

# TITLE 4B: CIVIL PROCEDURE RULES OF COURT

## Chapter 1 Administrative Rules

### § 4B.1.01 Communication with Judges

Unless permitted by other applicable provisions of Makah Tribal Code or Court Rule, no one other than court personnel shall have ex parte communication with judges of the Makah Tribal Court regarding a matter pending before the Court until final resolution of the case (this includes any pending appeals). Communication means any type of communication, oral, written, by telephone or electronic device, or otherwise. This rule does not limit communication on administrative matters, such as scheduling of cases.

### § 4B.1.02 Ex Parte Calendar

The Court may establish a calendar with time set aside for the presentation of appropriate ex parte orders.

### § 4B.1.03 Courtroom Safety

- (1) No person, except for Judges of the Court, and duly and regularly commissioned law enforcement officers of the Makah Reservation, State of Washington, or the United States government are allowed in the Makah Tribal Court while armed with any firearms, knives, or other dangerous weapon.
- (2) Any person found having any of the articles or devices mentioned in this rule is subject to having such articles or devices seized by law enforcement officers, bailiffs on court order, or as otherwise directed by the Court.
- (3) A license to carry a concealed pistol does not allow any of the items listed in this rule to be brought into the courthouse.

### § 4B.1.04 Filing

Pleadings. When filing any pleading with the Court, the party or representative must provide an original to be conformed for the filing party, which may be delivered in person or by mail. Pleadings delivered in person should be filed by 4:00 p.m.

**§ 4B.1.05 Working/Bench Copies of Motions and Documents**

The parties shall furnish an extra copy as the judge's bench copy of any motions or briefs marked "Judge's Copy" when they file motions or briefs. All working copies shall state, in red or blue ink in the upper right corner, the following: "Judge's Copy," the date and time of such hearing, and the name of the judge hearing the matter.

**§ 4B.1.06 Cited Cases**

A copy of any case law cited within a pleading must be attached to the Judge's Copy, unless otherwise directed by the Judge.

**§ 4B.1.07 Computation of Days**

(1) **Time.** Pursuant to MLOC 1.11.08,

(2) **Enlargement.** When by court rule or by law an act is required to be performed within a certain time period, the Court may extend or shorten the time within which a party must perform the act; except this rule shall not apply where the law or court has specified a procedure for extending or shortening the time within which an act must be performed. The Court also may not extend or shorten the timelines for filing motions for reconsideration, motions for new trial, motions for relief of judgment, and notices of appeal.

**§ 4B.1.08 Service**

Notice shall be attached to the copy of the complaint, and cite the respondent to 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.

**§ 4B.1.09 Notice by Publication**

Upon a showing by the complainant to the Tribal Court that diligent efforts were made to serve the complaint and notice on the respondent 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 the following designated public places on the Reservation; Washburn's General Store, Post Office, Sophie Trettevick Indian Health Clinic, Makah Senior Center, and the Tribal Administration Building #12 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.

§ 4B.1.10      **Sealing and Redaction of Court Records; Definitions**

(1) **Purpose and Scope.** This rule sets forth a uniform procedure for the sealing and redaction of court records. This rule applies to all court records not already protected by Makah law and applicable federal law. However, even within a sealed file, the Court may further limit or determine access to sensitive documents.

(2) **Definitions.** The following definitions shall apply to all actions, civil or criminal, filed in the Makah Tribal Court, unless other definitions are provided in specific contexts of specific code Chapters. If terms are not defined in substantive code Chapters, the following definitions shall apply:

(a) **"Court file"** means the pleadings, orders, and other papers filed with the clerk of the court under a single or consolidated cause number(s).

(b) **"Court record"** includes, but is not limited to: Any document, information, exhibit, or other thing that is maintained by a court in connection with a judicial proceeding, and any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute entry, and any information contained in a case management system created or prepared by the court that is related to a judicial proceeding. Court record does not include information and data maintained by or for a judge pertaining to a particular case or party, such as personal notes and communications, memoranda, drafts, or other working papers or information gathered, maintained, or stored by the Makah Reservation to which the Court has access but which is not entered in the record.

(c) **"Day"** shall mean **calendar** day, unless otherwise defined in a specific substantive code Chapter.

