NORTHERN PLAINS INTERTRIBAL COURT OF APPEALS

RULES

OF

APPELLATE PROCEDURE

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RULE 1--SCOPE OF RULES

(a) Scope of rules. These rules govern procedure in appeals to the Northern Plains Intertribal Court of Appeals (herein NPITCA), and in applications for writs or other relief which the NPITCA or a justice thereof is competent to give.

(b) Rules not to affect jurisdiction. These rules shall not be construed to extend or limit the jurisdiction of the Northern Plains Intertribal Court of Appeals as established by law or agreement of the participating Tribal Governments.

(c) Trial court. The term "trial court" under these rules shall include the court of any member reservation. The term "clerk of the trial court" under these rules shall include the clerk of the relevant Tribal Court.

(d) Parties. Subject to the provisions of Rule 28(h), the party perfecting an appeal shall be known as the appellant, and the respondent party shall be known as the appellee or respondent.

RULE 2--SUSPENSION OF RULES

In the interest of expediting decision, or for other good cause shown, the court, except as otherwise provided in Rule 26(b), may suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction.

In the interest of expediting decisions in cases of pressing concern to the public or to the litigants, or for good cause show, the Court of Appeals by unanimous action may suspend appellate court Rule requirements and procedures on the application of a party or its own motion, and may order proceedings in accordance with its discretion.

RULE 2.1--MENTAL, HEALTH APPEALS

(a) Filing of notice of expedited appeal. An expedite appeal from an order committing a person to treatment, may be taken by filing a notice of appeal with the clerk of the trial court within 10 days after entry of the order.

(b) Content of the notice of appeal. The notice of appeal must specify the party or parties taking the appeal; must designate the judgment, order or part thereof appealed from; and must name the court to which the appeal is taken.

(c) The record on appeal. The record on appeal shall consist of the record required by Rule 10(a). A tape recording of the

proceedings or an agreed statement of the case may substitute for the transcript.

(d) Briefs. The appellant's brief must be filed with the notice of appeal and be served upon the opposing party at that time. The appellee's brief must be filed and served within five days thereafter unless otherwise ordered.

(e) Motions. Any motion must be filed within five days after service of the notice of appeal. Any party may file a response in opposition to a motion within five days after service of the motion.

(f) Application of other rules. To the extent that they are not inconsistent with this rule, all other rules of appellate procedure apply.

RULE 3--APPEAL AS OF RIGHT--HOW TAKEN

(a) Filing the notice of appeal. An appeal permitted by law as of right from a trial court to this court shall be taken by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4. 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 ground only for such action as the court deems appropriate, which may include dismissal of the appeal.

(b) Joint or consolidated appeals. If two or more persons are entitled to appeal from a judgment or order of a trial 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 court upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

(c) Content of the notice of appeal. The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment, order, or part thereof appealed from; and shall name the court to which the appeal is taken.

(d) Service of the notice of appeal. The clerk of the trial court or appellant shall cause a copy of the notice of appeal to be mailed to the clerk of this court and to counsel of record for each party other than the appellant, or,if a party is not represented by counsel, to the party's last known address.

In criminal cases, habeas corpus proceedings, or post-conviction proceedings, the clerk or appellant shall also mail a copy of the docket entries to the clerk of this court. The clerk or appellant shall note on each copy mailed the date on

which the notice of appeal was filed. Failure of the clerk to cause the notice to be mailed does not affect the validity of the appeal. Service is sufficient notwithstanding the death of a party or the party's counsel. The clerk shall note in the docket the names of the parties to whom copies are mailed, with the date of mailing.

The title of the action is not to be changed in consequence of the appeal.

RULE 4--APPEAL--WHEN TAKEN

(a) Appeals in civil cases. In a civil case the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days of the date of the service of notice of entry of the judgment or order appealed from. If no notice of entry of judgment is made, then notice of appeal required by Rule 3 shall be filed within 60 days of the date of such judgment or order appealed from. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within fourteen days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this subdivision, whichever period last expires.

The running of the time for filing a notice of appeal is terminated as to all parties by a timely motion filed in the trial court by any party, and the full time for appeal fixed by this subdivision commences to run and is to be computed from service of notice of the entry of any of the following orders made upon a timely motion under such rules: (1) granting or denying a motion for judgment; (2) granting or denying a motion to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) granting or denying a motion to alter or amend the judgment; or (4) denying a motion for a new trial.

Upon a showing of excusable neglect, this court may extend the time for filing the notice of appeal by any party for a period not to exceed thirty days from the expiration of the time otherwise prescribed by this subdivision. Such an extension may be granted before or after the time otherwise prescribed by this subdivision has expired; but if a request for an extension is made after such time has expired, it shall be made by motion with such notice to all other parties.

(b) Appeals in criminal cases. (1) In a criminal case the notice of appealed by a defendant must be filed with the clerk of the trial court and mailed to this court within ten days after the entry of the judgment or order appealed from. If a timely motion in arrest of judgment or 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 ten 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 similarly extend the time for appeal from a judgment of conviction if the motion is made before or within ten days after entry of the judgment.

(2) If an appeal by the tribe is authorized by relevant Tribal Code, the notice of appeal must be filed with the clerk of the trial court and mailed to this court within thirty days after the entry of the judgment or order appealed from.

(3) A judgment or order is entered within the meaning of this subdivision when it is entered in the criminal docket. A notice of appeal filed after the announcement of a decision, sentence, or order but before entry of the judgment or order must be treated as filed after the entry and on the day thereof. Upon a showing of excusable neglect the trial 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 thirty days from the expiration of the time otherwise prescribed by this subdivision.

RULE 5 FILING FEE--DOCKET FEE

A filing fee or docket fee shall be required in all appeals, unless proceedings are in forma pauperis pursuant to Rule 6, in amount as set by the Board of Directors of NPITCA.

RULE 6 PROCEEDINGS IN FORMA PAUPERIS

A party to an action in a tribal court who desires to proceed on appeal in forma pauperis to the Northern Plains Intertribal Court of Appeals shall, with the Notice of Appeal, file an affidavit/application showing, in the detail and format prescribed by the Court, his inability to pay the bond, fees and costs or to give security therefor, and his belief that he is entitled to redress. If the affidavit/application is granted, the party may proceed without prepayment of fees or costs or the giving of security therefor; if denied, the Court of Appeals shall state in writing the reasons for the denial. Granting of the application may be made by the Clerk of NPITCA, the Chief Appellate Judge or any Associate Judge of NPITCA. Denial of the application may be made only by the Chief Appellate Judge or any Associate Judge.

