

TITLE 1 – GENERAL PROVISIONS

CHAPTER 1-16 COURT OF APPEALS

ESTABLISHMENT AND JURISDICTION

1-16-1 Creation of Court of Appeals

There is hereby created the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians' (Tribes) Court of Appeals.

1-16-2 Jurisdiction of Court of Appeals

The jurisdiction of the Court of Appeals shall extend to all appeals from final orders and judgments of the Tribal Court (Court), and appeals of final administrative decisions where a provision of this Code expressly vests such jurisdiction in the Court of Appeals. The Court of Appeals shall review de novo all determinations of the Tribal Court on matters of law, but shall not set aside any factual determinations of the Tribal Court if such determinations are supported by substantial evidence. The Court of Appeals shall have jurisdiction:

- (a) to take all necessary steps to preserve and protect the jurisdiction of the Court; and
- (b) to make any order appropriate to preserve the status quo or to protect any ultimate judgment of the Court of Appeals.

1-16-3 to 1-16-10 Reserved for Expansion.

COURT OF APPEALS JUDGES

1-16-11 Composition of Court of Appeals

The Tribal Council shall appoint a Chief Justice and two (2) Associate Justices to the Court of Appeals, none of whom shall be judges of the Tribal Court.

1-16-12 Compensation of Appellate Court Judges

The Appellate Court Justices' duties may be part time. Appellate Court Justices shall be compensated by an hourly, per case or salary basis, as established by contract with the Tribes and executed by the Chairman of the Tribal Council. No Appellate Court Justice's salary shall be diminished during the term of the Justice's office.

1-16-13 Appointment of Appellate Court Judges

- (a) Appellate Court Justices shall be appointed by a majority of a quorum of the Tribal Council for a term of two (2) years and shall be eligible for reappointment. A vacancy shall be filled by appointment by a majority of a quorum of the Tribal Council for the balance of the unexpired term.
- (b) A person shall be eligible to serve as an Appellate Court Justice only if the person has never been convicted of a felony, serious tribal crime, or misdemeanor within one (1) year of appointment, with the exception of minor traffic violations.
- (c) No Appellate Court Justice shall be qualified to preside in any case where he or she has any direct, personal interest, or where he or she is prejudiced for or against any of the parties in the action. Nor shall any Appellate Court Justice be qualified to act in any case where any relative by marriage or blood in the first (1st) or second (2nd) degree is a party unless all parties to the action waive this provision.
- (d) All Appellate Court Justices shall protect and preserve the high standards of the Tribal judiciary and shall abide by the American Bar Association Model Code of Judicial Conduct and CLUSITC Chapter 1-13.
- (e) Appellate Court Justices shall, at a minimum, hold a Doctor of Jurisprudence from an accredited law school in the United States, and have five (5) years' experience as a practicing attorney with experience in Indian Law, or have served for at least two (2) years as a trial or appellate court judge for an American Indian Tribe.

1-16-14 Removal of Appellate Court Justices

An Appellate Court Justice may be suspended, dismissed or removed for cause by the Tribal Council. Cause shall be defined as malfeasance in office, corruption, neglect of duty, or conviction of a felony or misdemeanor, excluding minor traffic violations. An Appellate Court Justice charged by a majority of a quorum of the Tribal Council with conduct constituting cause for suspension, dismissal or removal shall be given personal written notice of the basis for the charge and be given adequate time to prepare a defense. The Appellate Court Justice shall then be given a full hearing before the Tribal Council with an adequate opportunity to present a defense, including the production of witnesses and other evidence in the Justice's behalf and an opportunity to cross-examine witnesses against the charged Justice. An affirmative majority vote of all members of the Tribal Council is necessary to suspend, dismiss, or remove an Appellate Court Justice from office.

1-16-15 Decision by Panel of Three Justices

Each party to a proceeding is entitled to have his or her appeal decided by the entire three-Justice Court of Appeals unless one (1) or more Justices are unavailable due to relationship to the parties, other conflict of interest or vacancy on the court. In such circumstances, the appeal shall be decided by the remaining Justice or Justices.

1-16-16 to 1-16-20 Reserved for Expansion.

COURT OF APPEALS ADMINISTRATION

1-16-21 Time and Place of Meeting

The time and place of meeting of the Court of Appeals shall be established by order of the Chief Justice on a case by case basis.

