18) Discharging Jurors. When the jury has reached a verdict or has determined that it shall be unable to do so, even with additional deliberation, the Court shall discharge the jurors from service. [Ord. 49 § 1.11, 1-8-2010 (Res. 2010-10)].

## JURY SUMMONS

**TO: JURORNAME**

Juror Mailing Address

Juror Mailing City, Juror Mailing State Juror Mailing Zip

- 1) **YOU ARE HEREBY ORDERED** to appear before The Tulalip Tribal Court, located at 6103 31<sup>st</sup> Avenue NE Tulalip, Washington 98271 on the following dates to serve as a juror until released from jury service by this Court:

**FEBRUARY 5, 2014 at 9:00 a.m.**

**FEBRUARY 12, 2014 at 9:00 a.m.**

**FEBRUARY 19, 2014 at 9:00 a.m.**

**FEBRUARY 26, 2014 at 9:00 a.m.**

- 2) **YOU WILL NEED TO CALL (360) 716-4784 EVERY TUESDAY PRIOR TO THE ABOVE DATES AFTER 4:00PM. PLEASE LISTEN CAREFULLY TO THE AUTOMATED INSTRUCTIONS.** The recorded message will instruct the date and time you should report to the courthouse. If you do not have to report, the recorded message will instruct you to call again with a specific date and time, or you should call the following Tuesday until you monthly service is complete. You will continue to call for instructions as directed for the month you are to serve.
- 3) **FAILURE TO APPEAR:** If you fail to appear at the required time and place, **AN ORDER SHALL BE ISSUED COMPELLING YOUR APPEARANCE BEFORE THE COURT. THE COURT WILL THEN DETERMINE IF YOUR FAILURE TO APPEAR SHOULD WARRANT PROCEEDINGS FOR CONTEMPT AND/OR REFERRAL FOR PROSECUTION** pursuant to Tulalip Tribal Codes, Title 2, Chapter 2.05, Section 2.05.110 (2)(b).
- 4) **PLEASE COMPLETE** the attached Jury Questionnaire and mail it to the Court or bring it with you when you report for duty.

5) **NOTICE OF HARDSHIP:** If you feel that your circumstances warrant a hardship excusal from jury duty, please send in the attached Notice of Hardship with a description of the hardship you would like the Court to consider, any supporting documentation, and the notice will reviewed and disposed by the Judge. A copy will be returned to you. To be excused from jury duty requires a signed hardship form from the Court, if this is not granted you are still ordered to appear on the above listed dates.

Dated: 1/17/2013



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Janine B. Van Dusen

Court Administrator

The Tulalip Tribal Court

## JUROR QUESTIONNAIRE

Name: Juror Name Address \_\_\_\_\_

Tel. ( ) - \_\_\_\_\_ Bus. ( ) - \_\_\_\_\_ Date of Birth: \_\_\_\_/\_\_\_\_/\_\_\_\_ Age: \_\_\_\_

### QUESTIONS

1. Are you a U. S. Citizen? .....  Yes  
 No
2. Are you 18 years of age or older? .....  Yes  
 No
3. Are you a Tulalip Tribal member? .....  Yes  
 No
4. Are you related by blood, marriage or adoption to a Tulalip Tribal Member? .....  Yes  
 No  
    a. If Yes, how are you related?  
    \_\_\_\_\_
5. Are you a member of a federally recognized tribe other than Tulalip? .....  Yes  
 No  
    a. If Yes, which Tribe? \_\_\_\_\_
6. Are you a resident of the Tulalip Reservation? .....  Yes  
 No  
    a. If Yes, for how long? \_\_\_\_\_
7. Are you an employee of the Tulalip Tribes? .....  Yes  
 No  
    a. If Yes, have you been an employee for **longer than one year** from today's date? ...  Yes  
     No
8. Have you ever been convicted of a Felony? ..  Yes  
 No  
    a. If Yes, what year? \_\_\_\_\_  
    b. If Yes, what county / state? \_\_\_\_\_  
    c. If Yes, under what last name? \_\_\_\_\_  
    d. If Yes, list all charges from each case: \_\_\_\_\_
9. City/State of birth: \_\_\_\_\_ Occupation: \_\_\_\_\_
10. Name of employer: \_\_\_\_\_ Length of time employed: \_\_\_\_\_
11. Marital Status:  Married  Single  Divorced  Separated  
    a. If married, my Spouses name and occupation are \_\_\_\_\_
12. Do you have children: . . . . .  Yes  No  
    a. If Yes, how many? \_\_\_\_\_  
    b. If Yes, what are the ages of your children: \_\_\_\_\_
13. Are you or have you ever been a member of the Military Service. ....  Yes  No  
    a. If Yes, which branch? : \_\_\_\_\_  
    b. If Yes, what was your rank? \_\_\_\_\_  
    c. If Yes, for how many years? \_\_\_\_\_  
    d. If Yes, were you honorably discharged? . . . . .  Yes  No  
    e. If Yes, are you retired military? . . . . .  Yes  No

14. Please check all that apply.

I have completed the following:  High School  College  Post Graduate

a. If College, degree obtained? .....  Yes  No

b. Are you currently a student? .....  Yes  No

15. Have you served on a past jury? . . . . .  Yes  No

a. If Civil: When: \_\_\_\_\_ Where: \_\_\_\_\_ How Long: \_\_\_\_\_

b. If Criminal: When: \_\_\_\_\_ Where: \_\_\_\_\_ How Long: \_\_\_\_\_

I swear under penalty of perjury that all the above statements are true and accurate to the best of my knowledge.

\_\_\_\_\_

\_\_\_\_\_

Date

Signature

### NOTICE OF HARDSHIP

I, **JURORNAME**, cannot serve on a jury because:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

