

IN THE SUPREME COURT OF THE MUSCOGEE (CREEK) NATION

IN RE:)
)
ADOPTION OF 2023 APPELLATE RULES)
OF PROCEDURE)

SUPREME COURT
FILED

NOV 08 2023

ADMINISTRATIVE ORDER 2023-08

CONNIE DEARMAN *LM*
MUSCOGEE (CREEK) NATION
COURT CLERK

M(C)NCA Title 27, § 3-108 provides that “[t]he Supreme Court shall establish procedures for all cases and other matters before the Supreme Court. Such rules shall be transmitted, before their effective date, to the National Council, the District Court, and members of the Muscogee (Creek) Nation bar. Copies of the rules shall be made available to the public for a reasonable fee. Rules may be amended or rescinded by the Supreme Court at any time except that rules in effect at the time of filing of a matter in the original hearing body shall govern that matter until final resolution by the Supreme Court.”


Pursuant to the above-referenced statute, the Supreme Court rescinds the appellate rules of procedure currently in place, in its entirety, and establishes the *2023 Appellate Rules of Procedure*; except that, for cases currently pending before the Nation’s courts, the rules in effect at the time of filing of a matter in the original hearing body shall govern that matter until final resolution by the Supreme Court.

Pursuant to the above-referenced statute, the *2023 Appellate Rules of Procedure* have been transmitted in accordance with the Certificate of Service, below, to the National Council, the District Court, and to the members of the Muscogee (Creek) Nation bar. These rules shall also be made available to the public, free of charge, on the Supreme Court’s website.

The effective date for the *2023 Appellate Rules of Procedure* shall be December 1, 2023.

ALL JUSTICES CONCUR.

DONE AND ORDERED: November 8, 2023


Richard Lerblance
Chief Justice

CERTIFICATE OF DELIVERY

I hereby certify that on November 8, 2023, a true and correct copy of the foregoing Administrative Order was mailed to the following Muscogee (Creek) Nation government officials: David Hill - Principal Chief of the Muscogee (Creek) Nation, P.O. Box 580, Okmulgee, OK 74447; William Lowe - Speaker of the Muscogee (Creek) Nation National Council, P.O. Box 158, Okmulgee, OK 74447; Roger Wiley – Chief District Court Judge of the Muscogee (Creek) Nation; Geri Wisner – Attorney General, Muscogee (Creek) Nation, P.O. Box 580, Okmulgee, OK 74447. A copy has also been emailed to all members of the Muscogee (Creek) Nation Bar Association at each member’s email address of record.



Laura Marks, Deputy Court Clerk

APPENDIX 2. MUSCOGEE (CREEK) NATION SUPREME COURT RULES OF APPELLATE PROCEDURE

Rule

- 1.Name; authority; title.
- 2.Final order appeals.
- 3.Interlocutory appeals.
- 4.Filing and service.
- 5.Time.
- 6.Parties to the appeal; multiple appeals.
- 7.Intervention and amicus curiae.
- 8.Costs.
- 9.Motions.
- 10.Form of motions.
- 11.Form of briefs.
- 12.Appellant's brief.
- 13.Respondent's brief.
- 14.Appellant's reply brief.
- 15.Miscellaneous briefs.
- 16.Relief pending appeal.
- 17.Record.
- 18.Remedial powers of Supreme Court.
- 19.Oral argument.
- 20.Penalties.
- 21.Subpoenas.
- 22.Deliberations.
- 23.Decision of the Supreme Court.
- 24.Petition for rehearing.
- 25.Substantial and insubstantial errors on appeal.
- 26.Indigent appeal.
- 27.Habeas corpus.
- 28.Applications to assume original jurisdiction.
- 29.Motions to withdraw.

Rule 1. Name; authority; title

- A. **Citation:** These rules shall be cited as the MCN Rules of Appellate Procedure (MCN RAP).
- B. **Applicability:** These rules shall apply to the appellate proceedings conducted by the Supreme Court of the Muscogee (Creek) Nation.
- C. **Authority:** The Supreme Court was created by Article VII of the Constitution and has appellate jurisdiction over all cases and controversies, civil and criminal, arising within the Nation. These Appellate Procedures are required by Article VII Section 3 of the Constitution.
- D. **Jurisdiction not limited:** These rules shall not be construed to limit the jurisdiction of the Judicial Branch of the Muscogee (Creek) Nation as stated in Title 27, § 1–102, as amended.
- E. **Construction:** These rules shall be liberally construed in every appeal to ensure that the appellant receives due process of law and prompt and speedy relief.

- F. **Customs:** Matters and proceedings not specifically set forth herein shall be handled in accordance with reasonable justice, as determined by the rules of procedure for other Tribes or the United States may be used as a guide, so long as these guideline rules are not inconsistent with existing rules of procedure, laws, or the customs of the Nation.

Rule 2. Final order appeals

- A. **Right to appeal, civil:** A final judgment or final order of any original hearing body or District Court of the Muscogee (Creek) Nation may be appealed to the Supreme Court as a matter of right unless otherwise expressly provided by law.
- B. **Right to appeal, criminal:** An appeal may be taken by a defendant only from a final judgment of conviction, orders after judgment which affect the substantial rights of the defendant, or from a denial of a motion to dismiss the charges against the defendants.
- C. **Fee:** Final Order and Interlocutory Appeals shall commence at the District Court with the filing of an original Notice of Appeal, consistent with the Supreme Court's Rules of Appellate Procedure.

The Clerk of the District Court shall charge the sum of one hundred and seventy five dollars (\$175.00) for preparing, assembling, indexing and transmitting the record for appellate review. The fees collected shall be paid into the District Court's fund.

