

CHAPTER 11

APPEAL PROCEDURE, CIVIL AND CRIMINAL

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CHAPTER 11

APPEAL PROCEDURE, CIVIL AND CRIMINAL

PART 1 GENERALSection 1. The Court of Appeals of the Blackfeet Tribe.

The highest court of the Blackfeet Tribe shall be known as the Blackfeet Court of Appeals, and shall consist of five (5) Justices selected from within the adult membership of resident members of the Blackfeet Tribe by the Blackfeet Tribal Business Council. The Court of Appeals shall hear the appeal of all cases, criminal, and civil, including juvenile cases, appealed from the Blackfeet Tribal Court, and shall have original jurisdiction to hear writs of Habeas Corpus. There must be at least three (3) Justices sitting together as a body to hear any case appealed to the Court of Appeals, including writs of habeas corpus. The five (5) Justices shall select from within their membership a Chief Justice who shall attend to the administration of the Court of Appeals and select members of the Court to sit on each and every appealed case.

Section 2. Place of Sitting.

The Blackfeet Court of Appeals shall hear all appeals in the Blackfeet Judicial Building and such appeals shall be open to the public only during oral arguments.

Section 3. Clerk of the Court of Appeals.

The Chief Justice of the Court of Appeals shall select and appoint a Clerk of the Tribal Court to act as the Clerk of Appeals. If there is more than one Clerk of the Tribal Court, the Chief Justice, in his or her discretion, may rotate the appointment at the end of every six (6) months period.

Section 4. Filing and Service.

A. Filing. Papers required or permitted to be filed must be placed in the custody of the Clerk within the time fixed for filing. Filing may be accomplished by mail addressed to the Clerk, but filing shall not be timely unless the papers are actually received within the time fixed for filing.

B. Service of all papers required. Copies of all papers, including any transcript, filed by any party and not required by this chapter to be served by the Clerk shall, at or before the time of filing, be served by the party or person acting for him or her on all other parties to the appeal. Service on a party represented by counsel shall be made on the counsel.

C. Manner of service. Service may be personal or by mail. Personal service includes delivery of the copy to a Clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

D. Proof of service. Papers presented for filing shall contain 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 of the names of the persons served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed.

Section 5. Computation and Extension of time.

Computation and extension of time in this chapter shall be governed by Chapter 9, Rule 7 (A) and (B) of this code.

Section 6. Motions.

Unless another form is prescribed by this Chapter, an application for an order or other relief in both a criminal and civil appeal shall

be made by filing a motion in writing for such order or relief. The motion shall state with particularity the grounds therefor and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Motions for procedural orders may be determined ex parte. If a Motion seeks dismissal of the appeal or other substantial relief, any party may file an answer in opposition within seven (7) days after service of the motion, or within such times as the Court of Appeals may direct. Motions, supporting papers, and any response thereto may be either typewritten or handwritten.

At the Time of filing a motion the party or counsel shall present a proposed order, together with sufficient copies of both the motion and order for service upon all parties of record.

Section 7. Cases involving constitutional questions where the Tribe is not a party.

It shall be the duty of a party or counsel who challenges the constitutionality of any act of the Blackfeet Tribe in any suit or proceeding, civil or criminal, in the Court of Appeals, to which the Blackfeet tribe, or any agency officer or employee thereof is not a party, to give immediate notice in writing to the Court of such a question, specifying the section of the Code or the law in question. The Clerk shall thereupon certify such to be the a fact to the General Counsel of the Blackfeet Tribe who may enter the case as an amicus curae upon leave of the Court.

Part II. Criminal.

Section 10. Scope of Part II of this Chapter.

This Chapter, Part II shall govern all appeals from all criminal cases heard in the Blackfeet Tribal Court. All existing methods of appeal in criminal cases existing within the Courts of the Blackfeet Tribe are hereby abolished with the exception of the Small Claims Court.

Section 11. Scope of Appeal; Tribe.

A. Except as authority by this code, the Tribe may not appeal in a criminal case.

B. The Tribe may appeal from any Court order or judgment which results in:

- (1) dismissing a case;
- (2) modifying or changing a verdict of a jury by finding the defendant guilty of a lesser degree of the crime charged, finding the defendant guilty of a lesser included crime or finding the defendant not guilty, any of which are ordered by the Blackfeet Tribal Court upon application of the defendant for a new trial;
- (3) granting a new trial;
- (4) quashing an arrest or search warrant;
- (5) suppressing evidence;
- (6) suppressing a confession or admission.

Section 12. Scope of appeal; Defendant.

An appeal may be taken by a defendant only from a final judgment of conviction, orders after judgment which affect the substantial rights of the defendant or from a denial of a motion to dismiss the charges against the defendant. Upon appeal from a judgment, order or

motion as noted above, or decision or order of a Judge of the Lower Court objected affects the judgment or charge against the defendant.

Section 13. Procedure on appeal.

A. An appeal shall be taken by filing a notice of appeal in the Court which handed down the judgment, decision or order.

B. The notice of appeal shall specify the party or parties taking the appeal and shall designate the judgment, decision or order appealed from, and grounds for the appeal.

