

SAH-KU-MEHU



"The Root-Digging
People"

Ordinance No. 8/13A/06 : RULES OF COURT--APPELLATE

THEREFORE BE IT ENACTED BY THE TRIBAL COUNCIL OF THE SAUK-SUIATTLE INDIAN TRIBE, AS FOLLOWS:

WHEREAS, the Sauk-Suiattle Tribal Council is the duly constituted governing body of the Sauk-Suiattle Indian Tribe, by authority of the Constitution and Bylaws, approved by the Secretary of the Interior on September 17, 1975 and in accordance with the Indian Reorganization Act of June 18, 1934 (48 Stat.984); and

WHEREAS, in accordance with the Tribal Constitution and Bylaws of the Sauk-Suiattle Indian Tribe, it shall be the duty of Tribal Council to protect and preserve the people of the Sauk-Suiattle Indian Tribe as provided in Article II, Section 1(a) including the promulgation of laws and ordinances pursuant to Article VII, Section 1(P); and

WHEREAS, the Sauk-Suiattle Tribal Council enacted a "Law and Order Code" by Council Resolution No. 32-84 on April 16, 1984; and

WHEREAS, the Code currently contains some appellate court procedures, Sections 2.100-2.170, but those procedures are insufficient to address all the procedural issues that arise in tribal appellate court; and

WHEREAS, the Tribal Council has determined that it is most efficient to enact a separate ordinance, to be known as the "Sauk-Suiattle Indian Tribe Rules of Court—Appellate," and remove the limited provisions from the Law and Order Code entirely; and

WHEREAS, by Resolution # 8/12A/06, the Tribal Council removed from the Law and Order Code certain provisions addressing appellate court procedures.

NOW THEREFORE BE IT FURTHER ENACTED THAT, this Ordinance is to set forth uniform procedures to be followed in and by the Sauk-Suiattle Appellate Court.

BE IT FINALLY ENACTED THAT, the Sauk-Suiattle Court of Appeals shall be conducted in accordance with the following rules, which shall be cited as the "Sauk-Suiattle Rules of Court—Appellate":

OLC
SAUK-SUIATTLE INDIAN TRIBE
5318 Chief Brown Lane
Darrington, Washington 98241-9420

ORDINANCE OF THE GOVERNING BODY

OF THE

SAUK-SUIATTLE INDIAN TRIBE

(360) 436-0131
(360) 436-0132
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1 AGGRIEVED PARTY MAY APPEAL

(a) Right of appeal. Any appealable judgment or order of the Tribal Court may be appealed from and reviewed as prescribed by the provisions of these Rules and not otherwise.

(b) Appeal in a civil action or proceeding. Any party aggrieved may appeal any final judgment or order in a civil action or proceeding, unless otherwise prohibited by tribal law, with or without first moving for reconsideration at the trial court level or for a new trial, and the Appellate Court may review a final judgment or order for errors of law only, and may remand for a new trial or determination.

(c) Appeal in a criminal action. Any party aggrieved in a criminal action may appeal errors of law only, as follows:

(1) Either the Tribe or the defendant may appeal from a final judgment of the Tribal Court or an order of the Tribal Court granting a motion to dismiss, a motion for acquittal or a motion in arrest of judgment, or granting or refusing a new trial.

(2) The Tribe may, upon good cause shown, appeal to the Appellate Court from a pretrial order of the Tribal Court granting or denying a motion to suppress evidence. The Appellate Court may establish such procedures as it determines proper in requiring the appellant to make a preliminary showing of the propriety of the appeal and whether there may be a miscarriage of justice if the appeal, is not entertained. If the Appellate Court entertains the appeal, or if it otherwise appears necessary, it may enter an order staying the trial for such time as may be required.

(3) The defendant only may appeal from a final judgment or verdict in a criminal case.

