

LUMMI TRIBAL COURT
RULES OF COURT

AUTHORITY:

Lummi Code of Laws, 1.02.040, Means to Carry Jurisdiction into Effect. When jurisdiction is vested in the Court, all the means necessary to carry it into effect are also given, and in the exercise of this jurisdiction, if the course of proceedings be not specifically pointed out by this code, any suitable process or mode of proceedings may be adopted which may appear most conformable to the spirit of Tribal Law.

Lummi Code of Laws, 2.01.003, Court Rules for Criminal Proceedings. The Chief Judge of the Tribal Court may establish Rules of Court consistent with this Code and the Constitution of the Lummi Nation to regulate court decorum, court procedures, court records, court security, and other court matters so as to ensure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expenses and delay.

PROPOSED RULES SUBMITTED FOR COMMENT TO:

Lummi Nation Bar Association
Law and Justice Commission. These rules were approved by the Law and Justice Commission on February 8, 2023.

Short form for citation of these court rules shall be LTC rule (number).

Rule 1.00 Courtroom Decorum

- a) At all times, parties shall maintain a formal and respectful manner towards each other, the presiding judge, court staff, and members of the public.
- b) Members of the public may not bring drinks or food into the court room.
- c) All cell phones must be set to “vibrate” while in the courtroom. Telephone calls must not be answered while court is in session, but may be answered outside the courtroom. Text messaging and emailing

may not be conducted while court proceedings are in session.

- d) Hats and sunglasses must be removed in the courtroom unless culturally appropriate or permission from the Court has been granted.

Rule 2.00 Court Calendars

- a) The Court Clerk’s Office shall send out a weekly calendar on the Friday preceding the next week.
- b) The Court shall not issue weekly calendars for regularly scheduled cases the last two weeks of every calendar year. Emergency hearings, including hearing in-custody cases will be heard during the last two weeks of each calendar year.

Rule 3.00 Court Hours

- a) The Court’s business hours shall be 8:00 a.m. to 4:30 p.m. Monday through Friday.
- b) Filing may be received by the Court Clerk’s office between 8:00 a.m. and 4:00 p.m. Documents filed after 4:00 pm may not be processed until the next work day.
- c) The Court shall be closed completely according to the LIBC closure schedule of holidays.
- d) In the event of inclement weather, the Court shall follow the LIBC decision regarding closure of delayed start time.
- e) The Chief Judge shall be accessible by telephone at all times. If the Chief Judge is on vacation our out of cell phone range, the Judge shall designate a list of associate or Pro Tem judges who may be called when the Chief Judge is unavailable.

Rule 4.00 Recording

- a) The Court shall maintain an accurate and complete recording of all hearings.

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- b) If a party seeks to have a copy of a hearing provided to them, a request in writing must be filed with the Clerk's Office. The Court shall provide the hearing on CD to the party within 10 days of the request. The Court may charge a fee for providing this service according to the Court Fee Schedule. The format of the CD will be in "For The Record" ("FTR"). There is a free download for FTR to listen to the CD recording.
- c) At no time may any person other than the Court Clerk record court proceedings. If this rule is violated, the cell phones, video recording devices, audio recording devices, etc. shall be confiscated by the Court immediately and held for pickup by the Court Clerk's office after the conclusion of court business on that day.
- d) No photographs of the courtroom, court staff including the judge, or parties to proceedings may be taken without prior permission of the Chief Judge.

Rule 5.00 Courthouse Security

- a) The Court Services Officer (CSO) shall be charged with the responsibility of ensuring the safety of the Chief Judge, any presiding judge, court staff, attorneys, and members of the public.
- b) The CSO shall, with the assistance of the Chief Judge, promulgate security rules and procedures for the courthouse.
- c) The CSO may remove anyone from the courthouse who is disruptive or threatening in the courthouse.
- d) The CSO shall prevent unauthorized access to the Court Clerk's office and the Judicial Chambers. Access to Judicial Chambers will be locked at all times.
- e) The CSO may confiscate weapons for safekeeping during court hearings, in accordance with the security rules and procedures of the court.

