

# TRIBAL CODE

## CHAPTER 82:

### APPEALS

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**HISTORY NOTE:**

Current Ordinance: Resolution 97-11, adopted February 4, 1997, enacts Chapter 82:Tribal Court of Appeals.

Amendments:

Resolution 2012-28, adopted February 14, 2012, amends Tribal Code Chapter: 82, by adding §82.134, Appellate Court Vacancies.

Resolution 2011-106, adopted May 24, 2011, amends Tribal Code Chapter : 82, by adding Subchapter II, Appeals from the Election Committee.

Resolution 2004-119, adopted November 16, 2004, amends Tribal Code Chapter 82: Tribal Court of Appeals by changing the panel appellate court from three (3) to five (5).

## **TRIBAL CODE**

### **CHAPTER 82:**

#### **APPEALS**

##### **82.101 Purpose.**

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

##### **82.102 Definitions.**

For the purposes of this Chapter, certain terms are defined in this section. When not inconsistent with the context, words used in the present tense include the future, words in the singular number include the plural number, words in the plural include words in the singular, and words in the masculine gender include the feminine gender. The word "shall" is always mandatory and not merely directory.

(1) "Appellant" means the party filing the appeal.

(2) "Appellate Judge" means a person appointed by the Board of Directors to hear appeals.

(3) "Board of Directors" means the Board of Directors of the Sault Ste. Marie Tribe of Chippewa Indians.

(4) "Court of Appeals" means the appellate court established for the Tribe in this Chapter.

(5) "Election Committee" means the committee established to oversee elections by Tribal Code Chapter 10.

(6) "Tribal Court" means the trial level court of the Sault Ste. Marie Chippewa Tribal Court.

(7) "Tribal Judge" means the trial level judges appointed pursuant to Chapter 80 of the Tribal Code.

(8) "Tribe" means the Sault Ste. Marie Tribe of Chippewa Indians.

(9) "Tribe" (or "tribal") means (or refers to) the Sault Ste. Marie Tribe of Chippewa Indians.

### **82.103 Judges of Court of Appeals.**

Five (5) judges, appointed by the Board of Directors, shall sit as the Court of Appeals and hear all cases unless disqualified pursuant to ' 82.107. Any number of judges may be appointed as reserve judges, who shall be available to serve on the Court of Appeals to hear a particular appeal for which an appellate judge is disqualified or otherwise unable to sit.

### **82.104 Term.**

The term of office for each appellate judge shall be four (4) years, with no limit on the number of terms which can be served. When first selected, one (1) appellate judge shall serve for four (4) years, one (1) appellate judge shall serve for three (3) years, and one (1) appellate judge shall serve for two (2) years. Subsequent terms for each seat on the Court of Appeals shall be for the regular term. Reserve judges shall serve for the length of the appeal for which they were appointed to decide.

### **82.105 Chief Judge.**

One of the five judges shall be appointed as the Chief Judge by the Board of Directors. The Chief Judge shall be responsible for the administration of the Court of Appeals, and shall have such duties as are specified in this Chapter and as may be conferred by a provision of another Chapter of the Tribal Code.

### **82.106 Clerk.**

The Clerk of Tribal Court shall have the duties of Clerk for the Court of Appeals.

### **82.107 Disqualification of Appellate Judge.**

An appellate judge is disqualified to sit on the appeal of any case in which:

- (1) he has a direct interest in the outcome;
- (2) he was a witness at the trial;

(3) he served on the jury panel of the trial; or

(4) he is so related to either the appellant or the respondent as to bring into question the judge's ability to render an impartial decision.

**82.108 Court of Appeals.**

(1) Rules of Procedure. The Court of Appeals shall employ the rules of procedure adopted by the Tribal Court.

(2) Finality of Decisions. The decision of the panel of the Court of Appeals is final, and is not subject to further appeal.

(3) Reporting of Decisions. All decisions of the Court of Appeals shall be filed with the Clerk.

(4) Substantive Law. The Court shall apply the substantive law of the Tribe, as well as applicable federal law.

(5) Precedent. All decisions and rulings of the Court of Appeals shall be binding on the Tribal Court subject to its review authority.

**82.109 Exclusive Jurisdiction.**

The Court of Appeals shall have exclusive jurisdiction to review the decisions of the Tribal Court as provided in this Chapter.

**82.110 Who May Appeal.**

Any person adversely affected by a decision of the Tribal Court in a civil case may appeal. Any party 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.