Signature



**JURORNAME**

Juror Mailing Address

Juror Mailing City, Juror Mailing State Juror Mailing Zip

~~~~~

Received by: \_\_\_\_\_ Date: \_\_\_\_\_

**This request is [ ] Approved**

**[ ] Disapproved:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_

Judge

I \_\_\_\_\_ hereby certify that I mailed a copy  
of this document to the above named Juror to their  
address of record on \_\_\_\_\_ of \_\_\_\_\_ 2014.

\_\_\_\_\_  
Signature

From

## **TULALIP TRIBAL COURT RULES**

**Approved by the Tulalip Tribes Board of Directors**

**Resolution No. 2013-551**

### **Section 4**

### **Criminal Rules**

#### 4.2 JURY INFORMATION FORMS

Jury information forms shall be provided to the attorneys or pro se defendants prior to voir dire.

#### 4.3 JURY QUESTIONNAIRES

The Court may use jury questionnaires when appropriate. The parties may suggest questions for the jury questionnaires.

#### 4.3 INSTRUCTIONS TO THE JURY FOR CRIMINAL CASES

##### 4.3.1 Proposed Instructions

Unless otherwise ordered by the trial judge, proposed instructions shall be submitted by the parties two days prior to trial. Proposed instructions upon questions of law developed by the evidence, which could not reasonably have been anticipated, may be submitted at any time before the Court instructs the jury.

##### 4.3.2 Submission

- A) All instructions filed by a party shall be identified as the party's proposed instructions.
- B) Cited instructions shall be numbered and uncited instructions shall not be numbered.
- C) Parties shall file their proposed instructions as follows:
  - i) Original cited copy file with the Court;
  - ii) One cited copy and one uncited copy to the Judge; and
  - iii) One cited copy to opposing counsel.

##### 4.3.3 Form

Each proposed instruction shall be typewritten or printed on a separate sheet of letter size paper.

##### 4.3.4 Disregarding Requests

The Court may disregard any proposed instruction not submitted in accordance with this rule.

##### 4.3.5 Written Questions from the Jury during Deliberations

The jury shall be instructed that any question it wishes to ask the Court about the instructions or evidence should be signed, dated, and submitted in writing to the Court Clerk or bailiff without any indication of the status of the jury's deliberations. The Court shall notify the parties of the contents of the questions and provide them an opportunity to comment upon an appropriate response. Written questions from the jury, the Court's response and any

objections thereto shall be made a part of the record. The Court shall respond to all questions from a deliberating jury in open court or in writing. In its discretion, the Court may grant a jury's request to rehear or replay evidence, but should do so in a way that is least likely to be seen as a comment on the evidence, in a way that is not unfairly prejudicial and in a way that minimizes the possibility that jurors will give undue weight to such evidence. Any additional instruction upon any point of law shall be given in writing.

## **Section 6**

### **Tulalip Tribes Domestic Violence Court Rules**

#### 6.1 PURPOSE

Domestic violence offends the traditional Tulalip tribal values of honoring the family and respecting all members of the community, and it is contrary to the best interests of the family, the Tribes and the community. The purpose of the Tulalip Tribes Domestic Violence Court is to promote important traditional Tulalip tribal values by protecting victims of domestic violence and holding perpetrators accountable while ensuring that all persons accused of domestic violence crimes are provided equal protection and due process of law.

#### 6.2 CREATION

The Tulalip Tribal Court shall exercise the jurisdiction conferred by Chapter 4.25 of the Tulalip Tribal Code and while sitting in the exercise of such jurisdiction shall be known and referred to as the "Tulalip Domestic Violence Court."

#### 6.3 DOCKET

##### 6.3.1 Separate Docket

A separate docket shall be maintained for the Tulalip Domestic Violence Court. Cases assigned to the Tulalip Domestic Violence Court will be heard on Mondays, or as otherwise designated by the Tulalip Tribal Court calendar.

##### 6.3.2 Types of Cases Assigned

All criminal domestic violence cases (all criminal cases with the designation "DV") shall be assigned to the Tulalip Domestic Violence Court docket. Additionally, any civil protection order case involving the issuance, modification or enforcement of a permanent or temporary protection order (any civil case with the designation "RO") may be assigned to the Tulalip Domestic Violence docket at the judge's sole discretion.

#### 6.4 RIGHTS OF DEFENDANT

##### 6.4.1 Defendant Rights

It is the policy of Tulalip Domestic Violence Court to provide all defendants the full protection of the laws. Therefore, in all proceedings in which the Tulalip Domestic Violence Court is exercising its Special Domestic Violence Criminal Jurisdiction pursuant to TTC Chapter 4.25, all defendant rights afforded by TTC §4.25.040(2) shall apply. These rights include the following:

- A) To be free from excessive bail, excessive fines and cruel and unusual punishment;
- B) To defend in person or by counsel;
- C) To be informed of the nature of the charges pending against him or her and to have a copy of those charges;
- D) To have publicly available, the criminal laws, rules of evidence, and rules of criminal procedure of the Tribes, prior to being charged;
- E) To confront and cross-examine all prosecution or hostile witnesses;
- F) To compel by subpoena:
  - i) The attendance of any witness necessary to defend against the charges; and
  - ii) The production of any books, records, documents, or other things necessary to defend against the charges;
- G) To have a speedy and public trial by Judge or a jury, unless the right to a speedy trial is waived or the right to a jury trial is waived by the defendant;
- H) To have a judge presiding over the criminal proceeding:
  - i) Who has sufficient legal training to preside over criminal proceedings; and
  - ii) Who is licensed to practice law in any jurisdiction in the United States;
  - iii) Judge(s) meeting these qualifications can be designated to preside in the Special Domestic Violence Court. The Chief Judge shall designate and assign Judges to the Special Domestic Violence Court every January by standing order and the standing order and qualifications of the Judge will become part of the trial record.
- I) To appeal any final decision of the Tulalip Domestic Violence Court to the Tribal Court of Appeals;
- J) To be tried only once by the Tulalip Domestic Violence Court for the same offense;
- K) Not to be required to testify, and no inference may be drawn from a defendant's exercise of the right not to testify;
- L) To have a record of the criminal proceeding, including an audio or other recording, created and maintained;
- M) To petition for a writ of habeas corpus under Tulalip Tribal law and federal law; and
- N) All other rights whose protection is necessary under the Constitution of the United States including the right to be secure in their persons, houses, papers and effects against unreasonable search and seizures and not to be subjected to a warrant unless it was issued upon probable cause under oath or affirmation and particularly describing the place to be searched and the person or thing to be seized, the right to due process and equal protection of the law and rights in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise Special Domestic Violence Criminal Jurisdiction over the defendant.

#### 6.4.2 Right to Counsel

All defendants, regardless of the length of the potential sentence for the crime being charged, have the right to effective assistance of counsel meeting the requirements of TTC §2.25.070(3)(a) while the Tulalip Domestic Violence Court is exercising its Special Domestic Violence Criminal Jurisdiction conferred by Chapter 4.25 of the Tulalip Tribal Code. An indigent defendant shall be provided the assistance of a defense attorney meeting the requirements of TTC §2.25.070(3)(a) at the expense of the tribal government. Defense attorneys assigned to an indigent defendant will submit their credentials to the court demonstrating they meet the

requirements of federal law and such credentials and bar licensing will become part of the trial record.

#### 6.4.3 Right to Jury Trial

A defendant charged under TTC Chapter 4.25 has a right to a trial by jury of six fair and impartial jurors drawn from the community according to TTC §2.05.110. A defendant may waive the right to a jury trial in a written, voluntary statement to the Court. All jury verdicts must be unanimous.

### 6.5 SUPPLEMENTAL PROCEDURE

#### 6.5.1 Pre-Trial/Trial Procedure—Additional Requirement

- A) The initial appearance and/or arraignment will occur as currently outlined in the Tulalip Tribes criminal procedure rules. A Defendant charged with a domestic violence crime shall also be informed of his/her right to a federal writ of habeas corpus and or a stay under the federal Violence Against Women Act (VAWA). This notification will be contained in the Advisement of Rights Form signed by the Defendant. After the initial appearance and/or arraignment cases will be assigned to the Tulalip Domestic Violence Court calendar.
- B) All other generally applicable Civil and Criminal Rules of Procedure apply to these proceedings.

#### 6.5.2 Post-Trial Procedure

Post-trial procedure is meant to describe the general operation of the Domestic Violence Court and does not include procedures relating to appeals to the Tulalip Tribes Court of Appeals. All appeals will be handled as provided by the rules of appellate procedure.

#### 6.5.3 Sentencing and Probation

- A) The Tulalip Tribes Domestic Violence Court finds that each person who pleads guilty or is found guilty of a crime of domestic violence should be on monitored probation which includes participation in a certified Domestic Violence Batterer's Re-education program.
- B) The Domestic Violence Court will hold a weekly Monday calendar to monitor a participant's progress in their treatment program. This monitoring includes receiving input from treatment providers and probation on the successful participation with the treatment program requirements.
- C) The Judge shall review the client's progress at each review hearing and will impose short term or long term sanctions for noncompliance to encourage participation and completion of appropriate treatment modalities.

## EXHIBIT 2

# The Tulalip Tribes of Washington

## 2.25.070 Rights of the defendant in a criminal proceeding.

(1) Presence of the Defendant. Unless otherwise set forth in this chapter, a defendant shall be present at all stages of the proceedings. The Court in its discretion may allow the defendant to appear through counsel.

(2) Rights of the Defendant. In all criminal proceedings, the defendant shall have the following rights:

(a) To be free from excessive bail and cruel punishment;

(b) To defend in person or by counsel;

(c) To be informed of the nature of the charges pending against him or her and to have a copy of those charges;

(d) To confront and cross-examine all prosecution or hostile witnesses;

(e) To compel by subpoena:

(i) The attendance of any witnesses necessary to defend against the charges; and

(ii) The production of any books, records, documents, or other things necessary to defend against the charges;

(f) To have a speedy and public trial by Judge or a jury, unless the right to a speedy trial is waived or the right to a jury trial is waived by the defendant;

(g) To appeal any final decision of the Tribal Court to the Tribal Court of Appeals;

(h) To be tried only once by the Tribal Court for the same offense;

(i) Not to be required to testify, and no inference may be drawn from a defendant's exercise of the right not to testify; and

(j) To petition for a writ of habeas corpus.

(3) Right to Counsel. During the initial appearance before the Court, every defendant must be informed of the right to have counsel at his or her own expense or the right to apply for appointment of counsel. If the defendant wishes to obtain counsel, or is found to be ineligible for appointed counsel, the Court shall grant a reasonable time prior to arraignment for defendant's attorney to enter an appearance in the cause. If the defendant is being charged with a felony crime, with potential sentencing in excess of one year:

(a) The defendant shall have the right be represented by an attorney who is a member of the Tulalip Tribal Bar and who is licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys; and

(b) If the defendant is indigent, the Court shall, at the Tribes' expense, provide the defendant with an attorney meeting the qualifications in subsection (3)(a) of this section at all critical stages of the criminal proceeding.

(4) Right to a Jury Trial. A defendant charged with a crime for which jail is a penalty has a right to a trial by jury of six fair and impartial jurors. A defendant may waive the right to a jury trial in a written voluntary statement to the Court.

(5) Subsequent Prosecutions. A subsequent prosecution is allowed when the previous prosecution was properly terminated under any of the following circumstances:

(a) The defendant consents to the termination or waives, by motion, an appeal upon a judgment of conviction or otherwise, the right to object to the termination of the prosecution;

(b) The Tribal Court finds that a termination, other than by acquittal, is necessary because:

(i) It is impossible to proceed with the trial in conformity with the law;

(ii) There is a legal defect in the proceeding that would make any judgment entered upon a verdict reversible as a matter of law;

(iii) Prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the Tribes;

(iv) The jury cannot agree upon a verdict; or

(v) A false statement of a juror on voir dire prevents a fair trial;

(c) The subsequent prosecution was for an offense which was not completed when the former prosecution began; or

(d) There was a transfer of jurisdiction to another authority.

The following actions will not constitute an acquittal of the same offense: dismissal for insufficiency in form; dismissal without prejudice upon a pretrial motion; or discharge for want of prosecution without a judgment of acquittal.

(6) Writ of Habeas Corpus.

(a) Availability of Writ.

(i) Except as provided in subsection (6)(a)(ii) of this section, every person within the jurisdiction of the Tulalip Tribes imprisoned or otherwise restrained of liberty may prosecute a writ of habeas corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from imprisonment or restraint.

(ii) The writ of habeas corpus is not available to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense by a court of competent jurisdiction and has exhausted the remedy of appeal, nor is it available to attack the legality of an order revoking a suspended or deferred sentence. Moreover, a person may not be released on a writ of habeas corpus due to any technical defect in commitment not affecting the person's substantial rights.



(iii) When a person is imprisoned or detained in custody by the Tribes on any criminal charge for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring that fact in his petition, without alleging that he is illegally confined.

(b) Issuance of Writ.

(i) Application for a writ of habeas corpus is made by petition signed either by the party for whose relief it is intended or by some person on the petitioner's behalf, and must be filed with the Clerk of the Court. It must specify:

(A) That the petitioner is unlawfully imprisoned or restrained of liberty;

(B) Why the imprisonment or restraint is unlawful; and

(C) Where or by whom the petitioner is confined or restrained.

(ii) The parties to a writ, namely the Tulalip Prosecutor, Chief Judge of the Tribal Court, and the Tulalip Chief of Police, must be named. All parties must be named if they are known or otherwise described so that they may be identified.

(iii) The petition must be verified by the oath or affirmation or declaration under penalty of perjury that the contents of the declaration are true to the best of the declarant's belief of the party making the application.

(c) Granting of the Writ. Any Justice of the Court of Appeals may grant a writ of habeas corpus upon petition by or on behalf of any person restrained of liberty within the Justice's jurisdiction. If it appears to such Justice that a writ ought to issue, it shall be granted without delay, and may be made returnable to the Court of Appeals.

(d) Time of Issuance and Requirements for Service.

(i) A writ of habeas corpus or any associated process may be issued and served on any day at any time. The writ should be served on the Tribal Prosecutor and Chief Judge of the Trial Court.

(ii) The writ must be served upon the person to whom it is directed. If the writ is directed to a Tribal agency or employee, a copy of the writ must be served upon the Tribal Prosecutor.

(iii) The writ must be served by a Tribal Police Officer, or any other person directed to do so by the Justice or the Court, in the same manner as a civil summons, except where otherwise expressly directed by the Justice, the Court, or the employee of any correctional facility in which the petitioner is held.

(e) Return of the Writ. The Prosecutor or his or her designee shall make a return and state in that return:

(i) Whether the person is in custody or under that person's power of restraint; and

(ii) If the person is in custody or otherwise restrained, the authority for and cause of the custody or restraint; or

(iii) If the person has been transferred to the custody of or otherwise restrained by another to whom the party was transferred, the time and place of the transfer, the reason for the transfer, and the authority under which the transfer took place.

The return must be signed and verified by affirmation.

(f) Hearing. The Chief Judge commanded by the writ shall cause the petitioner to be brought before the Court as commanded by the writ unless the petitioner cannot be brought before the Court without danger to the petitioner's health. Sickness or infirmity must be confirmed. If the Court is satisfied with the truth of the writing, the Court may proceed and dispose of the case as if the petitioner were present or the hearing may be postponed until the petitioner is present. Any law enforcement officer may bring the person as directed. Unless the Court postpones the hearing for reasons of the petitioner's health, the Court shall immediately proceed to hear and examine the return. The hearing may be summary in nature. Evidence may be produced and compelled as provided by the laws governing criminal procedures and evidence.

(g) Refusal to Obey Writ Is Contempt. If the person commanded by the writ refuses to obey, that person must be adjudged to be in contempt.

(h) Disposition of Petitioner. If the Court finds in favor of the petitioner, an appropriate order must be entered with respect to the judgment or sentence in the former proceeding and any supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the Court finds for the prosecution, the petitioner must be returned to the custody of the person to whom the writ was directed.

(7) Right to a Speedy and Public Trial. A defendant not released from jail pending trial shall be brought to trial not later than 60 days after the date of arraignment. A defendant released from jail, whether or not subjected to conditions of release pending trial, shall be brought to trial not later than 90 days after the date of arraignment. The following extensions of time limits apply, notwithstanding the preceding time limits:

(a) Revocation of Release. A defendant whose release has been revoked by the Court shall be brought to trial no later than 60 days following the revocation or previously scheduled trial date, whichever is sooner.

(b) Failure to Appear. When a defendant fails to appear for any hearing, all future hearings shall be stricken from the Court calendar and a bench warrant will issue. Such failure to appear constitutes a waiver of the right to a speedy trial. When the defendant next appears before the Judge, the speedy trial clock begins at zero.

(c) Trial Preparation Time. The defendant is entitled to reasonable time to prepare for trial after entering a plea of not guilty.

(d) Extensions. When a trial is not begun on the date set because of unavoidable or unforeseen circumstances beyond the control of the Court or the parties, the Court, even if the time for trial has expired, may extend the time within which trial must be held in increments of no more than five judicial days unless the defendant will be substantially prejudiced in his or her defense. The Court must state on the record or in writing the reasons for the extension.

(i) Disqualification of Judge. In the event that the trial Judge is disqualified by affidavit or by recusal under TTC [2.05.060](#), the speedy trial date shall be extended beyond its current expiration by 15 days.

(e) Continuances. The Court may continue a trial beyond the speedy trial period as follows:

(i) Upon written agreement of the parties which must be signed by the defendant or all defendants. The agreement shall be effective when approved by the Court on the record or in writing.

(ii) On motion of the Tribal Prosecutor, the Court, or a party, the Court may continue the case when required in the administration of justice and the defendant will not be substantially prejudiced in the presentation of the defense. The motion must be filed on or before the date set for trial or the last day of any continuance or extension granted pursuant to this rule. The Court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that party's objection to the requested delay.

(f) Computation of Time. The following periods shall be excluded in computing the time for arraignment and the time for trial:

(i) All proceedings relating to the competency of a defendant to stand trial, terminating when the Court enters a written order finding the defendant to be competent;

(ii) Preliminary proceedings and trial on another charge;

(iii) The time during which a defendant is detained in jail or prison by authorities other than the Tulalip Tribes and the time during which a defendant is subjected to conditions of release not imposed by a Court of the Tulalip Tribes; and

(iv) All proceedings in Juvenile Court.

(g) Waiver. A defendant may waive the right to a speedy trial. Such waiver shall be in writing and shall be signed by the defendant. The waiver shall be to a date certain. [Res. 2013-102; Res. 2012-445 § 9; Ord. 49 § 5.7, 1-8-2010 (Res. 2010-10)].

## 2.05.030 General provisions.

(1) Purpose and Construction. The provisions of this title and TTC Title [3](#) shall be construed in accordance with Tribal custom as well as to achieve the following general goals:

- (a) To secure the just, speedy, and inexpensive determination of every civil action;
- (b) To provide for the just determination of every criminal proceeding;
- (c) To protect the rights of individuals;
- (d) To secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay; and
- (e) To enhance public safety on the Tulalip Reservation.

(2) Applicable Law. The Tulalip Tribal Courts shall apply the laws and ordinances of the Tulalip Tribes, including the custom laws of the Tribes, to all matters coming before the Courts; provided, that where no applicable Tulalip Tribal law, ordinance, or custom law can be found, the Courts may utilize, in the following order, the procedural laws of other Federally recognized Indian tribes, Federal statutes, Federal common law, State common law, and State statutes as guides to decisions of the Courts.

In all actions, and as to all claims or defenses, which concern or are based upon any contract, lease, lease assignment, loan agreement, credit agreement, a promissory note, assignment of rents, assignment of rental income, assignment of income or revenue, mortgage, deed of trust, any other agreement assigning, pledging or encumbering any collateral as security, or any other agreement or instrument, which contains a choice of law clause or provision that specifies or selects the governing law, the Tulalip Tribal Courts shall apply the governing law so specified or selected.

(3) Venue. There is one venue for causes of action arising under the Tulalip Tribal laws and that is Tulalip Tribal Court.

(4) Freedom From Improper Influence. The Court and the Prosecutor's Office shall be independent from improper influence. No person, including elected or appointed officials or employees of the Tulalip Tribes, shall attempt to improperly influence Court proceedings, or to interfere in any way with a Judge or Prosecutor in the performance of his or her duties.

(5) Rules of Court. The Judges may recommend adoption of rules of the Court regarding the rules of practice and process in Tulalip Tribal Court and for the keeping of dockets, records and proceedings and the regulation of the Court as may be deemed most conducive for the due administration of justice. The rules of the Court shall become effective upon approval by the Board of Directors.

(6) Computation of Time. Whenever a period of time is designated by these rules, it shall mean judicial days, except with reference to computations related to the speedy trial rule.

(7) Principles of Construction. In this code:

- (a) Masculine words shall include the feminine and singular words shall include the plural and vice versa, unless another meaning is clearly stated;

(b) Words shall be given their plain meaning and technical words shall be given their usually understood meaning where no other definition is specified;

(c) Whenever a term is defined within a specific section or chapter, that specific definition will control over a general definition unless the Court finds that a contrary meaning is intended;

(d) Provisions shall be construed as a whole to give effect to all its parts (i.e., titles, chapters, sections, etc.) in a logical, consistent manner; and

(e) If any provisions of this code or their application to any person or circumstance is held invalid, the remainder of this code, or the application of the affected provisions to other persons or circumstances, is not affected.

(8) Right to Counsel. Any person appearing as a party in Tribal Court shall have the right to counsel at his or her own expense. "Counsel" includes attorneys and spokespersons. Such counsel shall be of the parties' own choosing and need not be an attorney or admitted to practice before the bar of any state, but must be members of the Tulalip Tribal Bar. Indigent persons charged with a felony crime shall be appointed an attorney at the Tribes' expense at all critical stages of a criminal proceeding, up to and through trial.

(9) Attorneys Fees. Attorneys fees are not awardable unless otherwise provided by contract, ordinance, statute, or other law.

(10) Eligibility for Appointed Counsel in Criminal Cases. The Court may appoint counsel to assist any person appearing as a criminal defendant for charges carrying a potential jail sentence. In order to be eligible for such services, the defendant must be determined to be financially qualified based upon standards of indigency established by the Court.

(11) Definitions. Unless otherwise specified in a particular section, the following definitions shall apply to this chapter:

(a) "Contraband" means any property which is unlawful in itself, used for any unlawful purpose, or used in connection with or derived from any unlawful property or transaction.

(b) "Conviction" means a judgment or sentence entered upon a plea of guilty or no contest, or upon a verdict or finding of a defendant's guilt rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury. Once a conviction has been expunged, it is no longer considered a conviction under Tribal law.

(c) "Counsel" means an attorney or a Tribal spokesperson.

(d) "Defendant" means the party against whom relief or recovery is sought in an action or suit or the accused in a criminal case.

(e) "Elder" means a Tribal member or other individual residing on the Reservation who is:

(i) Sixty-two years of age or older; or

(ii) Determined by the Court to be an elder, pursuant to Tribal custom; or

(iii) At least 45 years of age and unable to protect him/herself from abuse, neglect, or exploitation because of a mental disorder or physical impairment or because of frailties or dependencies brought about by age or disease or alcoholism.

(f) “Firearm” means a weapon or device from which a projectile may be fired by an explosive such as gunpowder. Air guns and other guns fired by the release of compressed gas are firearms. “Firearm” shall also include any explosive, incendiary, or poison gas (i) bomb, (ii) grenade, (iii) rocket having a propellant charge of more than four ounces, (iv) missile having an explosive or incendiary charge of more than one-quarter ounce, (v) mine, or (vi) similar device.

(g) “Indian” means a person who is enrolled in a Federally recognized Indian tribe or who is recognized as a Canadian Indian.

(h) “Law enforcement officer” or “officer” means any person who by virtue of his or her office or employment by the Tribes or by another government is vested by law with a duty to:

(i) Enforce Tribal or Federal civil regulatory laws;

(ii) Maintain public order; or

(iii) Make arrests for offenses while acting within the scope of his or her authority.

(i) “Statement” means:

(i) A writing signed or otherwise adopted or approved by a person;

(ii) A mechanical, electronic, or other recording of a person’s oral communications or a transcript thereof;

(iii) A writing containing a verbatim record as a summary of a person’s oral communication(s); or

(iv) Electronic, computer or wireless communication.

(j) “Subpoena” means a Court document commanding a person to:

(i) Appear at a certain time and place to give testimony upon a certain matter; or

(ii) Produce specific books, records, papers, documents, or other objects as may be necessary and proper; or

(iii) Do both subsections (11)(j)(i) and (ii) of this section. [Res. 2013-102; Res. 2012-445 § 1; Ord. 49 § 1.3, 1-8-2010 (Res. 2010-10)].

## 2.25.090 Initial appearance.

A person arrested, whether with or without a warrant, must be taken before a Judge of the Tribal Court for an initial appearance within two judicial days following the arrest. A person not arrested shall appear for an initial appearance at the time and place designated in the citation or summons. A person who is arrested without a warrant shall have a judicial determination of probable cause at the initial appearance. If probable cause is not found, the person shall be released immediately without conditions.

(1) Duty of Court at Initial Appearance. The Judge shall inform the defendant of:

(a) The charge or charges against him or her;

(b) The maximum penalty allowed under Tribal law for the offense;

(c) The defendant's right to counsel at defendant's expense, or to have counsel appointed pursuant to TTC [2.25.070\(3\)](#);

(d) The right to call any witness on his or her behalf;

(e) The right to request a jury trial where the crime charged carries a possible jail sentence;

(f) The right to remain silent and that any statement made by her or him may be used in evidence against her or him at any subsequent Court proceedings;

(g) The right to cross-examine the Tribes' witnesses;

(h) The right to have up to five judicial days before arraignment;

(i) The right to petition for a writ of habeas corpus; and

(j) The right to discuss bail and conditions of release.

(2) Scheduling Arraignment. Unless the arraignment occurs at the initial appearance, arraignment shall be scheduled within five judicial days of the initial appearance, unless waived by the defendant. If the defendant is not arraigned within this time limit, and the right to a speedy trial has not been extended, the defendant shall be released without conditions. [Ord. 49 § 5.9, 1-8-2010 (Res. 2010-10)].

From

## **TULALIP TRIBAL COURT RULES**

**Approved by the Tulalip Tribes Board of Directors**

**Resolution No. 2013-551**

### **Section 6**

#### **Tulalip Tribes Domestic Violence Court Rules**

##### **6.1 PURPOSE**

Domestic violence offends the traditional Tulalip tribal values of honoring the family and respecting all members of the community, and it is contrary to the best interests of the family, the Tribes and the community. The purpose of the Tulalip Tribes Domestic Violence Court is to promote important traditional Tulalip tribal values by protecting victims of domestic violence and holding perpetrators accountable while ensuring that all persons accused of domestic violence crimes are provided equal protection and due process of law.

##### **6.2 CREATION**

The Tulalip Tribal Court shall exercise the jurisdiction conferred by Chapter 4.25 of the Tulalip Tribal Code and while sitting in the exercise of such jurisdiction shall be known and referred to as the "Tulalip Domestic Violence Court."

##### **6.3 DOCKET**

###### **6.3.1 Separate Docket**

A separate docket shall be maintained for the Tulalip Domestic Violence Court. Cases assigned to the Tulalip Domestic Violence Court will be heard on Mondays, or as otherwise designated by the Tulalip Tribal Court calendar.

###### **6.3.2 Types of Cases Assigned**

All criminal domestic violence cases (all criminal cases with the designation "DV") shall be assigned to the Tulalip Domestic Violence Court docket. Additionally, any civil protection order case involving the issuance, modification or enforcement of a permanent or temporary protection order (any civil case with the designation "RO") may be assigned to the Tulalip Domestic Violence docket at the judge's sole discretion.

##### **6.4 RIGHTS OF DEFENDANT**

###### **6.4.1 Defendant Rights**

It is the policy of Tulalip Domestic Violence Court to provide all defendants the full protection of the laws. Therefore, in all proceedings in which the Tulalip Domestic Violence Court is exercising its Special Domestic Violence Criminal Jurisdiction pursuant to TTC Chapter 4.25, all defendant rights afforded by TTC §4.25.040(2) shall apply. These rights include the following:

- A) To be free from excessive bail, excessive fines and cruel and unusual punishment;
- B) To defend in person or by counsel;



- C) To be informed of the nature of the charges pending against him or her and to have a copy of those charges;
- D) To have publicly available, the criminal laws, rules of evidence, and rules of criminal procedure of the Tribes, prior to being charged;
- E) To confront and cross-examine all prosecution or hostile witnesses;
- F) To compel by subpoena:
  - iii) The attendance of any witness necessary to defend against the charges; and
  - iv) The production of any books, records, documents, or other things necessary to defend against the charges;
- G) To have a speedy and public trial by Judge or a jury, unless the right to a speedy trial is waived or the right to a jury trial is waived by the defendant;
- H) To have a judge presiding over the criminal proceeding:
  - iv) Who has sufficient legal training to preside over criminal proceedings; and
  - v) Who is licensed to practice law in any jurisdiction in the United States;
  - vi) Judge(s) meeting these qualifications can be designated to preside in the Special Domestic Violence Court. The Chief Judge shall designate and assign Judges to the Special Domestic Violence Court every January by standing order and the standing order and qualifications of the Judge will become part of the trial record.
- I) To appeal any final decision of the Tulalip Domestic Violence Court to the Tribal Court of Appeals;
- J) To be tried only once by the Tulalip Domestic Violence Court for the same offense;
- K) Not to be required to testify, and no inference may be drawn from a defendant's exercise of the right not to testify;
- L) To have a record of the criminal proceeding, including an audio or other recording, created and maintained;
- M) To petition for a writ of habeas corpus under Tulalip Tribal law and federal law; and
- N) All other rights whose protection is necessary under the Constitution of the United States including the right to be secure in their persons, houses, papers and effects against unreasonable search and seizures and not to be subjected to a warrant unless it was issued upon probable cause under oath or affirmation and particularly describing the place to be searched and the person or thing to be seized, the right to due process and equal protection of the law and rights in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise Special Domestic Violence Criminal Jurisdiction over the defendant.

#### 6.4.2 Right to Counsel

All defendants, regardless of the length of the potential sentence for the crime being charged, have the right to effective assistance of counsel meeting the requirements of TTC §2.25.070(3)(a) while the Tulalip Domestic Violence Court is exercising its Special Domestic Violence Criminal Jurisdiction conferred by Chapter 4.25 of the Tulalip Tribal Code. An indigent defendant shall be provided the assistance of a defense attorney meeting the requirements of TTC §2.25.070(3)(a) at the expense of the tribal government. Defense attorneys assigned to an indigent defendant will submit their credentials to the court demonstrating they meet the requirements of federal law and such credentials and bar licensing will become part of the trial record.

### 6.4.3 Right to Jury Trial

A defendant charged under TTC Chapter 4.25 has a right to a trial by jury of six fair and impartial jurors drawn from the community according to TTC §2.05.110. A defendant may waive the right to a jury trial in a written, voluntary statement to the Court. All jury verdicts must be unanimous.

## 6.5 SUPPLEMENTAL PROCEDURE

### 6.5.1 Pre-Trial/Trial Procedure—Additional Requirement

A) The initial appearance and/or arraignment will occur as currently outlined in the Tulalip Tribes criminal procedure rules. A Defendant charged with a domestic violence crime shall also be informed of his/her right to a federal writ of habeas corpus and or a stay under the federal Violence Against Women Act (VAWA). This notification will be contained in the Advisement of Rights Form signed by the Defendant. After the initial appearance and/or arraignment cases will be assigned to the Tulalip Domestic Violence Court calendar.

B) All other generally applicable Civil and Criminal Rules of Procedure apply to these proceedings.

### 6.5.2 Post-Trial Procedure

Post-trial procedure is meant to describe the general operation of the Domestic Violence Court and does not include procedures relating to appeals to the Tulalip Tribes Court of Appeals. All appeals will be handled as provided by the rules of appellate procedure.

### 6.5.3 Sentencing and Probation

A) The Tulalip Tribes Domestic Violence Court finds that each person who pleads guilty or is found guilty of a crime of domestic violence should be on monitored probation which includes participation in a certified Domestic Violence Batterer's Re-education program.

B) The Domestic Violence Court will hold a weekly Monday calendar to monitor a participant's progress in their treatment program. This monitoring includes receiving input from treatment providers and probation on the successful participation with the treatment program requirements.

C) The Judge shall review the client's progress at each review hearing and will impose short term or long term sanctions for noncompliance to encourage participation and completion of appropriate treatment modalities.

## EXHIBIT 3

# The Tulalip Tribes of Washington

2.25.070 Rights of the defendant in a criminal proceeding.

(1) Presence of the Defendant. Unless otherwise set forth in this chapter, a defendant shall be present at all stages of the proceedings. The Court in its discretion may allow the defendant to appear through counsel.

(2) Rights of the Defendant. In all criminal proceedings, the defendant shall have the following rights:

(a) To be free from excessive bail and cruel punishment;

(b) To defend in person or by counsel;

(c) To be informed of the nature of the charges pending against him or her and to have a copy of those charges;

(d) To confront and cross-examine all prosecution or hostile witnesses;

(e) To compel by subpoena:

(i) The attendance of any witnesses necessary to defend against the charges; and

(ii) The production of any books, records, documents, or other things necessary to defend against the charges;

(f) To have a speedy and public trial by Judge or a jury, unless the right to a speedy trial is waived or the right to a jury trial is waived by the defendant;

(g) To appeal any final decision of the Tribal Court to the Tribal Court of Appeals;

(h) To be tried only once by the Tribal Court for the same offense;

(i) Not to be required to testify, and no inference may be drawn from a defendant's exercise of the right not to testify; and

(j) To petition for a writ of habeas corpus.

(3) Right to Counsel. During the initial appearance before the Court, every defendant must be informed of the right to have counsel at his or her own expense or the right to apply for appointment of counsel. If the defendant wishes to obtain counsel, or is found to be ineligible for appointed counsel, the Court shall grant a reasonable time prior to arraignment for defendant's attorney to enter an appearance in the cause. If the defendant is being charged with a felony crime, with potential sentencing in excess of one year:

(a) The defendant shall have the right be represented by an attorney who is a member of the Tulalip Tribal Bar and who is licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys; and

(b) If the defendant is indigent, the Court shall, at the Tribes' expense, provide the defendant with an attorney meeting the qualifications in subsection (3)(a) of this section at all critical stages of the criminal proceeding.

(4) Right to a Jury Trial. A defendant charged with a crime for which jail is a penalty has a right to a trial by jury of six fair and impartial jurors. A defendant may waive the right to a jury trial in a written voluntary statement to the Court.

(5) Subsequent Prosecutions. A subsequent prosecution is allowed when the previous prosecution was properly terminated under any of the following circumstances:

(a) The defendant consents to the termination or waives, by motion, an appeal upon a judgment of conviction or otherwise, the right to object to the termination of the prosecution;

(b) The Tribal Court finds that a termination, other than by acquittal, is necessary because:

(i) It is impossible to proceed with the trial in conformity with the law;

(ii) There is a legal defect in the proceeding that would make any judgment entered upon a verdict reversible as a matter of law;

(iii) Prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the Tribes;

(iv) The jury cannot agree upon a verdict; or

(v) A false statement of a juror on voir dire prevents a fair trial;

(c) The subsequent prosecution was for an offense which was not completed when the former prosecution began; or

(d) There was a transfer of jurisdiction to another authority.

The following actions will not constitute an acquittal of the same offense: dismissal for insufficiency in form; dismissal without prejudice upon a pretrial motion; or discharge for want of prosecution without a judgment of acquittal.

(6) Writ of Habeas Corpus.

(a) Availability of Writ.

(i) Except as provided in subsection (6)(a)(ii) of this section, every person within the jurisdiction of the Tulalip Tribes imprisoned or otherwise restrained of liberty may prosecute a writ of habeas corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from imprisonment or restraint.

(ii) The writ of habeas corpus is not available to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense by a court of competent jurisdiction and has exhausted the remedy of appeal, nor is it available to attack the legality of an order revoking a suspended or deferred sentence. Moreover, a person may not be released on a writ of habeas corpus due to any technical defect in commitment not affecting the person's substantial rights.

(iii) When a person is imprisoned or detained in custody by the Tribes on any criminal charge for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring that fact in his petition, without alleging that he is illegally confined.

(b) Issuance of Writ.

(i) Application for a writ of habeas corpus is made by petition signed either by the party for whose relief it is intended or by some person on the petitioner's behalf, and must be filed with the Clerk of the Court. It must specify:

(A) That the petitioner is unlawfully imprisoned or restrained of liberty;

(B) Why the imprisonment or restraint is unlawful; and

(C) Where or by whom the petitioner is confined or restrained.

(ii) The parties to a writ, namely the Tulalip Prosecutor, Chief Judge of the Tribal Court, and the Tulalip Chief of Police, must be named. All parties must be named if they are known or otherwise described so that they may be identified.

(iii) The petition must be verified by the oath or affirmation or declaration under penalty of perjury that the contents of the declaration are true to the best of the declarant's belief of the party making the application.

(c) Granting of the Writ. Any Justice of the Court of Appeals may grant a writ of habeas corpus upon petition by or on behalf of any person restrained of liberty within the Justice's jurisdiction. If it appears to such Justice that a writ ought to issue, it shall be granted without delay, and may be made returnable to the Court of Appeals.

(d) Time of Issuance and Requirements for Service.

(i) A writ of habeas corpus or any associated process may be issued and served on any day at any time. The writ should be served on the Tribal Prosecutor and Chief Judge of the Trial Court.

(ii) The writ must be served upon the person to whom it is directed. If the writ is directed to a Tribal agency or employee, a copy of the writ must be served upon the Tribal Prosecutor.

(iii) The writ must be served by a Tribal Police Officer, or any other person directed to do so by the Justice or the Court, in the same manner as a civil summons, except where otherwise expressly directed by the Justice, the Court, or the employee of any correctional facility in which the petitioner is held.

(e) Return of the Writ. The Prosecutor or his or her designee shall make a return and state in that return:

(i) Whether the person is in custody or under that person's power of restraint; and

(ii) If the person is in custody or otherwise restrained, the authority for and cause of the custody or restraint; or

(iii) If the person has been transferred to the custody of or otherwise restrained by another to whom the party was transferred, the time and place of the transfer, the reason for the transfer, and the authority under which the transfer took place.

The return must be signed and verified by affirmation.

(f) Hearing. The Chief Judge commanded by the writ shall cause the petitioner to be brought before the Court as commanded by the writ unless the petitioner cannot be brought before the Court without danger to the petitioner's health. Sickness or infirmity must be confirmed. If the Court is satisfied with the truth of the writing, the Court may proceed and dispose of the case as if the petitioner were present or the hearing may be postponed until the petitioner is present. Any law enforcement officer may bring the person as directed. Unless the Court postpones the hearing for reasons of the petitioner's health, the Court shall immediately proceed to hear and examine the return. The hearing may be summary in nature. Evidence may be produced and compelled as provided by the laws governing criminal procedures and evidence.

(g) Refusal to Obey Writ Is Contempt. If the person commanded by the writ refuses to obey, that person must be adjudged to be in contempt.

(h) Disposition of Petitioner. If the Court finds in favor of the petitioner, an appropriate order must be entered with respect to the judgment or sentence in the former proceeding and any supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the Court finds for the prosecution, the petitioner must be returned to the custody of the person to whom the writ was directed.

(7) Right to a Speedy and Public Trial. A defendant not released from jail pending trial shall be brought to trial not later than 60 days after the date of arraignment. A defendant released from jail, whether or not subjected to conditions of release pending trial, shall be brought to trial not later than 90 days after the date of arraignment. The following extensions of time limits apply, notwithstanding the preceding time limits:

(a) Revocation of Release. A defendant whose release has been revoked by the Court shall be brought to trial no later than 60 days following the revocation or previously scheduled trial date, whichever is sooner.

(b) Failure to Appear. When a defendant fails to appear for any hearing, all future hearings shall be stricken from the Court calendar and a bench warrant will issue. Such failure to appear constitutes a waiver of the right to a speedy trial. When the defendant next appears before the Judge, the speedy trial clock begins at zero.

(c) Trial Preparation Time. The defendant is entitled to reasonable time to prepare for trial after entering a plea of not guilty.

(d) Extensions. When a trial is not begun on the date set because of unavoidable or unforeseen circumstances beyond the control of the Court or the parties, the Court, even if the time for trial has expired, may extend the time within which trial must be held in increments of no more than five judicial days unless the defendant will be substantially prejudiced in his or her defense. The Court must state on the record or in writing the reasons for the extension.

