# Section 1: Administrative Rules

## 1.1 COMMUNICATION WITH JUDGES

Unless permitted by Quileute Tribal Code or Court Rule, no one other than court personnel shall have ex parte communications with judges of the Quileute Tribal Court regarding a matter pending before the Court. Communication means any type of communication, oral, written, by telephone or electronic device, or otherwise. This rule does not limit communication on administrative matters, such as scheduling of cases.

### 1.1.1 Ex Parte Calendar

The Court shall establish a calendar with time set aside for the presentation of ex parte orders and motions.

## 1.2 COURTROOM SAFETY

No person, except for judges of the Court, and duly and regularly commissioned law enforcement officers of the Quileute Police Department, State of Washington, or the United States government are allowed in the Quileute Tribal Court while armed with any firearm, taser, explosive device, knife, billy club, blackjack, truncheon or bat, or other weapon, nor shall any person be in the courthouse while possessing any gas gun, or other device for the spraying of tear gas, mace or other noxious chemical substance, or any incendiary device.

1.2.1 Any person found having any of the articles or devices mentioned in this rule is subject to having such articles or devices seized by law enforcement officers, bailiffs on court order, or as otherwise directed by the Court.

1.2.2 A license to carry a concealed firearm does not authorize any of the items listed in this rule to be brought into the courthouse.

## 1.3 FILING AND PRE-MARKING REQUIREMENTS

### 1.3.1 Pleadings

When filing any pleading with the Court, the party or attorney must provide two (2) copies, one for the Court, and one to be conformed for the filing party, which may be delivered in person or by mail. Pleadings delivered in person must be filed by 4 p.m. If filed by mail, a self-addressed stamped envelope shall be included.

### 1.3.2 Pre-Marking Exhibits

A) In all cases, if exhibits number more than five (5) per party, exhibits shall be pre-marked. Arrangements shall be made with the Court Clerk for the marking of all exhibits prior to trial.
B) In a criminal case, only the prosecution is required to pre-mark exhibits, unless otherwise ordered by the Court.

## 1.4 WORKING COPIES OF MOTIONS AND ICW DOCUMENTS

The parties shall furnish an extra copy as a working copy of any motions or briefs marked "Bench Copy" when they file motions or briefs. In ICW cases, working copies of reports, recommendations, and home studies shall be provided in the same format as for briefs and motions. Working copies of the motions or briefs shall be delivered by the party filing such documents to the Court Clerk no later than the day they are to be served on all other parties. All working copies shall state, in red ink in the upper right corner, the following: the date and time of such hearing and the name of the judge hearing the matter.

## 1.5 CITED CASES

A copy of any case cited within a pleading must be attached to the Bench Copy.

## 1.6 COMPUTATION OF DAYS

### 1.6.1 Computation

In computing any period of time prescribed or allowed by these rules, by order of court, or any applicable ordinance, the day of the act, event, or default from which the designated period of time begins to run shall not be included.

### 1.6.2 Enlargement

When by court rule or by law an act is required to be performed within a certain time period, the Court may extend or shorten the time within which a party must perform the act, provided that, this rule shall not apply where the law or court has specified a procedure for extending or shortening the time within which an act must be performed and except for motions for reconsideration, time for filing notice of appeal, motions for new trial, and motions for relief of judgment.

## 1.7 SERVICE

### 1.7.1 Upon Attorney or Party

Whenever service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the Court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, filing with the Court Clerk an affidavit of attempt to serve. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

### 1.7.2 Service by Mail

A) How Made

If service is made by mail, the papers shall be deposited in the United States mail addressed to the person on whom they are being served, with the postage prepaid. The service shall be deemed complete upon the fifth day following the day upon which they are placed in the mail, unless the

fifth day falls on a Saturday, Sunday or legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday or legal holiday, following the fifth day. Legal holidays are those declared by the Quileute Tribe.