RULE 7 STANDARDIZED FORMS

The Intertribal Court of Appeals authorizes the Chief Appellate Judge to adopt the use of the standardized forms, which shall become part of the Appendix, and which shall be used for all the below subscribed actions or other actions as permitted or required by the Chief Appellate Judge of this Court unless otherwise noted herein:

1) Notice of Appeal (must accompany any other formal Notice, except where the other Notice contains the same essential data elements and information);

2) Application and Affidavit For Proceeding in Forma Pauperis (Form #2. Application And Affidavit for Proceeding On Appeal In Forma Pauperis, has been revised and is attached);

3) Order of Stay of Execution;

4) Petition for Rehearing (or other petition containing the same essential data elements and information);

5) Order Of The Court Of Appeals

6) Satisfaction Of Judgment;

7) Call of the Court;

8) Appellant's Brief Proceeding Pro Se

9) Affidavit of Prejudice For Judicial Disqualification (or other affidavit containing the same essential data elements and information).

RULE 8--STAY OR INJUNCTION PENDING APPEAL

(a) Stay must ordinarily be sought in the first instance in trial court; motion for stay in appeals court. Application for a stay of the judgment or order of a trial 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 trial court. A motion for such relief may be made to this court or to a justice thereof, but the motion shall show that application to the trial court for the relief sought is not practicable, or that the trial court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the trial court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute 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. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the clerk and normally would be considered by the 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.

(b) Stay may be conditioned upon giving of bond; proceedings against sureties. Relief available in this court under this rule may be conditioned upon the filing of a bond or other appropriate security in the trial court. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the trial court and irrevocably appoints the clerk of the trial court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. A surety's liability may be enforced on motion in the trial court without the necessity of an independent action. The motion and

the notice of the motion the trial court prescribes may be filed with the clerk of the trial court, who shall forthwith mail copies to the sureties if their addresses are known.

(c) Stays in criminal cases. Stays of execution in criminal cases shall be had in accordance with the provisions as follows:

(1) Imprisonment. A sentence of imprisonment is stayed if appeal is taken and the defendant is released pending disposition of the appeal pursuant to Rule 9(b),

(2) Fine. A sentence to pay a fine or a fine and costs, if an appeal is taken, may be stayed by the trial court upon such terms as the court considers proper. The trial court may require the defendant pending appeal to deposit the whole or any part of the fine and costs with the clerk, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating assets.

(3) Probation. An order placing the defendant on probation may be stayed if an appeal is taken. If the order is stayed the court shall fix the terms of the stay.

(4) Tribal Code. Stays may also be permitted pursuant to applicable tribal code.

RULE 9--RELEASE IN CRIMINAL CASES

(a) (Reserved for future use.)

(b) Release pending appeal from a judgment of conviction. Application for release, modification of the conditions of release, or revocation of release, after a notice of appeal from a judgment of conviction has been filed shall be made in the first instance in the trial court. If the trial court refuses release pending appeal, or imposes conditions of release, or revokes release, the court shall state in writing the reasons for the action taken. Thereafter, a motion for release, pending review may be made to this court or to a justice thereof. The motion shall be determined promptly upon such papers, affidavits, and portions of the record as the parties present and after reasonable notice. This court or a justice thereof may order or deny the release of the appellant pending disposition of the motion.

RULE 10--THE RECORD ON APPEAL

(a) Composition of the record on appeal. Certified copies of the original papers and exhibits filed in the trial court, and a certified copy of the docket entries prepared by the clerk of the trial court shall constitute the record on appeal in all cases. A copy of the transcript is required, unless waived or excused as stated herein.

(b) The transcript; duty for appellant to order; time for ordering. If an appeal if taken in a case in which an evidentiary hearing was held, it is the duty of the appellant to order a transcript of the proceedings. Three copies must be ordered for this court and one copy must be ordered for each other party to the appeal. The order must be served on the trial court and must be for a complete transcript of the proceedings, unless a stipulation is obtained from all affected parties specifying portions which are not required for the purposes of the appeal. If a party affected by the appeal unreasonable refuses to stipulate to exclude from the transcript portions of the record not necessary to the resolution of issues raised by the appellant, the party proposing the stipulation may apply to the trial court for an order requiring the refusing party to pay for the unnecessary portions of the transcript and reasonable attorney's fees for making the application. Proof of service of the order for transcript and a copy of the stipulation of excluded portions, if applicable, must be filed with the clerk of the trial court with the notice of appeal. A party shall include in his order for transcript the following information:

1. Caption of the case;
2. Date or dates of trial;
3. Number of copies required; and
4. Names and addresses of the parties to be served with copies.

(c) Time for furnishing transcript; filing for transcript; financial arrangements. The transcript must be completed within sixty days after the notice of appeal is filed unless the trial court or a party applies for and receives an extension of time under subdivision(d). The trial court shall file three copies of the transcript with the clerk of this court. The other copies shall be served upon parties designated in the order for transcript. If demanded by the trial court, the appellant or a party obliged by an order of the court under subdivision (b) to pay for the transcript or a portion thereof shall advance the payment of his portion of the estimated cost of any transcript ordered, provided a written estimate of the amount and a demand for payment is served on any obligated party within ten days after receipt of the order for transcript or an order of the trial court under subdivision (b). Failure to furnish a written estimate and make a timely demand for payment waives the right to demand advance payment. No advance payment is required if the transcript is to be paid for by the tribe or any agency or subdivision thereof. If an obligated party fails to make the advance payment within ten days after service of the demand, the transcriber may suspend preparation of the transcript until payment is made.

In no event shall a criminal defendant be required to pay for the transcript on appeal.

(d) Extension of time. If the transcriber is unable to complete and file the transcript within sixty days after the notice of appeal is filed, the trial court for good cause shown by the transcriber or a party may extend the time for completion of the transcript.

If preparation of the transcript has been suspended by the transcriber for failure of any party to make a timely advance payment upon demand, the party responsible for the delay, for good cause shown, may move the trial court for an extension of time in which to file the transcript, on such terms as the court may order.

A request for extension must be made within the time originally prescribed or within an extension previously granted, but the trial court shall not extend the time to more than ninety days from the date of the filing of the first notice of appeal. If the trial court is without authority to grant the relief sought or has denied a request therefore this court may on motion for good cause shown extend the time for completion of the transcript to be filed after the expiration of the time allowed or fixed. If the request for extension of time for completion of the transcript has been previously denied, the motion must set forth the denial and must state the reasons therefore, if any were given.

(e) Form of transcript. Each transcript must conform to the requirements of Rule 32. The accuracy of the transcript must be certified by the transcriber or operator who took the shorthand notes or operated the electronic recording, as the case may be. If the transcriber or operator is not available or was not present during the proceeding, the judge shall certify the accuracy of the transcript.

(f) Statement of the evidence or proceedings if no verbatim record was made or transcript is unavailable. If no verbatim record of the evidence or proceedings at a hearing or trial was made or 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 must be served on the Appellee, who may serve objections or propose amendments thereto within ten days after service. Thereupon the statement and any objections or proposed amendments must be submitted to the trial court for settlement and approval and, as settled and approved, must be filed with the clerk of this court by the appellant within sixty days after the notice of appeal is filed.

(g) Agreed statement as the record on appeal. In lieu of the record on appeal as defined in subdivision (a), 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 trial 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,

it, together with any additions the trial court may consider necessary to present the issues raised on appeal, shall be approved by the trial court and shall then be certified to this court as the record on appeal and transmitted thereto by the clerk of the trial court within the time provided by Rule 11.

