

Rules of Appellate Procedure

Chapter One

Rule 101. Title of this Act.

This Title shall be known as the Kaw Nation Rules of Appellate Procedure, and may be cited as title 10.

[History Resolution 17-81]

Rule 102. Scope and Applicability of Rules.

- A. Scope. These Rules govern appeals to the Appellate Court from the Tribal Court of the Kaw Nation, and in applications for writs or for other relief under the Appellate Court's exclusive jurisdiction. When these Rules provide for the making of a motion or application in the Tribal Court, the procedure for making such motion or application shall be in accordance with the practice of the Tribal Court.
- B. Sources. Where necessary to promote fairness and justice to parties, the Appellate Court may apply the customs and traditions of the Kaw Nation and the Federal Rules of Appellate Procedure for guidance in applying and supplementing these Rules. Application of the Federal Rules will not constitute an adoption of those Rules, or federal court decisions interpreting those rules.
- C. Construction. Words used in the present tense include the future as well as the present; the singular number includes the plural and the plural the singular; words in the masculine gender include the feminine gender; the word "person" includes a corporation as well as a natural person; the word "county" includes "city and county"; the word "shall" is always mandatory and not merely directory; writing includes printing and typewriting; oath includes affirmation or declaration; and every mode of oral statement, under oath or affirmation, is embraced by the term "testify," and every written statement in the term "depose."
- D. Definitions. The following words shall mean:
 - a) "Appellant" shall mean the party who initiates an appeal from the Kaw Nation Tribal Court.
 - b) "Clerk" or "Clerk of Court" shall mean the Clerk of the Kaw Nation Tribal Court who shall also serve as the Clerk of the Kaw Nation Appellate Court.
 - c) "En banc" shall mean by the full Court.
 - d) "Ex parte" shall mean without notice to an adverse party.
 - e) "In Forma Pauperis" shall mean proceeding without liability for court fees or costs.
 - f) "Interlocutory order" shall mean any order issued prior to a final decision.
 - g) "Judge" shall mean the presiding officer of the Kaw Nation Tribal Court.
 - h) "Justice" shall mean the presiding officers of the Kaw Nation Appellate Court.
 - i) "Mandate" shall mean an order or direction that a court is authorized to give.
 - j) "Mandamus" shall mean a directive from a court of superior jurisdiction.

- k) "Process" shall mean a writ or summons issued in the course of judicial proceedings;
 - l) "Pro se" shall mean one who appears without the aid of counsel.
 - m) "Tribe" shall mean the Kaw Nation.
 - n) "Writ" shall mean a written order or precept, issued in the name of the people, or of a court or judicial officer;
- E. Jurisdiction Not Affected. These Rules shall not be construed to extend or limit the jurisdiction of the Appellate Court as may be established by the Constitution and Judicial Code of the Kaw Nation.

[History Resolution 17-81]

Rule 103. Suspension and Revision of Rules.

- A. In the interest of judicial economy or for other good cause shown, the Appellate Court may, except as otherwise provided in this Code, suspend the requirements or provisions of any Rule of this Code in a particular case on application of a party or on its own motion, and may order proceedings in accordance with its direction. However, 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.
- B. The Appellate Court is authorized to amend any provision of these Rules by Court Rule duly adopted and filed in the Clerk's Office and the Tribal Secretary's Office. Any such Rule of Court that would have the effect of amending this Code shall state its intent to amend this Code, and shall not be effective until it has been filed in the Tribal Secretary's Office for a period of sixty (60) days, within which time the Executive Committee may veto said Rule. If not vetoed, such Rule shall take effect on the sixty -first day after filing or on such later date as may be provided by the Court.

[History Resolution 17-81]

Rule 104. Discretionary Authority.

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

[History Resolution 17-81]

Rule 105. Representation before the Appellate Court.

Subject to attorney licensing requirements of the Kaw Nation Rules of Professional Responsibility, any person who is a party in a proceedings before the Appellate Court may represent their own interests, or be represented by a professional attorney who licensed to practice law before the Tribal Court.

