

Ho-Chunk Nation Rules of Appellate Procedure

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Rule 1. Scope of Rules

- a. **These rules, adopted by the Supreme Court of the Ho-Chunk Nation, govern the appeal process. Where necessary to promote fairness and justice to parties, the Supreme Court may look to the Ho-Chunk customs and traditions and the *Federal Rules of Appellate Procedure* for guidance in applying and supplementing these rules.**
- b. **These rules shall be liberally construed to secure a just and speedy determination of every appeal.**
- c. **These rules should be read and applied in conjunction with the *Ho-Chunk Nation Rules of Judicial Ethics* and *Ho-Chunk Nation Rules of Professional Responsibility*.**

Rule 2. Composition of the Supreme Court

- a. **The Supreme Court of the Ho-Chunk Nation shall consist of the Chief Justice and two (2) Associate Justices elected in accordance with the CONSTITUTION OF THE HO-CHUNK NATION.**
- b. **When an elected Justice is not available to hear an appeal, a substitute Justice shall be appointed in accordance with the CONSTITUTION OF THE HO-CHUNK NATION, ART. VII, § 13. Otherwise, all appeals shall be heard by a full Court.**

Rule 3. Conflicts of Interest

Any Justice with a direct personal or financial interest in the appeal before the Supreme Court shall recuse. All such conflicts or potential conflicts of interest shall be disclosed to all parties in the appeal at the earliest possible date and for the record. See also: *HCN Rules of Judicial Ethics*.

Rule 4. Recusal

A Justice may recuse him/herself or a party may request recusal of a Justice by Motion to the Chief Justice of the Supreme Court with Notice given to all parties. Notice shall also be given to the Legislature of any vacancy due to recusal along with a request to appoint a Justice pro tempore to fill such vacancy.

Rule 5. Traditional Court

At the request of a party or on its own Motion, the Supreme Court may consult with and be advised by the Elders of the Traditional Court for guidance on the customs and traditions of the Nation.

Rule 6. Jurisdiction and Scope of Review

The Supreme Court shall have the power to interpret the CONSTITUTION OF THE HO-CHUNK NATION and to make conclusions of law. The Chief Justice of the Supreme Court shall, when hearing a case, have the authority to compel the production of documents where such is deemed necessary to rendition of the Court's opinion. There shall not be a new trial in the Supreme Court. The Supreme Court may review both the factual findings and conclusion of law of the Trial Court.

Rule 7. Right of Appeal

- a. All parties have the right to appeal a final judgment or order of the Trial Court. Any party to a civil action, who is dissatisfied with the judgment or verdict, may appeal to the Supreme Court.
- b. Any party who is aggrieved by a final judgment or order of the Trial Court may appeal in the manner prescribed by this Rule.
 - (1) Such party shall within sixty (60) calendar days after the day such judgment or order was rendered, file with the Supreme Court Clerk, a *Notice of Appeal* from such judgment or order, together with a filing fee as stated in the appendix or schedule of fees.
 - (2) The party taking the appeal shall be referred to as the appellant; all other parties shall be referred to as the appellees.
- c. In any case in which an appeal is reflected as required by this Rule, the appellant may petition the Supreme Court for an order staying the judgment or order. A stay shall be granted in all cases in which it is requested unless manifest injustice would result therefrom. The Supreme Court may render a stay conditioned upon execution of a bond to guarantee performance of the judgment or order when deemed necessary.
- d. 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 Ho-Chunk Nation Trial Court. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the Trial Court and irrevocably appoints the Clerk of the Trial Court as his/her agent upon whom any papers affecting his/her liability on the bond or undertaking may be served. It is the responsibility of a surety to provide the Clerk of the Trial Court

with his/her proper and current address, and a supply of stamped, self-addressed envelopes, if he/she wishes copies of any papers served upon the Clerk as his/her agent to be mailed to him/her. His/her liability may be enforced by a motion in the Trial Court without the necessity of an independent action. The *Motion* and such *Notice of the Motion* that the Trial Court shall prescribe may be served on the Clerk of the Trial Court who shall forthwith mail copies to the sureties if their addresses are known.

