

**TITLE 4A
TRIBAL APPELLATE COURT
AND RULES OF
APPELLATE PROCEDURE**

**CHAPTER 1
TRIBAL APPELLATE COURT**

Section 4A-1-1. Establishment of Tribal Appellate Court and composition. In accordance with Title 1 of this Code, there is established a Tribal Appellate Court as a division of the Tribal Court. The Tribal Appellate Court shall be composed of three judges who shall be appointed by the Tribe. The Tribe shall appoint one appellate judge to serve as the Chief Judge of the Appellate Court.

Section 4A-1-2. Authority of Tribal Appellate Court. The Tribal Appellate Court shall have authority to hear civil and criminal appeals from the Tribal Court in accordance with the rules set out in this Title. The Appellate Court shall have authority to make and implement rules of procedure as are necessary to the the administration of the Appellate Court, provided that such rules do not conflict with the Rules set out in this Title.

Section 4A-1-3. Clerk of the Tribal Appellate Court. The Clerk of the Tribal Court shall serve as the Clerk of the Appellate Court. The Clerk shall keep a docket and shall enter therein each case. Cases shall be assigned consecutive file numbers. The file number of each case shall be noted on the folio of the docket. A numbered case file shall be created for each case with a case activity sheet for that case. Entries shall be brief but shall show the date, nature and title for each document entered. The Clerk shall also keep an alphabetical index of cases contained in the docket by appellant and appellee names so that the case number can be cross referenced. The clerk shall prepare, under the direction of the court, a calendar of cases pending argument. Preference shall be given to criminal and juvenile court appeals.

Immediately upon the entry of an Order of Judgment by the Appellate Court the Clerk shall serve Notice of Entry of Order/Judgment by certified mail upon each party to the proceeding with a copy of any opinion respecting the Order or Judgment and shall note the date of mailing on the case activity sheet for that case, including a copy of all cover letters in the file. Service on a party represented by an attorney or counselor shall be made on the attorney or counselor. Certified mail return receipts shall be stapled to the copy of the document mailed when returned by the postal service.

The Clerk shall have custody of the records and papers of the court. He or she shall not permit any original record or paper to be taken from his or her custody except as authorized by order of court. Original records

transmitted from the tribal court shall be returned to the court upon disposition of the case appealed. The clerk shall preserve copies of all briefs and documents filed.

Section 4A-1-4. Suspension of rules. In the interests of expediting decision in cases of pressing concern to the public or to the litigants, or for other good cause shown, the Appellate Court may suspend the requirements of the rules of criminal and civil procedure on application of a party or on its own motion and may order proceedings in accordance with its direction.

Section 4A-1-5. Filing fee and bond. There shall be a fifty dollar fee for filing appeals to the Appellate Court. In addition to the filing fee, the appellant shall also be required to post a one hundred dollar appellate bond for costs on appeal or equivalent security. The bond for costs shall have sufficient surety and shall be conditioned to secure payment of costs if the appeal is dismissed, the judgment or order affirmed, of such costs as the appellate court may direct if the judgment or order is modified or affirmed in part. In lieu of the filing fee and appellate bond, the appellant may file an affidavit of indigency which shall be subject to the approval of the Appellate Court.

Section 4A-1-6. Records and Decisions. Permanent records of proceedings and decisions of the Appellate Court will be maintained by the Clerk of Courts separate from records of other divisions of the Tribal Court. Decisions of the Appellate Court shall be compiled chronologically, indexed by subject matter, docket number, and caption, and made available to the public by the Clerk of Court. The Chief Judge of the Tribal Court may order the periodic publication of the collected decisions of the Appellate Court and provide for the distribution of the same.

Section 4A-1-7. Time and format of decisions. A decision of the Appellate Court shall be rendered in writing by a majority of the panel and filed with the Clerk of Courts within sixty days of the date of oral arguments or of agreement by the parties that the matter will be decided on briefs.

A judge who concurs in the result of the majority decision, but not in its reasoning, shall file a concurring opinion with the majority opinion. A judge who dissents from the result of the decision may file a dissenting opinion no later than 15 days after the majority opinion is filed.

Section 4A-1-7. Effect of Decision. A decision of the Appellate Court is final and binding upon the parties as to all issues and claims that were raised or might have been raised at trial or upon appeal. Decisions of the Appellate Court shall be given precedential effect by all divisions of the Tribal Court.

CHAPTER 2
CIVIL RULES OF APPELLATE PROCEDURE

RULE 1. Scope of Rules. This Chapter shall govern procedures in civil appeals to the Tribal Appellate Court from judgments and orders of the Tribal Court.