[History Resolution 17-81]

Chapter Two

Rule 201 Scope of Court's Review.

In reviewing a matter on appeal, the Appellate Court may:

- A. increase or decrease any sentence in a criminal case;
- B. affirm, modify, vacate, set aside or reverse any judgment, decree or order of the Tribal Court; or
- C. remand the case and direct entry of an appropriate judgment, decree or order, or require such further proceedings as may be just and equitable under the circumstances.

[History Resolution 17-81]

Rule 202 Standard of Review.

In deciding an appeal, the Appellate Court shall apply the following standards:

- A. A finding of fact by a judge shall be sustained unless clearly erroneous.
- B. A finding of fact by a jury shall be sustained if there is any credible evidence in the record to support it.
- C. A factual inference drawn by a judge or jury shall be reviewed as a finding of fact if more than one reasonable inference can be drawn from the fact.
- D. Any finding, whether explicit or implicit, of witness credibility shall be reviewed as a finding of fact.
- E. A conclusion of law shall be reviewed by the Appellate Court without deference to the Tribal Court's determination, i.e., review is de novo.
- F. Construction of an unambiguous contract term is reviewed as a conclusion of law.
- G. A matter which is a mixture of law and fact is reviewed by the standard applicable to each element.
- H. A matter which is within the discretion of the Tribal Court shall be sustained if it is reflected in the record that the Tribal Court exercised its discretionary authority; applied the appropriate legal standard to the facts, and did not abuse its discretion. A matter committed to the discretion of the Tribal Court shall not be subject to the substituted judgment of the Appellate Court.
- I. A sentence and the imposition of fine, forfeiture, or other penalty, excluding the assessment of damages, shall be reviewed as a discretionary determination of the Tribal Court.

[History Resolution 17-81]

Rule 203 Issues Preserved on Appeal.

In deciding an appeal, the Appellate Court shall consider issues in accordance with the following requirements:

- A. Unless a miscarriage of justice would result, the Appellate Court will not consider issues that were not raised before the Tribal Court.
- B. An issue raised before the Tribal Court, but not argued either by brief or orally, shall not be reviewed by the Appellate Court.
- C. No issue which moot at the time of argument shall be decided by the Appellate Court unless it is capable of repetition yet likely to evade appellate review, due to its nature.
- D. Facts which are not in the record shall not be presented in any manner to the Appellate Court, and if presented, shall not be considered by that Court.
- E. An issue concerning newly discovered material evidence which could not, with reasonable care, have been produced at the trial or hearing, shall not be considered by the Appellate Court until a decision concerning the evidence is made by the Tribal Court.

[History Resolution 17-81]

Chapter Three

Rule 301. Filing of Notice of Appeal.

- A. Form of Notice. A Notice of Appeal from a judgment of the Tribal Court must be filed with the Clerk of Court within thirty (30) calendar days from the date of entry of the final Tribal Court 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. The Appellate shall serve copies of the notice of Appeal on all parties. Failure to serve the Notice of Appeal shall not prevent its filing, but on reasonable notice, the Appellant may be required to remedy the failure.
- B. Extension of Time to File Notice of Appeal. Upon a motion showing excusable neglect or good cause, the Tribal Court may extend the time for filing a Notice of Appeal for a period not to exceed sixty (60) days from the date of entry of the final judgment or order. Any such motion must be filed within thirty (30) days from the date of entry of the final judgment or order and may be opposed in writing by any other party.
- C. Payment of Filing Fee in Civil Appeals. A party filing a Notice of Appeal shall pay a filing fee
- D. the Clerk at the time the Notice of Appeal is filed, unless proceedings are without costs to the Appellant. If the Appellant is indigent, payment of the filing fee may be excused on the same basis the filing fee in the Tribal Court is excused.

[History Resolution 17-81]

Rule 302. Transmission of Record.

