

THE
LAW AND ORDER CODE
OF THE



CHAPTER 3 - CIVIL ACTIONS

JURISDICTION

The Kalispel Tribal Court will have jurisdiction over civil actions where this Code, or a Business Committee Resolution, gives the Tribal Court jurisdiction over a specific subject matter. The Tribal Court does not have the jurisdiction to hear matters arising solely under the Constitution of the Kalispel Tribe of Indians, unless the Constitutional issues relate to a subject matter that has been given to the Tribal Court by this Code or the Business Committee has delegated such jurisdiction by Resolution.

APPLICABILITY

This Chapter provides general provisions which shall govern civil actions in the Kalispel Tribal Court. In the event of a conflict between this Chapter and another Chapter of the Kalispel Law and Order Code which provides specific procedural provisions, the specific procedural provisions shall apply to said Chapter. The term “civil action” shall include all court actions that do not have as their object the imposition of a criminal penalty.

CONSENT TO SUE TRIBE NOT GRANTED

This Chapter does not grant jurisdiction or authority to bring suit against the Kalispel Tribe. Nothing in this Section shall be deemed a waiver of the Tribal sovereign immunity from suit, which immunity is hereby held to extend to the Tribe and its officers and employees acting for the Tribe within the scope of their Tribal authority.

SECTION 3-1: COMMENCEMENT

3-1.01 COMMENCEMENT OF CIVIL ACTIONS

Civil actions in Tribal Court shall be commenced by the filing of a complaint with the Clerk of the Tribal Court, stating the names of the plaintiff and the defendant, accompanied by a simple statement of the facts giving rise to the grievance for which relief is requested and the nature of such relief.

3-1.02 SIGNATURE ON COMPLAINT

Complaints filed in the Tribal Court shall bear the signature of the complainant.

3-1.03 LIMITATION ON FILING

An action must be commenced within a period of three years from the date of such events giving rise to the cause of action.

3-1.04 TOLLING THE LIMITATION

If a person entitled to bring a civil action under this Code be, at the time the action occurred, either

under the age of eighteen years, or insane, or imprisoned on a criminal charge, the time of such disability shall not be a part of the three-year limitation on the commencement of civil actions. Provided, however, that if the action is brought after the three-year limitation has expired, a written statement of reasonable cause must be given why the person's parent, guardian or other available representative did not bring the action in behalf of said disabled or incapacitated person within the three-year limitation. The statement shall be filed with the complaint and if attacked by defendant or other party to the suit the Tribal Court shall consider the reasonable cause given and in its discretion decide whether it is sufficient to justify the tolling of the statute of limitations. The decision of the Traditional Peacemakers Panel in this respect shall be final, subject to the aggrieved party's right to reconsideration as set forth in Chapter 1 of the Kalispel Law and Order Code.

3-1.05 FILING FEE

The complainant shall pay a filing fee of ~~\$15.00~~ \$50.00 (Kalispel Resolution 2007-51) or such other fee prescribed in the rules. 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 plaintiff.

SECTION 3-2: SUMMONS

3-2.01 SUMMONS

Upon the filing of a complaint, the Clerk shall cause to be issued a summons requiring the defendant to appear before the Kalispel Tribal Court at a date and time certain which will be at least five days, but no more than 30 days, after service of summons and complaint upon the other party, excluding date of service. The summons shall also contain a notice that, in case of failure to so appear, judgment will be rendered against them, according to the demand of complaint.

SECTION 3-3: SERVICE

3-3.01 SERVICE

A summons, with a copy of the complaint attached, shall be served upon the defendant by personal service, by mail or by publication.

3-3.02 WHO MAY SERVE SUMMONS

In all cases, except when service is made by publication, as hereinafter provided, the summons shall be served by the Tribal Police of the Reservation wherein the service is made, or by the Sheriff of the County wherein the service is made or by his deputy, or by any person 18 years of age or over, who is competent to be a witness in the action, other than the plaintiff.

SECTION 3-4: PERSONAL SERVICE

3-4.01 PERSONAL SERVICE OF SUMMONS AND COMPLAINT

A summons, with a copy of the complaint attached, shall be served upon the defendant by personal service. Such service may be obtained by personally delivering the summons and complaint to the defendant or by leaving the summons and complaint at the place of his usual abode with some adult person who is a resident therein, the service of said summons and complaint shall be made between the hours of 7:00 a.m. and 9:00 p.m. unless service during such times is impossible.

