

**STILLAGUAMISH TRIBE OF INDIANS CODE OF LAWS
TRIBAL COURT
RULES OF EVIDENCE**

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CHAPTER I. GENERAL PROVISIONS

SECTION 1. Purpose.

The purpose of these Rules of Evidence is to ensure the Tribal Court is able to determine the truth of a matter with a minimum of delay, confusion, and uncertainty for the parties.

SECTION 2. Scope of Rules.

These rules shall constitute the rules of evidence in all proceedings, except proceedings arising under and governed by the Stillaguamish Tribe of Indian's Youth Code, in the Stillaguamish Tribe of Indian's Court. These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

SECTION 3. Rulings on Evidence.

- (A) Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and:
 - (1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears on the record, stating the specific ground of the objection; or
 - (2) Offer of Proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the Judge by an offer of proof or was apparent from the context within the questions were asked.
- (B) Not Needing to Renew an Objection or Offer of Proof. Once the court rules definitively on the record, either before or after trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.
- (C) Record of Offer and Ruling. The Judge may add any other or further statement which shows the character of the evidence, the form in which it was offered, the object made, and the ruling thereon. He may direct the making of an offer in question-and-answer form.
- (D) Hearing of Jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing or presence of the jury.
- (E) Plain Error. Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the Judge.

SECTION 4. Preliminary Questions.

- (A) In General. The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by these rules of evidence, except those on privilege.
- (B) Relevance that Depends on a Fact. When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.

- (C) Conducting a Hearing so that the Jury Cannot Hear It. The court must conduct any hearing on a preliminary question so that the jury cannot hear it if:
 - (1) The hearing involves the admissibility of a confession;
 - (2) A defendant in a criminal case is a witness and so requests; or
 - (3) Justice so requires.
- (D) Cross-Examining a Defendant in a Criminal Case. By testifying on a preliminary question, a defendant in a criminal case does not become subject to cross-examination on other issues in the case.
- (E) Evidence Relevant to Weight and Credibility. This rule does not limit a party's right to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.

SECTION 5. Limited Admissibility.

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

SECTION 6. Related or Remainder of Writings or Recorded Statements.

When a writing or recorded statement or part is introduced by a party, an adverse party may require him at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

SECTION 7. No Waiver of Sovereign Immunity.

Nothing in this Code shall be construed as a waiver of the sovereign immunity of the Stillaguamish Tribe of Indians and its officers, directors, agents, and employees.

SECTION 8. Severability.

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

SECTION 9. Savings.

This Code takes effect on the date approved by the Stillaguamish Board of Directors and does not extinguish or modify any civil liability or enforcement of such penalty or forfeiture that existed on or prior to the effective date of this Code and such Code shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such civil action, enforcement of any penalty therefrom, forfeiture or liability.

SECTION 10. Definitions.

- (A) Civil Case. A civil action or proceeding.
- (B) Criminal Case. Includes a criminal proceeding.
- (C) Public Office. Includes a public agency.
- (D) Record. Includes a memorandum, report, or data compilation.
- (E) A reference to any kind of written material or any other medium includes electronically stored information.
- (F) Tribe. Means the Stillaguamish Tribe of Indians.
- (G) Board of Directors. The governing body of the Stillaguamish Tribe
- (H) Tribal Court, The Court, or Court. All refer to the Stillaguamish Tribal Court.
- (I) Tribal Governmental Entity or Tribal Entity. Any cooperative formed by the Board of Directors pursuant to the authority of the Articles of Association and Bylaws for economic or governmental purposes and any entity which is controlled by the Board of Directors. For the purposes of this Code, an entity shall be deemed to be controlled by the Board of Directors if the majority of its Directors are chosen, selected or appointed by the Board of Directors. Entities governed by this Code include the Board of Directors and its committees and subcommittees.

CHAPTER II. JUDICIAL NOTICE OF ADJUDICATIVE FACTS

SECTION 1. Scope of Rule.

This rule governs only judicial notice of adjudicative facts.

SECTION 2. Types of Facts that May Be Judicially Noticed.