(4) The defendant in a criminal case may not appeal a final judgment or verdict resulting from a plea of guilty, guilty but mentally ill or nolo contendere that the defendant entered into voluntarily and with a full understanding of the nature of the charge and the consequences of a plea, unless the appeal is based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings. The Appellate Court may establish procedures to require the defendant to make a preliminary showing of the propriety of the appeal.

2 APPEAL - HOW TAKEN

(a) Filing the Notice of Appeal. An appeal permitted by law from the Tribal Court shall be taken by filing a notice of appeal with the clerk of the Tribal Court within ten (10) days of the date of service of written notice of the entry of the final judgment or order appealed from. Failure of an appellant to take any step other than the timely filing of a notice of appeals does not affect the validity of the appeal, but is ground only for such action as the Appellate Court deems appropriate which may include dismissal of the appeal.

(b) **Joint or Consolidated Appeals.** If two or more persons are entitled to appeal from a judgment or order of the Tribal Court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. 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.

(c) **Content of the Notice of Appeal.** The notice of appeal shall specify the party or parties taking the appeal and shall designate the judgment, order or part thereof appealed from.

(d) **Service of the Notice of Appeal.** Within one (1) day of filing such notice of appeal, the appellant shall serve the notice of appeal by mailing a copy thereof to counsel of record of each party other than appellant or, if a party is not represented by counsel, to the party at her last known address. There shall be noted on each copy served the date on which the notice of appeal was filed. There shall be noted in the proof of service the names of the parties to whom copies have been mailed with the date of mailing.

3 APPEAL - WHEN TAKEN

(a) **Appeals in Civil Cases.** In a civil case the notice of appeal required shall be filed with the clerk of the Tribal Court within ten (10) days of the date of service of written notice of the entry of the final judgment or order appealed from, except as otherwise provided by law. If a timely notice of appeal is filed by a party, any other party may file and serve a notice of appeal within 10 days of the date on which the first notice of appeal was served, or within the time otherwise prescribed by this subdivision, whichever period last expires.

(b) **Appeals in Criminal Cases.** Any party to a criminal action tried before the Tribal Court may appeal any appealable judgment or order of the Tribal Court at any time within ten (10) days from the time of the rendition of the judgment or order. A judgment or order is rendered within the meaning of this subdivision when it is signed by the justice or by the clerk, as the case may be, and filed.

4 STAY OF EXECUTION

Application for a stay of the judgment or order until the appeal is decided shall be made in the Tribal Court, and the decision of the Tribal Court in this regard shall not be reviewed by the Appellate Court. The Tribal Court Judge may require the filing of a bond or other appropriate conditions to granting a stay of execution.

5 HEARINGS AND CONTINUANCES

Within thirty (30) days from the date of filing of a written notice of appeal, the appellate panel shall convene to hear the case on appeal at such place as may be designated, unless continued by order of the appellate panel's chief judge. Continuances shall be ordered as necessary to

promote the efficiency and cost effectiveness of the judicial administration of appeals, so long as no substantial rights of any party of the appeal are thereby prejudiced. Any judge on the panel may preside over any scheduling hearings or other procedural matters that do not substantially prejudice the rights of any party to a full and fair appellate hearing prior to a final appellate decision.

6 THE RECORD ON APPEAL

(a) A transcript of all trial court proceedings shall be included in the record on appeal. Unless approved by the Tribal Court Judge or stipulated by the parties, the entire certified transcript of the proceedings which have been recorded by an official court reporter or by using electronic recording equipment shall be transmitted to Appellate Court.

(b) Preparation of transcript.

(1) Within 10 days after filing the notice of appeal, the appellant shall order a transcript of the proceedings for inclusion in the record and, unless the appellant is indigent, or a greater amount or different procedure is ordered by the Tribal Court Judge, shall deposit the sum of \$100 with the Tribal Court to absorb the cost of the record, including but not necessarily limited to the transcript and copies. After determination of the exact cost, any remaining balance shall be returned to the appellant or if additional cost is involved, the appellant shall pay such amount forthwith. Upon notice of appeal, request for record on appeal and the deposit being filed with the clerk of the Tribal Court, the clerk or judge shall immediately arrange for a transcript to be prepared within thirty (30) days. The Tribal Court, in its discretion and for good cause shown, may extend the time for preparation of transcript for an additional 30 days.

