

SHOALWATER BAY INDIAN TRIBE CODE OF LAWS



TITLE 19 APPELLATE

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RESOLUTION: 08-12-98-61

Shoalwater Bay Indian Tribe Code Of Laws



TITLE 19 - APPELLATE

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**Shoalwater Bay Indian Tribe
Code Of Laws**



TITLE 19 - APPELLATE

CHAPTER 19.01 SCOPE OF APPELLATE RULES

19.01.010 SCOPE OF TITLE.

This Title governs appeals from decisions of the Shoalwater Bay Tribal Court in both civil and criminal matters. "Shoalwater Bay Tribal Court" for the purposes of this Title shall mean the trial court division and the youth court division of the Shoalwater Bay Tribal Court.

CHAPTER 19.02 ESTABLISHMENT OF THE COURT OF APPEALS

19.02.010 ESTABLISHMENT OF COURT.

The Shoalwater Bay Court of Appeals is hereby established and is operative as a division of the Shoalwater Bay Tribal Court.

19.02.020 COMPOSITION OF THE COURT.

A panel of three judges shall be convened to serve as the Court of Appeals. The panel shall be selected, as needed, from a roster of eligible judges approved by the Shoalwater Bay Tribal Council. The Northwest Inter-Tribal Court System shall select the judges from the approved roster on a case-by case basis.

19.02.030 CHIEF JUDGES.

The judge who has served as a judge for the longest time, among those sitting on a particular appellate panel, shall be designated as Chief Judge.

19.02.040 CONFLICT OF INTEREST.

The judge who originally heard or decided a case is not eligible to sit on the panel which is hearing the case on appeal.

CHAPTER 19.03 WHAT COURT DECISIONS MAY BE REVIEWED

19.03.010 APPEALS FROM FINAL ORDERS.

An aggrieved party who claims, in good faith, that the Shoalwater Bay Tribal Court made an error of law or procedure which affected the outcome of the case may seek review in the Court of Appeals of any final order, commitment, or judgment of the Shoalwater Bay Tribal Court. The Shoalwater Bay Tribe may not appeal a final judgment of acquittal in criminal cases.

19.03.020 APPEAL FROM ORDERS NOT YET FINAL.

An aggrieved party may seek review of acts of the Shoalwater Bay Tribal Court which are not final by filing a Notice with the Court of Appeals for permission to appeal. Permission to appeal shall be granted only if the Shoalwater Bay Tribal Court has committed an obvious error which:

- a) Would render further proceedings useless; or
- b) Substantially limits the freedom of a party to act.

19.03.030 SCOPE OF THE REVIEW.

The Court of Appeals shall limit its review to:

- a) The record of proceedings from the Shoalwater Bay Tribal Court;
- b) Errors of law and procedure raised by the appellant in his or her written brief and
- c) Oral argument represented at a hearing before the Court of Appeals.

CHAPTER 19.04 STARTING AN APPEAL

19.04.010 NOTICE OF APPEAL.

A written Notice of Appeal must be filed with the Shoalwater Bay Tribal Court within fourteen (14) days after the Court enters the decision which the appellant wants reviewed. If the party first files a Motion for a new trial, rehearing, or reconsideration and the Motion is denied, the fourteen day time limit shall be counted from the day the Motion is denied.

19.04.020 FILING FEE.

A filing fee of \$35.00 must accompany any Notice of Appeal. The filing fee may be waived by the Chief Judge of the Court of Appeals, in his or her discretion, upon written request of the party, for good cause shown.

19.04.030 CONTENT OF NOTICE OF APPEAL.

A Notice of Appeal or Notice for Permission to Appeal shall be entitled as such and shall:

- a) Name the parties and their spokespersons, if any;
- b) State the case number, date, and nature of the decision appealed from;
- c) Specify those parts of the decisions which the party wants reviewed; and
- d) List each error of law or procedure which the appellant claims was committed by the Shoalwater Bay Tribal Court and its effect on the outcome of the case.

19.04.040 NOTICE OF APPEAL – SERVICE.

The appellant shall have a copy of the Notice served on all parties, within the fourteen (14) day time limit for filing the Notice of Appeal. The appellant shall be responsible for returning an Affidavit of Service to the Court.

CHAPTER 19.05 ACCEPTANCE OF REVIEW

19.05.010 ACCEPTANCE OF REVIEW OF APPEALS FROM FINAL ORDERS.

The Court Clerk shall provide the Chief Judge of the Court of Appeals with a copy of the Notice of Appeal and Affidavits of Service filed by the appellant. The Chief Judge shall review the documents and shall accept the appeal on behalf of the Court of Appeals provided:

- a) The Notice of Appeal was filed within the required time limit;
- b) The Notice of Appeal substantially complies with the requirements of Section 19.04.030; and
- c) The appeal appears, on its face, to comply with Section 19.03.010.

The Chief Judge shall notify the parties within forty-five (45) days whether the appeal is accepted, or is dismissed, for failure to meet the requirements of this Section.

