

TITLE 3: CIVIL ACTIONS

CHAPTER 1 Jurisdiction

§ 3.1.01 Jurisdiction - Generally

The Makah Tribal Court shall have jurisdiction of all suits involving persons whose residence is within the jurisdictional territory defined by this Code and all other suits in which a party has been deemed to have consented to submission to the jurisdiction of the Tribal Court under any Tribal ordinance, or in which events giving rise to the action occurred within the territory so defined.

CHAPTER 2 Filing of Complaints

§ 3.2.01 Complaints - Signature

A complaint filed in the Tribal Court shall state the nature and facts from which the action arises and the remedy requested, shall bear the signature of the complainant and shall be witnessed by a duly qualified judge of the Tribal Court, the Court Clerk or licensed notary public.

§ 3.2.02 Limitation on Filing of Complaint

No complaint shall be filed in a civil action unless the events shall have occurred within a 3-year period prior to the date of the complaint.

§3.2.03 Filing Fees

In all civil suits the complainant shall be required to pay to the Court a filing fee as established by the Makah Tribal Council upon recommendation of the Tribal Court. Such fee may be waived by the Tribal Court upon a showing of good cause. No fee shall be charged if the Tribe is the complainant.

CHAPTER 3

Notification

§ 3.3.01 Notice and Service

Civil actions may be instituted either by voluntary appearance and agreement of the parties or by service upon the defendant of a true copy of the filed complaint and notice either personally by a person not a party in the action or as provided herein. The notice shall be attached to the copy of the complaint, and cite the defendant to be and appear before the Court at the time and place therein specified, which shall not be less than 20 days from the date of serving of the complaint and notice. Such service may be made by means of certified mail, return receipt requested. Evidence of the receipt of the notice shall be kept as part of the record in the case.

§ 3.3.02 Publication

Upon a showing by the complainant to the Tribal Court that diligent efforts were made to serve the complaint and notice on the defendant and that service could not be made for sufficient reasons, the judge may allow service to be made by posting copies of the notice and complaint in two public places on the Reservation for three weeks and by publication of a copy of the notice and complaint once a week for three consecutive weeks in a newspaper of general circulation in the vicinity of the Makah Indian Reservation. In such case, the return date shall be not less than 30 days from the date of first publication.

CHAPTER 4

Civil Procedure

§ 3.4.01 Standard of Proof

The complainant in a civil case shall have the burden of proving his case by the greater weight of the evidence.

§ 3.4.02 Jury

Civil actions, other than appeals, shall be tried by a jury upon written request filed by any party at least seven (7) days before the trial date, and upon such party posting a fee or other security in an amount to be set by the Makah Tribal Council upon recommendation of the Tribal Court to cover costs, disbursements and jury fees in the case. Such fee may be waived by the Tribal Court upon a showing of good cause.

§ 3.4.03 Applicable Law

In all civil cases the Makah Tribal Court shall apply any laws of the United States that may be applicable, any authorized regulations of the Interior Department, and any laws, resolutions, ordinances, customs or codes of the Tribe not prohibited by such federal laws.

§ 3.4.04 Customs

Where any doubt arises as to the customs and usages of the Tribe, the Court may request advice of counselors familiar with these customs and usages.

§ 3.4.05 Other Law

As to any matters which are not covered by the traditional customs and usages of the Tribe or by by-laws, codes, ordinances and resolutions of the Tribal Council or by applicable federal laws and regulations, the Reservation Court may be guided by common law as developed by state and federal courts.

§ 3.4.06 Evidence

The Court shall not be bound by common law rules of evidence, but shall use its own discretion as to what evidence it deems necessary and relevant to the action.

**CHAPTER 5
Judgments**

§ 3.5.01 Verdict· Jury

When all, or at least five, of the six jury members agree on a verdict, they shall return the verdict to the judge in open court.

§ 3.5.02 Verdict· Judge

In cases tried without a jury, the Court shall enter its verdict in open court at the end of the presentation of all testimony and evidence, or the Court may take the case under advisement and reset the matter for the entry of a verdict at a later time, provided that such verdict shall be entered no later than thirty (30) days after the trial.