B) Proof of Service by Mail

Proof of service of all papers permitted to be mailed may be by written acknowledgment of service, by declaration under penalty of perjury of the person who mailed the papers, or by certificate of an attorney. The certificate of an attorney may be in form substantially as follows:

**CERTIFICATE OF SERVICE**

**I _____ [Print name] certify that I mailed a copy of the foregoing _____ [Name of document] to _____, at _____ [Insert Address], and to _____ [Print Name] at _____ [Insert Address], postage prepaid, on _____ [Include Date].**

**_____**
**Signature**
**Attorney for _____**

## 1.8 NOTICE BY PUBLICATION

To prove service by publication, a party must file a declaration of publication from the publishing newspaper and a copy of what was published.

## 1.9 SEALING AND REDACTION OF COURT RECORDS

### 1.9.1 Purpose and Scope

This rule sets forth a uniform procedure for the sealing and redaction of court records. This rule applies to all court records, not already protected by Quileute Tribal law and applicable federal law. However, even within a sealed file, the Court may further limit or determine access to sensitive documents.

### 1.9.2 Definitions

A) "Court file" means the pleadings, orders, and other papers filed with the clerk of the court under a single or consolidated cause number(s).

B) "Court record" includes, but is not limited to: Any document, information, exhibit, or other thing that is maintained by a court in connection with a judicial proceeding, and any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information contained in a case management system created or prepared by the court that is related to a judicial proceeding. Court record does not include information and data maintained by or for a judge pertaining to a particular case or party, such as personal notes and communications, memoranda, drafts, or other working papers or information gathered, maintained, or stored by the Quileute Tribe to which the Court has access but which is not entered in the record.

C) Seal. To seal means to protect from examination by the public and unauthorized court personnel.

D) Redact. To redact means to protect from examination by the public and unauthorized court personnel a portion or portions of a specified court record.

E) Restricted Personal Identifiers are social security numbers, account numbers and driver's license numbers.

F) Strike. A motion or order to strike from the record is not a motion or order to seal or destroy.

G) Vacate. To vacate means to nullify or cancel.

1.9.3 Sealing or Redacting Court Records

A) Requests

In a civil case, the court or any party may request a hearing to seal or redact the court records. In a criminal case, the court, any party, any victim or alleged victim, or any witness may request a hearing to seal or redact the court records. Reasonable notice of a hearing to seal must be given to all parties in the case. In a criminal case, reasonable notice of a hearing to seal or redact must also be given to the victim, if ascertainable, and the person or agency having probationary supervision over the affected individual.

B) Written Findings

After the hearing, the court may order the court files and records in the proceeding, or any part thereof, to be sealed or redacted if the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record. Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records. Sufficient privacy or safety concerns that may be weighed against the public interest include findings that:

i) The sealing or redaction is permitted by Quileute ordinance;

ii) The redaction includes only restricted personal identifiers contained in the court record;

iii) Another identified compelling circumstance exists that requires the sealing or redaction.

C) Redaction

A court record shall not be sealed under this section when redaction will adequately resolve the issues before the court pursuant to subsection (B) above.

D) Sealing of Entire Court File

When the clerk receives a court order to seal the entire court file, the clerk shall seal the court file and secure it from public access. All court records filed thereafter in such file shall also be sealed unless otherwise ordered. The order to seal and written findings supporting the order to seal shall also remain accessible to the parties, unless protected by Quileute ordinance.

E) Sealing of Specified Court Records

When the clerk receives a court order to seal specified court records the clerk shall:

i) On the docket, preserve the docket code, document title, document or subdocument number and date of the original court records;

ii) Remove the specified court records, seal them, and return them to the file under seal or store separately. The clerk shall substitute a filler sheet for the removed sealed court record. If the court record ordered sealed exists in another storage medium form other than paper, the clerk shall restrict access to the alternate storage medium so as to prevent unauthorized viewing of the sealed court record; and

iii) File the order to seal and the written findings supporting the order to seal. Both shall be accessible to the parties, unless protected by Quileute ordinance.

iv) Before a court file is made available for examination, the clerk shall not allow access to the sealed court records.

F) Procedures for Redacted Court Records

When a court record is redacted pursuant to a court order, the original court record shall be replaced in the public court file by the redacted copy. The redacted copy shall be provided by the moving party. The original unredacted court record shall be sealed.

1.9.4 Grounds and Procedure for Requesting the Unsealing of Sealed Records.

A) Court Orders

Sealed court records may be examined by the public only after the court records have been ordered unsealed pursuant to this section or after entry of a court order allowing access to a sealed court record.

