

TITLE 1 – GENERAL PROVISIONS

CHAPTER 1-16 COURT OF APPEALS

1-16-00 ESTABLISHMENT AND JURISDICTION

1-16-01 Creation of Court of Appeals

There is hereby created the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians' (Tribes) Court of Appeals.

1-16-02 Jurisdiction of Court of Appeals

The jurisdiction of the Court of Appeals shall extend to all appeals from final orders and judgments of the Tribal Court (Court), and appeals of final administrative decisions where a provision of this Code expressly vests such jurisdiction in the Court of Appeals. The Court of Appeals shall review de novo all determinations of the Tribal Court on matters of law, but shall not set aside any factual determinations of the Tribal Court if such determinations are supported by substantial evidence. The Court of Appeals shall have jurisdiction:

- (a) to take all necessary steps to preserve and protect the jurisdiction of the Court;
- (b) during the pendency of any criminal appeal, to release the appellant on his own recognizance or on bail; and
- (c) to make any order appropriate to preserve the status quo or to protect any ultimate judgment of the Court of Appeals.

1-16-10 COURT OF APPEALS JUDGES

1-16-11 Composition of Court of Appeals

The Tribal Council shall appoint a Chief Justice and two (2) Associate Justices to the Court of Appeals, none of whom shall be judges of the Tribal Court.

1-16-12 Compensation of Appellate Court Judges

The Appellate Court Justices' duties may be part-time. Appellate Court Justices shall be compensated by an hourly, per case or salary basis, as established by contract with the Tribes and executed by the Chairman. No Appellate Court judge's salary shall be diminished during the term of the judge's office.

1-16-13 Appointment of Appellate Court Judges

- (a) Appellate Court Justices shall be appointed by a majority of a quorum of the Tribal Council for a term of two (2) years and shall be eligible for reappointment. A vacancy shall be filled by appointment by a majority of a quorum of the Tribal Council for the balance of the unexpired term.
- (b) A person shall be eligible to serve as an Appellate Court judge only if the person has never been convicted of a felony, serious tribal crime, or misdemeanor within one (1) year of appointment, with the exception of minor traffic violations.
- (c) No Appellate Court Justice shall be qualified to preside in any case where he or she has any direct, personal interest, or where he or she is prejudiced for or against any of the parties in the action. Nor shall any Appellate Court judge be qualified to act in any case where any relative by marriage or blood in the first (1<sup>st</sup>) or second (2<sup>nd</sup>) degree is a party unless all parties to the action waive this provision.
- (d) All Appellate Court Justices shall protect and preserve the high standards of the Tribal judiciary and shall abide by the Model Canons of Judicial Ethics of the American Bar Association.
- (e) Appellate Court Justices shall, at a minimum, hold a Doctor of Jurisprudence from an accredited law school in the United States, and have three (3) years' experience as a practicing attorney with experience in Indian Law, or have served for at least one (1) year as a trial or appellate court judge for an American Indian Tribe.

1-16-14 Removal of Appellate Court Judges

An Appellate Court judge may be suspended, dismissed or removed for cause by the Tribal Council. Cause shall be defined as malfeasance in office, corruption, neglect of duty, or conviction of a felony or misdemeanor, excluding minor traffic violations. An Appellate Court judge charged by a majority of a quorum of the Tribal Council with conduct constituting cause for suspension, dismissal or removal shall be given personal written notice of the basis for the charge and be given adequate time to prepare a defense. The Appellate Court judge shall then be given a full hearing before the Tribal Council with an adequate opportunity to present a defense, including the production of witnesses and other evidence in the judge's behalf and an opportunity to cross-examine witnesses against the charged judge. An affirmative majority vote of all members of the Tribal Council is necessary to suspend, dismiss, or remove an Appellate Court judge from office.

1-16-15 Decision by Panel of Three Judges

Each party to a proceeding is entitled to have his or her appeal decided by the entire three- (3) judge Court of Appeals unless one (1) or more judges are unavailable due to

relationship to the parties, other conflict of interest or vacancy on the court. In such circumstances, the appeal shall be decided by the remaining justice or justices.

#### 1-16-20 COURT OF APPEALS ADMINISTRATION

##### 1-16-21 Rules for Court of Appeals.

The judges of the Court of Appeals, or the Chief Justice thereof, shall prescribe all necessary rules concerning:

- (a) The operation of the Court of Appeals.
- (b) The time and place of meeting of the Court of Appeals.

The rules shall be approved by the Tribal Council prior to becoming effective and shall be consistent with the provisions of this Code.