(2) The appellant shall furnish each party appearing separately, or their counsel, a copy of such transcript.

(c) Statement of the Evidence or Proceedings When No Report Was Made or When the Transcript is Unavailable. If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the available means, including her recollection. The statement shall be served on the respondent, who may serve objections or propose amendments thereto within 10 days after serve. Thereupon the statement and any objections or proposed amendments shall be submitted to the Tribal Court Judge for settlement and approval and, as settled and approved, shall be included by the clerk or judge of the Tribal Court in the record on appeal.

(d) Statement of Points by Appellant and Response by Respondent. In the absence of an agreed statement under Section (f), the appellant shall file with the Tribal Court and serve on all parties a concise statement of the points on which she intends to rely on the appeal. This statement of points shall include all the relevant facts of the appeal, the issues on appeal, and the argument supporting the appellant's position on appeal. The respondent may file with the Tribal Court and serve on all parties a concise statement in opposition to appellant within 10 days after service of

appellant's statement. The parties' statements shall be presented to the Appellate Court irrespective of whether or not the appellant designates for inclusion the complete record and all proceedings and evidence in the action. The Appellate Court may refuse to consider any part of a statement which exceeds five pages. A party may request the right to submit a written brief to the Appellate Court.

(e) Record to Be Transmitted by Clerk or Justice. Unless the record on appeal consists of an Agreed Statement pursuant to subdivision (f), the following documents shall be included in the record:

- (1) Complaint (including all amended complaints);
- (2) All answers, counterclaims, cross-claims and replies, and all amendments thereto;
- (3) Pretrial order, if any;
- (4) All stipulations;
- (5) All jury instructions given and to which exceptions are taken, and excluded when offered;
- (6) Verdict or findings of fact and conclusions of law with direction for entry of judgment thereon;
- (7) Opinion or memorandum of decision, if any;
- (8) Judgment or order appealed from;
- (9) Notice of Appeal;
- (10) All exhibits received in evidence and duly marked by the judge or clerk;
- (11) Transcript or Statement of the Trial Court Proceedings; and
- (12) Statement of points pursuant to subsection (d).

(f) Agreed Statement as the Record on Appeal. In lieu of the record on appeal as defined in subdivisions (a)-(e) of this rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the Tribal Court setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issue presented. If the statement conforms to the truth, it, together with such additions as the Tribal Court may consider necessary fully to present the issues raised by the appeal, shall be approved by the Tribal Court and shall then be certified to the Appellate Court as the record on appeal and transmitted thereto by the clerk or judge of the Tribal Court.

(g) 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 that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the Tribal Court, either before or after the record is transmitted to the Appellate Court, or the Tribal Court, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary, that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the Tribal Court.

7 POWERS OF APPELLATE COURT

(a) A case appealed must not be tried anew. The Appellate Court shall review only questions of law. Upon an appeal heard upon the record or a statement of the case, the Appellate Court may review the order or judgment appealed from and may set aside or confirm any or all of the proceedings subsequent to and dependent upon such order or judgment, and may, if necessary or proper, order a new trial. For a failure to prosecute an appeal, the Appellate Court, after notice, may order the appeal dismissed, with costs; and if it appears to such court that the appeal was made solely for delay, it may add to the costs such damages as may be just, not exceeding 25 percent of the judgment appealed from. Judgments rendered in the Appellate Court shall have the same force and effect, and may be enforced in the same manner as judgments in actions commenced in the Tribal Court. Upon the issuance of a judgment by the Appellate Court, the Appellate Court shall forthwith forward a copy of the judgment to the Tribal Court and to all parties.