§ 3.5.03 Judgments. Generally

In all civil cases, judgment shall consist of an order of the Court awarding money damages to be paid to the injured party, or directing the surrender of certain property to the injured party, or the performance of some other act for the benefit of the injured party.

§ 3.5.04 Judgments. Compensation

Where the injury inflicted was the result of carelessness of the defendant, the judgment shall fairly compensate the injured party for the loss he has suffered or shall follow any rules of compensation set out in any ordinance or section of this Code pursuant to which the action is brought.

§ 3.5.05 Punitive Damages

Where the injury was deliberately inflicted, the judgment may award punitive damages to the prevailing party.

§ 3.5.06 Costs in Civil Actions

The Court may assess the accruing costs of the case against the party or parties against whom judgment was given. Such costs shall consist of the expenses of voluntary witnesses for which either party may be responsible under this Code, and the fees of jurors in those cases where a jury is had, and any other further incidental expenses or fees connected with the procedure required by this Code before the Court as the Court may direct.

§ 3.5.07 Payment of Judgments. Tribal Members

Whenever the Tribal Court shall have ordered payment of money damages to an injured party and the losing party refuses to make such payment within the time set for payment by the Court, and when the losing party has sufficient funds to his credit at the agency office to pay all or part of such judgment, the Superintendent shall certify to the Secretary of the Interior the record of the case and the amount of available funds. If the Secretary shall so direct, the disbursing agent shall pay over to the injured party the amount of the judgment or such lesser amount as may be specified by the Secretary from the account of the delinquent party.

§ 3.5.08 Judgments and Decedents' Estates

A judgment shall be considered a lawful debt in all proceedings held by the Department of the Interior or by the Court to distribute decedents' estates.

CHAPTER 6

Execution

§ 3.6.01 Procedure

If, after the time for appeal has run, it is made to appear to the Court that the judgment debtor has not paid the judgment amount in full or is not making payments in a manner agreed to by the parties, the Court shall order the judgment debtor to appear before it and answer under oath regarding all his personal property. The Court shall then determine what property of the judgment debtor is available for execution and order the Tribal Police to seize as much of the property as reasonably appears necessary to pay the judgment. Failure of the judgment debtor to appear may be deemed a contempt of court and the Court may proceed without such appearance.

§ 3.6.02 Sale of Property

Sale of the seized property shall be at public auction conducted by the Tribal Police after giving at least ten days public notice posted in at least three public places on the Reservation. Property shall be sold in a commercially reasonable manner to the highest bidder who shall make payment for the property at the time of the sale. If the sale results in a higher price than the debt plus expenses of the sale, the debtor shall be given the surplus. The judgment shall continue in effect in the amount not recovered at the sale plus expenses of the sale.

§ 3.6.03 Exemption From Execution

The Court shall only order seizure and sale of such property of the judgment debtor the loss of which will not impose an immediate and substantial hardship on the immediate family of the judgment debtor. Only property of the judgment debtor himself may be subject to execution and not property of his family.

§ 3.6.04 Redemption From Sale

At any time within six months after the sale under this Code, the judgment debtor may redeem his property from the purchaser thereof by paying the amount such purchaser paid for the property plus eight per cent (8%) interest, plus any expenses actually incurred by the purchaser, such as taxes and insurance, to maintain the property.

CHAPTER 7

Judgments of Other Courts

§ 3.7.01 Application

Any person may apply to the Court by written application for an order accepting a civil judgment from another tribal court, a state or federal court, or a decision or award in arbitration as a judgment of the Makah Tribal Court. [Revised 4/17/90, Resolution No. 73-90.]

§ 3.7.02 Review by Court

The Court shall review the application within five (5) days of its filing. The Court shall then decide whether or not to enter the judgment of the other court or arbitration award or decision as a Makah Tribal Court judgment. The Court shall have full and total discretion regarding this matter and shall be guided by the best interests of the Makah Indian Tribe and its Reservation. [Revised 4/17/90, Resolution No. 73-90.]

