

## APPELLATE PROCEDURE

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**KICKAPOO TRIBE OF OKLAHOMA  
APPELLATE PROCEDURE**

**ENACTMENT CLAUSE**

**BE IT ENACTED BY THE COUNCIL OF THE KICKAPOO TRIBE OF  
OKLAHOMA THE ORDINANCE OF APPELLATE PROCEDURE FOR ALL  
MEMBERS OF THE KICKAPOO TRIBE OF OKLAHOMA.**

## **APPELLATE PROCEDURE**

### **Section 1. Scope and Applicability of Rules**

(a) **Scope.** This Title governs the procedure in appeals to the Supreme Court from the Tribal District Court, and in applications for writs or other relief which the Supreme Court or a Justice thereof is competent to give. When this title provides for the making of a motion or application in the Tribal District Court, the procedure for making such motion or application shall be in accordance with the practice of that Court.

(b) **"Tribal Court" Defined.** Unless otherwise specifically stated or required by the context, the term "Tribal Court" as used in this Title shall be deemed to refer to both the Tribal District Court and any Division, Judge, or Magistrate thereof.

(c) **Jurisdiction Not Affected.** This shall not be construed to extend or limit the jurisdiction of the Supreme Court as may be established by other Tribal laws, and all provisions of this title shall be subject to the Constitution, of the Tribe.

### **Section 2. Suspension and Revision of Rules**

(a) In the interest of expediting decision(s), the furtherance of the administration of justice, or for other good cause shown, the Supreme Court may, except as provided in Section 406, suspend the requirements or provisions of any of Section of this Title in a particular case on application of a party or on its own motion, may order proceedings in accordance with its direction.

(b) In the interest of expediting decisions (s), the furtherance of the administration of justice, and the efficient functioning of the Court, the Supreme Court is authorized to amend any provisions of this Title by Court Rule duly adopted and filed in the Supreme Court Clerk's Office and the Tribal Secretary's Office. Any Rule of the Court which would have the effect of amending this Title shall so state in its title, and shall not be effective until it has been filed in the Tribal Secretary's Office for a period of sixty days, within which time the Tribal Legislative Body may veto said Rule. If not vetoed, such Rules shall be placed in the Court's law library and shall take effect of the sixty first day after filing or on such later date as may be provided by the Court.

### **Section 3. Discretionary Authority**

Where no procedure in this Title, other statutes of the Tribe, or Supreme Court rules, the Supreme Court may proceed to exercise its functions in any lawful manner.

# APPELLATE PROCEDURE

## CHAPTER ONE

### APPEALS FROM JUDGMENTS AND ORDERS OF THE TRIBAL COURT

#### Section 101. Appeals As Of Right -- How Taken

(a) **Filing The Notice Of Appeal.** An appeal permitted by the laws of the Tribe as of right from the Tribal District Court to the Supreme Court of the Tribe shall be taken by filing a notice of appeal with the Clerk of the Tribal District Court within the time allowed by Section 102, or by the statute applicable in the specific case. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is grounds only for such action as the Supreme Court deems appropriate, which may include dismissal of the appeal.

(b) **Joint or Consolidated Appeals.** If two or more persons are entitled to appeal from a judgment or order of Tribal District Court, and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the Supreme Court upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

(c) **Content of the Notice of Appeal.** The notice of appeal shall specify the parties to the appeal; shall designate the order, commitment, or judgment appealed from, the docket, civil, criminal, juvenile, or small claims of the Tribal District Court from which the appeal is taken, and short statement of the reason or grounds for the appeal. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

(d) **Service of the Notice of Appeal.** The Clerk of the Tribal District Court shall serve notice of the filing of an appeal by mailing a copy of the notice of appeal, which copy shall be provided by the appealing party, to counsel of record of each party other than the appellant, and to the party at his last known address; and shall forthwith certify and deliver to the Clerk of the Supreme Court, for filing in the Supreme Court, a certified copy of the notice of appeal. The Clerk of the Supreme Court shall enter such filing upon the docket of the Supreme Court. When an appeal is taken by a defendant in a criminal case, the Clerk of the Tribal District Court shall also serve a copy of the notice of appeal upon the appellant, either by personal service or by mail addressed to him. The Clerk of the Tribal District Court shall note on each copy served the date on which the notice of appeal was filed. Failure of the Clerk to serve notice shall not affect the validity of the appeal. Service shall be sufficient notwithstanding the death of a party or his counsel. The clerk shall note in the docket the names of the parties to whom he mails copies, with the date of mailing.

(e) **Payment of Fees.** Upon the filing of any separate or joint notice of appeal from the tribal District Court, the appellant shall pay to the Clerk of the Tribal District Court, for deposit in the Court Fund, the filing fee which shall be in such amount as may be determined by rule of the Supreme Court, except that payment of a filing fee shall not be required for an appeal by the Tribe, its officers, or agents when acting in their official capacity. If a private party joins in an appeal by the Tribe, tribal officers, or tribal agents, the private party shall pay the required filing fee. The Supreme Court, or a Justice, thereof, may waive payment of the filing fee in criminal cases when the defendant, by affidavit or otherwise, establishes that he is without sufficient funds or resources with which to pay the required fees.

**Section 102. Appeal As Of Right -- When Taken**

**(a) Appeals in Civil Cases.**

(1) In a civil case in which an appeal is permitted by law as of right from the Tribal District Court to the Supreme Court, the notice of appeal required by Section 101 shall be filed with the Clerk of the Tribal District Court within the following time periods after entry of the judgment or order appealed from, if a time certain is not otherwise provided by statute:

(i) From an order or judgment in an action for forcible entry or forcible or unlawful detainer. Ten (10) Days;

(ii) From an order, decree, or judgment of the Juvenile Division of the District Court ( except an order, decree, or judgment which terminates parental rights). Thirty (30) Days.

