

## **Appendix III**

### **RULES OF PROCEDURE IN THE COURT OF APPEALS**

#### **RULE 1 Scope of Rules**

These rules govern procedures in appeals to the Fort Peck Court of Appeals from the Fort Peck Tribal Courts. When these rules provide for a making of a motion or application in the Tribal Court, the procedure for making such motion or application shall be in accordance with the practice of the Tribal Court and the Fort Peck Comprehensive Code of Justice.

These rules shall not be considered to extend or limit the jurisdiction of the Fort Peck Court of Appeals as established by the Fort Peck Comprehensive Code of Justice and any other applicable law. These rules may be cited as the Fort Peck Rules of Appellate Procedure (FPRAP).

#### **RULE 2 Suspension of Rules**

In the interest of judicial economy and efficiency, or for other good cause shown, the Fort Peck Court of Appeals may, except as otherwise provided in the Fort Peck Comprehensive Code of Justice, or applicable Federal Statute, 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.

#### **RULE 3 Filing and Service of Documents**

All documents, whether a Notice of Appeal, Motion, Application or other moving paper or pleading, permitted or required to be presented to the Fort Peck Court of Appeals, shall be filed with the Clerk. At the time of such filing, the moving papers, pleading or other documents to be filed, shall be accompanied by a Proof of Service showing that a copy thereof, along with all supporting papers, have been served on all parties of record, either by and through their attorney of record, or individually, if such party is not represented. Proof of service shall be sworn to by declaration or affidavit and appended to the moving papers and shall catalog the documents that were served, the names of the parties, or their attorneys of record, upon whom the documents were served, the address at which service was made, and the manner in which service was completed. If service is made by US Mail, a statement as to the time, date, and place that the declarant or affiant placed the documents into the US Mails and the manner in which the envelope or package was addressed.

#### **RULE 4 Ex parte Communications with Justices of the Court of Appeals**

Ex parte communication with Justices of the Court of Appeals is strictly prohibited except if initiated by a Justice of the Court when time constraints are such that communication by other means is not practicable and then only for the limited purpose of communicating the time and place of a hearing, or decision of the Court, regarding a Motion or Application for Stay or Injunction pending appeal.

#### **RULE 5 Stay or Injunction Pending Appeal**

Application for a stay of the judgment or order of the Tribal Court pending appeal, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must be made in the first instance in the Tribal Court. A motion for such relief may be made to the Court of Appeals, however, the motion shall show that application to the Tribal Court for the relief sought has been denied, or that the Tribal Court had failed to afford the relief which the applicant requested, within a reasonable period of time. The motion shall also show the reason or 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. The motion shall be filed with the Clerk of the Court of Appeals and normally will be considered *en blanc* by the Court of Appeals, however, the application may be decided by any two Justices of the Court.

#### **RULE 6 Interlocutory Appeals**

An interlocutory appeal is defined as an appeal from a final order of the Tribal Court which involves an issue of law consistent with a violation of due process adversely affecting the outcome of a trial in the merits, regardless of whether the final order includes a full determination on the merits.

Where the violation of due process is a denial of constitutional rights afforded under the Indian Civil Rights Act (25 U.S.C. 1301 et. seq.) Or there are other important constitutional issues at stake, and the outcome of the trial would be altered in such a manner as to cause irreparable harm to the aggrieved party, an extraordinary writ and/or interlocutory appeal to the Fort Peck Court of Appeals is appropriate. Interlocutory Appeals are appeals on procedural matters touching on due process issues and do not touch upon or concern the merits of the case pending. Notice and service of moving papers, pleadings, briefs, or other documents regarding an Interlocutory Appeal shall be filed in the same manner as other appeals, and in full compliance with the rules contained herein, except that time shall be considered of the essence and processing and deliberation shall be accomplished expeditiously, so as to not disrupt the timely prosecution of trial on the merits in the Tribal Court.

**RULE 7 Continuances and Postponements**

Continuances and postponements are disfavored and will not be granted in the absence of a showing of good cause. Requests for continuances and postponements must be made in writing, stating the factual or legal basis for the request and must be filed no later than two weeks prior to the date at issue. In the event of sickness or injury involving a party or attorney, the two weeks filing requirement may be waived upon Motion. Requests for continuance based upon calendar conflicts are disfavored and will be considered *only if* accompanied by an affidavit stating that the appearance of the party or attorney is critical to the outcome of both the scheduled hearing in this Court and the event in conflict *and* that no other qualified person is available to attend either of the calendared events in conflict.

**RULE 8 No Legal Advice by Clerks or Employees of the Court**

No Clerk or employee of the Appeals Court is authorized to give legal advice. Statements made by said Clerk or other employee shall be limited to receiving and filing documents, required or permitted to be filed in the Fort Peck Court of Appeals, and insuring that all such documents presented to be filed, comply with all existing Rules of Appellate Procedure and the Fort Peck Comprehensive Code of Justice. Litigants and/or their attorneys, shall not rely on any statement made by said Clerk or other employee unless such statement is made within the permitted scope of their duties contained therein.

**RULE 9 Motion for Reconsideration**

The Fort Peck Court of Appeals will entertain Motions for Reconsideration of any order, decision, or opinion, issued by the Court, provided that the Motion is made within the 20 days of issuance of the order, decision, or opinion. The Motion *must be* based upon new and relevant case or statutory law not previously considered by the Court, or new and material facts (e.g. juror misconduct, etc.) which were fraudulently withheld or could not have been reasonably known to the aggrieved litigant and/or their attorney during the pendency of the appeal proceedings.

**Rule 10. Schedule of the Court of Appeals**

The decision to accept a criminal case for review will be made within 30 working days of when the notice of appeal is filed.

The decision to accept a civil case for review will be made with 30 working days of when the petition for review is filed.

Appeals will be decided within 120 working days of the notice of appeal or petition for review.

The Fort Peck Court of Appeals will meet on the third Monday of January, April, July and October.

Telephonic hearings will be considered upon request. Extensions of the established schedule may be necessary when the transcript is not available.

**(AMENDED AS PER RESOLUTION NO. 1449-2010-12, DATED 12/13/2010.)**

*The defendant in a criminal case shall have an appeal as of right from a judgment of conviction.* II CCOJ 205(a). Therefore the Tribes/prosecutor do not respond to the notice of appeal/petition for review.

In civil cases, a party may appeal. The appeal is not automatically granted as in criminal cases. The notice of appeal must be answered by the other party within 15 working days. Then the Court of Appeals decides whether to grant the petition for review. Therefore, more time is need to process a civil notice of appeal than a criminal notice of appeal. II CCOJ 207

In civil cases, a party may request the trial court to stay the judgment. VIII CCOJ 308. If that stay is denied, the party may request the Court of Appeals to stay the trial court judgment. II CCOJ 207(e). The forms to request a stay of judgment are included in the packet of forms that are given to people who wish to file a notice of appeal/petition for review.