B) Criminal Cases

A sealed court record in a criminal case shall be ordered unsealed only upon proof of compelling circumstances, unless otherwise provided by Quileute ordinance or other applicable law, and only upon motion and written notice to the persons entitled to notice under these rules except: If a new criminal charge is filed and the existence of the conviction contained in a sealed record is an element of the new offense, or would constitute a statutory sentencing enhancement, or provide the basis for an exceptional sentence, upon application of the prosecuting attorney the court shall nullify the sealing order in the prior sealed case(s).

C) Civil Cases

A sealed court record in a civil case shall be ordered unsealed only upon stipulation of all parties or upon motion and written notice to all parties and proof that identified compelling circumstances for continued sealing no longer exist. If the person seeking access cannot locate a party to provide the notice required by this rule, after making a good faith reasonable effort to provide such notice as may be required by Quileute Tribal ordinances and rules, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provision of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful. In such cases where notice is not possible, the Court shall make an independent determination as to whether it is appropriate to unseal the requested file or documents.

1.9.5 Maintenance of Sealed Court Records

Sealed court records may be maintained in mediums other than paper.

1.9.6 Use of Sealed Records on Appeal

A court record or any portion of it, sealed in the trial court shall be made available to the appellate court in the event of an appeal. Court records sealed in the trial court shall be sealed from public access in the appellate court subject to further order of the appellate court.

1.9.7 References to Minor Children in Court Files or Court Records

In all court records and court files, minor children must be referred to by initials and date of birth only, unless such references are sealed or redacted.

## 1.10 EXAMINATION OF COURT FILES

1.10.1 The following court files may not be viewed without a judge's authorization: ICW/youth in need of care; guardianship; paternity; adoption; domestic relations; all civil cases related to domestic violence or elder protection; or any other action that is confidential by law or in the discretion of the Court.

1.10.2 The following parts of court files may not be viewed without a judge's authorization: parts of files covered by HIPAA; medical information; financial information; portions of files that are sealed; or reports marked sealed or confidential.

1.10.3 Files which are not restricted may be viewed only in the Court Clerk's office supervised by a Clerk.

1.10.4 The following conditions must be met in order to view court files:

A) A request form must be filled out.
B) The viewer may not:
   i) Remove anything from the court file;
   ii) Add anything to the court file;
   iii) Write in the court file; or
   iv) Make any alteration to the court file whatsoever.

1.10.5 Expedited consideration shall be given to requests related to criminal prosecutions. Such requests may be made at the Court Clerk's office.

1.10.6 Copies may be made of parts of files that are not restricted. The Court Clerk's office may assess a cost for the copies except for those copies made by court appointed counsel.

## 1.11 PROCEDURES FOR ADMISSION TO THE QUILEUTE TRIBAL BAR

1.11.1 Application

To apply for admission to the bar, the applicant must complete the Quileute Bar Application Form and return the completed form to the Court Clerk. The Court Clerk shall schedule a time for the Chief Judge to review the application and schedule a swearing-in session.

1.11.2 Fees

Application fees shall be set by the Court. All applicants shall pay the required fee prior to admission.

1.11.3 Oath

The applicant shall be sworn in, read, and take the Tribal Court Attorney's/Spokesperson's Oath before the Quileute Tribal Chief Judge.

## 1.13 WARRANT QUASHING

1.13.1 Calendar

The Court may hear warrant quashes at any time during a regularly scheduled court day with prior notice to the parties.

1.13.2 Notice

The Court Clerk shall notify the prosecutor and defense counsel when a warrant quash is requested.

1.13.3 The Court may impose a fee for granting a motion to quash a warrant.

## 1.14 INFORMATION TECHNOLOGY EQUIPMENT IN THE COURTROOMS

1.14.1 Responsibility of Parties

All courtrooms are equipped with electrical outlets. However, it is the responsibility of the parties to provide electrical cords, shadow boxes, overhead projectors, laptops, audio/visual equipment or other electronic equipment for use in the courtroom during hearings. Upon request of the Court, any party using private equipment shall provide mats or gaffer's tape for securing cables crossing floors to avoid hazards in the courtrooms. Each party who wishes to use private equipment or equipment based on other technologies during court hearings shall obtain prior approval from the Court.

