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Chapter 01. Generally

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Sec. 02.01.001 Short Title

This Statute shall be known as the “Court Procedures Code”.

Sec. 02.01.002 Applicability

This Code applies to all actions in the Tribal Court. If this Code is silent on an issue or topic, the Court may look to the Tribal common law or customs, the written laws of other Tribes, Federal, or State law, in that order of priority, for assistance in resolving a case or applying this Code.

Sec. 02.01.003 Purpose and Construction

This Code shall be liberally construed to provide a just and equitable result for the parties and citizens of the Tlingit & Haida generally, and to secure the just, speedy, and inexpensive determination of every action.

If a procedure is not specifically discussed in this Code, the Court may adopt any suitable procedure consistent with the spirit of this Code or take any measures reasonably necessary to carry out and protect its jurisdiction.

Nothing in this Code shall prevent persons involved in a dispute from agreeing to submit their dispute to persons or organizations outside the Court for resolution and nothing herein shall remove the inherent authority of the Tlingit & Haida Court in a particular case from fashioning and controlling the scope and extent of the proceedings as it deems appropriate.

Nothing herein is intended to limit the inherent jurisdiction of the Tlingit & Haida.

Sec. 02.01.004 Relief Allowed

The Court may award all forms of relief necessary to the complete exercise of its jurisdiction, including but not limited to: (a) money damages; (b) injunctions; (c) declaration of rights; (d) sanctions; and (e) such other relief as is just and proper in a particular case.

Sec. 02.01.005 Statute of Limitations

- A.** No civil action may be commenced in the Tlingit & Haida Court unless the cause of action arose within a three-year (3) period preceding the filing of the complaint.
- B.** For Child Support actions, filed by Tlingit & Haida, there shall be no Statute of Limitations (in accordance with Sec. 10.03.008).

C. Criminal [reserved].

D. The time period shall be counted from the date on which the event giving rise to the complaint or petition was committed or when it was first known to the complaining party or should have been known through reasonable diligence.

Sec. 02.01.006 Survival of Actions

All causes of action by a person shall survive to the personal representative of that person if he should die or become unable to pursue the action before its completion.

Sec. 02.01.007 Sovereignty

Nothing in this Code shall be construed as a waiver of the sovereign immunity of the Tlingit & Haida or any of its subordinate boards or bodies.

Sec. 02.01.008 Savings Clause

If any provision of this code is declared to be invalid, the remaining provisions shall not be affected.

Chapter 02. Civil Procedures

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Sec. 02.02.001 Commencement of Civil Actions

A civil action is started by filing a written complaint or petition with the Court and paying any necessary filing fee established by the Clerk of the Court.

The complaint or petition shall be concise and direct and contain a statement of the events complained of or the right sought to be declared or enforced and a statement of what relief is sought. No technical wording is required. A party asserting claims in a complaint or petition may join as many claims as he has against the opposing party.

More than one person may join in bringing an action if their claims involve the same or similar transactions or occurrences and involve common questions of fact or law.

The complaint or petition shall be signed by the party bringing the action or the attorney or representative of the party bringing the action.

The Court Clerk may assist plaintiffs in putting their complaints in writing by supplying necessary forms.

Sec. 02.02.002 Summons

When a complaint or petition is filed, the Court Clerk shall issue a summons requiring the opposing party to appear and respond to the complaint or petition within twenty (20) days.

The summons shall give notice that failure to respond may result in a default judgment being entered against the respondent.

Sec. 02.02.003 Service of Process and Computation of Time

- A. The summons, together with a copy of the complaint or petition shall be served upon the respondent by proper authorities or by any person over the age of eighteen (18) who is not a party to the action. Service may be accomplished by personal service or by leaving a copy of the summons and complaint or petition with a person of suitable age and discretion residing in the residence of the person sought to be served.

Personal service on a business or corporation may be made upon a secretary, officer, registered agent, or owner of the business.

