

**CONFEDERATED TRIBES OF THE UMATILLA INDIAN
RESERVATION**

COURT OF APPEALS

RULES OF APPELLATE PROCEDURE

RULE 1: RULES OF APPELLATE PROCEDURE

A - These rules govern all appeals before the Umatilla Tribal Court of Appeals (Court of Appeals).

B - Where no procedure is provided in these rules or other statutes of the Tribe, the Court may refer to the Federal Rules of Appellate Procedure for guidance and may proceed and exercise its functions in any lawful manner.

C - The Court of Appeals may suspend or modify the requirements or provisions of these rules in a particular case and may order proceedings accordingly within its discretion. These rules shall be liberally construed in the furtherance of justice.

RULE 2: JURISDICTION

A - Generally – The Court of Appeals has jurisdiction to review any decision of the Umatilla Tribal Court (Tribal Court) which resolves all issues in a case pending before it.

B - Interlocutory Appeals – The Court of Appeals has jurisdiction to hear appeals of dispositive issues requiring appellate review prior to the decision of the Tribal Court becoming a final decision. The following requirements must be met:

- 1 - The appealed matter must be conclusive on the issue presented;
- 2 - It must be collateral to the merits of the case, and
- 3 - Immediate appeal is necessary because it would be effectively unreviewable later.

C - Administrative Decisions – Final decisions by administrative bodies of the CTUIR pursuant to Sections 8.05.J. and 9.09 of the Yellowhawk Personnel Manual and Section 6.06 of the Tribal Personnel Policies Manual.

RULE 3: WHO MAY PRACTICE BEFORE THE COURT OF APPEALS

A - Attorneys - Upon presentation of evidence of their admission to practice before any state court, completion of an application form confirming their knowledge of the laws of the CTUIR and rules of the Court of Appeals and payment of a fee of \$50.00, attorneys will be admitted to practice before this court. Attorneys must be admitted to practice before filing any documents with this court.

B - Once an attorney has filed papers in an appeal, such counsel shall not be allowed to withdraw from the appeal except by order of the Court of Appeals upon written motion showing good cause, notice to the client and naming new counsel.

C - The Court of Appeals may, after reasonable notice and an opportunity to show cause to the contrary, and after a hearing, if requested by the offending counsel, take any appropriate disciplinary action, including suspension from practice before the Court of Appeals and complete disbarment, against any attorney or advocate who practices before the Court of Appeals for conduct unbecoming by a member of the bar or for failure to comply with rules or any order of the Court of Appeals.

D - Non-Attorneys – Individuals seeking to represent themselves in an appeal will be allowed to do so after completing an application form in which they confirm that they are familiar with the rules of the Court of Appeals, that they have been informed of the availability of training videos regarding those rules and have taken advantage of those deemed of interest to them and that they will abide by the Rules of Appellate Procedure in representing themselves. Court personnel will make training videos available to self-representing parties but may not give legal advice to those parties.

E - Lay Advocates – Non-attorneys who undertake to represent individuals before the Court of Appeals may do so upon completing an application form confirming their knowledge of the laws of the CTUIR and rules of the Court of Appeals and confirming that they have been advised of the availability of training videos regarding those rules, that they have taken advantage of those deemed of interest to them and that they will abide by the Rules of Appellate Procedure in representing others before the court.

RULE 4: SANCTIONS

Where the appeal is not valid or is taken solely for the purpose of delay or where any party has been guilty of an unreasonable infraction of these rules, the Court may impose upon the offending attorneys, parties or both, such penalties or damages, (including contempt, withholding or imposing costs or imposing attorney's fees) as the circumstances of the case may and the discouragement of conduct in the future may require.

RULE 5: PETITION FOR APPEAL

A - TIME FOR FILING – A Petition for Appeal must be filed within 30 days after the date of entry of the judgment or order appealed from. Failure to file the Petition for Appeal within the required time may result in the appeal being refused.