1-16-22 Decisions of the Court

- (a) The Court of Appeals shall render decisions in writing.
- (b) The appellate decision shall cite the legal basis for the determination, as well as clearly outline the reasons in support of the decision.
- (c) The appellate decision must be agreed upon by a majority of the Justices on the panel.
- (d) A dissenting Justice may write and submit a dissenting opinion, if so desired. However, a dissenting opinion shall not carry any precedential weight.

1-16-23 Records of Court of Appeals

- (a) The Court of Appeals shall keep a record of all proceedings of the Court, showing the title of the case, the name and addresses of all parties and attorneys, the briefs, the date of any oral argument, the names of the Justices who heard and decided the case, and the judgment, together with any other facts and circumstances deemed of importance to the case. Unless specifically excepted by this Code or Rule of Court, all decisions and opinions of the Court shall be published in a format that shall be available to the public at the Tribal Office.
- (b) In the event that an appeal is taken from a confidential matter, the record on appeal shall remain confidential and shall not be open to public inspection. Any written opinion in a confidential matter shall have the names of the parties redacted and replaced with an initial, prior to publication, and shall be available for public inspection in redacted form.

1-16-24-1-16-30 Reserved for Expansion.

REPRESENTATION AND ADMISSION

1-16-31 Representation Policy

Every person appearing as a party before the Tribal Court of Appeals has a right to be represented, at the person's own expense, by an attorney admitted to practice before the Court.

1-16-32 Admission to Practice in Tribal Appellate Court

Attorneys shall be admitted to practice before the Tribal Court of Appeals as provided in CLUSITC 1-1-61 *et. seq.*

1-16-33 to 1-16-40 Reserved for Expansion.

RULES OF APPELLATE PROCEDURE

1-16-41 Scope of Rules

(a) These Rules govern procedure in appeals to the Tribes' Court of Appeals ("Appellate Court") from any final judgment of the Tribes' Tribal Court.

(b) Any procedure, issue, question or other matter not covered by these Rules or by Supplemental Rules promulgated by the Court shall be governed by the Federal Rules of Appellate Procedure, ("FRAP").

(c) The Appellate Court may make and enforce Supplemental Rules in the manner provided in CLUSITC 1-1-100.

1-16-42 Right of Appeal

(a) Any aggrieved party may appeal from a final judgment of the Tribal Court. A final judgment is one that disposes of all issues in the case.

(b) Failure to file an appeal within the time limits imposed by CLUSITC 1-1-43 shall result in the automatic dismissal of the appeal.

(c) Failure to follow any procedure required by these Rules, other than the timely filing of a notice of appeal, does not affect the validity of the appeal, but is ground only for the Appellate Court to act as it considers appropriate, including dismissing the appeal.

(d) Appeals may be consolidated by order of the Appellate Court upon its own motion, or upon motion of a party, or by stipulation of the parties to the several appeals.

1-16-43 The Notice of Appeal

(a) A notice of appeal in a civil case may be filed by any party within thirty (30) days of the filing of the final judgment of the Tribal Court. In a civil case, notice of the judgment shall be deemed to have issued when judgment is filed with the Tribal Court Clerk. The Tribal Court Clerk shall, on the same day that judgment is issued, send a copy of the judgment to each party or attorney of record.

(b) The notice of appeal shall specify the party or parties taking the appeal, shall designate the judgment or order of the trial court appealed from, and shall be signed by the appealing party or counsel.

(c) The notice of appeal shall be filed in triplicate with the Tribal Court Clerk accompanied by a certification that a copy has been served upon each party or attorney of record. The Tribal Court Clerk shall endorse on the notice of appeal, the date and time of filing, shall docket the appeal, and send one (1) copy to the Chief Judge of the Tribal Court.

1-16-44 Costs and Fees

(a) At the time of filing the notice of appeal in a civil matter, which shall include violations, the appellant shall submit to the Tribal Court Clerk all required filing fees, as established by the Tribal Council.

(b) If a party is indigent and desires to appeal, that party may file a notice of appeal accompanied by a statement under oath reciting facts demonstrating the inability to pay the filing fee. The Court of Appeals may defer or establish a schedule for payment of the filing fee.

(c) The appellee shall pay all required fees at the time of appearance.

(d) The CTCLUSI, any CTCLUSI agent or department, any CTCLUSI office or employee sued in an official capacity shall not be required to pay any fees when appearing as a party, an intervenor or as amicus curiae.

1-16-45 The Record on Appeal

The provisions of 2012 FRAP 10, 11 and 12 or their successors shall apply.

1-16-46 Filing and Service

(a) Filing.