1.14.2 Other Considerations

A) There are a limited number of electrical outlets available in the courtroom.
B) Additional telephone and/or network connections may not be available in the courtroom.
C) Private equipment must not interfere with the line of sight of the judge or jury.

## 1.15 COURTROOM PHOTOGRAPHY AND RECORDING BY THE NEWS MEDIA

1.15.1 Permission

Video and audio recording and still photography by the news media are allowed in the courtroom during and between sessions, provided that: Permission shall have first been expressly granted by the judge and media personnel may not, by their appearance or conduct, distract participants in the proceedings or otherwise adversely affect the dignity and fairness of the proceedings.

1.15.2 Discretion

The judge shall exercise reasonable discretion in prescribing conditions and limitations for media personnel.

1.15.3 Guiding Principles

If a judge finds that sufficient reasons exist to warrant limitations on courtroom photography or recording, the judge shall make particularized findings on the record at the time of announcing the

limitations. This may be done either orally or in a written order. In determining what, if any, limitations should be imposed, the judge shall be guided by the following principles:

A) Open access is presumed; limitations on access must be supported by reasons found by the judge to be sufficiently compelling to outweigh that presumption;

B) Prior to imposing any limitations on courtroom photography or recording, the judge shall, upon request, hear from any party and from any other person or entity deemed appropriate by the judge; and

C) Any reasons found sufficient to support limitations on courtroom photography or recording shall relate to the specific circumstances of the case before the court rather than reflecting merely generalized views.

## Section 2: General Rules

### 2.1 INVOLUNTARY DISMISSAL

#### 2.1.1 Effect

For failure of the plaintiff to prosecute or to comply with these rules or any order of the court, a defendant may move for dismissal of an action or of any claim against him or her.

#### 2.1.2 Dismissal for Want of Action of Record on Motion of Party

Any civil action shall be dismissed, without prejudice, for lack of action of record whenever the plaintiff, counterclaimant, cross claimant, or third party plaintiff neglects to note the action for trial or hearing within 1 year after any issue of law or fact has been joined, unless the failure to bring the same on for trial or hearing was caused by the party who makes the motion to dismiss. Such motion to dismiss shall come on for hearing only after 10 days' notice to the adverse party. If the case is noted for trial before the hearing on the motion, the action shall not be dismissed.

#### 2.1.3 Dismissal on Court Clerk's Motion

A) Notice

In all civil cases in which no action of record has occurred during the previous 12 months, the Court Clerk shall notify the parties or attorneys of record by mail that the Court will dismiss the case for lack of action of record unless, within 30 days following the mailing of such notice, a party or attorney takes action of record or files a status report with the Court including the reason for inactivity and projecting future activity and a case completion date. If the Court does not receive such a status report, it shall, on motion of the Court Clerk, dismiss the case without prejudice and without cost to any party.

B) Mailing Notice; Reinstatement

The Court Clerk shall mail notice of impending dismissal not later than 30 days after the case becomes eligible for dismissal because of inactivity. A party who does not receive the Court Clerk's notice shall be entitled to reinstatement of the case, without cost, upon motion brought within a reasonable time after learning of the dismissal.

C) Discovery in Process

The filing of a document indicating that discovery is occurring between the parties shall constitute action of record for purposes of this rule.

D) Other Grounds for Dismissal and Reinstatement

This rule is not a limitation upon any other power that the Court may have to dismiss or reinstate any action upon motion or otherwise.

## 2.2 TIME ALLOWED FOR ARGUMENT ON MOTION

Each party shall be allocated ten minutes for the purpose of arguing in support of the party's motion, unless otherwise ordered by the Court.

## 2.3 DISCLOSURE OF WITNESSES

### 2.3.1 Civil Cases

The names, addresses and telephone numbers of possible primary witnesses and a short summary of their expected testimony shall be disclosed by the parties by filing a statement setting forth that information and serving it on the other parties at a time set by the Court. The names of any possible rebuttal witnesses shall be disclosed in the same fashion after the primary witnesses have been disclosed at a time set by the Court. If disclosure is not made as set forth in this rule, the testimony of the witness not disclosed will not be allowed at trial.

