

TABLE OF CONTENTS

<u>Section</u>	<u>Name</u>
1	Scope and applicability of Rules
2	Suspension and Revision of Rules
3	Discretionary Authority

CHAPTER ONE

APPEALS FROM JUDGEMENTS AND ORDERS OF THE TRIBAL COURT

101	Appeal As Of Right – How Taken
102	Appeal As Of Right – When Taken
103	Interlocutory Appeals in Civil Actions
104	Interlocutory Appeals In Criminal Actions
105	Appeals by the Tribe in Criminal Actions
106	Bond For Costs On Appeal In Civil Cases
107	Stay Or Injunction Pending Appeal
108	Release in Criminal Cases
109	The Record on Appeal
110	Transmission of Record
111	Docketing The Appeal; Filing The Record

CHAPTER TWO

EXTRAORDINARY WRITS

201	Mandamus or Prohibition Directed To a Judge or Judges
202	Denial Or Order Directing Answer
203	Other Extraordinary Writs
204	Form of Papers, Number of Copies

CHAPTER THREE

HABEAUS CORPUS; PROCEEDINGS IN FORMA PAUPERIS

SUBCHAPTER A
HABEAUS CORPUS

301	Habeas Corpus Proceedings
302	Transfer Of Custody Pending Review
303	Detention Or Release Pending Review Of Decision Failing To Release
304	Detention Or Release Pending Review Of Decision Ordering Release.
305	Modification of Initial Order Respecting Custody

Section

Name

SUBCHAPTER B
PROCEEDINGS IN FORMA PAUPERIS

- 311 Leave From Tribal District Court to Proceed to Supreme Court
- 312 Special Rule For Parties Previously Granted Permission To Proceed
In Forma Pauperis
- 313 Remedy For Denial Of Motion By Tribal District Court

CHAPTER FOUR
GENERAL PROVISIONS

- 401 Filing and Service
- 402 Service of All Papers Required
- 403 Manner Of Service
- 404 Proof Of Service
- 405 Computation of Time
- 406 Enlargement Of Time
- 407 Additional Time after Service By Mail

SUBCHAPTER A
MOTIONS AND BRIEFS

- 411 Content, Response, and Reply to Motiions
- 412 Determination of Motions for Procedural Orders
- 413 Power of a Single Judge to Entertain Motions
- 414 Form of Papers; Number of Copies
- 415 Brief of Appellant
- 416 Brief of Appellee
- 417 Reply Brief
- 418 References in Briefs to Parties
- 419 References in Briefs to the Record and Statutes
- 420 Length of Briefs
- 421 Briefs in Cases Involving Cross Appeals
- 422 Briefs in Cases Involving Multiple Appellants or Appellees
- 423 Citation of Supplemental Authorities
- 424 Brief of an Amicus Curiae
- 425 Appendix to the Briefs
- 426 Time for Filing and Service of Briefs
- 427 Number of Copies to Be Filed and Served
- 428 Consequence of Failure to File Briefs
- 429 Form of Briefs, the Appendix and Other Papers
- 430 Form of Other Papers

Section

Name

SUBCHAPTER B
ARGUMENT

441	Prehearing Conference
442	Oral Argument in General
443	Notice of Argument; Postponement
444	Order and Content of Argument
445	Cross and Separate Appeals
446	Non-Appearance of Parties
447	Submission on the Briefs
448	Use of Physical Exhibits at Argument; Removal
449	When Hearing or Rehearing in Banc Will Be Ordered
450	Suggestion of a Party for Hearing or Rehearing in Banc
451	Time for Suggestion of a Party for Hearing or Rehearing in Banc; Suggestion does not Stay Mandate

SUBCHAPTER C
JUDGMENT

461	Entry of Judgment
462	Interest on Judgments
463	Damages for Delay
464	To Whom Costs Allowed
465	Costs for Or Against the Tribe
466	Cost of Briefs, Appendices, and Copies of Records
467	Bill Of Costs; Objections; Costs inserted In Mandate Or Added Later
468	Costs On Appeal Taxable in the Tribal District Court
469	Petition For Rehearing
470	Issuance of Mandate
471	Voluntary Dismissal
472	Substitution of Parties
473	Cases Involving Constitutional or Indian Civil Rights Acts Questions Where the Tribe is Not a Party

APPENDIX Rules Relating to Attorneys and Lay Advocates

OATH OF ATTORNEY

I do solemnly swear:

I will support the Constitution of the United States, and the Constitution of the Tribe. I will maintain the respect due to Courts of Justice and judicial officers.

I will be bound by the Code of Professional Responsibility of the American Bar Association and will conduct myself in compliance therewith at all times.

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law.

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law.

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with a client's business except from the client or with the client's knowledge and approval.

I will abstain from all offensive personalities, and advance no facts prejudicial to the honor or reputation of a party or a witness, unless required by the justice of the cause with which I am charged.

I will never reject, for any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice. So help me God.

Section 1. Scope and Applicability of Rules

(a) **Scope.** This Title governs the procedure in appeals to the Supreme Court from the Tribal District Court, and in applications for writs or other relief which the Supreme Court or Justice thereof is competent to give. When this Title provides for the making of a motion or application shall be in accordance with the practice of that Court.

(b) **“Tribal Court” Defined.** Unless otherwise specifically stated or required by the context, the term “Tribal Court” as used in this Title shall be deemed to refer to both the Tribal District Court, and any division, Judge, or Magistrate thereof.

(c) **Jurisdiction Not Affected.** This Title shall not be construed to extend or limit the jurisdiction of the Supreme Court as may be established by other Tribal laws, and all provisions of this Title shall be subject to the Constitution, of the Tribe.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 2. Suspension and Revision of Rules

(a) In the interest of expediting decision(s), the furtherance of the administration of justice, or for good cause shown, the Supreme Court may, except as provided in Section 406, suspend the requirements of provisions of any Section of this Title in a particular case on application of a party or on its own motion, any may order proceedings in accordance with its direction.

(b) In the interest of expediting decision(s), the furtherance of the administration of justice, and the efficient functioning of the Court, the Supreme Court is authorized to amend any provision of this Title by Court Rule duly adopted and filed in the Supreme Court Clerk’s Office and the Tribal Secretary’s Office. Any Rule of the Court which would have the effect of amending this Title shall so state in its title, and shall not be effective until it has been filed in the Tribal Secretary’s Office for a period of sixty (60) days, within which time the Tribal Legislative Body may veto said rule. If not vetoed, such Rules shall be placed in the Court’s law library and shall take effect of the sixty-first day after filing or on such later date as may be provided by the Court.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 3. Discretionary Authority

Where no procedure is provided in this Title, other statutes

of the Tribe, or the Supreme Court rules, the Supreme Court may proceed to exercise its functions in any lawful manner.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

TITLE 2

APPELLATE PROCEDURE

§ 101

CHAPTER ONE

APPEALS FROM JUDGMENTS AND ORDERS OF THE TRIBAL COURT

Section 101. Appeals As Of Right – Now Taken

(a) **Filing The Motion of Appeal.** An appeal permitted by the laws of the Tribe as of right from the Tribal District Court to the Supreme Court of the Tribe shall be taken by filing a notice of appeal with the Clerk of the Tribal District Court within the time allowed by Section 102, or by the statute applicable in the specific case. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is grounds for such action as the Supreme Court deems appropriate, which may include dismissal of the appeal.

(b) **Joint or Consolidate Appeals.** If two or more persons are entitled to appeal from a judgment or order of Tribal District Court, and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the Supreme Court upon its own motion or upon motion of a party, or by stipulation of the parties to several appeals.

(d) **Service of the Notice of Appeal.** The Clerk of The Tribal District Court shall serve notice of the filing of an appeal by mailing a copy of the notice of appeal, which copy shall be provided by appealing party, to counsel of record of each party other than the appellant, and to the party at his last known address; and shall forthwith certify and deliver to the Clerk of the Supreme Court, for filing in the Supreme Court, a certified copy of notice appeal. The Clerk of the Supreme Court shall enter such filing upon the docket of the Supreme Court. When an appeal is taken by a defendant in a criminal case, the Clerk of the Tribal District Court shall also serve a copy of the notice of appeal upon the appellant, either by personal service or by mail addressed to him. The Clerk of the Tribal District Court shall note on each copy served the date on which the notice of appeal was file. Failure of the Clerk to serve notice shall not affect the validity of the appeal. Service shall be sufficient notwithstanding the death of a party of his counsel. The Clerk shall note in the docket the name of the parties to whom he mails copies, with the date of the mailing.

(e) **Payment of Fees.** Upon the filing of any separate or joint notice of appeal from the Tribal District Court, the appellant shall pay to the Clerk of the Tribal District Court, the appellant shall pay to the Clerk of the Tribal District Court, for deposit in the

Court Fund, the filing fee which shall be in such amount as may be determined by rule of the Supreme Court, except that payment of a filing fee shall not be required for an appeal by the Tribe, its officers, or agents when acting in their official capacity. If a private party joins in an appeal by the Tribe, tribal officers, or tribal agents, the private party shall pay the required filing fee. The Supreme Court, or a Justice thereof, may waive payment of the filing fee in criminal cases when the defendant, by affidavit or otherwise, establishes that he is without sufficient funds or resources with which to pay the required fees.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 102. Appeal As Of Right – When Taken

(a) Appeals In Civil Cases.

