

**CHIPPEWA CREE TRIBE**

**COURT OF APPEALS**

# **COURT OF APPEALS OF THE CHIPPEWA CREE TRIBE OF THE ROCKY BOY RESERVATION**

## **1. CREATION OF COURT OF APPEALS**

The Chippewa Cree tribal Business Committee hereby establishes a Court of Appeals to provide fair judicial service to those who are aggrieved by decisions of the Tribal Court pursuant to the Article XII, Section 1 of the Constitution and Bylaws of the Chippewa Cree Indians of the Rocky Boy's Reservation.

## **2. OATH OF OFFICE OF JUDGE OF THE COURT OF APPEALS**

- a. Each member of the Court of Appeals shall swear and affirm according to the following "I, (name of person talking oath) hereby swear that I will uphold the Constitution and By-laws of the Chippewa Cree Tribe as I am called upon to review, in my capacity as an Appeals Court Judge, and the Constitution and laws of the United States of America and that I will interpret and apply said laws with equity and fairness."
- b. The oath shall be administered by the Chairman of the Tribe.

## **3. JUDICIAL QUALIFICATIONS**

- a. Chief Judge of the Court of Appeals shall have following qualifications:
  - Person with J.D. or equivalent degree;
  - 25 years of older;
  - Not convicted of felony;
  - Person with good character and possesses a reputation for honesty, fairness and impartiality.

## **4. PROCEDURE FOR SELECTING JUDGES**

The Court of Appeals shall be comprised of one (1) to three (3) Judges with the Chief Appellate Judge presiding over the Court of Appeals. The Chief Appellate Judge of the Court of Appeals shall be appointed by a two-third majority of the Business Committee. Other Appellate Judges shall be selected from a pool of available judges to be determined and selected by the Chief Appellate Judge when needed.

## **5. JUDICIAL COMPENSATION**

The compensation of the judge(s) of the Court of Appeals shall be determined by the Business Committee. The Business Committee may negotiate that rate for the Chief Appellate Judge and a daily rate for the other judges who serve on a panel.

## **6. COURT OF APPEALS TO BE A COURT OF RECORD**

The proceedings of the Court of Appeals shall be recorded by a judicial staff or an electronic recorder, or both. Interpreters shall be provided when determined appropriate by the Chief Appellate Judge.

## **7. JURISDICTION OF THE COURT OF APPEALS**

- a. The jurisdiction of the Court of Appeals shall extend to all appeals from final orders

and judgments of the Tribal Court. The Court of Appeals shall review all determinations of the Tribal Court on matters of law, but shall not set aside any factual determinations are supported by substantial evidence.

- b.** The Court of Appeals shall have original and exclusive jurisdiction over all matters involving extraordinary writs of habeas corpus, mandamus, and prohibition.

## **8. ADMINISTRATION OF THE COURT OF APPEALS**

The Chief Appellate Judge is responsible for the administrative and fiscal management of the Court of Appeals and for the presentation of its annual budget proposal to the Business Committee. In connection with such management, the Chief Appellate Judge may, on behalf of the Court of Appeals, apply for grants and contracts to provide supplementary funding. If such applications require Tribal matching funds for their implementation, prior approval of the Business Committee is required.

## **9. APPEAL IN CRIMINAL CASES**

- a.** Except as otherwise specifically authorized, the Tribal prosecutor may not appeal a criminal case. The Tribal prosecutor may appeal any Tribal Court order or judgment, which results in
  - i.** the dismissal of a case,
  - ii.** any modification of a jury verdict,
  - iii.** granting a new trial,
  - iv.** quashing an arrest or search warrant,
  - v.** the suppression of evidence,
  - vi.** the suppression of a confession of admission, or
  - vii.** imposing a sentence that is contrary to law.
- b.** The defendant may file an appeal only from a final judgment of conviction and/or order, which affects the substantial rights of the defendant.

## **10. APPEAL IN CIVIL CASES**

The Court of Appeals has exclusive jurisdiction over appeals by an aggrieved party from a judgment or order in the following cases:

- a.** From a final judgment entered in an action or special proceedings commenced in the Tribal Court or brought into the Tribal Court from another court or administrative body.
- b.** From an order granting a new trial; or refusing to permit an action to be maintained as a class action; or granting or dissolving an injunction, or refusing to grant or dissolve an injunction; or dissolving or refusing to dissolve attachment; from any special order made after final judgment; and from such interlocutory judgments or orders involving the custody, guardianship, or conservatorship of minors or incompetent persons as may determine permanently, and not on an emergency or temporary bases pending further

proceedings, the rights, interests and responsibilities of the respective parties and direct the disposition of the person or property of the minor or incompetent person in accordance with the determination.

