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CHAPTER 5

APPELLATE PROCEDURE

SECTION 5.000.

PURPOSE AND DEFINITIONS

5.001 Title and Scope of Rules. These Rules shall be titled “Appellate Procedure” for both civil and criminal matters before the Tribal Court of Appeals. They were approved by the Little River Band of Ottawa Indians Tribal Court of Appeals on March 26, 2013. They became effective on May 1, 2013. The period from the date of adoption to the date of effect was provided by the Tribal Court of Appeals as a courtesy for Tribal Members and all those appearing before the Tribal Court of Appeals.

5.002 Purpose. The purpose of this Chapter is to establish the procedures for appeals from decisions of the Little River Band of Ottawa Indians (LRBOI) Tribal Court.

5.003 Definitions. The following terms shall have the following meanings:

- (A) “*Amicus Curiae*” translates from Latin as “friend of the court” and refers to a person or entity that is not a party to the case, but either has information to present to the Court of Appeals or believes their own interests will be impacted by the decision.
- (B) “*Appellant*” means the party filing the appeal.
- (C) “*Appellee*” means the party responding to the appeal.
- (D) “*Band*” and “*Nation*” and “*Tribe*” are synonymous and mean the Little River Band of Ottawa Indians.
- (E) “*Clerk*” means the Clerk of the Tribal Court of Appeals or their designee.
- (F) “*Decision*” as used in these rules, shall mean a written disposition of an appeal, including a disposition by opinion, memorandum decision, or order.
- (G) “*Ex parte*” translates from Latin and means “from (by or for) one party”, referring to when a party files a document only with the Court and does not include the other party or parties. While generally prohibited, these Court Rules provide for limited situations where ex parte communications are permitted, such as a request for fee waiver.
- (H) “*Judgment*” means any appealable order.
- (I) “*Justice*” means a judge on the Tribal Court of Appeals.
- (J) “*Tribal Court*” means the trial level court of the Tribe.
- (K) “*Tribal Court of Appeals*” means the appellate level court of the Tribe.

(L) “*Upon motion*” means a motion of a party to the appeal, in accordance with Rule 5.800, or on order of the Tribal Court of Appeals.

(M) “*Upon stipulation*” means an agreement by the parties.

5.004 Modification of the Rules. The Tribal Court of Appeals may modify or amend these rules as it deems appropriate for the proper and efficient administration of the Court. Such rules shall be filed with the Clerk, made available as issued to all persons admitted to practice before the LRBOI Tribal Court and be posted to the public, including on the LRBOI Tribal Court website.

5.005 Suspension of Rules. Except as otherwise provided in Rule 5.008, the Tribal Court of Appeals has the discretion to suspend any of the requirements or provisions of any of these rules in a particular case, and may order proceedings at its discretion.

5.006 Construction of Rules. These rules shall be liberally construed in the furtherance of justice.

5.007 Computation of Time. In computing the period of time as provided in these Court Rules or by order of the Tribal Court of Appeals, the day of the act, event, or judgment shall not be included. The last day of the period being computed shall be included unless it is a Saturday, Sunday, or Court holiday, in which case the period shall extend to the end of the next business day which is not a Saturday, Sunday, or Court holiday.

5.008 Shortening or Extension of Time. The time for doing any of the acts provided for in these rules, by order of the Tribal Court, or by any applicable statute, may be shortened or extended by the Tribal Court of Appeals on its own or upon written motion for good cause shown with the one exception being that the Tribal Court of Appeals may not shorten or extend the time for filing a Notice of Appeal.

5.009 Exclusive Jurisdiction. The Tribal Court of Appeals shall have exclusive jurisdiction to review the decisions of the Tribal Court according to these Rules. The Court’s jurisdiction shall include the authority to hear appeals regarding the constitutionality of any governmental action and/or inaction.

SECTION 5.100

**ORGANIZATION AND COMPOSITION OF THE TRIBAL
COURT OF APPEALS**

5.101 Judges of the Tribal Court of Appeals. The Tribal Court of Appeals shall consist of three (3) Justices elected according to the Little River Band of Ottawa Indians Constitution, Article VI, Section 3(b).