SECTION 3-5: SERVICE BY PUBLICATION OR MAIL

3-5.01 SERVICE BY PUBLICATION OR MAIL

The Traditional Peacemaker Panel may allow service to be made upon the defendant by certified mail, return receipt requested, or by the posting of copies of the Summons and Complaint in two public places on the Reservation for three weeks and then publication of Notice of the Filing of said Summons once a week for three consecutive weeks in any newspaper of general circulation on or adjacent to the Kalispel Reservation. Such a service by publication shall be made only upon sufficient showing by the complainant or his representative to the Court by affidavit that diligent efforts were made to serve the Summons with a copy of the Complaint upon the defendant and that said service could not be made.

3-5.02 SERVICE OF SUMMONS AND COMPLAINT UPON MINORS

If the suit be against a minor under the age of 14 years, to such minor personally and also to his father, mother or guardian, or if there be none within the state then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed, if such there be.

3-5.03 SERVICE UPON GUARDIAN

If the suit be against any person for whom a guardian has been appointed, then to such guardian.

3-5.04 SERVICE UPON CORPORATION

If the suit be against any company or corporation doing business within the Kalispel Reservation, to the president or other head of the company or corporation, secretary, cashier or managing agent thereof or to the secretary, stenographer or office assistant of the president or other head of the company or corporation, secretary, cashier or managing agent.

3-5.05 INCOMPETENT

If the party is incompetent other than by age, and has no proper guardian, the Court shall appoint one upon application of a friend or relative or upon the Court's own motion.

3-5.06 SERVICE UPON THE KALISPEL TRIBE OF INDIANS

If the suit be against the Kalispel Tribe of Indians and its governing body, the Kalispel Business Committee, by virtue of an express waiver of sovereign immunity, in full or in part, service of process shall be effectuated by serving a copy of the summons and complaint on an attorney employed within the Kalispel Tribal Legal Department AND a copy mailed to the Chairman of the Kalispel Tribal by certified mail, return receipt requested and first class mail. The attorney is hereby authorized to accept service of process on behalf of the Kalispel Tribe of Indians and its governing body, the Kalispel Business Committee. (Res. 2004-25)

SECTION 3-6: JURISDICTION WHERE SERVICE IS BY PUBLICATION

3-6.01 JURISDICTION WHERE SERVICE IS BY PUBLICATION

If jurisdiction is obtained through publication, such jurisdiction would extend only to the subject matter within the control of the Court. No personal judgment may be rendered where service is by publication and the defendant does not voluntarily appear.

SECTION 3-7: PERSONAL SERVICE OFF RESERVATION

3-7.01 PERSONAL SERVICE OFF RESERVATION

Personal service of the summons and complaint may be made upon any party outside the Reservation boundaries. If upon a resident of this Reservation or upon a person who has submitted to the Court of this Reservation, it shall have the force and effect of personal service within this Reservation; if the person so served is not a resident of this Reservation and has not submitted to this Reservation's jurisdiction, it shall have the same force and effect as service by publication. The summons served upon the party outside the Reservation, shall contain the same and be served in like manner as personal service within the Reservation, except it shall require the party to appear and answer within 60 days after such personal service off the Reservation.

SECTION 3-8: LONG-ARM JURISDICTION

3-8.01 LONG-ARM JURISDICTION

Any person, whether or not a resident of the Reservation, who in person or who, through an agent, does any of the acts enumerated in this section, hereby submits said person, and, if an individual, his personal representative, to the jurisdiction of the Court of this Reservation as to any cause of action arising from the doing of any of said acts:

- (1) The transaction of any business within this Reservation.

- (2) The commission of a tortious act within this Reservation.
- (3) The ownership, use, or possession of any property whether real or personal situated in this Reservation.
- (4) Contracting to insure any person, property or risk located within this Reservation at the time of contracting.

SECTION 3-9: PROOF OF SERVICE

3-9.01 PROOF OF SERVICE

Where there has been personal service, an affidavit of service shall be returned to the Clerk and entered into the Court Records, constituting proof of personal service. Where service was obtained by mail, the return receipt on such delivery shall be made a part of the Records of the Court. When there has been service by publication, an affidavit, shall be obtained for the Court Records from the newspaper publishing the notice, such affidavit, when filed with the Court, will constitute proof of service through publication.