(1) In a civil case in which an appeal is permitted by law as of right from the Tribal District Court to the Supreme Court, the notice of appeal required by Section 101 shall be filed with the Clerk of the Tribal District Court within the following time periods after entry of the judgment or order appealed from, if a time certain is not otherwise provided by statute:

(i) From an order or judgment in an action for forcible entry or forcible or unlawful detainer. Ten (10) Days.

(ii) From an order, decree, or judgment of the Juvenile Division of the District Court, (except an order, decree, or judgment which terminates parental rights). Thirty (30) Days.

(iii) From an order, decree, or judgment of the Juvenile Division of the District Court which terminates parental rights. Ninety (90) Days.

(iv) From a final order, commitment, judgment or other appealable order in civil case not hereinabove provided for. Twenty (20) Days.

(2) Except as provided in subsection (a) (4) of this Section, a notice of Appeal filed after the announcement of a decision or order but before the formal entry of the judgment or order shall be treated as filed after such entry and on the day thereof.

(3) If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this Section, whichever period last expires.

(4) If a timely motion under the Civil Procedure Act is filed in the Tribal District Court by any party.

(i) for judgment notwithstanding the verdict, or

(ii) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted, or

(iii) to alter or amend the judgment or for a new trial,

then, and in that event, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above. No additional fees shall be required for such filing.

(5) The Tribal District Court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal in a civil action upon motion filed not later than 30 days after the expiration of the prescribed time for the filing of a notice of appeal may be ex parte unless the Tribal District Court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with the Civil Procedure Act. No such extension shall exceed 30 days past such prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

(6) A judgment or order is entered within the meaning of this Section when it is entered in compliance with the Civil Procedure Act.

(b) **Appeals In Criminal Cases.** In a criminal case, the notice of appeal by a defendant shall be filed in the Tribal District Court with 10 days after the entry of the final judgment and sentence or other order appealed from. A notice of appeal filed after the announcement of a decision, sentence, or order, but before formal entry and on the day thereof. If a timely motion in arrest of judgment, or a motion for a new trial on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within 10 days after the entry of an order denying the motion. A motion for a new trial based on the ground of newly discovered evidence will be similarly extend the time for appeal from a judgment or conviction if the motion is made before or within 10 days after entry of judgment. When an appeal by the Tribe is authorized by statute, the notice of appeal shall be filed by the Tribe in Tribal District Court within 10 days after the entry of the judgment of order appealed from unless a different time is specifically set by the statute authorizing the appeal. A judgment or order is entered within the meaning of this subdivision when it is entered in the criminal docket pursuant to the Criminal Procedure Act. Upon a showing of excusable neglect Tribal District Court may, before or after the time has expired, with or without motion

and notice, extend the time for filing a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this subdivision of this Section.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 103. Interlocutory Appeals in Civil Actions

(a) **interlocutory Appeals as of Right.** A person may appeal to the Supreme Court by right any order make appealable by law, and the following judgments or orders of the Tribal District Court:

- (1) An order that grants or refuses a new trial or vacates or refuses to vacate a judgment on any grounds including that of newly discovered evidence or the impossibility of making a record.
- (2) An order that discharges, vacates, or modifies or refuses to discharge, vacate, or modify an attachment.
- (3) An order that denies, grants, or modifies a temporary injunction, or discharges vacates, or refuses to discharge, vacate, or modify a temporary injunction.
- (4) An order that discharges, vacates, or modifies, or refuses to discharge, vacate, or modify a provisional remedy which affects the substantial rights of the parties.
- (5) An order that appoints a receiver, except where the receiver was appointed at an ex parte hearing where a full hearing will be held upon application therefore, refuses to appoint a receiver, or vacates or refuses to vacate the appointment of a receiver, or refuses or grants orders to wind up receiverships or to take steps to accomplish the purposes thereof, such a directing sales or other disposals of property.
- (6) An order that directs the payment of money pendente lite, except where granted at an ex parte hearing where a full hearing will be held upon application therefore, refuse to direct the payment of money pendente lite, or vacates or refuses to vacate an order directing the payment of money pendente lite.
- (7) An order that certifies or refuses to certify an action to be maintained as a class action.
- (8) An order with regard to probate matters:
 - (i) granting, or refusing, or revoking letters testamentary or of administration, or of guardianship, or conservatorship, or
 - (ii) admitting, or refusing, or revoking letters testamentary or of administration, or of guardianship, or conservatorship, or

(iii) against or in favor of the validity of a will or revoking the probate thereof, or

(iv) against or in favor setting apart property, or making an allowance for a widow or child, or

(v) against or in favor of directing the partition, sale or conveyance of any interest in real property, or

(vi) settling an account of an executor, or administrator or guardian, or

(vii) refusing, allowing or direct the distribution or partition of an estate, or any part thereof or the payment of a debt, claim, legacy or distributive share, or

(ix) from any other judgment, decree, or order of the Court in a probate case, or of the Judge thereof, affecting a substantial right.

(9) Any interlocutory order or decree made immediately appealable by Tribal statute.

(b) Time for filing Interlocutory Appeals as of Right and Special Rules.

(1) The party aggrieved thereby may appeal the order to the Supreme Court without awaiting the final determination of the action, by filing the notice of appeal with the District Court Clerk within twenty (20) days after the order is issued.

(2) If the order discharges or modifies an attachment or preliminary injunction and it becomes operative, the undertaking given upon the allowance of an attachment or preliminary injunction shall stay the enforcement of said order shall remain in full force and effect until final order of discharge after appeal shall take effect.

(3) If the order grants a preliminary injunction, the party seeking to appeal, if he desires to stay said order, shall give within ten (10) days after the order is rendered, an undertaking, with sufficient surety, in each sum as the Court deems proper, to secure the party procuring the injunction the damages he may sustain, including reasonable attorney's fees, if it is finally decided that the preliminary injunction was properly granted. The undertaking shall stay the effect of the preliminary injunction pending appeal.

(4) Where a receiver shall be or has been appointed upon, the appellant filing an appeal bond, with sufficient sureties, in such sum as may have been required of the receiver by the Court or a Judge thereof,

conditioned for the due prosecution of the appeal and the payment of all costs, or damages that may accrue to the Tribe or any officer or person by reason thereof, the authority of the receiver shall be suspended until the final determination of the appeal, and if the receiver has taken possession of any property, real or personal, it shall be returned and surrendered to the appellant upon the filing and approval of the bonds.

(c) **Interlocutory Appeals by Permission.** When a Judge, in making an order or decree in a civil action not otherwise appealable under this Section or another Tribal statute, shall be of the opinion that such order involves a controlling question of law as to which there is substantial grounds for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Supreme Court may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made within ten (10) days after the entry of the order, provided, however, that application for an appeal hereunder shall not stay proceedings in the Tribal District Court, unless the Judge or the Supreme Court, or a Justice of the Supreme Court shall order.

(d) **Petition for Permission to Appeal.** An appeal from an interlocutory order containing the statement prescribed by Section 103(c) may be sought by filing a petition for permission to appeal with the Clerk of the Supreme Court within ten (10) days after entry of the order as amended.

(1) The petition shall contain a statement of the facts necessary to the facts necessary to an understanding of the controlling question of law determined by the order of the District Court; a statement of the question itself; and a statement of the reasons why a substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the termination of litigation. The petition shall include or have annexed thereto a copy of the order from which the appeal is sought and any findings of fact, conclusions of law and opinion relating thereto. Within seven (7) days after service of the petition, an adverse party may file an answer in opposition. The application and answer shall be submitted without oral argument unless otherwise ordered.

(2) All papers may be typewritten. Ten copies shall be filed the original, but the Court may require that additional copies be furnished.

(3) Within ten (10) days after the entry of an order granting permission to appeal, the appellant shall:

(i) pay to the Clerk of the District Court the fees established by rule of the Supreme Court for the filing of appeals by permission.

(ii) file a bond for costs if required by the Supreme Court.

The Clerk of the Tribal District Court shall notify the Clerk of the Supreme Court of the payment of the fees. Upon receipt of such notice The Clerk of the Supreme Court shall enter the appeal upon the docket. The record shall be transmitted and filed as in cases of direct appeal by Right. A notice of appeal need not be filed.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 104. Interlocutory Appeals in Criminal Actions

(a) **Appeal by the Defendant.** An interlocutory appeal to the Supreme Court may not be taken by the defendant except by leave of the Court in the same manner as the taking of interlocutory appeals by permission in civil actions.

(b) **Appeal by the Tribe.** An appeal by the Tribe to the Supreme Court may be taken from a decision or order of the Tribal Court prior to the beginning of trial suppressing or excluding evidence, or requiring the return of seized property in a criminal proceeding, or dismissing the criminal complaint, and, after the verdict is returned, upon an order granting a new trial, or an order refusing to revoke probation or parole, or an order reducing a valid sentence previously imposed.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

(a) An appeal to the Supreme Court may be taken by the Tribe from the final judgment in a criminal action in the following cases:

- (1) upon judgment for the defendant quashing or setting aside the criminal complaint prior to trial.
- (2) Upon an order of the Court arresting the judgment.
- (3) Upon a question of law reserved by the Tribe,

provided, that the criminal complaint shall be reinstated and the case shall proceed if the Tribe's appeal is upheld under subsection (a)(1) of this Section, the judgment and sentence arrested shall be entered and enforced if the Tribe's appeal is upheld under subsection (a)(2) of this Section, and a defendant may not be tried again for the same offense if the Tribe's appeal is upheld under subsection (a)(3) of this Section.