C. The Clerk of the Tribal Court shall serve notice of the filing of a notice of appeal on the adverse party, either the Tribe or the defendant, by either mailing a copy of the notice of appeal to the party at his last known address, or personally serving the party with the notice of appeal, noting in the Register of Criminal Actions the date the appeal was filed and the date the notice of appeal, noting in the Register of Criminal Actions the date the appeal was filed and the date the notice of appeal was served. Failure of the Clerk to serve notice shall not affect the validity of the appeal.

D. The party appealing shall be known as the appellant and the adverse party shall be known as the respondent but the title of the case shall not be changed from what it was in the Tribal Court.

E. An appeal from a judgment, decision or order must be taken within ten (10) days after it is rendered, and the defendant has one (1) day after final judgment is imposed before he or she begins to comply with the judgment so rendered.

Section 14. Stay of judgment pending appeal.

A. Imprisonment. If a defendant is sentenced to time in jail by the Tribal Court, and makes a timely application for appeal. The jail

sentence is stayed pending the outcome of the appeal. The Tribal Judge may continue the bail as originally set upon the defendant for the charge appealed from or may either lower the amount of the bail or release the defendant upon his own recognizance according to the bail procedure set down by the Blackfeet Tribal Court, pending the appeal.

B. Fine. If a defendant is fined and makes a timely appeal, the sentence to pay a fine or other costs shall be stayed by the Tribal Court pending the outcome of the appeal.

C. Probation. If an appeal is taken and the defendant was admitted to probation, he or she shall remain on probation pending the outcome of the appeal or else shall post bail.

D. Suspended Sentence. If the defendant was given a suspended by the Tribal Court, such sentence shall be suspended pending the outcome of the appeal.

E. An appeal taken by the Tribe in no way affects or stays the operation of the judgment, decision or order in favor of the defendant until the judgment, decision or order is reversed by the Court of Appeals.

Section 15. The Record on appeal.

A. The Tribal Court Reporter or the Clerk of Court, in the absence of the reporter, shall keep a transcript of any criminal proceedings before the Tribal Court. This transcript shall consist of either a complete transcription proceeding. In the event a tape recording of the proceeding is made, such tape shall be certified and catalogued by the Clerk of the Tribal Court, and kept for a period of not less than twenty five (25) days. At the end of the the twenty five (25) day period there has been no appeal or further proceedings on the

case, the Clerk shall make a record of minutes from the tape and may then erase the tape. The minutes shall contain the name of the action, the name of the presiding judge, the names of all the witnesses, a brief summation of the evidence of both the prosecution and the defense, the verdict or decision and the judgment, including any sentence in the event of a finding of guilty.

B. The original papers and exhibits filed in the Tribal Court, including the complaint and the warrant of arrest or summons, the transcript of the proceedings, if any, and a certified copy of the Register entries prepared by the Clerk of the Tribal Court, shall make up the record on appeal in all cases.

C. Within five (5) days after filing notice of appeal, the appellant shall contact the Clerk of the Tribal Court to ascertain whether or not there has been a transcript made of the proceedings. The Clerk of the Tribal Court shall then either produce a written transcript or an accurate tape recording of the proceedings within two (2) days after such inquiry by the appellant. In the event there is no written transcript or an accurate, unflawed tape recording of the proceedings, the Clerk of the Tribal Court shall so inform the appellant within the two (2) day period mentioned above. The appellant shall then proceed under subsection C of this Section below. If there is transcript of the proceedings the Tribal Clerk shall so inform the appellant and then file the transcript, together with the other papers constituting the records on appeal in an appropriate "pending appeals" file, and the appellant is required to pay Two Dollars Fifty Cents Fifty (\$2.50) for this transcript.

C. If there is no adequate transcript of the proceedings, the parties may prepare and sign a statement of the case showing what the substance of the testimony was at the original trial or hearing. The appellant first prepares a statement of the evidence at the proceedings from the best available means, including his or her recollection. This statement shall be prepared not less than three (3) days after notification by the Clerk of the Tribal Court that no adequate transcript exists. This statement shall then be served upon the respondent, who may serve objections or propose amendments to the statement within three (3) days after service of the statement upon him or her. There upon, the statement together with any objections or amendments shall be filed in the Tribal Court and the trial judge shall settle and approve the statement to constitute a "Statement of the Proceedings" to be included in the record on appeal. The approval by the trial judge must be within two (2) days after the filing of the statement. The statement shall contain the signatures of both the appellant and the respondent and shall be signed by the Tribal Judge approving the same.

D. If any difference arises as to whether the record on appeal truly tells what occurred in the Tribal Court, the difference shall be submitted to and settled by that Court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident, or is misstated therein, the parties by stipulation, or the Tribal Court, either before or after the record is transmitted to the Court of Appeals, on proper suggestion or of its own initiative, and direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and

transmitted. All other questions as to the form and content of the record shall be presented to the Court of Appeals.

Section 16. Transmission of the Record.

