

POTAWATOMI LAW AND ORDER CODE

**TITLE 5
APPELLATE PROCEDURE**

**CHAPTER 5-1
GENERAL**

Section 5-1-1. General Provisions.

These provisions and rules shall be known as the Prairie Band of Potawatomi's Code of Appellate Procedure. These rules shall govern the procedure in appeals to the Court of Appeals from the Tribal Courts, and other relief which the Court of Appeals is competent to give. These rules shall not be construed to extend or limit the jurisdiction of the Court of Appeals as may be established by other tribal laws, and all provisions of these rules shall be subject to the Constitution and By-Laws of the Prairie Band of Potawatomi Indians.

Section 5-1-2. Suspension and Revision of Rules.

In the interest of expediting decisions, administering justice, and the efficient functioning of the Court, the Court of Appeals may amend or suspend, for good cause shown, any provision of these rules. Any amendment of these rules shall not be effective until it has been filed for a period of sixty (60) days.

Section 5-1-3. Discretionary Authority.

Where no procedures are provided in these rules or other statutes of the Tribe. The Court of Appeals may proceed to exercise its functions in any lawful manner.

**CHAPTER 5-2
TRIBAL COURT APPEALS**

Section 5-2-1. Appeal How Taken.

(A) An appeal permitted by the laws of the Tribe as of right shall be taken by filing a notice of appeal with the clerk within the time allowed by Section 5-2-2, or by the statute applicable in the specific case. 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.

(B) The notice of appeal shall specify the parties to the appeal; shall designate the judgment appealed from; the docket number from which the appeal is taken; and a short statement of the reason or grounds for the appeal. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

(C) The clerk shall serve notice of an appeal by mailing a copy of the notice to the party. Failure of the clerk to serve notice shall not affect the validity of the appeal.

(D) The appellant shall pay to the clerk, for deposit in the Court fund, the filing fee, except that payment of a filing fee shall not be required for an appeal by the Tribe, its officers, or agents when acting in their official capacity.

Section 5-2-2. Appeal as of Right—When Taken.

In a civil case in which an appeal is permitted by law as of right, the notice of appeal required by Section 5-2-1 shall be filed within the following time:

(A) Thirty (30) days from an order, decree, or judgment concerning juveniles except when that order, decree, or judgment which terminates parental rights.

(B) Ninety (90) days from an order, decree, or judgment which terminates parental rights of a juvenile.

(C) Twenty (20) days from a final order, commitment, judgment or other appealable order in any civil case not otherwise provided for.

Section 5-2-3. Appeal as of Right.

A person may appeal to the Court of Appeals by right any order made appealable by law, and the following judgment or orders of the District Court concerning:

(A) a new trial.

(B) an attachment.

(C) a temporary injunction.

(D) the party's substantial rights of the parties.

(E) probate matters.

The party aggrieved may appeal the order to the Court of Appeals without the final determination of the action, by filing the notice of appeal with the District Court clerk within twenty (20) days after the order is issued.

Section 5-2-4. The Record on Appeal.

The original papers and exhibits filed in the Tribal Court, the transcript or tape recording of the proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the District Court shall constitute the record on appeal in all cases. If no record of proceedings was made, or if a transcript is unavailable, the appellant may prepare a statement of the proceedings from the best available means, including his recollection.

Section 5-2-5. Correction or Modification of the Record.

If any difference arises as to whether the record truly discloses what occurred in the Tribal Court, the difference shall be submitted to and settled by the Judge of that Court and the record made to conform to the truth. If anything material is omitted from the record it must be corrected.

Section 5-2-6. Transmission of Record.

The record on appeal shall be filed, prepared, certified and delivered to the Court of Appeals within fifteen (15) working days after the Notice of Appeal has been served.

Section 5-2-7. Docket the Appeal.

All appeals shall be entered into the docket after the transmission of the record. However, in juvenile matters, the docket books shall contain the correct names of the parties, all opinions or other papers of the Court which may become public information shall contain only initials or other similar designations and not the names of the parties.