A judicially noticed fact must be one not subject to reasonable dispute because it is:

- (A) generally known within the community, or
- (B) capable of accurate and ready determination from sources whose accuracy cannot reasonably be questioned, or
- (C) notice is provided for by statute.

SECTION 3. When Discretionary.

A Judge or Court may take judicial notice, whether requested or not.

SECTION 4. When Mandatory.

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

SECTION 5. Opportunity to Be Heard.

A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the nature of the fact to be noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

SECTION 6. Timing.

Judicial notice may be taken at any stage of the proceeding.

SECTION 7. Instructing the Jury.

The Judge shall instruct the jury to accept as established any facts judicially noticed.

CHAPTER III. PRESUMPTIONS

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

CHAPTER IV. RELEVANCE AND ITS LIMITATIONS

SECTION 1. Relevancy Defined.

“Relevant evidence” means evidence having any tendency to make the existence of any fact of consequence to the determination of the action more or less probable than it would be without the evidence.

SECTION 2. General Admissibility of Relevant Evidence.

All relevant evidence is admissible, except as otherwise provided by the Constitution, statute, these rules, or other rules adopted by the Stillaguamish Court. Irrelevant evidence is not admissible.

SECTION 3. Excluding Relevant Evidence for Unfair Prejudice, Confusion, or Other Reasons.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, misleading of the jury, undue delay, waste of time, or needless presentation of cumulative evidence.

SECTION 4. Character Evidence.

(A) Character Evidence Generally. Evidence of a person’s character or character trait is not admissible for the purpose of proving that the person acted in conformity with his or her character or character trait on a particular occasion.

(B) Exceptions. The following relevant evidence will not be excluded pursuant to section 4(A) of this Chapter:

(1) Character of Accused. Evidence of a pertinent trait of the accused’s character offered by the accused, or by the prosecution to rebut the same.

- (2) Character of Victim. Evidence of a pertinent character trait of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of the accused's same character trait, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor.
- (3) Character of Witness. Evidence of the character of a witness, as provided in these rules.
- (C) Other Crimes, Wrongs, or Acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. This subsection does not exclude the evidence when offered for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.
- (D) Methods of Proving Character.
 - (1) Reputation or Opinion. In all cases in which evidence of character or a character trait of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.
 - (2) Specific Instances of Conduct. In cases in which character or a character trait of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of the person's conduct.

SECTION 5. Character Evidence – Exception for Evidence of Similar Crimes in Cases Involving Sexual Offenses.

- (A) Permitted Uses.
 - (1) Adult Sexual Assault Cases. In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant.
 - (2) Child Sexual Abuse Cases. In a criminal case in which the defendant is accused of committing a crime under Chapter 8.10 or 8.25 of the Stillaguamish Tribe of Indian's Law and Order Code that involves a child, evidence of the defendant's commission of another offense or offenses of child sexual abuse is admissible, and may be considered for its bearing on any matter to which it is relevant.
- (B) Definitions.
 - (1) "Sexual assault" includes all forms of sexual assault or exploitation, including, but not limited to, rape, molestation, and prostitution.
 - (2) "Child" means a person below the age of 14.
 - (3) "Child sexual abuse" includes all forms of sexual assault or exploitation involving a child, including, but not limited to, child rape, child molestation, child pornography, and child prostitution.
- (C) Disclosure and Notice to Defendant. In a case in which the Tribe intends to offer evidence under this rule, the Tribe's Attorney shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least 15 days before the scheduled date of trial or at such later time as the Court may allow for good cause.

- (D) Effect on Other Rules. This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

SECTION 6. Character Evidence – Exception for Evidence of Similar Acts in Civil Cases Concerning the Sexual Assault of Adults or Children.

- (A) Permitted Uses. In a civil case in which a claim for damages or other relief is predicated on a party's alleged commission of conduct constituting an offense of sexual assault on an adult or child, evidence of that party's commission of another offense or offenses of sexual assault is admissible and may be considered as provided in section (11) of this Chapter.
- (B) Disclosure to the Opponent. A party who intends to offer evidence under this subsection shall disclose the evidence to the party against whom it will be offered, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least 15 days before the scheduled date of trial or at such later time as the Court may allow for good cause.
- (C) Effect on Other Rules. This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

SECTION 7. Relevance of Alleged Sexual Assault Victim's Sexual History.

