

**SHOALWATER BAY INDIAN TRIBE
CODE OF LAWS**



TITLE 1

COURT PROCEDURES

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**TITLE 1
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Chapter 1.01 General Provisions	1
1.01.010 Purpose.....	1
1.01.020 Establishment of the Shoalwater Bay Tribal Court.	1
1.01.030 Definitions.....	1
1.01.040 Sovereign Immunity.	2
Chapter 1.02 Jurisdiction	2
1.02.010 Shoalwater Bay Tribal Court – Judicial Power.	2
1.02.020 Shoalwater Bay Tribal Court – Jurisdiction.	2
1.02.020.1 Implied Consent.....	2
1.02.020.2 Expressed/Informed Consent.....	2
Chapter 1.03 Judges	5
1.03.010 Number of Judges.....	5
1.03.020 Appointment, Term, and Oath of Office.....	5
1.03.030 Qualifications for Judges.....	5
1.03.040 Removal of Judges.	6
1.03.050 Removal of Judges – Procedure.	7
1.03.060 Conflict of Interest.	7
Chapter 1.04 Rules of Judicial Conduct	7
1.04.010 Scope of Rules.	7
1.04.020 Judicial Conduct – Generally.....	7
1.04.030 No Outside Discussion of Cases.	7
1.04.040 Informal Contacts with Police to be Avoided.	8
1.04.050 Disqualification for Conflicts of Interest.	8
1.04.060 Independence of the Court.	8
Chapter 1.05 Court Clerk and Court Administrator	8
1.05.010 Court Clerk and Court Administrator.....	8
1.05.020 Court Clerk – Duties.	8
1.05.030 Court Clerk – Authority.....	9
1.05.040 Court Administrator – Duties.	9
1.05.050 Court Administrator – Authority.....	9
Chapter 1.06 Records	10
1.06.010 Court Records – Generally.	10
1.06.020 Records – Removal by Permission Only.....	10
1.06.030 Access to Court Records.	10
Chapter 1.07 Filing and Notice	11
1.07.010 Documents Filed with the Clerk.	11
1.07.020 Documents Given to Other Parties.	11

1.07.030	Service of Complaints.....	11
1.07.040	Orders Given to Parties.....	11
Chapter 1.08	Time.....	11
1.08.010	Computation of Time – Generally.....	11
1.08.020	Computation of Time – Mailing.	12
1.08.030	Extension of Time.	12
Chapter 1.09	Spokespersons.....	12
1.09.010	Right to a Spokesperson.....	12
1.09.020	Prosecutor.	12
1.09.030	Spokespersons – Qualifications.	12
1.09.040	Spokesperson’s Oath.	13
1.09.050	Roster of Spokesperson.....	13
1.09.060	Bar Admission Fee.....	13
1.09.070	Copies of Laws Available.....	13
1.09.080	Disbarment – Generally.	14
1.09.090	Disbarment – Complaint.....	14
1.09.100	Disbarment – Hearing.	14
1.09.110	Appeal from Disbarment.	14
Chapter 1.10	Conduct of Court Sessions	14
1.10.010	Conduct.....	14
1.10.020	Courtroom Order.	14
1.10.030	Sessions – Site.....	15
1.10.040	Schedule.....	15
Chapter 1.11	Contempt of Court.....	15
1.11.010	Civil Contempt Power.	15
1.11.020	Sanctions for Civil Contempt.....	15
1.11.030	Criminal Contempt.	15
1.11.040	Summary Disposition.....	16
1.11.050	Default on Fine.	16
Chapter 1.12	Rules of Evidence.....	16
1.12.010	Admissible Evidence.	16
1.12.020	Reliability.	16
Chapter 1.13	Juries.....	17
1.13.010	Right to Jury Trial.	17
1.13.020	Eligibility of Jurors.	17
1.13.030	Excuse from Jury Duty.	17
1.13.040	Request for Jury Trial.	17
1.13.050	Jury Panel – Clerk to Summon.	17
1.13.060	Challenges.	17
1.13.070	Fees. [Reserved].....	18
1.13.080	Jury Instructions.	18
1.13.090	Jury – Deliberation.	18
1.13.100	Jury – Decision.	18
Chapter 1.14	Witnesses.....	18
1.14.010	Right to Compel Witnesses to Appear.....	18
1.14.020	Summons – Generally.....	18

1.14.030	Summons – Signature.....	18
1.14.040	Summons – Content.....	19
1.14.050	Summons – Service.....	19
1.14.060	Summons – Return.....	19
1.14.070	Failure to Obey Summons.....	19
1.14.080	Witness Fees.....	19
Chapter 1.15	Costs	19
1.15.010	Costs – Generally.....	19
1.15.020	Costs – How Computed.....	19
Chapter 1.16	Severability	20
1.16.010	Severability.....	20
	Spokespersons Oath.....	21
	Motion and Order to Admit to Tribal Court Bar.....	22
	Consent To Criminal Jurisdiction Form.....	23
	Tribal Council Resolution #09-26-87-30.....	25
	Tribal Council Resolution #12-27-08-36.....	26
	Tribal Council Resolution #08-15-14-48.....	27

**Shoalwater Bay Indian Tribe
Code of Laws**



**TITLE 1
COURT PROCEDURES**

Chapter 1.01 General Provisions

1.01.010 Purpose.

This title is enacted to strengthen tribal government, provide for the judicial needs of the Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation, and to provide for the fair, effective, and efficient resolution of matters before the Shoalwater Bay Tribal Court.