### 2.3.2 Criminal Cases

Disclosure of witnesses in criminal cases shall be governed by the Quileute Tribal Code.

## 2.4 DISPOSITION OF EXHIBITS AFTER APPEAL PERIOD HAS RUN

### 2.4.1 Civil Cases

No one shall withdraw an exhibit without a court order. After 30-day notice to all parties of record following final disposition, the Court may order the Court Clerk to destroy or dispose of physical evidence unless good cause is shown why it should be preserved.

### 2.4.2 Criminal Cases

Non-contraband exhibits in the Court's custody, for which there is no dispute as to ownership, shall be returned to the party who produced that exhibit on motion of that party after expiration of the appeal period. In the event of a finding of guilty, for purpose of this rule, the appeal period shall begin on the day of sentencing. Exhibits not withdrawn or returned shall be delivered by the Court to the applicable law enforcement agency for disposition as abandoned property; or if contraband, for destruction. No exhibit shall be released by the Court without its being receipted for by the receiving person.

## 2.5 WITHDRAWAL OF ATTORNEYS AS COUNSEL

### 2.5.1 Withdrawal by Attorney in a Civil Case

A) Withdrawal by Order

A court appointed attorney may not withdraw without an order of the court. The client of the withdrawing attorney must be given notice of the motion to withdraw and the date and place the motion will be heard.

B) Withdrawal by Notice

Except as provided in subsections (A) and (C) of this rule, an attorney may withdraw by notice in the manner provided in this rule.

C) Notice of Intent to Withdraw

The attorney shall file and serve a Notice of Intent to Withdraw on all other parties in the proceeding. The notice shall specify a date when the attorney intends to withdraw, which date shall be at least 10 days after the service of the Notice of Intent to Withdraw. The notice shall include a statement that the withdrawal shall be effective without order of the court unless an objection to the withdrawal is served upon the withdrawing attorney prior to the date set forth in the notice. If notice is given before trial, the notice shall include the date set for trial. The notice shall include the names and last known addresses of the persons represented by the withdrawing attorney, unless disclosure of the address would violate the Washington State Rules of Professional Conduct, in which case the address may be omitted. If the address is omitted, the notice must contain a statement that after the attorney withdraws, and so long as the address of the withdrawing attorney's client remains undisclosed and no new attorney is substituted, the client may be served by leaving papers with the Court Clerk.

D) Service on Client

At least 5 days prior to service on other parties, the Notice of Intent to Withdraw shall be served on the persons represented by the withdrawing attorney or sent to them by certified mail, postage prepaid, to their last known mailing addresses. Proof of service or mailing shall be filed.

E) Withdrawal Without Objection

The withdrawal shall be effective, without order of court and without the service and filing of any additional papers, on the date designated in the Notice of Intent to Withdraw, unless a written objection to the withdrawal is served by a party on the withdrawing attorney prior to the date specified as the day of withdrawal in the Notice of Intent to Withdraw.

F) Effect of Objection

If a timely written objection is served, withdrawal may be obtained only by order of the court.

G) Withdrawal and Substitution

Except as provided in subsection (A) of this rule, an attorney may withdraw if a new attorney is substituted by filing and serving a Notice of Withdrawal and Substitution. The notice shall include a statement of the date on which the withdrawal and substitution are effective and shall include the name, address, and signature of the withdrawing attorney and the substituted attorney. If an attorney changes firms or offices, but another attorney in the previous firm or office will become counsel of record, a Notice of Withdrawal and Substitution shall nevertheless be filed. For any such Notice to be proper and effective, the substituted attorney must also be a member of the Quileute Bar.

H) Service

Service on an attorney who has appeared for a party in a civil proceeding shall be valid only until the attorney has withdrawn in the manner provided in this rule.

I) Circumstances of Denial of Withdrawal

Nothing in this rule defines the circumstances under which a withdrawal might be denied by the Court.

2.5.2 Withdrawal by Attorney in a Criminal Case

Whenever a criminal case has been set for trial, no lawyer shall be allowed to withdraw from said case, except upon written consent of the court, for good and sufficient reason shown.

