IN THE TRIBAL COURT FOR THE CONFEDERATED TRIBES
OF THE UMATILLA INDIAN RESERVATION

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| In The Matter of:<br>PROMULGATION AND ADOPTION<br>OF TRIBAL COURT RULES OF<br>APPELLATE PROCEDURE | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | **ORDER PROMULGATING TEMPORARY RULES OF PROCEDURE IN THE CTUIR COURT OF APPEALS**<br>**By authority of CTUIR Constitution Section 4** |

The court finding that the adoption of TemporaryTribal Rules of Appellate Procedure to govern proceedings in CTUIR Court of Appeals would be of benefit to the litigants, attorneys, court and the Tribe, it HEREBY PROMULGATES AND ADOPTS the TemporaryTribal Rules of Appellate Procedure attached hereto to be effective immediately.

Dated: Oct 25, 2017.

William D. Johnson, Chief Judge
Tribal Court

# PUBLIC NOTICE

## ADOPTION OF CTUIR TRIBAL COURT RULES OF APPELLATE PROCEDURE:

**In compliance with the Confederated Tribes of the Umatilla Indian Reservation Court Code Chapter 3, Rule Making Authority, public notice is hereby given of the promulgation and adoption by Order of the Chief Judge of the CTUIR Tribal Court dated October 13, 2017 of CTUIR TRIBAL COURT RULES OF APPELLATE PROCEDURE to become effective January 1, 2018.**

**The purpose of the rules is to govern proceedings in appeals in the CTUIR Tribal Court of Appeals and assist parties, litigants, attorneys, other interested parties, the public, the Tribe and the Court, in securing due process and prompt resolution of disputes and the effective administration of justice in matters before the CTUIR Tribal Court of Appeals.**

**Public comment is invited and may be made orally or in writing, personally delivered or mailed, to the CTUIR Tribal Court Administration Office in Room S126 of the Nixyaawii Governance Center, 46411 Timine Way, Pendleton, OR 97801.**

**Copies of the proposed rules are available at the CTUIR Tribal Court Administration Office in Room S126 or at the reception desk in the main lobby of the Nixyaawii Governance Center, 46411 Timine Way, Pendleton, OR 97801.**

**A copy of the proposed rules has been presented to the Board of Trustees of the CTUIR in accordance with the CTUIR Tribal Court Code.**

**The court's order is set forth as follows:**

IN THE TRIBAL COURT FOR THE CONFEDERATED TRIBES
OF THE UMATILLA INDIAN RESERVATION

| | | |
|---|---|---|
| In The Matter of:<br><br>PROMULGATION AND ADOPTION<br><br>OF CTUIR TRIBAL COURT RULES OF APPELLATE PROCEDURE | ) | **ORDER PROMULGATING RULES OF PROCEDURE IN THE CTUIR TRIBAL COURT OF APPEALS**<br><br>**By authority of CTUIR Tribal Court Code Chapter 3 Sections 3.01 and 3.02** |

The court finding that the adoption of CTUIR Tribal Rules of Appellate Procedure to govern proceedings in CTUIR TRIBAL Court of Appeals would be of benefit to the litigants, attorneys, court and the Tribe, it HEREBY PROMULGATES AND ADOPTS the CTUIR Tribal Rules of Appellate Procedure attached hereto to be effective on January 1, 2018, upon compliance with CTUIR Tribal Court Code Chapter 3.

Dated: Oct 17, 2017.

William D. Johnson, Chief Judge
CTUIR Tribal Court

**Dated: October 17, 2017**

**Crystal Pleninger**
**Clerk of Court, CTUIR Tribal Court**

# CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

# TRIBAL COURT RULES OF APPELLATE PROCEDURE

**Effective January 1, 2018**
**Including Order Adopting Tribal Court Rules of Appellate Procedure**
**Pursuant to authority granted by CTUIR Rules of Court Chapter 3 Sections 3.01 and 3.02**

## 1. GENERAL RULES

**Rule 1.05**

**SCOPE OF RULES**

These rules apply to all proceedings in the CTUIR Court of Appeals

**Rule 1.10**

**CITATION TO APPELLATE RULES;**
**EFFECTIVE DATE;**
**TEMPORARY AMENDMENTS AND RULES**

(1) These rules shall be cited as TRAP (Tribal Rules of Appellate Procedure).

(2) These rules are effective January 1, 2018. The effective date of any amendment to or new rule of the TRAP shall be January 1 of the year following the adoption of the amendment or new rule. The rules as amended shall apply to any thing filed or time period commenced in the appellate court on or after the effective date of the amendment or new rule. The superseded rules shall apply to any thing filed or time period commenced in the appellate court before the effective date of any amendment or new rule.

(3) Notwithstanding subsection (2) of this rule, the appellate court may adopt one or more temporary rules or temporary amendments to existing rules. Unless otherwise indicated in the order adopting the temporary rule or temporary amendment, the effective date of the rule or amendment shall be the date of the order, and the rule or amendment shall expire on the effective date of the next regularly adopted amendments to the Tribal Rules of Appellate Procedure.

**Rule 1.15**

**TERMINOLOGY**

(1) Headings in these rules do not in any manner affect the scope, meaning, or intent of the rules.

(2) Singular and plural shall each include the other, where appropriate.

(3) In these rules, unless expressly qualified or the context or subject matter otherwise requires:

(a) "Director" means the Appellate Director or, as appropriate, the Appellate Court Director's designee.

(b) "Agreed narrative statement" means the parties' stipulated account of proceedings in lieu of a transcript or audio record.

(c) "Appeal" includes judicial review.

(d) "Appearing jointly" refers to two or more parties who together file single documents.

(e) "Appellant" means a party who files a notice of appeal or petition for judicial review.

(f) "Appellate court" means the Tribal Court of Appeals.

(g) "Appellate judgment" means a decision of the Court of Appeals together with a final order.

(h) "Audio record" means the record of oral proceedings before a trial court or agency made by electronic means and stored or reproduced on audiotape or compact disc.

(i) "Business day" means Monday through Friday excluding legal holidays.

(j) "Disk" means the compact disk, or digital versatile disk (DVD0 or other comparable medium containing the audio or video recording.

(k) "Cross-appellant" means a party, already a party to an appeal, who files an appeal against another party to the case.

(l) "Cross-respondent" means a party who is adverse to a cross-appellant.

(m) "Decision" "Decision" means a designation of prevailing party and allowance of costs together with, an order disposing of the appeal or judicial review or affirming without opinion; or with respect to a per curiam opinion or an opinion indicating the author, the title page of the opinion containing the court's disposition of the appeal or judicial review.

(n) "Domestic relations case" includes but is not necessarily limited to these kinds of cases: dissolution of marriage, dissolution of domestic partnership, filiation, paternity, child support

enforcement, child custody, modification of judgment of dissolution of marriage or domestic partnership, and adoption.
(o) "Judgment" means any judgment document or order that is appealable under any CTUIR Code.
(p) "Legal advisor" means an attorney in a criminal case assisting a defendant who has waived counsel.
(q) "Notice of appeal" includes a petition for judicial review and a notice of cross-appeal.
(r) "Optical disk" means compact disk (CD), digital versatile disk (DVD), or comparable medium approved by the Director for use in filing an electronic version of a transcript.2
(s) "Original" in reference to anything to be served or filed shall mean the thing signed by the appropriate attorney or party and submitted for filing.
(t) "Petitioner" means a party who files a petition.
(u) "Respondent" means the party adverse to an appellant or a petitioner.
(v) "Transcript" means a typewritten, printed, or electronic transcription of oral proceedings before a trial court or agency.
(w) "Transcript Coordinator" means the Clerk of Court or clerk's designee.
(x) "Trial court" means the court or agency from which an appeal or judicial review is taken.
(y) "Video record" means the audio and visual record of proceedings before a trial court or agency made by electronic means and stored or reproduced on videotape or compact disc.

**Rule 1.20**
**ADMINISTRATIVE AUTHORITY TO REFUSE FILINGS; SANCTIONS FOR FAILING TO COMPLY WITH RULES; WAIVER OF RULES**

(1) The Director may refuse to file any thing delivered for filing that does not comply with these rules or applicable statutes.
(2) The court on its own motion or on motion of a party may strike, with or without leave to refile, any brief, excerpt of record, motion or other thing that does not conform to applicable statutes or these rules.
(3) If a party responsible for causing a transcript to be prepared and filed fails to do so, after notice and opportunity to cure the default, the court may direct that the appeal proceed without the transcript. If the court directs that the appeal proceed without the transcript and the party is the appellant, the appellant shall file a statement of points relied on.
(4) The court on its own motion or on motion of a party may dismiss an appeal for want of prosecution if:
(a) the appellant has failed to comply with applicable statutes or these rules;
(b) fourteen days' notice of the noncompliance has been given to each attorney of record and to parties not represented by counsel; and
(c) the court has not received a satisfactory response to the notice.
(5) For good cause, the court on its own motion or on motion of any party may waive any rule.

**Rule 1.25**
**COMPUTATION OF TIME**

(1) In computing any period of time prescribed or allowed by these rules or order of the court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless that day is a Saturday, a legal holiday (including Sunday), or a day or part of a day on which the court is closed for the purpose of filing documents, closed to the extent ordered by the Chief Judge or closed before the end of normal working hours during which documents may be filed. In any of those events, the period runs until the end of the next day the court is open.
(2) When the period of time prescribed or allowed relates to serving a public officer or filing a document at a public office, and if the last day falls on a day when that particular office is closed

before the end of or for all of the normal work day, the last day shall be excluded in computing the period of time within which service is to be made or the document is to be filed, in which event the period runs until the close of office hours on the next day the office is open for business.
(3) When a party intends to file by mail a brief or other thing, other than a notice of appeal or other document subject to Tribal Code, and the brief or other thing is due on a date that all local United States Postal Service facilities unexpectedly are closed in whole or in part, the party filing the brief or other thing shall have until the next day that United States Postal Service facilities are open to file the brief or other thing.
(4) As used in this rule, "legal holiday" means legal holiday as defined in the United States Code of Civil Procedure.

**Rule 1.30**
**LITIGANT CONTACT INFORMATION**

In these rules, "litigant contact information" means the name, bar number, address, telephone number, and e-mail address of the attorney(s) for each party, identifying the party or parties appearing jointly that each attorney represents, and the name, mailing address, and telephone number of each self-represented party.

**Rule 1.35**
**FILING AND SERVICE**

(1) Filing
(a) Anything to be filed in the Court of Appeals shall be delivered to the Appellate Court Director, 46411 Timine Way, Pendleton, Oregon 97801
(b) If, pursuant to law or order of the court, a party's address and telephone number are not subject to public disclosure, the party filing anything in the Court of Appeals shall provide an alternative contact address that the court may make available for public inspection and for purpose of service under paragraph (2)(a) of this rule. The court shall not make the party's telephone number or actual address available for public inspection.
(c) A person filing a notice of appeal, petition for judicial review or petition under the original jurisdiction of the Court of Appeals as may file by mail and the filing shall be complete on deposit in the mail. If the person relies on the date of mailing as the date of filing, the person shall certify the date of mailing and shall file the certificate, together with acceptable proof from the post office of the date of mailing, with the Director with proof of service on the parties to the appeal, judicial review or original proceeding. Acceptable proof from the post office of the date of mailing shall be a receipt for certified or registered mail, with the certified or registered mail number on the envelope or on the item being mailed, with the date of mailing either stamped by the United States Postal Service on the receipt or shown by a United States Postal Service postage validated imprint on the envelope received by the Director.
(d) Filing of briefs, petitions for attorney fees, statements of costs and disbursements, motions, petitions for review, and all other things required to be filed within a prescribed time, shall be complete if mailed or dispatched to a third-party commercial carrier on or before the due date if the method of mailing or delivery is at least as expeditious as first-class mail.
(e) If filing is not done as provided in paragraph (c) or (d) of this subsection, then the thing shall not be deemed filed until the thing actually is received by the Director.
(2) Service Generally
(a) (i) Except as provided in clause (2)(a)(ii) of this rule, a copy of any thing delivered for filing under these rules must also be served by the party or attorney delivering it to the other parties to the cause.
(ii) A party filing a motion for waiver or deferral of court fees and costs under need not serve on any other party to the cause a copy of the motion or any accompanying documentation of financial

eligibility. After the court has ruled on the motion, if another party to the cause requests a copy of the motion or documentation of financial eligibility for the purpose of challenging the court's ruling, the filing party must comply with the request but may redact protected personal information as described in any Tribal Code. As used in this clause, "documentation of financial eligibility" means a document showing eligibility for a government benefit based on financial need or an affidavit or declaration showing the income, assets, and financial obligations of a party and the party's household.

(b) Except as otherwise provided by law service may be in person, by mail, or by third-party commercial carrier for delivery within three calendar days. Unless otherwise provided by law, service by mail or by third-party commercial carrier shall be complete on deposit in the mail or on dispatch to the carrier if the method of mailing or delivery is at least as expeditious as first-class mail.

(c) All service copies must include a certificate showing the date of filing.

(d) Anything filed with the Director shall contain either an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service, and the names and addresses of the persons served, certified by the person who made service.

(e) If an attorney for a party files a change of address with the attorney's licensing authority or with the court, or a self-represented party notifies the court of a change of address in writing or otherwise, the attorney or party must inform all other parties to the cause of the change of address within seven calendar days.

(3) Service on Trial Court Director and Transcript Coordinators

(a) When a copy of a notice of appeal is required to be served on the trial court director, service is sufficient if it is mailed or delivered to the person serving in the capacity of trial court director.

(b) When a copy of a notice of appeal is required to be served on the transcript coordinator for the court from which the appeal is taken, the notice shall be mailed or delivered to the office of the trial court director addressed to "transcript coordinator."

(4) With respect to a person confined in an institution of confinement who files and serves a thing in the appellate court, the thing shall be deemed filed in the appellate court and served on another person when the original of the thing and the appropriate number of copies are delivered, in a form suitable for mailing, to the person or place designated by the institution for handling outgoing mail.

(5) (a) Parties filing anything in the Court of Appeals, including but not limited to notices of appeal, petitions for judicial review, and petitions invoking original jurisdiction, motions, and briefs, are

(i) Required to use recycled paper if recycled paper is readily available at a reasonable price in the party's community. Further, parties are encouraged to use paper containing the highest available content of post-consumer waste, that is recyclable in the office paper recycling program in the party's community, and

(ii) Encouraged to print on both sides of each sheet of paper of the thing being filed.

(b) The court will not decline to accept any filing on the ground that the filing does not comply with paragraph (a) of this subsection.

(6) Except as otherwise provided in these rules, parties may prepare any thing to be filed in the Court of Appeals using either uniformly spaced type (such as produced by typewriters) or proportionally spaced type (such as produced by commercial printers and many computer printers). Uniformly spaced type shall not exceed 10 characters per inch (cpi) for both the text of the thing filed and footnotes. If proportionally spaced type is used, it shall not be smaller than 13 point for both the text of the thing filed and footnotes. This subsection does not apply to the record on appeal or review.

**Rule 1.40**

**VERIFICATION; DECLARATIONS;**

(1) Except if specifically require by statute, nothing filed with the appellate court need be verified.

(2) When a statute requires a paper filed with the appellate court to be verified, a verification shall consist of a statement:

(a) that the person has read the paper and that the facts stated in the paper are true, to the best of the person's knowledge, information and belief formed after reasonable inquiry;
(b) signed and dated by the person; and
(c) sworn to or affirmed before a person authorized by law to administer oaths or affirmations, including, but not necessarily limited to, a notary public.
(3) A declaration under penalty of perjury may be used in lieu of any affidavit required or allowed by these rules. A declaration under penalty of perjury may be made without notice to adverse parties, must be signed by the declarant, and must include the substance of the following sentence in prominent letters immediately above the signature of the declarant: "I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury." As used in these rules, "declaration" means a declaration under penalty of perjury.

**2. NOTICE OF APPEAL**
**Rule 2.05**
**CONTENTS OF NOTICE OF APPEAL**
The notice of appeal shall be served and filed within 30 days of the date of entry of the judgment or order appealed from. Only the original need be filed. The notice of appeal shall contain:
(1) The complete title of the case as it appeared in the trial court, naming all parties completely, including their designations in the trial court (e.g., plaintiff, defendant, cross-plaintiff, intervenor), and designating the parties to the appeal, as appropriate (e.g., appellant, respondent, cross-appellant, cross-respondent). The title also shall include the trial court case number or numbers.
(2) The heading "Notice of Appeal" or "Notice of Cross-Appeal," as appropriate.
(3) A statement that an appeal is taken from the judgment or some specified part of the judgment, the name of the court from which the appeal is taken, and the name of the trial judge or judges who signed the judgment being appealed.
(4) A designation of the adverse parties on appeal.
(5) All litigant contact information.
(6) A designation of those parts of the proceedings to be transcribed and exhibits3 to be included in the record in addition to the trial court file.
(7) A plain and concise statement of the points on which the appellant intends to rely; but if the appellant has designated for inclusion in the record all of the testimony and all of the instructions given and requested, no statement of points is necessary.
(8) If more than 30 days has elapsed after the date the judgment was entered, a statement as to why the appeal is nevertheless timely.
(9) If appellate jurisdiction is not free from doubt, citation to statute or case law to support jurisdiction.
(10) Proof of service, specifying the date of service.
(a) In a civil case, the notice of appeal shall contain proof of service on all other parties who appeared in the trial court.
(b) In any civil case in which the adverse party is a governmental unit and an attorney did not appear, either in writing or in person, on behalf of the governmental unit in the proceedings giving rise to the judgment or order being appealed (for instance, in the prosecution of a violation, a contempt proceeding, or a civil commitment proceeding);
(i) The notice of appeal shall contain proof of service on the attorney for the governmental unit (for instance, the Tribal Office of Legal Counsel, the city attorney as to a municipality, the district attorney as to a county or the state); and
(ii) If the governmental unit is the state or a county, the notice of appeal shall also contain proof of service on the Attorney General.