Section 5-2-8. Civil Procedures Apply.

The Court of Appeals shall be governed by the Civil Procedures Act in areas of:

- (A) Service of papers,
- (B) Computation of time excepting the Court of Appeal shall not enlarge the time for Notice of Appeal, and
- (C) Costs unless specifically addressed in this Title.

CHAPTER 5-3 BRIEFS

Section 5-3-1. Brief of Appellant.

The brief of the appellant shall contain under appropriate headings and in the order here indicated.

- (A) A statement of the issues presented for review.
- (B) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceeding, and its disposition in the Court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record.
- (C) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.
- (D) A short conclusion stating the precise relief sought.

Section 5-3-2. Brief of Appellee.

The brief of the appellee shall conform to the requirements of Section 5-3-1, except that a statement of the issues or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

Section 5-3-3. Time for Filing and Service of Briefs.

The appellant shall serve and file his brief within twenty (20) days after the date on which the completed record is received and filed in the Court of Appeals. The appellee shall serve and file his brief within twenty (20) days after service of the brief of the appellant. The appellant may serve and file a rely brief within fourteen (14) days after service of the brief of the appellee, but except for good cause shown, a reply brief must be filed at least three (3) days before argument.

Section 5-3-4. Consequence of Failure to File Briefs.

If an appellant fails to file his brief within the time provided by these rules, or within the time as extended, an appellee may move for dismissal of the appeal. If an appellee fails to file his brief, he will not be heard at oral argument except by permission of the Court.

CHAPTER 5-4 ARGUMENTS

Section 5-4-1. Oral Argument.

Oral argument shall be allowed in all cases unless the Court, after examination of the briefs and record, shall be unanimously of the opinion that oral argument is not needed. In such cases the Court shall notify the parties of its intention to proceed without oral argument, and shall provide any party with an opportunity to file a statement setting forth the reasons why, in his opinion, oral argument should be heard. Oral argument will be allowed upon request unless the Court unanimously determines:

- (A) the appeal is frivolous; or
- (B) the set of issues has been recently decided; or
- (C) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

Section 5-4-2. Notice of Argument.

The clerk shall advise all parties whether oral argument is to be heard, and if so, of the time and place, and the time to be allowed each side.

Section 5-4-3. Order and Content of Argument.

The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case. Counsel will not be permitted to read at length from briefs, records or authorities.

Section 5-4-4. Non-appearance of Parties.

If the appellee fails to appear to present argument, the Court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the Court may hear argument on behalf of the appellee, if his Counsel is present. If neither party appears, the case will be decided on the briefs unless the Court shall otherwise order.

CHAPTER 5-5 JUDGMENT

Section 5-5-1. Entry of Judgment.

The notation of a judgment in the docket constitutes entry of the judgment. The clerk shall prepare, sign and enter the judgment following receipt of the opinion of the Court unless the opinion directs settlement of the form of the judgment, in which event the clerk

shall prepare, sign and enter the judgment following final settlement by the Court. If a judgment is rendered without an opinion, the clerk shall prepare, sign and enter the judgment following instruction from the Court. The clerk shall, on the date judgment is entered, mail to all parties a copy of the opinion, if any, or of the judgment if no opinion was written, and notice of the date of entry of the judgment.

Section 5-5-2. Interest on Judgments.

Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was entered in the District Court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the District Court the mandate shall contain instructions with respect to allowance of interest.

Section 5-5-3. Damages for Delay.

If the Court of Appeals shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

Section 5-5-4. To Whom Costs Allowed.

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

Section 5-5-5. Cost For or Against the Tribe.

If an award of cost against or for the Tribe is authorized by tribal statute, costs shall be awarded in accordance with the provisions of Section 5-5-4; otherwise, costs shall not be awarded against the Tribe or its agencies or officers in their official capacity.

Section 5-5-6. Voluntary Dismissal.

(A) Dismissal in the District Court. If an appeal has not been docketed, the appeal may be dismissed by the District Court upon the filing in that Court a stipulation for dismissal signed by all the parties, or upon motion and notice by the appellant.

