Part 8 - Court of Appeals

1–2–801. Establishment and Composition. (1) There is established a Court of Appeals to hear and decide appeals on the law taken from judgments, orders, or rulings of the Tribal Court or original proceedings as provided in Section 1–2–815 of this Code. The Court of Appeals is comprised of a Chief Justice and four Associate Justices

(2) Unless a request for a rehearing en banc is made and granted as provided in Rule 21 of the Rules of Appellate Procedure, an appeal or an original proceeding in the Court of Appeals will be heard and decided by a panel of three Justices, two of whom will be attorneys. The panel members will be chosen by rotation, unless another method of selection is prescribed by Court rule. A vacancy on a panel will be filled by appointment by the Chief Justice from among the remaining Justices or if, for reason of recusement, disqualification, or other unavoidable absence, no Justice is available, by appointment of a visiting judge or judges with qualifications corresponding to those of the absent member(s) of the panel.

1–2–802. Administration. (1) The Chief Justice is responsible for the administrative and fiscal management of the Court of Appeals and for the presentation of its annual budget proposal to the Tribal Council. In connection with such management, the Chief Justice may, on behalf of the Court of Appeals, apply for grants and contracts to provide supplementary funding. If such applications require Tribal matching funds for their implementation, prior approval of the Tribal Council is required.

(2) There is an office of Appellate Administration, comprised of an Appellate Administrator and such other personnel as may, from time to time, be approved by the Tribal Council in connection with its approval of the Court's budget. The Appellate Administrator is appointed by the Tribal Council, which shall determine whether the position is full–time or part time on the basis of the workload of the Court and which shall establish the Administrator's compensation. If the workload is insufficient to occupy the Administrator's full time, the Council may combine the Office with another Tribal administrative function and the Administrator may perform such other function in addition to the duties prescribed herein or assigned by the Chief Justice. The Administrator is subject to the direction and supervision of the Chief Justice in the performance of duties herein assigned and such other responsibilities as may be delegated or assigned to the Administrator by the Chief Justice.

(3) Permanent records of proceedings and decisions of the Court of Appeals will be maintained by the Appellate Administrator. Records of proceedings and decisions of the Court of Appeals will be compiled chronologically, indexed by subject matter, docket number, and caption, and made available to the public by the Appellate Administrator. The Chief Justice may order the periodic publication of the decisions of the Court of Appeals and provide for the distribution of the same to law libraries, other appropriate repositories, and subscribers.

1-2-803. Time and format of decision. All decisions, orders, or judgments of the Court of Appeals shall be rendered in writing by a majority of the Justices hearing the appeal or special proceeding and filed with the Appellate Administrator within 60 days of the date of oral argument or of stipulation by the parties that the matter will be decided on briefs, without oral argument.

The Justices hearing the matter shall select one Justice, by consensus, from within the panel to be the primary author of the opinion. The Justice selected to author the opinion shall render a draft opinion for review by the remaining panel members by no later than 45 days after the oral argument or after the date of stipulation to hear the matter on the briefs without oral argument. Failure of the primary author to meet the 45 day time frame above shall constitute neglect of judicial duties and may result in removal.

A Justice who concurs in the result of the majority decision, but not in its reasoning, may file a concurring opinion simultaneously with the majority opinion. A Justice who dissents from the result of the decision may file a simultaneous dissenting opinion. Copies of a ruling and opinion by the Court of Appeals shall be delivered to the parties by the Appellate Administrator within one working day of its filing. Delivery may be made personally or by depositing a copy in the U.S. Mail, first class postage prepaid. *(Rev. 4-1-04)*

1–2–804. Basis of decision. Every decision shall be based on the record established in the court below and on the law.

1–2–805. Effect of decision. A decision by a simple majority of a panel of the Court of Appeals (or of the full Court upon rehearing en banc) is final and binding upon the parties as to all issues and claims that were raised or might have been raised at trial or upon appeal.

1–2–806. Times of convening. The Court of Appeals will convene in regular session to hear and decide appeals for four weeks a year, which shall be the second week of February, April, June, and October. As necessary, the Chief Justice may call a special session of the Court of Appeals, schedule and assign opinion preparation, and adjourn a regular or special session when the business of the Court is concluded.

1–2–807. Rules of Court. To supplement the Rules of Appellate Procedure at Title I, Chapter 2, Part 9, the Court of Appeals, with the approval of the Tribal Council, may adopt such rules of practice, procedure, and administration as may improve or facilitate Court operations.

1–2–808. Appointment of Justices. One Chief Justice and four Associate Justices of the Court of Appeals shall be appointed by the Tribal Council.

1–2–809. Term and oath of office. The Chief Justice shall be appointed for a four year term, and each Associate Justice shall be appointed for a three year term. Prior to assuming his or her duties, each Justice shall at the next regular Tribal Council meeting after appointment take the oath of office prescribed by Article I, Section 6 of the Bylaws of the Confederated Salish and Kootenai Tribes.

1–2–810. Qualifications. (1) Three Justices, including the Chief Justice, shall be attorneys at law, qualified to practice before the Tribal Court, with not less than 5 years' experience in the practice of law or on the bench, or a combination or the equivalent thereof. Indian preference will be applied in the selection of these Justices.

(2) Two Justices shall be enrolled Tribal members who have relevant education or experience in law or a law–related field, and who are familiar with Tribal law, customs and tradition and with legal research and writing.