(iii) From an order, decree, or judgment of the Juvenile Division of the District Court which terminates parental rights. Ninety (90) Days.

(iv) From a final order, commitment, judgment or other appealable order in any civil case not hereinabove provided for. Twenty (20) Days.

(2) Except as provided in subsection (a)(4) of this section, a notice of appeal filed after the announcement of a decision or order but before the formal entry of the judgment or order shall be treated as filed after such entry and on the day thereof.

(3) If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this Section, whichever period last expires.

(4) If a timely motion under the Civil Procedure Act is filed in the Tribal District Court by any other party.

(i) for judgment notwithstanding the verdict, or

(ii) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted, or

(iii) to alter or amend the judgment or for a new trial,

then, and in that event, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above. No additional fees shall be required for such filing.

(5) The Tribal District Court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal in a civil action upon motion filed not later than 30 days after the expiration of the time prescribed by this Section. Any such motion which is filed before expiration of the prescribed time for the filing of a notice of appeal may be ex parte unless the Tribal District Court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with the Civil Procedure Act. No such extension shall exceed 30 days past such prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

(6) A judgment or order is entered within the meaning of this Section when it is entered in compliance with the Civil Procedure Act.

(b) **Appeals in Criminal Cases.** In a criminal case, the notice of appeal by a defendant shall be filed in the Tribal District Court within 10 days after the entry of the final judgment and sentence or other order appealed from. A notice of appeal filed after the announcement of a decision, sentence, or order, but before formal entry of the judgment or order shall be treated as filed after such entry and on the day thereof. If a timely motion in arrest of judgment, or a motion for a new trial on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within 10 days after the entry of an order denying the motion. A motion for a new trial based on the ground of newly discovered evidence will similarly extend the time for appeal from a judgment or order appealed from unless a different time is specifically set by the statute authorizing the appeal. A judgment or order is entered within the meaning of this subdivision when it is entered in the criminal docket pursuant to he



Criminal Procedure Act. upon a showing of excusable neglect Tribal District Attorney may, before or after the time has expired, with or without motion and notice, extend the time for filing a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this subdivision of this Section.

**Section 103. Interlocutory Appeals in Civil Actions**

(a) **Interlocutory Appeals as of Right.** A person may appeal to the Supreme Court by right any order make appealable by law, and the following judgment or orders of the Tribal District 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, or discharges, vacate, or modify a provisional remedy which affects the substantial rights of the parties.

(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 a 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 of certifies of refuses to certify an action to be maintained as a class action.

(8) An order eith regard to probate matters:

(i) granting, or refusing, or revoking letters testamentary or of administration, or of guardianship, or conservatorship, or

- (ii) admitting, or refusing to admit, a will to probate, or
- (iii) against or in favor of the validity of a will or revoking the probate thereof, or
- (iv) against or in favor of setting apart property, or making an allowance for a widow or child, or
- (v) against or in favor of directing the partition, sale or conveyance of any interest in real property, or
- (vi) settling an account of an executor, or administrator or guardian, or
- (vii) refusing, allowing or directing the distribution or partition of an estate, or any part thereof or the payment of a debt, claim, legacy or distributive share, or
- (viii) refusing or allowing the release of any tax liability, or
- (ix) from any other judgment, decree, or order of the Court in a probate case, or of the Judge thereof, affecting a substantial right.

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

**(b) Time for Filing Interlocutory Appeals as of Right and Special Rules.**

(1) The party aggrieved thereby may appeal the order to the Supreme Court without awaiting the final determination of the action, by filing the notice of appeal with the District Court Clerk within twenty (20) days after the order is issued.

(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, the party seeking to appeal, if he desires to stay said order, shall give within ten (10) days after the order is rendered, an undertaking, with sufficient surety, in each sum as the Court deems proper, to secure the party procuring the injunction the damages he may sustain, including reasonable attorneys fees, if it is finally decided that the

preliminary injunction was properly granted. The undertaking shall stay the effect of the preliminary injunction pending appeal.

(4) Where a receiver shall be or has been appointed, upon the appellant filing an appeal bond, with sufficient sureties, in such sum as may have been required of the receiver by the Court or a Judge thereof, conditioned for the due prosecution of the appeal and the payment of all costs, or damages that may accrue to the Tribe or any officer or person by reason thereof, 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, it shall be returned and surrendered to the appellant upon the filing and approval of the bonds.

(c) **Interlocutory Appeals by Permission.** When a Judge, in making an order or decree in a civil action not otherwise appealable under this Section or another Tribal statute, shall be of the opinion that such order involves a controlling question of law as to which there is substantial grounds for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Supreme Court may thereupon, in its discretion, permit an appeal to be taken from such order, ~~provided, however,~~ that application for an appeal hereunder shall not stay proceedings in the Tribal District Court, unless the Judge or the Supreme Court, or a Justice of the Supreme Court shall so order.

(d) **Petition for Permission to Appeal.** An appeal from an interlocutory order containing the statement prescribed by Section 103(c) may be sought by filing a petition for permission to appeal with the Clerk of the Supreme Court within 10 days after the entry of such order in the District Court with proof of service on all other parties to the action in the District Court. An doer may be amended to include the prescribed statement at any time, and permission to appeal may be sought within 10 days after entry of the order as amended.

(1) The petition shall contain a statement of the facts necessary to an understanding of the controlling question of law determined by the order of the District Court; a statement of the question itself; and a statement of the reasons why an immediate appeal may materially advance the termination of the litigation. The petition shall include or have annexed thereto a copy of the order from which the appeal is sought within 7 days after service of the petition, an adverse party may file an answer in opposition. The application and answer shall be submitted without oral argument unless otherwise ordered.

(2) All papers may be typewritten. Ten copies shall be filed with the original, but the Court may require that additional copies be furnished.