## 2.6 PROOF OF COMPLIANCE

### 2.6.1 Requirement

The Court may require a party to file proof of compliance with any court order.

### 2.6.2 Responsibility

The party is responsible for filing the proof of compliance with the Court.

### 2.6.3 Electronic Transmissions

Electronic transmission of proof of compliance is not allowed.

## 2.7 RESULTS OF DRUG AND ALCOHOL TESTING

### 2.7.1 Results

The results of tests used to screen the use of drugs or alcohol are presumptively valid.

### 2.7.2 Burden of Proof

The burden to prove invalidity is on the contesting party.

### 2.7.3 Lab Analysis

The party contesting the validity of the results of a test may request further laboratory analysis of the test. If the results of any subsequent tests corroborate the results of the first test, the costs of the subsequent tests shall be paid by the contesting party.

## 2.8 PAYMENT OF COURT FINES AND BAIL

### 2.8.1 Fines

Court fines shall be paid at the Quileute Tribal Court Clerk's office during regular business hours. Payment of fines shall be made by cash or a cash equivalent (i.e., money order, cashier's check).

### 2.8.2 Bail

Bail shall be paid at the Quileute Tribal Court Clerk's office during regular business hours or at the La Push Police Department after regular business hours.

### 2.8.3 Exoneration of Bail

A party may request exoneration of bail by filing a written motion with the Court Clerk's office.

# Section 3: Civil Rules

## 3.1 PLEADINGS IN CIVIL CASES

### 3.1.1 Late Filing; Terms

Any material offered at a time later than required by rule may be stricken by the Court and not considered. If the Court decides to allow the late filing and consider the materials, the Court may continue the matter or impose other appropriate remedies including terms, or both.

3.1.2 Motion; Contents Of

A motion must contain the following:

A) Relief Requested. The specific relief the Court is requested to grant;

B) Statement of Grounds. A concise statement of the grounds upon which the motion is based;

C) Statement of Issues. A concise statement of the issue(s) of law upon which the Court is requested to rule;

D) Evidence Relied Upon. The evidence on which the motion or reply is based shall be identified with particularity.

E) Legal Authority. Any legal authority relied upon must be cited and copies of case law must be provided.

3.1.3 Evidence Supporting Motion

Motions must be supported by admissible evidence.

3.1.4 Scheduling Orders

A) Schedule

After the petition and response have been filed, a scheduling order shall be entered at the pre-trial hearing, which may include the following:

i) Motion deadlines;

ii) Discovery methods allowed and deadlines;

iii) Dispositive motion deadlines;

iv) Witness list deadlines;

v) Exhibit list and exhibit pre-marking deadlines, if applicable;

vi) Trial readiness hearing date; and

vii) Any other matter the court deems necessary for scheduling.

B) Mediation

A scheduling order shall not be entered if the parties are ordered to mediation. If the parties mediate and come to an agreement, a court order may be entered. If the parties mediate and do not come to an agreement, a new pre-trial conference shall be held and a Scheduling Order shall be issued.

3.1.5 Settlement Dismissal Order

In civil cases where a settlement has been reached such that there will be no need for further litigation, the parties shall file a motion requesting that the case be removed from the active pending caseload of the Court. A hearing may be set to address the settlement order.

## 3.2 SETTING HEARING DATE

Once the Declaration of Service has been filed with the Court, the Court Clerk shall set a hearing date and mail a Notice of Hearing to the parties.

## 3.3 TYPES OF EVIDENCE ALLOWED IN CIVIL MOTION HEARINGS

Civil motions shall be argued only upon sworn affidavits, declarations under penalty of perjury, or stipulated facts. Live testimony shall only be permitted as allowed by the Court.

## 3.4 DEFAULT AND JUDGMENT

### 3.4.1 Entry of Default

A) Order of Default

When there has not been an appearance by any non-moving party, the moving party may seek entry of an Order and Judgment of Default from the Ex Parte Calendar. When there has been an appearance by any non-moving party, the Motion for Default shall instead be noted for hearing.

