

CHAPTER IV RULES OF APPELLATE PROCEDURE

Section 1

Court of Appeals

There is hereby created a Court of Appeals consisting of one Trial Judge who did not originally hear the case. It shall be the duty of the Court of Appeals to hear appeals from the judgments or sentences of the Shoshone Bannock Trial Court.

Section 2

Jurisdiction

The Court of Appeals shall have jurisdiction to review final orders, commitments and judgments of the Shoshone Bannock Tribal Court, Trial Division.

The Court of Appeals shall also have jurisdiction to review interlocutory orders, decrees or judgments of the Shoshone Bannock Tribal Court, Trial Division.

When a trial judge, in making an order, decree or judgment not otherwise appealable as a final order under this Section, shall be of the opinion that such order, decree or judgment involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter, he shall so state in writing such order. The Court of Appeals may thereupon, in its discretion, permit an appeal to be taken from such order, decree or judgment, if application is made to it within ten (10) days after the entry of the order, decree or judgment: Provided, however, That application for an appeal hereunder shall not stay proceedings in the trial court unless the trial judge or the Court of Appeals shall so order.

Section 3

Trial De Novo - Right to Jury

On appeal, each case shall be tried anew. Any party to an appeal shall be entitled to have the appeal heard by a jury. All requests by the appellant for a jury-heard appeal must be submitted to the Clerk of the Court at the time the appeal is filed. Requests for a jury made by the respondent must be filed within five (5) days after being served with a notice of appeal. Failure of either party to comply with the time restrictions in this Section shall constitute a waiver of the right of that party to a jury in the Court of Appeals.

Matters and procedures pertaining to trials by juries in the Trial Division found in other portions of this Code shall also apply to those same matters and procedures pertaining to juries in the Court of Appeals.

Section 4

Criminal Appeals

In a criminal appeal the Court of Appeals may affirm, reverse or modify any judgment, sentence or any other order of the trial court, but may not increase the sentence thereof. The Court of Appeals may also order a new trial or rehearing with specific instructions to the trial court.

Section 5

Civil Appeals

In civil appeals the Court of Appeals may affirm, reverse or modify any judgment, decree or order of the trial court and may order a new trial or a rehearing with specific instructions as the circumstances may deem just, or may order the entry of an appropriate order, judgment or decree.

Section 6

Term of Court of Appeals

If the business of the Court of Appeals requires, the Court shall hold at least four terms a year at the seat of the Tribal government, or other location if the Court so orders, to begin on the first Monday of February, May, August and November unless any such day is a legal holiday, in which case the term shall commence on the next working day that is not a legal holiday. The Court of Appeals may change or reschedule the days of its term in its discretion. The Court shall dispose of all appeals on the docket for hearing before it ends the term.

Section 7

Right of Appeal

Any party who is aggrieved by any final order, judgment or decree of the trial court may appeal in the manner prescribed by this Chapter. The Tribe shall have no right of appeal from a jury verdict of "Not Guilty" in criminal cases.

Section 8

Procedure on Appeal

(a) Time and Manner of Appeal

An appeal must be taken within twenty (20) days, excluding weekends and holidays, from the filing of the order, judgment or decree appealed from. No extensions of this period shall be granted. A party must appeal by filing a written Notice of Appeal, together with the filing fee, with the Clerk of the Court along with the requisite bond provided for by this Chapter.

(b) Notice of Appeal

The Notice of Appeal shall specify the parties taking the appeal and shall designate the order, judgment or decree, or part thereof, appealed from. The Clerk of the Court shall cause a copy of the Notice of Appeal to be served on all parties and shall set the matter for hearing before the Court

of Appeals. The Clerk shall also give adequate notice of the time and place set for the Appeals hearing.

(c) Designation of Parties

The party taking the appeal shall be designated the Appellant. All other parties shall be designated as Respondents.

(d) Bond on Appeal

In criminal cases, the right of the person to have his fine held in abeyance and suspended pending the appeal shall be contingent upon that person's depositing with the Notice of Appeal an amount which is, in the presiding Trial Judge's opinion, sufficient to ensure that the fine will be satisfied if the Court of Appeals affirms or reduces the judgment of the Trial Court. Said bond shall not exceed the amount of the fine imposed by the Trial Court and no bond shall be required of any defendant where no fine was imposed by the Trial Court.

