

**CITIZEN POTAWATOMI NATION
JUDICIARY AND APPELLATE PROCEDURE
TITLE 7**

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PREFACE

Section 7-0-001. Authorization

There is hereby established, ordained and activated pursuant to the Constitution of the Tribe A Judicial Branch of the Government with a lower Court known as the District Court and an upper Court known as the Supreme Court

Section 7-0-002. Definitions

The following words have the meanings given below when used in this Act, unless a different meaning is obvious from the context:

- (A) “Clerk” shall mean the Clerk of the Court.
- (B) “Code: shall mean the Statutory laws of the Tribe.
- (C) “Constitution” shall mean the Constitution of the Tribe.
- (D) “District Court” shall mean the lower or general trial Court operating within the jurisdiction of the Tribe.
- (E) “Jurisdiction” shall mean the jurisdiction as established by the Tribal Court.
- (F) “Supreme Court” shall mean the Court to which appeals may be taken from the District Court. The judicial decisions of the Supreme Court are final and are not subject to further appeal.

Section 7-0-003. Territorial Jurisdiction

The Territorial Jurisdiction of the Courts shall extend to all territory described as Indian Country within the meaning of Section 1151 of Title 18 of the United States Code over which the Tribe has authority, including tribal or individual, trust, non-trust and restricted land, and including all land owned by tribal agencies in their own name, all waters, minerals and wildlife, and any other such land, or interest in land, which may be subsequently acquired by virtue of Executive Order, a declaration or regulation of the United States Department of Interior, a declaration or order of a Court of competent jurisdiction, by purchase, gift, relinquishment, or by any other lawful means.

Section 7-0-004. Civil Jurisdiction

The Courts shall have general civil jurisdiction over all civil actions arising under the constitution, laws, or treaties of the Tribe including the tribal common law, over all general civil claims which arise within the tribal jurisdiction, and over all transitory claims in which the defendant may be served within the tribal jurisdiction. Personal jurisdiction shall exist over all defendants served within the territorial jurisdiction of the Court, or served anywhere consistent with tribal law, and all persons consenting to such jurisdiction. The act of entry within the territorial jurisdiction of the Court shall be considered consent to the jurisdiction of the court with respect to any civil action arising out of such entry. The act of entry upon the territorial jurisdiction by an extraterritorial seller, merchant or their agent(s) shall be considered consent by the seller or merchant to the jurisdiction of this Court for any dispute arising out of any sale or commercial transaction regardless of where the sale or transaction was entered into or took place.

Section 7-0-005. Criminal Jurisdiction

The Courts shall have original jurisdiction over all criminal offenses enumerated and defined in any ordinance adopted by the Tribe insofar as not prohibited by federal law.

Section 7-0-006. Probate Jurisdiction

To the extent permitted by federal law the Courts shall have probate jurisdiction over all the real and personal property located within the jurisdiction of the Court at the time of death, and the personal property, wherever located, of any person who is domiciled within the boundaries of the jurisdiction of the Court at the time of death.

Section 7-0-007. Juvenile Jurisdiction

The Juvenile Division of the District Court shall have exclusive original jurisdiction in all proceedings and matters affecting dependent or neglected children, children in need of supervision, or children under the age of eighteen (18) accused of crime, when such children are found within the jurisdiction of the Court, or when jurisdiction is transferred to the Court. The Supreme Court shall hear appeals in juvenile cases as in other civil actions.

Section 7-0-008. Law to be Applied

The Courts shall apply the Tribal Constitution, and the provisions of all statutory law. In matters not covered by Tribal Statute, the Court shall apply traditional tribal customs and usages, which shall be called the Common Law. When in doubt as to the Tribal Common Law, the Court may request the advice of counselors and tribal elders. In any dispute not covered by the Tribal Constitution, Tribal Statute, or Tribal Common Law, the Court may apply any laws of the United States or any State which would be cognizable in the courts of general jurisdiction therein, and any regulation of the Department of Interior which may be of general or specific applicability.

Section 7-0-009. Amendments

The Tribal Legislative Body shall have the authority to alter, amend, or repeal any of this Act.

**CHAPTER ONE
EQUITABLE POWERS DOCTRINE**

Section 7-1-101. Citation

This chapter may be cited as Defining the Existing Equitable Powers Doctrine of the Citizen Potawatomi Nation Tribal Court.

Section 7-1-102. Purpose

The Citizen Potawatomi Nation recognizes that the Tribal Court has had equitable powers to enforce its orders from inception, and to cite persons for both direct and indirect contempt of court. Indirect contempt of court consists of a willful disobedience of any process or order lawfully issued or made by court; and/or resistance willfully offered by any person to the execution of a lawful order or process of a court.

Section 7-1-103. Equitable Powers Doctrine

The Court is vested and has been vested with the power and authority, in a civil matter properly before the Court, to cite an individual for indirect contempt when they fail to execute, follow or obey an Order of the Court concerning payment, action or any inaction as required by Court Order regardless of the physical location of such acts. The respondent to a citation for contempt shall be entitled to a show cause hearing within ten (10) days of the issuance of a citation, at which time they will be advised of their rights and a plea taken. Upon a guilty plea the Court may proceed with sentencing as appropriate in the discretion of the Court, limited to Five

Thousand Dollars (\$5,000.00) and/or a year in prison.

CHAPTER TWO DISTRICT COURT

Section 7-2-101. Judges of the District Court

The District Court shall consist of the Chief Judge, and such District Judges, and Special Judges as may be appointed.

Section 7-2-102. Minimum Qualifications of Judge of the District Court

A Judge shall:

- (A) Be either:
 - (1) An enrolled member of the Tribe, or
 - (2) The parent, child, or spouse of an enrolled member of the Tribe, or
 - (3) Domiciled within the territorial jurisdiction of the Tribe, or
 - (4) An attorney, or
 - (5) A lay advocate who has regularly practiced before the Court as a member of the Bar of the Court for a period of five years, or
 - (6) An Indian graduate of an American Bar Association approved Law School, or a Paralegal program approved by the Supreme Court; and
- (B) Have demonstrated moral integrity and fairness in his business, public and private life, and
- (C) Have never been convicted of a felony or an offense punishable by banishment, whether or not actually imprisoned or banished, and have not been convicted of any offense, except traffic offenses, for a period of two years next preceding his appointment. The two year period shall begin to run from the date the person was unconditionally released from supervision.
- (D) Have regularly abstained from the excessive use of alcohol and any use whatsoever of illegal drugs or psychotoxic chemical solvents.
- (E) Be older than twenty-five (25).
- (F) Not be the holder of any other elective Tribal Office, provided, that the holder of elective Tribal Office, may be confirmed upon their resignation.
- (G) if less than fifty (50), have completed at least thirty (30) semester credit hours at an accredited college or university, or at least two years of previous experience as a Judicial Officer for some recognized Court.

Section 7-2-103. Manner of Selection of Justices and Judges

Justices and Judges of the Tribe shall be nominated by the Chief Executive Officer and confirmed by the Tribal Legislative Body upon a vacancy occurring in a judicial office in the following manner:

- (A) Within thirty days after a vacancy the Chief Executive Officer shall cause a notice of the vacancy to be published once in the Tribal newspaper and once each week for two (2) consecutive weeks in a newspaper of general circulation in the tribal jurisdiction. Copies of the notice shall be posted at the Tribal Office, and such other places as the Chief Executive Officer shall direct. The notice shall direct that inquiries, nominations and applications be directed to the Tribal Secretary who shall keep a permanent record of responses.
- (B) No sooner than twenty (20), nor more than thirty (30) days after the last required notice, the Secretary shall deliver the names and files of all persons nominated or applying to Chief Executive Officer, who shall select no more than three qualified candidates for each vacancy and place the candidate(s) on the agenda of the next regular or special meeting of the Tribal Legislative Committee.
- (C) The Tribal Legislative Body shall review the nominees, and may interview nominees. The Tribal Legislative Body shall give preference to candidates who:
 - (1) have more formal education and experience in the legal field.
 - (2) by written examination conducted by the Supreme Court or by interview have shown that they are familiar with the Constitution, Code and Common laws of the Tribe.
 - (3) have demonstrated decision making ability.
 - (4) agree to participate in a program of study provided by the Tribal Court Administration which reviews concepts of Tribal Sovereignty and United States, State and Tribal Court precedents.
- (D) If the nominee is confirmed by the Tribal Legislative Body, the nominee shall be sworn by the Chief Justice, or the next available Justice.
- (E) If the nominee(s) is not confirmed, the Chief Executive Officer may either republish the notice, or reconsider the candidates. Nomination - Legislative confirmation process shall continue until some nominee be confirmed.
- (F) Upon the expiration of a judicial term of office, the Judicial Officer is entitled upon request, filed with the Secretary not less than 150 days prior to the expiration of his term to be considered for confirmation to a new term at the next meeting of the Tribal Legislature at which a quorum is present. If the Legislature, a quorum being present, does not confirm the outgoing officer, it shall declare and direct the Chief Executive Officer to begin the selection process. The outgoing Judicial Officer's term shall expire upon confirmation of the new Justice or Judge.

Each person appointed to Tribal Judicial Office by the Tribal Legislature must furnish a standard form of consent before the Appointment is confirmed by the Council of the Citizen Potawatomi Nation by majority vote in a General or Special Election held for that purpose. To wit:

JUDICIAL APPOINTMENT CONSENT FORM

"I, (Appointee's Name) do hereby accept appointment by the Tribal Legislature of the Citizen Potawatomi Nation to the office of (Supreme Court Justice or District Court Judge) for a term of (number of) _____ years and consent to confirmation of this

appointment by the Citizen Potawatomi Nation Indian Council in a Tribal Election.”