SECTION 3-10: NOTICE

3-10.01 NOTICE

When a party to an action has appeared in the same, he shall be entitled to at least 5 days notice of any trial, hearing, motion, application, sale or proceeding therein; such notice shall be in writing, specifying the time and place where the same shall be had or made, and be served upon him or his attorney; provided, however, if neither such party nor his attorney resides upon the Reservation, then service by mail may be had on such party or his attorney by mailing to either of them a copy of such notice, properly addressed with postage thereon.

SECTION 3-11: APPLICABLE LAW IN CIVIL ACTIONS

3-11.01 APPLICABLE LAW IN CIVIL ACTIONS (rev 2013-36)

The Kalispel Tribal Court, in civil cases, shall apply, in the following order of priority, the applicable laws, resolutions, ordinances, or customs of the Tribe, the laws of the United States and regulations of the Department of the Interior. As to any matters not covered by the above, the Tribal Court shall apply, in the following order of priority, state statute, state common law and international law.

3-11.02 ADVISOR IN TRIBAL CUSTOM

In the event of dispute or uncertainty regarding traditional Tribal custom, the Court may utilize advisors familiar with these customs.

SECTION 3-12: TRIAL SETTING

3-12.01 TRIAL SETTING

When the defendant has been properly served with a summons and complaint and he has appeared in the case, upon the request of a party to the action, the Court shall set a date for trial convenient to the parties and the Court. Jury trials may be requested by following the procedures outlined in Section 3-13 of this Chapter.

SECTION 3-13: JURY TRIALS

3-13.01 REQUEST FOR JURY TRIAL

In non-criminal trials a request for a jury must be submitted to the Court, in writing, no later than 10 days before the date of trial. The procedure for picking a jury is as outlined in Section 9 of Chapter 1.

SECTION 3-14: JUDGMENTS IN CIVIL ACTION

3-14.01 JUDGMENTS

In all civil cases in which the plaintiff prevails, judgment shall consist of an order of the Court directing payment to plaintiff of the monies found owing him, awarding money damages to be paid to the injured party, or directing the surrender of certain property to the injured party, or the performance or prohibition of some other act.

3-14.02 JUDGMENTS IN CASES INVOLVING INJURY

In cases involving injury to persons or property:

- (1) 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.
- (2) Where the injury was deliberately and maliciously inflicted, the judgment shall impose an additional penalty upon the defendant, which additional penalty may run either in favor of the injured party or in favor of the Tribe.
- (3) Where the injury was inflicted as the result of an accident where both the complainant and the defendant were at fault, the judgment shall compensate the injured party for a reasonable part of the loss he has suffered with adjustment thereof for the ratio or proportion of the accident caused by his negligence or fault.

SECTION 3-15: DEFAULT JUDGMENT

3-15.01 DEFAULT JUDGMENT

Upon the failure of a defendant to appear at the time stated in the summons, the other party may proceed to offer evidence including proof that the defendant was served with a summons, and the Court may render a judgment granting such relief as the evidence warrants, provided that the defaulting party may apply in writing for new trial within 20 days of the default judgment, showing good cause for his failure to answer the summons. Upon failure of plaintiff to appear at the time set by the summons for hearing, the Court will dismiss the case.

SECTION 3-16: COST

3-16.01 COSTS IN CIVIL ACTIONS

Unless the Court provides otherwise, Court costs incurred by the winning party shall be included in any judgment, including filing fees, compensation of jurors and other incidental expenses.

SECTION 3-17: RECONSIDERATION

3-17.01 RECONSIDERATION

Any person who is a plaintiff or defendant in a civil proceeding and is aggrieved by a final order of the Court may move for reconsideration, as provided in Chapter 1, Section 12.

SECTION 3-18: PAYMENTS OF JUDGMENTS FROM INDIVIDUAL INDIAN MONEYS ACCOUNTS

3-18.01 PAYMENTS OF JUDGMENTS FROM INDIVIDUAL INDIAN MONEY

Whenever the Kalispel Tribal Court has ordered payment of money damages to an injured party and payment is not made within the time specified therein and when the party against whom judgment is rendered has sufficient funds to his credit in an Individual Indian Money Account with the judgment against him the Clerk of the Court shall certify a copy of the case record to the Superintendent of the Agency where the losing party has such funds on deposit. Said Superintendent shall send this record, and a statement as to the amount of funds available in the individual's account, to the Secretary of the Interior, or his authorized representative, who may direct the disbursing agent to pay over, from the delinquent party's account, to the injured party the amount of judgment, or such amount as may be specified, not to exceed the amount of judgment.