(b) Pending the prosecution and determination of the appeal in the foregoing instances, the defendant shall be released in accordance with the Section 108 of this Act.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 106. Bond For Costs On Appeal In Civil Cases

The Tribal District Court may require an appellant to file a bond or provide other security in such form and amount as it finds necessary to ensure payment of costs on appeal in a civil case. The provisions of Section 107(b) of this Act applies to a surety upon a bond given pursuant to this Section.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 107. Stay or Injunction Pending Appeal

(a) **Procedure.** Application for a stay of the judgment or order of Tribal District Court pending appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the Tribal District Court. A motion for such relief may be made to the Supreme Court, or to a Justice thereof, but the motion shall show that application to the Tribal District Court for the relief sought is not practicable, or that the Tribal District Court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the Tribal District Court for its action. The motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant to the motion. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the Clerk of the Supreme Court, and normally will be considered by the entire court, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single Justice of the Court pending review by the entire Court. In cases where relief has not been previously requested in the Tribal District Court, the Supreme Court may, if it determines such action to be appropriate under the circumstances, remand the motion to the Tribal District Court for its initial determination.

(b) **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 Tribal District Court. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submit himself to the jurisdiction of the Tribal District Court and irrevocably appoints the Clerk of the Tribal District Court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. It is the responsibility of the surety to provide the Clerk of the Tribal District Court with his proper and current address, and a supply of stamped, self-addressed envelopes, if he wishes copies of any papers served upon the Clerk as his agent to be mailed to him. His liability may be enforced on motion in the Tribal District Court without the necessity of an independent action. The motion and such notice of the motion as the Tribal District Court shall prescribe may be served on the Clerk of the Tribal District Court who shall forthwith mail copies to the sureties if their addresses are known.

(c) **Criminal Cases.** Stays in criminal cases shall be had in accordance with the provisions of Criminal Procedure Act.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 108. Release in Criminal Cases

(a) **Appeal of Order Denying Release Pending Appeal.** An appeal authorized by law from an order refusing or imposing condition of release pending appeal of the underlying judgment of conviction and sentence shall be determined promptly. Upon entry of an order refusing or imposing conditions of release pending appeal of the underlying judgment of conviction and sentence, the Tribal District Court shall state in writing the reasons for the action taken. The appeal in such matters shall be heard without the necessity of briefs after reasonable notice to the appellee upon such papers, affidavits, and portions of the record as the parties shall present. The Supreme Court, or a Justice thereof pending action by the entire Court may order the release of the appellant pending the appeal.

(b) **Procedure.** Application for release after a judgment of conviction shall be made in the first instance in the Tribal District Court. If the Tribal District Court refuses release pending appeal, or imposes conditions of release the Court shall state in writing the reasons for the action taken. Thereafter, if an appeal is pending, a motion for release, or for modification of the conditions of release, pending review may be made to the Supreme Court or to a designated Justice thereof. The motion shall be determined promptly upon such papers, affidavits, and portions of the record as the parties shall present and after reasonable notice to the appellee. The Supreme Court or a Justice thereof pending action by the entire Court may order the release of the appellant pending disposition of the motion.

(c) **Criteria for Release.** The decision as to release pending appeal shall be made in accordance with the criteria for bail established by tribal law in the Criminal Procedure Act or otherwise. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 109. The Record on Appeal

(a) **Composition of the Record on Appeal.** The original papers and exhibits filed in the Tribal District Court, the transcript or tape recording of the proceeding, if any, and a certified copy of the docket entries prepared by the Clerk of the Tribal District Court shall constitute the record on appeal in all cases.

(b) **Transcript, Duty of Appellant to Order, Notice of Partial Transcript.**

(1) Within ten (10) days after filing the notice of appeal the appellant

shall order from the Clerk or reporter a transcript of such parts of the proceedings not already on file as he deems necessary. The order shall be in writing and within the same period a copy shall be filed with the Clerk of the Tribal District Court. If no such parts of the proceedings are to be ordered, within the same period the appellant shall file a certificate to that effect.

(2) If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, he shall include in the record a transcript of all evidence relevant to such finding or conclusion.

(3) Unless the entire transcript is to be included, the appellant shall within the ten (10) days time provided in subsection (b)(1) of this Section, file a statement of the issues he intends to present on the appeal and shall serve on the appellee a copy of the order or certificate and of the statement. If the appellee deems a transcript of other parts of the proceedings to be necessary, he shall, within ten (10) days after the service of the order or certificate and the statement of the appellant, file and serve on the appellant a designation of additional parts to be included. Unless within ten (10) days after the service of such designation the appellant has ordered such parts, and has so notified the appellee, the appellee may within the following ten (10) days order the parts or move in the Tribal District Court for an order requiring the appellant to do so.

(4) At the time of ordering, a party must make satisfactory arrangements with the reporter for payment of the cost of the transcript. If a typewritten transcript is ordered, the Clerk or Reporter shall charge a fee to be set by the Court for each original page, and an additional fee for each copy of an original page. If a copy of a tape recording of the proceedings is ordered, the Clerk or reporter shall charge a fee to be set by the Court for each tape copy ordered. All such fees paid on behalf of a Clerk or reporter who is employee by the Tribe and paid a salary from tribal monies shall be deposited in the Court fund, unless specific statutory authority for disposition of such monies is provided. All such fees paid on behalf of an independent reporter appointed or authorized by the Tribal District Court to record its proceedings, but not paid from tribal funds shall be paid over to such reporter.

(c) **Procedure When No Transcript Available.** If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the appellee, who may serve objections or propose amendments thereto within ten (10) days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the Tribal District Court for settlement and approval and as settled and approved shall be included by the Clerk of the Tribal District Court in the record on appeal.

(d) **Agreed Statement as the Record on Appeal.** In lieu of the record on appeal as defined in subsection (1) of this section, the parties may prepare and sign a statement

of the case showing how the issues presented by the appeal arose and were decided in the Tribal District Court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, the statement together with such additions as the Court may consider necessary fully to present the issue raised by the appeal, shall be approved by the Tribal District Court, and shall then be certified to the Supreme Court Clerk's records.

(e) **Correction or Modification of the Record.** If any difference arises as to whether the record truly discloses what occurred in the Tribal District Court, the difference shall be submitted to and settled by the Judge of that Court, and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the Tribal District Court, either before or after the record is transmitted to the Supreme Court, or proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the Supreme Court.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 110. Transmission of Record

(a) **Chief Clerk to Serve as Clerk of the Supreme Court.** The Chief Clerk of the Tribal District Court may also serve as the Clerk of the Supreme Court whenever the position of Clerk of Supreme Court is vacant, or, in the opinion of the Supreme Court such service shall be deemed expedient.

(b) **Transmission and Filing of Record.** In all cases, including juvenile and criminal actions, the Clerk in charge of the papers in that case shall, within fifteen (15) working days after a Notice of Appeal is filed, prepare, certify, and deliver to the Clerk of the Supreme Court, for filing with the Supreme Court, all papers comprising the record of the case except the transcript. Such compilation shall be indexed with page numbers. All parties to the appeal shall be notified of the filing of the record with the Supreme Court, and a copy of the index to the record shall be attached to the notice for the benefit of the parties. Copies of any documents contained in the record shall be available to the parties at a cost per page set by rule of the Supreme Court.

(c) **Completion of Record.** Upon receipt of an order for a transcript or additional tape recording, the Clerk or reporter shall acknowledge at the foot of the order the fact that he has received it and the date on which he expects to have the transcript or copy of the tape recording completed and shall transmit the order, so endorsed, to the Clerk of the Supreme Court. If the transcript cannot be completed within thirty (30) days of receipt of the order the Clerk or reporter shall request an extension of time from the Clerk of the Supreme Court, and the action of the Clerk of the Supreme Court shall be entered on the docket and the parties notified. In the event of the failure to file the transcript or complete making copies of the tapes within the time allowed, the Clerk of

the Supreme Court shall notify the Chief Justice and take such steps as may be directed by the Chief Justice of the Supreme Court. Upon completion of the transcript the Clerk or reporter shall file it with the Clerk of the Tribal District Court and shall notify the Clerk of the Supreme Court that he has done so.

(d) **Transmission of Transcript.** Upon receipt of the Transcript, or notification that requested copies of tape recordings of the proceedings are completed, or the filing of a statement as provided in Section 109(c) or (d) of this Act, the Clerk of the Tribal District Court shall forthwith notify the parties that the transcript, tapes, or statement is completed and ready for transmittal to the Supreme Court, shall state in the notice the date upon which the notice was given, and the date the final record will be delivered to the Supreme Court. The parties may receive their copies (if ordered) of such transcript, tapes, or statement as soon as they become available whether before or after formal notice of such availability is mailed to the parties. Fifteen days after the mailing of the notice of completion of the transcript, tapes, or statement, the Clerk of the Tribal District Court shall deliver the original thereof to the Clerk of the Supreme Court for filing. Upon filing by the Clerk of the Supreme Court, the record shall be deemed received and completed for the purposes of the appeal.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 111. Docketing the Appeal; Filing the Record

(a) **Docketing the Appeal.** Upon receipt of the Notice of Appeal and of the docket entries and papers transmitted by the Clerk of the Tribal District Court pursuant to Section 110(b), the Clerk of the Supreme Court shall thereupon enter the appeal upon the docket. An appeal shall be docketed under the title given to the action in the Tribal District Court, with the appellant identified as such, but if such title does not contain the name of the appellant, his name, identified as appellant, shall be added to the title. In appeals from the Juvenile Division of the Court, the docket books shall contain the correct names of the parties, however, all opinions or other papers of the Court which may become public information shall contain only initials or other similar designations and not the names of the parties.