(i) Disqualification of Judge. In the event that the trial Judge is disqualified by affidavit or by recusal under TTC [2.05.060](#), the speedy trial date shall be extended beyond its current expiration by 15 days.

(e) Continuances. The Court may continue a trial beyond the speedy trial period as follows:

(i) Upon written agreement of the parties which must be signed by the defendant or all defendants. The agreement shall be effective when approved by the Court on the record or in writing.

(ii) On motion of the Tribal Prosecutor, the Court, or a party, the Court may continue the case when required in the administration of justice and the defendant will not be substantially prejudiced in the presentation of the defense. The motion must be filed on or before the date set for trial or the last day of any continuance or extension granted pursuant to this rule. The Court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that party's objection to the requested delay.

(f) Computation of Time. The following periods shall be excluded in computing the time for arraignment and the time for trial:

(i) All proceedings relating to the competency of a defendant to stand trial, terminating when the Court enters a written order finding the defendant to be competent;

(ii) Preliminary proceedings and trial on another charge;

(iii) The time during which a defendant is detained in jail or prison by authorities other than the Tulalip Tribes and the time during which a defendant is subjected to conditions of release not imposed by a Court of the Tulalip Tribes; and

(iv) All proceedings in Juvenile Court.

(g) Waiver. A defendant may waive the right to a speedy trial. Such waiver shall be in writing and shall be signed by the defendant. The waiver shall be to a date certain. [Res. 2013-102; Res. 2012-445 § 9; Ord. 49 § 5.7, 1-8-2010 (Res. 2010-10)].



## 2.05.030 General provisions.

(1) Purpose and Construction. The provisions of this title and TTC Title [3](#) shall be construed in accordance with Tribal custom as well as to achieve the following general goals:

- (a) To secure the just, speedy, and inexpensive determination of every civil action;
- (b) To provide for the just determination of every criminal proceeding;
- (c) To protect the rights of individuals;
- (d) To secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay; and
- (e) To enhance public safety on the Tulalip Reservation.

(2) Applicable Law. The Tulalip Tribal Courts shall apply the laws and ordinances of the Tulalip Tribes, including the custom laws of the Tribes, to all matters coming before the Courts; provided, that where no applicable Tulalip Tribal law, ordinance, or custom law can be found, the Courts may utilize, in the following order, the procedural laws of other Federally recognized Indian tribes, Federal statutes, Federal common law, State common law, and State statutes as guides to decisions of the Courts.

In all actions, and as to all claims or defenses, which concern or are based upon any contract, lease, lease assignment, loan agreement, credit agreement, a promissory note, assignment of rents, assignment of rental income, assignment of income or revenue, mortgage, deed of trust, any other agreement assigning, pledging or encumbering any collateral as security, or any other agreement or instrument, which contains a choice of law clause or provision that specifies or selects the governing law, the Tulalip Tribal Courts shall apply the governing law so specified or selected.

(3) Venue. There is one venue for causes of action arising under the Tulalip Tribal laws and that is Tulalip Tribal Court.

(4) Freedom From Improper Influence. The Court and the Prosecutor's Office shall be independent from improper influence. No person, including elected or appointed officials or employees of the Tulalip Tribes, shall attempt to improperly influence Court proceedings, or to interfere in any way with a Judge or Prosecutor in the performance of his or her duties.

(5) Rules of Court. The Judges may recommend adoption of rules of the Court regarding the rules of practice and process in Tulalip Tribal Court and for the keeping of dockets, records and proceedings and the regulation of the Court as may be deemed most conducive for the due administration of justice. The rules of the Court shall become effective upon approval by the Board of Directors.

(6) Computation of Time. Whenever a period of time is designated by these rules, it shall mean judicial days, except with reference to computations related to the speedy trial rule.

(7) Principles of Construction. In this code:

- (a) Masculine words shall include the feminine and singular words shall include the plural and vice versa, unless another meaning is clearly stated;

(b) Words shall be given their plain meaning and technical words shall be given their usually understood meaning where no other definition is specified;

(c) Whenever a term is defined within a specific section or chapter, that specific definition will control over a general definition unless the Court finds that a contrary meaning is intended;

(d) Provisions shall be construed as a whole to give effect to all its parts (i.e., titles, chapters, sections, etc.) in a logical, consistent manner; and

(e) If any provisions of this code or their application to any person or circumstance is held invalid, the remainder of this code, or the application of the affected provisions to other persons or circumstances, is not affected.

(8) Right to Counsel. Any person appearing as a party in Tribal Court shall have the right to counsel at his or her own expense. "Counsel" includes attorneys and spokespersons. Such counsel shall be of the parties' own choosing and need not be an attorney or admitted to practice before the bar of any state, but must be members of the Tulalip Tribal Bar. Indigent persons charged with a felony crime shall be appointed an attorney at the Tribes' expense at all critical stages of a criminal proceeding, up to and through trial.

(9) Attorneys Fees. Attorneys fees are not awardable unless otherwise provided by contract, ordinance, statute, or other law.

(10) Eligibility for Appointed Counsel in Criminal Cases. The Court may appoint counsel to assist any person appearing as a criminal defendant for charges carrying a potential jail sentence. In order to be eligible for such services, the defendant must be determined to be financially qualified based upon standards of indigency established by the Court.

(11) Definitions. Unless otherwise specified in a particular section, the following definitions shall apply to this chapter:

(a) "Contraband" means any property which is unlawful in itself, used for any unlawful purpose, or used in connection with or derived from any unlawful property or transaction.

(b) "Conviction" means a judgment or sentence entered upon a plea of guilty or no contest, or upon a verdict or finding of a defendant's guilt rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury. Once a conviction has been expunged, it is no longer considered a conviction under Tribal law.

(c) "Counsel" means an attorney or a Tribal spokesperson.

(d) "Defendant" means the party against whom relief or recovery is sought in an action or suit or the accused in a criminal case.

(e) "Elder" means a Tribal member or other individual residing on the Reservation who is:

(i) Sixty-two years of age or older; or

(ii) Determined by the Court to be an elder, pursuant to Tribal custom; or

(iii) At least 45 years of age and unable to protect him/herself from abuse, neglect, or exploitation because of a mental disorder or physical impairment or because of frailties or dependencies brought about by age or disease or alcoholism.

(f) “Firearm” means a weapon or device from which a projectile may be fired by an explosive such as gunpowder. Air guns and other guns fired by the release of compressed gas are firearms. “Firearm” shall also include any explosive, incendiary, or poison gas (i) bomb, (ii) grenade, (iii) rocket having a propellant charge of more than four ounces, (iv) missile having an explosive or incendiary charge of more than one-quarter ounce, (v) mine, or (vi) similar device.

(g) “Indian” means a person who is enrolled in a Federally recognized Indian tribe or who is recognized as a Canadian Indian.

(h) “Law enforcement officer” or “officer” means any person who by virtue of his or her office or employment by the Tribes or by another government is vested by law with a duty to:

(i) Enforce Tribal or Federal civil regulatory laws;

(ii) Maintain public order; or

(iii) Make arrests for offenses while acting within the scope of his or her authority.

(i) “Statement” means:

(i) A writing signed or otherwise adopted or approved by a person;

(ii) A mechanical, electronic, or other recording of a person’s oral communications or a transcript thereof;

(iii) A writing containing a verbatim record as a summary of a person’s oral communication(s); or

(iv) Electronic, computer or wireless communication.

(j) “Subpoena” means a Court document commanding a person to:

(i) Appear at a certain time and place to give testimony upon a certain matter; or

(ii) Produce specific books, records, papers, documents, or other objects as may be necessary and proper; or

(iii) Do both subsections (11)(j)(i) and (ii) of this section. [Res. 2013-102; Res. 2012-445 § 1; Ord. 49 § 1.3, 1-8-2010 (Res. 2010-10)].

2.05.080 Tulalip Tribal Bar – Attorneys and Tribal spokespersons.

(1) Jurisdiction. Any attorney or Tribal spokesperson admitted, or permitted by rule, to practice law in the Tulalip Tribal Court, and any attorney or spokesperson specially admitted by this Court for a particular case, is subject to the rules of this chapter. Jurisdiction exists regardless of the attorney's or spokesperson's residency. Attorneys and spokespersons are considered counsel.

(2) Tulalip Tribal Court Bar. Any person practicing as counsel in Tulalip Tribal Court must be a member in good standing of the Tulalip Tribal Court Bar. In order to qualify as a member in good standing, all applicants must:

(a) Schedule and pass the Tulalip Tribal Bar Exam;

(b) Sign and take the Spokesperson's Oath of Admission;

(c) Pay the Bar application fee and annual admission fee as may be established; unless such fee is waived by the Tulalip Tribal Court; and

(d) Certify they are a member in good standing in any other jurisdiction in which the applicant is licensed.

(3) Spokesperson's Oath of Admission.

I [insert name of spokesperson], do solemnly swear:

1) I have read the Tulalip Indian Tribes Constitution and laws and am familiar with their contents;

2) I will support the Constitution of the Tulalip Indian Tribes in all respects;

3) I will abide by the rules established by the Board of Directors of the Tulalip Tribes and the Tulalip Tribal Court;

4) I will at all times maintain the respect due to the Tribal Court and its officers;

5) I will not counsel or speak for any suit or proceeding which shall appear to me to be unjust, or any defense except such as I believe to be honestly debatable under the laws of the Tulalip Indian Tribes unless it be in defense of a person charged with a criminal 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; and,

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

(4) Tulalip Tribal Court Bar Roster. The Court Clerk of the Tulalip Tribal Court will maintain a roster and the signed oaths of all attorneys and

spokespersons admitted to practice before the Court.

(5) Disciplinary Action Taken Against an Attorney or Spokesperson.

(a) Tulalip Tribal Court. The Tulalip Tribal Court has (i) the exclusive responsibility to administer attorney and spokesperson discipline, (ii) the inherent power to maintain appropriate standards of professional conduct, and (iii) the authority to dispose of individual cases of attorney and spokesperson discipline. Persons carrying out the functions set forth in the following rules act under the Court's authority.

(b) Definitions. Unless the context clearly indicates otherwise, terms used in these rules have the following meanings:

(i) "Disciplinary action" means sanctions as defined within this chapter.

(ii) "Final" means no review has been sought in a timely fashion or all appeals have been concluded.

(iii) "Panel" means a Hearing Panel.

(iv) "Party" means the person aggrieved or directly affected by the attorney or spokesperson's behavior or action.

(v) "Respondent" means an attorney or spokesperson against whom a grievance is filed or an attorney or spokesperson investigated by the investigative officer.

(vi) "May" means "has discretion to," "has the right to," or "is permitted to."

(vii) "Must" means "is required to."

(viii) "Should" means recommended but not required.

(c) Grounds for Sanctions and/or Disbarment of Spokespersons. Any spokesperson admitted to the Tulalip Tribal Court Bar may be subject to disciplinary sanctions, including disbarment, for any of the following reasons arising after his or her admission to practice:

(i) Conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction shall be conclusive evidence;

(ii) Willful disobedience or violation of a Court order;

(iii) Violation of any provision of the Spokesperson's Oath of Admission, or his or her duties as a spokesperson;

(iv) For the commission of any act involving moral turpitude, dishonesty, or corruption; or

(v) Suspension or other disciplinary action taken against the spokesperson by an authority of another jurisdiction, except that disbarment, or resignation during pendency or any disciplinary investigation, by competent authority in any other tribe, state, federal or foreign jurisdiction shall subject the spokesperson to automatic disbarment from the Tulalip Bar until such time as the person has been reinstated in such other jurisdiction in which the person has been disbarred.

(d) Grounds for Sanctions and/or Disbarment of Attorneys. Any attorney admitted to the Tulalip Tribal Court Bar may be subject to disciplinary sanctions, including disbarment, for any of the reasons listed in subsection (5)(c) of this section.

(e) Tulalip Tribal Court Bar – Sanctions and Disbarment. Upon the request of any party, or upon its own, the Tulalip Tribal Court may order an investigation of any allegations of misconduct by a member of the Tulalip Tribal Court Bar. The Court Director shall appoint an investigative officer to review the allegations. If the officer determines there is no merit in the allegations, he or she shall file a written report with the Court Director suggesting that no further action be taken, including reasons for such decision. The Court Director, in consultation with the Chief Judge, shall either adopt or reject the decision. If the recommendation is adopted, then notice shall be sent to the attorney or spokesperson and the complaining witness within 10 days and the matter shall be concluded.

If the investigative officer does find merit to the allegations, he or she shall file a written complaint with the Court Director against such member. The Court Director will then appoint a Hearing Officer or a three-person panel in consultation with the Chief Judge, who will then review(s) the complaint and set a hearing as necessary.

(f) Investigative Officer.

(i) Function. An investigative officer, appointed by the Court Director, investigates allegations of misconduct by a member of the Tulalip Tribal Court Bar and performs other functions as provided under these rules.

(ii) Appointment. The Court Director shall appoint an investigative officer from the list of Hearing Officers.

(iii) Term of Office. The investigative officer shall be appointed to a one-year term, to be extended at the discretion of the Chief Judge.

(g) Hearing Officer and Hearing Panel.

(i) Function. A Hearing Officer or Hearing Panel conducts the hearing and performs other functions as provided under these rules.

(ii) Qualifications. A Hearing Officer or panel member must be an active member of the Tulalip Tribal Court Bar and have no record of discipline.

(iii) Appointment. The Court Director, in consultation with the Chief Judge, shall appoint a Hearing Officer or a Hearing Panel. The list of Hearing Officers and potential panel members should include as many attorneys or spokespersons as the Chief Judge considers necessary to carry out the provisions of these rules effectively and efficiently.

(iv) Terms of Appointment. Appointment to the Hearing Officer and Hearing Panel shall be appointed to a one-year term, to be extended at the discretion of the Chief Judge.

(v) Hearing Panel. A panel shall consist of three persons.

(vi) Training. Hearing Officers and Hearing Panel members shall comply with training requirements established by the Court.

(h) Removal of Appointees. The Chief Judge may remove the Hearing Officer or a panel member whenever that Hearing Officer or panel member appears unwilling or unable to perform his or her duties, or for any other good cause. The Court Director has the authority to fill any resulting vacancy.

(i) Compensation and Expenses. The Tulalip Tribal Court shall determine what compensation, if any, is to be provided to the Hearing Officer or Hearing Panel members.

(j) Right to Representation. An attorney or spokesperson may be represented by counsel during any stage of an investigation or hearing under these rules at their own expense.

(k) Attorney-Client Privilege. An attorney or spokesperson may not assert the attorney-client privilege or other prohibitions on revealing client confidences or secrets as a basis for refusing to provide information during the course of an investigation, but information obtained during an investigation involving client confidences or secrets must be kept confidential to the extent possible under these rules unless the client otherwise consents. Nothing in these rules waives or requires waiver of any attorney's or spokesperson's own privilege or other protection as a client against the disclosure of confidences or secrets.

(l) Commencement of Proceedings.

(i) Formal Complaint.

(A) Filing. After a matter is ordered to hearing, the investigative officer files a formal complaint and summons with the Court Clerk.

(B) Service. After the formal complaint is filed, it must be personally served on the respondent attorney or spokesperson with the summons notifying him or her that they have 20 days to respond.

(C) Content. The formal complaint must state the respondent's acts or omissions in sufficient detail to inform the respondent of the nature of the allegations of misconduct. The investigative officer must sign the formal complaint, under penalty of perjury.

(D) Prior Discipline. Prior disciplinary action against the respondent should be included in a supporting declaration if the respondent is charged with conduct demonstrating unfitness to practice law.

(ii) Filing Commences Proceedings. A disciplinary proceeding commences when the formal complaint is filed.

(iii) Joinder. The investigative officer ordering a hearing on alleged misconduct or the Hearing Officer or Hearing Panel may in its discretion consolidate for hearing two or more charges against the same respondent, or may join charges against two or more respondents in one formal complaint.

(m) Answer.

(i) Time to Answer. Within 20 days of service of the formal complaint and notice to answer, the respondent attorney or spokesperson must file and serve an answer with the Court Clerk and the investigative officer. Failure to file an answer as required may be grounds for discipline and for an order of default.

(ii) Content. The answer must contain:

(A) A specific denial or admission of each fact or claim asserted in the formal complaint;

(B) A statement of any matter or facts constituting a defense, affirmative defense, or justification, in ordinary and concise language without repetition; and

(C) An address at which all further pleadings, notices, and other documents in the proceeding may be served on the respondent.

(iii) Filing and Service. The answer must be filed and served pursuant to this title and TTC Title [3](#) on the investigative officer and the Court Clerk.

(n) Hearing. If a complaint is filed, a Hearing Officer or Hearing Panel shall conduct an open hearing to determine whether the findings of alleged misconduct are well founded. All interested parties shall be notified at least 20 days in advance of the hearing, and shall be entitled to present evidence and confront witnesses.

Following the hearing, the Hearing Officer or Hearing Panel shall make a finding by a preponderance of evidence of whether a violation has been established. The officer or panel will then reconvene to determine appropriate sanctions allowing both sides to make recommendations. The panel will memorialize the sanction(s) in a written opinion. Sanctions may include censure, reprimand, suspension, or disbarment.

Alternatively, the respondent may admit to the violation and agree to appropriate sanctions, which can be presented to the officer or panel. The officer or panel may accept or reject the agreement within its discretion.

(o) Appeal.

(i) Respondent's Right to Appeal. The respondent attorney or spokesperson has the right to appeal a decision to the Chief Judge recommending suspension or disbarment. There is no other right of appeal.

(ii) Notice of Appeal. Only the respondent attorney or spokesperson has the right to appeal. To appeal he or she must file a Notice of Appeal with the Court Clerk within 20 days of service of the panel's decision on the respondent. The Chief Judge will review the appeal based on the record before the Hearing Panel. Evidence not presented to the panel cannot be considered by the Chief Judge.

(iii) Action by Chief Judge. On appeal, the Chief Judge may adopt, modify, or reverse the findings, conclusions, or recommendation of the Hearing Officer or panel. The Chief Judge may also direct that the Hearing Officer or the panel hold an additional hearing on any issue, on its own motion, or on either party's request.

(iv) Oral Argument. The panel may hear oral argument if requested by either party.

(v) Order or Opinion. The Chief Judge must issue a written order or opinion. If the Chief Judge amends, modifies, or reverses any finding, conclusion, or recommendation of the panel, the Chief Judge must state the reasons for its decision in a written order or opinion.

(vi) Decision of Chief Judge Is Final. A respondent may ask the Chief Judge to review an adverse determination by the Hearing Officer or panel, including review of the reasonableness of a proposed periodic payment plan for restitution. The Chief Judge's ruling is not subject to further review.

(p) Remedies – Restitution, Censure, Reprimand, Suspension and Disbarment.

(i) Restitution May Be Required. A respondent attorney or spokesperson that has been sanctioned or admonished under this rule may be ordered to make restitution to persons financially injured by the respondent's conduct.



(A) Payment of Restitution.

(I) A respondent ordered to make restitution must do so within 30 days of the date the order becomes final. The restitution order may include a periodic payment plan.

(II) The Hearing Officer or panel may enter into an agreement with a respondent for a reasonable periodic payment plan if:

1. The respondent demonstrates in writing a present inability to pay restitution; and
2. There is no objection from the person(s) owed restitution.

(B) Failure to Comply. A respondent's failure to make restitution when ordered to do so or to comply with the terms of a periodic payment plan may be grounds for further discipline.

(ii) Censure. The respondent attorney or spokesperson may be censured.

(iii) Reprimand. The respondent attorney or spokesperson may be reprimanded with a course of action.

(iv) Suspension. The respondent attorney or spokesperson may be suspended and/or placed on probation and ordered to engage in remedial services for up to two years.

(v) Disbarment. The respondent attorney or spokesperson may be disbarred if their conduct rises to such a level.

(q) Probation.

(i) Conditions of Probation. A respondent attorney or spokesperson that has been sanctioned or admonished under this rule may be placed on probation for a fixed period of two years or less.

(A) Conditions of probation may include, but are not limited to, requiring:

(I) Alcohol or drug treatment;

(II) Medical care;

(III) Psychological or psychiatric care;

(IV) Professional office practice or management counseling;

(V) Other reasonable services in light of the complaint; or

(VI) Periodic audits or reports.

(B) The Hearing Officer or panel may designate a suitable person to supervise the probation. Cooperation with a person so appointed is a condition of the probation.

(ii) Failure to Comply. Failure to comply with a condition of probation may be grounds for discipline and any sanction imposed must take into account the misconduct leading to the probation. [Res. 2010-207; Ord. 49 § 1.8, 1-8-2010 (Res. 2010-10)].

From

## **TULALIP TRIBAL COURT RULES**

**Approved by the Tulalip Tribes Board of Directors**

**Resolution No. 2013-551**

### **Section 6**

#### **Tulalip Tribes Domestic Violence Court Rules**

##### 6.1 PURPOSE

Domestic violence offends the traditional Tulalip tribal values of honoring the family and respecting all members of the community, and it is contrary to the best interests of the family, the Tribes and the community. The purpose of the Tulalip Tribes Domestic Violence Court is to promote important traditional Tulalip tribal values by protecting victims of domestic violence and holding perpetrators accountable while ensuring that all persons accused of domestic violence crimes are provided equal protection and due process of law.

##### 6.2 CREATION

The Tulalip Tribal Court shall exercise the jurisdiction conferred by Chapter 4.25 of the Tulalip Tribal Code and while sitting in the exercise of such jurisdiction shall be known and referred to as the "Tulalip Domestic Violence Court."

##### 6.3 DOCKET

###### 6.3.1 Separate Docket

A separate docket shall be maintained for the Tulalip Domestic Violence Court. Cases assigned to the Tulalip Domestic Violence Court will be heard on Mondays, or as otherwise designated by the Tulalip Tribal Court calendar.

###### 6.3.2 Types of Cases Assigned

All criminal domestic violence cases (all criminal cases with the designation "DV") shall be assigned to the Tulalip Domestic Violence Court docket. Additionally, any civil protection order case involving the issuance, modification or enforcement of a permanent or temporary protection order (any civil case with the designation "RO") may be assigned to the Tulalip Domestic Violence docket at the judge's sole discretion.

##### 6.4 RIGHTS OF DEFENDANT

###### 6.4.1 Defendant Rights

It is the policy of Tulalip Domestic Violence Court to provide all defendants the full protection of the laws. Therefore, in all proceedings in which the Tulalip Domestic Violence Court is exercising its Special Domestic Violence Criminal Jurisdiction pursuant to TTC Chapter 4.25, all defendant rights afforded by TTC §4.25.040(2) shall apply. These rights include the following:

- A) To be free from excessive bail, excessive fines and cruel and unusual punishment;
- B) To defend in person or by counsel;
- C) To be informed of the nature of the charges pending against him or her and to have a copy of those charges;

- D) To have publicly available, the criminal laws, rules of evidence, and rules of criminal procedure of the Tribes, prior to being charged;
- E) To confront and cross-examine all prosecution or hostile witnesses;
- F) To compel by subpoena:
  - v) The attendance of any witness necessary to defend against the charges; and
  - vi) The production of any books, records, documents, or other things necessary to defend against the charges;
- G) To have a speedy and public trial by Judge or a jury, unless the right to a speedy trial is waived or the right to a jury trial is waived by the defendant;
- H) To have a judge presiding over the criminal proceeding:
  - vii) Who has sufficient legal training to preside over criminal proceedings; and
  - viii) Who is licensed to practice law in any jurisdiction in the United States;
  - ix) Judge(s) meeting these qualifications can be designated to preside in the Special Domestic Violence Court. The Chief Judge shall designate and assign Judges to the Special Domestic Violence Court every January by standing order and the standing order and qualifications of the Judge will become part of the trial record.
- I) To appeal any final decision of the Tulalip Domestic Violence Court to the Tribal Court of Appeals;
- J) To be tried only once by the Tulalip Domestic Violence Court for the same offense;
- K) Not to be required to testify, and no inference may be drawn from a defendant's exercise of the right not to testify;
- L) To have a record of the criminal proceeding, including an audio or other recording, created and maintained;
- M) To petition for a writ of habeas corpus under Tulalip Tribal law and federal law; and
- N) All other rights whose protection is necessary under the Constitution of the United States including the right to be secure in their persons, houses, papers and effects against unreasonable search and seizures and not to be subjected to a warrant unless it was issued upon probable cause under oath or affirmation and particularly describing the place to be searched and the person or thing to be seized, the right to due process and equal protection of the law and rights in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise Special Domestic Violence Criminal Jurisdiction over the defendant.

#### 6.4.2 Right to Counsel

All defendants, regardless of the length of the potential sentence for the crime being charged, have the right to effective assistance of counsel meeting the requirements of TTC §2.25.070(3)(a) while the Tulalip Domestic Violence Court is exercising its Special Domestic Violence Criminal Jurisdiction conferred by Chapter 4.25 of the Tulalip Tribal Code. An indigent defendant shall be provided the assistance of a defense attorney meeting the requirements of TTC §2.25.070(3)(a) at the expense of the tribal government. Defense attorneys assigned to an indigent defendant will submit their credentials to the court demonstrating they meet the requirements of federal law and such credentials and bar licensing will become part of the trial record.

#### 6.4.3 Right to Jury Trial

A defendant charged under TTC Chapter 4.25 has a right to a trial by jury of six fair and impartial jurors drawn from the community according to TTC §2.05.110. A defendant may waive the right to a jury trial in a written, voluntary statement to the Court. All jury verdicts must be unanimous.

## 6.5 SUPPLEMENTAL PROCEDURE

### 6.5.1 Pre-Trial/Trial Procedure—Additional Requirement

- C) The initial appearance and/or arraignment will occur as currently outlined in the Tulalip Tribes criminal procedure rules. A Defendant charged with a domestic violence crime shall also be informed of his/her right to a federal writ of habeas corpus and or a stay under the federal Violence Against Women Act (VAWA). This notification will be contained in the Advisement of Rights Form signed by the Defendant. After the initial appearance and/or arraignment cases will be assigned to the Tulalip Domestic Violence Court calendar.
- D) All other generally applicable Civil and Criminal Rules of Procedure apply to these proceedings.

### 6.5.2 Post-Trial Procedure

Post-trial procedure is meant to describe the general operation of the Domestic Violence Court and does not include procedures relating to appeals to the Tulalip Tribes Court of Appeals. All appeals will be handled as provided by the rules of appellate procedure.

### 6.5.3 Sentencing and Probation

- D) The Tulalip Tribes Domestic Violence Court finds that each person who pleads guilty or is found guilty of a crime of domestic violence should be on monitored probation which includes participation in a certified Domestic Violence Batterer's Re-education program.
- E) The Domestic Violence Court will hold a weekly Monday calendar to monitor a participant's progress in their treatment program. This monitoring includes receiving input from treatment providers and probation on the successful participation with the treatment program requirements.
- F) The Judge shall review the client's progress at each review hearing and will impose short term or long term sanctions for noncompliance to encourage participation and completion of appropriate treatment modalities.

IN THE TULALIP TRIBAL COURT  
TULALIP INDIAN RESERVATION  
TULALIP, WASHINGTON

THE TULALIP TRIBES ) No.  
A Federally Recognized Indian Tribe, )  
 )  
Plaintiff, ) ADVISEMENT OF RIGHTS (DV)  
 )  
 )  
VS. ) Incident # \_\_\_\_\_  
 ) Charge(s) \_\_\_\_\_  
(D.O.B.) Defendant. ) \_\_\_\_\_  
 )

\_\_\_\_\_

Date of Arraignment/ Initial Appearance is the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

You are advised that you have the following rights regarding this (these) matter(s):

- A. You have the right to remain silent before and during trial and you need not testify against yourself. Your silence cannot be used against you as evidence of guilt. Any statement made by you may be used in evidence against you at any subsequent court proceedings.
- B. You have the right to the advice and counsel of an attorney, at your own expense. You also have the right to apply for a determination of eligibility for the services of the Public Defender.
- C. You have the right to have up to 5 working days before arraignment.
- D. You have the right to a speedy and public trial by an impartial jury from this Reservation. You do not have the right to a jury trial where no jail time will be imposed.
- E. You have the right to hear and question the witnesses who testify against you.
- F. You have the right to have witnesses testify for you. They can be made to appear at no expense to you.
- G. You have the right to appeal a determination of guilt after trial.
- H. You are presumed innocent until the charge(s) are proven beyond a reasonable doubt.
- I. You have a right to petition the court for a Writ of Habeas Corpus in a court of the United States to test the legality of your detention. If you file a petition for a Writ of Habeas Corpus in a court of the United States, you may petition that court to stay further detention by the Tulalip Tribes.
- J. You have the right to discuss bail and conditions of release.

If you have any questions regarding these rights, you should make an immediate inquiry of the court and/or your attorney. I have received and have read or had read to me this Advisement of Rights and understand the Terms and Conditions.

\_\_\_\_\_ Defendant's Signature

Witnessed by: \_\_\_\_\_

Date: \_\_\_\_\_



**TRIBAL COURT PUBLIC DEFENSE CLINIC  
 CLIENT INTAKE DATA FORM**

Arrestment Notes: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Release Factors: \_\_\_\_\_

Prior History: \_\_\_\_\_

1. Date of Application: \_\_\_\_\_ Data Form Completed by: \_\_\_\_\_

2. Client Name (Last, First Middle): \_\_\_\_\_

3. Date of Birth (mm/dd/yy): \_\_\_\_\_ Tribal Affiliation \_\_\_\_\_ Enrolled? Y / N

4. Address (including Zip Code): \_\_\_\_\_

5. Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

6. Message Phone: \_\_\_\_\_ Cell: \_\_\_\_\_

7. Email: \_\_\_\_\_ Other: \_\_\_\_\_

8. Date of Conflicts Check : \_\_\_\_\_

| Witnesses prosecutor will call: | Date of Birth | Previously Represented?<br>By which attorney/student? | Screen Implemented? |
|---------------------------------|---------------|-------------------------------------------------------|---------------------|
|                                 |               |                                                       | Yes / No            |
|                                 |               |                                                       | Yes / No            |
|                                 |               |                                                       | Yes / No            |
|                                 |               |                                                       | Yes / No            |

9. Charges Filed In Current Case: \_\_\_\_\_

10. Has the client pled "Not Guilty"? \_\_\_\_\_ When was the plea entered? (date) \_\_\_\_\_

IN THE TULALIP TRIBAL COURT  
FOR THE TULALIP INDIAN RESERVATION  
MARYSVILLE, WASHINGTON

|                                          |   |                                                |
|------------------------------------------|---|------------------------------------------------|
| THE TULALIP TRIBES,                      | ) |                                                |
|                                          | ) |                                                |
| Plaintiff,                               | ) | Case No. TUL-Cr-                               |
|                                          | ) |                                                |
| Vs.                                      | ) | <b><i>FINANCIAL SCREEN FOR ELIGIBILITY</i></b> |
| Defendant.                               | ) |                                                |
| <hr style="border: 0.5px solid black;"/> |   |                                                |

The Tulalip Tribes recognize the need to provide legal assistance to low-income individuals to ensure a fair judicial process. This policy applies to the University of Washington Tribal Public Defense Clinic, the Tulalip Office of Civil Legal Aid, the Tribal Parent Advocacy Project, criminal conflict counsel attorneys, and court-appointed civil conflict counsel attorneys.

**Section 1. Definitions**

- A. Household: A household is defined as the individual plus any direct dependents such as the individual's cohabitating partner and any children living in the home.
- B. Household Income: The household income is defined as an individual's income from all sources and per capita payments plus the income from all sources and per capita payments of the cohabitating partner. Any per capita payments received by children living in the household shall not be considered.

**Section II. Eligibility**

- A. To be eligible to receive legal services from the University of Washington Tribal Public Defense Clinic or criminal conflict counsel attorneys, an individual must:
  - i. Be a member of a federally recognized tribe;
  - ii. Be low-income and meet financial requirements;
  - iii. Have a criminal matter pending in Tulalip Tribal Court.
- B. To be eligible to receive legal services from the Tulalip Office of Civil Legal Aid (TOCLA) and court-appointed civil conflict counsel attorneys, an individual must:
  - i. Be a member of a federally recognized tribe;
  - ii. Be low-income and meet financial requirements;
  - iii. Have a civil matter pending in Tulalip Tribal Court.
- C. To be eligible to receive legal services from the Tribal Parent Advocacy Project, an individual must:
  - i. Be a parent of a Tulalip tribal child(ren)
  - ii. Be low-income and meet financial requirements;
  - iii. Have a dependency case pending Tulalip Tribal Court.



D. Each office and conflict counsel attorney providing need-based legal services shall be responsible for determining the eligibility of its clients.

**Section 3. Income Requirement**

A. An individual shall be eligible to receive need-based legal services if his or her household income is less than 200% of the federal poverty guidelines (see chart below).

B. Each individual applying for need-based legal services shall be required to make a declaration attesting to his or her household income under penalty of perjury for the purpose of determining eligibility.

C. The office providing need-based legal services may make an exception to the income requirement on a case-by-case basis but is not required to do so.

**Section 4. Automatic Eligibility**

An individual shall be eligible automatically if one of the following factors is satisfied:

- A. The individual is a youth as defined under Title 4.05;
- B. The individual currently receives public benefits such as disability, SSI, or TANF;

**Section 5. Other Considerations**

A. If an individual's household income is over 200% of the federal poverty guidelines, the office offering need-based legal services may consider:

- i. Number of dependents, including all children, elders, and vulnerable adults in the home;
- ii. Individual seeking to obtain benefits in a governmental program for low-income persons;
- iii. Individual seeking to obtain or maintain benefits for disabled persons or vulnerable adults;
- iv. Fixed debts and obligations that will be counted against any income include, but are not limited to, mortgage, rent, child support, maintenance, on-going medical expenses, and unpaid federal, state or local taxes. This does not include regular fluctuating living expenses such as food costs, credit card debt, and utility payments, except in extraordinary circumstances;
- v. Expenses necessary for employment; includes job training, or educational activities in preparation for employment;
- vi. Other significant factors related to financial hardship.

B. The office providing need-based legal services is not required to consider other factors to determine eligibility.

**Worksheet**

I. Persons living in the same dwelling as you:

Name: \_\_\_\_\_ Relationship to you: \_\_\_\_\_ Age: \_\_\_\_\_

Name: \_\_\_\_\_ Relationship to you: \_\_\_\_\_ Age: \_\_\_\_\_

Name: \_\_\_\_\_ Relationship to you: \_\_\_\_\_ Age: \_\_\_\_\_

Name: \_\_\_\_\_ Relationship to you: \_\_\_\_\_ Age: \_\_\_\_\_

Name: \_\_\_\_\_ Relationship to you: \_\_\_\_\_ Age: \_\_\_\_\_

2. Employment information for everyone living in the same dwelling as you? (Including treaty fishing, fireworks and per capita.) The Tulalip Tribes have passed a resolution requiring applicants to be below a specific income in order to qualify for a public defender. An attorney cannot represent you without the information requested below.

Name: \_\_\_\_\_ Their Job: \_\_\_\_\_ Annual Income: \_\_\_\_\_

Name: \_\_\_\_\_ Their Job: \_\_\_\_\_ Annual Income: \_\_\_\_\_

Name: \_\_\_\_\_ Their Job: \_\_\_\_\_ Annual Income: \_\_\_\_\_

Name: \_\_\_\_\_ Their Job: \_\_\_\_\_ Annual Income: \_\_\_\_\_

### 2014 - Tulalip Eligibility Worksheet

| Person in Family or Household | 200% of Federal Poverty Guidelines Monthly | 200% of Federal Poverty Guidelines Annual |
|-------------------------------|--------------------------------------------|-------------------------------------------|
| 1                             | 1,915                                      | 22,980                                    |
| 2                             | 2,585                                      | 31,020                                    |
| 3                             | 3,255                                      | 39,060                                    |
| 4                             | 3,925                                      | 47,100                                    |
| 5                             | 4,595                                      | 55,140                                    |
| 6                             | 5,265                                      | 63,180                                    |
| 7                             | 5,935                                      | 71,220                                    |
| 8                             | 6,605                                      | 79,260                                    |
| each additional person        | 670                                        | 8,040                                     |

Form current with Tulalip Tribes Resolution No. 2013-122 and through the 2014 Federal Poverty Guidelines

# EXHIBIT 4

## The Tulalip Tribes of Washington

No Exhibit. Question 4: does not require supportive documentation

# EXHIBIT 5

## The Tulalip Tribes of Washington

## 2.05.040 Judges.

The Tulalip Tribal Court shall consist of a Chief Judge and such Associate Judges as needed, whose duties shall be regular and permanent, as fixed and determined by the Board of Directors. No person shall exercise the judicial authority of the Tulalip Tribes in any Tulalip Tribal Court, Employment Court, Gaming Court, or other Court under this code or any other Tulalip ordinance or regulation unless and until such person has been appointed by the Board of Directors in accordance with this chapter. Judges shall receive such compensation as is set by resolution of the Board.

(1) Eligibility. To be eligible to serve as a Judge of the Tribal Court, a person must:

(a) Be over 25 years of age;

(b) Never have been convicted or found guilty of a felony in any Federal or State Court or of a Class E offense under Tulalip Tribal law;

(c) Within the previous five years, not have been convicted of a misdemeanor in any Tribal, Federal, or State Court;

(d) Be of high moral character and never have been convicted of any offense involving moral turpitude;

(e) Be either a Judge from any Federally recognized Indian tribe, licensed to practice before the Washington State Bar Association, or any other qualified person appointed by the Tribal Board of Directors, or possess a J.D. from an accredited law school; and

(f) Be a member in good standing of the Tulalip Bar.

To be eligible to serve as Chief Judge of the Tribal Court, a person must also possess administrative experience in addition to the requirements included in this section.

(2) Appointment – Trial Court. Judges shall be appointed by the Tulalip Board of Directors, subject to acceptance of the position upon signing the oath of office. Judges shall hold office for a term of four years from the date of appointment, unless sooner removed for cause or by resignation, but shall be eligible for reappointment. The Board of Directors shall designate a Judge to hold the office of Chief Judge every two years and assign authority over Court administrative matters to that office. Judges pro tem may also be appointed, as necessary.

(3) Appointment – Appellate Court.

(a) Justices of the Court of Appeals. Justices of the Court of Appeals shall meet the same eligibility requirements for Judges, as set forth by subsection (1) of this section. Justices of the Tulalip Court of Appeals shall be appointed, subject to acceptance of the position upon signing the oath of office.

Justices shall serve four-year terms from the date of appointment, unless sooner removed for cause or by resignation. The Board of Directors shall appoint at least three Justices, including a Chief Justice of the Court of Appeals.

(b) Chief Justice. The Board of Directors shall designate a Justice to hold the office of Chief Justice every two years and assign authority over Court administrative matters, including the assignment of Judges over felony criminal matters. To be eligible to serve as Chief Justice of the Tribal Court, a person must also possess administrative experience.

(c) Duties of Chief Justice. For each matter properly placed before the Court of Appeals, a panel of three Justices shall be selected by the Chief Justice to hear and decide the issue or issues before the Court of Appeals. The Chief Justice shall designate a Presiding Justice for each panel and shall serve as Presiding Justice for each panel on which he or she sits. A single regular Justice of the Court of Appeals may act as a full panel where the Board of Directors so provides by rule.

(4) Powers and Duties. Judges shall have the authority to act in all matters within the jurisdiction of the Tulalip Tribal Court. Justices shall have authority to act in all matters within the jurisdiction of the Court of Appeals. No Judge or Justice shall be qualified to act as such in any case where the Judge has any direct interest or wherein any relative by marriage or blood, in the first or second degrees, is a party.

(5) Removal. During tenure in office, Judges or Justices may be suspended, dismissed, or removed for cause by the Board of Directors. Copies of a written statement setting forth the facts and the reasons for such proposed action must be delivered to the Judge and to members of the Board of Directors at least 10 days before the meeting of the Board of Directors before which the Judge at issue is to appear. A public or private hearing shall then be held by the Board of Directors wherein the accused Judge shall be given an adequate opportunity to answer any and all charges. The decision of the Board of Directors shall be final. Causes judged sufficient for removal shall include, by way of example and not limitation:

(a) Any act or omission which would have resulted in ineligibility for appointment;

(b) Illegal use of intoxicants or drugs;

(c) Conduct involving moral turpitude;

(d) Conviction of any offense other than minor traffic violations;

(e) Use of official position for personal gain;

(f) Desertion of office;

(g) Negligence in the performance of duties; or

(h) Conduct determined by the Tulalip Court of Appeals to be violative of the American Bar Association Code of Judicial Conduct, which code is incorporated herein by reference as though set forth in full.

(6) Felony Crimes. To be eligible to preside over all stages of a felony criminal case, the Judge must: (a) have sufficient legal training to preside over criminal proceedings; and (b) be licensed as an attorney in the State of Washington or other state. [Res. 2012-445 §§ 2, 3; Ord. 49 § 1.4, 1-8-2010 (Res. 2010-10)].

## **Tulalip Tribal Court Chief Judge Theresa M. Pouley**

Theresa M. Pouley Theresa M. Pouley is the Associate Justice of the Colville Court of Appeals, Chief Judge of the Tulalip Tribal Court, and is the former Chief Judge of the Lummi Tribal Court. As a Judge of the Northwest Intertribal Court System, she serves as a trial judge and appellate court justice for several other Northwest tribes.