Signed: _____

Name: _____

Date: _____

This form must be filed with the Tribal Secretary by either facsimile or letter no later than one hundred and fifty (150) days prior to a regular election or sixth (60) days prior to a special election.

As amended by Ordinance #10-02 enacted by the Citizen Potawatomi Legislature on 1/13/2010.

Section 7-2-104. Term of Office

All Judges of the District Court shall serve six (6) year terms of office beginning from the date of their confirmation and until their successors take office, unless removed for cause, or by death or resignation.

Section 7-2-105. Oath of Office

Before assuming office each Judge, and Special Judge, shall take an oath to support and protect the Constitution of the Tribe and to administer justice in all causes coming before him with integrity and fairness, without regard to the persons before him to be administered by the Chief Justice or the next ranking available Justice of the Supreme Court as soon after confirmation as may be practical.

Section 7-2-106. Duties and Powers of Judges

All Judges of the District Court, and Special Judges shall have the duty and power to conduct all court proceedings, and issue all orders and papers. In doing so the Court shall:

- (A) Be responsible for creating and maintaining rules of the Court, not in conflict with the Tribal Code or the Rules of the Supreme Court regulating conduct in the District Court. Such rules must be filed in the office of the Tribal Secretary and the District Court Clerk before becoming effective.
- (B) Hold Court regularly at designated time and place.
- (C) Have the power to administer oaths, conduct hearings, and otherwise undertake all duties and exercise all authority of a judicial officer under the law.
- (D) Hear and decide all cases.
- (E) Enter all appropriate orders and judgments.
- (F) Issue all appropriate warrants and subpoenas.
- (G) Keep all Court and other records as may be required.
- (H) Perform the duties of the Clerk in their absence.
- (I) Subject to the confirmation of the Supreme Court, to appoint such Magistrates as may be necessary for the convenient functioning of the Court. These Magistrates shall have the authority to issue arrest and search warrants, search warrants for the protection of children, emergency custody orders in children's cases, temporary

commitments of persons accused of offenses, to conduct arraignments in criminal or juvenile delinquency cases, and to act on such ex parte, summary, or other matters a may be determined by Rule of the Supreme Court. Magistrates shall meet the minimum qualifications for Judges of the District Court except that Section 102 (a) and (g) shall not apply.

- (J) Unless a coroner is appointed in any Judge designated by the Chief Judge shall have the authority to perform the duties of a coroner.

Section 7-2-107. Special Appointments

Whenever, due to any cause an additional Judicial Officer is needed, the Supreme Court may designate by Court Order Justices to sit or may make special appointments to act as a Special Judge to hear specific named cases. No special procedure need be followed and Special Judges need not meet the qualifications of Section 102 (a) or (g) of this Act. Whenever a Justice of the Supreme Court sits on the trial panel, that Justice may not participate in any appeal of the case to the Supreme Court. Special Judges may be compensated from the Court fund.

Section 7-2-108. Compensation of Judges

(A) The compensation of all Judges of the District Court shall be set by appropriate legislation of the Tribal Legislative Body. No Judge shall have his compensation reduced during his term of office, except that if funds be unavailable for appropriation, the compensation of all judicial officers may be reduced proportionally.

(B) Subsection (A) above shall not apply to Special Judges. The compensation of all shall be set by the Court Administrator.

Section 7-2-109. Removal of Judges

The Judges of the District Court shall be removed only for cause by the Tribal Legislative Body upon the recommendation of the Supreme Court. Neither the Supreme Court, nor the Tribal Legislative Body may remove a Judge of the District Court independently, but the Supreme Court must first recommend the removal, and the Tribal Legislative Body must then concur. The term "cause" shall include any reason sufficient for disbarment of an Attorney from the Bar of the Supreme Court, or a violation of the Canons of Judicial Ethics promulgated by the American Bar Association.

Section 7-2-110. Disqualifications, Conflict of Interest

(A) No Judge shall hear any case when he has a direct financial, personal or other interest in the outcome of such case or is related by blood or marriage to one or both of the parties as: husband; wife; son; daughter; father; mother; brother; sister; grandfather; grandmother; or any other legal dependant. A Judge should attempt to prevent even the appearance of partiality or impropriety.

(B) A party of interest or the Judge may raise the question of conflict of interest. Upon a decision by the Judge concerned or the Supreme Court that disqualification is appropriate, another Judge shall be assigned.

(C) Any Judge disqualified because he is related to one of the parties enumerated in subsection (a) may hear a case if all parties are informed of the relationship in open Court and of

their right to have a different Judge, and consent to further action by that Judge upon the record, or in a writing filed in the record.

Section 7-2-111. Decisions

(A) Decisions of the District Court at trial may be recorded on a form approved by the Supreme Court or written findings of fact and conclusions of law. The form shall provide for recording the date of the decision, the case number, the names of all parties, the substance of the complaint, the relevant facts found by the Court to be true, the Court's decision, and the conclusions of law supporting the Court's decision.

(B) The decision form or the written findings of fact and conclusions of law may be placed in the case file.

Section 7-2-112. Records

The District Court shall be a Court of Record. To preserve such records:

(A) In all Court proceedings, the Clerk shall record the proceedings by electronic or stenographic means. The recording shall be identified by case number and kept for five (5) years for use in appeals or collateral proceedings. At the close of each hearing, or as specified, the Reporter shall make a recording upon the request of any party or the Court as a permanent part of the case record.

(B) To preserve the integrity of the electronic record, the Clerk shall store the recording in a safe place and release it only to relevant Court or pursuant to an Order.

(C) The Clerk shall keep in a file bearing the case name and number every written document filed in the case.

(D) All Court records shall be public records except as otherwise provided by law.

(E) After five (5) years, court records except judgments, appearance, and other dockets may be reproduced on computer disk, microfilm, or microfiche or similar space saving record keeping methods, provided, that at least one (1) hard copy, including microfilm or microfiche, of electronically stored data shall be kept at all times.

(F) The Supreme Court shall provide for the publication in books or similar reporters of all of its decisions and opinions in cases before it, and the opinions and decisions of the District Court which would be useful to the Bar of the Court and public.

Section 7-2-113. Files

(A) Except as otherwise provided by law, as in juvenile cases, Court files are generally open to the public. Any person may inspect the records of a case and obtain copies of documents contained therein during normal business hours.

(B) Any persons desiring to inspect the records of a case or obtain copies may inspect such files only during the ordinary working hours of the Clerk, and in their presence. Under no circumstances shall anyone, except a Judge or Clerk taking a file to a Judge or courtroom, take a file from the Clerk's office.

(C) A copy of any document may be obtained from the Clerk for a reasonable copy fee, to be set by the Court Administrator. The Clerk is hereby authorized to

certify that such copies are accurate reproductions of those documents on file. The Supreme Court by rule may provide for such certification.

Section 7-2-114. Motion Day

Unless impractical, the District Court shall establish regular times and places, at which motions requiring notice and hearing may be heard. The Judge at any time or place may make orders for the advancement, conduct, and hearing of actions. The Court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

Section 7-2-115 through 7-2-119 Reserved

Section 7-2-120. Practice Before the Trial Court

- (A) No person shall be denied the right to have a member of the Bar of the Court represent him and present his case before the Courts.
- (B) The Supreme Court, after conferring with the District Court, shall make rules which shall govern who may practice before the District Court and the Supreme Court. Such rules shall be filed in the office of the Tribal Secretary and the office of the Clerk of the Supreme and District Courts.

**CHAPTER THREE
SUPREME COURT**

Section 7-3-101. General Provisions

The Supreme Court may hear appeals resulting from all final orders or judgments rendered by the District Court, appeals of other orders of the District Court subject to interlocutory appeal by law, and original actions as may be provided by tribal law, and shall render its decision in writing to the parties of interest, file a copy thereof in the Supreme Court Clerk's office and, at the time of filing, submit a copy to the official reporter of the decisions of the Court. The decision of the Supreme Court shall be final and binding.

Section 7-3-102. Composition of the Supreme Court

The Supreme Court shall consist of one (1) Chief Justice, and six (6) Associate Justices.

Section 7-3-103. Minimum Qualifications of Justices

To be eligible for selection or confirmation as a Justice of the Supreme Court, a person shall:

- (A) Be either
 - (1) An enrolled member of the Tribe, or
 - (2) The parent, child, or spouse of an enrolled member of the Tribe, or
 - (3) Actually domiciled within the territorial jurisdiction of the Tribe, or
 - (4) An attorney, or
 - (5) A lay advocate who has regularly practiced before the Court as a member of the Bar of the Court for a period of seven years, or
 - (6) An Indian graduate of an American Bar Association approved Law School, or a Paralegal program approved by the Supreme Court; and

- (B) Have demonstrated moral integrity and fairness in his business, public and private life. Agree to participate in a program of study provided by the Tribal Court Administrator which review concepts of Tribal Sovereignty and United States, State and Tribal Court precedents, and
- (C) Have never been convicted of a felony or an offense punishable by banishment or involving moral turpitude, whether or not actually imprisoned or banished, and have not been convicted of any offense, except traffic offenses, for a period of five years next preceding his appointment. The five year period shall begin to run from the date the person was unconditionally released from supervision of any sort as a result of a conviction.
- (D) Have regularly abstained from the excessive use of alcohol and any use whatsoever of illegal drugs or psychotoxic chemical solvents.
- (E) Be not less than thirty (30) years of age.
- (F) Not be a member of the Tribal Legislative Body, or the holder of any other elective Tribal Office of this Tribe, provided, that a candidate who is a member of the Tribal Legislative Body, or the holder of some other elective Tribal Office, may be confirmed as a Justice subject to his resignation. Upon resignation from his office, he may be sworn in as and assume the duties of judicial office.
- (G) If less than fifty (50) years of age, have completed at least sixty (60) semester credit hours at an accredited college or university, or at least four years of previous experience as a Judicial Officer for some recognized Court.