(b) upon receipt of the completed record on appeal as provided in Section 110(d), the Clerk of the Supreme Court shall file it and shall immediately give notice to all parties of the date on which it was filed.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

CHAPTER TWO**EXTRAORDINARY WRITS****Section 201. Mandamus or Prohibition directed to a Judge or Judges**

Application for a writ of mandamus or of prohibition directed to a judge or Magistrate of the Tribal District Court, or to any other subordinate agency or officer against whom as original action in mandamus or prohibition may be filed by law in the Supreme Court, shall be made by filing a petition therefore with the Clerk of the Supreme Court with proof of service on the respondent and on all parties in interest to the action in the Tribal District Court. The petition shall contain a statement of the facts necessary to an understanding of the issues presented by the application; a statement of the issues presented and the relief sought; a statement of the reasons why the writ should issue; and the copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition. The Clerk shall docket the petition and submit it to the Court upon payment of a docketing fee set by Court rule. In vacation, the alternative Writ may be issued only by a single Justice but a preemptory writ should be issued only by a quorum of the Tribal District Court for initial determination.

(History: PUBLIC LAW #kt 90-14, February 6, 1990)

Section 202. Denial or Order Directing Answer

If the Court is of the opinion that the writ should not be granted in any case on the facts and law stated in the petition, it shall deny the petition. Otherwise, it shall order that an answer to the petition be filed by the respondents within the time fixed by the order. The order shall be served by the Clerk on the named respondents and on all other parties to the action in the Tribal District. All parties below other than the petitioner shall also be deemed respondents for all purposes. Two or more respondents may answer jointly. If the named respondents do not desire to appear in proceeding, they may so advise the Clerk and all parties by letter, but the petition shall not thereby be taken as admitted. The Clerk shall advise the parties of the dates on which briefs are to be filed, if briefs are required, and of the date of oral argument, if any. The proceeding shall be given preference over ordinary civil cases. These writs may be used to compel a respondent to perform a required action or to refrain from exceeding his jurisdiction, but may not be used to control the discretionary actions of judges, agencies, or other Tribal officials.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 203. Other Extraordinary Writs

Application for extraordinary writs other than those provided for in Section 201 of this Chapter shall be made by petition filed with the Clerk of the Supreme Court with proof of service on the parties names as respondents. Proceedings on such applications shall conform, so far as is practical, to the procedure prescribed in Sections 201 and 202 of this Chapter.

(History: PUBLIC LAW #90-14, February 6, 1990)

Section 204. Form of Papers, Number of Copies

All papers may be typewritten. Ten copies and the original shall be filed, but the Court may direct that additional copies be furnished.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

CHAPTER THREE**HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS****SUBCHAPTER A****HABEAS CORPUS****Section 301. Habeas Corpus Proceedings**

An application for a writ of habeas corpus shall originally be made to the Tribal District Court. If application is made to the Supreme Court, or to a Justice thereof individually, the application will ordinarily be transferred to the District Court for determination. The Supreme Court, or a Justice thereof, will accept original jurisdiction in such matters only upon a showing of compelling necessity and urgency. If an application is made to or transferred to the Tribal District Court and denied, renewal of the application before the Supreme Court, or a Justice thereof is not favored; the proper remedy is by appeal to the Supreme Court from the order of the Tribal District Court denying the writ.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 302. Transfer of Custody Pending Review

Pending review of a decision in a habeas corpus proceeding commenced before the Court, or a Justice or Judge for the release of a prisoner, a person having custody of the prisoner shall not transfer custody to another unless such transfer is directed in accordance with the provisions of this Section and the Court rules. Upon application of a custodian showing a need therefore, the Court, Justice or Judge rendering a decision may make an order authorizing transfer and providing for the substitution of the successor custodian as a party.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 303. Detention or Release Pending Review of Decision Failing to Release

Pending review of a decision failing or refusing to release a prisoner in such a proceeding, the prisoner may be detained in the custody from which release is sought, or in other appropriate custody, or may be enlarged upon his recognizance or admitted to bail, with or without surety, as may appear fitting to the Court or Justice or Judge, rendering the decision, or to the Supreme Court en banc.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 304. Detention or Release Pending Review of Decision Ordering Release

Pending review of a decision ordering the release of a prisoner in such a proceeding, the prisoner shall be enlarged upon his recognizance, with or without surety, unless the Court or Justice or Judge rendering the decision, or the Supreme Court shall otherwise order.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 305. Modification of Initial Order Respecting Custody

An initial order respecting the custody or enlargement of the prisoner and any recognizance or surety taken, shall govern during review in the Supreme Court unless for special reasons shown to the Supreme Court the order shall be modified, or an independent order respecting custody, enlargement or surety shall be made.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

SUBCHAPTER B

PROCEEDINGS IN FORMA PAUPERIS

Section 311. Leave From Tribal District Court to Proceed to Supreme Court.

A party to an action in the Tribal District Court who desires to proceed on appeal in forma pauperis shall file in the Tribal District Court a motion for leave so to proceed, together with an affidavit showing, in explicit detail, his inability to pay fees and costs or to give security therefore, his belief that he is entitled to redress, and a statement of the issues which he intends to present on appeal. If the motion is granted, the party may proceed without further application to the Supreme Court, and without payment of fees or costs in either Court or the giving of without security therefore. If the motion is denied, the Tribal District Court shall state in writing the reasons for the denial.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 312. Special Rule for Parties Previously Granted Permission to Proceed in Forma Pauperis

Notwithstanding the provisions of the proceeding Section, a party who has been permitted to proceed in an action in the Tribal District Court in forma pauperis, or who has been permitted to proceed there as one who is financially unable to obtain an adequate defense in a criminal case, or a case involving the termination of parental rights, may proceed on appeal in forms pauperis without further authorization unless, before or

after the notice of appeal is filed, the Tribal District Court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed, in which event the Tribal District Court shall state in writing the reasons for such certification or finding.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 313. Remedy for Denial of Motion by Tribal District Court

If a motion for leave to proceed on appeal in forma pauperis is denied by the Tribal District Court, or if the Tribal District Court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled to proceed in forma pauperis, the Clerk shall forthwith serve notice of such action. A motion for leave so to proceed may then be filed in the Supreme Court within thirty (30) days after service of notice of the action of the Tribal District Court, and by a copy of the statement of reasons given by the Tribal District Court for its action.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

CHAPTER FOUR**GENERAL PROVISIONS****Section 401. Filing and Service**

Filing. Papers required or permitted to be filed in the Supreme Court shall be filed with the Clerk. Filing may be accomplished by mail addressed to the Clerk, but filing shall not be timely unless the papers are received by the Clerk within the time fixed for filing, except that briefs and appendices shall be deemed filed on the day of mailing if first class mail or any more expeditious form of delivery by mail, excepting special delivery or overnight mail, is utilized. If a motion requests relief which may be granted by a single Justice, the justice may permit the motion to be filed with him, in which event he shall note thereon the date of filing and shall thereafter transmit it to the Clerk.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 402. Service of all Papers Required

Copies of all paper filed by any party and not required by the Title to be served by the Clerk shall, at or before the time of filing, be served by that party or person acting for him on all other parties to the appeal or review. Service on a party represented by counsel or lay advocate shall be made on the counsel or lay advocate.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 403. Manner of Service

Service may be personal or by mail in any manner allowed by the Civil Procedure Act for service of motions or briefs. Personal service includes delivery of the copy to a Clerk, secretary, or other responsible person at the office of counsel or lay advocate. Service by mail is complete upon mailing.

(History: #KT 90-14, February 6, 1990)

Section 404. Proof of Service

Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and the name of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The Clerk may permit papers to be filed without acknowledgment or proof of service but shall require such to be filed promptly thereafter.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 405. Computation of Time

In computing any period of time prescribed by this Title, by an order of the Court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period extends until the end of the next day which is not a Saturday, Sunday, or a legal holiday. When the period of time prescribed or allowed is equal to less than seven (7) days, intermediate Saturdays, Sundays, or legal holidays shall be excluded in the computation. As used in this Section, "legal holiday" includes New Year's Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or Congress of the United States or the Legislative Body of the Tribe.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 406. Enlargement of Time

The Court for good cause shown may upon motion enlarge the time prescribed by the Title or Court rule or by its order for doing any act, or may permit an act to be done after the expiration of such time, but the Supreme Court may not enlarge the time for filing a notice of appeal.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 407. Additional Time after Service by Mail

Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him and that paper is served by mail, three (3) days shall be added to the prescribed period.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Sections 408-410. Reserved

SUBCHAPTER A

MOTIONS AND BRIEFS

Section 411. Content, Response, and Reply to Motions

Unless another form is elsewhere prescribed by this Title, an application for an order or other relief shall be made by filing a motion or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of the Title governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits, or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order within seven (7) days after service of the motion, but motions authorized by Section 107, 108, and 469 may be acted upon after reasonable notice, and the Court may shorten or extend the time for responding to any motion.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 412. Determination of Motions for Procedural Orders

Notwithstanding the provisions of Section 411 of the Title as to motions generally, motions for procedural orders, including any motion under Section 406, may be acted upon at any time, without awaiting a response thereto, and pursuant to rule or order of the Court, motions for specified types of procedural orders may be disposed of by the Clerk. Any party adversely affected by such action, may, by application, to the Court, request consideration, vacation or modification of such action.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 413. Power of a Single Judge to Entertain Motions

In addition to the authority expressly conferred by this Title or by other Tribal law, a single Justice of the Supreme Court may entertain and may grant or deny any request for relief which under this Title may properly be sought by motion, except that a single Justice may not dismiss or otherwise determine an appeal or other proceeding, and except that the Supreme Court may provide by order or rule that any motion or class of motions must be acted upon by the Court. The action of a single Justice may be reviewed by the Court.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 414. Form of Papers; Number of Copies

All papers relating to motions may be typewritten. Ten copies shall be filed with the original, but the Court may require that additional copies be furnished.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 415. Brief of Appellant

The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(a) A cover page as described in Section 429.