A second original, and eight (8) file-stamped copies, of the Notice of Appeal obtained from the District Court shall then be filed with the Supreme Court. The Clerk of the Supreme Court shall charge the sum of seventy-five dollars (\$75.00) for the filing and management of the appeal. The fees collected shall be paid into the Supreme Court's fund.

Should the Petitioner need to retain file-stamped copies for their own file or for purposes of service, such copies are in addition to the requirements listed above.

If more than one party to the action shall prosecute an appeal from the same judgment or order, the fee shall be paid by the party whose petition in error is determined by the District Court or by the Supreme Court to commence the principal appeal.

Appellate filing fees may be waived by Order of the Supreme Court upon a showing that the appellant is indigent and unable to pay the filing fees prescribed. A party seeking a waiver of appellate filing fees must submit to the Supreme Court Clerk an Order from the District Court showing that the appellant was found indigent in the underlying District Court action in accordance with MCNCA Title 27, App. 2, Rule 26

- D. **Time:** A party has fifteen (15) days from the receipt of the District Court decision to file a Notice of Appeal. If the Muscogee (Creek) Nation or an officer thereof is a party in their official capacity, the Notice of Appeal shall be filed within twenty-five (25) days. Where another law of the Nation provides a different timeframe to file an appeal, that law shall be binding.
- E. **Additional information:** The following information shall be provided in or with the filing of the Notice of Appeal:
1. A copy of the written decision of the original hearing body.
 2. A short statement explaining what relief is sought by the appellant.

3. A short statement explaining the legal grounds for seeking the appeal and justification for the relief requested.
 4. A short statement or statements outlining the hearing bodies and/or agencies where the appellant has sought a remedy.
 5. Name, address and phone numbers of all parties, including respondents.
 6. Name, address, phone number, and email address of all parties' advocates, if known.
- F. **Filing deficiencies.** If the appellant fails to pay the filing fee or obtain a waiver from the Court, or fails to submit any required documents or materials, the appellant shall be so notified of any filing deficiencies within five (5) days and shall have five (5) days from receipt of this notice to perfect the filing. Failure to perfect the filing within five (5) days shall result in the non-acceptance of the appeal.
- G. **Notice to respondent(s):** Within five (5) days of filing of a perfected Notice of Appeal, the Clerk of the Supreme Court shall serve notice of the Supreme Court's docketing decision. If the case is docketed, a case number will be assigned and a briefing schedule shall be issued to the parties.

Rule 3. Interlocutory appeals

- A. **Granted by permission:** A non-final judgment or order not appealable as a right under Rule 2 may be appealed via an interlocutory appeal to the Supreme Court prior to a final judgment or order upon leave granted by the Supreme Court if the original hearing body determines that an interlocutory appeal will (or may):
1. Materially advance the termination of the litigation or clarify further proceedings in the litigation;
 2. Protect the petitioner from substantial or irreparable injury; or
 3. Clarify an issue of general importance in the administration of justice.
- Upon the filing of an interlocutory appeal, the Supreme Court will issue an Order to the District Court directing the underlying judge to submit a "Determination of Interlocutory Merit" to the Clerk of the Supreme Court within ten (10) days of the filing of the Order, accessing the applicability of Rule 3 (A)(1 through 3). The Supreme Court shall consider the District Court's analysis when deciding whether to grant or deny leave for the Interlocutory Appeal.
- B. **Time:** A party aggrieved of an intermediate ruling, judgment or order during an original hearing, who wishes to seek intermediate relief, shall file an interlocutory appeal with the Supreme Court within five (5) days of the receipt of the ruling, judgment, or order in question.
- C. **Rights saved:** Issues not raised or decided in an interlocutory appeal may be considered in an appeal after the final judgment or order.
- D. **Fees:** Filing fees shall be paid in accordance with the provisions of MCNCA Title 27, App. 2, Rule 2 (C).
- E. **Additional information:** The following information shall be provided in or with the filing of the Notice of Appeal:
1. A copy of the written decision of the original hearing body.
 2. A short statement explaining what relief is sought by the appellant.
 3. A short statement explaining the legal grounds for seeking the appeal and justification for the relief requested.

4. A short statement or statements outlining the hearing bodies and/or agencies where the appellant has sought a remedy.
 5. Name, address and phone numbers of all parties, including respondents.
 6. Name, address, phone number, and email address of all parties' advocates, if known.
- F. **Filing deficiencies.** If the appellant fails to pay the filing fee or obtain a waiver from the Court, or fails to submit any required documents or materials, the appellant shall be so notified of any filing deficiencies within five (5) days and shall have five (5) days from receipt of this notice to perfect the filing. Failure to perfect the filing within five (5) days shall result in the non-acceptance of the appeal.
- G. **Notice to respondent(s):** Within five (5) days of filing of a perfected Notice of Appeal, the Clerk of the Supreme Court shall serve notice of the Supreme Court's docketing decision. If the case is docketed, a case number will be assigned and a briefing schedule shall be issued to the parties.