(3) Within 10 days after the entry of an order granting permission to appeal, the appellant shall:

(i) pay to the Clerk of the District Court the fees established by rule of the Supreme Court for the filing of appeals by permission.

(ii) file a bond for costs if required by the Supreme Court.

The Clerk of the Tribal District Court shall notify the Clerk of the Supreme Court of the payment of the fees. Upon receipt of such notice the Clerk of the Supreme Court shall enter the appeal upon the docket. The record shall be transmitted and filed as in cases of direct appeal by right. A notice of appeal need not be filed.

#### **Section 104. Interlocutory Appeals in Criminal Actions**

(a) **Appeal by the Defendant.** An interlocutory appeal to the Supreme Court may not be taken by the Defendant except by leave of the Court in the same manner as the taking of interlocutory appeals by permission in civil actions.

(b) **Appeal by the Tribe.** An appeal by the Tribe to the Supreme Court may be taken from a decision or order of the Tribal Court prior to the beginning of trial suppressing or excluding evidence, or requiring the return of seized property in a criminal proceeding, or dismissing the criminal complaint, and, after the verdict is returned, upon an order reducing a valid sentence previously imposed.

#### **Section 105. Appeals by the Tribe in Criminal Actions**

(a) An appeal to the Supreme Court may be taken by the tribe from the final judgment in a criminal action in the following cases:

(1) Upon judgment for the defendant quashing or setting aside the criminal complaint prior to trial.

(2) Upon an order of the Court arresting the judgment.

(3) Upon a question of law reserved by the Tribe,

provided, that the criminal complaint shall be reinstated and the case shall proceed if the tribe's appeal is upheld under subsection (a)(1) of this Section, the judgment and sentence arrested shall be entered and enforced if the Tribe's appeal is upheld under subsection (a) (2) of this Section, and a defendant may not be tried again for the same offense if the Tribe's appeal is upheld under subsection (a)(3) of this Section.

(b) Pending the prosecution and determination of the appeal in the foregoing instances, the defendant shall be released in accordance with Section 108 of this Act.

#### **Section 106. Bond For Costs On Appeal In Civil Cases**

The Tribal District 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 in a civil case. The provisions of Section 107 (b) of this Act applies to a surety upon a bond given pursuant to this Section.

**Section 107. Stay Or Injunction Pending Appeal**

(a) **Procedure.** Application for a stay of the judgment or order of Tribal District Court pending appeal, or for approval of a supersedes 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 District Court. A motion for such relief may be made to the Supreme Court, or to a Justice thereof, but the motion shall show that application to the Tribal District Court for the relief sought is not practicable, or that the Tribal District Court has denied an application, or has failed to afford the relief requested and the facts relied upon, and if the facts are subject to or copies thereof. With the motion shall be filed such parts of the record as are relevant to the motion. reasonable notice of the motion shall be given to all parties. The motion shall be filed with the Clerk of the Supreme Court, and normally will be considered by the entire Court, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single Justice of the Court pending review by the entire Court. In cases where relief has not been previously requested in the Tribal District Court, the Supreme Court may, if it determines such action to be appropriate under the circumstances, remand the motion to the Tribal District Court for its initial determination .

(b) **Bond, Proceedings Against Sureties.** Relief available in the Supreme Court under this Section may be conditioned upon the filing of a bond or other appropriate security in the Tribal District Court. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the Tribal District Court and irrevocably appoints the Clerk of the Tribal District Court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. It is the responsibility of the surety to provide the Clerk of the Tribal District Court with his proper and current address, and a supply of stamped, self-addressed envelopes, if he wishes copies of any papers served upon the Clerk as his agent to be mailed to him. his liability may be enforced on motion in the Tribal District Court without the necessity of an independent action. the motion and such notice of the motion as the tribal District Court shall prescribe may be served on the Clerk of the Tribal District Court who shall forthwith mail copies to the sureties if their addresses are known.

(c) **Criminal Cases.** Stays in criminal cases shall be had in accordance with the provisions of the Criminal Procedure Act.

**Section 108. Release in Criminal Cases**

(a) **Appeal Of Order Denying Release Pending Appeal.** An appeal authorized by law from an order refusing or imposing conditions of release pending appeal of the underlying judgment of conviction and sentence shall be determined promptly. Upon entry of an order refusing or imposing conditions or release pending appeal of the underlying judgment of conviction and sentence, the Tribal District Court shall state in writing the reasons for action taken. The appeal in such matters shall be heard without necessity of briefs after reasonable notice to the appellee upon such papers, affidavits, and portions of the record as the parties shall present. The Supreme Court, or a Justice thereof pending action by the entire Court may order the release of the appellant pending the appeal.

(b) **Procedure.** Application for release after a judgment of conviction shall be made in the first instance in the Tribal District Court. If the Tribal District Court refuses release pending appeal, it imposes conditions of release, the Court shall state in writing the reasons for the action taken. Thereafter, if an appeal is pending, a motion for release, or for modification of the conditions of release, pending review may be made to the Supreme Court or to a designated Justice thereof. The motion shall be determined promptly upon such papers, affidavits, and portions of the record as the parties shall present thereof pending action by the entire Court may order the release of the appellant pending disposition of the motion.

(c) **Criteria For Release.** The decision as to release pending appeal shall be made in accordance with the criteria for bail established by tribal law in the Criminal Procedure Act or otherwise. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

#### **Section 109. The Record on Appeal**

(a) **Composition Of The Record On Appeal.** The original papers and exhibits filed in the Tribal District Court, the transcript or tape recording of the proceedings, if any, and a certified copy of the docket entries prepared by the Clerk of the Tribal District Court shall constitute the record on appeal in all cases.