(d) **"Ex Parte"** refers to court proceedings for the benefit of one party to a controversy, without the other being present. This is an exception to basic court procedure, which requires that both parties be present at any argument or proceeding, and that neither party may have contact with a judge without previously notifying the other party. Ex parte matters usually involve emergency requests, and often result in temporary orders pending a hearing on the matter.

(e) **"Seal"** To seal means to protect from examination by the public and unauthorized court personnel.

(f) **“Redact”** To redact means to protect from examination by the public and unauthorized court personnel a portion or portions of a specified court record.

(g) **“Restricted Personal Identifiers”** are social security numbers, date of birth, account numbers and driver’s license numbers.

(h) **“Strike”** A motion or order to strike from the record is not a motion or order to seal or destroy.

(i) **“Vacate”** To vacate means to nullify or cancel.

### **(3) Sealing or Redacting Court Records**

(a) **Requests.** In a civil case, the court or any party may move or request that the court seal or redact the court records. In a criminal case, the court, any party, any victim or alleged victim, or any witness, may request that the court seal or redact the court records. Reasonable notice of a motion to seal must be given to all parties in the case. In a criminal case, reasonable notice of a motion to seal or redact must also be given to the victim, if ascertainable, and the person or agency having probationary supervision over the affected individual. The court or any party may move for a hearing on the motion and the court will determine whether a hearing shall be required before it makes its findings.

(b) **Written Findings.** After having considered the motion and any responses to it, the court may order the court files and records in the proceeding, or any part thereof, to be sealed or redacted if the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record. Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records. Sufficient privacy or safety concerns that may be weighed against the public interest include findings that:

- i) The sealing or redaction is permitted by Makah code, rule, or ordinance;
- ii) The redaction includes only restricted personal identifiers contained in the court record;

iii) Another identified compelling circumstance exists that requires the sealing or redaction.

**(c) Redaction.** A court record shall not be sealed under this Chapter when redaction will adequately resolve the issues before the court pursuant to subchapter (B) above.

**(d) Sealing of Entire Court File.** When the clerk receives a court order to seal the entire court file, the clerk shall seal the court file and secure it from public access. All court records filed thereafter shall also be sealed unless otherwise ordered. The order to seal any written findings supporting the order to seal shall also remain accessible to the parties, unless protected by Makah ordinance.

**(e) Sealing of Specified Court Records.** When the clerk receives a court order to seal specified court records the clerk shall:

i) Remove the specified court records, seal them, and return them to the file under seal or store separately. The clerk shall substitute a filler sheet for the removed sealed court record. If the court record ordered sealed exists in another storage medium form other than paper, the clerk shall restrict access to the alternate storage medium so as to prevent unauthorized viewing of the sealed court record; and

ii) File the order to seal and the written findings supporting the order to seal. Both shall be accessible to the parties.

iii) Before a court file is made available for examination, the clerk shall not allow access to the sealed court records.

**(f) Procedures for Redacted Court Records.** When a court record is redacted pursuant to a court order, the original court record shall be replaced in the public court file by the redacted copy. The redacted copy shall be provided by the moving party. The original un-redacted court record shall be sealed and returned to the file or stored separately.

#### **(4) Grounds and Procedure for Requesting the Unsealing of Sealed Records.**

**(a) Court Orders.** Sealed court records may be examined by the public only after the court records have been ordered unsealed pursuant to this

Chapter or after entry of a court order allowing access to a sealed court record.

**(b) Criminal Cases.** A sealed court record in a criminal case shall be ordered unsealed only upon proof of compelling circumstances, unless otherwise provided by Makah ordinance or other applicable law, and only upon motion and written notice to the persons entitled to notice under subchapter 1.10.3(A) of this rule except:

i) If a new criminal charge is filed and the existence of the conviction contained in a sealed record is an element of the new offense, or would constitute a statutory sentencing enhancement, or provide the basis for an exceptional sentence, upon application of the prosecuting representative the court shall nullify the sealing order in the prior sealed case(s).