1.01.020 Establishment of the Shoalwater Bay Tribal Court.

There is hereby established a court to be known as the Shoalwater Bay Tribal Court with judicial power of Shoalwater Bay Indian Reservation being vested in Shoalwater Bay Tribal Court and extend to all cases and controversies in law and equity arising under the laws and traditions of the Shoalwater Bay Indian Reservation.

1.01.030 Definitions.

When the words below appear in this title, they shall be defined as set forth in this section unless another meaning is specifically indicated in the code.

- a) "Court" means the Shoalwater Bay Tribal Court.
- b) "Law enforcement," "law enforcement officer," and "tribal police" mean any person authorized by the Shoalwater Bay Tribe to act on behalf of the tribe as a law enforcement officer, including but not limited to natural resources enforcement officers.
- c) "Tribe" means the Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation.

1.01.040 Sovereign Immunity.

The sovereign immunity of the Shoalwater Bay Indian Tribe, its tribal council, law enforcement officers, natural resources officer, judges, judicial officers, prosecutors, and court personnel is in no manner waived by this title.

Chapter 1.02 Jurisdiction

1.02.010 Shoalwater Bay Tribal Court – Judicial Power.

The judicial power of the Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation shall be vested in the Shoalwater Bay Tribal Court. When jurisdiction is vested in the court, all the means necessary to exercise that jurisdiction also is delegated. In the exercise of that jurisdiction, if the course of a proceeding is not specified in this code, any suitable process may be adopted which appears most in keeping with the spirit of Shoalwater Bay Tribal law.

1.02.020 Shoalwater Bay Tribal Court – Jurisdiction.

The territorial jurisdiction of the Shoalwater Bay Tribal Court shall extend to the fullest extent permissible under the Constitution of the Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation and as it may be amended. The Shoalwater Bay Tribal Court shall have the fullest personal and subject matter jurisdiction permissible under applicable law.

1.02.020.1 Implied Consent

Entrance by any person onto the Shoalwater Bay Reservation shall be construed to be an acceptance of the jurisdiction of the Tribal Court and a consent to such jurisdiction over his/her person concerning any legal action under this Code and shall be deemed consent to service of summons or process by registered mail with return receipt requested at his last known address, implied consent notice shall be posted at ingress and egress areas.

1.02.020.2 Expressed/Informed Consent

- (a) The Tribal Court shall have jurisdiction over all persons who commit criminal offenses as enumerated in the laws of the Shoalwater Bay Tribe, when committed by any person within the exterior boundaries of the Shoalwater Bay Reservation.
- (b) Non-Indian Procedures
- (c) A non-Indian may waive the issue of personal jurisdiction and consent to any proceeding in the Tribal Court.

- (d) If necessary the Judge shall confirm that the defendant is either an Indian or a non-Indian as follows for determining jurisdiction:
- A) Inquire if the defendant is an enrolled member of any Federally recognized Indian Tribe;
 - B) Inquire if the defendant is a member or descendent of any Indian Tribe;
 - C) Inquire if the defendant is a citizen of another country;
 - D) Inquire if the defendant participates in any Indian cultural events, lives on a Reservation, receives any benefits reserved exclusively for Indians, or otherwise holds themselves out as an Indian, or a member of the Indian Community.
 - E) If the defendant exercises his or her right to remain silent, the Judge shall determine that the defendant is an Indian for the purposes of jurisdiction, without prejudice to the defendant's right to challenge jurisdiction at a later date. If the defendant is too intoxicated or impaired for the Judge to conduct this inquiry, the Judge shall order that the defendant appear before the Judge on duty on the following business day for the conclusion of this proceeding.

If the answers to questions A)-C), or any one of them is "yes," the inquiry ends there and the Court has jurisdiction over the defendant. If the answers to questions A)-C) is "no," but the answer to question D) is "yes," further inquiry may be in order to satisfy the Judge that the defendant is an Indian for the purposes of the exercise of jurisdiction.

If the Judge determines that the defendant is a non-Indian, the Judge may then inform the non-Indian that they may waive personal jurisdiction and voluntarily consent to the criminal jurisdiction of the Court.

Prior to accepting any non-Indian's consent, the Court shall inform the non-Indian;

- (1) You have been arrested for, or accused of committing a criminal act within the jurisdiction of the Shoalwater Bay Indian Tribe, a Sovereign Indian Nation;
- (2) Because you have not claimed to be a Native American or a member of an Indian Tribe, you cannot automatically be subject to criminal prosecution in the Tribal Court of this Sovereign Nation;
- (3) However, because the criminal activity occurred within the borders of this Sovereign Nation, in accordance with Article I, Section 1 of the

Constitution of the Shoalwater Bay Tribe, you have the opportunity to expressly consent to the criminal jurisdiction of the Shoalwater Bay Tribal Court if you voluntarily choose to do so. However you must be informed of, and understand the following very important information and conditions;