(b) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where they are cited.

(c) A statement of the issues presented for review.

(d) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of the proceedings, and its disposition in the Court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record (see Section 419).

(e) An argument. The argument may be preceded by a summary. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefore, with citations to the authorities, statutes and parts of the record relied on.

(f) A short conclusion stating the precise relief sought.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 416. Brief of Appellee

The brief of the appellee shall conform to the requirements of Section 415, except that a statement of the issues or the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 417. Reply Brief

The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross appeal. No further briefs may be filed except with the leave of the Court.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 418. References in Briefs to Parties

Counsel will be expected in their briefs and oral arguments to keep minimum of references to parties by such designations as “appellant” and “appellee”. It promotes clarity to use the designations used in the lower Court or the actual names of the parties, or descriptive terms such as “the employee,” “the injured person,” “the taxpayer,” “the car”, or the names of the parties.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 419. References in Briefs to the Record and Statutes

(a) References in the briefs to parts of the record reproduced in any appendix filed with the brief of the appellant shall be to the pages of the appendix at which those parts appear and to the pages in the original record. If an appendix is prepared after the briefs are filed, references in the briefs to the record shall be made a part of the original record. Intelligible abbreviations may be used. If reference is made to original evidence the admissibility of which is in controversy, reference shall be made to the pages of the record or of the transcript at which the evidence was identified, offered, and received or rejected.

(b) If determination of the issues presented requires the study of statutes, rules, regulations, or similar material or relevant parts thereof, they shall be reproduced in the brief or in an addendum at the end, or they may be supplied to the Court in pamphlet form.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 420. Length of Briefs

Except by permission of the Court, principal briefs shall not exceed fifty (50) pages, and reply briefs shall not exceed twenty-five pages containing the table of contents, tables of citations, and any addendum containing statutes, rules, regulations, and similar material.

Section 421. Briefs In Cases Involving Cross Appeals

If a cross appeal is filed, the plaintiff in the Court below shall be deemed the appellant for the purposes of this Chapter and Section 426 and 427, and 428, unless the parties otherwise agree or the Court otherwise orders. The brief of the appellee shall contain the issues and argument involved in his appeal as well as the answer to the brief of the appellant.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 422. Briefs in Cases Involving Multiple Appellants or Appellees.

In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 423. Citation of Supplemental Authorities

When pertinent and significant authorities come to the attention of a party after his brief has been filed, or after oral argument but before decision, a party may promptly advise the Clerk of the Court, by letter, with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall without argument state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 424. Brief of an Amicus Curiae

A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of Court granted on motion or at the request of the Court, except that consent or leave shall not be required when the brief is presented by the Tribe, the United States or an officer or agency thereof, or by another Tribe or a state, territory or Commonwealth. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of amicus curiae is desirable. Save as all parties otherwise consent, any amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support unless the Court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer. A motion of an amicus curiae other than the Tribe to participate in the oral argument will be granted only for extraordinary reasons, or on the Court's own motion.

A motion of the Tribe to present oral argument as amicus curiae shall be granted unless extraordinary reasons appear for refusing to grant such a motion.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 425. Appendix to the Briefs

Whenever the record on appeal, or the transcript is particularly voluminous, the Court may order the appellant to prepare, with notice and consultation by the appellant to prepare, with notice and consultation by the appellee, an appendix to the briefs which shall contain the papers, documents, and portions of the transcript necessary to the determination of the issues presented on appeal. The preparation of an appendix does not prevent further referrals to the original record by any party or the Court. A party may append pertinent parts of the record to his brief when such is necessary for a clear presentation of the issues raised on appeal.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 426. Time for Filing and Service of Briefs

The appellant shall serve and file his brief within 20 days after the date on which the completed record is received and filed in the Supreme Court. The appellee shall serve and file his brief within 20 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the appellee, but, except for good cause shown, a reply brief must be filed at least 3 days before argument.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 427. Number of Copies to be Filed and Served

Ten copies of each brief shall be filed with the Clerk in addition to the original, unless the Court by order shall direct a lesser or greater number, and two copies shall be served on counsel for each party separately represented. If a party is allowed to file typewritten ribbon and carbon copies of the brief, the original and three legible copies shall be filed with the Clerk, and one copy shall be served on counsel for each party separately represented.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 428. Consequence of Failure to File Briefs

If an appellant fails to file his brief within the time provided by this Title, or within the time as extended, an appellee may move for dismissal of the appeal. If an appellee fails to file his brief, he will not be heard at oral argument except by permission of the Court.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 429. Form of Briefs, the Appendix and Other Papers

(a) Briefs and appendices may be produced by standard typographic printing or by any duplicating or copying process which produces a clear black image on white paper, including legible photocopies. Carbon copies of briefs and appendices may not be submitted without permission of the Court, except in behalf of parties allowed to proceed in forma pauperis. All printed matter must appear in at least 11 point (pica) type on opaque, unglazed paper. Briefs and appendices produced by the standard typographic process shall be bound in volumes having pages 1 1/8 by 9 1/4 inches and type matter 4 1/6 by 7 1/6 inches. Those produced by any other process shall be bound in volumes having pages not exceeding 8 1/2 by 11 inches and type matter not exceeding 6 1/2 by 9 1/2 inches, with double spacing between each line of text, except that quoted matter may be single spaced. Copies of the reporter's transcript and other papers reproduced in a manner authorized by the Section may be inserted in the appendix, such pages may be informally renumbered if necessary.

(b) If briefs are produced by commercial printing or duplicating firms or, if produced otherwise and the covers to be described are available, the cover of the brief of the appellant should be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; that of any reply brief, gray. The cover of the appendix, if separately printed should be white. The front covers of the briefs and of appendices shall contain:

- (1) the name of the Court and the number of the case;
- (2) the title of the case;
- (3) the nature of the proceedings in the Court (e.g., Appeal; Petition for Review) and the name of the Court below;
- (4) the title of the document (e.g., Brief for Appellant, Appendix); and
- (5) the names, addresses, and telephone number of counsel representing the party on whose behalf the document is filed.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 430. Form of Other Papers

(a) Petitions for rehearing shall be produced in a manner prescribed by Section 429.

(b) Motions and other papers may be produced in a like manner, or they may be typewritten upon opaque, unglazed paper 8 ½ by 11 inches in size. Lines of typewritten text shall be double spaced. Consecutive sheets shall be attached at the left margin. Carbon copies may be used for filing and service if they are legible.

(c) A motion or other paper addressed to the Court shall contain a caption setting forth the name of the Court, the title of the case, the file number, and a brief descriptive title indicating the purpose of the paper.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Sections 431-440. Reserved

SUBCHAPTER B

ARGUMENT

Section 441. Prehearing Conference

The Court may direct the attorneys for the parties to appear before the Court or a Justice thereof for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceeding by the Court. The Court or Justice shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of counsel, and such order when entered controls the subsequent course of the proceeding, unless modified to prevent manifest injustice.

(History: PUBLIC LAW #KY 90-14, February 6, 1990)

Section 442. Oral Argument in General

Oral argument shall be allowed in all cases unless the Court, after examination of the briefs and record, shall be unanimously of the opinion that oral argument is not need. In such cases the Court shall notify the parties of its intention to proceed without oral argument, and shall provide any party with an opportunity to file a statement setting forth the reasons why, in his opinion, oral argument should be heard. Oral argument will be allowed upon request unless the Court unanimously determines:

- (a) the appeal is frivolous; or
- (b) the dispositive issue or set of issues has been recently authoritatively decided; or
- (c) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 443. Notice of Argument; Postponement

The Clerk shall advise all parties whether oral argument is to be heard, and if so, of the time and place therefore, and the time to be allowed each side. A request for postponement of the argument or for allowances of additional time must be made by motion filed reasonably in advance of the date fixed for hearing.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 444. Order and Content of Argument

The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case. Counsel will not be permitted to read at length from briefs, records or authorities.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 445. Cross and Separate Appeals

A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the Court otherwise directs. If a case involves a cross-appeal, the plaintiff in the action below shall be deemed the appellant for the purpose of this Subchapter unless the parties otherwise agree or the Court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

(History: PUBLIC LAW #KT 90-14, February 6, 1999)

Section 446. Non-Appearance of Parties

If the appellee fails to appear to present argument, the Court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the Court may hear argument on behalf of the appellee, if his counsel is present. If neither party appears, the case will be decided on the briefs unless the Court shall otherwise order.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 447. Submission on the Briefs

By agreement of the parties, case may be submitted for decision on the briefs, but the Court may direct that the case be argued.