The person or officer affecting service of process shall file proof of such service with the Court.

- B. The Clerk of Court may also affect service of the Summons and a copy of the Complaint or Petition by certified mail, return receipt requested. In such a case, the return receipt shall be considered proof of service.
- C. When the respondent cannot be found within Tlingit & Haida region or within the State of Alaska and upon the filing of an affidavit of the plaintiff stating that the respondent is not a resident in the Tlingit & Haida region or in the State of Alaska or cannot be found therein and that attempts at personal service or service by certified mail have failed, service may be made by publication of notice of the lawsuit once a week for three weeks in a newspaper of general circulation or on the Court website.
- D. When a code subsection, ordinance, rule or court order requires an action to be taken within a specific number of days, the day of the event from which the time limit runs is not counted. The last day is counted unless the last day is a Saturday, Sunday or Tribal holiday, in which case the deadline is the next working day.
- E. If a notice is given by mail, the time limit shall begin on the third day after deposit in the mail. For example, if a notice is mailed on the first, the first day of the time limit will be the fourth.

Sec. 02.02.004 Long Arm Service

Any person, including a business or corporation, may be served outside the Tlingit & Haida region with the same force and effect as if service was made within the Tlingit & Haida region for any of the following regions:

- A. Transacted business or performed an act within the Tlingit & Haida region leading to a civil action;

- B. Contracts for services to be rendered for goods to be furnished within the Tlingit & Haida region;
- C. Contracts to insure a person, property, or a risk located within the Tlingit & Haida region at the time of contracting; or
- D. Owns, uses, or possesses any property involved in the case within the Tlingit & Haida region.
- E. Alleged to be a parent of or have a parental obligation to a child that is enrolled or is eligible to be enrolled as a citizen of the Tlingit & Haida.

Sec. 02.02.005 Answer

Within twenty (20) days after a respondent is served with the summons and a copy of the complaint or petition, the respondent must file a written answer with the Court Clerk responding to the complaint or petition. The answer shall set forth any affirmative defenses and may deny the complaint or petition in its entirety or may deny it in part.

The following defenses must be raised either in the answer or in a pre-trial motion or they are waived: lack of personal jurisdiction; (2) insufficient or improper service of process.

A Respondent may file a counterclaim asserting against a Petitioner any claim or set-off which arises out of the same event as the complaint was filed for. Provided, however, that no counterclaims may be asserted against the Tlingit & Haida or its subordinate boards or bodies.

Failure of a respondent to answer within twenty (20) days after a complaint or petition is served shall be a default and provide grounds for judgment against the respondent as asked for in the complaint or petition.

Sec. 02.02.006 Amendment of Pleadings

Parties may freely amend or supplement their pleadings at any time on such terms as are just, as long as the other party is given notice and an opportunity to respond to or oppose the amendment.

Sec. 02.02.007 Service and Signing of Pleadings and Papers

A copy of every pleading or paper filed with the Court after the original complaint or petition must be served to all of the other parties unless the Court orders otherwise.

Every written motion or request shall put into writing, unless done verbally before the Court while on the record, and shall be filed with the Court Clerk and a copy supplied to each of the parties.

Service upon the attorney or upon a party or authorized representative shall be made by delivering an electronic copy to them or by mailing it to him at the last known address or, if no address is known, filing with the Clerk of Court an affidavit of attempt to serve.

No service needs to be made on parties in default for failure to appear.

Every pleading, motion, or paper shall be signed by a party or the party's attorney or representative.

Sec. 02.02.008 Motions

Questions regarding procedure or issues of law regarding the rights of the parties which are raised during a lawsuit and which are neither covered by this Code nor settled by agreement of the parties may be presented to the court in a motion.

Motions shall be made in writing or presented verbally before the Court on the record. All motions which might eliminate the need for trial on all or some of the issues involved in a case shall be made at least ten (10) days before trial.