- (4) You do not have a consent to the Tribal Court criminal jurisdiction, as well as the appropriate Tribal criminal law(s);
- (5) If you do not voluntarily consent to the Tribal Court's jurisdiction, your criminal charges will be immediately referred to the appropriate county, state, or federal criminal justice jurisdiction for criminal prosecution purposes;
- (6) If you choose to voluntarily and expressly consent to the criminal jurisdiction to the Tribal Court, your consent is strictly limited to this one immediate incident only, however more than one criminal crime may arise out of this immediate incident. It is also possible that another sovereign entity such as the State of Washington or the Federal government of the United States may or may not exercise their right to prosecute you for any crimes in violation of their laws related to this same incident;
- (7) By consenting to this Sovereign Nation's criminal jurisdiction, you are not admitting that you are guilty of any criminal violation, however all applicable Tribal rights, and Indian Bill of Rights as required by law will apply to your criminal case, you must understand that the United States Constitution and the rights contained therein do not apply to Tribal Court proceedings.
- (8) Your expressed consent waives the right to request a change of jurisdiction or venue to a court outside this Sovereign Nation and stipulates, agrees and consents that all criminal actions arising under the laws of this Tribe and commenced within the Tribal Court shall be the most proper and convenient forum;
- (9) Your expressed consent waives any civil or criminal claims that may be forthcoming regarding jurisdiction, venue and your status as a non-Indian, and stipulates, agrees and expressly consent that all criminal actions arising under the laws of this Tribe and commenced within the Tribal Court shall be the proper and convenient forum;
- (10) Your expressed consent to criminal prosecution will continue throughout the entire criminal case, and be aware that if you are found to be guilty of a criminal offense either from a bench trial, or a jury of six, and the Tribal Court thereafter orders you to be either confined in jail, and/or to pay a fine, and/or to participate in a particular type of counseling consistent with

your original charge and sentence, you cannot withdraw your consent to avoid sentencing obligations imposed by Tribal Court orders;

(11) Do you understand these conditions? Yes. No.

(12) Do you consent to the criminal jurisdiction of the Tribal Court? Yes. No.

An appropriate Affidavit documenting the defendant's consent/non-consent shall be attached to the defendant's official record.

Chapter 1.03 Judges

1.03.010 Number of Judges.

The Shoalwater Bay Tribal Court may have a chief judge and one or more associate judges or a judge pro tempore. An associate judge may serve on a regular basis if the court's caseload so requires or on a temporary basis when the chief judge is unavailable.

1.03.020 Appointment, Term, and Oath of Office.

Judges shall be appointed by the tribal council and shall serve until resignation or removal under this title. The tribal council shall not appoint any person to serve as a judge who does not meet the qualifications under Section 1.03.030. The tribal council may rescind its appointment, with or without cause, at any time. If an appointment is rescinded, all actions taken by the judge up to the time of rescission shall be valid.

The chairperson of the tribe shall administer an oath to appointed judges before they begin their duties. The contents of the oath shall be as followed:

"I swear (or affirm) that I will support and defend the Indian Civil Rights Act, the Constitution, By-Laws, and laws of the Shoalwater Bay Indian Tribe, and that I will faithfully and diligently perform the duties of (Chief Judge, Associate Judge, Appellate Justice, as applicable) of the Shoalwater Bay Tribal Court to the utmost of my ability, with impartiality, and fairness, and without improper favor, to the end that justice may be fully served."

1.03.030 Qualifications for Judges.

A person must meet the following requirements in order to serve as a judge of the Shoalwater Bay Tribal Court:

a) Be at least thirty years of age;

- b) Be a member of a federally recognized Indian tribe.
- c) Have at least a high school education;
- d) Have successfully completed course work in the areas of Indian law, criminal law and procedure, civil law and procedure and judicial ethics;
- e) Be familiar with the Constitution and laws of the Shoalwater Bay Indian Tribe;
- f) Never have been found guilty of a felony;
- g) Have committed no misdemeanors within the two years preceding appointment. This requirement may be waived by the tribal council with regard to minor traffic offenses;
- h) Be of good moral character; and
- i) Be physically and mentally able to carry out the duties necessary as a tribal court judge.
- j) Appellate Judges may be appointed by **Northwest Intertribal Court System** [NICS] per their judges' roster as provided for by our membership in NICS.

1.03.040 Removal of Judges.

Judges may be reprimanded or removed with or without cause by a unanimous vote of the tribal council, at a meeting at which a quorum is present. Good cause shall include but is not limited to:

- a) Conviction of any offense other than minor traffic violations;
- b) Use of official position for personal gain;
- c) Failure to perform or neglect in performing judicial duties;
- d) Excessive use of intoxicants; or
- e) Violation of the Rules of Judicial Conduct, Chapter 1.04.

A judge shall not be removed because the tribal council disagrees with an action the judge has taken in his or her official capacity.

1.03.050 Removal of Judges – Procedure.

Any person who charges that a judge should be removed or reprimanded shall provide the tribal council with a written notice setting forth the specific factual basis for the charge and the names of all persons who have firsthand knowledge of those facts. The tribal council shall determine whether the charge constitutes sufficient grounds for reprimand or removal. If so, it shall notify the judge of the charge, in writing. The notice shall be delivered to the judge at least ten days before a tribal council meeting convenes to consider the matter. The judge shall be given an opportunity to answer the charges at the tribal council meeting. The decision of the tribal council shall be final.

1.03.060 Conflict of Interest.

No judge shall be qualified to sit as a judge in any case in which he or she has a direct interest or in which any party is a relative in the first or second degree by blood or marriage.

Chapter 1.04 Rules of Judicial Conduct

1.04.010 Scope of Rules.

This chapter applies to judges of the Shoalwater Bay Tribal Court.

1.04.020 Judicial Conduct – Generally.

A judge shall at all times seek to carry out his or her duties with fairness and diligence. A judge:

- a) Shall always conduct him or herself in such a way as to promote respect for the law;
- b) Shall not let social relationships, his or her political or religious views, or criticism or praise influence the decisions he or she makes in the court;
- c) Shall be patient, courteous, careful, and conscientious in the performance of all official duties; and
- d) Shall maintain order in the courtroom.

1.04.030 No Outside Discussion of Cases.

A judge shall not discuss any case for which he or she is responsible with any party to the case. A judge shall not seek advice or opinions from other persons, including judges and lawyers, regarding the merits of a particular case. A judge may, however, discuss general principles affecting cases and hypothetical

examples with other judges and lawyers, and may seek specific advice from a law clerk employed to give such advice.