Rule 4. Filing and service

- A. **Filing methods:** In person or mail filing are the only acceptable methods of officially filing documents related to cases pending before the Supreme Court.
1. By mail: A party to a pending case may file papers by the U.S. Postal Service or other reliable mailing service, with cover documents to be addressed to the Supreme Court Clerk. Mailed documents must be received by the Clerk prior to the close of business on or before the day that the filing is due. The party filing shall supply the Supreme Court with an original, eight (8) copies of all documents together with an affidavit showing service on opposing counsel. If the filing party desires a file stamped copy by return mail, an additional copy must be sent with a postage paid addressed envelope. Filing shall not be completed upon mailing, but only upon receipt.
 2. In person: A party to a pending case, or the party's advocate or authorized agent may file papers in person before the Clerk of the Supreme Court. Filing must be complete prior to thirty (30) minutes before the close of business on the day that any filing is due. The party filing shall supply the Supreme Court with an original, and eight (8) copies of all documents together with an affidavit showing service on opposing counsel.
- B. **Service methods:** Service may be made by delivering a copy of the document to the other party personally or by leaving the copy at the party's usual place of residence with some member of the family over fifteen (15) years of age.
- C. **Proof of service:** Documents presented for filing shall contain 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 of the names of the persons who made service. Proof of service shall be filed with the document filed.
- D. **Parties with counsel:** The following rule shall apply where a party is represented by counsel, whether advocate, paralegal or attorney. Only counsel need be served papers. Service to a party is assumed to be completed upon service to the party's counsel.
- E. **Service of documents by the Court:** Each member of the Muscogee (Creek) Nation Bar Association has an affirmative duty under Rule 2-1 of the *Rules Governing the M(C)N Bar and Attorney Professional Conduct* to promptly notify the Clerk of the Supreme Court of

any changes to the bar member's contact information (including email address). As such, the Clerk of the Supreme Court may serve court documents related to any appeal electronically to the email address of record of counsel.

Rule 5. Time

- A. **Calendar days:** All reference to days in these rules of appellate procedure shall refer to the use of calendar days.
- B. **Deadline computation:** Days are counted by designating the day after notice is received as day one. If notice is mailed, then three (3) dates shall be added to the normal due date in order to determine the due date. Computation involving calendar days shall include intermediate holidays and weekend days. Computation involving business days shall not include intermediate week end days. If the last day of the period falls on a Saturday, Sunday or legal holiday, then the next business day shall be the due date. All papers to be filed with the Supreme Court are due no later than thirty (30) minutes before the closing of the office on the last day of the time period.
- C. **Extension of time:** The Chief Justice may, upon the petition or motion by a party showing good cause, extend any time period set forth herein for any required act or submission. Motions for an extension of time shall be submitted no less than two (2) days prior to the due date.
- D. **Dismissal for failure to file:** An appeal filed under Rule 2 or Rule 3 may be dismissed by this Court when the appellant has failed to timely file the Brief-in-Chief and no extension of time has been granted.
- E. **Time to complete:** Unless time is extended by the Supreme Court, the time from the filing of the Notice of Appeal subsequent to the entry of the final written decision of the District Court shall not exceed six (6) months.

Rule 6. Parties to the appeal; multiple appeals

- A. **Appellant:** The person or persons filing the appeal is the appellant to the case. If the person filing the appeal is the agent or other representative of an agency, department or other Tribal entity, then the full name of the agency shall be listed as the appellant, followed by the filing person's name.
- B. **Respondent:** The person or persons against whom appellate relief is sought shall be named as the respondent(s) to the case. If the appellant is seeking relief from an agency action or decision, then that agency, along with the agency's representative shall be named as the respondent.
- C. **Joint appeals:** If two or more people are each entitled to appeal from the same judgment or order entered in the same action or proceeding before the original hearing body and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may, after filing separate notices of appeal proceed as a single appellant, upon order of the Court.
- D. **Co-appels:** If the parties do not file a joint appeal or elect to proceed as a single appellant, or if joinder is impracticable, they shall be known as appellant and co-appellant, with identical procedural rights and obligations as any single appellant. The appellant shall be that person who has the earlier filing date or time of filing where the people file on the same date.

- E. **Cross appeals:** A respondent who seeks modification of the judgment or order appealed from or of another judgment or order entered in the same action or proceeding shall file a notice of a cross appeal by an appellant within the time established for the filing of a notice of appeal or ten (10) days after the receipt of the notice of appeal, whichever is later. The respondent shall be listed as the respondent and cross appellant. A cross appellant has the same rights and obligations as an appellant under these rules.
- F. **Consolidation of separate appeals:** The appellate court may consolidate separate appeals in separate actions or proceedings in the Trial Court upon its own motion, motion of a party, or stipulation of the parties.

Rule 7. Intervention and amicus curiae

A. Intervention:

1. A person may, upon a timely motion and with the permission of the Appellate Court, intervene and be treated in all respects as a party to an appeal where:
 - a) The movant claims an interest relating to the property or transaction which is the subject of the appeal; and
 - b) The movant is so situated that the disposition of the appeal may as a practical matter impair or impede the movant's ability to protect that interest, and
 - c) The movant's interest is not adequately represented by the existing parties.
2. A person may, upon the timely motion and with the permission of the Appellate Court, intervene in an appeal when the movant's claim or defense and the main appeal have a question of law or fact in common.
3. A person desiring to intervene shall serve a motion to intervene upon the parties to the main action. This motion shall state the grounds upon which intervention is sought and shall be accompanied by a brief setting forth the arguments for which intervention is sought.

B. **Amicus curiae (friend of the Court):** A person who is not a party to a case but has some interest in the outcome of an appellate case may, upon a timely motion and with permission of the Appellate Court, submit an amicus curiae brief in support of one party to the action or to supplement the arguments of a party. See also Rule 16.

C. **Time:** A person wishing to intervene or file an amicus curiae brief in an appeal shall file a motion to intervene within fifteen (15) days of the entry of the initial review decision accepting the appeal. Parties shall have fifteen (15) days from receipt of the person's motion to file a response brief to the motion to intervene.

Rule 8. Costs

Copy charge: Parties who fail to supply a sufficient number of copies for use by the Supreme Court and opposing parties shall be assessed a fee per page copied by the Supreme Court Clerk.

Rule 9. Motions

A. **Procedure:** A party seeking an order or other relief in a docketed appeal shall file a motion for the order or other relief.

