

**APPELLATE RULES
FOR THE
LOWER SIOUX INDIAN COMMUNITY**

[Approved March 16, 2006. Effective March 16, 2006. Resolution 06-42 as amended
April 23, 2009 Resolution 09-170]

TITLE OF THE ACT

Rule A. Title of this Act.

This Act shall be known as the Appellate Rules of the Lower Sioux Indian Community.

Rule B. Scope and Applicability of Rules.

(a) **[Scope]** This Act governs the procedure of appeals to the Appellate Court from the Tribal Court, and in applications for writs or other relief.

(b) **[Sources]** Where necessary to promote fairness and justice to parties, the Appellate Court may look to Dakota customs and traditions and the Federal Rules of Appellate Procedure for guidance in applying and supplementing these Rules.

(c) **[Definitions]** The following words shall mean:

1. Appellant shall mean the party who takes an appeal from one court or jurisdiction to another.
2. Clerk means the Clerk of the Tribal Court who shall also serve as the Clerk of the Appellate Court.
3. *En banc* shall mean by the full Court;
4. *In forma pauperis* shall mean without costs;
5. Interlocutory order shall mean any order issued prior to a final decision.
6. Judge shall mean the presiding officer of the Tribal Court.
7. Justice shall mean the presiding officer of the Appellate Court.
8. Month means a calendar month, unless otherwise expressed;
9. *Pendente lite* shall mean matters that are contingent upon determination of a pending

lawsuit;

10. Personal property includes money, goods, chattels, things in action, and evidences of debt;

11. Process means a writ or summons issued in the course of judicial proceedings;

12. Property includes both real and personal property;

13. *Pro se* shall mean one who appears without the aid of counsel.

14. Real property is coextensive with lands, tenements, and hereditaments;

15. Will includes codicil;

(d) [Lay Advocates (Persons Appearing *Pro Se* Without Counsel)] Except where otherwise expressly provided, all references to “counsel,” “lawyer” or “attorney” shall be equally applicable to those persons appearing before the Appellate Court without counsel. Lay advocates and persons appearing *pro se* shall be expected to conform to all applicable rules to the same degree as professional members of the Bar.

Rule C. Suspension of Rules

In the interest of judicial economy or for other good cause shown, the Appellate Court may, except as otherwise provided elsewhere in this Act, suspend the requirements or provisions of any Rule in a particular case on application of a party or on its own motion. However, except as provided in Rule 134, in no instance may a matter be heard in the Appellate Court until after the matter has first been heard at the Tribal court level.

Rule D. Discretionary Authority

Where no procedure is provided in this Title or other Tribal statutes, the Appellate Court may proceed to exercise its functions in any lawful manner.

DIVISION I

GENERAL PROVISIONS

Rule 101. Filing of Notice of Appeal.

(a) [Form of Notice] A notice of appeal from a decision of the Tribal Court must be filed with the Clerk within thirty (30) calendar days from the date of final judgment or order. The notice

shall be signed by the appellant or by their attorney of record and shall state that the appellant appeals from a specified judgment or order. A notice of appeal shall be liberally construed in favor of its sufficiency. Copies of the Notice of Appeal shall be served on all parties by the Appellant. Proof of service shall be promptly filed with the Tribal Court.

(b) [Payment of Filing Fee in Civil Appeals] A party filing a notice of appeal shall pay a filing fee as set forth in Appendix “A” of these Appellate Rules to the Clerk at the time the notice of appeal is filed, unless proceedings are in Forma Pauperis.

Rule 102. Extension of Time and Cross-Appeal.

(a) [New Trial Proceeding] When a notice of intention to move for a new trial is filed by any party and the motion is denied, the time for filing the notice of appeal is extended for thirty (30) days after entry of the order denying the motion or its denial by operation of law, but in no event may such notice of appeal be filed later than 180 days after the date of entry of the final judgment.

(b) [Motion to Vacate] When a valid notice of intention to move or vacate a judgment or to vacate a judgment and enter a different judgment is filed by any party within the time in which, under Rule 102, a notice of appeal may be filed, the time for filing the notice of appeal from the judgment is extended for all parties until the earliest of thirty (30) days after entry of the order denying the motion to vacate.

(c) [Motion for Judgment Notwithstanding the Verdict] When the same party has filed a notice of intention to move for a new trial and for entry of a judgment notwithstanding the verdict, and both motions are denied or not decided by the Tribal Court within sixty (60) days after the filing of the notice, the time for filing the notice of appeal is extended for all parties until the earlier of thirty (30) days after entry of the order denying the motion for a new trial or its denial by operation of law, or one hundred eighty (180) days after the date of entry of the final judgment.

Rule 103. Service of All Papers Required.

Copies of all papers filed by any party shall, at or before the time of filing, be served by that party or person acting for them on all other parties to the appeal. Service on a party represented by counsel or lay advocate shall be made on the counsel or lay advocate.

Rule 104. Manner of Service.