(3) A Justice may not simultaneously serve in another position within the Tribal justice system. Otherwise, a person is not disqualified from appointment to the Court of Appeals for the reason that he or she is otherwise employed, provided that the nature of the employment does not interfere with judicial duties and is neither inherently prejudicial to the exercise of the appellate function nor likely to give rise to an appearance of impropriety.

1–2–811. Vacancies and removal. (1) In the event that a Justice, by reason of resignation or otherwise, fails or is unable to complete an appointed term, the Tribal Council shall fill the vacancy by appointment for the balance of the unexpired term. If necessary, pending such appointment, the Chief Justice may designate a substitute judge as provided in Section 1–2–813. Pending Council appointment, a

vacancy in the office of Chief Justice will be filled by an Acting Chief Justice selected from among the Associate Justices by their majority vote.

(2) A Justice may be removed from office during his or her appointed term, after adequate notice to the Justice and an opportunity to be heard, by an affirmative vote of seven members of the Tribal Council, for reasons of misconduct in office, neglect of judicial duties, mental or physical incapacity, or conviction by a court of competent jurisdiction of a felony or misdemeanor, excluding minor traffic offenses. *(Rev. 4-1-04)*

1–2–812. Additional powers and duties of Justices. (1) In addition to the powers and duties expressed in or necessarily implied from this Part and the Rules of Appellate Procedure,

(a) each Justice has the emergency powers, pending review by the full Court of Appeals,

(i) upon the Justice's own motion or that of a party, to issue a citation for criminal or civil contempt of court or other sanction as may be appropriate in the circumstances to a person appearing before the Court whose conduct is disruptive, contemptuous, or otherwise sanctionable, or to a person disobeying an order of the Court,

(ii) to order the Tribal police to provide for and to maintain the order and security of the courtroom,

(iii) to stay execution of a trial court sentence, judgment, or imposition of sanctions pending appeal, and

(iv) to issue a writ of habeas corpus.

(b) Each Justice has the duty

(i) if a lay Justice, to participate in inservice instruction, training, or consultation with other Justices of the Court and with organizations offering short courses in appellate work. Topics of such in–service education shall include, but are not limited to, such matters as appellate court jurisdiction and procedures, procedures for original or special proceedings in the Court of Appeals, limitations on the appealability of issues of law and fact, remedies, and options for disposition of matters heard,

(ii) if an attorney Justice, to assist with the in–service training of lay Justices,

(iii) to attend bench conferences dealing with the cases to which the Justice is assigned and to prepare or to oversee the preparation of bench memoranda as assigned, and

(iv) to protect and preserve the high standards of the Tribal judiciary, and to abide by the Model Canons of Judicial Ethics of the American Bar Association.

(2) A bench memorandum of law shall be prepared, prior to a bench conference, for each appeal taken. Such memorandum shall be produced in a timely fashion by a Justice who is an attorney and a member of the panel assigned to the case. If sufficient funds are available, the responsible Justice may delegate the preparation of a memorandum of law to an individual or firm qualified to provide legal research assistance.

1–2–813. Disqualification, recusement, and unavoidable absence. (1) (a) Within 10 days of the time a party to a proceeding is notified by the Appellate Administrator of the membership of the panel that is assigned to determine the matter, the party may move the Court of Appeals for the disqualification

of a Justice so assigned. One such motion shall be granted as a matter of right for each party to the proceeding.

(b) A party may move at any time that one or more Justices be disqualified from a panel for bias or other good cause shown. Such motion shall be supported by an affidavit and, if opposed by a party or a Justice, shall be heard by a panel of Justices other than those sought to be disqualified.

(c) A Justice shall disclose on the record information that the Justice believes the parties or their lawyers might consider relevant to the question of disqualification, even if the Justice believes there is no real basis for disqualification.

(d) A Justice shall disqualify himself or herself in a proceeding in which the Justice's impartiality might reasonably be questioned, including, but not limited to instances where

(i) the Justice has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(ii) the Justice individually or as a fiduciary, or the Justice's spouse, parent or child wherever residing, or any other member of the Justice's family residing in the Justice's household has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other than a de minimis interest that could be substantially affected by the proceeding;

(iii) the Justice or the Justice's spouse, or a person related to the Justice in the first or second degree of consanguinity or affinity

(A) is a party to the proceeding or an officer, director or trustee of a party;

(B) is acting as a lawyer in the proceeding;

(C) is known by the Justice to have a more than de minimis interest that could be substantially affected by the proceeding;

(D) has been, or to the Justice's knowledge is likely to be, a material witness in the proceeding.

(E) A Justice disqualified by the terms of subsection (d) above may disclose on the record the basis of the disqualification and may ask the parties and their lawyers to consider, out of the presence of the Justice, whether to waive disqualification. If, following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the Justice, all agree that the Justice should not be disqualified, and the Justice is willing to participate, the Justice may participate in the proceedings. The agreement shall be incorporated in the record of the proceeding.

(2) (a) Upon the disqualification, recusal, or unavoidable absence of a Justice other than the Chief Justice, the Chief Justice shall fill the vacancy

(i) by appointment of a Justice with qualifications corresponding to those of the absent Justice, or

(ii) if no Justice is available, by appointment of a substitute judge with corresponding qualifications.