§ 3.7.03 Execution of Judgment

Upon the entry of the order declaring the other court's judgment or award or decision in arbitration to be a judgment of the Makah Tribal Court, the provisions of this Code regarding execution of civil judgments shall be applied. [Revised 4/17/90, Resolution No. 73-90.]

CHAPTER 8

Civil Fines and Forfeitures

§ 3.8.01 Findings

Law breakers are using devices, items, substances, things, and vehicles on the Reservation in violation of federal law, this Code, and other laws and ordinances of the Tribe, and are taking, possessing, and using the natural resources of the Reservation in violation of federal law and this Code. These activities are interfering with law enforcement and endangering the peace, safety, morals, and general welfare of all persons on the Reservation. It

is the purpose of this Chapter to provide for a procedure for the assessment of civil fines and forfeiture of such things.

§ 3.8.02 Purpose

These procedures are intended to be remedial and not punitive; they are to compensate the Tribe for the damage done to the peace, security, welfare, and natural resources of the Makah Reservation and for the actions taken by the Makah Tribe to protect the Reservation and its resources and people. These civil procedures are also intended to persuade individuals to obey the ordinances and regulations of the Makah Tribe; they are not meant as a means to punish persons for violating the ordinances and regulations.

§ 3.8.03 Applicability

The provisions of this Chapter shall not apply to civil fines imposed for traffic infractions under Title 7 of this Code or to civil fines or forfeitures under other tribal law where the provisions of this Chapter are inconsistent or in conflict with the provisions of such other tribal law.

§ 3.8.04 Civil Action

When any provision of this Code or any applicable ordinance or regulation of the Tribe shall provide for assessment of a civil fine against any person, association, partnership, company, or corporation for the violation of such provision, Tribal ordinance, or regulation, the Tribe shall proceed against such individual or group by civil complaint under this Title. The Tribe in such action shall have the burden of showing by a preponderance of the evidence that such person or group violated the applicable ordinance or regulation.

§ 3.8.05 Civil Fine

If it is determined in the civil action that the defendant violated the applicable provision of this Code or ordinance or regulation, the Court shall impose a civil fine of not less than \$10.00 nor more than \$500.00 against the defendant. The civil fine assessed shall become a judgment against the defendant and an obligation of the defendant to the Tribe. Such fine shall become a lien upon any available real, personal, or other property of the defendant located within the boundaries of the Reservation or within the jurisdiction of the Tribal Court. When necessary, the Tribe may bring suit in any court to reach property of the defendant located outside the boundaries of the Reservation or outside the jurisdiction of the Tribal Court.

§ 3.8.06 Forfeiture, Generally

Property shall be forfeited to the Tribe pursuant to this Chapter when it is found to be "contraband." Contraband is defined as Property which was or is:

- a. illegal to possess, under federal or Tribal law, such as Controlled Substances or Drug Paraphernalia;
- b. being used to violate or in violation of any provision of this Code or ordinance or regulation of the Tribe, or
- c. obtained by violation of any provision of this Code or ordinance or regulation of the Tribe.

§ 3.8.07 Search and Seizure of Contraband with Warrant

If upon presentation by a Tribal Prosecutor or police officer of a written or oral complaint based upon probable cause, supported by oath or affirmation, the Judge concludes that it is probable that contraband as defined in this Chapter is Possessed or used on the Reservation, the Judge shall issue a warrant directed to any police officer commanding him to search for and seize any such contraband, to keep it safely, and to make a return of the warrant within three days showing all acts and things done thereunder, with a specification of all contraband seized and the name of the person in whose possession it was found, if any. No warrant for search and seizure of contraband shall be valid unless it contains: a description of the property to be seized; a description of the persons, things, and places to be searched; and bears the signature of a Judge of the Tribal Court.