Service may be personal or by U.S. mail, Express Mail, overnight delivery or facsimile transmission in any manner allowed by the Lower Sioux Indian Community Judicial Ordinances for service of Tribal Court motions or briefs. Personal service may include substitute service to a Clerk, secretary, or other responsible adult over the age of eighteen (18) at the office of record for counsel or lay advocate so long as said substitute service is performed Monday through Friday from 8:00 a.m. – 5:00 p.m., excluding legal holidays. Service by mail is complete upon mailing.

Rule 105. Proof of Service.

Papers presented for filing shall include:

An affidavit setting forth the exact title of the document filed, the name and residence or business address of the person making the service that they are over the age of eighteen (18) years and not a party to the cause, and the date and place of deposit for the method of service used, and the name and address of the person served as shown on the envelope. In the case of service by U.S. mail, Express Mail, or overnight delivery, the proof of service shall also include a statement that the envelope or service device used was sealed and deposited with the proper postage fully prepaid.

Rule 106. Computation of Time.

In computing any period of time, the day of the act, event, or default from which the designated period of time begins to run, Saturdays, Sundays and Tribal legal holidays are excluded from the computation. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period extends until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. “Legal holiday” are set forth in Appendix “B” to these Appellate Rules.

DIVISION I(A)

MOTIONS AND BRIEFS

Rule 107. Moving Papers, Opposition and Reply to Motions Other than the Appellate Brief.

Unless elsewhere prescribed by this Act, a request for an order or other relief shall be made by filing a motion file with the Clerk with proof of service on all other parties. The motion shall state with

particularity the grounds on which it is based and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits, or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion within seven (7) days after service of the motion.

Rule 108. Form of Motions.

A motion or other paper addressed to the Court shall contain a caption setting forth the name of the Court, the title of the case, the file number, and a brief descriptive title indicating the purpose of the paper.

Rule 108.5. Fee for Motions.

All motions presented to the Appellate Court must be accompanied by a fee as set forth in Appendix A of this Act.

Rule 109. Determination of Motions for Procedural Orders.

Motions for procedural orders may be acted upon at any time, without awaiting a response thereto, and pursuant to Rule or order of the Court, motions for specified types of procedural orders may be disposed of by the Clerk. Any party adversely affected by such action may request consideration, vacation or modification of such action.

Rule 109.5. Request for Clarification of a Point of Procedure.

Any party to an appeal may petition the Court for clarification of a point of procedure. Upon request, the Clerk shall provide a party with a primer explaining the most frequently asked questions regarding points of procedure. Any questions not answered by the primer may be addressed to the Clerk. Any questions the Clerk cannot answer may be directed to any of the Appellate Justices, either individually or as a group, upon motion.

Rule 110. Power of a Single Judge to Entertain Motions.

A single Justice may entertain and decide any request for relief, except that a single Justice may not dismiss or otherwise determine an appeal or other proceeding.

Rule 111. Form of Papers; Number of Copies.

All papers relating to motions must be typewritten or, if handwritten, printed in a legible manner. Three copies shall be filed with the original, but the Court may require that additional copies be furnished.

Rule 112. Appellant’s Opening Brief.

Every appellant shall file an opening brief, except that an appellant may join in a brief or may adopt by reference any brief in the same or companion cases. The opening brief shall contain either a statement that the appeal is from a final judgment or a statement explaining why the order or non-final judgment is appealable.

Rule 113. Respondent’s Brief.

The respondent’s brief shall conform to the requirements of Rule 112.

Rule 114. Reply Brief.

The appellant may file a brief in reply to the respondent’s brief. No additional or supplementary briefs may be filed except with leave of Court requested pursuant to a motion or upon invitation by the Appellate Court.

Rule 115. References in Briefs to Parties.

To promote clarity, parties shall use the actual names of the parties, descriptive terms such as “the employee,” “the injured person,” “the taxpayer,” “the car,” the names of the parties, or the designations used by the Tribal Court.

Rule 116. Length of Briefs.

Except by permission of the Court, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages. The page limits may be increased upon motion by any party or on the Appellate Court’s own motion.

Rule 117. Briefs in Cases Involving Multiple Appellants or Multiple Respondents

In cases involving more than one appellant or respondent upon notice to the Court and to all parties involved, any number of appellants and/or respondents may join in a single brief, and any appellant or respondent may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs upon notice to the Court and all parties involved.

Rule 118. Citation to Supplemental Authorities.

When pertinent and significant authorities come to the attention of a party after a brief has been filed, or after oral argument but before decision, a party may promptly advise the Clerk, by letter, with a copy to all counsel, setting forth the citations referencing either the page of the brief or the point argued orally to which the citations pertain. Without presenting further argument, the letter shall state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited.

Rule 119. Amicus Curiae Briefs.

