

Title 3 – Tribal Court
Chapter 4 – Rules of Appellate Procedure

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Legislative History

Enacted:

Rules of Appellate Procedure, Ord. 191 (10/24/03), BIA (11/7/03).

Repealed or Superseded:

Amendment to Ord. 32 (Article III - Court of Appeals), Ord. 94 (5/5/92), BIA (5/15/92).

Swinomish Law and Order Code, Ord. 32 (Article III) (3/4/75), BIA (5/30/75).

The Swinomish Law and Order Ordinance, Ord. 7 (3/23/38), BIA (3/24/38).

Approving adoption of Swinomish Law and Order Code, Ord. 1 (no date).

[Ed. Note. Ordinance 1 is undated and adopts the Law and Order Regulations approved by the Secretary of the Interior on November 27, 1935 as part of the fundamental law governing the Swinomish Reservation. The referenced “regulations” are not located in tribal records.]

3-04.010 Title.

This Chapter shall be known and may be cited as the “Swinomish Rules of Appellate Procedure.”

[History] Ord. 191 (11/7/03).

3-04.020 Authority.

This Chapter is enacted pursuant to authority provided by Article VI, Section 1(b), (i), (k), (l), (o), (p), (r) and (s), and Article VI, Section 3 of the Swinomish Constitution.

[History] Ord. 191 (11/7/03).

3-04.030 Definitions.

- (A) **“Court of Appeals”** or **“Appellate Court”** means the Swinomish Tribal Court of Appeals.
- (B) **“Person”** means any natural person, corporation, trust, unincorporated association, partnership, and federal, state or local governments, agencies or subdivisions thereof.
- (C) **“Police,” “tribal police”** and **“officer”** means qualified tribal police personnel or police officers of the Bureau of Indian Affairs as established in Title 2 of the Swinomish Tribal Code.
- (D) **“Reservation”** means all the lands and waters within the exterior boundaries of the Swinomish Indian Reservation.
- (E) **“Senate”** means the Swinomish Indian Senate, the governing body of the Swinomish Indian Tribal Community.
- (F) **“Tribe”** or **“Tribal Community”** means the Swinomish Indian Tribal Community, a federally recognized Indian Tribe organized pursuant to Section Sixteen of the Indian Reorganization Act of 1934.
- (G) **“Tribal Court”** or **“Court”** or **“trial court”** means the Swinomish Tribal Court.

[History] Ord. 191 (11/7/03).

3-04.040 Notice of Appeal.

- (A) A party may initiate an appeal by filing a written Notice of Appeal with the tribal court clerk within fifteen (15) days of the trial court ruling being appealed.
- (B) The Notice may be in a form provided by the Tribal Court, but must be a written notice that states the name of the case and indicates the party’s intention to appeal and the specific ruling being appealed. A Notice should only be filed if the appeal satisfies the grounds for Court of Appeals jurisdiction, as set forth in Chapter 1 of this Title.
- (C) A Notice of Appeal shall be entitled as such and shall:
 - (1) Name the parties and their spokespersons, if any;
 - (2) State the case number, date and nature of the decision appealed from;

- (3) Specify those parts of the decision that the party wants reviewed; and
- (4) List each error of law or procedure that the appellant claims the Swinomish Tribal Court committed and its effect on the outcome of the case.

[History] Ord. 191 (11/7/03); Ord. 94 (5/5/92).

3-04.050 Filing and Service.

- (A) **Filing.** All papers required or permitted to be filed in the Court of Appeals shall be filed with the clerk of the court. Filing may be accomplished by mail, addressed to the clerk, but filing shall not be timely unless the papers are received by the clerk within the time fixed for filing.
- (B) **Service.** Copies of all papers filed by any party shall, at or before the time of filing, be served by the party or person acting for the party on all other parties to the appeal or their counsel. Service may be personal or by mail. Personal service includes delivery of the copy to the clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.
- (C) **Proof of Service.** Papers presented for filing shall contain an acknowledgement of service by the person served or by proof of service in the form of a statement of the date and manner of service and the name of the person served, signed by the person who made service. The clerk may permit papers to be filed without acknowledgement or proof of service, but shall require the acknowledgement or proof of service to be filed within five (5) days thereafter.

[History] Ord. 191 (11/7/03); Ord. 94 (5/5/92).

3-04.060 Bond on Appeal; Stay of Execution of Judgment.

(A) **Criminal Cases.**

- (1) Matters regarding bonds in criminal appeals shall be determined pursuant to the Rules of Criminal Procedure or court rules adopted thereunder.
- (2) Modification and disposition of all criminal appeal bonds, whether posted pursuant to an order of the trial court or an order of the Court of Appeals, shall be determined by the Court of Appeals pursuant to the Rules of Criminal Procedure or court rules adopted thereunder.