Judge Pouley was appointed to the Indian Law & Order Commission by President Obama in 2011. She formerly served as the President of the Northwest Tribal Court Judges Association and formerly served on the Board of Directors for the National American Indian Court Judges Association. She has worked and lectured with the Washington State Office of Administrator of Court's in the area of Domestic Violence and Indian Law for the last several years. She was a presenter to the United States Supreme Court Justices O'Connor and Breyer on "Indigenous Justice Paradigms." She provided Testimony to the United States Senate Committee on Indian Affairs on "Challenges in Law Enforcement in Indian Country" in 2000, the "Oversight Hearings on Tribal Courts" in 2007, and "Tribal Law and Order Act," one year later in 2011.

She frequently lectures at local, state and national conferences on Tribal Courts and Indian Law issues. She was selected by the Washington Supreme Court to sit on the "Historical Court of Justice" which reviewed and exonerated Chief Leschi in 2004. She was awarded the National Tribal Child Support's Award for Outstanding Judge in 2005. Tulalip Tribal Court was awarded the Harvard Honoring Nations Award in 2006 for its focus on its therapeutic and indigenous approaches to criminal law.

Judge Pouley graduated from Wayne State University Law School in 1987, was admitted to the Michigan Bar and Washington Bar. She has been an attorney for over 20 years and in her practice had a variety of roles including private practice in Michigan and Washington and teaching Indian Law at local community colleges and the Northwest Indian College. She is a member of the Colville Confederated Tribes in eastern Washington.

## **Tulalip Tribal Court Associate Judge Gary F. Bass**

Gary F. Bass. Gary F. Bass is Associate Judge of the Tulalip Tribal Court; is a Justice on the Colville Tribal Court of Appeals; and a Justice on the Nevada Inter-Tribal Court of Appeals.

Judge Bass is a member of the Colville Confederated Tribes, Lakes Band in eastern Washington and served as an Airborne Ranger in Special Forces from 1962 to 1965. He participated in the invasion of Fort Lawton, which led to the establishment of Daybreak Star Center at Discovery Park. Prior to his appointment to the Tulalip Tribal Court bench in 2003, he had a general practice in Seattle, Washington where he tried over one hundred jury trials to verdict. He was admitted to the bar in Washington State in 1965. He sat as a Pro Tem Court Commissioner in King County Superior Court for 20 years in the Ex Parte Department. Judge Bass also was a Washington State Trial Lawyers Association Eagle, and was rate A-V in the Martindale Hubble.

Judge Bass was instrumental in starting the Tulalip Tribes' Elder's Panel; the Tulalip-Based Juvenile Community Accountability Board; as well as the Tulalip Wellness (Drug) Court.

He earned his bachelor's degree from Gonzaga University and his Juris Doctorate from the University of Washington School of Law in 1965.



# EXHIBIT 6

## The Tulalip Tribes of Washington

# THERESA M. POULEY

## SUMMARY OF QUALIFICATIONS

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1987 - 2013      Attorney, Judge and Faculty      Washington  
*Attorney: Licensed and Practicing Attorney for the last twenty-five (25) Years  
Specializing in Civil Litigation and Indian Law*  
*Judge: Tribal Court Judge and Justice for the last thirteen (13) Years*  
*Commissioner: Member of the federal Indian Law and Order Commission*  
*Faculty: College level instructor at Community Colleges including paralegal  
instruction, political science, public speaking and Indian legal issues*

## PROFESSIONAL EXPERIENCE

---

- 2005 to current      Tulalip Tribal Court      Tulalip, WA  
*Judge*
- Current Chief Judge and previous associate Judge of Tulalip Tribal Court. Caseload primarily focuses on criminal matters including the full range of criminal cases from arraignment through sentencing, probation calendar, Wellness Court and civil matters including children's dependency cases, civil dissolution and custody and general civil litigation including workers' compensation.
  - Assist in the planning, development and implementation of Tribal Court Programs including Alternative Sentencing and Wellness Court.
  - Recipient of High Honors Award from Harvard Honoring Nations program for Tulalip's Alternative Sentencing Program.
- 2010 to current      Indian Law and Order Commission      Commissioner
- Appointed by President Obama in 2011 to serve as a member of the Indian Law and Order Commission (ILOC) created by the Tribal Law and Order Act of 2010. The ILOC is charged with providing comprehensive recommendations to Congress and the President about improvements to the criminal justice system in Indian Country.
- 1999 – 2005      Lummi Tribal Court      Bellingham, WA  
*Chief Judge*
- 2005 awarded the National Tribal Child Support for "Outstanding Judge" for work on the Lummi Nation's Child Support Program.
  - Effectively, Efficiently and Fairly adjudicated 1000-1500 tribal court civil and criminal cases.
  - Author opinions on important legal issues regarding the law of the Lummi

Nation and the impact of federal law on tribal law.

- Spokesperson for Tribal Courts including Lummi policy and design for Constitutional Judiciary, preparing and appearing for Congressional Testimony, coordination of legal issues with federal and state jurisdictions, presentation of legal issues and judicial solutions for the Lummi and legal community.
- Administrative Director for Tribal Court, until 2002, including responsibility for technical system development, statistical analysis, coordination of non-judicial services, supervision and management of pro tem judges and court staff, budgeting and grant management.
- Conceptualize, Capitalize and Develop Lummi's Healing to Wellness Programs including an Adult and Juvenile Drug Court, current planning for a Family Drug Court and Coordinated Domestic Violence Response including program development, implementation and obtaining over \$1 million in grant funds to support the programs.
- Assisted and supported development of Lummi Nation Child Support Program as one of the original eight directly funded tribal child support programs in the United States.
- Tribal Judicial Representative on Washington State Supreme Court's Gender and Justice Commission's Rural Domestic Violence Training Series and National Center for State and Family Court Judges Project Passport Training Series.

2001 – Current                      Colville Tribal Court of Appeals                      Nespelem, WA

*Associate Justice*

- Appointed for a second 6-year term to serve as Associate Justice on appeals from the Colville Tribal Court.
- Preside over a variety of appeals including appeals of criminal convictions, housing evictions, child welfare and custody matters, and interpretations of tribal constitution, tribal law, tribal procedures and interrelated matters of state and federal law.

1998 – 1999                      Lummi Reservation Attorney                      Bellingham , WA

*Staff Attorney*

- Developed and Codified Lummi Code of Laws including enrollment and juvenile code, development of codification procedures and actual publication of laws with updates.
- Represent the Business Council and administration including negotiations with state and federal agencies, court appearances, drafting of legal memoranda on a variety of issues, drafting of legislative resolutions, and general representation of legislature in policy analysis and litigation.
- Assist and advise administrative departments on matters of enrollment, elections, protection of native remains, law and order, employment matters and codification of cultural requirements.

1999 – 2001                      Northwest Indian College                      Bellingham , WA

*Adjunct Faculty*

- Instructor teaching political science, Indian Policy and Political Theory, and legal studies classes.
- Piloted courses and curriculum in Project Peacemaker for curriculum in tribal legal advocacy including teaching Introduction to Legal Studies.

1995-1998 Lummi Tribal Court Bellingham, WA  
*Pro Tem Judge:* Served as a pro tempore Judge and Justice of the Lummi Court of Appeals hearing a variety of criminal, civil, and juvenile matters.

1993– current Edmonds Community College Edmonds, WA  
*Instructor of Legal Studies*

- Instructor teaching in the Paralegal Program including conducting classes in: Environmental Law, Introduction to Law, Civil Procedure, Criminal Law and Procedure, Interviewing and Investigative Techniques, Legal Research and Writing, Family Law and other areas as needed.
- Developed, piloted and continue to teach Indian Law Course outlining general rules relating to federal Indian law and Tribal law.

1987– 1998 Private Practice—Arlington & Lynwood, WA & Michigan  
*Attorney at Law*

- Solo Private Practitioner with primary focus on litigation in Indian Country including complex civil litigation in Colville Tribal Court favorably resolved in 1998.
- Small firm practice in general civil litigation from 1990-1991.
- Large firm practice, over 100 attorneys, in Grand Rapids Michigan at *Varnum, Riddering, Schmidt and Howlett* emphasizing complex litigation and practice in all state, federal and administrative tribunals. Primary Practice Groups were litigation and environmental law. Associate Attorney representing local County and City governments including Prosecuting Attorney duties for municipal government.

PROFESSIONAL ACTIVITIES: PRESENTER AND SPOKESPERSON FOR  
EDUCATION AND INFORMATION  
ABOUT TRIBAL JUSTICE SYSTEMS

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1999-Current

- 2000: Department of Justice Mediation and Alternative Dispute Resolution Panel. Presenter on Lummi Nation's Community Panel Project before the Department of Justice and Attorney General Janet Reno. Summary of community panel and court coordination project to match at-risk youth with elders as a promising practice for long-term delinquency prevention.
- 2001: Tribal Court Presenter for State and National Conference for National Center for State Court Full Faith and Credit Conference, "Crossing Borders". Presentation title "The 3 C's: Cooperation, Coordination and Consistency in Tribal-State Enforcement of Protection Orders."
- 2001: National Tribal Court Judges Association Presenter to the United States Supreme Court Justices O'Connor and Breyer. Presentation title, "Indigenous Justice Paradigms and Judicial Leadership".
- 2001-2005: Washington Administrator of Court series on Tribal Courts and the federal Violence Against Women Act. Presentations entitled

“Living in Peace—Full Faith and Credit for Tribal Court Domestic Violence Protection Orders.”

- 2002: Whatcom County Human Rights Task Force, Martin Luther King Day Celebration. Presentation title, “Treaty Rights in the 21<sup>st</sup> Century.”
- 2000-2002: Northwest Indian College Treaty Day Celebration. 2002 Presentation entitled, “Treaty Rights—Alive and well in the New Millennium.”
- 2002: Indigenous Environmental Justice, Region I Conference. Presentation title, “Native American Environmental Values & Judicial Perspectives on Tribal Environmental Law.”
- July 11, 2002: Testimony Before the United States Senate Committee on Indian Affairs. Testimony provided on “Contemporary Tribal Governments: Challenges in Law Enforcement Related to the Rulings of the U.S. Supreme Court”.
- 2002: University of Washington, 15<sup>th</sup> Annual Indian Law Symposium, “Criminal Law in Indian Country”. Presentation on the status of criminal law after the United States Supreme Court decision in *Nevada v. Hicks*.
- 2002: Annual Conference of State Drug Court Professionals, “Healing to Wellness Courts—Drug Court Programs in Indian Country.” Presentation on Drug Court movement and co-occurring disorders in Indian Country.
- 2004: Washington State Annual Judicial Conference, “Coordinating State and Tribal Judicial Efforts”.
- 2004: Lummi Nation’s Coast Salish Gathering I: Healing Conference on Substance Abuse, “Banishment and Drug Court” presentation.
- 2004: Lummi Nation’s Coast Salish Gathering II: Drug Enforcement and Education Conference, Keynote Speaker on “Focus on the Future by Remembering our Past”.
- 2004: National Tribal Court Judges Association Annual Conference, “Banishment, Therapy and Beyond”. Presentation on Lummi’s Banishment Code and Federal Legal Issues regarding banishment including building a system to facilitate therapeutic outcomes.
- December 2004: Associate Justice on the Historical Court of Justice and Inquiry—Chief Leschi proceedings. The only tribal judge on the Panel of State Supreme Court, Court of Appeals and Superior Court Justices convened to decide whether Chief Leschi of the Nisqually Tribe should be exonerated. The Court unanimously exonerated Chief Leschi.
- 2005: Presenter at Department of Justice National Gathering of Tribal Justice Leaders entitled, “Justice as a Partner ‘for the future of our Children in the ways of our Ancestors—Lummi Tribal Court as Part of the Healing Process.”
- 2005 to 2009: Presenter at Washington State Annual Judicial

Conference for series of trainings on Indian Law beginning in October of 2005. Presentation entitled "Indian Law 101 to Indian Law 103". 2008 and 2009 presentations were focused on Indian Children in dependencies and in child custody cases.

- 2005: 18<sup>th</sup> Annual Indian Law Symposium Presenter for University of Washington School of Law on Traditional Values in Tribal Justice Systems.
- 2005: Keynote Speaker at National Tribal Child Support Annual Conference. Presentation entitled: "Tribal Child Support as an Act of Sovereignty – Lummi Tribal Court Supporting Every Child."
- 2006: Presenter at National Tribal Court Judges Association Annual Conference on "Judicial Ethics" and co-presenter of "Planning Tribal Justice systems".
- 2006 to current: Presentation and Support for the Washington Bar Association's Leadership Institute. Yearly presentation on a panel entitled "Conversation with the Judges" focusing on tribal court and tribal court practice.
- 2006: 19<sup>th</sup> Annual University of Washington Indian Law Symposium Presenter on "Criminal Defense Practice in Indian Country."
- 2007: Presenter for Harvard Honoring Nations Program on Tulalip's Alternative Sentencing Program. The Program achieved the High Honors Award for its contribution to tribal governance in 2006.
- 2008: Testimony before the United States Senate Committee on Indian Affairs for the "Oversight Hearing on Tribal Courts and the Administration of Justice in Indian Country". Testified in support of Tribal Law and Order Act of 2008 which seeks to increase funding and authority for Tribal Justice Systems.
- 2008: University of Arizona's "Emerging Leaders Conference" presentation on Tulalip Alternative Sentencing Program.
- 2008: National Tribal Child Support Conference Presentation delivered entitled, "Child Support as an Act of Sovereignty".
- 2008: Provided training at Northwest Inter-tribal Court System Training on tribal court's and tribal court management. Delivered plenary presentation entitled, "Strong Courts, Strong Communities - - Justice in Indian Country."
- 2009: Facilitator and Designated Expert for the U.S. Department of Justice's "Tribal Nations Listening Session on Public Safety and Law Enforcement" held in St. Paul, Minnesota.
- 2009: Presenter at the National Gaming Conference on Therapeutic Jurisprudence as a model for gambling addiction.
- 2009: Affiliated Tribes of the Northwest, Law and Justice Committee Presentation on the "Federal Role in Indian Country Justice."

- 2010: Office of Victims of Crime Facilitator for the “Focus Group on Human Trafficking of American Indian and Alaska Native Women and Children.”
- 2010: 23<sup>rd</sup> Annual University of Washington Indian Law Symposium Presenter on the implications of the Tribal Law and Order Act of 2010 on Tribal Justice Systems.
- 2011: National Council for Juvenile and Family Court Judges (NCJFCJ) member of the tribal leadership group focusing on information gathering and strategic planning for full compliance with the federal Indian Child Welfare Act.
- 2011: Testimony before the Senate Committee on Indian Affairs on “Tribal Law and Order Act One Year later: Have we improved Public Safety and Justice throughout Indian Country”, September 22, 2011.
- 2012: 25<sup>th</sup> Annual University of Washington Indian Law Symposium Presenter on the preliminary work and issues presented to the Indian Law and Order Commission.

## EDUCATION

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1984 - 1987      Wayne State University Law School      Detroit, MI

- Juris Doctorate Degree, June, 1987. Graduated top one-third of class.
- *Honors*: Order of Barristers, Dykema, Gosset, Goodnow and Trigg Award for Outstanding Minority Student, Quarter-finalist National Moot Court Regional Competition.

1980 - 1984      Gonzaga University      Spokane, WA

- Bachelor of Arts in Speech Communication and Political Science with minor in Economics, May, 1984.
- Graduated with honors.
- Numerous Awards for Intercollegiate National Debate Competitions.

## PROFESSIONAL MEMBERSHIPS

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- Admitted Michigan State Bar, October 1987; admitted Washington State Bar, October 1990; admitted Colville Tribal Bar, June 1994; admitted Lummi Tribal Bar, March 1996.
- Member, Northwest Tribal Court Judges Association, National Tribal Court Judges Association and NCJFCJ.

**GARY F. BASS**

**Associate Judge**

**Tulalip Tribal Court**

## **Resume of Gary F. Bass**

Date and Place of Birth: April 4<sup>th</sup>, 1936, Colville, Washington

### Education:

- High School - Inchelium, Washington 1955
- College - B.A., Gonzaga University, 1960
  - Law School, J.D., University of Washington, 1965
- Military Service - First Lieutenant, U.S. Army & Army Reserve, 1960-66
  - Airborne, Ranger, Special Forces

### Member Colville Tribe

Raised at Inchelium and Spokane

Scholarship to college from Colville Tribe

Director of Youth Camp, Colville Tribe, 1963

Colville Tribal Enterprises Board, 3 to 4 years beginning approximately 1990

### Urban Indian Organizations

Seattle Indian Center

American Indian Women's Services League

United Indians of All Tribes Foundation

### Native American Practice



Represented many Native Americans in treaty fishing rights cases

Muckleshoot Tribe, hired by the Tribe to represent members charged in Treaty – hunting, fishing clamming and wood gathering

Indian Probate Trials

Professional Organizations:

Seattle/King County Bar Association

Washington State Bar Association

Washington State Trial Lawyers Association

Native American Indian Court Judges' Association

Northwest Tribal Court Judges' Association

Court Admitted to Practice in:

Muckleshoot Tribal Court

Colville Tribal Court

State of Washington, all courts since 1965

Federal District Court, Washington, since 1965

Ninth Circuit Court of Appeals, since 1970

U.S. Supreme Court, since 1975

Martindale-Hubble listing: a, v

Special Awards:

Seattle-King County Association Pro-Bono Award, 1984. High Honors to Tulalip Tribal Court's Alternative Sentencing Program from Harvard University's John F. Kennedy School of Government, Honoring Nations in 2006, and Local Heroes award from the Washington State Bar Association Board of Governors for the Elders Court at Tulalip Tribal Court.

King County Superior Court Pro-Tem Commissioner 1980 to 2003, two to five days per month

Jury Trials tried as a lawyer: approximately 100 or more

Criminal Law practice: Represented a minimum of 400 criminal clients in Municipal Courts, State District Courts, State Superior Court, State Court of Appeals, State Supreme Court, U. S. District Court, U. S. Court of Appeals, and U. S. Supreme Court. Was on the U. S. District Court, Western District of Washington Public Defender panel representing defendants.

Non-Jury Trials tried as a lawyer: approximately 200 or more

Court appearances: approximately 1000 or more

Judge Native American Courts:

Chief Judge Tulalip Tribal Court December 2004 to 2009

Associate Judge Tulalip Tribal Court January 2003 to December 2004, and 2009 to present

Puyallup Tribal Court of Appeals 2004

Northwest Intertribal Court System Court of Appeals January 2003 to present

Nevada Intertribal Court of Appeals 2005 to 2011

Colville Tribal Court of Appeals 2005 to present

Northwest Intertribal Court System Judge since January 2003

Suquamish Tribal Court of Appeals since 2006

Professional Training:

National Judicial College, Basic Skills for Tribal Court Judges and General Jurisdiction course, Drug Court training at NJC, 40 hour civil mediation course at NJC, Court Management at NJC, and Advanced Evidence at NJC..

# EXHIBIT 7

## The Tulalip Tribes of Washington

## 2.05.060 Disqualification of Judges and Magistrates.

(1) As a Matter of Right. A defendant, or other party, to any legal proceedings may accomplish one automatic change of assignment of the case from one Judge or Magistrate to another upon filing an affidavit of prejudice with the Court, stating that the Judge assigned to the case is prejudiced against their case. Such affidavit shall be in written form and must be filed with the Court within 10 days of assignment or reassignment of the trial Judge or before any discretionary ruling, whichever comes first. Rulings made at arraignment, the first appearance, or the initial bail hearing shall not be considered discretionary rulings for purposes of this rule.

(2) For Cause. A defendant, or other party, to any legal proceedings may accomplish a second change of assignment of the case from one Judge or Magistrate to another upon filing an affidavit of prejudice with the Court. A Judge shall be disqualified for cause if an affidavit alleging interest or prejudice that would prevent a fair and impartial trial is ruled to be founded by a preponderance of the evidence after review by the Chief Justice of the Tulalip Court of Appeals. If an affidavit alleging interest or prejudice that would prevent a fair and impartial trial is filed against the Chief Justice of the Tulalip Court of Appeals, the Chief Justice shall recuse him or herself from the matter. Such affidavit shall be in written form and must be filed by the party alleging such interest or prejudice within 10 days of discovery of the facts supporting the affidavit, unless good cause is shown for later filing.

(3) Recusal. A Judge may recuse himself or herself upon grounds that he or she deems sufficient. [Ord. 49 § 1.6, 1-8-2010 (Res. 2010-10)].

## 2.05.130 Rules of evidence.

(1) Scope of Rules. These rules shall constitute the rules of evidence in all proceedings in the Courts of the Tulalip Tribes. These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

### (2) Rulings on Evidence.

(a) Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and:

(i) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears on the record, stating the specific ground of the objection if the specific ground was not apparent from the context; or

(ii) Offer of Proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the Judge by offer or was apparent from the context within which questions were asked.

(b) Record of Offer and Ruling. The Judge may add any other or further statement which shows the character of the evidence, the form in which it was offered, the object made, and the ruling thereon. He may direct the making of an offer in question-and-answer form.

(c) Hearing of Jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

(d) Plain Error. Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the Judge.

(3) Limited Admissibility. When evidence, which is admissible as to one party or for one purpose, but not admissible as to another party or for another purpose, is admitted, the Judge, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

(4) Related or Remainder of Writings or Recorded Statements. When a writing or recorded statement or part is introduced by a party, an adverse party may require him at that time to introduce any other party or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

### (5) Judicial Notice of Adjudicative Facts.

(a) Scope of Rule. This rule governs only judicial notice of adjudicative facts.

(b) Types of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (i) generally known within the community, or (ii) capable of accurate and ready

determination by resort to sources whose accuracy cannot reasonably be questioned, or (iii) notice is provided for by statute.

(c) When Discretionary. A Judge or Court may take judicial notice, whether requested or not.

(d) When Mandatory. A Judge or Court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to Be Heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of Taking Notice. Judicial notice may be taken at any stage of the proceeding.

(g) Instructing Jury. The Judge shall instruct the jury to accept as established any facts judicially noticed.

(6) Presumptions. In all cases not otherwise provided for by statute or by these rules, a presumption imposes on the party against whom is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence. Except as otherwise provided by statute, in criminal cases, presumptions against an accused, recognized as common law or created by statute, including statutory provision that certain facts are prima facie evidence of other facts or of guilt, are governed by this rule.

(7) Relevancy. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. All relevant evidence is admissible, except as otherwise provided by Constitution, by statute, by these rules, or by other rules adopted by the Tulalip Court. Evidence which is not relevant is not admissible. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, misleading of the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence.

(8) Character Evidence.

(a) Character Evidence Generally. Evidence of a person's character or trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

(i) Character of Accused. Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same.

(ii) Character of Victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor.

(iii) Character of Witness. Evidence of the character of a witness, as provided in these rules.

(b) Other Crimes, Wrongs, or Acts. Evidence of other crimes, wrongs, and acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. This subsection does not exclude the evidence when offered for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(c) Reputation or Opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(d) Specific Instances of Conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of his conduct.

(e) Habit or Routine Practice. Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice. Habit or routine practice may be proved by testimony in the form of an opinion or by specific instances of conduct sufficient in number to warrant a finding that the habit existed or that the practice was routine.

(9) Subsequent Remedial Measures. When, after an event, measures are taken which if taken previously would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

(10) Admissibility of Sympathetic Gestures. The portion of statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person involved in an accident, and made to that person or to the family of that person, shall be inadmissible as evidence in a civil action. A statement of fault, however, which is part of, or in addition to, any of the above shall not be made inadmissible by this section. For purposes of this section:

(a) "Accident" means an occurrence resulting in injury or death to one or more persons that is not the result of willful action by a party.

(b) "Benevolent gestures" means actions that convey a sense of compassion or commiseration emanating from humane impulses.

(c) "Family" means the spouse or the domestic partner, parent, grandparent, stepmother, stepfather, child, grandchild, brother, sister, half-brother, half-sister, adopted child of a parent, or spouse's or domestic partner's parents of an injured party.

(11) Compromise and Offers to Compromise. Evidence of (a) furnishing, offering, or promising to furnish, or (b) accepting, offering, or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution. Evidence of furnishing, offering, or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible as an admission of liability for the injury. Evidence of a plea of guilty, later withdrawn, or a plea of no contest, or of an offer to plead guilty or no contest to the crime charged or any other crime, or of statements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer.

(12) Liability Insurance. Evidence that a person was or was not insured against liability is not admissible upon the issue of whether he acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, control, or bias or prejudice of a witness.

(13) Privileges Recognized Only as Provided. Except as otherwise required by law, and except as provided in these rules or in other rules adopted by the Judges, no person has a privilege to:

(a) Refuse to be a witness;

(b) Refuse to disclose any matter;

(c) Refuse to produce any object or writing; or

(d) Prevent another from being a witness or disclosing any matter or producing any object or writing.

(14) Privileged Matter Disclosed Under Compulsion or Without Opportunity to Claim Privilege. Evidence of a statement or other disclosure of privileged matter is not admissible against the holder of the privilege if the disclosure was (a) compelled erroneously, or (b) made without opportunity to claim the privilege.

(15) Comment upon or Interference from Claim of Privilege – Instruction.

(a) Comment or Interference Not Permitted. The claim of privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by Judge or counsel. No inference may be drawn therefrom.

(b) Claiming Privilege Without Knowledge of Jury. In a jury case, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.



(c) Jury Instruction. Upon request, any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom.

(16) Competency of Witnesses.

(a) Personal Knowledge. A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness himself. The exception to this is expert witnesses.

(b) Oath or Affirmation. Before testifying, every witness shall be required to declare before the Court that he will testify truthfully, by oath or affirmation.

(c) Interpreters. An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation that he will make a true translation.

(d) Judge as Witness. The Judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

(e) Competency of Juror as Witness.

(i) At the Trial. A member of the jury may not testify as a witness before that jury in the trial of the case in which he is sitting as a juror. If a juror is called to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(ii) Inquiry into Validity of Verdict. Upon an inquiry into the validity of a verdict, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith, except that a juror may testify on the question whether any outside prejudicial information or influence was improperly brought to bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received.

(17) Evidence of Character and Conduct of Witness.

(a) General Rule.

(i) Opinion and Reputation Evidence of Character. The credibility of a witness may be attacked or supported by evidence in the form of reputation or opinion, but subject to these limitations:

(A) The evidence may refer only to character for truthfulness or untruthfulness; and

(B) Evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(ii) Specific Instances of Conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility, other than conviction of crime, may not be proved by extrinsic evidence. They may, however, if probative of truthfulness or untruthfulness and not remote in time, be inquired into on cross-examination of the witness himself or on cross-examination of a witness who testifies to his character for truthfulness or untruthfulness. The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the privilege against self-incrimination when examined with respect to matters relating only to credibility.

(iii) Religious Beliefs. Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that, by reason of their nature, his credibility is impaired or enhanced.

(b) Previous Convictions. For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime is admissible, but only if either the crime was punishable by death or imprisonment in excess of one year under the law under which he was convicted, or the crime involved dishonesty or false statement regardless of the punishment.

(i) Time Limit. Evidence of a conviction under this rule is not admissible if a period of more than 10 years has elapsed since the date of the release of the witness from confinement imposed for his most recent conviction, or the expiration of the period of his parole, probation, or sentence granted or imposed with respect to his most recent conviction, whichever is the later date.

(ii) Effect of Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is not admissible under this rule if:

(A) The conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a substantial showing of rehabilitation and the witness has not been convicted of a subsequent crime; or

(B) The conviction has been the subject of a pardon, annulment, or other equivalent procedure based on innocence.

(iii) Pendency of Appeal. The pendency of an appeal therefore does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

(18) Mode and Order of Interrogation and Presentation.

(a) Control by Judge. The Judge shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(i) Make the interrogation and presentation effective for the ascertainment of the truth;

(ii) Avoid needless consumption of time; and

(iii) Protect witnesses from harassment or undue embarrassment.

(b) Scope of Cross-Examination. A witness may be cross-examined only with respect to matters testified to on direct examination.

(c) Leading Questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop his testimony. Ordinarily, leading questions should be permitted on cross-examination. In civil cases, a party is entitled to call an adverse party or witness identified with him and interrogate by leading questions.

(19) Writing Used to Refresh Memory. If a witness uses a writing to refresh his memory for the purpose of testifying, either before or while testifying, an adverse party is entitled to have it produced at the hearing, to inspect it, to cross-examine the witness, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony, the Judge shall examine the writing in camera, excise any portion not so related, and order delivery of the remainder to the party entitled to it. Any portion withheld over objections shall be preserved and made available to the Appellate Court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the Judge shall make any order justice requires, except that in criminal cases, when the prosecution elects not to comply, the order shall be one striking the testimony or, if the Judge in his discretion determines that the interests of justice so require, declaring a mistrial.

(20) Prior Statement of Witnesses.

(a) Examining Witness Concerning Prior Statement. In examining a witness concerning a prior statement made by him, whether written or not, the statement need not be shown or its contents disclosed to him at that time, but on request, the same shall be shown or disclosed to opposing counsel.

(b) Extrinsic Evidence of Prior Inconsistent Statement of Witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate him thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in subsection (27) of this section.

(21) Calling and Interrogation of Witnesses by Judge.

(a) Calling by Judge. The Judge may, on his own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(b) Interrogation by Judge. The Judge may interrogate witnesses, whether called by himself or a party; provided, however, that in trials before a jury, the Judge's questioning must be cautiously guarded so as not to constitute an implied comment.

(c) Objections. Objections to the calling of witnesses by the Judge or to interrogation by him may be made at the time or at the next available opportunity when the jury is not present.

(22) Exclusion of Witnesses. At the request of a party, the Judge shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and he may make the order of his own

motion. This rule does not authorize exclusion of a party to the proceedings or a person whose presence is shown by a party to be essential to the presentation of his case.

(23) Opinion Testimony.

(a) Testimony of Lay Witnesses. If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are:

(i) Rationally based on the perception of the witness; and

(ii) Helpful to a clear understanding of his testimony or the determination of a fact in issue.

(b) Testimony of Expert Witnesses. If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinion or inferences upon the subject, the facts or data need not be admissible in evidence. Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact. The expert may testify in terms of opinion or inference and give his reasons therefore without prior disclosure of the underlying facts or data, unless the Judge requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

(24) Expert Witnesses. Any party may call an expert witness of their own selection and at their own expense.

(25) Court-Appointed Experts.

(a) Appointment. The Judge may on his own motion, or on the motion of any party, appoint expert witnesses, and may request the parties to submit nominations. The Judge may, in his or her discretion, appoint one or more expert witnesses of his own selection to give evidence in the action except that if the parties agree as to the experts to be appointed, he shall appoint only those designated in the agreement. An expert witness shall not be appointed by the Judge unless he consents to act. A witness so appointed shall be informed of his duties by the Judge in writing, a copy of which shall be filed with the Clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of his findings, if any; his deposition may be taken by any party; and he may be called to testify by the Judge or any party. He shall be subject to cross-examination by each party, including a party calling him as a witness.

(b) Compensation. Expert witnesses so appointed may be entitled to reasonable compensation in whatever sum the Judge may allow. If able, compensation shall be paid by the parties in such proportion and at such time as the Judge directs, and thereafter charged in like manner as other costs.

(26) Hearsay. Hearsay is an out-of-court statement of a person other than the one testifying offered in evidence in order to prove the truth of the matter asserted in that statement.

(27) Hearsay Exceptions – Availability of Declarant Immaterial. The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

- (a) Present sense impression;
- (b) Excited utterance;
- (c) Then-existing mental, emotional, or physical condition;
- (d) Statements for purposes of medical diagnosis or treatment;
- (e) Recorded recollection;
- (f) Records of regularly conducted activity;
- (g) Absence of entry in records of regularly conducted activity;
- (h) Public records and reports;
- (i) Records of vital statistics;
- (j) Absence of public record or entry;
- (k) Records of religious organizations;
- (l) Marriage, baptismal, and similar certificates;
- (m) Family records;
- (n) Records of documents affecting an interest in property;
- (o) Statements in documents affecting an interest in property;
- (p) Statements in ancient documents (20 years old or more);
- (q) Market reports, commercial publications;
- (r) Learned treatises;
- (s) Reputation concerning personal or family history;
- (t) Reputation concerning boundaries or general history;
- (u) Reputation as to character;

- (v) Judgment of previous conviction;
- (w) Judgment as to personal, family, or general history;
- (x) An admission of a party-opponent; and
- (y) Statement used by a witness at a prior hearing subject to cross-examination.

(28) Hearsay Exceptions – Declarant Unavailable.

(a) Definition of Unavailability. “Unavailability as a witness” includes a situation in which the declarant:

- (i) Is exempted by ruling of the Judge on the ground of privilege from testifying concerning the subject matter of his statement;
- (ii) Persists in refusing to testify concerning the subject matter of his statement despite an order of the Judge to do so;
- (iii) Testifies to a lack of memory of the subject matter of his statement;
- (iv) Is unable to be present or to testify at the hearing because of death or then-existing physical or mental illness or infirmity; or
- (v) Is absent from the hearing and the proponent of his statement has been unable to procure his attention by process or other reasonable means.

A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying.

(b) Exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

- (i) A statement of present sense impression;
- (ii) A statement under belief of impending death;
- (iii) A statement against pecuniary or proprietary interest; or
- (iv) A statement not specifically covered by any of the foregoing exceptions but having comparable guarantees of trustworthiness.

(29) Hearsay within Hearsay. Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms to an exception of the hearsay rule provided in these rules.

(30) **Attacking and Supporting Credibility of Declarant.** When a hearsay statement has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported by any evidence which would be admissible for those purposes if the declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with his hearsay statement, is not subject to any requirement that he may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine him on the statement as if under cross-examination.

(31) **Foundations for Evidence.** All evidence must be authenticated or identified to the satisfaction of the Judge that the evidence is what it is claimed to be before it may be admitted.

(32) **Best Evidence Rule.** To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute. When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the Judge to determine. However, when an issue is raised regarding: whether the asserted writing ever existed; whether another writing, recording, or photograph produced at the trial is the original; or whether other evidence of contents correctly reflects the contents, then the issue is for the trier of fact to determine as in the case of other issues of fact.

(a) **Duplicates.** A duplicate is admissible to the same extent as an original unless:

(i) A genuine question is raised as to the authenticity of the original; or

(ii) Under the circumstances, it would be unfair to admit the duplicate in lieu of the original.

(b) **Original Not Required.** The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible, if:

(i) **Originals Lost or Destroyed.** All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith;

(ii) **Original Not Obtainable.** No original can be obtained by any available judicial process or procedure;

(iii) **Original in Possession of Opponent.** At a time when an original was under the control of the party against whom offered, he was put on notice, by the pleadings or otherwise, the contents would be a subject of proof at the hearing, and he does not produce the original at the hearing; or

(iv) **Collateral Matters.** The writing, recording, or photograph is not closely related to a controlling issue.

(c) **Official Records.** The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilation in any form, if otherwise admissible, may be proved by copy, certified as correct or testified to be correct by a witness who

has compared it with the original. If a copy, which complies with the foregoing, cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

(d) Testimony Regarding Contents. Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by his written admission, without accounting for the nonproduction of the original.

(33) Evidence of Similar Crimes in Cases Involving Sexual Offenses.

(a) Adult Sexual Assault Cases. In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant. In a case in which the Tribes' Attorney intends to offer evidence under this rule, the attorney shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least 15 days before the scheduled date of trial or at such later time as the Court may allow for good cause. This rule shall not be construed to limit the admission or consideration of evidence under any other rule. For purposes of this rule, "sexual assault" includes all forms of sexual assault or exploitation, including, but not limited to, rape, molestation, and prostitution.

(b) Child Sexual Abuse Cases. In a criminal case in which the defendant is accused of committing a crime under Chapter [3.20](#) or [3.25](#) TTC that involves a child, evidence of the defendant's commission of another offense or offenses of child sexual abuse is admissible, and may be considered for its bearing on any matter to which it is relevant. In a case in which the Tribes intends to offer evidence under this rule, the Tribes' Attorney shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least 15 days before the scheduled date of trial or at such later time as the Court may allow for good cause. This rule shall not be construed to limit the admission or consideration of evidence under any other rule. For purposes of this rule, "child" means a person below the age of 14, and "child sexual abuse" includes all forms of sexual assault or exploitation involving a child, including, but not limited to, child rape, child molestation, child pornography, and child prostitution.

(34) Relevance of Alleged Sexual Assault Victim's Sexual History.

(a) Evidence offered to prove that any alleged victim engaged in other sexual behavior and evidence offered to prove any alleged victim's sexual predisposition is not admissible in any criminal or civil proceeding involving alleged sexual misconduct except as provided in subsections (34)(b) and (c) of this section.

(b) In a criminal case, the following evidence is admissible, if otherwise admissible under these rules: evidence of specific instances of sexual behavior by the alleged victim offered to prove that a person other than the accused was the source of semen, injury or other physical evidence; evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered by the accused to prove consent or by the prosecution; and evidence the exclusion of which would violate the constitutional rights of the defendant.



(c) In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of an alleged victim's reputation is admissible only if it has been placed in controversy by the alleged victim.

(d) Procedure to Determine Admissibility. A party intending to offer evidence under subsection (34)(b) of this section must file a written motion at least 14 days before trial specifically describing the evidence and stating the purpose for which it is offered unless the Court, for good cause, requires a different time for filing or permits filing during trial; and serve the motion on all parties and notify the alleged victim or, when appropriate, the alleged victim's guardian or representative. Before admitting evidence under this rule the court must conduct a hearing in camera and afford the victim and parties a right to attend and be heard. The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the Court orders otherwise.

(35) Evidence of Similar Acts in Civil Cases Concerning the Sexual Assault of Adults or Children. In a civil case in which a claim for damages or other relief is predicated on a party's alleged commission of conduct constituting an offense of sexual assault on an adult or child, evidence of that party's commission of another offense or offenses of sexual assault is admissible and may be considered as provided in subsection (33) of this section. A party who intends to offer evidence under this subsection shall disclose the evidence to the party against whom it will be offered, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least 15 days before the scheduled date of trial or at such later time as the Court may allow for good cause. This rule shall not be construed to limit the admission or consideration of evidence under any other rule. [Res. 2010-206; Ord. 49 § 1.13, 1-8-2010 (Res. 2010-10)].

## Chapter 2.25 CRIMINAL PROCEDURES

### Sections:

- [2.25.010](#) General provisions.
- [2.25.020](#) Investigative procedures.
- [2.25.030](#) Searches.
- [2.25.040](#) Arrests.
- [2.25.050](#) Defendant must appear.
- [2.25.060](#) Commencing prosecution.
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- [2.25.080](#) Pretrial release.
- [2.25.090](#) Initial appearance.
- [2.25.100](#) Arraignment.
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- [2.25.120](#) Pretrial.
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- [2.25.140](#) Trial.
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- [2.25.160](#) Revocation of probation.

### 2.25.010 General provisions.

(1) Criminal Jurisdiction. Tulalip Tribal Court shall have exclusive jurisdiction over all crimes committed within the exterior boundaries of the Reservation, unless otherwise provided by Federal law. Tulalip Tribal Court will have concurrent jurisdiction over offenses defined by Federal law. An Indian defendant is subject to prosecution in Tribal Court for any offense enumerated in TTC Title [3](#) or another Tribal ordinance which is committed totally or partially within the exterior boundaries of the Tulalip Reservation, or is committed on lands and waters outside the Tulalip Reservation reserved or obtained by the Tribes and its people for their use by any treaty or law or in any other manner, except where such exercise of criminal jurisdiction is limited by Federal or Tribal law. Any offense is committed partially within the Tulalip Reservation or within other Tribal lands, as described above, if either the conduct which is an element of the offense or the result which is an element occurs within the exterior boundaries of the Tulalip Reservation or other Tribal lands. An offense based on an omission to perform a duty imposed by Tribal law is committed within the exterior boundaries of the Tulalip Reservation, regardless of the location of the defendant at the time of the omission.