B - CONTENTS OF PETITION FOR APPEAL – The Petition for Appeal shall contain:

1. The complete title of the case as it appeared in the Tribal Court and the trial court case number.
2. The names of the parties and their designations in the Tribal Court and their designations in the appeal as either appellant or appellee.
3. A plain and concise statement, without argument, of the judgment or ruling being appealed.
4. A plain and concise statement, without argument, of the grounds for the appeal which are limited to properly made assignments of error with citations to the record where those claims of error were made.
5. Proof of service upon the opposing party or opposing party's counsel and including service upon the Clerk of the Tribal Court.

C - FILING FEE – A filing fee in the amount of \$50.00 must be submitted along with the Petition for Appeal. The filing fee may be waived by the court upon a motion by the Appellant with a showing that payment of the fee would result in a financial hardship on the Appellant.

D - ACCEPTANCE OR REJECTION OF PETITION FOR APPEAL – Within 14 days from the date the Petition for Appeal is filed, the Court of Appeals shall review the Petition for Appeal. If the Petition for Appeal is appropriate and timely, the Court shall issue an Order Accepting the Appeal which may also specify the briefing schedule or may defer setting a briefing schedule until such time as

transcripts of Tribal Court proceedings are received by the Clerk of the Court. If the Petition for Appeal is defective or untimely, the Court shall issue an order rejecting the Notice of Appeal which specifies the reason the petition was rejected and return the filing fee.

E – FRIVOLOUS APPEAL - If the Court determines that an appeal is frivolous, it may, after a separately filed motion or notice from the Court and reasonable opportunity to respond, award just damages and single or double costs to the Appellee.

RULE 6: RECORD ON APPEAL

A - Absent an agreement by the parties and/or an order from the Court, the record on appeal shall consist of the entire Tribal Court file including exhibits and transcript of the Tribal Court proceedings. If there was more than one hearing before the Tribal Court only the transcripts of the hearing or hearings that are the basis for the appeal need be included.

B - SUPPLEMENTING THE RECORD ON APPEAL – A party may, by motion, seek to supplement the record on appeal with documents that were relevant to the case but not made part of the record. The motion to supplement the record must specify the number of pages sought to be added to the record.

C – Upon agreement of the parties or for good cause shown after briefing and oral argument, the Court may order the record supplemented.

RULE 7: TRANSCRIPT OF TRIBAL COURT PROCEEDINGS

A - Upon the entry of the Order Accepting the Appeal, the Court Clerk shall order a transcript of the Tribal Court proceedings that are the subject of the Appeal. Upon receipt of the transcript of the Tribal Court proceedings the Court Clerk shall provide copies of the transcript to the parties and add the transcript to the record on appeal.

B - CHALLENGES TO TRANSCRIPT CONTENT – Either party may challenge the content of the transcript. The challenge must be made within 14 days from the date the transcript is received by the parties. A challenge shall be made in the form of a motion supported by a memorandum noting with specificity the portion or portions of the transcript being challenged and the reasons therefor.

C - STIPULATION TO TRANSCRIPTS – The parties may stipulate to a transcript for purposes of an appeal. The stipulation may be to a partial transcript or to an informal transcript.

D - COST OF TRANSCRIPTS – The Court will cover the first \$200.00 of the cost for the transcript. If the cost exceeds \$200.00, the appellant shall be responsible for paying balance.

RULE 8: BRIEFS

A – PARTIES' BRIEFS - Appellant shall file an opening brief, Appellee shall file a response brief and Appellant may file a reply brief all as set forth below.

B - COVER PAGE – The cover page of any brief shall have the court of appeals heading, the names and designations of the parties, the Tribal Court case number, the court of appeals case number, the caption of the brief as Appellant's Opening Brief or Appellee's Response Brief.