- (A) Prohibited Uses. Evidence offered to prove that any alleged victim engaged in other sexual behavior and evidence offered to prove any alleged victim's sexual predisposition is not admissible in any criminal or civil proceeding involving alleged sexual misconduct except as provided in subsection (B) of this section.
- (B) Exceptions.
- (1) Criminal Cases. In a criminal case, the following evidence is admissible, if otherwise admissible under these rules:
 - (a) evidence of specific instances of sexual behavior by the alleged victim offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence;
 - (b) evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered by the accused to prove consent or if offered by the prosecution; and
 - (c) evidence whose exclusion would violate the constitutional rights of the defendant.
 - (2) Civil Cases. In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of an alleged victim's reputation is admissible only if it has been placed in controversy by the alleged victim.
- (C) Procedure to Determine Admissibility.
- (1) Motion. A party intending to offer evidence under Section 12(B) of this Chapter must file a written motion at least 14 days before trial specifically describing the evidence and stating the purpose for which it is offered unless the Court, for good cause, requires a different time for filing or permits filing during trial; and serve the motion on all parties and notify the alleged victim or, when appropriate, the alleged victim's guardian or representative.

- (2) Hearing. Before admitting evidence under this rule the court must conduct a hearing in camera and afford the victim and parties a right to attend and be heard. The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the Court orders otherwise.

SECTION 8. Habit or Routine Practice.

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

SECTION 9. Subsequent Remedial Measures.

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

SECTION 10. Offers to Pay Medical and Similar Expenses.

Evidence of furnishing, offering, or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

SECTION 11. Admissibility of Sympathetic Gestures.

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

- (A) “Accident” means an occurrence resulting in injury or death to one or more persons that is not the result of willful action by a party.
- (B) “Benevolent gestures” means actions that convey a sense of compassion or commiseration emanating from humane impulses.
- (C) “Family” means the spouse or the domestic partner, parent, grandparent, stepmother, stepfather, child, grandchild, brother, sister, half-brother, half-sister, adopted child of a parent, or spouse’s or domestic partner’s parents of an injured party.

SECTION 12. Compromise Offers and Negotiations.

(A) Prohibited Uses.

- (1) **Compromise Offers and Acceptance.** Evidence of (i) furnishing, promising, or offering, or (ii) accepting, offering to accept, or promising to accept, a valuable consideration in compromising or attempting to compromise a disputed claim as to either validity or amount, is not admissible to prove or disprove the validity or amount of the claim.
- (2) **Compromise Negotiations.** Evidence of conduct or statements made in compromise negotiations is likewise not admissible.

(B) Exceptions. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

SECTION 13. Pleas, Plea Discussions, and Related Statements.

Evidence of a guilty plea later withdrawn, a plea of no contest, an offer to plead guilty or no contest to the crime charged or any other crime, or of statements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer.

SECTION 14. Liability Insurance.

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

CHAPTER V. PRIVILEGES

SECTION 1. General Privileges.

There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, in any proceeding in the Stillaguamish Tribal Court or in any proceeding applying the law of the Stillaguamish Tribe of Indians, a person cannot be examined as a witness in the following enumerated cases:

(A) Spousal Privilege.

- (1) **In General.** A person cannot be examined for or against his or her spouse without the spouse's consent; nor can either, during the marriage or afterward, be, without the consent of the other, examined as to any communication made by one to the other during the marriage.
- (2) This privilege does not apply to a civil action or proceeding by one spouse against the other or to a criminal action or proceeding for a crime committed by one spouse against the other, and further does not apply to a criminal action for a crime committed by either spouse against any child of whom either spouse is the parent or guardian.

(B) Attorney-Client Privilege.