§ 3.8.08 Search and Seizure of Contraband Without Warrant

A police officer may search and seize contraband as defined in this Chapter without a warrant in circumstances under which warrantless searches and seizures are permitted by federal law. The officer shall keep such contraband safely and report the seizure to a Judge of the Tribal Court within three days after seizure, showing all acts and things done, with a specification of all contraband seized and the name of the person in whose possession it was found, if any.

§ 3.8.09 Notice, Hearing, Disposal of Contraband

A. Property Seized Incident to Arrest

If the property seized under the provisions of this Chapter is seized incident to a lawful arrest for a violation of this Code, the civil forfeiture determination must still be made in a separate civil proceeding. The procedure in Subsection (b) should be used, but the 10-day period shall begin running on:

- 1 the day the criminal trial concludes, if there is a trial;

- 2 the day the defendant enters a plea of guilty, if he enters a plea of guilty without trial;
- 3 the day the Tribe decides not prosecute or drops the prosecution, or the Court dismisses the case with prejudice; or
- 4 if none of the above apply, the day any other event occurs which makes it clear that the prosecution has concluded or will not proceed.

Property held as evidence in a criminal prosecution may be held until the time the prosecution has concluded or has been dismissed. Any evidence from the criminal prosecution, including a plea of guilty or a conviction, may be used as evidence in the civil forfeiture proceeding at the Judge's discretion.

B. Property Seized without an Arrest

If the property seized under the provisions of this Chapter is seized without a lawful arrest for violation of this Code, then a hearing before the Tribal Court shall be held within 10 days after such seizure. The Tribal Prosecutor shall provide written notice of the hearing at least five days before the hearing to the person in whose possession the property was found, if any, and the owner of the property, if known. If the owner or possessor of the property is not known, then the notice of hearing shall be posted for 10 days in a public manner on the premises from which the property was seized. At the hearing the Judge shall hear the evidence presented and shall determine if a preponderance of the evidence shows that the property is contraband.

C. Disposition of the Property

If it is determined under Subsection (b) that the property is contraband, the Judge shall order the contraband to be destroyed immediately or disposed of and all proceeds therefrom shall be the sole property of the Tribe. If the property may be adapted to any lawful use, it shall be forfeited to the Tribe for its use. If the Court does not find that the property is contraband, it shall order the property returned to the owner.

§ 3.8.10 Innocent Owner Defense

If the contraband has a lawful use and the owner of the property claims that he did not know that the property was being used by another for an unlawful purpose, the Court shall consider the claims of the owner and determine if justice permits that the owner suffer the loss of his property. If the Court determines that the owner did not know that the property was being used by another for an unlawful purpose, the Court may order the property returned to the owner.

CHAPTER 8A

Civil Actions Related to Drug Offenses

§ 3.8A.01 Civil Cause of Action

A. Findings

The Makah Tribal Council finds that the presence of illegal, or illegally used or acquired, Controlled Substances presents a serious threat to the health, safety, and welfare of the Makah Tribe and the reservation community. The Council finds that these threats have a real effect on the prosperity and stability of the Tribe and its community. The Council also finds that those whose who are harmed by the illegal manufacture, sale, possession, or use of Controlled Substances are entitled to relief and compensation for the harms they have suffered.

B. Civil Cause of Action Created

There is hereby created a civil cause of action for money damages for injury to property, injury to a person, and death of a person as a result of any act within the Makah Reservation that violates § 5.6.06 Subsection (b), (c), (k), or (l). In an action brought under this Section the plaintiff shall be entitled to money damages. An action may be brought by:

- 1 any person who suffers injury as a result of the violation;
- 2 the heirs of a deceased person who died as a result of the violation;
- 3 the Makah Tribe on behalf of the injured person at his request, or if he died as a result of the injury his heirs at their request, provided that the injured person is a member of the Tribe; or
- 4 the Makah Tribe on its own behalf for injury to its property.

C. Purpose and Construction

The purpose of this Section is to provide broad civil remedies for injuries or death arising from violations of Section 5.6.06 Subsection (b), (c), (k), or (l). The individual and collective Sections of this chapter shall be construed liberally in order to effectuate its purpose. "He," "she," or other gender pronouns are gender neutral and cover both male and female persons.