(b) **Transcript, Duty of appellant to Order, Notice Of Partial Transcript.**

(1) Within 10 days after filing the notice of appeal the appellant shall order from the Clerk or reporter a transcript of such parts of the proceedings not already on file as he deems necessary. the order shall be in writing and within the same period a copy shall be filed with the Clerk of the Tribal District Court. If no such parts of the proceedings are to be ordered, within the same period the appellant shall file a certificate to that effect.

(2) If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, he shall

include in the record a transcript of all evidence relevant to such finding or conclusion.

(3) Unless the entire transcript is to be included, the appellant shall, within the 10 days time provided in subsection (b)(1) of this Section, file statement of the issues he intends to present on the 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 10 days after the service of the order or certificate and the statement of the appellant, file and serve on the appellant a designation of additional parts to be included. Unless within 10 days after service of such designation the appellant has within the following 10 days order the parts or move in the Tribal District Court for an order requiring the appellant to do so.

(4) At the time of ordering, party must take satisfactory arrangements with the reporter for payment of the cost of the transcript. If a typewritten transcript is ordered, the Clerk or Reporter shall charge a fee to be set by the Court for each original page, and additional fee for each copy of an original page. If a copy of a tape recording of the proceedings is ordered, the Clerk or Reporter shall charge a fee to be set by the Court for each tape copy ordered. All such fees paid on behalf of a Clerk or Reporter who is employed by the Tribe and paid salary from tribal monies shall be deposited in the Court fund, unless specific statutory authority for other disposition of such monies is provided. All such fees paid on behalf of an independent reporter appointed or authorized by the Tribal District Court to record its proceedings, but not paid from tribal funds shall be paid over to such reporter.

(c) **Procedure When No Transcript Available.** If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the appellee, who may serve objections or propose amendments thereto within 10 days after service. Thereupon the statement and any objections or proposed amendments shall be subtitled to the Tribal District Court for settlement and approval and as settled and approved shall be included by the Clerk of the Tribal District Court in the record on appeal.

(d) **Agreed Statement As The Record On Appeal.** In lieu of the record on appeal as defined in subsection (a) of this Section, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the Tribal District Court and setting forth only so many of the facts averred and proved or sought to proved as are essential to a decision of the issues presented. If the statement conforms to the truth, the statement together with such additions as the Court may consider necessary fully to present the issues raised by the appeal, shall be approved by the Tribal District Court, and shall then be certified to the Supreme Court as the record on Appeal and transmitted to the Supreme Court Clerk's records.

(e) **Correction or Modification Of The Record.** If any difference arises as to whether the record truly discloses what occurred in the Tribal District Court, the difference shall be submitted to and settled by the Judge of that Court and the record made to conform the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the Tribal District Court, either before or after the record is transmitted to the Supreme Court, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the Supreme Court.

**Section 110. Transmission of Record**

(a) **Chief Clerk to serve As Clerk of the Supreme Court.** The Chief Clerk of the Tribal District Court may also serve as the Clerk of the Supreme Court whenever the position of Clerk of the Supreme Court is vacant, or, in the opinion of the Supreme Court such services shall be deemed expedient.

(b) **Transmission And Filing Of Record.** In all cases, including juvenile and criminal actions, the clerk in charge of the papers in that case shall, within 15 working days after a Notice of Appeal is filed, prepare, certify, and deliver to the Clerk of the Supreme Court, for filing with the Supreme Court, all papers comprising the record of the case except the transcript. Such compilation shall be indexed with page numbers. All parties to the appeal shall be notified of the filing of the record with the Supreme Court, and a copy of the index to the record shall be attached to the notice for the benefit of the parties. Copies of any documents contained in the record shall be available to the parties at a cost per page to be set by rule of the Supreme Court.

(c) **Completion of Record.** Upon receipt of an order for a transcript or additional tape recording, the Clerk or reporter shall acknowledge at the foot of the order the fact that he has received it and the date on which he expects to have the transcript or copy of the tape recording completed and shall transmit the order, so endorsed, to the Clerk of the Supreme Court. If the transcript cannot be completed within 30 days of receipt of the order the Clerk or reporter shall request an extension of time from the Clerk of the Supreme Court, and the action of the Clerk of the Supreme Court shall be entered on the docket and the parties notified. In the event of the failure to file the transcript or complete making copies of the tapes within the time allowed, the Clerk of the Supreme Court shall notify the Chief Justice and take such steps as may be directed by the Chief Justice of the Supreme Court. Upon completion of the transcript the Clerk or reporter shall file it with the Clerk of the Tribal Court and shall notify the Clerk of the Supreme Court that he has done so.

(d) **Transmission of Transcript.** Upon receipt of the Transcript, or notification that requested copies of tape recordings of the proceedings are completed, or



the filing of a statement as provided in Section 109(c) or (d) of this Act, the clerk of the Tribal District Court shall forthwith notify the parties that the transcript, tapes, or statement is completed and ready for transmittal to the Supreme Court, shall state in the notice the date upon which the notice was given, and the date the final record will be delivered to the Supreme Court. The parties may receive their copies (if ordered) of such transcript, tapes, or statement as soon as they become available whether before or after formal notice of such availability is mailed to the parties. Fifteen days after mailing of the notice of completion of the transcript, tapes, or statement, the Clerk of the Tribal District Court shall deliver the original thereof to the Clerk of the Supreme Court for filing. Upon filing by the Clerk of the Supreme Court, the record shall be deemed received and completed for the purposes of the appeal.