- (1) In General. An attorney or spokesperson cannot, without the consent of his or her client, be examined as to any communication made by the client to the attorney or the attorney's advice given to the client in the course of professional employment. A client cannot, except voluntarily, be examined as to any communication made by the client to his or her attorney or Court advocate or the advice given to him by his or her attorney or Court advocate in the course of the attorney's or Court advocate's professional employment.
- (2) Applicability.
 - (a) The attorney-client privilege applies regardless of whether the client is an individual, company, or a Tribal or governmental entity.
 - (b) When the client of the attorney is not an individual, the attorney-client privilege protects communications between an attorney and its client when such communications were made by or to any employees or a functional equivalent and: (i) they were made to in-house or outside counsel at the direction of company, Tribal or governmental superiors, (ii) concerned matters within the scope of their duties, (iii) the information was not readily available from upper-level management; and (iv) the individuals were aware that they were being questioned in order for the company, Tribes, or government to receive legal advice.
 - (c) For the purposes of this section, "functional equivalent" shall mean a consultant or independent contractor hired or retained by a company, Tribe, or governmental entity who (i) has a continuous and close working relationship with the company, Tribe, or governmental entity; (ii) has primary responsibility for a key company, Tribal, or governmental job or activity; and (iii) has knowledge possessed by no one else at the company, Tribe, or governmental entity. By way of example, but not limitation, a representative or agent designated as such by the Tribe shall be considered a functional equivalent under this section.
- (C) Doctor-Patient. Except as provided in Rule 35, Federal Rules of Civil Procedure, a licensed physician, surgeon, or dentist cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient. This privilege shall not apply in the following situations:
 - (1) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse of the cause thereof; and
 - (2) Ninety days after filing an action for personal injuries or wrongful death, the claimant shall be deemed to have waived the physician-patient privilege. Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as the Court may impose.
- (D) Mental Health Professional-Client. The confidential relations and communications between a counselor, psychiatrist, or psychologist and his client shall be placed on the same basis as provided by law for those between an attorney and client.
- (E) Investigative Reports – Board of Directors. An investigator employed by the Tribe cannot be examined in any civil case before the Tribal Court regarding an investigation performed at the request of the Board of Directors without the formal consent in writing of the Board of Directors to such examination. No written report produced as a part of an investigation performed at the request of the Board of Directors may be utilized as evidence in any civil case before the Tribal Court without formal written consent of the Board of Directors.

- (F) Investigative Reports – Tribal Agencies. Any reports or information collected by Tribal Police or ti̱dxw bədbəda? are privileged unless otherwise provided by statute or order of the Court.
- (G) Interpreters. Any information that an interpreter gathers pertaining to any proceeding then pending shall at all times remain confidential and privileged, on an equal basis with the attorney-client privilege, unless such person desires that such information be communicated to other persons.
- (H) Clergy. A clergyman, priest, or traditional spiritual advisor cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church or religion to which he belongs.
- (I) Secret Ballot in a Political Vote. The right of individuals to vote by secret ballot is fundamental. Where Tribal law requires elections for public office, the right of individuals to vote by secret ballot shall be guaranteed.
- (J) Trade Secrets. A person may refuse to disclose or to prevent other persons from disclosing a trade secret owned by a person, if such refusal will not tend to conceal fraud or otherwise work injustice. When disclosure is directed, the Judge shall take such protective measures as the interests of the holder of the privilege and of the parties and the furtherance of justice may require.
- (K) Privileges Not Applicable in Child or Elder Abuse Reporting. None of the privileges contained in this section shall apply to the extent that reporting or testimony is required by any law related to the mandatory reporting of child or elder abuse or neglect. All persons acting in good faith to report child abuse and who provide testimony directly related to child abuse or neglect in judicial proceedings shall be immune from liability for reporting and/or testifying in good faith.
- (L) Tribal Representative or Agent –Board of Directors. The confidential communications between (i) a representative or agent employed or designated by the Board of Directors or the Tribe and (ii) Board of Directors shall be placed on the same basis as provided by law for those between an attorney and client.
- (M) Executive/Deliberative Process Privilege. A privilege applies to protect Tribal governmental entity documents, such as advisory opinions, information, recommendations, and deliberations from being produced, that (i) reflect how Tribal government decisions are made or (ii) are made during the internal decision-making processes. The executive/deliberative process privilege applies not only to documents, information, recommendations, and deliberations of the Board of Directors and its subcommittees, but also to documents, information, communications, recommendations, and deliberations with employees and/or consultants in which opinions are expressed or policies formulated or recommended related to the deliberative process.
- (N) Board of Directors Privilege. It is imperative that in order to aid in the effective functioning of government, the Board of Directors must perform their public duties untroubled by the fear or threat of suit and charge of malice. When acting within the scope of their responsibilities and duties as members of the Board of Directors or on any subcommittee thereof, the members of the Board of Directors shall be immune from civil liability for any acts or omissions committed or made in discharge of their official positions.
- (O) Qualified Immunity for Tribal Government Officials. When acting within the scope of their authority and on behalf of the Tribe, Tribal government officials, officers, agents or