Section 7-3-104. Selection of Justices

Justices shall be selected in accordance with the provisions above.

Section 7-3-105. Term of Office

All Justices of the Supreme Court shall serve six (6) year terms of office beginning from the date of their confirmation and until their successors take office, unless removed for cause, or death or resignation. The first appointment of Justices hereunder shall be for terms which may vary in order to provide for staggered terms of office.

- (A) The Tribal Judicial Offices of the District Court shall be designated and numbered as follows:
 - 1. The Office currently held by Chief District Judge shall be named Chief Judge #1.
 - 2. Associate District Judge #1.
 - 3. Associate District Judge #2.
- (B) The Tribal Judicial Offices of the Supreme Court shall be designated and numbered as follows:
 - 1. The Office of Chief Justice of the Supreme Court shall be named Supreme Court Justice #1.
 - 2. Associate Justice #2.

3. Associate Justice #3.
4. Associate Justice #4.
5. Associate Justice #5.
6. Associate Justice #6.
7. Associate Justice #7.

As amended by Ordinance #10-02 enacted by the Citizen Potawatomi Legislature on 1/13/2010.

Section 7-3-106. Oath of Office

Before assuming office each Justice shall take an oath to support and protect the Constitution of the Tribe and to administer justice in all causes coming before them with integrity and fairness, without regard to the persons to be administered by the Chief Justice, the Chief Executive Officer or the available Justice of the Court.

Section 7-3-107. Duties and Powers of Justices

All Justices of the Supreme Court, unless disqualified for conflict of interest of other cause, shall participate in the deliberation of that body and shall have the duty and power to conduct all Court proceedings, and issue all orders and papers. In doing so the Supreme Court shall:

- (A) Be responsible for creating and maintaining rules of the Court, not contrary to the Tribal Constitution or Code, regulating conduct in the Supreme and District Courts to provide for the orderly and efficient administration of justice. Such rules shall determine, where not otherwise provided by law, what actions may be taken by a single Justice of the Court, and shall be filed with the Clerk of the Court, and:
- (B) Hear appeals from the District Court.
- (C) Enter all appropriate orders and judgments.
- (D) Keep all appropriate records.
- (E) Perform any and all duties as may be required for the operation of the Supreme Court and the District Court.
- (F) Supervise the actions of the District Court and all Clerks, Bailiffs, and other officers of the Courts.
- (G) Perform any of the duties and powers of a District Judge in appropriate cases.

Section 7-3-108. Reserved

Section 7-3-109. Compensation of Justices

The compensation of all Justices of the Supreme Court shall be set by legislation of the Tribal Legislative Body. No Justice shall have his compensation reduced during his term of office, except the compensation of all judicial officers may be reduced proportionally.

Section 7-3-110. Removal of Justices

Justices of the Supreme Court may not be removed from office except upon final conviction of a felony, or an offense punishable by banishment, or an offense involving moral turpitude, in

which case the Supreme Court shall enter its order disbaring and expelling such Justice from the Court and declaring that Judicial Office vacant.

Section 7-3-111. Disqualifications, Conflict of Interest

- (A) No Justice shall hear any case when he has a direct financial, personal, or other interest in the outcome of such case or is related by blood or marriage to one or both of the parties as: husband, wife, son, daughter, father, mother, brother, sister, grandfather, grandmother, or any other legal dependent. A Justice should attempt to prevent even the appearance of partiality or impropriety.
- (B) A party in interest or the Justice may raise the question of conflict of interest. Upon decision by the Justice concerned or the Supreme Court that disqualification is appropriate, a Judge, or Special Justice may be appointed to sit on the Supreme Court to hear the matter.
- (C) Any Justice related to one of the parties enumerated in Subsection (a) may hear a case if all parties are informed of the relationship on the record and of their right to have the interested Justice disqualified and consent in writing or upon the record to the conflict of interest. Normally, the Justice knowing of the conflict should file an order recusing from the action and stating the relationship. If the parties consent to that Justice hearing the action, they should file their consent for the Justice to continue in the cause. If all parties file such consents, the Justice may then enter his order withdrawing the recusation on grounds of the consents filed. A consent to the withdrawal of a Justices recusation may not be withdrawn.

Section 7-3-112. Decisions

- (A) All decisions and opinions of the Supreme Court shall be rendered in writing to the parties, the District Court in appeal cases, filed in the Supreme Court Clerk's office and recorded on a form approved by the Supreme Court. The form shall provide for recording the date of the decision or opinion, the case number, the names of the parties, the issues presented of appeal or the substance of the complaint in an action within the Court's original jurisdiction, the relevant facts upon which the decision was made or found by the Court to be true in an original action, the Court's decision, and the legal principals and reasoning supporting the Court's decision. A written Court opinion containing the above information may be filed by the majority or dissent in lieu of the form.
- (B) Each Justice shall record in writing his decision, or the fact of his not participating when he is disqualified, on each case decided by the Supreme Court as part of the permanent record.
- (C) The decision form or Court opinion shall be placed in the file of the case on appeal as an official document of the case.

Section 7-3-113. Rules of the Court

- (A) The Supreme Court shall establish rules concerning the administration of the Courts and conduct in the Supreme Courts not inconsistent with Tribal Ordinance or the Tribal Constitution. Such rules shall govern the conduct, demeanor, and

decorum of those in the Court as well as the form and filing of appeals, briefs, pleadings, and other matters which will make the Court function efficiently.

- (B) The Rules shall be filed in the Court Clerk's office.
- (C) The Court may require the observance of its Rules as a prerequisite before taking any action in a matter.

Section 7-3-114. Special Appointments

Whenever, due to vacancies for any cause three (3) Justices cannot be convened, the Court, including any disqualified Justices, may designate Judges of the District Court, not having tried the case, or some member of the Bar to sit as a special Justice for purposes of the appeal or original action, or request the Chairman with Tribal Legislative Body concurrence to make special appointments to hear specific named cases, or cases filed prior to the date three (3) Justices can be convened. No special procedure need be followed and special Justices need not meet the qualifications above.

Section 7-3-115. Supreme Court's Action on Appeals

In any appeal, the Supreme Court shall have full authority to affirm, reverse, modify, or vacate any action of the District Court or other entity from whom the appeal is taken, and may enter such order as is just or remand for the entry of a specified judgment, a new trial, or for further action in accordance with opinion or instructions.

Section 7-3-116. Terms of the Court

The regular term of the Court shall commence on the first Monday in October of each year, and upon that date the Supreme Court shall convene or meet by electronic means for the purpose of disposing of the actions and other business. The term shall continue until such time as the Court determines the term is declared completed. Special terms may be convened upon the call of the Chief Justice for dispensing with pressing matters which may not be justly delayed until the regular term.

Section 7-3-117. Court Fund

There is hereby authorized to be maintained by the Clerk under the supervision of the Court, a "Fund" into which shall be deposited all fines, fees, penalties, costs, and other monies authorized or required to be paid to the Courts which are not distributed. These funds shall be used exclusively for the purchase of supplies, materials, and personal property for the use of the Courts, the maintenance of the Court law library, and such other applications as shall be specifically authorized by law. The Court Fund shall not be used for the payment of salaries.

**CHAPTER FOUR
COURT CLERK**

Section 7-4-101. Establishment

There is hereby established a Court Clerk's Office to be administered by one (1) Court Clerk and Deputy Court Clerks. The Court Clerk shall be selected by Court Administrator, and Deputy Court Clerks shall be appointed by the Court Clerk and Court Administrator.

Section 7-4-102. Clerk to Serve Supreme and District Courts

The Court Clerk shall serve as the Clerk of the Supreme Court and the Clerk of the District Court. When serving the Supreme Court, the Clerk's title shall be "Clerk of the District Court".

Section 7-4-103. Clerk as Department Director

The Court Clerk is a supervisory administrative position of the Judicial Branch of the Government of the Tribe with the same rank as Department Director. The Court Clerk shall be charged with the preparation of Court budgets, the acquisition of necessary supplies, the maintenance and upkeep of the Court's law library, the custody upkeep and maintenance of the record, papers, effects, and property of the Court and such other matters as shall be assigned to the Clerk.

Section 7-4-104. Powers and Duties

The Court Clerk shall have the following powers and duties:

- (A) To undertake all duties and functions otherwise authorized by law, or necessary and proper to the exercise of the office.
- (B) To supervise and direct the hiring, firing, and work of all deputy court clerks and other employees.
- (C) To collect all fines, fees, and costs paid to the Courts, to receipt, and to deliver them to the Tribal Treasurer for deposit.
- (D) To accept, when ordered, monies for the payment of civil judgments and to pay to the party entitled to them. The Clerk is authorized to maintain a bank checking account.
- (E) To administer oaths, issue summons and subpoenas, certify a true copy of Court records, and to accurately keep each and every record of the Supreme and District Court.
- (F) To provide an accurate and complete record all proceedings of the Courts.
- (G) To provide stenographic and clerical services to the Court.
- (H) To keep and maintain the Court's law library.
- (I) To undertake all duties assigned or delegated to the Clerk's office.
- (J) Upon a written request for a Transcript, the Court may obtain the cost from two transcription services. The requesting party will by the transcription service the required amount directly and prior to preparation.