Rule 6.00 Communication with the Court

- a) All attempts to avoid Ex Parte communication with the Judge shall be made by attorneys and pro se parties.
- b) No email exchanges with the Chief Judge or the presiding Pro Tem judge regarding specific pending or to-be-filed cases shall occur.
- c) The court staff may reach the Chief Judge by telephone when necessary. However, it is the responsibility of those with access of cellular and home phone numbers of the Chief Judge to safeguard that information and prevent widespread dissemination.

Rule 7.00 Continuances

- a) Requests for continuances shall be presented to the court in writing. Continuances that are agreed by all parties shall be granted by the Court unless there is good cause for the court to deny the requests. Agreed continuances are to be signed by all parties, or the party filing the continuance shall certify that they have obtained agreement of the other party(s) for the continuance.
- b) Contested continuance motions may be heard on the record if the judge deems it necessary.
- c) Non-emergency continuances must be filed at least two weeks prior to the scheduled hearing.
- d) Emergency requests to continue hearings must be presented to the Court 48 hours in advance of the scheduled hearing. The court will only entertain Motions to Continue filed less than 48 hours before a hearing only in extremely emergent circumstances.

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Rule 7.01 Telephonic Appearances

- a) Request for Telephonic appearances by parties for hearings must be filed no less than 48 hours in advance of the court hearing. A request made less than 48 hours in advance may be granted for good cause. The telephonic appearance request shall contain a reason for the request and phone number at which the Court Clerk may reach the party.
- b) If the Court grants the request, the party must be available when the court calls the party. Calendars are stacked and the court cannot guarantee a start time for each individual hearing. It is the responsibility of the party appearing telephonically to ensure availability of the phone line and to ensure his or her presence.

Rule 8.00 Pre-trial Motions

- a) Civil Motions. The party filing a written motion shall be responsible for service of the motion on all parties. All written motions shall be made on seven (7) days notice to the opposing party.
- b) Civil Motions. After a motion is filed, all responses shall be filed within two (2) days prior to the date set for the hearing.
- c) For motions in civil and criminal cases, the Court may order additional briefing if necessary.
- d) For motions in civil and criminal cases, if a hearing on a motion is necessary with witnesses, parties must present the court and other parties a witness list two (2) days prior to the hearing.
- e) Other than standard Motions in Limine , all pretrial motions must be scheduled during the pre-jury conference or must be filed at least 21 days before trial.

- f) Motions in Limine needing an evidentiary hearing must be scheduled during the pre-jury conference.
- g) Motion of Extradition under LCL 2.01.010 may be made by the arresting Lummi Nation Police officer. During business hours, the arresting officer may bring the Motion for Extradition to the Court or may telephone the Judge through the Court Clerk's office. During non-business hours, the arresting officer may telephone the Judge Directly.
- h) Subpoena requests are due 14 days before the scheduled trial, motion hearing or other court hearing.

Rule 9.00 Format for Filing

- a) All documents filed must be done in writing, with a minimum 12-point font size, on paper.
- b) Electronic filing (including Child Protection and Reunification Report) shall not be accepted.
- c) Fax filing will not be accepted.
- d) The Court may issue rules allowing electronic filings under separate local rules. Until the court has issued such rules, no electronic or fax filing will be accepted.
- e) The Clerk's Office will not accept any document that appears to have on it blood, fish slime, dirt, mud, oil, gasoline, or any other contaminating substance that may pose a health and safety risk to the Court staff, or that would contaminate other documents and files. The party may then file a clean version of the document.

Rule 10.00 Child Protection & Reunification Report ("CPRR")

- a) CPRRs shall be filed with the Court Clerk's Office at least 7 days prior to the upcoming dependency hearing. A brief supplement to

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support the CPRR may be provided one day (24 hours) prior to the hearing

- b) Additional documentation filed by other parties to dependencies must be filed at least seven days prior to the upcoming dependency hearings. A brief supplement to that document may be provided one day (24 hours) prior to the hearing.
- c) Failure to provide the CPRR or other documentation according to this rule may result in a court-ordered continuance and contempt of court findings.
- d) CPRR plans must be two tiered in planning with the most urgent remedies for the cause of the immanent harm on the first level to enable return of the child safely to the home, and the remaining wrap around services on the second tier to accomplish closure of the case.
- e) Projected dates by which the child may be safely returned to the home, or place in a permanent out of home placement under LNCL 8.05.110 will be supported by LCW with facts and charts to show what the normal expected time ranges are for the treatment plans and accomplishments needed by the parents or guardians under the Child Protection and Reunification Report.

