

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 the Court's 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 conclusions 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 aggrieved by a final judgment or order of the Trial Court, 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 file with the Clerk of Court a *Notice of Appeal* from such judgment or order, together with a filing fee as stated in appendix or schedule of fees, within sixty (60) calendar days after the day such judgment or order was rendered.
 - (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 brought on appeal, 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 on *Motion* in the Trial Court without the necessity of an independent action. The *Motion* and such Notice of the *Motion* 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 may be sought by filing a Petition for *Permission to Appeal* with the Clerk of Court 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 annexed 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. When counting days, computation begins on the day after the initial act, such as a filing, based on the stamped Court filing date. If the allotted time period is less than seven (7) calendar days, then weekend days and legal holidays are not counted. If the time period concludes on a weekend day, a legal holiday, or a day when the Court is closed without advance notice, then the time period shall conclude on the next working day.
- 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 final 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/parties making the appeal by name and address, and shall identify the final judgment or order being appealed by name and case number. Extension of the sixty (60) day limit may only occur when there is a change of judicial official assignment.
- b. The *Notice of Appeal* must include a short statement of the reason or grounds for the appeal. The party filing the appeal must articulate exactly how the lower court erred as a matter of law when considering the facts offered to that court. The statement should include references and/or citations to the applicable law.
- c. The party filing the appeal shall provide the *Notice of Appeal*, and a copy of the final judgment or order, along with three (3) additional copies of each for the Court. The Appellant shall serve copies of the *Notice of Appeal* upon all parties to the action. *Proof of Service* shall be promptly filed with the Court.

- d. Upon receipt of the *Notice of Appeal* and *Proof of Service*, the Clerk of Court shall prepare, certify and file with the Supreme Court all papers comprising the record of the case appealed. A separate docket shall be maintained for the Supreme Court in which shall be recorded each state 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 attorney. The Appellees shall have a thirty (30) calendar days from the file stamp of Appellant's brief within which to file a *Response Brief*. The *Reply Brief* may be filed by the Appellant within ten (10) calendar days of the file stamp of the Appellee's *Response Brief*. Parties should confer with the Supreme Court Clerk of Court if they need confirmation of filing dates.

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) A 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 ½" 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 (20) pages in length, excluding addenda, and *Reply Briefs* shall not exceed six (6) pages in length, excluding addenda.

- b. An appeal may be dismissed if the Appellant does not file the written

brief, reply or respond within the allotted time period. If the Appellant does not serve all the parties, the appeal will be deemed deficient and not proceed until the parties are served. If the Appellee does not file a *Response Brief*, the Court may convene a Show Cause Hearing to allow the Appellee to show that unforeseen or emergency circumstances prevented the Appellee from filing a timely *Response Brief*. Absent a showing of good cause, the Court may decide the matter without holding oral argument, based upon the record.

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 Court for the Trial Court shall certify that the record consists of 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 giving *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. Opinions 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 or oral argument, or after the expiration of time to file a *Reply Brief* or *Response Brief* if no oral argument is held.
- c. The time for issuing a decision and opinion 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 and opinion 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 and opinion if requested by any party. The Clerk of Court shall report the status of the decision and opinion in writing to all parties.

Rule 17. Entry and Form of Judgment

- a. The decision and opinion of the Supreme Court shall be by a majority vote. The Supreme Court may dismiss an appeal, make conclusions of law, 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 and opinion of the Supreme Court.
- c. The Supreme Court Clerk shall serve all parties with a copy of the stamped decision and opinion 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, or 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, the appeal shall be dismissed and costs and fees for counsel may be awarded to 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 interprets actions of the Legislature. The request shall be made according to 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.

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Adopted this 25th day of May 1997.