

TABLE OF CONTENTS

CHAPTER 9 RULES OF APPELLATE PROCEDURE

Subchapter 9.000 Purpose and Definition

| | | |
|-------|-------------------|-----|
| 9.001 | Purpose | 138 |
| 9.002 | Definitions | 138 |

Subchapter 9.100 Organization and Composition of Tribal Appellate Court

| | | |
|------------|---|-----|
| Rule 9.101 | Judges of Tribal Appellate Court | 138 |
| Rule 9.102 | Term..... | 138 |
| Rule 9.103 | Chief Justice..... | 138 |
| Rule 9.104 | Court Clerk..... | 138 |
| Rule 9.105 | Disqualification of Appellate Judge | 138 |

Subchapter 9.200 Jurisdiction of Tribal Appellate Court

| | | |
|------------|-------------------------------|-----|
| Rule 9.201 | Exclusive Jurisdiction | 138 |
| Rule 9.202 | Review of Legislation | 138 |
| Rule 9.203 | Who May Appeal | 138 |
| Rule 9.204 | Subject of Appeal | 139 |
| Rule 9.205 | Scope of Court's Review | 139 |

Subchapter 9.300 Procedure for Appeal

| | | |
|------------|--|-----|
| Rule 9.301 | Time Period to Appeal | 139 |
| Rule 9.302 | Notice of Appeal | 139 |
| Rule 9.303 | Service of Notice of Appeal | 140 |
| Rule 9.304 | Appellate Filing Fee..... | 140 |
| Rule 9.305 | Waiver of Fees | 140 |
| Rule 9.306 | Bond..... | 140 |
| Rule 9.307 | Record of Appeal | 140 |
| Rule 9.308 | Briefing. | 141 |
| Rule 9.309 | Oral Argument | 141 |
| Rule 9.310 | Stay Pending Appeal | 141 |
| Rule 9.311 | Motions before the Tribal Appellate Court..... | 141 |

Subchapter 9.400 Decisions of the Tribal Appellate Court

| | | |
|------------|--|-----|
| Rule 9.401 | Standard of Review | 141 |
| Rule 9.402 | Issues Preserved on Appeal..... | 142 |
| Rule 9.403 | Content of Order or Judgment Appealed | 142 |
| Rule 9.404 | Decisions of the Tribal Appellate Court..... | 142 |
| Rule 9.405 | Request for Reconsideration of Decision..... | 143 |
| Rule 9.406 | Remand..... | 143 |

Subchapter 9.500 Court Administration

| | | |
|------------|---|-----|
| Rule 9.501 | Authority to Waive Requirements..... | 143 |
| Rule 9.502 | Standards for Computing Time Requirements | 143 |
| Rule 9.503 | Requirements for Service | 143 |
| Rule 9.504 | Practice Before the Tribal Court | 143 |
| Rule 9.505 | Rules of Court..... | 143 |

RULES OF APPELLATE PROCEDURE

Subchapter 9.000 Purpose and Definition

9.001 Purpose. The purpose of this Chapter is to establish the procedures by which appeals are taken from decisions of the Tribal Court.

9.002 Definitions. The following terms shall have the meaning provided herein:

- (A) “Appellant” means the party filing the appeal.
- (B) “Tribal Appellant Court” means the party responding to another party's appeal.
- (C) “Tribal Court” means the trial level of the Tribe.
- (D) “Tribe” means the Grand Traverse Band of Ottawa and Chippewa Indians.

Subchapter 9.100 Organization and Composition of Tribal Appellate Court

Rule 9.101 Judges of Tribal Appellate Court. Consistent with Article V, Section 3(b) of the Grand Traverse Band of Ottawa and Chippewa Indians Constitution, the Tribal Appellate Court shall consist of three (3) judges. At least one (1) of the three (3) judges shall be an attorney licensed to practice before the courts of a state in the United States.

Rule 9.102 Term. Consistent with Article V, Section 3(b) of the Grand Traverse Band of Ottawa and Chippewa Indians Constitution, each judge of the Tribal Appellate Court shall be appointed by an affirmative vote of five (5) of seven (7) members of the Tribal Council for a term of six (6) years, with no limit on the number of terms which can be served.