**(c) Civil Cases.** A sealed court record in a civil case shall be ordered unsealed only upon stipulation of all parties or upon motion and written notice to all parties and proof that identified compelling circumstances for continued sealing no longer exist. If the person seeking access cannot locate a party to provide the notice required by this rule, after making a good faith reasonable effort to provide such notice as required by Makah ordinances and rules, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provision of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful. In such cases where notice is not possible, the Court shall make an independent determination as to whether it is appropriate to unseal the requested file or documents.

#### **(5) Maintenance of Sealed Court Records**

Sealed court records may be maintained in mediums other than paper.

#### **(6) Use of Sealed Records on Appeal**

A court record or any portion of it, sealed in the trial court shall be made available to the appellate court in the event of an appeal. Court records sealed in the trial court shall be sealed from public access in the appellate court subject to further order of the appellate court.

**(7) References to Minor Children in Court Files or Court Records**

In criminal proceedings, all court records and court files must refer to any minor children by initials and date of birth only, unless such references are sealed or redacted.

**§ 4B.1.11 Examination of Court Files**

(1) The following court files may not be viewed without a judge's authorization: minor in need of care; guardianship; paternity; adoption; domestic relations; workers compensation; all civil cases related to domestic violence or elder protection; or any other action that is confidential by law or in the discretion of the Court.

(2) The following parts of court files may not be viewed without a judge's authorization: parts of files covered by HIPAA; medical information, including but not limited to information regarding chemical dependency or mental health treatment; financial information; portions of files that are sealed; or reports marked sealed or confidential.

(3) Files may be viewed only in the Court Clerk's office under the supervision of a Court Clerk.

(4) The following conditions must be met in order to view court files:

(a) A request form must be filled out.

(b) The viewer may not:

i) Remove anything from the court file;

ii) Add anything to the court file;

iii) Write in the court file; or

iv) Make any alteration to the court file whatsoever.

(5) Expedited consideration shall be given to requests related to criminal prosecutions. Such requests may be made at the Court Clerk's office or at the ex parte calendar.

(6) Copies may be made of parts of files allowed to be viewed. A document request form must be filled out and submitted to the Court Clerk for processing.

The Court Clerk's office may assess a cost for the copies according to the current fines and fees schedule that may be set by the Chief Judge. The Chief Judge shall have the discretion to waive costs with a showing of hardship by the person requesting copies.

**§ 4B.1.12 Cell Phones**

(1) All cell phones shall be turned off prior to entering the courtroom and shall remain off until the person with the phone leaves the courtroom. If the presiding judge determines that a cell phone has not been turned off, said phone may be confiscated and held until the conclusion of the court hearing.

(2) Prohibition against individuals recording any proceeding with cell phone. No person may record, either via audio or video, any proceeding in Tribal Court. Violation of this Chapter may result in the issuance of a civil penalty or fine, at the discretion of the presiding judge.

**Chapter 2  
General Rules**

**§ 4B.2.01 Guiding Principles for Interpretation of Makah Law**

(1) **Purpose.** Makah Tribal Law provides that Makah Tribal Court may apply custom and traditions to actions heard in Makah Tribal Court. These rules are not intended to supplant custom and tradition, but to support the efficient administration of justice on the Makah Indian Reservation.

(2) **Applicability.** These Rules shall apply to all proceedings in Makah Tribal Court unless another applicable code or law provides its own rules or proceedings. These shall be the default Rules in the absence of rules or proceedings found in other Titles of Makah Tribal Code.

**(3) Incorporated Values**

(a) **Judicial Demeanor.** The presiding judge shall take whatever steps are necessary and appropriate to ensure that proceedings are conducted in a fair and respectful manner. This includes, but is not limited to removing individuals and/or spokespersons from the courtroom for displays of contemptuous, threatening, or disrespectful behavior

(b) **Courtroom Decorum.** In all proceedings, each party shall be given an opportunity to speak uninterrupted by the other party or other individuals in the courtroom (except for the judge, who may need to interject), unless a formal objection is made by one of the parties during the course of a trial.

#### § 4B.2.02 Civil Case Rules

(1) **Limitation on Filing of Complaint.** No complaint shall be filed in a civil action unless the events shall have occurred within a three-year period prior to the date of the complaint.

(2) **Applicable Law.** In all civil cases the court shall be governed by Makah Tribal law, regulations, resolutions or ordinances.