employees when performing discretionary functions shall be immune from liability for civil damages insofar as their conduct does not violate clearly established Tribal Code or Tribal Constitutional rights to which a reasonable person would have known.

SECTION 2. Privileges Recognized Only as Provided.

Except as otherwise required by law, and except as provided in these rules or in other rules adopted by the Tribe, no person has a privilege to:

- (A) Refuse to be a witness;
- (B) Refuse to disclose any matter;
- (C) Refuse to produce any object or writing; or
- (D) Prevent another from being a witness or disclosing any matter or producing any object or writing.

SECTION 3. Privileged Matter Disclosed Under Compulsion or Without Opportunity to Claim Privilege.

Evidence of a statement or other disclosure of privileged matter is not admissible against the holder of the privilege if the disclosure was (A) compelled erroneously, or (B) made without opportunity to claim the privilege.

SECTION 4. Comment upon or Interference from Claim of Privilege – Instruction.

- (A) Comment or Interference Not Permitted. The claim of privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by Judge or counsel. No inference may be drawn therefrom.
- (B) Claiming Privilege Without Knowledge of Jury. In a jury case, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.
- (C) Jury Instruction. Upon request, any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom.

SECTION 5. Limitations on Waiver.

- (A) Disclosure Made in a Tribal Proceeding or to a Tribal Office or Agency; Scope of a Waiver. When the disclosure is made in a Tribal proceeding or to a Tribal office or agency and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in a Tribal proceeding only if:
 - (1) the waiver is intentional;
 - (2) the disclosed and undisclosed communications or information concern the same subject matter; and
 - (3) they ought in fairness to be considered together.
- (B) Inadvertent Disclosure. When made in a Tribal proceeding or to a Tribal office or agency, the disclosure does not operate as a waiver in a Tribal proceeding if:
 - (1) the disclosure is inadvertent;

- (2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and
- (3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following Federal Rule of Civil Procedure 26 (b)(5)(B).
- (C) Controlling Effect of a Court Order. The Tribal court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court — in which event the disclosure is also not a waiver in any other Tribal proceeding.
- (D) Controlling Effect of a Party Agreement. An agreement on the effect of disclosure in a Tribal proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.
- (E) Definitions. In this rule:
 - (1) “attorney-client privilege” means the protection that applicable law provides for confidential attorney-client communications; and
 - (2) “work-product protection” means the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial.

CHAPTER VI. WITNESSES

SECTION 1. Competency of Witnesses.

- (A) Personal Knowledge. A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he or she has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness him or herself. The exception to this is expert witnesses.
- (B) Oath or Affirmation. Before testifying, every witness shall be required to declare before the Court that he or she will testify truthfully, by oath or affirmation.
- (C) Interpreters. An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation that he will make a true translation.
- (D) Judge as Witness. The Judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.
- (E) Competency of Juror as Witness.
 - (1) At the Trial. A member of the jury may not testify as a witness before that jury in the trial of the case in which he is sitting as a juror. If a juror is called to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.
 - (2) Inquiry into Validity of Verdict. Upon an inquiry into the validity of a verdict, a juror may not testify as to any matter or statement occurring during the course of the jury’s deliberations or to the effect of anything upon his or any other juror’s mind or emotions as influencing him or her to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith, except that a juror may testify on the question whether any outside prejudicial information or influence was improperly brought to bear upon any juror. Nor may his or her affidavit or evidence of any statement by him or her concerning a matter about which he or she would be precluded from testifying be received.

