

RULES OF APPELLATE PROCEDURE
KLAMATH TRIBAL CODE
Title 2 Chapter 16

TABLE OF CONTENTS

16.01	Purpose and Policy.....	1
16.02	Applicability.....	1
16.03	Definitions.....	1
16.04	Appellate Jurisdiction	3
16.05	Commencement of an Appeal.....	3
16.06	Content of Notice of Appeal.....	3
16.07	Appeals in Administrative, Civil, and Criminal Proceedings -- When Taken.....	4
16.08	Cross-Appeals -- When Taken.....	4
16.09	Service; Service of the Notice of Appeal.....	4
16.10	Payment of Filing Fees; Proceedings in <i>Forma Pauperis</i>	5
16.11	Service and Filing of Pleadings	5
16.12	Computing Time.....	6
16.13	Additional Time After Service By Mail.....	6
16.14	Enlargement of Time	6
16.15	Stay of Injunction Pending Appeal	6
16.16	Stay of Judgment, Decision, or Orders Pending Appeal.....	7
16.17	Motions	7
16.18	Form of Pleadings	8
16.19	Signing Pleadings; Sanctions.....	8

16.20	Record on Appeal	9
16.21	Statement of the Evidence or Proceedings When No Report Was Made or When a Transcript is Unavailable	9
16.22	Briefs	10
16.23	Brief of an <i>Amicus Curiae</i>	11
16.24	Oral Arguments	11
16.25	Separate Docket	11
16.26	Scope of Review	11
16.27	Entry of Judgments	12
16.28	Interest on Judgments	12
16.29	Damages and Costs for Frivolous Appeals	12
16.30	Costs	13
16.31	Voluntary Dismissal	13
16.32	Substitution of Parties	13
16.33	Rules of Court	13
16.34	Extraordinary Writs: Mandamus and Prohibition	14
16.35	Severability	15

RULES OF APPELLATE PROCEDURE
KLAMATH TRIBAL CODE
Title 2 Chapter 16

16.01 Purpose and Policy. The purpose of this Chapter and the policy of the Klamath Tribes are to establish uniform rules of procedure under which persons may seek review of a final judgment or other appealable order of an Administrative Agency or of the Klamath Tribal Court, Klamath Juvenile Court, Klamath Peacemaker Court, or such other lower courts that may be established by the Klamath Tribes.

16.02 Applicability. This Chapter governs the procedure for appeals authorized by the Klamath Tribal Code from Administrative Agencies to the Klamath Tribal Court and from the Lower Tribal Courts to the Klamath Supreme Court. This Chapter also governs the procedures for applications to the Klamath Supreme Court for extraordinary writs.

16.03 Definitions. The following words have the following meanings under this Chapter:

(a) "Agency" or "Administrative Agency" means a governmental body of the Klamath Tribes that is charged with administering and implementing particular legislation of the Klamath Tribes, including but not limited to any department, commission, administration, committee, board, or bureau;

(b) "Appellant" means the party who takes an appeal to the Klamath Supreme Court or who takes an administrative appeal to the Klamath Tribal Court, *provided* that "cross-appellant" means the appellee who makes a cross-appeal against the appellant;

(c) "Appellee" means the party against whom an appeal is taken, *provided* that "cross-appellee" means the appellant against whom a cross-appeal is made by an appellee;

(d) "Clerk" or "Clerk of the Court" means the clerk of the Tribal Courts of the Klamath Tribes;

(e) "Counsel" means an attorney or lay advocate who is licensed, or a law student who is certified, to practice before the Tribal Courts under the Klamath Tribal Court Ordinance;

(f) "Court" or "Tribal Courts" means any or all of the courts established by the Klamath Tribes to enforce the Klamath Tribal Law, including but not limited to the Klamath Supreme Court and the Klamath Tribal Court, Klamath Juvenile Court, Klamath Peacemaker Court, and such other lower courts that the Tribes may establish from time to time;

(g) "Defendant" means the person defending or denying and against whom relief or

RULES OF APPELLATE PROCEDURE
KLAMATH TRIBAL CODE
Title 2 Chapter 16

recovery is sought in a civil action or an accusation of charge is made in a criminal action;