Rule 10.01 Court Timeline for Permanent Plan Hearings in Dependency Cases LNCL 8.05.130(c)

- a) Forty-five (45) days prior to the permanency plan hearing; LCW shall file and serve parents with a notice of permanent plan hearing and the LCW recommendations for their Permanent Plan hearing.
- b) Thirty (30) days prior to the Permanent Plan hearing a Permanent Plan Readiness Hearing will take place. At the hearing the parents will be notified of their rights, the implications of the permanent plan hearing, and provided the LCW recommendations

and all supporting documentation for the recommendation. The Court will attempt to ascertain if the Permanent Plan hearing will be contested.

- c) LCW caseworkers and any other employees of LCW may serve parties notice of the permanent plan hearing and any other documents associated with the permanent plan hearing.

Rule 11.00 Warrant Quashing

- a) Requests to quash warrants may be filed **between 9:00 a.m. and 2:30 p.m. Monday through Friday**. Any warrant quash requests filed after 2:30 pm will not have the warrant pulled from the active warrant list until the next business day.
- b) The Clerk will then remove the warrant from the active list and hold the warrant until the warrant quash hearing.
- c) The person seeking to quash their warrant must sign a promise to appear for a warrant quash hearing.
- d) Requests to quash warrants may be granted at the sole discretion of the Judge.
- e) Failure to pay the \$50 quash fee or submit proof of completion of eight hours of community work may result in the reissuance of the warrant as a non-quashable warrant.
- f) Failure to appear at the warrant quash hearing will result in reissuance of the warrant.

Rule 12.00 Bail

- a) Bail may be paid at the Whatcom County Jail or the Lummi Indian Business Council Accounting office.
- b) The Court will not release bail until the case has been resolved and finally disposed, or when ordered by the Court

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- c) Under LCL 2.03.015, bail **shall** be forfeited if the defendant fails to appear. Bail shall not be reinstated when forfeited unless the defendant can demonstrate good cause to reinstate.
- d) In order to release bail, the Court Clerk's office must have the bail receipt from the jail, the check from the jail and a receipt from LIBC, and a court order releasing the bail. Bail releases cannot be processed until each of these documents has been received by the Court Clerk's office. It is the responsibility of the jail and LIBC accounting to ensure that the Court Clerk's Office receives documentation in a timely manner.
- e) Bail shall be released to the person who posted the bail. In the event that the individual who posted the bail is not indicated by the jail or LIBC Accounting, Bail shall be released to the Defendant.

Rule 13.00 Jail

- a) Jail Commitment Orders:
 - 1. Defendant in-custody: The Clerk's Office shall fax commitment orders to jail.
 - 2. HTWDC commitment orders: Prosecutors office shall prepare the commitment order and court shall fax the commitment.
- b) Jail Location: Jail terms may be served at Whatcom County Jail, Chehalis Tribal Jail, and any other facilities approved by the Court in consultation with the Law & Justice Commission. The selection of where a defendant serves his or her time in-custody lies in the sole discretion of the sentencing judge.
- c) Jail Alternatives: The Court, in its discretion, may order alternatives to time served in custody. Alternatives may include, but are not limited to, Electronic Home Monitoring, Work Crew, Community Service hours.