(2) Extradition. Nothing in this section shall be considered to limit or restrict an individual's right to seek a writ of habeas corpus in Tribal Court. If a Tribal law enforcement officer arrests an individual based on a warrant issued by another jurisdiction, or a reasonable belief that a warrant has been issued, the Tribes may hold such individual for up to 48 hours after any Tribal sentence has been served for transport by authorized officials. If officials representing the other jurisdiction do not retrieve the defendant within that time, he or she shall be released. The defendant shall be entitled to bail at the amount set in the warrant.

(3) Jurisdiction over Felony Crimes. The Tulalip Tribal Court shall have jurisdiction over specific offenses that may be subject to punishment greater than one year or a fine of \$5,000 or both under specific circumstances and conditions. Such offenses are considered felony crimes and classified as a Class F crime under the resolution codified in this section.

(4) Definitions. Unless otherwise specified in a particular section, the following definitions shall apply to this chapter:

(a) “Bail” means the security given, in the form of cash, stocks, bonds, real property, or any other form of approved collateral, for the primary purpose of insuring the presence of the defendant in a pending criminal proceeding.

(b) “Charge” means a written statement accusing a person of the commission of a specific offense.

(c) “Citation” means a written direction that is issued by a law enforcement officer and that requests a person to appear before the Court at a stated time and place to answer a charge for the alleged commission of an offense.

(d) “Elder” or “older person” means a Tribal member or other individual residing on the Reservation who is:

(i) Sixty-two years of age or older;

(ii) Determined by the Court to be an elder; or

(iii) At least 45 years of age and unable to protect himself or herself from abuse, neglect, or exploitation because of a mental disorder or physical impairment or because of frailties or dependencies brought about by age or disease or alcoholism.

(e) “Family member” or “household member” means a spouse, former spouse, person related by blood or marriage, person residing with the offender due to adoption or foster placement, or any person currently cohabiting with the offender at any time during the year immediately preceding the commission of any alleged abuse.

(f) “Frisk” means an external patting of a person’s outer clothing.

(g) “Incarceration” or “imprisonment” means the confinement or detention of an offender pursuant to Court-ordered sentencing, including, but not limited to, confinement in a jail or correctional facility, treatment facility, residential detention or GPS monitoring.

(h) “Judgment” means an adjudication by the Tribal Court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, the judgment includes the sentence pronounced by the Court.

(i) “Mental disorder” means any organic, mental, or emotional impairment which has substantial adverse effects on an individual’s cognitive or volitional functions. It does not include an abnormality manifested only by repeated criminal or other antisocial behavior.

(j) “Offender” means a person who has been convicted of an offense under Tulalip law.

(k) “Offense” means a violation of Tulalip Tribal criminal law.

(l) “Personal recognizance” means the release from lawful custody of a defendant upon his or her promise to appear in Court at all appropriate times.

(m) “Probation” means the release by the Court without imprisonment of an offender found guilty of a crime upon verdict or plea, subject to conditions imposed by the Court and subject to supervision by the Probation Office upon direction of the Court.

(n) “Summons” means a written document issued by the Court that commands a person to appear before the Court at a stated time and place.

(o) “Supervised offender” means an offender who is either:

(i) Sentenced to probation; or

(ii) Who is subject to a deferred sentence; or

(iii) Who is subject to a stipulated order of continuance; or

(iv) Released from incarceration subject to conditions imposed by the Court and subject to the supervision of the Department.

(p) “Temporary roadblock” means any structure, device, or other method used by law enforcement officers to control the flow of traffic through a point on a highway or road whereby all vehicles be slowed or stopped.

(q) “Witness” means a person whose testimony is desired in a criminal action, prosecution or proceeding. [Res. 2012-445 §§ 4, 5; Ord. 49 § 5.1, 1-8-2010 (Res. 2010-10)].

### **2.25.020 Investigative procedures.**

(1) Investigative Subpoenas. A Judge may cause a subpoena to be issued commanding a specified person to appear before the Tribal Prosecutor or a designated agent of the Prosecutor and give testimony and produce such books, records, papers, documents, and other objects as may be necessary and proper to the investigation. An investigative subpoena may only be issued by a Judge when supported by an affidavit of the Prosecutor sufficient to show that the administration of justice requires the testimony or information being sought.

(2) Immunity from Self-Incrimination. No person subpoenaed to give testimony pursuant to this section may be required to make a statement or to produce evidence that may be personally incriminating. The Prosecutor may, with the approval of the Judge who authorized the issuance of the subpoena, grant a person subpoenaed immunity from the use of any compelled testimony or evidence or any information directly or indirectly derived from the testimony or evidence against that person in a criminal prosecution. Nothing in this section prohibits a Prosecutor from granting

immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the Prosecutor determines, in the Prosecutor's sole discretion, that the best interest of justice would be served by granting immunity. After being granted immunity, no person may be excused from testifying on the grounds that the testimony may be personally incriminating. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena. Nothing in this section requires a witness to divulge the contents of a privileged communication unless the privilege is waived as provided by law.

(3) Relief from Improper Subpoena. A person aggrieved by a subpoena issued pursuant to this section may, within a reasonable time, file a motion to dismiss the subpoena and, in the case of a subpoena duces tecum, to limit its scope. The motion must be granted if the subpoena was improperly issued or, in the case of a subpoena duces tecum, if it is overly broad in its scope.

(4) Investigative Hearings. Before a Judge, the Prosecutor may examine under oath all witnesses subpoenaed pursuant to this section. Testimony must be recorded. The witness has the right to have counsel present at all times. Failure to obey, without just cause, a subpoena served under this section is punishable for contempt of Court. Proceedings conducted under this section are closed and confidential except to the extent that they supply probable cause for arresting or charging a defendant in a subsequent criminal action or are admissible in a later criminal trial. A person who divulges the contents of the Prosecutor's affidavit or the proceedings without legal privilege to do so is punishable for contempt of Court. All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this section. [Ord. 49 § 5.2, 1-8-2010 (Res. 2010-10)].

### **2.25.030 Searches.**

A search of a person, object, or place may be made, and evidence, contraband, or persons may be seized when a search is made, either by the authority of a search warrant or in accordance with Federally judicially recognized exceptions to the warrant requirement.

(1) Search Warrants. A search warrant is a Court order that shall be:

(a) In writing;

(b) In the name of the Tribes;

(c) Signed by a Judge;

(d) Particularly describing the premises, property, place, or person to be searched and the instruments, articles, or items to be seized; and

(e) Directed to a specific law enforcement officer commanding the officer to search for and seize the person or property designated in the warrant and bring the person or property before a Judge.

Every Judge has the authority to issue warrants for the search of persons, premises, and property and the seizure of goods, instruments, articles, or items. A warrant issued under this chapter shall

not be held invalid due to minor irregularities in the warrant which do not substantially affect any rights of a person named in the warrant.

(2) Grounds for a Search Warrant. No search warrant shall issue except upon a written or oral sworn statement of a law enforcement officer or Tribal Prosecutor, based upon reliable information and stating facts sufficient to support probable cause to believe that an offense has been committed, particularly describing the place, object, or persons to be searched and who or what is to be seized, which sufficiently shows probable cause exists to indicate a search will discover:

- (a) Stolen property, embezzled property, contraband, or otherwise criminally possessed property;
- (b) Property which has been or is being used to commit a criminal offense; or
- (c) Property which constitutes evidence of the commission of a criminal offense.

(3) Issuance of a Search Warrant. When a warrant is requested based on oral testimony, communicated by telephone or otherwise, a Judge shall:

- (a) Immediately place the requesting person(s) under oath;
- (b) Record by voice recording device if available, or otherwise make a verbatim record of the requesting person's statement and certify the accuracy of this record;
- (c) Enter on an original warrant the grounds indicating probable cause exists to issue a warrant and the scope of the search warrant as requested or as modified;
- (d) Sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued; and
- (e) Direct the requesting party to:
  - (i) Prepare a document identical to the original warrant to be known as a duplicate original warrant;
  - (ii) Sign the duplicate original warrant on behalf of the Judge; and
  - (iii) Enter the exact time of execution on the face of the duplicate original warrant.

A Judge may require the applicant to furnish further testimony or documentary evidence in support of the application for the warrant.

(4) Exceptions to the Warrant Requirement.

(a) Pursuant to Arrest. When a lawful arrest is effected, a law enforcement officer may make a reasonable search of the person arrested and the area within such person's immediate presence, without a search warrant, for the purpose of:

- (i) Protecting the officer from attack;

(ii) Discovering and seizing the fruits of the crime;

(iii) Discovering and seizing instruments, articles, or other property which may have been used in the commission of the offense, or which may constitute evidence of the offense, in order to prevent its destruction; or

(iv) Preventing the person from escaping.

(b) Investigative Stop. In order to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person, a law enforcement officer may stop any person or vehicle that is observed in circumstances that create a particularized suspicion that the person or occupant of the vehicle has committed, is committing, or is about to commit, an offense.

(c) Stop and Frisk. A law enforcement officer who has lawfully made an investigative stop:

(i) May frisk the person and take other reasonable steps necessary for protection if the officer has reasonable cause to suspect that the person is armed and presently dangerous to the officer or another person present;

(ii) May take possession of any object that is discovered during the course of the frisk if the officer has probable cause to believe the object is a deadly weapon; and

(iii) May demand the name and present address of the person.

(d) Roadblocks. Law enforcement officers may use a temporary roadblock in order to apprehend a person suspected of committing a criminal offense. Unless exigent circumstances exist justifying a departure from the requirements given below, the minimum requirements to be met by law enforcement officers when establishing roadblocks include:

(i) Establishing the roadblock at a point on the highway that is clearly visible at a distance of not less than 100 yards in either direction;

(ii) Placing a sign on the center line of the highway at the point of the roadblock displaying the word "stop" in letters of sufficient size and luminosity to be readable at a distance of not less than 50 yards in both directions either in daytime or darkness;

(iii) Placing a flashing or intermittent beam of light, which is visible to oncoming traffic for at least 100 yards, on the side of the road at the point of the roadblock; and

(iv) Placing warning signs, which will attract an oncoming driver's attention, at least 200 yards prior to the roadblock indicating that all vehicles should be prepared to stop.

(e) Duration of Stop. An authorized stop may not last longer than is necessary to effectuate the purpose of the stop.

(5) Execution of a Search Warrant.

(a) Generally. Search warrants shall only be executed by law enforcement officers between the hours of 6:00 a.m. and 10:00 p.m., unless the issuing Judge otherwise authorizes the warrant to be served anytime day or night. A warrant is only effective within 10 days of the date of issuance, and warrants not executed within this time limit are void.

(b) Return of Warrant. The executing officer shall return the warrant to the Court within the time limit shown on the face of the warrant.

(c) Reasonable Force. Only reasonable and necessary force may be used to execute a search warrant.

(d) Notice. Before entering the premises named in a search warrant, the law enforcement officer shall give appropriate notice of her or his identity, authority, and purpose to the person to be searched, or to the person in apparent control of the premises to be searched, if reasonably available. Before undertaking any search or seizure pursuant to the warrant, the executing law enforcement officer shall show and give a copy of the original or duplicate original warrant to the person to be searched, or to the person in apparent control of the premises to be searched, if reasonably available. If the premises are unoccupied or there is no one in apparent control, the law enforcement officer shall leave a copy of the warrant suitably affixed to the premises.

(e) Receipt for Seized Items. If the warrant is executed, a receipt for all articles taken shall be left with any person at the place from which any items were seized. The inventory of the items shall be made in the presence of an officer and the person from whose possession or premises the property was taken, if present, or in the presence of at least one other credible person. Failure to give or leave a receipt of all items seized shall not render the seized property inadmissible at any subsequent trial. If the premises are unoccupied or there is no one in apparent control, the law enforcement officer shall leave a copy of the receipt suitably affixed to the premises.

(6) Scope of Search Pursuant to Warrant. The scope of any search shall only include those areas specifically authorized by the warrant and is limited to the least restrictive means reasonably necessary to discover the persons or property specified in the warrant. Upon discovery of the person or property named in the warrant, the law enforcement officer shall take possession or custody of the person or property and search no further under the authority of the warrant. If, in the course of an authorized search, the law enforcement officer discovers property not specified in the warrant and the officer has probable cause to believe the discovered property constitutes evidence of the commission of a criminal offense, the officer may also take possession of that property.

(a) What May Be Seized. A warrant may be issued to search for and seize any evidence, contraband, or person for whose arrest there is probable cause, for whom there has been a warrant of arrest issued, or who is unlawfully restrained. [Ord. 49 § 5.3, 1-8-2010 (Res. 2010-10)].

#### **2.25.040 Arrests.**

(1) Method of Arrest. An arrest is made by actually restraining the person to be arrested or by that person voluntarily submitting to the custody of the person making the arrest. All necessary and reasonable force may be used in making an arrest, but the person arrested shall not be subject to any greater restraint than is necessary to hold or detain the person. All necessary and reasonable



force may be used to effect an entry into any building or property or part thereof to make an authorized arrest. An arrest made outside the boundaries of the Tulalip Reservation shall be valid if made pursuant to the laws of the jurisdiction where the arrest occurred.

(2) Time Restraints. An arrest may be made any day of the week and at any time of the day or night. A person charged with a Class A, B, or C offense can only be arrested at night in a private dwelling with a signed arrest warrant specifically permitting arrest at night, unless there is an immediate threat of harm to another person.

(3) Arrest Warrant. An arrest warrant shall be issued by a Judge, based on a sworn complaint or a declaration under risk of perjury attesting that there is probable cause to believe an offense has been committed, or that a mandate, sentence, or order of the Court has been violated, and that the named person has committed the offense.

(a) Content. The warrant shall be in writing in the name of the Tribes; set forth the nature of the offense; command that the person against whom the sworn complaint or affidavit was made be arrested, or contain a description of the person as well as any alias used by the person; be signed by a Judge; and include any bail amount, if deemed appropriate by the issuing Judge.

(b) Duty of Arresting Officer. The officer making an arrest must inform the defendant that he or she acts under authority of a warrant; provided, that if the officer does not have the warrant in his or her possession at the time of arrest, the officer shall declare that the warrant does presently exist and will be shown to the defendant as soon as possible on arrival at the place of intended confinement.

(c) Minor Irregularities. An arrest warrant shall not be dismissed due to minor irregularities in the warrant which do not substantially affect any rights of the arrested person.

(4) Grounds for Arrest. A law enforcement officer may arrest a person within the exterior boundaries of the Tulalip Reservation under the following circumstances:

(a) When the officer has a warrant commanding that the person be arrested or when the officer believes on reasonable grounds that a warrant for the person's arrest has been issued by the Tribal Court or that a warrant for the person's arrest has been issued in another jurisdiction;

(b) When the person has committed an offense in the officer's presence; or

(c) When the officer has probable cause, as reflected by stated and provable facts, to believe the person to be arrested has committed an offense and exigent circumstances require an immediate warrantless arrest in order to prevent the person from:

(i) Fleeing the jurisdiction or concealing himself or herself to avoid arrest;

(ii) Destroying or concealing evidence of the commission of an offense;

(iii) Injuring another person; or

(iv) Damaging property belonging to another.

Arrest is the preferred response in situations involving bodily harm to an elder, family member, or household member; use or threatened use of a weapon against an elder, family member, or household member; or where there appears to be imminent danger of bodily harm to another.

(5) Warrantless Arrest. A law enforcement officer having probable cause to believe that a person has committed or is committing a Class E or F offense shall have the authority to arrest the person without a warrant. A law enforcement officer may arrest a person without a warrant for committing any other class of offense only when the offense is committed in the presence of the officer, except as provided in the subsections below:

(a) Any law enforcement officer having probable cause to believe that a person has committed or is committing a criminal offense under Tulalip law shall have the authority to arrest the person.

(b) A law enforcement officer shall arrest and take into custody, pending release on bail, personal recognizance, or Court order, a person without a warrant when the officer has probable cause to believe that:

(i) An order or foreign domestic violence protection order has been issued of which the person has knowledge restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence, or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or in the case of an order imposing any other restrictions or conditions upon the person; or

(ii) The person has assaulted a family or household member defined in Chapter [4.25](#) TTC, Domestic Violence, and the officer believes:

(A) A Class E or above assault has occurred;

(B) An assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or

(C) That any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death.

(c) Any law enforcement officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic or natural resource laws which have criminal penalties shall have the authority to arrest the person:

(i) Relating to duty on striking an unattended car or other property;

(ii) Relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(iii) Relating to reckless driving or racing of vehicles;

- (iv) Relating to persons under the influence of intoxicating liquor or drugs;
- (v) Relating to driving a motor vehicle while operator's license is suspended or revoked;
- (vi) Relating to operating a motor vehicle in a negligent manner.

(d) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.

(e) An officer may act upon the request of a law enforcement officer in whose presence a traffic infraction was committed, to stop, detain, arrest, or issue a notice of traffic infraction to the driver who is believed to have committed the infraction. The request by the witnessing officer shall give an officer the authority to take appropriate action under the laws of the State of Washington and/or the Tulalip Tribes.

(f) Except as specifically provided, nothing in this section extends or otherwise affects the powers of arrest prescribed by Tribal, Federal, or State law.

(6) Notice of Rights Prior to Interrogation. Prior to questioning any person in custody, a law enforcement officer must inform the person in clear and unequivocal terms of the following rights:

- (a) That the person has the right to remain silent;
- (b) That anything said by him or her can and will be used against the person in any subsequent Court proceedings;
- (c) That the person has the right to legal counsel or representation at their own expense prior to answering any questions; and
- (d) That if, at any point during questioning, the person indicates that he or she wishes to remain silent, the questioning will cease.

Any statement obtained in violation of these rights shall not be admitted into evidence. The fact that a person chooses to remain silent cannot be used against him or her in any subsequent criminal proceedings.

(7) Abuse Situations.

(a) Report Where No Arrest. When a law enforcement officer is called to the scene of a reported incident of child neglect or abuse, elder abuse, or domestic abuse, but does not make an arrest, the officer shall file a written report with the Tulalip Police Department stating the reasons that an arrest was not made. [Res. 2012-445 §§ 6, 7; Ord. 49 § 5.4, 1-8-2010 (Res. 2010-10)].

2.25.050 Defendant must appear.

The defendant shall personally appear at all stages of the proceedings. If the defendant fails to appear, the Court may issue a bench warrant. Appearance by counsel is insufficient to avoid issuance of a bench warrant. The Court may in its discretion, however, allow the defendant to appear by counsel or telephonically. [Ord. 49 § 5.5, 1-8-2010 (Res. 2010-10)].

#### 2.25.060 Commencing prosecution.

(1) Complaint. All criminal prosecutions shall be initiated by complaint.

(a) Content. The complaint shall contain:

(i) The name of the person accused, if known, or a description sufficient to identify the person accused of committing the alleged offense;

(ii) The general location where the alleged offense was committed;

(iii) The name, class, and code citation of the alleged offense; special notice shall be given to the defendant for Class F offenses that the charged offense is a felony crime for which the defendant may be subject to the maximum sentence authorized by the resolution codified in this section;

(iv) A concise statement of the specific acts or omissions to act constituting an offense;

(v) The person, if any, against whom the alleged offense was committed, if known, except in the case of a sexual offense or an offense involving a minor;

(vi) The date and approximate time of the commission of the alleged offense, if known; and

(vii) The signature of a Tribal Prosecutor.

(b) Minor Omissions. No minor omission from, or error in, the form of the complaint shall be grounds for dismissal unless the defendant is shown to be significantly prejudiced by the omission or error.

(c) Amending the Complaint. The defendant shall be arraigned on the amended complaint without unreasonable delay, and shall be given a reasonable period of time to prepare for trial on the amended complaint.

(i) Amendments as to Substance. A complaint may be amended in matters of substance at any time prior to arraignment without leave of the Tribal Court. A complaint may be amended in matters of substance at any time before the commencement of trial with leave of the Tribal Court. If the motion is timely filed, the amended complaint is supported by probable cause, and there is no undue prejudice to the defendant, the Court shall grant leave to amend. When the prosecution seeks leave to amend a complaint as to a matter of substance, the Prosecutor shall file the following:

(A) A motion for leave to amend stating the nature of the proposed amendment;

(B) A copy of the proposed complaint, as amended; and

(C) An affidavit setting forth facts and circumstances sufficient to show probable cause exists to justify the amended complaint.

(ii) Amendments as to Form. The Court may permit a complaint to be amended as to form at any time before a verdict or a finding if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced. No charge may be dismissed because of a defect in form which does not tend to prejudice any substantial right of the defendant.

(2) Summons in Lieu of Arrest Warrant. The Court may, or upon request of a Prosecutor shall, issue a summons instead of an arrest warrant. The summons may be served personally or by first class mail, and shall:

(a) Be in writing in the name of the Tribes;

(b) State the name of the person summoned, along with that person's address, if known;

(c) Set forth the nature of the offense charged;

(d) State the date issued;

(e) Command the person to appear in Tribal Court at a specified date and time; and be signed by a Judge.

(3) Joinder and Severance of Offenses. Two or more offenses may be charged in the same complaint in separate counts. Allegations made in one count may be incorporated by reference in another count. The Tribal Court may order that different offenses or counts set forth in the complaint be tried separately or consolidated. Each offense of which the defendant is convicted must be stated in the verdict or the finding of the Tribal Court.

(a) Prosecution for Multiple Offenses. When the conduct of an offender establishes the commission of more than one offense, the offender may be prosecuted separately for each offense. The offender, however, may not be convicted of more than one offense if:

(i) One offense is included in the other;

(ii) One offense consists only of conspiracy or some other form of preparation for committing the offense;

(iii) Inconsistent findings of fact are required to establish the commission of the offenses;

(iv) The offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or

(v) The offense is defined to prohibit a continuing course of conduct and the offender's course of conduct was interrupted, unless the law provides that the specific periods of such conduct constitute separate offenses.

(4) Lesser Included Offenses. An offender may be convicted of an offense included in an offense charged without having been specifically charged with the lesser included offense. An offense is included when:

(a) It is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(b) It consists of attempt or solicitation to commit the offense charged or to commit an offense otherwise included therein; or

(c) It differs from the offense charged only in that it is a less serious injury or risk of injury to the same person, property, or Tribal interest, or a lesser kind of culpability suffices to establish its commission.

The Tribal Court need not charge the jury with respect to an included offense unless there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting the defendant of the lesser included offense. [Res. 2012-445 § 8; Ord. 49 § 5.6, 1-8-2010 (Res. 2010-10)].

#### 2.25.070 Rights of the defendant in a criminal proceeding.

(1) Presence of the Defendant. Unless otherwise set forth in this chapter, a defendant shall be present at all stages of the proceedings. The Court in its discretion may allow the defendant to appear through counsel.

(2) Rights of the Defendant. In all criminal proceedings, the defendant shall have the following rights:

(a) To be free from excessive bail and cruel punishment;

(b) To defend in person or by counsel;

(c) To be informed of the nature of the charges pending against him or her and to have a copy of those charges;

(d) To confront and cross-examine all prosecution or hostile witnesses;

(e) To compel by subpoena:

(i) The attendance of any witnesses necessary to defend against the charges; and

(ii) The production of any books, records, documents, or other things necessary to defend against the charges;

(f) To have a speedy and public trial by Judge or a jury, unless the right to a speedy trial is waived or the right to a jury trial is waived by the defendant;

(g) To appeal any final decision of the Tribal Court to the Tribal Court of Appeals;

(h) To be tried only once by the Tribal Court for the same offense;

(i) Not to be required to testify, and no inference may be drawn from a defendant's exercise of the right not to testify; and

(j) To petition for a writ of habeas corpus.

(3) Right to Counsel. During the initial appearance before the Court, every defendant must be informed of the right to have counsel at his or her own expense or the right to apply for appointment of counsel. If the defendant wishes to obtain counsel, or is found to be ineligible for appointed counsel, the Court shall grant a reasonable time prior to arraignment for defendant's attorney to enter an appearance in the cause. If the defendant is being charged with a felony crime, with potential sentencing in excess of one year:

(a) The defendant shall have the right be represented by an attorney who is a member of the Tulalip Tribal Bar and who is licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys; and

(b) If the defendant is indigent, the Court shall, at the Tribes' expense, provide the defendant with an attorney meeting the qualifications in subsection (3)(a) of this section at all critical stages of the criminal proceeding.

(4) Right to a Jury Trial. A defendant charged with a crime for which jail is a penalty has a right to a trial by jury of six fair and impartial jurors. A defendant may waive the right to a jury trial in a written voluntary statement to the Court.

(5) Subsequent Prosecutions. A subsequent prosecution is allowed when the previous prosecution was properly terminated under any of the following circumstances:

(a) The defendant consents to the termination or waives, by motion, an appeal upon a judgment of conviction or otherwise, the right to object to the termination of the prosecution;

(b) The Tribal Court finds that a termination, other than by acquittal, is necessary because:

(i) It is impossible to proceed with the trial in conformity with the law;

(ii) There is a legal defect in the proceeding that would make any judgment entered upon a verdict reversible as a matter of law;

(iii) Prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the Tribes;

(iv) The jury cannot agree upon a verdict; or

(v) A false statement of a juror on voir dire prevents a fair trial;

(c) The subsequent prosecution was for an offense which was not completed when the former prosecution began; or

(d) There was a transfer of jurisdiction to another authority.

The following actions will not constitute an acquittal of the same offense: dismissal for insufficiency in form; dismissal without prejudice upon a pretrial motion; or discharge for want of prosecution without a judgment of acquittal.

(6) Writ of Habeas Corpus.

(a) Availability of Writ.

(i) Except as provided in subsection (6)(a)(ii) of this section, every person within the jurisdiction of the Tulalip Tribes imprisoned or otherwise restrained of liberty may prosecute a writ of habeas corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from imprisonment or restraint.

(ii) The writ of habeas corpus is not available to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense by a court of competent jurisdiction and has exhausted the remedy of appeal, nor is it available to attack the legality of an order revoking a suspended or deferred sentence. Moreover, a person may not be released on a writ of habeas corpus due to any technical defect in commitment not affecting the person's substantial rights.

(iii) When a person is imprisoned or detained in custody by the Tribes on any criminal charge for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring that fact in his petition, without alleging that he is illegally confined.

(b) Issuance of Writ.

(i) Application for a writ of habeas corpus is made by petition signed either by the party for whose relief it is intended or by some person on the petitioner's behalf, and must be filed with the Clerk of the Court. It must specify:

(A) That the petitioner is unlawfully imprisoned or restrained of liberty;

(B) Why the imprisonment or restraint is unlawful; and

(C) Where or by whom the petitioner is confined or restrained.

(ii) The parties to a writ, namely the Tulalip Prosecutor, Chief Judge of the Tribal Court, and the Tulalip Chief of Police, must be named. All parties must be named if they are known or otherwise described so that they may be identified.



(iii) The petition must be verified by the oath or affirmation or declaration under penalty of perjury that the contents of the declaration are true to the best of the declarant's belief of the party making the application.

(c) Granting of the Writ. Any Justice of the Court of Appeals may grant a writ of habeas corpus upon petition by or on behalf of any person restrained of liberty within the Justice's jurisdiction. If it appears to such Justice that a writ ought to issue, it shall be granted without delay, and may be made returnable to the Court of Appeals.

(d) Time of Issuance and Requirements for Service.

(i) A writ of habeas corpus or any associated process may be issued and served on any day at any time. The writ should be served on the Tribal Prosecutor and Chief Judge of the Trial Court.

(ii) The writ must be served upon the person to whom it is directed. If the writ is directed to a Tribal agency or employee, a copy of the writ must be served upon the Tribal Prosecutor.

(iii) The writ must be served by a Tribal Police Officer, or any other person directed to do so by the Justice or the Court, in the same manner as a civil summons, except where otherwise expressly directed by the Justice, the Court, or the employee of any correctional facility in which the petitioner is held.

(e) Return of the Writ. The Prosecutor or his or her designee shall make a return and state in that return:

(i) Whether the person is in custody or under that person's power of restraint; and

(ii) If the person is in custody or otherwise restrained, the authority for and cause of the custody or restraint; or

(iii) If the person has been transferred to the custody of or otherwise restrained by another to whom the party was transferred, the time and place of the transfer, the reason for the transfer, and the authority under which the transfer took place.

The return must be signed and verified by affirmation.

(f) Hearing. The Chief Judge commanded by the writ shall cause the petitioner to be brought before the Court as commanded by the writ unless the petitioner cannot be brought before the Court without danger to the petitioner's health. Sickness or infirmity must be confirmed. If the Court is satisfied with the truth of the writing, the Court may proceed and dispose of the case as if the petitioner were present or the hearing may be postponed until the petitioner is present. Any law enforcement officer may bring the person as directed. Unless the Court postpones the hearing for reasons of the petitioner's health, the Court shall immediately proceed to hear and examine the return. The hearing may be summary in nature. Evidence may be produced and compelled as provided by the laws governing criminal procedures and evidence.

(g) Refusal to Obey Writ Is Contempt. If the person commanded by the writ refuses to obey, that person must be adjudged to be in contempt.

(h) Disposition of Petitioner. If the Court finds in favor of the petitioner, an appropriate order must be entered with respect to the judgment or sentence in the former proceeding and any supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the Court finds for the prosecution, the petitioner must be returned to the custody of the person to whom the writ was directed.

(7) Right to a Speedy and Public Trial. A defendant not released from jail pending trial shall be brought to trial not later than 60 days after the date of arraignment. A defendant released from jail, whether or not subjected to conditions of release pending trial, shall be brought to trial not later than 90 days after the date of arraignment. The following extensions of time limits apply, notwithstanding the preceding time limits:

(a) Revocation of Release. A defendant whose release has been revoked by the Court shall be brought to trial no later than 60 days following the revocation or previously scheduled trial date, whichever is sooner.

(b) Failure to Appear. When a defendant fails to appear for any hearing, all future hearings shall be stricken from the Court calendar and a bench warrant will issue. Such failure to appear constitutes a waiver of the right to a speedy trial. When the defendant next appears before the Judge, the speedy trial clock begins at zero.

(c) Trial Preparation Time. The defendant is entitled to reasonable time to prepare for trial after entering a plea of not guilty.

(d) Extensions. When a trial is not begun on the date set because of unavoidable or unforeseen circumstances beyond the control of the Court or the parties, the Court, even if the time for trial has expired, may extend the time within which trial must be held in increments of no more than five judicial days unless the defendant will be substantially prejudiced in his or her defense. The Court must state on the record or in writing the reasons for the extension.

(i) Disqualification of Judge. In the event that the trial Judge is disqualified by affidavit or by recusal under TTC [2.05.060](#), the speedy trial date shall be extended beyond its current expiration by 15 days.

(e) Continuances. The Court may continue a trial beyond the speedy trial period as follows:

(i) Upon written agreement of the parties which must be signed by the defendant or all defendants. The agreement shall be effective when approved by the Court on the record or in writing.

(ii) On motion of the Tribal Prosecutor, the Court, or a party, the Court may continue the case when required in the administration of justice and the defendant will not be substantially prejudiced in the presentation of the defense. The motion must be filed on or before the date set for trial or the last day of any continuance or extension granted pursuant to this rule. The Court must state on the

record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that party's objection to the requested delay.

(f) Computation of Time. The following periods shall be excluded in computing the time for arraignment and the time for trial:

(i) All proceedings relating to the competency of a defendant to stand trial, terminating when the Court enters a written order finding the defendant to be competent;

(ii) Preliminary proceedings and trial on another charge;

(iii) The time during which a defendant is detained in jail or prison by authorities other than the Tulalip Tribes and the time during which a defendant is subjected to conditions of release not imposed by a Court of the Tulalip Tribes; and

(iv) All proceedings in Juvenile Court.

(g) Waiver. A defendant may waive the right to a speedy trial. Such waiver shall be in writing and shall be signed by the defendant. The waiver shall be to a date certain. [Res. 2013-102; Res. 2012-445 § 9; Ord. 49 § 5.7, 1-8-2010 (Res. 2010-10)].

2.25.080 Pretrial release.

(1) Right to Bail. A person charged with any offense is bailable before conviction and shall be released from custody by the Court upon reasonable conditions that ensure the appearance of the defendant and protect the safety of the community or of any person unless otherwise provided by ordinance. Bail shall not be excessive.

(a) Bail Schedule. The Chief Judge of the Tribal Court may, if needed, establish and post a schedule of bail for offenses to be used by law enforcement officers. The schedule may be revised yearly, at the discretion of the Chief Judge. Bail may be specifically set by a Judge for any offense not listed on the posted bail schedule.

(2) Conditions of Release. The conditions of release of the defendant must be determined immediately upon the defendant's initial appearance.

(a) Criteria. The criteria for determining the conditions of release include, but are not limited to, the following:

(i) Defendant's employment status and work history;

(ii) Defendant's financial condition;

(iii) The nature and extent of defendant's family relationships and ties to the Reservation community;

(iv) Defendant's past and present residences;

- (v) Names of individuals personally agreeing to assure defendant's Court appearance;
  - (vi) The nature and circumstances of the current charge, including whether the offense involved the use of force or violence;
  - (vii) The defendant's prior criminal record, if any, and whether, at the time of the current arrest or offense, the defendant was on probation, on parole, or on other release pending trial, sentencing, or appeal for an offense;
  - (viii) The defendant's record of appearance at Court proceedings;
  - (ix) The nature and seriousness of the danger to any person or the community that would be posed by the defendant's release; and
  - (x) Any drug or alcohol tests ordered by the Court at initial appearance; provided, however, that any results of such tests or statements made by the defendant during such tests shall not be used to criminally charge the defendant and may not be used as evidence against the defendant in the current or any future criminal prosecutions.
- (b) Conditions. The Court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including, but not limited to, the following conditions:
- (i) The defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the Court, if the designated person is reasonably able to assure the Court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;
  - (ii) The defendant may not commit an offense during the period of release;
  - (iii) The defendant shall maintain employment or, if unemployed, actively seek employment;
  - (iv) The defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;
  - (v) The defendant shall avoid all contact with an alleged victim and any potential witness who may testify concerning the offense;
  - (vi) The defendant shall comply with a specified curfew;
  - (vii) The defendant may not possess a firearm, destructive device, or other dangerous weapon;
  - (viii) The defendant may not use or possess alcohol, or any dangerous drug or other controlled substance without a legal prescription;
  - (ix) The defendant shall report on a regular basis to a designated agency or individual, or both;

(x) The defendant shall furnish bail; or

(xi) The defendant shall return to custody for specified hours following release for employment, schooling, or other approved purposes.

The Court shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the Court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

(c) GPS Monitoring. GPS monitoring is available as an option, at the discretion of the Court, upon meeting the eligibility requirements as determined by the Court.

(3) Personal Recognizance. Any person in custody, if otherwise eligible for bail, may be released on his own personal recognizance subject to such conditions as the Court may reasonably prescribe to assure his appearance when required.

(4) Funeral Leave. Defendants may be released, in the discretion of the Court, for funerals of persons they are related to in the degrees specified in Chapter [9.10](#) TTC (funeral leave policy).

(5) Forms of Bail. Bail may be furnished in the following ways, as the Court may require:

(a) By a deposit with the Court of an amount equal to the required bail of cash or other personal property approved by the Court;

(b) By pledging real estate situated within the Reservation with an unencumbered equity, not exempt, owned in fee simple by the defendant or sureties at a value double the amount of the required bail;

(c) By posting a written undertaking by the defendant and by two sufficient sureties; or

(d) By posting a commercial surety bond executed by the defendant and by a qualified agent for and on behalf of the surety company.

The amount of the bond must ensure the appearance of the defendant at all times required through all stages of the proceeding and remain in effect until final sentence is pronounced in open Court. Nothing in this section prohibits a surety from surrendering the defendant in a case in which the surety feels insecure in accepting liability for the defendant.

(6) Property and Surety Bonds.

(a) Personal. If property posted as a condition of release is personal property, the defendant or sureties shall file a sworn schedule that must contain a list of the personal property, including a description of each item, its location and market value, and the total market value of all items listed.

(b) Real Estate. If the property is real estate, the defendant or sureties shall file a sworn schedule that must contain a legal description of the property, a description of any encumbrance on the property, including the amount of each encumbrance and its holder, and the market value of the unencumbered equity owned by the defendant or sureties.

(c) Surety Bond. If the property is a written undertaking with sureties, each surety must be a reservation equivalent to the amount required.

(d) Commercial Bond. If the property posted is a commercial bond, it may be executed by any domestic or foreign surety company that is qualified to transact surety business in Washington. The undertaking must state the following: the name and address of the surety company that issued the bond; the amount of the bond and the unqualified obligation of the surety company to pay the Court should the defendant fail to appear as guaranteed; and a provision that the surety company may not revoke the undertaking without good cause.

The Court may examine the sufficiency of an undertaking and take any action it considers proper to ensure that a sufficient undertaking is posted.

(7) Exoneration of Bail. When all conditions of release have been satisfactorily performed and the defendant has been discharged from any obligations imposed by the Tribal Court, the Court shall return any security posted by the defendant to satisfy bail requirements.

(8) Changing Bail or Conditions of Release. Upon application by the Tribes or the defendant, the Court may increase or reduce the amount of bail, alter the conditions in the bail or release order, or revoke bail. Reasonable notice of such application must be given to the opposing parties or their attorneys by the applicant.

(9) Revocation of Release Order. If a defendant violates a condition of release, including failure to appear, the Prosecutor may make a motion to the Court for revocation of the order of release. The Court may issue a warrant for the arrest of a defendant charged with violating a condition of release and declare the bail to be revoked. Upon arrest, the defendant must be brought before the Court without unnecessary delay, and the Court shall conduct a hearing and redetermine bail. On finding probable cause that the defendant has violated a Tribal, State, or Federal law, or on finding a violation of any other release condition by clear and convincing evidence, the Court may:

(a) Reinstate the original release order on the same conditions and amount of bail; or

(b) Revoke the original bail, increase the amount of the bail, and modify the conditions of release;  
or