(3) **Other Law.** Where no Makah Tribal laws, regulations, resolutions, or ordinances apply, the court may refer to any other lawful authority.

(4) **Other Rules.** The court shall have the power to promulgate any other rules deemed necessary for the purpose of expediting trial.

#### § 4B.2.03 Commencement of Civil Actions

##### (1) Complaints

(a) An action is commenced by filing a complaint with the clerk of the court and by service of the complaint and summons upon the respondent.

(b) No complaint shall be filed nor be valid unless it shall bear the signature of the petitioner or the petitioner's representative or legal representative.

(2) **Default.** Judgment by default may be given if respondent fails to appear or answer within the time required after service of process. Default judgment may be given upon a verified complaint or upon affidavit, without further proof, if the claim is for damages in a certain sum. For any other claim, petitioner must present proof of claim before a default judgment will be entered. Proof of a claim may be attached to the Complaint as an Exhibit at the time of filing the Complaint, or be presented by subsequent affidavit or in open court at a hearing of the matter. The Court shall retain sole discretion regarding setting or not setting a hearing for a requested default judgment or evidence provided.

**(3) Trial Setting Want of Prosecution.** The court may set a case for trial on its own motion, or trial may be set on the motion of petitioner. If the case is not set for trial within six months from the filing of the complaint, the court shall notify the petitioner that the court will dismiss the complaint without prejudice for want of prosecution, unless the petitioner does within thirty days of such notice by the court, either set the matter for trial or show good cause why the matter should be continued.

#### § 4B.2.04 Pretrial Procedure and Motions

##### **(1) Pretrial Conference**

**(a)** In any civil action, the court shall, prior to setting a trial date, direct the parties to appear before it for at least one pretrial conference to consider:

(i) Simplification of the issues;

(ii) Those facts which are uncontested and those documents which will not need additional proof;

(iii) Such other matters as may aid in the disposition or settlement of the action, including but not limited to submission of the case to an arbitrator or mediator; and

(iv) Scheduling of further proceedings, including the time limits which will be placed upon the conduct of discovery. After such discovery cut-off date, further discovery can only take place on a motion for further discovery and a showing of good cause and substantial need.

**(b)** A pretrial conference may be consolidated with a hearing held to enter an oral answer to a complaint.

**(2) Trial Setting.** A trial date will be set not more than 90 days from the first pretrial conference, unless the parties agree or the court orders a longer period.

**(3) Pretrial Statement.** The court, in its discretion, may require each party to prepare and file, or all parties to file jointly, at least 30 days prior to trial, a pretrial statement containing the following information:

**(a)** A statement of facts;

(b) Admitted facts;

(c) All claims for relief and all defenses advanced by the party submitting the pretrial statement and the type of evidence expected to be offered in support of each claim and defense;

(d) The names, addresses, categories (i.e., lay, eye, investigative), and type (i.e., liability, damages) of all non-expert witnesses reasonably expected to be called by each party and a general statement concerning the nature of the testimony expected; and

(e) The name, address and field of expertise of each expert witness expected to testify and a general statement concerning the nature of the testimony expected. The statement shall also state that discovery is substantially completed, or there has been reasonable time to complete discovery.

**(4) Discovery.** A party may conduct discovery by any of the established methods allowed in Chapter 2.2 of this Code. Limitations on discovery may be ordered in the court's discretion where needed to prevent undue harassment or oppression and to promote substantial justice.

**(5) Motions.**

(a) All motions, except when made during a hearing or trial, shall be in writing, shall state the grounds therefore, shall set forth the relief or order sought, and if involving questions of law shall be accompanied by a memorandum in support of the motion. If the motion requires the consideration of facts not appearing of record, it shall be supported by affidavit.

(i) Reasonable notice of a motion must be given to all parties in the case. The court or any party may move for a hearing on the motion and the court will determine whether a hearing shall be required before it makes its findings.

(b) An opposing party may serve and file counter affidavits and a written statement of reasons in opposition to the motion and of the authorities relied upon, which shall be served and filed no later than 48 hours preceding the time set for the hearing, except as otherwise ordered by the court. If a hearing has not been requested and or set, then the opposing

party shall immediately notify the court and opposing counsel of intent that the party will promptly file countering affidavits and written statements of reasons.