- 1. Electronic Home Monitoring shall be credited at a rate of 1 for 1. One day of jail credit shall be given for one day of monitoring. Should the monitoring be terminated prior to completion of sentence, credit will be given up until the day the violation occurred
- 2. Treatment for jail credit may be credited at a rate of 1 for 1. One day of jail credit for every one day of treatment if successfully completed.
- 3. Successful completion of treatment programs less than six months is required of Drug and Alcohol treatment for credit to be given.
- 4. Long term programs more than six (6) months may be given credit for successful completion of phases of the program lasting at least six (6) months
- 5. Lummi Jail Alternatives days will be credited 1 for 1. One day of jail time for day of Lummi Jail Alternative time.

- d) Jail Credit for good time: Jails determine good time credit and whether the individual earns good time.
 - 1. Credit for time served: Jails shall calculate credit for time served.
 - 2. Placement and/or classification within the facility shall be at the discretion of the facility.
 - 3. Rules of the facility shall be at the discretion of the facility.

Rule 14.00 In-Custody Transports

- a) Transports shall be set twice per week (times set by the court quarterly calendar).

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- i. Transports lists shall be prepared by the prosecutor's office, and arranged with the Whatcom County Jail, or any other jail facility as necessary. The transport list shall be set by the prosecutor twice per week, Monday and Wednesday, for the Tuesday, Thursday criminal court hearings as set by the court calendar, and any other day as necessary for special transports for trial, hearings or juveniles.
 - ii. All Defendants held in custody the previous week or weekend, who have not been brought to court after a probable cause finding, will be brought to court for a bail hearing and or arraignment on the first transport of the week after such finding.
- b) Defendants held in-custody by Lummi Tribal Court shall be transported to the Lummi Tribal Court for arraignments, changes of plea, entry of orders (Probation violation orders, Temporary release etc.) and trials.
 - c) Defendants held in-custody on other court holds may be transported for the same hearings as listed in 14.b, but only with permission of the jurisdiction holding defendant.
 - d) Defendants who have other court matters set for hearings (i.e. child support, dependency, civil protection orders) will **not** be transported for hearings.
 - e) Co-defendants shall not be transported together for hearings.
 - f) Defendants and alleged victims shall not be transported together for hearings.
 - g) Defendants who are immediate family members (parents and children, sibling's ect.) shall not be transported together.
 - h) During in-custody transports, it is the responsibility of the transporting officer to prohibit discussion of cases between defendants.
- 1. Defendants shall have no contact with members of the public in any common area, including the courtroom, while being transported. If communication occurs, the defendant shall be admonished by the transporting officer (and the Court, if necessary). Any further violation of this rule will result in the removal of the Defendant from the courtroom and possible delay of hearing. The member of the public communicating or attempting to communicate with the defendant may be removed from the courtroom. Violation of this rule may result in civil or criminal contempt charges.
 - 2. Video and Telephonic Conference Proceedings may be held in accordance with LCL 2.05.050.

Rule 14.01 Temporary Releases from Custody

- a) Temporary releases from custody may be presented to the court for the following reasons:
 - 1. Attendance at funerals of immediate family members
 - 2. Treatment for substance abuse
 - 3. Medical treatment
- b) Procedure for requesting temporary releases:
 - 1. Motion for temporary release: Must be filed by the defendant or his/her attorney 21 days prior to the requested release date. Motion must state the reason for release and return to jail, the time for release and return to jail, proposed supervisor for the release, proposed agreement by the person(s) agreeing to supervise the defendant or if no supervisor is necessary, and proposed conditions of release.