5.102 Term. The term of office for each Justice shall be consistent with the Nation’s Constitution, Article VI, Section 5.

5.103 Chief Justice. The Tribal Court of Appeals Justices shall select one (1) of their members to serve as Chief Justice for a term of two (2) years. The Chief Justice shall be responsible for the administration of the Tribal Appellate Court and shall perform duties specified by these Court Rules.

5.104 Court Clerk. The Clerk of the Tribal Court shall have duties of Clerk for the Tribal Court of Appeals.

5.105 Disqualification of an Appellate Justice. A Justice shall disqualify him/herself, upon the Justice’s own motion or that of a party, from sitting on the appeal of any case in which:

- (A) **Direct Interest.** The Justice has a direct interest, other than an interest held in common by all Tribal members, in the outcome;
- (B) **Witness.** The Justice was a witness at trial; or
- (C) **Related.** The Justice is the spouse or partner of a party or is so related to a party as to bring into question the Justice’s ability to render an impartial decision.

5.106 Practice Before the Tribal Court. Any person admitted to practice before the Tribal Court is also admitted to practice before the Tribal Court of Appeals.

SECTION 5.200

JURISDICTION OF THE TRIBAL COURT OF APPEALS

5.201 Exclusive Jurisdiction. The Court of Appeals shall have exclusive jurisdiction to review the decisions of the Tribal Court according to these Rules.

5.202 Issues of Constitutionality. The jurisdiction of the Court of Appeals shall include the authority to hear appeals regarding the constitutionality of any governmental action and/or inaction.

5.203 Who May Appeal

- (A) **Civil Cases.** Any person significantly and adversely affected by a decision of the Tribal Court in a civil case may appeal.
- (B) **Criminal Cases.** Any participant in a criminal case, except the prosecution, may appeal the judgment or sentence. The prosecution may appeal a decision to the extent it raises a question of law, rather than of fact.

5.204 Right to Appeal

(A) Civil Cases:

- (1) **Constitutionality of Governmental Action and/or Inaction: Appeal by Right.** Appeals involving the constitutionality of any governmental action and/or inaction shall be as a matter of right.
- (2) **Other Civil Cases: Appeal by Leave.** The Tribal Court of Appeals shall have the discretion to grant leave to appeal in all other civil cases. The Content of the “Notice to Appeal” and the standards of review, Rule 5.401 of this Chapter, shall be the basis for the Court of Appeals exercise of discretion.

(B) Criminal Cases:

- (1) **Defendant.** All appeals by a defendant as to a finding of guilt or sentence imposed shall be as a matter of right.
- (2) **Prosecutor.** All appeals by the Prosecutor as to an issue of law shall be as a matter of right.

5.205 Subject of Appeal. An appeal is properly brought before the Tribal Court of Appeals if:

- (A) **Final Judgment, Order or Decree.** The judgment, order or decree of the Tribal Court is final;
- (B) **Disqualification of a Judge.** The appeal involves an order denying an appellant’s motion for disqualification of a judge; or
- (C) **Substantial Right.** The appeal involves an order affecting a substantial right or claim, which disposes of the matter as to the participant.

SECTION 5.300

PROCEDURE FOR APPEALS

5.301 Time Period to Appeal.

- (A) **Civil Cases.** A Notice of Appeal to the Tribal Court of Appeals in civil cases must be filed no later than twenty-eight (28) calendar days after the entry of the written Tribal Court judgment, order or decree.
- (B) **Criminal Cases.** A Notice of Appeal to the Tribal Court of Appeals in criminal cases must be filed no later than twenty-eight (28) calendar days after the entry of the written Tribal Court judgment, order or decree.

(C) Cross-Appeals. An Appellee may cross-appeal by filing a Notice of Cross-Appeal within twenty-eight (28) calendar days of service of the Notice of Appeal.

(D) Untimely Appeals. All late appeals shall be dismissed by the Tribal Court of Appeals unless a leave for late filing has been granted under the exception in (E) below.