Rule 9.103 Chief Appellate Judge. The Chief Appellate Judge shall be selected by the three (3) appellate judges for a two-year term. The Chief Appellate Judge shall be responsible for the administration of the Tribal Appellate Court, and shall have duties specified in these Court Rules and as may be conferred by subsequent enactment.

Rule 9.104 Court Clerk. The Clerk of Tribal Court shall have the duties of Clerk for the Tribal Appellate Court.

Rule 9.105 Disqualification of Appellate Judge. An appellate judge shall disqualify him/herself from sitting on the appeal of any case in which:

- (A) Direct Interest. The judge has a direct interest in the outcome;
- (B) Witness. The judge was a witness at a trial; or
- (C) Related. The judge is so related to either the appellant or the respondent as to bring into question the judge's ability to render an impartial decision.
- (D) The judge is otherwise required to disqualify him/herself under Chapter 1 of these court rules.

Subchapter 9.200 Jurisdiction of Tribal Appellate Court

Rule 9.201 Exclusive Jurisdiction. The Tribal Appellate Court shall include the authority to determine the constitutionality of legislative acts of the Tribal governing body.

Rule 9.202 Review of Legislation. The jurisdiction of the Tribal Appellate Court shall include the authority to determine the constitutionality of legislative acts of the Tribal governing body.

Rule 9.203 Who May Appeal.

- (A) Civil Cases. Any participant significantly and adversely affected by a decision of the Tribal Court in a civil case may appeal.
- (B) Criminal Cases. Any participant in a criminal case, except the prosecution, may appeal a judgment or sentence. The prosecution may appeal a decision to the extent it raises a question of law, rather than of fact.

Rule 9.204 Subject of Appeal. An appeal is properly brought before the Tribal Appellate Court if:

- (A) Final Order. A final judgment or order of the Tribal Court is concerned;
- (B) Recusal. An order denying appellant's request for recusal is concerned; or
- (C) Substantial Right. An order affecting a substantial right and which disposes of the matter is concerned.

Rule 9.205 Scope of Court's Review. In reviewing a matter on appeal, the Tribal Appellate Court may increase or decrease any sentence in a criminal case may affirm, modify, vacate, set aside or reverse any judgment, decree or order of the Tribal Court, may award the costs of the appeal, and may remand the case and direct entry of an appropriate judgment, decree or order, or require such further proceedings as may be just and equitable under the circumstances.

Subchapter 9.300 Procedure for Appeal

Rule 9.301 Time Period to Appeal.

- (A) Civil Cases. An appeal to the Tribal Appellate Court in civil cases shall be made no later than twenty-eight (28) days after the entry of the written judgment or order of the Tribal Court.
- (B) Criminal Cases. An appeal to the Tribal Appellate Court in criminal cases shall be made no later than twenty-eight (28) days after entry of the written judgment or order of the Tribal Court.
- (C) Cross-Appeals. If one party has filed an appeal within the time period provided, the other party may take a Cross-Appeal by filing a Notice of Cross-Appeal within twenty-eight (28) days of service of the initial appeal.
- (D) Untimely Appeals. Subject to the exception contained in subrule 9.301(E) below, failure to file an appeal within the time period provided in this Rule deprives the Tribal Appellate Court of subject matter jurisdiction to hear the appeal. Late appeals shall be denied filing by the Clerk of the Tribal Appellate Court unless leave for late filing has been granted by the Appellate Court.
- (E) Grounds for Granting Late Appeal. The Court of Appeals may, at its discretion, grant leave to appeal from any order or judgment upon the showing by appellant, supported by affidavit, that there is merit in the reasons for appeal and that late filing was not due to appellant or appellant's attorney/advocate negligence.
- (F) Expedited Appeals. The Court of Appeals may, at its discretion, upon motion by a party, grant an expedited appeal from any order or judgment upon a showing by the moving party, supported by an affidavit, that irreparable harm will be caused unless the appeal procedure is expedited.