**Section 111. Docketing The Appeal; Filing The Record**

(a) **Docketing The Appeal.** Upon receipt of the Notice of Appeal and of the docket entries and papers transmitted by the Clerk of the Tribal District Court pursuant to Section 110(b), the Clerk of the Supreme Court shall thereupon enter the appeal upon the docket. An appeal shall be docketed under the title given to the action in the Tribal District Court, with the appellant identified as such, but if such title does not contain the name of the appellant, his name, identified as appellant, shall be added to the title. In appeals from the Juvenile Division of the Court, the docket books shall be added to the title. In appeals from the Juvenile Division of the Court, the docket books shall contain the correct names of the parties, however, all opinions or other papers of the Court which may become public information shall contain only initials or other similar designations and not the names of the parties.

(b) Upon receipt of the completed record on appeal as provided in Section 110(d), the clerk of the Supreme Court shall file it and shall immediately give notice to all parties of the date on which it was filed.

## CHAPTER TWO

### EXTRAORDINARY WRITS

#### **Section 201. Mandamus or Prohibition Directed To a Judge or Judges**

Application for a writ of mandamus or of prohibition directed to a Judge or Magistrate of the Tribal District Court, or to any other subordinate agency or officer against whom an original action in mandamus or prohibition may be filed by law in the Supreme Court, shall be made by filing a petition therefore with the Clerk of the Supreme Court with proof of service on the respondent and on all parties in interest to the action in the Tribal District Court. The petition shall contain a statement of the facts necessary to an understanding of the issues presented by the application; a statement of the issues presented and relief sought; a statement of the reasons why the writ should issue; and copies of any order or opinion or parts of the record which 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 docketing fee set by Court rule. In vacation, 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 Supreme Court may, in its discretion, remand the writ to the Tribal District Court for initial determination.

#### **Section 202. Denial Or Order Directing Answer**

If the Court is of the opinion that the writ should not be granted in any case 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 respondents within the time fixed by the order. The order shall be served by the Clerk on the named respondents and on all other parties to the action in the Tribal District Court. All parties below other than the petitioner shall also be deemed respondents for all purposes. Two or more respondents may answer jointly. If the named respondents do not desire to appear in the proceeding, they may so advise the Clerk and all parties by letter, but the petition shall not thereby be taken as admitted. The Clerk shall advise the parties of the dates on which briefs are to be filed, if briefs are required, and of the date or oral argument, if any. The proceeding shall be given preference over ordinary civil cases. These writs may be used to compel a respondent to perform a required action or to refrain from exceeding his jurisdiction, but may not be used to control the discretionary actions of judges, agencies, or other tribal officials.

#### **Section 203. Other Extra ordinary Writs**

Application for extraordinary writs other than those provided for in Section 201 of this Chapter shall be made by petition filed with the Clerk of the Supreme Court 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 Sections 210 and 202 of this Chapter.

**Section 204. Form of Paper, Numbers of Copies**

All papers may be typewritten. Ten copies and the original shall be filed, but the Court may direct that additional copies be furnished.

## CHAPTER THREE

### HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS

#### SUBCHAPTER A HABEAS CORPUS

##### **Section 301. Habeas Corpus Proceedings**

An application for a writ of habeas corpus shall originally be made to the Tribal District Court. If application is made to the Supreme Court, or a Justice thereof individually, the application will ordinarily be transferred to the District Court for determination. The Supreme Court, or a Justice thereof, will accept original jurisdiction in such matters only upon a showing of compelling necessity and urgency. If an application is made to or transferred to the Tribal District Court and denied, renewal of the application before the Supreme Court, or a Justice thereof is not favored; the proper remedy is by appeal to the Supreme Court from the order of the Tribal District Court denying the writ.

##### **Section 302. Transfer Of Custody Pending Review**

Pending review of a decision in a habeas corpus proceeding commenced before the Court, or a Justice or Judge for the release of a prisoner, a person having custody of the prisoner shall not transfer custody to another unless such transfer is directed in accordance with the provisions of this Section and the Court rules. Upon application of a custodian showing a need therefore, the Court, Justice or Judge rendering a decision may make an order authorizing transfer and providing for the substitution of the successor custodian as a party.

##### **Section 303. Detention Or Release Pending Review Of Decision Failing To Release.**

Pending review of a decision failing or refusing to release a prisoner in such a proceeding, the prisoner may be detained in the custody from which release is sought, or in other appropriate custody, or may be enlarged upon his recognizance or admitted to bail, with or without surety, as may appear fitting to the Court or Justice or Judge rendering the decision, or to the Supreme Court en banc.

##### **Section 304. Detention Or Release Pending Review Of Decision Ordering Release**

Pending review of a decision ordering the release of a prisoner in such a proceeding, the prisoner shall be enlarged upon his recognizance, with or without surety, unless the Court or Justice rendering the decision, or the Supreme Court shall otherwise order.

##### **Section 305. Modification of Initial Order Respecting Custody**

An initial order respecting the custody or enlargement of the prisoner and any recognizance or surety taken, shall govern during review in the Supreme Court unless for special reasons shown to the Supreme Court the order shall be modified, or an independent order respecting custody, enlargement or surety shall be made.

## SUBCHAPTER B

### PROCEEDINGS IN FORMA PAUPERIS

#### **Section 311. Leave From Tribal District Court to Proceed to Supreme Court**

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

#### **Section 312 Special Rule For Parties Previously Granted Permission To Proceed In Forma Pauperis**

Notwithstanding the provisions of the preceding Section, a party who has been permitted to proceed in an action in the Tribal District Court in forma pauperis, or who has been permitted to proceed there as one who is financially unable to obtain an adequate defense in a criminal case, or a case involving the termination of parental rights, may proceed on appeal in forma pauperis without further authorization unless, before or after the notice of appeal is filed, the Tribal District Court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not taken in good faith or shall find that the party is otherwise not entitled so to proceed, in which event the Tribal District Court shall state in writing the reasons for such certification or finding.