(h) **Correction or modification of the record.** If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference 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 misstated therein, the parties by stipulation, or the trial court either before or after the record is transmitted to the appeals court, or the appeals court, on proper suggestion or of its own initiative, may direct that omission or misstatement be corrected, and, if necessary, that supplement record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the appeals court.

(i) **Transcript not required.** For good cause shown by appellant this Court may waive the requirement of a transcript, if Appellant within ten days of filing notice of appeal makes application to this court to excuse the requirement of a transcript and sets forth the basis, justifying such waiver. Granting or denying such request is in the sole discretion of this court and any one Justice may make such ruling.

RULE 11--TRANSMISSION AND FILING OF THE RECORD

(a) **Time for transmission; duty of appellant.** The clerk of the trial court shall transmit the exhibits necessary for the determination of the appeal and the record on appeal, excluding the transcript, to this court not less than twenty-five nor more than thirty days after the filing of the notice of appeal unless otherwise directed by the court or a party or transcriber pursuant to subdivision (c). After filing the notice of appeal the appellant shall take any action necessary to expedite the assembly and transmission of the record. If more than one appeal is taken, a single record must be transmitted within the period above stated.

(b) **Method of transmitting the record.** The clerk of the trial court shall number the documents comprising the record and shall transmit with the record a list of the documents correspondingly numbered and identified with reasonable definiteness. Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the clerk unless he is directed to do so by a party or by the clerk of this court. A

party shall make advance arrangements with the clerk for the transportation and receipt of exhibits of unusual bulk or weight.

Transmission of the record is effected when the clerk of the trial court mails or otherwise forwards the record to the clerk of this court. The clerk of the trial court shall indicated, by endorsement on the face of the record or otherwise, the date upon which it is transmitted to this court.

(c) **Temporary retention of record in trail court for use in preparing briefs and transcript.** A party or transcriber may retain the record in the trial court by sending written request to the clerk of the trial court within the earliest time stated in subdivision (a) for transmission of the record. Copies of the request must be sent to all counsel of record and to the clerk of this court. If the record is retained by a party under this subdivision, the appellant, upon receipt of the brief of the appellee, shall request the clerk of the trial court to transmit the record, unless transmission of the record at an earlier time is agreed upon by the parties or directed by this court. If the record is retained by the transcriber under this subdivision, the transcriber, upon filing of the transcript, shall request the clerk of the trial court to transmit the record, unless transmission of the record at an earlier time is directed by this court.

(d) **Retention of the record in the trial court by order of court.** This court may provide by rule or order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted.

If the record or any part thereof is required in the trial court for use there pending the appeal, the trial court may make an order to that effect, and the clerk of the trial court shall retain the record or parts thereof subject to the request of this court, and shall transmit a copy of the order and of the docket entries together with those parts of the record the trial court allows and copies of those parts the parties designate.

(e) **Stipulation of parties that parts of the record be retained in the trial court.** The parties may agree by written stipulation filed in the trial court that designated parts of the record shall be retained in the trial court unless thereafter this court shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

(f) **Record for preliminary hearing in NPITCA.** If before record is transmitted a party desires to make in this court a motion for dismissal, for release, for a stay pending appeal, for additional security on the bond on appeal or on a

supersedeas bond, or for any intermediate order, the clerk of the trial court at request of any party shall transmit to this court those parts of the original record any party designates.

(g) Filing of the record. Upon receipt of the record or of parts of the record authorized to be filed under the provisions of subdivision (d) by the clerk of this court following timely transmittal, and after the appeal has been docketed, the clerk shall file the record. The clerk shall give notice as soon as practical to all parties of the date on which the record is filed.

(h) Dismissal for failure of appellant to cause timely transmission. If the appellant fails to cause timely transmission of the record, any appellee may file a motion in this court to dismiss the appeal. The motion must be supported by a certificate of the clerk of the trial court showing the date and substance of the judgment or order from which the appeal was taken, the date on which the notice of appeal was filed, the expiration date of any order or request extending the time for transmitting the record, and by proof of service. The appellant may respond within fourteen days after service on him.

RULE 12--DOCKETING THE APPEAL--PAYMENT OF FILING FEE

(a) Time for docketing the appeal. The appellant shall deposit the docket fee with the clerk of this court at the time the notice of appeal is filed unless not required or waived pursuant to Rule 6. No docket fee is required in criminal cases. Upon receipt of the docket fee, the clerk of the appeals court shall thereupon enter the appeal upon the docket. If two or more parties file separate notices of appeal, the first to file is the appellant for the purposes of depositing the docket fee and entry of the appeal upon the docket. If an appellant is authorized to prosecute the appeal without prepayment of fees or has been declared indigent by order of any court of this state for the purpose of any action relating to the appeal, the clerk shall enter the appeal upon the docket at the request of a party or at the time of filing the record. This court upon motion for cause shown may enlarge the time for docketing the appeal or permit the appeal to be docketed under the title given to the action in the trial court, with the appellant identified as such, but if the title does not contain the name of the appellant, the appellant's name, identified as appellant, must be added to the title.

(b) Dismissal for failure of appellant to docket appeal. If the appellant fails to pay any docket fee, if a docket fee is required, any appellee may file a motion in this court to dismiss the appeal. The motion must be supported by a certificate of the clerk of the trial court showing the date and substance of the judgment or order from which the appeal was

taken, the date on which the notice of appeal was filed, and by proof of service. The appellant may respond within fourteen days after the service. The clerk of this court shall docket the appeal for the purpose of permitting the court to entertain the motion without requiring payment of the docket fee, but the appellant is not permitted to respond without payment of the fee unless he is otherwise exempt therefrom.

(c) All docket fees shall be payable to NPITCA and by certified or cashiers check or money order.

RULE 13--SANCTIONS

The court may take any appropriate action against any person failing to perform an act required by the rules or required by court order.

RULE 14 ASSIGNMENT OF CASE

The Chief Appellate Judge of this Court may assign a case to a single Associate Justice to rule on all matters raised prior to the case being fully submitted to the Court for decision. The single Associate Justice shall have the power and authority to rule on all issues raised by the parties procedurally prior the case being submitted for final decision on appeal.

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(Reserved for future use.)

RULE 16--DEFECTIVE RECORD--NEW TRIAL

The adequacy of a tribal court case record may be broadly defined as a collection of material which enables a neutral person to reconstruct the essential aspects of the matter under consideration. On appeal, a case record not providing the essential or key materials for a determination of the merits must be deemed defective.

The Court of Appeals on its own motion or that of a party may remand a case to tribal court for a new trial or hearing, or take such other related action deemed appropriate, at any stage of the appellate proceedings where any or all of the following conditions exist:

a) where the whole or a part of the tribal court record has been lost or is otherwise unavailable for appellant review, due to no fault of the appellant, and circumstances exist where it is impossible to sufficiently reconstruct the essential elements of the record on appeal; or

b) where the present record is so defective that it does not adequately present the questions for review; or
c) for other purposes deemed appropriate by the Court in its discretion such that ends of justice will be served thereby.