3-18.02 WHERE APPLICABLE

Provisions for the payment of judgments from individual Indian monies shall be applicable in any case

where the judgment creditor has acquiesced to the jurisdiction of the Tribal Court.

SECTION 3-19: EFFECT UPON ESTATES

3-19.01 EFFECT UPON ESTATES

A judgment by this Court shall be considered a lawful debt for purposes of probate proceedings or other actions regarding descendants' estates.

SECTION 3-20: JUDGMENT LIEN

3-20.01 JUDGMENT LIEN

An unsatisfied judgment shall be a lien against funds owing the judgment debtor by the Kalispel Tribe upon the delivery of a copy of the Judgment to the Chairman or Secretary of the Tribe. When such copy is received, the Chairman or Secretary shall pay over the amount specified in the judgment as the funds become available to the credit of the judgment debtor. If such funds be wages, 75 percent of the disposable earnings by defendant shall be exempt, such percentage to be computed as per each interval said wages are to be paid defendant.

3-20.02 JUDGMENTS - DURATION

A judgment of the Tribal Court shall be valid until satisfied in full subject to the limits established by Chapter 3, Section 22 of this Chapter, including interest upon the judgment at the rate of 8% per annum from the date of entry of the judgment.

SECTION 3-21: EXECUTION OF JUDGMENTS

3-21.01 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 or required by the Court, the Traditional Peacemaker Panel shall order the judgment debtor to appear before them and answer under oath regarding his personal property. The Traditional Peacemakers Panel shall then determine what property of the judgment debtor is available for execution and order the Police to seize as much of the property as reasonably appears necessary to pay the judgment. Upon the Police's seizure of the property, the judgment creditor will have a judgment lien on the property. (Kalispel Resolution 2008-39) Failure of the judgment debtor to appear may be deemed a contempt of Court and the Traditional Peacemakers Panel may proceed without his appearance.

3-21.02 SALE OF PROPERTY

Sale of the seized property shall be at public auction conducted by the 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. Payment for the property and transfer of title shall take place after the redemption period has expired, as described below. If the sale results in a price higher than the debt plus expenses of 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.

3-21.03 EXEMPTION FROM EXECUTION

The Traditional Peacemakers Panel shall order seizure and sale of only such property of the judgment debtor as will not impose an immediate and substantial hardship on his immediate family.

3-21.04 REDEMPTION

At any time within fourteen (14) days after the sale under 3-21.02 above, the judgment debtor may redeem the sold property by paying the judgment amount in full, plus expenses of the sale. Upon such payment, the property shall be returned to the judgment debtor and the purchaser shall be notified that the property has been redeemed.

SECTION 3-22: LIMITATION OF ENFORCEMENT OF JUDGMENT

3-22.01 LIMITATION OF ENFORCEMENT OF JUDGMENT

A judgment shall be unenforceable after a period of 5 years has elapsed from the date of entry; provided, that the judgment creditor may extend the period of enforceability for an additional three (3) years by the institution of appropriate court proceedings before the date of expiration.

SECTION 3-23: EXTENDING JUDGMENTS

3-23.01 EXTENDING JUDGMENTS

To extend the period of enforceability of a judgment, the judgment creditor shall file, with the Clerk of the Court an affidavit stating that all or part of the judgment remains unsatisfied together with a request to extend the effective time of the judgment by 3 years. This affidavit and request must be served upon the judgment debtor in accordance with provisions of Sections 4 and 5 of this Chapter 3.

3-23.02 HEARING TO EXTEND JUDGMENTS

The Court may extend the period of enforceability of a judgment upon hearing. In granting such an extension, the Court shall consider all facts, including whether the judgment creditor made a serious effort to obtain satisfaction of the judgment. The enforceability of a judgment may be extended only

once.

SECTION 3-24: SATISFACTION OF JUDGMENT

3-24.01 SATISFACTION OF JUDGMENT

It shall be the duty of the judgment creditor to notify the Court in writing that a judgment has been fully or partially satisfied.

