



NHBP TRIBAL COURT

NOTTAWASEPPI HURON BAND OF THE POTAWATOMI

Court Rules of Appellate Procedure Chapter 9

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**Court Rules of Appellate Procedure
Chapter 9**

Section 1: Purpose and Definitions.

A. Purpose. The purpose of these *Rules* is to establish the procedures by which appeals are taken from final judgments, orders or decisions of the Tribal Court to the Supreme Court.

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

1. "*Appellant*" means the party filing the appeal.
2. "*Band*" and "*Tribe*" are synonymous and mean the Nottawaseppi Huron Band of the Potawatomi.
3. "*Chief Justice*" means Chief Judge of the Supreme Court or his/her designee by order of the Chief Justice.
4. "*Court*" and "*Tribal Court*" are synonymous and mean the trial court of the Band.
5. "*Tribal Supreme Court*" means the appellate court of the Band.
6. "*Day*" means *Calendar Day*.
7. "*Final judgment*" means a decision by the Tribal Court that disposes of all the issues in the case or a ruling or order involving a controlling question of law, appeal from which may materially advance resolution of the case or result in the resolution of the case.
8. "*Justice*" means a judge appointed to the Supreme Court.
9. "*Respondent*" means the party responding to the appeal.
10. "*Tribal courts*" means the trial court and the appellate court of the Band.
11. "*Administrator of the Supreme Court*" and "*Clerk of the Supreme Court*" are synonymous and means the Tribal Court Administrator unless otherwise designated by the Chief Justice and the Chief Judge.
12. "Natural person" means a human being not a corporation or other legal entity.

Section 2: Who has the Right to Appeal?

A. Civil Cases. Any party to a case in controversy adversely affected by a final judgment of the Tribal Court in a civil case may appeal.

B. Criminal Cases.

1. A defendant in a criminal case may appeal the judgment or sentence.
2. The prosecution may not appeal a finding of fact or an acquittal. The prosecution may appeal a decision to the extent it raises a question of law. The Tribal prosecutor may appeal any Tribal Court order or judgment which:
 - a. Results in the dismissal of a criminal case on a point of law;
 - b. Modifies a jury verdict of guilty in a criminal case;
 - c. Grants a new trial in a criminal case;
 - d. Quashes an arrest or search warrant
 - e. Suppresses evidence in a criminal prosecution;
 - f. Suppresses a confession or admission by a defendant in a criminal prosecution; or
 - g. Imposes a sentence that is inconsistent with Tribal law.

Section 3: Subject of Appeal.

An appeal is properly brought before the Supreme Court if:

- A. It is from any final decision, judgment, or order; or
- B. It is from a criminal sentence.

Section 4: Scope of Court's Review.

- A. In reviewing a matter on appeal, the Supreme Court may:
 1. Affirm, modify, vacate, or reverse the final judgment of the Tribal Court, provided that the Supreme Court may only vacate or reverse a criminal sentence and only if the Tribal Court imposed a sentence which is inconsistent with Tribal law;
 2. Award the costs of the appeal; or
 3. Remand the case to the Tribal Court and direct entry of an appropriate judgment, or require such further proceedings as may be just and equitable under the circumstances.

- B.** No final decision, sentence, judgment, or order shall be reversed upon appeal by reason of error committed by the Trial Court where the record shows that the same result would have been attained had the Trial Court not committed the error, except when such error involves any issue of constitutional or statutory interpretation.

Section 5: Procedure for Appeals.