#### **Section 313. Remedy For Denial Of Motion By Tribal District Court**

If a motion for leave to proceed on appeal in forma pauperis is denied by the tribal district Court, or if the tribal District Court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled to proceed in forma pauperis, the Clerk shall forthwith serve notice of such action. A motion for leave so to proceed may then be filed in the supreme Court within 30 days after service of notice of the action of the affidavit filed in the Tribal District Court, or by the affidavit prescribed by Section 311 of this Subchapter if no affidavit has been filed in the Tribal District Court , and by a copy of the statement of reasons given by the Tribal District Court for its action.

## CHAPTER FOUR

### GENERAL PROVISIONS

#### **Section 401. Filing and Service**

(a) **Filing.** Papers required or permitted to be filed in the Supreme Court shall be filed with the Clerk. Filing may be accomplished by mail addressed to the Clerk, but filing shall not be timely unless the papers are received by the Clerk within the time fixed for filing, except special delivery or overnight mail, is utilized. If a motion requests relief which may be granted by a single Justice, the Justice may permit the motion to be filed and shall thereafter transmit it to the Clerk.

#### **Section 402. Service of All Papers Required**

Copies of all papers filed by any party and not required by this Title to be served by the Clerk shall, at or before the time of filing, be served by that party or person acting for him on all other parties to the appeal or review. Service on a party represented by counsel or lay advocate shall be made on the counsel or lay advocate.

#### **Section 403. Manner Of Service**

Service may be personal or by mail in any manner allowed by the Civil Procedure Act for service of motions or briefs. Personal service includes delivery of the copy to a Clerk, secretary, or other responsible person at the office of counsel or lay advocate. Service by mail is complete upon mailing.

#### **Section 404. Proof Of Service**

Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the name of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The Clerk may permit papers to be filed without acknowledgment or proof of service but shall require such to be filed promptly thereafter.

#### **Section 405. Computation of Time**

In computing any period of time prescribed by this Title, by an order of the Court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is equal to or less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this Section, "legal

holidays" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States or the Legislative Body of the Tribe.

**Section 406. Enlargement Of Time**

The Court for good cause shown may upon motion enlarge the time prescribed by this Title or Court rule or by its order for doing any act, or may permit an act to be done after the expiration of such time; but the Supreme Court may not enlarge the time for filing a notice of appeal.

**Section 407. Additional Time after Service By Mail.**

Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him and that paper is served by mail, 3 days shall be added to the prescribed period.

**SUBCHAPTER A**

**MOTIONS AND BRIEFS**

**Section 411. Content, Response, and Reply to Motions**

Unless another form is elsewhere prescribed by this Title, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of this Title governing such a 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 other than the one for a procedural order within 7 days after service of the motion, but motions authorized by Section 107, 108, and 469 may be acted upon after reasonable notice, and the Court may shorten or extend the time for responding to any motion.

**Section 412. Determination of Motions for Procedural Orders**

Notwithstanding the provisions of Section 411 of this Title as to motions generally, motions for procedural orders, including any motion under Section 406, 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 modification of such action.

**Section 413. Power of a Single Judge to Entertain Motions**

In addition to the authority expressly conferred by this title or by other Tribal law, a single Justice of the Supreme Court may entertain and may grant or deny any request for relief which under this Title may properly be sought by motion, except that a single Justice may not dismiss or otherwise determine an appeal or other proceeding, and except that the Supreme Court may provide by order or rule that any motion or class of motions must be acted upon by the Court. The action of a single Justice may be reviewed by the Court.

**Section 414. Form of Papers; Number of Copies**

All papers relating to motions may be typewritten. Ten copies shall be filed with the original, but the Court may require that additional copies be furnished.

**Section 415. Brief of Appellant**

The Brief of the appellant shall contain under appropriate headings and in the order, here indicated:

- (a) A cover page as described in Section 429.
- (b) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where they are cited.
- (c) A statement of the issues presented for review.
- (d) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the Court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record (see Section 419).
- (e) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes, and parts of the record relied on.
- (f) A short conclusion stating the precise relief sought.

**Section 416. Brief of Appellee**

The brief of the appellee shall conform to the requirements of Section 415, except that a statement of the issues or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

**Section 417. Reply Brief**



The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross appeal. No further briefs may be filed except with leave of Court.

**Section 418. References in Briefs to Parties**

Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee". It promotes clarity to use the designations used in the lower Court or the actual names of the parties, or descriptive terms such as "the employee," "the injured person," "the taxpayer," "the car," or the names of the parties.

**Section 419. References in Briefs to the Record and Statutes**

(a) References in the briefs to parts of the record reproduced in any appendix filed with the brief of the appellant shall be to the pages of the appendix at which those parts appear and to the pages in the original record. If an appendix is prepared after the briefs are filed, references in the briefs to the record shall be made to the original record. Intelligible abbreviations may be used. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the record or of the transcript at which the evidence was identified, offered, and received or rejected.

(b) If determination of the issues presented requires the study of statutes, rules, regulations, or similar material or relevant parts thereof, they shall be reproduced in the brief or in an addendum at the end, or they may be supplied to the Court in pamphlet form.

**Section 420. Length of Briefs**

Except by permission of the Court, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, and similar material.

**Section 421. Briefs in Cases Involving Cross Appeals**

If a cross appeal is filed, the plaintiff in the Court below shall be deemed the appellant for the purpose of this Chapter and Sections 426, 427, and 428, unless the parties otherwise agree or the Court otherwise orders. The brief of the appellee shall contain the issues and argument involved in his appeal as well as the answer to the brief of the appellant.

**Section 422. Briefs in Cases Involving Multiple Appellants or Appellees**

In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

**Section 423. Citation of Supplemental Authorities.**

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

**Section 424. Brief of an Amicus Curiae**

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 Tribe, the United States or an officer or agency thereof, or by another Tribe of a State, Territory or Commonwealth. the brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. save as all parties otherwise consent, any amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support unless the Court for cause shown shall grant leave for filing, in which event it shall specify within what period an opposing party may answer. A motion of an amicus curiae other than the Tribe to participate in the oral argument will be granted only for extraordinary reasons, or on the Court's own motion. A motion of the tribe to present oral argument as amicus curiae shall be granted unless extraordinary reasons appear for refusing to grant such a motion.