Section 7-4-105. Seal

The Court Clerk is authorized to have and use a seal which shall be circular in form and contain the words, "District Court Clerk", and the name of the Tribe around the edge thereof, and the words "Official Seal" or the official Tribal emblem in its center. When acting as the Clerk of the Supreme Court the Clerk's seal shall be circular in form and contain the words "Supreme Court Clerk" and the name of the Tribe around the edge thereof, and the words "Official Seal" or the Tribal emblem in the center. The seal shall be impressed upon all warrants, subpoenas, summons, certified copies of records, judgments, orders, decrees, and similar documents, as evidence of their authenticity.

Section 7-4-106. Certification of True Copies

Certified copies of records shall be admissible as evidence without further authentication in all judicial and administrative proceedings of this Tribe.

Section 7-4-107. Courts Always Open

The District and Supreme Courts shall be deemed always open for the purpose of filing any pleading or other proper paper.

Section 7-4-108. Trials and Hearings - Orders in Chambers

All trials, except as specifically provided and in children's cases, shall be conducted in open Court. All other acts or proceedings may be done or conducted by a Judge in chambers, without the clerk or other court officials and in any place either within or without the tribal jurisdiction; but no hearing, other than ex parte, shall be conducted outside the tribal jurisdiction without the consent of all parties affected. Except when determined to be necessary or expedient in children's cases arising under the Indian Child Welfare Act, or when the Tribe has entered into an agreement with another government for the sharing of judicial officers and courtroom space.

Section 7-4-109. Clerk's Office and Orders by the Clerk

The Clerk's office shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but the Court may provide by rule or order that its Clerk's office shall be open for specified hours on Saturdays or particular legal holidays other than New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. All motions and applications and other proceedings which do not require court permission or order are grantable by the Clerk, but any action may be suspended or altered or rescinded by the Court.

Section 7-4-110. Notice of Orders or Judgments

Immediately upon the entry of an order or judgment, the Clerk shall serve a notice of the entry by mail upon each party and shall make a note in the docket. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by law, but any party may in addition serve a notice of such entry in the manner provided in the Civil Procedure Act for the service of papers. Lack of notice of the entry by the Clerk does not affect the time to appeal or relieve or authorize the Court to relieve a party for failure to appeal within the time allowed, except as permitted in the Civil Procedure Act.

Section 7-4-111. Books and Records Kept by the Clerk and Entries Therein

- (A) The Clerk shall keep a "book" known as the "Civil Docket" in paper or electronic form and shall enter each civil action. Pursuant to rules and regulations prescribed by the Court Administrator.
- (B) In like fashion, the Clerk shall keep suitable dockets, indices, calendars, and judgment records for the criminal, juvenile, and small claims dockets of the District Court, and the appeals and original action dockets of the Supreme Court.
- (C) The Clerk shall also keep such other books and records as may be required from time to time.

Section 7-4-112. Stenographic Report or Transcript as Evidence

- (A) Whenever the testimony of a witness was stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript certified by the person who reported the testimony.
- (B) Whenever the testimony of a witness was electronically taped is admissible in evidence at a later trial, it may be proved by the tape recording maintained in the custody of the Court Clerk or by some other person certified as correct by the Court Clerk, or authorized to administer oaths, who has prepared under their direction a transcript.

Section 7-4-113. Judgment Docket

The judgment docket shall be kept in the form pursuant to rules and regulations prescribed by the Court Administrator.

Section 7-4-114. Execution Docket

In the execution docket the Clerk shall enter all executions as they are issued. Pursuant to rules and regulations prescribed by the Court Administrator.

Section 7-4-115. Clerk may Collect Judgment and Costs

Where there is no execution outstanding, the Clerk of the Court may receive and receipt the amount of the judgment and costs, with the same effect as if the same had been paid to the Chief of the Tribal Police on an execution and the Clerk shall be liable in the same manner and amount as the Chief of the Tribal Police.

Section 7-4-116 through 7-4-122 Reserved

Section 7-4-123. Clerk to Provide Statistical and Other Information

The Clerk is directed to furnish as requested statistical and other information as the Executive, Legislature and Supreme Court may require, including, but without being limited to, the number and classification of cases:

- (A) Filed with the Court.
- (B) Disposed of by the Court, and the manner of such disposition.
- (C) The number of cases pending before the Court.

Section 7-4-124 through 7-4-125. Reserved

**CHAPTER FIVE
CHIEF OF THE TRIBAL POLICE - PROCESS**

Section 7-5-101. Reserved

Section 7-5-102. Appointment of Substitute for Tribal Police Chief

The Court upon an oral or written order, may appoint a person to serve a particular process or order, who shall have the same power to execute it as the Chief of Police. The person may be appointed on the application of the party obtaining the process or order, and the return must be verified by affidavit.

Section 7-5-103. Tribal Police Chief to Indorse Time of Receipt on Process

The Chief of the Tribal Police shall indorse upon every document, the day and hour it was received by him.

Section 7-5-104. Tribal Police Chief to Execute and Return Process

The Chief of the Tribal Police shall execute every summons, order or other process, and return the same as required by law. If he fails unless prevented by inevitable accident he shall be fined by the Court in a sum not exceeding Five Hundred Dollars (\$500.00) upon motion and ten (10) days notice, and shall be liable to any person aggrieved by such failure. Provided that whenever any party shall make and file with the Clerk an affidavit, stating that they believe the Chief of the Tribal Police will not, by reason of either partiality, prejudice, consanguinity or interest, faithfully perform his duties. The Clerk shall direct the original, or other process, in such suit to the Chief Executive Officer of the Tribe or his designate who shall execute the same in like manner as the Chief of the Tribal Police might or ought to have done.

Section 7-5-105. When Bailiff or Tribal Police Chief May Adjourn Court

If the Judge fails to attend at the time and place appointed for holding Court, the Chief of the Tribal Police, or person appointed by the Court as bailiff, shall have power to adjourn the Court, until the regular or assigned Judge attend or a Special Judge, or Judge pro tempore, be selected.

Section 7-5-106. Reserved

**CHAPTER SIX
BONDS AND SURETIES**

Section 7-6-101. Justification of Surety

A ministerial officer whose duty it is to take security shall require the person, if not a qualified surety or bonding company, to make an affidavit of qualifications, which affidavit may be made before such officer, and shall be indorsed upon or attached to the undertaking. If the undertaking is given by a qualified surety or bonding company, the credentials of the person shall be shown and attached. The ministerial officer shall have the power to administer oaths for the purpose of making any affidavits required by this Chapter.

Section 7-6-102. Qualifications of Surety

The surety in every undertaking unless a surety or bonding company authorized to give their bond or undertaking by Tribal law, irrevocably submits to the jurisdiction of the Tribal Court for the purpose of enforcement of said bond or undertaking, and must be worth double the sum to be secured, over and above all exemptions, debts, and liabilities. Where there are two or more sureties in the same undertaking they must in the aggregate have the qualifications prescribed.

Section 7-6-103. Real Estate Mortgage as Bond

In every instance where bond, indemnity or guaranty is required, a first mortgage upon real estate within a State in which any portion of the Tribal jurisdiction lies shall be accepted, provided, that the amount of such bond, guaranty, or indemnity shall not exceed fifty per cent of the reasonable valuation of such improved real estate, provided further, that where the amount of such bond, guaranty or indemnity shall exceed fifty per cent of the reasonable valuation of such improved real estate, then such first mortgage shall be accepted to the extent of such fifty per cent valuation.

Section 7-6-104. Valuation of Real Estate

The officer, whose duty it is to accept and approve such bond, guaranty or indemnity shall require the affidavits of two landowners or licensed real estate appraisers or brokers versed in land values in community where such real estate is located to the value of such real estate.

Section 7-6-105. False Valuation - Penalty

Any person willfully making a false affidavit shall be guilty of perjury and punished accordingly. Any officer administering or accepting such affidavit knowing it to be false shall be guilty of conspiracy to commit perjury and punished accordingly. Any such wrongdoer shall be liable in a civil action to the party injured to the extent of the injuring proximately caused.

Section 7-6-106. Action by Tribal Department - No Bond Required

Whenever an action is filed in the Court by the Tribe, or by direction of any department of the Tribe, its agencies, commissions, or political branches, no bond, whatsoever. In case of an adverse decision, such costs as by law are taxable against a party shall be paid out of the available fund of the party under whose direction the proceedings were instituted.

Section 7-6-107. Appearance Bond - Enforcement

(A) If a bench warrant or command to enforce a Court order is issued in a case for divorce, legal separation, annulment, child support, or alimony, or in any civil proceeding in which a judgment debtor is summoned to answer as to assets, and the person arrested, makes a bond for his appearance, the bond made shall be disbursed by the Court Clerk by order of the Court to the party in the suit who has procured the bench warrant or command for body attachment rather than to the Tribe as the Court shall direct for the payment of any sums due. The penalty on the bond or any part thereof, shall, when recovered, first be applied to discharge the obligation adjudicated in the case in which the bond was posted, and any excess shall be deposited in the Court fund. The party who is the obligee on such bond shall have the right to enforce its penalty to the same extent and in the same manner as the Tribe may enforce the penalty on a forfeited bail bond.