(c) In a criminal case, the notice of appeal shall contain proof of service on:
(i) The defendant, in an appeal by the tribe. The notice of appeal in such an appeal also shall contain proof of service of a copy of the notice of appeal on the Office of Public Defender when the defendant was represented by court-appointed counsel.
(ii) The tribal prosecutor, in an appeal by the defendant. The notice of appeal in such an appeal also shall contain proof of service of a copy of the notice of appeal on the Attorney General for the tribe.
(d) In a juvenile dependency case, including a case involving the termination of parental rights, the notice of appeal shall contain proof of service on Oregon Legal Services when a parent was represented by court-appointed counsel.
(e) In all cases, in addition to the foregoing requirements, the notice of appeal shall contain proof of service on:
(i) The trial court director; and
(ii) The transcript coordinator, if any part of the record of oral proceedings in the trial court has been designated as part of the record on appeal.
(11) A certificate of filing, specifying the date the notice of appeal was filed with the Director.
(12) A copy of the judgment, decree or order appealed from and of any other orders pertinent to appellate jurisdiction.

**Rule 2.10**

**SEPARATE NOTICES OF APPEAL**

(1) If the trial court consolidated two or more cases, a party must file a separate notice of appeal in each case in which the party seeks to appeal the judgment. The Director will decide whether to place the notices of appeal in the same appellate file, but the appellant may state in each notice of appeal a preference that the Director place them in the same appellate file or assign them separate appellate case numbers. If the Director assigns separate appellate case numbers to each notice of appeal, any party to either appeal may move to consolidate the appellate cases.
(2) After a party has filed a notice of appeal from a decision in a trial court case, if another party files a notice of appeal from a decision in the same trial court case, the Director may place the subsequent notice of appeal in the same appellate file as the first notice of appeal or may assign a new appellate case number to the subsequent notice of appeal, subject to the following:
(a) When the Director has placed a subsequent notice of appeal in the same appellate case file, any party may move the court to sever the case and for assignment of a new appellate case number to the subsequent notice of appeal.
(b) When the Director has assigned a new appellate case number to a subsequent notice of appeal, any party to either appeal may move to consolidate the appellate cases.
(3) With respect to violation or infraction cases initiated by citations and heard by the trial court at the same time, one notice of appeal identifying the judgment or judgments being appealed is sufficient.

**Rule 2.15**

**FILING FEES IN CIVIL CASES**

(1) Filing Fees shall be set by schedule of the Chief Judge. This rule:
(a) does not apply to criminal, habeas corpus, post-conviction relief, juvenile court, or civil commitment of allegedly mentally ill or mentally retarded persons;
(b) does apply to all other civil proceedings.
(2) One filing fee is required for each appellant appearing separately or for two or more appellants appearing jointly. When two or more notices of appeal are filed, a filing fee is required for each notice of appeal. When a notice of appeal has been filed and a notice of appeal subsequently is filed in circumstances resulting in the creation of a new appellate court case, the appellant is required to pay a filing fee at the time of the subsequent notice of appeal.

(3) Except as provided in subsection (4) of this rule, a respondent's appearance fee is required for each respondent appearing separately or for two or more respondents appearing jointly. When a notice of appeal has been filed and a notice of appeal subsequently is filed in circumstances resulting in the creation of a new appellate court case, the respondent shall pay an appearance fee at the time of the appearance in the subsequent appeal.
(4) (a) If two or more respondents appearing jointly submit a single brief or other first appearance, only one appearance fee is required.
(b) If a respondent concurs in a brief but does not join in submitting it, no appearance fee is required from the concurring respondent but the concurring respondent is deemed to have waived appearance and oral argument.
(c) After a brief is filed, if a stipulation is filed allowing a second respondent to join in the brief, the second respondent is deemed to have appeared, and an appearance fee is required from that party.
(5) If a party fails to pay the appearance fee, the court will not consider any thing filed by that party, and that party will not be allowed to argue the appeal.

**Rule 2.20**
**APPEAL FROM SUPPLEMENTAL JUDGMENTS ON COSTS AND ATTORNEY FEES AFTER NOTICE OF APPEAL FILED**

(1) If the trial court enters a supplemental judgment awarding attorney fees or costs and disbursements after the notice of appeal has been filed, and if the appellant intends to challenge the supplemental judgment on appeal, the appellant, within 30 days after entry of the supplemental judgment, shall serve and file an amended notice of appeal from the supplemental judgment.
(2) If the trial court enters a supplemental judgment disallowing, in whole or in part, any request for attorney fees or costs and disbursements after the notice of appeal has been served, and if a respondent intends to challenge the supplemental judgment on appeal:
(a) If that respondent has, before entry of the supplemental judgment, timely filed notice of cross-appeal, that respondent, within 30 days after entry of the supplemental judgment, shall serve and file an amended notice of cross-appeal from the supplemental judgment.
(b) If that respondent has not, before entry of the supplemental judgment, timely filed notice of cross-appeal, that respondent, within 30 days after entry of the supplemental judgment, shall serve and file a notice of cross-appeal.

**Rule 2.22**
**APPEALS IN JUVENILE CASES**

(1) If an appeal is pending from an order or judgment of a juvenile court, the juvenile court enters a subsequent appealable order or judgment, and a party to the juvenile court case wishes to appeal from the subsequent order or judgment:
(a) If the party who wishes to appeal is the appellant in the pending appeal, the appellant shall serve and file an amended notice of appeal from the subsequent order or judgment.
(b) If the party who wishes to appeal is the cross-appellant in the pending appeal, the cross-appellant shall serve and filed an amended notice of cross-appeal from the subsequent order or judgment.
(c) If the party who wishes to appeal is any other party to the case, that party shall file a notice of appeal from the subsequent order or judgment.
(d) Any such notice of appeal, amended notice of appeal, or amended notice of cross-appeal shall contain the appellate case number of the pending appeal and shall be served and filed within 30 days after entry of the subsequent order or judgment.
(3) At the request of a party to a juvenile case or on the court's own motion, the Chief Judge may refer the case to the Appellate Settlement Conference Program.

**Rule 2.25**
**CASE TITLES;**
**CHANGES TO CASE TITLES**

(1) With respect to appeals from courts:
(a) The case title shall include all parties or entities ever named in the case, including parties or entities dismissed from the case, notwithstanding that the title of the judgment being appealed may not refer to all parties in the case.
(b) All parties should be named completely and should be identified by their designations in the trial court (e.g., plaintiff, defendant, cross-plaintiff, intervenor) and on appeal, as appropriate (e.g., appellant, respondent, cross-appellant, cross-respondent). A party to the case who is not a party on appeal should be designated only by that party's designation in the trial court.
(c) Parties to a cross-claim, third-party claim or counterclaim should be set forth in a separate case title under the original case title.
(d) Where the trial court has used an "In Re" or other similar case title that does not identify the adverse parties to the proceeding, such as in probate and juvenile court cases, the contesting parties should be set forth in a separate case title under the original case title.
(e) The title shall include the trial court case number or numbers.
(2) The Director may correct the title of the case on appeal or judicial review to include all persons who were parties to the proceeding below and to designate properly the parties according to their status on appeal or judicial review. If the Director corrects the title, the Director shall give notice and opportunity to respond to all parties to the appeal or judicial review.
(3) (a) A person who was a party to the case in the tribunal from which the appeal was taken but who was not designated in the notice of appeal as a party to the appeal may appear as of right as a party to the appeal by filing a notice of intent to participate as a party.
(b) If the notice of appeal in a juvenile court, guardianship, conservatorship or other similar proceeding does not identify the juvenile or protected person as a party to the appeal, the juvenile or protected person may appear as of right as a party to the appeal by filing a notice of intent to participate as a party.
(c) A notice of intent to participate on appeal under paragraph (a) or (b) of this subsection shall be filed within 21 days after the date of filing of the notice of appeal, or within such further time as may be allowed by the court, and shall be served on all other parties to the appeal and on the court reporter or transcriber, if any, preparing the transcript.
(d) A party who appears on appeal under paragraph (a) or (b) of this subsection may recover costs and attorney fees, if any, and is liable for costs and attorney fees, if any, the same as any party to an appeal.
(4) (a) In an adoption, juvenile court, or civil commitment case, when the notice of appeal is filed, the court will modify the case title on appeal for the purpose of avoiding public disclosure of the identity of natural persons who are parties to the case. For the same purpose, in all other cases, on motion of a party or on its own motion, and for good cause shown, the court may modify the case title or the version of the court's opinion published on the Judicial Department's website.3
(b) In all cases, notwithstanding paragraph (a) of this subsection, the appellate judgment will contain the full case title.

**Rule 2.30**

**CONSOLIDATION**

The appellate court, on motion of a party or on its own motion, may consolidate cases for purposes of appeal. Any party may file an objection to another party's motion for consolidation within 14 days after the filing of the motion. The appellate court, on motion of a party or on its own motion, may consolidate cases for oral argument, whether or not the cases have been consolidated for appeal.

**Rule 2.35**

**SUMMARY DETERMINATION OF APPEALABILITY AND EXPEDITED COURT OF APPEALS REVIEW**

(1) As used in this rule, "decision" means any oral or written ruling of the tribal trial court.

(2) The Court of Appeals in an appeal of a decision to that court may make a summary determination of whether the decision is appealable.
(3) (a) If the court makes a summary determination of appealability, the order or opinion expressing the court's determination shall expressly state that the determination is a summary determination. The order or opinion also shall contain a notice informing the parties that the order or opinion is a summary determination of appealability.
(4) Unless a shorter period of time is ordered by the Court of Appeals a petition for reconsideration of a summary determination by the Court of Appeals shall be filed within 14 days after the date of the appellate court's determination. The caption of the petition shall prominently display the words "Expedited Summary Determination of Appealability." The Court of Appeals shall expedite its consideration of a petition for review or reconsideration of a summary determination of appealability.
(5) If the appellate court has determined that the decision is not appealable and has dismissed the appeal, and the opportunity for reconsideration of that determination as provided in this rule has been exhausted or has expired, the Director shall immediately issue the appellate judgment.

**Rule 2.40**
**NOTICE OF APPEAL IN GUILTY OR NO CONTEST PLEA, PROBATION OR SENTENCE SUSPENSION REVOCATION, AND RESENTENCING CASES**

(1) Except as provided in subsections (2) and (3) of this rule, in addition to the notice of appeal requirements set forth above, when a defendant in a criminal case appeals from a judgment following
• a guilty plea
• a no contest plea
• resentencing pursuant to a remand from an appellate court
• resentencing pursuant to the judgment of a court granting post-conviction relief
or from an order or judgment
• revoking probation or sentence suspension
• extending a period of probation
• imposing a new condition of probation
• modifying an existing condition of probation:
(a) The caption of the notice of appeal shall identify the notice as a "Notice of Appeal Pursuant to TRAP 2.40.
(b) The body of the notice of appeal shall:
(i) Identify the type of proceeding from which the appeal arises (e.g., guilty plea, no contest plea, probation revocation, etc.); and
(ii) Identify at least one colorable claim of error from the proceeding.
(2) (a) Except as provided in paragraph (b) of this subsection, if, concurrently with filing a notice of appeal in a case subject to subsection (1) of this rule, the defendant has filed a motion for delayed appeal, the defendant need not identify a colorable claim of error in the notice of appeal.
(b) Where the defendant is unable timely to file a notice of appeal because of the need to identify a colorable claim of error in the case, the defendant requesting leave to file a delayed appeal may do so by filing a combined notice of appeal and motion for late appeal. The document shall be entitled "Notice of Appeal; Motion -- File Late Appeal" and shall contain a statement, if true in the case, to the effect that the delay in filing the notice of appeal was attributable to the need to identify a colorable claim of error in the case. In the absence of opposition from the tribe filed within 14 days after filing of the combined notice of appeal and motion for delayed appeal, the motion shall be deemed to have been granted by the court.
(3) If the defendant entered a conditional guilty or no contest plea , the defendant need not comply with paragraphs (1)(a) and (b) of this rule, but the caption of the notice of appeal shall identify the case as a "Conditional Plea Case."

**Rule 2.45**
**SUMMARY DETERMINATION OF AUTHORITY TO DECIDE ACTION AGAINST PUBLIC BODY**

(1) Referral to Court of Appeals of Question of Authority to Decide Case

(a) This subsection applies to an action or other proceeding against a public body when the court or other tribunal refers the question of its legal authority to decide the case. The tribal court or other tribunal shall:

(i) Issue a referral order entitled "REFERRAL ORDER" stating the nature of the question of authority to decide the action or proceeding that has arisen, briefly summarizing the parties' contentions, and, if time is of the essence, identifying the date by which the court or other tribunal requests that the matter be decided.

(ii) Transmit the referral order and the record to the Court of Appeals through the Director, and send a copy of the referral order to each party.

(c) Any party wishing to address in the Court of Appeals the question of which court or other tribunal, if any, has authority to decide the action or proceeding may file a memorandum addressing the question. Any such memorandum shall be in the form prescribed for motions generally, shall not exceed 10 pages without leave of the court, and shall be served and filed within 21 days after the date of receipt by the Court of Appeals of the referral order.

(d) The Court of Appeals will decide the question summarily and as expeditiously as practicable, and will endeavor to decide the question by the date, if any, identified in the referral order.

(e) The Court of Appeals will issue an order communicating its decision to the parties and to the court or other tribunal that referred the question. If the Court of Appeals decides that another court or other tribunal has authority to decide the case, the Court of Appeals will enter a transfer order and send a copy of the order to each party. The person who filed the action or proceeding must accomplish the transfer. At the request of the court or other tribunal to which the case has been transferred, the Court of Appeals will transmit the record to the court or other tribunal.

(f) No filing fee or first appearance fee is due for a referral to the Court of Appeals for a summary determination of the question of authority to decide a case.

(2) Court of Appeals Determination that it is the Correct Forum

On referral of a question to the Court of Appeals if the Court of Appeals decides that it is the appropriate court to decide a case referred to it:

(a) The Director will assign the case a regular appellate case number.

(b) The Court of Appeals will enter an order stating its determination that it is the appropriate court to decide the case and identifying any actions that a party must take to perfect the case. On entry of the order, the case will be deemed to have been transferred to the Court of Appeals.

(c) For the purpose of determining the next event in the appellate process, the case will be deemed to have been filed in the Court of Appeals as of the date of entry of the order referred to in paragraph (2)(b) of this rule.

(d) The appellant or petitioner shall pay the appellate court filing fee within 10 days after the date of entry of the order of the Court of Appeals or such additional time as the court may allow. Any respondent shall pay the respondent's first appearance fee on the respondent's first appearance thereafter.

(3) Transfer of Case to the Court of Appeals

(a) If the tribal court determines that the Court of Appeals is the court authorized by law to hear an action or proceeding against a public body and transfers the case to the Court of Appeals, the person who filed the action or proceeding must file a copy of the transfer order in the Court of Appeals.

(b) When the person who filed the action or proceeding files a copy of the transfer order with the Director, the Director will assign a case number to the case. For the purpose of determining the next

event in the appellate process, the case will be deemed to have been filed in the Court of Appeals on the day of filing of a copy of the trial court's transfer order.
(c) The person filing the action or proceeding shall pay the appellate filing fee at the same time as filing a copy of the transfer order or within such additional time as may be allowed by the Court of Appeals. Any respondent shall pay the respondent's first appearance fee on the respondent's first appearance thereafter.
(d) The Court of Appeals will give a party notice of any actions that the party must take to perfect the case in the Court of Appeals.

**3. RECORD ON APPEAL**

**Rule 3.05**

**TRIAL COURT RECORD ON APPEAL;**
**SUPPLEMENTING THE RECORD**

(1) In any appeal from a trial court, the trial court record on appeal shall consist of the trial court file, exhibits, and as much of the record of oral proceedings as has been designated in the notice or notices of appeal filed by the parties.
(2) The record of oral proceedings shall be a transcript, unless the oral proceedings were recorded by audio or video recording equipment and the appellate court has waived preparation of a transcript and ordered that the appeal proceed on the audio or video record alone. The parties may file an agreed narrative statement in lieu of or in addition to a transcript.
(3) The appellate court, on motion of a party or on its own motion, may order that any thing in the record in the trial court whether or not designated as part of the record in the notice of appeal, be transmitted to it or that parts of the oral proceedings be copied or transcribed, certified and transmitted to it.

**Rule 3.07 [RESERVED FOR EXPANSION]**
**INSPECTION OF CONFIDENTIAL AND SEALED MATERIALS,**
**INCLUDING PRESENTENCE REPORTS IN CRIMINAL APPEALS**

**Rule 3.10**

**DUTIES OF TRIAL COURT DIRECTOR**
**REGARDING JUDGMENTS AND ORDERS**
**ENTERED AFTER NOTICE OF APPEAL**

(1) The trial court director shall promptly send to the Director and to each party to the appeal a copy of any order settling the transcript. If the date of entry in the register is not apparent from the order, the trial court director shall state on the order the date of entry.
(2) In criminal and other cases in which the trial court appoints an attorney to represent a party or authorizes preparation of a transcript at state expense, the trial court director shall promptly send to the Director and provide to the transcript coordinator a copy of any order appointing an attorney on appeal or authorizing preparation of a transcript at state expense.
(3) In a criminal case, after a notice of appeal is filed, if the trial court, on motion of a party or on its own motion, enters a judgment or a modified, corrected or amended judgment, the trial court director promptly shall send a copy of the judgment to the Director, to the defendant or to the attorney for the defendant if the defendant is represented by counsel, to the prosecuting attorney, and to the Attorney General of the Tribe.