(B) **Civil Cases.**

- (1) **Stay of enforcement of judgment.** The appellant in any case may request, and the trial court may grant, a stay of execution of the judgment pending the appeal. Except when the appellant is the Tribe or any of its subdivisions, agents, enterprises, or officers acting in their official capacity, the court may require as a condition to the granting of such a stay that the appellant post a bond in such amount as will compensate the appellee for any damages

occurring as a result of the stay, and/or guarantee control by the court of sufficient assets of the appellant to satisfy the judgment in the event the judgment is affirmed.

- (2) **Cost bond.** Except when the appellant is the Tribe or any of its subdivisions, agents, enterprises, or officers acting in their official capacity, the trial court may require that the appellant post a cost bond in an amount that will secure the costs of appeal in the event the appeal is dismissed or the judgment affirmed, or that will secure such costs as the Court of Appeals may direct if the judgment is modified.
- (3) **Disposition of bond.** After the Court of Appeals has issued its opinion, it shall, upon the motion of any party or upon its own motion, order such disposition of any appeal bond which may have been posted as it deems just and consistent.
- (4) **Surety.** 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 Swinomish Tribal Court and irrevocably appoints the Clerk of the 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. Upon receipt of any notice of such motion, the Clerk of the Court shall forthwith mail copies to the sureties if their addresses are known.

[History] Ord. 191 (11/7/03); Ord. 94 (5/5/92).

3-04.070 Record on Appeal.

- (A) Within five (5) days after the filing of the notice of appeal, the appellant shall request that the court reporter(s) or transcriber(s) prepare the transcript. Thereupon, each court reporter or transcriber shall promptly prepare the transcript.
- (B) The parties may stipulate with the approval of the trial court, or the trial court may order on the motion of a party, that the tape recording of the trial court proceedings may be sent to the Court of Appeals without transcription. The Court of Appeals, however, may independently order a transcription of the tape at appellant's expense if, in its discretion, it determines that a transcription is required for a fair and just determination of the appeal.
- (C) Instead of using the record of proceedings in the trial court, the parties may prepare and sign an agreed statement or designation as to the record on appeal. An agreed statement shall show how the issues presented by the appeal arose and were decided in the trial court, setting forth only so much of the facts averred and proved or thought to be proved as are essential to a decision of the issues presented. Notice that a statement is being prepared shall be served promptly on the trial court and the appropriate court reporter(s) and transcriber(s). The agreed statement shall be submitted for the trial court's approval within twenty (20) days of filing the notice of

appeal. The trial court may make such additions as it considers necessary to present the appeal fully and accurately.

- (D) Unless otherwise indicated by stipulation or designation of the parties or action of the trial court or the Court of Appeals, the record on appeal shall consist of the originals of all materials and exhibits in the file of the trial court and the transcript.
- (E) Within forty-five (45) days of the filing of the notice of appeal, the trial court and the court reporter(s) or transcriber(s) shall prepare the record, including any transcripts, certify that it is true, correct, and complete as ordered, and transmit it to the Court of Appeals. Prior to the end of the forty-five (45) day period, the appellant shall pay to the Clerk of the Court the fees determined by Rule of Court for any transcripts. Unless waived by the Court due to the indigency of the appellant, failure of the appellant to pay the required fees for the transcript within the thirty (30) day period shall result in dismissal of the appeal.
- (F) Upon filing of the record, the Court of Appeals shall forthwith notify the parties in writing of the date of its filing and the schedule for the filing of briefs.

[History] Ord. 191 (11/7/03); Ord. 94 (5/5/92).

3-04.080 Appellate Briefs.

- (A) **Time.** The appellant's brief shall be filed within twenty (20) days after the service on the parties by the Court of Appeals of notice of the filing of the record of proceedings or the denial of a motion for a new trial, whichever is later. The appellee's brief shall be filed within twenty (20) days after service of the appellant's brief on appellee. No reply briefs shall be filed unless authorized by the Court of Appeals.
- (B) **Length.** Briefs shall not exceed fifteen (15) pages in length exclusive of any appendix, except by order of the court for good cause shown. Briefs that are not clearly legible may be stricken by the Court of Appeals.
- (C) **Contents.**
 - (1) The appellant's brief shall include:
 - (a) A short statement of the case, including such facts as are material to the issues presented on appeal, with appropriate references to the record;
 - (b) A concise argument containing the contentions of the party, the reasons therefor, and necessary supporting citations; and
 - (c) A short conclusion stating the precise relief sought.
 - (2) The appellee's brief shall be of like character and arrangement as that of the appellant except that no statement of the case is required unless the appellee finds the statement presented by the appellant to be insufficient or incorrect.

- (3) The appellate brief for either party may include an appendix which may contain pertinent laws, treatises, regulations, rules, instructions or extended quotations from cases and authorities where such quotations are required for proper presentation of the issues.

[History] Ord. 191 (11/7/03); Ord. 94 (5/5/92).

3-04.090 Oral Argument.

The Court of Appeals may order oral argument at any time upon its own initiative and shall do so upon the request of a party. If a party wishes oral argument, the request shall be made in the caption of the appellate brief at the time the brief is filed.

[History] Ord. 191 (11/7/03); Ord. 94 (5/5/92).