**Section 425. Appendix to the Briefs**

Whenever the record on appeal, or the transcript is particularly voluminous, the court may order the appellant to prepare, with notice an consultation by the appellee, an appendix to the briefs which shall contain the papers, documents, and portions of the transcript necessary to the determination of the issues presented on appeal. The preparation of an appendix does not prevent further referrals to the original record by any party or the Court. a party may append pertinent parts of the record to his brief when such is necessary for a clear presentation of the issues raised on appeal.

**Section 426. Time for Filing and Service of Brief**

The appellant shall serve and file his brief within 20 days after the date on which the completed record is received and filed in the Supreme Court. The appellee shall serve and file his brief within 20 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the appellee, but, except for good cause shown, a reply brief must be filed at least 3 days before argument.

**Section 427. Number of Copies to Be Filed and Served.**

Ten 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 separately represented. If a party is allowed to file typewritten ribbon and carbon copies of the brief, the original and three legible copies shall be filed with the Clerk, and one copy shall be served on counsel for each party separately represented.

**Section 428. Consequence of Failure to File Briefs**

If an appellant fails to file his brief within the time provided by this Title, or within the time as extended, an appellee may move for dismissal of the appeal. If an appellee fails to file his brief, he will not be heard at oral argument except by permission of the Court.

**Section 429. Form of Briefs, the Appendix and Other Papers**

(a) Briefs and appendices may be produced by standard typographic printing or by any duplicating or copying process which produces a clear black image on white paper, including legible photocopies. Carbon copies of briefs and appendices may not be submitted without permission of the Court, except in behalf of parties allowed to proceed in forma pauperis. All printed matter must appear in at least 11 point (pica) type on opaque, unglazed paper. Briefs and appendices produced by the standard typographic process shall be bound in volumes having pages 6 1/8 by 9 1/4 inches and type matter 4 1/6 by 7 1/6 inches. Those produced by any other process shall be bound in volumes having pages not exceeding 8 1/2 by 11 inches and type matter not exceeding 6 1/2 by 9 1/2 inches, with double spacing between each line of text, except that quoted matter may be single spaced. Copies of the reporter's transcript and other papers reproduced in a manner authorized by this Section may be inserted in the appendix; such pages may be informally renumbered if necessary.

(b) If briefs are produced by commercial printing or duplicating firms, or, if produced otherwise and the covers to be described are available, the cover of the brief of the appellant should be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; that of any reply brief, gray. The cover of the appendix, if separately printed, should be white. The front covers of the briefs and of appendices shall contain:

- (1) the name of the Court and the number of the case;

- (2) the title of the case;
- (3) the nature of the proceedings in the Court (e.g., Appeal; Petition for Review) and the name of the Court below;
- (4) the title of the document (e.g. Brief for Appellant, Appendix); and
- (5) the names, addresses, and telephone number of counsel representing the party on whose behalf the document is filed.

**Section 430. Form of Other Papers**

- (a) Petitions for rehearsing shall be produced in a manner prescribed by Section 429.
- (b) Motions and other papers may be produced in a like manner, or they may be typewritten upon opaque, unglazed paper 8 1/2 by 11 inches in size. Lines of typewritten text shall be double spaced. Consecutive sheets shall be attached at the left margin. Carbon copies may be used for filing and service if they are legible.
- (c) 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 containing the purpose of the paper.

**Section 441. Prehearing Conference**

The Court may direct the attorneys for the parties to appear before the Court or justice thereof for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceeding by the Court. The Court or Justice shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of counsel, and such order when entered controls the subsequent course of the proceeding, unless modified to prevent manifest injustice.

**Section 432. Oral Argument in General**

Oral argument shall be allowed in all cases unless the Court, after examination of the briefs and record, shall be unanimously of the opinion that oral argument is not needed. In such cases the Court shall notify the parties of its intention to proceed without oral argument, and shall provide any party with an opportunity to file a statement setting forth the reasons why, in his opinion, oral argument should be heard. Oral argument will be allowed upon request unless the Court unanimously determines.

- (a) the appeal is frivolous; or

(b) the dispositive issue or set of issues has been recently authoritatively decided; or

(c) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

**Section 443. 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 reasonably in advance of the date fixed for hearing.

**Section 444. Order and Content of Argument**

The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case. Counsel will not be permitted to read at length from briefs, records or authorities.

**Section 445. Cross and Separate Appeals**

A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the Court otherwise directs. If a case involves a cross-appeal, the plaintiff in the action below shall be deemed the appellant for the purpose of this subchapter unless the parties otherwise agree or the Court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

**Section 446. Non-Appearance of Parties**

If the appellee fails to appear to present argument, 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 appellee, if his counsel is present. If neither party appears, the case will be decided on the briefs unless the Court shall otherwise order.

**Section 447. Submission on the Briefs**

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

**Section 448. Use of Physical Exhibits at argument; Removal**

If physical exhibits other than documents are to be used at the argument, counsel shall arrange to have them placed in the courtroom before the Court convenes on the date of the argument. After the argument counsel shall cause the exhibits to be removed 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, they shall be destroyed or otherwise disposed of as the Clerk shall think best.

**Section 449. When Hearing or Rehearing in Banc will Be Ordered**

A majority of the Justice of the Court who are in regular active service may order that any motion or other proceeding be heard or reheard by the Supreme Court in banc. Such hearing or rehearing is not favored and ordinarily will not be ordered except:

- (a) when consideration by the full Court is necessary to secure or maintain uniformity of its decisions, or
- (b) when the proceedings involves a question of exceptional importance.