(B) Upon forfeiture of a bond payable to the Tribe as ordered by the Court, including bail bonds, the Tribe may enforce the penalty on the bond upon motion filed in the case by any method authorized for the execution of civil judgments. All amounts received upon such forfeited bonds as penalty shall be deposited in the court fund. The Court may, for good cause shown, vacate an order of bond forfeiture.

**CHAPTER SEVEN
MISCELLANEOUS**

Section 7-7-101. Deputy May Perform Official Duties

Any duty enjoined by the Tribal Code upon a ministerial officer, and any act permitted to be done by him, may be performed by this lawful deputy unless otherwise specifically stated.

Section 7-7-102. Affirmation

Whenever an oath is required by the Tribal Code, the affirmation of a person, conscientiously scrupulous of taking an oath shall have the same effect.

Section 7-7-103. Publications in "Patent Insides"

(A) Every daily or weekly newspaper published continuously for a period of two years in any county in which a portion of the tribal jurisdiction lies, or within or adjacent to the tribal jurisdiction, and any Tribal Newspaper shall be recognized and authorized to publish all publications and notices required or permitted to be published by the Tribal Code.

(B) All publications and notice required by law to be published in a newspaper, if published in newspapers having one side of the paper printed away from the office of publication, known as patent outsides or insides, shall have the same force and effect as though the same were published in newspapers printed wholly and published as required by Subsection (a) of this Section if at least one side of such paper is printed within the legal area.

Section 7-7-104. Action on Official Bond

When an officer, executor, or administrator within the jurisdiction of the Tribe by misconduct or neglect of duty, forfeits his bond or renders his sureties liable, any person injured thereby, or who is, by law; entitled to the benefit of the security, may bring an action thereon in his own name, against the officer, executor, or administrator and his sureties, or may proceed in a proper case as provided in the Civil Procedure Act, to recover the amount to which he may be entitled.

Section 7-7-105. May be Several Actions on Same Security

A judgment in favor of a party for one delinquency does not preclude the same or another party from an action on the same security for another delinquency.

Section 7-7-106. Immaterial Errors to be Disregarded

The Court, in every stage of action, must disregard any error or defect in the pleading or proceedings which does not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such immaterial or harmless error or defect.

Section 7-7-107. Payments Into Court for Minors and Incompetents

Where any amount not exceeding Five Hundred Dollars (\$500.00) is deposited and paid into Court, for any minor or incompetent person having no legal guardian, and no person within ninety (90) days becomes the legal guardian, if the money is needed for support or in the best interest of the minor or incompetent, the Court may order payment made to a person as trustee. The order may be made in the original cause upon application of any interested person; and the Court may direct the Clerk to make payment in installments or one lump sum. If a guardian has been appointed with bond, the Court shall order the money paid to the guardian subject to restrictions and accounting.

Section 7-7-108. Conserving Moneys Obtained for Minors or Incompetent Persons

Moneys recovered for or on behalf of a person less than eighteen (18) years or incompetent in excess of Five Hundred Dollars (\$500.00) over sums sufficient for paying costs and expenses, shall by Court order, be deposited in a banking or savings and loan institution. Until the person becomes eighteen (18) or competent, withdrawals of moneys from accounts shall be solely pursuant to Court order. When an application is made pro se, the Judge shall prepare the order. This Section shall not apply in cases where a legal guardian has been appointed. In that case, the Court may direct, money may be paid to the guardian, subject to restrictions and accounting.

Section 7-7-109. Sharing of Judicial Officers

The Tribal Legislative Body is authorized to negotiate an agreement with other Indian Tribes and jurisdiction for the shared use of magistrates, trial judges, and appellate court justices.

Section 7-7-110. Sharing of Other Judicial Personnel

The Tribal Legislative Body is authorized to negotiate an agreement with other Indian Tribes and jurisdictions for the shared used of Court Clerks, District Attorneys, Bailiffs, Court Reporters, and other judicial related or support personnel.

Section 7-7-111. Sharing of Material Resources

The Tribal Legislative Body is authorized to negotiate an agreement with other Indian Tribes, or any other unit of government for the shared use of facilities, including courtroom, offices, and jail space, equipment, and supplies necessary for the operation of the Court and law enforcement agencies of the Tribe.

Section 7-7-112. Sharing of Financial Resources

Provisions may be made in the above mentioned agreements for the allocation of fines, fees, and court costs to support the functions of the judicial system, provided, the salaries of the magistrates, judges, justices, and District Attorney shall not be subject to, or contingent upon the assessment or collection of any fines, fees, court costs, or penalties. Agreements may also provide for monetary contributions to the funding of the Court.

Section 7-7-113. Indians Employed in the Indian Service

All persons employed in the Indian Service shall be subject to the jurisdiction of the Court to the extent permitted by law. Any employee appointed by the Secretary of the Interior shall not be subject to any sentence or judgment for actions while on official duty except to the extent permitted by federal law, unless such sentence or judgment shall have been approved by the Secretary of the Interior.

Section 7-7-114. Copies of Laws

- (A) The Supreme Court law library will be provided with available copies of all Federal, Tribal, and State laws and the regulations of the Bureau of Indian Affairs which may be applicable to the conduct of any persons within the tribal jurisdiction.
- (B) Whenever the Court is in doubt as to the meaning of any law, treaty, or regulation, it may request the Tribal Attorney General to furnish an opinion on the point in question.

Section 7-7-715. Cooperation by Federal Employees

- (A) No field employee of the Indian Service shall obstruct, influence or interfere with the functions of the Courts or attempt to influence, interfere or obstruct, functions in any manner.
- (B) Employees of the Bureau of Indian Affairs and the Indian Health Service, particularly those who are engaged in police, social service, health, and educational work, shall assist the court upon its request in the preparation and presentation of the facts, and in the proper treatment of offenders and juveniles.

Section 7-7-716. Effect of Prior Decisions of the Court

The prior decisions of the Courts shall be binding upon the parties. The rules of law stated in such decisions, not inconsistent with Tribal statutes enacted after such decisions, shall be precedent in the Courts subject to modification or being overruled by subsequent opinion of the Court.

Section 7-7-717. Judicial Review of Legislative and Executive Actions

The District and Supreme Courts shall have the authority to review any act by the Tribal Legislative Body, or any tribal officer, agent, or employee to determine whether that action, and the procedure or manner of taking that action, is Constitutional authorized and not prohibited by the Indian Civil Rights Act, If the Court finds action, or the manner of its exercise, to be unlawful, it may enjoin the action, refuse to recognize the unlawful action or to apply the law or statute. If the Court finds the contemplated action is authorized by the Constitution, Tribal Statutes, or the common law and the manner the authorized action is exercised is not prohibited, the Court shall dismiss the case. The Court shall not review the exercise of any authority committed to the discretion of a tribal officer, agency, agent, or employee unless some specific provision authorizes judicial review of the merits of the discretionary decision or action.

Section 7-7-718. Action When No Procedure Provided

Whenever no specific procedure is provided in the Tribal Code, the Court may proceed in any lawful fashion.

**CHAPTER EIGHT
APPELLATE PROCEDURE
PREFACE**

Section 7-8-001. Scope and Applicability of Rules

- (A) Scope. This Act governs the procedure in appeals to the Supreme court from the Tribal District court and in application for writs or other relief which the Supreme Court or a Justice thereof is competent to give. When this Act provides for the making of a motion or application in the Tribal District Court, the procedure for making such motion or application shall be in accordance with the practice of that Court.
- (B) “Tribal Court” Defined. Unless otherwise specifically stated or required by the context, the term “Tribal Court” as used in this Act shall be deemed to refer to both the Tribal District Court and any Division, or Judge thereof.
- (C) This Act shall not be construed to extend or limit the jurisdiction of the Supreme Court as may be established by other Tribal laws, and all provisions of this Act shall be subject to the Tribal Constitution.

Section 7-8-002. Suspension and Revision of Rules

- (A) In the interest of expediting decision(s), the furtherance of the administration of justice and the efficient functioning of the Court, the Supreme Court is authorized to amend provisions of this Act by Court Rule duly adopted by a unanimous vote of the entire Court and filed in the Supreme Court clerk’s Office and the Tribal Secretary’s Office. Any Rule of the court which would have the effect of amending the Act shall so state in its title, and shall not be effective until it has been filed in the Tribal Secretary’s Office for a period of sixty days, within which

time the Tribal Legislative Body may veto said Rul. If not vetoed, such Rules shall be placed in the Court's law library and shall take effect of the sixty-first day after filing or on such later date as may be provided by the Court.

- (B) Amendment is specifically limited to necessary changes in existing provisions but not the addition of provisions which expand the authority of the Court.

Section 7-8-003. Discretionary Authority

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

Section 7-8-004. Authority

The Supreme Court shall hear cases by a panel of three justices, provided that appropriate provision be made for en banc hearings at the request of a party.

**SECTION ONE
APPEALS FROM JUDGMENTS AND ORDERS
OF THE TRIBAL COURT**

Section 7-8-101. Appeal As Of Right - How Taken.