1. The motion must state specifically the order or relief sought and the grounds on which the motion is based and may include a statement of the positions of other parties as to the granting of the motion.
2. If a motion is supported by brief, affidavit or other paper, then these shall be attached and filed with the motion and designated as exhibits or supporting memoranda.
3. Parties to the case may file a response to the motion within ten (10) days of the receipt of the motion, after which time the Appellate Court will deliberate upon the arguments/positions of the parties, and render a decision which will grant or deny the motion.

B. Exceptions:

1. A motion for procedural orders may be granted or denied by the Chief Justice, without notice to the opposing party. A party adversely affected by a procedural order may request reconsideration of the order by the full Appellate Court within five (5) days of receipt of notice of the decision by the lead judicial officer.
2. The Chief Justice, upon receipt of a motion by a party, may order that the opposing party's response be made within five (5) days for procedural motions or motions where the relief requested requires a decision within the normal ten (10) day response period.

C. Sanctions: Sanctions may be issued for the filing of a frivolous motion. Frivolous motions may include motions brought for the sole purpose of delay or for motions so obviously without merit as to impute bad faith on the party bringing the motion. Sanctions may include:

1. Denial of the Motion;
2. Dismissal of the appeal;
3. Imposition of a penalty or costs on a party or party's advocate;
4. A finding of contempt against the party in non-compliance;
5. Other action as the appellate court considers appropriate.

Rule 10. Form of motions

- A. **Caption:** Every motion shall contain a caption heading, "In the Muscogee (Creek) Nation Supreme Court," names of all of the parties to the action, the docket number (if known), a designation as to the purpose or type of motion it is, and the name, address, phone number and other contact information such as an e-mail address of the person responsible for the brief. Example:

IN THE MUSCOGEE (CREEK) NATION SUPREME COURT

Name of Appellant)
Appellant)
v.) SC 2000-____
Name of Respondent)
Respondent)

Brief of Appellant

Appeal from the District Court of the Muscogee (Creek) Nation
Okmulgee District, Case No. CV 2000–xx

Name of Appellant or Attorney
Address
Phone
e-mail

- B. **Content:** All motions shall be organized in sections containing a clear designation, which shall include but not be limited to:
 - 1. The facts, events or occurrences which make a specific motion for relief necessary.
 - 2. The specific relief requested by the moving party.
 - 3. The applicable law or laws which are applicable to the motion at hand.
 - 4. The grounds upon which the relief is sought.

Rule 11. Form of briefs

- A. **Caption:** Every brief shall contain a caption heading, “In the Muscogee (Creek) Nation Supreme Court,” names of all of the parties to the action, the docket number (if known), a designation as to the purpose or type of brief it is, and the name, address, phone number and other contact information such as an e-mail address of the person responsible for preparing the Brief. See example in Rule 10.
- B. **Format:** Briefs shall be double spaced, typed or computer generated, and on 8.5 x 11 inch paper. Type shall be 12 to 14 point readable typefaces such as Times New Roman, Helvetica or Arial. Margins shall be at least 1 inch on all sides. Each page shall be numbered at the bottom. Pages shall be printed on one side only. Each copy shall be securely bound such that it lays flat and no words are obscured by the binding. A corner staple is acceptable for short documents. Questions about the acceptability of a document should be addressed to the Supreme Court Clerk before filing. A sample page is available from the Clerk. After filing the court may request reproduction in acceptable form.
- C. **Subscription and verification:** Briefs shall be signed by the party or the party’s advocate, if represented. Signing indicates that to the best of the signer’s knowledge, information and belief, the person signing knows that the matters communicated to the court are true and not frivolous, scandalous or indecent. Electronic signatures will not be accepted.

Rule 12. Appellant's brief

- A. **Time:** The appellant shall file a brief within thirty (30) days of the filing of the Notice of Appeal.
- B. **Content:** The appellant's brief must contain the following information:
 - 1. A table of contents with page references to the portions of the brief, including headings of each section of the argument.
 - 2. A table of cases cited in the brief, arranged alphabetically, with a page reference to where the case is cited in the brief.
 - 3. A statement of the issues presented for review by the Appellate Court.
 - 4. A statement of the case which should include: the nature of the case; the course of the proceedings to date, and the cases disposition at the trial court or original hearing level, and the facts relevant to the issues presented for review, with appropriate references to the record of the trial court proceedings.
 - 5. The argument, which may be preceded by a summary. The argument shall contain the positions of the appellant with respect to each of the issues presented for review, with the reasons for these positions and citations to applicable laws, authorities, and parts of the record relied upon by the appellant. The argument of the appellant should be separately identified for each issue presented to the Appellate Court.
 - 6. A short conclusion stating the precise relief sought.
 - 7. All rules, regulations, laws, authorities, and portions of the record cited by the appellant shall be attached as an addendum unless previously filed with the Appellate Court.
 - 8. The appellant's brief may incorporate by clear and specific reference, portions of other documents or material previously submitted to the Appellate Court in the case at hand.
- C. **Length:** The brief shall be no more than twenty (20) pages in length, not including any addendums, appendices, attachments, table of contents or list of authorities. An appellant may not submit over fifty (50) pages total (including brief material, addendums, appendices, attachments, table of contents, authorities or otherwise) without leave of Court. The Clerk of the Supreme Court shall reject (at time of filing) any Appellant's Brief exceeding fifty (50) pages in length filed without leave of Court.
- D. **Withdrawal and dismissal:** A Final Order Appeal (Rule 2) and/or an Interlocutory Appeal (Rule 3) may be withdrawn or dismissed by the Appellant without the approval of the Court at any time prior to the filing of the Response Brief or a Cross-Appeal. After a Response Brief or Cross-Appeal has been filed, a Final Order Appeal and/or an Interlocutory Appeal may only be dismissed with the consent of the Court.