**Section 450. Suggestion of a Party for Hearing for Rehearing In Banc**

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

**Section 451. Time for Suggestion of a Party for Hearing or Rehearing in Banc: Suggestion does not Stay Mandate**

If a party desires to suggest that motion or preceding be heard initially in banc, the suggestion must be made by the date on which the appellee's brief is filed. A suggestion for rehearing a motion in banc must be made within ten days after notice of the decision of the Justice initially hearing the motion. The pendency of such a suggestion whether or not included in a petition for rehearing shall not affect the finality of the judgment of the Supreme Court or stay the issuance of the mandate.

## SUBCHAPTER C

### JUDGMENT

#### **Section 461. Entry of Judgment**

The notation of a judgment in the docket constitutes entry of the judgment. The Clerk shall prepare, sign and enter the judgment following receipt of the opinion of the Court unless the opinion directs settlement of the form of the judgment, in which event the Clerk shall prepare, sign and enter the judgment following final settlement by the Court. If a judgment is rendered without an opinion, the Clerk shall prepare, sign and enter the judgment following instruction from the 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.

#### **Section 462. Interest on Judgments**

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

#### **Section 463. Damages for Delay**

If the Supreme shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

#### **Section 464. To Whom Costs Allowed**

(a) Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the Court; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the Court.

#### **Section 465. Costs For Or Against the Tribe**

In cases involving the Tribe or an agency or officer thereof, if an award of costs against of for the Tribe is authorized by tribal statute, costs shall be awarded in accordance with the provisions of Section 464, otherwise, costs shall not be awarded against the Tribe or its agencies or officers in their official capacity, provided that cost shall be awarded as a matter of course against a criminal defendant when the conviction is affirmed.

**Section 466. Costs of Briefs, Appendices, and Copies of Records**

Unless otherwise provided by tribal statute or Court rule, the cost of printing, or otherwise producing necessary copies of briefs, appendices, and copies of records shall be taxable in the Supreme Court at rates not higher than those generally charged for such work within the jurisdiction of the Tribe.

**Section 467. Bill of Costs; Objections; Costs Inserted in Mandate or Added Later**

A party who desires such costs to be taxed shall state them in an itemized and verified bill of costs which he shall file with the Clerk, with proof of service, within 14 days after the entry of judgment. Objections to the bill of costs must be filed within 10 days of service on the party against whom costs are to be taxed unless the time extended by the Court. the Clerk shall prepare and certify an itemized statement of costs taxed in the Supreme Court for insertion in the mandate, but the issuance of the mandate shall not be delayed for taxation of costs and if the mandate has been issued before final determination of costs, the statement, or any amendment thereof, shall be added to the mandate upon request by the Clerk of the Supreme Court to the Clerk of the Tribal District Court.

**Section 468. Costs On Appeal taxable in the Tribal District Court**

Costs incurred in preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedes bonds or other bonds to preserve rights pending appeal, and the fee for filing the notice of appeal in favor of the party entitled to costs under this Title.

**Section 469. Petition For Rehearing**

(a) **Time For Filing, Content, Answer, Action By Court.** A petition for rehearing may be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order of the Court. The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the Court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. 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, but a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted the Court may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(b) **Form of Petition; Length.** The petition shall be in a form prescribed by Section 429, and copies shall be served and filed as prescribed by Section 427 for the



service and filing of briefs. Except by permission of the Court, a petition for rehearing shall not exceed 15 pages.

**Section 470. Issuance of Mandate**

The mandate of the Court shall be issued 21 days after the entry of judgment unless the time is shortened or enlarged by order. A certified copy of the judgment and a copy of the opinion of the Court, if any, and any direction as to costs shall constitute the mandate, unless the Court directs that a formal mandate issue. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the Court. If the petition is denied, the mandate shall issue 7 days after entry of the order denying the petition unless the time is shortened or enlarged by order.

**Section 471. Voluntary Dismissal**

(a) **Dismissal In The Tribal District Court.** If an appeal has not been docketed, the appeal may be dismissed by the Tribal District Court upon the filing in that Court of a stipulation for dismissal signed by all parties, or upon motion and notice by the appellant.

(b) **Dismissal In The Supreme Court.** If the parties to an appeal or other proceeding shall sign and file with the Clerk of the Supreme Court an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the Clerk shall enter the case dismissed, but no mandate or other process shall issue without an order of the Court. An appeal may be dismissed on motion of the appellant upon such terms as may be agreed upon by the parties or fixed by the Court.

**Section 472. Substitution of Parties**

(a) **Death of a Party.** If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the Supreme 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 of the Court. The motion of a party shall be served upon the representative in accordance with the provisions of Section 402, 403, and 404. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the Supreme Court may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the Tribal District 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 Supreme Court in accordance with this Section. 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 Title. After the notice of appeal is filed substitution shall be effected in the Supreme Court in accordance with this Section.

(b) **Substitution For Other Causes.** If substitution of a party in the Supreme Court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subsection (a).

(c) **Public Officers; Death or Separation From Office.**

(1) When a public officer is a party to an appeal or other proceeding in the Supreme Court in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter an order shall not affect the substitution.

(2) When a public officer is a party to an appeal or other proceeding in his official capacity he may be described as a party by his official title rather than by name; but the Court may require that his name be added.

**Section 473. 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 draws in question the constitutionality (or unlawfulness under the Indian Civil Rights Act of 1968) of any statutes, ordinance, or other action of the Tribal Legislative Body in any proceeding in the Supreme 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 Supreme Court, to give immediate notice in writing to the Court of the existence of said question. The Clerk shall thereupon certify such fact to the Attorney General and/or Tribal Prosecutor who may intervene upon such question upon motion.