A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of Court granted on motion or at the request of the Court, except that consent or leave shall not be required when the brief is presented by the Community. A motion for leave shall identify the interest of the applicant and the reasons why a brief of amicus curiae is desirable. Unless all parties otherwise consent, any amicus curiae shall file its brief within the time allowed the party whose position the amicus brief will support unless the Court grants leave for later filing, in which event it shall specify within what period an opposing party may answer.

Rule 120. Time for Filing and Service of Briefs.

The appellant shall file a brief within twenty (20) days after the date which the completed record is received and filed in the Appellate Court. The respondent shall file a brief within twenty (20) days after service of the appellant's brief. The appellant may serve and file a reply brief within fourteen (14) days after service of the respondent's brief, but, except for good cause shown, a reply brief must be filed at least five (5) days before the date set for oral argument.

Rule 121. Number of Copies to Be Filed and Served.

Three copies of each brief shall be filed with the Clerk in addition to the original, unless the Court by order shall, direct a lesser or greater number, and two copies shall be served on counsel for each

party.

Rule 122. Consequence of Failure to File Briefs.

If, after filing a timely notice of appeal, an appellant fails to file a brief within the time allowed, a respondent may move for dismissal of the appeal. If a respondent fails to file a brief, they will not be heard at oral argument except by permission of the Appellate Court.

Rule 122.5. Defective Briefs.

When a brief fails to comply with the requirements of these Rules, the Appellate Court, on application of any party or on its own motion, and with or without notice, may: (1) order the brief to be returned for correction and be redeposited with the Clerk within a time specified in the order; (2) order the brief stricken from the files, with leave to file a new brief within a specified time; or (3) disregard the defects and consider the brief as if it were properly prepared.

Rule 122.6. Attorney Conference With Respect to Appeals of Discovery Motions.

With respect to all appeals from discovery motions, the Appellate Court shall refuse to hear any such appeals unless counsel for the movant shall first advise the Court in writing that they have conferred in good faith with opposing counsel, but that, after a sincere attempt to resolve differences had been made, the attorneys have been unable to reach an agreement

Rule 123. The Record on Appeal.

[Composition of the Record on Appeal] The original papers and exhibits filed in the Tribal Court, the transcript of the proceedings, if any, and a certified copy of the final judgment or order of the Tribal Court shall constitute the record on appeal in all cases.

Rule 124. Clerk's Record on Appeal.

The Clerk's record on appeal consists of all papers filed with the Clerk, all minutes from the underlying case, and all exhibits admitted into evidence or refused.

Rule 125. Agreed Statement.

(a) [Contents of Agreed Statement] An appeal may be presented on record consisting in whole or in part of an agreed statement. Within forty (40) days after filing the notice of appeal, the appellant shall file with the Clerk two (2) copies of such statement signed by the parties. The statement shall state the nature of the controversy, the basis on which it is claimed, that the Appellate Court has jurisdiction, and how the questions arose and were decided by the Tribal Court, and should set forth only such facts alleged and proved, or sought to be proved, as are necessary to a determination of the questions on appeal. The statement shall contain a copy of the judgment, a copy of the notice of appeal, and the pretrial order, if any. Additionally, whenever the statements refer to the judgment, together with any intention to move for a new trial or motion to vacate the judgment, the statement must contain a copy thereof.

(b) [Extension of Time] Within ten (10) days after filing the notice of appeal, the parties may file with the Clerk a preliminary stipulation stating that they are attempting to prepare an agreed statement. This stipulation shall extend the period fifty (50) days from the date of filing of the notice of appeal.

Rule 126. Notification of Appeal; Transmission and Filing of Record.

(a) [Action Upon Receiving Notification of Notice of Appeal] If the notice of appeal that is not accompanied by the filing fee or if a check given in payment of the filing fee is returned dishonored, the Clerk shall notify the appellant in writing that the appeal will be dismissed unless, within fifteen (15) days after mailing of the notice, the appellant either tenders the fee and shows good cause why it was not paid or shows good cause why the fee should be excused.

If an adequate excuse for nonpayment is not shown within that time the appeal may be dismissed at the discretion of the Appellate Court.

(b) [Filing the Record] When the record on appeal has been completed, the Clerk shall transmit any original transcripts or agreed statements to the Appellate Court. When these are received the record shall be filed.

The Clerk shall forthwith mail notice to the parties stating the date the record was filed.

(c) [Failure to Procure Record; Dismissal of Appeal] If the appellant fails to perform any act necessary to procure the filing of the record within the time allowed or within any valid extension of that time, and such failure is the fault of the appellant and not of any court officer or any other party,

the appeal may be dismissed on motion of the respondent or on the Appellate Court's own motion.

Upon appellant's default, the Clerk shall forthwith mail a notice to the appellant. The notice shall inform the appellant that the appeal will be dismissed if appellant fails to perform the act(s) necessary to procure the record as enumerated in the notice within fifteen (15) days of the date of the mailing of the notification. If the appellant fails to do the act(s) within this time, the Clerk shall notify the Appellate Court and the appeal may be dismissed at the discretion of the Appellate Court.