(E) Grounds for Granting Late Appeal. The Tribal Court of Appeal may, in its discretion, grant leave for a late filing of appeal from any judgment, order or decree upon a showing by the Appellant, supported by affidavit, that there is merit in the reasons for appeal and that the late filing was not due to the Appellant's or the Appellant's attorney/advocate's negligence.

(F) Consequences of Failure to Timely File an Appeal. All late appeals shall be dismissed by the Tribal Court of Appeals unless a leave for late filing has been granted under Rule 5.301(E). Failure to file a timely appeal deprives the Tribal Court of Appeal of subject matter jurisdiction to hear the appeal.

(G) Expedited Appeals. The Court of Appeals may, in its discretion, or upon motion by a party, grant an expedited appeal from any judgment, order or decree upon a showing by the moving party, supported by affidavit, that irreparable harm will be caused unless the appeal procedure is expedited.

5.302 Sanctions for Frivolous Appeals. Where the appeal is frivolous or taken solely for the purpose of delay, or where a motion is frivolous or filed solely for the purpose of delay, or where any party has violated these rules, the Court of Appeals may impose upon the offending attorneys, or parties, or both, such penalties or damages (including contempt, withholding or imposing costs, or imposing attorney fees) as the circumstances of the case and the discouragement of similar conduct in the future may require.

SECTION 5.400

NOTICE OF APPEAL AND SERVICE OF NOTICE OF APPEAL

5.401 Notice of Appeal.

(A) Filing Required. An appeal is made by the proper filing of a Notice of Appeal with the Clerk.

(B) Content of Notice. The Notice of Appeal shall:

- (1) Include the caption and case number of the case in Tribal Court;
- (2) Be labeled "Notice of Appeal";
- (3) State the date, judge, and content of judgment, order or decree being appealed;

- (4) A brief statement of the reasons for the appeal;
 - (5) Whether oral argument is requested;
 - (6) The relief requested from the Tribal Court of Appeals; and
 - (7) Be signed and dated by the Appellant or the attorney/ advocate appearing on behalf of the Appellant.
- (C) **Defects in Notice.** No appeal shall be dismissed for formal defects in the Notice of Appeal, if the matter appealed is clear from the documents and it has been properly filed.
- (D) **Docketing of Appeal.** Upon receipt of the Notice of Appeal and the filing fee, the Court Clerk shall notify the Justices of the pending appeal. The Chief Justice shall ensure timely docketing of the matter as appropriate according to these Rules.
- (E) **Effect on Judgment by Filing Appeal.** The filing of an appeal does not cause an automatic stay of the Tribal Court’s judgment, order or decree.

5.402 Filing Fee. The Clerk shall collect from every party that files an appeal or cross-appeal, a filing fee as determined by the Chief Judge of the Tribal Court in an Administrative Order that shall be posted at the Tribal Court and on the LRBOI Tribal Court website. The Clerk shall not accept any appeal for filing without the filing fee and no appeal shall be considered filed until the filing fee has been paid and a copy of the final judgment has been attached.

5.403 Waiver of Fees.

- (A) **Applicability.** Only a natural person is eligible for a waiver of the appellate filing fees under this Rule.
- (B) **Persons Receiving Public Assistance.** If a party demonstrates by ex parte affidavit that he/she is primarily supported by public assistance, the payment of fees required by law or Court Rule as to that party shall be waived by the Chief Justice.
- (C) **Other Indigent persons.** If a party demonstrates by ex parte affidavit that he/she is unable to pay fees required by law or Court Rule, the Chief Justice may order those fees waived.
- (D) **Reinstatement of Requirement for Payment of Fees.** If the payment of fees has been waived under these Court Rules, the Court of Appeals may on its own

initiative order those fees be paid, while the matter is pending, if the reason for the waiver no longer exists.

5.404 Service of Notice of Appeal. A copy of the Notice of Appeal shall be served on all other parties by the Clerk by first class mail. Proof of service shall be filed simultaneously with the Notice of Appeal.

5.405 Requirements of Service.

(A) **What Must Be Served.** Any paper, of whatever kind, which is filed with the Clerk shall be served on each other party. Proof of that service shall also be filed.