A. Time. The record on appeal, including the transcript or the "Statement of the Proceedings" shall be transmitted to the Court of Appeals within thirty (30) days after the filing of the notice of appeal, unless this time is shortened or extended by an order of the Tribal Court. If the appellant has complied with Section 9, above, in a lesser time, the record on appeal shall be transmitted to the Court of Appeals immediately after such compliance which may be less than thirty (30) days without leave of the Court. Thus, if there is an adequate transcript of the proceedings or uncontested "Statement of the Proceedings", the Clerk of the Tribal Court shall transmit the record on appeal within two (2) days after such transcript of "Statement" has been certified or approved.

B. Duty of Clerk to Transmit. It is the duty of the Clerk of the Tribal Court to transmit the record on appeal, as defined in Section 9B above to the Clerk of the Court of Appeals, who in turn shall notify the Chief Justice of the Court of Appeals that an appeal has been filed and the records transmitted. The Clerk of the Tribal Court must certify that the record on appeal is the actual record filed and approved in the Tribal Court. The Clerk of the Court of Appeals shall note on the face of the record the date it has been transmitted to the Court of Appeals.

C. Extension of Time for Transmission. The Tribal Court may extend the time for transmitting the record on appeal upon timely motion from either party, but in no event shall such extension go

beyond fifteen (15) days from the time set for such transmission in subsection A of this section. A motion for extension of time for transmitting the record shall show the inability of the party due to causes beyond his or her control or circumstances which may be deemed excusable neglect.

D. It is the duty of the appellant to make sure that the record on appeal has been transmitted to the Court of Appeals within the time period noted in subsection A above.

Section 17. Docketing the Appeal.

The Clerk of the Court of Appeals shall keep a "Docket of Appeals-Criminal" in which shall be listed each and every paper or document filed in the Court, the date of the filing any order of the Court pertaining to the case, a case number of the appeal, the notation of any decision reached by the Court and any other matter affecting the case in question. Upon receipt of the record on appeal, the Clerk of the Court shall note the papers filed in the record, and the date of filing. The Clerk of the Court of Appeals shall also keep each case appealed in a separate file folder and a separate file cabinet marked "Appeals-Criminal". The Clerk of the Court of Appeals shall give notice immediately to all parties of the date on which the record was filed. If the appellant fails to cause the transmission of the record within the time allowed, any respondent may file a Motion in the Court of Appeals to dismiss the appeal. The motion must be accompanied by a certified statement of the Clerk of the Court of Appeals showing the date on which the record was filed together with any order extending the time for filing, together with the date when appellant filed his or her notice of appeal. If the Court of Appeals finds that the record

was not transmitted within the time allowed, the motion shall be allowed and the appeal dismissed.

Section 18. Hearing of the Appeal; Briefs Oral Arguments;

A. Upon the filing of a record on appeal and the notification of the Chief Justice by the Clerk of the Court of Appeals, that an appeal has been filed, the Chief Justice shall set a hearing on the appeal not less than twelve (12) nor more than twenty (20) days after such notification. The Clerk of the Court of Appeals shall immediately notify the parties as to the date of the appeal which shall include the fact that both parties are to present oral arguments at that time. The Chief Justice shall then appoint three Justices to hear the case and notify them of the time and date of the hearing of the appeals.

B. Briefs:

(1) Appellant. The Appellant may submit a brief to the Court of Appeals which shall be in the following form:

(a) a brief statement of the case including the decision of the Tribal Court;

(b) a statement of the issues presented for review;

(c) an argument putting down the contentions of the appellant;

(d) a short conclusion stating the precise relief sought;

(2) Respondent. The respondent shall submit a brief to the Court of Appeals in reply to appellant's brief in the same form as above except that the respondent may omit a statement of the case unless he or she is dissatisfied with the statement as set down by the appellant.

(3) Reply of Appellant. The Appellant may make a short reply brief to the respondent's brief only covering any new matter brought up by the respondent.

(4) Lengths of briefs. Each brief must contain the title of the case and in no event may exceed ten (10) typewritten pages or fifteen (15) handwritten pages.

(5) Time for submission of briefs. The Appellant's brief must be filed with the Court of Appeals within five (5) days after receipt of notice of hearing. The Respondent brief must be filed within three (3) days after receipt of appellant brief. It is the duty of both the appellant and respondent to serve their briefs upon the opposing party either by certified mail or by personal service. The reply brief must be filed within two (2) days after receipt of respondents brief.

(6) Failure to file brief or filing a brief outside of the required time. If one party fails to file a brief with the Court of Appeals, his case will stand on his oral argument and the record of appeal. If a party fails to file a brief within the required time period without an order of extension by the Court of Appeals, such late brief upon motion by the opposing party shall be deemed not filed and shall not be considered in the hearing of the appealed case.

C. Oral Arguments. On the date and time set for the hearing of the appeal, both the appellant and respondent should be present to present oral arguments before the Court of Appeals. The appellant and respondent may be represented by counsel and if such is the case, only the counsels need be present for oral argument. The appellant is allowed fifteen (15) minutes for oral argument and the respondent is

allowed ten (10) minutes. The appellant is the first to present oral argument and may proceed for ten (10) minutes. The respondent may then make a ten (10) minute presentation, after which the appellant has an additional five (5) minutes to sum up and close the argument. At the end of the oral argument either party or counsel may be questioned by any of the Justices sitting on the appeal. If one party fails to appear or to have his counsel appear for him or her, the opposing party may present oral argument and the case will then be decided on the briefs, if any, the record on appeal, and the argument heard. If a party fails to file a brief and appear for oral argument, the case will be decided upon the brief and/or oral argument of the opposing party.