(d) [Transmission of Exhibits] When the parties have been notified by the Clerk that an appeal has been set for hearing, each party shall file with the Clerk a notice specifying the original exhibits either admitted in evidence or rejected that they desire transmitted to the Appellate Court. The Clerk shall arrange the exhibits and list them. The exhibits and two duplicates of such list shall be forwarded to the Appellate Court. If any papers are illegible or otherwise unusable, the Appellate Court may require new copies be filed. The Appellate Court at any time may request that any original exhibits be transmitted to it by the Clerk.

(e) [Use and Disposal of Copies] Any additional copies of the record required by these Rules shall be immediately transmitted by the Clerk to the appellant at the conclusion of the appellate proceedings.

When the respondent does not procure a copy of the record and so notifies the appellant not more than twenty (20) days after the filing of the record in the Appellate Court, the appellant shall deliver the additional copy of the record to the respondent at the time they serve the opening brief. The respondent shall redeliver the copy to the appellant at the time they serve the respondent's brief or, if the respondent does not file a brief, at the time the brief is due.

Rule 127. Record on Multiple Appeals.

(a) [Record on Cross-Appeals] Where several parties appeal from the same judgment, a single record on appeal shall be prepared and filed within the time prescribed for filing the record in the latest appeal. Unless the Tribal Court orders otherwise, the initial expense of preparing the record shall be borne equally by the parties appearing.

(b) [Record on Subsequent Appeals in Same Case] If there has been a prior appeal in the same action, and any portions of the record therein are desired for use in the second appeal, those need not be copied or included in the subsequent record unless the Appellate Court so orders. The

appellant's notice shall designate, by appropriate references, the portions of the prior record to be incorporated by reference, and the Clerk shall insert in the subsequent record a list and description of the record to be used.

If the respondent desires to have the Clerk copy any portions of the prior record that the appellant has designated for incorporation by reference, respondent shall serve and file a notice designating the portions to be copied. Within ten (10) days after notification by the Clerk of the estimate of the costs of copying, the respondent shall deposit with the Clerk the estimated cost; otherwise the portions designated by the respondent shall not be copied.

Rule 128. Augmentation and Correction of Record.

(a) [Augmentation] On suggestion of any party or the Appellate Court's own motion, a justice may order that any part of the original Tribal Court file be deemed filed or that portions of the oral proceedings be transcribed and certified or that an agreed statement of portions of the oral proceedings be prepared. Upon completion, the Clerk shall transmit the documents to the Appellate Court, and they shall be deemed a part of the record on appeal. The Clerk shall mail each party a copy of any augmentation order.

A party requesting augmentation shall file copies of any papers to be added to the record, if they are available to the party. An opposing party who objects to their addition to the record may file a statement of their opposition within ten (10) days from the date of service. If the request is granted, the papers are deemed to be part of the record.

If the Clerk or reporter has omitted material that was designated by a party in an appeal, a party may proceed under the preceding paragraph, or may serve and file a notice to the Clerk or the reporter to prepare and certify the missing material and transmit it to the Appellate Court. A copy of the notice shall be served on the Appellate Court. The notice shall identify the material with specificity. The Clerk or reporter shall comply with the notice within ten (10) days from the date it is filed, without the necessity of a court order.

(b) [Correction] If any material part of the record, or of any transcript or appendix, is incorrect in any respect, or lacks proper certification, the Appellate Court, on suggestion of any party or on its own motion, may direct that it be corrected or changed.

(c) [Correction by Tribal Court or Parties] The Appellate Court may defer to the Tribal

Court for settlement of any differences between the parties with respect to alleged omissions or errors in the record, or in any transcript or appendix, and the Tribal Court shall make it conform to the truth.

Rule 129. Bond for Costs on Appeal in Civil Cases.

The Tribal Court may require an appellant to file a bond or provide other security in such form and amount as it finds necessary to ensure payment of costs on appeal. The provisions of Rule 130 (b) of this Act apply to a surety upon a bond given pursuant to this Rule.

Rule 130. Stay or Injunction Pending Appeal.

(a) **[Procedure]** Application for a stay of the underlying judgment or order of Tribal Court pending appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the Tribal Court. A motion for such relief may be made to the Appellate Court, or to a Justice thereof, but the motion shall show that application to the Tribal Court is not practicable, or that the Tribal Court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the Tribal Court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. Reasonable notice of the motion shall be given to all parties. In cases where relief has not been previously requested in the Tribal Court, the Appellate Court may, if it determines such action to be appropriate under the circumstances, remand the motion to the Tribal Court for its initial determination.

(b) **[Bond, Proceedings Against Sureties]** Relief available in the Appellate Court under this Rule may be conditioned upon the filing of a bond or other appropriate security in the Tribal Court. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits themselves to the jurisdiction of the Tribal Court and irrevocably appoints the Clerk as agent upon whom any papers affecting liability on the bond or undertaking may be served. It is the responsibility of the surety to provide the Clerk with a proper and current address, and a supply of stamped, self-addressed envelopes if they wish copies of any papers served upon the Clerk as agent to be mailed to them. Liability may be enforced on motion in the Tribal Court without the necessity of an independent action.