19.05.020 THREE JUDGE REVIEW OF DECISION TO DISMISS APPEAL FROM FINAL ORDER.

A party may make a written request to the Court of Appeals that the full three-judge panel reconsider the Chief Judge's decision to dismiss an appeal under Section 19.05.010. The request must be filed within five (5) days from the date the Notice to Dismiss the appeal is served on the party. The decision of the three-judge panel shall be final.

19.05.030 ACCEPTANCE OF REVIEW FOR APPEAL BY PERMISSION.

The Court Clerk shall provide the Chief Judge of the Court of Appeals with a copy of the Notice for Permission to Appeal. The Chief Judge may convene a hearing on the Motion and shall give written notice of its decision to the parties within forty-five (45) days. Denial of a Motion for Permission to Appeal shall not affect a party's right to appeal under 19.03.010.

CHAPTER 19.06 STAY OF JUDGMENT

19.06.010 AUTOMATIC STAY – EXCEPTION.

The Judgment or Order of the Shoalwater Bay Tribal Court appealed from, shall not be carried out unless—and until—the Court of Appeals upholds the Judgment or dismisses the appeal. An exception to this rule is that injunctions—including restraining orders—shall take effect unless the Court of Appeals suspends them.

19.06.020 RELEASE IN CRIMINAL CASES.

Upon receipt of a Notice of Appeal and after the trial judge gives the parties an opportunity to be heard, the judge may set terms and conditions governing the release of a person convicted of a crime, the disposition of property which has been used as evidence or is the subject of the judgment, and other matters necessary to preserve the Court's jurisdiction while the appeal is being considered.

19.06.030 BOND.

The trial Judge may require the party who appeals a judgment to deposit cash or other security with the Court while the appeal is being processed if there is a clear showing that some security is needed to guarantee that the Court's judgment will be enforceable later. The security required shall not be greater in value than the amount of the judgment or fine imposed by the trial Court, plus costs.

CHAPTER 19.07 RECORD ON APPEAL

19.07.010 PREPARATION OF THE RECORD.

The record on appeal shall be made up of the papers and exhibits filed in the trial Court, a written transcript of the proceedings, and a copy of the tape recordings. Within ten (10) days of the date the Court Clerk receives Notice from the Court of Appeals that review has been accepted, the Clerk shall prepare three copies of the record and send them to the judges on the Court of Appeals. The Court Clerk shall make the record available to all parties for inspection and copying at the parties' expense.

19.07.020 COST OF PREPARING THE RECORD.

A party who requests a copy of the record shall bear the costs of preparing it unless waived by the Court, in its discretion, for good cause shown.

CHAPTER 19.08 THE REVIEW PROCESS

19.08.010 MOTIONS.

An application for an Order or other relief during an appeal shall be made in a Motion to the Court of Appeals with Proof of Service on all other parties. All Motions shall include:

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

Any party may file a response in opposition to a Motion within five (5) working days after Service of the Motion. The Chief Judge may rule on the Motion alone, or after consulting with the associate judges on the appellate panel. The Court may shorten or extend the time allowed for responding to a Motion. No Motion shall be accepted for filing unless accompanied by Proof of Service on opposing parties.

19.08.020 FILING BRIEFS.

Within thirty (30) days of Notice that the Court of Appeals accepts review, the party making the appeal shall file with the Court of Appeals a written brief or statement in support of his/her appeal and serve a copy on all parties. The Court of Appeals may allow a longer time for filing, in its discretion. The respondent shall have thirty (30) days after Service of appellant's brief in which to file a Reply brief or statement and shall serve a copy on each party. A response shall be allowed the appellant in the Courts discretion. All briefs shall be accompanied by an Affidavit of Service on opposing parties.

19.08.030 CONTENT OF APPELLANT'S BRIEF.

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

- a) Cover page. The front cover page shall state the name of the Court and the number of the case, the Title of the document (e.g. Brief for Appellant) and the name and addresses of counsel, if any, and the name and address of the appellant.
- b) Tables. A table of contents with page references, and a table of cases cited in the brief, a list of other authorities relied upon with references to the pages of the brief where used.

- c) Trial Court Errors. A separate concise statement of each error a party contends was made by the trial Court, together with the issues pertaining to the errors.
- d) Statement of the case. A fair statement of the facts and procedures of the trial which are relevant to the issues presented for review, without argument.
- e) Argument. The argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record.
- f) Conclusions. A short conclusion precisely stating the relief sought.
- g) All pages of the brief shall be numbered.

19.08.040 RESPONDENT'S BRIEF.

The respondent's brief should answer the appellant's brief and conform to the basic format of the appellant's brief.

19.08.050 HEARING – SCHEDULING.

The Court of Appeals shall schedule a Hearing or oral argument to take place within sixty (60) days of the date the last brief allowed by the Court is filed. The Court Clerk shall have Notices of Hearing served on all parties.