Section 19. Brief of Amicus Curiae.

A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of the Court of Appeals granted on motion. A motion to file such a brief must state the interest of the applicant and the reasons why such a brief is desirable. A motion for leave of an amicus curiae to participate in the oral argument will be granted only for extraordinary reason.

Section 20. Decision of the Court of Appeals.

Within five (5) days after the hearing of the case, the Court of Appeals must render a decision. This decision shall be in writing, signed by the Justices sitting on the case who agree with the decision and filed with the Clerk of the Court of Appeals. The Clerk of the Court of Appeals shall then send a copy of the decision to the appellant, the respondent and the Clerk of the Tribal Court. Upon receipt of the decision, the Clerk of the Tribal Court shall report the decision to the Tribe Judge for appropriate action. There must be at

least a majority of the Justices sitting on any appeals case who agree on a decision of the Court before such decision becomes final. If five (5) Justices sit on a case, at least three (3) must concur to make a final decision; if four (4) Justices sit on a case, at least three (3) must concur to make a final decision; if three (3) Justices sit on a case at least two (2) must concur to make a final decision.

Section 21. Petition for Rehearing.

A petition for a rehearing before the Court of Appeals may be filed within ten (10) days after the decision of the Court has been rendered and the adverse party shall have seven (7) days thereafter in which to serve and file his or her objections thereto. A petition for rehearing may be presented on the following grounds and no others: That some facts, material to the decision, or some question decisive of the case submitted by counsel, was overlooked by the Court, or that the decision, is in conflict with an express statute or controlling decision to which the attention of the Court was not directed. Oral argument in support of the petition will not be permitted. The rehearing will be held without oral argument and will be decided only upon the petition and the objections thereto.

Section 22. Substantial and Insubstantial Errors on Appeal.

Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded. Defects affecting jurisdiction or constitutional rights may be noticed although they were not brought to the attention of the Tribal Court sitting as the trial court.

Section 23. Determination of Appeal.

On appeal, the Court of Appeals may:

A. Reverse, affirm or modify the judgment or order from which the appeal is taken;

B. Set aside, affirm or modify any or all of the proceedings subsequent to or dependent upon the judgment or order from which the appeal is taken;

C. Reduce the degree of the offense of which the appellant was convicted;

D. Reduce or raise the punishment within the limits of the particular statute, imposed by the Tribal Court; or

E. Order a new trial if justice so requires.

Section 24. Filing Fee; Transmittal Fee.

A. Filing Fee. The cost of filing a notice of appeal is Ten Dollars (\$10.00).

B. Transmittal Fee. The cost of transmitting a record on appeal is Two Dollars (\$2.00).

Section 25. Indigent Appeals.

A. Upon imposition of any sentence in a criminal case a defendant may file in the Tribal Court, a petition requesting that he or she be furnished with a transcript of the proceeding at his or her trial and that the filing fee for the notice of appeal, the transmission fee of the record on appeal and the transcript fee be waived because of the defendant's indigency. The petition shall be verified by the defendant and shall state facts showing that he or she is at the time of the filing of the petition, without financial means to pay the filing fees and the cost of the transcript. If the trial judge who imposed sentence, or in his or her absence, any judge of the Tribal Court to

produce the transcript and waive the filing fee for the notice of appeal and the transmission of the record on appeal.

B. If the petition provided for in subsection A above, is denied by the Tribal Court, a petition so to proceed may be filed in the Court of Appeals within ten (10) days after entry of the denial. The petition shall be accompanied by a copy of the verified petition filed in the Tribal Court and of the statement of reasons for denial given by the trial court.

Section 26. Habeas Corpus.

A writ of habeas corpus may be filed by any person who is detained in the Blackfeet Tribal Jail before any hearing on the merits of the charges against him or her. The writ may be made by the prisoner alone, or if requested by the prisoner, the Clerk of the Tribal Court must make such a writ on behalf of the prisoner. The writ shall state the reasons why the prisoner feels he or she is being wrongfully detained and shall immediately be serve upon the Chief Justice of the Court of Appeals, who upon receipt of such writ must call a hearing on the writ within one (1) day after receipt thereof, unless on a weekend, in which case the hearing shall be called the next day after a weekend or holiday. Three (3) Justices must sit at the hearing and the prisoner and/or his counsel may be present to present oral arguments on the merits of the writ. The Court of Appeals may also summon in the Tribal Jailer and request a record of the charge to be presented by the Clerk of the Tribal Court. If the Justices find that the prisoner has been unlawfully detained and jailed, they must proceed affirmatively upon the writ of habeas corpus and order the release of the prisoner. Release under a writ of habeas corpus in no way affects any charge

against the defendant and the Tribe may proceed to charge the defendant under the legal methods and procedures provided under this Code. This Section in no way interferes with the prisoner's right to seek a writ of habeas corpus through the United States District Court.

PART III. CIVIL

Section 30. Scope of Rules.