RULE 2. Judgments and orders from the tribal court from which appeal may be taken. Civil appeals to the Tribal Appellate Court from the Tribal Court may be taken as provided in this title from:

- (1) A judgment;
- (2) An order affecting a substantial right, made in any action, when such order in effect determines the action and prevents a judgment from which an appeal might be taken;
- (3) An order granting a new trial;
- (4) Any final order affecting a substantial right, made in special proceedings, or upon a summary application in an action after judgment;
- (5) An order which grants, refuses, continues, dissolves or modifies any of the remedies of arrest and bail, claim and delivery, injunction, attachment, garnishment, receivership, or deposit in court; or
- (6) Any other intermediate order made before trial, any appeal under this subdivision, however, being not a matter of right but of sound judicial discretion, and to be allowed by the appellate court only when the court considers that the ends of justice will be served by determination of the questions involved without awaiting the final determination of the action or proceeding.

RULE 3. Appeals of right-How taken. An appeal permitted by Rule 2 as of right shall be taken as follows:

- (1) Notice of appeal. A timely filing of a Notice of Appeal commences the appellate process. The notice shall specify the party or parties taking the appeal; shall designate the judgment, order, or part thereof appealed from; and shall be signed by the appellant or his attorney.

- (2) Service of the notice of appeal. The appellant, or his counsel, shall serve the notice of appeal on counsel of record of each party other than appellant, or, if a party is not represented by counsel, on the party at his last known address.
- (3) Filing notice of appeal. Before the expiration of the time to appeal, the appellant shall file the notice of appeal with the Clerk of Courts along with the filing fee required under Chapter 1 of this Title. The Clerk shall not accept a notice of appeal for filing unless accompanied by proof of service of a copy thereof on each party other than the appellant together with the required statutory filing fees unless exempt by law.
- (4) Transmittal to Appellate Court. Upon compliance with subdivision (3) of this section, the Clerk of Courts shall immediately transmit to the judges of the Appellate Court certified copies of the notice of appeal, proof of service and the judgment or order appealed from.
- (5) Joint appeals. If two or more parties are entitled to appeal from a judgment or order and their interests are such as to make joinder practicable, they may serve and file a joint notice of appeal, or may join in appeal after serving and filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant.

Failure of an appellant to take any step other than timely service and filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the Appellate Court deems appropriate, which may include dismissal of the appeal.

Appeals may be consolidated by order of the Chief Judge of the Appellate Court upon motion of a party.

RULE 4. Appeals-When taken. Any appeal other than from a judgment must be made within sixty days after written notice of the filing of the order shall have been given to the party appealing. An appeal from a judgment must be made within sixty days after the judgment shall be signed, attested, filed and written notice of entry thereof shall have been given to the adverse party.

A written notice of appeal filed before the attestation and filing of such signed judgment or order shall be deemed as filed on the date of the attestation and filing of the judgment or order.

The running of the time for filing a notice of appeal is terminated as to all parties by a timely motion filed in the tribal court by any party pursuant to Section 4-16-1 or 4-12-2 of Title 4 of this Code, or both, and the full time for appeal fixed by this section commences to run and is to be computed

from the attestation and filing of an order made pursuant to such motion or if the tribal court fails to take action on such motion or fails to enter an order extending the time for taking action on such motion within the time prescribed, then the date shall be computed from the date on which the time for action by the tribal court expires.

RULE 5. Orders and determination of tribal court subject to review on appeal from judgment. On appeal from a judgment, the Appellate Court may review any order, ruling, or determination of the tribal court, including an order denying a new trial, and whether any such order, ruling, or determination is made before or after judgment involving the merits and necessarily affecting the judgment and appearing upon the record.

RULE 6. New trial motion not required for review on insufficiency of evidence or error of law. Such of the matters specified in subdivisions (6) and (7) of Section 4-16-1 of Title 4 of this Code as may have been timely presented to the tribal court by motion for directed verdict, request for findings, or other motion, offer, or objection may be reviewed on appeal from the judgment without necessity for an application for new trial.

RULE 7. Matters subject to review on appeal from order denying new trial. When reviewing an order denying a new trial, the Appellate Court may review all matters properly and timely presented to the court by the application for a new trial.

RULE 8. Scope of review on appeal from order. When the appeal is from any order subject to appeal, the Appellate Court may review all matters appearing on the record relevant to the question of whether the order appealed from is erroneous.

RULE 9. Combining of appeals in one notice and one undertaking. The appellant may unite in one notice, and under one undertaking of the amount required for a single appeal, all appeals from one or more judgments and from one or more orders made in or pertaining to the same action or proceeding, subject however to all limitations of time for taking appeals.