A moving party shall serve notice to other parties of any pre-trial motions at least ten (10) days before presenting it in Court, or such other time as the Court feels is necessary to provide the opposing party a fair opportunity to respond. When a motion is supported by a memorandum or affidavit, they shall be served on the other party with the motion.

The non-moving parties shall have ten (10) days to respond to the motion. If a response is filed by any party, the moving party shall then have ten (10) days to file a reply to the response(s). If no party responds to the motion the Court may rule on the motion after the time to respond has expired.

A Motion to Dismiss a civil action because the Court lacks subject matter jurisdiction or because the Petitioner has not stated a basis for relief may be made at any stage of the proceeding.

Sec. 02.02.009 Motion for Continuance

A motion for continuance of a hearing or trial will be granted only upon a showing of good cause. A motion for continuance may be made in writing or verbally at a hearing. The following shall be deemed good cause:

- A. Illness, with such verification as may be required by the Court;
- B. Unavoidable and/or unforeseen conflicts;
- C. For trial, lack of discovery, or discovery of new evidence requiring investigation; or
- D. Other causes, in the discretion of the Court.

Sec. 02.02.010 Order on Motion for Continuance

The Court shall make a written order granting or denying a written motion for a continuance.

Sec. 02.02.011 Preliminary Relief

- A. Temporary Restraining Order.** A Judge may issue a Temporary Restraining Order prohibiting or requiring particular action by another party without prior notice where the party seeking an order shows the Court orally or by affidavit that the party will suffer immediate loss or potential injury unless temporary relief is granted. A Temporary Restraining Order shall be valid for no more than thirty (30) days after notice of it is given to the party restrained. The Order may be renewed only one time and for no more than thirty (30) days.
- B. Preliminary Injunction.** Following notice to all parties and an opportunity to be heard in court or through affidavits, the Court may consider entering a Preliminary Injunction, which shall remain in effect until final judgment in the

case, requiring a party or parties to take or refrain from taking certain action while the case is pending. The request for a Preliminary Injunction may be granted if the party seeking it demonstrates a substantial likelihood that the party will prevail in the lawsuit and that the party will suffer immediate or irreparable loss or injury if the injunction is not issued. The Court may condition the issuance of the injunction upon the posting of a bond by the party seeking it, if necessary to protect the other party.

C. Prejudgment. At the commencement or during the course of a civil action, a party may by affidavit, apply to the Court for an order allowing the party to attach, garnish, re-levy, or take similar action against an adverse party's property where that is shown to be necessary to ensure that any judgment ultimately to be entered can be satisfied. The Court may place such conditions on the granting of such relief as the Court deems just and equitable, including a requirement that the party seeking the order post a bond to protect the other party against losses which might arise from the seizure of his property.

Sec. 02.02.012 Discovery

In order to facilitate fair trials and avoid unfair surprise in civil cases, it shall be the policy of the Court to allow a party to obtain information about the other party's case.

Methods of discovering and exchanging information may include submission of written questions to the other party, requesting admissions of facts, requesting witnesses' names, interviewing the other party's witnesses, and requesting the other party to produce documents or property for inspection.

Such requests for information shall be as clear and specific as possible.

A party who receives a request for information shall respond within ten (10) days. Failure to respond shall be ground for the other party to seek a Court order compelling a response.

If the parties disagree about whether information is required to be disclosed, the Court shall decide the dispute. If the Court deems the information should be disclosed, conditions may be placed on the release of information to protect confidential material.

Sec. 02.02.013 Pre-Trial Conference

In the interest of saving time, simplifying issues, and avoiding unnecessary litigation, the judge may schedule a pretrial conference with all parties in a civil action. The pretrial conference may, in the Court's discretion, be held in an informal setting and conducted without formal procedures. The parties and the judge should discuss issues the parties agree and disagree upon. The discussion shall have the purpose of identifying and disposing of issues that can be resolved without trial, identifying the issues of law remaining to be decided and, if necessary, limiting the testimony of witnesses and presentation of evidence. Any agreements reached shall be stated on the record or put in writing and signed by the parties.