SECTION 2. Evidence of Character and Conduct of Witness.

(A) General Rule.

- (1) Opinion and Reputation Evidence of Character. The credibility of a witness may be attacked or supported by evidence in the form of reputation or opinion, but subject to these limitations:
 - (a) The evidence may refer only to character for truthfulness or untruthfulness; and
 - (b) Evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.
- (2) Specific Instances of Conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting his or her credibility, other than conviction of crime, may not be proved by extrinsic evidence. They may, however, if probative of truthfulness or untruthfulness and not remote in time, be inquired into on cross-examination of the witness himself or on cross-examination of a witness who testifies to his character for truthfulness or untruthfulness. The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the privilege against self-incrimination when examined with respect to matters relating only to credibility.
- (3) Religious Beliefs. Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that, by reason of their nature, his credibility is impaired or enhanced.

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

- (1) Time Limit. Evidence of a conviction under this rule is not admissible if a period of more than 10 years has elapsed since the date of the release of the witness from confinement imposed for his most recent conviction, or the expiration of the period of his parole, probation, or sentence granted or imposed with respect to his most recent conviction, whichever is the later date.
- (2) Effect of Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is not admissible under this rule if:
 - (a) The conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a substantial showing of rehabilitation and the witness has not been convicted of a subsequent crime; or
 - (b) The conviction has been the subject of a pardon, annulment, or other equivalent procedure based on innocence.
- (3) Pendency of Appeal. The pendency of an appeal therefore does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

SECTION 3. Mode and Order of Interrogation and Presentation.

- ### **(A) Control by Judge. The Judge shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:**
- (1) Make the interrogation and presentation effective for the ascertainment of the truth;
 - (2) Avoid needless consumption of time; and
 - (3) Protect witnesses from harassment or undue embarrassment.

- (B) Scope of Cross-Examination. A witness may be cross-examined only with respect to matters testified to on direct examination.
- (C) Leading Questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop his or her testimony. Ordinarily, leading questions should be permitted on cross-examination. In civil cases, a party is entitled to call an adverse party or witness identified with him or her and interrogate by leading questions.

SECTION 4. Writing Used to Refresh Memory.

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

SECTION 5. Prior Statement of Witnesses.

- (A) Examining Witness Concerning Prior Statement. In examining a witness concerning a prior statement made by him or her, whether written or not, the statement need not be shown or its contents disclosed to him or her at that time, but on request, the same shall be shown or disclosed to opposing counsel.
- (B) Extrinsic Evidence of Prior Inconsistent Statement of Witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposing party is afforded an opportunity to interrogate him or her thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in Chapter 7, Section 4 of this Code.

SECTION 6. Calling and Interrogation of Witnesses by Judge.

- (A) Calling by Judge. The Judge may, on his or her own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.
- (B) Interrogation by Judge. The Judge may interrogate witnesses, whether called by himself/herself or a party; provided, however, that in trials before a jury, the Judge's questioning must be cautiously guarded so as not to constitute an implied comment.
- (C) Objections. Objections to the calling of witnesses by the Judge or to interrogation by him or her may be made at the time or at the next available opportunity when the jury is not present.

SECTION 7. Exclusion of Witnesses.

At the request of a party, the Judge shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and he or she may make the order of his or her own motion. This rule does not authorize exclusion of a party to the proceedings or a person whose presence is shown by a party to be essential to the presentation of his case.

CHAPTER VII. OPINIONS AND EXPERT TESTIMONY

SECTION 1. Testimony of Lay Witnesses.

If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are:

- (A) Rationally based on the perception of the witness; and
- (B) Helpful to a clear understanding of his or her testimony or the determination of a fact in issue.

SECTION 2. Testimony of Expert Witnesses.

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

SECTION 3. Expert Witnesses.

Any party may call an expert witness of their own selection and at their own expense.

SECTION 4. Court-Appointed Experts.