1.04.040 Informal Contacts with Police to be Avoided.

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

1.04.050 Disqualification for Conflicts of Interest.

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

1.04.060 Independence of the Court.

A judge shall not engage in any outside activity which would be inconsistent with the court's status as an independent government branch. In particular, the judge shall not participate in legislative or administrative activities of the tribal government. A judge shall not be swayed by public criticism or clamor regarding his or her official actions. A judge shall make no public comment on matters pending before the court except in the course of official proceedings.

Chapter 1.05 Court Clerk and Court Administrator

1.05.010 Court Clerk and Court Administrator.

The Shoalwater Bay Indian Tribe may hire a court clerk and a court administrator or may designate a person to act as court clerk and court administrator if funding is unavailable.

1.05.020 Court Clerk – Duties.

The court clerk shall have the following duties:

- a) Keep court records in all cases filed;
- b) Attend all court proceedings and keep a record of such proceedings;
- c) Keep a calendar of court hearing dates and help schedule court proceedings;

- d) Notify the judges and parties, as required in these rules, of actions taken, hearings scheduled, and other developments requiring their attention;
- e) Receive and record money for fines and costs charged to parties in court cases;
- f) Maintain a list of persons who are eligible to serve as jurors;
- g) Maintain a list of persons who are admitted to the tribal court bar.

1.05.030 Court Clerk – Authority.

The court clerk shall have the authority to administer oaths for persons making affidavits, to prepare and certify the official record of a court hearing, to issue notices of hearing and summonses, and such other authority vested by this title or by other laws of the Shoalwater Bay Indian Tribe.

1.05.040 Court Administrator – Duties.

The court administrator shall oversee the court operations, non-judicial activities of the court including management of finances. Some duties of a court administrator may be:

- a) Assisting the legal profession with courtroom procedure;
- b) Attend court proceedings and keep a record of such proceedings when court clerk is unavailable;
- c) Maintain and update a set of the laws of the Tribe;
- d) Collecting court costs;
- e) Verify copies of court proceedings;
- f) Issuing Summons;
- g) Appointment of staff.

1.05.050 Court Administrator – Authority.

The court administrator shall have the authority to provide oversight for the tribal court and such other authority vested by this title or by other laws of the Shoalwater Bay Indian Tribe.

Chapter 1.06 Records

1.06.010 Court Records – Generally.

All testimony and arguments given in open court shall be recorded and made part of the official record of each case and shall be kept by the court clerk with other official records. Tape/digital recordings shall be retained for at least three months after final disposition, including any appeal taken. Records kept by the court clerk shall include:

- a) A calendar of scheduled court hearings;
- b) The roster of members of the tribal court bar;
- c) A separate file for each lawsuit and criminal prosecution brought in the court, with the original of every document submitted in the case;
- d) A payment ledger showing all funds received and disbursed in the course of each lawsuit or prosecution;
- e) A docket book which shows, for each case filed, the case file number, the parties' names, and a short description of every document filed and every order issued in the case, including the date of the order or filing.

1.06.020 Records – Removal by Permission Only.

Official records of the court shall be kept on the Shoalwater Bay Indian Reservation in the court clerk's office, and these records shall not be removed except with the permission of the chief judge.

1.06.030 Access to Court Records.

The case files of the Shoalwater Bay Tribal Court shall be accessible on a limited basis. The prosecutor, judge, tribal law enforcement, and the court clerk shall have access to the files as required by their official duties. The defendants in criminal cases and parties to civil cases shall have access to information contained in their case files. Other persons may have access to case files by written permission of the defendant, in civil fishing and in criminal cases, or of all parties to a civil case. This rule may be waived by the judge, in his or her discretion, upon written request and good cause shown.

Chapter 1.07 Filing and Notice

1.07.010 Documents Filed with the Clerk.

Every complaint, summons, warrant, motion, written argument, agreement, order, shall be in writing and a copy filed with the court clerk unless the court waives the writing requirement. Oral motions (requests to the court) may be made in open court with all parties or their representatives present. The clerk shall give a copy of every document filed in a court case to the judge who has responsibility for the case.

1.07.020 Documents Given to Other Parties.

A party who files any document with the court clerk in a lawsuit or criminal prosecution shall give a copy of the same document to every other party in the case. If a party is represented by an attorney or spokesperson, the document shall be given to that representative. Delivery of a copy as required by this section may be made either by giving it to the party in person or by putting it in the mail.

1.07.030 Service of Complaints.

Service of complaints and summons shall be personally served on the defendant or left at the defendant's residence with a person of suitable age and discretion. The person serving the papers shall be at least eighteen (18) years of age and neither a party to the action or a member of a party's immediate family. If attempts at personal service fail, the papers may be served by certified mail, return receipt requested. If this fails, the court may authorize, by telephone if necessary, service by publication.

1.07.040 Orders Given to Parties.

Unless the judge issues an order or makes a decision in open court when all parties are present, decisions and orders of the court shall be written down, and the clerk shall give or send a copy of each such order to each party in the case. Orders and decisions made in open court shall be put in writing by the Judge, within ten (10) days, for the record and a copy mailed out to each party in the case.

Chapter 1.08 Time

1.08.010 Computation of Time – Generally.

When a code section, ordinance, rule, or court order requires an action to be taken within a specific number of days, the day of the event from which the time limit runs is not counted. The last day is counted unless the last day is a

Saturday, Sunday or tribal holiday, in which case the deadline is the next working day.