- (A) **Filing The Notice Of Appeal.** An appeal permitted as of right from the Tribal District Court to the Supreme Court shall be taken by filing a notice of appeal with the Clerk within the time allowed by Section 102, or by the statute applicable. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is grounds only for such action as the Supreme Court deems appropriate, which may include dismissal.
- (B) **Joint or Consolidated Appeals.** If two or more persons are entitled to appeal, and their interests make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separately, and they may proceed on appeal as a single appellant. Appeals may be consolidated by order of the Supreme Court upon its own motion or upon motion of a party, or by stipulation of the parties.
- (C) **Content of the Notice of Appeal.** The notice of appeal shall specify the parties to the appeal; shall designate the order, commitment, or judgment appealed, the docket of the Tribal District Court from which the appeal is taken, and a short statement of the reason or grounds for the appeal. An appeal shall not be dismissed for informality of form or title of the notice.
- (D) **Service of the Notice of Appeal.** The Clerk shall serve notice of the filing of an appeal by mailing a copy of the notice, which copy shall be provided by the appealing party, to counsel of record of each party other than the appellant, and to the party at his last known address; and shall certify and deliver to the Clerk of the Supreme Court for filing, a certified copy of the notice of appeal. The Clerk shall enter such filing upon the docket of the Supreme Court. When an appeal is taken by a defendant in a criminal case, the Clerk shall also serve a copy of the notice of appeal upon the appellant, either by personal service or by mail addressed to him. The Clerk shall note on each copy served the date on which the notice of appeal was filed. Failure of the Clerk to serve notice shall not affect the validity of the

appeal. Service shall be sufficient notwithstanding the death of a party or his counsel. The Clerk shall note in the docket the names of the parties to whom copies are mailed, with the date of mailing.

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

Section 7-8-102. Appeal As Of Right - When Taken.

(A) **Appeals In Civil Cases.**

- (1) In a civil case appeal permitted by law the notice of appeal shall be filed within the following time periods after entry of the judgment or order appealed from, if a time certain is not otherwise provided:
- (a) From an order or judgment in an action for forcible entry or forcible or unlawful detainer. Ten (10) Days;
 - (b) From an order, decree, or judgment of the Juvenile Division of the District Court, (except an order, decree, or judgment which terminates parental rights). Thirty (30) Days.
 - (c) From an order, decree, or judgment of the Juvenile Division of the District Court which terminates parental rights. Sixty (60) days.
- (2) Except as provided in subsection (a)(4) of this Section, a notice of appeal filed after the announcement of a decision or order but before the formal entry of the judgment or order shall be treated as filed after such entry and on the day thereof.
- (3) If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this Section, whichever period last expires.
- (4) If a timely motion under the Civil Procedure Act is filed in the Tribal District Court by any party.
- (a) For judgment notwithstanding the verdict, or
 - (b) To amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted, or
 - (c) To alter or amend the judgment or for a new trial,

then, and in that event, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. A

notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above. No additional fees shall be required for such filing.

(5) The Tribal District Court, upon the showing of excusable neglect or good cause, may extend the time for filing a notice of appeal in a civil action upon motion filed not later than 15 days after the expiration of the time prescribed by this Section. Any such motion which is filed before expiration of the prescribed time for the filing of a notice of appeal may be ex parte unless the Tribal District Court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with the Civil Procedure Act. No such extension shall exceed 10 days from the date of entry of the order granting the motion.

(6) A judgment or order is entered when it is entered in compliance with the Civil Procedure Act.

(B) Appeals In Criminal Cases.

In a criminal case, the notice of appeal by a defendant shall be filed in the Tribal District Court within 10 days after the entry of the final judgment and sentence or other order. A notice of appeal filed after the announcement of a decision, sentence, or order, but before formal entry of the judgment or order shall be treated as filed after such entry and on the day thereof. If a timely motion in arrest of judgment, or a motion for a new trial on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within 10 days after the entry of an order denying the motion. A motion for a new trial based on the ground of newly discovered evidence will similarly extend the time for appeal from a judgment of conviction if the motion is made before or within 10 days after entry of the judgment. When an appeal by the Tribe is authorized by statute, the notice of appeal shall be filed by the Tribe in the Tribal District Court within 10 days after the entry of the judgment or order appealed from unless a different time is specifically set by statute. A judgment or order is entered within the meaning of this subdivision when it is entered in the criminal docket pursuant to the Criminal Procedure Act. Upon a showing of excusable neglect Tribal District Court may, before or after the time has expired, with or without motion and notice, extend the time for filing a notice of appeal for a period not to exceed 20 days from the expiration of the time otherwise prescribed by this subdivision of this Section.

Section 7-8-103. Interlocutory Appeals in Civil Actions.

(A) **Interlocutory Appeals as of Right.** A person may appeal to the Supreme Court by right any order make appealable by law, and the following judgments or orders of the Tribal District Court:

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

- (2) An order that discharges, vacates, or modifies or refuses to discharge, vacate, or modify an attachment.
- (3) An order that denies, grants, or modifies a temporary injunction, or discharges, vacates, or modifies, or refuses to discharge, vacate, or modify a temporary injunction.
- (4) An order that discharges, vacates, or modifies, or refuses to discharge, vacate, or modify a provisional remedy which affects the substantial rights of the parties.
- (5) An order that appoints a receiver, except where the receiver was appointed at an ex parte hearing where a full hearing will be held upon application therefore, refuses to appoint a receiver, or vacates or refuses to vacate the appointment of a receiver, or refuses or grants orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposal of property.
- (6) An order that directs the payment of money pendente lite, except where granted at an ex parte hearing where a full hearing will be held upon application therefore, refuses to direct the payment of money pendente lite, or vacates or refuses to vacate an order directing the payment of money pendente lite.
- (7) An order that certifies or refuses to certify an action to be maintained as a class action.
- (8) An order with regard to probate matters:
 - (a) Granting, or refusing, or revoking letter testamentary or of administration, or of guardianship, or conservatorship, or
 - (b) Admitting, or refusing to admit, a will to probate, or
 - (c) Against or in favor of setting apart property, or making an allowance for a widow or child, or
 - (d) Against or in favor of setting apart property, or making an allowance for a widow or child, or
 - (e) Against or in favor of directing the partition, sale or conveyance of any interest in real property, or
 - (f) Settling an account of an executor, or administrator or guardian, or
 - (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, or
 - (h) Refusing or allowing the release of any tax liability, or
 - (i) From any other judgment, decree, or order of the Court in a probate case, or of the Judge thereof, affecting a substantial right.
- (9) Any interlocutory order or decree made immediately appealable by Tribal statute.

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

(1) The party aggrieved may appeal the order without awaiting the final determination of the action, by filing the notice of appeal with the District Court Clerk within fifteen (15) days after the order is issued.

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

(3) If the order grants a preliminary injunction, the party seeking to appeal, if he desires to stay said order, shall give within ten (10) days after the order is rendered, an undertaking, with sufficient surety, in the sum as the Court deems proper, to secure the party procuring the injunction damages he may sustain, including reasonable attorneys fees, if it is finally decided that the preliminary injunction was properly granted. The undertaking shall stay the effect of the preliminary injunction pending appeal.

(4) Where a receiver has been appointed, upon the appellant filing an appeal bond, with sufficient sureties, in a sum required of the receiver or a Judge, conditioned for the due prosecution of the appeal and the payment of all costs, or damages that may accrue to the Tribe or any officer or person, the authority of the receiver shall be suspended until the final determination of the appeal, and if the receiver has taken possession of any property, real or personal, it shall be returned and surrendered to the appellant upon the filing and approval of the bonds.

(C) **Interlocutory Appeals by Permission.** When a Judge, in making an order or decree in a civil action not appealable believes the order involves a controlling question of law which there is substantial grounds for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing. The Supreme Court may in its discretion, permit an appeal to be taken from such order, if application is made within ten days after the entry of the order, provided, however, that application for an appeal hereunder shall not stay proceedings in the Tribal District Court, unless the Judge or the Supreme Court, or a Justice of the Supreme Court shall so order.

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

(1) The petition shall contain a statement of the facts necessary to an understanding of the controlling question of law determined the District Court; a statement of the question itself; and a statement of 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 appealed and findings of fact, conclusions of law and opinion. Within 7 days after service of the petition, an adverse party may file an answer in opposition. The application and answer shall be submitted without oral argument unless otherwise ordered.

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

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

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

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

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

Section 7-8-104. Interlocutory Appeals In Criminal Actions.

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

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

Section 7-8-105. Appeals by the Tribe in Criminal Actions.

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

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

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

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

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

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

Section 7-8-106. Bond For Costs On Appeal In Civil Cases.

The District Court may require an appellant to file a bond or provide other security in such form and amount as it finds necessary to ensure payment of costs on appeal in a civil case. The provisions of Section 107(B) of this Act applies to a surety upon a bond given pursuant to this Section.

Section 7-8-107. Stay Or Injunction Pending Appeal.

(A) **Procedure.** Application for a stay of the judgment or order of Tribal District Court pending appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring or granting an injunction pending must ordinarily be made first in the District Court. A motion may be made to the Supreme Court panel, or to a Justice thereof, but the motion shall show that application to the District Court is not practicable, or the District Court has denied an application, or has denied the relief with the reasons given. The motion shall also show the reasons for the relief and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies. The record as relevant shall be filed. Reasonable notice of the motion shall be given. The motion shall be filed with the Clerk. In exceptional cases due to the requirements of time, the application may be made to and considered by a single Justice of the Court pending review by the Court panel. In cases where relief has not been previously requested in the District Court, the Supreme Court may, if it determines such action to be appropriate under the circumstances, remand the motion to the District Court for its initial determination.

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

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

Section 7-8-108. Release in Criminal Cases.