- c. From a judgment or order granting or refusing to grant, revoking or refusing to revoke, letters testamentary, or of administration, or of guardianship; or admitting or refusing to admit a will to probate, or against or in favor of the validity of a will, or revoking or refusing to revoke the probate thereof; or against or in favor of settling an account of an executor or administrator or guardian, or refusing, allowing, or directing the distribution of an estate, or this payment of a debt, claim, legacy, or distributive share.

## **11. REMOVAL OF CHIEF APPELLATE JUDGE**

Any Appeals Judge may be removed by the Business Committee for cause. For the purpose of this Section, removal for cause shall be:

1. Performance of official duties while intoxicated or under the intemperate influence of any drug or mind/behavior altering substance; or
2. Upon conviction for a felony; or
3. Upon conviction for a misdemeanor involving a crime or of moral turpitude; or
4. Upon disbarment by any State or Federal Court; or
5. For failure to perform the duties of the office for a period of three (3) months from the date that there are duties required to be performed, but have not been performed; or
6. Willful misconduct in office.

**12. Notice for a hearing to show cause** why the Judge should not be removed shall be served upon the Judge by registered mail, return receipt requested, and shall give such judge twenty (20) days in which to request a hearing. If no hearing is requested within twenty (20) days from the date of service upon the Judge, then the Business Committee may hear any complaint in absentia and make its determination. Such decision shall be served upon the Judge in the same manner as above. There shall be no appeal from a decision by the Business Committee.

## **RULES OF PROCEDURES OF THE COURT OF APPEALS OF THE CHIPPEWA CREE TRIBE**

### **Rule 1. Notice of Appeal.**

1. An appeal shall be taken by filing a notice to appeal with the Administrator, with a copy to the Clerk of the Tribal Court within 30 days of the date of the final judgment or order of the trial court. Failure of an appellant to timely file a notice or appeal is ground for dismissal of the appeal.
2. Appeals may be consolidated by order of the Court of Appeals upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.
3. The notice of appeal shall specify the party or parties taking the appeal, and shall designate the judgment, order, or part of either appealed from.
4. The Administrator shall serve notice of the filing of a notice of appeal by mailing a copy thereof, together with a copy of the Rules of Appellate Procedure to counsel of record for each party other than the appellant, or, if a party is not represented by counsel to the party at his last known address. The Administrator shall note on each copy served the date on

which the notice of appeal was filed. If an appellate is represented by counsel, such counsel shall provide the Administrator with sufficient copies of the notice of appeal to permit the Administrator to comply with the requirements of this rule. Failure of the Administrator to serve notice shall not affect the validity of the appeal. The Administrator shall note in the appellate docket the names of the parties to whom copies have been mailed, with the date of mailing.

**Rule 2. Stay of Judgment or Order Pending Appeal.**

1. When a criminal defendant files a notice of appeal, any order or judgment resulting in:
  - (a) imprisonment
  - (b) payment of fine or restitution; or
  - (c) probation shall be stayed by the trial court pending the posting of reasonable bond as ordered by the Court of Appeals
2. The filing of notice of appeal by the Tribal prosecutor in a criminal case does not stay any order or judgment of the trial court pending decision of the Court of Appeals.
3. In a civil matter, upon the filing of a notice of appeal, a party may apply to the judge ex parte for a stay of execution of the judgment or order. The judge may grant said stay for such period of time and under such conditions as the judge deems proper, including restraining a party from disposing of, encumbering, or concealing property. The judge may also order that applicant to provide to the court a surety bond, conditioned for the satisfaction of the judgment or order in full together with costs, interest, and damages for delay, if the appeal is dismissed or if the judgment is affirmed.