The absence of a portion of the tribal court record and its inability to be replaced or reconstructed shall not constitute by itself grounds for a new trial, but shall be considered in light of the remaining portions of the record and its relevance and material importance to the issues raised on appeal.

RULE 17--ORAL TRADITION--WAIVER OF BRIEFS

In recognition of the oral tradition in tribal history and culture, and to speed the hearing and final disposition of cases on appeal, the Court may waive the requirement for legal briefs in selected cases and process the appeal in accordance with the following guidelines, or as may otherwise be directed by the Court.

a) The Court may hear and make a ruling on certain appeals on the basis of the tribal court record and/or oral argument alone;

b) A waiver for the use of briefs may be obtained on the petition of either party or upon the motion of the Court itself, with the agreement of both parties necessary before a waiver be granted. A party may withdraw from the agreement by written petition at any time up to ten (10) days before oral argument is scheduled, and the Court will then issue an expedited briefing schedule order;

c) Only certain civil cases of a non-complex nature, in the discretion of the Court, will be accepted for waiver of briefs;

d) This Rule may be used in appeals in which both parties are acting pro se (representing themselves);

e) The Court may make and issue an Oral Ruling or Judgment on the same date as oral argument, which shall be rendered into a brief written document as soon as is reasonable possible, which may subsequently be incorporated into a per curiam or other Opinion. The Oral Ruling or Judgment, however, shall be binding in and of itself either immediately or pending a 20 day rehearing period, as the Court may direct. The procedural intent of this Rule is to provide speedy justice with a hearing and final judgment within thirty (30) days of the date the Court has accepted the application of the parties for use of this procedure and the receipt of the record on appeal by the Appellate Court Clerk.

RULE 18--INTERMEDIATE APPEALS

In civil cases, discretionary intermediate appeals shall be allowed, if in the sole discretion of the Intertribal Court of Appeals, it is the Court's opinion,

1) That such order entered by the tribal court involves a controlling question of law as to which there is substantial grounds for difference of opinion;

2) That an immediate appeal from the order may materially advance the ultimate termination of litigation;

3) That the interests of a litigant will not be adversely affected by the delay of the appeal, should the appeal be unsuccessful;

4) That the facts are fully developed such that the appeal is ripe for resolution.

It is intended that the foregoing factors serve as a guideline to establish the interests of justice. Any intermediate appeal is not a matter of right unless the issue cannot be appealed from at a later time. Only when the Court considers that the ends of justice will be served by determination of the questions involved without awaiting the final determination of the action or proceeding should permission for the appeal be granted.

RULE 19 FILING AND SERVICE OF PETITION FOR INTERMEDIATE APPEAL

A petition for intermediate appeal shall be filed with the Clerk of the Intertribal Court of Appeals within ten (10) days after entry of the order. Copies of the petition for intermediate appeal shall be served upon all parties to the appeal and upon the Clerk of the Tribal Court from which the appeal is being taken, such service shall be accomplished by certified mail. Certified mail receipts for each party notified, a docket fee or forma pauperis application and affidavit, and a copy of the order being appealed must accompany the original petition for intermediate appeal filed with the Clerk of the Intertribal Court of Appeals.

RULE 20 CONTENTS AND VERIFICATION OF PETITION FOR INTERMEDIATE APPEAL

A petition for intermediate appeal shall contain the following:

1) A brief statement, in narrative for, of the nature of the case, and the proceedings therein, including a summary of any evidence taken which is material to the question or questions sought to be reviewed;

2) A concise statement, without argument, of the principals of law relied on, with citations of authority to support the same;

3) The reasons claimed why the ends of justice requires that the appeal be allowed, and the questions involved therein

to be determined in advance of the final determination of the action or proceeding.

Any petition for intermediate appeal must be subscribed by the petitioner or petitioner's attorney. By signing of such petition, such petitioner or attorney thereby certifies that the petition is not interposed for purposes of delay; that he believes in good faith that the proposed appeal involves a substantial question which justice requires should be determined in advance of final determination of the action or proceeding; that to the best of his knowledge, information and belief all statements made in the petition are accurate, and that the proceedings are fairly summarized therein.

If a petition is granted, the appeal shall take the same course as other appeals and all appellate rules shall apply.

RULE 20 DENIAL OF PETITION FOR INTERMEDIATE APPEAL AND TERMS IMPOSED

In any case where it appears to the Intertribal Court of Appeals that a petitioner has willfully failed to comply with the requirements set forth in Rules 18, 19 and 20, or has intentionally made an unfair or inaccurate statement in such petition, this shall constitute sufficient grounds for denial of the petition.

If the Intertribal Court of Appeals is satisfied that a petition for intermediate appeal has been filed without reasonable grounds, or that the filing of such petition may be considered for purposes of delay, the Intertribal Court of Appeals may impose upon the petitioner such terms as the Court deems proper.

RULE 22 FRIVOLOUS APPEALS

The Intertribal Court of Appeals may dismiss an appeal that it finds to be frivolous and entirely without merit. If the Court determines that an appeal is frivolous, it may award just damages and costs to the respondent to the appeal.

RULE 23
(Reserved for future use.)

RULE 24
(Reserved for future use.)

RULE 25--FILING AND SERVICE

(a) **Filing.** Papers required or permitted to be filed in this court must be filed with the clerk. Filing maybe accomplished by mail addressed to the clerk, but filing is not timely unless

the papers are received by the clerk within the time fixed for filing. However, briefs, appendices, and transcripts are deemed filed on the day of mailing if the most expeditious form of delivery by mail, excepting special delivery, is utilized. If a motion requests relief that may be granted by a single justice, the justice may receive the motion for filing. If this occurs, the justice shall note thereon the date of filing and thereafter transmit it to the clerk.

(b) Service of all papers required. Copies of all papers filed by any party and not required by these rules to be served by the clerk, at or before the time of filing, must be served by a party or person acting for that party on all other parties to the appeal or review. Service on a party represented by counsel must be made on counsel.

(c) Manner of service. 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.

(d) Proof of service. Papers presented for filing must contain an acknowledgment of service by the person served or proof service in the form of an affidavit 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 acknowledgment or proof of service to be filed promptly thereafter.

RULE 26--COMPUTATION AND EXTENSION OF TIME

(a) Computation of time. In computing any period of time prescribed by these rules, by an order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run must not be included. The last day of the period must be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period extends until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. If the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays must be included in the computation. As used in this rule "legal holiday" includes all those days specified as holidays for federal employees.

(b) Enlargement of time. This court for good cause shown upon motion may enlarge the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of that time; but the court may not enlarge the time for filing a notice of appeal.

(c)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 that party and the paper is served by mail, three days must be added to the prescribed period.

RULE 27--MOTIONS

(a) Content of motions; response; reply. Unless another form is elsewhere prescribed by these rules, an application for an order or other relief must be made by filing a motion for order or relief with proof of service on all other parties. The motion must:

1. contain or be accompanied by any matter required by a specific provision of these rules governing that motion,
2. state with particularity the grounds on which it is based, and
3. set forth the order or relief sought.