B) Late Appearance or Answer

When a non-moving party has appeared or answered before consideration of the Motion for Order of Default, the moving party shall notify the judge.

### 3.4.2 Entry of Default Order and Judgment

If the Court determines that testimony is required, the moving party shall schedule the matter for a hearing.

### 3.4.3 Setting Aside Default Orders and Judgments

Orders to Show Cause to Vacate Default Judgments shall be presented to the Court and shall include Notice to the non-moving party. A hearing shall be held to determine whether the order will be set aside or vacated and notice shall be given.

### 3.4.4 Failure to Appear at Trial

Where a party fails to appear for trial and the appearing party asks the Court to enter judgment in their favor, the Court may, in its discretion, require testimony covering the facts alleged or relief requested before granting the request.

### 3.4.5 Effect of Default

When a party against whom a judgment is sought fails to appear, plead, or otherwise defend within the time allowed, and that is shown to the Court by a motion and affidavit or testimony, the Court may enter an order of a default and, without further notice to the party in default, enter a judgment granting the relief sought in the complaint.

## 3.5 SANCTIONS FOR FAILURE TO MAKE DISCOVERY AVAILABLE IN CIVIL CASES

### 3.5.1 Motion for Order Compelling Discovery

If a deponent fails to answer a question or makes an evasive or incomplete answer, fails to designate someone to answer interrogatories or be deposed on behalf of a corporation, or other business entity, or fails to allow inspection, any party may move for an order compelling the failed act. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before they apply for an order.

### 3.5.2 Award of Expenses of Motion to Compel

If the motion is granted, the Court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the

Court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. If the motion is granted in part, and denied in part, the Court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

3.5.3 Sanctions

If a party, officer, director or managing agent of a party or a person designated as the person to testify or be deposed fails to permit discovery, the Court shall have the discretion to make orders in regard to the failure to comply. In lieu of any orders or in addition, the Court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstance make an award of expenses unjust.

3.5.4 Failure of a Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Production or Inspection

If a party, or an officer, director, or managing agent of a party or a person designated to testify on behalf of a corporation or like entity, fails to:

A) Appear before the officer who is to take his or her deposition, after being served with a proper notice;

B) Serve answers or objections to interrogatories after proper service of the interrogatories; or

C) Serve a written response to a request for production of documents for inspection, after proper service of a request, the Court may make such orders in regard to the failure as are just.

In lieu of any order or in addition, the Court may require the party failing to act or the attorney advising them to pay the reasonable expenses, including attorney fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. The failure to act described in this rule may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order. For purposes of this rule, an evasive or misleading answer is to be treated as a failure to answer.

## 3.6 GUARDIANS AD LITEM

3.6.1 Purpose

The purpose of these rules is to establish a minimum set of standards applicable to all court cases when the Court appoints a guardian ad litem or any person to represent the best interest of a child, an alleged incapacitated person, or an adjudicated incapacitated person pursuant to tribal law.

3.6.2 Definition

Unless otherwise defined by ordinance or other law, a guardian ad litem shall mean any person or program appointed pursuant to tribal law in an action to represent the best interest of a child, an alleged incapacitated person, or an adjudicated incapacitated person. The guardian ad litem is not a court-appointed attorney.

3.6.3 General Responsibilities of a Guardian ad Litem

Consistent with the responsibilities set forth by tribal law and rules of court, in every case in which a guardian ad litem is appointed, the guardian ad litem shall perform the responsibilities set forth below.

A) Represent Best Interests

A guardian ad litem shall represent the best interests of the person for whom he or she is appointed. Representation of best interests may be inconsistent with the wishes of the person whose interest the guardian ad litem represents. The guardian ad litem shall not advocate on behalf of or advise any party so as to create in the mind of a reasonable person the appearance of representing that party as an attorney.

B) Maintain Independence

A guardian ad litem shall maintain independence, objectivity and the appearance of fairness in dealings with parties and professionals, both in and out of the courtroom.

C) Professional Conduct

A guardian ad litem shall maintain the ethical principles established by the Court.

