

CHAPTER 7

7.000 APPELLATE PROCEDURES

7.100 Purpose And Definitions

7.101 **Purpose.** The purpose of this Chapter is to establish the procedures by which appeals are taken from final judgments, orders or decisions of the Tribal Court to the Tribal Appellate Court, based on: alleged error of law; procedural violation of this Constitution, laws or regulations enacted by the Tribal Council, or Court Rules; or clear factual error.

7.102 **Definitions.** The following terms shall have the following meanings:

- (A) *"Appellant"* means the party filing the appeal.
- (B) *"Respondent"* means the party responding to the appeal.
- (C) *"Tribal Court"* means the Trial Level Court of the Tribe.
- (D) *"Tribal Appellate Court"* means the Appellate Level Court of the Tribe.
- (E) *"Justice"* means a judge appointed to the Tribal Appellate Court.
- (F) *"Tribe"* means the Little Traverse Bay Bands of Odawa Indians (LTBB Tribe).

7.200 Organization And Composition Of The Tribal Appellate Court

7.201 **Justices of the Tribal Appellate Court.** The Tribal Appellate Court shall consist of one (1) Chief Justice and two (2) Associate Justices who shall meet as often as circumstances require. At least one (1) of the three (3) justices shall be an attorney licensed to practice before the Courts of a state in the United States and at least one (1) of the justices shall be an enrolled tribal member who is over fifty five (55) years of age and the remaining justice shall be an enrolled tribal member.

7.202 **Term.** Justices of the Tribal Appellate Court shall serve for terms of six (6) years. There shall be no limitation on the number of terms a justice may serve. In order to implement staggered terms of service, the initial appointment of one (1) justice shall be for a two (2) year term. The initial appointment of one (1) justice shall be for a four (4) year term. The initial appointment of one (1) justice shall be for a six (6) year term. All subsequent appointments shall be for six (6) year terms.

7.203 **Chief Justice.** The justices of the Tribal Appellate Court shall appoint from among themselves one of the justices to serve as Chief Justice for a two (2) year term. There shall be no limit on the number terms of a Chief Justice may serve.

7.204 **Court Clerk.** The Clerk of the Tribal Court shall have the duties of Clerk for the Tribal Appellate Court.

7.205 **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) the Justice has a direct personal or financial interest;
- (B) the Justice was a witness at trial; or
- (C) the Justice has any kind of relationship, or is so related to either the Appellant or Respondent, as to bring into question the Justice's ability to render an impartial decision.

7.300 **Jurisdiction Of The Tribal Appellate Court**

7.301 **Exclusive Jurisdiction.** The Tribal Appellate Court shall have exclusive jurisdiction to review the decisions of the Tribal Court according to these Rules.

7.302 **(Repealed by the LTBB Judiciary 05//2016)**

7.303 **Who has the Right to Appeal.**

- (A) **Civil Cases.** Any party adversely affected by a decision of the Tribal Court in a civil case may appeal.
- (B) **Criminal Cases.** The defendant in a criminal case 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.

7.304 **Subject Of Appeal.** An appeal is properly brought before the Tribal Appellate Court if:

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

7.305 **Scope of Court's Review.** In reviewing a matter on appeal, the Tribal Appellate Court may:

- (1) increase or decrease any sentence in a criminal case;
- (2) affirm, modify, vacate, set aside or reverse any judgment, order or decision of the Tribal Court;
- (3) award the costs of the appeal; or
- (4) remand the case to the Tribal Court and direct entry of an appropriate judgment, order or decision, or require such further proceedings as may be just and equitable under the circumstances.

7.400 **Procedure For Appeals**

7.401 **Time period to Appeal.**

- (A) **Civil Cases.** An appeal to the Tribal Appellate Court in civil cases must be filed no later than twenty-eight (28) calendar days after the entry of the final written Tribal Court judgment, order or decision.
- (B) **Criminal Cases.** An appeal to the Tribal Appellate Court in criminal cases must be filed no later than twenty-eight (28) calendar days after the entry of the final written Tribal Court judgment, order or decision.
- (C) **Cross-Appeals.** Respondent 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.** Subject to the exception contained in (E) below, failure to file an appeal within the time period provided in this Rule deprives the Tribal Appellate Court of subject matter jurisdiction to hear the appeal. Late appeals shall be dismissed by the Tribal Appellate Court unless leave for late filing has been granted.
- (E) **Grounds for Granting Late Appeal.** The Tribal Appellate Court may, in its discretion, grant leave for a late filing of appeal from any judgment, order or decision 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) **Expedited Appeals.** The Tribal Appellate Court may, in its discretion, upon motion by a party, grant an expedited appeal from any judgment, order or decision upon a showing by the moving party, supported by affidavit, that irreparable harm will be caused unless the appeal procedure is expedited.