(b) A substitute judge may be a trial judge of the Tribal Court who had no contact with the case below, or a visiting judge.

(c) In the event that the Chief Justice is disqualified, unavoidably absent, or has recused himself or herself from a proceeding, a substitute Justice or judge, as conditioned in subsection (2)(a)(i) and (ii), shall be appointed by a majority vote of the Associate Justices to serve as Acting Chief Justice for purposes of the proceeding and any associated administration or management of the Court of Appeals.

1–2–814. Compensation. (1) The base retainer salary to be paid to each Justice of the Court of Appeals shall not be less than $10,000 per year for the Chief Justice or $5,000 per year for each Associate Justice. This sum may be increased from time to time by the Tribal Council upon the recommendation of the Chief Justice in connection with the Council's approval of an annual budget for the Court of Appeals. The base retainer salary will compensate Justices for services associated with regular sessions of the Court of Appeals, and the Chief Justice for administrative oversight of Court operations.

(2) A Justice may be additionally compensated for work, such as research and writing, associated with special sessions of the Court or generated by complex cases in regular sessions and assigned by the Chief Justice, at an hourly rate, to be established annually in connection with the Court budget. Eight hours of each day spent in travel or training time or in attendance at national or regional judges' conferences will be compensated at half the hourly rate established by the Council for extra hours of work.

(3) Justices may be reimbursed for off–Reservation travel or training necessitated by their judicial duties and approved by the Chief Justice at the regular Tribal mileage and per diem rates.

(4) A visiting judge, designated by the Chief Justice, or selected as provided in Section 1–2–813, to hear a case or cases in the absence of a Justice or a vacancy on the bench, may be compensated and reimbursed as provided in subsections (2) and (3) above.

(5) One–fourth of the base retainer salary for each Justice will be paid quarterly (in April, June, September, and December). Any additional compensation and reimbursement for expenses incurred for travel or training will be paid to a Justice or a visiting judge within 30 days of submission to the Appellate Administrator of a billing statement and receipts for expenses paid.

1–2–815. Original jurisdiction. (1) The Court of Appeals is an appellate court, but it is empowered to hear and determine such original and remedial writs as may be necessary or proper to the complete exercise of its jurisdiction. The institution of such original proceedings in the Court of Appeals is sometimes justified by circumstances of an emergency nature, as when a cause of action or a right has arisen under conditions making due consideration in the Tribal Court and due appeal to the Court of Appeals an inadequate remedy, or when supervision of the trial court other than by appeal is deemed necessary or proper.

(2) The Court of Appeals shall have original and exclusive jurisdiction over all matters involving extraordinary writs of habeas corpus, mandamus, and prohibition.

1–2–816. Scope of appeal in criminal cases. (1) Except as otherwise specifically authorized, the Tribal prosecutor may not appeal a criminal case. The Tribal prosecutor may appeal from any Tribal Court order or judgment which results in

(a) the dismissal of a case,

(b) any modification of a jury verdict,
(c) granting a new trial,

(d) quashing an arrest or search warrant,

(e) the suppression of evidence,

(f) the suppression of a confession or admission, or

(g) imposing a sentence that is contrary to law.

(2) The defendant may take an appeal only from a final judgment of conviction and order after judgment which affects the substantial rights of the defendant.

(3) On appeal from a judgment, the Court of Appeals may review the verdict or decision and any alleged error objected to which involves the merits or necessarily affects the judgment.

1–2–817. Scope of jurisdiction in civil cases. The Court of Appeals has exclusive jurisdiction over appeals by an aggrieved party from a judgment or order in the following cases:

(1) From a final judgment entered in an action or special proceeding commenced in the Tribal Court or brought into the Tribal Court from another court or administrative body;

(2) From an order granting a new trial; or refusing to permit an action to be maintained as a class action; or granting or dissolving an injunction; or refusing to grant or dissolve an injunction; or dissolving or refusing to dissolve an attachment; from an order directing the delivery, transfer, or surrender of property; from any special order made after final judgment; and from such interlocutory judgments or orders in actions involving the custody, guardianship, or conservatorship of minors or incompetent persons as may determine permanently, and not on an emergency or temporary basis pending further proceedings, the rights, interests and responsibilities of the respective parties and direct the disposition of the person or property of the minor or incompetent person in accordance with the determination;

(3) From a judgment or order granting or refusing to grant, revoking or refusing to revoke, letters testamentary, or of administration, or of guardianship; or admitting or refusing to admit a will to probate, or against or in favor of the validity of a will, or revoking or refusing to revoke the probate thereof; or against or in favor of setting apart property, or making an allowance to a spouse or child; or against or in favor of directing the partition, sale, or conveyance of real property, or settling an account of an executor or administrator or guardian; or refusing, allowing, or directing the distribution of any estate, or the payment of a debt, claim, legacy, or distributive share.

1–2–818. Commencement and conduct of original proceedings. Proceedings to obtain a writ of habeas corpus, mandate, or prohibition or other remedial writs or orders shall be commenced originally in the Court of Appeals and conducted as provided in this Part. All papers filed shall conform to the requirements of Rule 12 of the Rules of Appellate Procedure.

(1) Notice to trial judge. If an application for a writ or an order is directed against a ruling of a trial judge, the application and all further documents relating to the ruling must be served upon the judge. Such application shall, in its title, contain the name of the judge who issued the ruling.