(A) **Appeal Of Order Denying Release Pending Appeal.** An appeal authorized by law from an order refusing or imposing conditions of release pending appeal of the underlying judgment of conviction and sentence shall be determined promptly. The appeal in such matters shall be heard without briefs after reasonable notice to the appellee upon such papers, affidavits, and the record as the parties shall present. A Supreme Court, panel of three justices may order the release of the appellant pending the appeal.

(B) **Procedure.** Application for release after a judgment of conviction shall be made first in the Tribal District Court. If the Tribal District Court refuses release pending appeal, or imposes conditions of release, the Court shall issue an order. Thereafter, if an appeal is pending, a motion

for release, or for modification of the conditions of release, pending review may be made to the Supreme Court or to a designated Justice. The motion shall be determined promptly upon such papers, affidavits, and the record as the parties shall present and after reasonable notice to the appellee. The Supreme Court panel may order the release of the appellant pending disposition of the motion.

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

(D) The Defendant shall be required to post a cash bond in the amount of fines, fees, costs and restitution ordered by the District Court after a finding of guilt by the court or a jury.

Section 7-8-109. The Record on Appeal.

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

(B) **Transcript, Duty of Appellant To Order, Notice Of Partial Transcript.**

- (1) Within 10 days after filing the notice of appeal the appellant shall order from the Clerk or reporter a transcript of such parts of the proceedings not already on file. The order shall be in writing and within the same period a copy shall be filed with the Clerk of the District Court. If no parts of the proceedings are ordered, within the same period the appellant shall file a certificate to that effect.
- (2) If the appellant intends to urge on appeal that a finding or conclusions unsupported by the evidence or is contrary to the evidence, he shall include in the record a transcript of all evidence relevant to such finding or conclusion.
- (3) Unless the entire transcript is to be included, the appellant shall, within the 10 days time provided in subsection (B)(1) of this Section, file a statement of the issues he intends to present on appeal and shall serve on the appellee a copy of the order or certificate and of the statement. If the appellee deems a transcript of other parts of the proceedings are necessary, he shall, within 10 days after the service of the order or certificate and the statement of the appellant, file and serve on the appellant a designation of additional parts to be included. Unless within 10 days after service of such designation the appellant has ordered such parts, and has so notified the appellee, the appellee may within the following 10 days order the parts or move in the District Court for an order requiring the appellant to do so.
- (4) At the time of ordering, a party must make satisfactory arrangements with the reporter for payment of the cost of the transcript. If a typewritten transcript is ordered, the Clerk or Reporter shall charge a fee to be set by the Court Administrator for each original page, and an additional fee for each copy of an original page. The Clerk may designate a Reporter to produce a transcript with the cost assigned to the party. If a copy of a tape recording of the proceedings is ordered, the Clerk shall charge a fee to be set by the Court Administrator for each tape ordered. All such fees paid on behalf of a Clerk or reporter who is employed

by the Tribe and paid a salary from tribal monies shall be deposited in the Court fund. All fees paid on to an independent reporter appointed or authorized by the District Court to record proceedings, not paid from tribal fund shall be paid over to such reporter.

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

(D) **Agreed Statement As The Record On Appeal.** In lieu of the record on appeal as defined in subsection (A) above, the parties may prepare and sign a statement showing how the issues presented arose and were decided and setting forth facts proved or sought to be proved essential to a decision of the issues presented. If the statement conforms to the truth, the statement together with additions the Court may consider necessary, shall be approved by the District Court, and be certified to the Supreme Court as the record and transmitted to the Supreme Court Clerk's records.

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

Section 7-8-110. Transmission of Record.

(A) **Chief Clerk To Serve As Clerk of the Supreme Court.** The Chief Clerk of the Tribal District Court may also serve as the Clerk of the Supreme Court whenever the position of Clerk of the Supreme Court is vacant.

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

(C) **Completion of Record.** Upon receipt of an order for a transcript or additional tape recording, the Clerk or reporter shall acknowledge receipt and the date on which he expects to have the transcript or copy of the tape recording completed and shall transmit the order, to the Clerk of the Supreme Court. If the transcript cannot be completed within 30 days of receipt of

the order the Clerk or reporter shall request an extension of time from the Clerk of the Supreme Court, and the action of the Clerk of the shall be entered and the parties notified. In the event of the failure to file the transcript or complete making copies of the tapes within the time allowed, the Clerk of the Supreme Court shall notify the Chief Justice and take such steps as may be directed by the Chief Justice of the Supreme Court. Upon completion of the transcript the clerk or reporter shall file it with the Clerk of the Tribal District Court and shall notify the Clerk of the Supreme Court that he has done so.

(D) **Transmission of Transcript.** Upon receipt of the Transcript, or notification that requested copies of tape recordings of the proceedings are completed, or the filing of a statement as provided in Section 109 (C) or (D) of this Act, the Clerk of the District Court shall notify the parties that the transcript, tapes, or statement is completed and ready for transmittal to the Supreme Court and shall state in the notice the date upon which the notice was given, and the date the final record will be delivered to the Supreme Court. The parties may receive their copies (if ordered) of such transcript, tapes, or statement as soon as they become available whether before or after formal notice of such availability is mailed to the parties. Fifteen days after the mailing of the notice of completion of the transcript, tapes, or statement, the Clerk of the District Court shall deliver the original thereof to the Clerk of the Supreme Court for filing. Upon filing by the Clerk of the Supreme Court, the record shall be deemed received and completed.

Section 7-8-111. Docketing The Appeal; Filing The Record.

(A) **Docketing The Appeal.** Upon receipt of the Notice of Appeal and of the docket entries and papers transmitted by the Clerk of the Tribal District Court pursuant to

**SECTION TWO
HABEAS CORPUS**

Section 7-8-201. Habeas Corpus Proceedings.

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

Section 7-8-202. Transfer Of Custody Pending Review

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

Section 7-8-203. Detention Or Release Pending Review Of Decision Failing to Release

Pending review of a decision failing or refusing to release a prisoner in such a proceeding, the prisoner may be detained in the custody from which release is sought, or in other appropriate custody or may be enlarged upon his recognizance or admitted to bail, with or without surety, as may appear fitting to the Court or Justice or Judge rendering the decision, or to the Supreme Court panel. This provision is subject to Section 108(D).

Section 7-8-204. Detention Or Release Pending Review Of Decision Ordering Release

Pending review of a decision ordering the release of a prisoner in such a proceeding, the prisoner shall be enlarged upon his recognizance, with or without surety, unless the Court or Justice or Judge rendering the decision, or the Supreme Court shall otherwise order. This provision is subject to Section 108(D).

Section 7-8-205. Modification of Initial Order Respecting Custody

An initial order respecting the custody or enlargement of the prisoner and any recognizance or surety taken, shall govern during review in the Supreme Court unless for special reasons shown to the Supreme Court the order shall be modified, or an independent order respecting custody, enlargement or surety shall be made. This provision is subject to Section 108(D).

**SECTION THREE
PROCEEDINGS IN FORMA PAUPERIS**

Section 7-8-301. Leave From Tribal District Court to Proceed to Supreme Court

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

Section 7-8-302. Special Rule For Parties Previously Granted. Permission To Proceed In Forma Pauperis.

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

Section 7-8-303. Remedy For Denial Of Motion By Tribal District Court.

If a motion for leave to proceed on appeal in forma pauperis is denied by the District Court, or if the District Court shall certify that the appeal is not taken in good faith or shall find that the party is not entitled to proceed in forma pauperis, the Clerk shall serve notice of such action. A motion for leave may then be filed in the Supreme Court within 30 days after service of notice of the action of the District Court. The motion shall be accompanied by a copy of the affidavit filed in the District Court, or by the affidavit prescribed by Section 311 of this Subchapter if no affidavit

has been filed in the District Court, and by a copy of the statement of reasons given by the District Court for its actions.

SECTION FOUR GENERAL PROVISIONS

Section 7-8-401. Filing and Service.

Papers required or permitted to be filed in the Supreme Court shall be filed with the Clerk. Filing may be accomplished by mail addressed to the Clerk, but filing shall not be timely unless the papers are received by the Clerk within the time fixed for filing, except that briefs and appendices shall be deemed filed on the day of mailing if first class mail or any more expeditious form of delivery by mail, excepting special delivery or overnight mail, is utilized. If a motion requests relief which may be granted by a single Justice, the Justice may permit the motion to be filed with him, in which event he shall note thereon the date of filing and shall thereafter transmit it to the Clerk.

Section 7-8-402. Service of All Papers Required.

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

Section 7-8-403. Manner Of Service.

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

Section 7-8-404. Proof Of Service.

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

Section 7-8-405. Computation of Time.

In computing any period of time, by an order of the Court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period extends until the end of the next day which not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is equal to or less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this Section, "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States or the Legislative Body of the Tribe.

Section 7-8-406. Enlargement Of Time.

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

Section 7-8-407. Additional Time after Service By Mail.

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

**SECTION FIVE
MOTIONS AND BRIEFS**

Section 7-8-501. Content, Response, and Reply to Motions.

Unless another form is elsewhere prescribed by this Act, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of this Act governing such a motion, shall set forth the order or relief sought. If a motion is supported by briefs, affidavits, or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order within 7 days after service of the motion, but motions authorized by Sections 107, 108, and 469 may be acted upon after reasonable notice, and the Court may shorten or extend the time for responding to any motion.

Section 7-8-502. Determination of Motions for Procedural Orders.