7.402 **Notice of Appeal.**

- (A) **Filing Required.** An appeal is made by the proper filing of a Notice of Appeal with the Court Clerk and the payment or request of waiver of the filing fee.
- (B) **Content of Notice.** The Notice of Appeal shall bear the caption and case number of the case in Tribal Court, and shall be labeled "Notice of Appeal". It shall state the date; judge; and content of the judgment, order or decision being appealed; a brief statement of the reasons for the appeal; whether oral argument is requested; and the relief requested from the Tribal Appellate Court. The Appellant or the attorney/advocate appearing on behalf of the Appellant shall sign and date the notice.
- (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 document 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.
- (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 decision.

7.403 **Service of Notice of Appeal.** A copy of the Notice of Appeal shall be served on all other parties by the Clerk of the Tribal Appellate Court by first class mail. If the Clerk of the Tribal Court is a separate position from that of Clerk of the Tribal Appellate Court, the Clerk of the Tribal Court shall also be served a copy of the Notice of Appeal. Proof of service shall be filed simultaneously with the Notice of Appeal.

7.404 **Appellate Filing Fee.** The Clerk for the Tribal Appellate Court shall collect from every party that files an appeal or cross-appeal a filing fee as set by the Court Fee Schedule.

7.405 **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.
- (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 Court 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 may on its own initiative order the person for whom the fees were waived to pay those fees when the reason for the waiver no longer exists, if the matter is still pending.
- 7.406 **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 thereof in an amount sufficient to guarantee payment or satisfaction of the judgment, including costs, in the event that the judgment is affirmed on appeal. Notice of such bonds will be filed with the Tribal Appellate Court by the Court Clerk prior to docketing the Appellate Scheduling Conference.
- 7.407 **Request for Stay.** Upon notification of a request for stay, the Court Clerk shall file such notice with the Tribal Appellate Court prior to docketing the Appellate Scheduling Conference.
- 7.408 **Appellate Scheduling Conference.** The Court Clerk shall schedule an Appellate Scheduling Conference with the parties to determine need of oral arguments, briefing schedule and requirements, ordering of transcripts, waiver of filing fees and transcript cost, scheduling of motions, requested remedies and defining of issues.
- 7.409 **Record of Appeal.** Upon receiving the Notice of Appeal, the Clerk of the Tribal Court shall timely compile for transmittal to the Tribal Appellate Court the record of the case on appeal.
- (A) Pleadings, Orders, and Judgments. All written documents filed with the Tribal Court, including pleadings, reports, notices, depositions, judgments, orders and decisions shall constitute the written record of the case on appeal. The Clerk of the Tribal Court shall certify the contents as true, correct and complete copies of the originals as part of the transmittal to the Tribal Appellate Court.
- (B) Hearing Transcript. The Appellant, Cross-Appellant, or Respondent may specify in writing to the Clerk of the Tribal Court which proceeding, or part of a proceeding, is required for review by the Tribal Appellate Court. The cost of the transcript shall be paid by the party who requests the transcript. The Tribal Appellate Court may waive costs pursuant to a petition for waiver. The Clerk of the Tribal Court shall only prepare the portion(s) that have been requested. Requests for transcripts may be made no later than twenty-one (21) calendar days after the filing of the Notice of Appeal. The need for transcript will be determined at the scheduling conference. If no portions are requested, no transcript shall be made.
- (C) Notice of Record Transmittal. The Clerk shall file a Notice of Record Transmittal, 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 Appellate Court until the Notice of Transmittal has been filed with the Clerk of the Tribal Appellate Court.

7.410 **Briefing**. Parties are encouraged to file written briefs, concerning the issue(s) on appeal, in order to assist the Tribal Appellate Court in its review. The Tribal Appellate Court may require the parties to file written briefs, in its discretion, if briefs would be helpful to the Court. The following requirements apply to the filing of a brief:

- (A) Format of Briefs. Briefs shall be typewritten, double spaced, on white paper 8 1/2 by 11 inches in size. With the exception of the title page, briefs must have typed page numbers on the center of the bottom of each page. No brief shall exceed fifty (50) pages in length. Four (4) copies of each brief shall be submitted.
- (B) Content of Briefs. The first brief to be filed shall contain a short statement of the case's history, a brief summary of the facts and a listing of the issues presented on appeal and how, if at all, the issues were decided by the Tribal Court. All briefs shall contain an argument and a conclusion, and state clearly the precise action sought from the Tribal Appellate Court.