D. Procedure; Standard of Proof; Evidence

The action shall be commenced and conducted as a civil action under this Title, except that where other Sections of the Title conflict with this Section, this Section shall apply. The standard of proof required to establish liability in an action brought under this Section shall be a preponderance of the evidence. If the defendant has been subject to criminal prosecution for the violation of § 5.6.06 that is the basis of the civil action, the Court may at its discretion choose to admit the evidence from the prosecution.

E. Criminal Prosecution Not Required

An action may be taken under this Section even if the defendant was not criminally prosecuted for the same alleged violation of § 5.6.06 Subsection (b), (c), (k), or (l).

F. Criminal Conviction Not Required

An action may be taken under this Section even if the defendant was found not guilty in a criminal prosecution for the same alleged violation of § 5.6.06 Subsection (b), (c), (k), or (l).

§ 3.8A.02 Civil Banishment Action

A. Findings

The Makah Tribal Council finds that the presence of illegal, or illegally used or acquired, Controlled Substances presents a serious threat to the health, safety, and welfare of the Makah Tribe and the reservation community. The Council finds that these threats have a real effect on the prosperity and stability of the Tribe and its community. The Council further finds that in the customs and traditions of the Makah, members of the Tribe can be banished if they committed an offense that jeopardized the health, welfare, and safety of the Tribe.

B. Civil Banishment Action Created

Any member of the Tribe who violates Section 5.6.06 Subsection (b), (c), (j), or (l) presents a serious threat to the health, safety, and welfare of the Makah Indian Tribe and the reservation community. Accordingly, there is hereby created a civil cause of action for banishment of any member of the Tribe who violates Section 5.6.06 Subsection (b), (c), (j), or (l). A banishment action may be brought only in the Makah Tribal Court.

Banishment is, and has historically been, a political action taken by the Tribe to protect itself and the Reservation community from dangerous and harmful persons. It is not intended to

be punishment for criminal acts. This Civil Banishment Action was created in part to standardize the procedure and provide the defendant with sufficient process.

C. Purpose and Construction

The purpose of this Section is to provide a broad and powerful protective remedy from the dangers of the manufacture, dealing, and abuse of Controlled Substances on the Reservation, particularly violations of Section 5.6.06 Subsections (b), (c), (j), and (l). The individual and collective Sections of this chapter shall be construed liberally in order to effectuate its purpose. "He," "she," or other gender pronouns are gender neutral and cover both male and female persons.

D. Commencement of a Banishment Action

A banishment action under this Section may be brought only on behalf of the Makah Tribal Council upon the affirmative vote of a majority of the Council. The action shall be commenced and conducted as any other civil action under this Title, except that where other Sections of this Title conflict with this Section, this Section will apply. Trial by jury shall not be available in a banishment action.

E. Conditional and Contingent Banishment Orders

Upon a finding, by a preponderance of the evidence, that the defendant in the action has violated Section 5.6.06 Subsection (b), (c), (j), or (l) the Court may issue either a conditional or contingent banishment order. Either type of banishment order shall contain provisions allowing for the termination of the order upon petition by the person subject to the order. The provisions of the order shall be relevant to the rehabilitation of the person subject to the order so that he or she no longer poses a threat to the health, safety, and welfare of the Makah Indian Tribe or the reservation community.

F. Conditional Banishment Order

A conditional order of banishment shall exclude a person from the Makah Indian Reservation upon entry of the order, but shall allow the person to regain access to the Reservation by fulfilling requirements imposed by the Court. A conditional order of banishment may also allow entry onto the Reservation for specific purposes, including alcohol or drug dependency treatment or to attend the funerals of immediate family members. The banished person shall not enter the Reservation, except for any limited purposes permitted in the order, until the Court has lifted the banishment. When the person believes that he has satisfied all of the conditions of the order, he may petition the Court to lift the banishment. Upon petition, the Court shall determine if the conditions of the order have been satisfied; it may, but need not, hold a hearing.