If a motion is supported by briefs, affidavits, or other papers, they must 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 (see subdivision (b) within ten days after service of the motion, but motions authorized by Rules 8, 9, and 41 may be acted upon after reasonable notice). The court may shorten or extend the time responding to any motion.

(b) Determination of motions for procedural orders. Notwithstanding the provisions of subdivision (a), motions for procedural orders, including any motion under Rule 26 (b), may be acted upon at anytime, without awaiting a response thereto. Any party adversely affected by action on the motion may request reconsideration, vacation, or modification of the action.

(c) Power of a single justice to entertain motions. In addition to the authority expressly conferred by these rules by law, a single justice of this court may entertain and grant or deny any request for relief which may properly be sought by motion under these rules, except that a single justice may not dismiss or otherwise determine an appeal or other proceeding, and except that the 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.

(d) Number of copies. Four copies of all papers relating to motions must be filed with the original, but the court may require that additional copies be furnished.

(e) Motion to dismiss based on ground appeal not authorized by law. Unless otherwise ordered by the court, the filing of a motion to dismiss which is based on the ground that the appeal is not authorized by law tolls the time for filing briefs on the merits. If the motion is denied, the running of the time for filing briefs on merits resumes upon service of the notice of entry of the order.

RULE 28--BRIEFS

(a) Brief of the appellant. The brief of the appellant must contain under appropriate headings and in the following order:

1. A table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to pages of the brief where they are cited.
2. In an application for the exercise of the original jurisdiction, a concise statement of the grounds on which the jurisdiction of this court is invoked, including citations of authorities.
3. A statement of the issues presented for review.
4. A concise statement of the case. The statement must first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below, followed by a clear, concise, chronological statement of the facts relevant to the issues presented for review, with appropriate references to the record (subdivision (e)). If the facts are in dispute the brief must so state.
5. An argument. The argument may be preceded by a summary. The argument must 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. The argument must avoid unnecessary repetition.
6. A short conclusion stating the precise relief sought.

(b) Brief of the appellee. The brief of the appellee must conform to the requirements of subdivision (a) (1),(3),(4), and (5), but a statement of the issues or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(c) Reply brief. The appellant may file a brief in reply to the brief of the appellee. The reply brief must be confined to new matter raised in the brief of the appellee. Except as provided in subdivision (h), no further briefs may be filed without leave of the court. All reply briefs must contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the pages of the reply brief in which they are cited.

(d) References in briefs to parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee". It promotes clarity to use instead the designations used in the trial court or in the agency proceedings, or the actual names of parties, or descriptive terms such as "the employee", "the injured person", "the tribe", "the purchaser".

(e) References in briefs to the record. References in the briefs to parts of the record reproduced in the appendix filed with the brief of the appellant (see Rule 30(a)) must be to the pages of the appendix at which those parts appear. If the record is reproduced in accordance with the provisions of Rule 30(f), or if references are made in briefs to parts of the record not reproduced, the references must be to the pages of the parts of the record involved. Intelligible abbreviations may be used. If reference is made to evidence the admissibility of which is in controversy, reference must be made to the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(f) Reproduction of statutes, code sections, rules, regulations, and other sources. If determination of the issues presented requires the study of statutes, code sections, rules, regulations, other source, or relevant parts thereof, they must be reproduced in the brief or in an addendum thereto, or they may be supplied to the court in pamphlet form.

(g) Length of briefs. Except by permission of the court, principal briefs, whether written or printed, must not exceed forty pages, and reply briefs must not exceed ten pages, exclusive of pages containing the table of contents, tables of citations, and any addendum containing statutes, rules, regulations, other sources. A motion for an extension of the page limits of a brief must asset careful editing for conciseness and to avoid repetition, specify in detail why additional pages are necessary, and state the number of additional pages requested.

(h) Briefs in cases involving cross-appeals. If a cross-appeal is filed, the party first filing the notice of appeal is deemed to be the appellant for the purposes of this rule and Rules 30, 31, 32, and 34, unless the parties otherwise stipulate or the court otherwise orders. A cross-appellant shall file a single brief as appellee and cross-appellant at the time his brief as appellee is due. This brief must contain the issues and argument involved in his appeal as well as the answer to the brief of the appellant. The appellant's answer to the argument of the cross-appeal must be included in his reply brief, and the contents of his brief as cross-appellee must be the same as in an appellee's brief, but without duplication of statements, arguments, or authorities already contained in the appellee's brief. To avoid duplication, references may be made to the appropriate portions of the appellant's brief. The cross-appellant may then file a reply brief confined strictly to reply to those arguments raised in the cross-appeal within fourteen days after the due date of the appellant's reply brief, but, unless excused by the court, a reply brief must be filed at least three days before argument.

(i) 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.

RULE 29--BRIEF OF AN AMICUS CURIAE

A brief of 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. The brief may be conditionally filed with the motion for leave. A motion for leave must identify the interest of the applicant and must state the reasons why a brief of an amicus curiae is desirable. Any amicus curiae shall file his brief within the time allowed the party whose position as to affirmance or reversal the amicus will support unless all parties otherwise consent or the court for cause shown grants leave for later filing. If the court grants leave for late filing it shall specify the time within which an opposing party may answer. A motion of an amicus curiae to participate in the oral argument must be made if amicus curiae wishes to make oral judgment.

RULE 30--APPENDIX TO THE BRIEFS

(a) Duty of appellant to prepare and file; contents of appendix; time for filing; numbers of copies. The appellant (however, if appellant is proceeding prose or in forma pauperis then the trial court clerk shall assist appellant) shall prepare and file a separately bound appendix to the briefs which must contain a table of contents, with page references, and only the following relevant portions of the lower court record:

1. The docket sheet of the lower court;
2. The indictment, information, or complaint, as amended in a criminal case;
3. The answer, counterclaim, cross claim, and replies;
4. Parts of any pre-trial order relevant to the issues on appeal;
5. Any supporting memorandum of decision, findings of fact and conclusions of law filed or delivered orally by the court;
6. The judgment, order, or decision in question;
7. Any other words to be reviewed;
8. The instruction in question, if the correctness of a jury instruction is in issue, and any other relevant part of the jury charge;
9. Any other parts of the record, including portions of the transcript, to which the particular attention of the court is invited.

Unless they have independent relevance, briefs of the parties in the trial court should not be included in the appendix.

The fact that parts of the record are not included in the appendix does not preclude the parties or the court from relying on those parts.

Unless filing is to be deferred pursuant to the provisions of subdivision (c), the appellant shall serve and file the appendix with the brief. Four copies of the appendix must be filed with the clerk, and one copy must be served on counsel for each party separately represented and if not represented then on the party, unless the court by rule or order directs otherwise.