##### 1-16-22 Decisions of the Court

- (a) The Court of Appeals shall render decisions in writing.
- (b) The appellate decision shall cite the legal basis for the determination, as well as clearly outline the reasons in support of the decision.
- (c) The appellate decision must be agreed upon by a majority of the judges on the panel.
- (d) A dissenting judge may write and submit a dissenting opinion, if so desired. However, a dissenting opinion shall carry any precedential weight.

##### 1-16-23 Records of Court of Appeals

- (a) The Court of Appeals shall keep a record of all proceedings of the Court, showing the title of the case, the name and addresses of all parties and attorneys, the briefs, the date of any oral argument, the names of the justices who heard and decided the case, and the judgment, together with any other facts and circumstances deemed of importance to the case. Unless specifically excepted by this Code or Rule of Court, all decisions and opinions of the Court shall be published in a format that shall be available to the public at the Tribal Office.
- (b) In the event that an appeal is taken from a confidential matter, the record on appeal shall remain confidential and shall not be open to public inspection. Any written opinion in a confidential matter shall have the names of the parties redacted and

replaced with an initial, prior to publication, and shall be available for public inspection in redacted form.

## 1-16-30 REPRESENTATION AND ADMISSION

### 1-16-31 Representation Policy

Every person appearing as a party before the Tribal Appellate Court has a right to be represented, at the person's own expense, by an attorney or other person admitted to practice before the Court.

### 1-16-32 Admission to Practice in Tribal Appellate Court

Attorneys and non-attorney advocates shall be admitted to practice before the Tribal Appellate Court as provided in CTCLUSITC 1-1-60 et. seq.

## 1-16-40 RULES OF APPELLATE PROCEDURE

### 1-16-41 Scope of Rules

(a) These Rules govern procedure in appeals to the Tribes' Court of Appeals ("Appellate Court") from any final judgment of the Tribes' Tribal Court. These rules may be supplemented by Rules promulgated by the Court of Appeals.

(b) Any procedure, issue, question or other matter not covered by these Rules or by Rules promulgated by the Court shall be governed by the Federal Rules of Appellate Procedure.

### 1-16-42 Right of Appeal

(a) Any aggrieved party may appeal from a final judgment of the Tribal Court. A final judgment is one that disposes of all issues in the case.

(b) Failure to file an appeal within the time limits imposed by Section **1-16-43** shall result in the automatic dismissal of the appeal.

(c) Failure to follow any procedure required by these Rules, other than the timely filing of a notice of appeal, shall not affect the validity of the appeal, but is grounds for such action as the Appellate Court deems appropriate, which may include dismissal of the appeal.

(d) Appeals may be consolidated by order of the Appellate Court upon its own motion, or upon motion of a party, or by stipulation of the parties to the several appeals.

1-16-43 The Notice of Appeal

(a) A notice of appeal in a civil case shall be filed within thirty (30) days of the filing of the final judgment of the Tribal Court. In a civil case, notice of the judgment shall be deemed to have issued when judgment is filed with the Tribal Court Clerk. The Tribal Court Clerk shall, on the same day that judgment is issued, send a copy of the judgment to each party or attorney of record.

(b) A notice of appeal in a criminal case shall be filed within thirty (30) days of the date sentence is pronounced, or from the date of any subsequent order of the court that substantially affects the rights of the parties.

(c) The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment or order of the trial court appealed from, and shall be signed by the appealing party or counsel.

(d) The notice of appeal shall be filed in triplicate with the Tribal Court Clerk accompanied by a certification that a copy has been served upon each party or attorney of record. The Tribal Court Clerk shall endorse on the Notice, the date and time of filing, shall docket the appeal, and send one (1) copy to the chief judge of the Tribal Court.

1-16-44 Costs and Fees

(a) At the time of filing the notice of appeal in a civil matter, which shall include violations, the appellant shall submit to the Tribal Court Clerk a filing fee in the sum of \$100.

(b) If a party is indigent and desires to appeal, that party may file a notice of appeal accompanied by a statement under oath reciting facts demonstrating the inability to pay the filing fee. Under these circumstances, the filing fee will be waived.

(c) There shall be no charge for the filing of an appeal in a criminal matter.

1-16-45 The Record on Appeal

(a) The record on appeal shall consist of the original papers and exhibits filed in the Tribal Court, the docket entries, and the transcript of proceedings, if any. Any party to the appeal shall request from the Tribal Court Clerk a transcript of such parts of the proceedings deemed necessary for the appeal, within fifteen (15) days of the filing of the Notice of Appeal. The requesting party in a civil action shall pay for the costs of the copy of the transcript. In a criminal action, the transcript shall be provided at no charge, upon request of either party.

(b) The Clerk of the Tribal Court shall prepare and file with the Court of Appeals, the original and three (3) copies of the Record on Appeal within fifteen (15) days of receipt of the request for transcript. If it is necessary to transcribe testimony and court proceedings, the Clerk may request an extension of up to an additional fifteen (15) days, to file the Record on Appeal.