1.08.020 Computation of Time – Mailing.

If a notice is given by mail, the time limit shall begin on the third day after deposit in the mail. For example, if a notice is mailed on the first, the first day of the time limit will be the fourth.

1.08.030 Extension of Time.

A party may make a prior, written request for an extension of time. The court may grant the request, in its discretion, except the right of a criminal defendant to a speedy trial shall not be violated.

Chapter 1.09 Spokespersons

1.09.010 Right to a Spokesperson.

Any person appearing before the Shoalwater Bay Tribal Court has the right to a spokesperson, at his or her own expense, to assist in presenting his or her case.

1.09.020 Prosecutor.

The tribe may be represented in court by a prosecutor. The prosecutor must be admitted to the tribal court bar. The prosecutor shall meet the qualifications and shall carry out the duties under the terms of his or her employment whether through the **Northwest Intertribal Court System**, government contract, tribal employment, or other source.

1.09.030 Spokespersons – Qualifications.

Persons desiring to appear as spokespersons before the court of justice must meet the following qualifications:

- a) Be at least 21 years of age;
- b) Be of good moral character;
- c) Be familiar with the laws of the Shoalwater Bay Indian Tribe which apply in their cases; and
- d) Have taken and signed the spokesperson's oath.

1.09.040 Spokesperson's Oath.

Persons desiring to appear as spokespersons before the Shoalwater Bay Tribal Court must take the following oath, signed before a judge or judicial officer:

"I, _____, do solemnly swear:

- 1) "I am familiar with the laws of the Shoalwater Bay Indian Tribe which apply to my case and will become familiar with those laws which apply to cases in which I represent people before this Court in the future.
- 2) "I will at all times maintain the respect due to the Shoalwater Bay Tribal Court and its officers.
- 3) "I will abide by the rules of the Shoalwater Bay Tribal Court.
- 4) "I will use only those means consistent with truth and honor and I will never seek to mislead a judge by any false statements."

Spokesperson

SUBSCRIBED AND SWORN to before me this ____ day of _____, 20__.

Judge

1.09.050 Roster of Spokesperson.

A roster of all persons who may act as spokespersons and copies of the signed spokesperson's oaths shall be kept by the court clerk and shall be referred to as the *tribal court bar*.

1.09.060 Bar Admission Fee.

The tribal council may establish a fee for admission to the tribal court bar.

1.09.070 Copies of Laws Available.

Copies of the laws of the Shoalwater Bay Indian Tribe shall be available for the use of spokespersons and individuals representing themselves before the Shoalwater Bay Tribal Court. The tribal council may establish a fee to cover the cost of copying the laws.

1.09.080 Disbarment – Generally.

Any spokesperson that breaks any promise he or she made in the spokesperson's oath or who has violated the laws of the Shoalwater Bay Indian Tribe may be disbarred.

1.09.090 Disbarment – Complaint.

Any member of the general council, tribal law enforcement, the court clerk, judge, or prosecutor may file a written complaint with the court for disbarment of a spokesperson. The complaint shall state the specific grounds for disbarment along with an affidavit stating facts to support the complaint. A copy of the complaint and a notice of hearing shall be served on the spokesperson.

1.09.100 Disbarment – Hearing.

A hearing before the Shoalwater Bay Tribal Court shall be scheduled no sooner than ten days and no more than sixty days from the date the complaint and notice of hearing are served on the spokesperson. The spokesperson may present witnesses on his or her behalf and any other defense. The court may dismiss the complaint, order permanent disbarment, or order disbarment for a specific period. The court may set conditions for reinstatement.

1.09.110 Appeal from Disbarment.

A spokesperson who has been disbarred by the Shoalwater Bay Tribal Court may appeal the decision to the tribal council. The tribal council shall decide whether to affirm, reverse, or modify the court's decision by a unanimous vote of the tribal council at a meeting at which a quorum is present. The decision of the tribal council shall be final.

Chapter 1.10 Conduct of Court Sessions

1.10.010 Conduct.

All court proceedings shall be conducted in a dignified manner. All persons present when court is in session shall be orderly and respectful. Persons addressing the court shall speak in a clear, courteous manner. No person shall possess any weapon or firearm in the courtroom except an authorized law enforcement officer or bailiff or when the weapon is being presented as evidence.

1.10.020 Courtroom Order.

A judge may appoint a person to keep order in the courtroom. A law enforcement officer or other person appointed by the judge shall be posted outside the door of any closed hearing. Persons who disrupt the court

proceedings or who are disrespectful of the court may be ordered to leave the courtroom and may be found to be in contempt of court.

1.10.030 Sessions – Site.

All sessions of the Shoalwater Bay Tribal Court shall be held on the Shoalwater Bay Indian Reservation unless otherwise agreed by the parties and the court.

1.10.040 Schedule.

The court may set and publish a schedule for regular court sessions.

Chapter 1.11 Contempt of Court

1.11.010 Civil Contempt Power.

The court has the power to charge with civil contempt any person who neglects his or her duty or harms the rights of any party to an action before the court. The court may invoke its civil contempt power in the following situations, but its power is not limited to these examples: disobedience to any lawful order, judgment, or process of the court; willful interference with the attendance or testimony of a witness; or failure to appear as a juror.

1.11.020 Sanctions for Civil Contempt.

Any person found to be in civil contempt of court may be ordered to:

- a) Pay compensation to a party if actual loss or injury was suffered by a party due to the misconduct; or
- b) Imprisonment until the person performs an act or duty which he or she failed to perform and which is yet in the power of the person to perform. Imprisonment under this subsection shall not exceed one year.