- e. In the event the appeal is denied, the Supreme Court shall state the reasons for the refusal within thirty (30) calendar days of the receipt of the *Notice of Appeal*.

Rule 8. Appeal by Permission

An appeal from an interlocutory order maybe sought by filing a petition for permission to appeal with the Supreme Court Clerk within ten (10) calendar days after the entry of such order with proof of service on all other parties to the action. The petition shall contain a statement of the facts necessary to an understanding of the controlling question of law determined by the order of the Trial Court; a statement of the question itself; and a statement of the reasons why 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 or have attached a copy of the order relating thereto. Within ten (10) calendar days after service of the petition, an adverse party may file an answer in opposition.

Rule 9. Filing Fees and Costs

- a. The filing fee for an appeal shall be in accordance with the schedule of fees.
- b. The Chief Justice of the Supreme Court may waive the filing fee upon *Motion For A Fee Waiver* by the Appellant where the Chief Justice is satisfied the Appellant lacks the means to pay the filing fee. The *Motion* must include an affidavit demonstrating inability to pay and must accompany the *Notice of Appeal*.
- c. A cash deposit or bond in an amount equal to the amount of any judgment, plus costs assessed by the Trial Court, or a *Motion for Waiver* of this requirement, must accompany the *Notice of Appeal*. The deposit/bond requirement may be waived only when in the judgment of the Supreme Court such deposit/bond is not in the interest of justice and such waiver does not unnecessarily harm the judgment holder. The *Motion for Waiver* of the deposit/bond requirement must be requested with Notice to all parties. If the *Motion for Waiver* is denied, the deposit/bond must be submitted

within ten (10) calendar days of the denial. The appeal will be dismissed if the deposit/bond is not paid or waived.

Rule 10. Computation of Time

- a. The computation of any time period in these Rules shall be in calendar days.
- b. When the interests of justice require an expedited appeal, the Supreme Court shall notify all parties promptly of the reduced time limit.
- c. There shall be no extension of time limits contained in these rules unless the moving party demonstrates unforeseen or emergency circumstances.

Rule 11. Time for Filing and Service of Notice of Appeal

- a. A written *Notice of Appeal* from a decision of the Trial Court must be filed with the Clerk of Court within sixty (60) calendar days of the date of the final judgment or order. The *Notice of Appeal* shall identify the party (ies) making the appeal by name and address, and shall identify the final judgment or order being appealed by name and case number.
- b. The party filing the appeal must file a short statement of the reason or grounds for the appeal. The statement should include complete procedural and factual summary of the proceedings below.
- c. Copies of the *Notice of Appeal* shall be served upon all parties to the action by the Appellant. *Proof of Service* shall be promptly filed with the Court.
- d. Upon receipt of the *Notice of Appeal*, the Clerk of the Trial Court shall prepare, certify and file with the Supreme Court all papers, electronic records and exhibits comprising the record of the case appealed. A separate docket shall be maintained for the Supreme Court in which there shall be recorded each stage of the proceedings on each case appealed.

Rule 12. Time for Filing Briefs and Memoranda

Within thirty (30) calendar days of filing the *Notice of Appeal* or within such longer time as the Supreme Court shall allow, the appellant shall file a written brief. An original and three (3) copies shall be filed with the Supreme Court Clerk and one (1) additional copy shall be served upon or mailed to each other party or his/her counselor or his/her attorney. The appellees shall have thirty (30) calendar days after receipt of the brief within which to file a

Reply Brief. Appellants *Response Brief* may be filed within ten (10) calendar days of the receipt of the appellee's *Reply*.