(h) "De Novo" means trying a case or matter as if it had never been heard before and without any presumption that the prior decision was correct;

(i) "Final Judgment" means a judgment, order, or decision that ends litigation on the merits and/or finally disposes of the issues involved in an action or proceeding, whether disposing of the entire controversy or some part thereof, *provided* that a judgment, order, or decision as to a part is final only if no future action by the Lower Tribal Court or Agency, as the case may be, will be necessary in order to settle and determine the entire controversy; *provided further*, that a judgment, order, or decision in an administrative proceeding is final only if all administrative remedies have been exhausted;

(j) "Lower Tribal Court" means any lower court of the Klamath Tribes, including the Klamath Tribal Court, Klamath Juvenile Court, Klamath Peacemaker Court, and such other lower courts that may be established by the Klamath Tribes;

(k) "Klamath Tribal Code" means the Klamath Tribal Code adopted by the General Council of the Klamath Tribes;

(l) "Klamath Tribal Court" means the Klamath Tribal Court of the Klamath Tribes;

(m) "Klamath Tribal Common Law" means the decisions of the Tribal Courts and the customs and traditions of the Klamath Tribes, as may be modified by Klamath Tribal Law;

(n) "Klamath Tribal Law" means the Constitution and By-Laws for the Klamath Tribe, the Klamath Tribal Code and any rules promulgated thereunder, other ordinances and enactments of the General Council, and Klamath Tribal Common Law;

(o) "Klamath Tribes" means the Klamath Tribes of Oregon, a federally-recognized Indian tribal government;

(p) "Klamath Supreme Court" means the Klamath Supreme Court of the Klamath Tribes;

(q) "Notice of Appeal" means the instrument used to commence an administrative appeal in the Klamath Tribal Court or to commence a civil or criminal appeal in the Klamath Supreme Court;

RULES OF APPELLATE PROCEDURE
KLAMATH TRIBAL CODE
Title 2 Chapter 16

(r) "Party" or "Parties" means a person or persons whose name is designated on the record of the Lower Tribal Courts as a plaintiff or defendant or who is named as a participant in any proceeding before an Administrative Agency;

(s) "Person" means an individual natural person, trust, firm, association, partnership, limited liability company, public or private corporation, political subdivision, government agency, municipality, industry, or any other entity whatsoever;

(t) "Pleading" means the written claims, allegations, responses, defenses, notices, and requests of the parties, filed by a party with the Tribal Courts; and

(u) "Service" means delivering a document to or leaving a document with the party for whom it is intended and, when so delivered in accordance with this Chapter, the document has been served.

16.04 Appellate Jurisdiction. Except as otherwise provided in this Chapter or the Klamath Tribal Code:

(a) The Klamath Supreme Court shall have exclusive jurisdiction to hear all civil and criminal appeals from final judgments and other orders and decisions of the Lower Tribal Courts made appealable under the Klamath Tribal Code, including requests for extraordinary writs, which review shall be final and not further appealable in any court or forum.

(b) The Klamath Tribal Court shall have exclusive jurisdiction over all appeals from final judgments and other orders and decisions of Administrative Agencies made appealable under the Klamath Tribal Code, which review shall be final and not further appealable in any court or forum.

(c) If any party, or a Court on its own initiative, raises the issue of whether the judgment, decision, or order being appealed is appealable, the Court where the appeal would be heard shall have jurisdiction to make a summary determination, with or without a hearing, whether the decision is appealable and may dismiss an appeal that is not properly appealable under this Chapter. Such a dismissal shall be final.

16.05 Commencement of an Appeal. All appeals are commenced by filing a notice of appeal with the Clerk of the Court. Such a filing shall be labeled a "Notice of Appeal."

16.06 Content of Notice of Appeal. The notice of appeal shall specify the party or parties taking

RULES OF APPELLATE PROCEDURE
KLAMATH TRIBAL CODE
Title 2 Chapter 16

the appeal; shall designate the final judgment appealed from; and shall name the Court to which the appeal is made. Neither the Klamath Tribal Court nor the Klamath Supreme Court shall dismiss an appeal for informality of form or title.