Sec. 02.02.014 Orders to Show Cause

An order to show cause requiring a party to appear before the Court and explain why they

should not be held in Contempt of Court and subject to sanctions, or why the Court should not grant the relief requested, may be issued by the Court upon a showing in a sworn statement that the person to whom the order is to be directed has violated a valid existing order of the Court after he has had notice of it.

Sec. 02.02.015 Trials

Civil cases shall be tried by the Court without a jury. Procedure at trial shall be as follows unless otherwise agreed by the parties and the Court:

- A. The party bringing the action may make an opening statement summarizing what the party intends to prove, after which the respondent may make an opening statement summarizing a defense;
- B. The petitioner shall call witnesses or present other evidence in support of the case to the Court. The witnesses shall testify under oath and be subject to cross-examination by the respondent. Following cross-examination of witnesses, the petitioner shall have a second opportunity to question the witness about matters raised in cross examination. When the petitioner has presented all the witnesses and evidence, the Petitioner shall inform the Court that the Petitioner's case is completed;
- C. After the Petitioner's case has been presented, the respondent may move the Court to dismiss the case. If the Court, after considering the evidence in the light most favorable to the party bringing the action, finds that there is insufficient evidence to support the case, the action shall be dismissed;
- D. If the action is not dismissed, the respondent shall call witnesses or present evidence. A witness shall testify under oath and be subject to cross-examination by the petitioner, after which the respondent shall have a second opportunity to question the witness about matters brought up during cross examination;
- E. The Court, in its discretion, may allow the party bringing the action to present additional witnesses or evidence to rebut any new matters presented in the respondent's case, but no evidence or testimony which is merely cumulative or repetitive of the petitioner's case shall be allowed;
- F. The parties shall have the opportunity to present final remarks to the Court. Because the party bringing the action has the burden of proving the civil case; the party bringing the action will have an additional opportunity to rebut the opposing party's remarks;
- G. The Court shall consider all the evidence and announce a judgment or issue a written decision at a later time.

Sec. 02.02.016 Burden of Proof

The party making the claim has the burden to prove the case by a preponderance of the evidence. A party shall be considered to have met the burden of proof if most of the evidence presented tends to prove that party's claim.

Sec. 02.02.017 Evidence

This section governs the presentation of evidence in civil actions. In a particular case, the Court may require or the parties may agree to the application of Rules of Evidence, specifically rules established by Tlingit & Haida, or another Tribe or Tribal Court, or the Federal Rules of Evidence.

- A. Evidence presented in a civil action in the Tlingit & Haida Court must be related to the issues before the Court. When questioned by the judge or another party, the party who wishes to present certain evidence shall explain why the evidence is relevant;
- B. Where there is more than one kind of evidence about the same subject, the Court should allow the most reliable kind of evidence;
- C. The testimony of persons having personal knowledge, such as firsthand observation and direct knowledge of, or participation in a described event, shall be preferred and be afforded greater weight than the testimony of persons with secondhand knowledge of the event, which is considered hearsay;
- D. Copies of written records, photographs, and other documentary evidence may be presented as long as they are reliably identified by the party offering them, or if they are certified, as true and accurate copies by a reliable source.

Sec. 02.02.018 Subpoenas

A Judge or the Clerk of the Court may issue a subpoena to compel the attendance at trial of witnesses to give testimony or to command the person to whom it is directed to produce evidence.

The Court may quash or modify a subpoena, at any time before the time specified on its face for compliance, for good cause shown and the Court may condition the issuance of a subpoena upon payment of a reasonable bond to offset the affected party's costs of producing the evidence sought.

Subpoenas shall be served in the same manner as a summons and complaint or petition, except that no subpoena shall be served by publication.

Failure to comply with a subpoena may be punishable as contempt of court.