A. Time Period to Appeal.

1. **Civil Cases.** Notice of appeal to the Supreme Court in civil cases must be filed no later than twenty-eight (28) calendar days after the entry of the final Tribal Court judgment unless otherwise specified by Tribal Law.
 2. **Criminal Cases.** A notice of appeal to the Supreme Court in criminal cases must be filed no later than twenty-eight (28) calendar days after the entry of the final Tribal Court judgment which includes:
 - a. The entry of the judgment of conviction;
 - b. The sentence handed down by the Trial Court;
 - c. The entry of an order denying a motion for a new trial;
 - d. The entry of an order denying a motion for directed verdict of acquittal; or
 - e. The entry of an order denying a motion to correct an invalid sentence.
 3. **Cross-Appeals.** A Respondent may cross-appeal by filing a Notice of Cross-Appeal within twenty-eight (28) calendar days of filing of the Notice of Appeal.
- B. Untimely Appeals.** Subject to the exception contained in subsection C below, failure to file an appeal within the time period provided in these *Rules* deprives the Supreme Court of subject matter jurisdiction to hear the appeal, provided however that the Supreme Court may grant leave to file a late appeal.
- C. Grounds for Granting Late Appeal.** The Supreme Court may grant leave for a late filing of appeal from a final judgment for good cause or upon a showing of excusable delay by motion of the Appellant supported by affidavit. The Appellant's motion must also include a statement as to whether the opposing party consents or objects to the extension.
- D. Expedited Appeals.** The Supreme Court may grant leave for an expedited appeal from a final judgment upon a showing of irreparable harm by motion of the Appellant supported by affidavit. The Appellant's motion must also include a statement as to whether the opposing party consents or objects.

- E. Stay of Proceedings.** Once a Notice of Appeal has been filed, upon motion, the Supreme Court may grant a stay of the Tribal Court judgment upon a showing of good cause.

Section 6: Notice of Appeal.

- A. Filing Required.** An appeal is made by the proper filing of a Notice of Appeal with the Tribal Court Administrator and the payment or request of waiver of the filing fee.
- B. Content of Notice.** The Notice of Appeal must bear the caption and case number of the case in Tribal Court, and must be labeled "Notice of Appeal". It must state the date; judge; and content of the judgment. The Appellant or the attorney appearing on behalf of the Appellant must sign and date the notice.
- C. Defects in Notice.** No appeal may 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 Tribal Court Administrator must notify the Justices of the pending appeal.
- 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.

Section 7: Service of Notice of Appeal.

A copy of the Notice of Appeal must be served by the Appellant on all other parties by first class mail. A certificate of service must be filed simultaneously with the Notice of Appeal.

Section 8: Appellate Filing Fee.

The Administrator for the Supreme Court must collect from every party that files an appeal or cross-appeal a filing fee as set by the *Court Fee Schedule*.

Section 9: Waiver of Fees.

- A. Applicability.** Only a natural person is eligible for a waiver of the appellate filing fees under this Section.
- B. Persons Receiving Public Assistance.** If a party demonstrates by notarized affidavit that he/she is primarily supported by public assistance, the payment of fees required by law or court rules as to that party must be waived.
- C. Other Indigent Persons.** If a party demonstrates by notarized affidavit that he/she is unable to pay fees required by law or court rules, the Court may order those fees waived.
- D. Reinstatement of Requirement for Payment of Fees.** If the payment of fees has been waived under this Section, the Supreme Court may on its own motion 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.

Section 10: 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 may be filed with the Supreme Court by the Administrator.

Section 11: Record of Appeal.

Upon receiving the Notice of Appeal, the Administrator must timely compile the record of the case on appeal for transmittal to the Supreme Court.

A. Time Frame. The record must be compiled within forty-five (45) calendar days of the filing of the Notice of Appeal.

B. Contents. The record on appeal must consist of all of the following:

1. All written documents filed with the Tribal Court, including pleadings, reports, notices, depositions, judgments, orders and decisions constitute the written record of the case on appeal. The Administrator must certify the contents as true, correct and complete copies of the originals as part of the transmittal to the Supreme Court;
2. In addition to all written documents filed with the Tribal Court, the record on appeal must include a copy of all docket entries and exhibits; and
3. Upon the filing of a Notice of Appeal the Administrator shall cause to have prepared a transcript of all or part of the proceedings as may be requested by the Appellant. The cost of preparing the transcript or portions thereof shall be borne by the parties as ordered by the Chief Justice. Any party may request a copy of the transcript at the cost charged to the Supreme Court by the certified transcriber. Upon written application, the Chief Justice may waive costs in accordance with Section 9.

