

*Winnemucca Indian Colony of Nevada and California*

## **Law & Order Code**

### **INTER-TRIBAL COURT OF APPEALS RULES**

#### **(1) APPELLATE COURT**

The Western Nevada Agency, Eastern Nevada Agency and the Southern Paiute Field Station, of the Bureau of Indian Affairs provides service for appellate review for the Nevada Tribes.

This service is provided to all Nevada Tribes which by resolution of the respective Tribal Councils or the Tribal Law and Order Code designate appeals to be heard by the Nevada Inter-Tribal Court of Appeals. All appeal cases will be heard at the Inter-Tribal Council of Nevada offices located at 680 Greenbrae Drive, Suite 265, Sparks, Nevada or other designated locations. A special request to review cases on site of the Trial Court may also be considered if funding is available. The Inter-Tribal Council of Nevada is the prime contractor for this service and provides for support costs, staffing and subcontract Justices.

An appeal is a legal procedure by which the decision of a lower trial court is brought to the Inter-Tribal Court of Appeals of Nevada for review and decision. Due process demands that the person have a right to challenge the proceedings and request a review of the decision rendered.

Appeals in either civil or criminal case may be taken on such grounds as errors in trial procedure, errors in substantive law (an interpretation of the law by the trial Judge), improperly admitting evidence, or failure to have sufficient evidence to justify the decision.

#### **(2) AUTHORITIES**

- (a) 25 CFR Part 11.800 Subpart H (CFR Courts only)
- (b) Tribal Law and Order Codes
- (c) Tribal Resolutions
- (d) Tribal Ordinances
- (e) Other Indian/Federal Laws as appropriate

#### **(3) COMPOSITION OF THE COURT OF APPEALS**

##### **(A) JUSTICES**

The Inter-Tribal Court of Appeals of Nevada shall consist of a panel of three Justices to hear each appeal. If an emergency appeal is required, it may be necessary to sit two Justices instead of three. The Court Coordinator will consult with available Justices in order to appoint a panel for the appeal.

The Inter-Tribal Council Executive Board shall hire Justices for the Inter-Tribal

Court of Appeals of Nevada. Upon appointment, the Justices shall be required to sign contractual agreements for employment.

The Inter-Tribal Council of Nevada shall hire as many Justices as are required to properly hear an appeal in accordance with Tribal and Federal Law. The procedures set out herein apply to appeals from tribal courts. However, the more specific provision of section 12 herein will apply to appeals from CFR courts.

The three Justices shall select a Chief Justice among themselves. The Chief Justice shall be responsible for leadership to the court hearing, making assignments if necessary, and assuring that the other Justices submit their opinions in a timely manner. The Justices may decide amongst themselves who will write the decision. The Chief Justice and the Court Coordinator are responsible for ensuring that this decision is submitted in a timely manner.

The Appellate Court Justices shall be licensed attorneys, and preferably with experience in Indian law. For all appeal hearings, the Justices shall be selected by the Court Coordinator from a list of appointed Justices using a rotation system.

Appellate Court Justices shall avoid even the appearance of conflicts of interest and recuse themselves in accordance with the tribal Code of Judicial Ethics, when such appearance of conflict arises. Justices shall provide an impartial and independent review to the complete record and issue an opinion.

No Justice shall sit on a panel if the issue arises from a tribe to which she/he is an employee or an independent contractor. If the Justice is an enrolled member of a Nevada tribe, she/he shall not sit on a panel if the issue involves that tribe, members of that tribe or that tribe's property.

Justices hearing appeals from CRF courts must be CFR Magistrates appointed by the Bureau of Indian Affairs.

Justices shall maintain a Code of Ethics as set forth in Attachment I.

## **(B) COURT COORDINATOR**

The Court Coordinator shall be responsible for the orderly flow of cases arising before the Court of Appeals and insure that proper procedures are followed by the parties appealing and that materials from the trial court are provided in a timely manner to process the cases.

The Court Coordinator shall schedule all cases and be responsible for notifying all parties of the date scheduled for their hearing. For all appeal hearings, Justices shall be selected by the Court Coordinator from a list of appointed Justices using a rotation system.

The Court Coordinator shall ensure that any appeals filed, be transcribed from the trial court.