(B) **Form of Service.** It is sufficient notification to other parties if service is made by first class mail. Service is considered complete upon mailing. Personal service on any party may be made if done in compliance with Tribal Court Rules.

(C) **Person Served.** Service shall be made upon the party's attorney or Tribal Advocate, if any, and if the party is not represented, upon the party.

5.406 Proof of Service.

(A) Papers presented for filing shall contain:

(1) An acknowledgement of service by the person served; or

(2) Proof of service in the form of a statement of the date and manner of service and of the name of the person served, signed by the person who served the person.

5.407 Bond. Upon notification of the filing of an appeal of a civil judgment, the Tribal Court may order the filing of a bond or cash equivalent in an amount sufficient to guarantee payment or satisfaction of the judgment, including costs, in the event that the judgment is affirmed on appeal.

5.408 Record of Appeal. Upon receipt of the Notice of Appeal and the filing fee, the Clerk shall timely compile the record of the case on appeal and send it by first class mail, fax or email as appropriate for the size of the record and by the request of the Justices.

(A) **Pleadings, Orders, and Judgments.** All written documents filed with the Tribal Court, including pleadings, reports, notices, depositions, judgments, orders and decrees shall constitute the written record of the case on appeal. The Clerk shall certify the contents as true, correct and complete copies of the originals as part of the record sent to the Court of Appeals.

(B) **Hearing Transcript.** The Appellant, Cross-Appellant, or Defendant may specify in writing to the Clerk which proceeding, or part of a proceeding, is required for

review by the Court of Appeals. The cost of the transcript shall be paid by the party who requests the transcript. The Tribal Court may waive costs pursuant to a petition for waiver. The Clerk shall only prepare the portions(s) that have been requested. Requests for transcripts shall be made no later than twenty-one (21) calendar days after the date of the Notice of Appeal. If no portions are requested, no transcript shall be made unless requested by the Tribal Court of Appeals.

- (C) **Notice of Record Transmittal.** The Clerk shall file a Notice of Transmittal of the Record to the Court of Appeals, identifying each item included, together with a copy of any transcript, on each of the parties.
- (D) **Effect of Transmittal.** No appeal issue may be considered by the Tribal Court of Appeals until the Notice of Transmittal of the Record to the Tribal Court of Appeals has been filed.

5.409 Stay of Execution

- (A) **Filing Requirements.** The Appellant may file with the Tribal Court a motion for stay of execution of its judgment or order, at the time the Notice of Appeal is filed, or at any time thereafter. If the Tribal Court denies the motion, it shall state its reasoning in writing.
- (B) **Documents Forwarded.** All original documents, orders, and other papers filed in the Tribal Court relating to a stay of execution shall be included in the case file and forwarded to the Tribal Court of Appeals.
- (C) **Bond.** A stay may be issued for an appeal bond, or otherwise, as the Tribal Court may require.
- (D) **Motion for Stay Denied.** If the Tribal Court denies the motion for a stay, a petition for a stay may be filed with the Tribal Court of Appeals. The Order of the Tribal Court denying the stay shall be added to the Notice of Appeal filed with the Tribal Court of Appeals.
- (E) **No Ruling on Motion for Stay.** If the Tribal Court does not grant or deny the stay within seven (7) days of the date it was filed with the Tribal Court, the party requesting the stay may file a petition for a stay with the Tribal Court of Appeals.
- (F) **Standard of Review.** The Tribal Court of Appeals may grant a stay of the Tribal Court judgment only upon a showing of good cause and when justice so requires.

SECTION 5.500

APPELLATE SCHEDULING CONFERENCE

5.501 Appellate Scheduling Conference.

- (A) **Constitutionality of Governmental Action/Inaction: Appeal by Right.** The Chief Justice shall schedule an Appellate Scheduling Conference within fourteen (14) days of receiving an appeal by right. Unless ordered otherwise at the Scheduling Conference, the timing for the filing of briefs shall be as provided in Section 5.600 of these Court Rules.
- (B) **Other Civil Cases: Appeal by Leave.** The Tribal Court of Appeals shall have the discretion to schedule an Appellate Scheduling Conference in all other civil cases. If an Appellate Scheduling Conference is not held, the Chief Justice shall issue an Appellate Scheduling Order with the date and time of Oral Arguments, if applicable, within twenty-eight (28) days of receiving the Notice of Appeal.
- (C) **Criminal Cases.** The Chief Justice shall schedule an Appellate Scheduling Conference within fourteen (14) days of receiving an appeal by right.