(b) Determination of contents of appendix; cost of producing. The parties are encouraged to agree as to the contents of the appendix. In the absence of written agreement, the appellant shall serve on the appellee a designation of the parts of the record the appellant intends to include in the appendix and a statement of the issues the appellant intends to present for review. The designation must be served not later than ten days after the transcript is filed, but if a transcript is not required, then not later than ten days after the record is filed. If the appellee deems it necessary to direct the particular attention of the court to parts of the record not designated by the appellant, the appellee, within ten days after receipt of the designation, shall serve upon the appellant a designation of those parts. If a cross-appeal is filed, the appellee, within that period, shall serve upon the appellant a statement of the issues the appellee intends to present in the cross-appeal. The appellant shall include in the appendix the parts thus designated. In designating parts of the record for inclusion in the appendix, the parties shall have regard for the fact that the entire record is always available to the court for reference and examination and must not engage in unnecessary designation.

Unless the parties otherwise agree, the cost of producing the appendix must initially be paid by the appellant, but if the appellant considers that parts of the record designated by the appellee for inclusion are unnecessary for the determination of the issues presented the appellant may so advise the appellee and the appellee shall advance the cost of including those parts. The cost of producing the appendix must be taxed as costs in the case, but if either party causes matters to be included in the appendix unnecessarily the court may impose the cost of producing those parts on that party.

(c) Alternative method of designating contents of the appendix; how references to the record may be made in the briefs when alternative method is use. If the court so provides by rule for classes of cases or by order in specific cases, preparation of the appendix may be deferred until briefs have been filed, and the appendix may be filed 21 days after service of the brief of the appellee. If the preparation and filing of the appendix is thus deferred, the provisions of subdivision (b) apply, but the designations referred to therein must be made by each party at

the time each brief is served, and a statement of the issues is unnecessary.

If the deferred appendix authorized by this subdivision is employed, references in the briefs to the record may be to the pages of the parts of the record involved, in which event the original paging of each part of the record must be indicated in the appendix by placing in brackets the number of each page at the place in the appendix where that page begins. Or, if a party desires to refer in a brief directly to pages of the appendix, that party may serve and file typewritten or page proof copies of the brief within the time required by Rule 31 (a), with appropriate references to the pages of the parts of the record involved. In that event, within fourteen days after the appendix is filed, the party shall serve and file copies of the brief in the form prescribed by Rule 32 containing references to the pages of the appendix in place of or in addition to the initial references to the pages of the parts of the record involved. No other changes may be made in the brief as initially served and filed, but typographical errors may be corrected.

(d) Arrangement of appendix. At the beginning of the appendix there must be inserted a list of the parts of the record it contains, in the order in which the parts are set forth therein, with references to the pages of the appendix at which each part begins. The relevant docket entries must be set forth following the list of contents. Thereafter, other parts of the record must be set forth in chronological order. If matter contained in the reporter's transcript of proceedings is set forth in the appendix, the page of the transcript at which that matter may be found must be indicated in brackets immediately before the matter set forth. Omissions in the text of papers or of the transcript must be indicated by three spaced periods. Immaterial formal matters (captions, subscriptions, acknowledgments, etc.) should be omitted. A question and its answer may be contained in a single paragraph.

(e) Reproduction of exhibits. Exhibits designated for inclusion in the appendix may be contained in a separate volume or volumes, suitably indexed. Four copies must be filed with the appendix and one copy must be served on counsel for each party separately represented.

(f) Hearing of appeals on the original record without the necessity of an appendix. This court, by rule applicable to all cases, or to classes of cases, or by order in specific cases, may dispense with the requirement of an appendix and permit appeals to be heard on the original record, with such copies of the record, or relevant parts thereof, as the court requires. The appellant or clerk of trial court may make this request or this court may do so on its own accord.

RULE 31-- RILING AND SERVICE OF BRIEFS

(a) Time for serving and filing briefs; where filed. The appellant shall serve and file appellant's brief within forty days after the date on which the transcript is filed but, if no transcript is ordered, within forty days after the notice of appeal is filed. The appellee shall serve and file appellee's brief within thirty days after service of the brief of the appellant. The appellant may serve and file a reply brief within fourteen days after service of the brief of the appellee. Except for good cause shown, a reply brief must be filed at least three days before argument. All briefs must be filed with the clerk of this court.

(b) Number of copies to be filed and served. Four copies and an original of each brief shall be filed with the clerk of this court unless the court by order in a particular case shall permit a lesser number, and one copy shall be served on counsel for each party separately represented.

(c) Consequences of failure to file briefs. If an appellant fails to file a brief within the time provided by this rule, or within the time provided by this rule, or within the time as extended, an appellee may move for dismissal of the appeal or the court may on its own accord dismiss the appeal. If an appellee fails to file an appropriate brief, sanctions may be imposed pursuant to Rule 13 which may include refusal to be heard at oral argument.

RULE 32--FORM OF BRIEFS, THE APPENDIX AND OTHER PAPERS

All papers filed in the court must be typewritten, printed, or reproduced by a process that produces a clear image on white paper. Typewritten pages must not exceed eight and one-half by eleven inches, contain typed matter not exceeding six and one-half by nine and one-half inches, and must be double-spaced.

The type must be of pica size or larger.

Printed pages must not exceed six and one-eighth by nine and one-fourth inches, contain printed matter not exceeding four and one-sixth by seven and one-sixth inches, and must appear in at least 11-point type on opaque, unglazed paper.

Carbon copies of any paper may not be submitted without permission of the court. All pages should be numbered at the bottom. Copies of the transcript and other papers reduced in a manner authorized by this rule may be inserted in the appendix, the pages may be informally renumbered if necessary.

Briefs, appendices, and petitions for rehearing must be bound separately. The cover of the brief of the appellant must be **blue**; that of the appellee and cross-appellant, **red**; that of an intervenor or amicus curiae, **green**; that of the cross-appellee and any reply brief, **gray**. The cover of the appendix

must be **white**. The front covers of the briefs, appendices, and petitions for hearing, must contain:

1. the name of the court and the number of the case;
2. the title of the case (see Rule 12(a));
3. the nature of the proceedings in the court (e.g.,Appeal), and the name of the court, agency, or board below;
4. the title of the document (e.g., Brief for Appellant, Appendix); and
5. the names and addresses of counsel if any representing the party on whose behalf the document is filed.

All other papers addressed to the court 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. Consecutive sheets must be attached at the left margin.

RULE 33
(Reserved for future use.)

RULE 34--ORAL ARGUMENT

(a) Notice of argument; postponement. The clerk shall inform all parties of the time and place at which oral arguments will be heard. A postponement may be obtained by motion filed reasonably in advance of the date fixed for hearing. If a party plans to appear for oral argument, they shall notify the clerk of this court at least 10 days before said matter is set for oral argument.

(b) Time allowed for argument. Arguments on motions will be limited to fifteen minutes for each side regardless of the number of counsel on each side, and in all other arguments the appellant will be allowed thirty minutes and the appellee will be allowed twenty minutes. Additional time may be granted by the court, a justice, or the clerk of the appeals court upon written request addressed to the clerk no later than the filing date of the requesting party's last brief. 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.