Rule 131. Substitution of Parties.

(a) **[Death of a Party]** If a party to an appeal dies after a notice of appeal is filed or while a proceeding is pending in the Appellate Court, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the Clerk. If the deceased party has no representative, any party may request the death be entered on the record, and proceedings shall then be had as the Appellate Court may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the Tribal Court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed, substitution shall be effected in the Appellate Court in accordance with this Rule. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by his attorney of record within the time prescribed by this Act. After the notice of appeal is filed, substitution shall be effected in the Appellate Court in accordance with this Rule.

(b) **[Substitution for Other Causes]** If substitution of a party in the Appellate Court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subdivision (a) of this Rule.

(c) **[Tribal Officers; Death or Separation from Office.]**

When a Tribal officer is a party to an appeal or other proceeding in the Appellate Court in their official capacity and dies, resigns, or otherwise ceases to hold office while the appeal is ongoing, the action shall be dismissed by the Court.

Rule 132. Cases Involving Constitutional or Indian Civil Rights Act Questions Where the Tribe is Not a Party.

It shall be the duty of a party who questions the constitutionality (or unlawfulness under the Indian Civil Rights Act of 1968) of any statutes, ordinance, or other action of the Community Council in any proceeding in the Appellate Court to which the Tribe, or any agency, officer, or employee thereof in their official capacity is not a party, upon the filing of the record, or as soon thereafter as the question is raised in the Appellate Court, to give immediate notice in writing to the Appellate Court of the existence of said question. Upon notice, the Clerk shall immediately inform the Community's General Counsel who may intervene upon such question at the sole discretion of the Community Council.

Rule 133. Appearance of Counsel and Withdrawal of Counsel.

[Appearance] Any attorney or lay advocate appearing for a party shall enter their appearance by signing and filing a pleading or by entry of appearance on a form prescribed by the Clerk. In the event a party should change counsel or add additional counsel, the new or additional counsel shall enter their appearance on a form to be provided by the Clerk for that purpose. Counsel of record in any case shall be permitted to withdraw only by the express written consent of their client or by order of one of the justices to whom the appeal is assigned.

DIVISION II

APPEALS FROM JUDGMENTS AND ORDERS OF THE TRIBAL COURT

Rule 201. Appeals in Civil Cases.

In a civil case in which an appeal from a final judgment is permitted by law as of right from the Tribal Court to the Appellate Court, the notice of appeal described in Rule 101 shall be filed with the Clerk within the time frame set forth therein.

Rule 202. Interlocutory Appeals as of Right.

(a) A person may appeal to the Appellate Court by right any order made appealable by law, and the following judgments or orders of the Tribal Court:

(1) An order that grants or refuses a new trial or vacates or refuses to vacate a judgment on any grounds including that of newly discovered evidence or the impossibility of making a record.

(2) An order that discharges, vacates, or modifies or refuses to discharge, vacate, or modify an attachment.

(3) An order that denies, grants, or modifies a temporary injunction, discharges, vacates, or modifies, or refuses to discharge, vacate, or modify a temporary injunction.

(4) An order that discharges, vacates, or modifies, or refuses to discharge, vacate, or modify a provisional remedy which affects the substantial rights of the parties.

(5) An order that appoints a receiver, except where the receiver was appointed at an ex parte hearing where a full hearing will be held upon application therefore, refuses to appoint a receiver, or

vacates or refuses to vacate the appointment of a receiver, or refuses or grants orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property.

(6) An order that directs the payment of money *pendente lite*, except where granted at an *ex parte* hearing where a full hearing will be held upon application therefore, refuses to direct the payment of money *pendente lite*, or vacates or refuses to vacate an order directing the payment of money *pendente lite*.

(7) An order that certifies or refuses to certify an action to be maintained as a class action.

(8) An order with regard to probate matters.

(9) Any interlocutory order or decree made immediately appealable by Tribal statute.

Rule 203. Time for Filing Interlocutory Appeals as of Right and Special Rules.

(1) The party aggrieved may appeal the order to the Appellate Court without awaiting the final determination of the action, by filing the notice of appeal with the Clerk within twenty (20) days after the order is issued as provided in Rule 102.

(2) If the order discharges or modifies an attachment or preliminary injunction and it becomes operative, the undertaking given upon the allowance of an attachment or preliminary injunction shall stay the enforcement of said order and said order shall remain in full force and effect until final order of discharge after appeal shall take effect.

(3) If the order grants a preliminary injunction, to stay the order, the party seeking to appeal shall, within ten (10) days after the order is rendered, file a security in an amount to be determined by the Tribal Court to protect the non-appealing party against any damages they may sustain if the appeal is unsuccessful. In determining the amount of the security, the Tribal Court shall consider all potential damages the non-appealing party may suffer if the stay is issued including reasonable attorneys fees. The security shall stay the effect of the preliminary injunction pending the conclusion of the appeal.