(2) Filing of applications. An original application may be made to the Court of Appeals at any time. The moving party's application and all supporting documents shall be filed with the Appellate Administrator.

(3) Contents of application. The application for the issuance of the above writs or orders must set forth, in addition to the other requisite matters, the particular questions and issues anticipated to be raised in the

proceeding and also the fact which renders it necessary and proper that the writ should issue originally from the Court of Appeals. Each application shall also set forth as exhibits a copy of each judgment, order, notice, pleading, document, proceeding, or court minute referred to in the application, or which is necessary to make out a prima facie case or to substantiate the application or conclusion or legal effect. A memorandum of authorities must be filed with the application. Counsel shall file with the Appellate Administrator the original court file, unless for some reason the same is not available.

(4) Court consideration. (a) A panel of three Justices, as provided in Section 1–2–801(2) of this Code, shall consider whether to accept jurisdiction of an extraordinary writ at a bench conference, which may be held by telephone, within 5 days of the receipt of the application.

(b) As promptly as possible thereafter, the panel shall, on the basis of the application, dismiss the application for want of jurisdiction, accept jurisdiction, or order a response reserving the question of jurisdiction.

(c) Only in extraordinary cases will the Court grant oral argument to determine the necessity and propriety of accepting jurisdiction.

(d) Unless oral argument is ordered by the Court in order to establish jurisdiction, the court will enter an appropriate order forthwith. Such order may dismiss the application, grant the relief requested, order a hearing on the application, or issue any other writ or order deemed appropriate in the circumstances.

(5) Adversary hearing. When ordered by the Court, an adversary hearing on the application shall be held at the time fixed by the order. The oral argument shall be conducted in the same manner as in the argument of appeals, with the same time limits for presentation, and with the applicant opening and closing the argument. Each party shall serve and file briefs in full conformance with Rules of Appellate Procedure 12 and 15 and according to the time schedule set forth in the order, in no event later than 24 hours prior to the time fixed for oral argument.

1–2–819. Writs of mandamus and prohibition.

(1) Definitions.

(a) Mandamus. A writ of mandamus or mandate may be issued to any lower tribunal, corporation, board, or person to compel the performance of an act that the law specially enjoins as a duty resulting from an office, trust, or station or to compel the admission of a party to the use and enjoyment of a right to which the party is entitled and from which the party is unlawfully precluded by the lower tribunal, corporation, board, or person.

(b) Prohibition. The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions when such proceedings are without or in excess of the jurisdiction of such tribunal, board, corporation, or person.

(2) Application of rules of procedure. Except as otherwise provided in this Ordinance or inconsistent herewith, the federal rules of evidence and civil procedure relative to new trials and the Rules of Appellate Procedure herein apply to the proceedings mentioned in this Part.

(3) Procedure for obtaining, serving, and enforcing writ.

(a) A writ of mandamus or of prohibition must be issued upon affidavit, on the application of the party beneficially interested.

(b) A writ of prohibition may be issued by the Court of Appeals to any lower tribunal or to a corporation, board, or person in all cases in which there is not a plain, speedy, and adequate remedy in the ordinary course of law.

(c) The writ may be either alternative or peremptory. The alternative writ must be first issued if no 10–day (or shorter, if the Court so allows) notice of the application is given by the applicant to the adverse party. If the application is upon due notice, a peremptory writ may be issued in the first instance.

(d) An alternative writ of mandamus or prohibition must state generally the allegation against the party to whom it is directed and,

(i) if mandamus, command such party, immediately after the receipt of the writ or at some other specified time, to do the act required to be performed or to show cause before the court at a specified time and place, why he or she has not done so, or

(ii) if prohibition, command such party to desist or refrain from further proceedings in the action or matter specified therein until the further order of the Court of Appeals and to show cause before such Court, at a specified time and place, why such party should not be absolutely restrained from further proceedings in such action or matter.

(e) A peremptory writ must be in similar form to an alternative writ, except that the words requiring the party to show cause why he should not be absolutely commanded to do the act or to be restrained, etc., must be omitted and a return day inserted.

(f) The writ must be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the Court of Appeals.

(g) When a peremptory mandate or prohibition has been issued and directed to any lower tribunal, corporation, board, or person upon whom and writ has been personally served has, without just excuse refused or neglect to obey the writ, the Court may, upon motion, impose a fine not exceeding $10,000. In case of persistence in a refusal of obedience, the Court may order the party to be imprisoned until the writ is obeyed and may make any orders necessary and proper for the complete enforcement of the writ.

1–2–820. Procedure upon return of writ of mandate or prohibition.

(1) Time for return and hearing. Writs of mandate or of prohibition issued by the Court of Appeals may, in the discretion of the Court, be made returnable and hearing thereon may be heard at any time.

(2) Answer of adverse party. On the return of the alternative or on the day on which the application for the writ is noticed, the party on whom the writ or notice has been served may show cause by answer, under oath, made in the same manner as an answer to a complaint in a civil action.

(3) When jury trial may be had. (a) If an answer is made which raises a question of fact essential to the determination of the matter and affecting the substantial rights of the parties or the supposed truth of the allegation upon which the application for the writ is based, the Court may, in its discretion, order the question to be tried before a jury and postpone the argument until the trial can be had. The question to be tried must be distinctly stated in the order for trial. The order may also direct the jury to assess any

damages which the applicant may have sustained if it finds for him or her. At trial, the applicant is not precluded by the answer from any valid objection to its sufficiency and may contradict it by proof, either in direct denial or by way of avoidance.