(B) Dismissal in the Court of Appeals. 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, but no mandate or other process shall be issued without an order of the Court. An appeal

may be dismissed on motion of the appellant upon such terms as may be agreed upon by the parties or fixed by the Court.

CHAPTER 5-6 ATTORNEY AND LAY ADVOCATE RULES

Section 5-6-1. Members of the Bar.

The Bar shall consist of those attorneys and lay advocates admitted to practice before these Courts. Applicant shall file a written petition for admission. Admission is designed to acquaint the applicants with certain aspects of practice in this Court, emphasizing the Tribal law and Tribal Court Rules. Each applicant shall take and subscribe to the Oath of Attorney before being admitted as a member of the Bar of this Court. At the discretion of the Tribal Court, an attorney may be granted temporary admission to practice in a pending case.

Any member of a federally recognized Indian Tribe shall be eligible for admission as a lay advocate and be held to the same standards, be entitled to the same rights, privileges, obligations, and duties, as any attorney admitted to practice before the Courts of the Tribe within this reservation. Any American Bar Association member in good standing of any competent jurisdiction is eligible for admission to the Bar of this Court.

Any member of this Bar who is guilty of violating his oath of office, misconduct, disbarred from any court of competent jurisdiction, resigns from the Bar, or who voluntarily permits the expiration of his license to practice, shall be, by this Court, deemed to have been disbarred.

Section 5-6-2. Appearance of Counsel.

Any member of the Bar shall enter his appearance by signing and filing a pleading, or by signing and filing a form prescribed by the Court stating that he is the counsel of record.

Section 5-6-3. Courtroom Decorum.

The purpose of this rule is to emphasize the ethical principles applicable to the lawyer's conduct in the courtroom. Members of the Bar appearing in this Court shall:

- (A) Be punctual.
- (B) Not address one another by first names.
- (C) Not leave while Court is in session, unless Court's permission has been first obtained.
- (D) Show respect for all individuals.

- (E) Not approach jurors who have completed a case unless authorized by the Court.
- (F) Avoid approaching the bench as much as possible.
- (G) Advise clients, witnesses, and other interested persons concerning rules of decorum to be observed in Court.
- (H) Rise when addressing, or being addressed by the Court.

Section 5-6-4. Free Press—Fair Trial.

It is the duty of every member of this Bar not to release or authorize the release of information or opinion if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice. A member of this Bar shall refrain from making any extra-judicial statement that goes beyond the public record in relation to any pending investigation.

Section 5-6-5. Representation of Indigent Defendants.

- (A) Attorneys will be appointed, on a rotational basis, for representation when indigents, or parents and children in child custody actions are found to be financially unable providing the Court has adequate funds, not otherwise obligated, to pay for such representation.
- (B) Appointees may be compensated at a rate determined by the Court but not to exceed sixty dollars (\$60.00) per hour for time expended, in addition to reasonable expenses as determined by the Court as the Court budget and Court fund will allow.
- (C) If at any time after appointment, counsel obtains information that a client is financially able to pay and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the Court.
- (D) Every person who has a member of the Bar is appointed, shall be liable for all sums paid to their counsel as fees and expenses in the action, or all sums taxed against that person as the fair costs of such representation at the conclusion of the case.

(Amended by PBP TC No. 2005-089, July 7, 2005)

OATH OF ATTORNEY

I do solemnly swear:

I will support the Constitution of the United States, and the Constitution and By-Laws of the Prairie Band of Potawatomi Indian Tribe. I will maintain the respect due to Courts of justice and judicial officers.

I will be bound by the Code of Professional Responsibility of the American Bar Association.

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law.

I will employ only such means that are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law.

I will maintain the confidence and secrets of my client, and will accept no compensation without the client's knowledge and approval.

I will never reject the cause of the defenseless or oppressed, or delay any person's cause for profit or malice. So help me God.

(Title 5 enacted by PBP TC No. _____, _____ Amended by PBP TC No. 2005-089, July 7, 2005)