G. Contingent Banishment Order

Under a contingent order of banishment, the person is not banished from the Reservation at the time the order is issued; rather the banishment takes immediate effect if the person fails to fulfill the requirements imposed by the order. If the Tribe believes that the person failed to fulfill the requirements imposed by the order, the Court shall hold a hearing to determine if the requirements of the order have not been met. If the Court finds that the person failed to meet the requirements of the order, the Court shall issue a conditional banishment order.

Until all of the requirements imposed by the contingent banishment order have been met, the order of banishment may: (1) place immediate restrictions on the person's access to certain areas of the Reservation and/or the person's ability to participate in certain activities conducted on the Reservation; and (2) impose whatever other conditions the Court deems appropriate.

H. Removal of Persons Subject to a Banishment Order

If any person who has been banished under this Section is found within the Makah Indian Reservation:

- 1 the Makah Tribal Police shall immediately remove the person from the Reservation; and
- 2 the person may be charged with violation of both federal and tribal trespass laws.

I. Criminal Prosecution Not Required

An action may be taken under this Section even if the defendant was not criminally prosecuted for the same alleged violation of § 5.6.06 Subsection (b), (c), (j), or (l).

J. Criminal Conviction Not Required

An action may be taken under this Section even if the defendant was found not guilty in a criminal prosecution for the same alleged violation of § 5.6.06 Subsection (b), (c), (j), or (l).

K. Exclusion and Other Banishment Authority Not Affected

Nothing in this Section shall affect: (1) the authority of the Makah Tribal Council to exclude or banish any person from the Makah Indian Reservation in accordance with the Treaty of Neah Bay and the Constitution and By-Laws of the Tribe; and (2) the authority of the Makah Tribal Court to order the exclusion or banishment of any person from the Reservation under

another Section of this code that specifically provides for such a remedy, or in accordance with a duly enacted resolution or ordinance of the Makah Tribal Council.

CHAPTER 9

Long Arm Jurisdiction

§ 3.9.01 Acts That Are The Basis for Tribal Court Jurisdiction and Extraterritorial Service of Process

Any person, whether or not a member of the Makah Indian Tribe, who in person or through the an agent does any of the following enumerated acts, submits said person, and, if an individual, his personal representative, to the jurisdiction of the Tribal Court, and such act is the basis for Tribal Court jurisdiction and extraterritorial service of process as to any claim or cause of action arising from the doing of any said acts:

- (a) Transacting any business on the Reservation;
- (b) Contracting to supply goods or services on the Reservation or entering contracts involving warranties to be performed on the Reservation;
- (c) Contracting to insure any person, property or risk located on the Reservation at the time of contracting;
- (d) Causing a tortious injury or damage on the Reservation by an act or omission committed on the Reservation;
- (e) Causing tortious injury or damage on the Reservation by an act or omission committed outside the Reservation if such person regularly engages in a persistent course of conduct or derives substantial revenue from goods used or consumed or services rendered on the Reservation;
- (f) Owning, leasing, using, possessing or holding any interest in any property, real or personal, located on the Reservation.

§ 3.9.02 Service or Process Outside the Reservation

Service of process upon any person who is subject to the jurisdiction of the Tribal Court under this Chapter may be made by serving such person outside the Reservation in the same manner and with the same force and effect as though such person were served on the Reservation under the provisions of Chapter 3.3 of this Code, as now or hereafter amended.

§ 3.9.03 Causes of Action to Which This Chapter Applies

Only those causes, of action arising from the acts enumerated herein may be asserted against a defendant in an action in which service of process and jurisdiction over him is based upon this Chapter.

§ 3.9.04 Affidavit or Service

Service outside the Reservation shall be valid only when an affidavit is made and filed to the effect that service cannot be made on the Reservation.

§ 3.9.05 Other Means or Service of Process Not Affected

Nothing contained herein shall limit or affect the right to serve any process in any other manner now or hereafter provided by applicable law.