Sec. 02.02.019 Judgments

The judgment shall state any relief granted to the prevailing party, be reduced to writing explaining the basis of the decision and become final when entered in the record by the Clerk of the Court.

Sec. 02.02.020 Default Judgments

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

Sec. 02.02.021 Reconsideration

No later than ten (10) days after a judgment is final, a party may ask the judge to reconsider

the judgment. The matter may be decided based upon writings without a hearing. The judge may grant reconsideration and change the judgment if one of the following is found to be true:

- A. The original judgment was reached as a result of fraud or mistake;
- B. There is newly discovered evidence which could have affected the outcome of the case and which could not have been discovered with reasonable effort at the time of trial; or
- C. The Court did not have jurisdiction over the subject matter.

Sec. 02.02.022 Enforcement of Judgments

If a party fails to satisfy any money judgment of the Court, not less than ten (10) days after entry of the judgment the Court may issue an order allowing the judgment to be executed on and satisfied out of property owned by the judgment debtor upon the filing of an application setting forth:

- A. The date of entry of the judgment, the amount of the judgment, the amount paid on the judgment, the amount currently owing the judgment including interest, the name of the Court, the case number, and the date of registration of the judgment if it is a foreign judgment;
- B. The name of the requesting party and his address or the address of his attorney or authorized representative;
- C. A statement of the type of execution sought, the name and address of the person on whom it is to be served, and a description of the property to be seized.

Sec. 02.02.023 Relief from Judgment or Order.

- A. Clerical Error. Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party after such notice as the Court may order.
- B. Mistake, Inadvertence, Excusable Neglect, or New Evidence. On motion and upon such terms as are just, but no later than one year after the judgment or order at issue has been entered, the Court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons:
 - 1. Mistakes, inadvertence, surprise, excusable neglect, or irregularity in obtaining a judgment or order;
 - 2. Erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record; or
 - 3. Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial.
 - 4. Void Judgments, Fraud, or Death. On motion and upon such terms as are just, and within a reasonable time after the judgment or order at issue has been entered, the Court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons:

- a. The judgment is void;
- b. The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated;
- c. Unavoidable casualty or misfortune preventing the party from prosecuting or defending;
- d. Fraud;
- e. Death of one of the parties before judgment in the action; or
- f. Any other reason justifying relief from the operation of the judgment.

Sec. 02.02.024 Types of Execution

A Court order allowing execution of a judgment shall consist of two types:

- A. Attachment shall be used to seize property in possession of a judgment debtor;
- B. Garnishment shall be used to seize property of the judgment debtor that is in the hands of another person.

Orders of attachment or garnishment shall be served in the same manner as the summons and complaint or petition, and proof of service shall be filed with the Court.

Sec. 02.02.025 Exemptions

In the execution of any judgment the following shall be exempt from execution to satisfy a judgment;

- A. All wearing apparel of every person in the family but not to exceed \$500 value in furs, jewelry, beadwork, or personal ornaments for any one person;
- B. Items of bona fide religious or cultural significance;
- C. Fishing equipment, gear, and fishing boats of reasonable value;
- D. A minimum number of tools, instruments, and materials sufficient to allow a judgment debtor to carry on his regular employment or trade;
- E. Provisions and fuel for the comfortable maintenance of the home for three (3) months' time;
- F. Land or interests in land held in trust or subject to restrictions against alienation imposed by the United States or other land which is the judgment debtor's principal residence;
- G. Sixty-five (65%) of a judgment debtor's disposable wages (gross wages minus deduction required by law, but not including voluntary payroll deductions), salary, or other compensation regularly paid to a judgment debtor for personal services each pay period. An exception may apply if the judgment debtor's obligations are in arrears, in which case no less than fifty-five percent (55%) of debtor's disposable wages may apply.
- H. An automobile of reasonable value necessary for personal or family use.