**82.111 Subject of Appeal.**

An appeal is properly before the Court of Appeals if it concerns:

- (1) a final judgment or order of the Tribal Court; or
- (2) an order denying appellant's request for refusal; or
- (3) an order affecting a substantial right and which determines the action and prevents a judgment from which an appeal might be made.

**82.112 Scope of Court's Review.**

In reviewing a matter on appeal, the Court of Appeals may:

- (1) increase or decrease any sentence in a criminal case;
- (2) affirm, modify, vacate, set aside or reverse any judgment, decree or order of the Tribal Court; or
- (3) 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.

**82.113 Time Period to Appeal.**

(1) Civil Cases. An appeal to the Court of Appeals in civil cases shall be made not later than thirty (30) days after the entry of the written judgment or order of the Tribal Court.

(2) Criminal Cases. An appeal to the Court of Appeals in criminal cases shall be made not later than thirty (30) days after the entry of the written judgment or order of the Tribal Court.

(3) Cross-Appeals. If one party has filed an appeal within the requisite time period, the other party may file a notice of appeal within fifteen (15) days of service of the initial appeal.

(4) Untimely Appeals. Subject to the exception contained in sub. (5), failure to file an appeal within the time period provided in this section deprives the Court of Appeals of subject matter jurisdiction to hear the appeal. Late appeals shall be denied filing the Clerk of Court of Appeals.

(5) Grounds for Granting Late Appeals. 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 grounds for appeal and that late filing was not due to appellant's negligence.

**82.114 Notice of Appeal.**

- (1) Filing Required. An appeal is made by the filing of a notice of appeal with the

Clerk of the Court of Appeals. The notice shall be served on the respondent simultaneously with filing, and proof of service shall be filed with the notice.

(2) 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 and the decision on the appeal desired from the Court of Appeals. Where possible, a copy of the judgment or order appealed from shall be attached to the notice of appeal. The appellant or the attorney appearing on the appellant's behalf shall sign and date the notice. The reasons for the appeal shall be limited to the following:

(a) Lack of jurisdiction of the Tribal Court.

(b) Irregularities or improprieties in the proceedings, or by the Tribal Court, the jury, any witnesses, or any party substantially prejudicial to the rights of petitioner.

(c) Any ruling, order, decision or abuse of discretion which prevented a fair hearing or trial.

(d) Insufficient evidence to support the verdict, decision, order or judgment of the jury or Tribal Court.

(e) An error of law substantially prejudicial to the rights of the appellant.

(3) Defects in Notice. No appeal shall be dismissed for formal defects in the notice of appeal, if the matter appealed is clear from the document and it has been properly filed and served.

(4) Docketing of Appeal. Upon receipt of the notice of appeal and filing fee, the Clerk of the Court of Appeals shall docket the appeal and notify the appellate judges of the pending appeal.

(5) 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. If a stay is desired by appellant, a motion seeking a stay should be addressed to the Tribal Court before or after the filing of the notice of appeal.

### **82.115 Service of Notice of Appeal.**

A copy of the Notice of Appeal shall be served by appellant on all other parties by first class mail. Proof of service shall be filed simultaneously with the Notice of Appeal.

**82.116 Appellate Filing Fee.**

The Clerk of the Court of Appeals shall collect from each party who files an appeal or cross-appeal a filing fee of \$45.00. The fee may be waived by order of the Court of Appeals when the appellant submits with the notice of appeal an affidavit of indigency.

**82.117 Stay.**

An appellant may request that the Tribal Court issue a stay of civil judgment or order pending an appeal.

**82.118 Bond.**

Upon granting a stay of a civil judgment or order, the Tribal Court may order the filing of a bond or cash equivalent in an amount sufficient to guarantee payment or satisfaction of the judgment, including costs, in the event that judgment is affirmed on appeal. The Court of Appeals may waive this requirement upon the submission by appellant of an affidavit of indigency.

**82.119 Record On Appeal.**

(1) Upon receiving the Notice of Appeal, the Clerk of Tribal Court shall compile the record of the case, consisting of:

(a) All written documents filed with the Tribal Court, including pleadings, reports, notices, depositions, orders and judgments. The clerk of Tribal Court shall certify the contents of the record as true, correct and complete transcript of all proceedings relevant to the appeal.