(c) A party who does not oppose or who intends to support a motion, or who desires a continuance, shall immediately notify the court and opposing counsel or representative, or opposing party if s/he is not represented by counsel or representative. Failure to appear at the hearing may be deemed a waiver of objection to the granting of the motion.

(d) Motions to dismiss the lawsuit because the court lacks jurisdiction or because the petitioner has not stated a legal basis for relief may be made at any time.

(e) The Court may, in its discretion, schedule a hearing upon filing and serving of Motions. If a hearing is not scheduled by the presiding judge, the Motion shall be decided based upon the Motion and any Response and/or Reply. If the Court does schedule a hearing, each party shall be allocated fifteen (15) minutes for the purpose of arguing in support of the party's motion, unless otherwise ordered by the Court.

#### § 4B.2.05 Trial

(1) **Standard of Proof.** The petitioner in a civil case shall have the burden of proving his case by preponderance of the evidence.

(2) **Manner of Trial.** Civil actions shall be heard before the presiding judge or jury per MLOC 3.4.02.

(3) **Pre-Marking Exhibits.** In all cases, if exhibits number more than ten (10) per party, exhibits shall be pre-marked. Arrangements shall be made with the Court Clerk, within a reasonable time for the marking of all exhibits prior to trial.

(4) **Swearing in Witnesses.** All witnesses shall be administered an oath by the court prior to providing testimony.

(5) **Conduct of Trial.** Petitioner shall make the opening statement setting out the claims against the respondent. The respondent shall have an opportunity to make a statement of his position. Upon the conclusion of such statement, the petitioner shall call such witnesses and produce such exhibits as he may see fit. The respondent shall then have an opportunity to call such witnesses and produce such

evidence as he may see fit. The petitioner shall thereafter, in rebuttal, have an opportunity to call such witnesses and produce such evidence as he may see fit to rebut the evidence produced by the respondent. Both the petitioner and respondent shall have the right to cross-examine witnesses produced by the other side.

**(6) Evidence.** Rules of Evidence. Except as otherwise expressly provided under this code or under applicable federal law, or unless expressly directed by the presiding judge, the rules governing evidence under the Federal Rules of Evidence shall **not** apply to the civil proceedings of this court.

**(a)** The court shall consider the most reliable evidence offered when more than one kind of evidence is offered. That is, in oral testimony, persons who testify from their personal (first-hand) knowledge shall be preferred as witnesses to persons who have second-hand knowledge of the event, although all testimony may be heard.

**(b)** Evidence admitted must be directly related either to the issue before the court or to the weight and credibility which should be given to other evidence. When questioned by the judge or another party, the party who wishes to present certain evidence shall explain why he or she thinks the evidence is relevant.

**(c)** When the relevance or reliability of evidence is challenged and the judge decides whether or not to use the evidence, the judge shall explain his ruling on the record.

**(d)** Although hearsay is not a preferred method of offering evidence, it is not specifically prohibited.

**(7) Closing Argument.** Upon the conclusion of the evidence, the petitioner shall be given an opportunity to argue their case. The respondent shall then be given an opportunity to argue their case, and the petitioner shall be given an opportunity to make a closing argument. Further argument may be allowed at the court's discretion.

**(8) Entry of Judgment.** After closing arguments are presented, the judge shall decide the case and render a judgment within thirty (30) days.

**(9) Judgments.** In all civil cases, judgment shall consist of an order of the court awarding money damages to be paid to the prevailing party or directing the surrender of certain property to the prevailing party or directing the performance

of some other act for the benefit of the prevailing party, or any other remedy available under any ordinance or regulation of the tribe.

**§ 4B.2.06 Post-Trial Procedures**

**(1) Costs in Civil Actions.** Pursuant to MLOC 3.5.06.

**(2) Execution of Judgment.** Pursuant to MLOC 3.6.01 through 3.6.04.

**(3) Writ of Execution.**

**(a)** A writ of execution shall be issued in the name of the Makah Tribe, sealed with the seal of the court, and subscribed by the clerk of the court and directed to the party seeking execution. The writ shall direct the party to whom it is addressed to levy upon sufficient unrestricted and nonexempt property of the judgment debtor to pay the judgment and costs of sale. The writ of execution shall refer to the judgment, including the names of the parties, the amount of the judgment and if it be for money, the amount actually due thereon and list the particular property to be levied upon. If the judgment has been recorded, the writ shall so indicate and shall state the time and place of the recording and the recording number.