Rule 13. Respondent's brief

- A. **Time:** The respondent shall file a brief in response to the appellant's brief within thirty (30) days of the filing of the appellant's brief,
- B. **Content:** The respondent's brief shall comply with the content requirements of Rule 12B. above.
 - 1. The respondent's brief shall address each issue and argument presented by the appellant in the appellant's brief.

2. The respondent's brief may present additional issues, with the respondent's positions and arguments on these issues.
- C. **Length:** The respondent's brief shall be no more than fifteen (15) pages in length, not including any addendums, appendices, attachments, or the tables of contents and authorities. A respondent may not submit over forty-five (45) pages total (including brief material, addendums, appendices, attachments, table of contents, authorities or otherwise) without leave of Court. The Clerk of the Supreme Court shall reject (at time of filing) any Respondent's Brief exceeding forty-five (45) pages in length filed without leave of Court.

Rule 14. Appellant's reply brief

- A. **Time:** The appellant may submit a reply brief within fifteen (15) days of filing of the respondent's brief.
- B. **Content:** The reply brief shall be organized in accordance with Rule 12B. The brief shall address only those additional issues presented in the respondent's brief which have not previously been argued by the appellant.
- C. **Length:** The reply brief shall be no more than five (5) pages in length, not including any addendums, appendices, attachments, or tables of contents and authorities. An appellant may not submit over fifteen (15) pages total (including brief material, addendums, appendices, attachments, table of contents, authorities or otherwise) without leave of Court. The Clerk of the Supreme Court shall reject (at time of filing) any Reply Brief exceeding fifteen (15) pages in length filed without leave of Court.

Rule 15. Miscellaneous briefs

- A. **Consolidated/joint appeals:** Each appellant in a consolidated appeal or a joint appeal and each co-appellant may file a separate brief or a joint brief with another appellant or co-appellant. A joint brief must comply with Rules 12, 13 and 15 above related to appellants' briefs and may not exceed the page limit for a single appellant.
- B. **Cross appeal:** The parties in a cross appeal have the same rights as a party in an appeal and may file separate cross appellant's and cross respondent's briefs in accordance with the Rules 12 thru 15 above related to parties' briefs.
- C. **Amicus curiae briefs:** A person not a party to an action may by motion request permission to file a brief. The motion shall identify the interest of the person and state why a brief filed by that person desirable or necessary.
 1. Permission may be granted by the Chief Justice.
 2. If permission to file a brief is granted, the non-party brief shall be due fifteen (15) days after permission has been granted.
 3. The non-party brief shall comply with the content and form rules of a respondent's brief, Rules 12 and 14.
 4. Each party shall have fifteen (15) days to file a response brief to the nonparty brief. Such briefs shall comply with the content and form requirements of Rules 12 and 15.

Rule 16. Relief pending appeal

- A. **Effect of appeal:** An appeal from a decision, final or interlocutory, of an original hearing body or the District Court does not stay the enforcement of the order or judgment appealed from except as provided in these rules, or other Tribal laws.

- B. **Stay upon appeal:** A party may file a motion asking the Supreme Court for a stay of enforcement of the original hearing body order or District Court judgment pending the final adjudication of the appeal. The Supreme Court may issue such an order upon its own motion where justice requires.
- C. **Bond or other security:** The stay of enforcement may be conditioned upon the posting of a bond or other appropriate security by the moving party, except that where the Tribe or a Tribal entity is the appellant, no bond shall be necessary,
- D. **Remedies:** During the pendency of an appeal, the appellate court may:
 - 1. Stay the execution or enforcement of a judgment or order;
 - 2. Suspend, modify, restore, or grant an injunction; or
 - 3. Make any order appropriate to preserve the existing state of affairs or the effectiveness of the judgment.
- E. **Criminal judgment:**
 - 1. Imprisonment: If a defendant is sentenced to time in jail by the District Court and makes a timely application for appeal, the jail sentence is stayed pending the outcome of the appeal. The Tribal Judge may continue the bail as originally set upon the defendant for the charge appealed from or may either lower the amount of the bail or release the defendant upon his own recognizance according to the bail procedure set down by the District Court, pending the appeal.
 - 2. Fine: If a defendant is fined and makes a timely appeal, the sentence to pay a fine or other costs shall be stayed by the District Court pending the outcome of the appeal.
 - 3. Probation: If an appeal is taken and the defendant was admitted to probation, he or she shall remain on probation pending the outcome of the appeal or else shall post bail.
 - 4. Suspended sentence: If the defendant was given a suspended sentence by the District Court, such sentence shall be suspended pending the outcome of the appeal.
 - 5. Defense verdict: An appeal taken by the Nation in no way affects or stays the operation of the judgment, decision or order in favor of the defendant until the judgment, decision or order is reversed by the Supreme Court.

Rule 17. Record

- A. **General:** The record shall consist of all papers filed with the original hearing body, whether or not admitted for consideration, the exhibits viewed, the transcript or recording of the proceedings, if any, the final decision of the original hearing body, and a certified copy of the entries prepared by the Clerk of the District Court.
- B. **Disputes about record:** If any dispute arises as to whether the record on appeal truly tells what occurred in the District Court, the dispute shall be submitted to and settled by 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 District Court, either before or after the record is transmitted to the Supreme Court, on proper suggestion or of its own initiative, shall 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.