(c) 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.

(d) Cross and separate appeals. A cross and separate appeal shall be argued with the initial appeal at a single argument, unless the court otherwise directs. If separate appellants

support the same argument, care shall be taken to avoid duplication of argument.

(e) Nonappearance 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 present. If the parties to the appeal fail to appear, the case will be decided on the briefs unless the court orders otherwise.

(f) Submission on briefs. By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

RULE 35--SCOPE OF REVIEW

(a) Civil appeals; intermediate orders. Upon an appeal from a judgment, this court may review any intermediate order or determination of the court below which involves the merits and necessarily affects the judgment appearing upon the record transmitted or returned from the trial court.

(b) Civil appeals; power of the court on review. Upon an appeal from a judgment or order, this court may reverse, affirm, or modify the judgment or orders as to any and all of the parties, and if necessary or proper may order a new trial of the entire cause or some specific issue or issues, and if the appeal is from a part of the judgment or order, may reverse, affirm, or modify it as to the part appealed from. If, in the consideration of any appeal, it becomes apparent to this court that some issue involved in the case has not been tried, or if tried has not been determined by the trial court, and that it is necessary or desirable to proper disposition of the case on appeal that the issue be determined, this court may remand the case to the trial court for the determination of the issue, without relinquishing jurisdiction of the appeal, and this court may hold the determination of the appeal in abeyance until the issue has been determined by the trial court and the determination certified to this court. In that case the proceedings had and the determination made in the trial court, upon remand, are deemed part of the record on appeal in the case. In all cases this court shall remit its final judgment or decision to the court from which the appeal was taken to be enforced accordingly, and if from a judgment, final judgment thereupon shall be entered in the court below in accordance therewith, except when ordered otherwise.

(c) Criminal appeals; intermediate orders. Upon an appeal from a verdict or judgment, this court may review any intermediate order or ruling which involves the merits or which may have affected the verdict or judgment adversely to the appellant.

(d) Criminal appeals; power of court on review. This court may reverse, affirm, or modify the verdict or judgment or order appealed from, and may set aside, affirm, or modify any or all of the proceedings subsequent to or dependent upon the verdict, judgment, or order, and if proper, may order a new trial. In either case, the action must be remanded to the trial court with proper instructions, together with the opinion of the court.

RULE 35.1--SUMMARY DISPOSITION

(a) Affirmance by summary opinion. In any case in which the court determines after argument, unless waived, that no reversible error of law appears and insofar as applicable:

(1) the appeal is frivolous and completely without merit;

(2) the judgment of the trial court is based on findings of fact that are not clearly erroneous;

(3) the verdict of the jury is supported by substantial evidence;

(4) the trial court did not abuse its discretion;

(5) the order of an administrative agency is supported by a preponderance of the evidence;

(6) the summary judgment, directed verdict, or judgment on the pleadings is supported by the record; or

(7) a previous controlling appellate decision is dispositive of the appeal.

The court may affirm by an opinion and indicating which one or more of the above criteria applies and citing any previous controlling appellate decision.

RULE 36--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 final settlement by the court. If a judgment is rendered without an opinion, 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.

RULE 37--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 or properly ordered by the trial court or this Court shall be payable from the date the judgment was entered in the trial court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the trial court, the

mandate shall contain instructions with respect to allowance of interest.

RULE 38--DAMAGES FOR DELAY

If the court determines that an appeal is frivolous, or that any party has been dilatory in prosecuting the appeal, it may award just damages and single or double costs including reasonable attorney's fees.

RULE 39--COSTS

(a) To whom allowed. In all civil cases, 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 appellee unless otherwise ordered; if a judgment is reversed. costs shall be taxed against the appellee unless otherwise ordered; and if a judgment is affirmed or reversed in part, or vacated, costs shall be allowed only as ordered by the court.

(b) Costs on appeal in civil cases taxable in the trial court. Costs incurred in the preparation and transmission of the record, the costs of the transcript, if necessary for the determination of the appeal, the premiums paid for costs of supersedeas bonds or other bonds to preserve rights pending appeal, the reasonable and necessary costs of preparing briefs under the rules (presumed to be $100.00 for appellant's brief and $75.00 for appellee's brief), and the fee for filing the notice of appeal shall be taxed in the trial court as costs of the appeal in favor of the party entitled to costs under this rule.

(c) Costs taxable in this court. In original proceedings before the court, costs as applicable in (e) above may be taxed by the clerk in favor of the party entitled to costs.

(d) Execution for costs taxable in this court. An execution signed by the clerk of this court may issue upon direction of this court to enforce any judgment for costs made and entered in a case which originated in that court. The execution may issue and be directed to BIA officers, tribal police, the Marshall, or to the sheriff or any other appropriate law enforcement officer of any reservation, state, county or territory, and may be enforced in any manner a judgment for costs can be collected within said jurisdiction.

(e) Costs on appeal of criminal actions. Costs incurred in the appeal of a criminal action shall be taxed in the trial court only upon motion of a party to the appeal and order of this court.

RULE 40--PETITION FOR REHEARING

(a) Time for filing; content; answer; action by court if granted. A petition for rehearing may be filed within fourteen days after entry of judgment unless the time is shortened or enlarged by order. 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. No answer to a petition for rehearing will be received unless requested by the court, but 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 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 resubmission or may make other such orders as are deemed appropriate under the circumstances of the particular case.

(b) Form of petition; length. The petition shall be in form prescribed by Rule 32, and copies shall be served and filed as prescribed by Rule 31 (b) for the service and filing of briefs. Except by permission of the court, a petition for rehearing must not exceed ten pages.

RULE 41--ISSUANCE OF MANDATE; STAY OF MANDATE

(a) Date of issuance. The mandate of this court shall issue 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 days after entry of the order denying the petition unless the time is shortened or enlarged by order.

(b) Stay of mandate pending appeal or petition for certiorari. A stay of the mandate pending an appeal or a petition to this court, any federal court or the United States Supreme Court for a writ of certiorari may be granted upon motion. The stay may not exceed thirty days unless the period is extended for cause shown. If while the stay is in effect, the party who has been granted a stay files a copy of the petition for the writ with the clerk of this court the stay shall continue until final disposition by any federal court or agency or the supreme court of the United States. Upon the filing of a copy of an order of

any federal court or agency or the supreme court of the United States affirming the judgment or denying the petition for writ of certiorari the mandate shall issue immediately. A bond or other security may be required as a condition to the grant or continuance of a stay of the mandate.

RULE 42--VOLUNTARY AND INVOLUNTARY DISMISSAL

(a) Voluntary dismissal. If the parties to an appeal or other 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.

(b) Involuntary dismissal. When an appellant is in violation of any appellate rule and no motion to dismiss has been filed by the appellee, the clerk of this court shall notify the appellant that unless the appellant gives reason within ten days why the case should not be dismissed, the case will be dismissed.

(c) Dismissal for Lack of Jurisdiction. Any time after the filing the Notice of Appeal, this court may upon its own accord dismiss the appeal if the court by unanimous action determines this court lacks jurisdiction.