(b) The Clerk of Tribal Court shall prepare a transcript of the proceedings in the Tribal Court relevant to the appeal or designated by appellant, the cost of which shall be borne by the appellant. The transcripts shall be completed within 15 days of a request. The transcription fee shall be paid by appellant, unless it is waived by order of the Tribal Court upon appellant's petition for waiver of costs and fees, accompanied by an affidavit of indigency. The appellant may specify, in writing, to the Clerk which proceeding, or parts of proceeding, is needed for the Court of Appeals to review the Tribal Court's decision. If only portions of the proceeding are requested, any other party may request within 15 days of appellant's request transcription of any other portion, and shall pay the costs of its preparation to the



Clerk.

(2) The Clerk shall file a notice of preparation of the record, identifying each item included, together with a copy of any transcript, on each of the parties.

(3) No appeal issue may be considered by the Court of Appeals until the notice of preparation of the record has been filed with the Clerk of the Court of Appeals.

### **82.120 Briefing.**

Parties are encouraged, but not required, to file written briefs concerning the issue on appeal, in order to assist the Court of Appeals in its review. If briefing is made, the following requirements apply:

(1) If appellant wishes to file a brief, he must do so within 30 days of receiving notice of preparation of the record to the Court of Appeals. If respondent wishes to file a brief, he must do so within 15 days of receiving appellant's brief, or within 45 of receiving notice of preparation of the record, whichever should first occur. A reply brief may be submitted by appellant within 15 days of receiving respondent's brief.

(2) Briefs shall be typewritten, double-spaced, on white paper which is no more than 8 1/2 by 11 inches in size. No brief shall exceed 50 pages in length. Four (4) copies of each brief shall be submitted.

(3) 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 Court of Appeals.

### **82.121 Oral Argument.**

If each party files a brief, all appeals shall be scheduled for oral argument unless waived by appellant and respondent after briefing is concluded. In all other cases an oral argument shall be scheduled only at the discretion of the Appellate Court. The length of argument shall be set by the appellate judges hearing the appeal, and shall be stated in the notice scheduling argument.

### **82.122 Stay Pending Appeal.**

In the event that the Tribal Court denies a request for stay of the judgment or order pending appeal, the Court of Appeals 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:

(1) In an appeal of a criminal case, the likelihood that appellant will flee the Tribal Court's jurisdiction during the pendency of the appeal, and the ability of the appellant to post bond in lieu of incarceration during the pendency of the appeal.

(2) In an appeal of a money judgment in a civil case, the existence of a bond posted pursuant to ' 82.118.

(3) In an appeal of a child custody order, the existence of a change in the custodian of the child.

### **82.123 Motions before the Court of Appeals.**

Any party requesting action by the Court of Appeals 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 Court of Appeals 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 a response with the Court of Appeals indicating agreement or disagreement with the motion. The Court of Appeals shall issue a written order disposing of any motion filed.

### **82.124 Standard of Review.**

In deciding an appeal, the Court of Appeals shall apply the following standards:

(1) A finding of fact by a judge shall be sustained unless clearly erroneous.

(2) A finding of fact by a jury shall be sustained if there is any credible evidence in the record to support it.

(3) 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.

(4) Any finding, whether explicit or implicit, of witness credibility shall be reviewed as a finding of fact.

(5) A conclusion of law shall be reviewed by the Court of Appeals without deference to the Tribal Court's determination, i.e., review is *de novo*.

(6) Construction of an unambiguous contract term is reviewed as a conclusion of law.

(7) A matter which is a mixture of law and fact is reviewed by the standard

applicable to each element.

(8) A matter which is within the discretion of the Tribal Court shall be sustained if it is reflected in the record that the Tribal Court exercised its discretionary authority; applied the appropriate legal standard to the facts, and did not abuse its discretion. A matter committed to the discretion of the Tribal Court shall not be subject to the substituted judgment of the Court of Appeals.

(9) A sentence and the imposition of fine, forfeiture, or other penalty, excluding the assessment of damages, shall be reviewed as a discretionary determination of the Tribal Court.

### **82.125 Issues Preserved on Appeal.**

In deciding an appeal, the Court of Appeals shall consider issues in accordance with the following requirements:

(1) Unless a miscarriage of justice would result, the Court of Appeals will not consider issues that were not raised before the Tribal Court.

(2) An issue raised before the Tribal Court, but not argued either by brief or orally, shall not be reviewed by the Court of Appeals.