In emergency cases stemming from Stays of Execution or Judgment or Sentences and child custody matters, the Court Coordinator shall assist the Tribal Court

Clerk in preparing the transcriptions of such cases providing that the taped transcript is clear and audible. If it is necessary to sit two Justices instead of three, the Court Coordinator will consult with available Justices in order to appoint a panel for the appeal.

At the completion of the case, the Court Coordinator shall notify the parties by sending the court's decision to all parties to the case.

#### **4. RIGHT OF APPEAL**

Any party who can establish legal cause may appeal any final order, commitment or judgment of the trial court in the manner prescribed by the rules of the Tribal Law and Order Code of the Tribe from which the appeal is taken.

#### **5. PARTIES AND REPRESENTATIVES**

The party submitting the appeal to the Inter-Tribal Court of Appeals for review shall be referred to as the Appellant, all other parties shall be referred to as the Appellees. The caption and identity of the case shall be the same as that used in the trial court.

A party may elect to be represented at any proceeding before the Inter-Tribal Court of Appeals at his own expense. A representative may be an attorney, an advocate, or other person selected by the party to speak on his behalf. Such representative must provide the court with documentation that he or she is duly admitted to practice in the trial court from which the appeal is taken, or, must obtain the consent of the court to appear.

#### **6. APPEAL PROCEDURE**

Any person who can establish legal cause, may appeal by filing a written Notice of Appeal with the Trial Court Clerk within the time allowed by the Tribe's Law and Order Code with regard to the Judge's decision. If the tribe does not provide for a time limit to file a notice of appeal, the Appellant shall have thirty (30) days to file a written notice of appeal. The Notice of Appeal should specify the reason(s) or grounds for the appeal. The Trial Court Clerk shall file the Notice of Appeal and mail copies, to the appealing party and all other parties to the case at their last known address. Proof of service will be filed with the notice. The Trial Court Clerk shall send a copy of Notice of Appeal to the Appellate court within ten (10) days of Appeal being filed.

Upon receiving the Notice of Appeal, the Trial Court Clerk shall prepare an appellate case file consisting of copies of all relevant documents and transfer that file and entire typed transcript of the court record to the Inter-Tribal Court of Appeals within the thirty (30) days unless superseded by the Tribal Law and Order Codes, or such later date as approved by the Appellate Court. Once received from the Trial Court the Justices assigned to the case will review and determine if the case has met the appeal requirements. Copies of case documents shall be furnished to each Appellate Justice. In cases of emergency hearings, the taped recording of the hearing(s) at the lower court level may be transcribed by the Appellate Court Coordinator.

Whenever possible, appeals shall be decided on the record of the case.

Appellate Court cases shall be scheduled on a quarterly basis, or such other date and time as necessary. Each hearing will be scheduled for one hour and a half (1 ½ hrs.). Each party to a case will be allowed fifteen (15) minutes for oral argument and fifteen (15) minutes for rebuttal. The Justice(s) may interrupt at any time to request clarification or ask questions.

The Inter-Tribal Court of Appeals shall recognize and use Tribal appeal procedures established in Tribal Law and Order Codes. In the absence of the Appellate Court procedures in a Tribal Law and Order Codes, these procedures shall apply.

## **7. STAY PENDING**

In any case in which an appeal is fully submitted, as required by this rule, the appellant may petition the trial court for an order staying the order of commitment or judgment rendered. A motion seeking a stay may be addressed to the Trial Court before or after the filing of a Notice of Appeal.

The Trial Judge may require the appellant to deposit cash or security with the court while the appeal is being processed if there is a clear showing that some security is needed to guarantee that the court's judgment will be enforceable later. The security of bond required shall not be greater in value than the amount of the judgment or fine imposed by the Trial Court.

If the Stay is denied by a Trial Court, the appellant may file a Motion for Stay with the Appeals Court. The security or bond would be reviewed by the Appeals Court is requested by the appellant.

## **8. SUBPOENAS**

The Appellate Court shall have authority to subpoena a witness to attend and testify, or compel production of documents, where such is deemed necessary to the rendition of the court's opinion.

## **9. BRIEFS AND MEMORANDUM**

Within twenty (20) days of the filing of the Notice of Appeal, or within such longer time as the Appeals Court shall allow, the appellant shall file a written Brief, Memorandum or Statement in support of the appeal.