Rule 9.302 Notice of Appeal.

- (A) Filing Required. An appeal is made by the filing of a Notice of Appeal with the Clerk of the Tribal Appellate Court.
- (B) Content of Notice. The Notice of Appeal shall bear the caption and case number of the case in Tribal Court, and shall be labeled "Notice of Appeal." It shall state the date, judge, and content of the judgment or order appealed, and include a brief statement of the reasons for appeal, shall state whether oral arguments are requests, and the decision on the appeal desired from the Tribal Appellate Court. The appellant or the attorney appearing on appellant's behalf shall sign and date the notice.
- (C) Defects in Notice. No appeal shall be dismissed for formal defects in the Notice of Appeal, if the latter appealed is clear from the document and it has been properly filed and served.
- (D) Docketing of Appeal. Upon receipt of the Notice of Appeal and filing fee, the Clerk of the Tribal Appellate Court shall docket the appeal and notify the appellate judges of the pending appeal.
- (E) Effect on Judgment by Filing Appeal. The filing of an appeal does not cause an automatic stay of the Tribal Court's judgment or order. A motion--and supporting brief seeking a stay should be addressed to the Tribal Court.

Rule 9.303 Service of Notice of Appeal. A copy of the Notice of Appeal shall be served by the Clerk of the Tribal Appellate Court on all other parties by first class mail, and on the Clerk of the Tribal Court, if that position is separate from that of the Clerk of the Tribal Appellate Court. Proof of Service shall be filed simultaneously with the Notice of Appeal.

Rule 9.304 Appellate Filing Fee. The Clerk shall collect from each party who files a Notice of Appeal the appropriate filing fee. The Notice of Appeal shall be accepted by the Court without payment when the individual appellant submits an Application and Order for Waiver or Suspension of Fees and Court Costs with the Notice of Appeal.

Rule 9.305 Waiver of Fees.

- (A) Applicability.
 - (1) Only a natural person is eligible for the waiver or suspension of fees and costs under this Rule.
 - (2) Except as provided in subrule 9.301(F), for the purpose of this Rule, "fees and costs" applies only to the filing fees required by law.
- (B) Persons Receiving Public Assistance. If a party demonstrates by ex parte affidavit that he/she is primarily supported by any form of public assistance, the payment of fees and costs required by law or court rule as to that party shall be waived.

- (C) Other Indigent Persons. If a party demonstrates by ex parte affidavit that he/she is unable to pay fees and costs required by law or court rule, the Tribal Appellate Court may order those fees and costs waived.
- (D) Reinstatement of Requirement for Payment of Fees and Costs. If the payment of fees and costs has been waived under these Rules, the Court may on its own initiative order the person for whom the fees and costs were waived to pay those fees or costs when reason for the waiver no longer exists.

Rule 9.306 Bond. Upon notification of the filing of an appeal of a civil judgment or order, the Tribal Court may order the filing of a bond or cash equivalent thereof in an amount sufficient to guarantee payment or satisfaction of the judgment, including costs, in the event that judgment is affirmed on appeal. The Tribal Appellate Court may waive this requirement upon the petition of an appellant claiming indigence.

Rule 9.307 Record of Appeal. Upon receiving the Notice of Appeal, the Clerk of the Tribal Court shall compile for transmittal to the Tribal Appellate Court the record of the case on appeal. The Clerk of the Tribal Court shall certify the contents of the record as true, correct, and complete as part of the transmittal to the Tribal Appellate Court.