- A. **Deadline for Transmission of Record.** The Clerk of Court shall forward the Notice of Appeal and the Trial Court Record to the Appellate Court within 5 business days after the filing of a conforming Notice of Appeal.
- B. **Composition of the Record on Appeal.** The original papers and exhibits filed in the Tribal Court, the transcript or tape recording 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.
- C. **Agreed Statement of Record on Appeal.** An appeal may be presented on record consisting in whole or in part of an agreed statement. Within thirty (30) 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 and a copy of the Notice of Appeal. 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.
- D. **Notification of Appeal; Transmission and Filing of Record.**
 - a. **Action Upon Receiving Notification of Notice of Appeal.** If a Notice of Appeal 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 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.

[History Resolution 17-81]

Rule 303. 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 in a civil case.

[History Resolution 17-81]

Rule 304. 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 statute, ordinance, or other action of the Executive Committee 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 Tribal Secretary who may intervene upon such question at the sole discretion of the Executive Committee.

[History Resolution 17-81]

Rule 305. Appearance of Counsel and Withdrawal of Counsel.

Any attorney making an appearance 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 the Appellate Court.

[History Resolution 17-81]

Rule 306. 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 on their behalf on all other parties to the appeal. Service on a party represented by counsel shall be made on the counsel.

[History Resolution 17-81]

Rule 307. Manner of Service.

Service may be effectuated by personal or by U.S. mail, Express Mail, overnight delivery or any other manner allowed by the Kaw Nation Rules of Civil Procedure for service of Tribal Court motions or briefs. Service by facsimile transmission is not permitted.

[History Resolution 17-81]

Chapter Four

Rule 401. Appeals of Right.

Appeals from a final judgment are permitted as of right, provided the Notice of Appeal described in Rule 301 is filed with the Clerk within the time frames set forth therein.

[History Resolution 17-81]

Rule 402. Interlocutory Appeals as of Right.

A person may take an interlocutory appeal to the Appellate Court by right from any of the following judgments or orders of the Tribal Court:

- A. An order that grants or refuses to grant a new trial or that vacates or refuses to vacate a judgment on any grounds, including that of newly discovered evidence or the impossibility of making a record;
- B. An order that discharges, vacates or modifies, or refuses to discharge, vacate, or modify an attachment;
- C. An order that denies, grants or modifies a temporary injunction, or that discharges, vacates, or modifies, or refuses to discharge, vacate, or modify a temporary injunction;
- D. An order that discharges, vacates or modifies, or refuses to discharge, vacate, or modify any provisional remedy that affects a substantial right of any party;
- E. 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, or that refuses to appoint a receiver, or vacates or refuses to vacate the appointment of a receiver, or that refuses to grant or grants an order to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property;
- F. Orders regarding the following probate matters:
 - a. granting, refusing or revoking letters testamentary or of administration, or of guardianship or conservatorship;
 - b. admitting or refusing to admit a will to probate;
 - c. against or in favor of the validity of a will or revoking the probate thereof;
 - d. against or in favor of setting apart property or making an allowance for a widow or child;
 - e. against or in favor of directing the partition, sale or conveyance of any interest in real property;
 - f. settling an account of an executor, administrator or guardian;

- g. 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;
- h. refusing or allowing the release of any tax liability; or
- i. from any other judgment, decree, or order of the Tribal Court in a probate case affecting a substantial right of a party.

[History Resolution 17-81]

Rule 403. Time for Filing Interlocutory Appeals of Right and Special Rules.