(c) At the defendant's request, revoke the defendant's release for any period of time, up to 10 days, and then reinstate release on the original conditions and bail or on such conditions and bail as the Court deems appropriate, but such time shall not be credited as time served.

Sanctions may be given for violating an order without revoking the agreement in its entirety. This section provides the exclusive remedy for a violation of a release order. A defendant may not be charged with contempt or found in contempt for violation of a release order.

(10) Surrender of Defendant. At any time before the forfeiture of bail: the defendant may surrender to the Court or any Tribal law enforcement officer, or the surety company may arrest the defendant and surrender the defendant to the Court or to any Tribal law enforcement officer. The law enforcement officer will detain the defendant. The Court may then order the bail exonerated.

(11) Forfeiture of Bail. If defendant fails to appear for hearing, and bail or bond has been posted, the Court may enter an order for forfeiture of bail or bond. If within 90 days of a forfeiture order, the defendant, or the defendant's surety, appears and presents evidence justifying the defendant's failure to appear or otherwise meet the conditions found in the release order, the Court may direct the forfeiture of the bail to be discharged upon such terms as are just. If the forfeiture order is not discharged by the Court, the Court shall proceed with the forfeiture of bail as follows:

(a) If money has been posted as bail, the Court shall pay the money to the Tribal Board Treasurer;

(b) If a surety bond has been posted as bail, execution may be issued against the sureties or the surety company in the same manner as executions in civil actions; or

(c) If other property is posted as a condition of release, the property must be sold in the same manner as property sold in civil actions. The proceeds of the sale must be used to satisfy all Court costs and prior encumbrances, if any, and from the balance, a sufficient sum to satisfy the forfeiture must be paid to the Tribal Board Treasurer.

Neither a cash bond nor a commercial bond may be forfeited for violation of release conditions, except for failing to appear for Court proceedings without a lawful excuse. Notice of an order of forfeiture must be mailed to the defendant and the defendant's sureties at their last known address(es) within 10 working days of the date of the order or the bond becomes void. [Ord. 49 § 5.8, 1-8-2010 (Res. 2010-10)].

#### 2.25.090 Initial appearance.

A person arrested, whether with or without a warrant, must be taken before a Judge of the Tribal Court for an initial appearance within two judicial days following the arrest. A person not arrested shall appear for an initial appearance at the time and place designated in the citation or summons. A person who is arrested without a warrant shall have a judicial determination of probable cause at the initial appearance. If probable cause is not found, the person shall be released immediately without conditions.

(1) Duty of Court at Initial Appearance. The Judge shall inform the defendant of:

(a) The charge or charges against him or her;

(b) The maximum penalty allowed under Tribal law for the offense;

(c) The defendant's right to counsel at defendant's expense, or to have counsel appointed pursuant to TTC [2.25.070\(3\)](#);

(d) The right to call any witness on his or her behalf;

- (e) The right to request a jury trial where the crime charged carries a possible jail sentence;
- (f) The right to remain silent and that any statement made by her or him may be used in evidence against her or him at any subsequent Court proceedings;
- (g) The right to cross-examine the Tribes' witnesses;
- (h) The right to have up to five judicial days before arraignment;
- (i) The right to petition for a writ of habeas corpus; and
- (j) The right to discuss bail and conditions of release.

(2) Scheduling Arraignment. Unless the arraignment occurs at the initial appearance, arraignment shall be scheduled within five judicial days of the initial appearance, unless waived by the defendant. If the defendant is not arraigned within this time limit, and the right to a speedy trial has not been extended, the defendant shall be released without conditions. [Ord. 49 § 5.9, 1-8-2010 (Res. 2010-10)].

#### 2.25.100 Arraignment.

(1) Procedure upon Arraignment. A defendant shall be arraigned in open Tribal Court whenever a complaint has been filed by a Tribal Prosecutor. Arraignment consists of reading the charge, unless the defendant waives the reading, supplying a copy of it to the defendant, and calling on the defendant to plead to the charge. If the defendant waives his or her right to counsel in writing, the Court may arraign the defendant at the initial appearance. Prior to accepting any plea at the time of arraignment, the Presiding Judge must:

- (a) Verify that the person appearing before the Tribal Court is the defendant named in the complaint, and that the defendant's true name appears on the complaint, and if different from the name used on the complaint, order the complaint amended to reflect the true name; and
- (b) Determine whether the defendant has a mental disorder that would prevent the defendant from understanding the charges, the penalties, or the effects of a plea, and, if the determination is that defendant has a mental disorder, the arraignment may be continued until the defendant is able to proceed.

(2) Case Management Schedule. A case management schedule shall be ordered at the arraignment, which shall include the following: assignment of trial Judge, pretrial hearing, discovery deadline, trial readiness hearing, trial date, and speedy trial deadline.

(3) Joint Defendants. Defendants who are jointly charged may be arraigned separately or together in the discretion of the Court.

(4) Entry of Plea. A defendant shall enter a plea of guilty, not guilty, or if the Judge agrees, no contest, to each charge contained in the complaint. All pleas shall be entered in open Court. In



exceptional circumstances and at its discretion, the Court may accept a defendant's change of plea through a recorded telephonic proceeding. [Ord. 49 § 5.10, 1-8-2010 (Res. 2010-10)].

#### 2.25.110 Plea procedures.

##### (1) Pleas.

(a) Not Guilty. A plea of not guilty puts in issue every element of the charged offense, and the case shall proceed according to the case management schedule. A defendant pleading not guilty must inform the Judge at the time of arraignment if a jury trial is requested.

(b) Guilty. A plea of guilty may be accepted by a Judge only after due consideration of the views of the parties and interest of the Tribes in the effective administration of justice. The Court may not accept a plea of guilty without first determining:

(i) That the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The Court shall also inquire as to whether the defendant's willingness to plead guilty results from prior discussions between the Prosecutor and the defendant or the defendant's attorney;

(ii) That the defendant understands the following: (A) the nature of the charge for which the plea is offered, any mandatory minimum penalty, the maximum penalty, and, when applicable, that the Court may require the defendant to make restitution to the victim, and (B) the defendant will be giving up his or her right to a trial and right to remain silent;

(iii) That if the defendant pleads guilty in fulfillment of a plea agreement, the Court is not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the plea if the agreement is not accepted;

(iv) That, in charges for which imprisonment is a possible penalty, there is a factual basis for the plea; and

(v) If a defendant voluntarily enters a plea of guilty, the Judge may impose a sentence at that time or, on the Court's own motion or the request of either party, schedule a sentencing hearing in order to allow sufficient time for the involved parties to obtain any information deemed necessary for the imposition of a just sentence.

(c) No Contest. A no contest plea differs from a plea of guilty only in that the defendant need not make an admission of guilt but accepts an entry of conviction.

(d) Guilty or No Contest Reserving Right to Appeal. With the approval of the Court and the consent of the Prosecutor, a defendant may enter a plea of guilty or no contest, reserving the right, on appeal from the judgment, to review the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, the defendant must be allowed to withdraw the plea.

##### (2) Alternatives to Pleas.

(a) Deferred Prosecution Agreement. Deferred prosecutions may not be agreed to in cases of domestic violence or violent crimes.

(i) Conditions for Agreement. At any time, the Prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

(A) That the defendant may not commit any offense;

(B) That the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;

(C) That the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;

(D) That the defendant shall make restitution in a specified manner for harm or loss caused by the offense, or any other reasonable conditions, including voluntary exclusion from the Reservation; and

(E) Participation in the Elders Panel or Wellness Court.

(ii) Contents of Agreement. A deferred prosecution agreement is subject to approval by the Tribal Court. The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for an additional 60 days past the end of the deferral period. The agreement may include stipulations concerning the admissibility of the police report, specified testimony, or dispositions if the deferred prosecution is revoked. The agreement shall be filed with the Court.

(iii) Violations of Agreement. The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms. Sanctions can be imposed for violation of the agreement, without revoking the agreement in its entirety. The conditions of the agreement shall be monitored by the Tulalip Tribal Probation Officer.

(iv) Expungement of Records. Whenever the Court has deferred the prosecution and after expiration of the period of deferral and after the defendant's successful completion of any conditions of deferral, upon motion by the Court, the defendant, or the defendant's counsel, the Court shall allow the expungement of the Court records of all record of the proceedings by entering an order of dismissal of charges and expungement, inscribing each record of the proceedings with the word "Expunged" and sealing the file.

(b) Stipulated Order of Continuance. In certain circumstances, a stipulated order of continuance may be available.

(3) Plea Negotiations and Recommendations. A Prosecutor and counsel for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the Prosecutor will do one of the following:

(a) Move for dismissal of other charges; or

(b) Make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that the recommendation or request may not be binding on the Court; or

(c) Reduce the charges.

A plea bargain agreement may be entered into anytime prior to a verdict or finding of guilt by Judge or jury. If a plea agreement has been reached by the parties, the Court shall, on the record, require a disclosure of the agreement in open Court at the time the plea is offered. [Ord. 49 § 5.11, 1-8-2010 (Res. 2010-10)].

### **2.25.120 Pretrial.**

(1) Discovery.

(a) Attorney Work Product Exception. Attorney work product of the Tribal Prosecutor's Office and defense counsel is not subject to disclosure and production.

(b) Disclosure by Prosecution. At the time of the initial appearance and upon request, the Prosecutor shall furnish to the defendant the name of the person, if any, against whom the offense was committed if it is not disclosed in the complaint. At the arraignment or as soon thereafter as practicable, the defendant shall be furnished all evidence the Prosecutor intends to use in the prosecution's case in chief at trial. Any of the following information or evidence which is within the possession, custody, or control of the Tribal Prosecutor is subject to disclosure and production and may be copied or photographed, as appropriate for the item, by the defendant:

(i) Any relevant written or recorded statement made by the defendant while in the custody of the Tribes and of any person who will be tried with the defendant;

(ii) The names, addresses, and statements of all persons whom the Prosecutor may call as witnesses in the case in chief;

(iii) The record of defendant's convictions that is in the possession of the Prosecutor;

(iv) Any books, papers, documents, photographs, tangible objects, drawings of buildings or places, or other physical or demonstrative evidence which is intended for use by the prosecution at trial;

(v) Any written reports of or statements of experts who have personally examined the defendant or any evidence in the particular case, together with results of physical examinations, scientific tests or experiments, or comparisons;

(vi) All material or information that tends to mitigate or negate the defendant's guilt as to the offense charged or that would tend to reduce the defendant's potential sentence;

(vii) Whether there has been any electronic surveillance of any conversation to which the defendant was a party;

(viii) Whether an investigative subpoena has been executed in connection with the case; and

(ix) The Prosecutor shall provide written notice of any evidence of any prior wrongs, acts, or crimes it may introduce in the case in chief at least two weeks prior to the trial readiness hearing. The notice shall describe the prior wrong or act, the closest approximation possible as to when and where it occurred and who witnessed it, unless the prior crime is confirmed as a conviction, in which case the Court and date of conviction must be disclosed. The Prosecutor must also disclose the purpose for which the evidence would be offered.

(c) Disclosure by Defendant.

(i) Generally. The defendant or defendant's counsel shall make available to the Prosecutor for testing, examination, or reproduction:

(A) The names, addresses, and statements of all persons, other than the defendant, whom the defendant may call as witnesses in the defense's case in chief;

(B) The names and addresses of experts whom the defendant may call at trial, together with the results of their physical examinations, scientific tests, experiments, or comparisons, including all written reports and statements made by these experts in connection with the particular case;

(C) All papers, documents, photographs, and other tangible objects that the defendant may use at trial.

(ii) Notice of Affirmative Defenses. At the close of discovery, as set forth in the case scheduling management order, or at such other time as set forth in that order, the defendant shall provide the Prosecutor with a written notice of the defendant's intention to introduce evidence at trial of good character or of any affirmative defenses. The notice must specify for each defense the names and addresses of the persons, other than the defendant, whom the defendant may call as witnesses in support of the defense, together with all written reports or statements made by them, including all reports and statements concerning the results of physical examinations, scientific tests, experiments, or comparisons, except that the defendant need not include a privileged report or statement, or the witness who made it, at trial.

(iii) Notice of Alibi. If a defendant intends to rely upon a defense of alibi, the defendant will so notify the Prosecutor, in writing, by the pretrial hearing. The defendant's notice of alibi defense shall state the specific place or places where the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses the defendant intends to call to establish such alibi.

(iv) Specific Discovery Requests. At any time after the filing of a complaint, the defendant, in connection with the particular offense charged, shall upon written request of the Prosecutor and approval of the Court:

- (A) Appear in a lineup;
- (B) Speak for identification by witnesses;
- (C) Be fingerprinted, palm printed, footprinted, or voiceprinted;
- (D) Pose for photographs not involving reenactment of an event;
- (E) Try on clothing;
- (F) Provide handwriting samples;
- (G) Permit the taking of samples of the defendant's hair, blood, saliva, urine, or other specified materials that involve no unreasonable bodily intrusions; and
- (H) Submit to reasonable physical or medical examination where the examination does not involve psychological or psychiatric evaluation.

(d) Depositions. The taking of depositions or the requesting of admissions, the propounding of interrogatories, and other discovery procedures may be available to a party for good cause only upon obtaining prior permission of the Court.

(e) Continuing Duty to Disclose. The obligations imposed by this section are continuing.

(f) Regulating Discovery.

(i) Protective and Modifying Orders. At any time, the Court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief. The Court may permit a party to show good cause by a written statement that the Court will inspect ex parte. If relief is granted, the Court must preserve the entire text of the party's statement under seal.

(ii) Failure to Comply. If a party fails to comply with the requirements of discovery, the Court may:

(A) Order that party to permit the discovery or inspection; specify its time, place and manner, and prescribe other just terms and conditions;

(B) Grant a continuance;

(C) Prohibit that party from introducing the undisclosed evidence; or

(D) Enter any other order that is just under the circumstances.

(2) Subpoenas.

(a) Issuance. A Judge of the Tribal Court has the power to issue subpoenas to compel the attendance of witnesses and the production of documents either on the Court's own motion or on the request of any party to a case, which shall bear the signature of the Judge issuing the subpoena.

The subpoenas may direct the attendance of witnesses or the production of documents or evidence at a specified date, time, and location. Subpoenas under this section may be issued for purposes of discovery, for pretrial hearing, or for a trial or post-trial proceeding. For witness appearances at pretrial hearings and trial, the parties may issue subpoenas under their own signature directing the witness to appear at the specified date, time, and location of such hearing or trial; provided, however, that copies of those subpoenas and their return of service be filed with the Court.

(b) Service. Service of subpoena shall be made by a Tribal Police Officer or other person appointed by the Court for such purposes, or by a competent person who is at least 18 years of age and not a party to the action. As soon as practicable, proof of service of subpoena shall be filed with the Clerk of Court indicating the date, time, and place of service. The Court, in its discretion, may assess reasonable costs.

(c) Failure to Obey. In the absence of a justification satisfactory to the Court, a person who fails to obey a subpoena may be subject to a bench warrant to compel their attendance.

(d) Material Witnesses.

(i) Warrant. On motion of the prosecuting authority or the defendant, the Court may issue a warrant, subject to reasonable bail, for the arrest of a material witness. The warrant shall issue only on a showing, by affidavit or on the record in open Court, that the testimony of the witness is material and that:

(A) The witness has refused to submit to a deposition ordered by the Court; or

(B) The witness has refused to obey a lawfully issued subpoena; or

(C) It may become impracticable to secure the presence of the witness by subpoena. Unless otherwise ordered by the Court, the warrant shall be executed and returned in the same manner as an arrest warrant.

(ii) Hearing. After the arrest of the witness, the Court shall hold a hearing no later than the next Court day. The witness shall be entitled to be represented by counsel at his or her own expense or as appointed at the discretion of the Court.

(iii) Release/Detention. Upon a determination that the testimony of the witness is material and that one of the conditions set forth in subsection (2)(d)(i) of this section exists, the Court shall set conditions for release of the witness. Release of a material witness may be delayed for a reasonable period of time until the testimony or deposition of the witness can be taken.

(3) Pretrial Hearing. The Trial Court shall hold a pretrial hearing to consider such matters as will promote a fair and expedient trial. At the hearing:

(a) The defense shall certify to the Court that they have received the Tribes' discovery;

(b) The defense shall note any affirmative defenses in writing;

(c) All parties shall note any motions in writing and shall request an order setting a briefing and hearing schedule for such motions; and

(d) The parties may raise other issues of importance that should be addressed by the Court.

Failure of a party to raise defenses or objections or to make a request that must be made prior to trial, except lack of jurisdiction or the failure of a complaint to state an offense, which must be noticed by the Court at any time during the pendency of a proceeding, constitutes a waiver of the defense, objection, or request. The Court, for good cause shown, may grant relief from any waiver provided in this subsection. [Ord. 49 § 5.12, 1-8-2010 (Res. 2010-10)].

#### 2.25.130 Motions.

(1) Form of Motions. An application to the Court for an order shall be by written motion. A motion need not be in any special form, but must be such as to enable a person of common understanding to know what is intended. The general rules of pleading shall apply to all motions.

(a) Judicial Copy. A copy of any motion, response, or supporting documentation filed and served under this section shall be provided to the Judge at the time it is filed. The judicial copy shall contain the date and time of the hearing and the Judge assigned to the matter.

(b) Timing. The Court shall set the time frames for any motions not covered by this section. Notice of any hearing date or other deadline shall be given to all parties.

(2) Motion to Sever Co-Defendant or Charge. A defendant may move for severance of defendants or charges. Such motion shall be filed no later than the pretrial hearing unless otherwise directed by the Tribal Court. If it appears that the defendant is prejudiced by a joinder of related prosecutions or defendants in a single charge, or by a joinder of separate charges or defendants for trial, the Court may order separate trials, grant a severance of defendants, or provide any other relief as justice may require.

(3) Motion to Suppress.

(a) Evidence. A defendant may move to suppress as evidence anything obtained by unlawful search and seizure. The motion must be filed no later than the pretrial hearing, unless good cause is shown for waiving this time restriction. The motion must identify the evidence sought to be suppressed and the grounds upon which the motion is based. The prosecution has the burden of proving, by a preponderance of the evidence, that the search and seizure were valid. If the motion is granted, the evidence is not admissible at trial.

(b) Confession/Admission. A defendant may move to suppress as evidence any confession or admission given by him or her on the ground that it was not voluntary or that it was otherwise obtained in violation of his or her rights. The motion must be filed no later than the pretrial hearing, unless good cause is shown for waiving this time restriction. The Court shall conduct a hearing on the merits of the motion. The prosecution must prove by a preponderance of the evidence that the confession or admission was not obtained in violation of the defendant's rights. The issue of admissibility of the confession or admission may not be submitted to the jury. If the confession is

determined to be admissible, the circumstances surrounding the making of the confession or admission may be submitted to the jury as bearing upon the credibility or the weight to be given to the confession or admission. If the motion to suppress is granted, the confession or admission may not be admitted into evidence by the prosecution at the time of trial.

(4) Motion for Continuance. Any party may file a written motion for continuance, or the Court may continue the proceedings on its own motion. If a party so moves less than 10 days before a scheduled hearing or trial, the Court may require that the motion be supported by an affidavit, whether or not the motion is opposed by the adverse party. This section, however, shall be applied in a manner which ensures criminal cases are tried in consistence with the rights of the defendant to a speedy trial and effective representation at trial.

(5) Motion in Limine. Motions in limine should be made at least five days before trial, unless good cause is shown.

(6) Motion to Dismiss.

(a) On Motion of Prosecution. The Court may, in its discretion, upon written motion of the Prosecuting Attorney, dismiss an indictment, information, or complaint.

(b) On Motion of Court. The Court, in the furtherance of justice, after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial. The Court shall set forth its reasons in a written order.

(c) On Motion of Defendant for Pretrial Dismissal. The defendant may, prior to trial, move to dismiss a criminal charge due to insufficient evidence establishing a prima facie case of the crime charged.

(i) The defendant's motion shall be in writing and supported by an affidavit or declaration alleging that there are no material disputed facts and setting out the agreed facts, or by a stipulation to facts by both parties. The stipulation, affidavit, or declaration may attach and incorporate law enforcement reports, witness statements, or other material to be considered by the Court when deciding the motion to dismiss.

(ii) The Prosecuting Attorney may submit affidavits or declarations in opposition to defendant's supporting affidavits or declarations. The affidavits or declarations may attach and incorporate police reports, witness statements, or other material to be considered by the Court when deciding defendant's motion to dismiss.

(iii) The Court shall grant the motion if there are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt. In determining the defendant's motion, the Court shall view all evidence in the light most favorable to the Prosecuting Attorney and the Court shall make all reasonable inferences in the light most favorable to the Prosecuting Attorney. The Court may not weigh conflicting statements and base its decision on the statement it finds the most credible. The Court shall not dismiss a sentence enhancement or aggravating circumstance unless the underlying charge is subject to dismissal under this section. A decision denying a motion to dismiss



under this rule is not subject to appeal. A defendant may renew the motion to dismiss if the Trial Court subsequently rules that some or all of the Prosecuting Attorney's evidence is inadmissible.

(iv) If the defendant's motion to dismiss is granted, the Court shall enter a written order setting forth the evidence relied upon and conclusions of law. The granting of defendant's motion to dismiss shall be without prejudice.

(7) Motion for Reconsideration. A motion for reconsideration shall be plainly labeled as such. The motion shall be filed within 10 judicial days after the order to which it relates is filed. The motion shall be noted for consideration for the day it is filed. The motion shall describe with specificity the matters which the movant believes were overlooked or misapprehended by the Court, any new matters being brought to the Court's attention for the first time, and the particular modifications being sought to the Court's prior ruling. Failure to comply with this subsection may be grounds for denial of the motion. The pendency of a motion for reconsideration shall not stay discovery or any other procedure mandated by these rules. [Ord. 49 § 5.13, 1-8-2010 (Res. 2010-10)].

#### 2.25.140 Trial.

The provisions of TTC [2.05.110](#) apply to jury trials, unless otherwise provided in this chapter.

(1) Trial Priority. Defendants held in custody have priority on the trial calendar over defendants released on bail, unless otherwise directed by the Court. Generally, criminal actions and child dependency actions take precedence over civil actions when determining a hearing or trial date, unless otherwise directed by the Court.

(2) Questions of Law and Fact. Issues of law shall be decided by the Judge. Issues of fact shall be decided by the jury, unless the matter is tried without a jury, in which case issues of fact shall also be submitted to the Judge. Parties may stipulate to factual issues and submit them for acceptance by the Court.

(3) Testimony. In all trials, the testimony of witnesses shall be taken orally in Court, unless otherwise provided by rule or statute.

(a) Refusal to Testify. If a witness other than the defendant refuses to attend or testify at the trial after proper service of a subpoena, that person shall be subject to contempt of Court. A bench warrant may also be issued by the Court.

(b) Counsel as Witness. No person shall appear before the Court as both counsel and witness in the same case.

(c) Witness Fees. Each witness answering a subpoena or appearing voluntarily shall be entitled to fees and mileage as set by resolution of the Tulalip Board of Directors.

#### (4) Order of Trial.

(a) Preliminary Instructions. In a jury trial, after selecting and empaneling the jurors, the Court shall state the nature of the charges and generally instruct the jurors as to their duties.

(b) Opening Statements. The prosecution and the defense will be afforded an opportunity to make an opening statement prior to the presentation of any evidence or testimony, unless waived. The defense may reserve its opening statement until after the prosecution has presented its case in chief.

(c) Prosecution. The prosecution must offer evidence supporting the allegations contained in the complaint. The defense shall be given an opportunity to cross-examine any witness called by the prosecution.

(d) Defense. After the prosecution has rested its case, the defense may give any reserved opening statement and present any defenses or evidence relating to the allegations contained in the complaint. The prosecution shall be given an opportunity to cross-examine any witness called by the defense.

(e) Rebuttal. Rebuttal evidence may be presented by the prosecution after the conclusion of the defense case when appropriate, and if necessary, surrebuttal evidence may be offered by the defense.

(f) Evidence. No new evidence may be presented after the prosecution and the defense have rested their cases, unless allowed by the Judge in the interest of justice.

(g) Jury Instructions. In a trial by jury, after the close of evidence and before the closing arguments are given, the Court shall give final instructions. All instructions shall be in writing and filed as part of the record.

(h) Closing Arguments. After the Judge reads the instructions to the jury, the prosecution and then the defense may make closing arguments. The prosecution may also make a rebuttal closing argument.

(i) Verdict or Judgment. Upon the conclusion of the case, the jury shall deliberate. If the case is tried by a jury, a verdict shall be rendered; if tried by a Judge, a judgment shall be rendered.

(5) Burden of Proof. A plea of not guilty requires that the prosecution prove beyond a reasonable doubt that the defendant committed every element of the crime alleged.

(6) Insufficient Evidence. If the Court determines at the close of the prosecution's case in chief, or at the conclusion of the case, that the evidence presented is insufficient to sustain a conviction for the charged offense or offenses, the Court may, on its own motion or on the motion of the defense, dismiss the action and discharge the defendant. If the judgment of acquittal is vacated or reversed on appeal, the Court may grant a new trial.

(7) Conviction of Lesser Included Offense. A lesser included offense instruction must be given when there is a proper request by one of the parties based on the evidence admitted, and the jury could be warranted in finding the defendant guilty of a lesser included offense. The verdict form for an offense charged or necessarily included in the offense charged, or an attempt to commit either the offense charged or any offense necessarily included therein, may be submitted to the jury.

(8) Motion for a New Trial. Within 20 days of a guilty verdict or judgment, the defendant may file with the Court, and serve upon the prosecution, a written motion for a new trial. The motion must specify the grounds for a new trial. After hearing the motion for a new trial, the Court may, in the interest of justice, deny the motion, grant a new trial, or provide for such other relief that may be deemed appropriate. The granting of a new trial starts the speedy trial clock at zero. [Ord. 49 § 5.14, 1-8-2010 (Res. 2010-10)].

#### 2.25.150 Judgment and sentencing.

(1) Judgment. The verdict of the jury or the judgment shall be rendered in open Court.

(2) Sentencing. Sentences shall be pronounced within a reasonable time. Sentencing shall be imposed on all offenses pursuant to Tribal law. To the extent that any foreign provisions incorporated into Tribal law provide a penalty that conflicts with Tribal sentencing law, Tribal sentencing law will control. Unless the Court otherwise orders, all sentences stemming from offenses occurring in the same transaction or course of conduct are presumed to run concurrently and not consecutively. Where the Court in its discretion deems it appropriate, a form of traditional punishment may be imposed in addition to or in place of any punishment provided in this code.

(a) Considerations. Considerations in sentencing include:

(i) The crime committed;

(ii) The prospects of rehabilitation of the offender;

(iii) The circumstances under which the crime was committed;

(iv) The criminal history of the offender;

(v) The safety of the community, victim, or the offender;

(vi) Statements of the victim;

(vii) Alternatives to imprisonment of the offender;

(viii) The ability of the defendant to pay a fine; and

(ix) Any other consideration the Court deems relevant.

(b) Penalties and Consequences. An offender found guilty of an offense may be sentenced to one or more of the following penalties and/or consequences:

(i) Imprisonment for a period of time not to exceed the maximum permitted for the offense;

(ii) A fine in an amount not to exceed the maximum permitted for the offense;

(iii) Community service;

(iv) Any diagnostic, therapeutic, or rehabilitative measures, treatments, or services deemed appropriate;

(v) Restitution to a victim of an offense for which the offender was convicted;

(vi) Participation in an Elders Panel or Wellness Court;

(vii) Suspension of all or part of the sentence for a reasonable time, not to exceed three years, under such terms imposed by the Court;

(viii) Deferred imposition of sentence with reasonable restrictions and conditions monitored by the Tribal Probation Officer, and with the following characteristics (does not apply to the Class F offenses):

(A) The record of the offense, based on criminal history, shall be expunged upon satisfactory performance by the offender of the restrictions and conditions of deferral for a period not to exceed one year for Class A, B, C, and D offenses, and three years for a Class E offense; and

(B) Upon a finding of violation of a restriction or condition of deferral, an appropriate sanction may be ordered, including imposition of sentence;

(ix) Prohibiting the offender from owning or carrying a dangerous weapon;

(x) Restricting the offender's freedom of movement;

(xi) Restricting the offender's freedom of association;

(xii) Requiring the offender, if employed, to remain employed and, if unemployed, to actively seek employment;

(xiii) Subjecting the offender to search of their residence, vehicle, and person; and

(xiv) Any requirement or limitation intended to improve the mental or physical health or marketable skills of the offender.

(c) Pre-Sentence Report. The Court may order or consider any pre-sentence reports offered by the parties. The offender and the offender's counsel shall be afforded an opportunity to examine any pre-sentence report and to cross-examine the preparer of such report on the basis for any sentencing recommendations contained in the report.

(d) Imposition of Sentence. No sentence shall be imposed until:

(i) The prosecution and defense have had an opportunity to present evidence, witnesses, and an argument regarding the appropriateness of a sentencing option; and

(ii) The Judge has given the defendant an opportunity to inform the Court of any extenuating or mitigating circumstances which should be considered by the Court in imposing penalties.

(e) Incarceration. If the offender is sentenced to imprisonment, the offender shall be discharged from custody after satisfactorily fulfilling the conditions of the imposed sentence or upon earlier order of the Court.

(f) Credit for Time Served. A defendant subject to a judgment of imprisonment must be allowed credit for each day of incarceration prior to or after conviction for that offense. This does not include time served pursuant to a violation of a release order. No credit shall be allowed for time served on other charges and/or for other jurisdictions unless specifically provided by the Court.

(i) Credit Pursuant to Modification. If a defendant has served any of the defendant's sentence under a commitment based upon a judgment that is subsequently declared invalid or that is modified during the term of imprisonment, the time served must be credited against any subsequent sentence received upon a new commitment for the same criminal act or acts. This does not include time served pursuant to a violation of a release order.

(ii) Application of Credit Toward Fines. Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of the offense must be allowed a credit for each day of incarceration prior to conviction, except that the amount allowed or credited may not exceed the amount of the fine. The daily rate of credit for incarceration is \$50.00 per day, unless otherwise set by the Board of Directors. This does not include time served pursuant to a violation of a release order.

(g) Probation. After conviction by plea or verdict of guilty, the Court may, upon application or its own motion, summarily grant or deny probation. The Court may set a subsequent hearing to consider the matter of probation and the conditions of such probation.

(h) Restitution. When restitution is ordered, the Court shall specify the amount, method of payment, and payment schedule imposed. Before restitution may be ordered, the defendant shall receive notice of the amount and terms requested and shall be entitled to a hearing upon his or her timely request.

(i) Civil Actions. The fact that restitution was ordered is not admissible as evidence in a civil action. The Court trying the civil action shall determine the amount of any reduction due to payment of restitution by an offender under this section. However, in the event that criminal and civil actions against an offender arising from the same transaction or events are heard in courts of different jurisdictions, one of which is the Tribal Court, the Tribal Court shall adjust offender's payments within its jurisdictional control for restitution or otherwise to assure that an injured party does not recover twice for the same harm. Restitution for time lost by the Tribes may be imposed and will be calculated by the Judge at the time of the order of restitution.

(i) Payment of Fines and Restitution. All monies collected as the result of a fine or restitution imposed by the Court shall be paid to the Court. Upon receiving the monies:

(i) A receipt shall be issued to the paying person;

(ii) The account of the offender shall be credited, noting whether the fine is paid in full or what balance, if any, remains due; and

(iii) For fines, the monies shall be transferred to the General Fund of the Tribes, unless otherwise specifically directed by a provision of this code; for restitution, the monies shall be transferred to the person to whom restitution is to be paid.

(j) Failure to Pay. If a defendant sentenced to pay a fine or restitution fails to make payment as ordered, the Probation Officer or the Prosecutor may move that the offender show cause why sanctions should not be imposed for failure to pay.

(i) Show Cause Hearing. Notice of a show cause hearing shall be served on the offender personally or by first class mail at the address provided by the offender at least five days prior to the date set for hearing. Notice shall also be served on the victim if the show cause was issued for failure to pay restitution. Unless the offender shows that the nonpayment was not attributable to an intentional refusal to obey a Tribal Court order or the offender's failure to make a good faith effort to make the ordered payments, the Court may impose sanctions, including incarceration. If the Court determines that the offender's nonpayment was not attributable to an intentional refusal, the Court may modify the original sentence, judgment, or order, allowing the offender additional time to pay the fine or restitution or reducing the amount owed.

(k) Dismissal and Expungement after Deferred Sentencing. Whenever the Court has deferred the imposition of sentence, and after expiration of the period of deferral and the defendant's successful completion of any conditions of deferral, upon motion by the Court, the defendant, or the defendant's counsel, the Court shall allow the defendant to withdraw his or her plea of guilty or strike the verdict or judgment expunging the Court records of all record of the proceedings by entering an order of dismissal of charges and expungement, inscribing each record of the proceedings with the word "Expunged" and sealing the file.

(3) Fixing and Collection of Costs. Upon conviction or judgment of any offense, costs will be assessed to the defendant as established by the Court. In an exceptional case, the Court may waive costs. Such costs shall be payable to the Court Clerk, and may include: witness fees; cost of service of Court papers; and any other costs sustained by the Court in connection with the matter. [Res. 2012-445 § 10; Ord. 49 § 5.15, 1-8-2010 (Res. 2010-10)].

#### 2.25.160 Revocation of probation.

(1) Arrest for Violation of Probation. A Probation Officer may arrest or cause to be arrested a supervised offender for violation of a condition of probation. Any Probation Officer may cause the arrest of the supervised offender without a warrant by providing Tribal Police with a statement that the Probation Officer has found probable cause to believe the offender has violated the conditions of his or her probation.

If the initial probable cause statement is oral, a written statement shall be prepared by the Probation Officer within 24 hours of the arrest. The Probation Officer's statement shall be sufficient to commit the offender to incarceration pending a probable cause determination by the Tribal Court.

(a) In the event of arrest, the Probation Officer shall cause to be filed a petition for revocation of probation, which shall include, but not be limited to, facts showing the basis for the arrest and for revocation of probation.

(b) A probationer arrested without a warrant is entitled to determination of probable cause for the grounds for his or her arrest by a Tribal Court Judge within two judicial days of the time of arrest. The presence of the offender shall be required for the Judge to make the probable cause determination. If probable cause is found, the arrested probationer shall be or remain incarcerated without bail until the probation revocation hearing is held, provided the Judge in his or her discretion may set bail and such other conditions for release.

(2) Probation Revocation Hearing.

(a) A probationer is entitled to a hearing before the Court prior to revocation of probation on the date set in any notice of revocation unless good cause for delay exists. The burden is on the party asking for the delay to show that good cause exists.

(b) A probationer who is arrested for a probation violation and who remains incarcerated on the first Monday after the arrest shall appear no later than the date of any regular probation calendar occurring in the same week as the first Monday referenced above and the revocation hearing will be set there for no later than the tenth day after that appearance date, unless good cause for delay exists. The burden is on the party asking for the delay to show that good cause exists.

(c) The supervised offender shall be entitled to notice of the date and time of the hearing, and the grounds for the proposed revocation. Notice to the probationer may be accomplished by personal service or service by first class mail to the probationer's mailing address on record with the Tribal Court.

(d) A violation of a condition is deemed to be a knowing violation if the probationer signed, and was given a copy of, the conditions of the probation.

(e) Supervised offenders do not have a right to a jury trial at a revocation hearing.

(f) If the probationer admits to violating a condition of probation, the Court may revoke the probation after the probationer has had the opportunity to offer testimony or evidence regarding any circumstances tending to mitigate the violation.

(g) If the probationer does not admit to violating a condition of the probation, the Prosecutor or Probation Office has the burden of proving by a preponderance of the evidence that the probationer violated a condition of the probation. Evidence may not be suppressed on the ground that, if an admission of a violation, no warning was given of a right not to incriminate oneself. The Judge may issue an order that any testimony or information from the defendant may not be used against the defendant in any criminal case arising from the same charge or incident that is the basis for the revocation.

(h) Revocation may be based on demonstrably reliable hearsay evidence unless the Judge request witnesses present on the issue. The Prosecutor may show any aggravating circumstances, and the probationer may show any mitigating circumstances.

(i) The Court shall determine the appropriate disposition of a petition for revocation. An order revoking probation shall be in writing.

(3) Penalty upon Revocation of Probation. A probationer who is found, after a hearing, to have violated a condition of his or her probation may be required:

(a) In the case of probation during a suspended sentence, to serve the term of the original sentence in whole or in part, including incarceration and payment of fines; or

(b) In the case of deferred imposition of sentence, to serve such sentence as may be imposed by the Court after a sentencing hearing.

(c) Probation may be continued with consent of defendant and approval by the Court. [Ord. 49 § 5.16, 1-8-2010 (Res. 2010-10)].



# TULALIP TRIBAL COURT RULES

Approved by the Tulalip Tribes Board of Directors

Resolution No. 2013-551

## Section 4

### Criminal Rules

#### 4.1 CRIMINAL CONFLICT COUNSEL

In the event the University of Washington Tribal Public Defense Clinic, which acts as the public defender in Tulalip Tribal Court, has a conflict of interest in representing a defendant in Tulalip Tribal Court, conflict counsel may be appointed by the Court, if the defendant qualifies for such appointment, on such terms as the Court sets.

#### 4.2 JURY INFORMATION FORMS

Jury information forms shall be provided to the attorneys or pro se defendants prior to voir dire.

#### 4.3 JURY QUESTIONNAIRES

The Court may use jury questionnaires when appropriate. The parties may suggest questions for the jury questionnaires.

#### 4.3 INSTRUCTIONS TO THE JURY FOR CRIMINAL CASES

##### 4.3.1 Proposed Instructions

Unless otherwise ordered by the trial judge, proposed instructions shall be submitted by the parties two days prior to trial. Proposed instructions upon questions of law developed by the evidence, which could not reasonably have been anticipated, may be submitted at any time before the Court instructs the jury.

##### 4.3.2 Submission

D) All instructions filed by a party shall be identified as the party's proposed instructions.

E) Cited instructions shall be numbered and uncited instructions shall not be numbered.

F) Parties shall file their proposed instructions as follows:

iv) Original cited copy file with the Court;

v) One cited copy and one uncited copy to the Judge; and

vi) One cited copy to opposing counsel.

##### 4.3.3 Form

Each proposed instruction shall be typewritten or printed on a separate sheet of letter size paper.

##### 4.3.4 Disregarding Requests

The Court may disregard any proposed instruction not submitted in accordance with this rule.

#### 4.3.5 Written Questions from the Jury during Deliberations

The jury shall be instructed that any question it wishes to ask the Court about the instructions or evidence should be signed, dated, and submitted in writing to the Court Clerk or bailiff without any indication of the status of the jury's deliberations. The Court shall notify the parties of the contents of the questions and provide them an opportunity to comment upon an appropriate response. Written questions from the jury, the Court's response and any objections thereto shall be made a part of the record. The Court shall respond to all questions from a deliberating jury in open court or in writing. In its discretion, the Court may grant a jury's request to rehear or replay evidence, but should do so in a way that is least likely to be seen as a comment on the evidence, in a way that is not unfairly prejudicial and in a way that minimizes the possibility that jurors will give undue weight to such evidence. Any additional instruction upon any point of law shall be given in writing.