Responding brief shall be submitted within fifteen (15) days from service.

The original and three (3) copies shall be filed with the Appellate Court Coordinator and served upon, or mailed with proof of service, to the other party or their Attorney.

The Appellate Court may establish a post hearing briefing schedule if the situation so demands.

## **10. ARGUMENT**

The Appellate Court shall render its decision upon the Briefs, Memorandum, or Statements filed and the record of the Trial Court, with oral arguments

## **11. DECISION**

The Appellate Court shall issue a written decision within sixty (60) days following the appeal hearing. The decision shall be mailed to the Trial Court, the appellant, the appellee, respective counsel and other parties related to the case. All decisions of the Appellate Court will be final and enforced by the Trial Court, where the appeal originates. Failure to abide by an appellate decision may result in a contempt citation being issued by the Trial Court or the Inter-Tribal Court of Appeals if necessary to enforce an Order.

A Chief Justice may request an extension of time up to thirty (30) days upon written request and approval by the Court Coordinator. The following factors must be addressed in any request for extension of time:

- (a) appeals involving multiple parties;
- (b) appeals involving total sovereignty issues;
- (c) appeals involving inter-tribal dispute; and
- (d) appeals involving jurisdictional disputes between tribal and state/federal courts.

A motion for reconsideration may be filed by either party within ten (10) days after receipt of decision. The motion must specifically identify factual or legal errors claimed in the decision. The Chief Justice shall have thirty (30) days to grant or deny the motion. If granted, it shall be calendared for a hearing before the same Justices who heard the case.

## **25 CFR COURT-APPEAL PROCEDURES**

### **11.800 JURISDICTION OF APPELLATE DIVISION**

The jurisdiction of the appellate division shall extend to all appeals from final orders and judgments of the trial division by any party except the prosecution in a criminal case where there has been a jury verdict. The appellate division shall review all issues of law presented to it which arose in the case but shall not reverse the trial division decision unless the legal error committed affected a substantial right of a party or the outcome of the case.

#### **11.801 PROCEDURE ON APPEAL**

An appeal must be taken within fifteen (15) days from the judgment appealed from by filing a written notice of appeal with the Court

Coordinator of the court.

The notice of appeal shall specify the party or parties taking the appeal, shall designate the judgment, or part thereof, appealed from and shall contain a short statement of reasons for the appeal. The Court Coordinator of the court shall mail a copy of the notice of appeal to all parties other than parties taking the appeal.

In civil cases, other parties shall have fifteen (15) days to respond to the notice of appeal.

In civil cases, the appellant may request the trial division to stay the judgment pending action on the notice of appeal and, if the appeal is allowed, either party may request the trial division to grant or stay an injunction pending appeal. The trial division may condition a stay or injunction pending appeal on the depositing of case or bond sufficient to cover damages awarded by the court together with interest.

#### **11.802 JUDGMENT AGAINST SURETY**

Any surety to a bond submits himself or herself to the jurisdiction of the Court of Indian Offenses, and irrevocably appoints the Court Coordinator of the court as his or her agent upon whom any papers affecting his or her liability on the bond may be served.

#### **11.803 RECORD ON APPEAL**

Within twenty (20) days after a notice appeal is filed, the Court Coordinator of the court shall certify and file with the appellate division the record of the case.

#### **11.804 BRIEFS AND MEMORANDUM**

Within thirty (30) days after the notice of appeal is filed the appellant may file a written brief in support of his/her appeal. An original and one copy for each appellee shall be filed with the Court Coordinator of the Court who shall mail one copy by registered or certified mail to each appellee.

The appellee shall have thirty (30) days after receipt of the appellant's brief within which to file a reply brief. An original and one copy for each appellant shall be filed with the Court Coordinator of the Court who shall mail one copy, by registered or certified mail, to each appellant.

#### **11.805 ORAL ARGUMENT**

The appellate division shall assign all criminal cases for oral argument. The court may, in its discretion, assign civil cases for oral argument or may dispose of civil cases on the briefs without argument.

## **11.806 RULE OF THE COURT**

The Chief Justices of the appellate division shall prescribe all necessary rules concerning the operation of the appellate division and the time and place of meeting of the court.