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

appointed shall advise the parties of his or her findings, if any; his or her deposition may be taken by any party; and he or she may be called to testify by the Judge or any party. He or she shall be subject to cross-examination by each party, including a party calling him or her as a witness.

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

CHAPTER VIII. HEARSAY

SECTION 1. General Rule.

Hearsay is not admissible except as otherwise provided by these rules of evidence.

SECTION 2. Definitions.

Hearsay shall be defined according to this section.

- (A) Statement. "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.
- (B) Declarant. "Declarant" means the person who made the statement.
- (C) Hearsay. "Hearsay" means a statement that:
- (1) The declarant does not make while testifying at the current trial or hearing; and
 - (2) A party offers in evidence to prove the truth of the matter asserted in the statement.

SECTION 3. Statements That Are Not Hearsay.

A statement that meets any of the following conditions is not hearsay:

- (A) Prior Inconsistent Statement. The declarant testifies and is subject to cross-examination about a prior statement, and the statement is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition.
- (B) Prior Consistent Statement. The declarant testifies and is subject to cross-examination about a prior statement, and the statement is consistent with the declarant's testimony and is offered
- (i) to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or
 - (ii) to rehabilitate the declarant's credibility as a witness when attacked on another ground.
- (C) Identification. The declarant testifies and is subject to cross-examination about a prior statement, and the statement identifies a person as someone the declarant perceived earlier.
- (D) Opposing Party's Statement. The statement is offered against an opposing party and:
- (1) Was made by the party in an individual or representative capacity;
 - (2) Is one the party manifested that it adopted or believed to be true;
 - (3) Was made by a person whom the party authorized to make a statement on the subject;
 - (4) Was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or
 - (5) Was made by the party's coconspirator during and in furtherance of the conspiracy.
- The statement must be considered but does not by itself establish the declarant's authority under subsection of this section; the existence or scope of the relationship under

subsection (D)(3) of this section; or the existence of the conspiracy or participation in it under subsection (D)(5) of this section.

SECTION 4. Hearsay Exceptions – Availability of Declarant Immaterial.

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

- (A) Present sense impression;
- (B) Excited utterance;
- (C) Then-existing mental, emotional, or physical condition;
- (D) Statements for purposes of medical diagnosis or treatment;
- (E) Recorded recollection;
- (F) Records of regularly conducted activity;
- (G) Absence of entry in records of regularly conducted activity;
- (H) Public records and reports;
- (I) Records of vital statistics;
- (J) Absence of public record or entry;
- (K) Records of religious organizations;
- (L) Marriage, baptismal, and similar certificates;
- (M) Family records;
- (N) Records of documents affecting an interest in property;
- (O) Statements in documents affecting an interest in property;
- (P) Statements in ancient documents (20 years old or more);
- (Q) Market reports, commercial publications;
- (R) Learned treatises;
- (S) Reputation concerning personal or family history;
- (T) Reputation concerning boundaries or general history;
- (U) Reputation as to character;
- (V) Judgment of previous conviction;
- (W) Judgment as to personal, family, or general history;
- (X) An admission of a party-opponent; and
- (Y) Statement used by a witness at a prior hearing subject to cross-examination.

SECTION 5. Hearsay Exceptions – Declarant Unavailable.

- (A) Definition of Unavailability. “Unavailability as a witness” includes a situation in which the declarant:
- (1) Is exempted by ruling of the Judge on the ground of privilege from testifying concerning the subject matter of his or her statement;
 - (2) Persists in refusing to testify concerning the subject matter of his or her statement despite an order of the Judge to do so;
 - (3) Testifies to a lack of memory of the subject matter of his or her statement;
 - (4) Is unable to be present or to testify at the hearing because of death or then-existing physical or mental illness or infirmity; or
 - (5) Is absent from the hearing and the proponent of his or her statement has been unable to procure his or her attendance by process or other reasonable means.

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

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

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

SECTION 6. Hearsay within Hearsay.

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

SECTION 7. Attacking and Supporting Credibility of Declarant.