#### 4.4 APPEARANCE BY TELEPHONE IN CRIMINAL CASES

When counsel is unable to be physically present at court because of other duties, illness, or other reasonable circumstances, counsel may appear at hearings by telephone with the permission of the Court, notice to the Court Clerks, and approval by the defendant.

#### 4.5 VIDEO CONFERENCING (Reserved)

#### 4.6 PARTICIPATION IN SNOHOMISH COUNTY COMMUNITY CORRECTIONS PROGRAMS

Defendants and offenders may participate in the Community Corrections programs provided by Snohomish County Corrections if ordered to do so by the Court, pursuant to the Pre-trial Release or Sentencing provisions of Tulalip Law and Order Code.

### **Section 6**

### **Tulalip Tribes Domestic Violence Court Rules**

#### 6.1 PURPOSE

Domestic violence offends the traditional Tulalip tribal values of honoring the family and respecting all members of the community, and it is contrary to the best interests of the family, the Tribes and the community. The purpose of the Tulalip Tribes Domestic Violence Court is to promote important traditional Tulalip tribal values by protecting victims of domestic violence and holding perpetrators accountable while ensuring that all persons accused of domestic violence crimes are provided equal protection and due process of law.

## 6.2 CREATION

The Tulalip Tribal Court shall exercise the jurisdiction conferred by Chapter 4.25 of the Tulalip Tribal Code and while sitting in the exercise of such jurisdiction shall be known and referred to as the "Tulalip Domestic Violence Court."

## 6.3 DOCKET

### 6.3.1 Separate Docket

A separate docket shall be maintained for the Tulalip Domestic Violence Court. Cases assigned to the Tulalip Domestic Violence Court will be heard on Mondays, or as otherwise designated by the Tulalip Tribal Court calendar.

### 6.3.2 Types of Cases Assigned

All criminal domestic violence cases (all criminal cases with the designation "DV") shall be assigned to the Tulalip Domestic Violence Court docket. Additionally, any civil protection order case involving the issuance, modification or enforcement of a permanent or temporary protection order (any civil case with the designation "RO") may be assigned to the Tulalip Domestic Violence docket at the judge's sole discretion.

## 6.4 RIGHTS OF DEFENDANT

### 6.4.1 Defendant Rights

It is the policy of Tulalip Domestic Violence Court to provide all defendants the full protection of the laws. Therefore, in all proceedings in which the Tulalip Domestic Violence Court is exercising its Special Domestic Violence Criminal Jurisdiction pursuant to TTC Chapter 4.25, all defendant rights afforded by TTC §4.25.040(2) shall apply. These rights include the following:

- A) To be free from excessive bail, excessive fines and cruel and unusual punishment;
- B) To defend in person or by counsel;
- C) To be informed of the nature of the charges pending against him or her and to have a copy of those charges;
- D) To have publicly available, the criminal laws, rules of evidence, and rules of criminal procedure of the Tribes, prior to being charged;
- E) To confront and cross-examine all prosecution or hostile witnesses;
- F) To compel by subpoena:
  - vii) The attendance of any witness necessary to defend against the charges; and
  - viii) The production of any books, records, documents, or other things necessary to defend against the charges;
- G) To have a speedy and public trial by Judge or a jury, unless the right to a speedy trial is waived or the right to a jury trial is waived by the defendant;
- H) To have a judge presiding over the criminal proceeding:
  - x) Who has sufficient legal training to preside over criminal proceedings; and
  - xi) Who is licensed to practice law in any jurisdiction in the United States;

Judge(s) meeting these qualifications can be designated to preside in the Special Domestic Violence Court. The Chief Judge shall designate and assign Judges to the Special Domestic Violence Court every January by standing order and the standing order and qualifications of the Judge will become part of the trial record.

- I) To appeal any final decision of the Tulalip Domestic Violence Court to the Tribal Court of Appeals;
- J) To be tried only once by the Tulalip Domestic Violence Court for the same offense;
- K) Not to be required to testify, and no inference may be drawn from a defendant's exercise of the right not to testify;
- L) To have a record of the criminal proceeding, including an audio or other recording, created and maintained;
- M) To petition for a writ of habeas corpus under Tulalip Tribal law and federal law; and
- N) All other rights whose protection is necessary under the Constitution of the United States including the right to be secure in their persons, houses, papers and effects against unreasonable search and seizures and not to be subjected to a warrant unless it was issued upon probable cause under oath or affirmation and particularly describing the place to be searched and the person or thing to be seized, the right to due process and equal protection of the law and rights in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise Special Domestic Violence Criminal Jurisdiction over the defendant.

#### 6.4.2 Right to Counsel

All defendants, regardless of the length of the potential sentence for the crime being charged, have the right to effective assistance of counsel meeting the requirements of TTC §2.25.070(3)(a) while the Tulalip Domestic Violence Court is exercising its Special Domestic Violence Criminal Jurisdiction conferred by Chapter 4.25 of the Tulalip Tribal Code. An indigent defendant shall be provided the assistance of a defense attorney meeting the requirements of TTC §2.25.070(3)(a) at the expense of the tribal government. Defense attorneys assigned to an indigent defendant will submit their credentials to the court demonstrating they meet the requirements of federal law and such credentials and bar licensing will become part of the trial record.

#### 6.4.3 Right to Jury Trial

A defendant charged under TTC Chapter 4.25 has a right to a trial by jury of six fair and impartial jurors drawn from the community according to TTC §2.05.110. A defendant may waive the right to a jury trial in a written, voluntary statement to the Court. All jury verdicts must be unanimous.

### 6.5 SUPPLEMENTAL PROCEDURE

#### 6.5.1 Pre-Trial/Trial Procedure—Additional Requirement

- E) The initial appearance and/or arraignment will occur as currently outlined in the Tulalip Tribes criminal procedure rules. A Defendant charged with a domestic violence crime shall also be informed of his/her right to a federal writ of habeas corpus and or a stay

under the federal Violence Against Women Act (VAWA). This notification will be contained in the Advisement of Rights Form signed by the Defendant. After the initial appearance and/or arraignment cases will be assigned to the Tulalip Domestic Violence Court calendar.

- F) All other generally applicable Civil and Criminal Rules of Procedure apply to these proceedings.

#### 6.5.2 Post-Trial Procedure

Post-trial procedure is meant to describe the general operation of the Domestic Violence Court and does not include procedures relating to appeals to the Tulalip Tribes Court of Appeals. All appeals will be handled as provided by the rules of appellate procedure.

#### 6.5.3 Sentencing and Probation

- G) The Tulalip Tribes Domestic Violence Court finds that each person who pleads guilty or is found guilty of a crime of domestic violence should be on monitored probation which includes participation in a certified Domestic Violence Batterer's Re-education program.
- H) The Domestic Violence Court will hold a weekly Monday calendar to monitor a participant's progress in their treatment program. This monitoring includes receiving input from treatment providers and probation on the successful participation with the treatment program requirements.
- I) The Judge shall review the client's progress at each review hearing and will impose short term or long term sanctions for noncompliance to encourage participation and completion of appropriate treatment modalities.

# EXHIBIT 8

## The Tulalip Tribes of Washington

**TTC 2.05.070 Administration of the Court.**

The administrative functions of the Tulalip Tribal Court shall be performed by the Office of the Court Director or designee. There shall be a Court Director who shall be responsible for the management of the office and supervision of Court employees, including, but not limited to, Court Clerks and Probation Officers. The Court Director shall be under the supervision of the Chief Judge.

(1) Duties and Responsibilities of the Clerk. The Clerk shall render assistance to the Court, Tribal departments, and the public. It shall also be the duty of the Clerk to receive and process Court documents; provide forms; attend and assist in Court proceedings; record all Court proceedings; enter orders and judgments; receive and disburse all fees, fines, and charges; and perform such other duties as the Court Director shall designate. All records, forms, documents, orders, and judgments related to criminal and civil proceedings shall be maintained by the Clerk. Before entering upon these duties, the Clerk shall be covered by the blanket bond provided for all Tribal employees.

(a) Appeals. The Clerk shall deliver a copy of the case record to the Administrator of the Court of Appeals no later than 15 days after receiving the Notice of Appeal.

(i) If an intertribal entity such as the Northwest Intertribal Court System is administering the Court of Appeals on behalf of the Tribes, the Clerk shall immediately forward a copy of each Notice of Appeal to the Administrator of the Court of Appeals. If the Tribes is directly administering the Court of Appeals, the Clerk shall immediately forward a copy of each Notice of Appeal to the Presiding Justice.

(ii) No longer than 10 days after the Notice of Appeal is delivered to the Administrator of the Court of Appeals or to the Presiding Justice as provided above, the Clerk shall deliver a copy of the record to the Administrator of the Court of Appeals, or, if the Tribes is directly administering the Court of Appeals, to each of the three Justices selected to hear the appeal. [Res. 2013-102; Ord. 49 § 1.7, 1-8-2010 (Res. 2010-10)].



**THE TULALIP TRIBAL COURT**  
 6103 31<sup>st</sup> Avenue NE Tulalip Washington 98271  
 Tel: (360) 716-4773 | Fax: (360) 716-0657



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### Document Request Form

Requestor Name: \_\_\_\_\_ Suffix: \_\_\_\_\_ D.O.B. \_\_\_\_\_  
 Name of Parties Involved: \_\_\_\_\_ D.O.B. \_\_\_\_\_  
 Name of Youths Involved: \_\_\_\_\_ D.O.B. \_\_\_\_\_  
 Case #: \_\_\_\_\_ Type of Case \_\_\_\_\_  
 Requestor's Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
 Tele. \_\_\_\_\_ Bus. Tele. \_\_\_\_\_ Email: \_\_\_\_\_  
 Department: \_\_\_\_\_ Title: \_\_\_\_\_

**I would like to request copies of the following from the Court Records:**

*All Requests will require a minimum of 3 days to complete. Also, there will be a \$0.25 Charge for Each Page Made.*

- Appeal Notice
- Complaint, Citation, Petition     Court Judgment/Order Date of Entry: \_\_\_\_\_
- Copy of Complete file             CD Transcripts Hearing Dates: \_\_\_\_\_
- Criminal History                     Other: \_\_\_\_\_

Amount Due at time of Copying: \_\_\_\_\_  
 If request is for a criminal matter and the requestor has indigent counsel, the fee will be waived. Please indicate who public defense counsel is if applicable: \_\_\_\_\_

Other: \_\_\_\_\_

The Court does not have the following Records.

I have made copies of the records requested and mailed or delivered to requestor stated above.

Court Staff dated: \_\_\_\_\_ Signature: \_\_\_\_\_



# EXHIBIT 9

## The Tulalip Tribes of Washington

## 2.25.090 Initial appearance.

A person arrested, whether with or without a warrant, must be taken before a Judge of the Tribal Court for an initial appearance within two judicial days following the arrest. A person not arrested shall appear for an initial appearance at the time and place designated in the citation or summons. A person who is arrested without a warrant shall have a judicial determination of probable cause at the initial appearance. If probable cause is not found, the person shall be released immediately without conditions.

(1) Duty of Court at Initial Appearance. The Judge shall inform the defendant of:

(a) The charge or charges against him or her;

(b) The maximum penalty allowed under Tribal law for the offense;

(c) The defendant's right to counsel at defendant's expense, or to have counsel appointed pursuant to TTC [2.25.070\(3\)](#);

(d) The right to call any witness on his or her behalf;

(e) The right to request a jury trial where the crime charged carries a possible jail sentence;

(f) The right to remain silent and that any statement made by her or him may be used in evidence against her or him at any subsequent Court proceedings;

(g) The right to cross-examine the Tribes' witnesses;

(h) The right to have up to five judicial days before arraignment;

(i) The right to petition for a writ of habeas corpus; and

(j) The right to discuss bail and conditions of release.

(2) Scheduling Arraignment. Unless the arraignment occurs at the initial appearance, arraignment shall be scheduled within five judicial days of the initial appearance, unless waived by the defendant. If the defendant is not arraigned within this time limit, and the right to a speedy trial has not been extended, the defendant shall be released without conditions. [Ord. 49 § 5.9, 1-8-2010 (Res. 2010-10)].

#### 4.25.040 Special domestic violence criminal jurisdiction.

(1) The Tulalip Tribes hereby exercises “special domestic violence criminal jurisdiction” as a “participating tribe,” as defined within 25 U.S.C. 1304 (2013), subject to applicable exceptions defined therein, in the Tulalip Tribes Domestic Violence Court.

(2) In all proceedings in which the Tribal Court is exercising special domestic violence criminal jurisdiction as a participating tribe, all rights afforded by Chapter [2.25](#) TTC shall apply and those enumerated in the Indian Civil Rights Act, 25 U.S.C. 1302 to all defendants. Should there be any inconsistency between Chapter [2.25](#) TTC and 25 U.S.C. 1302, those of 25 U.S.C. 1302 shall apply.

(3) Every defendant has the privilege of the writ of habeas corpus to test the legality of his or her detention by order of the Tulalip Tribes and may petition the Court to stay further detention pending the habeas proceeding.

(a) A court shall grant a stay if the court:

(i) Finds that there is a substantial likelihood that the habeas corpus petition will be granted; and

(ii) After giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.

(4) The Tulalip Tribes hereby declares its special domestic violence criminal jurisdiction over any person only if he or she:

(a) Resides within the jurisdiction of the Tulalip Tribes; or

(b) Is employed within the jurisdiction area of the Tulalip Tribes; or

(c) Is a spouse, intimate partner, or dating partner of:

(i) A member of the Tulalip Tribes; or

(ii) A member of another Indian tribe who resides within the jurisdiction of the Tulalip Tribes. [Res. 2013-379].

2.25.070 Rights of the defendant in a criminal proceeding.

(1) Presence of the Defendant. Unless otherwise set forth in this chapter, a defendant shall be present at all stages of the proceedings. The Court in its discretion may allow the defendant to appear through counsel.

(2) Rights of the Defendant. In all criminal proceedings, the defendant shall have the following rights:

(a) To be free from excessive bail and cruel punishment;

(b) To defend in person or by counsel;

(c) To be informed of the nature of the charges pending against him or her and to have a copy of those charges;

(d) To confront and cross-examine all prosecution or hostile witnesses;

(e) To compel by subpoena:

(i) The attendance of any witnesses necessary to defend against the charges; and

(ii) The production of any books, records, documents, or other things necessary to defend against the charges;

(f) To have a speedy and public trial by Judge or a jury, unless the right to a speedy trial is waived or the right to a jury trial is waived by the defendant;

(g) To appeal any final decision of the Tribal Court to the Tribal Court of Appeals;

(h) To be tried only once by the Tribal Court for the same offense;

(i) Not to be required to testify, and no inference may be drawn from a defendant's exercise of the right not to testify; and

(j) To petition for a writ of habeas corpus.

(3) Right to Counsel. During the initial appearance before the Court, every defendant must be informed of the right to have counsel at his or her own expense or the right to apply for appointment of counsel. If the defendant wishes to obtain counsel, or is found to be ineligible for appointed counsel, the Court shall grant a reasonable time prior to arraignment for defendant's attorney to enter an appearance in the cause. If the defendant is being charged with a felony crime, with potential sentencing in excess of one year:

(a) The defendant shall have the right be represented by an attorney who is a member of the Tulalip Tribal Bar and who is licensed to practice law by any jurisdiction in the United States that applies

appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys; and

(b) If the defendant is indigent, the Court shall, at the Tribes' expense, provide the defendant with an attorney meeting the qualifications in subsection (3)(a) of this section at all critical stages of the criminal proceeding.

(4) Right to a Jury Trial. A defendant charged with a crime for which jail is a penalty has a right to a trial by jury of six fair and impartial jurors. A defendant may waive the right to a jury trial in a written voluntary statement to the Court.

(5) Subsequent Prosecutions. A subsequent prosecution is allowed when the previous prosecution was properly terminated under any of the following circumstances:

(a) The defendant consents to the termination or waives, by motion, an appeal upon a judgment of conviction or otherwise, the right to object to the termination of the prosecution;

(b) The Tribal Court finds that a termination, other than by acquittal, is necessary because:

(i) It is impossible to proceed with the trial in conformity with the law;

(ii) There is a legal defect in the proceeding that would make any judgment entered upon a verdict reversible as a matter of law;

(iii) Prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the Tribes;

(iv) The jury cannot agree upon a verdict; or

(v) A false statement of a juror on voir dire prevents a fair trial;

(c) The subsequent prosecution was for an offense which was not completed when the former prosecution began; or

(d) There was a transfer of jurisdiction to another authority.

The following actions will not constitute an acquittal of the same offense: dismissal for insufficiency in form; dismissal without prejudice upon a pretrial motion; or discharge for want of prosecution without a judgment of acquittal.

(6) Writ of Habeas Corpus.

(a) Availability of Writ.

(i) Except as provided in subsection (6)(a)(ii) of this section, every person within the jurisdiction of the Tulalip Tribes imprisoned or otherwise restrained of liberty may prosecute a writ of habeas

corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from imprisonment or restraint.

(ii) The writ of habeas corpus is not available to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense by a court of competent jurisdiction and has exhausted the remedy of appeal, nor is it available to attack the legality of an order revoking a suspended or deferred sentence. Moreover, a person may not be released on a writ of habeas corpus due to any technical defect in commitment not affecting the person's substantial rights.

(iii) When a person is imprisoned or detained in custody by the Tribes on any criminal charge for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring that fact in his petition, without alleging that he is illegally confined.

(b) Issuance of Writ.

(i) Application for a writ of habeas corpus is made by petition signed either by the party for whose relief it is intended or by some person on the petitioner's behalf, and must be filed with the Clerk of the Court. It must specify:

(A) That the petitioner is unlawfully imprisoned or restrained of liberty;

(B) Why the imprisonment or restraint is unlawful; and

(C) Where or by whom the petitioner is confined or restrained.

(ii) The parties to a writ, namely the Tulalip Prosecutor, Chief Judge of the Tribal Court, and the Tulalip Chief of Police, must be named. All parties must be named if they are known or otherwise described so that they may be identified.

(iii) The petition must be verified by the oath or affirmation or declaration under penalty of perjury that the contents of the declaration are true to the best of the declarant's belief of the party making the application.

(c) Granting of the Writ. Any Justice of the Court of Appeals may grant a writ of habeas corpus upon petition by or on behalf of any person restrained of liberty within the Justice's jurisdiction. If it appears to such Justice that a writ ought to issue, it shall be granted without delay, and may be made returnable to the Court of Appeals.

(d) Time of Issuance and Requirements for Service.

(i) A writ of habeas corpus or any associated process may be issued and served on any day at any time. The writ should be served on the Tribal Prosecutor and Chief Judge of the Trial Court.

(ii) The writ must be served upon the person to whom it is directed. If the writ is directed to a Tribal agency or employee, a copy of the writ must be served upon the Tribal Prosecutor.

(iii) The writ must be served by a Tribal Police Officer, or any other person directed to do so by the Justice or the Court, in the same manner as a civil summons, except where otherwise expressly directed by the Justice, the Court, or the employee of any correctional facility in which the petitioner is held.

(e) Return of the Writ. The Prosecutor or his or her designee shall make a return and state in that return:

(i) Whether the person is in custody or under that person's power of restraint; and

(ii) If the person is in custody or otherwise restrained, the authority for and cause of the custody or restraint; or

(iii) If the person has been transferred to the custody of or otherwise restrained by another to whom the party was transferred, the time and place of the transfer, the reason for the transfer, and the authority under which the transfer took place.

The return must be signed and verified by affirmation.

(f) Hearing. The Chief Judge commanded by the writ shall cause the petitioner to be brought before the Court as commanded by the writ unless the petitioner cannot be brought before the Court without danger to the petitioner's health. Sickness or infirmity must be confirmed. If the Court is satisfied with the truth of the writing, the Court may proceed and dispose of the case as if the petitioner were present or the hearing may be postponed until the petitioner is present. Any law enforcement officer may bring the person as directed. Unless the Court postpones the hearing for reasons of the petitioner's health, the Court shall immediately proceed to hear and examine the return. The hearing may be summary in nature. Evidence may be produced and compelled as provided by the laws governing criminal procedures and evidence.

(g) Refusal to Obey Writ Is Contempt. If the person commanded by the writ refuses to obey, that person must be adjudged to be in contempt.

(h) Disposition of Petitioner. If the Court finds in favor of the petitioner, an appropriate order must be entered with respect to the judgment or sentence in the former proceeding and any supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the Court finds for the prosecution, the petitioner must be returned to the custody of the person to whom the writ was directed.

(7) Right to a Speedy and Public Trial. A defendant not released from jail pending trial shall be brought to trial not later than 60 days after the date of arraignment. A defendant released from jail, whether or not subjected to conditions of release pending trial, shall be brought to trial not later than 90 days after the date of arraignment. The following extensions of time limits apply, notwithstanding the preceding time limits:

(a) Revocation of Release. A defendant whose release has been revoked by the Court shall be brought to trial no later than 60 days following the revocation or previously scheduled trial date, whichever is sooner.

(b) Failure to Appear. When a defendant fails to appear for any hearing, all future hearings shall be stricken from the Court calendar and a bench warrant will issue. Such failure to appear constitutes a waiver of the right to a speedy trial. When the defendant next appears before the Judge, the speedy trial clock begins at zero.

(c) Trial Preparation Time. The defendant is entitled to reasonable time to prepare for trial after entering a plea of not guilty.

(d) Extensions. When a trial is not begun on the date set because of unavoidable or unforeseen circumstances beyond the control of the Court or the parties, the Court, even if the time for trial has expired, may extend the time within which trial must be held in increments of no more than five judicial days unless the defendant will be substantially prejudiced in his or her defense. The Court must state on the record or in writing the reasons for the extension.

(i) Disqualification of Judge. In the event that the trial Judge is disqualified by affidavit or by recusal under TTC [2.05.060](#), the speedy trial date shall be extended beyond its current expiration by 15 days.

(e) Continuances. The Court may continue a trial beyond the speedy trial period as follows:

(i) Upon written agreement of the parties which must be signed by the defendant or all defendants. The agreement shall be effective when approved by the Court on the record or in writing.

(ii) On motion of the Tribal Prosecutor, the Court, or a party, the Court may continue the case when required in the administration of justice and the defendant will not be substantially prejudiced in the presentation of the defense. The motion must be filed on or before the date set for trial or the last day of any continuance or extension granted pursuant to this rule. The Court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that party's objection to the requested delay.

(f) Computation of Time. The following periods shall be excluded in computing the time for arraignment and the time for trial:

(i) All proceedings relating to the competency of a defendant to stand trial, terminating when the Court enters a written order finding the defendant to be competent;

(ii) Preliminary proceedings and trial on another charge;

(iii) The time during which a defendant is detained in jail or prison by authorities other than the Tulalip Tribes and the time during which a defendant is subjected to conditions of release not imposed by a Court of the Tulalip Tribes; and

(iv) All proceedings in Juvenile Court.

(g) Waiver. A defendant may waive the right to a speedy trial. Such waiver shall be in writing and shall be signed by the defendant. The waiver shall be to a date certain. [Res. 2013-102; Res. 2012-445 § 9; Ord. 49 § 5.7, 1-8-2010 (Res. 2010-10)].



# EXHIBIT 10

## The Tulalip Tribes of Washington

From:

## **TULALIP TRIBAL COURT RULES**

**Approved by the Tulalip Tribes Board of Directors**

**Resolution No. 2013-551**

### **Section 6**

#### **Tulalip Tribes Domestic Violence Court Rules**

##### **6.1 PURPOSE**

Domestic violence offends the traditional Tulalip tribal values of honoring the family and respecting all members of the community, and it is contrary to the best interests of the family, the Tribes and the community. The purpose of the Tulalip Tribes Domestic Violence Court is to promote important traditional Tulalip tribal values by protecting victims of domestic violence and holding perpetrators accountable while ensuring that all persons accused of domestic violence crimes are provided equal protection and due process of law.

##### **6.2 CREATION**

The Tulalip Tribal Court shall exercise the jurisdiction conferred by Chapter 4.25 of the Tulalip Tribal Code and while sitting in the exercise of such jurisdiction shall be known and referred to as the "Tulalip Domestic Violence Court."

##### **6.3 DOCKET**

###### **6.3.1 Separate Docket**

A separate docket shall be maintained for the Tulalip Domestic Violence Court. Cases assigned to the Tulalip Domestic Violence Court will be heard on Mondays, or as otherwise designated by the Tulalip Tribal Court calendar.

###### **6.3.2 Types of Cases Assigned**

All criminal domestic violence cases (all criminal cases with the designation "DV") shall be assigned to the Tulalip Domestic Violence Court docket. Additionally, any civil protection order case involving the issuance, modification or enforcement of a permanent or temporary protection order (any civil case with the designation "RO") may be assigned to the Tulalip Domestic Violence docket at the judge's sole discretion.

##### **6.4 RIGHTS OF DEFENDANT**

###### **6.4.1 Defendant Rights**

It is the policy of Tulalip Domestic Violence Court to provide all defendants the full protection of the laws. Therefore, in all proceedings in which the Tulalip Domestic Violence Court is exercising its Special Domestic Violence Criminal Jurisdiction pursuant

to TTC Chapter 4.25, all defendant rights afforded by TTC §4.25.040(2) shall apply. These rights include the following:

- A) To be free from excessive bail, excessive fines and cruel and unusual punishment;
- B) To defend in person or by counsel;
- C) To be informed of the nature of the charges pending against him or her and to have a copy of those charges;
- D) To have publicly available, the criminal laws, rules of evidence, and rules of criminal procedure of the Tribes, prior to being charged;
- E) To confront and cross-examine all prosecution or hostile witnesses;
- F) To compel by subpoena:
  - ix) The attendance of any witness necessary to defend against the charges; and
  - x) The production of any books, records, documents, or other things necessary to defend against the charges;
- G) To have a speedy and public trial by Judge or a jury, unless the right to a speedy trial is waived or the right to a jury trial is waived by the defendant;
- H) To have a judge presiding over the criminal proceeding:
  - xii) Who has sufficient legal training to preside over criminal proceedings; and
  - xiii) Who is licensed to practice law in any jurisdiction in the United States;
  - xiv) Judge(s) meeting these qualifications can be designated to preside in the Special Domestic Violence Court. The Chief Judge shall designate and assign Judges to the Special Domestic Violence Court every January by standing order and the standing order and qualifications of the Judge will become part of the trial record.
- I) To appeal any final decision of the Tulalip Domestic Violence Court to the Tribal Court of Appeals;
- J) To be tried only once by the Tulalip Domestic Violence Court for the same offense;
- K) Not to be required to testify, and no inference may be drawn from a defendant's exercise of the right not to testify;
- L) To have a record of the criminal proceeding, including an audio or other recording, created and maintained;
- M) To petition for a writ of habeas corpus under Tulalip Tribal law and federal law; and
- N) All other rights whose protection is necessary under the Constitution of the United States including the right to be secure in their persons, houses, papers and effects against unreasonable search and seizures and not to be subjected to a warrant unless it was issued upon probable cause under oath or affirmation and particularly describing the place to be searched and the person or thing to be seized, the right to due process and equal protection of the law and rights in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise Special Domestic Violence Criminal Jurisdiction over the defendant.

#### 6.4.2 Right to Counsel

All defendants, regardless of the length of the potential sentence for the crime being charged, have the right to effective assistance of counsel meeting the requirements of TTC §2.25.070(3)(a) while the Tulalip Domestic Violence Court is exercising its Special Domestic Violence Criminal Jurisdiction conferred by Chapter 4.25 of the Tulalip Tribal Code. An indigent defendant shall be provided the assistance of a defense attorney meeting the requirements of TTC §2.25.070(3)(a) at the expense of the tribal government. Defense attorneys assigned to an indigent defendant will submit their credentials to the court demonstrating they meet the requirements of federal law and such credentials and bar licensing will become part of the trial record.

#### 6.4.3 Right to Jury Trial

A defendant charged under TTC Chapter 4.25 has a right to a trial by jury of six fair and impartial jurors drawn from the community according to TTC §2.05.110. A defendant may waive the right to a jury trial in a written, voluntary statement to the Court. All jury verdicts must be unanimous.

### 6.5 SUPPLEMENTAL PROCEDURE

#### 6.5.1 Pre-Trial/Trial Procedure—Additional Requirement

A) The initial appearance and/or arraignment will occur as currently outlined in the Tulalip Tribes criminal procedure rules. A Defendant charged with a domestic violence crime shall also be informed of his/her right to a federal writ of habeas corpus and or a stay under the federal Violence Against Women Act (VAWA). This notification will be contained in the Advisement of Rights Form signed by the Defendant. After the initial appearance and/or arraignment cases will be assigned to the Tulalip Domestic Violence Court calendar.

B) All other generally applicable Civil and Criminal Rules of Procedure apply to these proceedings.

#### 6.5.2 Post-Trial Procedure

Post-trial procedure is meant to describe the general operation of the Domestic Violence Court and does not include procedures relating to appeals to the Tulalip Tribes Court of Appeals. All appeals will be handled as provided by the rules of appellate procedure.

#### 6.5.3 Sentencing and Probation

A) The Tulalip Tribes Domestic Violence Court finds that each person who pleads guilty or is found guilty of a crime of domestic violence should be on monitored probation which includes participation in a certified Domestic Violence Batterer's Re-education program.

B) The Domestic Violence Court will hold a weekly Monday calendar to monitor a participant's progress in their treatment program. This monitoring includes receiving input from treatment providers and probation on the successful participation with the treatment program requirements.

C) The Judge shall review the client's progress at each review hearing and will impose short term or long term sanctions for noncompliance to encourage participation and completion of appropriate treatment modalities.

## 2.25.070 Rights of the defendant in a criminal proceeding.

(1) Presence of the Defendant. Unless otherwise set forth in this chapter, a defendant shall be present at all stages of the proceedings. The Court in its discretion may allow the defendant to appear through counsel.

(2) Rights of the Defendant. In all criminal proceedings, the defendant shall have the following rights:

(a) To be free from excessive bail and cruel punishment;

(b) To defend in person or by counsel;

(c) To be informed of the nature of the charges pending against him or her and to have a copy of those charges;

(d) To confront and cross-examine all prosecution or hostile witnesses;

(e) To compel by subpoena:

(i) The attendance of any witnesses necessary to defend against the charges; and

(ii) The production of any books, records, documents, or other things necessary to defend against the charges;

(f) To have a speedy and public trial by Judge or a jury, unless the right to a speedy trial is waived or the right to a jury trial is waived by the defendant;

(g) To appeal any final decision of the Tribal Court to the Tribal Court of Appeals;

(h) To be tried only once by the Tribal Court for the same offense;

(i) Not to be required to testify, and no inference may be drawn from a defendant's exercise of the right not to testify; and

(j) To petition for a writ of habeas corpus.

(3) Right to Counsel. During the initial appearance before the Court, every defendant must be informed of the right to have counsel at his or her own expense or the right to apply for appointment of counsel. If the defendant wishes to obtain counsel, or is found to be ineligible for appointed counsel, the Court shall grant a reasonable time prior to arraignment for defendant's attorney to enter an appearance in the cause. If the defendant is being charged with a felony crime, with potential sentencing in excess of one year:

(a) The defendant shall have the right be represented by an attorney who is a member of the Tulalip Tribal Bar and who is licensed to practice law by any jurisdiction in the United States that applies

appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys; and

(b) If the defendant is indigent, the Court shall, at the Tribes' expense, provide the defendant with an attorney meeting the qualifications in subsection (3)(a) of this section at all critical stages of the criminal proceeding.

(4) Right to a Jury Trial. A defendant charged with a crime for which jail is a penalty has a right to a trial by jury of six fair and impartial jurors. A defendant may waive the right to a jury trial in a written voluntary statement to the Court.

(5) Subsequent Prosecutions. A subsequent prosecution is allowed when the previous prosecution was properly terminated under any of the following circumstances:

(a) The defendant consents to the termination or waives, by motion, an appeal upon a judgment of conviction or otherwise, the right to object to the termination of the prosecution;

(b) The Tribal Court finds that a termination, other than by acquittal, is necessary because:

(i) It is impossible to proceed with the trial in conformity with the law;

(ii) There is a legal defect in the proceeding that would make any judgment entered upon a verdict reversible as a matter of law;

(iii) Prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the Tribes;

(iv) The jury cannot agree upon a verdict; or

(v) A false statement of a juror on voir dire prevents a fair trial;

(c) The subsequent prosecution was for an offense which was not completed when the former prosecution began; or

(d) There was a transfer of jurisdiction to another authority.

The following actions will not constitute an acquittal of the same offense: dismissal for insufficiency in form; dismissal without prejudice upon a pretrial motion; or discharge for want of prosecution without a judgment of acquittal.

(6) Writ of Habeas Corpus.

(a) Availability of Writ.

(i) Except as provided in subsection (6)(a)(ii) of this section, every person within the jurisdiction of the Tulalip Tribes imprisoned or otherwise restrained of liberty may prosecute a writ of habeas

corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from imprisonment or restraint.

(ii) The writ of habeas corpus is not available to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense by a court of competent jurisdiction and has exhausted the remedy of appeal, nor is it available to attack the legality of an order revoking a suspended or deferred sentence. Moreover, a person may not be released on a writ of habeas corpus due to any technical defect in commitment not affecting the person's substantial rights.

(iii) When a person is imprisoned or detained in custody by the Tribes on any criminal charge for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring that fact in his petition, without alleging that he is illegally confined.

(b) Issuance of Writ.

(i) Application for a writ of habeas corpus is made by petition signed either by the party for whose relief it is intended or by some person on the petitioner's behalf, and must be filed with the Clerk of the Court. It must specify:

(A) That the petitioner is unlawfully imprisoned or restrained of liberty;

(B) Why the imprisonment or restraint is unlawful; and

(C) Where or by whom the petitioner is confined or restrained.

(ii) The parties to a writ, namely the Tulalip Prosecutor, Chief Judge of the Tribal Court, and the Tulalip Chief of Police, must be named. All parties must be named if they are known or otherwise described so that they may be identified.

(iii) The petition must be verified by the oath or affirmation or declaration under penalty of perjury that the contents of the declaration are true to the best of the declarant's belief of the party making the application.

(c) Granting of the Writ. Any Justice of the Court of Appeals may grant a writ of habeas corpus upon petition by or on behalf of any person restrained of liberty within the Justice's jurisdiction. If it appears to such Justice that a writ ought to issue, it shall be granted without delay, and may be made returnable to the Court of Appeals.

(d) Time of Issuance and Requirements for Service.

(i) A writ of habeas corpus or any associated process may be issued and served on any day at any time. The writ should be served on the Tribal Prosecutor and Chief Judge of the Trial Court.

(ii) The writ must be served upon the person to whom it is directed. If the writ is directed to a Tribal agency or employee, a copy of the writ must be served upon the Tribal Prosecutor.



(iii) The writ must be served by a Tribal Police Officer, or any other person directed to do so by the Justice or the Court, in the same manner as a civil summons, except where otherwise expressly directed by the Justice, the Court, or the employee of any correctional facility in which the petitioner is held.

(e) Return of the Writ. The Prosecutor or his or her designee shall make a return and state in that return:

(i) Whether the person is in custody or under that person's power of restraint; and

(ii) If the person is in custody or otherwise restrained, the authority for and cause of the custody or restraint; or

(iii) If the person has been transferred to the custody of or otherwise restrained by another to whom the party was transferred, the time and place of the transfer, the reason for the transfer, and the authority under which the transfer took place.

The return must be signed and verified by affirmation.

(f) Hearing. The Chief Judge commanded by the writ shall cause the petitioner to be brought before the Court as commanded by the writ unless the petitioner cannot be brought before the Court without danger to the petitioner's health. Sickness or infirmity must be confirmed. If the Court is satisfied with the truth of the writing, the Court may proceed and dispose of the case as if the petitioner were present or the hearing may be postponed until the petitioner is present. Any law enforcement officer may bring the person as directed. Unless the Court postpones the hearing for reasons of the petitioner's health, the Court shall immediately proceed to hear and examine the return. The hearing may be summary in nature. Evidence may be produced and compelled as provided by the laws governing criminal procedures and evidence.

(g) Refusal to Obey Writ Is Contempt. If the person commanded by the writ refuses to obey, that person must be adjudged to be in contempt.

(h) Disposition of Petitioner. If the Court finds in favor of the petitioner, an appropriate order must be entered with respect to the judgment or sentence in the former proceeding and any supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the Court finds for the prosecution, the petitioner must be returned to the custody of the person to whom the writ was directed.

(7) Right to a Speedy and Public Trial. A defendant not released from jail pending trial shall be brought to trial not later than 60 days after the date of arraignment. A defendant released from jail, whether or not subjected to conditions of release pending trial, shall be brought to trial not later than 90 days after the date of arraignment. The following extensions of time limits apply, notwithstanding the preceding time limits:

(a) Revocation of Release. A defendant whose release has been revoked by the Court shall be brought to trial no later than 60 days following the revocation or previously scheduled trial date, whichever is sooner.

(b) Failure to Appear. When a defendant fails to appear for any hearing, all future hearings shall be stricken from the Court calendar and a bench warrant will issue. Such failure to appear constitutes a waiver of the right to a speedy trial. When the defendant next appears before the Judge, the speedy trial clock begins at zero.

(c) Trial Preparation Time. The defendant is entitled to reasonable time to prepare for trial after entering a plea of not guilty.

(d) Extensions. When a trial is not begun on the date set because of unavoidable or unforeseen circumstances beyond the control of the Court or the parties, the Court, even if the time for trial has expired, may extend the time within which trial must be held in increments of no more than five judicial days unless the defendant will be substantially prejudiced in his or her defense. The Court must state on the record or in writing the reasons for the extension.

(i) Disqualification of Judge. In the event that the trial Judge is disqualified by affidavit or by recusal under TTC [2.05.060](#), the speedy trial date shall be extended beyond its current expiration by 15 days.

(e) Continuances. The Court may continue a trial beyond the speedy trial period as follows:

(i) Upon written agreement of the parties which must be signed by the defendant or all defendants. The agreement shall be effective when approved by the Court on the record or in writing.

(ii) On motion of the Tribal Prosecutor, the Court, or a party, the Court may continue the case when required in the administration of justice and the defendant will not be substantially prejudiced in the presentation of the defense. The motion must be filed on or before the date set for trial or the last day of any continuance or extension granted pursuant to this rule. The Court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that party's objection to the requested delay.

(f) Computation of Time. The following periods shall be excluded in computing the time for arraignment and the time for trial:

(i) All proceedings relating to the competency of a defendant to stand trial, terminating when the Court enters a written order finding the defendant to be competent;

(ii) Preliminary proceedings and trial on another charge;

(iii) The time during which a defendant is detained in jail or prison by authorities other than the Tulalip Tribes and the time during which a defendant is subjected to conditions of release not imposed by a Court of the Tulalip Tribes; and

(iv) All proceedings in Juvenile Court.

(g) Waiver. A defendant may waive the right to a speedy trial. Such waiver shall be in writing and shall be signed by the defendant. The waiver shall be to a date certain. [Res. 2013-102; Res. 2012-445 § 9; Ord. 49 § 5.7, 1-8-2010 (Res. 2010-10)].

## 2.25.020 Investigative procedures.

(1) Investigative Subpoenas. A Judge may cause a subpoena to be issued commanding a specified person to appear before the Tribal Prosecutor or a designated agent of the Prosecutor and give testimony and produce such books, records, papers, documents, and other objects as may be necessary and proper to the investigation. An investigative subpoena may only be issued by a Judge when supported by an affidavit of the Prosecutor sufficient to show that the administration of justice requires the testimony or information being sought.

(2) Immunity from Self-Incrimination. No person subpoenaed to give testimony pursuant to this section may be required to make a statement or to produce evidence that may be personally incriminating. The Prosecutor may, with the approval of the Judge who authorized the issuance of the subpoena, grant a person subpoenaed immunity from the use of any compelled testimony or evidence or any information directly or indirectly derived from the testimony or evidence against that person in a criminal prosecution. Nothing in this section prohibits a Prosecutor from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the Prosecutor determines, in the Prosecutor's sole discretion, that the best interest of justice would be served by granting immunity. After being granted immunity, no person may be excused from testifying on the grounds that the testimony may be personally incriminating. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena. Nothing in this section requires a witness to divulge the contents of a privileged communication unless the privilege is waived as provided by law.

(3) Relief from Improper Subpoena. A person aggrieved by a subpoena issued pursuant to this section may, within a reasonable time, file a motion to dismiss the subpoena and, in the case of a subpoena duces tecum, to limit its scope. The motion must be granted if the subpoena was improperly issued or, in the case of a subpoena duces tecum, if it is overly broad in its scope.

(4) Investigative Hearings. Before a Judge, the Prosecutor may examine under oath all witnesses subpoenaed pursuant to this section. Testimony must be recorded. The witness has the right to have counsel present at all times. Failure to obey, without just cause, a subpoena served under this section is punishable for contempt of Court. Proceedings conducted under this section are closed and confidential except to the extent that they supply probable cause for arresting or charging a defendant in a subsequent criminal action or are admissible in a later criminal trial. A person who divulges the contents of the Prosecutor's affidavit or the proceedings without legal privilege to do so is punishable for contempt of Court. All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this section. [Ord. 49 § 5.2, 1-8-2010 (Res. 2010-10)].