**Rule 3. Record on Appeal.**

1. The original papers and exhibits filed in the Tribal Court, any transcript of the proceedings, and a certified copy of the minute entries prepared by the Clerk of Court shall constitute the record on appeal in all cases.
2. Within 5 days after filing the notice of appeal, the appellant shall order from the court reporter a transcript of such parts of the proceedings not already on file as the appellant deems necessary for inclusion in the record. The transcript shall be filed and certified with the Clerk of the Tribal Court as part of the record on appeal within 20 days of the filing of the notice of appeal. In all cases where the appellant intends to urge insufficiency of evidence to support the order or judgment appealed from, it shall be the duty of the appellant to order the entire transcript of the evidence and proceedings. Whenever the appellant appeals a specific finding of fact by the trial court on the ground of insufficiency of evidence, the appellant shall be under a duty to include in the transcript all evidence relevant to such finding. Unless the entire transcript is to be provided, the appellant shall, within the 5-day period, file and serve on the respondent a description of the parts of the transcript which he or she intends to present on appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary he shall, within 5 days after such filing and service, order such parts from the reporter or procure an order from the Judge requiring the appellant to do so. The cost of producing the transcript shall be borne by the appellant unless the Judge waives the transcript. Costs of a transcript are among the costs of appeal that may be awarded by the Court of Appeals to a prevailing party, and if a

prevailing appellant's costs have been waived by the Judge, the award will be applied to the transcript costs borne by the Tribal Court.

3. If no record of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may, within 10 days of the hearing or trial or such time extended as the Judge may allow, prepare a statement of the evidence or proceedings from the best available means, including his or her recollection. The statement shall be served on the respondent who may serve objections or propose amendments thereto within 10 days after service. Thereupon, the statement and any objections or proposed amendments shall be included by the Clerk of the Court in the record on appeal.

**Rule 4. Transmission of the Record on Appeal.**

1. The record on appeal, including the transcript necessary for the determination of the appeal, shall be transmitted to the Appellate Administrator within 30 days after the filing of the notice of appeal unless the time is extended to a date certain for good cause shown by the Judge upon application of a party.
2. When the record is complete for purpose of the appeal, the Clerk of Court shall transmit a certified copy to the Appellate Administrator. The Appellate Administrator shall immediately transmit a complete copy of the record to each Justice who will hear the appeal and to any visiting or substitute judge.

**Rule 5. Docketing the Appeal and Filing the Record.**

1. At the time of filing the notice of appeal, the appellant shall pay to the Clerk of the **Tribal Court a fee of \$100 for filing and transmitting the record on appeal**, unless the fee is waived by the Judge upon the granting of leave to proceed in forma pauperis or for other good cause shown. Failure to pay the filing fee, unless waived, is ground for dismissal of the appeal.
2. On the date on which the record on appeal is transmitted to the Court of Appeals, the Administrator will docket the appeal and file the record in a repository. An appeal shall be docketed and filed under the title given to the action in the trial court with such addition as necessary to indicate the identity of the appellant. The Administrator shall immediately give notice to all parties of the date on which the record was filed and the appeal docketed.

**Rule 6. Effect of Dismissal.** The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from unless the dismissal is expressly made without prejudice to another appeal.

**Rule 7. Harmless Error.** No judgment or order shall be reversed upon appeal by reason of any error committed by the trial court affecting the interests of the appellant where the record shows that the same result would have been attained had the trial court not committed an error or errors.

**Rule 8. Ruling against Respondent May Be Reviewed.** Whenever the record on appeal in a civil case shall contain any order, ruling or proceeding of the trial court against the respondent, affecting the respondent's substantial rights on the appeal of said cause, the Court of Appeals shall consider such orders, rulings, proceedings, and shall reverse or affirm the cause on appeal according to the substantial rights of the respective parties, as shown

upon the record.

**Rule 9. Remedial Powers of the Court of Appeals in Civil Cases.** In a Civil Case, where the proceedings were not stayed, and when the judgment or order is reversed or modified, the Court of Appeals may make complete restitution of all property and rights lost by the erroneous judgment or order, so far as such restitution is consistent with protection of a purchaser of property at a sale ordered by the judgment, or had under process issued upon the judgment.

**Rule 10. Certification of Judgment to Clerk of the Tribal Court.** When judgment is rendered upon the appeal, it must be certified by the Administrator to the Clerk to the Tribal Court. The Clerk of Court shall enter the certificate into the records of the Tribal Court. Also, in cases of appeal from a judgment, the Clerk must enter a minute of the judgment of the Court of Appeals on the docket against the original entry; and in cases of appeal from an order, the Clerk must enter a minute against the entry for the order appealed from, containing a reference to the certificates, with a brief statement that such order has been affirmed, reversed, or modified by the Court of Appeals on appeal.