- (A) Pleadings, Orders, and Judgments. All written documents filed with the Tribal Court, including pleadings, reports, notices, depositions, orders and judgments, shall constitute the written record of the case on appeal. The Clerk of Tribal Court shall certify the contents of the record as true, correct, and complete as part of the transmittal to the Tribal Appellate Court.
- (B) Hearing Transcript(s). The Clerk of Tribal Court shall also prepare a transcript of the proceedings in the Trial Court, the cost of which shall be borne by the appellant. The transcription fee shall be paid by appellant unless it is waived by order of the Tribal Court pursuant to appellant's petition for waiver of fees and costs. The Appellant may specify, in writing, to the Clerk which proceeding, or parts thereof, is needed for the Tribal Appellate Court to review the Tribal Court's decision. If only portions of the proceeding are requested, any other party may request within twenty-one (21) days of appellant's request, a transcription of any other portion, and shall pay the costs of its preparation to the Clerk.
- (C) Notice of Record of Transmittal. The Clerk shall file a Notice of Transmittal of the Record, identifying each item included therein, together with a copy of any transcript, on each of the parties.
- (D) Effect of Transmittal. No appeal issue may be considered by the Tribal Appellate Court until the Notice of Transmittal has been filed with the Clerk of the Tribal Appellate Court.

Rule 9.308 Briefing. Parties are encouraged, but not required, to file written briefs concerning the issue(s) on appeal, in order to assist the Tribal Appellate Court in its review. The following requirements apply if a brief is filed.

- (A) Time to File a Brief. If an appellant wishes to file a brief, he/she must do so within twenty-eight (28) days of receiving Notice of Transmittal of the Record to the Tribal Appellate Court. If respondent wishes to file a brief, he/she must do so within forty-two (42) days of receiving Notice of Transmittal of Record, or within twenty-eight (28) days of receiving the Appellant's brief, whichever shall occur first. A reply brief may be submitted by appellant within twenty-eight (28) days of receiving respondent's brief.
- (B) Format of Briefs. Briefs shall be typewritten, double-spaced, on white paper which is no more than eight and a half by eleven inches (8 1/2 x 11") in size. No brief shall exceed fifty (50) pages in length. Four (4) copies of each brief shall be submitted.
- (C) Content of Briefs. The first brief to be filed shall contain a short statement of the case's history and a listing of the issues presented on appeal and how, if at all, the issues were decided by the Tribal Court. All briefs shall contain an argument and a conclusion, stating clearly the precise action sought from the Tribal Appellate Court.

Rule 9.309 Oral Argument. After timely written request and at the discretion of the Chief Justice, appeals will be scheduled for oral argument after the time to file briefs shall have expired. The length of arguments shall be sent by the appellate judges hearing the appeal, and shall be stated in the notice scheduling arguments.

Rule 9.310 Stay Pending Appeal. In the event that the Trial Court denies a request for stay of the judgment or order pending appeal, the Tribal Appellate Court may consider the request. A stay shall be granted only if the purposes of justice require it, and irreversible harm may occur if the stay is not granted. In determining whether or not to grant a stay, the Court shall consider:

- (A) Criminal Case. In an appeal of a criminal case, the likelihood that appellant will flee the Court's jurisdiction during pendency of the appeal, and the ability of the appellant to post bond in lieu of incarceration during the pendency of the appeal;
- (B) Money Judgment. In an appeal of a money judgment in a civil case, the existence of a bond pursuant to Rule 9.306 of these Rules; and
- (C) Child Custody. In an appeal of a child custody order, the existence of an order changing the custodian of the child.

Rule 9.311 Motions before the Tribal Appellate Court. Any party requesting action by the Tribal Appellate Court on a matter unrelated to its decision on a pending appeal, such as a waiver of filing fee or a stay pending appeal, shall file a motion with the Clerk of the Tribal Appellate Court clearly stating the action requested and the reasons why the Court should do what is asked of it. Any motion shall be served on all other interested parties, who may file within five (5) days of receipt of response with the Court indicating agreement or disagreement with the motion. The Tribal Appellate Court shall issue a written order disposing of any motion filed.

Subchapter 9.400 Decisions of the Tribal Appellate Court

Rule 9.401 Standard of Review. The following standards apply to the Tribal Appellate Court when deciding an appeal.