RULE 10 . Actions available to Appellate Court on decision. By its judgment, the Appellate Court may reverse, affirm, or modify the judgment or order appealed from, and may either direct a new trial or the entry by the tribal court of such judgment as the Court of Appeals deems necessary as required under the record.

RULE 11. Petition for permission to take discretionary appeal. An appeal from an intermediate order made before trial as prescribed by subdivision (6) of Rule 2 may be sought by filing a petition for permission to appeal,

together with proof of service thereof upon all other parties to the action in tribal court, with the Clerk of Courts within ten days after notice of entry of such order.

The original and three copies of the petition shall be filed with the clerk, together with the required statutory filing fees unless exempt by law.

RULE 12. Contents of petition for appeal. The petition shall be captioned in the Tribal Appellate Court and entitled as in the tribal court. It shall contain:

- (1) A statement of facts necessary to an understanding of the controlling questions of law or fact determined by the order of the tribal court;
- (2) A statement of the question itself;
- (3) A concise statement, without argument, of the principles of law on which the petitioner relies, with citations of authorities to support the same;
- (4) The reasons as claimed by the petitioner why the ends of justice require that an intermediate appeal be allowed;
- (5) A statement that the petition is not interposed for the purpose of delay; and
- (6) A statement that no notice of entry of the order sought to be appealed was given if such is the case.

RULE 13. Exhibits attached to petition for appeal. Copies of the following shall be attached as exhibits to the petition:

- (1) All relevant pleadings;
- (2) A conformed copy of the order sought to be reviewed;
- (3) All findings of fact, conclusions of law, or memorandum opinions relating thereto;
- (4) Other papers and exhibits as petitioner may deem relevant and material; and
- (5) The notice of entry of the order sought to be appealed.

RULE 14. Response to petition. Within seven days after the service of the petition, any party to the action may serve and file a response thereto. The original and five copies of the answer shall be filed with the clerk of courts.

The petition and any response shall be submitted without oral argument unless otherwise ordered.

RULE 15. Grant of permission to appeal-Procedure. If permission to appeal is granted, the clerk of courts shall serve notice of the order granting permission to appeal by mailing a copy of the order to the counsel of record of each party to the action. The appellate petitioner shall then file the bond for costs as required under Chapter 1 of this Title and shall thereafter proceed as though the appeal had been instituted by service of a written notice of appeal. In the order granting the appeal, the Court shall fix the time for the filing of the bond, briefs and the transmitting of the record if necessary.

RULE 16. Noncompliance with requirements and inaccurate statements as grounds for denial from intermediate order. In any case where it appears to the Appellate Court that a petitioner has willfully failed to comply with the requirements of Rules 12 through Rule 15, inclusive, as to the form and contents of a petition for allowance of an appeal from an intermediate order, or has intentionally made an unfair or inaccurate statement in such petition, this shall constitute sufficient grounds for denial of the petition.

RULE 17. Stay of further proceedings pending petition for appeal from intermediate order-Security required-Filing of order granting stay. Upon the filing of any petition referred to in Rule 11 with the Clerk of Courts, the petitioner may make application to the court for a stay of proceedings pending action of the court on such petition. The court shall grant such stay only when satisfied that the ends of justice require it, and upon such security as the court may direct to safeguard any other party against damage by reason of delay. If the court makes an order granting such stay, a certified copy thereof must be filed with the clerk of the court from which the appeal is sought. The filing of the petition shall not operate to stay proceedings except as provided in this section.

RULE 18. Terms imposed on unreasonable and vexatious petition for appeal from intermediate order. In any case where the Appellate Court is satisfied that a petition for allowance of an appeal from an intermediate order has been filed without reasonable grounds, and that the filing of the same may be fairly considered vexatious, the court may impose upon the petitioner such terms as the court deems proper.

RULE 19. Composition of the record on appeal. The original pleadings, papers, offered exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases.

RULE 20. Determination of parts of transcript to be included. Unless the entire tribal court transcript is to be included, the appellant shall within ten days after filing the notice of appeal, file with the clerk a statement of the issues he intends to present for appeal and shall serve on the appellee a copy of the order or certificate and of the statement. If the appellee deems a transcript of other parts of the proceedings to be necessary, he shall, within ten days after service of the order or certificate and the statement of the appellant, file with the clerk and serve on the appellant, a designation of additional parts to be included. Unless within ten days after service of such designation the appellant has ordered such parts and has so notified the appellee, the appellee may within the following ten days either order the parts or move the tribal court for an order requiring the appellant to do so.