SECTION 5.600

BRIEFING

5.601 Briefs. Parties must file written briefs in order to assist the Tribal Court of Appeals in its review. The following requirements apply to the filing of a brief:

(A) Format of Briefs. Briefs shall:

- (1) Be typewritten in 12-point font, double spaced and on white paper 8 1/2 by 11 inches in size; and
- (2) Be thirty (30) pages or less in length, not including appendices.
 - a. Parties, attorneys or lay advocates who wish to submit a brief with more than thirty (30) pages must submit a written request to the Court of Appeals no less than fourteen (14) days before the brief is due.
 - i. The Chief Justice shall issue an Order granting or denying permission within seven (7) days of receiving the petition.

(B) Content of Briefs. The first brief to be filed must contain:

- (1) A short statement of the case history;
- (2) A brief summary of the facts;

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- (3) A listing of the issues presented on appeal and how, if at all, the issues were decided by the Tribal Court;
- (4) An argument; and
- (5) A conclusion; and
- (6) A clear statement as to the action sought from the Court of Appeals.

5.602 Brief of the Appellee. The Appellee’s brief shall conform to the above section, Rule 5.601.

5.603 Reply Brief. The Appellant may file a reply brief, but it shall be confined strictly to rebuttal of points argued in the Appellee’s brief. No further briefs may be filed except as provided in Rule 5.604, or with permission of the Tribal Court of Appeals.

5.604 Briefs in Cases Involving Cross-Appeals. A party who files a cross-appeal may combine in one (1) brief, their brief as both Appellee and as Cross-Appellant. If the Appellant files a further brief, they may combine in one (1) brief their brief as Appellant and as Cross-Appellee. The Cross-Appellant may file a reply brief on the issues of the cross-appeal.

5.605 Briefs Involving Multiple Appellants or Appellees. In cases involving more than one (1) Appellant or Appellee, including cases consolidated for appeal, any number of Appellants or Appellees may join in a single brief, and any Appellant or Appellee may adopt any part of another brief by reference.

5.606 Filing of Briefs.

(A) Timing of Briefs.

- (1) The Appellant shall file their brief and three (3) copies within twenty-eight (28) days after the Clerk mails the notice required by Rule 5.404.
- (2) The Appellee shall file their brief and three (3) copies within twenty-eight (28) days after service of the Appellant’s brief.
- (3) The Appellant may file a reply brief within fourteen (14) days after service of the Appellee’s brief, or the Appellant may file a notice that no reply brief will be filed.

(B) Number of Copies of Briefs to be Submitted to the Court of Appeals. The original and three (3) copies of each brief must be submitted to the Court of Appeals and shall include a certificate of service upon all parties, attorneys and/or lay advocates.

(1) **Electronic Filing.** The parties may file a brief electronically, but must also submit the original and three (3) copies of the brief within forty-eight (48) hours of filing the brief electronically.

(C) **Number of Copies to be Served on the Parties.** One (1) copy of each brief shall be served on each party separately represented and proof of service shall be filed with the Clerk.

5.607 Consequences of Failure to Timely File Briefs.

(A) **Appellant Fails to Submit a Timely Brief.** If the Appellant does not timely file a brief, the Tribal Court of Appeals, upon Appellee's motion, may dismiss the appeal.

(B) **Appellee Fails to Submit a Timely Brief.** If the Appellee does not timely file a brief, the appeal may be decided on the appellate record.

5.608 Amicus Curiae Brief.

(A) An amicus curiae brief shall be filed only upon motion to and with the permission of the Tribal Court of Appeals.