16.07 Appeals in Administrative, Civil, and Criminal Proceedings -- When Taken.

(a) After exhausting any and all administrative remedies, any party to an administrative proceeding may file with the Clerk of the Court a notice of appeal within the time specified by the rules of that Administrative Agency. If no such administrative rules apply, the party must file a notice of appeal within ten (10) days after the day that the Agency rendered the final judgement being appealed.

(b) Except as otherwise provided in the Klamath Tribal Code, any party to a civil action or proceeding in a Lower Tribal Court may file with the Clerk of the Court a notice of appeal within twenty (20) days after the date of entry of a final judgment; *provided* that an appeal from the granting of a temporary restraining order or a preliminary injunction shall be filed within five (5) days of the granting of such order or injunction.

(c) Except as otherwise provided in the Klamath Tribal Code, a criminal defendant or the Klamath Tribes may file with the Clerk of the Court a notice of appeal within the time specified by the Klamath Rules of Criminal Procedure.

16.08 Cross-Appeals -- When Taken. If a timely notice of appeal is filed by a party, any other party to the proceeding being appealed from may cross-appeal by filing a notice of appeal within seven (7) days after the date on which the first notice of appeal was filed.

16.09 Service; Service of the Notice of Appeal.

(a) The Clerk of the Court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record for each party other than the appellant or, if a party is not represented by counsel, to the party at his or her last known address or by personal service. The Clerk of the Court also shall transmit a copy of the notice of appeal to the Lower Tribal Court or the Agency from which the appeal is taken.

(b) The Clerk of the Court shall note on each copy served the date on which the notice of appeal was filed. The Clerk of the Court shall note in the docket book the names of the parties to whom he or she mails copies and the date of the mailing.

RULES OF APPELLATE PROCEDURE
KLAMATH TRIBAL CODE
Title 2 Chapter 16

(c) Failure of the Clerk of the Court to serve notice shall not affect the validity of the appeal.

16.10 Payment of Filing Fees; Proceedings in *Forma Pauperis*.

(a) Contemporaneous with the filing of a notice of appeal, the appellant and cross-appellant, if any, shall pay to the Clerk of the Court a fee of one hundred dollars (\$100.00) for filing each notice of appeal or such other fee as may be established by rule of court; *provided that*, the Klamath Tribes, or any officer or agent of the Tribes, shall not be required to pay a fee for appeals filed in connection with actions to enforce Klamath Tribal Law.

(b) Any person who is unable to pay the filing fee may file with the Klamath Tribal Court or Klamath Supreme Court, as the case may be, a motion for leave to proceed in *forma pauperis*. The motion shall be accompanied by an affidavit stating his or her inability to pay, the issues he or she intends to present on appeal, and his or her belief that he or she is entitled to redress. If the motion is granted, the party may proceed without payment of the filing fees. If the motion is denied, the Court shall notify the party in writing the reason for the denial and order the party to pay the filing fee within five (5) days or the appeal will be dismissed.

16.11 Service and Filing of Pleadings.

(a) Papers required or permitted to be filed under this Chapter shall be filed with the Clerk of the Court. Filing may be accomplished by personal delivery or first class, postage paid mail addressed to the Clerk of the Court and must be received by the Clerk within the time fixed for filing.

(b) Copies of all papers filed by any party after the notice of appeal shall be served by the filing party on all other parties to the appeal, either before filing or within one (1) day thereafter. Service on a party represented by counsel shall be made on the counsel. Service by mail is complete upon mailing.

(c) Service may be accomplished in civil and administrative appeals in any manner consistent with the Klamath Rules of Civil Procedure. Service may be accomplished in criminal appeals in any manner consistent with the Klamath Rules of Criminal Procedure.

(d) Papers presented for filing shall contain either an acknowledgment of service by the

**RULES OF APPELLATE PROCEDURE
KLAMATH TRIBAL CODE
Title 2 Chapter 16**

person served or a proof of service in the form of a statement of the date and manner of service and of the parties served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The Clerk of the Court may permit papers to be filed without acknowledgment or proof of service but shall require such to be filed no later than three (3) days following such service.

16.12 Computing Time. In computing any time period prescribed by this Chapter, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it falls on a weekend or tribal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or tribal holiday. If the time period prescribed is less than seven (7) days, intermediate Saturdays, Sundays, and tribal holidays shall not be included in the computation.