1.11.030 Criminal Contempt.

Any person who is found by the court to have committed one of the following acts may be declared in contempt of court and punished by a fine no greater than five thousand dollars (\$5,000) or by imprisonment no longer than one year or both:

- a) Disorderly, contemptuous, or insolent behavior which interrupts the proceedings of the court or which impairs the respect due to its authority;
- b) Willful disobedience of any process or order lawfully issued or made by the court;

- c) Resistance willfully offered to the lawful order or process of the court;
- d) The unlawful refusal of any person to be sworn or affirmed, including refusal to answer any material questions except where refusal is based on valid legal grounds;
- e) Any person who shall request a jury trial and fails to appear on the date the jury trial is scheduled.

1.11.040 Summary Disposition.

When contempt is committed in the presence of the court, it may be punished at that time. An order shall be prepared stating: the contemptuous acts which occurred in the court's presence, determining that the person is guilty of contempt, and the punishment imposed.

1.11.050 Default on Fine.

When a defendant defaults in the payment of a fine or any installment thereof, the court on its own motion or on the tribe's motion shall order the defendant to show cause why he or she shall not be held in contempt and may issue a summons or an arrest warrant for the defendant's appearance. If good faith is shown, the court may allow additional time for payment. This section may be imposed in addition to any other penalty or remedy provided under this ordinance or other laws of the Shoalwater Bay Indian Tribe.

Chapter 1.12 Rules of Evidence

1.12.010 Admissible Evidence.

All evidence which is relevant to a case and may be admitted in proceedings before the court, except the following rights shall not be violated:

- a) The defendant's right, in all cases, to confront witnesses against him; and
- b) The defendant's right, in criminal prosecutions, to refuse to be a witness against himself.

1.12.020 Reliability.

The judge and jury, if there is a jury, may weigh the evidence presented based on its reliability.

Chapter 1.13 Juries

1.13.010 Right to Jury Trial.

The right to a jury trial is limited to criminal prosecutions in which the offense is punishable by imprisonment.

1.13.020 Eligibility of Jurors.

Members of the Shoalwater Bay Indian Tribe who are at least eighteen (18) years of age, spouses, and others residing on or near the Shoalwater Bay Indian Reservation are eligible to serve as jurors. However, no person shall be eligible to sit on a jury in any case in which he or she has a direct interest or is directly related to a party by blood or marriage. Law enforcement officers and court personnel are not eligible to serve as jurors.

1.13.030 Excuse from Jury Duty.

The judge may excuse any person from jury duty if the person demonstrates hardship or other good cause to be excused. Jurors may be excused temporarily or permanently.

1.13.040 Request for Jury Trial.

A request for a jury trial may be made at arraignment and must in all cases be made at least ten (10) days before the scheduled trial date.

1.13.050 Jury Panel – Clerk to Summon.

When a defendant asks for a jury, the court clerk shall draw the names of at least twelve (12) persons, at random, from the list of eligible jurors. The clerk shall then send a summons to each person whose name is drawn. The summons shall order the person to appear in court at the time set for trial of the case. The summons shall give the defendant's name.

1.13.060 Challenges.

At the trial, all potential jurors shall be called and then seated in the courtroom. The parties shall alternately question the jurors as to their impartiality and fairness. A party may challenge any juror for cause and the judge shall excuse any juror whom he or she feels would not be completely fair and impartial. There shall be a limit of three challenges for cause but jurors shall only be excused for cause.

1.13.070 Fees. [Reserved]

1.13.080 Jury Instructions.

The jury shall hear all admissible evidence about the facts of the case. At the close of presentations, the judge shall explain to the jury what the law is and shall instruct the jury to decide what the facts are in light of the law as explained. The parties may suggest to the judge the explanations which they think the judge should give the jury. The court shall instruct the jury that the defendant is presumed to be innocent and that the jury should find the defendant guilty only if they believe the defendant is guilty beyond a reasonable doubt.

1.13.090 Jury – Deliberation.

In all cases, the judge shall instruct the jury that they shall retire to consider the matter, that they shall elect a foreman, and that each juror shall be given an opportunity to state his or her opinion.

1.13.100 Jury – Decision.

The jury shall enter a verdict of guilty only if the six (6) jurors unanimously agree with that verdict.

Chapter 1.14 Witnesses

1.14.010 Right to Compel Witnesses to Appear.

Any party to a proceeding before the Shoalwater Bay Tribal Court shall have the right to compel witnesses to appear in court on his or her behalf.

1.14.020 Summons – Generally.

Upon request of a party or of a judge, the court shall issue a summons which commands a named person to appear in court and/or to bring certain evidence or documents to court.

1.14.030 Summons – Signature.

The court clerk may sign and issue summonses for witnesses if they are to be served within the Shoalwater Bay Indian Reservation. In all other situations, the

summons shall be issued by and include the signature of a judge or court administrator.

1.14.040 Summons – Content.

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

1.14.050 Summons – Service.

A summons issued as provided in this chapter shall be delivered to the witness by a person named by the court for that purpose. The summons may be delivered either by giving it to the witness directly or by leaving it at the witness's residence or place of employment with a person at least fourteen (14) years old who lives or works there.

1.14.060 Summons – Return.

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

1.14.070 Failure to Obey Summons.

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

1.14.080 Witness Fees.

The tribal council may establish witness fees. The court may order witness fees, if any are paid, to be assessed as costs in civil actions and appeals.

Chapter 1.15 Costs

1.15.010 Costs – Generally.

The judge shall order the losing party to pay costs to the winning party in those civil suits which are essentially private in nature, unless the judge decides that requiring payment of costs would be unjust.