Section 448. Use of Physical Exhibits at Argument: Removal

If physical exhibits other than documents are to be used at the argument, counsel, shall arrange to have them placed in the courtroom before the Court convenes on the date of the argument. After the argument counsel shall cause the exhibits to be removed from the courtroom unless the Court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the Clerk, they shall be destroyed or otherwise disposed of as the Clerk shall think best.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 449. When Hearing or Rehearing in Banc will be Ordered

A majority of the Justices of the Court who are in regular active service may order that any motion or other proceeding be heard or reheard by the Supreme Court in ban. Such hearing or rehearing is not favored and ordinarily will not be ordered except:

(a) when consideration by the full Court is necessary to secure or maintain uniformity of its decisions, or

(b) when the proceedings involve a question of exceptional importance.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 450. Suggestion of a Party for Hearing or Rehearing in Banc

A party may suggest the appropriateness of a hearing or rehearing in banc. No response shall be filed unless the Court shall so order. The Clerk shall transmit any such suggestion to the Justices of the Court who are in regular active service but a vote need not be taken to determine whether the cause shall be heard or reheard in banc unless a Justice in regular active service or the Justice who rendered a decision sought to be reheard requests a vote on such a suggestion made by a party.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 451. Time for Suggestion of a Party for Hearing or Rehearing in Banc: Suggestion does not Stay Mandate

If a party desires to suggest that a motion or proceeding be heard initially in banc, the suggestions must be made by the date on which the appellee's brief is filed. A suggestion for rehearing a motion in banc must be made within ten (10) days after notice of the decision of the Justice initially hearing the motion. The pendency of such a suggestion whether or not included in a petition for rehearing shall not affect the finality of the judgment of the Supreme Court or stay the issuance of the mandate.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Sections 452-459. Reserved

SUBCHAPTER C

JUDGMENT

Section 461. Entry of Judgment

The notation of a judgment in the docket constitutes entry of the judgment. The Clerk shall prepare, sign and enter the judgment following receipt of the opinion of the Court unless the opinion directs settlement of the form of the judgment, in which event the Clerk shall prepare, sign and enter the judgment following instruction from the Court. The Clerk shall, on the date judgment is entered, mail to all parties a copy of the opinion, if any, or of the judgment if no opinion was written, and notice of the date of entry of the judgment.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 462. Interest on Judgments

Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was entered in the Tribal District Court the mandate shall contain instructions with respect to allowance of interest.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 463. Damages for Delay

If the Supreme Court shall determine that an appeal is frivolous, it may award the damages and single or double costs to appellee.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 464. To Whom Costs Allowed

Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the Court; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the Court.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 465. Cost for or Against the Tribe

In cases involving the Tribe or an agency or officer thereof, if an award of cost against or for the Tribe is authorized by Tribal statute, costs shall be awarded in accordance with the provisions of Section 464, otherwise, costs shall not be awarded against the Tribe or its agencies or officers on their official capacity, provided that cost shall be awarded as a matter of course against a criminal defendant when the conviction is affirmed.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 466. Cost of Briefs, Appendices, and Copies of Records

Unless otherwise provided by Tribal statute or Court rule, the cost of printing, or otherwise producing necessary copies of briefs, appendices, and copies of records shall be taxable in the Supreme Court at rates not higher than those generally charged for such work within the jurisdiction of the Tribe.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 467. Bill of Costs; Objections; Costs Inserted in Mandate or Added Later

A party who desires such costs to be taxed shall state them in an itemized and verified bill of costs which he shall file with the Clerk, with proof of service, within fourteen (14) days after the entry of judgment. Objections to the bill of costs must be filed within ten (10) days of service in the party against whom costs are to be taxed unless the time is extended by the Court. The Clerk shall prepare and certify an itemized statement of costs taxed in the Supreme Court for insertion in the mandate, but the issuance of the mandate has been issued before final determination of costs, the statement, or any amendment thereof, shall be added to the mandate upon request by the Clerk of the Supreme Court to the Clerk of the Tribal District Court.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 468. Costs on Appeal Taxable in the Tribal District Court

Costs incurred in preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing the notice of appeal shall be taxed in the Tribal District Court as costs of the appeal in favor of the party entitled to costs under this Title.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 469. Petition for Rehearing

(a) **Time for Filing, Content, Answer, Action by Court.** A petition for rehearing may be filed within fourteen (14) days after entry of judgment unless the time is shortened or enlarged by order of the Court. The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the Court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted except upon the Court's own motion. No answer to a petition for rehearing will be received unless requested by the Court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted the Court may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or submission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(b) **Form of Petition; Length,** The petition shall be in a form prescribed by Section 429, and copies shall be served and filed as prescribed by Section 427 for the service and filing of briefs. Except by permission of the Court, a petition for rehearing shall not exceed fifteen (15) pages.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 470. Issuance of Mandate

The mandate of the Court shall issued twenty-one (21) days after the entry of judgment unless the time is shortened or enlarged by order. A certified copy of the judgment and a copy of the opinion of the Court. If any, and any direction as to costs shall constitute the mandate, unless the Court directs that a formal mandate issue. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the Court. If the petition is denied, the mandate shall issue seven (7) days after entry of the order denying the petition unless the time is shortened or enlarged by order.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 471. Voluntary Dismissal

(a) **Dismissal in the Tribal District Court.** If an appeal has not been docketed, the appeal may be dismissed by the Tribal District Court upon the filing in that Court of a stipulation for dismissal signed by all the parties, or upon motion and notice by the appellant.

(b) **Dismissal in the Supreme Court.** If the parties to an appeal or other proceeding shall sign and file with the Clerk of the Supreme Court an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the Clerk shall enter the case dismissed, but no mandate or other process shall issue without an order of the Court. An appeal may be dismissed on motion of the appellant upon such terms as may be agreed upon by the parties or fixed by the Court.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 472. Substitution of Parties

(a) **Death of a Party.** If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the Supreme Court, the personal representative of the deceased party may be substituted as a party of motion filed by the representative or by any party with the Clerk of the Court. The motion of a party shall be served upon the representative in accordance with the provisions of Sections 402, 403, and 404. If the deceased party has no representative, any party may suggest the death on the direct. If a party against whom an appeal may be taken dies after entry of judgment or order in the Tribal District Court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed substitution shall be effected in the Supreme Court in accordance with this Section. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by his attorney of record within the time prescribed by this Title. After the notice of appeal is filed substitution shall be effected in the Supreme Court in accordance with this Section.

(b) **Substitution for Other Causes.** If substitution of a party in the Supreme Court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subsection (a).

(c) Public Officers; Death of Separation from the Office.

(1) When a public officer is a party to an appeal or other proceeding in the Supreme Court in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer is a party to an appeal or other proceeding in his official capacity he may be described as a party by his official title rather than by name; but the Court may require that his name be added.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

**Section 473. Cases Involving Constitutional or Indian Civil Rights Act Questions
Where the Tribe is not a Party**

It shall be the duty of a party who draws in question the constitutionality (or unlawfulness under the Indian Civil Rights Act of 1968) of any statutes, ordinance, or other action of the Tribal Legislative Body in any proceeding in the Supreme Court to which the Tribe, or any agency, officer, or employee thereof in their official capacity is not a party, upon the filing of the record, or as soon thereafter as the question is raised in the Supreme Court, to give immediate notice in writing to the Court of the existence of said question. The Clerk shall thereupon certify such fact to the Attorney General and/or Tribal Prosecutor who may intervene upon such question upon motion.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

ATTORNEY AND LAY ADVOCATE RULES

Rule 101: Admission to the Bar

(a) **Roll of Attorney and Lay Advocate.** The Bar of this Court shall consist of those attorneys and law advocates heretofore and those hereafter admitted to practice before this Court, who have taken the oath prescribed by the rules in force at the time they were admitted or the oath prescribed by this rule, and have signed the roll of attorneys of this Court.

(b) **Procedure for Admission.** There is hereby constituted a Committee on Admissions and Grievances consisting of three members of the Bar of this Court, to be appointed by the Court. Every applicant for admission shall file with the Clerk, on a form prescribed by the Court, a written petition for admission, which shall be referred immediately to the Committee on Admissions and Grievances for investigation into the qualifications of the applicant and his fitness to be admitted to the Bar of this Court. The Committee shall report its recommendations in writing to the Clerk of this Court. Upon a favorable report of the Committee, filed with the Clerk, the applicant, if any attorney, may be admitted. Lay Advocates shall be admitted upon order of the Court after having filed his oath of attorney without appearing in Court. Any applicant for admission, who has qualified for admission, may appear at any session of Court during its term and be admitted by taking the oath of attorney in open Court upon motion of any member of the Bar of this Court.

It is desired that the procedure for admission by the Committee include a Tribal practice program which is designed to acquaint the applicants with pertinent aspects of practice in this Court, emphasizing the Tribal law and Tribal Court Rules. It is anticipated that this program would be held in the ceremonial courtroom, and would, if possible, include presentations by Court officials and judicial officers. The Court will endeavor to set aside a portion of one day at the beginning of each term of a Tribal practice program which should be attended by those expecting to be admitted during that term unless such attendance would create a hardship for the prospective admittee.

Individual Justices may, from time to time, in emergent situations upon special request admit individual lawyers who have been approved by the Committee. Before being admitted as a member exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations. Periodically as necessary, the panel will be republished by the Judges of this Court. If sufficient attorney volunteer to be placed on this panel to satisfy the needs of the court for representation of indigent persons and children, other attorneys may be excused from service on the panel, provided, that the Court may still request the assistance of such attorneys if necessary or useful to the Court.