(B) A motion to submit an amicus curiae brief shall:

- (1) Identifies the interest(s) of the applicant;
- (2) State the reasons why applicant's amicus curiae brief should be accepted by the Court of Appeals; and
- (3) Be filed within fourteen (14) days after the Notice of Appeal has been filed.

(C) The Tribal Court of Appeals shall issue an order granting or denying the motion with the reasons for the decision in the order.

(D) If granted, the applicant shall file a brief within fourteen days (14) of the date of service of Appellee's brief that:

- (1) Identifies the interest(s) of the applicant;
- (2) States that the applicant has read the briefs of the parties; and
- (3) Conforms to 5.601(A) and 5.601(B).

SECTION 5.700

ORAL ARGUMENTS

5.701 Oral Arguments

- (A) **Appeal by Right.** In cases that are an appeal by right, oral arguments, if requested, shall be scheduled during the Appellate Scheduling Conference.
- (B) **Appeal by Leave.** In cases that are appeal by leave, granting a request for oral arguments is within the discretion of the Chief Justice and shall be scheduled:
- (1) At the Appellate Scheduling Conference, if held; or
 - (2) If an Appellate Scheduling Conference is not held and oral arguments have been requested, the Chief Justice shall issue an Appellate Scheduling Order with the date of oral arguments within twenty-eight (28) days of the Notice of Appeal.

5.702 Timing of Oral Arguments.

- (A) If notice for oral arguments is not in the Appellate Scheduling Order, or the date must be adjourned either by the Court or by permission of the Court upon motion of one (1) party in writing or written agreement by all parties, the Court shall notify the parties of the date, time, and place at which oral arguments will be heard at least twenty-one (21) days prior to the date for oral arguments, unless a shorter period of time has been agreed upon by the parties in writing.
- (B) Unless otherwise agreed upon, ordered by the Court or permission granted at the oral arguments:
- (1) The Appellant shall have thirty (30) minutes to present their argument;
 - (2) The Appellee shall have thirty (30) minutes to present their argument; and
 - (3) The Appellant shall have five (5) minutes for rebuttal.

5.703 Failure to Appear by Either Party. If either party fails to appear at the time set for the oral arguments of the appeal, the Tribal Court of Appeals may hear the argument presented by the party appearing and decide the appeal on the basis of the presentation and the briefs submitted.

5.704 Decision on Basis of Briefs Alone. The Tribal Court of Appeals may, within its discretion or if the parties so stipulate, decide the appeal on the basis of the briefs alone.

5.705 Disqualification of Justice.

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- (A) Any Justice may be disqualified on motion of one of the parties or on her/his own motion pursuant to 5.105.
- (B) When any Justice is disqualified, the Chief Justice or their designee shall randomly select a Special Appellate Justice from the list of qualified Special Appellate Justices.
- (C) A motion to disqualify a Justice shall be:
 - (1) Made as soon as the reason for disqualification becomes known, but not less than twenty-one (21) days prior to the date set for oral arguments.
 - (2) Made in writing and state the specific grounds for which they are seeking disqualification; and
 - (3) Be supported by affidavit or other satisfactory evidence.

SECTION 5.800

MOTIONS BEFORE THE TRIBAL COURT OF APPEALS

5.801 Motions.

- (A) **Content of Motions.** A request for an order or other relief shall be made by filing a written motion and shall:
 - (1) Contain or be accompanied by any matter required by a specific provision of these rules governing such a motion;
 - (2) Specifically state the grounds on which it is based; and
 - (3) Set forth the order or relief sought.
- (B) **Response.** Any party may file a response to a motion within fourteen (14) days after service of the motion.
- (C) **Reply.** The moving party may file a reply memorandum within seven (7) days after service of the response. The reply memorandum shall be confined strictly to rebuttal of points argued in the response to the motion.
- (D) **Motion Papers Requiring Supporting Affidavits or Other Evidence.** Motion papers that rely on facts not apparent in the record, and of which the Tribal Court of Appeals cannot take judicial notice, shall be supported by affidavit or other satisfactory evidence.