(3) No issue which is moot at the time of argument shall be decided by the Court of Appeals unless it is capable of repetition yet likely to evade appellate review, due to its nature.

(4) Facts which are not in the record shall not be presented in any manner to the Court of Appeals, and if presented, shall not be considered by that Court.

(5) An issue concerning newly discovered material evidence which could not, with reasonable care, have been produced at the trial or hearing, shall not be considered by the Court of Appeals until a decision concerning the evidence is made by the Tribal Court.

### **82.126 Content of Order or Judgment Appealed.**

Orders and judgments subject to an appeal shall contain the following, in order to facilitate justice by the Court of Appeals:

(1) 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.

(2) In any civil matter tried to a jury, the jury shall make a special verdict on each issue of fact placed before it.

(3) In the absence of findings of fact by the Tribal Court, the Court of Appeals may affirm the judgment if supported by the record, reverse the judgment if the record does not support it, or remand the case for the issuance of findings and conclusions.

#### **82.127 Decisions of the Court of Appeals.**

All decisions of the Court of Appeals on an appeal, and all determinations of motions, shall be made as follows:

(1) 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 or judgment of the Tribal Court is upheld.

(2) In the exercise of its jurisdiction under ' 82.111, 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.

(3) The Court shall issue an order conforming with the decision, which shall direct the Tribal Court in its disposition of the case which 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.

(4) 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 sub. (2).

(5) Within two 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 which indicates the date on which the decision was filed.

#### **82.128 Request for Reconsideration of Decision.**

A request for reconsideration may be filed with the Clerk of the Court of Appeals if made within 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.

(1) Content. The request must identify the exact element of the decision, which is to be reconsidered, the reasons for the request, and any authority upon which the party relies.

(2) Response. Any other party may file a response to the request within ten (10) days of receiving it.

(3) Determination. The panel which issued 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 §82.120 and oral argument under §82.121.

**82.129 Authority to Waive Requirements.**

The Chief Judge may, upon good cause shown by written motion of a party, enlarge the time any party has to comply with any provision of this Chapter, or waive the page limitation for briefing.

**82.130 Standards for Computing Time Requirements.**

In computing the period of time prescribed by this Chapter or by any order of the Court of Appeals, 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 legal holiday; in that event, the last day of the period falls on the next regular business day.

**82.131 Requirements for Service.**

(1) Any paper, of whatever kind, which is filed with the Clerk of the Court of Appeals or the Clerk of Tribal Court shall be served on every other party. Proof of service shall also be filed.

(2) It is sufficient notification to other parties if service is made by first class mail. Service 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.

(3) Service shall be made upon the party's attorney, if any, and if the party is not represented, upon the party.

**82.132 Practice before the Court of Appeals.**

Any person who is admitted to practice before the Tribal Court is thereby admitted to practice before the Court of Appeals.

### **82.133 Rules of Court.**

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

### **82.134 Appellate Court Vacancies.**

#### (1) Notification, Request for Proposals.

- (a) At least four months prior to the expiration of the term of any tribal appellate judge, or as soon as possible following the resignation, death, or removal of an appellate judge or other unexpected vacancy, the court administrator shall notify the tribal chairman and board of directors of the vacancy and request the appointment of a selection committee. The court administrator shall also prepare a request for proposal and submit it for publication in the local and tribal newspapers and, in the case of an attorney appellate judge vacancy, in the Michigan Bar Journal. The posting shall be for a period of two (2) weeks.
- (b) Interested persons who meet the qualifications may submit to the tribal court, an application and resume.

#### (2) Committee and Selection Process.

- (a) The tribal chairman, subject to the concurrence of the Board of Directors, shall appoint a selection committee consisting of three (3) board members, the court administrator, and an attorney from the legal department.
- (b) After the posting has closed, the committee shall meet, without undue delay to review the applications for qualifications, conduct interviews, and perform both personal and professional background checks.
- (c) The committee shall then select three (3) candidates and rank them in order of appointment preference.
- (d) When selecting candidates, the committee should consider the following factors and questions, among others:

1. Integrity and moral courage.
2. Legal ability and experience
3. Intelligence and wisdom.
4. Is the applicant culturally oriented?
5. Will the applicant be deliberate and fair minded in reaching decisions?
6. Will the applicant be industrious and prompt in performing his or her duties as a judge?
7. Are the applicant's personal habits and outside activities compatible with judicial office?
8. Will the applicant be courteous and considerate on the bench?