- (A) Judge Finding of Fact. A finding of fact by a judge shall be sustained unless clearly erroneous.
- (B) Jury Finding of Fact. A finding of fact by a jury shall be sustained if there is any credible evidence to support it.
- (C) Factual Inference. A factual inference drawn by a judge or jury shall be reviewed as a finding of fact if more than one reasonable inference can be drawn from the fact(s).
- (D) Witness Credibility. Any finding whether explicit or implicit, of witness credibility shall be reviewed as a finding of fact.
- (E) Conclusions of Law. A conclusion of law shall be reviewed by the Tribal Appellate Court de novo.
- (F) Contracts. An unambiguous contract term is reviewed as a conclusion of law.
- (G) Mixture of Fact and Law. A matter, which is a mixture of law and fact, is reviewed by the standard applicable to each element.
- (H) Discretion of the Court. A matter which is determined within the Tribal Court discretion shall be sustained if it is apparent from the record that the Tribal Court exercised its discretionary authority and applied the appropriate legal standard to the facts.
- (I) Sentence or Penalty. A sentence and the imposition of fine, forfeiture, and/or other penalty, excluding the assessment of damages, shall be reviewed as a discretionary determination of the Tribal Court.
- (J) Substituted Judgment. A matter committed to the discretion of the Tribal court shall not be subject to the substituted judgment of the Tribal Appellate Court.

Rule 9.402 Issues Preserved on Appeal. The Tribal Appellate Court shall consider issues pursuant to the following requirements in deciding an appeal.

- (A) Issues Omitted. The Tribal Appellate Court will not consider issues that were not raised before the Tribal Court unless a miscarriage of justice would result.
- (B) Issues Raised. An issue raised before the Tribal Court, but not argued either by brief or orally, shall not be reviewed by the Tribal Appellate Court.
- (C) Moot. No issue which is moot at the time of argument shall be decided by the Tribal Appellate Court unless it is capable of repetition, yet likely to evade appellate review, due to its nature.
- (D) Facts Omitted. Facts, which are not in the record, shall not be presented in any manner to the Tribal Appellate Court, and if presented, shall not be considered by that Court.

Rule 9.403 Content of Order or Judgment Appealed. Orders and judgments subject to an appeal shall contain the following, in order to facilitate justice by the Tribal Appellate Court.

- (A) Non-Jury. In any proceeding tried to a judge without a jury, the judge shall make separate findings of fact and conclusions of law. The Tribal Court may do this orally on the record in open court, or issue a written opinion and order.
- (B) Civil Jury. In any civil matter tried to a jury, if requested by either party or by the Court, the jury shall make a special verdict on each issue of fact placed before it.
- (C) Findings of Fact. In the absence of findings of facts by the Tribal Court, the Tribal Appellate Court may affirm the judgment if supported by the record, reverse the judgment if it does not support it, or remand the case for the issuance of findings and conclusions.

Rule 9.404 Decisions of the Tribal Appellate Court. All decisions of the Court on an appeal, and all determinations of motions, shall be made as follows:

- (A) Panel Majority. Any decision of the Court of Appeals shall be made by the majority of the judges on the panel. If no majority is reached on a decision, the order of judgment of the Tribal Court is upheld.
- (B) Content. In the exercise of its jurisdiction under Rule 9.205, the decision of the Court of Appeals shall be in written form, which shall state the facts, the issues to be decided, the rules of law applied, and the reasoning of the Court. The panel shall determine which of its members in the majority shall write the decision.

- (C) Order. The Court shall issue an order confirming with the decision, which shall direct the Tribal Court in its disposition of the case, that is the subject of appeal. Such order shall include the continuance or termination of any order relating to a stay and the posting of bond.
- (D) Dissenting Opinions. Any member of the panel who disagrees with the majority's decision may issue a written dissent, which shall comply with the content requirements of subrule 9.404(B) above.
- (E) Distribution of Decision. Within five (5) days of issuance, the Clerk of the Court of Appeals shall transmit by first class mail a copy of the decision to each interested party at their address of record, and to the Clerk of the Court of Appeals shall inform all of the date on which the decision was filed.
- (F) Official Reporter. Any decision which determines an issue of law shall be retained and filed as Tribal substantive law and be reported to the official reporter of the Tribal Appellate Court. Any decision so filed shall become binding precedent.

Rule 9.405 Request for Reconsideration of Decision. A request for reconsideration may be filed with the Clerk of the Tribal Appellate Court, if made within fourteen (14) days of the decision's filing with the Clerk. A copy of the request must be served upon all other parties and on the Tribal Court.