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2. Hearing: Motion shall be set for hearing on a regular Motion or an in-custody calendar unless otherwise requested by the movant.
 3. If motion is granted, Court shall read the conditions of temporary release into the record with the defendant present in the courtroom. If Defendant's presence is not possible, Defendant shall appear by phone. Defendant's attorney is responsible for ensuring Defendant's presence.
 4. Motion for Shortening Time: If Motion for Temporary Release must be brought on short notice, a Motion for Shortening Time shall be filed stating the need for an expedited hearing. Such motions will be granted only in limited circumstances when there is an emergency requiring expedited hearings (for example, funerals). If a release for substance abuse treatment is foreseen, the Motion for Temporary Release may be filed without a firm bed date for an initial hearing at which the court will decide whether a temporary release would be granted. A secondary hearing will be set on shortened time once a bed date has been confirmed.
 5. Motions for Temporary Release may be filed jointly.
 6. Decisions to grant Temporary Releases and set the conditions for those releases lie in the sole discretion of the Judge.
- c) Full Faith and Credit for Lummi Tribal Court orders: It is the responsibility of the Petitioner to request that full faith and credit be granted to Lummi Tribal Court no-contact/civil protection orders by other jurisdictions. *It is the responsibility of the Petitioner to inform other jurisdictions that have given Full Faith and Credit to a Lummi Tribal Court Protection order that the order has been lifted.*
 - d) Lifting of civil protection orders: Petitioners may request modification or discontinuance of no-contact/civil protection orders. Petitioner shall file a written motion with a sworn affidavit requesting removal of the order. Motion must indicate the reason for removal, state a change in circumstances, and provide a safety plan to assure the court that removal of the order will not result in harm to the Petitioner and/or other protected persons.
 - e) Lifting of criminal no-contact orders: Protected persons may request that no-contact orders resulting from criminal proceedings be lifted. The Lummi Nation Prosecutor's Office shall indicate whether it is or is not in agreement with the request. The protected person shall file a written motion with a sworn affidavit requesting removal of the order. Motion must indicate the reason for removal, state a change in circumstances, and provide a safety plan to assure the court that removal of the order will not result in harm to the protected person(s).
 - f) Court may require the appearance of all parties to a no-contact/civil protection order at a hearing on lifting of order.
 - g) When a criminal no-contact order is in place as part of pending criminal matters and the protected person(s) requests a civil protection order, the Court shall grant the

Rule 14.02 No-Contact & Protection Orders

- a) No-contact and protection orders shall be transmitted to the Lummi Nation Police Department within 24 hours of issuance by the Court Clerk's Office.
- b) Granting Full Faith and Credit: Court shall grant full faith and credit to no-contact/civil

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civil protection order on a temporary basis until the pending criminal case is resolved in order to prevent the Court from hearing matters involving criminal proceedings during a civil hearing. Temporary orders entered under this rule shall be issued for two months increments and renewed every two months until the criminal matter is resolved.

Rule 14.03 Occupational Driving Privileges

- a) The Court may grant an occupational driving privileges for the following purposes:
 - 1. Employment
- b) Occupational driving privilege orders shall be retained by the driver in the car they drive at all times.
- c) Failure to adhere to the terms of the occupational driving privileges will result in full suspension of driving privileges.

Rule 15.00 Ex Parte Child Custody Orders

- a) Any Ex Parte Motion or Petition seeking a change of placement shall be granted only in extreme circumstances that impact the health and safety of children.
- b) A sworn affidavit stating the reasons for the Motion or Petition shall be filed by the Petitioner. The affidavit must indicate why the change in placement is necessary and why the Motion or Petition should be granted without notice to the Respondent.

Rule 16.00 Healing to Wellness Drug Court

- a) The HTWDC manual sets the policies, procedures, incentives, and sanctions lists
- b) The HTWDC manual is developed by the HTWDC team.

- c) After initial application is submitted, the applicant must meet with the HTWDC Coordinator for an orientation to drug court.
- d) Within one (1) month of the initial application, the applicant must schedule a substance abuse evaluation and view at least one HTWDC session. Failure to do so will result in denial of the application to HTWDC.
- e) Criminal background checks shall include state, federal, and Lummi Criminal history and shall be conducted by the Court Clerk's office to the extent available in CJIS.
- f) Applicants must sign Releases of Information for the HTWDC team to monitor evaluation progress and compliance.

Rule 18.00 Urinalysis Requests

- a) Lummi Nation Probation Office shall conduct random urinalysis (UAs) on all probation clients.
- b) UAs requested for other purposes (dependencies, child custody, child support enforcement) must be approved by the Chief Judge and the Lummi Nation Probation Office. Court reserves the right to require the requesting department share the cost of UAs.

**Rule 19.00 Fines and Court Costs:
Community Service Hours**

- a) When allowed by a court order, fines may be worked off in Community Service Hours.
- b) Community Service Hours performed in lieu of fines may be credited at the rate of the current Washington State minimum wage per hour of work performed.