**Rule 3.15**

**PREPARATION AND FILING OF**
**THE RECORD ON APPEAL**

(1) The trial court director shall prepare and file the record in the same manner in all appeals.
(2) The trial court director shall identify separately by certificate and promptly forward on request of the appellate court:

(a) the trial court file, or part thereof designated by the parties if less than the entire file has been designated;
(b) the exhibits specified in the designation of record;
(c) if applicable, the audio or video record specified in the designation of record, or agreed narrative statement;ı and
(d) any part of the trial court record ordered by the appellate court.
(3) If the record of oral proceedings is an audio record and the appellate court has directed that the appeal proceed on the audio record without a transcript, the trial court director shall place the original audio record and the official log and reporter's certificate in an envelope or other suitable container, clearly identified as containing the audio record and official log, and forward the envelope or other container to the Director along with the trial court file.

**Rule 3.20**

**TRIAL COURT FILE**

(1) The trial court director shall prepare an index of the contents of the trial court file and shall securely fasten the index and file in a suitable cover or folder showing on the outside the title and trial court number of the case and the court and county from which the appeal is taken. The index may consist of a printout of the computer case register showing next to each entry the page in the trial court file at which each item will be found.
(2) Pages shall be consecutively numbered at the bottom of the page, commencing with the bottom page of the trial court file. Each document shall be separately indexed, in chronological order, with the last filed document on the top.

**Rule 3.25**

**EXHIBITS**

(1) Exhibits designated as part of the record on appeal shall not be transmitted to the appellate court unless requested by the Director. The Director will request transmittal of documentary exhibits when it requests transmittal of the trial court file, or sooner if requested by a party. The Director will request transmittal of a nondocumentary exhibit only if requested to do so by a party to the appeal or at the direction of the court. A party wishing to have one or more nondocumentary exhibits transmitted to the appellate court shall notify the Director by letter specifying the exhibit or exhibits to be transmitted. The letter shall be submitted to the Director no later than the date of filing of that party's brief and shall be copied to all other parties to the appeal.
(2) When the appellate court requests transmittal of documentary exhibits, the trial court director promptly shall transmit the documentary exhibits to the appellate court in a single envelope, so far as practicable, and shall note thereon or, if no envelope is used, on a separate list, the number and description of all exhibits being transmitted, with notations indicating those received and those not received in evidence.
(3) Notwithstanding a party's request for nondocumentary exhibits pursuant to subsection (1) of this rule, the trial court director need not transmit exhibits which are bulky, dangerous or difficult to transmit or store, such as machinery, firearms, clothing, narcotics, chemicals, money, or jewelry, unless a party in its request to the Director identifies the exhibit with particularity and requests that the Director arrange to have the exhibit transmitted to the appellate court. The trial court director shall make appropriate notation of retained exhibits on the exhibit list.
(4) If a party fails to comply with rule or order requiring return of documentary exhibits within 21 days after receipt of the trial court's request, following the filing of a notice of appeal by any party, the appellate court may order that the appeal proceed without consideration of that party's exhibits.
(5) For purposes of this rule, "documentary exhibits" include text documents, photographs and maps, if not oversized, and audio and video tapes. An oversized document is one larger than standard letter size or legal size.

**Rule 3.30**

**EXTENSION OF TIME FOR PREPARATION OF TRANSCRIPT**

(1) Only the appellate court may grant an extension of time for the preparation of a transcript.

(2) A request for an extension of time to prepare a transcript may be filed by the party responsible for causing the transcript to be prepared or by the court reporter or transcriber (in audio and video record cases) responsible for preparing the transcript.

(3) A request for an extension of time shall include the amount of time sought, the number of previous extensions obtained and the reason for the extension of time.

(4) If all or part of the need for an extension of time is the failure to make satisfactory arrangements for payment of the transcript, the request shall so state. If a party makes a request for an extension of time under this rule, the party shall show why appropriate arrangements have not been made. The court in its discretion may deny the extension of time and direct that the appeal proceed without the transcript.

(5) A court reporter's or transcriber's request for an extension of time shall include the date on which the transcript was ordered, the number of days of proceedings designated on appeal, the approximate number of pages of transcript to be prepared, and information about other transcripts due on appeal. The request shall show proof of service on the parties and, for the second or any subsequent request for extension of time, on the trial court director.

(6) Any party may file an objection to a court reporter's or transcriber's request for an extension of time within 14 days after the request is filed. The objection must be served on all other parties, the court reporter or transcriber, and the trial court director. An objection received after the court has granted the request will be treated as a motion for reconsideration of the ruling. On reconsideration, if the court modifies the extension of time, the court reporter or transcriber and the parties will be notified; otherwise, the objection will be noted and placed in the file.

**Rule 3.33**

**PREPARATION, SERVICE,**

**AND FILING OF TRANSCRIPT**

(1) On being served with a copy of a notice of appeal, the transcript coordinator shall examine the notice of appeal and determine:

(a) Whether the party has designated a record of oral proceedings as part of the record on appeal;

(b) Whether preparation of a transcript of the designated proceedings is required by law or these rules; and

(c) Whether the proceedings were reported by a court reporter or recorded by audio or video recording equipment, or both.

(2) (a) When a party has designated as part of the record on appeal a transcript of oral proceedings reported by:

(i) A court reporter, the transcript coordinator shall forward a copy of the notice of appeal to the court reporter or reporters who reported the proceedings designated as part of the record on appeal and inform the reporter(s) of the due date of the transcript.

(ii) Audio or video recording, the transcript coordinator shall identify one or more qualified transcribers, forward a copy of the notice of appeal to the transcriber(s) along with a certified copy of the audio or video tape recording, and inform the transcriber(s) of the due date of the transcript.

(b) Except as provided in paragraph (c) of this subsection, the party shall make financial arrangements with the court reporter(s) or transcriber(s) for preparation of the transcript.

(c) If the transcript coordinator has not forwarded the notice of appeal to the court reporter(s) or has not forwarded the notice of appeal and a certified copy of the audio or video tape recording to a transcriber before the transcript due date, the transcript coordinator shall notify the appellate court of that fact.

(3) After making arrangements with the court reporter(s) or transcriber(s) as provided in subsection (2) of this rule, the transcript coordinator shall notify the appellate court and the parties to the appeal

of the name, address, telephone number, and e-mail address of each court reporter or transcriber, or both, as appropriate, who will be preparing all or a part of the transcript.
(4) It shall be the responsibility of each court reporter or transcriber with whom arrangements have been made to prepare a transcript to:
(a) Cause the transcript to be prepared.
(b) Serve a copy of the transcript on each party required by these rules and file with the Director and serve on each party, the trial court director, and the transcript coordinator a certificate of preparation and service of transcript within 30 days. In a criminal case, the tribe's copy of the transcript shall be served on the tribal prosecuting attorney and CTUIR Office of Legal Counsel. If the transcript is not served and the certificate is not served and filed within that time, the court reporter or transcriber shall move for an extension of time.
(c) Upon notice from the Director of the settlement of the transcript, file with the Director an electronic version of the transcript. and, at the same time, file with the Director and serve on each party a certificate of filing of transcript. The certificate of filing must be a separate document and may not be included as part of the electronic version of the transcript. Filing an electronic version of the transcript with the Director is in lieu of filing a paper transcript.
(5) (a) The court reporter or transcriber shall serve the appellant and the respondent each with a copy of the transcript as follows:
(i) If a party is represented by an attorney, unless the attorney has made other arrangements with the court reporter or transcriber, the court reporter or transcriber shall serve the transcript in electronic form on the attorney at the e-mail address identified in the notice of appeal. If a party is not represented by an attorney, unless the party has made other arrangements with the court reporter or transcriber, the court reporter or transcriber shall serve a paper copy of the transcript on the party. In addition to or in lieu of service by e-mail or by paper copy, an attorney or party may make arrangements with the court reporter or transcriber to provide a copy of the transcript to that attorney or party on an optical disk or USB drive, or in other comparable medium.
(ii) If two or more respondents not represented by attorneys must be served by paper copy as provided in clause (5)(a)(i) of this rule, the court reporter or transcriber shall provide one copy of the transcript to the trial court director for use by all such respondents. The copy of the transcript provided to the trial court director under this clause shall be in the medium (e.g., paper or optical disk) requested by the trial court.
(b) If a party or attorney negotiates with a court reporter or transcriber to provide the transcript in a medium, other than paper or e-mail, provided by the court reporter or transcriber, the court reporter or transcriber may request payment of no more than $5.00 per optical disk, USB drive, or other comparable medium.
(c) A party may specify in the party's designation of record or other request for preparation of a transcript on appeal that the version of the transcript to be provided to that party be prepared by reducing the pages of the transcript in such a manner as to fit up to four pages of transcript onto a single 8-1/2 x 11 inch page or in the one page of transcript per one standard page format. If a party not responsible for arranging for preparation of a transcript is served with a transcript containing four reduced pages of transcript on one standard page, that party may arrange with the court reporter or transcriber, at the party's own expense, for preparation of a transcript in the one page of transcript per one standard page format.6
(6) The court reporter or transcriber may not charge for preparing more than one original transcript and may charge only at the rate for copying a transcript for any additional transcript that may be needed for an appeal or appeals:
(a) When two or more cases are heard simultaneously in the trial court from which one or more appeals are taken, either as consolidated cases or otherwise; or

(b) When two or more cases not heard simultaneously in the trial court are consolidated on appeal before the transcripts are prepared.

**Rule 3.35**

**FORM OF TRANSCRIPT**

(1) A transcript shall meet these specifications:

(a) It shall be prepared using either uniformly spaced type (such as produced by typewriters) or proportionally spaced type (such as produced by commercial printers and many computer printers). Uniformly spaced type shall be 10 characters per inch (cpi). If proportionally spaced type is used, it shall be 12 point type. The font size shall be uniform and not vary from line to line or within the same line. Uppercase and lowercase letters shall be used according to rules of grammar; a transcript shall not be prepared using all uppercase letters.

(b) It shall be prepared on good quality white, opaque, unglazed paper, 8-1/2 x 11 inches in size, with numbered lines, and printed on both sides of each page.1 It shall be double-spaced and each page shall contain 25 lines of text, no more and no less, except for the last page of the transcript. The margins of each page shall be one inch on each side, at the top, and at the bottom.

(c) Each question shall be prefaced by "Q" and each answer shall be prefaced by "A." Each question and answer shall begin on a separate line no more than five spaces from the left margin and no more than five spaces from the "Q" and "A" to the beginning of the text. Text that carries on to the next line shall begin at the left margin.

(d) Colloquy, parentheticals, and exhibit markings shall begin no more than 15 spaces from the left margin. Text that carries on to the next line shall begin at the left margin.

(e) Quoted material shall begin no more than 15 spaces from the left margin. Text that carries on to the next line shall begin no more than 10 spaces from the left margin.

(f) Each page shall be consecutively numbered at the top right corner, and to the left thereof shall be given the name of the witness followed by a notation indicating whether the testimony is on direct, cross, redirect or recross examination, indicated by "D," "X," "ReD," or "ReX."

(g) Appropriate notation similarly shall be made of other proceedings, such as a motion for dismissal or a directed verdict, requested jury instructions, jury instructions, any opinion by the court, and other matters of special importance.

(h) It shall be preceded by an appropriate title page followed by an index noting:

(i) the first page of the direct, cross, redirect, and recross testimony of each witness;

(ii) all exhibits, with notation of the nature thereof and of the page of the record where offered and, when appropriate, where received in evidence; and

(iii) appropriate notations of other proceedings such as motions for involuntary dismissal and directed verdict, requested jury instructions, jury instructions, opinion of the court and other matters of special importance.

(i) Each transcript volume shall be bound in a manner that allows the pages of the transcript to lie flat when the transcript is open, as provided in this paragraph. The transcript volume shall be bound with a plastic comb binding, with the binding within 3/8 inch from the left edge of the transcript. A transcript volume may be bound by stapling if the transcript does not exceed 20 pages (10 pieces of paper), excluding the cover. A transcript volume bound by stapling shall be secured by a single staple placed as close to the upper left-hand corner as is consistent with securely binding the transcript.

(j) It shall have a cover sheet of clear plastic or 65-pound weight paper, front and back.

(k) If a transcript exceeds 200 pages, it shall be bound into volumes of approximately equal size of not more than 200 pages each. Volumes shall be consecutively numbered on their covers.

(2) The electronic version of the transcript filed with the Director shall be in the following form:

(a) The electronic transcript shall be in Portable Document Format (PDF) that allows text searching, and copying and pasting into another document. The pagination of the transcript served on the parties shall correspond to the pagination of the electronic transcript filed with the court.

(b) If the transcript exceeds 200 pages, the electronic transcript shall be broken into separate PDF files of approximately equal length not to exceed 200 pages. Regardless of whether a transcript consists of one or more PDF files, each file shall be named in accordance with the file naming conventions. If a PDF file contains more than one proceeding date, the beginning of each proceeding shall be bookmarked.
(c) If the transcript is in two volumes or less, it may be filed by attaching the electronic transcript to an e-mail directed to the Director. If the Director determines that an electronic transcript must be rejected for security reasons (e.g., virus or malware), the court reporter or transcriber shall resubmit the transcript as directed by the Director. If the transcript is more than two volumes, it shall be filed by optical disk.
(d) The electronic transcript filed with the court shall be prepared in the one page of transcript per one standard page format.

**Rule 3.40**

**ADDITION TO OR CORRECTION OF TRANSCRIPT**

(1) A party desiring to correct or add to the transcript shall file a motion in the trial court within 15 days after the service of the transcript and serve a copy of the motion on the Director and on the transcript coordinator. When multiple parts of the oral record have been designated as part of the record on appeal or if more than one court reporter or transcriber is preparing the transcript, the transcript is not deemed filed until the last part of the transcript due on appeal is filed.
(2) The Director will hold the appeal in abeyance pending the trial court's disposition of the motion and the occurrence of one of the events specified in paragraphs (5)(b) or (c) of this rule.
(3) After the filing of a timely motion to correct or add to the transcript, the trial court shall have the authority to grant an extension of time for making the corrections or additions to the transcript.
(4) (a) If the trial court allows a motion to correct the transcript, after the filing of the corrected transcript, the moving party shall request that the trial court enter an order settling the transcript. The appeal will remain in abeyance until receipt by the Director of a copy of the order settling the transcript as provided in paragraph (5)(b) of this rule.
(b) If the trial court allows a motion to add to the transcript, the appeal will remain in abeyance for a period of 15 days after the filing of the additional transcript. If a motion to correct the additional transcript is filed timely, the appeal will continue in abeyance pending disposition of the motion to correct and receipt of an order settling the transcript as provided in paragraph (5)(b) of this rule.
(c) If the trial court denies the motion, the appeal will be reactivated as provided in paragraph (5)(c) of this rule.
(5) (a) If no motion to correct or add to the transcript is filed, the transcript shall be deemed settled 15 days after it is served, and the period for filing the appellant's opening brief shall begin the next day.
(b) If a motion to correct or add to the transcript is filed and allowed, the period for filing the appellant's opening brief shall begin the day after entry by the trial court director of the order settling the transcript.
(c) If a motion to correct or add to the transcript is filed and denied, the period for filing the appellant's opening brief shall begin the day after entry by the trial court director of the order settling the transcript.

**Rule 3.45**

**AGREED NARRATIVE STATEMENT**

If the parties agree to a narrative statement in lieu of or in addition to a transcript and the parties are able to reconstruct the statements and testimony of the judge, parties, counsel, witnesses, and others present at the proceeding, the narrative statement shall follow as nearly as practicable the form prescribed for transcripts in TRAP 3.35; otherwise, the statement may be in narrative form. The appellant shall file the agreed narrative statement in the trial court for transmittal to the Director.

When the narrative statement is delivered for filing with the trial court, the appellant shall give notice thereof to the Director, showing the date of filing.

**Rule 3.50**

**RETURN OF RECORDS AND EXHIBITS**

(1) When the appellate judgment issues, the Director shall return the trial court or agency record, file, and exhibits to the trial court or agency.

(2) Jurisdiction over exhibits not forwarded to the appellate court and, after issuance of the appellate judgment, over those returned to the trial court or agency by the appellate court rests exclusively with the trial court or agency.

**Rule 3.55**

**WITHDRAWAL OF PAPERS OR EXHIBITS**

No one shall remove from the office of the Director or from the court any thing on file with the appellate court except:

(1) A judge or justice may do so for official business.

(2) An administrative or legal staff person may do so for official business:

(3) Any party or member of the public seeking to withdraw any thing shall file a motion stating the reason for the request and specifying the thing desired. If the court grants the motion, the person allowed to withdraw the thing shall furnish the Director a receipt for the thing withdrawn.

**Rule 3.63**

**USE OF AUDIO OR VIDEO RECORD ON APPEAL**

(1) Where the appeal will proceed on the audio or video record without a transcript, on payment of the prescribed fee,1 the trial court director shall:

(a) Arrange for duplication of the audio or video record and the official log of the audio or video record. Any duplicate copy of an audio or video record prepared for appeal shall contain the caption and trial court number of the proceeding and the number of tapes used in the proceeding (e.g., 1 of 5).

(b) Cause the copy of the audio or video record and official log to be served on the party requesting it and to have a certificate of duplication and proof of service prepared.

(c) Cause to be placed in the trial court file the original of the audio or video record, official log and certificate of duplication and proof of service, where they shall remain until the appellate court requests that the trial court record be forwarded to the appellate court, as provided in ORAP 3.15.

(2) The trial court director shall file and serve copies of the audio or video record within 14 days after receiving notice that the appellate court has waived preparation of a transcript and is allowing the appeal to be heard on the audio or video record alone.

(3) The appellate court may order the transcription of any part of an audio or video recording not previously transcribed that the appellate court determines necessary for deliberation. The cost of transcription under this subsection shall be paid in the first instance by the parties to the appeal in such proportions as directed by the appellate court.

(4) (a) If the trial court director has previously provided a copy of all or part of the audio or video record to a party, on appeal that party need not pay for and the trial court director need not provide another copy of the audio or video record to that party.