RULE 21. Order for transcript of proceedings. Within ten days after filing of the notice of appeal, the appellant shall order from the court a transcript of the proceedings or such parts thereof as he deems necessary. The order shall be in writing, and within the same time period service of the order shall be made on all parties to the action. The appellant shall be responsible for any costs associated with obtaining a copy of the transcript.

RULE 22. Statement of the proceedings when no report was made or when the transcript is unavailable. If no report of all or any part of the proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may, within fifteen days after service of the notice of appeal, prepare a statement of the proceedings from the best available means, including his recollection, and file a written notice of intention to file such a statement with Clerk of Courts. The statement shall be served on the appellee, who may serve objections or propose amendments thereto within fifteen days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the tribal court, and the statement as approved by the trial court shall be filed with the clerk and included in the record within fifteen days of submission.

RULE 23. Agreed statement as the record. In lieu of the record as defined in Rule 19, the parties within fifteen days of service of the notice of appeal may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the tribal court and setting forth only so many facts averred and proved or sought to be proved as are essential to a decision of the issues presented, and file a written notice of intention to file such statement with Clerk of Courts. If the statement conforms to the truth, it, together with such additions as the tribal court may

consider necessary to present the issue raised by appeal, shall be approved by the tribal court and filed with the clerk within fifteen days of preparation. As so filed, the statement shall serve as the record on appeal.

RULE 24. Transmission of record of appeal to the Appellate Court. Upon designation of the record as provided in Rule 19 or Rule 23, the Clerk shall transmit the record of appeal to the Justices of the Appellate Court within 10 days.

RULE 25. Time for serving and filing briefs. The appellant shall serve and file his brief within forty-five days from the date the record was transmitted to the Appellate Court. The appellee shall serve and file his brief within forty-five days after service of the brief of appellant, or in the case of multiple appellants, within forty-five days after service of the last appellant's brief. The appellant may serve and file a reply brief within fifteen days after service of the appellee's brief, or in the case of multiple appellee's, within fifteen days after service of the last appellee's brief.

RULE 26. Extension of time for serving and filing briefs. The parties to an appeal may allow to each other by stipulation, one extension of time not exceeding fifteen days for serving and filing the appellant's and appellee's initial brief, provided such stipulation is made and presented to the Clerk before the time for filing such brief has expired. Thereafter, no other extension of time fixed by these rules will be allowed, except upon application and notice.

RULE 27. Contents and form of briefs. All briefs shall be served and filed in accordance with these rules. The brief of the appellant shall contain:

- (1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes or other authorities cited, with reference to the pages of the brief where they are cited;
- (2) A statement of the issues presented for review;
- (3) A statement of the case, indicating the nature of the case, the course of the proceedings before the tribal court, and its disposition;
- (4) An itemization of all assignments of error or legal or factual issues desired to be considered in the appeal;
- (5) An argument, which shall contain the contentions of the Appellant with respect to the issue presented, the reasons thereof, with citations to the authorities, statutes and parts of the record relied upon;

- (6) A short conclusion stating the precise relief sought; and
- (7) Appendix, if any. Such appendix may include the judgment, order or decision in question, any relevant portions of the pleadings, instructions, findings or opinion, and any other parts of the record to which the parties wish to direct the particular attention of the court.

The brief of the appellee shall conform to the requirements outlined above for the appellant's brief, except that a statement of the issues or of the case and the facts need not be made unless the appellee is dissatisfied with the statement of appellant.

All briefs shall be limited to twenty-five pages, exclusive of pages containing the table of contents, tables of citations, and any addendum included as exhibits, unless otherwise ordered by the court. Briefs shall be submitted on 8 1/2 x 11" paper only and shall be typed and double-spaced and shall be attached at the left margin.

RULE 28. Reply brief. The appellant may file a brief in reply to the brief of the appellee. The reply brief must be confined to new matters raised in the brief of the appellee.

RULE 29. Supplemental brief with late authorities-service on opposing counsel. Whenever a party desires to present late authorities, newly enacted legislation, or other intervening matters that were not available in time to have been included in his brief in chief, he shall serve a copy thereof upon opposing counsel and file five copies of the supplemental brief, restricted to such new matter and otherwise in conformity with this chapter, up to the time the case is called for hearing, or by leave of court thereafter.

RULE 30. Number of copies of briefs to be served and filed. Two copies of each brief shall be served on the attorney for each party to the appeal separately represented and upon any party who is not represented by counsel. Five copies of each brief shall be filed with the Clerk of Courts. The Clerk shall not accept a brief for filing unless it is accompanied by admission or proof of service.