In civil cases, the party taking the appeal shall deposit with the Notice of Appeal a bond in an amount sufficient in the opinion of the presiding Trial Judge, to guarantee the satisfaction or performance of the judgment appealed from, together with costs, interest and damages as the Court of Appeals may award.

Section 9

Stay on Appeal

Unless otherwise provided in this Chapter, in any case where an appeal is perfected in accordance with the provisions of this Chapter, the order, commitment, judgment or decree of the trial court shall be stayed pending the appeal, provided the appellant posts such bond as may be required by the trial court in accordance with the provisions of this Chapter.

Section 10

Finality of Decisions

Unless by virtue of other provisions of this Code, Federal regulations or legislation there exists further remedies in the Department of the Interior, in Federal Court or Tribal Court, any judgment or decision of the Court of Appeals shall be final.

Section 11

Subpoena of Witnesses and Records

The Court of Appeals shall have all the authority vested by this Code in the trial court, including authority to issue subpoenas to compel the attendance of witnesses or the production of books, records, documents or other things necessary to the final disposition of the case on appeal. Witnesses

before the Court shall not be compensated unless specific authorization for such is provided in this Code for hearings before the trial court.

Section 12

Record of the Trial Court

Within five (5) days after the appeal has been perfected, the Clerk of the Court shall notify the presiding Judge of the Court of Appeals and thereby certify that such appeal has been perfected. At the request of the presiding Judge of the Court of Appeals the Clerk shall forward the file comprising the complete record of the trial court to said judge for review.

Section 13

Transcript of Record

At the request of the Court of Appeals, the Chief Court Clerk shall cause to be transcribed the record of the case being appealed and shall submit said transcript to the presiding Judge thereof.

Section 14

Clerk

The Chief Court Clerk of the Shoshone Bannock Tribal Court shall serve as the Clerk of the Court of Appeals and perform all the duties of that office. Said Clerk may appoint another duly qualified court clerk to serve in that position.

Section 15

Rehearing

1. Authority

The Court of Appeals may exercise its inherent power to rehear a matter previously before it. In exercising this authority the rules of this Section must be complied with.

2. Time of Filing - Fee

Petitions for rehearing must be physically filed with the Clerk of the Court, together with the filing fee, within fifteen (15) days after the filing date of the Court of Appeals' opinion, order or decree, and must be served upon all parties to the appeal or proceeding by the Petitioner. No extensions of this time period will be granted.

3. Form

The petition must be typewritten and legible. In addition to requesting a rehearing, the petition will briefly and distinctly state its grounds. The petition must also contain a certificate of petitioner certifying that this petition is presented in good faith and not for delay.

4. Briefs on the Petition

A brief or memorandum in support of the petition may be filed by the petitioner. If a brief or memorandum is filed, it must be physically filed with the Clerk of the Court within ten (10) days of the filing date of the petition and petitioner must serve a copy thereof upon all parties to the appeal or proceeding.

5. Response to Petition

No response to a petition for rehearing will be received unless required by the Court of Appeals, but no petition will be granted without an opportunity to submit a response.

6. Oral Argument on Petition

A petition for rehearing is not subject to oral argument except at the instance of the Court of Appeals.

7. Rehearing - Notice

If a rehearing is granted it shall be by written order of the Court of Appeals which shall be served by the Clerk thereof upon all parties to the appeal or proceeding. The order may limit the issues to be addressed at the rehearing and may require that all testimony be limited to addressing said issues, or may otherwise direct the format of the rehearing.

The order shall further direct the Clerk of the Court to schedule, without undue delay, a place and time for the rehearing, and to properly notify all parties to the appeal or proceeding thereof.

8. Stay of Order

The filing of a Petition for rehearing will not stay the execution of the opinion, order, decree or judgment of the Court of Appeals unless that Court so orders.

9. Modification

If, after rehearing, the opinion, order or decree of the Court of Appeals is modified thereby, the aggrieved party may physically file another petition for rehearing pursuant to the same rules and procedures outlined in this Section.

10. Discretion of Court of Appeals

The decision to grant or deny a rehearing under this Section shall be discretionary with the Court of Appeals.