**(b)** Before an execution is delivered on a judgment of the court, the amount of the judgment, including court costs, shall be entered in the docket and upon the back of the execution, and reasonable costs and reasonable representatives' fees incurred by the judgment creditor in seeking enforcement of the judgment.

**(c)** A writ shall require substantially as follows:

**(i)** If the execution is against the property of the judgment debtor, it shall require the person executing the writ to satisfy the judgment out of the personal property of the debtor first, unless an affidavit of exemption has been filed with the court pursuant to any applicable provisions of MLOC or these Rules, and there is not sufficient non-exempt personal property to satisfy the judgment, the writ shall require that the unsatisfied portion of the judgment be satisfied out of the real property of the debtor.

(ii) If the execution is against real or personal property in the hands of a personal representative, heir, devisee, legatee, tenant of real property, or trustee, it shall require that the judgment be satisfied out of such property.

(iii) If the execution is for the delivery of real or personal property it shall describe the property and state its value and require the person executing the writ to deliver possession of it to the party entitled thereto, and may, at the same time, require the satisfaction of any charges, damages, or rents and profits recovered by the same judgment out of the personal property of the party against whom it was rendered. If the property described in the execution cannot be delivered, and if sufficient personal property cannot be found to satisfy the judgment, it shall be satisfied out of the real property of the party against whom the judgment was rendered.

(iv) If the execution is to enforce obedience to an order, it shall particularly command what is required to be done or to be omitted.

(v) If the nature of the case requires it, the execution may embrace two or more of the requirements of this Chapter.

(vi) In all cases the execution shall require the collection of all interest, costs and increased costs thereon.

**(4) Return of Writ.** Within thirty days of receipt of the writ of execution, the party seeking execution shall return the writ to the clerk of the court with an inventory of the property levied upon, or with a written explanation of why the property has not been levied upon as specified in the writ.

**(5) Non-Exempt Property.** All real and personal property of the judgment debtor, not including land held in trust by the United States, or subject to restriction against alienation under federal law, shall be subject to execution, including any property transferred by the judgment debtor for the purpose of defrauding the judgment creditor, where the transferee knew, or should have known, of such purpose at the time of the transfer.

**(6) Interest on Judgment.** If the court expressly so rules, a judgment shall earn interest at the prime rate from the date of entry of judgment until paid.

**(7) Satisfaction of Judgment.** A judgment may be satisfied, in whole or in part, by the owner thereof or his representative or representative, executing under oath and filing an acknowledgment of satisfaction specifying the amounts paid and whether such is in full or partial satisfaction. A judge may order the entry of partial or full satisfaction of judgment upon proof of payment and failure of the judgment creditor to file a satisfaction.

#### **§ 4B.2.07 Involuntary Dismissal of Civil Case**

**(1) Effect.** For failure of the plaintiff to prosecute or to comply with these rules or any order of the court, a Respondent may move for dismissal of an action or of any claim against him or her.

**(2) Dismissal for Want of Action of Record on Motion of Party.** Any civil action shall be dismissed, without prejudice, for lack of action of record whenever the Petitioner, counterclaimant, cross claimant, or third-party Petitioner neglects to note the action for trial or hearing within 6 months after any issue of law or fact has been joined, unless the failure to bring the same on for trial or hearing was caused by the party who makes the motion to dismiss. Such motion to dismiss shall come on for hearing only after 10 days' notice to the adverse party. If the case is noted for trial before the hearing on the motion, the action shall not be dismissed.

#### **(3) Dismissal on Court Clerk's Motion.**

**(a) Notice.** In all civil cases in which no action of record has occurred during the previous 6 months, the Court Clerk shall notify the presiding judge who shall review the case file and determine whether to dismiss the case for lack of action of record. Notice of the court action shall be served upon the parties. If a party moves to vacate the dismissal and the court is satisfied that good cause exists to do so, the court shall vacate the dismissal and schedule the case accordingly.