(b) If a jury is required, the jury is to be selected by the Appellate Administrator in the same manner in which a jury is selected in the Tribal Court. The conduct of the trial must be the same as in Tribal Court, and the Appellate Administrator has the same authority to issue process and enter orders and judgments as the Clerk of the Tribal Court.

(c) If no answer be made, the case must be heard on the papers of the applicant. If the answer raises only questions of law or puts in issue immaterial statements not affecting the substantial right of the parties, the Court must proceed to hear or fix a day for hearing the argument of the case.

1–2–821. Judgment on writs of prohibition and mandate.

(1) Default not permitted. Neither a writ of prohibition nor a writ of mandate may be granted by default. The case must be heard by a panel of the Court of Appeals whether the adverse party appears or not.

(2) Judgment for applicant. If judgment is given for the applicant:

(a) the applicant may recover the damages which he or she has sustained, as found by the Court or by the jury, together with costs;

(b) an execution may issue for such damages and costs; and

(c) a peremptory mandate must be awarded without delay.

1–2–822. Writ of Habeas Corpus.

(1) Availability of writ. (a) Except as provided in subsection (1)(b), every person within the jurisdiction of the Tribes imprisoned or otherwise restrained of liberty may prosecute a writ of habeas corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from imprisonment or restraint.

(b) The writ of habeas corpus is not available to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense by a court of competent jurisdiction and has exhausted the remedy of appeal, nor is it available to attack the legality of an order revoking a suspended or deferred sentence. Moreover, a person may not be released on a writ of habeas corpus due to any technical defect in commitment not affecting the person's substantial rights.

(c) When a person is imprisoned or detained in custody by the Tribes on any criminal charge for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring that fact in his petition, without alleging that he is illegally confined.

(2) Issuance of writ.

(a) Application for a writ of habeas corpus is made by petition signed either by the party for whose relief it is intended or be some person on the petitioner's behalf. It must specify:

(i) that the petitioner is unlawfully imprisoned or restrained of liberty;

(ii) why the imprisonment or restraint is unlawful; and

(iii) where or by whom the petitioner is confined or restrained.

(b) All parties must be named if they are known or otherwise described so that they may be identified.

(c) The petition must be verified by the oath or affirmation of the party making the application.

(3) Granting of the writ. Any Justice of the Court of Appeals may grant a writ of habeas corpus upon petition by or on behalf of any person restrained of liberty within the Justice's jurisdiction. If it appears to such Justice that a writ ought to issue, it shall be granted without delay, and may be made returnable to the Court of Appeals.

(4) Time of issuance and requirements for service. (a) A writ of habeas corpus or any associated process may be issued and served on any day, at any time.

(b) The writ must be served upon the person to whom it is directed. If the writ is directed to a Tribal agency or employee, a copy of the writ must be served upon the Tribal prosecutor.

(c) The writ must be served by a Tribal policeman, or any other person directed to do so by the Justice or the Court, in the same manner as a civil summons, except where otherwise expressly directed by the Justice or the Court.

(5) Return of the writ, hearing, appeal. (a) Return. (i) The person upon whom the writ is served shall make a return and state in that return:

(A) whether the petitioner is in that person's custody or under that person's power of restraint; and

(B) if the petitioner is in custody or otherwise restrained, the authority for and cause of the custody or restraint; or

(c) if the petitioner has been transferred to the custody of or otherwise restrained by another, to whom the party was transferred, the time and place of the transfer, the reason for the transfer, and the authority under which the transfer took place.

(ii) The return must be signed and verified by oath unless the person making the return is a sworn Tribal officer making a return in an official capacity.

(b) Appearance and hearing.

(i) The person commanded by the writ shall bring the petitioner before the Court as commanded by the writ unless the petitioner cannot be brought before the court without danger to the petitioner's health. Sickness or infirmity must be confirmed in an affidavit by the person having custody of the petitioner. If the Court is satisfied with the truth of the affidavit, the Court may proceed and dispose of the case as if the petitioner were present or the hearing may be postponed until the petitioner is present.

(ii) Unless the Court postpones the hearing for reasons of the petitioner's health, the Court shall immediately proceed to hear and examine the return. The hearing may be summary in nature. Evidence may be produced and compelled as provided by the laws governing criminal procedures and evidence.

(c) Refusal to obey the writ is contempt. If the person commanded by the writ refuses to obey, that person must be adjudged to be in contempt.

(d) Disposition of petitioner. If the Court finds in favor of the petitioner; an appropriate order must be entered with respect to the judgment or sentence in the former proceeding and any supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the Court finds for the prosecution, the petitioner must be returned to the custody of the person to whom the writ was directed.

Part 9 - Rules of Appellate Procedure

Rule 1. Notice of Appeal. (1) An appeal shall be taken by filing a notice of appeal with the Appellate Administrator, with a copy to the Clerk of the Tribal Court within 20 days of the date of the final judgment or order of the trial court. Failure of an appellant to timely file a notice of appeal is ground for dismissal of the appeal.

(2) Appeals may be consolidated by order of the Court of Appeals upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

(3) The notice of appeal shall specify the party or parties taking the appeal, and shall designate the judgment, order, or part of either appealed from.