(4) Where a receiver shall be or has been appointed, upon the appellant filing an appeal bond, with sufficient sureties, the authority of the receiver shall be suspended until the final determination of the appeal, and if the receiver has taken possession of any property, real or personal, it shall be returned and surrendered to the appellant upon the filing and approval of the bonds.

DIVISION III

ORAL ARGUMENT

Rule 301. Prehearing Conference.

The Appellate Court, or a Justice thereof, may direct the parties to appear before it for a prehearing conference to consider simplification of the issues and such other matters as may aid in the disposition of the proceeding. The Appellate Court or Justice shall make an order which recites the action taken at the conference, any agreements made by the parties and limiting the issues to those not disposed of by admissions or agreements of counsel.

Rule 302. Oral Argument in General.

Oral argument shall be allowed in all cases unless the Appellate Court, after examination of the briefs and record, unanimously decide that oral argument is not needed. In such cases the Appellate Court shall notify the parties of its intention to proceed without oral argument.

Rule 303. Notice of Argument; Postponement.

The Clerk shall advise all parties whether oral argument is to be heard, and if so, of the time and place therefor, and the time to be allowed each side. A request for postponement of the argument or for allowance of additional time must be made by motion filed at least five (5) days in advance of the date fixed for oral argument.

Rule 303.5. Courtroom Decorum.

(b) The purpose of this Rule is to emphasize, not to supplant, certain portions of the ethical principles applicable to counsel's conduct in the courtroom. In addition to all other requirements, counsel appearing before this Court shall:

1. Be punctual in attendance.
2. Refrain from addressing one another in Court by first names.

3. Refrain from leaving the courtroom while Court is in session, unless it is absolutely necessary, and then only if the Court's permission has been first obtained.

4. See that only one attorney is on their feet at a time unless an objection is being made.

5. Refrain from employing delaying tactics.

6. Hand all papers intended for the Court's consideration to the Clerk, who, in turn will pass them up to the Justices.

7. Avoid disparaging personal remarks or hostility toward opposing counsel and remain uninfluenced by any ill-feeling between the respective clients.

8. Rise when addressing or being addressed by the Court.

9. Refrain from assuming an undignified posture. Counsel should always be attired in a proper and dignified manner as befits an officer of the Court and should abstain from any action or activity calculated to attract unnecessary attention to themselves.

10. Comply, along with all other persons in the courtroom, with the following:

(i) No tobacco in any form will be permitted.

(ii) No propping of feet on tables or chairs will be permitted.

(iii) No bottles, beverage containers, paper cups or edibles should be brought into the courtroom.

(iv) No gum chewing or reading of newspapers or magazines (except as a part of the evidence in a case) will be permitted while Court is in session.

(v) Except as it relates to matters before the Court, no talking or other unnecessary noises will be permitted while Court is in session.

(vi) Everyone must rise when instructed to do so, upon opening, closing, or declaring recesses of

Court.

(vii) Any attorney who appears in Court intoxicated or under the influence of intoxicants, drugs or narcotics may be held in contempt.

Rule 304. Order and Content of Argument.

The appellant shall open and conclude the argument. The opening argument shall include a statement of the case. Additionally, counsel will not be allowed to raise matters for the first time in oral argument. Any attempt by counsel to introduce matters for the first time at oral argument will be disregarded by the Appellate Court absent prior notice to the Court and all parties to the appeal. Such a request shall only be granted upon a showing of good cause.

Rule 305. Non-Appearance of Parties.

If the respondent fails to appear, the Court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the Court may hear argument on behalf of the respondent, if their counsel is present. If neither party appears, the case will be decided on the briefs unless the Court shall otherwise order.

Rule 306. Submission on the Briefs.

By unanimous written agreement of the parties, a case may be submitted for decision on the briefs, but the Court may direct that the case be argued.

Rule 307. Use of Physical Exhibits at Argument; Removal.

If physical exhibits other than documents are to be used at oral argument, counsel shall arrange to have them placed in the courtroom before the Court convenes on the date set for argument. After the argument, counsel shall remove the exhibits from the courtroom unless the Court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the Clerk, the exhibits shall be destroyed or otherwise disposed in a manner directed by the Clerk and any expense related thereto shall be charged to the party or parties that presented the exhibits.

Rule 308. Suggestion of a Party for Hearing or Rehearing *En Banc*.

A party may suggest the appropriateness of a hearing or rehearing *en banc*. No response shall be filed unless the Court shall so order. The Clerk shall transmit any suggestion to the Justices of the Court but a vote need not be taken to determine whether the cause shall be heard or reheard *en banc* unless the Justice who rendered a decision sought to be reheard requests a vote on such a suggestion.