**(b) Mailing Notice; Reinstatement.** The Court Clerk shall mail notice of impending dismissal not later than 30 days after the case becomes eligible for dismissal because of inactivity. A party who does not receive the Court Clerk's notice shall be entitled to reinstatement of the case, without cost, upon motion brought within a reasonable time after learning of the dismissal and providing that good cause is shown to vacate the dismissal and reinstate the case.

(c) **Discovery in Process.** The filing of a document indicating that discovery is occurring between the parties shall constitute action of record for purposes of this rule.

(d) **Other Grounds for Dismissal and Reinstatement.** This rule is not a limitation upon any other power that the Court may have to dismiss or reinstate any action upon motion or otherwise.

**§4B.2.08 Disclosure of Witnesses**

The names, addresses and telephone numbers of possible primary witnesses and a short summary of their expected testimony shall be disclosed by the parties by filing a statement setting forth that information and serving it on the other parties at a time set by the Court. The names of any possible rebuttal witnesses shall be disclosed in the same fashion after the primary witnesses have been disclosed at a time set by the Court. If disclosure is not made as set forth in this rule, the testimony of the witness not disclosed may not be allowed at trial.

**§ 4B.2.09 Appeal**

An aggrieved party may file with the trial court a Notice of Appeal pursuant to MLOC Title 1 Chapter 9.

**§ 4B.2.10 Disposition of Exhibits After Appeal Period Has Run**

No one shall withdraw an exhibit without a court order. After 30-day notice to all parties of record following final disposition, the Court may order the Court Clerk to destroy or dispose of physical evidence unless good cause is shown why it should be preserved.

**§ 4B.2.11 Withdrawal of Representative as Counsel**

**(1) Withdrawal by Representative in a Civil Case.**

**(A) Withdrawal by Order.** A court appointed representative may not withdraw without an order of the court. The client of the withdrawing representative must be given notice of the motion to withdraw and the date and place the motion will be heard.

**(B) Withdrawal by Notice.** Except as provided in subchapters (A) of this rule, a representative may withdraw by notice in the manner provided in this rule.

**(C) Service.** Service on a representative who has appeared for a party in a civil proceeding shall be valid only until the representative has withdrawn in the manner provided in this rule.

**(D) Circumstances of Denial of Withdrawal.** Nothing in this rule defines the circumstances under which a withdrawal might be denied by the Court.

**§ 4B.2.12 Proof of Compliance**

**(1) Requirement.** The Court may require a party to file proof of compliance with any court order.

**(2) Responsibility.** The party is responsible for filing the proof of compliance with the Court.

**(3) Electronic Transmissions.** Electronic transmission of proof of compliance is allowed.

**§ 4B.2.13 Results of Drug and Alcohol Tests**

**(1) Results.** The results of tests to determine use of drugs or alcohol are presumptively valid.

**(2) Burden of Proof.** The burden to prove invalidity is on the contesting party.

**(3) Lab Analysis.** The party contesting the validity of the results of a test may request further laboratory analysis of the test. If the results of any subsequent tests corroborate the results of the first test, the costs of the subsequent tests shall be paid by the contesting party.

**§ 4B.2.14 Hearings Regarding Impound Fees**

Persons who have vehicles impounded by the Makah Tribe may request a hearing to determine if the impound was lawful by filing a petition requesting a hearing to determine if the impound was authorized by law. The Court will set a hearing to determine the lawfulness of the impoundment. The petition and order setting the hearing shall be served on the Makah Prosecutor.

**§ 4B.2.15 Filing Fees**

**(1) Petitions.** A filing fee may be charged for each petition filed with the Court, unless otherwise specified by law.

**(2) Filing Fees.** The Chief Judge may set filing fees through the issuance of an Administrative Order, and may waive any such fee upon a showing of hardship.

**§ 4B.2.16 Severability; Amendments; Savings Clause**

If any Chapter of these Rules shall be determined to be a violation of any applicable law or rights, that Chapter may be severed without affecting the applicability of the remainder of the Rules. Any amendments to these Rules shall become effective as outlined in the Constitution and Bylaws of the Makah Indian Tribe, or any applicable law. Any action commenced but not concluded prior to enactments amendments shall be heard and shall proceed under the Chapters in effect at the time the action was commenced.