(4) The Appellate Administrator shall serve notice of the filing of a notice of appeal by mailing a copy thereof, together with a copy of the Rules of Appellate Procedure to counsel of record for each party other than the appellant, or, if a party is not represented by counsel to the party at his last known address. The Administrator shall note on each copy served the date on which the notice of appeal was filed. If an appellant is represented by counsel, such counsel shall provide the Administrator with sufficient copies of the notice of appeal to permit the Administrator to comply with the requirements of this rule. Failure of the Administrator to serve notice shall not affect the validity of the appeal. The Administrator shall note in the appellate docket the names of the parties to whom copies have been mailed, with the date of mailing.

Rule 2. Stay of Judgment or Order Pending Appeal. (1) When a criminal defendant files a notice of appeal, any order or judgment resulting in:

(a) imprisonment;

(b) payment of a fine or restitution; or

(c) probation shall be stayed by the trial court pending the posting of reasonable bond as ordered by the Court of Appeals.

(2) The filing of a notice of appeal by the Tribal prosecutor in a criminal case does not stay any order or judgment of the trial court pending decision of the Court of Appeals.

(3) In a civil matter, upon the filing of a notice of appeal, a party may apply to the Chief Justice ex parte for a stay of execution of the judgment or order. The Chief Justice may grant said stay for such period of

time and under such conditions as the Chief Justice deems proper, including restraining a party from disposing of, encumbering, or concealing property. The Chief Justice may also order the applicant to provide to the court a surety bond, conditioned for the satisfaction of the judgment or order in full together with costs, interest, and damages for delay, if the appeal is dismissed or if the judgment is affirmed.

(4) In an action involving the suspension or termination of parental rights brought under Title III, Chapter 2, of this Code, an appeal of a court order or decree does not stay the order or decree appealed from and does not divest the presiding Tribal Court judge of jurisdiction to take steps that are necessary in the best interests of the child and in order to protect the health and safety of the child. The appellate court may order a stay upon application and hearing if suitable provision is made for the care and custody of the child. If the appeal results in the reversal of the order appealed, the legal status of the child reverts to the child's legal status before the entry of the order that was appealed. The child's prior legal status remains in effect until further order of the Tribal court unless the appellate court orders otherwise. *(Rev. 9-6-07)*

Rule 3. Record on Appeal. (1) The original papers and exhibits filed in the Tribal Court, any transcript of the proceedings, and a certified copy of the minute entries prepared by the Clerk of Court shall constitute the record on appeal in all cases.

(2) Within 5 days after filing the notice of appeal, the appellant shall order from the court reporter a transcript of such parts of the proceedings not already on file as the appellant deems necessary for inclusion in the record. The transcript shall be filed and certified with the Clerk of the Tribal Court as part of the record on appeal within 20 days of the filing of the notice of appeal. In all cases where the appellant intends to urge insufficiency of evidence to support the order or judgment appealed from, it shall be the duty of the appellant to order the entire transcript of the evidence and proceedings. Whenever the appellant appeals a specific finding of fact by the trial court on the ground of insufficiency of evidence, the appellant shall be under a duty to include in the transcript all evidence relevant to such finding. Unless the entire transcript is to be provided, the appellant shall, within the 5–day period, file and serve on the respondent a description of the parts of the transcript which he or she intends to present on appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary he shall, within 5 days after such filing and service, order such parts from the reporter or procure an order from the Chief Justice requiring the appellant to do so. The cost of producing the transcript shall be borne by the appellant unless the chief Justice waives the transcript cost by granting leave to proceed in forma pauperis or for other good cause shown. In the event of such a waiver, the Tribal Court shall provide the transcript. Costs of a transcript are among the costs of appeal that may be awarded by the Court of Appeals to a prevailing party as provided in Rule 21, and if a prevailing appellant's costs have been waived by the Chief Justice, the award will be applied to the transcript costs borne by the Tribal Court.

(3) If no record of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may, within 10 days of the hearing or trial or such time extended as the Chief Justice may allow, prepare a statement of the evidence or proceedings from the best available means, including his or her recollection. The statement shall be served on the respondent, who may serve objections or propose amendments thereto within 10 days after service. Thereupon, the statement and any objections or proposed amendments shall be submitted for settlement and approval to the trial judge, and as settled and approved shall be included by the Clerk of the Court in the record on appeal.

Rule 4. Transmission of the Record on Appeal. (1) The record on appeal, including the transcript necessary for the determination of the appeal, shall be transmitted to the Appellate Administrator within 30 days after the filing of the notice of appeal unless the time is extended to a date certain for good cause shown by the Chief Justice upon application of a party.

(2) When the record is complete for purposes of the appeal, the Clerk of Court shall transmit a certified copy to the Appellate Administrator The Appellate Administrator shall immediately transmit a complete copy of the record to each Justice who will hear the appeal and to any visiting or substitute judge. Documents in bulky containers and physical exhibits will not be transmitted, although a party may move the Chief Justice to make such materials available to the Court at the time when the appeal is first considered at a bench conference by the panel of Justices who will hear the appeal.

Rule 5. Docketing the Appeal and Filing the Record. (1) At the time of filing the notice of appeal, the appellant shall pay to the Clerk of the Tribal Court a fee of $25 for filing and transmitting the record on appeal, unless the fee is waived by the Chief Justice upon the granting of leave to proceed in forma pauperis or for other good cause shown. Failure to pay the filing fee, unless waived, is ground for dismissal of the appeal.