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- c) Credit may be earned toward payment of fines for every month of compliance with Lummi Probation.

Rule 20.00 Procedures for Delinquent Children

The Court will hold Preliminary Inquiries to determine whether the interest of the child or the public require that further action be taken.

Once a petition is filed by the Lummi Nation alleging the Child has violated LCL Chapter 8 the Court will:

- 1) Hold a 1st hearing to direct the child to take certain measures to obtain further information regarding themselves in relation to their charge, ie. Drug or alcohol evaluation, appointment with school counselors or, investigation of other volunteer activities or youth programs. Police reports will be made available to juveniles by the prosecutor. Court may give preliminary directive to the juvenile with possible no-contact orders. Set a date for the Preliminary Inquiry.
- 2) Preliminary Inquiry by the Court to determine further proceedings on the case either formally or informally pursuant to LCL 8.03.010 (a) (b) (c) or (d).

This is not a fact or evidentiary hearing. No sworn testimony will be taken. The purpose is to determine the direction of further proceedings in the case

All persons and parties present agree that all matters will be kept strictly confidential at such hearing.

All parties agree that no statements made by defendant or persons present

will be used against the child at further hearings or Trial if chosen by the Child.

Lummi Nation need not be present at the Preliminary Inquiry if so desired.

A written agreement may be made between the Court and the Juvenile, and parents, setting out goals and steps to achieve informal directives and goals.

Further dates will be set by the Court for review of compliance with the Court directives under either LCL 8.03.010 (a) or (b) or setting of dates for more formal proceedings under (c) or (d) if so determined. Should the Court set a hearing under (d) LCL 2.01.040 will be followed for Remand of Juvenile to Adult Court. Promise to Appear is signed.

- 3) Child returns for review, or further formal hearings.

Should the Court determine no further action need to be taken the Petition is dismissed by the Lummi Nation and a formal Motion to Dismiss is filed.

Should formal hearings proceed, formal arraignment will occur and with scheduling orders and appropriate documents filed.

Should the Child proceed to trial on the case, the matter will be heard by a Judge not present at the Preliminary Inquiry hearing.

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Rule 21.00 Appointment of Guardian Ad Litem and GAL Reports

- a) A Guardian Ad Litem (GAL) will be appointed by the Court from a list of Guardian Ad Litem's provided by the Guardian Ad Litem's Coordinators Office. Any objections to the proposed guardian will be heard by the Court and considered for cause. If the GAL is excused the next GAL on the list will be appointed. In the absence of a person on the roster who is able to participate in the proceedings, subsequent appointments will follow LCL 8.01.150 (d) as decided by the Court.

- b) GAL Reports are presumed to be confidential and will be sealed by the Court Clerk's Office when filed, except that GAL Reports filed in Title 8 cases do not have to be sealed, because the entire file in a Title 8 case is confidential.

Rule 22.00 Administrative Closure of Files

After one (1) year of inactivity in a pending case, the Court Clerk's Office may administratively close the case and place the case file in archives. Prior to administrative closure, the Clerk's Office shall mail notice to the parties at their last known address on file with the Court. The Notice shall advise the parties that their case will be closed in thirty (30) days after the date on the Clerk's Notice, unless the Clerk's Office is notified in writing by at least one party that the case should remain in active status. If after thirty (30) days, the Clerk's Office has not received a response, the Clerk's Office may seek an order from a judge to administratively close the case.

To reactivate the case, any party to the case must file a motion to reactivate the case.

Cases files with unpaid fines and/or court costs, active probation, and civil files with parenting plans for minor children may remain open, even if there has been one (1) year of inactivity.

Rule 23.00 Filing Documents to be Sealed

- a) When requesting filed document(s) be sealed, include a motion and proposed order to seal the document(s).
- b) The document(s) to be sealed must be marked with the word "confidential" on the first page of the document(s). File stamp the documents.
- c) A 9" x 12" envelope must be included with the document(s). The envelope must also be marked with the word "confidential" and the envelope is to be file stamped.