- A. Time for Filing. The party aggrieved by an order or judgment from which an interlocutory appeal of right may be taken 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 or judgment is issued.
- B. Stay of Enforcement Pending Appeal. If the order or judgment discharges or modifies an attachment or preliminary injunction and it becomes operative, the security 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 a final order of discharge after appeal takes effect.
- C. Stay of Enforcement — Security. A party wishing to stay the effect of an order granting a preliminary injunction pending appellate review shall, within ten (10) days after the order is rendered, file a security in an amount sufficient to protect the non - appealing party against any damages that the party may sustain if the appeal is unsuccessful. The maximum amount of the security shall be \$2,500.00, unless the Tribal Court deems a higher amount is warranted based on a showing by the non - appealing party. Tender of the security shall stay the effect of the preliminary injunction pending the conclusion of the appeal.
- D. Suspension of Receiver's Appointment Pending Appeal. If a receiver has been appointed, his or her authority shall be suspended until the final determination of the Appellate Court if the files an appeal bond in such sum as the Tribal Court may deem appropriate under the circumstances. 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 bond.

[History Resolution 17-81]

Rule 404. Interlocutory Appeals by Permission.

- A. As Allowed in the Tribal Court Order. If a Judge issues an order, judgment or decree that is not appealable of right under these Rules determines 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 resolution of the litigation, the issuing Judge shall so state in writing in that order. The Appellate Court may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made within ten (10) days after the entry of the order, provided, that application for an appeal hereunder shall not stay proceedings in the Tribal Court, unless the Appellate Court shall so order.

- B. By Petition of a Party. An appeal from an interlocutory order prescribed by Rule 404 may be sought by filing a petition for permission to appeal with the Clerk within ten (10) days after the entry of such order in the Tribal Court with proof of service on all other parties to the action in the Tribal Court. An order may be amended to include the prescribed statement at any time, and permission to appeal may be sought within ten (10) days after entry of the order as amended. The petition shall contain a statement of the facts necessary to an understanding of the controlling question of law; a statement of the question itself; and a statement of the reasons why a substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the termination of the litigation. The petition shall include a copy of the order from which the appeal is sought and any findings of fact, conclusions of law and opinion relating thereto. Within seven (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. The petition and any opposition papers filed thereto shall not exceed ten (10) pages. Three (3) copies shall be filed with the original, but the Appellate Court may require that additional copies be furnished.

[History Resolution 17-81]

Rule 405. Appeals of Discovery Orders.

The Appellate Court will not entertain appeals from discovery orders absent a showing of extraordinary circumstances by the party seeking to take the appeal.

[History Resolution 17-81]

Rule 406. Voluntary Dismissal of Appeal.

- A. Dismissal in the Tribal Court. The appeal may be dismissed by the Tribal Court upon the filing of a stipulation for dismissal signed by all the parties, or upon motion and notice by the Appellant.
- B. 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. The agreement shall specify the terms as to payment of costs. All fees due shall be paid concurrent with the filing of the dismissal. 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.

[History Resolution 17-81]

Chapter Five

Rule 501. Entry of Judgment.

The Clerk shall prepare, sign and enter the judgment following receipt of the opinion of 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.

[History Resolution 17-81]

Rule 502. Interest on Judgments.

Unless otherwise provided by Tribal law, if a judgment for money is affirmed, law allows 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.

[History Resolution 17-81]

Rule 503. Stay or Injunction Pending Appeal.

Application for a stay of the underlying judgment or order of Tribal Court pending appeal or for an order suspending, modifying, restoring or granting an injunction while an appeal is pending must ordinarily be made in the first instance in the Tribal Court. A motion for such relief may be made to the Appellate Court but the motion shall show that application to the Tribal Court for the relief sought is not practicable, or that the Tribal Court has denied an application, or has failed to afford the relief that 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 affidavits or other sworn statements or copies thereof shall support the motion. 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 and will be considered by the entire Court. 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.

[History Resolution 17-81]

Rule 504. Costs and Sanctions for Frivolous Appeals.

If the Appellate Court determines that an appeal is frivolous or that it has been taken for improper purpose, including but not limited to, to unduly delay the proceedings or to harass or

cause undue expense to a non - appealing party, it may award the non - appealing party its costs and attorney's fees, may impose sanctions against the appealing party, or both.

Rule 505. Costs on Appeal Taxable in the Tribal Court.