(b) If the trial court director does not provide a duplicate copy of the audio or video record to a party on appeal under paragraph (a) of this subsection, the trial court director shall prepare and sign a proof of service certifying the date or dates on which the party received a copy of the audio or video record. The trial court director's certificate shall constitute proof of service of the audio or video record on that party and shall be forwarded to the appellate court in lieu of the proof of service required in paragraph (1)(c) of this rule.

(c) If the trial court director has provided a copy of all or part of an audio or video record to a party or the attorney for a party and on appeal the party is represented by an attorney or by a different

attorney, respectively, the party or the attorney for a party who received a certified copy of the audio or video record shall, on request and without charge, give the audio or video record to the attorney or different attorney representing the party on appeal. The person giving the audio or video record may require that the person receiving the audio or video record provide a receipt therefor.
(d) If the trial court director has provided part but not all of the audio or video record to a party, the provisions of paragraphs (a), (b), and (c) of this subsection shall apply to so much of the audio or video record as has been previously provided to a party.
(5) If a part of a recording is extracted from the official audio or video recording and duplicated for the purpose of appeal, the trial court director shall attach a certificate stating that the copy is an accurate copy of the extracted part of the original. The copy containing the extract of the official recording shall become the official recording on appeal in lieu of the copy referred to in subsection (1) of this rule. The trial court director shall make copies of the extracted copy of the recording for service on the parties to the appeal, and prepare a certified copy of the relevant part or parts of the official log, to be served and filed as part of the record on appeal.

**4. JUDICIAL REVIEW OF ADMINISTRATIVE AGENCY PROCEEDINGS [RESERVED FOR EXPANSION]**

**5. PREPARATION AND FILING OF BRIEFS**

**Rule 5.05**

**SPECIFICATIONS FOR BRIEFS**

(1) Briefs, including petitions for review or reconsideration in the Court of Appeals, shall be reproduced by any duplicating process that makes a clear, legible, black image; the Director will not accept carbon copies, copies on slick paper, or copies darkened by the duplicating process.
(2) (a) Except as provided in paragraph (2)(c) of this subsection, an opening, answering, combined, or reply brief shall comply with the word-count limitation in paragraph (2)(b) of this subsection. Headings, footnotes, and quoted material count toward the word-count limitation. The front cover, index of contents and appendices, index of authorities referred to, excerpt of record, appendices, certificate of service, any other certificates, and the signature block do not count toward the word-count limitation.
(b) In the Court of Appeals, no opening, answering, or combined brief shall exceed 10,000 words and no reply brief or reply part of a combined reply and cross-answering brief2 shall exceed 3,300 words.
(c) If a party does not have access to a word-processing system that provides a word count, in the Court of Appeals, an opening, answering, or combined brief is acceptable if it does not exceed 35 pages, and a reply brief or reply part of a combined reply and cross-answering brief is acceptable if it does not exceed 10 pages.
(d) An attorney or unrepresented party shall include at the end of each brief a certificate that:
(i) The brief complies with the word-count limitation in paragraph (2)(b) of this subsection by indicating the number of words in the brief. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the brief. If the attorney, or an unrepresented party, does not have access to a word-processing system that provides a word count, the certificate shall indicate that the attorney, or unrepresented party, does not have access to such a system and that the brief complies with paragraph (2)(c) of this subsection.
(ii) If proportionally spaced type is used, the size is not smaller than 14 point for both the text of the brief and footnotes.
(e) A party's excerpt of record or appendix or combined excerpt of record and appendix shall not exceed 50 pages.
(f) Unless the court orders otherwise, no supplemental brief shall exceed five pages.
(3) (a) On motion of a party stating a specific reason for exceeding the prescribed limit, the court may permit the filing of a brief, an excerpt of record, an appendix, or a combined excerpt of record and appendix exceeding the limits prescribed in subsection (2) of this rule or prescribed by order of

the court. A party filing a motion under this subsection shall make every reasonable effort to file the motion not less than seven days before the brief is due. The court may deny an untimely motion under this paragraph on the ground that the party failed to make a reasonable effort to file the motion timely.
(b) If the court grants permission for a longer excerpt of record, appendix, or combined excerpt of record and appendix, the excerpt of record, appendix, or combined excerpt of record and appendix shall be printed on both sides of each page and shall be plastic spiral bound separately from the brief.
(4) All briefs shall conform to these requirements:
(a) Front and back covers shall be paper of at least 65-pound weight. The cover of the brief shall be:
(i) For an opening brief, blue;
(ii) For an answering brief, red;
(iii) For a combined answering brief and cross-opening brief, violet;
(iv) For a reply brief, a combined reply brief and answering brief on cross-appeal, or an answering brief to a cross-assignment of error under ORAP 5.57(3)(b), gray;
(b) The front cover shall set forth the full title of the case, the appropriate party designations as the parties appeared below and as they appear on appeal, the case number assigned below, the case number assigned in the appellate court, designation of the party on whose behalf the brief is filed, the court from which the appeal is taken, the name of the judge thereof, and the litigant contact information required by TRAP 1.30. The lower right corner of the brief shall state the month and year in which the brief was filed.
(c) Pages and covers shall be a uniform size of 8-1/2 x 11 inches.
(d) Paper for the text of the brief shall be white bond, regular finish without glaze, and at least 20-pound weight with surface suitable for both pen and pencil notation. If both sides of the paper are used for text, the paper shall be sufficiently opaque to prevent the material on one side from showing through on the other.
(e) Printed or used area on a page shall not exceed 6-1/4 x 9-1/2 inches, exclusive of page numbers, with inside margin 1-1/4 inches, outside margin 1 inch, top and bottom margins 3/4 inch.
(f) Briefs shall be legible and capable of being read without difficulty. Briefs may be prepared using either uniformly spaced type (such as produced by typewriters) or proportionally spaced type (such as produced by commercial printers and many computer printers). Uniformly spaced type shall not exceed 10 characters per inch (cpi) for both the text of the brief and footnotes. If proportionally spaced type is used, the style shall be either Arial or Times New Roman and the size shall be not smaller than 14 point for both the text of the brief and footnotes. Reducing or condensing the typeface in a manner that would increase the number of words in a brief is not permitted. Briefs printed entirely or substantially in uppercase are not acceptable. All briefs shall be double-spaced with double space above and below each paragraph of quotation.
(g) The last page of the brief shall contain the name and signature of the author of the brief, the name of the law firm or firms, if any, representing the party, and the name of the party or parties on whose behalf the brief is filed.
(h) Pages shall be consecutively numbered at the top of the page within 3/8 inch from the top of the page. Pages of the excerpt of record shall be numbered independently of the body of the brief, and each page number shall be preceded by "ER,"e.g., ER-1, ER-2, ER-3. Pages of appendices shall be preceded by "App," e.g., App-1, App-2, App-3.
(i) A brief shall be bound in a manner that allows the pages of the brief to lie flat when the brief is open, as provided in this paragraph. Regardless of whether a brief is prepared with text on one or both sides of the pages, the brief may be bound with a plastic comb binding, with the binding to be within 3/8 inch from the left edge of the brief. A brief also may be bound by stapling (1) if the brief is prepared with text only on one side of each page or (2) if the brief is prepared with text on both sides of the pages and does not exceed 20 pages (10 pieces of paper), excluding the cover but

including the index, the excerpt of record and any appendix. A brief bound by stapling shall be secured by a single staple placed as close to the upper left-hand corner as is consistent with securely binding the brief.
(5) The court on its own motion may strike any brief that does not comply with this rule.

**Rule 5.10**

**NUMBER OF COPIES OF BRIEFS;**
**PROOF OF SERVICE**

(1) Any party filing a brief on appeal or on judicial review in the Court of Appeals shall file with the Director one brief, marked as the original, and 2 copies.
(2)Any party filing a brief shall serve two copies of the brief on every other party to the appeal, judicial review, or proceeding.
(3) The original of each brief shall contain proof of service on all other parties to the appeal. The proof of service shall be the last page of the brief or printed on or affixed to the inside of the back cover of the brief.

**Rule 5.12**

**BRIEFS OR PETITIONS FOR REVIEW**
**CHALLENGING CONSTITUTIONALITY OF**
**STATUTES OR CONSTITUTION [RESERVED FOR EXPANSION]**

**Rule 5.15**

**REFERENCES IN BRIEFS TO PARTIES**
**AND CRIME VICTIMS OF OFFENSES AGAINST PERSONS**

(1) In the body of a brief, parties shall not be referred to as appellant and respondent, but as they were designated in the proceedings below, except that in domestic relations proceedings the parties shall be referred to as husband or wife, father or mother, or other appropriate specific designation.
(2) In the body of a brief on appeal in a criminal, post-conviction, or habeas corpus case or on judicial review of an order of the Board of Parole and Post-Prison Supervision that includes a conviction for an offense, or attempt to commit an offense, compiled in ORS Chapter 163, any references to the victim of the offense must not include the victim's full name.

**Rule 5.20**

**REFERENCE TO EVIDENCE AND EXHIBITS; CITATION OF AUTHORITIES**

(1) Briefs, in referring to the record, shall make appropriate reference to pages and volumes of the transcript or narrative statement, or in the case of an audio record, to the tape number and official cue or numerical counter number or, in the case of an exhibit, to its identification number or letter.
(2) If the precise location on the audio record cannot be determined, it is permissible to indicate between which cue numbers the evidence is to be found.
(3) The following abbreviations may be used:
"P Tr" for pretrial transcript;
"Tr" for transcript;
"Nar St" for narrative statement;
"ER" for Excerpt;
"App" for Appendix;
"AR Tape No. ___, Cue No. ___" for audio record;
"PAR" for pretrial audio record;
"TCF" for trial court file;
"Rec" for record in judicial review proceedings only;
"Ex" for exhibit.
Other abbreviations may be used if explained.

**Rule 5.30**

**ORDINANCES, CHARTERS,**
**STATUTES, AND OTHER WRITTEN**
**PROVISIONS TO BE SET OUT**

If an appeal involves an ordinance, charter, statute, constitutional provision, regulation, or administrative rule, so much of the provision as relevant shall be set forth verbatim with proper citation. If lengthy, such matter should be appended or footnoted and need not be set out verbatim if it appears in another brief in the case and is cross-referenced appropriately.

**Rule 5.35**

**APPELLANT'S OPENING BRIEF: INDEX**

The appellant's combined opening brief and excerpt shall begin with:

(1) an index of the contents of the brief, including a statement of the substance of each assignment of error, without argument, with appropriate page references;

(2) an index of appendices, if any; and

(3) an index of all authorities referred to, classified by cases (alphabetically arranged and with complete citations), constitutional and statutory provisions, texts, treatises, and other authorities, and indicating the pages of the brief where the authorities are cited. Citations are to be in the form prescribed by the Uniform Citation convention. Reference to "passim" or "et seq." in the index of authorities is discouraged.

**Rule 5.40**

**APPELLANT'S OPENING BRIEF:**
**STATEMENT OF THE CASE**

The appellant's opening brief shall open with a clear and concise statement of the case, which shall set forth in the following order under separate headings:

(1) A statement, without argument, of the nature of the action or proceeding, the relief sought and, in criminal cases, the indictment or information, including citation of the applicable statute.

(2) A statement, without argument, of the nature of the judgment sought to be reviewed and, if trial was held, whether it was before the court or a jury.

(3) A statement of the statutory basis of appellate jurisdiction and, where novelty or possible doubt makes it appropriate, other supporting authority.

(4) A statement of the date of entry of the judgment in the trial court register, the date that the notice of appeal was served and filed, and, if more than 30 days elapsed between those two dates, why the appeal nevertheless was timely filed; and any other information relevant to appellate jurisdiction.

(5) In cases on judicial review from a state or local government agency, a statement of the nature and the jurisdictional basis of the action of the agency and of the trial court, if any.

(6) A brief statement, without argument and in general terms, of questions presented on appeal.

(7) A concise summary of the arguments appearing in the body of the brief.

(8) (a) In those proceedings in which the Court of Appeals has discretion to try the cause anew on the record and the appellant seeks to have the court exercise that discretion, the appellant shall concisely state the reasons why the court should do so.

(b) In those proceedings in which the Court of Appeals has discretion to make one or more factual findings anew on the record and the appellant seeks to have the court exercise that discretion, the appellant shall identify with particularity the factual findings that the appellant seeks to have the court find anew on the record and shall concisely state the reasons why the court should do so.

(c) The Court of Appeals will exercise its discretion to try the cause anew on the record or to make one or more factual findings anew on the record only in exceptional cases. Consistently with that presumption against the exercise of discretion, requests under paragraph (a) or (b) of this section are disfavored.

(d) The Court of Appeals considers the items set out below to be relevant to the decision whether to exercise its discretion to try the cause anew on the record or make one or more factual findings anew

on the record. These considerations, which are neither exclusive nor binding, are published to inform and assist the bar and the public.
(i) Whether the trial court made express factual findings, including demeanor-based credibility findings.
(ii) Whether the trial court's decision comports with its express factual findings or with uncontroverted evidence in the record.
(iii) Whether the trial court was specifically alerted to a disputed factual matter and the importance of that disputed factual matter to the trial court's ultimate disposition of the case or to the assignment(s) of error raised on appeal.
(iv) Whether the factual finding(s) that the appellant requests the court find anew is important to the trial court's ruling that is at issue on appeal (*i.e.*, whether an appellate determination of the facts in appellant's favor would likely provide a basis for reversing or modifying the trial court's ruling).
(v) Whether the trial court made an erroneous legal ruling, reversal or modification of which would substantially alter the admissible contents of the record (*e.g.*, a ruling on the admissibility of evidence), and determination of factual issues on the altered record in the Court of Appeals, rather than remand to the trial court for reconsideration, would be judicially efficient.
(9) A concise summary, without argument, of all the facts of the case material to determination of the appeal. The summary shall be in narrative form with references to the places in the transcript, narrative statement, audio record, record, or excerpt where such facts appear.
(10) In a dissolution proceeding or a proceeding involving modification of a dissolution judgment, the summary of facts shall begin with the date of the marriage, the ages of the parties, the ages of any minor children of the parties, the custody status of any minor children, the amount and terms of any spousal or child support ordered, and the party required to pay support.
(11) Any significant motion filed in the appeal and the disposition of the motion. A party need not file an amended brief to set forth any significant motion filed after that party's brief has been filed.
(12) Any other matters necessary to inform the court concerning the questions and contentions raised on the appeal, insofar as such matters are a part of the record, with reference to the parts of the record where such matters appear.

**Rule 5.45**

**ASSIGNMENTS OF ERROR AND ARGUMENT**

(1) Assignments of error are required in all opening briefs of appellants and cross-appellants. No matter claimed as error will be considered on appeal unless the claim of error was preserved in the lower court and is assigned as error in the opening brief in accordance with this rule, provided that the appellate court may consider an error of law apparent on the record.
(2) Each assignment of error shall be separately stated under a numbered heading. The arrangement and form of assignments of error, together with reference to pages of the record, should conform to the illustrations in Appendix 5.45.
(3) Each assignment of error shall identify precisely the legal, procedural, factual, or other ruling that is being challenged.
(4) (a) Each assignment of error shall demonstrate that the question or issue presented by the assignment of error timely and properly was raised and preserved in the lower court. Under the subheading "Preservation of Error":
(i) Each assignment of error, as appropriate, must specify the stage in the proceedings when the question or issue presented by the assignment of error was raised in the lower court, the method or manner of raising it, and the way in which it was resolved or passed on by the lower court.
(ii) Each assignment of error must set out pertinent quotations of the record where the question or issue was raised and the challenged ruling was made, together with reference to the pages of the transcript or other parts of the record quoted or to the excerpt of record if the material quoted is set

out in the excerpt of record. When the parts of the record relied on under this clause are lengthy, they shall be included in the excerpt of record instead of the body of the brief.
(iii) If an assignment of error challenges an evidentiary ruling, the assignment of error shall quote or summarize the evidence that appellant believes was erroneously admitted or excluded. If an assignment of error challenges the exclusion of evidence, appellant also shall identify in the record where the trial court excluded the evidence and where the offer of proof was made; if an assignment of error challenges the admission of evidence, appellant also shall identify where in the record the evidence was admitted.
(b) An assignment of error for a claimed error apparent on the record shall comply with the requirements for assignments of error generally by identifying the precise ruling, specifying the state of the proceedings when the ruling was made, and setting forth pertinent quotations of the record where the challenged ruling was made.1
(c) The court may decline to consider any assignment of error that requires the court to search the record to find the error or to determine if the error properly was raised and preserved.
(5) Under the subheading "Standard of Review," each assignment of error shall identify the applicable standard or standards of review, supported by citation to the statute, case law, or other legal authority for each standard of review.
(6) Each assignment of error shall be followed by the argument. If several assignments of error present essentially the same legal question, the argument in support of them may be combined so far as practicable. The argument in support of a claimed error apparent on the record shall demonstrate that the error is of the kind that may be addressed by the court without the claim of error having been preserved in the record.

**Rule 5.50**

**THE EXCERPT OF RECORD**

(1) After the conclusion of the substance of the brief, the appellant shall set forth an excerpt of record.
(2) When preparing an excerpt of record, the appellant shall be guided by the following considerations:
(a) The excerpt of record shall include the pleadings relevant to the issue or issues raised on appeal, any written opinion or findings of fact issued by the trial judge addressing a ruling to which error is assigned, any order disposing of the claim to which an assignment of error relates, and the judgment document or order being appealed.
(b) The excerpt of record shall include any other document and part of a document that either is essential to or significantly helpful in understanding the arguments developed in the brief, particularly for purposes of assisting the court in advance of oral argument. The issues on appeal and the procedural posture of the case should determine the contents of the excerpt of record. The full record is available to and used by the court after submission of a case; therefore, the appellant should exercise judgment regarding the content of the excerpt of record, rather than merely duplicate the entire trial court file.
(c) It generally is not necessary to include in the excerpt of record memoranda of law filed in the trial court, unless the fact that a particular argument was or was not made in a memorandum has independent significance (e.g., a dispute over preservation of an issue).1
(3) (a) In criminal, civil commitment, and juvenile cases, the excerpt of record shall contain the judgment document or order being appealed, and such other parts of the record as are appropriate to include.
(b) In criminal cases in which the defendant appealed after entering a conditional plea of guilty or no contest, the defendant shall include in the excerpt of record the writing in which the defendant reserved for review on appeal the trial court's adverse determination of a pretrial motion.