C. Time for Securing a Transcript. The requested transcript shall be filed and certified to the Supreme Court Administrator as part of the record on appeal within 30 days of the record of the proceedings being delivered to the certified court transcriber by the Tribal Court Administrator.

D. The Clerk of the Supreme Court shall notify the parties in writing when the record of the case has been transmitted to the Justices.

1. The notification shall contain the dates when the Appellant's Brief is due to be filed with the Court, and the date when the Appellee's Brief is due to be filed with the Court.
2. For any extensions of time for filing refer to Section 12. F. of these Rules.

Section 12: Briefing.

Parties must file written briefs in order to assist the Supreme Court in its review. The following requirements apply to the filing of a brief.

A. Format of Briefs. Briefs must be typewritten, double spaced, on white paper 8 1/2 by 11 inches in size, 12-point font. No brief may exceed thirty (30) pages in length, exclusive of Appendices, without an order from the Chief Justice. An original and four (4) copies of each brief must be submitted to the Supreme Court. Briefs must be accompanied by a certificate of service upon all parties and/or attorney.

B. Content of Briefs. All brief must contain the following:

1. A title page that lists the parties to the case and states whether Oral Argument is being requested;
2. An index of authorities including cases cited, court rules cited and statutes and ordinances cited;
3. An index of the entire appeal brief;
4. A statement of facts;
5. Statements of the legal issues on appeal, how the Tribal Court ruled on those issues and how the appealing party requests the Supreme Court to rule on those issues;
6. Legal arguments;
7. Prayer for relief stating clearly the precise action sought from the Supreme Court; and
8. A signature of the party or the party's attorney.

C. Cited Case Law. The full opinions of cases cited in a brief must be attached to the brief.

D. Timing of Briefs. The Appellant's Brief must be filed within sixty (60) calendar days of the filing of the Notice of Appeal. Respondent's Response Brief must be filed within thirty (30) calendar days after the Appellant's Brief has been filed. The Appellant may file a Rebuttal Brief within fourteen (14) calendar days of the filing of the Respondent's Response Brief.

E. Brief of Amicus Curiae Any amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing. If consent of the parties has not been obtained, the party wishing to file *an amicus curiae* brief must file a motion accompanied by the proposed brief and state the movant's interest; and the reason why an *amicus* brief is desirable. An amicus brief must comply with this Section. In addition, a

cover page must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. An *amicus curiae* must file its brief, accompanied by a motion for filing when necessary, no later than seven (7) calendar days after the principal brief of the party being supported is filed. An *amicus curiae* that does not support either party must file its brief no later than seven (7) calendar days after the appellant's principal brief is filed.

F. Extensions of Time for Filing Briefs. Upon a petition of a party, the Supreme Court may grant an extension of time for the filing of any brief required in these Rules. The length of any extension is at the discretion of the Supreme Court but may not exceed 180 days.

Section 13: Oral Argument.

The need for scheduling oral arguments will be at the discretion of the Supreme Court and will be determined following the proper request by a party and a review of the parties' briefs.

A. Examination of the Briefs. The Supreme Court Administrator shall examine the parties' briefs to ensure that they comply with this Chapter of Court Rules before forwarding them to the Supreme Court Justices.

1. If the Supreme Court Administrator determines that a brief does not comply with this Chapter of Court Rules, the Supreme Court Administrator shall immediately notify that party in writing setting forth the areas of non-compliance or non-conformance.
2. The party will have (fourteen) 14 days from the date of the written notice to correct the non-conforming or non-compliance.

B. Date of Oral Arguments. Once both parties' briefs have been accepted by the Court, the Court shall set the date for oral argument, if requested, and notify the parties in writing.