Costs incurred in preparation and transmission of the record, the premiums paid for cost of bonds to preserve rights pending appeal, and the fee for filing the Notice of Appeal shall be taxed in the Tribal Court as costs of the appeal in favor of the party entitled to costs under this Code.

[History Resolution 17-81]

Chapter Six

Rule 601. Motions.

- A. Motions. An application to the Appellate Court for an order or other relief shall be made by filing a motion with the Clerk for such order or relief 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 briefs, affidavits, or other papers support a motion, they shall be served and filed with the motion.
- B. Opposition to Motions. Any party may file a response in opposition to a motion, other than one for a procedural order, within seven (7) days after service of the motion.
- C. Form of Motions and Number of Copies for Filing. A motion or other paper addressed to the Appellate 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. All motions must be typewritten or, if handwritten, printed in a legible manner. Three (3) copies of a Motion shall be filed with the original, but the Clerk may require that additional copies be furnished.
- D. Fee for Motions. All motions presented to the Appellate Court must be accompanied by a filing fee. The fee must be paid at the time the motion is filed.
- E. Request for Clarification of a Point of Procedure. Any party to an appeal may file a motion with the Clerk requesting clarification of 'a point of procedure. Upon request, the Clerk shall provide a party with a summary explaining the most frequently asked questions regarding points of Appellate Court procedures. Any questions not answered by the summary may be addressed to the Clerk. Any questions the Clerk cannot answer may be directed to any of the Justices, either individually or as a group, upon noticed motion.
- F. Determination of Motions for Procedural Orders. Motions for procedural orders may be acted upon at any time, without awaiting a response thereto. Any party adversely affected by such action may request reconsideration, vacation or modification of such action.
- G. Authority of a Single Justice to Entertain Motions. A single Justice of the Appellate Court may entertain and may grant or deny any request for relief which under this Code 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 Appellate Court may provide by order or Rule that any motion or class of motions must be acted upon by the entire Court. The entire Appellate Court may review the action of a single Justice.

[History Resolution 17-81]

Rule 602. Briefs of Parties.

- A. Appellant's Opening Brief. The opening brief of the Appellant shall be in the following format:
 - a. A cover page.
 - b. A table of contents and a table of authorities that includes all cases cited in the brief (alphabetically arranged), as well as all statutes, Court Rules, Tribal laws and other authorities cited, with reference to the pages of the brief where they are cited.
 - c. A page that sets forth a concise statement of the issues presented for review, and a request for oral argument if sought.
 - d. A statement of the case. The statement shall briefly state the nature of the case, the course of proceedings and the by the Tribal Court. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record.
 - e. A summary of argument. A separate legal argument for each issue presented to the Appellate Court.
 - f. Points and authorities. The points and authorities provision shall contain the contentions of the Appellant with respect to the issues presented, and the reasons therefore. The points and authorities shall cross - reference all citations to the authorities including all statutes, Court Rules, Tribal laws and all portions of the record on appeal that support the arguments made.
 - g. A short conclusion stating the precise relief sought.
- B. Respondent's Brief. The responsive brief shall conform to the requirements of Rule 602(a), except that a statement of the issues or of the case need not be made unless the Respondent is dissatisfied with the statement of the Appellant. Argument shall be limited to the argument in Appellant's opening brief. In the event that the constitutionality of a law of the Kaw Nation is challenged, and the Tribe is notified of the challenged and intervenes in the proceedings as provided for in these Rules, the Tribe shall be considered a party Respondent for the purposes of the Appeal.
- C. Appellant's Reply Brief. The Appellant may file a brief in reply to the Respondent's brief and the Respondent may file a brief in reply to the response of the Appellant. Argument shall be limited to the argument in the responsive brief. No additional or supplementary briefs may be filed except with leave of Court requested pursuant to a noticed motion or upon invitation by the Appellate Court.
- D. 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 "Respondent." 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," or the names of the parties, or the designations used in the Tribal Court.