1.15.020 Costs – How Computed.

Costs shall include:

- a) Filing fees;
- b) Costs of serving papers;
- c) Postage costs for delivering notices and documents; and
- d) Witness and jury fees paid. Costs shall not include attorney or spokesperson fees except where the court finds an action was brought frivolously or for harassment purposes.

Chapter 1.16 Severability

1.16.010 Severability.

If any part of this title or its application to any person or circumstance is held to be invalid, the remainder of this title or its application to other persons or circumstances is not affected.

Shoalwater Bay Tribal Court
Shoalwater Bay Indian Reservation
Tokeland Washington

SPOKESPERSON'S OATH

I, _____, do solemnly swear:

Print Name

- (1) I am familiar with the laws of the Shoalwater Bay Indian Tribe which apply to my case and will become familiar with those laws which apply to cases in which I represent people before this Court in the future.
- (2) I will at all times maintain the respect due to the Shoalwater Bay Tribal Court and its officers.
- (3) I will abide by the rules of the Shoalwater Bay Tribal Court.
- (4) I will use only those means consistent with the truth and honor and I will never seek to mislead a judge by any false statements.

 Attorney or Spokesperson

SUBSCRIBED AND SWORN TO BEFORE ME on this __ day of _____,
20__.

Judge, Shoalwater Bay Tribal Court

CONSENT TO CRIMINAL JURISDICTION
OF THE SHOALWATER BAY TRIBE, A SOVEREIGN INDIAN NATION

GREETINGS: You have been arrested for, or accused of committing a criminal act within the jurisdiction of the Shoalwater Bay Indian Tribe, a Sovereign Indian Nation.

Because you have not claimed to be a Native American or a member of an Indian Tribe, you cannot automatically be subject to criminal prosecution in the Tribal Court of this Sovereign Nation.

However, because the criminal activity occurred within the borders of this Sovereign Nation, in accordance with Article I, Sections (A) (B) and (C) of the Constitution of the Shoalwater Bay Tribe, you have the opportunity to expressly consent to the criminal jurisdiction of the Shoalwater Bay Tribal Court if you voluntarily choose to do so. However, you must be informed of, and understand the following very important information and conditions:

YOU DO NOT HAVE TO CONSENT TO TRIBAL COURT CRIMINAL JURISDICTION, AS WELL AS THE APPROPRIATE TRIBAL CRIMINAL LAW(S);

If you do not voluntarily consent to the Tribal Court's jurisdiction, your criminal charges will be immediately referred to the appropriate county, state, or federal criminal justice jurisdiction for criminal prosecution purposes;

If you choose to voluntarily and expressly consent to the criminal jurisdiction to the Tribal Court, this written consent is strictly limited to this one immediate incident only, however more than one criminal crime may arise out of this immediate incident. It is also possible that another sovereign entity such as the State of Washington or the Federal Government of the United States may or may not exercise their right to prosecute you for any crimes in violation of their laws related to this same incident;

By consenting to this Sovereign Nation's criminal jurisdiction, you are not admitting that you are guilty of any criminal violation, however all applicable Tribal rights, and Indian Bill of Rights as required by the Indian Civil Rights Act will apply to your criminal case, and you must understand that the United States Constitution and rights contained therefore may not all be available to you as a defendant, and those United States Constitutional rights may apply differently to Tribal Court proceedings;

Your expressed consent waives the right to request a change of jurisdiction or venue to a court outside this Sovereign Nation and stipulates, agrees and consents that all criminal actions arising under the laws of this Tribe and commenced with the Tribal Court shall be the most proper and convenient forum;

Your expressed consent waives any civil or criminal claims that may be forthcoming regarding jurisdiction, venue and your status as a non-Indian, and stipulates, agrees and expressly consents that all criminal action arising under the laws of this Tribe and commenced within the Tribal Court shall be the proper and convenient forum;

Your expressed consent to criminal prosecution will continue throughout the entire criminal case, and be aware that if you are found to be guilty of a criminal offense either from a bench trial, or a jury of six and the Tribal Court thereafter orders you to be either confined in jail, and/or to pay a fine, and/or to participate in a particular type of counseling consistent with your original charge and sentence, you cannot without prior motion later withdraw your consent to avoid sentencing obligations imposed by Tribal Court orders;

Any refusal to accept your Court ordered sentence could cause your consent to the Tribal Court's criminal jurisdiction to be considered void by the Tribal Court, and in accordance thereafter, your criminal charges will be immediately referred to the appropriate county, state, or federal criminal justice jurisdiction for criminal prosecution purposes.

I, _____, hereby swear and certify that I have carefully read and fully understand the aforementioned information regarding my right to refuse consent to this Sovereign Nation's criminal jurisdiction. I hereby agree to voluntarily and expressly consent to the criminal jurisdiction of the Shoalwater Bay Tribal Court, and I agree that the Tribal Court of this Indian Nation is the proper and convenient forum for any criminal action commenced against me, including trial, and entry of final judgment, with direct review by the Indian Appeals Court, if appeal is filed, for any alleged criminal activity that occurred within the Shoalwater Bay Tribe's Jurisdiction on the _____ day of _____, 20_____.

(Incident Number, if known: _____)

This written CONSENT TO CRIMINAL JURISDICTION is being given by me to the below mentioned witnesses/officer(s) voluntarily, intelligently, and without threats or promises of any kind.