C. **Open record:** The record compiled by the Supreme Court is Tribal record and open to the public for viewing subject to the following exceptions and conditions:

1. Any person viewing the record of any case may purchase copies of the entire record or parts thereof from the Supreme Court Clerk. Copies of any part of the record, or for costs associated with Rule 8 of the Appellate Rules of Procedure, shall be \$1.00 for the first page, and \$0.50 for each subsequent page. The Court shall also publish electronic copies of the party briefs, intermediate orders, and final decisions issued in each appellate matter to the Court's official website (for cases filed after November 1, 2023).
2. Juvenile and guardianship: Records of cases involving juveniles and guardianships shall remain confidential and shall only be viewed by justices, the parties and their counsel, court staff assigned to the case, those other persons who first obtain a written release from a party to view specific material in the record, or by order of the Chief Justice of the Supreme Court. This does not include final orders and/or opinions issued by this Court, which shall be made public in order to establish case-law precedent. All final orders and/or opinions shall be redacted of all personal identifiers, including names, addresses, dates of birth, social security numbers, financial information, driver's license information, medical records, employment history, and/or any other information that could be used to link an individual to the final order and/or opinion in question.
3. Adoption: Adoption files are confidential and may be viewed only by order of the Court. Any adopted person over the age of eighteen (18) may review his/her adoption records. This does not include final orders and/or opinions issued by this Court, which shall be made public in order to establish case-law precedent. All final orders and/or opinions shall be redacted of all personal identifiers, including names, addresses, dates of birth, social security numbers, financial information, driver's license information, medical records, employment history, and/or any other information that could be used to link an individual to the final order and/or opinion in question.
4. Sealed files: Where a case involves the review and consideration of material or evidence that would normally be considered confidential, such as trade secrets, attorney/client privilege, etc., the Appellate Court may order that portion of the record sealed and such portion shall be available for viewing only by Supreme Court personnel assigned to the case, the parties and those agents or representatives specifically authorized by the parties to view the material.
5. Permissive viewing: Any person who can prove a legitimate interest in a particular confidential case may review said matter after receiving written permission from the Chief Justice. The original written permission document is to be filed in the case by the Chief Justice and a copy shall be sent to the applicant. The Supreme Court Clerk shall document the date and time at which the person actually viewed the file.

6. Deliberations of the Supreme Court are confidential, are not part of the appellate record, and are not subject to reproduction. Opinions or votes of individual justices may be published in the Final Order.

Rule 18. Remedial powers of Supreme Court

- A. **Civil appeals:** Upon appeal from a judgment or order from an original hearing body decision, the Supreme Court may:
 1. Reverse, affirm, or modify the judgment or order as to any or all parties;
 2. Remand the matter and order a new trial/hearing on any or all issues presented;
 3. If the appeal is from a part of a judgment or order, may reverse, affirm, or modify as to the part which is appealed;
 4. Direct the entry of an appropriate judgment or order; or
 5. Require such other action or further proceedings as may be appropriate to each individual action.
- B. **Criminal appeals:** The Supreme Court may take any action in Section A and/or:
 1. Set aside, affirm or modify any or all of the proceedings subsequent to or dependent upon the judgment or order from which the appeal is taken;
 2. Reduce the degree of the offense of which the appellant was convicted;
 3. Reduce or raise the punishment within the limits of the particular statute, imposed by the District Court, or
 4. Order a new trial if justice so requires.

Rule 19. Oral argument

- A. **When:** If, after a review of the briefs the Appellate Court finds that issues of fact or law remain unclear, oral arguments may be scheduled by the appellate court. An amicus curiae may be granted leave to participate in oral argument.
- B. **Procedure:** The following procedure shall apply when conducting oral arguments:
 1. Parties will be given at least ten (10) days notice of the scheduled date.
 2. Each party shall each have thirty (30) minutes to present their respective arguments and may reserve up to five (5) minutes of this time for the purposes of rebuttal of the opposing party's arguments. Intervening and amicus curiae parties will only be heard during oral argument with consent of the Court.
 3. The appellant shall present that party's argument first. The argument shall consist of the appellant's position or positions on the issues presented in appeal.
 4. The respondent shall present that party's argument after the appellant's presentation. The argument shall consist of the respondent's position(s) on the issues presented in the appeal.
 5. The appellant, if any time was reserved for rebuttal, may present rebuttal arguments addressing the respondent's positions.
 6. The respondent, if any time was reserved for surrebuttal, may present surrebuttal arguments addressing the appellant's positions.
 7. Judicial officers may ask questions of any party at any time during the presentation. Time may be extended by the Chief Justice.
- C. **Failure to appear:** If a party or his counsel fails to appear for oral argument, the Court will hear the argument of the party who is present and the case will be decided upon the briefs, if any, the oral argument made and the notice and record of appeal.

Rule 20. Penalties

- A. **Frivolous claims:** If an appeal or cross-appeal is found by the appellate court to be taken without substantial or reasonable grounds, the court may award to the prevailing party costs and attorney's fees.
1. Costs may be assessed against the appellant or cross-appellant, their advocate, or both jointly.
 2. A finding of a frivolous appeal or cross-appeal will be made if one or more of the following elements are found by the appellate court:
 - a) The appeal or cross-appeal was filed, used, or continued in bad faith, solely for the purposes of harassing or injuring the opposing party; or
 - b) The party or party's advocate knew, or should have known, that the appeal or cross-appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.
- B. **Delay:** If the appellate court finds that an appeal or cross-appeal was taken for the purpose of delay, it may award one or more of the following to the opposing party:
1. Double costs;
 2. A penalty of additional interest not exceeding 10% on the award amount affirmed;
 3. Damages occasioned by the delay;
 4. Attorney's fees.
- C. **Non-compliance with rules:** Failure of a party to comply with a requirement of these rules or an order of the appellate court, does not affect the jurisdiction of the appellate court over the appeal but may be grounds for one or more of the following:
1. Dismissal of the appeal;
 2. Summary reversal of the original hearing body decision;
 3. Striking of a paper, document or memorandum submitted by a party;
 4. Imposition of a penalty or costs on a party or party's advocate;
 5. A finding of contempt against the party in non-compliance.
 6. Other action as the appellate court considers appropriate.