(3) Submission to the Board of Directors.

(a) The committee shall select and submit three (3) ranked candidates for consideration and appointment by the board of directors to the board's secretary for placement on the board's workshop agenda.

(b) A resolution appointing the selected candidate shall be prepared and presented to the board of directors for consideration at the next regularly scheduled board meeting.

## **SUBCHAPTER II: APPEALS FROM THE ELECTION COMMITTEE**

### **82.201 Who May Appeal.**

An Appellant may challenge a decision of the Election Committee where the Appellant alleges that the Election Committee acted in a manner not consistent with applicable tribal law. The allegation of injury by the Appellant must be personal to said party and may not be a generalized grievance shared in substantially equal measure by all or a large class of similarly situated parties.

### **82.202 Subject of Appeal.**

An appeal is properly before the Court of Appeals if it concerns a final decision of

the Election Committee rendered pursuant to Tribal Code Chapter 10 at Section 10.120(c).

**82.203 Scope of Court's Review.**

In reviewing a matter on appeal, and in strict compliance with Section 82.210, the Court of Appeals may affirm, modify, vacate, set aside or reverse any decision of the Election Committee or remand the matter and direct entry of a new decision or require such further proceedings as may be just and equitable under the circumstances.

**82.204 Time Period to Appeal.**

- (1) A notice of appeal must be filed within five business days of the Appellant receiving an adverse decision from the Election Committee.
- (2) The Court of Appeals shall not grant extensions to the five day time period.

**82.205 Notice of Appeal.**

(1) An appeal is made by the filing of a notice of appeal with the Clerk of the Court of Appeals. The notice shall be served on the Election Committee simultaneously with filing, and proof of service shall be filed with the notice.

(2) The notice of appeal shall bear the Appellants name and address and any formal identification label assigned to the matter by the Election Committee, and shall be labeled "Notice of Appeal". It shall state the date, judge and content of the decision appealed, and include a brief statement of the reasons for the appeal and the decision on the appeal desired from the Court of Appeals. Where possible, a copy of the decision appealed from shall be attached to the notice of appeal. The appellant or the attorney appearing on the appellant's behalf shall sign and date the notice. The reasons for the appeal shall be limited to whether or not the Election Committee acted in a manner consistent with applicable Tribal law.

(3) No appeal shall be dismissed for formal defects in the notice of appeal, if the matter appealed is clear from the document and it has been properly filed and served.

(4) Upon receipt of the notice of appeal and filing fee, the Clerk of the Court of Appeals shall docket the appeal and notify the appellate judges of the pending appeal.

(5) The filing of an appeal does not cause an automatic stay of the Election Committee's decision.

**82.206 Service of Notice of Appeal.**

A copy of the Notice of Appeal shall be served by Appellant on all other parties by first class mail. Proof of Service shall be filed simultaneously with the Notice of Appeal.



**82.207 Appellate Filing Fee.**

The Clerk of the Court of Appeals shall collect from each party who files an appeal a filing fee of \$45.00.

**82.208 Stay Pending Appeal.**

(1) An Appellant may request that the Court of Appeals issue a stay of implementation of a decision of the Election Committee pending an appeal.

(2) If a stay is desired by Appellant, a motion seeking a stay shall be provided to the Clerk of the Court of Appeals at the same time the appeal is filed.

(3) The Court of Appeals shall render a decision on the motion within twenty four hours.

(4) A stay shall not be issued five days preceding either the opening of ballots for a primary election or the opening of ballots for an election.

(5) A stay shall be granted only if the purpose of justice requires it, and irreversible harm may occur if the stay is not granted.

(6) The Board of Directors hereby expressly retains onto itself the authority of revering any stay ordered by the Court of Appeals under this Section with said reversal to be had by motion requiring a positive majority.

**82.209 Oral Argument.**

If each party files a brief, all appeals shall be scheduled for oral argument five days after the filing of notice of appeal, unless waived by Appellant and Respondent after briefing is concluded. The length of argument shall be set by the appellate judges hearing the appeal, and shall be stated in the notice scheduling argument.

**82.210 Standard of Review.**

The standard of review shall be abuse of discretion and shall be defined as the Election Committee acting in an arbitrary or unreasonable way that results in an Appellant being unfairly denied a substantial right or being caused to suffer an unjust result.

**83.211 Incorporation.**

All the procedural matters codified in Subchapter I are incorporated herein.