(Signature)

(Printed Name)

(Date)

Witness/Officer: _____
(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Date)

(Date)



SHOALWATER BAY INDIAN TRIBE

Tokeland, Washington 98590

Telephone 267-6766

SHOALWATER BAY TRIBE

RESOLUTION # 09-26-87-30

WHEREAS, the Shoalwater Bay Tribe is a federally recognized Tribe headquartered on the Shoalwater Bay Indian Reservation in the State of Washington; and

WHEREAS, the Shoalwater Bay Tribal Council is the governing body of the Shoalwater Bay Indian Tribe; and

WHEREAS, the Tribal Council, pursuant to Article VI, section 1 (f) of the Tribal Constitution, has the authority to enact laws necessary to govern the administration of justice; and

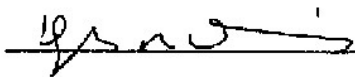
WHEREAS, the Tribal Council deems it appropriate necessary to the orderly administration of tribal justice that civil court procedures or court rules be promulgated; and

WHEREAS, it will be some time before that process can be undertaken and completed and, in the interim, it is necessary to adopt contempt of court provisions to ensure an effective means of enforcing compliance with Tribal Court orders;

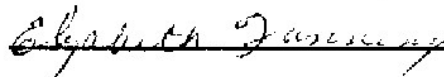
NOW THEREFORE BE IT RESOLVED, that the attached TITLE 1 COURT PROCEDURES of the SHOALWATER BAY TRIBE CODE OF LAWS is hereby adopted, effective on the date of this resolution.

***** C E R T I F I C A T I O N *****

The above resolution was passed at a regular Tribal Council meeting held on the 26 day of Sept, 1987 at the Shoalwater Bay Tribal Center at which a quorum was present by a vote of 3 for, 0 against, and 0 abstaining.



ATTEST:



131/RESO.SB9



SHOALWATER BAY INDIAN TRIBE

P.O. Box 130 • Tokeland, Washington 98590
Telephone (360) 267-6766 • FAX (360) 267-6778

SHOALWATER BAY INDIAN TRIBE RESOLUTION 12-27-08-36

WHEREAS, The Shoalwater Bay Indian Tribe is a Federally Recognized Tribe headquartered on the Shoalwater Bay Indian Reservation in the State of Washington; and

WHEREAS, The Shoalwater Bay Tribal Council is the governing body of the Shoalwater Bay Indian Tribe in accordance with their Constitution and by-laws; and

WHEREAS, The Tribal Council, pursuant to Article VI, Section 1 (f) of the Shoalwater Bay Tribal Constitution, has the authority to enact laws necessary to govern the administration of justice; and

WHEREAS, The Shoalwater Bay Indian Tribe has an approved Title 1 Court Procedures dated September 26, 1987;

WHEREAS, The Shoalwater Bay Indian Tribe has need to amend the Title 1 Court Procedures; now

THEREFORE BE IT RESOLVED, The Shoalwater Bay Tribal Council does hereby approve the amended TITLE 1 COURT PROCEDURES OF THE SHOALWATER BAY TRIBE to be effective as of this date and to be amended as the need arises.

CERTIFICATION

This Resolution was passed at a Special Meeting of the Shoalwater Bay Tribal Council at which a quorum was present by a vote of 4 FOR 0 AGAINST AND 0 ABSTENTIONS on the 27th day of December, 2008.

Charlene Nelson, Chairperson
Shoalwater Bay Tribal Council

Lynn Clark, Secretary
Shoalwater Bay Tribal Council



SHOALWATER BAY INDIAN TRIBE

P.O. Box 130 • Tokeland, Washington 98590
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SHOALWATER BAY INDIAN TRIBE RESOLUTION 08-15-14-48

Summary: Approval of Shoalwater Bay Tribal Code of Laws Revision of Title 1 Court Procedures, and Consent to Criminal Jurisdiction form of the Shoalwater Bay Tribe (NICS Prosecutor Tim Rybka version attached).

WHEREAS, The Shoalwater Bay Indian Tribe is a Federally Recognized Tribe headquartered on the Shoalwater Bay Indian Reservation in the State of Washington; and

WHEREAS, The Shoalwater Bay Tribal Council is the governing body of the Shoalwater Bay Indian Tribe in accordance to their Constitution and By-Laws; and

WHEREAS, The Shoalwater Bay Council, pursuant to Article VI, Section 1 (f) of the Shoalwater Bay Tribal Constitution, has the authority to enact laws necessary to govern the administration of justice; and

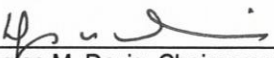
WHEREAS, The Shoalwater Bay Indian Tribe has an approved Title 1 Court Procedures dated September 26, 1987; and

WHEREAS, The Shoalwater Bay Indian Tribe has the need to revise the Title 1 Court Procedures 1.02.020 Shoalwater Bay Tribal Court-Jurisdiction; and add Consent to Criminal Jurisdiction of the Shoalwater Bay Tribe; now

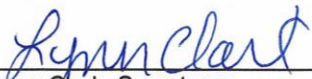
THEREFORE BE IT RESOLVED, that the Shoalwater Bay Tribal Council hereby approves the proposed revision to the Shoalwater Bay Tribal Code of Laws Title 1 Court Procedures, and Consent to Criminal Jurisdiction of the Shoalwater Bay Tribe (NICS Prosecutor Tim Rybka version attached).

CERTIFICATION

This Resolution was passed at a Regular Meeting of the Shoalwater Bay Tribal Council on August 15, 2014, at which a quorum was present by a vote of 4 FOR 0 AGAINST 0 ABSTENTION.



Douglas M. Davis, Chairperson
Shoalwater Bay Tribal Council

Attest: 

Lynn Clark, Secretary
Shoalwater Bay Tribal Council