RULE 43--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 this court, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the clerk of this court. The motion of party must be served upon the personal representative in accordance with the provisions of Rule 25. If the deceased party has no personal representative, any party may suggest the death on the record and proceedings must then be has as this court may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the trial 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 this court in accordance with this subdivision. If a party entitled to appeal dies before filing a notice of appeal, the notice of appeal may be filed by the decedent's personal representative, or, if there is no personal representative, by the decedent's attorney of record within the time prescribed by these rules. After the notice of appeal is filed substitution shall be effected in this court in accordance with this subdivision.

(b) Substitution for other causes. If substitution of a party in this court is necessary for any reason other than death,

substitution shall be affected in accordance with the procedure prescribed in subdivision (a).

(c) Public officers; death or separation from office. If a public officer is a party to an appeal or other proceeding in this court in an official capacity and during its pendency dies, resign, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution must be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties must be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order does not affect the substitution. If a public officer is a party to an appeal or other proceeding in an official capacity the officer may be described as a party by the officer's official title rather than by name; but this court may require the officer's name to be added.

RULE 44

(Reserved for future use.)

RULE 45--DUTIES OF CLERK

(a) General provisions. In addition to any duties specified by the Board of Directors of the NPITCA the clerk of this court shall take the oath and give the bond required by law. Neither the clerk nor any deputy clerk shall practice as an attorney or as counselor in this court while in office. The court is deemed always open for the purpose of filing any proper paper, of issuing and returning process, and of making motions and orders. The office of the clerk, with the clerk or a deputy in attendance, must be open during business hours on all days except Saturdays, Sundays, and legal holidays. The clerk is under no obligation to give notice to the parties of time deadlines.

(b) The docket; calendar; other records required. The clerk shall keep a book known as the docket, and shall enter therein each case. Cases must be assigned consecutive file numbers. The file number of each case must be noted on the folio of the docket whereon the first entry is made. All papers filed with the clerk and all process, orders, and judgments must be entered chronologically in the docket on the folio assigned to the case. Entries must be brief and show the nature of each paper filed or judgment or order entered. The entry of an order or judgment must show the date the entry is made. The clerk shall keep a suitable index of cases contained in the docket.

The clerk shall prepare, under the direction of the court, a calendar of cases awaiting argument. In placing cases on the calendar for argument, the clerk shall give preference to habeas corpus proceedings, to appeals in criminal cases, and to appeals and other proceedings entitled to preference by law.

The clerk shall keep such other books and records as may be required by the court.

(c) Notice of orders or judgments. Immediately upon the entry of an order or judgment the clerk shall serve a notice of entry by mail upon each party to the proceeding together with a copy of any opinion respecting the order or judgment, and shall make a note in the docket of the mailing. Service on a party represented by counsel shall be made on counsel.

(d) Custody of records and papers. The clerk shall have custody of the records and papers of the court. The clerk nay not permit any original record or paper to be taken from the clerk's custody except as authorized by the orders or instructions of the court. Original papers transmitted as the record on appeal or review must be returned upon disposition of the case to the court or agency from which they were received. The clerk shall preserve copies of briefs and appendices and other papers filed.

RULE 46

(Reserved for future use.)

RULE 47

(a) Power to answer. This court may answer questions of law certified to it by the supreme court of the United State, a court of appeals of the United States, a United States district court, or the highest appellate court or the intermediate court of any other state or tribe, when requested by the certifying court if there are involved in any proceeding before it questions of law of any participating tribe in this court system which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of this court of the tribal.

(b) Method of invoking. This rule may be invoked by an order of any of the courts referred to in subdivision (a) upon the court's own motion or upon the motion of any party to the cause.

(c) Contents of certification order. A certificate order shall set forth:

1. the question of law to be answered; and
2. a statement of all facts relevant to the questions certified and showing fully the nature of the controversy in which the question arose.

(d) Preparation of certification order. The certification order shall be prepared by the certifying court, signed by the judge presiding at the hearing, and forwarded to this court by the clerk of the certifying court. This court may require the

original or copies of all or of any portion of the record before the certifying court to be filed with the certification order, if, in the opinion of the court, the record or portion thereof may be necessary in answering the questions.

(e) Costs of certification. Fees and costs shall be the same as in civil appeals docketed before this court and shall be equally divided between the parties unless otherwise ordered by the certifying court in its order of certification.

(f) Briefs and argument. Unless the certifying court specifies the order and time within which the briefs must be filed and served, all proceedings, including oral argument, in this court will be governed by these rules and the plaintiff will be deemed to be the appellant.

(g) Opinion. The written opinion of this court stating the law governing the questions certified shall be sent by the clerk to the certifying a court and to the parties.

(h) Power to certify. This court, on its own motion or the motion of any party, may order certification of questions of law to the highest court of any jurisdiction when it appears to the certifying court that there are involved in any proceeding before the court questions of law of the receiving jurisdiction which maybe determinative of the cause then pending in the certifying court and it appears to the certifying court that there are no controlling precedents in the decisions of the highest court.

(i) Procedure on certifying. The procedures for certification from this court to the receiving court shall be those provided in the laws of the receiving jurisdiction.

(j) Severability. If any provision of this rule or the application thereof to any person, court, or circumstance is held invalid, the invalidity does not affect other provision or applications of the rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are severable.

(k) Construction. This rule shall be so construed as to effectuate its general purpose to make uniform the law of those jurisdictions which enact it.

(l) Short title. This rule may be cited as the NPITCA Certification of Questions of Law Rule.

RULE 47.1--CERTIFICATION OF QUESTIONS OF LAW BY TRIBAL COURT

(a) Who may certify questions of law. Any tribal court of a participating tribe in its discretion may submit a question of

law pursuant to this rule to this court for final determination by the use of a certification order.

(b) Contents of certification order and supporting documentation.

(1) A certification order must contain:

(i) Findings of fact of all pertinent facts needed to resolve the question of law.

(ii) The question of law formulated in such a manner that it may be answered by yes or no and the trial court's answers to each question.

(2) The certifying court shall transmit with the certification order any parts of the record and other documents if deems necessary in answering the certified questions. This court may require that an original or copies of all or any portion thereof is necessary in answering the certified questions.

(c) Cost. Fees and costs shall be the same as in civil appeals docketed before this court and shall be equally divided by the parties unless otherwise ordered by the certifying court in its order of certification.

RULE 48--TITLE

These rules shall be know as Rules of Northern Plains Intertribal Court Appellate Procedure, and may be cited as NPITCA App.P.

RULE 49--EFFECTIVE DATE; STATUTES AND RULES SUPERSEDED

(a) Effective date and application. These rules shall take effect on _____. They shall govern all proceedings and actions brought after they take effect, and all further proceedings in actions then pending, except to the extent that, in the opinion of the court, their application in a particular action pending when the rules take effect would not be feasible, or would work an injustice, in which event the previous procedure shall apply.

(b) Superseded statutes and rules. Upon the effective date of these rules, previous rules, shall be superseded.