(4) In agency review cases, including workers' compensation cases, the excerpt of record shall include the order of the administrative law judge, the agency, and other administrative tribunal, if part of the lower tribunal's record, together with such other parts of the record as are appropriate to include.
(5) If the appellant has failed to prepare an excerpt of record, the respondent may move the court to require appellant to do so. If the excerpt of record prepared by the appellant does not include materials that the respondent believes to be essential to or significantly helpful in the court's preparation for oral argument, the respondent may prepare a supplemental excerpt of record. The respondent shall set forth the supplemental excerpt of record after the conclusion of the substance of the respondent's answering brief.*
(6) The excerpt of record shall be in the following form:
(a) All documents or parts of documents shall be copies of documents included in the record, rather than summarized or paraphrased. Omissions, if not apparent, shall be noted. No matter shall be omitted if to do so would change the meaning of the matter included.
(b) Contents shall be set forth in chronological order. The excerpt shall be consecutively paginated, with the first page being page ER-1. The excerpt shall begin with an index organized chronologically, describing each item and identifying where the item may be found in the trial court or agency record, and the page where the item may be found in the excerpt.
(c) The materials included shall be reproduced on 8-1/2 x 11 inch white paper by any duplicating or copying process that produces a clear, black, legible image.
(d) The excerpt of record shall comply with the applicable requirements, including page limitations, of TRAP 5.05.

**Rule 5.52**

**APPENDIX**

The purpose of an appendix to a brief is to provide, for the convenience of the reader, materials that would be helpful in understanding and resolving an issue raised on appeal. A party appropriately may include in an appendix, for instance, copies of a statute or statutes at issue in the appeal, or copies of cases that are not readily available from standard research sources. A party should not include in the appendix materials from the record of the tribunal from which the appeal is taken that should be in the excerpt of record.

**Rule 5.55**

**RESPONDENT'S ANSWERING BRIEF**

(1) The respondent's answering brief shall follow the form prescribed for the appellant's opening brief, omitting repetition of the verbatim parts of the record in appellant's assignments of error. It shall contain a concise answer to each of the appellant's assignments of error preceding respondent's own argument as to each.
(2) Under the heading "Statement of the Case," the respondent specifically shall accept the appellant's statement of the case, or shall identify any alleged omissions or inaccuracies, and may state additional relevant facts or other matters of record as may apply to the appeal, including any significant motion filed on appeal and the disposition of the motion. The additional statement shall refer to the pages of the transcript, narrative statement, audio record, record, or excerpt in support thereof but without unnecessary repetition of the appellant's statement.
(3) If a cross-appeal is abandoned, the respondent shall immediately notify the appellate court in writing and, if notice has not been given previously, the respondent shall notify the court of the abandonment when the respondent's answering brief is filed, in writing and separately from the brief.
(4) If the court gives an appellant leave to file a supplemental brief after the respondent's answering brief has been filed, the respondent may file a supplemental respondent's answering brief addressing those issues raised in the appellant's supplemental brief.

**Rule 5.57**
**RESPONDENT'S ANSWERING BRIEF:**
**CROSS-ASSIGNMENTS OF ERROR**
(1) A respondent must cross-assign as error any trial court ruling described in subsection (2) of this rule in order to raise the claim of error in the appeal.
(2) A cross-assignment of error is appropriate:
(a) If, by challenging the trial court ruling, the respondent does not seek to reverse or modify the judgment on appeal; and
(b) If the relief sought by the appellant were to be granted, respondent would desire reversal or modification of an intermediate ruling of the trial court.
(3) The appellant's answer to a cross-assignment of error shall be in the form prescribed by TRAP 5.55 for a respondent's answering brief and shall be:
(a) Contained in a separate section of the appellant's reply brief, if a reply brief is permitted under "TRAP 5.70, and designated "response to cross-assignment of error;" or
(b) Filed within 21 days after the filing of the respondent's answering brief, if a reply brief is not permitted under TRAP 5.70, and entitled "appellant's answer to cross-assignment of error."
(4) A respondent may file a reply to an appellant's answer to a cross-assignment of error only if the nature of the case is one in which a reply brief is permitted under TRAP 5.70 and TRAP 5.80(3). The reply shall be no longer than 15 pages and shall be filed within 21 days after the filing of the appellant's answer to a cross-assignment of error.

**Rule 5.60**
**FAILURE OF RESPONDENT TO FILE BRIEF**
If the respondent files no brief, the cause will be submitted on the appellant's opening brief and appellant's oral argument, and the respondent shall not be allowed to argue the case.

**Rule 5.65**
**CROSS-APPELLANT'S OPENING BRIEF**
(1) When a respondent has cross-appealed, the opening brief on cross-appeal shall be presented in a separate part of the respondent's answering brief immediately following the body of the answering brief. The opening brief on cross-appeal shall be appropriately indexed at the front of the answering brief. Pages of the opening brief on cross-appeal shall be numbered consecutively following the numbering of the answering brief.
(2) A cross-appellant's opening brief shall be in the form of an appellant's opening brief.

**Rule 5.70**
**REPLY BRIEF**
(1) (a) Except as provided in subsection (3) of this rule, a party may file a reply brief to a respondent's answering brief or an answering brief of a cross-respondent.
(b) A reply brief shall be confined to matters raised in the respondent's answering brief or the answering brief of a cross-respondent; reply briefs that merely restate arguments made in the opening brief are discouraged.
(c) The court encourages a party who decides not to file a reply brief, as soon as practicable thereafter, to notify the court in writing to that effect.
(2) The form of a reply brief shall be similar to a respondent's answering brief. A reply brief shall have an index and shall contain a summary of argument.
(3) (a) Except on request of the appellate court or on motion of a party that demonstrates the need for a reply brief, reply briefs shall not be submitted in the following cases:
(i) traffic, boating, wildlife, and other violations;
(ii) criminal, probation revocation, habeas corpus, and post-conviction relief;
(iii) juvenile court;

(iv) civil commitment;
(v) forcible entry and detainer; and
(vi) judicial review of orders of the Department of Human Resources and Housing Department, as provided in TRAP 4.66(1)(c).
(b) A motion for leave to file a reply brief shall be submitted, without copies, within 14 days after the filing of the brief to which permission to reply is sought.

**Rule 5.75**

**ANSWERING BRIEF ON CROSS-APPEAL**

When an appellant files an answering brief on cross-appeal, that party may file the brief separately or as a separate part of a reply brief, if a reply brief is filed. The answering brief on cross-appeal shall follow the form of a respondent's answering brief. If filed as part of a reply brief, it shall be presented in a separate part of the reply brief and be shown in the index of the reply brief as "Answering Brief on Cross-Appeal." An answering brief on cross-appeal and a reply brief, whether filed as one brief or as separate briefs, shall be subject to the length limitations prescribed in TRAP 5.05.

**Rule 5.77**

**JOINT AND ADOPTED BRIEFS**

(1) In a case involving more than one party on the same side, including cases consolidated on appeal, the court discourages the filing of briefs that duplicate arguments made in another brief in the same case and encourages parties to file joint briefs or to adopt to the extent practicable a brief filed by another party in the same case.
(2) A party may join or adopt a brief submitted in the same case or consolidated case but shall not join or adopt a brief in another case.
(3) Joint Briefs
(a) If two or more parties join in a brief by signing the brief and have not previously appeared and paid a filing fee, only one filing fee need be paid.
(b) A party who has not signed a brief filed by another may join that brief provided that the party:
(i) Obtains the consent of the party who filed the brief;
(ii) Pays a filing or first appearance fee; and
(iii) Submits a letter to the court copied to all parties on appeal stating that the party joins in the brief filed by another party and has the consent of the other party.
(4) Adopted Briefs
(a) A party who concurs with all or part of a brief filed by another party and who has no other position to assert may adopt the other party's brief by filing a brief adopting in whole or in part the brief of another party. If a party adopts only part of the brief of another, the brief shall identify the part of the brief of the other party being adopted.
(b) A party who concurs with all or part of a brief submitted by another party but who wishes to argue additional matters may submit a brief adopting by reference the part of the other party's brief in which the party concurs.

**Rule 5.80**

**TIME FOR FILING BRIEFS**

(1) Unless otherwise provided by statute or these rules, the appellant's opening brief and excerpt of record shall be served and filed within 49 days after:
(a) the entry of the trial court order settling the transcript; or
(b) the filing of an agreed narrative statement with the trial court; or
(c) the transcript is deemed settled under TRAP 3.40(5); or
(d) the appellate court enters an order waiving a transcript under TRAP 3.05(2); or
(e) if a transcript or narrative statement is not designated, the filing of the notice of appeal; or
(f) in a judicial review case, the agency record has been settled.

(2) The respondent's answering brief shall be served and filed within 49 days after the filing of the appellant's opening brief. If the court has given an appellant leave to file a supplemental brief after the respondent's answering brief has been filed, the respondent's supplemental brief shall be served and filed within 21 days after the filing of the appellant's supplemental brief.
(3) A reply brief, if any, shall be served and filed within 21 days after the filing of the respondent's answering brief or after a motion to file a reply brief is allowed, unless otherwise provided in the order allowing the motion.
(4) An appellant's answering brief on cross-appeal or, in a case in which the appellant is permitted to file a reply brief, an appellant's combined reply brief on appeal and answering brief on cross-appeal shall be served and filed within 49 days after the filing of the opening brief on cross-appeal.
(5) When a party other than an appellant is made a cross-respondent, that party shall have 49 days after the filing of the opening brief on cross-appeal to serve and file an answering brief on cross-appeal.
(6) A cross-appellant shall have 21 days after the date of the filing of an answering brief on cross-appeal in which to serve and file a reply brief on cross-appeal, if permitted to do so by these rules or by order of the court.
(7) In cases in which the appellant is represented in the Court of Appeals by a public defender, the appellant's opening brief shall be served within a period of time established by the Chief Judge in consultation with public defender.
(8) In complex cases, such as cases with multiple parties, multiple appeals or cross-appeals, or both, the parties are encouraged to confer to develop a briefing schedule that varies from the schedule that would otherwise result under this rule but that will present the parties' positions in an orderly manner and to file a motion seeking approval of that suggested briefing schedule.

**Rule 5.85**
**ADDITIONAL AUTHORITIES**

(1) Any party filing a memorandum of additional authorities or a response memorandum shall submit the memorandum in the manner provided in this rule, subject to any instructions of the court. A party may submit a memorandum of additional authorities after the filing of the party's brief but before oral argument without leave of the court. After oral argument, a party may submit a memorandum of additional authorities only with leave of the court.
(2) A memorandum of additional authorities and a response, if any:
(a) Shall include citations to relevant cases and statutes and shall identify the issue that has been previously briefed to which the new citations apply;
(b) Shall not exceed two pages, without leave of the court;
(c) Shall be filed with the Director together with two copies.
(d) If filed less than five business days before oral argument, shall include in the caption the words "ORAL ARGUMENT SCHEDULED FOR [DATE]."
(3) If a party files or is given leave to file a memorandum of additional authorities, any other party to the case who has filed a brief may file a response. Unless the court directs otherwise, a response is due 14 days after the date of filing of the memorandum of additional authority to which the party is responding.

**6. SUBMISSION OF CASES**
**AND ORAL ARGUMENT;**
**RECONSIDERATION IN COURT OF APPEALS**

**Rule 6.05**
**REQUEST FOR ORAL ARGUMENT;**
**SUBMISSION WITHOUT ARGUMENT**

(1) (a) The Director will send the parties notice of the date that a case is scheduled to be submitted to the court ("the submission date"). Parties to the case may request oral argument in the Court of

Appeals by filing a "Request for Oral Argument" directed to the attention of Director. If a party files a timely request for oral argument, the case will be argued on the submission date and all parties who have filed a brief may argue. If no party files a timely request for oral argument, the case shall be submitted on the briefs on the submission date without oral argument, unless the court directs otherwise.

(b) A party wanting oral argument must file the request for oral argument and serve it on every other party to the appeal within the number of days specified in this subsection after the date of the notice from the Director:

(i) On appeal in juvenile dependency (including termination of parental rights) and adoption cases, 14 days after the date of the notice;

(ii) In all other cases, 28 days after the date of the notice.

(2) Notwithstanding subsection (1) of this rule, in the Court of Appeals, if a self-represented party files a brief, the case will be submitted without argument by any party. An attorney representing himself or herself is not considered to be a self-represented party for the purpose of this rule.

(3) Notwithstanding subsection (1) of this rule, when a respondent submits an answering brief confessing error as to all assignments of error and not objecting to the relief sought in the opening brief, the respondent shall so inform the court by letter when the brief is filed or at any time thereafter. On receipt of respondent's notice that a brief confesses error, the case will be submitted without oral argument. The appellant may by letter bring to the court's attention that a respondent's brief appears to confess error. If the court concurs, the case will be submitted without oral argument.

**Rule 6.10**

**WHO MAY ARGUE;**

**FAILURE TO APPEAR AT ARGUMENT**

(1) A party may present oral argument only if the party has filed a brief.

(2) An amicus curiae may present oral argument only if permitted by the court on motion or on its own motion.

(3) An attorney who was a witness for a party, except as to merely formal matters such as attestation or custody of an instrument, shall not argue the cause without leave of the court.

(4) Only active members of the CTUIR Bar shall argue unless the court, on motion filed not less than 21 days before the date for argument orders otherwise. If the court has allowed a lawyer from another jurisdiction to appear on appeal for a particular case, the lawyer does not need leave of the court to participate in oral argument of the case.

(5) (a) After any party has filed and served a request for oral argument pursuant to TRAP 6.05(1), any party who decides to waive oral argument or cannot attend oral argument shall give the court and all other parties participating in oral argument at least 48 hours' notice that the party will not be appearing for oral argument.

(b) If a party fails to appear at oral argument, the court may deem the cause submitted without oral argument as to that party. A party's failure to appear shall not preclude oral argument by any other party.

(c) If a party fails to give at least 48 hours' notice of nonappearance at argument, the court may order counsel for that party to pay the costs and attorney fees that reasonably would have been incurred but for failure to give timely notice of nonappearance.

**Rule 6.15**

**PROCEDURE AT ORAL ARGUMENT**

(1) In all cases in the Court of Appeals:

(a) The appellant, petitioner, or petitioner on review shall have not more than 30 minutes to argue; and the respondent or respondent on review shall have not more than 30 minutes to argue.

(b) The appellant, petitioner, or petitioner on review shall argue first and may reserve not more than 10 minutes of the time allowed for argument in which to reply.

(c) If there are two or more parties on one side, they shall divide their allotted time among themselves, unless the court orders otherwise.
(2) A motion for additional time for argument shall be filed at least seven days before the time set for argument.
(3) No point raised by a party's brief shall be deemed waived by the party's failure to present that point in oral argument.
(4) For the purpose of this rule, a cross-appellant shall be deemed a respondent.
(5) It is the general policy of the Court of Appeals to prohibit reference at oral argument to any authority not cited either in a brief or in a preargument memorandum of additional authorities. If a party intends to refer in oral argument to an authority not previously cited, counsel shall inform the court at the time of argument and shall make a good faith effort to inform opposing counsel of the authority at the earliest practicable time. The court may, in its discretion, permit reference at argument to that authority and may give other parties leave to file a post-argument memorandum of additional authorities or a memorandum in response.
(6) The Court of Appeals encourages any party who is aware of another case pending under advisement in the Court of Appeals raising the same or a similar issue as the case being argued to bring that fact to the attention of the court at oral argument, or in writing after oral argument or after submission without oral argument.
(7) If counsel desires to have present at oral argument an exhibit that has been retained by the trial court, it is counsel's responsibility to arrange to have the exhibit transmitted to the appellate court.

**Rule 6.25**

**RECONSIDERATION BY COURT OF APPEALS**

(1) As used in this rule, "decision" means an opinion, per curiam opinion, affirmance without opinion, and an order ruling on a motion or an own motion matter that disposes of the appeal. A party seeking reconsideration of a decision of the Court of Appeals shall file a petition for reconsideration. A petition for reconsideration shall be based on one or more of these contentions:
(a) A claim of factual error in the decision;
(b) A claim of error in the procedural disposition of the appeal requiring correction or clarification to make the disposition consistent with the holding or rationale of the decision or the posture of the case below;
(c) A claim of error in the designation of the prevailing party or award of costs;
(d) A claim that there has been a change in the statutes or case law since the decision of the Court of Appeals; or
(e) A claim that the Court of Appeals erred in construing or applying the law. Claims addressing legal issues already argued in the parties' briefs and addressed by the Court of Appeals are disfavored.
(2) A petition for reconsideration shall be filed within 14 days after the decision.
(a) The petition shall have attached to it a copy of the decision for which reconsideration is sought. The form of the petition and the manner in which it is served and filed shall be the same as for motions generally.(b) The petition shall have a title page printed on plain white paper and containing the following information:
(i) The full case caption, including appropriate party designations for the parties as they appeared in the court from which the appeal was taken and as they appear on appeal, and the trial and appellate court case numbers; and
(ii) A title designating the party filing the petition, such as "Appellant's Petition for Reconsideration" or "Respondent's Petition for Reconsideration."
(3) If a response to a petition for reconsideration is filed, the response shall be filed within seven days after the petition for reconsideration was filed. The court will proceed to consider a petition for

reconsideration without awaiting the filing of a response, but will consider a response if one is filed before the petition for reconsideration is considered and decided.1
(4) A request for reconsideration of any other order of the Court of Appeals ruling on a motion or own motion matter shall be entitled "motion for reconsideration." A motion for reconsideration is subject to TRAP 7.05 regarding motions in general.