These rules govern procedures in appeals in civil cases to the Court of Appeals of the Blackfeet Tribe from the Tribal Court and original proceedings in the Court of Appeals. The party applying for original relief is known as the petitioner and the adverse party as the defendant. The party appealing is known as the appellant and the adverse party as the respondent.

A party aggrieved may appeal from a judgment or order, except when expressly made final by law, in the following cases:

A. From a final judgment entered in an action or special proceeding commenced in the Tribal Court with the exception of Small Claims cases.

B. From an order granting a new trial; or granting or dissolving an injunction; or refusing to grant or dissolve an injunction; or dissolving or refusing to dissolve a writ of execution; from an order directing the delivery, transfer or judgment. In any of the cases mentioned in this subsection, the Court of Appeals or Justice thereof, may stay all proceedings under the order appealed from, on such condition as may seem proper.

C. From a judgment or order granting or refusing to grant, revoking or refusing to revoke, letters testamentary, or of administration, or of guardianship; or admitting or refusing to admit a will to probate, or against or in favor of the validity of a will, or revoking or refusing to revoke the probate thereof; or against or in favor of setting apart property, or making an allowance for a widow or child; or against or in favor of directing the partition, sale, or

conveyance of real property, or settling an account of an executor, or administrator, or guardian; or refusing, allowing, directing, the distribution or partition of any estate or any part thereof, or the payment of a debt, claim, legacy, or distributive share; or confirming or refusing to confirm, a report of an appraiser setting apart a homestead.

All questions raised on an order overruling a motion for a new trial may be raised and reviewed on an appeal from the judgment.

Section 31. What the Court may Review on an Appeal from a Judgment.

A. Filing of the Notice of Appeal. An appeal shall be taken by filing a notice of appeal in the Trial Court. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is grounds only for such action as the Court of Appeals deems appropriate, which may include dismissal of the appeal.

B. Joint Appeals. If two or more persons are entitled to appeal from a judgment or order of the Tribal Court, and their interests are such as to make a joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate notices of appeal as a single appellant.

C. Contest of the Notice of Appeal. The notice of appeal shall specify the party or parties taking the appeal, and shall designate the judgment or order appealed from, together with the grounds for the appeal.

D. Service of the Notice of Appeal. The Clerk of the Tribal Court shall serve notice of the filing of a notice of appeal by mailing

a copy thereof to each party of record other than the appellant, or to the counsel of each party if the party is so represented, and shall mail a copy of the notice of appeal to the Clerk of the Court of Appeals, or serve the Clerk of the Court of Appeals, by personal service, whichever is more appropriate and expedient. The Clerk of the Tribal Court shall note on each copy served, the date on which the notice of appeal was filed. If an appellant is represented by counsel, his counsel shall provide the Clerk with sufficient copies of the notice of appeal to permit the Clerk to comply with the requirements of this Section. Failure of the Clerk to serve notice shall not affect the validity of the appeal. The Clerk shall note in the Register of Civil Actions, the names of the parties to whom she mails copies, with the date of mailing, or shall file a certificate of personal service noting in the Register the name of the person served and the date served.

Section 33. Time for Filing Notice of Appeal.

The time for filing notice of appeal as described in Section 32 above, must be within fifteen (15) days from the entry of the judgment or order appealed from the Tribal Court. If the Tribe or any political subdivision thereof is a party, the notice of appeal shall be filed within twenty-five (25) days from the date of entry of the judgment or order in the Tribal Court. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within seven (7) days of the date on which the first notice of appeal was filed, or within the time otherwise provided in this Section, whichever period comes last.

Upon a showing of excusable neglect or other unavoidable circumstances, the Court may extend the time for filing the notice of appeal by any party for a period not to exceed fifteen (15) days from the expiration of the original time prescribed by this rule.

Section 34. Undertaking for Costs on Appeal.

Within five (5) days after service of notice of appeal, an undertaking for costs of appeal shall be filed in the Tribal Court, or a deposit of money in the amount thereof shall be deposited with the Clerk of the Tribal Court, or the undertaking may be waived by the adverse party in writing. The undertaking must be executed on the part of the appellant by at least two (2) sureties, or one (1) corporate surety, to the effect that the appellant will pay all damages under Section 48 and costs which may be awarded against him on the appeal, or on the dismissal thereof, not exceeding Five Hundred Dollars (\$500.00). If the undertaking on appeal is not filed within the time specified, or if the undertaking filed is found insufficient and if the action is not yet filed with the Court of Appeals, an undertaking may be filed at such time before the action is so filed as may be fixed by the Tribal Court. After the action is so filed, application for leave to file an undertaking may be made only in the Court of Appeals. If the appellant is indigent, he or she may file a motion to waive the undertaking for costs on appeal, including the motion evidence to show that he or she is in fact indigent at the time of filing the notice of appeal, but feels that there is a good and meritorious claim for review and that if the appellant is stopped from appealing due to lack of funds that great injustice will result. The Court may waive the undertaking upon the application of the appellant but may require the appellant to file an

agreement with the Court that in the event the appeal is affirmed or dismissed, he or she will pay the judgment against him or her within twenty (20) days after affirmance or dismissal by the Court of Appeals and in the event such judgment is not paid in that time, the appellant waives the right to claim any exemptions for property upon which an execution may be issued.