SECTION 3-25: JUDGMENTS OF OTHER COURTS

3-25.01 APPLICATION

Any person may apply to the Court by written application for an order accepting a civil judgment from another Tribal Court or a state or federal court as a judgment of the Court.

3-25.02 REVIEW BY COURT

The Tribal Court shall recognize, implement and enforce the orders, judgments and decrees of other courts, unless the Tribal Court finds that the court that rendered the order, judgment or decree:

- (1) lacked jurisdiction over a party or the subject matter,
- (2) Denied due process, or
- (3) Does not reciprocally provide for recognition and implementation of orders, judgments and decrees of the Kalispel Tribal Court.

3-25.03 PAYMENT OF JUDGMENT

Upon the entry of the order declaring the other Court's judgment to be a judgment of the Tribal Court, all provisions of this Code regarding judgments and execution shall be applicable.

SECTION 3-26: CIVIL FORFEITURE

- (1) Seizures Generally. The Tribal Police shall have the authority to seize the following real or personal property located within the jurisdiction of the Kalispel Tribe. This authority does not extend to property held in trust by the United States. No property right shall exist in any property described below:

- (A) All controlled substances which have been manufactured, distributed, dispensed, possessed or acquired in violation of the Kalispel Law and Order Code ("KLOC").
- (B) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance or listed chemical in violation of the KLOC. This includes all listed equipment, illicit chemicals, capsules, and all machinery used in the creation, production, and encapsulation of drugs, which have been imported, exported, transported, possessed, manufactured, dispensed,

distributed, acquired or intended to be imported, exported, transported, possessed, manufactured, dispensed, or distributed in violation of Kalispel Tribal law.

- (C) All property which is used, or intended for use, as a container, vessel, or other storage receptacle or device, for property that violates the KLOC.
- (D) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, facilitate, or aid the transportation, sale, possession, concealment, or receipt of property, that would otherwise constitute a violation of the KLOC.
- (E) All books, records, and research, including, but not limited to, formulas, microfilm, tapes, and data which are used, or intended for use, in violation of the KLOC.
- (F) All monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a violation of the KLOC. All proceeds traceable to such an exchange, and all monies, negotiable instruments, and securities used or intended to be used to facilitate any violation of the KLOC.
- (G) All real property, excluding property held in trust by the Federal Government, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of an offense involving the manufacture, cultivation, delivery, or possession with intent to manufacture, deliver, or otherwise utilized in any violation of the KLOC.
- (H) All drug paraphernalia as defined by the Controlled Substances Act or the KLOC.
- (I) Any firearm, projectile, or weapon used or intended to be used to facilitate the movement, exchange, possession, sale, receipt or concealment of property described in this section, and any monies or funds traceable to such property, or otherwise used in violation of the KLOC.
- (J) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, facilitate, or aid in the transportation of persons involved in, the offering or promotion of, the concealment of, or in the course of activities of prostitution and/or human trafficking as defined by Tribal, state or Federal law.
- (K) All books, records, and research, including, but not limited to, digital recordings, microfilm, tapes, and data which are used, or intended for use, in prostitution and/or human trafficking as defined by Tribal, state or Federal law.
- (L) All monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in an exchange in transactions related to prostitution and/or human trafficking as defined by Tribal, state or Federal law. All proceeds traceable to such an exchange, and all monies, negotiable instruments, and securities used or intended to be used to

facilitate any violation of the KLOC.

(M) Any firearm, projectile, or weapon, which are used, or are intended for use, to facilitate, or aid in the transportation of persons involved in, the offering or promotion of, the concealment of, or in the course of activities related to prostitution and/or human trafficking as defined by Tribal, state or Federal law.

(2) Seizures Related to All Other Property. Any property that is within the jurisdiction of the Kalispel Tribe, real or personal, excluding property held in trust by the Federal Government, is subject to forfeiture under Kalispel Tribal Law.