Rule 13. Form of Briefs

a. Briefs shall include the following:

- (1) A cover page stating the name of the case; the numbers assigned to the case by the Trial Court and the Supreme Court; the name, address and telephone number of the party filing the document; and the name, address and telephone number of counsel;**
- (2) A statement of the case which indicates the nature of the case, the disposition by the Trial Court and the legal issues presented to the Supreme Court;**
- (3) Separately identified legal argument for each issue presented to the Supreme Court;**
- (4) A conclusion stating precisely the relief sought;**
- (5) All pages shall be 8 1/2" by 11" double spaced and consecutively numbered;**
- (6) All laws, rules, regulations and cases cited in the document shall be attached as an addendum unless previously provided in the appeal;**
- (7) No other attachments or addenda shall be permitted and will be disregarded by the Supreme Court.**
- (8) All briefs shall not exceed twenty (20) pages in length, excluding addendum, and *Response Briefs* shall not exceed six (6) pages in length, excluding addendum.**

- b. An appeal may be dismissed if the Appellant does not file the written Brief, reply or response or if the Appellant does not serve all parties.**

Rule 14. Record on Appeal

The papers filed in the Trial Court, the exhibits and the transcript of the proceedings shall constitute the entire record on appeal in all cases. The Clerk of the Trial Court shall certify that the appellate record constitutes the complete and entire file. The *Certification of the Record* shall be served on all of the parties.

Rule 15. Oral Argument

- a. At the discretion of the Supreme Court, an oral argument may be ordered in the Appeal. The Supreme Court shall decide the order of presentation, the length of time each party is permitted for their presentation, the issues to be addressed in oral argument, and such other matters as may be necessary. The order providing *Notice of Oral Argument* shall include all such matters and shall be served on all parties at least ten (10) calendar days prior to the date set for**

argument, except for election challenges pursuant to *Ho-Chunk Nation Rules of Civil Procedure*, Section IX.

- b. The Supreme Court shall decide all cases upon the briefs, memoranda and statements filed plus the oral argument, if heard.

Rule 16. Decisions of the Supreme Court

- a. All decisions of the Supreme Court shall be in writing and accompanied by an opinion stating the legal issues and the basis for the decision.
- b. Decisions of the Supreme Court shall be issued no later than sixty (60) calendar days after the conclusion of oral argument. If no oral argument is held, the expiration of time to file a *Reply Brief or Response Brief*.
- c. The time for issuing a decision may be extended provided all parties are notified of the extension. The *Notice of Extension* will include the cause for and length of such extension.
- d. If no decision is issued by the Supreme Court within the time designated, the Supreme Court Clerk shall contact the Chief Justice of the Supreme Court to determine the status of the decision if requested by any party. The Clerk of Court shall report the status of the decision in writing to all parties.

Rule 17. Entry and Form of Judgment

- a. The decision of the Supreme Court shall be by a majority vote. The Supreme Court may dismiss an appeal; make conclusions of law, which reverse and remand the final judgment or order of the Trial Court, in whole or in part; or affirm the final judgment or order of the Trial Court.
- b. The Supreme Court Clerk shall file and enter the final decision of the Supreme Court.
- c. The Supreme Court Clerk shall serve all parties with a copy of the stamped decision as entered.
- d. Any decision of the Supreme Court shall be final according to the CONSTITUTION OF THE HO-CHUNK NATION, ART. VIII, § 7(c).

Rule 18. Interest on Judgments

If a judgment for money is dismissed on appeal, affirmed or upheld on remand, whatever interest is allowed by Legislative enactment or other Court Rule shall be computed from the date the first judgment was entered

by the Trial Court. Any interest accrued shall be awarded to the prevailing party.

Rule 19. Frivolous Appeals

If an appeal is determined to be frivolous by the Supreme Court, an appeal shall be dismissed and costs and fees for counsel may be awarded to the Appellee(s). The Supreme Court may also assess expenses incurred by the Supreme Court to the Appellant. If an Appellant has been granted a waiver of fees, the Supreme Court may remand to the Trial Court for the imposition of a duty for community service by the Appellant.

Rule 20. Appeals to General Council

Any party may request a review by the General Council of a decision of the Supreme Court, which interpret actions of the Legislature. The request shall be made according to the procedures set forth by the General Council. The General Council does not retain the power to review and reverse decisions of the Supreme Court which interpret the CONSTITUTION OF THE HO-CHUNK NATION.

Rules of Appellate Procedure: Adopted 4/13/96. Restated and Revised 11/13/04 by the Ho-Chunk Nation Supreme Court

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