Notwithstanding the provisions of Section 311 of this Act as to motions generally, motions for procedural orders, including any motion under Section 306, may be acted upon at any time, without awaiting a response thereto, and pursuant to rule or order of the Court, motions for specified types of procedural orders may be disposed of by the Clerk. Any party adversely affected by such action may by application to the Court request consideration, vacation or modification of such action.

Section 7-8-503. Power of a Single Judge to Entertain Motions.

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

Section 7-8-504. Form of Papers; Number of Copies.

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

Section 7-8-505. Brief of Appellant.

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

- (A) A cover page as described in Section 329.

- (B) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where they are cited.
- (C) A statement of the issues presented for review.
- (D) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the Court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record (see Section 319).
- (E) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefore, with citations to the authorities, statutes and parts of the record relied on.
- (F) A short conclusion stating the precise relief sought.

Section 7-8-506. Brief of Appellee.

The brief of the appellee shall conform to the requirements of Section 315, except that a statement of the issues or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

Section 7-8-507. Reply Brief.

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

Section 7-8-508. References in Briefs to Parties.

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

Section 7-8-509. References in Briefs to the Record and Statutes.

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

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

Section 7-8-510. Length of Briefs.

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

Section 7-8-511. Briefs in Cases Involving Cross Appeals.

If a cross appeal is filed, the plaintiff in the Court below shall be deemed the appellant for the purposes of this Chapter and Sections 326, 327, and 328, unless the parties otherwise agree or the Court otherwise orders. The brief of the appellee shall contain the issues and argument involved in his appeal as well as the answer to the brief of the appellant.

Section 7-8-512. Briefs and Cases Involving Multiple Appellants or Appellees.

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

Section 7-8-513. Citation of Supplemental Authorities.

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

Section 7-8-514. Brief of an Amicus Curiae.

A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of Court granted on motion or at the request of the Court, except that consent or leave shall not be required when the brief is presented by the Tribe, the United States or an officer or agency thereof, or by another Tribe or a State, Territory or Commonwealth. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Save as all parties otherwise consent, any amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support unless the Court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer. A motion of an amicus curiae other than the Tribe to participate in the oral argument will be granted only for extraordinary reasons, or on the Court's own motion. A motion of the Tribe to present oral argument as amicus curiae shall be granted unless extraordinary reasons appear for refusing to grant such a motion.

Section 7-8-515. Appendix to the Briefs.

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

Section 7-8-516. Time for Filing and Service of Briefs.

The appellant shall serve and file his brief within 20 days after the date on which the completed record is received and filed in the Supreme Court. The appellee shall serve and file his brief within 20 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the appellee, but, except for good cause shown, a reply brief must be filed at least 5 days before argument.

Section 7-8-517. Number of Copies to Be Filed and Served.

Ten copies of each brief shall be filed with the Clerk in addition to the original, unless the Court by order shall direct a lesser or greater number, and two copies shall be served on counsel for each party separately represented. If a party is allowed to file typewritten ribbon and carbon copies of the brief, the original and three legible copies shall be filed with the Clerk, and one copy shall be served on counsel for each party separately represented.

Section 7-8-518. Consequence of Failure to File Briefs.

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

Section 7-8-519. Form of Briefs, the Appendix and Other Papers.

(A) Briefs and appendices may be produced by standard typographic printing or by any duplicating or copying process which produces a clear black image on white paper, including legible photocopies. All printed matter must appear in at least 12 point (pica) type on opaque, unglazed paper. Briefs and appendices produced by the standard typographic process shall be bound in volumes having pages 6 1/8 by 9 1/4 inches and type matter 4 1/6 by 7 1/6 inches. Those produced by any other process shall be bound in volumes having pages not exceeding 8 1/2 by 11 inches and type matter not exceeding 6 1/2 by 9 1/2 inches, with double spacing between each line of text, except that quoted matter may be single spaced. Copies of the reporter's transcript and other papers reproduced in a manner authorized by this Section may be inserted in the appendix; such pages may be informally renumbered if necessary.

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

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

Section 7-8-520. Form of Other Papers.

(A) Petitions for rehearing shall be produced in a manner prescribed by a Section 329.

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

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

SECTION SIX ARGUMENT

Section 7-8-601. Prehearing Conference.

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

Section 7-8-602. Oral Argument in General.

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

(A) The appeal is frivolous; or

(B) The dispositive issue or set of issues has been recently authoritatively decided; or

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

Section 7-8-603. 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 motion filed reasonably in advance of the date fixed for hearing.

Section 7-8-604. Order and Content of Argument.

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

Section 7-8-605. Cross and Separate Appeals.

A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the Court otherwise directs. If a case involves a cross-appeal, the plaintiff in the action below shall

be deemed the appellant for the purpose of this Subchapter unless the parties otherwise agree or the Court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

Section 7-8-606. Non-Appearance of Parties.

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

Section 7-8-607. Submission on the Briefs.

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

Section 7-8-608. Use of Physical Exhibits at Argument; Removal.

If physical exhibits other than documents are to be used at the argument, counsel shall arrange to have them placed in the courtroom before the Court convenes on the date of the argument. After the argument counsel shall cause the exhibits to be removed from the courtroom unless the Court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the Clerk, they shall be destroyed or otherwise disposed of as the Clerk shall think best.

Section 7-8-609. When Hearing or Rehearing En Banc Will Be Ordered.

A majority vote of the nine Justices may order that any motion or other proceeding be heard or reheard by the Supreme Court en banc. Such hearing or rehearing is not favored and ordinarily will not be ordered except:

- (A) When consideration by the full Court is necessary to secure or maintain uniformity of its decisions, or
- (B) When requested by the Chief Judge of the District Court
- (C) When the proceedings involves a question of exceptional importance, to the Tribe or Tribal Government.

Section 7-8-610. Suggestion of a Party for Hearing or Rehearing En Banc.

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

- (A) When the majority of the nine Justices vote that a matter will be heard en banc the cost of the en banc hearing until be appropriated to the parties equally at the rate of the current daily Justices pay. Such amount to be paid to the Court Clerk before the conduct of such hearing, unless waived by the Court.

- (B) A party may request an appeal hearing en banc by depositing the amount to cover the additional Justices, beyond the three Justice panel. The amount deposited shall cover

the daily pay rate of the additional Justices. A request under this provision, where one party assumes the additional costs will ordinarily be granted unless the Justice vote to reject such a request. The moving party under this provision assumes the additional costs of further hearings if they are required by the circumstances of the case.

Section 7-8-611. Time for Suggestion of a Party for Hearing or Rehearing En Banc; Suggestion does not Stay Mandate.

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

**SECTION SEVEN
JUDGMENT**

Section 7-8-701. Entry of Judgment.

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

Section 7-8-702. Interest on Judgments.

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

Section 7-8-703. Damages for Delay.

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

Section 7-8-704. To Whom Costs Allowed.

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

Section 7-8-705. Costs For Or Against the Tribe.

In cases involving the Tribe or an agency or officer thereof, if an award of costs against or for the Tribe is authorized by tribal statute, costs shall be awarded in accordance with the provisions of

Section 364, otherwise, costs shall not be awarded against the Tribe or its agencies or officers in their official capacity, provided that cost shall be awarded as a matter of course against a criminal defendant when the conviction is affirmed.

Section 7-8-706. Costs of Briefs, Appendices, and Copies of Records.

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

Section 7-8-707. Bill Of Costs; Objections; Costs Inserted In Mandate Or Added Later.

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

Section 7-8-708. Costs On Appeal Taxable in the Tribal District Court.

Costs incurred in preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing the notice of appeal shall be taxed in the District Court as costs of the appeal in favor of the party entitled to costs under this Act.

Section 7-8-709. Petition For Rehearing.

(A) **Time For Filing, Content, Answer, Action By Court.** A petition for rehearing may be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order of the Court. The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the Court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted except upon the Court's own motion. No answer to a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted the Court may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or may make such other order as are deemed appropriate under the circumstances of the particular case.

(B) **Form of Petition; Length.** The petition shall be in a form prescribed by Section 329, and copies shall be served and filed as prescribed by Section 327 for the service and filing briefs. Except by permission of the Court, a petition for rehearing shall not exceed 15 pages.

Section 7-8-710. Issuance of Mandate.

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

denied, the mandate shall issue 7 days after entry of the order denying the petition unless the time is shortened or enlarged by order.

Section 7-8-711. Voluntary Dismissal.

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

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

Section 7-8-712. Substitution of Parties.

(A) **Death of a Party.** If a party dies after a notice of appeal is filed or while a proceeding is pending in the Supreme Court, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party. The motion of a party shall be served upon the representative in accordance with the provisions of Sections 302, 303, and 304. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the Supreme Court may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the District Court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed substitution shall be effected in the Supreme Court in accordance with this Section. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by his attorney of record within the time prescribed by this Act. After the notice of appeal is filed substitution shall be effected in the Supreme Court in accordance with this Section.

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

(C) **Public Officers; Death or Separation from Office.**

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

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

Section 7-8-713 Cases Involving Constitutional or Indian Civil Rights Act Questions Where the Tribe Is Not A Party.

It shall be the duty of a party who draws in question the constitutionality (or unlawfulness under the Indian Civil Rights Act of 1968) of any statutes, ordinance, or other action of the Tribal Legislative Body in any proceeding in the Supreme Court to which the Tribe, or any agency, officer, or employee in their official capacity is not a party, upon the filing of the record, or as soon as the question is raised in the Supreme Court, to give immediate notice in writing to the Court of the existence of they question. The Clerk shall certify such fact to the Tribal Attorney and/or Tribal Prosecutor who may intervene.