(3) Seizure Procedures. Any property subject to forfeiture under subsection 1 may be seized under a search warrant. Property may be seized without a warrant if:

(A) The property is seized as incident to an arrest or search warrant for a different cause or purpose;

(B) The property is being seized due to a prior judgment against the property in favor of the Kalispel Tribe in a formal legal proceeding pursuant to the KLOC;

(C) The Kalispel Tribal Police has determined that there is probable cause that the property to be seized poses a threat to public safety or health;

(D) The Kalispel Tribal Police has reason to believe that the property is or was intended to be used in a violation of Kalispel Tribal law. Precautions should be taken to ensure that, if the property being seized is subject to a forfeiture hearing, all efforts are made to document the necessity of the seizure, the severity of the violation committed or intended to be committed, and the circumstances that gave rise to the seizure.

(4) Inventory and Custody of Seized Goods. The Tribal Police shall make an inventory of all property seized and copies of such inventory shall be left with the person for whom the property was taken from if it is possible to do so. A copy of such inventory shall also be filed with the Court Clerk. This property shall not be recoverable. The property will be deemed property of the Kalispel Tribe, subject only to a court order from a Court or Tribal Police.

(5) Summary Forfeiture. Property seized pursuant to subsections (1) A, B, C, H, is subject to summary forfeiture, subject to possible discovery and use by a defendant in their defense. Property confiscated as contraband shall be subject to summary forfeiture.

(6) Non-summary Forfeiture Procedure. Property seized pursuant to subsections (1) D, E, F, G, I, J, K, L, M and (2) is subject to the following procedures:

(A) Within forty-five (45) calendar days of the seizure, a petition shall be filed to institute forfeiture proceedings with the Court. The petitioner shall issue a summons, and the petitioner shall serve the petition and summons upon all owners or claimants of the property as provided by Chapter 3 of the Kalispel Law and Order Code. An affidavit of service shall also be filed with the Court.

(B) Within thirty (30) calendar days after the service of the petition and summons, the owner or claimant of the seized property shall file an answer to the allegations described in the petition to institute forfeiture proceedings. Extensions will not be granted, with exception of extraordinary circumstances.

- i. If an answer is not filed within thirty (30) calendar days after the service of the petition and summons, the Court upon motion shall order the property forfeited to the Kalispel Tribe.
- ii. If an answer is filed within thirty (30) calendar days, the forfeiture proceeding must be set for hearing without a jury no later than sixty (60) calendar days after the answer is filed. Notice of such hearing must be given pursuant to Chapter 3.

(C) Any claimant for a security interest who files an answer to a petition for seizure of property must prove:

- i. that the security interest is bona fide and
- ii. was created after a reasonable investigation by the claimant into the moral character and reputation of the purchaser and believed that the security interest was legitimate and
- iii. without knowledge that the property was in use or was to be used for the purpose charged.

This section shall not apply to claimants who have a lien dependent upon possession for legally entitled compensation, or companies that regularly engage in the business of selling the property or of purchasing conditional sales contracts for property.

(7) Forfeiture Hearing. The petitioner must prove the allegations in the petition by a preponderance of evidence.

(A) If the Judge finds that the property was not used for the purpose charged or that the property was used without the knowledge or consent of the owner, then it shall order the property released to the owner of record as of the date of seizure.

(B) If the Judge finds that the property was used for the purpose charged and that it was used with the knowledge or consent of the owner, then the property shall be forfeited to the Kalispel Tribe.

(C) The Judge may determine that the seizure is grossly disproportional in relation to the fine that could be assessed in the proceeding, in which case the property shall be returned to the owner.

(D) In determining whether a seizure is grossly disproportional, the Judge will weigh the following factors: (1) the severity of the alleged conduct of the owner, (2) the potential penalties and fines associated with the alleged conduct, (3) the assets of the owner, (4) whether the property that was

seized was directly involved in the alleged criminal conduct, (5) the harm caused to the owner if the property remains seized, (6) the potential harm caused by returning the seized property to the owner, (7) and any other factors that are presented to the Judge in the forfeiture hearing.

(E) The Judge may order production of any relevant documentation in order to establish a finding that the seizure was grossly disproportional to the fine that could be assessed.

(8) Disposition of Forfeited Property. Whenever property is forfeited under this Chapter, the Kalispel Tribe may:

(A) Retain the property for official use;

(B) Sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public;

- i. Any funds generated through subsection (8) (B) shall be used to pay any and all expenses of the forfeiture proceedings and sale expenses of the property, and retained for the benefit of the Tribe.