C - SPECIFICATIONS FOR BRIEFS

1. The text of all briefs shall be double spaced. Footnotes may be single spaced. Text and footnotes shall be printed in 14 point font size on white paper.
2. Pages shall be 8 ½ x 11 inches.
3. The inside margin shall be 1 ¼ inches, the outside margin shall be 1 inch and the top and bottom margins shall be ¾ inches.
4. Each page after the cover page shall be consecutively numbered in the lower, right-hand corner.
5. Opening and response briefs shall not exceed 15 pages and an appendix shall not exceed 10 pages unless otherwise authorized by order of the court in response to a motion made by the party seeking to exceed page limitations.
6. Briefs may be bound or stapled in the upper left-hand corner.
7. The last page of the brief shall contain the name and signature of the author of the brief, the name of the law firm, if any, representing the party and the name of the party on whose behalf the brief is filed.
8. The court, on its own motion, may strike any brief that does not comply with this rule.

D - APPELLANT'S OPENING BRIEF – INDEX – Appellant's opening brief shall begin with:

1. An index of the contents of the brief, including a statement 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.

E - 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 and the relief sought.
2. A statement, without argument, of the nature of the judgment being appealed and the date it was entered.
3. A brief statement, without argument, of the questions presented on appeal.
4. A concise summary of the arguments appearing in the body of the brief.
5. A concise summary, without argument, of all the facts of the case material to the determination of the appeal in narrative form with citations to the record where such facts appear.
6. Any other matters necessary to inform the court concerning the questions and contentions raised in the appeal, insofar as such matters are part of the record, with citations to the parts of the record where such matters appear.

F - APPELLANT'S OPENING BRIEF – ASSIGNMENTS OF ERROR -

Assignments of error are required in all opening briefs of 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 Court of Appeals may consider an error of law apparent on the record.

1. Each assignment of error shall identify precisely the legal, procedural, factual, or other ruling that is being challenged.
2. Each assignment of error shall demonstrate that the issue presented by the assignment of error was timely and properly raised and preserved in the lower court.

3. Each assignment of error shall specify the manner in which it was raised and the way in which it was ruled on by the lower court with appropriate quotations from the transcript or elsewhere in the lower court record.
4. 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 was properly raised and preserved.
5. Each assignment of error shall be followed by the argument. 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.

G - 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. This may include copies of a statute at issue in the appeal or copies of cases that are not readily available from standard sources. Arguments about issues in the appeal may not be included in an appendix.

H - APPELLEE’S ANSWERING BRIEF – Appellee’s answering brief shall follow the form prescribed for Appellant’s opening brief. It shall also contain a concise answer to each of appellant’s assignments of error preceding appellee’s own argument as to each.

I - APPELLANT’S RESPONSE BRIEF – An Appellant may file a brief in response to Appellee’s brief upon a motion granted by the Court. A response brief may address only those issues raised in Appellee’s brief.

J - AMICUS CURIEA BRIEFS – Individuals or entities not party to an appeal may petition the Court by motion to file a brief in an appeal. Amicus briefs may be filed only with the permission of the Court of Appeals. The motion and supporting memorandum must clearly specify the individual or entities interest in the case as well as stating how and why their brief would be helpful to the Court.

K - TIME FOR FILING BRIEFS – Unless otherwise set in the Court’s Order granting the petition for appeal, Appellant’s opening brief shall be due within 30 calendar days from the date of the Order granting the petition for appeal. Appellee’s answering brief shall be due within 30 calendar days from the date of the proof of service of Appellant’s brief.

L - NUMBER OF COPIES OF BRIEFS – In addition to the copies of briefs served by one party to the other, the parties shall each file two copies of their respective briefs with the Court.

M - FAILURE TO FILE BRIEF – If an Appellant fails to file a brief by its due date, the appeal shall be dismissed and the filing fee forfeited. If an Appellee fails to file a brief by its due date the Court may decide the case based only upon Appellant's brief or the Court may proceed by setting and hearing oral arguments.

RULE 9: FILING SERVICE OF DOCUMENTS

A - FILING - Papers required or permitted to be filed in the Court of Appeals shall be filed with the Clerk of the Court of Appeals.

B - SERVICE - Copies of all papers filed by any party shall, at the time of filing, have been served on all other parties to the appeal. Service on parties represented by counsel shall be made on counsel.

C - MANNER OF SERVICE – Service may be personal or by first class mail with postage prepaid.