- E. Length of Briefs. Except by permission of the Court, Appellant's Opening Brief and Respondent's Brief shall not exceed thirty (30) pages, and Appellant's Reply Brief shall not exceed fifteen (15) pages. The page limitations do not include the table of contents, tables of citations and any attachments or exhibits thereto. The page limits may be increased upon noticed motion by any party thereto or on the Appellate Court's own motion.
- F. Time for Filing and Service of Briefs. The Appellant shall serve and file their opening brief within fifteen (15) days of filing a Notice of Appeal. The Respondent shall serve and file their brief within fifteen (15) days after service of the Appellant's opening brief. The Appellant may serve and file a reply brief within seven (7) days after service of the Respondent's brief.
- G. Number of Copies to be Filed and Served. Three (3) 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 one (1) copy shall be served on counsel for each party.

[History Resolution 17-81]

Rule 603. Briefs in Cases Involving Multiple Appellants or Multiple Respondents.

In cases involving more than one Appellant or Respondent, including consolidated cases, 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.

[History Resolution 17-81]

Rule 604. Amicus Curiae Briefs.

A person who is not a party to an action with an interest in the subject matter of an action may request permission from the Appellate Court to file a brief of 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. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of amicus curiae is desirable. An amicus curiae motion to participate in oral argument that is brought by a party other than the Tribe will be granted only upon a showing of extraordinary circumstances, or on the Court's own motion. A motion of the Tribe to present oral argument as amicus curiae shall be granted unless opposed by counsel of any party to the appeal and a showing has been made that such participation will be prejudicial to a party or otherwise impede the Court's consideration of the appeal.

[History Resolution 17-81]

Rule 605. Consequence of Failure to File Briefs.

If, after filing a timely Notice of Appeal, an Appellant fails to file an opening brief within the time allowed, a Respondent may move for dismissal of the appeal. If a Respondent fails to file a Response Brief, they will not be heard at oral argument except by permission of the Appellate Court.

[History Resolution 17-81]

Rule 606. 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.

[History Resolution 17-81]

Chapter Seven

Rule 701. Prehearing Conference.

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

[History Resolution 17-81]

Rule 702. 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, and shall provide the parties of record an opportunity to file a statement setting forth the reasons why oral argument should be allowed. Oral argument will be allowed upon request unless the Court unanimously determines that any one of the following three factors is present:

- (a) the appeal is frivolous;
- (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.

[History Resolution 17-81]

Rule 703. 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 therefore, 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 noticed motion filed no less than five (5) days in advance of the date fixed for hearing.

[History Resolution 17-81]

Rule 704. Submission of Exhibits For Oral Argument.

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 be forwarded 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 and a single duplicate to each party at least ten (10) days before oral argument. If any papers are illegible or otherwise unusable, the Appellate Court may require new copies to be made and filed. The Appellate Court at any time may request that the Clerk transmit any original exhibits to it. The Appellate Court, on application, may return any original exhibit to the Tribal Court for use in any other proceeding.

[History Resolution 17-81]

Rule 705. Courtroom Decorum.

All persons appearing before the Appellate Court, whether legal counsel, a party or a Justice shall observe the following rules of decorum:

- A. Be punctual in attendance.
- B. Refrain from employing delay tactics.
- C. Hand all papers intended for the Court's consideration to the Clerk, who, in turn will pass them up to the Justices.
- D. Avoid disparaging personal remarks or hostility toward opposing counsel and remain uninfluenced by any ill feeling between the respective clients.
- E. Rise when addressing, or being addressed by the Court.
- F. 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.
- G. No propping of feet on tables or chairs will be permitted.

- H. Everyone must rise when instructed to do so, upon opening, closing, or declaring recesses of Court.
- I. No food or beverages are allowed in the Courtroom.
- J. Any person who appears in Court intoxicated or under the influence of intoxicants, drugs or narcotics may be held in contempt.

[History Resolution 17-81]

Rule 706. Order and Content of Argument.