19.08.060 HEARING – CONDUCT.

The parties may present any arguments raised in the briefs at the Hearing. The party who appealed shall speak first. Each side is allowed forty (40) minutes for oral argument. Additional time may be allowed by the Court where it is deemed necessary.

19.08.070 ADDITIONAL EVIDENCE.

The Court of Appeals may make an exception to the rule that appellate review shall be restricted to the record and may allow the presentation of additional evidence 1) if the evidence was not available at the time of the trial Court proceedings and 2) refusal to consider the evidence would result in a clear injustice.

CHAPTER 19.09 JUDGMENT

19.09.010 FORM OF JUDGMENT.

The Court of Appeals decision shall be made by a majority vote of the judges. The Court may: dismiss an appeal, affirm or modify the decision being reviewed, reverse the decision in whole or in part, order a new trial, or take any other action as the merits of the case and the interest of justice may require.

19.09.020 WRITTEN OPINION.

The Court of Appeals shall prepare a written opinion within thirty (30) days of the Hearing. The Court Clerk shall mail a copy of the opinion to the lower Court and to all parties.

19.09.030 COSTS.

Costs on appeal are those incurred by a party in having the record copied, costs of Service, the premiums paid for any appeal bonds and the fee paid for filing the appeal. Costs of review shall be determined and awarded by the Court of Appeals. Appellant shall pay the costs of review if the appeal is dismissed or if the judgment is affirmed. Respondents shall pay the costs if the judgment is reversed. In any other case, the costs shall be awarded only as ordered by the Court. The Chief Judge of the Court of Appeals may, in his/her discretion, waive all or part of the costs incurred, if justice so requires.

19.09.040 BILL OF COSTS.

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

CHAPTER 19.10 SUPPLEMENTAL PROVISIONS

19.10.010 VIOLATION OF RULE.

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

19.10.020 DAMAGES FOR FRIVOLOUS APPEAL.

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

19.10.030 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 APPELLATE RULES TIME LINE

TRIAL COURT DECISION

14 DAYS

FILE NOTICE OF APPEAL/ NOTICE OF PERMISSION TO APPEAL

45 DAYS

CHIEF JUDGE REVIEWS APPEAL AND NOTIFIES PARTIES OF DECISION

5 DAYS

10 DAYS THREE JUDGE PANEL

REVIEWS DISMISSAL 30 DAYS

CLERK PREPARES RECORD

SENDS ONE TO EACH JUDGE

APPELLANT FILES BRIEF

30 DAYS

RESPONSE BRIEF DUE

60 DAYS

HEARING

30 DAYS

JUDGE'S WRITTEN OPINION DUE



SHOALWATER BAY INDIAN TRIBE

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SHOALWATER BAY INDIAN TRIBE
RESOLUTION # 01-31-91-09

WHEREAS, The Shoalwater Bay Indian Tribe is a Federally Recognized Tribe headquartered on the Shoalwater Bay 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 Shoalwater Bay Tribal Council has the authority to enact laws necessary to govern the administration of justice; AND

WHEREAS, The Shoalwater Bay Tribal Council deems it appropriate and necessary For tribal justice to enact regulations for a tribal Appellate Code, also known as Title 19, AND

WHEREAS, A public hearing was conducted on Appellate Code title 19 on January 23, 1991.

NOW THEREFORE BE IT RESOLVED, THAT The Shoalwater Bay Tribe hereby adopts Apellate Code Title 19 with provisions to amend and/or delete as needed, effective as of the date of this resolution.

CERTIFICATION

This resolution was passed at a Tribal Council Meeting January 31, 1991, at which a quorum was present.

FOR 4 AGAINST 0 ABSTENTIONS 0

Douglas M. Davis
DOUGLAS M. DAVIS, CHAIRMAN

Lynn Clark
LYNN CLARK, SECRETARY



SHOALWATER BAY INDIAN TRIBE

P.O. Box 130 • Tokeland, Washington 98590
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SHOALWATER BAY INDIAN TRIBE RESOLUTION #08-12-98-61

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 Shoalwater Bay Indian-Tribe has adopted, January 31, 1991, Title 19: Appellate Code; and

WHEREAS, Regarding Sec.19.07.010 which states in part: The Court Clerk shall make the record available to all parties for inspection and copying at the parties' expense; now

THEREFORE BE IT RESOLVED, the Shoalwater Bay Tribal Council does hereby approve and amend Sec.19.07.010 so that the party(ies) requesting Appeal Transcripts shall pay \$50.00 prior to receiving a copy from the Court Clerk.

CERTIFICATION

This Resolution was passed at a Regular Meeting of the Shoalwater Bay Tribal Council at which a quorum was present by a vote of 3 FOR 0 AGAINST AND 1 ABSTAINING on the 12th Day of August, 1998.

Herbert Mark Whitish, Chairman
Shoalwater Bay Tribal Council

Holly Blake, Treasurer
Shoalwater Bay Tribal Council