**7. MOTIONS**
**Rule 7.05**
**MOTIONS IN GENERAL**
(1) (a) Unless a statute or these rules provide another form of application, a request for an order or other relief shall be made by filing a motion in writing.
(b) A party seeking to challenge the failure of another party to comply with any of the requirements of a statute or these rules shall do so by motion.
(c) A party may raise an issue of the jurisdiction of the appellate court by motion at any time during the appellate process.
(2) (a) Generally, a party seeking relief in a case pending on appeal should file the motion in the court in which the case is pending.1 A party seeking relief from a court other than the court in which the case is pending shall, on the first page of the motion, separately and conspicuously state that the party is seeking relief from a court other than the court in which the case is pending.
(b) A case is considered filed in the Supreme Court if the motion is captioned "In the Supreme Court of the State of Oregon" and in the Court of Appeals if the motion is captioned "In the Court of Appeals of the State of Oregon." Notwithstanding the caption, the Director has the authority to file a motion in the appropriate court, provided that the Director shall give notice thereof to the parties.
(3) Any party may, within 14 days after the filing of a motion, file a response.2 The court may shorten the time for filing a response and may grant temporary relief pending the filing of a response, as circumstances may require.
(4) Unless the court directs otherwise, all motions will be considered without oral argument.
(5) Parties shall be referred to by their designation in the appellate court. Hyphenated designations are discouraged. However, in motions in domestic relations cases, parties shall be referred to as husband or wife, mother or father, or other appropriate specific designations.
**Rule 7.10**
**PREPARATION, FILING,**
**AND SERVICE OF MOTIONS**
(1) A motion or a response to a motion, including a supporting memorandum, shall be on 8-1/2 x 11 inch white paper, printed or typewritten, double-spaced, and securely fastened in the upper left-hand corner with a single staple. A motion or response may be prepared using either uniformly spaced type (such as produced by typewriters) or proportionally spaced type (such as produced by commercial printers and many computer printers). Uniformly spaced type shall not exceed 10 characters per inch (cpi) for both the text of the brief and footnotes. If proportionally spaced type is used, it shall not be smaller than 13 point for both the text of the motion or response and footnotes. The first page of the motion or response shall contain the following information:
(a) The case caption, including appropriate party designations for the parties as they appeared in the court from which the appeal was taken and as they appear on appeal, and the trial and appellate court case numbers; and
(b) For a motion other than a motion for extension of time, a title designating the party filing the motion and the motion title. If more than one motion is contained in a single document, the title of each motion shall be listed; or
(c) For a motion for extension of time (MOET), a title designating the party filing the motion for extension of time and the title "Motion for Extension of Time". If more than one motion for

extension of time is contained in a single document, or if a motion for extension of time is contained in a single document with another motion, the title of each MOET and/or motion shall be listed. (d) For a response to a motion or motion for extension of time (MOET), an indication that the filing is a response using the title of the motion or MOET to which the filing responds. For example, the response to a respondent's motion for summary affirmance should be titled "Response to Respondent's Motion–Summary Affirmance" and the response to an appellant's motion for extension of time to file the opening brief should be titled "Response to Appellant's MOET–File Opening Brief."

(2) A motion or response, including any supporting memorandum, but excluding appendices or exhibits, longer than 20 pages shall contain an index of contents, an index of appendices or exhibits, and an index of authorities, each with page references.

(3) (a) A moving or responding party shall file with the Director the original motion or response with proof of service.

4) Any party filing a motion to dismiss before the transcript has been filed shall serve a copy of the motion on the transcript coordinator and, if known to the party filing the motion to dismiss, all court reporters and transcribers who are responsible for preparing all or any part of the transcript on appeal.

**Rule 7.15**

**DECISIONS ON MOTIONS**

(1) An appellate judge may determine any motion made before submission of a case to the court or after the date of the decision or may refer the motion to any other judge or judges of the court for decision.

(2) Any motion filed after submission of a case, but before decision, shall be decided by the court.

(3) If any motion other than a challenge to the court's jurisdiction is denied before submission of the case, the motion may not be resubmitted without leave of the court in the order on the motion.

(4) Except for a ruling on an oral motion for extension of time the court will rule on a motion by written order.

**Rule 7.25**

**MOTION FOR EXTENSION OF TIME**

(1) Only the appellate court may grant an extension of time for the performance of any act pertaining to an appeal.

(2) A motion for an extension of time shall contain:

(a) The date the notice of appeal was filed (or in the case of a petition for review;

(b) The date of the decision of the Court of Appeals for which review is being sought);

(c) The date the brief or other action is due;

(d) The date to which the extension is requested;

(e) Whether it is the first or other request;

(f) The specific circumstances which caused the act not to be completed in the allotted time; and

(g) In a criminal case, whether the defendant is incarcerated.

(3) A statement whether opposing counsel objects to, concurs in or has no position regarding the extension of time requested is required for any motion other than a first motion for 28 days or less to file a brief.

(4) An objection to a motion for extension of time shall articulate specific grounds for the objection and shall identify how an extension of time will prejudice the objector's interest. An attorney may object on the ground that the client has instructed counsel to object to any extension, but that alone will not be a sufficient ground to deny or reduce any extension of time.

(5) An objection to a request for an extension of time may be filed by facsimile transmission, provided that the objection does not exceed five pages. Filing shall be deemed complete when the entirety of the objection being transmitted has been received by the Director. The facsimile transmission shall have the same force and effect as filing of the original.

(6) A motion for an extension of time generally will be decided within a few days after it is filed. An objection to a motion for an extension of time filed after the court has granted the extension will be treated as a motion for reconsideration of the ruling. On reconsideration, if the court modifies the extension of time, the parties to the appeal will be notified; otherwise, the objection will be noted and placed in the appellate file.
(7) Requests for extensions of time for preparation of transcripts shall be made in accordance with TRAP 3.30.

**Rule 7.27**
**ORAL REQUEST FOR EXTENSION OF TIME TO FILE BRIEF**

(1) For good cause shown, the Director may grant an oral request for an extension of time of no more than 14 days to file an opening, answering, or reply brief, provided that:
(a) The party making the request for an extension of time under this rule shall give prior notice to the other parties to the appeal, except that such notice need not be given to a person confined in a correctional institution and not represented by counsel; and
(b) The party previously has not obtained written extension or extensions of time of more than 28 days.
(2) A party may request an oral extension of time under this rule, and the Director may grant or deny the motion, by telephone.
(3) The Director acting on an oral request for an extension of time shall enter the grant or denial of the request in the appellate case register.
(4) The grant of an extension of time under this rule will bar any further motion for time to file the brief unless such motion, made in writing, demonstrates extraordinary and compelling circumstances.

**Rule 7.30**
**MOTIONS THAT TOLL TIME**

(1) Except as otherwise provided in subsection (2) of this rule or if the court otherwise orders, any motion that must be ruled on before the next event in the appellate process occurs, including but not necessarily limited to a motion to hold the appeal in abeyance, a motion to amend a designation of record, to dismiss, to determine jurisdiction, for summary affirmance, to remand, to strike a brief, to supplement the record, or for leave to present additional evidence, tolls the time for the next event in the appellate process as established in these rules, until the court disposes of the motion. The motions listed in this rule do not toll the running of any period of time established by statute.
(2) If the court has ordered that no further extensions of time will be granted, no motion tolls the time for the next event in the appellate process as established in these rules. A party may move for relief from a no-further-extensions-of-time order based on a showing of extraordinary and compelling circumstances; any such motion must include in its title the notation "RELIEF FROM NONTOLLING REQUESTED."

**Rule 7.35**
**MOTIONS SEEKING EMERGENCY RELIEF**

(1) If a party files a motion for substantive relief and requires relief in less than 21 days, the party shall include in the caption of the motion a statement that the motion is an "EMERGENCY MOTION UNDER TRAP 7.35" The motion should explain in the first paragraph the reason for the emergency and identify any deadline for action by the court.
(2) Before filing the motion, the movant shall make a good faith effort to notify the opposing counsel or opposing party, if the party is not represented by counsel. The motion shall state whether the other party has been notified and served.
(3) A motion seeking emergency relief, other than a motion for an extension of time, and any response to a motion seeking emergency relief may be served and filed email provided that the material being transmitted does not exceed 10 pages and subject to the following conditions:

(a) Filing shall not be deemed complete until the entirety of the motion or response being transmitted has been received by the Director, but, as so filed, the email communication shall have the same force and effect as filing of the original.
(b) The party or attorney being served maintains an email address. The proof of service shall contain the email address of any party or attorney served by email.

**Rule 7.40**
**DISMISSAL OF APPEAL FOR LACK OF AN UNDERTAKING FOR COSTS ON APPEAL**

(1) A motion to dismiss an appeal for lack of an undertaking for costs on appeal shall not be filed without at least seven days' notice to the appellant. Notice may be written or oral. The notice shall not be filed with the court.
(2) A motion to dismiss an appeal for lack of an undertaking for costs on appeal shall state that the movant has given the notice required by subsection (1) of this rule or explain why it has not. If written notice was given, a copy of the notice shall be attached to the motion.
(3) The filing of an undertaking in response to a motion to dismiss shall not, in and of itself, be a sufficient response to the motion. Appellant shall file an answer to the motion explaining whether there was good cause for the failure to comply with the notice or the statutory deadline for filing and shall append a copy of the undertaking filed in the trial court.
(4) The movant may, but is not required to, assert that the movant has been prejudiced by appellant's failure to file timely an undertaking for costs on appeal. If, however, the motion is based on an assertion that appellant's failure to meet the statutory filing deadline should result in dismissal, even though appellant complied with a later filing deadline stated in the notice provided under subsection (1) of this rule, the movant must establish that substantial prejudice resulted from appellant's failure to meet the statutory filing deadline.

**Rule 7.45**
**MOTIONS ARISING FROM SETTLEMENT, MEDIATION, OR ARBITRATION**

(1) If a party files a motion to dismiss an appeal filed by that party, or files a response to such a motion, and the motion is the result of a negotiated settlement or compromise, the motion or response shall so state.
(2) If a party files a motion to dismiss or to determine jurisdiction arising from an arbitration or mediation required or offered by a court, or files a response to such a motion, the caption of the motion or response shall so state.

**Rule 7.50**
**MOTION FOR SUMMARY AFFIRMANCE IN COURT-APPOINTED COUNSEL CASES**

(1) Except as provided otherwise by statute,ı in any case in which one of the parties is represented by court-appointed counsel, the court on motion of the respondent may summarily affirm the judgment if the court concludes, after submission of the appellant's opening brief and without submission of the respondent's answering brief, that the appeal does not present a substantial question of law. The Judge may deny a motion for summary affirmance and may grant an unopposed motion for summary affirmance. Only the court may grant a motion for summary affirmance to which the appellant has filed written opposition. A summary affirmance under this rule constitutes a decision on the merits of the appeal.

**8. MISCELLANEOUS RULES**

**Rule 8.05**
**SUBSTITUTION OF PARTIES IN CIVIL CASES; EFFECT OF DEATH OR ABSCONDING OF**

**DEFENDANT IN CRIMINAL CASES**

(1)

**A Nonabatement of action by death, disability, or transfer.** No action shall abate by the death or disability of a party, or by the transfer of any interest therein, if the claim survives or continues.

**B Death of a party; continued proceedings.** In case of the death of a party, the court shall, on motion, allow the action to be continued:

B(1) By such party's personal representative or successors in interest at any time within one year after such party's death; or

B(2) Against such party's personal representative or successors in interest unless the personal representative or successors in interest mail or deliver notice including the information required by law to the claimant or to the claimant's attorney if the claimant is known to be represented, and the claimant or his attorney fails to move the court to substitute the personal representative or successors in interest within 30 days of mailing or delivery.

**C Disability of a party; continued proceedings.** In case of the disability of a party, the court may, at any time within one year thereafter, on motion, allow the action to be continued by or against the party's guardian or conservator or successors in interest.

**D Death of a party; surviving parties.** In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be shown upon the record by a written statement of a party signed in according to law and the action shall proceed in favor of or against the surviving parties.

**E Transfer of interest.** In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

**F Public officers; death or separation from office.**

F(1) When a public officer is a party to an action in such officer's official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and such officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

F(2) When a public officer sues or is sued in such officer's official capacity, such officer may be described as a party by official title rather than by name; but the court may require such officer's name to be added.

**G Procedure.** The motion for substitution may be made by any party, or by the successors in interest or representatives of the deceased party or the party with a disability, or the successors in interest of the transferor and shall be served on the parties as provided by law and upon persons not parties in the manner provided by law for the service of a summons.

(2) (a) Any party who learns of the death of a defendant in a criminal case that is pending on appeal shall notify the court and all other parties of the death within 28 days after learning of the death. Any party may move to dismiss the appeal.

(b) If the appeal is from a judgment of conviction and sentence, the party filing the notice also may, concurrently with filing the notice of the defendant's death, file a memorandum addressing whether the court should dismiss the appeal or vacate the judgment, or both. Within 28 days after the filing of the notice of the defendant's death, any other party or interested person may file a memorandum addressing the same issues.

(c) The following are presumptive dispositions under this subsection:
(i) For a tribe's appeal, the court will dismiss the appeal.
(ii) For a defendant's appeal, if the defendant has made an assignment of error that, if successful, would result in reversal of the conviction, the court will vacate the judgment and dismiss the appeal.
(iii) For a defendant's appeal, if the defendant has assigned error only to a part of the sentence other than a monetary provision, the court will dismiss the appeal but will not vacate the judgment. If the defendant has assigned error to a monetary provision of the sentence, the court will dismiss the appeal and vacate the challenged monetary provision, but will not vacate the remainder of the judgment.
(iv) Notwithstanding subparagraphs (ii) and (iii) of this paragraph, if the defendant dies after issuance of a the court's decision affirming the judgment and after all right to petition for review has expired, the court will dismiss the appeal but will not vacate the judgment.
(3) If a defendant in a criminal case, a petitioner in a post-conviction relief proceeding, a plaintiff in a habeas corpus proceeding, a petitioner in a parole review proceeding, or a petitioner in a prison disciplinary case, on appeal of an adverse decision, escapes or absconds from custody or supervision, the respondent on appeal may move for dismissal of the appeal. If the court determines that the appellant is on escape or abscond status at the time the court decides the motion, the court may dismiss the appeal or judicial review. If the court has not been advised otherwise, the court may infer that the appellant remains on escape or abscond status when the court considers and decides the motion.

**Rule 8.10**
**WITHDRAWAL, SUBSTITUTION, AND ASSOCIATION OF ATTORNEYS ON APPEAL**

(1) During the pendency of an appeal, an attorney may not withdraw from or substitute new counsel in a case except on order of the appellate court. A motion to withdraw or substitute new counsel must be filed and served on the client and every other party to the appeal.
(2) Except as provided in TRAP 8.12, unless it appears otherwise from the record, the court will presume that good and sufficient cause exists for substitution of counsel if both attorneys sign the motion for substitution of counsel. On filing of the motion for substitution of counsel in proper form and bearing the signatures of both attorneys, the substitution shall be deemed to have been ordered by the appellate court.
(3) An attorney who associates another attorney from a different firm on appeal shall file a notice of association with the appellate court, accompanied by proof of service on every other party to the appeal.

**Rule 8.12**
**APPOINTMENT, WITHDRAWAL, AND**
**SUBSTITUTION OF COURT-APPOINTED COUNSEL**
**OR LEGAL ADVISOR ON APPEAL**

(1) (a) During the pendency of an appeal, withdrawal or substitution of court-appointed counsel is subject to TRAP 8.10.
(b) A court-appointed attorney shall have no obligation to move to withdraw or substitute counsel at the client's request unless the attorney has a good faith basis for the motion.
(2) (a) If the client of a court-appointed attorney moves to appoint new counsel based on the client's dissatisfaction with professional services rendered by the attorney, the client shall file the motion in the appellate court and serve the motion on the court-appointed attorney.
(b) If a party has a statutory or constitutional right to be represented by court-appointed counsel, the filing of any motion that would result in the party proceeding on appeal or review without counsel constitutes an attempt to waive the right to counsel.
(c) If the court declines to accept a party's attempt to waive counsel, the court shall give the party an opportunity to file a supplemental *pro se* brief as provided in TRAP 5.92

(3) To the extent practicable, the provisions of this rule are applicable to a legal advisor appointed by the court.

**Rule 8.15**

***AMICUS CURIAE***

(1) A person may appear as *amicus curiae* in any case pending before the appellate court only by permission of the appellate court on written application setting forth the interest of the person in the case. The application must:

(a) state whether the applicant intends to present a private interest of its own or to present a position as to the correct rule of law that does not affect a private interest of its own;

(b) identify the party with whom the amicus is aligned or state that the amicus is unaligned;

(c) identify the deadline in the case that is relevant to the timeliness of the amicus application (such as the date that the aligned party's brief is due); and

(d) explain why the application is timely relative to that deadline.

(e) The application shall not contain argument on the resolution of the case.

(2) The application shall be submitted by an active member of the CTUIR Tribal Court Bar. A filing fee is not required. The applicant shall file the original and one copy of the application and copy of the application shall be served by the applicant on all parties to the proceeding.

(3) The application to appear *amicus curiae* may, but need not, be accompanied by the brief the applicant would file if permitted to appear. The form of an *amicus* brief and the number of copies of the brief shall be subject to the same rules as those governing briefs of parties. If, consistently with this rule, a brief is submitted with the application, then:

(a) if the court grants the application, the date of filing for the brief relates back to the date of filing for the application; or

(b) if the court denies the application, the court will strike the brief.

(4) Unless the court grants leave otherwise for good cause shown, an *amicus* brief shall be due seven days after the date the brief is due of the party with whom *amicus curiae* is aligned or, if *amicus curiae* is not aligned with any party, seven days after the date the opening brief is due.