(C) Take custody of the property and destroy or dispose it in accordance with Tribal and Federal laws;

(D) Transfer of the forfeited property to any other jurisdiction which participated directly or indirectly in the seizure or forfeiture of the property, provided that the transfer is authorized and allowed by the Kalispel Tribe, or is authorized in an agreement with the Kalispel Tribe and the other jurisdiction.

(9) Forfeiture and Destruction of Controlled Substances. The Kalispel Tribe and Tribal Police shall have the right to seize any and all controlled substances as defined by Chapter 9 of the KLOC, the Controlled Substances Act, and this Chapter. Such property shall be deemed contraband, and shall be summarily forfeited to the Kalispel Tribe.

(A) Any dangerous substances, materials, paraphernalia or containers, even property which has no identifiable owner which cannot be safely separated from their containers shall also be deemed contraband and summarily forfeited to the Kalispel Tribe.

(B) The Kalispel Tribe may direct the destruction of all property described in this subsection as they deem necessary.

(10) Plants. The Kalispel Tribe and Tribal Police shall have the right to seize any and all species of plants from which controlled substances may be derived as defined by Chapter 9 of the KLOC, the Controlled Substances Act, and this chapter.

(A) Plants which have been planted or cultivated in violation of:

- i. Kalispel Tribal law, or
- ii. which the owners or cultivators are unknown, or

iii. which are wild growths, may be seized and summarily forfeited to the Kalispel Tribe.

(B) The Kalispel Tribe, or its duly authorized agent, shall have authority to enter upon any lands, or into any dwelling pursuant to a search warrant, to cut, harvest, carry off, or destroy such plants.

(11) Criminal Offenses. The Kalispel Tribe and Tribal Police shall have the right to seize any and all property, real or personal, excluding property held in trust by the Federal Government, which is used or intended to be used in any manner to commit, or to facilitate the commission of, a criminal offense under Tribal, State or Federal laws.

(12) Return of Seized Noncontraband Property. Noncontraband property may be returned to the owner prior to forfeiture at the discretion of the Tribal Police Chief or his designee. A hearing may be requested before the Judge within thirty (30) days of any seizure to determine the disposition of all property seized by law enforcement officers.

(A) Upon satisfactory proof of ownership, the property shall be delivered to the owner, unless such property is to be used as evidence in a pending case, or is subject to forfeiture. Noncontraband property taken as evidence shall be returned to the owner after final judgment has been rendered and time for appeal has expired. Noncontraband property may be returned to the owner prior to final judgment upon application to and at the discretion of the Judge.

(B) Property in the possession of the Tribal Police and of unknown ownership shall become the property of the Kalispel Tribe and may be disposed of according to the procedures for handling unclaimed property.

(13) Vesting of Title in the Kalispel Tribe. All right, title and interest in property described in Section 1 of this section shall vest in the Kalispel Tribe upon the act giving rise to forfeiture under this section, subject to possible discovery and use by defendants in their defense.

(14) Stay of Civil Forfeiture Proceedings.

(A) Upon the motion of the Kalispel Tribe, the Judge shall stay the civil forfeiture proceeding if the Court determines that civil discovery will adversely affect the ability of the Kalispel Tribe to conduct a related criminal investigation or the prosecution of a related criminal case.

i. In requesting a stay, the Kalispel Tribe may, in appropriate and reasonable instances, submit evidence *ex parte* and *in camera* in order to prevent disclosing any matter or case which may adversely affect an ongoing criminal investigation or trial. The Judge may take appropriate action to accommodate such a request.

(B) Upon the motion of a claimant, the Judge shall stay the civil forfeiture proceeding if the Judge determines:

- i. the claimant is the subject of a related criminal investigation or case;
- ii. claimant has standing to assert a claim in the civil forfeiture proceeding; or
- iii. continuation of the proceeding would burden the right of the claimant against self-incrimination in the related case or investigation.
- iv. The Judge finding that a claimant has standing to assert a claim in the civil forfeiture proceeding does not in any way preclude the Kalispel Tribe raising lack of standing in a dispositive motion at trial.

(C) The Judge may determine that a stay is unnecessary if a protective order limiting discovery would protect the interest of one party without unfairly limiting the ability of the other party to pursue the civil case. If such a protective order would in any way be unfairly limiting for one party over the other, then that protective order shall not be used as an alternative to a stay.