(b) Upon request of a party or upon the Appellate Court's own initiative, the court may, in its discretion, require the parties to file briefs. The Appellate Court will follow the established rules and procedures defined by the Tribal Council.

8 BRIEF OF AN AMICUS CURIAE

(a) When Permitted. The Sauk-Suiattle Tribe may file an amicus-curiae brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if all parties have consented to its filing.

(b) Motion for Leave to File. The motion must be accompanied by the proposed brief and state:

(1) the movant's interest; and

(2) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

(c) Contents and Form. An amicus brief must comply with all orders of the court regarding forms of briefs allowed to be filed. In addition, the cover of the brief must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. An amicus brief must include the following:

(1) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;

(2) an argument, which may be preceded by a summary and which need not include a statement of the applicable standard of review; and

(3) a certificate of service on all parties.

(d) Time for Filing. An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's or petitioner's principal brief is filed. A court may grant leave for later filing, specifying the time within which an opposing party may answer.

(f) Reply Brief. Except by the court's permission, an amicus curiae may not file a reply brief.

(g) Oral Argument. An amicus curiae may participate in oral argument only with the court's permission.

9 REHEARING OF DECISION ON APPEAL

(a) Panel Rehearing. The appeals panel may grant a petition for rehearing if it believes such petition raises substantial question regarding an error in application of tribal law that affected the outcome of the panel decision.

(1) **Petition for Panel Rehearing.** The petition must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition. Oral argument is not permitted.

(b) Rehearing En Banc May Be Ordered. A majority of the appellate court judges may order that an appeal or other proceeding may be reheard by the court of appeals en banc, i.e. by the full appeals court of five judges. Rehearing en banc is not favored and ordinarily will not be ordered unless en banc consideration is necessary to secure or maintain uniformity of the court's decisions or the proceeding involves a question of exceptional importance.

(1) **Petition for Rehearing En Banc.** The petition must begin with a statement that either:

(A) the panel decision conflicts with a decision of the United States Supreme Court or the Sauk-Suiattle Court of Appeals (with citation to the conflicting case

or cases) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; or

(B) the proceeding involves one or more questions of exceptional importance, each of which must be concisely stated; for example, a petition may assert that a proceeding presents a question of exceptional importance if it involves an issue on which the panel decision conflicts with the Sauk-Suiattle Constitution or it involves an instance of the court substituting its judgment for that of the Tribal Council.

(C) The petition must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition. Oral argument is not permitted.

(c) Time for Filing Petition.

(1) A petition for panel rehearing or rehearing en banc may be filed within 10 days after entry of judgment. But in a civil case, if the Sauk-Suiattle Indian Tribe is a party, the time within which any party may seek rehearing is 30 days after entry of judgment.

(2) A petition for rehearing en banc may be filed within 10 days of denial of petition for panel rehearing.

(d) Length of Petition. Except by the court's permission, a petition for panel rehearing or rehearing en banc must not exceed 15 pages.

(e) Response. No response may be filed to a petition for panel rehearing or rehearing en banc consideration unless the court orders a response.

(f) Call for a Vote. A vote need not be taken to determine whether the case will be reheard by the panel or reheard en banc unless a judge calls for a vote.

(g) Action by the Court. If a petition for panel rehearing or rehearing en banc is granted, the court may do any of the following:

- (1) make a final disposition of the case without reargument;
- (2) restore the case to the calendar for reargument or resubmission; or
- (3) issue any other appropriate order.

CERTIFICATION

Pursuant to the authority contained in Article VII, Section 1(N) of the Constitution and Bylaws of the Sauk-Suiattle Indian Tribe, ratified by the Tribe on July 19, 1975 and certified by the Secretary of Interior on September 17, 1975, pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), the foregoing Ordinance was enacted this 10th day of August at a Special Council Meeting at which time a quorum was present, by a vote of for, against, abstain, and absent..


Gloria Y. Green, Chairman

ATTEST:


Cynthia M. Harris, Secretary