Section 35. Stay of Judgment or Order Pending Appeal.

A. Upon entry of a judgment or order in the Tribal Court, a party may apply to the Court for a stay of the execution of the judgment or order pending appeal of the case. If a timely notice of appeal has been filed, the Court may stay the judgment or order pending the outcome of the appeal or for a lesser time if the Court so desires. The Court may also order in this stay, such terms and conditions as the Court deems proper, including restraining the party from disposing of, encumbering, or concealing his property.

B. In addition to the stay of execution on the judgment or order of the Tribal Court, the Court may order the appellant to file a surety bond in the amount of the judgment, together with any costs including the cost of the appeal, and the attorney's fees or in lieu of such a surety bond, the cash amount of the judgment, costs and any attorney's fees. The surety bond must be executed by at least two (2) sureties who state that they are worth the amount of the judgment, cost and any attorney's fees, over and above their liabilities and expenses, and that if the appellant fails to pay the judgment, costs and attorney's fee in the event of the dismissal or affirmance by the Court of Appeals, within twenty (20) days from the date of the decision of the Court of Appeals, they will pay said amounts. If the appellant can pay

neither the cash deposit as prescribed above or obtain a surety bond, he or she may apply to the Tribal Court for a waiver of the bond, showing in such application the reasons why the appellant cannot comply with either, together with the fact that the appellant has a good and meritorious claim and that to deny him or her an appeal would result in substantial injustice. The Court in its discretion, may waive the surety bond deposit, but may require the appellant to sign an agreement with the respondent listing all his or her property, any liens or money owing on such property, and a promise that if the judgment, costs and attorney's fees are not paid within twenty (20) days after action by the Court of Appeals in dismissing or affirming the judgment of the Tribal Court, that the appellant waives the right to claim exemption on any of his or her property described in a writ of execution issued out of the Tribal Court on the judgment or order in question. If this is not required the appellant may proceed under Section 42 below.

C. If the judgment or order appealed from, directs the sale of perishable property, the Tribal Court may order the property to be sold and the proceeds thereof to be disposed, to await the judgment of the Court of Appeals.

D. No stay of proceedings shall be allowed upon a judgment or order which adjudges the defendant guilty or usurping, or intruding into, or unlawfully holding Tribal office, within the Blackfeet Reservation, or which grants a writ of mandamus, or or prohibition, against a tribunal, corporation, Tribal Officer, or board, commanding certain acts to be done which ought to be done by such tribunal, corporation, Tribal Officer, or board, and not involving the payment of allowance of money or its equivalent.

Section 36. Sureties and Their Responsibility.

A. In cases where a surety bond or undertaking of costs of appeal is required, the sureties shall be liable to the judgment creditor in the event a judgment or order is affirmed or dismissed as to the appellant. If the judgment debtor fails or refuses to pay the judgment, including costs and any attorney fees, the judgment creditor may proceed against sureties in tribal Court upon their undertaking or bond.

B. A party may take exception to the sufficiency of the sureties to any bond or undertaking mentioned in Section 35 above at any time within fifteen (15) days after the filing of such bond or undertaking, and unless they or other sureties, within ten (10) days after service of notice of such exception, justify before a judge of the Tribal Court, or the Clerk thereof, upon five (5) days notice to the other parties of the time and place of justification, execution of the judgment or order appealed from is no longer stayed.

Section 37. The Record on Appeal.

The record on appeal in a civil case shall comply with Section 15 of this Chapter.

Section 38. Transmission of the Record on Appeal.

Transmission of the record on appeal shall comply with Section 16 of this Chapter.

Section 39. Docketing the Appeal-Filing of the Record.

A. Docketing the Appeal. Within the time allowed or fixed for transmission of the record, the appellant shall pay to the Clerk of the Court of Appeals the fee for filing the record on appeal, and the Clerk shall thereupon enter the appeal upon the "Docket of Civil Appeals".

If an appellant is authorized to make an appeal without prepayment of fees, the Clerk shall enter the appeal upon the docket at or before the time of filing the record. An appeal shall be docketed under the title given to the action in the Tribal Court with an appropriate case number and such addition as necessary to indicate the identity of the appellant.

B. Filing of the Record. Upon receipt of the record by the Clerk of the Court of Appeals following its timely transmittal, and after the appeal has been docketed, the Clerk shall file the record. The Clerk shall immediately give notice to all parties of the date on which the record was filed, and give notice of the date and time of the hearing of the appeal which shall not be less than twenty (20) days nor more than thirty (30) days from the docketing of the appeal.

C. Dismissal for failure of Appellant to Cause Timely Transmission or to Docket Appeal. If the appellant fails to cause timely transmission of the record or to pay the filing fee, if a filing fee is required, without having such filing fee waived by the Tribal Court, any respondent may file a motion in the Court of Appeals to dismiss the appeal. The motion shall be supported by a certificate of the Clerk of the Tribal Court showing the date and substance of the judgment or order from which the appeal was taken, the date on which the notice of appeal was filed, and the expiration date of any order extending the time for transmitting the record. The Clerk shall docket the appeal for the purpose of permitting the Court to entertain the motion, without requiring payment of the filing fee, but the appellant shall not be permitted to appear without payment of the fees unless he or she is otherwise exempt from paying the fees. Instead of filing a

motion to dismiss the appeal, the respondent may cause the record to be transmitted and may docket the appeal, in which event the appeal shall proceed as if the appellant has caused it to be docketed.