(2) On the date on which the record on appeal is transmitted to the Court of Appeals, the Appellate Administrator will docket the appeal and file the record in a repository. An appeal shall be docketed and filed under the title given to the action in the trial court with such addition as necessary to indicate the identity of the appellant. The Appellate Administrator shall immediately give notice to all parties of the date on which the record was filed and the appeal docketed.

Rule 6. Effect of Dismissal. The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from unless the dismissal is expressly made without prejudice to another appeal.

Rule 7. Harmless Error. No judgment or order shall be reversed upon appeal by reason of any error committed by the trial court affecting the interests of the appellant where the record shows that the same result would have been attained had the trial court not committed an error or errors.

Rule 8. Ruling against Respondent May Be Reviewed. Whenever the record on appeal in a civil case shall contain any order, ruling, or proceeding of the trial court against the respondent, affecting the respondent's substantial rights on the appeal of said cause, the Court of Appeals shall consider such orders, rulings, or proceedings, and shall reverse or affirm the cause on appeal according to the substantial rights of the respective parties, as shown upon the record.

Rule 9. Remedial Powers of the Court of Appeals in Civil Cases. In a civil case, where the proceedings were not stayed, and when the judgment or order is reversed or modified, the Court of Appeals may make complete restitution of all property and rights lost by the erroneous judgment or order, so far as such restitution is consistent with protection of a purchaser of property at a sale ordered by the judgment, or had under process issued upon the judgment.

Rule 10. Certification of Judgment to Clerk of the Tribal Court. When judgment is rendered upon the appeal, it must be certified by the Appellate Administrator to the Clerk of the Tribal Court. The Clerk of Court shall enter the certificate into the records of the Tribal Court. Also, in cases of appeal from a judgment, the Clerk must enter a minute of the judgment of the Court of Appeals on the docket against the original entry; and in cases of appeal from an order, the Clerk must enter a minute against the entry of the order appealed from, containing a reference to the certificate, with a brief statement that such order has been affirmed, reversed, or modified by the Court of Appeals on appeal.

Rule 11. Appeals in Forma Pauperis. An indigent party who desires to proceed on appeal in forma pauperis shall file with the Appellate Administrator a motion for leave so to proceed together with an affidavit showing the party's inability to pay the fees and costs of the appeal or to give security therefor, the party's belief that the party is entitled to redress, and a statement of the issues the party intends to

present on appeal. If the motion is granted the Chief Justice may waive the payment of fees or costs or the giving of security therefor.

Rule 12. Filing and Service. (1) Papers required or permitted to be filed with the Court of Appeals must be placed in the custody of the Appellate Administrator within the time fixed for filing. The Administrator shall note upon each such paper or document the time of filing and transmit the same to the Justices and any substitute judge designated to hear the matter.

(2) Copies of all papers filed by any party shall, at or before the time of filing, be served by the party or a person acting for him or her on all other parties to the appeal. Service on a party represented by counsel shall be made on counsel. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing. Papers presented for filing shall contain a certification of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service.

(3) Except as otherwise provided in these rules, a signed original and three copies of all papers shall be filed with the Appellate Administrator.

Rule 13. Motions. Unless another form is prescribed by these rules, an application for an order or other relief shall be made by filing a motion in writing for such order or relief. The motion shall state with particularity the grounds therefor and shall set forth the order or relief sought. Counsel shall also note therein that opposing counsel has been contacted concerning the motion and whether opposing counsel objects to the motion. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. The Court of Appeals may authorize disposition of motions by a single Justice. If a motion seeks dismissal of the appeal or other substantial relief, any party may file an answer in opposition within 7 days after service of the motion, or within such time as the Court may direct.

Rule 14. Computation and Extension of Time. In computing any period of time prescribed by these rules,

(1) Saturdays, Sundays, and Tribal legal holidays are excluded from the computation, and

(2) the day from which the designated period of time begins to run shall not be included, but the last day of the period is included.

For good cause shown, the Chief Justice may order an extension of the time prescribed by these rules. All motions or orders for extension of time shall include a date certain on or before which date the act for which an extension of time is requested must be performed.

Rule 15. Briefs. (1) An appellant's brief shall be filed and served within 20 days of the date the record is filed and transmitted. The brief will contain under appropriate headings in the order indicated:

(a) A table of contents and a table of laws, decisions, and other authorities cited, with references to the pages of the brief where they are cited;

(b) A statement of the legal issues presented for review;

(c) A statement of the nature of the case and of the judgment or order appealed from;

(d) A legal argument, which shall contain the contentions of the appellant with respect to the issues presented and the reasons therefor, together with citations to the authorities and pages of the record relied on;

(e) A short conclusion, stating the precise relief sought; and

(f) A copy of the judgment, order, findings of fact, conclusions of law, or decision in question, together with the memorandum opinion, if any.

(2) Respondent's brief shall be filed and served within 20 days after service of the appellant's brief and shall conform to the requirements of subsection (1)(a) through (d) of this rule. A statement of the issues or of the case need not be made if the respondent is satisfied with the statements of the appellant.