C. Arguments. Each party shall have (thirty) 30 minutes to present their arguments to the Supreme Court. It is the responsibility of the individual party to reserve time out, of the allotted argument time, for rebuttal argument. The Court may grant additional time for arguments at the Court's discretion if one or more of the following circumstances is present:

1. Due to complexity of the case referring to legal issues or factual disputes over the record that additional time for argument is needed;
2. That in the interests of justice or fundamental fairness additional time for argument is necessary.

Section 14: Motions before the Supreme Court.

The timing and the requirements of the filing of motions will be determined at a scheduling conference to be arranged by the Supreme Court Administrator. Other motions may be filed upon leave of the Chief Justice. Once both parties' briefs have been filed with the Court, the Supreme Court Clerk shall convene a scheduling conference with the parties, if requested, to schedule any motions or other preliminary matters before Oral Arguments.

Section 15: Decisions of the Supreme Court.

All decisions of the Supreme Court must be made as follows:

- A. Panel Majority.** If no majority is reached on a decision, the final judgment of the Tribal Court is upheld.
- B. Content.** The decision of the Supreme Court must be in written form, which must state the facts, the issues decided, the rule(s) of law applied, the reasoning and decision of the Supreme Court. The Chief Justice will decide which of the judges in the majority will write the decision.
- C. Order.** The Supreme Court must issue an order conforming with the decision. Such order must include the continuance or termination of any order relating to a stay or the posting of bond.
- D. Precedent.** Decisions of the Supreme Court are binding precedent for the Tribe.
- E. Dissenting and Concurring Opinions.** Any member of the panel who disagrees with the majority's decision or reasoning may issue a written dissent or concurrence.
- F. Distribution of Decision.** The Administrator must transmit by first class mail a copy of the decision to each interested party at their address of record within five (5) calendar days of issuance.
- G. Public Posting of Decisions.** The Administrator shall post all decisions of the Supreme Court on the Tribal Court web site within 5 days of the entry of the decision. The Administrator shall maintain a volume of all written Supreme Court decisions which will be available to any Tribal member and the general public. The decisions will be indexed by year and volume number.

Section 16: Remand.

In the event of an order of remand by the Supreme Court, the Administrator must transmit the decision and order of the Supreme Court to the Tribal Court within fourteen (14) calendar days of the disposition of all post decision motions, if any. Upon such transmittal, jurisdiction over the case is returned to the Tribal Court.

Section 17. Court Administration.

A. Standards for Computing Time Requirements. In computing the period of time prescribed by these *Rules* or by any order of the Supreme 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.

B. Requirements of Service.

1. **What Must Be Served?** Any paper, of whatever kind, that is filed must be served on each other party. A certificate of that service must be filed with the Court.
2. **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.
3. **Person Served.** Service must be made upon the party's attorney if any. If the party is not represented, service must be made upon the party.

C. Practice before the Supreme Court. Any person who is admitted to practice before the Tribal Court is thereby admitted to practice before the Supreme Court.

D. Rules of Court. The Justices of the Supreme Court may make or amend such Rules as are deemed appropriate by them for the proper and efficient appellate functioning of the Supreme Court.

Section 18. Short Title, Effective Date and Citation Format.

A. Short Title. These *Rules* are titled “Rules of Appellate Procedure”.

B. Effective Date. These *Rules* become effective when adopted by the Chief Judge of the Tribal Court for the Nottawaseppi Huron Band of the Potawatomi.

C. Citation. The official abbreviated citation form to these *Rules* is: NHBPCR 9.

CERTIFICATION OF ADOPTION

The Chief Judge of the Tribal Court adopts the above *Chapter of Court Rules* on November 4, 2010.

Hon. Michael Petoskey, Chief Judge

Date: 11-04-2010

Melissa L. Pope

Date: 8.25.2011

Hon. Melissa L. Pope, Chief Judge

JUDICIAL HISTORY

The *Court Rules of Appellate Procedure* were adopted by the Chief Judge on November 4, 2010. Amendments to these *Rules* were adopted by the Chief Judge Melissa L. Pope on August 25, 2011.