(c) **Pay.** Appointees may be compensated at a rate determined by a Judge of this Court but not to exceed \$30.00 per hour for time expended in court and \$20.00 per hour for time expended out of the court in addition to reasonable expenses as determined by a Judge of this Court as the Court budget and court fund will allow. The compensation for legal services shall not exceed \$1,000.00 for an attorney in a case in which a crime punishable by banishment is charged, or in termination of parental rights cases, including all representation before the Supreme Court through appeal of the case, and shall not exceed \$400.00 for an attorney in a case in which a misdemeanor is charged including all representation before the Court through appeal of the case. Compensation in post-conviction cases, probation and parole revocation hearings and material witness matters shall not in any event exceed \$250.00 per attorney per case. In all events, the compensation paid shall be in that amount approved by a Judge of this Court.

(d) **Claims.** Standard forms shall be used throughout and claims for legal compensation and expenses and for services other than counsel shall be submitted within 45 days after services are completed.

(e) **Obligation of Court-Appointed Counsel to Disclose Client's Assets.** If at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the Court.

(f) **Refusal to Represent Indigents.** An attorney who neglects or refuses to serve as counsel for an indigent or child in this Court when duly appointed so to do by either a Judge or a Magistrate may have his name removed from the list of those admitted to practice law in this Court, provided, that no attorney shall be required, without his consent, to represent more than one person each calendar year without receiving compensation therefore as provided in paragraph (v) of this rule. For good cause shown, the Court may excuse an attorney from an appointment although such action is not favored. No Government attorney shall be appointed in any such cases.

(g) **Persons Obligated to Refund Court Fund for Attorney Fees or Pay Attorneys.** Every indigent person, and the parents of every child, for whom a court appointed attorney is obtained, shall be liable to the Tribe for all sums paid to their court appointed counsel as fees and expenses in the action, or all sums which the court, upon motion of appointed counsel, taxes against that person as the fair costs of such representation at the conclusion of the case, which amount shall not exceed the amount which the court would have paid from the court fund or court budget if funds for payment had been available. This liability may be enforced, by motion filed in the case by the parties attorney, the Tribal Attorney, or Tribal District Attorney, at any time after the amount of such attorneys fees and costs have been set by the Court, and process may be issued as in civil cases to enforce this liability. All amounts recovered shall be paid into the Court fund or Court budget, and if the attorney has not received payment for his fees and costs, the Clerk of the Court shall forthwith pay over to the attorney such amounts as he is entitled to pursuant to the order of the Court setting the attorney fees and costs.

Rule 102. Appearance of Counsel and Withdrawal of Counsel

(a) **Appearance.** Any attorney appearing for a defendant in a civil or criminal case shall enter his appearance by signing and filing a pleading or by entry of appearance on a form prescribed by the Clerk of this Court. In the event a plaintiff should change counsel or add additional counsel, the new or additional counsel for such plaintiff shall enter his appearance on a form to be provided by the Clerk for that purpose. Counsel of record in any case shall be permitted to withdraw conformably to Rule 101 (h) only by order of the judge to whom the case is assigned.

(b) **Certificate of Familiarity with Local Court Rules.** Every person, upon entering an appearance in any case of proceeding in this Court, or upon first tendering for filing any pleading or paper therein, shall be required to certify that such person has received, read and is familiar with the current Rules of this Court, specifically including all of the most recent published amendments to them.

Such certification shall be required before any such entry of appearance, pleading or paper shall be filed by the clerk, provided however, for good cause shown, the Clerk may in his discretion receive and file any such matter on condition that the required certificate be filed within ten (10) days thereafter, failing in which the matter so filed shall be stricken.

The same certificate shall also be required of every other person thereafter participating in such cause or proceeding.

The Clerk shall keep master file of all such certificates. Once a person has so certified his familiarity, he shall not be required to do so in subsequent cases unless required by order of the Court. A judge of this Court may authorize the Clerk to waive the requirement as to certain persons or categories of persons when such will best serve the administration of justice.

Rule 103: Courtroom Decorum

(a) The Canon of Professional Ethics were adopted by the American Bar Association and this Court as a general guide, because as stated in the preamble of the American Bar Association Canons, “No code or set of rules can be framed, which will particularize all the duties of the lawyer in the varying phases of litigation or in all the relations of professional life.” The preamble further admonishes that “the enumeration of particular duties should not be construed as a denial of the existence of others equally imperative, though not specifically mentioned.” In that spirit, all lawyers should become familiar with their duties and obligations as defined and classified generally in the Canons, the common law decisions, the statutes and the usages, customs, and practice of the bar of this Court. These Canons, and the statutes and common law of the Tribe

relating to attorney conduct, are applicable to all attorneys and lay advocates who practice before this Court.

(b) The purpose of this rule is to emphasize, not to supplant, certain portions of those ethical principles applicable to the lawyer's conduct in the courtroom. In addition to all other requirements, therefore, lawyers appearing in this court shall:

1. Be punctual in attendance at Court.
2. Refrain from addressing one another in Court by their first names.
3. Refrain from leaving the courtroom while Court is in session, unless it is absolutely necessary, and then only if the Court's permission has been obtained.
4. See that only one of them is on his feet at a time unless an objection is being made.
5. Refrain from approaching jurors who have completed a case unless authorized by the Court.
6. Avoid approaching the bench as much as possible. In this connection, counsel should try to anticipate questions which will arise during the trial, and take them up with the Court and opposing counsel in chambers. If however, it becomes necessary for an attorney to confer with the Court at the bench, the Court's permission should be obtained, and opposing counsel should be openly invited to accompany him.
7. Refrain from employing dilatory tactics.
8. Deliver jury arguments from the lectern placed in a proper position facing the jury. If it is necessary to argue from an exhibit, the Court will, upon request, grant permission to do so.
9. Hand all papers intended for the Court to see to the Clerk, who, in turn will pass them up to the judge.
10. hand to the Clerk, rather than the Court Reporter, any exhibits to be marked which have not previously been identified.
11. Advise clients, witnesses, and other interested persons concerning rules of decorum to be observed in Court.
12. Stand and use the lectern when interrogating witnesses, unless otherwise instructed by the Court. However, when interrogating a witness concerning an exhibit the Court may, upon request, grant permission to approach the witness stand or the exhibit, as the case may be, for that purpose.

13. Never conduct or engage in experiments involving any use of their own persons or bodies except to illustrate in argument which has been previously admitted in evidence.

14. Not conduct a trial when they know, prior thereto, that they will be necessary witnesses, other than as to merely formal matters such as identification or custody of a document or the like. If, during the trial, they discover that the ends of justice require their testimony, they should from that point on, if feasible and not prejudicial to their client's case, leave further conduct of the trial to other counsel. If circumstances do not permit withdrawal from the conduct of the trial, lawyers should not argue the credibility of their own testimony.

15. Avoid disparaging personal remarks or acrimony toward opposing counsel and remain wholly uninfluenced by any ill-feeling between the respective clients. They should abstain from any allusion to personal peculiarities and idiosyncrasies of opposing counsel.

16. Rise when addressing, or being addressed by the Court.

17. Refrain from assuming an undignified posture. They should always be attired in a proper and dignified manner as befits an officer of the Judicial Branch of the Government and should abstain from any apparel or ornament calculated to attract attention to themselves.

18. Comply, along with all other persons in the courtroom, with the following:

- (i) No tobacco in any form will be permitted at any time.
- (ii) No propping of feet on tables or chairs will be permitted at any time.
- (iii) No bottles, beverage containers, paper cups or edibles should be brought into the courtroom, except with permission of the bailiff.
- (iv) No gum chewing or reading of newspapers or magazines (except as a part of the evidence in a case) will be permitted while Court is in session.
- (v) No talking or other unnecessary noises will be permitted while Court is in session.
- (v) Everyone must rise when instructed to do so, upon opening, closing, or declaring recesses of Court.

(vii) All male lawyers and male Court personnel must wear both coats and ties; women lawyers and women Court personnel must be suitably attired.

(viii) Any attorney who appears in Court intoxicated or under the influence of intoxicants, drugs or narcotics may be summarily held in contempt.

Rule 104: Attorney Conference with Respect to Discovery Motion

With respect to all motions or objections relating to discovery, the Tribal District Court shall refuse to hear any such motion or objection unless counsel for the movant shall first advise the Court in writing that he has conferred in good faith with opposing counsel, but that, after a sincere attempt to resolve differences has been made, the attorneys have been unable to reach an accord.

Rule 105. Free Press – Fair Trial

(a) It is the duty of the lawyer or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by any means of public communication, in connection with pending or imminent criminal litigation with which a lawyer or a law firm is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

(b) With respect to a pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated, by any means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

(c) From the time of arrest, issuance of an arrest warrant or the filing of a criminal complaint in any criminal matter until the commencement of trial or disposition without trial, a lawyer or law firm associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement which a reasonable person would expect to be disseminated by any means of public communication, relating to that matter and concerning:

(1) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer, or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status and, if the accused has not been apprehended, a lawyer associated with the prosecution may release any

information necessary to aid in his apprehension or to warn the public of any dangers he may present:

(2) The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

(3) The performance of any examinations or test or the accused's refusal or failure to submit to an examination or test;

(4) The identity, testimony, or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;

(5) The possibility of a plea of guilty to the offense charged or a lesser offense.

(6) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

(d) The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of his or its official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the Court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against him.