D) Avoid Conflicts of Interests

A guardian ad litem shall avoid any actual or apparent conflict of interest or impropriety in the performance of the guardian ad litem responsibilities. A guardian ad litem shall avoid self-dealing or association from which a guardian ad litem might directly or indirectly benefit, other than for compensation as guardian ad litem. A guardian ad litem shall take action immediately to resolve any potential conflict or impropriety. A guardian ad litem shall advise the Court and the parties of action taken, resign from the matter, or seek court direction as may be necessary to resolve the conflict or impropriety. A guardian ad litem shall not accept or maintain appointment if the performance of the duties of guardian ad litem may be materially limited by the guardian ad litem's responsibilities to another client or a third person, or by the guardian ad litem's own interests.

E) Treat Parties with Respect

A guardian ad litem is an officer of the court and as such shall at all times treat the parties with respect, courtesy, fairness and good faith.

F) Become Informed About Case

A guardian ad litem shall make reasonable efforts to become informed about the facts of the case and to contact all parties. A guardian ad litem shall examine material, information and sources of information, taking into account the positions of the parties.

G) Timely Inform the Court of Relevant Information

A guardian ad litem shall file a written report with the Court and the parties as required by law or by the court order, no later than 10 days prior to a hearing for which a report is required. The report shall be accompanied by a written list of documents considered or called to the attention of the guardian ad litem and persons interviewed during the course of the investigation.

H) Limit Duties to Those Ordered by Court

A guardian ad litem shall comply with the Court's instructions as set out in the order appointing a guardian ad litem, and shall not provide or require services beyond the scope of the Court's instruction unless by motion and on adequate notice to the parties, a guardian ad litem obtains additional instruction, clarification or expansion of the scope of such appointment.

I) Appear at Hearings

The guardian ad litem shall be given notice of all hearings and proceedings. A guardian ad litem shall appear at any hearing for which the duties of a guardian ad litem or any issues substantially within a guardian ad litem's duties and scope of appointment are to be addressed.

J) Maintain Privacy of Parties

As an officer of the court, a guardian ad litem shall make no disclosures about the case or the investigation except in reports to the Court or as necessary to perform the duties of a guardian ad litem. A guardian ad litem shall maintain the confidential nature of identifiers or addresses where there are allegations of domestic violence or risk to a party's or child's safety. The guardian ad litem may recommend that the Court seal the report or a portion of the report of the guardian ad litem to preserve the privacy, confidentiality, or safety of the parties or the person for whom the guardian ad litem was appointed.

3.6.4 Cultural Competency

The guardian ad litem shall establish and maintain a cultural competence of the Quileute Tribal community as required by the Court.

### 3.7 APPEARANCE BY TELEPHONE IN CIVIL CASES

3.7.1 In some situations, a party may be permitted to participate in a hearing by telephone rather than by personally appearing in court based on the following criteria:

A) The party lives out of state;
B) The party has a medical condition preventing travel;
C) The party is in treatment thus is unable to be present; or
D) Any other reason as deemed appropriate by the Court and/or Court Clerk.

3.7.2 A party requesting to participate by telephone shall make a written motion to the Court and/or Court Clerk and provide a copy to all other parties at least 24 hours in advance of the proceedings. The opposing party may object to such appearance. Those participating by telephone will not receive priority and the requesting party shall be available for hearing for at least two hours past the set hearing time.

## Section 4: Criminal Rules

### 4.1 CRIMINAL CONFLICT COUNSEL

In the event the Quileute Tribal Public Defender has a conflict of interest in representing a defendant in Quileute Tribal Court, conflict counsel may be appointed by the Court.

### 4.2 JURY QUESTIONNAIRES

The Court may use jury questionnaires when appropriate. The parties may suggest questions to include in 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.

## 4.4 LEGAL COUNSEL'S 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 Clerk, and approval by the defendant.

## 4.5 GOOD TIME AND FURLOUGH

4.5.1 Good Time

The Court shall determine whether an incarcerated defendant is eligible for "good time" as defined by the detention facility.

4.5.2 Furlough

An incarcerated defendant may request a furlough based on a personal medical emergency or to attend the funeral of an immediate family member. Such request shall be made by written motion of the

defendant and filed with the Court Clerk. The Tribal Prosecutor and the Probation Officer shall both provide a response to the request for furlough. The Court shall make the determination whether the request will be granted.