- (A) Content. The request must identify the exact element of the decision that is to be reconsidered, the reasons for the request, and any authority upon which the party relies.
- (B) Response. Any other party may file a response(s) to the request within ten (10) days of service.
- (C) Effect of Request. A request for rehearing shall stay all proceedings until the Tribal Appellate Court issues its decisions on the matter.
- (D) Determination. The panel, which issues the decision, which is the subject of the request, shall also decide the request for rehearing. The request may be granted or denied, and if granted, the parties are entitled to brief under Rule 9.307 and oral argument under Rule 9.307.

Rule 9.406 Remand. The Clerk of the Tribal Appellate Court shall transmit the entire record of the Tribal Court, together with the decision and order of the Tribal Appellate Court, to the Clerk of Tribal Court within fifteen (15) days of the disposition of all post-decision motions, if any. Upon such transmittal, jurisdiction over the case is returned to the Tribal Court from which the appeal was made.

Subchapter 9.500 Court Administration

Rule 9.501 Authority to Waive Requirements. The Chief Appellate Judge may, upon good cause shown by written motion of a party, enlarge the time any party has to comply with these Rules, or waive the page limitation for briefing.

Rule 9.502 Standards for Computing Time Requirement. In computing the period of time prescribed by these Rules or by any order of the Tribal Appellate Court, the day of the act or event from which the period begins to run is not included. The last day of the period is included, unless it falls on a Saturday, Sunday, or Tribal holiday. In that event, the last day of the period falls on the next regular business day.

Rule 9.503 Requirements for Service.

- (A) What Must Be Served. Any paper, of whatever kind, which is filed with the Clerk of the Tribal Appellate Court or the Clerk of the Tribal Court, shall be served on each other party. Proof of that service shall also be filed.
- (B) Form of Service. If sufficient notification to other parties if service is made by first class mail. Services is considered complete upon mailing. Personal service on any other party may be made, if done in compliance with the rules for such service in the Tribal Court.
- (C) Person Served. Service shall be made upon the party's attorney or Tribal Advocate, if any, and if the party is not requested, upon the party.

Rule 9.504 Practice Before the Tribal Court. Any person who is admitted to practice before the Tribal Court is thereby admitted to practice before the Court of Appeals.

Rule 9.505 Rules of Court. The judges of the Tribal Appellate Court may make and amend such rules as are deemed by them appropriate for the proper and efficient administration of the Court. Such rules shall be filed with the Clerk of the Tribal Appellate Court, and made available as issued to all persons admitted to practice.

| | | |
|---|------------------|--|
| GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS TRIBAL COURT | NOTICE OF APPEAL | CASE NO. |
| 2605 N. WEST BAY SHORE DRIVE, PESHAWBESTOWN, MI 49682 (231)534-7050 TribalCourt@gtb-nsn.gov (231)534-7051 fax | | |
| Petitioner: _____ Plaintiff OR _____ Defendant Name, address, phone number | vs | Defendant: _____ Plaintiff OR _____ Defendant Name, address, phone number |

- I, _____, claim an appeal from a judgment or final judgment or final order
Name

entered on _____, in the Grand Traverse Band Tribal Court, by Judge _____.
Date Judge Name
- Appeal being filed on court case number: _____.
- I am requesting an oral argument on this appeal: YES NO
- Statement of the reason and grounds for appeal:

- Relief requested from the Tribal Appellate Court:

- Filing Fee of \$150.00 for Notice of Appeal has been paid. If not, then a Petition for Waiver of Filing Fees must accompany this notice with a copy of your DHS benefits letter or a copy of your Bridge Card.
- A Transcript may be ordered by the Court, if so, the Respondent is responsible for the cost unless indigent.

Date Signature

| | |
|----------------------------|--------|
| FOR COURT USE ONLY | NOTES: |
| Date Filed: _____ | |
| Filing Fee Paid: _____ | |
| Transcript Fee Paid: _____ | |
| Clerk Signature: _____ | |