**Rule 11. Appeals in Forma Paurperis.** An indigent party who desires to proceed on appeal in forma paurperis shall file with the Administrator a motion for leave so to proceed together with an affidavit showing the party's inability to pay the fees and costs of the appeal or to give security therefore, the party's belief that the party is entitled to redress, and a statement of the issues the party intends to present on appeal. If the motion is granted the Judge may waive the payment of fees or costs or the giving of security therefore.

**Rule 12. Filing and Service.**

1. Papers required or permitted to be filed with the Court of Appeals must be placed in the custody of the Administrator within the time fixed for filing. The Administrator shall note upon each such paper or document the time of filing and transmit the same to the Judge and any substitute judge designated to hear the matter.
2. Copies of all papers filed by any party shall, at or before the time of filing, be served by the party or a person acting for him or her on all other parties to the appeal. Service on a represented by counsel shall be made on counsel. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing. Papers presented for filing shall contain a certification of service in the form of a statement of the date and manner of service and of the names of the persons, served, certified by the person who made service.
3. Except as otherwise provided in these rules, a signed original and three copies of all papers shall be filed with the Appellate Administrator.

**Rule 13. Motions.** Unless another form is prescribed by these rules, an application for an order or other relief shall be made by filing a motion in writing for such order or relief. The motion shall state with particularity the grounds therefore and shall set forth the order or relief sought. Counsel shall also note therein that opposing counsel has been contacted concerning the motion and whether opposing counsel objects to the motion. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. The Court of Appeals may authorize disposition of motions by a Judge. If a motion seeks dismissal of the appeal or other substantial relief, any party may file an answer in opposition within 7 days after service of the motion, or within such time as the Court may direct.

**Rule 14. Computation and Extension of Time.** In computing any period of time prescribed by these rules.

1. Saturdays, Sundays, and Tribal Holidays are excluded from the computation, and
2. The day from which the designated period of time begins to run shall not be included, but the last day of the period is included.
3. For good cause shown, the Judge may order an extension of the time prescribed by these rules. All motions or orders for extension of time shall include a date certain on or before which date the act for which an extension of time is requested must be performed.

**Rule 15. Briefs**

1. An Appellant's brief shall be filed and served within 20 days of the date the record is filed and transmitted. The brief will contain under appropriate headings in the order indicated.
  - a) A Table of contents and a table of laws, decisions, and other authorities cited, with references to the pages of the brief where they are cited
  - b) A statement of the legal presented for review;
  - c) A statement of the nature of the cases and of the judgment or order appealed from;
  - d) A legal argument, which shall contain the contentious of the appellant with respect to the issues presented and the reasons therefore, together with citations to the authorities and pages of the record relied on;
  - e) A short conclusion, stating the precise relief sought; and
  - f) A copy of the judgment, order, findings of fact, conclusions of law, or decision in question, together with the memorandum opinion, if any.
2. Respondent's brief shall be filed and served within 20 days after services of the appellant's brief and shall conform to the requirements of subsection (1) (a) through (d) of this rule. A statement of the issues or of the case need not be made if the respondent is satisfied with the statements of the appellant.
3. Within 14 days of service of the Respondent's brief, the appellant may file a reply brief. Any reply brief must be in confined to new matter raised in the brief of the Respondent. No further briefs may be filed except with leave of the Judge.
4. Except by permission of the Judge, briefs shall not exceed 50 pages, double spaced, on 8 1/2 x 11 inch paper, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, etc.
5. A signed original and three copies (except as otherwise provided in these rules) of each brief shall be filed with the Administrator. The brief will contain a certification of service to each party separately represented and will not be accepted for filing absent such certification



6. If an appellant fails to file a brief within the time provided by this rule, or within the time extended, the respondent may move from dismissal of the appeal. If a respondent fails to file brief he or she will not be heard an oral argument except by permission of the court.