(1) Filing with the Clerk. A paper required or permitted to be filed in the Court of Appeals must be filed with the Tribal Court Clerk.

(2) Filing: Method and Timeliness.

(A) In general. Filing may be accomplished by mail addressed to the Tribal Court Clerk, but filing is not timely unless the Tribal Court Clerk receives the papers within the time fixed for filing.

(B) A brief or appendix. A brief or appendix is timely filed however, if on or before the last day for filing, it is:

(i) Mailed to the Tribal Court Clerk by First-Class Mail, or other class of mail that is at least as expeditious, postage prepaid; or

(ii) Dispatched to a third-party commercial carrier for delivery to the clerk within three (3) days.

(C) Electronic Filing. Papers may be filed, signed or verified by electronic means. A paper filed by electronic means constitutes a written paper for purposes of these rules except that the following documents shall be filed and served conventionally, in paper format:

- (i) Sealed and in-camera documents;
- (ii) Social Security Administration records; and
- (iii) Individually identifiable health information protected under HIPAA (See *also* 45 CFR 160.103).

(3) Clerk's Refusal of Documents. The Tribal Court Clerk must not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or by any local rule or practice.

(4) Privacy Protection. Privacy protection is governed by UTTCR 5(c), which adopts Federal Rule of Civil Procedure 5.2.

(b) Service of All Papers Required. Unless a rule requires service by the Tribal Court Clerk, a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal or review. Service on a party represented by counsel must be made on the party's counsel.

(c) Manner of Service.

(1) Service may be any of the following:

- (A) personal, including delivery to a responsible person at the office of counsel;
- (B) by mail;
- (C) by third-party commercial carrier for delivery within three (3) days; or
- (D) by electronic means, if the party being served consents in writing.

(2) When reasonable considering such factors as the immediacy of the relief sought, distance, and cost, service on a party must be by a manner at least as expeditious as the manner used to file the paper with the court.

(3) Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete on transmission, unless the party making service is notified that the paper was not received by the party served.

(d) Proof of Service.

(1) A paper presented for filing must contain either of the following:

(A) an acknowledgment of service by the person served; or

(B) proof of service consisting of a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served; and

(iii) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

(2) When a brief or appendix is filed by mailing or dispatch in accordance with CLUSITC 1-16-46, the proof of service must also state the date and manner by which the document was mailed or dispatched to the Tribal Court Clerk.

(3) Proof of service may appear on or be affixed to the papers filed.

(e) Number of Copies. When these rules require the filing or furnishing of a number of copies, a court may require a different number by local rule or by order in a particular case.

1-16-47 Computing and Extending Time

(a) Computing Time. The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any provision of tribal law that does not specify a method of computing time. This rule is based on, and should be interpreted consistent with, decisions interpreting and applying FRAP 26 or its successor.

(1) Period Stated in Days or a Longer Unit. When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) Period Stated in Hours. When the period is stated in hours:

- (A) begin counting immediately on the occurrence of the event that triggers the period;
 - (B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and
 - (C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.
- (3) Inaccessibility of the Tribal Court Clerk's Office. Unless the court orders otherwise, if the Tribal Court Clerk's office is inaccessible:
- (A) on the last day for filing under CLUSITC 1-16-47, then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or
 - (B) during the last hour for filing under CLUSITC 1-16-47, then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.
- (4) "Last Day" Defined. Unless a different time is set by a tribal Code or ordinance, local rule, or court order, the last day ends:
- (A) For filing under CLUSITC 1-16-46 at the latest time for the method chosen for delivery to the post office, third-party commercial carrier, or prison mailing system; and
 - (B) For filing by other means, when the Tribal Court Clerk's office is scheduled to close.
- (5) "Next Day" Defined. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.
- (6) "Legal Holiday" Defined. "Legal holiday" means:
- (A) the day set aside by federal, tribal or Oregon law for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, or Christmas Day;
 - (B) any day declared a holiday by the Tribal Council, the President of the United States or Congress.
- (b) Extending Time. For good cause, the court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires. But the court may not extend the time to file:

- (1) a notice of appeal; or
 - (2) a notice of appeal from or a petition to enjoin, set aside, suspend, modify, enforce, or otherwise review an order of a Tribal agency, board, commission, or officer of the CTCLUSI, unless specifically authorized by law.
- (c) **Additional Time after Service.** When a party may or must act within a specified time after service, three (3) days are added after the period would otherwise expire under CLUSITC 1-16-47(a), unless the paper is delivered on the date of service stated in the proof of service. For purposes of this CLUSITC 1-16-47(c), a paper that is served electronically is not treated as delivered on the date of service stated in the proof of service.