5.802 Motions for Procedural Orders.

- (A) Not including 5.801, motions for procedural orders may be acted upon by a majority of the Court of Appeals at any time, without awaiting a response. Any such motion must contain an affidavit containing the following:
- (1) The reason why the motion constitutes a motion for procedural order and can be acted upon without a response; and
 - (2) A description of all efforts to secure a stipulation from the opposing party and the reasons why the stipulation has not been obtained.
- (B) Any party adversely affected by the granting of a procedural order may file a motion within fourteen (14) days of the date of the order requesting a rehearing, that the Court of Appeals vacate or modify the order.

5.803 Motions on Unrelated Matters to the Appeal.

- (A) Any party requesting action by the Tribal Court of Appeals on a matter unrelated to its decision in the pending appeal, such as a stay pending appeal, shall:
- (1) File a motion with the Clerk stating:
 - a. The action requested; and
 - b. The reasons why the Court should do what is asked of it.
 - (2) Serve the motion on all other interested parties.
- (B) Within fourteen (14) days of the motion being filed, a party may file a response indicating their agreement or disagreement with the motion.
- (C) The Tribal Court shall issue a written order granting or denying any motion filed.

5.804 Oral Argument. Motions shall be considered and decided without oral argument unless otherwise ordered.

SECTION 5.900

DECISIONS OF THE TRIBAL COURT OF APPEALS

5.901 Scope of Court's Review. In reviewing a matter on appeal, the Tribal Court of Appeals may:

- (A) Increase or decrease any sentence in a criminal case;

- (B) Affirm, modify, vacate, set aside or reverse any judgment, order or decree of the Tribal Court;
- (C) Award the costs of appeal; and/or
- (D) Remand the case of the Tribal Court and direct entry of an appropriate judgment, order or decree, or require such further proceedings as is just and equitable under the circumstances.

5.902 Standard of Review. The following standards apply to the Tribal Court of Appeals when deciding an appeal, unless a clear miscarriage of justice would result:

- (A) **Finding of Fact by a Judge.** A finding of fact by a judge shall be sustained unless clearly erroneous. The trial court's decision will not be changed unless the Appellate Court is definitely and firmly convinced that a mistake has been made. In other words, it is not enough that the Appellate Court may have weighed the evidence differently and/or reached a different conclusion; the trial court's decision will only be reversed if it is implausible in light of all the evidence.
- (B) **Finding of Fact by a Jury.** A finding of fact by a jury shall be sustained if there is any credible evidence to support it.
- (C) **Factual Inference.** A factual inference drawn by a judge or jury shall be reviewed as a finding of fact if more than one reasonable inference can be drawn from the fact(s).
- (D) **Witness Credibility.** Any finding, whether explicit or implicit, of witness credibility shall be reviewed as a finding of fact.
- (E) **Conclusion of Law.** A conclusion of law shall be reviewed by the Tribal Court of Appeals de novo, meaning that the Appellate Court shall review it as though it is the first time a court has ruled on this matter.
- (F) **Contracts.** An unambiguous contract term is reviewed as a conclusion of law.
- (G) **Mixture of Law and Fact.** A matter which is a mixture of law and fact is reviewed by the standard applicable to each element.
- (H) **Discretion of the Court.** A matter which is determined to be within the Tribal Court's discretion shall be sustained if it is apparent from the record that the Tribal Court exercised its discretionary authority and applied the appropriate legal standard to the fact(s).
- (I) **Sentence or Penalty.** A sentence and the imposition of fine, forfeiture, and/or penalty, excluding the assessment of damages, shall be reviewed as a discretionary determination by the Tribal Court of Appeals.

- (J) **Substituted Judgment.** A matter committed to the discretion of the Tribal Court shall not be subject to the substituted judgment of the Tribal Court of Appeals.

5.903 Issues Preserved on Appeal. The Tribal Court of Appeals shall consider issues pursuant to the following requirements in deciding an appeal:

- (A) **Issues Omitted.** The Tribal Court of Appeals will not consider issues that were not raised before the Tribal Court unless a miscarriage of justice would result.
- (B) **Issues Raised.** An issue raised before the Tribal Court, but not argued either by brief or orally, shall not be reviewed by the Tribal Court of Appeals.
- (C) **Moot.** No issue which is moot at the time of argument shall be decided by the Tribal Court of Appeals unless it is capable of repetition, yet likely to evade review, due to its nature.
- (D) **Facts Omitted.** Facts which are not in the record shall not be presented in any manner to the Tribal Court of Appeals, and if presented, shall not be considered by that Court.