#### **Rule 16. Oral Arguments.**

1. Except in the case of an case of an extraordinary writ or other special or emergency proceeding when the Judge may schedule a special session of the Court, the Judge will set the time and place at which the oral argument will be heard during the next regular convening of the appellate bench after the time for filing and service of appellant's reply brief has expired. The Administrator shall advise all parties of the time and place of hearing. Any request for postponement of the hearing must be made by motion to the Judge no later than 10 days prior to the time scheduled for hearing and may be granted for good cause shown.
2. At oral argument, 45 minutes will be allowed appellant and 35 minutes to respondent. Arguments of multiple parties or amici curiae for appellant or respondent shall be allocated by the parties to conform to these limits. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.
3. The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case, and the closing argument shall be limited to rebuttal of respondent's argument.
4. If counsel for a party fails to appear, the court may hear arguments on behalf of a party whose counsel is present, and the case will be decided on the briefs and the argument heard. If no counsel appears for any party, the case will be decided on the briefs.
5. By agreement of the parties, a case may be submitted for decision that briefs.

#### **Rule 17. Return and Remand.**

1. A judgment on appeal shall be entered in full by the Administrator in the appellant records and transmitted to the Clerk of Court for entry in the records of the case in the trial court.
2. When a judgment on appeal includes a remand tot the court below for further findings of fact, conclusions, or amendments of the trial court judgment or order in keeping with the decision of the Court of Appeals, trial court jurisdiction over the matter is reinstated for the purpose of such further proceedings as may be appropriate. Any party may appeal any amended or modified judgment of the trial court on remand that is not in accord with the appellate decision or instructions or that incorporates new findings or conclusions alleged to be in error.

**Rule 18. Entry and Notice of Appellate Orders, Judgments, or Decisions.** A notation of an order, judgment or decision of the Court of Appeals in its docket constitutes entry thereof. Upon entry, the Appellate Administrator shall promptly mail to all parties a copy of the order, judgment, or decision, and notice of the late of entry.

**Rule 19. Interest on Civil Judgments.** If a judgment for money is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was rendered in the trial court. If a judgment is modified or reverse with a direction that a judgment for money be entered in the trial court, the mandate shall contain instructions with respect to interest.

**Rule 20. Costs on Appeal.**

1. not otherwise provided by the Court in its decision, costs on appeal and in original proceedings will automatically be awarded to the successful party against the other party; provided however, that costs awarded to plaintiff or relator in special proceedings to review trial court rulings, namely, the party interested in upholding the trial court's action, rather than against the Tribes or the trial judge.
2. Costs incurred in the printing or producing of briefs and appendices, in the preparation and transmission of record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for the cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing notice of appeal shall be taken by the Administrator as costs of the appeal in favor of the party entitled to costs under this rule.
3. The Administrator shall, in all civil cases, include in the order of judgment of affirmance, reversal, or modification on appeal or for the issuance of a writ in an original or special proceeding and in remand, peremptory writ, or judgment, a clause awarding the costs in accordance with the rule or the special order of the Court of Appeals to be recovered by claim as provided by law; and the Administrator shall also furnish therewith an itemized statement of such costs as have been paid by the Administrator or by the Tribal Court.

**Rule 21. Petitions for Rehearing en Banc.**

1. Except as otherwise provided in this rule, a petition for rehearing before the Judge may be filed within 10 days after the appellate decision has been rendered by filing an original copy of the petition with the Administrator. The adverse party will have 7 days thereafter in which to serve and file an original and five copies of any objections to rehearing en banc.
2. No rehearing is allowed for an original proceeding where the entire Court considered the application and participated in the issuance of the order, judgment, or writ.
3. A petition for rehearing en banc may be presented on the following grounds and no others:
  - a) that some fact, material to the decision, or some question decisive of the case submitted by counsel, was overlooked by the Court;
  - b) that the decision is in conflict with an express statute or controlling decision; or
  - c) that the Court employed inappropriate procedures or considered facts outside the record on appeal.
4. Within 15 days after receipt of the petition and any objections and upon consultation with his or her colleagues, the Chief Justice may grant or deny the petition for rehearing en banc. If granted, the parties shall submit briefs as provided in Rule 17 on the issues permitted to

be raised and the matter will be scheduled for argument unless the parties agree that the matter will be decided on briefs.

**Rule 22. Voluntary Dismissal.** If the parties sign and file with the Administrator an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and whatever fees are due, the Administrator shall enter the case dismissed, and shall give to each party a copy of the agreement filed. An appeal may be dismissed on motion of the appellant upon such terms as to costs as may be agreed upon by the parties or fixed by the Judge.