(c) The Clerk of the Tribal Court shall serve one (1) copy of the Record on Appeal on each party to the appeal, simultaneously with the filing of the record.

1-16-46 The Briefs and Motion Papers - General Provisions

(a) Briefs and all motions shall be printed or typewritten, with double-spaced typing, on white 8½" by 11" paper.

(b) An original and four (4) copies of each brief, any appendix, and any motions shall be filed with the Tribal Court Clerk, accompanied by a certificate of service upon all parties or attorneys of record.

(c) The front cover of each brief and appendix, if a separate document, shall contain the title of the case, the case number, the title of the document (e.g., Brief of Appellant, Brief of Respondent, Appendix); and the name, address, and telephone number of the party's attorney, if any, or the party if not represented.

(d) The brief of the appellant shall not exceed thirty (30) pages and shall be filed within thirty (30) days after the filing of the Record on appeal.

(e) The brief of the Respondent shall not exceed thirty (30) pages and shall be filed within thirty (30) days after the filing of the appellant's brief.

(f) The appellant may file a reply brief, not to exceed fifteen (15) pages, within fifteen (15) days after the filing the Respondent's brief.

(g) Where cases are consolidated, or a joint appeal has been filed, the briefs of each the appellants and that of each of the respondents shall not exceed the page limitations specified above.

1-16-47 Contents of the Briefs

The briefs shall contain under appropriate headings and in the order indicated:

(a) A table of contents with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited;

(b) A statement of the nature of the proceedings and of the facts of the case;

- (c) A list or statement of the issues presented for review;
- (d) The argument, divided under appropriate headings into as many parts as there are points to be presented;
- (e) A short conclusion stating the precise relief sought.

1-16-48 Appendices

No appendix is required. However, an appendix may be used to excerpt lengthy exhibits or quotations from transcripts or to set forth any other parts of the record to which the parties wish to direct the particular attention to the Appellate Court.

1-16-49 Oral Argument Not Automatic

- (a) Any party to the appeal may request oral argument in writing, filed within ten (10) days of the filing of the Reply Brief, or within ten (10) days of the due date of the Reply Brief, if none is filed.
- (b) If no party requests oral argument, the Court may set oral argument on its own motion, or decide the case on the record and briefs submitted.

1-16-50 Oral Argument

- (a) Oral argument will be heard en banc by the Court. The hearing may be conducted in person or by telephone or computer assisted conference.
- (b) The attorney for the appellant will be entitled to open and close the argument.
- (c) The time occupied in the argument shall not, without leave of the Appellate Court, exceed one-half (1/2) hour on each side, including closing argument by the appellant.
- (d) The allotted time shall include time spent answering questions of the Court.

1-16-51 Motions

- (a) Once an appeal has been filed, the time provided for taking any step necessary to prosecute or defend the appeal may be extended by the Chief Appellate Court Judge or his designee.
- (b) Extensions shall be granted only upon written motion filed with the Appellate Court Clerk. The motion shall specify the reason for the requested extension and shall also include a statement as to whether the opposing party consents or objects to the motion. Extensions are not favored and shall be granted only upon a showing of good cause.

(c) An opposing party who objects to a motion shall file with the Tribal Court Clerk an objection with reasons in support thereof within seven (7) days from the filing of the motion.

1-16-52 Decisions on Appeal

Decision of the Appellate Court shall be issued within forty-five (45) days from the date of oral argument.

1-16-53 General Provisions

(a) Filing

To be timely filed, documents must be received by the Tribal Court Clerk by the close of business on the date of the filing deadline.

(b) Service of Papers Required

All papers filed with the Tribal Court Clerk shall contain a certification that a copy has been served on all other parties. Service on a party represented by counsel shall be made on counsel.

(c) Manner of Service

Service may be personal or by mail. Service by mail is complete upon mailing, but shall extend the time of filing any responsive paper by five (5) days.

(d) Day

Means a calendar day. When an action is required on a day when the office of the Tribal Court Clerk is not open, the required action is due on the next day that the office of the Tribal Court Clerk is first open for business.

APPENDIX A

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

COURT OF APPEALS

**LEGISLATIVE HISTORY AND EDITORIAL CHANGES**

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the Court of Appeals Ordinance, Resolution No. 07-022, Ordinance No. 080, at a regular Tribal Council meeting on March 11, 2007. Vote was 7 (for), 0 (against), and 0 (abstaining).

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians approved the Court of Appeals Ordinance, Resolution No. 07-005, Ordinance No. 080, at a regular Tribal Council meeting on January 14, 2007. Vote was 6 (for), 0 (against), and 0 (abstaining).