Section 40. Remedial Powers of the Court of Appeals.

When the judgment or order is reversed or modified, the Court of Appeals may make complete restitution of all property and rights lost by the erroneous judgment or order of the Tribal Court, so far as such restitution is consistent with protection of a purchaser of property at a sale ordered by the judgment, or had process issued upon the judgment, on an appeal from which the proceedings were not stayed; and for relief in such cases the appellant may have his action against the respondent, enforcing the judgment for the proceeds of the sale of the property, after deducting therefrom the expenses of the sale.

Section 41. Action by Clerk of Court of Appeals after Appeal.

When judgment is made upon the appeal, it must be certified by the Clerk of the Court of Appeals to the Clerk of the Tribal Court, from which the appeal is taken. The Clerk of the Tribal Court must then enter the judgment of the Court of Appeals in the Register of Civil Actions, noting properly the action that was taken.

Section 42. Appeals in Forma Pauperis.

A. A party who desires to proceed on appeal but does not have the funds to make the required filing fees, deposits and cannot secure sureties, may file an *informa pauperis* motion asking leave of the Tribal Court to proceed *informa pauperis* together with an affidavit showing in detail his or her inability to pay the fees and costs of the appeal or to give security therefor, his or her belief that he or she is entitled to an appeal, and a statement of the issues to be presented

on appeal. If the motion is granted, the party may be ordered to proceed without costs after signing an agreement set out in Section 35 B. of this Chapter, or the Court may allow the party to proceed without costs without signing such agreement. If the motion is denied, the Tribal Court shall state the reasons for the denial.

B. If the motion for leave to proceed on appeal *informa pauperis* is denied by the Tribal Court, a motion for leave to so proceed may be filed in the Court of Appeals within ten (10) days after the denial by the Tribal Court. The motion shall be accompanied by a copy of the affidavit in the Tribal Court and of the statement of reasons for denial given by the Tribal Court.

Section 43. Briefs.

A. Appellant. The appellant may file a brief in support of the appeal or may be required by an order of the Court of Appeals to file such brief. In either case, the brief must be filed within fifteen (15) days after the docketing of the appeal, unless the Court provides otherwise. The brief of the appellant shall contain:

- (1) The correct title of the case and the appeals case number;
- (2) A brief statement of the case, including the appeal;
- (3) An argument in support of the grounds of the appeal;
- (4) A short conclusion stating the precise relief sought.

B. Respondent. The respondent may respond to the brief of the appellant either by the choice or by the order of the Court of Appeals. The respondent's brief shall conform to subsection A above with the exception that the respondent need not include a statement of the appellant.

C. Reply Brief. The appellant may file a brief in reply to the brief of the respondent, but such brief must be confined only to new matter raised in respondent's brief. No further briefs may be filed without leave of the Court.

D. Time for Filing. Unless otherwise ordered by the Court of Appeals, the time for filing briefs referred to above shall be:

(1) Appellant's brief: Fifteen (15) days after the docketing of the appeal;

(2) Respondent's brief: Ten (10) days after the docketing of appellant's brief;

(3) Reply brief: Five (5) days after receipt of respondent's brief.

E. Service. Each party filing a brief as out out in subsections A through C above, shall cause a copy of the brief to be served upon all the other parties of record. This service may be by mail or by personal service, and shall be made at the same time or as soon thereafter as possible as the filing of the brief with the Clerk of the Court of Appeals.

F. Length of Brief. No brief filed in the Court of Appeals may exceed twenty-five (25) pages in length if typewritten, and thirty-five (35) pages if handwritten.

G. Filing. All briefs referred to above, shall be filed with the Clerk of the Court of Appeals, who shall note the date of filing the Docket of Civil Appeals and then send such brief to the Chief Justice of the Court of Appeals.

Section 44. Pre-Hearing Conference.

The Chief Judge of the Court of Appeals or another Justice sitting on the case may direct the parties or their counselors to appear before the Court or a Justice thereof for a pre-hearing conference to consider the simplification of the issues and such other matters as may aid in the proceedings. The Justice shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issue to those not disposed of by admission or agreements of the parties or counsel, and such order when entered controls the subsequent course of the proceedings, unless modified to prevent manifest injustice.

Section 45. Oral Argument.

Upon notification of the hearing of the appeal as set out in Section 39 B above, the appellant and the respondent shall be prepared to make oral arguments before the Court of Appeals at the date and time specified. The appellant shall be allowed thirty (30) minutes to present oral argument and the respondent shall be allowed the same time. The appellant is entitled to open and close the argument and should divide the time allotted accordingly. The opening argument shall include a fair statement of the case, and the closing argument shall be limited to the parties, they shall not be allowed to read at length from briefs, records or authorities. At the conclusion of the oral arguments, either party or counsel may be questioned by the presiding Justices. If a party or his counsel fails to appear for oral argument, the Court will hear the argument of the party who is present and the case will be decided upon the briefs, if any, the oral argument made and the notice and record of appeal.