1-16-48 Corporate Disclosure Statement

- (a) **Who Must File.** Any nongovernmental corporate party to a proceeding in a court of appeals must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation.
- (b) **Time for Filing; Supplemental Filing.** A party must file the CLUSITC 1-16-48(a) statement with the principal brief or upon filing a motion, response, petition, or answer in the court of appeals, whichever occurs first, unless a local rule requires earlier filing. Even if the statement has already been filed, the party's principal brief must include the statement before the table of contents. A party must supplement its statement whenever the information that must be disclosed under this rule changes.
- (c) **Number of Copies.** The party must file an original and three (3) copies unless the court requires a different number by local rule or by order in a particular case.

1-16-49 Motions

The Chief Justice may allow motions in a particular case and will prescribe by order the requirements therefor, including times for response and reply.

1-16-50 Form of Appendices and Other Papers

The provisions of FRAP 32 or its successor shall apply.

1-16-51 Contents of the Briefs

The briefs shall contain under appropriate headings and in the order indicated:

- (a) 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 brief where they are cited;

- (b) A statement of the case briefly indicating the nature of the case, the course of the proceedings, and disposition below;
- (c) A statement of facts relevant to the issues submitted with appropriate reference to the record;
- (d) A summary of the argument which must not merely repeat the argument headings but be a clear, accurate, succinct summary;
- (e) The argument, divided under appropriate headings into as many parts as there are points to be presented, which must contain appellant's contentions and the reasons for them with citations to the authorities and parts of the record on which the appellant relies.
- (f) For each issue, a statement of the standard of review;
- (g) A short conclusion stating the precise relief sought; and
- (h) A certificate that the brief complies with the type-volume limitations of CLUSITC 1-16-46.

1-16-52 Appendix to the Briefs

It is the appellant's responsibility to prepare and file an appendix in accord with the provisions of FRAP 30.

1-16-53 Serving and Filing Briefs

- (a) Time to Serve and File a Brief.
 - (1) The appellant must serve and file a brief within forty (40) days after the record is filed. The appellee must serve and file a brief within thirty (30) days after the appellant's brief is served. The appellant may serve and file a reply brief within fourteen (14) days after service of the appellee's brief but a reply brief must be filed at least seven (7) days before argument, unless the court, for good cause, allows a later filing.
 - (2) The Court of Appeals may shorten the time to serve and file briefs by order in a particular case.
 - (3) Number of Copies. Four (4) copies of each brief must be filed with the clerk and two (2) copies must be served on each unrepresented party and on counsel for each separately represented party. An unrepresented party proceeding in *forma pauperis* must file four (4) legible copies with the clerk, and one copy must be served on each unrepresented party and on counsel for each separately represented party. The court may by order in a particular case require the filing or service of a different number.

(4) Consequence of Failure to File. If an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal. An appellee who fails to file a brief will not be heard at oral argument unless the court grants permission.

1-16-54 Oral Argument

(a) Oral argument will be heard en banc by the Court. The hearing may be conducted in person or by telephone or computer assisted conference.

(b) The provisions of FRAP 34 or its successor shall apply.

1-16-55 Entry of Judgment, Interest on Judgment

The provisions of FRAP 36 and 37 shall apply.

1-16-56 Costs

(a) If the Appellate Court determines the appeal is frivolous, it may award, after notice and an opportunity to be heard, just damages and single, double or triple costs to the appellee;

(b) Assessment of costs shall be determined by the court upon submission of a bill of costs and objections thereto in the manner provided under FRAP 39.

1-16-57 Decisions on Appeal

Decision of the Appellate Court shall be issued within ninety (90) days from the date of oral argument, unless the Chief Justice determines that an additional time period, up to ninety (90) days is necessary given the complexities of the case.

APPENDIX A

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

COURT OF APPEALS

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

The Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians Tribal Council enacted the revisions to the Court of Appeals Code by Ordinance 080A on March 10, 2013, effective on that same date. Vote was 6 (for), 0 (against), 1 (absent) and 0 (abstaining).

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the Court of Appeals Ordinance, Resolution No. 07-022, Ordinance No. 080, at a regular Tribal Council meeting on March 11, 2007. Vote was 7 (for), 0 (against), and 0 (abstaining).

S0041210.1