D - PROOF OF SERVICE – Papers presented for filing shall contain an acknowledgement of service in the form of a statement of the date and manner of service, the names of the persons served and the addresses to which the papers were mailed or at which they were delivered, certified by the person who made the service. Proof of service may appear on or be affixed to the papers filed.

E - ORIGINAL SIGNATURE AND BAR NUMBER REQUIRED – All documents submitted to the Court of Appeals for filing by a represented party shall include the original signature of the attorney of record who is admitted to practice before the Court of Appeals and the address, telephone number and State Bar identification number of the attorney. All documents submitted to the court for filing by an unrepresented party shall include the original signature of the party and shall state the party's address and telephone number.

RULE 10: ORAL ARGUMENT

A - Unless waived by both parties, oral arguments shall be held on an appeal.

B - TIME SET FOR – Upon receipt of Appellee's answering brief, the Court shall issue an order specifying the date and time for oral argument.

C - PROCEDURE AT ORAL ARGUMENT – Unless otherwise ordered by the Court, the parties shall have 30 minutes to present their argument. Appellant may reserve part of its allocated time to present a rebuttal argument after Appellee’s argument has been completed.

D - LIMITED TO ISSUES IN RECORD ON APPEAL – Oral argument shall be limited to those issues identified in the record on appeal and briefed by the parties.

E - WHO MAY ARGUE – Attorneys and lay advocates admitted to practice before the Court may present arguments on behalf of a client. Unrepresented parties may present oral arguments on their own behalf.

F - FAILURE OF PARTY TO APPEAR – A party who fails to appear for oral argument as scheduled by the Court forfeits their right to make any further presentations to the Court with regard to their case. If one party fails to appear the Court shall make its decision in the case based upon that parties’ briefs and any other filings and shall allow the party present to proceed with its oral argument.

RULE 11: MOTIONS

A - Any request by a party to the Court shall be by written motion unless the motion is made in the course of oral arguments.

B - FORM – A motion shall contain the title of the court, the names of the parties, their positions as either appellant or appellee and the case number. It shall clearly state the request being made to the Court. Every motion shall be accompanied by a Memorandum in Support of the Motion. The memorandum shall contain citations to authorities as well as arguments that support the party’s request that the motion be granted.

C - PROOF OF SERVICE - A motion and memorandum in support of that motion shall be served upon all other parties to the case and proof of that service shall appear on or affixed to the motion and shall contain the same information as required for proof of service of briefs and be served in the same manner.

D - FILING – A motion and memorandum in support thereof shall be filed with the Clerk of the Court of Appeals.

E - RESPONSE TO MOTION AND MEMORANDUM – Parties who were served with a motion and memorandum in support of that motion may file a memorandum in opposition to that motion within 20 days from the date they were served. The memorandum in opposition shall contain citations to authorities and arguments that justify denial of the motion.

F – TIME FOR ORAL ARGUMENT – Upon receipt of any memorandum in opposition to the motion or 20 days after the motion was filed, whichever comes first, the Court shall issue an order specifying the date and time for oral argument on the motion.

RULE 12: DECISION AND OPINION

A - Once oral arguments have been concluded, the Court shall reach a decision on the issues raised in the appeal and prepare a written opinion in which those decisions are described and the legal and factual basis for them.

B - DISTRIBUTION OF THE OPINION - Upon completion of the Court's opinion, the Clerk of the Court shall distribute copies to counsel for the parties or, if the parties are not represented by counsel, then to the individual parties.

RULE 13: STAY OR INJUNCTION PENDING APPEAL

A - A decision or order of the Tribal Court may be stayed or its implementation enjoined.

B - STAY MUST ORDINARILY BE SOUGHT IN THE FIRST INSTANCE IN TRIBAL COURT – Application for a stay of the judgment or order of a Tribal Court pending an appeal or for an order suspending, modifying, restoring or granting an injunction during any pendency of an appeal must ordinarily be made in the first instance in the Tribal Court. A motion for such relief may be made to the Court of Appeals but the motion must show that application to the Tribal Court for the relief sought is not practicable or that the Tribal Court has denied an application or has failed to afford the relief which the applicant requested, with reasons given by the Tribal Court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements. With the motion shall be filed such parts of the record as are relevant. Reasonable notice of the motion shall be given to all parties.