Section 46. Decision on Appeal-Time.

At the conclusion of oral argument, the Court of Appeals shall have not more than fifteen (15) days to make a decision in the case, reviewing the notice of appeal, the record on appeal, briefs of any party timely filed, motions and any other paper property filed and before the Court for its decision. The decision shall be in writing and shall be served upon all parties of record, and shall be certified and served upon the Clerk of the Tribal Court for appropriate action.

Section 47. Interest of Judgments.

If a judgment for money in a civil case is affirmed, interest at the rate of seven percent (7%) per annum shall be payable from the date the judgment was rendered or made in the Tribal Court. If a judgment is modified or reversed with a direction that order shall contain instructions with respect to allowance of interest.

Section 48. Damages for Appeal without Merit.

If the Court of Appeals is satisfied from the record and the presentation of the appeal, that the appeal was without substantial or reasonable grounds, but apparently for purposes of delay only, it may assess damages against the appellant as are deemed proper in the judgment of the Court.

Section 49. Costs on Appeal.

A. Filing Fee. There is a Ten Dollar (\$10.00) filing fee to file a notice of a appeal in the Tribal Court. This fee must be paid to the Clerk of the Tribal Court, unless waived as provide under this Chapter.

B. Other costs. Costs incurred in the preparation and transmission of record, the cost of a transcript if necessary for determination of the appeal, the premiums paid for surety bonds or an

undertaking, together with the cost of filing the notice of appeal shall be considered costs on appeal and may be assessed against the losing party.

C. The cost of transmission of the record on appeal is Five Dollars (\$5.00), but may be waived as provided under this Chapter under an application of in forma pauperis. Such fee shall be paid to the Clerk of the Tribal Court.

Section 50. Petition for hearing.

When, in appeals or special proceedings, it is ordered that judgment issue immediately, no petition of rehearing will be entertained. In all other cases a petition for rehearing may be filed within ten (10) days after the decision of the Court of Appeals has been rendered, unless the time is shortened or enlarged by order, and the adverse party shall have seven (7) days thereafter in which to serve and file his objections thereto. Extensions of time will be granted only upon showing of unusual merit, and in no event in excess of ten (10) days. A petition for rehearing may be presented upon the following grounds and not other: That some fact, material to the decision, or some question decisive of the case was overlooked by the Court, or that the decision to which the attention of the Court was not directed. Oral argument in support of the petition will not be permitted. Six (6) copies of the petition and six (6) copies of the objections thereto, shall be filed with the Clerk of the Court of Appeals.

Section 51. Voluntary Dismissal.

If the parties to an appeal or other proceeding shall sign and file with the Clerk of the Court of Appeals an agreement that the

proceeding be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the Clerk shall enter the case dismissed, and shall give to each party a copy of the agreement filed. An appeal may be dismissed on motion of the appellant upon such terms as to costs as may be agreed upon by the parties or fixed by the Court. If an appeal has not been docketed the appeal may be dismissed by the Tribal Court upon the filing in that Court upon motion and notice by the appellant.

Section 52. Substitution of parties.

A. Death of party. If a party dies after a notice of appeal is filed or while a proceeding is pending in the Court of Appeals, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the Clerk of the Court of Appeals. The motion of party shall be served upon the days after the motion is filed. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the Court of Appeals may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the Tribal Court but before a notice of appeal is filed, and appellant may proceed as if death had not occurred. After the notice of appeal is filed substitution shall be made in accordance with this Section. If a party against whom an appeal may be taken dies after entry of a judgment or order in the Tribal Court but before a notice of appeal is filed, and appellant may proceed as if death had not occurred. After the notice of appeal is filed substitution shall be made in accordance with this Section. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be

filed by his or her personal representative, or, if he or she has no personal representative, by his or her counsel of record within the time set up in the Chapter, Part III.

B. Other reasons. If substitution of a party in the Court of Appeals is necessary for any reason other than death. It shall be accomplished in the same manner as set out in subsection A of this section.

C. Public officials. When a public officer, including any Tribal Officer, is a party to an appeal or other proceeding in the Court of Appeals in his or her official capacity and during the pendency of the appeal, dies, resigns or otherwise ceases to hold office, the action does not abate and his or her successor is automatically substituted as a party.

Section 53. Appeals from Injunction Order.

Upon appeal from an order dissolving or refusing an injunction, if the appellant desires to continue in force the injunction order dissolved by the Tribal Court, or to obtain such injunction order pending the appeal, he shall apply to the Tribal Court under Chapter 9, Rule 36, of the Rules of Procedure in this Code. In the event the relief there requested be not granted he may file in the Court of Appeals his sworn application, setting forth the proceedings appeal from and the relief desired, and present with it to the Court of Appeals, a verified copy of the affidavits or evidence used on the hearing in the Tribal Court. Such application will be heard ex parte and without argument, and the Court, upon such record will make such order as it deems proper.

(PASSED BY THE BLACKFEET TRIBAL COUNCIL, APRIL 20, 1974, ORDINANCE

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