5.904 Content of a Judgment, Order or Decree Appealed. Judgments, orders or decrees subject to an appeal shall contain the following, in order to facilitate justice by the Tribal Court of Appeals.

- (A) **Non-Jury.** In any proceeding tried by a Judge without a Jury, the Tribal Court shall issue in written form its opinions and orders, which shall state the facts, the issues to be decided, the rules of law applied, and the reasoning of the Court.
- (B) **Civil Jury.** In any civil matter tried by a jury, if requested by either party or by the Court, the jury shall make a special verdict on each issue of fact placed before it.
- (C) **Findings of Fact.** In this absence of finding of facts by the Tribal Court, the Tribal Court of Appeals may affirm the decision if supported by the record, reverse the judgment if it is not support by the record, or remand the case for the issuance of findings and conclusions.

5.905 Decisions of the Tribal Court of Appeals. All decision of the Court on an appeal, and all determinations of motions, shall be made as follows:

- (A) **Panel Majority.** Any decision of the Court of Appeals shall be made by the majority of the Justices on the panel. If no majority is reached on a decision, the order of judgment of the Tribal Court is upheld.

- (B) **Content.** In the exercise of its jurisdiction under Rule 5.009, the decision of the Court of Appeals shall be in written form, state the facts, the issues to be decided, the rules of law applied, and the reasoning of the Court. The panel shall decide which of its members in the majority shall write the decision.
- (C) **Order.** The Court of Appeals shall issue an order conforming to the decision, which shall direct the Tribal Court in its disposition of the case which is the subject of appeal. Such order shall include the continuance or termination of any order relating to a stay and the posting of bond.
- (D) **Precedent.** Decision of the Tribal Court of Appeals shall be binding precedent for the Nation.
- (E) **Dissenting Opinions.** Any member of the panel who disagrees with the majority's decision may issue a written dissent, which shall comply with the content requirements of Rule 5.905(B).
- (F) **Distribution of Decisions.** Within five (5) days of issuance, the Clerk shall send by first class mail a copy and the decision to each interested party at their address of record and inform all of the date on which the decision was filed.
- (G) **Official Reporter.** Any decision which determines an issue of law shall be retained and filed as Tribal substantive law, and may also be reported the *Indian Law Reporter*.

5.906 Reconsideration of Decision.

- (A) **Request for Reconsideration of Decision.** A request for reconsideration may be filed with the Clerk within fourteen (14) days of the decision's filing with the Clerk. A copy of the request must be served upon all other parties and on the Tribal Court.
 - (1) **Content.** A petition for reconsideration and supporting memorandum shall be directed solely to the discussion of those specific points or matters of law in which it is claimed the Tribal Court of Appeals erred. The request must identify the exact element of the decision which is to be reconsidered, the reasons for the request, and any authority upon which the party relies.
- (B) **Response to Petition.** Any adverse party may file a response to the petition within fourteen (14) days after service of the petition and memorandum. Failure to file a response shall not be considered an admission that the petition should not be granted.
 - (1) **Response.** Any other party may file a response to the request within fourteen (14) days of service.

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(C) **Effect of Request.** A request for reconsideration shall stay all proceedings until the Tribal Court of Appeals issues its decisions on the matter.

(D) **Determination.** The panel that issued the decision which is the subject of the request shall also decide the request for reconsideration. The request may be granted or denied, and if granted, the parties are entitled to submit briefs according to these Court Rules.

5.907 **Remand.** The Clerk of the Tribal Court of Appeals shall transmit the entire record of the Tribal Court, together with the decision and order of the Tribal Court of Appeals, to the Clerk of the Tribal Court within fourteen (14) days of the disposition of all post decision motions, if any. Upon such transmittal, jurisdiction over the case is returned to the Tribal Court from which the appeal was made.