(5) *Amicus curiae* shall not be allowed to orally argue the case, unless the court specifically authorizes or directs oral argument.[4]

(6) The Tribe may appear as *amicus curiae* in any case without permission of the court. The Tribe shall comply with all the requirements for appearing *amicus curiae*, including the time within which to appear under this rule. If the Tribe is not aligned with any party, the Tribe's *amicus curiae* brief shall be due on the same date as the respondent's brief.

**Rule 8.20**

**EFFECT OF BANKRUPTCY PETITION**

(1) When a matter is pending in the appellate court and a party learns that the matter is subject to the stay provisions of 11 USC § 362(a)(1)[1] (relating to bankruptcy proceedings), the party shall give notice of that fact to the appellate court, together with proof of service of the notice on all other parties to the case. The court will enter an order holding the matter in abeyance until it is shown to the court's satisfaction that the stay has been lifted or that 11 USC § 362(a)(1) is not applicable to the case.

(2) If a petition in bankruptcy is filed after entry of a judgment or final order but before a notice of appeal or petition for judicial review is filed and the adverse party desires to appeal, the notice or petition must nonetheless be filed within the time provided by statute or rule.

(3) If an appellant believes that a pending bankruptcy proceeding involving a party to the judgment being appealed should stay the appeal pending disposition of the bankruptcy proceeding, the notice of appeal or petition for judicial review shall contain, in addition to all other requirements under a statute or these rules, a statement identifying the party that has filed a petition in bankruptcy and a request to hold the appeal in abeyance on account of the bankruptcy proceeding.

(4) (a) Whether the petition in bankruptcy is filed after judgment or final order but before a notice of appeal or petition for judicial review is filed, or after a notice or petition is filed, the appellate court will not exercise jurisdiction as to the debtor party as long as the stay under 11 USC § 362 remains in effect.
(b) If more than one creditor and debtor are parties to the case on appeal and the presence of the debtor subject to the bankruptcy petition is necessary to resolve on appeal the claims of the other parties, then the appellate court will not exercise jurisdiction of the entire cause as long as the stay under 11 USC § 362 remains in effect.

**Rule 8.25**
**MOTION UNDER TRIBAL CODE FOR RELIEF FROM JUDGMENT**

(1) If the copy of a motion for relief from judgment under tribal statute required to be served on the appellate court is not entitled "MOTION FOR RELIEF FROM JUDGMENT," it shall be accompanied by a letter of transmittal identifying the motion as a motion for relief and the tribal code provision relied upon.
(2) When a party has filed a motion for relief from judgment while the judgment is on appeal, the appellate court will decide whether to hold the appeal in abeyance pending disposition of the motion or to allow the appeal to go forward. Any party to the appeal may move the court to hold the appeal in abeyance or to allow the appeal to go forward. In the absence of a motion from a party, the court on its own motion will review the motion for relief from judgment, decide whether to hold the appeal in abeyance and notify the parties if it decides to do so. If the court does not order the appeal to be held in abeyance, the appeal will go forward.
(3) A party wishing to appeal an order deciding a motion filed during the pendency of an appeal shall file a notice of appeal within the time and in the manner prescribed by the tribal code. The notice of appeal as filed shall bear the same appellate case number assigned to the original notice of appeal.
(4) If the appellate court holds an appeal in abeyance pending disposition of a motion under this Rule and subsequently receives a copy of the trial court's order deciding the motion, the appellate court shall decide whether to reactivate the case or take other action after expiration of the period within which an appeal from the order may be filed.

**Rule 8.27**
**MODIFICATION OF JUDGMENT OF DISSOLUTION OF MARRIAGE DURING PENDENCY OF APPEAL**

(1) During the pendency of an appeal from a judgment of dissolution of marriage, if it comes to the attention of the court that a party has filed a motion pursuant to tribal code to modify the judgment of dissolution of marriage, including a motion to reconsider spousal or child support provisions of a judgment pursuant, the appellate court may hold the appeal in abeyance pending disposition of the motion or allow the appeal to go forward. Any party to the appeal may move the court to hold the appeal in abeyance or to allow the appeal to go forward. In the absence of a motion from a party, the court on its own motion may review the motion filed in the trial court, decide whether to hold the appeal in abeyance and notify the parties if it decides to do so. If the court does not order the appeal to be held in abeyance, the appeal will go forward.
(2) A party wishing to appeal the trial court's final decision on a motion during the pendency of an appeal shall file a notice of appeal within the time and in the manner prescribed herein. The notice of appeal as filed shall bear the same appellate case number assigned to the original notice of appeal.
(3) If the appellate court holds an appeal in abeyance pending disposition of a motion hereunder and subsequently receives a copy of the trial court's final decision, the appellate court shall decide whether to reactivate the appeal or take other action after expiration of the period within which an appeal from the final decision may be filed. If a timely appeal from the final decision on a motion is

filed, the court may direct that both appeals be heard at the same time or may allow the appeals to proceed independently of one another.

**Rule 8.28**
**CORRECTED, SUPPLEMENTAL, OR NEW JUDGMENTS IN CRIMINAL CASES AFTER NOTICE OF APPEAL FILED**

(1) After a notice of appeal is filed in a criminal case, if either the tribe or the defendant files a motion in the trial court for entry of a corrected or supplemental judgment, the party filing the motion shall transmit a copy of the motion to the appellate court.

(2) (a) If the trial court enters a corrected or supplemental judgment on motion of a party or on its own motion, a party wishing to appeal the corrected or supplemental judgment shall file an amended notice of appeal within the time and in the manner prescribed herein and shall use the appellate case number assigned to the appeal from the original judgment. The amended notice of appeal shall state when the party received notice of entry of the corrected or supplemental judgment.

(b) If the trial court enters a corrected or supplemental judgment and the appellant no longer wishes to pursue the original appeal, the appellant shall file a motion to dismiss the appeal.

(c) If the trial court denies a motion for entry of a corrected or supplemental judgment subject to subsection (1) of this rule, the party who filed the motion shall notify the Director in writing and within seven days after the date of entry of the trial court's order and shall attach a copy of the order denying the motion.

(3) When a party has filed a motion subject to subsection (1) of this rule, pending a final ruling on the motion by the trial court, the appellate court, on motion of a party or on its own motion, may order that the appeal be held in abeyance. If an order is entered holding the appeal in abeyance, when the court receives notice under subsection (2) of this rule that the trial court has entered a corrected or supplemental judgment or a final order disposing of the motion, the appellate court shall reactivate the appeal or issue such other order as may be appropriate.

**Rule 8.30**
**MEDIA COVERAGE OF APPELLATE COURT PROCEEDINGS**

(1) As used in this rule, "judge presiding in a proceeding" means a judge of the Court or Court of Appeals.

(2) The judge presiding in a proceeding shall have the authority and responsibility to control the conduct of proceedings before the court, insure decorum and prevent distractions, and insure the fair administration of justice in proceedings before the court. Subject to that authority and responsibility, radio, television, and still photography coverage of public judicial proceedings in the appellate courts shall be allowed in accordance with this rule.

(3) Where available, audio pickup for all media purposes shall be accomplished from existing audio systems present in the courtroom, except if the audio pickup is attached to and operated as part of a television or videotape camera. If no technically suitable audio system exists in the courtroom, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance of the proceeding by the judge presiding in the proceeding.

(4) One still photographer, utilizing not more than two still cameras and related equipment, and one television or videotape camera operator shall be permitted to cover any public proceeding in an appellate court. The judge presiding in the proceeding shall designate:

(a) Where in the courtroom the photographer or television or videotape camera operator shall be positioned; and

(b) Where outside the courtroom videotape recording equipment that is not part of the television or videotape camera shall be positioned.

(5) Microphones and cameras shall be placed in the courtroom before proceedings each day or during a recess and, once positioned, shall not be moved during the proceeding. Microphones and cameras shall be removed only after adjournment of proceedings each day or during a recess. Broadcast media representatives shall not move about the courtroom while proceedings are in session.
(6) (a) Audio and photographic equipment that produces distracting sound or light shall not be used, nor shall artificial lighting device of any kind be used. Broadcast media representatives shall eliminate all excessive noise while in the courtroom; *e.g.*, any equipment coverings or cassette cases should be removed or opened before being brought into the courtroom and may not be replaced or closed inside the courtroom. Television film magazines (as distinct from videotape) and still camera film or lenses shall not be changed in the courtroom except during a recess.
(b) The judge presiding in the proceedings may require any media representative intending to cover the proceeding to demonstrate adequately in advance of the proceeding that the equipment that will be used meets the light and sound standards of this rule.
(7) "Pooling" arrangements required by the limitations of this rule on media equipment and personnel shall be the sole responsibility of the media without calling on the judge presiding in the proceeding to mediate any dispute as to the appropriate representative or equipment authorized to cover a particular proceeding. In the absence of advance media agreement on disputed equipment or personnel issues, the judge presiding in the proceeding shall exclude all radio, television and still photography coverage.
(8) Media representatives attending an appellate court proceeding shall be dressed so as not to detract from the dignity of the court and may be removed from the courtroom for failure to wear appropriate attire.

**Rule 8.40**
**REVIEW OF TRIAL COURT RULINGS AFFECTING APPEAL**

During the pendency of an appeal, if the trial court rules on a matter affecting the appeal, any party aggrieved by the trial court's ruling may request, by motion filed within 14 days after the date of entry of the trial court's ruling, that the appellate court review the trial court's ruling and grant appropriate relief. The appellate court may review the ruling of the trial court on a matter affecting an appeal as necessary to decide a matter before the court.

**Rule 8.45**
**DUTY TO SERVE NOTICE OR**
**FILE MOTION ON OCCURRENCE OF EVENT**
**RENDERING APPEAL MOOT**

Except as to facts the disclosure of which is barred by the attorney-client privilege, when a party becomes aware of facts that probably render an appeal moot, that party shall provide notice of the facts to the court and to the other party or parties to the appeal, and may file a motion to dismiss the appeal. If a party becomes aware of facts that probably render an appeal moot and fails promptly to inform the other party or parties to the appeal and the court dismisses the appeal as moot, the court, on motion of the aggrieved party, may award costs and attorney fees incurred by the aggrieved party incurred after notice should have been given of the facts probably rendering the appeal moot, payable by the party who had knowledge of the facts.

**Rule 8.47**
**NOTIFICATION OF RELATED CASES**

When a party files a brief in the Court of Appeals, if the party is aware of another case pending in an appellate court that arises out of the same case or consolidated case, or that involves the same transaction or event, the party must file a notice with the Court of Appeals identifying the related case by case title and appellate case number. The notice must be a separate document from the party's brief. A party may likewise notify the Court of Appeals if the party is aware of another case

pending in an appellate court that raises the same or a closely related issue. A party need not notify the Court of Appeals of a related case if another party has already done so.

**Rule 8.50**

**SEGREGATION OF**
**PROTECTED PERSONAL INFORMATION**

(1) For purposes of this rule, "protected personal information" is information that:
(a) Identifies a person beyond that person's name (*e.g.*, Social Security number, maiden name, driver license number, birth date and location) or identifies a person's financial activities (*e.g.*, credit card number, credit report, bank account number or location); and
(b) The appellate court is permitted to maintain as confidential and not subject to public inspection.
(2) (a) A person or entity required to file a document in the appellate court that contains protected personal information may submit that information on a separate document together with a motion describing the information and requesting that the appellate court keep the separate document segregated from the appellate court file. The caption of the separate document must prominently display the words "Segregated Personal Protected Information, Confidential." The moving party shall serve a copy of the motion on all other parties to the appeal, review, or other proceeding. During the pendency of the motion, the separate document will not be available for public inspection
(b) A person or entity who has filed a document in the appellate court that contains protected personal information may submit a motion to replace the document with a document that redacts the protected personal information and requesting that the appellate court keep the original document segregated from the appellate court file. The caption of the motion must prominently display the words "Motion -- Redact Previously Filed Document,." The moving party shall submit the proposed redacted document with the motion. The moving party shall serve a copy of the motion and the proposed redacted document on all other parties to the appeal, review, or other proceeding. During the pendency of the motion, the document containing protected personal information will not be available for public inspection.
(3) If the court grants the motion, then the court will segregate the document containing protected personal information from the appellate court file. The motion will remain in the appellate court file. Any request for public inspection of such a document containing protected personal information must be made in writing, filed with the appellate court, and served on all other parties to the appeal, review, or other proceeding.

**Rule 8.52**

**CONFIDENTIAL AND SEALED ATTACHMENTS**

A document that includes an attachment containing material that is, by statute or court order, confidential, sealed, or otherwise exempt from disclosure1 must include:
(1) in the caption, prominently displayed, the words "Includes Confidential Attachment" or "Includes Sealed Attachment," as applicable; and
(2) in the filing, a statement citing the authority by which the attachment is deemed confidential or sealed.

**Rule 8.55**

**CRIMINAL CONVICTION SET ASIDES;**
**DELINQUENCY ADJUDICATION EXPUNGEMENTS**

If the trial court sets aside the conviction of a party in a criminal case or expunges the delinquency adjudication in a juvenile court case and the party wishes to have the appellate court record sealed, the party must provide the Director with a true and complete copy of the trial court order. After taking such steps as appropriate to confirm the validity of the order:
(1) If the trial court order sets aside all convictions or expunges all delinquency adjudications in the case, the Director will seal the appellate court record and modify the version of the court's opinion published to avoid use of the party's name in the case title and body of the opinion.

(2) If the trial court order sets aside fewer than all convictions or adjudications in a case, the Director will not seal the appellate court record, but may modify the version of the court's opinion published to avoid use of the party's name in the case title and body of the opinion.

**9. FILING AND SERVICE BY ELECTRONIC MEANS**

**Rule 9.03**

**APPLICABILITY**

These rules apply to electronic filing in the Tribal Court of Appeals. At this time, only attorneys who are members of the CTUIR Tribal Court Bar and authorized to practice law before that court are eligible to file documents electronically.

**Rule 9.05**

**DEFINITIONS**

(1) "Document" means a brief, petition, notice, motion, response, application, affidavit or declaration, or any other writing that, by law, may be filed with an appellate court, including any exhibit or attachment referred to in that writing. All documents must be in PDF formant accessible by the court's email system.

(2) "Electronic filing" or "eFiling" means the process whereby a user of the eFiling system transmits a document directly from the user's computer to the electronic filing system to file that document with the appellate court. eFiling shall mean filing with the CTUIR Clerk of Court at the Clerk's email address published in the CTUIR website.

(3) "Electronic filing system" or "eFiling system" means the system provided by the CTUIR Tribal Court for the electronic filing of a document in the appellate courts via the internet. Initially the system shall consist of filing by transmitting a copy of the document to be filed to the Clerk of Court along with proof of service by email upon the attorney for the opposing party.

(4) "Electronic payment system" means the system provided by the CTUIR Tribal Court of Appeals for paying filing fees and associated charges electronically in the appellate court and if no system is operational all payments for fees shall be by check hand delivered or mailed to the Clerk of Court.

(5) An "eFiler" means a person registered with the eFiling system who submits a document for electronic filing with the appellate court.

(6) "Electronic service" or "eService" means the process for a user of the eFiling system to accomplish service by emailing to an attorney for a party a certified true copy of the document eFiled if the attorney has provided an email address for this purpose, and eService is not accomplished until the attorney eFiling also eFiles a proof of service.

(7) "Hyperlink" means a navigational link in the electronic version of a document to another section of the same document or to another electronic document accessible via the internet.

(8) "Initiating document" means any document that initiates a case, including but not limited to a notice of appeal; a petition for review; a petition for judicial review; a petition for a writ of mandamus, habeas corpus or *quo warranto.*

(9) "PDF" means Portable Document Format, an electronic file format.

(10) "Username" means the identifying term assigned to an eFiler by the court, used to access the appellate court eFiling system.

**Rule 9.10**

**eFILERS**

(1) Authorized eFilers

(a) Any member of the Tribal Court Bar who is authorized to practice law before tribal court may register to become an eFiler.

(b) To become an eFiler, an attorney register for access to the eFiling system by certifying to the court in writing the attorney's email address and an agreement to notify the court immediately of any change of email address.

(2) Conditions of Electronic Filing

(a) To access the eFiling system, each eFiler agrees to and shall
(i) review the technical requirements for electronic filing;
(ii) register for access to the eFiling system;
(iii) comply with the electronic filing terms and conditions when using the eFiling system;
(iv) furnish required information for case processing;
(v) advise the CTUIR Tribal Court Clerk of Court of any change in the eFiler's e-mail address.
(b) The appellate court may suspend the electronic filing privileges of an eFiler if the court becomes aware of misuse of the eFiling system.