The Appellant shall open and conclude the oral argument before the Appellate Court. The Appellant's opening argument shall include a statement of the case. Counsel will not be permitted to read at length from briefs, records or authorities. 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, and only in the event that the Appellate Court finds good cause.

[History Resolution 17-81]

Rule 707. Non - Appearance of Parties.

If the Respondent 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 Respondent, if present. If neither party appears, the case will be decided on the briefs unless the Court shall otherwise order.

[History Resolution 17-81]

Rule 708. 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.

[History Resolution 17-81]

Rule 709. 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.

[History Resolution 17-81]

Rule 710. Decision of the Appellate Court.

The Appellate Court shall issue its decision on appeal within 45 days of the case being submitted to the Court. The 45 -day deadline shall run from the close of oral argument and formal submission to the Court or the date of the final supplemental brief being filed with the Court, if the Court requests such briefing.

[History Resolution 17-81]

Rule 711. Petition for Rehearing En banc.

- A. Time for Filing, Content, Answer. A petition for rehearing en banc may be filed within ten (10) Court days after entry of judgment unless the time is shortened or extended by order of the Court. The petition for rehearing en banc 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 party making the petition shall state by affidavit what application was made before and 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 en banc will be received unless requested by the Court.
- B. 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.
- C. New or Different Law. For the purposes of this section, an alleged new or different law shall not include a later enacted statute without a retroactive application.
- D. Action by 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.
- E. 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 warrants reconsideration of a prior order, it may do so on its own motion and enter a new or different order.

[History Resolution 17-81]

Rule 712. Issuance of Mandate.

The mandate of the Court shall issue twenty -one (21) days after the entry of judgment, or the issuance of a decision after appeal or after rehearing, whichever is latest, unless the time is shortened or enlarged by order of the Appellate or Tribal Court. A certified copy of the judgment and a copy of the opinion of the Court, if any, and any order for 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 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.

[History Resolution 17-81]

Chapter Eight

Section 801. 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, 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 therefore. If the motion is denied, the Tribal Court shall state in writing the reasons for the denial.

[History Resolution 17-81]

Rule 802. Special Rule for Parties Previously Granted Permission to Proceed In Forma Pauperis.

Notwithstanding the provisions of the preceding Rule, a party who has been permitted to proceed in an action in the Tribal Court in forma pauperis 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 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, in which event the Tribal Court shall state in writing the reasons for such certification or finding.

[History Resolution 17-81]

Rule 803. Remedy for Denial of Motion by Tribal Court.

[History Resolution 17-81]

If a motion for leave to proceed on appeal in forma pauperis is denied by the Tribal Court, or if the Tribal 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 to proceed may then be filed in the Appellate Court within thirty (30) days after service of notice of the action of the Tribal Court. The motion shall be accompanied by a copy of the affidavit filed in the Tribal Court, or by the affidavit prescribed by Rule 802 of this Division if no affidavit has been filed in the Tribal Court, and by a copy of the statement of reasons given by the Tribal Court for its action.

[History Resolution 17-81]

Chapter Nine

Rule 901. 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 of the Tribal 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 Appellate Court, shall be made by filing a petition with the Clerk with proof of service on the Respondent and 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 presented by the application; 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 docketing fee set by Court Rule. If an order, action or judgment is vacated, a single Justice may issue the alternative writ 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.

[History Resolution 17-81]

Rule 902. Denial or Order Directing Answer.

If the Appellate 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 the Respondents file an answer to the petition 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 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 of oral argument, if any. The proceeding shall be given preference over ordinary civil cases.

[History Resolution 17-81]

Rule 903. Other Extraordinary Writs.

Application for extraordinary writs other than those provided for in Rule 901 of this Chapter 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 901 and 902 of this Division.

[History Resolution 17-81]

Rule 904. Form of Papers, Number of Copies.

All papers may be typewritten. Three (3) copies and the original shall be filed, but the Court may direct that additional copies be furnished.

[History Resolution 17-81]