Rule 309. Time for Suggestion of a Parity for Hearing or Rehearing *En Banc*; Suggestion does not Stay Mandate.

If a party desires to suggest that a motion or proceeding be heard initially *en banc*, the suggestion must be made by the date on which the respondent's brief is filed. A suggestion for rehearing a motion *en banc* must be made within ten (10) days after notice of the decision of the Justice initially hearing the motion. Such a suggestion, whether or not included in a petition for rehearing, shall not affect the finality of the judgment of the Appellate Court or stay the issuance of the mandate.

DIVISION IV

EFFECT OF APPEALS ON JUDGMENTS

Rule 401. Entry of Judgment.

The notation of a judgment in the permanent Tribal Court minutes or docket constitutes entry of the judgment. The Clerk shall prepare, sign and enter the judgment following receipt of the opinion of the Tribal Court unless the opinion directs settlement, in which event the Clerk shall prepare, sign and enter the judgment following final settlement by the Tribal Court. If a judgment is rendered without an opinion, the Clerk shall prepare, sign and enter the judgment following instruction from the Tribal Court. The Clerk shall, on the date judgment is entered, mail to all parties a copy of the opinion, if any, or of the judgment if no opinion was written, and notice of the date of entry of the judgment.

Rule 402. Interest on Judgments.

Unless otherwise provided by Tribal law, if a judgment for money is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was entered in the Tribal Court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the Tribal Court the mandate shall contain instructions with respect to allowance of interest and the rate to be charged.

Rule 403. Damages for Frivolous Appeals

If the Appellate Court determines that an appeal is frivolous, it may award just damages and costs to the respondent.

Rule 404. For Whom Costs Allowed.

The Appellate Court shall have discretion to award costs to either party, in full or in part, as equity requires.

Rule 405. Costs for or Against the Tribe.

In cases involving the Tribe or an agency or officer thereof, if an award of costs against or for the Tribe is authorized by Tribal statute, costs shall be awarded in accordance with the provisions of Rule 404. In all other instances, the Appellate Court shall honor Tribal sovereignty and shall not award costs against the Tribe or its agencies or officers acting in their official capacity.

Rule 406. Petition for Rehearing.

(a) **[Time for Filing, Content, Answer, Action by Court]** A petition for rehearing may be filed within ten (10) days after entry of judgment unless the time is shortened or extended by order of the Court. The petition for rehearing shall be served on all parties affected by the order or judgment and must be based upon new or different facts, circumstances or law. The petitioner shall state by affidavit what application was made, what order or decisions were made and what new or different facts, circumstances or law are claimed through the petition. Oral argument in support of the petition will not be permitted except upon the Court's own motion. No answer to a petition for rehearing will be received unless requested by the Court. If a petition for rehearing is granted, the Court may make a final disposition of the case without further argument, or may restore it to the calendar for further argument or resubmission, or may make such other orders as are deemed appropriate under the circumstances of the case.

(b) **[Court's Inherent Power to Correct Orders]** If the Court at any time determines that there has been a change of law or an error in consideration of existing law or facts that warrant reconsideration of a prior order, it may do so on its own motion and enter a new or different order.

(c) **[Length of Petition]** Except by permission of the Court, a petition for rehearing and any

answer thereto, if allowed, shall not exceed fifteen (15) pages. Any reply shall not exceed five (5) pages.

(d) [New or Different Law] For the purposes of this section, an alleged new or different law shall not include a later enacted statute without retroactive application.

(e) [Interim Orders] This section applies to petitions for rehearing of interim orders as well as final judgments.

Rule 407. Issuance of Mandate.

The mandate of the Court shall issue twenty-one (21) days after the entry of judgment unless the time is shortened or enlarged by order. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the Court. If a rehearing petition is requested and the petition is denied, the mandate shall issue seven (7) days after entry of the order denying the petition unless the time is shortened or enlarged by order.

Rule 408. Voluntary Dismissal.

[Dismissal in the Appellate Court] The parties to an appeal or other proceeding may sign and file an agreement with the Clerk that the proceeding be dismissed. Upon receipt of a request for dismissal, the Clerk shall enter the case dismissed, but no mandate or other process shall issue without an order of the Appellate Court. An appeal may be dismissed on motion of the appellant upon such terms as may be agreed upon by the parties or as otherwise set by the Court.

DIVISION V

REPRESENTATION OF INDIGENT RESPONDENTS, HABEAS CORPUS, AND PROCEEDINGS *IN FORMA PAUPERIS*

Section 501. Plan of the Tribal Court for the Representation of Indigent Respondents.

(a) [For Whom Appointed] As provided by the Tribal Court, an attorney will be appointed for parents and children in child custody actions when such persons are found to be financially unable to obtain adequate representation, and free representation is available, or when the Court has adequate funds, not otherwise obligated, to pay for such representation.