Rule 21. Subpoenas

- A. **Issuance:** Subpoenas may be ordered by the Supreme Court and issued by the clerk to compel the submission of specific documents or information to be used for consideration in the case.
1. Parties may submit a motion to the Appellate Court for the issuance of a subpoena upon a showing that an adverse party or witness is refusing to submit relevant documents, property, or other evidence for discovery or is refusing to appear before the Supreme Court.
 2. A response from said adverse party or witness may be submitted to explain such a refusal.
- B. **Service:** May be made following the requirements of service above or by any person not a party to the action, over the age of eighteen (18) years.
- C. **Endorsement:** The person serving a subpoena shall endorse upon the copy served the person's name, title and the time, date and place of service.

- D. **Return to clerk:** The person serving shall sign a return statement before the clerk stating the name of the case, the name of the person served, the place, date and time of service.
- E. **Failure to appear or submit:** Failure to appear by a person properly served a subpoena or failure to submit required papers by order of subpoena may be deemed by the Appellate Court to be contempt on the part of the failing person.
- F. **Subpoena not needed:** A person present before the Appellate Court may be required to testify in the same manner as if such presence had been compelled by a subpoena.

Rule 22. Deliberations

- A. **Motions:** The Appellate Court may deliberate and deny or otherwise dismiss a motion by a party prior to the opposing party's receipt of the motion. Otherwise, the Appellate Court shall delay deliberation on any motion or until after a response brief has been filed or the due date for receipt of the response brief has expired,
- B. **Merits:** The Appellate Court shall not deliberate upon the merits of any appeal until after receipt of the appellant's brief, respondent's brief, and appellant's rebuttal brief, or until after the expiration of the due date for the filing of such documents.
- C. **Judgment/decision.** A judgment or decision of the Supreme Court requires the approval of a minimum of four (4) justices.

Rule 23. Decision of the Supreme Court

- A. **Final procedure:** The decision of the Court shall be in writing, signed by the justices sitting on the case who agree with the decision and filed with the Clerk of the Supreme Court. The Clerk of the Supreme Court shall then send a copy of the decision to each party and the Clerk of the District Court. Upon receipt of the decision, the Clerk of the District Court shall report the decision to the Tribal Judge for appropriate action.

Rule 24. Petition for Rehearing

- A. **Time:** A petition for a rehearing before the Supreme Court may be filed within ten (10) days after the decision of the Court has been rendered and the adverse party shall have seven (7) days thereafter in which to serve and file objections thereto.
- B. **Grounds:** A petition for rehearing may be presented on the following grounds and no others:
 - 1. That some facts, material to the decision, or some question decisive of the case submitted by counsel, was overlooked by the Court, or
 - 2. that the decision is in conflict with an express statute or controlling decision to which the attention of the Court was not directed.
- C. **Procedure:** The rehearing may be held with or without oral argument and will be decided only upon the petition and the objections thereto.
- D. **Second petition for rehearing:** No motion or application for rehearing or review will be accepted for filing after the denial of a petition for rehearing.
- E. **When no petition for rehearing may be filed:** No petition for rehearing may be filed for the following types of orders:
 - 1. An order denying an application to assume original jurisdiction.
 - 2. An order denying a motion to dismiss with prejudice.

Rule 25. Substantial and insubstantial errors on appeal

- A. Any defect, irregularity or variance which does not affect substantial rights shall be disregarded.
- B. Defects affecting jurisdictional or constitutional rights may be noticed although they were not brought to the attention of the District Court sitting as the District Court.

Rule 26. Indigent appeal

- A. **Petition:** Upon imposition of any sentence in a criminal case a defendant may file in the District Court a petition requesting that he or she be furnished with a transcript of the proceeding at his or her trial and that the filing fee for the notice of appeal, the transmission fee of the record on appeal and the transcript fee be waived because of the defendant's indigence.
- B. **Verification:** The petition shall be verified by the defendant and shall state facts showing that he or she is at the time of the filing of the petition without financial means to pay the filing fees and the cost of the transcript. If the trial judge who imposed sentence or in his or her absence any judge of the District Court finds that the defendant is without financial means with which to pay the filing fees or the transcript fee, he shall order the Clerk of the District Court to produce the transcript and waive the filing fee for the notice of appeal and the transmission of the record on appeal.
- C. **Appeal:** If the petition provided for the subsection "A" above is denied by the District Court, a petition so to proceed may be filed in the Supreme Court within ten (10) days after entry of the denial. The petition shall be accompanied by a copy of the verified petition filed in the District Court and of the statements of reasons for denial given by the District Court.

Rule 27. Habeas corpus

- A. **Filing the writ:** A writ of habeas corpus may be filed by any person who is detained in the Nation's custody before any hearing on the merits of the charges against him or her. The writ may be made by the prisoner alone, or if requested by the prisoner, the Clerk of the District Court must make such a writ on behalf of the prisoner. The writ shall state the reasons why the prisoner feels he or she is being wrongfully detained and shall immediately be served upon the Chief Justice of the Supreme Court.
- B. **Hearing:** The Chief Justice upon receipt of such writ must call a hearing on the writ within seventy-two (72) hours of receipt thereof, unless on a weekend or holiday, in which case the hearing shall be called the next day after a weekend or holiday. Three justices must sit at the hearing and the prisoner and/or his counsel may be present to present oral arguments on the merits of the writ. The Supreme Court may also summon Tribal officials and request a record of the charge to be presented by the Clerk of the District Court. If the justices find that the prisoner has been unlawfully detained and jailed they may proceed affirmatively upon the writ of habeas corpus. The writ of habeas corpus in no way affects the charge against the defendant and the Tribe may proceed to charge the defendant under the legal methods and procedures provided under this Code.