3-04.100 Priority of Criminal Appeals.

Appeals in criminal cases shall have priority over all other appeals except those from juvenile actions or where otherwise provided by law.

[History] Ord. 191 (11/7/03); Ord. 94 (5/5/92).

3-04.110 Disposition of Appeals.

- (A) **Ancillary Orders.** The Court of Appeals may issue such orders in aid of the proceedings as it deems necessary.
- (B) The Court of Appeals shall issue a written opinion and mandate within forty-five (45) days of the filing of the last appellate brief in the case, or the hearing of oral argument, whichever is the later.
- (C) Upon issuance of the opinion, the clerk of the Court of Appeals shall forthwith transmit the opinion and mandate and the trial court's file to the trial court, and serve copies of the opinion upon the parties.

[History] Ord. 191 (11/7/03); Ord. 94 (5/5/92).

3-04.120 Motion for Rehearing.

- (A) Any party desiring rehearing of a decision or order of the Court of Appeals that finally disposes of the case, except for an order denying rehearing, may file a motion for rehearing within ten (10) days after service of the decision or order. Accompanying the motion shall be a brief that states, with particularity, the points of law that the moving party contends the court has decided wrongly. Within ten (10) days thereafter the opposing party may file a response to such motion. On a motion for rehearing there shall be no oral argument unless requested by the Court.

(B) Except as provided in (A), no further appeal may be taken from a final decision or order of the Court of Appeals.

[History] Ord. 191 (11/7/03); Ord. 94 (5/5/92).

3-04.130 Waiver of Formal Requirements.

Upon a showing of good cause, the Court of Appeals may extend the time for filing an appellate brief, accept a brief or pleading that does not conform to the formal requirements set out herein, but that is legible and understandable, or modify the procedural requirements set out herein in order to ensure that a fair and just determination of the appeal on its merits can be made from the record.

[History] Ord. 191 (11/7/03); Ord. 94 (5/5/92).

3-04.140 Costs.

Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed or ordered by the Court; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; and/or if a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the Court

[History] Ord. 191 (11/7/03); Ord. 94 (5/5/92).

3-04.150 Repealer.

This Chapter repeals and supersedes Ordinance 94 and any other inconsistent rules of appellate procedure.

[History] Ord. 191 (11/7/03).

3-04.160 Severability.

If any provision of this Chapter, or its application to any person or circumstance is held invalid, the remainder of this Chapter, or the application of the provision to other persons or circumstances, is not affected.

[History] Ord. 191 (11/7/03).

Annotations

STC 3-04.040

NOTES OF DECISIONS

Effect on outcome of case 1
Arguments on appeal 2

1. Effect on Outcome of Case

Where defendant appealed trial court order denying his motion to suppress statements and evidence prior to proceeding to trial and therefore had not been convicted of the crimes charged, defendant did not establish any effect on the outcome of the case sufficient to meet the requirement of STC 3-04.040(C)(4); appeal dismissed. *George v. SITC*, Cr-2006-0290 (Swinomish Ct. App. January 24, 2007).

Notice of Appeal from writ of restitution for delinquent rent, late fees, and penalties failed to comply with statutory requirements in STC 3-04.040 because the Notice did not set forth the effect on the outcome of the case of each error of law or fact alleged by the appellant; appeal dismissed. *Goodman v. Swinomish Housing Authority*, AP-7/05-129 (Swinomish Ct.App. September 8, 2005).

Notice of Appeal from Order Dissolving Guardianship failed to comply with requirements in former STC 3-04.040 because appellant failed to show how each of the errors alleged had an effect on the outcome of the case; appeal dismissed. *In Re the Matter of Guardianship of L.S.*, G-4/98-058 (Swinomish Ct.App. August 15, 2003).

Where the criminal judgment and sentencing order provided procedures for appealing that were inconsistent with the Rules of Appellate Procedure, the Court of Appeals had discretion to modify procedural requirements to ensure a fair and just determination of the appeal on its merits. Appellee's motion to dismiss for failure to specify those parts of the decision the appellant wanted reviewed and for failure to list the alleged errors of law or procedure and its effect on the outcome of the case was denied. *Edge v. SITC*, Cr-5/94-071, Cr-10/96-400 (Swinomish Ct.App. December 3, 1996).

2. Arguments on Appeal

Defendant's argument that spitting on a police car was protected free speech was raised for the first time on appeal, was unsupported by authority or analysis, and would not be considered by the Court. *Edge v. SITC*, CR-5/94-071, CR-10/96-400 (Swinomish Ct.App. December 3, 1996).

STC 3-04.070

NOTES OF DECISIONS

Transcript costs 1

1. Transcript Costs

Denied request to impose the cost of transcript on Appellant as Rules of Court prescribing transcript costs had not been established as required under Ordinance 94. *Edge v. SITC*, Cr-5/94-071, Cr-10/96-400 (Swinomish Ct.App. December 3, 1996). [Ed. Note. Ordinance 94 has since been superseded.]