(3) Within 14 days of service of the Respondent's brief, the appellant may file a reply brief. Any reply brief must be confined to new matter raised in the brief of the respondent. No further briefs may be filed except with leave of the Chief Justice.

(4) Except by permission of the Chief Justice, briefs shall not exceed 50 pages, double spaced, on 8 ½ x 11 inch paper, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, etc.

(5) A signed original and three copies (except as otherwise provided in these rules) of each brief shall be filed with the Appellate Administrator. The brief will contain a certification of service to each party separately represented, and will not be accepted for filing absent such certification.

(6) If an appellant fails to file a brief within the time provided by this rule, or within the time extended, the respondent may move for dismissal of the appeal. If a respondent fails to file a brief, he or she will not be heard at oral argument except by permission of the court.

Rule 16. Oral Arguments. (1) Except in the case of an extraordinary writ or other special or emergency proceeding when the Chief Justice may schedule a special session of the Court, the Chief Justice will set the time and place at which oral argument will be heard during the next regular convening of the appellate bench after the time for filing and service of appellant's reply brief has expired. The Appellate Administrator shall advise all parties of the time and place of hearing. Any request for postponement of the hearing must be made by motion to the chief Justice no later than 10 days prior to the time scheduled for hearing and may be granted for good cause shown.

(2) At oral argument, 45 minutes will be allowed appellant and 35 minutes to respondent. Arguments of multiple parties or amici curiae for appellant or respondent shall be allocated by the parties to conform to these limits. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(3) The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case, and the closing argument shall be limited to rebuttal of respondent's argument.

(4) If counsel for a party fails to appear, the court may hear arguments on behalf of a party whose counsel is present, and the case will be decided on the briefs and the argument heard. If no counsel appears for any party, the case will be decided on the briefs.

(5) By agreement of the parties, a case may be submitted for decision on the briefs.

Rule 17. Return and Remand. (1) A judgment on appeal shall be entered in full by the Appellate Administrator in the appellate records and transmitted to the Clerk of Court for entry in the records of the case in the trial court.

(2) When a judgment on appeal includes a remand to the court below for further findings of fact, conclusions, or amendment of the trial court judgment or order in keeping with the decision of the Court of Appeals, trial court jurisdiction over the matter is reinstated for the purpose of such further proceedings as may be appropriate. Any party may appeal any amended or modified judgment of the trial court on remand that is not in accord with the appellate decision or instructions or that incorporates new findings or conclusions alleged to be in error.

Rule 18. Entry and Notice of Appellate Orders, Judgments, or Decisions. A notation of an order, judgment or decision of the Court of Appeals in its docket constitutes entry thereof. Upon entry, the Appellate Administrator shall promptly mail to all parties a copy of the order, judgment, or decision, and notice of the date of entry.

Rule 19. Interest on Civil Judgments. If a judgment for money is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was rendered in the trial court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the trial court, the mandate shall contain instructions with respect to interest.

Rule 20. Costs on Appeal. (1) If not otherwise provided by the Court in its decision, costs on appeal and in original proceedings will automatically be awarded to the successful party against the other party; provided however, that costs awarded to plaintiff or relator in special proceedings to review trial court rulings, orders, or judgments will ordinarily be assessed against the real party in interest, namely, the party interested in upholding the trial court's action, rather than against the Tribes or the trial judge.

(2) Costs incurred in the printing or producing of briefs and appendices, in the 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 the cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing notice of appeal shall be taken by the Appellate Administrator as costs of the appeal in favor of the party entitled to costs under this rule.

(3) The Appellate Administrator shall, in all civil cases, include in the order of judgment of affirmance, reversal, or modification on appeal or for the issuance of a writ in an original or special proceeding, and in remand, peremptory writ, or judgment, a clause awarding the costs in accordance with this rule or the special order of the Court of Appeals to be recovered by claim as provided by law; and the Administrator shall also furnish therewith an itemized statement of such costs as have been paid by the Administrator or by the Tribal Court.

Rule 21. Petitions for Rehearing en Banc. (1) Except as otherwise provided in this rule, a petition for rehearing before all five Justices may be filed within 10 days after the appellate decision has been rendered by filing an original and five copies of the petition with the Appellate Administrator. The adverse party will have 7 days thereafter in which to serve and file an original and five copies of any objections to rehearing en banc.

(2) No rehearing is allowed for an original proceeding where the entire Court considered the application and participated in the issuance of the order, judgment, or writ.

(3) A petition for rehearing en banc may be presented on the following grounds and no others:

(a) that some fact, material to the decision, or some question decisive of the case submitted by counsel, was overlooked by the Court;

(b) that the decision is in conflict with an express statute or controlling decision; or

(c) that the Court employed inappropriate procedures or considered facts outside the record on appeal.

(4) Within 15 days after receipt of the petition and any objections and upon consultation with his or her colleagues, the Chief Justice may grant or deny the petition for rehearing en banc. If granted, the parties shall submit briefs as provided in Rule 17 on the issues permitted to be raised and the matter will be scheduled for argument unless the parties agree that the matter will be decided on briefs.

Rule 22. Voluntary Dismissal. If the parties sign and file with the Appellate Administrator an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and whatever fees are due, the Administrator shall enter the case dismissed, and shall give to each party a copy of the agreement filed. An appeal may be dismissed on motion of the appellant upon such terms as to costs as may be agreed upon by the parties or fixed by the Chief Justice.