## 2.25.030 Searches.

A search of a person, object, or place may be made, and evidence, contraband, or persons may be seized when a search is made, either by the authority of a search warrant or in accordance with Federally judicially recognized exceptions to the warrant requirement.

(1) Search Warrants. A search warrant is a Court order that shall be:

(a) In writing;

(b) In the name of the Tribes;

(c) Signed by a Judge;

(d) Particularly describing the premises, property, place, or person to be searched and the instruments, articles, or items to be seized; and

(e) Directed to a specific law enforcement officer commanding the officer to search for and seize the person or property designated in the warrant and bring the person or property before a Judge.

Every Judge has the authority to issue warrants for the search of persons, premises, and property and the seizure of goods, instruments, articles, or items. A warrant issued under this chapter shall not be held invalid due to minor irregularities in the warrant which do not substantially affect any rights of a person named in the warrant.

(2) Grounds for a Search Warrant. No search warrant shall issue except upon a written or oral sworn statement of a law enforcement officer or Tribal Prosecutor, based upon reliable information and stating facts sufficient to support probable cause to believe that an offense has been committed, particularly describing the place, object, or persons to be searched and who or what is to be seized, which sufficiently shows probable cause exists to indicate a search will discover:

(a) Stolen property, embezzled property, contraband, or otherwise criminally possessed property;

(b) Property which has been or is being used to commit a criminal offense; or

(c) Property which constitutes evidence of the commission of a criminal offense.

(3) Issuance of a Search Warrant. When a warrant is requested based on oral testimony, communicated by telephone or otherwise, a Judge shall:

(a) Immediately place the requesting person(s) under oath;

(b) Record by voice recording device if available, or otherwise make a verbatim record of the requesting person's statement and certify the accuracy of this record;

(c) Enter on an original warrant the grounds indicating probable cause exists to issue a warrant and the scope of the search warrant as requested or as modified;

(d) Sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued; and

(e) Direct the requesting party to:

(i) Prepare a document identical to the original warrant to be known as a duplicate original warrant;

(ii) Sign the duplicate original warrant on behalf of the Judge; and

(iii) Enter the exact time of execution on the face of the duplicate original warrant.

A Judge may require the applicant to furnish further testimony or documentary evidence in support of the application for the warrant.

(4) Exceptions to the Warrant Requirement.

(a) Pursuant to Arrest. When a lawful arrest is effected, a law enforcement officer may make a reasonable search of the person arrested and the area within such person's immediate presence, without a search warrant, for the purpose of:

(i) Protecting the officer from attack;

(ii) Discovering and seizing the fruits of the crime;

(iii) Discovering and seizing instruments, articles, or other property which may have been used in the commission of the offense, or which may constitute evidence of the offense, in order to prevent its destruction; or

(iv) Preventing the person from escaping.

(b) Investigative Stop. In order to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person, a law enforcement officer may stop any person or vehicle that is observed in circumstances that create a particularized suspicion that the person or occupant of the vehicle has committed, is committing, or is about to commit, an offense.

(c) Stop and Frisk. A law enforcement officer who has lawfully made an investigative stop:

(i) May frisk the person and take other reasonable steps necessary for protection if the officer has reasonable cause to suspect that the person is armed and presently dangerous to the officer or another person present;

(ii) May take possession of any object that is discovered during the course of the frisk if the officer has probable cause to believe the object is a deadly weapon; and

(iii) May demand the name and present address of the person.

(d) Roadblocks. Law enforcement officers may use a temporary roadblock in order to apprehend a person suspected of committing a criminal offense. Unless exigent circumstances exist justifying a departure from the requirements given below, the minimum requirements to be met by law enforcement officers when establishing roadblocks include:

(i) Establishing the roadblock at a point on the highway that is clearly visible at a distance of not less than 100 yards in either direction;

(ii) Placing a sign on the center line of the highway at the point of the roadblock displaying the word "stop" in letters of sufficient size and luminosity to be readable at a distance of not less than 50 yards in both directions either in daytime or darkness;

(iii) Placing a flashing or intermittent beam of light, which is visible to oncoming traffic for at least 100 yards, on the side of the road at the point of the roadblock; and

(iv) Placing warning signs, which will attract an oncoming driver's attention, at least 200 yards prior to the roadblock indicating that all vehicles should be prepared to stop.

(e) Duration of Stop. An authorized stop may not last longer than is necessary to effectuate the purpose of the stop.

#### (5) Execution of a Search Warrant.

(a) Generally. Search warrants shall only be executed by law enforcement officers between the hours of 6:00 a.m. and 10:00 p.m., unless the issuing Judge otherwise authorizes the warrant to be served anytime day or night. A warrant is only effective within 10 days of the date of issuance, and warrants not executed within this time limit are void.

(b) Return of Warrant. The executing officer shall return the warrant to the Court within the time limit shown on the face of the warrant.

(c) Reasonable Force. Only reasonable and necessary force may be used to execute a search warrant.

(d) Notice. Before entering the premises named in a search warrant, the law enforcement officer shall give appropriate notice of her or his identity, authority, and purpose to the person to be searched, or to the person in apparent control of the premises to be searched, if reasonably available. Before undertaking any search or seizure pursuant to the warrant, the executing law enforcement officer shall show and give a copy of the original or duplicate original warrant to the person to be searched, or to the person in apparent control of the premises to be searched, if reasonably available. If the premises are unoccupied or there is no one in apparent control, the law enforcement officer shall leave a copy of the warrant suitably affixed to the premises.

(e) Receipt for Seized Items. If the warrant is executed, a receipt for all articles taken shall be left with any person at the place from which any items were seized. The inventory of the items shall be made in the presence of an officer and the person from whose possession or premises the property was taken, if present, or in the presence of at least one other credible person. Failure to give or

leave a receipt of all items seized shall not render the seized property inadmissible at any subsequent trial. If the premises are unoccupied or there is no one in apparent control, the law enforcement officer shall leave a copy of the receipt suitably affixed to the premises.

(6) Scope of Search Pursuant to Warrant. The scope of any search shall only include those areas specifically authorized by the warrant and is limited to the least restrictive means reasonably necessary to discover the persons or property specified in the warrant. Upon discovery of the person or property named in the warrant, the law enforcement officer shall take possession or custody of the person or property and search no further under the authority of the warrant. If, in the course of an authorized search, the law enforcement officer discovers property not specified in the warrant and the officer has probable cause to believe the discovered property constitutes evidence of the commission of a criminal offense, the officer may also take possession of that property.

(a) What May Be Seized. A warrant may be issued to search for and seize any evidence, contraband, or person for whose arrest there is probable cause, for whom there has been a warrant of arrest issued, or who is unlawfully restrained. [Ord. 49 § 5.3, 1-8-2010 (Res. 2010-10)].

## 2.25.040 Arrests.

(1) Method of Arrest. An arrest is made by actually restraining the person to be arrested or by that person voluntarily submitting to the custody of the person making the arrest. All necessary and reasonable force may be used in making an arrest, but the person arrested shall not be subject to any greater restraint than is necessary to hold or detain the person. All necessary and reasonable force may be used to effect an entry into any building or property or part thereof to make an authorized arrest. An arrest made outside the boundaries of the Tulalip Reservation shall be valid if made pursuant to the laws of the jurisdiction where the arrest occurred.

(2) Time Restraints. An arrest may be made any day of the week and at any time of the day or night. A person charged with a Class A, B, or C offense can only be arrested at night in a private dwelling with a signed arrest warrant specifically permitting arrest at night, unless there is an immediate threat of harm to another person.

(3) Arrest Warrant. An arrest warrant shall be issued by a Judge, based on a sworn complaint or a declaration under risk of perjury attesting that there is probable cause to believe an offense has been committed, or that a mandate, sentence, or order of the Court has been violated, and that the named person has committed the offense.

(a) Content. The warrant shall be in writing in the name of the Tribes; set forth the nature of the offense; command that the person against whom the sworn complaint or affidavit was made be arrested, or contain a description of the person as well as any alias used by the person; be signed by a Judge; and include any bail amount, if deemed appropriate by the issuing Judge.

(b) Duty of Arresting Officer. The officer making an arrest must inform the defendant that he or she acts under authority of a warrant; provided, that if the officer does not have the warrant in his or her possession at the time of arrest, the officer shall declare that the warrant does presently exist and will be shown to the defendant as soon as possible on arrival at the place of intended confinement.

(c) Minor Irregularities. An arrest warrant shall not be dismissed due to minor irregularities in the warrant which do not substantially affect any rights of the arrested person.

(4) Grounds for Arrest. A law enforcement officer may arrest a person within the exterior boundaries of the Tulalip Reservation under the following circumstances:

(a) When the officer has a warrant commanding that the person be arrested or when the officer believes on reasonable grounds that a warrant for the person's arrest has been issued by the Tribal Court or that a warrant for the person's arrest has been issued in another jurisdiction;

(b) When the person has committed an offense in the officer's presence; or

(c) When the officer has probable cause, as reflected by stated and provable facts, to believe the person to be arrested has committed an offense and exigent circumstances require an immediate warrantless arrest in order to prevent the person from:



- (i) Fleeing the jurisdiction or concealing himself or herself to avoid arrest;
- (ii) Destroying or concealing evidence of the commission of an offense;
- (iii) Injuring another person; or
- (iv) Damaging property belonging to another.

Arrest is the preferred response in situations involving bodily harm to an elder, family member, or household member; use or threatened use of a weapon against an elder, family member, or household member; or where there appears to be imminent danger of bodily harm to another.

(5) Warrantless Arrest. A law enforcement officer having probable cause to believe that a person has committed or is committing a Class E or F offense shall have the authority to arrest the person without a warrant. A law enforcement officer may arrest a person without a warrant for committing any other class of offense only when the offense is committed in the presence of the officer, except as provided in the subsections below:

(a) Any law enforcement officer having probable cause to believe that a person has committed or is committing a criminal offense under Tulalip law shall have the authority to arrest the person.

(b) A law enforcement officer shall arrest and take into custody, pending release on bail, personal recognizance, or Court order, a person without a warrant when the officer has probable cause to believe that:

(i) An order or foreign domestic violence protection order has been issued of which the person has knowledge restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence, or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or in the case of an order imposing any other restrictions or conditions upon the person; or

(ii) The person has assaulted a family or household member defined in Chapter [4.25](#) TTC, Domestic Violence, and the officer believes:

(A) A Class E or above assault has occurred;

(B) An assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or

(C) That any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death.

(c) Any law enforcement officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic or natural resource laws which have criminal penalties shall have the authority to arrest the person:

- (i) Relating to duty on striking an unattended car or other property;
- (ii) Relating to duty in case of injury to or death of a person or damage to an attended vehicle;
- (iii) Relating to reckless driving or racing of vehicles;
- (iv) Relating to persons under the influence of intoxicating liquor or drugs;
- (v) Relating to driving a motor vehicle while operator's license is suspended or revoked;
- (vi) Relating to operating a motor vehicle in a negligent manner.

(d) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.

(e) An officer may act upon the request of a law enforcement officer in whose presence a traffic infraction was committed, to stop, detain, arrest, or issue a notice of traffic infraction to the driver who is believed to have committed the infraction. The request by the witnessing officer shall give an officer the authority to take appropriate action under the laws of the State of Washington and/or the Tulalip Tribes.

(f) Except as specifically provided, nothing in this section extends or otherwise affects the powers of arrest prescribed by Tribal, Federal, or State law.

(6) Notice of Rights Prior to Interrogation. Prior to questioning any person in custody, a law enforcement officer must inform the person in clear and unequivocal terms of the following rights:

- (a) That the person has the right to remain silent;
- (b) That anything said by him or her can and will be used against the person in any subsequent Court proceedings;
- (c) That the person has the right to legal counsel or representation at their own expense prior to answering any questions; and
- (d) That if, at any point during questioning, the person indicates that he or she wishes to remain silent, the questioning will cease.

Any statement obtained in violation of these rights shall not be admitted into evidence. The fact that a person chooses to remain silent cannot be used against him or her in any subsequent criminal proceedings.

(7) Abuse Situations.

(a) Report Where No Arrest. When a law enforcement officer is called to the scene of a reported incident of child neglect or abuse, elder abuse, or domestic abuse, but does not make an arrest, the officer shall file a written report with the Tulalip Police Department stating the reasons that an arrest was not made. [Res. 2012-445 §§ 6, 7; Ord. 49 § 5.4, 1-8-2010 (Res. 2010-10)].

## 1.20.010 Findings.

(1) The Tulalip Tribes has a primary interest in assuring that the administrative procedures carried out by the Tribes, and implemented through its subordinate administrative bodies pursuant to Tribal law, are consistent with the basic principles of common sense, justice and fairness. This chapter is intended to implement the following major principles: (a) except in emergencies, all rule-making, both procedural and substantive, shall be accompanied by notice to interested persons, and opportunities to submit views or information; (b) proper publicity shall accompany the enactment of all administrative rules; (c) provision shall be made for advanced determination of the applicability of the administrative rules to particular cases; (d) administrative adjudicatory hearings shall be fundamentally fair, particularly in regard to such matters as notice, rules of evidence, taking of official notice, and preparation of the administrative record; (e) responsible deciding officers and agency heads in quasi-judicial cases shall be personally familiar with the evidence presented in that proceeding; and (f) adequate provision shall be made to provide for judicial review of administrative errors.

(2) The Tulalip Tribes has jurisdiction to enforce this chapter and to ensure that all persons, whether residing upon the Tulalip Indian Reservation or conducting business or other activities within the exterior boundaries of the Reservation, are provided with due process of law. Tribal jurisdiction of all such persons and lands is necessary to protect the economy, health, safety and welfare of the Reservation population. [Ord. 83 § 83.1.1, 5-12-1995 (Res. 95-0090)].

#### 4.25.040 Special domestic violence criminal jurisdiction.

(1) The Tulalip Tribes hereby exercises “special domestic violence criminal jurisdiction” as a “participating tribe,” as defined within 25 U.S.C. 1304 (2013), subject to applicable exceptions defined therein, in the Tulalip Tribes Domestic Violence Court.

(2) In all proceedings in which the Tribal Court is exercising special domestic violence criminal jurisdiction as a participating tribe, all rights afforded by Chapter [2.25](#) TTC shall apply and those enumerated in the Indian Civil Rights Act, 25 U.S.C. 1302 to all defendants. Should there be any inconsistency between Chapter [2.25](#) TTC and 25 U.S.C. 1302, those of 25 U.S.C. 1302 shall apply.

(3) Every defendant has the privilege of the writ of habeas corpus to test the legality of his or her detention by order of the Tulalip Tribes and may petition the Court to stay further detention pending the habeas proceeding.

(a) A court shall grant a stay if the court:

(i) Finds that there is a substantial likelihood that the habeas corpus petition will be granted; and

(ii) After giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.

(4) The Tulalip Tribes hereby declares its special domestic violence criminal jurisdiction over any person only if he or she:

(a) Resides within the jurisdiction of the Tulalip Tribes; or

(b) Is employed within the jurisdiction area of the Tulalip Tribes; or

(c) Is a spouse, intimate partner, or dating partner of:

(i) A member of the Tulalip Tribes; or

(ii) A member of another Indian tribe who resides within the jurisdiction of the Tulalip Tribes. [Res. 2013-379].

# EXHIBIT 11

## The Tulalip Tribes of Washington

4.25.050 Special jurisdiction – Criminal conduct applicable.

The Tulalip Tribes exercises the special domestic violence criminal jurisdiction of a defendant for criminal conduct that falls into one or more of the following categories:

(1) Domestic Violence and Dating Violence. An act of domestic violence or dating violence that occurs within the jurisdiction of the Tulalip Tribes.

(2) Violations of Protection Orders. An act that occurs within the jurisdiction of the Tulalip Tribes, and:

(a) Violates the portion of a protection order that:

(i) Prohibits or provides protection against violent or threatening acts of harassment against, sexual violence against, contact or communication with, or physical proximity to the person protected by the order;

(ii) Was issued against the defendant;

(iii) Is enforceable by the Tulalip Tribes; and

(iv) Is consistent with 18 U.S.C. 2265(b). [Res. 2013-379].

# EXHIBIT 12

## The Tulalip Tribes of Washington



#### 4.25.040 Special domestic violence criminal jurisdiction.

(1) The Tulalip Tribes hereby exercises “special domestic violence criminal jurisdiction” as a “participating tribe,” as defined within 25 U.S.C. 1304 (2013), subject to applicable exceptions defined therein, in the Tulalip Tribes Domestic Violence Court.

(2) In all proceedings in which the Tribal Court is exercising special domestic violence criminal jurisdiction as a participating tribe, all rights afforded by Chapter [2.25](#) TTC shall apply and those enumerated in the Indian Civil Rights Act, 25 U.S.C. 1302 to all defendants. Should there be any inconsistency between Chapter [2.25](#) TTC and 25 U.S.C. 1302, those of 25 U.S.C. 1302 shall apply.

(3) Every defendant has the privilege of the writ of habeas corpus to test the legality of his or her detention by order of the Tulalip Tribes and may petition the Court to stay further detention pending the habeas proceeding.

(a) A court shall grant a stay if the court:

(i) Finds that there is a substantial likelihood that the habeas corpus petition will be granted; and

(ii) After giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.

(4) The Tulalip Tribes hereby declares its special domestic violence criminal jurisdiction over any person only if he or she:

(a) Resides within the jurisdiction of the Tulalip Tribes; or

(b) Is employed within the jurisdiction area of the Tulalip Tribes; or

(c) Is a spouse, intimate partner, or dating partner of:

(i) A member of the Tulalip Tribes; or

(ii) A member of another Indian tribe who resides within the jurisdiction of the Tulalip Tribes.  
[Res. 2013-379].

# EXHIBIT 13

## The Tulalip Tribes of Washington

#### 4.25.040 Special domestic violence criminal jurisdiction.

(1) The Tulalip Tribes hereby exercises “special domestic violence criminal jurisdiction” as a “participating tribe,” as defined within 25 U.S.C. 1304 (2013), subject to applicable exceptions defined therein, in the Tulalip Tribes Domestic Violence Court.

(2) In all proceedings in which the Tribal Court is exercising special domestic violence criminal jurisdiction as a participating tribe, all rights afforded by Chapter [2.25](#) TTC shall apply and those enumerated in the Indian Civil Rights Act, 25 U.S.C. 1302 to all defendants. Should there be any inconsistency between Chapter [2.25](#) TTC and 25 U.S.C. 1302, those of 25 U.S.C. 1302 shall apply.

(3) Every defendant has the privilege of the writ of habeas corpus to test the legality of his or her detention by order of the Tulalip Tribes and may petition the Court to stay further detention pending the habeas proceeding.

(a) A court shall grant a stay if the court:

(i) Finds that there is a substantial likelihood that the habeas corpus petition will be granted; and

(ii) After giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.

(4) The Tulalip Tribes hereby declares its special domestic violence criminal jurisdiction over any person only if he or she:

(a) Resides within the jurisdiction of the Tulalip Tribes; or

(b) Is employed within the jurisdiction area of the Tulalip Tribes; or

(c) Is a spouse, intimate partner, or dating partner of:

(i) A member of the Tulalip Tribes; or

(ii) A member of another Indian tribe who resides within the jurisdiction of the Tulalip Tribes.  
[Res. 2013-379].

# EXHIBIT 14

## The Tulalip Tribes of Washington

#### 4.25.040 Special domestic violence criminal jurisdiction.

(1) The Tulalip Tribes hereby exercises “special domestic violence criminal jurisdiction” as a “participating tribe,” as defined within 25 U.S.C. 1304 (2013), subject to applicable exceptions defined therein, in the Tulalip Tribes Domestic Violence Court.

(2) In all proceedings in which the Tribal Court is exercising special domestic violence criminal jurisdiction as a participating tribe, all rights afforded by Chapter [2.25](#) TTC shall apply and those enumerated in the Indian Civil Rights Act, 25 U.S.C. 1302 to all defendants. Should there be any inconsistency between Chapter [2.25](#) TTC and 25 U.S.C. 1302, those of 25 U.S.C. 1302 shall apply.

(3) Every defendant has the privilege of the writ of habeas corpus to test the legality of his or her detention by order of the Tulalip Tribes and may petition the Court to stay further detention pending the habeas proceeding.

(a) A court shall grant a stay if the court:

(i) Finds that there is a substantial likelihood that the habeas corpus petition will be granted; and

(ii) After giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.

(4) The Tulalip Tribes hereby declares its special domestic violence criminal jurisdiction over any person only if he or she:

(a) Resides within the jurisdiction of the Tulalip Tribes; or

(b) Is employed within the jurisdiction area of the Tulalip Tribes; or

(c) Is a spouse, intimate partner, or dating partner of:

(i) A member of the Tulalip Tribes; or

(ii) A member of another Indian tribe who resides within the jurisdiction of the Tulalip Tribes.  
[Res. 2013-379].

# EXHIBIT 14-1

## The Tulalip Tribes of Washington

#### 4.25.130 Law enforcement duties to victims.

A law enforcement officer who responds to an allegation of domestic violence or family violence shall use all reasonable means to protect the victim and any family or household member, and prevent further violence, including, but not limited to:

- (1) Taking necessary actions to provide for the safety of the victim and any family or household members or witnesses, including arresting the alleged perpetrator or dominant aggressor;
- (2) Transporting or obtaining transportation for the victim and any child(ren) to a domestic violence safe house or other place of safety at the victim's request;
- (3) Assisting the victim in removing essential personal effects, at the victim's request;
- (4) Assisting the victim and any child(ren) in obtaining medical treatment, including obtaining transportation to a medical facility;
- (5) Calling the Legacy of Healing contact number so that an advocate can provide immediate support to the victim;
- (6) Giving the victim immediate and adequate written notice of the rights of victims and of the remedies available as well as the name, address, and telephone number of local services available to victims, family or household members or witnesses of domestic violence or family violence;
- (7) Providing the victim with any other notice as required by the Tulalip Tribal Police Protocol Manual for Domestic Violence as adopted and amended;
- (8) Confiscating any weapon as provided within this chapter; and/or
- (9) Providing assistance in obtaining a temporary protection order or emergency no contact order. [Res. 2013-379].

#### 4.25.350 Communication with victim.

In every case in which a person is arrested for or charged with a crime under this chapter, the Prosecutor shall endeavor to maintain contact with the victim throughout the criminal proceedings, with particular attention to the following:

(1) Hearing Dates, Continuances, Sentencing. The Prosecutor shall assure that the victim is informed of all hearing dates and continuances and of the right to address the Court at any hearing, in person or in writing, regarding the various impacts of the criminal offense on the victim, the risk of further acts of domestic violence or family violence, and the conditions of sentence necessary to ensure the safety of the victim and the victim's family and household members.

(2) Prosecutorial Decisions. The Prosecutor shall inform the victim of every major prosecutorial decision, including a decision to decline prosecution of the crime, to dismiss the charges, or to enter into a plea agreement, within five Court days of the decision and should include available resources for the victim.

(3) Restitution. The Prosecutor shall obtain information from the victim regarding costs and losses sustained as a result of the defendant's act(s) of domestic violence or family violence and shall seek restitution for the victim. [Res. 2013-379].



4.25.400 Advocates – Present during prosecution or defense interviews.

If requested by the victim, and if the presence of the advocate does not cause any unnecessary delay in the investigation or prosecution of the case, an advocate of the victim's choosing shall be present at any interview with the victim and at any judicial proceeding related to criminal acts committed against the victim. [Res. 2013-379].

#### 4.25.410 Victim rights.

Notwithstanding other provisions of the Tulalip Tribal Code, a victim of a crime under this chapter shall have the following rights:

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any public Court proceeding, or any probation proceeding, involving the crime or of any release or escape of the accused.
- (3) The right not to be excluded from any such public Court proceeding, unless the Court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- (4) The right to be reasonably heard at any public proceeding in Court involving release, plea, sentencing, or any parole proceeding.
- (5) The reasonable right to confer with the Prosecutor in the case.
- (6) The right to full and timely restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.
- (9) The victim has the right to provide a victim impact statement.

A victim impact statement is a written or oral statement given to the sentencing judge by the victim. Such statements may include the impact of the crime on the victim, and how the crime affected the victim psychologically, financially, and physically. The Prosecutor shall assist the victim to provide this statement. The Court shall make all reasonable efforts to accommodate the participation of the victim at the sentencing hearing, being mindful of the unique emotional and psychological barriers victims may experience when facing a perpetrator in Court. [Res. 2013-379; Ord. 117 § 1.15, 11-5-2001 (Res. 2001-365). Formerly 4.25.150].

## EXHIBIT 14-2

### The Tulalip Tribes of Washington

### **2.05.110 Juries.**

(1) Jury Pool. A list of eligible jurors shall be prepared by the Court. The eligible juror list shall be updated from time to time, but no less than once in each year. The Court shall provide for the selection of names of persons eligible for service as jurors. Jurors shall be 18 years of age or older and, notwithstanding any other law of the Tulalip Tribes or any of its agencies, shall be chosen from the following classes of persons:

- (a) Tribal members living on or near the Tulalip Indian Reservation;
- (b) Residents of the Tulalip Indian Reservation; and
- (c) Employees of the Tulalip Tribes or any of its enterprises, agencies, subdivisions, or instrumentalities who have been employed by the Tribes for at least one continuous year prior to being called as a juror.

(2) Formation of Jury. Juries will be comprised of six jurors. A person may be excused from serving on a jury upon good cause shown under oath to a Judge. Jurors whose employers provide for compensated leave for jury service shall not be excused by the Court because of work-related responsibilities, except under extraordinary circumstances. The Judge shall consider the needs of the Court to maintain an adequate jury pool before allowing jurors to be excused for employment reasons. Members of the Board of Directors shall be exempt from serving on juries during their terms of office.

(a) Random Selection. The Clerk of the Court will randomly select a minimum of 25 names from the jury pool.

(b) Juror Summons. The Court shall issue summons and thereby notify persons selected for jury service. Persons selected for jury service shall be summoned by mail or personal service. Persons who do not appear after proper notice of jury service shall be subject to contempt of Court.

(3) Selection (Voir Dire). After summoning jurors and before trial, or at a time designated by the Court, the Clerk shall notify the Court and counsel of the names of the members of the jury pool appearing for selection. In selecting a jury from among the panel members, the initial questioning of the jurors shall be conducted by the Judge in order to determine whether each prospective juror is capable of being fair and impartial. Questions to be asked by the Court include whether a panel member:

(a) Is directly related to any person involved in the action, including, but not limited to, the parties, counsel, alleged victims, or any prospective witness;

(b) Is or has been involved in any business, financial, professional, or personal relationship with a party or alleged victim;

(c) as had any previous involvement in a civil or criminal lawsuit or dispute with a party or alleged victim;

(d) Has a financial or personal interest in the outcome of the action before the Court; or

(e) Has formed an opinion as to the defendant's guilt.

When the Court determines that a juror is prejudiced or cannot act impartially, the juror shall be excused. After questioning by the Judge, both parties may question the jurors using the struck jury system. Either party may question the jurors concerning the nature of the action, including burden of proof in criminal cases and the presumption of innocence. The Judge may limit examination of jurors when the Judge believes such examination to be improper or unacceptably time consuming.

(4) Challenges. All challenges must be made to the Tribal Court before the jury is empanelled and sworn. When a potential challenge for cause is discovered after the jury is sworn, and before the introduction of any evidence, the Court may allow a challenge for cause to be made.

(a) For Cause. Each party shall have unlimited challenges for cause. Each challenge must be tried and determined by the Court at the time the challenge is made.

(b) Peremptory. Each party shall have two peremptory challenges. In criminal cases where defendants are tried together, the prosecution and defense shall each be entitled to one additional peremptory challenge. In civil cases involving multiple parties, additional challenges may be allowed at the discretion of the Court.

(5) Motion to Discharge.

(a) Venire or Jury. Any objection to the manner in which the venire or jury has been selected or drawn shall be raised by motion to discharge.

(b) Court's Ruling. It shall be the duty of the Court to conduct a hearing on any motion to discharge. The burden of proof shall be on the movant. If the Court finds that the venire was improperly selected or drawn, the Court shall order a new venire. If the Court finds that the jury was improperly selected or drawn, the Court shall order the jury discharged and the selection or drawing of a new jury.

(6) Conflicts of Interest. No person shall be qualified to sit on a jury panel in the Tribal Court in any case where that person has a direct interest or wherein any relative, by marriage or blood, in the first or second degree is a party; nor shall any party be required to use a peremptory challenge to remove a person not qualified to serve as a juror under this section. This section shall not be construed as the sole cause upon

which a juror may be challenged for cause, and other conflicts of interest shall be considered by the Judge.

(7) Emergency Additions. In the event there is a shortage of jurors, the Court may call upon anyone eligible to serve as a juror in the case without giving any advance notice.

(8) Fees. Every person who is required to attend Court for selection or service as a juror shall be entitled to fees for each day, unless otherwise compensated through Tribal ordinance, as set by resolution of the Board of Directors.

(9) Juror Oath. The jury shall be sworn in by the Court. Any juror who violates the oath may be held in contempt of Court.

(10) Conduct of Jury During Trial. Once empanelled, jurors shall be instructed by the Judge that it is their duty not to converse among themselves or with anyone else on any subject connected with the trial, or to form or express any opinion thereon, until the issues of the case are finally submitted to them. Jurors may be allowed to take notes, in the discretion of the Court. At each adjournment recess prior to submission of the case to the jury, jurors' notes shall be collected by the Bailiff and the Judge shall instruct the jurors as to whether they may separate or must remain in the care of the Bailiff or other proper officer of the Court.

(11) View of Relevant Place or Property. Upon request by either party, the Court may allow the jury to view any place or property deemed pertinent to the just determination of the case. If viewing of a place or property is deemed appropriate, the Court shall place the jury under the custody of the Bailiff, or other proper officer of the Court, who shall then transport the jury to the viewing place. The place or property will be shown to the jury by a person appointed by the Court for that purpose, and the jurors may personally inspect the same. The Bailiff, or other proper officer of the Court, must ensure that no person speaks or otherwise communicates with the jury, on any subject connected with the trial, while viewing the place or property or traveling to or from the viewing site. After the jury has viewed the place or property, the Bailiff, or other proper officer of the Court, shall return the jurors to the courtroom without unnecessary delay or at a specified time, as directed by the Court.

(12) Jury Instructions.

(a) Submission.

(i) General. Each party shall propose jury instructions in writing as set forth by the criminal or civil procedure rules of this title. If no jury instructions are submitted to the Court, the Judge may order one or more parties to submit jury instructions.

(ii) Special. If either party desires a special instruction to be given to the jury, such proposed instruction shall be reduced to writing, signed by the party offering the instruction, and delivered to the Judge.

(b) Content. All jury instructions shall adequately inform the jurors of:

(i) Which decisions are made by the jury and which by the Presiding Judge;

(ii) The issues of fact in the case;

(iii) The rules of law to be applied to the issues of fact; and

(iv) The burden of proof with respect to each issue of fact.

(c) Disputed Instructions. A party not offering a proposed instruction shall be allowed reasonable opportunity to examine the proposed instruction and object to it. The objection must specifically state on what grounds the instruction is not an accurate statement of the law or is not an appropriate instruction for this particular case and, therefore, should not be given. A dispute regarding a proposed jury instruction must be settled during a settlement hearing outside the presence of the jury. Parties must note any objections to the jury instructions at the settlement of instructions or in writing prior to the settling hearing. A record must be made at the hearing to settle instructions.

(d) Delivery and Incorporation into the Court Record. After all evidence has been presented, and before closing arguments, the Court shall give both general and specific instructions to the jurors. For the record, but not for the jury, the Court shall mark or endorse each instruction in such a manner that shall distinctly reflect what proposed instructions were rejected, what were given in whole, and what were modified, together with the Court's reasons for giving as requested, as modified, or for refusing a proposed instruction. All proposed instructions are part of the Court record. All objections to jury instructions must be noted on the Court record, as well as the Court's reasons for either giving as requested, as modified, or for refusing a proposed instruction.

(13) Jury Deliberations. After closing arguments, the Court shall commit the jury to the care of a Bailiff or other officer of the Court who shall keep the jurors together and prevent communication between the jurors and others. Upon retiring to deliberate, the jurors shall select a juror as foreperson. After the jury has retired for deliberation, if there is any disagreement among the jurors as to the testimony or if the jurors desire to be informed on any point of law arising in the cause, they shall notify the Bailiff or the officer appointed to keep them together who shall then notify the Court. The information requested may be given, in the discretion of the Court, after consultation with the parties.

(14) Items That May Be Taken into Jury Room. Upon retiring for deliberation, the jurors shall take with them the written jury instructions read by the Court, exhibits admitted into evidence, and specific other exhibits. Jurors' notes may be taken into the jury room at the discretion of the Court. All evidence that has been admitted may be allowed in the jury room, unless the Judge finds good cause not to permit it in the jury room.

(15) Activity of the Court During Jury's Absence. While the jury is absent, the Court may adjourn or conduct other business, but it must be open for every purpose connected with the cause submitted to the jury until a verdict is returned or the jury discharged.

(16) Form of Verdict. The jury shall return a verdict as instructed by the Court and for each offense charged. The verdict must be unanimous in all criminal actions. The verdict must be by five out of six in all civil cases. The verdict must be signed by the foreperson and returned by the jury to the Judge in open Court. When two or more defendants are involved in the case before the jury, the jurors may reach a verdict regarding any one of the defendants. If the jury cannot agree with respect to all the defendants, the defendant or defendants as to whom it does not agree may be tried again.

(17) Polling the Jury. When a verdict is returned, but before it is recorded, the jury shall be polled at the request of any party or upon the Court's own motion. If the results of the poll show that the verdict does not reflect the verdict returned, the jury may be directed to return for further deliberations or may be discharged at the Court's discretion.

(18) Discharging Jurors. When the jury has reached a verdict or has determined that it shall be unable to do so, even with additional deliberation, the Court shall discharge the jurors from service. [Ord. 49 § 1.11, 1-8-2010 (Res. 2010-10)].



## **TULALIP TRIBAL COURT JURY TRIAL**

In order to ensure a fair and impartial jury trial, made up of affair cross section of our community, the Tulalip Tribal Court has implemented procedures for the Court Clerks to follow to empanel a jury. Jury Trials will be scheduled on Wednesdays at 9:00a.m.

The Court currently uses the software program, *Jury Master*. This software program allows for a random selection of qualified jurors. Qualified jurors consist of:

- (a) Tribal members living on or near the Tulalip Indian Reservation;
- (b) Residents of the Tulalip Indian Reservation; and
- (c) Employees of the Tulalip Tribes or any of its enterprises, agencies, subdivisions, or instrumentalities who have been employed by the Tribes for at least one continuous year prior to being called as a juror.

Every January, the Court Clerk will request an updated Tulalip Tribal Member roster, an Employee List from the Tulalip Tribal Government and its entities, and a property list from Snohomish County indicating the names and addresses of citizens residing on the Tulalip reservation for import into the *Jury Master* system.

On the 15<sup>th</sup> of every month, the Clerk shall perform the following steps to secure the Jury pool for the subsequent month:

1. Create a Monthly Juror Group. Select “New Group”. Name the group as follows: MM-YYYY. Enter “start date” – use the first day of the upcoming month. Enter an “end date”- the last day of the upcoming month. Enter “report date” – enter the first Wednesday of the month. Enter the “summons date” – enter the date you created the group, or the date you plan to mail out the summons. Be sure and check the box “Yes”, under “Import Run”. Select “Save”.
2. Add Jurors to the Monthly Juror Group. Select “Add Jurors”. A “Group” dialog box will appear. Enter the date range of 01/01/YYYY – 12/31/YYYY. Enter at least 65 jurors to be selected. Select “Save”.
3. Update “Documents”. Select “Setup”, “Document Maintenance”. Select “Batch Summons2” file, and “Edit Template”. Enter the updated report dates for the month. Select Save.
4. Issue “Summons”; “Juror Questionnaire” and blank “Notice of Hardship” for each juror in the Monthly Juror Group. Select “Documents”. Select “Batch Summons”. The forms will be auto-generated and pre-populated with the Juror’s name and address. *\*This is a long process and prints three documents for every Juror. This should be done over lunch or at the end of the day as to not interrupt regular Court business.*

5. Mail Summons, Juror Questionnaire, and Notice of Hardship (examples follow) no later than the 16<sup>th</sup> of the month.
6. Every Tuesday of the month, before 4:30 p.m. ensure that the Jury Line is updated with applicable instructions to the Jury Pool.

The Court will issue Jury Summons, to approximately 70 jurors, by the 15<sup>th</sup> of the month preceding the jury report date. Jurors are expected to report for jury duty for the entire month in which they are summoned.

## EXHIBIT 14-3

# The Tulalip Tribes of Washington

Public Affairs  
Violence Against Women Act 2013  
Special Domestic Violence Criminal Jurisdiction

### **Communications & Community Involvement Strategy**

**Situation Analysis:** In order to effectively communicate the special and enhanced jurisdiction of the Tulalip Tribes to arrest and try non-Indians for domestic violence and other sexual crimes against Native Americans on the Tulalip Reservation, and to enforce protection orders associated with such crimes, it is necessary to inform victims, offenders, police, justice system, as well as the general publics of surrounding communities, and the general publics of the Tulalip Reservation (tribal members and non-Indians), the Tulalip Tribes Office of Public Affairs will devise and implement a communications and outreach plan.

**Goals and Objectives:** 1.) Building trust with victims that enhanced jurisdiction will bring their aggressors to justice. 2.) Communicating to offenders the reasons and repercussions of enhanced jurisdiction. 3.) Communicating to surrounding communities the history and realities of DV and sexual crimes on Indian reservations and why enhanced jurisdiction will help bring offenders to justice. 4.) Communicating with non-tribal law enforcement, civic organizations and programs that support victims of sex crimes and DV the history and realities of said crimes on Indian reservations, and why enhanced jurisdiction will bring more offenders to justice.

**Target Audience:** a sound communications strategy will message to both internal and external audiences.

- 1.) External audience will include surrounding communities (Marysville, Everett) law enforcement, public defenders, district attorneys, and other identified groups of importance. External will also include offenders living on the Tulalip Indian Reservation.
- 2.) Internal audience includes Tulalip tribal members and other Native Americans living on the Tulalips Tribes Reservation.

**Key Messages:** 1.) Native American victims of domestic violence and other sexual crimes will see justice because of enhanced jurisdiction. 2.) Tulalip Tribes is part of pilot project because of its existing justice system which is well-regarded. 3.) Safeguards in place to protect defendant's rights. 4.) Indian reservations are no longer safe places for perpetrators to escape justice.

## **Tools and Tactics:**

### 1.) Media (print, online, video, social media)

- a. **External** prior to the pilot project commencing pitch letters sent out to largest regional media channels in early February. This will include Seattle Times, Everett Herald, KOMO, KIRO, and KUOW. Only one quality piece is needed to be the “source” other outlets will use to archive. Suggest a regular press release go out as soon as pilot project approval is given. Distribute to regional and national media, Native media, legal and civic associations (e.g., WA State Bar Association) and the public affairs departments of surrounding towns, cities, and counties.
- b. **Internal** See-Yaht-Sub and TulalipNews.com could begin to cover topic as early as February to introduce the pilot program and what it could mean to victims, offenders, and other identified audiences. TulalipNews.com will post article/information on FaceBook page. Tulalip Matters is willing to produce a segment devoted to pilot program. We need to use internal media resources to reach offenders living within the reservation boundaries and with Tulalip tribal members.

### 2.) Website

- a. Tribal Court pages under Tulalip Tribes government website and the Tulalip Police Department website will describe pilot project and will list resources and contact information.

### 3.) Outreach

- a. Work with City of Marysville public information officer to disseminate news of pilot program through right channels. The same is true of Everett.

Communicate with various support organizations in Tulalip and surrounding communities who serve victims of domestic violence (Tulalip’s Legacy of