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

CHAPTER IX. AUTHENTICATION AND IDENTIFICATION

SECTION 1. Foundations for Evidence.

All evidence must be authenticated or identified to the satisfaction of the Judge that the evidence is what it is claimed to be before it may be admitted.

SECTION 2. Best Evidence Rule.

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

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

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

- (2) Under the circumstances, it would be unfair to admit the duplicate in lieu of the original.
- (B) Original Not Required. The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible, if:
 - (1) Originals Lost or Destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith;
 - (2) Original Not Obtainable. No original can be obtained by any available judicial process or procedure;
 - (3) Original in Possession of Opponent. At a time when an original was under the control of the party against whom offered, he or she was put on notice, by the pleadings or otherwise, the contents would be a subject of proof at the hearing, and he or she does not produce the original at the hearing; or
 - (4) Collateral Matters. The writing, recording, or photograph is not closely related to a controlling issue.
- (C) Official Records. The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilation in any form, if otherwise admissible, may be proved by copy, certified as correct or testified to be correct by a witness who has compared it with the original. If a copy, which complies with the foregoing, cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.
- (D) Testimony Regarding Contents. Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by his written admission, without accounting for the nonproduction of the original.



Stillaguamish Tribe of Indians

PO Box 277 · 3322 236th St. NE
Arlington, WA 98223

BOARD OF DIRECTORS

Resolution 2019/118

APPROVING AND ADOPTING THE STILLAGUAMISH TRIBE OF INDIAN'S RULES OF EVIDENCE CODE AND AN AMENDMENT TO THE LAW AND ORDER CODE

WHEREAS, the Stillaguamish Tribe of Indians is a party to the Treaty of Point Elliott of January 22, 1855, 12 Stat. 927; and is a sovereign, Federally Recognized tribe, which the U.S. Government acknowledged on October 27, 1976; and

WHEREAS, the Stillaguamish Tribe of Indians Board of Directors is the duly constituted Governing Body of the Stillaguamish Tribe of Indians, in accordance with Articles III, IV and V of the Stillaguamish Constitution; and

WHEREAS, the Stillaguamish Tribe of Indians Board of Directors, acting in the best interest of their people is embarked on a course of self-determination; and

WHEREAS, the authority to protect the Tribe as a sovereign political entity is vested in the Stillaguamish Tribe of Indians Board of Directors ("Board of Directors" or "Board") under Article III and Article V, Sec. 1 of the Constitution, which Board has enumerated authority under Article V, Sec. 1(b) to administer the affairs and assets of the Tribe, develop appropriate contracts, leases, permits, loan documents, sale agreements and, under Article V, Sec. 1(h), to exercise other necessary powers to fulfill the Board's obligations, responsibilities and purposes as the governing body of the Tribe; and

WHEREAS, the Board of Directors, acting in the best interest of the Tribe, to protect and preserve the political integrity, economic security and health and welfare of the Tribe, now wishes to approve and adopt the Rules of Evidence Code and an amendment to the Law and Order Code to remove its sections regarding rules of evidence, which are both attached hereto and incorporated by reference; and

WHEREAS, the Board of Directors wishes to repeal and rescind all previous codes, resolutions, and sections thereof covering the same topics that are in conflict with this resolution and Rules of Evidence Code; now

THEREFORE BE IT RESOLVED that the Stillaguamish Tribe's Board of Directors does hereby approve and adopt the Rules of Evidence Code and an amendment to the Law and Order Code and repeals and rescinds all prior resolutions and codes in conflict with this resolution and Rules of Evidence Code.

BE IT FURTHER RESOLVED that this Resolution, Rules of Evidence Code, and Amendment to the Law and Order Code shall take effect and be in full force immediately upon the adoption of this Resolution.

CERTIFICATION

As Chairman and Secretary of the Stillaguamish Tribal Board of Directors, we hereby certify that the above resolution was duly adopted at a meeting of the Stillaguamish Tribal Board of Directors held on the 25th day of July, 2019 at which time a quorum was present and a vote of 5 for 0 opposed and 0 abstain was cast.


SHAWN YANITY, Chairman


PATRICIA PECOR, Secretary