Rule 28. Applications to assume original jurisdiction

- A. **Commencement and fees if underlying District Court action exists:** The petitioner shall commence an action for the Supreme Court to assume original jurisdiction at the District Court by the filing of an *Application to Assume Original Jurisdiction and Brief in Support*. The Application must be filed at least ten (10) days prior to the date said cause is set for hearing or trial at the District Court. Provided, however, the above limitation may be excused by the Supreme Court if the petitioner alleges and shows that asserted grounds for relief were not known, or could not reasonably have been discovered prior to the ten-day period.

The Clerk of the District Court shall charge the sum of one hundred and seventy-five dollars (\$175.00) for preparing, assembling, indexing and transmitting the record for appellate review. The fees collected shall be paid into the District Court's fund.

A second original, and eight (8) copies, of the *Application to Assume Original Jurisdiction and Brief in Support*, file-stamped by the District Court, shall then be filed with the Supreme Court. The Clerk of the Supreme Court shall charge the sum of seventy-five dollars (\$75.00) for the filing and management of the *Application*. The fees collected shall be paid into the Supreme Court's fund.

- B. **Commencement and fees if no underlying District Court action exists:** The petitioner shall commence the action at the Supreme Court by the filing of one (1) original and eight (8) copies of the *Application to Assume Original Jurisdiction and Brief in Support*. The Clerk of the Supreme Court shall charge the sum of seventy-five dollars (\$75.00) for the filing and management of the Application to Assume Original Jurisdiction. The fees collected shall be paid into the Supreme Court's fund.
- C. **Length:** The Application to Assume Original Jurisdiction and Brief in Support shall not exceed fifteen (15) pages in length (including brief material, addendums, appendices, attachments, table of contents, authorities or otherwise) without leave of Court. Formatting shall be in compliance with Rule 10. The Clerk of the Supreme Court shall reject (at time of filing) any *Application* exceeding fifteen (15) pages in length filed without leave of Court.
- D. **Additional information:** The following information shall be provided in or with the filing of an Application to Assume Original Jurisdiction and Brief in Support:
1. Arguments supporting the extraordinary use of the court's power to assume original jurisdiction.
 2. Arguments addressing why the action cannot be processed through normal judicial procedures, with the action first being heard to its completion in the District Court.
 3. Arguments addressing any extraordinary circumstances involved in the action that dictate assumption of original jurisdiction being in the interest of justice.
 4. Name, address and phone numbers of all parties, including the petitioner and all adverse parties.
 5. Name, address, phone number, and email address of all parties' advocates, if known.
 6. Underlying District Court case number, if applicable.

7. A short statement or statements outlining the hearing bodies and/or agencies where the appellant has sought a remedy, if applicable.
- E. **Filing deficiencies.** If the petitioner fails to pay the required filing fee or fails to submit any required documents or materials, the petitioner shall be so notified of any filing deficiencies within five (5) days and shall have five (5) days from receipt of this notice to perfect the filing. Failure to perfect the filing within five (5) days shall result in the non-acceptance of the Application.
- F. **Docketing decision:** Within five (5) days of filing of a perfected Application, the Clerk of the Supreme Court shall serve notice of the Supreme Court's docketing decision. If the case is docketed, a case number will be assigned.
- G. **Response:** The Court may refuse to assume original jurisdiction without a response being filed. Otherwise, the date of any response shall be set by order of the Court. If ordered, the response shall not exceed fifteen (15) pages in length (including brief material, addendums, appendices, attachments, table of contents, authorities or otherwise) without leave of Court. Formatting shall be in compliance with Rule 10. The Clerk of the Supreme Court shall reject (at time of filing) any response exceeding fifteen (15) pages in length filed without leave of Court. If a response is ordered, one (1) original and eight (8) copies shall be filed with the Clerk of the Supreme Court (plus any additional copies needed by the party for service).
- H. **Oral argument:** Oral argument before the Supreme Court is not a matter of right. The Court may refuse to assume original jurisdiction without hearing oral presentations. If oral argument is deemed necessary by the Court, it shall be scheduled and conducted in compliance with Rule 19.
- I. **Relief:** Depending on the relief sought by the petitioner, the Court may assume original jurisdiction and grant in whole or in part the relief sought, may assume original jurisdiction and deny the relief sought, may assume original jurisdiction and require additional briefing on the merits of the case, or may take any other action it deems appropriate, as justice so requires.
- J. **Sanctions:** Sanctions may be issued for the filing of a frivolous Application to invoke this Court's extraordinary powers to issue original jurisdiction writs. Frivolous proceedings may include Application brought for the sole purpose of delay or to disrupt the proceedings in the lower court, or proceedings so obviously without merit as to impute bad faith on the party bringing the action. Where the filing of such proceeding is in good faith, sanctions will not be imposed. Sanctions may include:
 1. Dismissal of the appeal;
 2. Imposition of a penalty or costs on a party or party's advocate;
 3. A finding of contempt against the party in non-compliance;
 4. Other action as the appellate court considers appropriate.

Rule 29. Motions to withdraw

- A. A motion to withdraw may be filed at any time. However, unless a successor counsel enters an appearance, leave of Court must be obtained for withdrawal. The Court will consider and may grant a motion to withdraw where there is no successor counsel only if the withdrawing attorney clearly states in the body of the motion the name and address of the party and that notice of the motion was given to the party.