RULE 31. Failure to file briefs. If an appellant fails to file his brief within the time provided by Rule 25 or within the time as extended, an appellee may move for dismissal of the appeal. If an appellee fails to timely file his brief, he will not be heard at oral argument except by permission of the court. The Clerk shall not accept for filing any brief not timely submitted for filing.

RULE 32. Briefs mailed for filing. When briefs are forwarded to the clerk for filing by mail they shall be accompanied by an affidavit of mailing or

certificate of service of mailing and shall be deemed to be filed as of the date of mailing.

RULE 33. Oral argument-by request or motion of the court of appeals. If either the appellant or the appellee desires oral argument, the appellant or appellee as appropriate shall present a written request for oral argument along with his statement why argument is needed and why the court should not decide the matter based on the briefs and record. The Appellate Court may on its own motion, require oral argument. The decision to grant oral arguments shall be discretionary with the Appellate Court. If oral arguments are granted, the Chief Judge of the Appellate Court shall set the time and place at which oral arguments will be heard. The Clerk shall advise all parties of the time and place for hearing on oral arguments. Any request for postponement of the hearing for good cause must be made by motion to the Chief Judge no later than 10 days prior to the time scheduled for hearing.

RULE 34. Time allowed for argument. For oral argument, unless otherwise ordered, the appellant shall be allowed twenty minutes to open, the appellee shall be allowed twenty minutes to answer and the appellant shall be allowed ten minutes for rebuttal. If additional time is necessary for adequate presentation, counsel shall obtain permission from the court before commencing the argument.

RULE 35. Decision by the Appellate Court. After all briefs have been filed or after oral arguments have been heard, if granted, the Appellate Court shall enter its order. Upon entry, the Clerk of Courts shall promptly mail to all parties a copy of the order, judgment, or decision, and notice of the date of entry.

CHAPTER 3 CRIMINAL RULES OF APPELLATE PROCEDURE

RULE 1. Scope of Rules. This Chapter shall govern procedures in criminal appeals to Tribal Appellate Court from judgment and order of the Tribal Court.

RULE 2. Defendant's Right To Appeal. An appeal to the Tribal Appellate Court may be taken by the Defendant from a final judgment of conviction.

RULE 3. Appeal by Tribal Prosecutor from dismissal or order for a new trial. An appeal by the Tribal Prosecutor in a criminal case may be taken to the Appellate Court, as a matter of right, from a judgment or order of the tribal court sustaining a motion to dismiss a complaint on statutory grounds or otherwise, or granting a motion for a new trial, or suppressing or excluding

evidence; but such appeals shall not bar or preclude another prosecution of the defendant for the same offense, except where the dismissal is affirmed by the Appellate Court. An appeal under this Rule shall be taken within ten days after written notice of entry of the judgment or order.

RULE 4. Scope of Review by Appellate Court. On an appeal from a judgment the Appellate Court may review any order, ruling, or determination of the tribal court, involving the merits and necessarily affecting the judgment and appearing upon the record including an order denying a new trial, and whether any such order, ruling, or determination is made before or after judgment. When the appeal is from an order subject to appeal, the Appellate Court may review all matters appearing on the record relevant to the question of whether the order appealed from is erroneous.

RULE 5. Scope of review when denial of new trial assigned as error. When an order denying a new trial is assigned as error, the Appellate Court may on such assignment, review all matters properly and timely presented to the trial court by the application for a new trial.

RULE 6. Discretionary appeal from intermediate order before trial- Procedure. As to any intermediate order made before trial, as to which an appeal is not allowed as a matter of right, either the Tribe or the defendant may be permitted to appeal to the Appellate Court, not as a matter of right, but of sound judicial discretion, and such appeal shall be allowed by the Appellate Court only when the court considers that the ends of justice will be served by the determination of the questions involved without awaiting the final determination of the action. The procedure as to the taking of such appeal, petition for allowance thereof, and allowance thereof, shall be as set forth in Rules 12 through 15 of Chapter 2 of this Title, inclusive, so far as the same are applicable.

RULE 7. Constitutional issue first raised on appeal. The issue of the constitutionality of any statute under which a defendant has been convicted may be raised on appeal regardless of whether it was first raised at trial.

RULE 8. Provisions regarding civil appeals applicable unless otherwise provided. Except as otherwise expressly provided in this Chapter, all of the provisions of Chapter 2 of this Title with reference to settlement of the record, certification and transmission thereof to the Appellate Court, laying the foundation for appellate review of alleged errors, preparing, serving, and filing of briefs, and presentation and argument of the appeal, shall apply to appeals under this Chapter except to the extent that such provisions by their context are clearly inapplicable.