(b) [Appointment Panel] Private attorneys will be appointed by the Justices on a rotational basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations. Periodically as necessary, the panel will be republished by the Justices of this Court. If sufficient attorneys volunteer to be placed on this panel to satisfy the needs of the Court for representation of indigent persons and children, other attorneys may be excused from service on the panel, provided that the Court may still request the assistance of such attorneys if necessary or useful to the Court.

(c) [Pay] Appointees may be compensated at a rate determined by a Justice in an amount not to exceed \$30.00 per hour for time expended in court, and \$20.00 per hour for time expended out of court, in addition to reasonable expenses as determined by a Justice and as the Court budget and Court fund will allow. The compensation for legal services shall not exceed \$1,000.00 for an attorney in any case. In all events, the compensation paid shall be in that amount approved by a Justice.

(d) [Claims] Standard forms shall be used throughout and claims for legal compensation and expenses and for services other than counsel shall be submitted within forty-five (45) days after services are completed.

(e) [Obligation of Court-Appointed Counsel to Disclose Client's Assets] If at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with their representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the Court.

(f) [Refusal to Represent Indigents] An attorney who neglects or refuses to serve as counsel for an indigent or child when duly appointed may have their name removed from the list of those admitted to practice law in this Court, provided, that no attorney shall be required, without their consent, to represent more than one person each calendar year without receiving compensation as provided in paragraph (c) of this Rule. For good cause shown, the Court may excuse an attorney from an appointment.

(g) [Persons Obligated to Refund Court Fund for Attorney Fees or Pay Attorneys] Every indigent person, and the parents of every child, for whom a court appointed attorney is obtained, shall be liable to the Tribe for all sums paid to their court-appointed counsel as fees and expenses in the action, or all sums which the court, upon motion of appointed counsel, taxes against that person as the fair costs of such representation at the conclusion of the case, which amount shall not exceed the amount which the court would have paid from the court fund or court budget if funds for payment had been available. This liability may be enforced, by motion filed in the case by the party's attorney or the Tribal Attorney at any time after the amount of such attorney's fees and costs have been set by the Court, and process may be issued to enforce this liability. All amounts recovered shall be repaid into the Court fund or Court budget, and if the attorney has not received payment for their fees and costs, the Clerk shall pay the attorney such amounts to which they are

entitled.

Rule 502. Leave of Tribal Court to Proceed to Appellate Court

A party to an action in the Tribal Court who desires to proceed on appeal *in forma pauperis* shall file in the Tribal Court a motion for leave to proceed, together with an affidavit showing, in explicit detail, an inability to pay fees and costs or to give security, their belief that they are entitled to redress, and a statement of the issues which they intend to present on appeal. If the motion is granted, the party may proceed without further application to the Appellate Court, and without prepayment of fees or costs in either Court or the giving of security. If the motion is denied, the Tribal Court shall state in writing the reasons for the denial.

DIVISION VI

EXTRAORDINARY WRITS

Rule 601. Mandamus or Prohibition Directed to a Judge or Judges

Application for a writ of mandamus or of prohibition may be used to compel a respondent to perform a required action or to refrain from exceeding jurisdiction, but may not be used to control the discretionary actions of judges, agencies, or other tribal officials. Application for a writ of mandamus or of prohibition directed to a judge or justice, or to any other subordinate agency or officer against whom an original action in mandamus or prohibition may be filed by law shall be made by filing a petition with the Clerk with proof of service on all parties in interest to the action in the Tribal Court. The petition shall contain a statement of the facts necessary to an understanding of the issues; a statement of the issues presented and the relief sought; a statement of the reasons why the writ should issue; and copies of any order or opinion or parts of the record that may be essential to an understanding of the matters set forth in the petition. The Clerk shall docket the petition and submit it to the Court upon payment of a fee set by Court Rule. If an order, action or judgment is vacated, the alternative Writ may be issued by a single Justice but a preemptory writ should be issued only by a quorum of the Court. The Appellate Court may, in its discretion, remand the writ to the Tribal Court for initial determination.

Rule 602. Denial or Order Directing Answer

If the Court is of the opinion that the writ should not be granted on the facts and law stated in the

petition, it shall deny the petition. Otherwise, it shall order that an answer to the petition be filed by the respondent within the time fixed by the order. All parties below other than the petitioner shall also be deemed respondents for all purposes. If the named respondents do not desire to appear in the proceeding, they may advise the Clerk and all parties by letter. The Clerk shall advise the parties of the dates on which briefs are to be filed, if briefs are required, and of the date of oral argument, if any. The proceeding shall be given preference over ordinary civil cases.

Rule 603. Other Extraordinary Writs

Application for extraordinary writs other than those provided for in Rule 601 of this Division shall be made by petition filed with the Clerk with proof of service on the parties named as respondents. Proceedings on such applications shall conform, so far as is practicable, to the procedure prescribed in Rules 601 and 602 of this Division.

[Approved and Effective March 16, 2006 Resolution 06-42]

[Amended April 23, 2009 Resolution 09-170 Article XI]