7.411 **Oral Argument**. The need for scheduling oral arguments will be at the discretion of the Tribal Appellate Court and will be determined at the Appellate Scheduling Conference.

7.412 **Motions Before the Tribal Appellate Court**. The timing and the requirements of the filing of motions shall be determined at the Appellate Scheduling Conference.

7.500 **Decisions Of The Tribal Appellate Court**

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

- (A) Judge Finding of Fact. A finding of fact by a judge shall be sustained unless clearly erroneous.
- (B) Jury Finding of Fact. 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 Appellate Court *de novo, i.e.,* reviewed as though it is the first time for the matter to be decided.
- (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 facts.
- (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 of the Tribal Court.

7.502 **Issues Preserved on Appeal**. The Tribal Appellate Court shall consider issues pursuant to the following requirements in deciding an appeal.

- (A) Issues Omitted. The Tribal Appellate Court 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 Tribal Appellate Court unless a miscarriage of justice would result.
- (C) Moot. No issue which is moot shall be decided by the Tribal Appellate Court unless it is capable of repetition, yet likely to evade appellate review, due to its nature.
- (F) Facts Omitted. Facts which are not in the record shall not be presented by the parties in any manner to the Tribal Appellate Court, and if presented, shall not be considered by that Court.

7.503 **Decisions of the Tribal Appellate Court**. All decisions of the Tribal Appellate Court shall be made as follows:

- A) Panel Majority. Decision of the Tribal Appellate Court shall be made by the majority of the judges on the panel. If no majority is reached on a decision, the order of judgment of the Tribal Court is upheld.
- B) Limited Delegation. The authority of the Court may be delegated to one justice on matters that are raised, from time to time before the Court, that do not involve the merits of the case or jurisdiction of the Court.

- (B) Content. The decision of the Tribal Appellate Court shall be in written form, which shall state the facts, the issues decided, the rule(s) 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 Tribal Appellate Court shall issue an order conforming with the decision. Such order shall include the continuance or termination of any order relating to a stay or the posting of bond.
- (D) Precedent. Decisions of the Tribal Appellate Court shall be binding precedent for the Tribe.
- (E) Dissenting Opinions. Any member of the panel who disagrees with the majority's decision may issue a written dissent.
- (F) Distribution of Decision. The Clerk of the Tribal Appellate Court or Clerk of the Tribal Court shall transmit by first class mail a copy of the decision to each interested party at their address of record within five (5) days of issuance.
- (F) Official Reporter. Any decision which determines an issue of law shall be retained and filed as Tribal substantive law and be reported to the official reporter of the Tribal Appellate Court.

7.504 **Request for Reconsideration of Decision.** No request of reconsideration of a final decision by the Tribal Appellate Court will be permitted.

(Rule 7.504 was amended by the Judiciary on May 22, 2015 and filed with the Clerk of the Court)

7.505 **Remand.** The Clerk of the Tribal Appellate Court shall transmit the entire record of the Tribal Court, together with the decision and order of the Tribal Appellate Court, to the Clerk of the Tribal Court within fifteen (15) 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.

7.600 **Court Administration**

7.601 **Standards for Computing Time Requirements.** In computing the period of time prescribed by these Rules or by any order of the Tribal Appellate Court, the day of the act or event from which the period begins to run is not included. The last day of the period is included, unless it falls on a Saturday, Sunday or Tribal Holiday. In that event, the last day of the period falls on the next regular business day.

7.602 **Requirements of Service.**

- (A) **What Must Be Served.** Any paper, of whatever kind, which is filed with the Clerk of the Tribal Appellate Court or the Clerk of the Tribal Court shall be served on each other party. Proof of that service shall 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. If the party is not represented, upon the party.

7.603 **Practice Before the Tribal Court.** Any person who is admitted to practice before the Tribal Court is thereby admitted to practice before the Tribal Appellate Court.

7.604 **Rules of Court.** The Justices of the Tribal Appellate Court may make or amend such rules as are deemed by them appropriate for the proper and efficient administration of the Tribal Appellate Court. Such rules shall be filed with the Clerk of the Tribal Appellate Court and made available as issued to all persons admitted to practice.

7.700 Short Title And Effective Date

7.701 **Short Title**. These procedures shall be titled "Appellate Procedures".

7.702 **Effective Date**. These procedures become effective when adopted by the Tribal Judiciary of the Little Traverse Bay Bands of Odawa Indians and signed below by the Chief Judge and Court Administrator.

CERTIFICATION OF ADOPTION

The Tribal Judiciary unanimously adopted the above rule on April 7, 2002.