C - STAY MAY BE CONDITIONED UPON GIVING OF BOND; PROCEEDINGS AGAINST SURETIES. Relief available in the Court of Appeals under this rule may be conditioned upon the filing of a bond or other appropriate security in the Tribal Court. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits itself to the jurisdiction of the Tribal Court and irrevocably appoints the clerk of the Tribal Court as its agent upon whom any papers affecting its liability on the bond or undertaking may be served. Its liability may be enforced on motion in the Tribal Court without the necessity of an independent action. The motion and such notice of the motion as the Tribal Court prescribes may be served on the clerk of the Tribal Court, who shall forthwith mail copies to the sureties.

D - STAYS IN CIVIL CASES NOT INVOLVING CHILD CUSTODY – In deciding whether to issue a stay or injunction, this court will generally consider the following factors: (1) whether the object of the appeal will be defeated if the stay or injunction is denied; (2) whether appellant will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant is likely to prevail on the merits in the appeal.

E - STAYS IN CIVIL CASES INVOLVING CHILD CUSTODY - In deciding whether to issue a stay in matters involving child custody, this court will consider the following factors: (1) whether the child(ren) will suffer hardship or harm if the stay is either granted or denied; (2) whether the nonmoving party will suffer hardship or harm if the stay is granted; (3) whether movant is likely to prevail on the merits in the appeal; and (4) whether a determination of other existing equitable considerations, if any, is warranted.

RULE 14: COSTS AND ATTORNEY FEES

A - STATEMENT OF COSTS, OBJECTIONS - A party entitled to costs may, within ten days after the Clerk has given notice that a decision has been rendered, file with the Clerk a verified itemized cost of appeal. An adverse party may file objections to the statement of costs within five days after service of such a statement. If no objections are filed, the Clerk shall compute the cost in accordance with these rules and the court will enter an order requiring payment to be made. If objections are filed, the party entitled to costs may reply within five days after service of the objections. The Court of Appeals shall determine the amount of costs, if any, to be allowed.

B - COST OF BRIEFS, APPENDICES – The allowance for cost of copies of briefs and appendices shall be the amount expended.

C – CLAIM FOR ATTORNEY’S FEES – When attorney’s fees are claimed pursuant to statute, law or contract, a request for the allowance of attorney’s fees in connection with the prosecution or defense of the appeal shall be by written motion filed and served prior to oral argument or submission of the appeal. If recovery of attorney fees is allowed by the Court of Appeals in its decision, a statement of the amount claimed for such fees may be included in the statement of costs.

D – STATEMENT FOR ATTORNEY’S FEES - The statement of the amount claimed for attorney’s fees shall set forth any relevant statutory or contractual provision and any other factors relevant to the determination of a reasonable fee. Counsel shall also attach and submit an affidavit containing an itemized statement of hours, indicating the following:

1. The date on which the service was performed;
2. The time and costs expended on such date;
3. The nature of the service; and
4. The name and title of the persons performing the service.

RULE 15: PETITION FOR REHEARING

A – TIME A petition for rehearing may be filed within 14 days after the decision and opinion has been entered.

B – CONTENTS – The petition must state with particularity each point of law or fact that the petitioner believes the Court has overlooked or misapprehended.

C – RESPONSE – Non-petitioning parties may file a response to the petition within 14 days after the petition has been filed with the Court.

D – ORAL ARGUMENT– Oral argument will not be allowed unless ordered by the Court.

E – ACTION BY THE COURT – If a petition for rehearing is granted, the Court may do any of the following:

1. Make a final disposition of the case without reargument;
2. Restore the case to the calendar for reargument or resubmission;

3. Issue any other appropriate order.

F – FORM OF PETITION AND RESPONSE – THE petition and response shall be in the form required of the parties' briefs as specified in Rule 8.

RULE 16: VOLUNTARY DISMISSAL

An appeal may be dismissed on the Appellant's motion on terms agreed to by the parties or fixed by the Court.