**Rule 9.11**

**FORMAT OF DOCUMENTS TO BE FILED ELECTRONICALLY**

(1) Any document filed via the eFiling system must be in a Portable Document Format (PDF) that is compatible with the eFiling system requirements and that does not exceed 25 megabytes. An eFiler should break down a document that exceeds the size limit into as few smaller separate documents as possible, which the filer may upload as supporting documents under subsection (5) of this rule. The PDF document shall allow text searching and shall allow copying and pasting text into another document.
(2) A submitted document, when viewed in electronic format and when printed, shall comply, to the extent practicable, with the formatting requirements of any applicable Tribal Court Rule of Appellate Procedure. Except as provided in TRAP 9.40, a document submitted for electronic filing need not contain a physical signature.
(3) An eFiler who submits a document that does not comply with an applicable Tribal Rule of Appellate Procedure will receive from the court an acknowledgement of the electronic filing and a notice of the deficiency or deficiencies to be corrected.
(4) The court may require that an eFiler submit, in the manner and time specified by the court, an electronic version of a document in its original electronic format.
(5) Except as provided in subsection (1) and paragraphs (5)(a) through (c) of this rule, to the extent practicable, an electronic filing must be submitted as a unified single PDF file, rather than as separate eFiled documents or as a principal eFiled document with additional supporting documents attached through the eFiling system.
(a) The following documents must be submitted as supporting documents through the eFiling system:
(i) One or more parts of an eFiled document that exceeds the size limit set out in subsection (1) of this rule, as a supporting document to the initial eFiled document.
(ii) A memorandum of law accompanying a petition in a mandamus, habeas corpus, or quo warranto proceeding, as a supporting document to the eFiled petition.
(b) For an electronic filing containing an attachment that is confidential or otherwise exempt from disclosure, the eFiler must eFile the attachment separately from the principal document, not as a supporting document attached through the eFiling system. For the principal document, the eFiler must include a comment that the related eFiling is a confidential attachment to the principal document. For the eFiled attachment, the eFiler must select the document name "Notice to Court Confidential Attachment."
(c) For an electronically filed motion seeking approval to file another document, including an application to appear *amicus curiae* with an accompanying brief, where the eFiler intends to submit the brief or other document for filing at the same time, the brief or other document must be electronically filed separately from the motion seeking approval or application to appear *amicus curiae*, rather than being submitted as a supporting document attached to the motion. For each electronic filing transaction under this paragraph, the eFiler must include the following comments:
(i) For the motion seeking approval or application to appear *amicus curiae*, a comment that the eFiler is submitting the brief or other document through a separate eFiling transaction; and

(ii) For the brief or other document, a comment that the electronic filing transaction relates to the earlier electronic filing transaction that submitted the motion or application to appear *amicus curiae*.
(6) An eFiled document may not contain an embedded audio or video file.
(7) Unless otherwise provided by these rules or directed by the court, an eFiler shall not submit to the court paper copies of an eFiled document.

**Rule 9.20**

**FILING FEES AND eFILING CHARGES**

(1) The appellate court may impose a transaction charge for using the eFiling system, as prescribed by order of a Judge of the Court of Appeals.
(2) The appellate courts may collect a document recovery charge. The document recovery charge shall be at the rate prescribed by a Judge of the Court of Appeals, multiplied by the number of copies required for a particular document. The number of copies, if any, varies based on the type of document that is eFiled.
(3) An eFiler shall pay any required filing fees or eFiling charges at the time of the electronic filing, by using the electronic payment system, unless otherwise directed by the court. Charges for electronic filing may be recovered.
(4) If an eFiler seeks to waive or defer filing fees, the eFiler shall apply for a waiver or deferral of filing fees by eFiling an application to waive or defer filing fees at the time of filing a document electronically.

**Rule 9.25**

**ELECTRONIC FILING AND ELECTRONIC FILING DEADLINES**

(1) A filer may use the eFiling system at any time, except when the system is temporarily unavailable. The filing deadline for any document filed electronically is 11:59:59 p.m. in the time zone in which the court is located on the date by which the document must be filed.
(2) The submission of a document electronically by the eFiler and acceptance of the document by the court accomplishes electronic filing. When accepted for filing, the electronic document constitutes the court's official record of the document.
(3) (a) The court considers a document received when the eFiling system receives the document.
(b) When the court accepts the document for filing, the Clerk of Court will affix to the document the time of day, the day of the month, the month, and the year that the eFiling system received the document. The date and time of filing entered in the register relate back to the date and time that the eFiling system received the document. The Clerk of Court will send an email that includes the date and time of acceptance to the eFiler's e-mail address and to any other email address provided by the eFiler. If the document was electronically served by the eFiling system pursuant to TRAP 9.45, the date of service will also relate back to the date that the eFiling system received the document.
(4) If the eFiling system is temporarily unavailable due to a system malfunction or if an error in the transmission of the document or other technical problem prevents the eFiling system from receiving the document, the court may, upon satisfactory proof, permit the filing date of the document to relate back to the date that the eFiler first attempted to file the document electronically. A party must show satisfactory proof by filing and serving with the document as to which the party seeks relation back an accompanying letter explaining the circumstances, together with any supporting documentation. Problems with the eFiler's equipment, the eFiler's hardware or software, or other problems within the eFiler's control generally will not excuse an untimely filing.
(5) Documents Conventionally Filed: The court may digitize, scan, or otherwise reproduce a document that is filed conventionally into an electronic record, document, or image. The court subsequently may destroy a conventionally filed document in accordance with any protocols established by the Director.

**Rule 9.30**

**CONVENTIONAL FILING REQUIREMENTS**

(1) The following documents must be conventionally filed:
(a) A document filed under seal, including a motion requesting that a simultaneously filed document be filed under seal or a document with an attachment that is sealed by statute or court order.
(b) An oversized demonstrative exhibit or oversized part of an appendix or excerpt of record. Such a document must be filed within three business days of eFiling the document to which the oversized document relates. An eFiler may note, in the "comments" section of the eFiling screen, that an oversized appendix or excerpt of record will be filed conventionally.
(2) An eFiler who is not a lawyer of record for a party in a case must conventionally file any document in any case that is confidential by law or court order.
(a) The conventional filing requirement in this subsection applies to a lawyer for a person or entity appearing as amicus curiae.
(b) The Director is authorized to develop a means of electronic transmission for the filing of a notice of appointment of counsel in a confidential case, for the purpose of documenting a lawyer of record on the case.
(3) The following documents may be conventionally filed or eFiled:
(a) A notice of appeal, petition for judicial review, cross-petition for judicial review, or petition under Court of Appeals jurisdiction.
(b) A request or motion for waiver of the mandatory eFiling requirement, as set out in TRAP 9.60(2). If the request is approved or the motion granted, then the approval or order filed in a case under TRAP 9.60(2)(c) or (d), and any document subject to that approval or order may be conventionally filed.

**Rule 9.40**

**ELECTRONIC SIGNATURES**

(1) The username and password required to submit a document to the eFiling system constitute the signature of the eFiler for purposes of these rules and for any other purpose for which a signature is required.
(2) (a) In addition to information required by statute or rule to be included in the document, an electronically filed document must include a signature block that includes the printed name of the eFiler and an indication that the printed name is intended to substitute for the eFiler's signature. The attorney's bar number and an indication of the party that the attorney represents must appear as part of or in addition to the signature block.
Example: *s/Attorney Name*
Attorney Name
_____State Bar No. _____
Attorney for _____.
(b) The Director is authorized to provide notice on the CTUIR website that eFilers may not include signature blocks generated by certain programs that are incompatible with the appellate electronic court systems.
(3) When a document is filed electronically in which an opposing party joins, that all such parties join in the document must be shown either by:
(a) submitting a scanned document containing the signatures of all parties joining in the document;
(b) including a recitation in the document that all such parties consent or stipulate to the document; or
(c) identifying in the document the signatures that are required and submitting each such party's written confirmation no later than three business days after the court's acceptance of the electronic filing.
(4) A party electronically filing a document, such as a declaration, that must be signed by a person other than the eFiler, shall include a scanned image of the signature page showing the person's signature.

**Rule 9.45**

**ELECTRONIC SERVICE**

(1) Registration as an eFiler with the eFiling system constitutes consent to receive service via the electronic mail function of the eFiling system.

(2) (a) Except as provided in subsection (3), a party eFiling a document with the appellate court may accomplish service of that document on any other party's attorney, if that attorney is a registered eFiler, by emailing a copy of that document to the other party's attorney.

(b) eService is effective under this rule when the eFiler has received a confirmation e-mail stating that the eFiled document has been received by the attorney to whom it was directed.

(3) A party eFiling a document must accomplish service via the conventional manner, as provided by TRAP 1.35 and other applicable rules and statutes, if:

(a) The document to be served is an initiating document;

(b) The party to be served is self-represented; or

(c) The attorney to be served is not a member of the Tribal Court Bar.

(4) All eFiled documents must be accompanied by a proof of service under TRAP 1.35(2)(e). The proof of service must certify service on all parties regardless of the means by which service was accomplished, including eService. The proof of service must state that service was accomplished at the person's email address as recorded on the date of service in the eFiling system, and need not include that person's email address or mailing address.

(5) If an eFiled document is not eServed by the eFiling system because of an error in the transmission of the document or other technical problem experienced by the eFiler, the court may, upon satisfactory proof, permit the service date of the document to relate back to the date that the eFiler first attempted to eServe the document. A party must show satisfactory proof by filing and serving an accompanying letter explaining the circumstances, together with any supporting documentation.

**Rule 9.50**

**HYPERLINKS AND BOOKMARKS IN eFILED BRIEFS**

(1) An eFiled document may contain one or more hyperlinks to other parts of the same document or hyperlinks to a location outside of the document that contains a source document for a citation.

(a) When a party eFiles a brief or other memorandum that is accompanied by excerpts of record or attachments, the party is encouraged to hyperlink citations to the relevant portions of the excerpts or attachments.

(b) The functioning of a hyperlink reference is not guaranteed. The appellate courts neither endorse nor accept responsibility for any product, organization, or content at any hyperlinked site.

(c) A hyperlink to cited authority does not replace standard citation format. The complete citation must be included within the text of the document. Neither a hyperlink, nor any site to which it refers, shall be considered part of the record. A hyperlink is simply a convenient mechanism for accessing material cited in an eFiled document.

(2) When a party eFiles a brief, the party is encouraged to electronically bookmark the sections of the brief, excerpt of record, and any appendix using PDF document creation software. The caption of a bookmark should be concise. The sections of the brief that should be bookmarked include the discussion on each assignment of error or question presented on review, or the response to any assignment of error or presented question. The sections of the excerpt of record or appendix that should be bookmarked include the judgment, order, or opinion under review and any separate findings or determinations that are part of that disposition.

**Rule 9.55**

**RETENTION OF DOCUMENTS BY eFILERS**
**AND CERTIFICATION OF ORIGINAL SIGNATURES**

(1) Unless the court orders otherwise, if an eFiler electronically files an image of a document that contains the original signature of a person other than the eFiler, the eFiler must retain the document in the eFiler's possession in its original paper form for no less than 90 days.

(2) When an eFiler electronically files a document described in subsection (1) of this rule, the eFiler certifies by filing that, to the best of the eFiler's knowledge and after appropriate inquiry, the signature purporting to be that of the signer is in fact that of the signer.

SECTION 3.02. RULES OF PRACTICE, PROCEDURE AND EVIDENCE

A. The Court shall have the power to prescribe general rules of practice, procedure, and rules of evidence for cases in the Umatilla Tribal Court and the Court of Appeals. Such rules shall not abridge any substantive right under the Constitution, laws of the Confederated Tribes, or the Indian Civil Rights Act. All other laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

B. The Court may authorize the appointment of volunteer committees to assist the Court by recommending rules to be prescribed under this Chapter. Each such committee shall consist of members of the bench and the professional bar, and trial and appellate judges.

C. The Court shall transmit to the Board of Trustees a copy of any proposed rule prescribed under this Chapter not later than 30 days prior to the date upon which it is to take effect unless the rule is otherwise approved directly by Board resolution. A copy of the rule shall be made available to the public.

D. The Court may fix the extent a rule shall apply to proceedings then pending, except that the Court shall not require the application of such rule to further proceedings then pending to the extent that, in the opinion of the Court, the application of such rule in would not be feasible or would work an injustice, in which event the former rule applies, if any.

## CHAPTER 4. JUDICIAL CONDUCT

SECTION 4.01. A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

An independent and honorable judiciary is indispensable to justice. As such, a judge should maintain and enforce high standards of personal and professional conduct to preserve the integrity of the judicial system.

SECTION 4.02. A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES

A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. To this end, a judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge.

SECTION 4.03. A JUDGE SHOULD PERFORM THE DUTIES OF THE OFFICE FAIRLY, IMPARTIALLY AND DILIGENTLY

The duties of judicial office take precedence over all other activities. In performing the duties prescribed by law, the judge should adhere to the following standards:

A. Adjudicative Responsibilities.

1. A judge should be faithful to, and maintain professional competence in, the law and should not be swayed by partisan interests, public clamor, or fear of criticism.

2. A judge should hear and decide matters assigned, unless disqualified, and should maintain order and decorum in all proceedings.

3. A judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity. A judge should require similar conduct of those subject to the judge's control, including

B. The Board of Trustees may increase the compensation provided for Judges herein, however, the compensation of a Judge may not be decreased during his term of office.

SECTION 2.04. PERFORMANCE OF DUTIES

A. The Board of Trustees shall evaluate the quality of work performed and the suitability of the appointee. If the Board of Trustees is dissatisfied with the performance or deportment of a Judge during his probationary term, he may be removed summarily without cause.

B. During their tenure in office, Judges may be removed for cause by the Board of Trustees. A written complaint recommending such removal shall be prepared by the Tribal business manager setting forth the facts and reasons for such proposed action with copies delivered to the Judge and Board of Trustees. Causes sufficient for such action shall include, but not be limited to: excessive use of intoxicants; immoral behavior; conviction of any offense other than minor traffic violations; use of official position for personal gain; desertion of office; blatant and repeated violations of civil rights of individuals; and any other serious violation of the standards of judicial conduct.

C. A hearing shall be held by the Board of Trustees within ten days from their receipt of the written complaint. The accused Judge shall have the opportunity to answer charges made against him before that body. An adverse decision may be appealed to the General Council whose decision shall be final. An appeal to the General Council shall be heard and voted on no later than the second regularly scheduled meeting of that body after the decision of the Board of Trustees.

D. The Chief Judge shall be in complete charge of the Court and shall have supervision over the Associate Judges, the Court Clerk and any other Court personnel.

SECTION 2.05. COURT OF APPEALS

A. There is hereby established the Umatilla Tribal Court of Appeals.

B. The Court of Appeals shall have jurisdiction to hear appeals from the final decisions of the Umatilla Tribal Court where permitted by law.

C. Any ruling of the Court of Appeals shall be final and binding on the parties except for those matters where a review by a Federal Court is proper pursuant to 25 U.S.C. §1303.

D. The Judges for the Court of Appeals shall be those persons designated as Judges for the Umatilla Tribal Court, excluding the Judge who issued the ruling being appealed, sitting together.

## CHAPTER 3. RULE MAKING AUTHORITY

SECTION 3.01. RULE MAKING GENERALLY

A. The Court may from time to time prescribe rules for the conduct of its business. Such rules shall be consistent with the laws and Constitution of the Confederated Tribes, as well as the Indian Civil Rights Act.

B. Any rule prescribed by the Court shall be prescribed only after giving reasonable public notice and an opportunity for comment unless otherwise directly approved by Board resolution.

C. A rule prescribed by the Court shall remain in effect unless otherwise modified or abrogated by the Court or the Board of Trustees.

B. The Board of Trustees may increase the compensation provided for Judges herein, however, the compensation of a Judge may not be decreased during his term of office.

SECTION 2.04. PERFORMANCE OF DUTIES

A. The Board of Trustees shall evaluate the quality of work performed and the suitability of the appointee. If the Board of Trustees is dissatisfied with the performance or deportment of a Judge during his probationary term, he may be removed summarily without cause.

B. During their tenure in office, Judges may be removed for cause by the Board of Trustees. A written complaint recommending such removal shall be prepared by the Tribal business manager setting forth the facts and reasons for such proposed action with copies delivered to the Judge and Board of Trustees. Causes sufficient for such action shall include, but not be limited to: excessive use of intoxicants; immoral behavior; conviction of any offense other than minor traffic violations; use of official position for personal gain; desertion of office; blatant and repeated violations of civil rights of individuals; and any other serious violation of the standards of judicial conduct.

C. A hearing shall be held by the Board of Trustees within ten days from their receipt of the written complaint. The accused Judge shall have the opportunity to answer charges made against him before that body. An adverse decision may be appealed to the General Council whose decision shall be final. An appeal to the General Council shall be heard and voted on no later than the second regularly scheduled meeting of that body after the decision of the Board of Trustees.

D. The Chief Judge shall be in complete charge of the Court and shall have supervision over the Associate Judges, the Court Clerk and any other Court personnel.

SECTION 2.05. COURT OF APPEALS

A. There is hereby established the Umatilla Tribal Court of Appeals.

B. The Court of Appeals shall have jurisdiction to hear appeals from the final decisions of the Umatilla Tribal Court where permitted by law.

C. Any ruling of the Court of Appeals shall be final and binding on the parties except for those matters where a review by a Federal Court is proper pursuant to 25 U.S.C. §1303.

D. The Judges for the Court of Appeals shall be those persons designated as Judges for the Umatilla Tribal Court, excluding the Judge who issued the ruling being appealed, sitting together.

## CHAPTER 3. RULE MAKING AUTHORITY

SECTION 3.01. RULE MAKING GENERALLY

A. The Court may from time to time prescribe rules for the conduct of its business. Such rules shall be consistent with the laws and Constitution of the Confederated Tribes, as well as the Indian Civil Rights Act.

B. Any rule prescribed by the Court shall be prescribed only after giving reasonable public notice and an opportunity for comment unless otherwise directly approved by Board resolution.

C. A rule prescribed by the Court shall remain in effect unless otherwise modified or abrogated by the Court or the Board of Trustees.

IN THE TRIBAL COURT FOR THE CONFEDERATED TRIBES
OF THE UMATILLA INDIAN RESERVATION

| | | |
|---|---|---|
| In The Matter of:<br>PROMULGATION AND ADOPTION<br>OF TRIBAL COURT RULES OF<br>APPELLATE PROCEDURE | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | **ORDER PROMULGATING RULES OF PROCEDURE IN THE CTUIR COURT OF APPEALS**<br>**By authority of CTUIR Court Code Chapter 3 Sections 3.01 and 3.02** |

The court finding that the adoption of Tribal Rules of Appellate Procedure to govern proceedings in CTUIR Court of Appeals would be of benefit to the litigants, attorneys, court and the Tribe, it HEREBY PROMULGATES AND ADOPTS the Tribal Rules of Appellate Procedure attached hereto to be effective on January 1, 2018, upon compliance with CTUIR Court Code Chapter 3.

Dated: Nov. 13, 2017.

William D. Johnson

William D. Johnson, Chief Judge
Tribal Court