Provided, that none of the above property shall be exempt from execution for any judgment awarded because of the debtor's failure to pay all or part of the purchase price for that property, and, with the exception of Indian trust land, none of the above property shall be exempt from execution if it was specifically pledged as collateral or security to the person awarded the judgment.

Sec. 02.02.026 Sale Procedure

When property has been seized or otherwise delivered to the Court in execution of a judgment, the Court shall give the judgment debtor written notice that:

- A.** The property is in the possession of the Court pursuant to a Court Order;
- B.** The property will be sold at public auction on a date specified in the notice and the proceeds applied to the judgment
- C.** The judgment debtor has the right to contest the execution order by filing a written opposition with the Court and requesting a hearing;
- D.** At any time prior to the sale, the judgment debtor has the right to satisfy the judgment and obtain the return of the property.

Sec. 02.02.027 Enforcement of Foreign Judgments

Execution on a judgment from a Court other than the Tlingit & Haida Court shall be allowed in accordance with this code as long as it has been registered with the Court by filing a certified or verifiable true copy of the judgment with the Court Clerk, paying the required filing fee established by the clerk, and serving a copy on the judgment debtor. Before giving effect to a foreign judgment the court may conduct a preliminary inquiry regarding compliance with the Full Faith and Credit Act (FFA), 28 U.S.C § 1738 (1994).

Chapter ____ Criminal Procedures

[RESERVED]

Chapter ____ Specialty Court Procedures

[RESERVED]

Chapter 03. Appellate Procedures

Sec. 02.03.001 **Generally**

Sec. 02.03.001 **Generally**

The Chief Justice or justices of the Supreme, or Appellate Courts, shall hear all appeals of Trial Court or subordinate Court decisions on the record.

- A.** The Supreme Court matters shall be heard by the Chief Justice and such number of Justices as the Chief Justice shall determine necessary.
- B.** The Supreme Court shall have jurisdiction of appeals from all final decisions on the record of judges of the CCTHITA Trial Court or subordinate Courts.
- C.** In appeals brought before it, the Supreme Court shall determine whether the Court's factual findings are supported by substantial evidence and whether its conclusions are in accordance with law. The Supreme Court shall disregard any error or defect in proceedings which does not affect the substantial rights of the parties. The Court shall consider the record of the Trial Court and such briefs and oral arguments as the Supreme Court may allow.
- D.** The following procedures shall apply in addition to any applicable rules of the Appellate Court:
 - 1.** An aggrieved party may file a notice of appeal together with a filing fee with the Clerk of the Court within thirty days after the date of entry of the judgment or order appealed from or after the date of granting, continuing, modifying, refusing, or dissolving an injunction or refusing to dissolve or modify an injunction.
 - 2.** A statement of reasons shall be filed by the appellant in every appeal, accompanied by supporting documents that were part of the Court record. If the statement of reasons is not filed with the notice of appeal it shall be filed with the Clerk of the Tribal Court within thirty days after filing the notice of appeal. Any other party to the Tribal Court proceedings may file a response together with supporting documents that were part of the Tribal Court record within thirty days after receipt of the appellant's statement of reasons. The appellant may file a reply brief within thirty days after receipt of a response.
 - 3.** Upon completion of the briefing, the Supreme Court shall schedule such oral arguments and hearings as it deems appropriate.
 - 4.** The decision of the Appellate Court shall be produced as a written order and shall be issued no later than 30 calendar days following the final hearing.

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5. If the Appellate Court determines a petition is without merit or the Court lacks jurisdiction the Court shall produce the written order no later than 30 days from the date the Appellate petition was filed with the Court.


ADOPTED this 17th day of February 2021, by the Executive Council of the Central Council of Tlingit & Haida Indian Tribes of Alaska, by a vote of 5 yeas, 0 nays, 0 abstentions and 1 absence.

CERTIFY



President Richard J. Peterson

ATTEST



Tribal Secretary Ralph Wolfe