CHAPTER 10 Injunctive Relief

§ 3.10.01 Definitions

As used in this Chapter, unless the context clearly indicates otherwise:

- (a) "Injunction" shall be intended to mean a Court order in a civil case requiring the party to whom it is directed to do or refrain from doing a particular thing, either for a limited period or perpetually. A "Final Injunction" may be granted when the rights of the parties are finally determined by the Court at the conclusion of the trial, as distinguished from a "Preliminary Injunction" or a "Temporary Restraining Order";
- (b) "Preliminary Injunction" shall be intended to mean an injunction issued after five (5) days written notice and an opportunity to be heard has been afforded the adverse party, but before the conclusion of the trial. A preliminary injunction expires at the conclusion of the trial;
- (c) "Temporary Restraining Order" shall be intended to mean a court order granted without formal notice being given to the adverse party, and is effective only for a very short period of time, or until a hearing can be had to determine the propriety of granting a preliminary injunction.

§ 3.10.02 Form and Scope of Injunction or Restraining Order - Service

Every injunction, preliminary injunction or restraining order shall be specific in terms, shall describe in reasonable detail, and not by reference to another document, the act or acts sought to be restrained, and is binding only upon the parties to the action, their officers, agents, servants, employees, spokesmen and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

§ 3.10.03 Preliminary Injunctions - Notice - Grounds - Duration

- (a) Notice. No preliminary injunction shall be issued without five (5) days written notice and an opportunity to be heard being accorded to the adverse party.
- (b) Grounds. A preliminary injunction may be granted when it appears from the pleadings or from the sworn testimony or other evidence given in court that:
 - (1) The party is entitled to the relief demanded, and such relief, or any part thereof, consists in requiring the defendant to do or refrain from doing a particular thing;
 - (2) The commission or continuance of some act or omission during the litigation would produce great or irreparable injury to the party seeking the preliminary injunction; or
 - (3) Either party is doing or threatening, or is about to do, or is procuring or suffering to be done, some act or omission in violation of the rights of another party respecting the subject matter of the action, and tending to render the judgment ineffectual.

§ 3.10.04 Temporary Restraining Orders - Sworn Application - Requirements - Contents and Filing • Duration

- (a) Sworn Application. No temporary restraining order shall be granted except upon written application therefor made under oath.
- (b) Requirements. No temporary restraining order shall be granted without reasonable written or oral notice to the adverse party or his spokesman or attorney unless:
 - (1) It clearly appears from specific facts shown by the application that immediate and irreparable injury, loss or damage will result to the

applicant before the adverse party or his spokesman or attorney can be heard in opposition, and

- (2) The application describes the efforts, if any, which have been made to give notice to the adverse party, or his spokesman or attorney and explains the reasons supporting the applicant's claim that formal notice should not be required.
- (c) Contents and Filing. Every temporary restraining order shall be endorsed with the date and hour of issuance; shall be filed forthwith in the Court Clerk's office and entered on record; shall define the injury and state why it is irreparable and why the order was granted without formal notice and shall expire by its own terms at a date certain, as provided by paragraph (d) below.
- (d) Duration. Every temporary restraining order shall expire by its own terms within such time after entry, not to exceed fifteen (15) days, as the Court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period of time or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for such extension shall be entered on record. In case a temporary restraining order is granted, a hearing to determine whether a preliminary injunction shall be granted shall be set down for hearing at the earliest possible time and takes precedence over all other matters except older matters of the same character; and if the party who obtained the temporary restraining order does not appear at such hearing to argue for a preliminary injunction, the Court shall dissolve the temporary restraining order. On two (2) days notice to the party who obtained the temporary restraining order or on such shorter notice to that party as the Court may prescribe, the adverse party may appear and move for the dissolution or modification of the temporary restraining order and in that event the Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

§ 3.10.05 Security

Except for good cause shown, no restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the Court deems proper for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States, the Makah Tribe or of any officer or agency of either. A surety upon a bond or undertaking under this rule submits to the jurisdiction of the Court and irrevocably appoints the Clerk of the Court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the Court prescribes may be served on the Clerk of the Court who shall forthwith mail copies to the persons giving the security if their addresses are known.