(e) During a jury trial on any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview relating to the trial or the parties or issues in the trial, which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial, except that the lawyer or law firm may quote from or refer without comment to public records of the Court in the case.

(f) Nothing in this rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude

any lawyer from replying to charges of misconduct that are publicly made against him.

(g) All Court supporting personnel, including among others, Tribal and Bureau of Indian Affairs Police and their deputies, marshals, deputy marshals, court clerks, deputy court clerks, bailiffs, court reporters and employees or subcontractors retained by the court-appointed official reporters, are hereby prohibited from disclosing to any person, without authorization by the Court, information relating to a pending criminal case that is not a part of the public records of the Court. Such personnel are also forbidden from divulging information concerning in camera arguments and hearings held in chambers or otherwise outside the presence of the public.

(h) In a widely publicized or sensational civil or criminal case, the Court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such an order.

Such a special order may be addressed to some or all of the following subjects:

(1) A proscription of extrajudicial statements by participants in the trial (including lawyers, parties, witnesses, jurors, and court officials) which might divulge prejudicial matter not of public record in the case.

(2) Specific directives regarding the clearing of entrances to and hallways in the courthouse and respecting the management of the jury and witnesses during the course of the trial, to avoid their mingling with or being in the proximity of reporters, photographers, parties, lawyers, and others, both in entering and leaving the courtroom or courthouse and during recesses in the trial.

(3) A specific direction that the jurors refrain from reading, listening to, or watching news reports concerning the case, and that they similarly refrain from discussing the case with anyone during the trial and from communicating with others on any manner during their deliberations.

(4) Sequestration of the jury on motion of either party or by the Court, without disclosure of the identity of the movant.

(5) Direction that the names and addresses of jurors or prospective jurors not be publicly released except as required by the Tribal Court, and that no photograph be taken or sketch made of any juror within the environs of the Court.

(6) Insulation off witnesses during the trial.

(7) Specific provisions regarding the seating of spectators and representatives of news media, including:

(i) An order that no member of the public or news media representative be at any time permitted within the bar railing;

(ii) The allocation of seats to news media representatives in cases where there are an excess of requests, taking into account any pooling arrangement that may have been agreed to among the newsman.

(i) The taking of photographs and operation of tape recorders in the courtroom or its environs and radio or television broadcasting from the courtroom or its environs during the progress of or in connection with judicial proceedings, including proceedings before a Tribal judge, whether or not Court is actually in session, is prohibited. A Judge may, however, permit (1) the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record, (2) the broadcasting, televising, recording, or photographing of investigative, ceremonial, or similar proceedings, and (3) the use of electronic or photographic equipment including recording apparatus by tribal officers or employees in the regular course of their business within their normal area of operation within the Courthouse when such will not interfere with the trial of the case.

(j) As used in this Rule the term “environs” means any place in or near the tribal courtroom, or within the building in which the tribal courtroom is situated.

Rule 106: Plan of the Tribal Court for the Representation of Indigent Defendants

(a) **For Whom Appointed.** As designated and provided by the Tribal Court for Criminal defendants, and parents, and children in child custody actions when such persons are found to be financially unable to obtain adequate representation, and free representation is available, or when the Court has adequate funds, not otherwise obligated, to pay for such representation.

(b) **Appointment Panel.** Private attorneys will be appointed by the Judges of this Court. Said appointments shall be made on a rotational bases, subject to the Court’s discretion to make of the Bar of this Court each applicant shall take and subscribe to the oath shown in Exhibit I to these rules.

(c) **Eligibility.** Any member in good standing of the Bar of the Supreme Court of the United States, or of any United States Court of Appeals, or of any District Court of the United States, or any person appointed as Tribal Justice, Judge, or magistrate, or a member in good standing of the Bar of the highest court of any Indian Tribe or State of the United States, is eligible for admission to the Bar of this Court.

Any member of a federally recognized Indian Tribe shall be eligible for admission as a lay advocate upon successfully taking a comprehensive examination on the laws and rules applicable in the Tribal Court, which examination shall be promulgated by the

Admissions Committee with the approval of the Court, and administered by the Admissions Committee at least once each year or at such other intervals as may be ordered by the Court. Upon receiving a passing score on the examination and showing their moral fitness to practice law, such persons should receive a favorable report from the Admissions Committee and be admitted to the practice of law in this Court and all inferior Tribal Courts. Thereafter, such lay advocates shall be held to the same standards, be entitled to the same rights, privileges, obligations, and duties, and be accorded all the honors to the same extent as any attorney admitted to practice before the Courts of the Tribe within this reservation.

(d) **Reciprocity.** Any attorney who shall have been admitted to practice in any Federal Court within this State may be admitted to practice in this Court upon the motion of member of the Bar, in open Court, and the filing of a written application without the necessity of appearing before the Admissions Committee.

(e) **Attorneys for the United States.** Attorneys who are employed or retained by the United States or its agencies may practice in this Court in all cases or proceedings in which they represent the United States or such agencies.

(f) **Admission of Non-Resident Attorney for Limited Practice.** Any member of the Bar of the Supreme Court of the United States, or of any United States Court of Appeals, or of any District Court of the United States, or of the highest Court of any Indian Tribe or State of the United States, who is a non-resident of the State may be admitted to the Bar of this Court for limited practice upon oral application and without compliance with subsection (b) hereof. Limited practice shall be restricted to appearance and practice in a case or proceeding then on file in the court.

(g) **Temporary Admission.** Any attorney who appears eligible for admission to the Bar of this Court may in the discretion of a Judge of the District Court or Justice of this Court be granted temporary admission to practice in a pending case.

(h) **Withdrawal from Case.** In any action, wherein appearance is made through counsel, there shall be no withdrawal by counsel except by leave of Court upon reasonable notice to the client and all other parties who have appeared in the case. Withdrawal of counsel may be granted subject to the condition that subsequent papers may continue to be served upon the counsel for forwarding purposes or upon the Clerk of the Court, as the Court may direct, unless and until the client appears by other counsel or in propria persona, and any notice to the client shall so state and any filed consent of the client shall so acknowledge.

(i) **Discipline.** Any member of the Bar of this Court guilty of a violation of the prescribed oath of office, or of a violation of the disciplinary rules set forth in the Code of Professional Responsibility of the American Bar Association, or of any conduct unbecoming a member of the Bar of this Court, shall be subject to reprimand, suspension, disbarment, or such other disciplinary action as the Court deems appropriate.

(j) **Summary Discipline.** For misconduct in the presence of the Court, an order may issue forthwith administering such discipline as the Court deems appropriate, including a fine of not to exceed \$500.00 or confinement of not to exceed ten (10) days, but summary discipline shall not include the right of the Court to suspend or disbar the offending lawyer from practicing in this Court. An attorney summarily disciplined as herein provided may appeal any punishment imposed hereunder to the Supreme Court, or if summary discipline is administered by a Justice, to the remaining Justices of the Court sitting en banc. The Justice or judge administering the discipline shall not sit in the hearing of such an appeal. In order to allow such an appeal the discipline imposed will, upon request of the attorney, and by his posting a supersedeas bond in a reasonable amount to be fixed by the Court, be stayed for seven (7) days to allow such attorney to perfect an appeal. If no written appeal be filed within said seven (7) days, the punishment so imposed shall be forthwith administered unless in the interim the Judge or Justice imposing same has rescinded or modified his original action. Nothing herein provided is intended to preclude the right to the disciplined attorney to appeal direct to the Supreme Court.

(k) **Conviction; Discipline in Other Courts.** Any member of the Bar of this Court convicted in either federal, state, or tribal court of a felony or other crime punishable by banishment or involving moral turpitude, and any member disbarred or suspended from practice in any Court of competent jurisdiction, shall be suspended automatically from practice in this Court and may be reinstated only on written application showing cause why he should be reinstated, excepting however that in the event the discipline imposed in this Court shall likewise be deferred until such stay expires in the other jurisdiction. And provided further however that in the event a member of the Bar of this Court is disciplined in some other jurisdiction and this Court determines upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:

1. that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
2. that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistent with its duty, accept as final the conclusion on that subject; or
3. that the imposition of the same discipline by the Court would result in grave injustice; or
4. that the misconduct established is deemed by the Court to warrant substantially different discipline.

Then and in either of such events said attorney shall not be automatically similarly disciplined in this Court.

An attorney of this Bar who is under investigation for misconduct, or who is facing disbarment proceedings in any Court of competent jurisdiction, who resigns from the Bar of the investigating jurisdiction, or who voluntarily permits his license to practice therein to terminate, shall be, by this Court, deemed to have been disbarred in the other jurisdiction and shall forthwith be disbarred from practicing in this Court.

(1) **Disciplinary Procedures.** Proceedings to discipline a member of the Bar of this Court, except as set forth in paragraphs (j) and (k) hereof, shall be upon an order to show cause issued by the Court, reciting the charges and fixing notice of the date of hearing (which shall not be less than thirty (30) days from the date of the notice), and reciting the place of the hearing and such hearing procedures as may be reasonable and consistent with due process. Notice to the attorney shall be made by personal service or by registered or certified mail, addressed to the respondent-attorney at his last known address. The Court may, in its discretion, refer any Bar disciplinary matter to its Committee on Admissions and Grievances, if same suggests disbarment or suspension, shall not be adopted until the procedure set forth above has been followed. Any attorney disbarred or suspended pursuant to these rules may apply to the Court for leave to petition for reinstatement.