16.13 Additional Time After Service By Mail. Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon him or her and the notice or other paper is served upon him or her by mail, three (3) days shall be added to the prescribed period.

16.14 Enlargement of Time.

(a) Except as otherwise provided in this Section, whenever this Chapter or the Court hearing the appeal requires that an act be done at or within a specified time, the Court for good cause shown may at any time in its discretion:

(1) with or without motion or notice, order the period enlarged if a request is made before the expiration of the period prescribed, including any previously ordered extensions; or

(2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect.

(b) The Court may not extend the time for filing an appeal.

16.15 Stay of Injunction Pending Appeal.

(a) An application for a stay of a final judgment of any Lower Tribal Court or of any Administrative Agency pending appeal, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal, must be made first in the issuing Court or Agency.

RULES OF APPELLATE PROCEDURE
KLAMATH TRIBAL CODE
Title 2 Chapter 16

A motion for such relief may be made to the Court hearing the appeal thereafter, but the motion shall show that application to the issuing Court or Agency is not practicable or that the issuing Court or Agency has denied an application or has failed to afford the relief sought. The motion also shall state the reasons for the relief requested and the facts relied upon. If such facts are disputed, then the motion shall be supported by affidavits and sworn statements.

(b) The Court hearing the appeal may condition a stay or injunction pending appeal on the depositing of cash or a surety bond in an amount satisfactory to the Court to cover any injury to other parties that might be caused by such stay or injunction and any costs on appeal; *provided that* the Klamath Tribes, including any department, commission, agency, agent, or officer, shall not be required to deposit cash or a bond under this Subsection. The cash or bond may be deposited with the Court at or after the time the notice of appeal is filed. The stay shall be effective when the required deposit of cash or bond is received by the Court.

(c) Any surety to a bond thereby submits himself or herself to the jurisdiction of the Court hearing the appeal and irrevocably appoints the Clerk of the Court as his or her agent upon whom any papers affecting his or her liability on the bond may be served. The liability of a surety may be enforced on motion without an independent action. The motion and such notice of the motion as the Court prescribes may be served on the Clerk of the Court, who shall forthwith mail copies to the surety at his or her last known address.

16.16 Stay of Judgment, Decision, or Orders Pending Appeal.

(a) When a criminal defendant appeals, the Klamath Tribal Court may continue bail as originally set, lower the amount of bail, or release the defendant on his or her own recognizance pending disposition of the appeal. On petition by a criminal defendant who is appealing his or her conviction, the Klamath Supreme Court may review any decision of the Klamath Tribal Court concerning bail.

(b) In a civil appeal, the Klamath Supreme Court may stay the final judgment appealed from pending the disposition of the appeal.

(c) In an administrative appeal, the Klamath Tribal Court may stay the final judgment appealed from pending the disposition of the appeal.

16.17 Motions. An application to the Court hearing the appeal for an order shall be by a written motion unless made orally during a hearing. All motions must be accompanied by a memorandum

RULES OF APPELLATE PROCEDURE
KLAMATH TRIBAL CODE
Title 2 Chapter 16

containing a statement of the relief desired, the factual and/or legal grounds supporting the motion, and any other relevant matters. The Court hearing the appeal, in its discretion, may order briefs and oral arguments on the motion

16.18 Form of Pleadings.

(a) Every pleading shall contain a caption setting forth the name of the Court, the title of the appeal and names of the parties, the case number (if known), and a designation or title for the pleading.

(b) Statements in a pleading may be adopted by reference in a different part of the same pleading, in another pleading, or in any motion. Exhibits to a pleading become a part of the pleading for all purposes.

(c) Pleadings and papers used in pleadings insofar as possible shall be typed on 8 1/2" x 11" size paper, double spaced with a 2" top margin and a 1" left side margin.

(d) Substantial compliance with this Section shall be sufficient for parties not represented by counsel.

16.19 Signing Pleadings; Sanctions.

(a) Unless specifically required, pleadings need not be verified or accompanied by an affidavit.

(b) Every pleading shall be signed by the counsel of record, whose name and address shall be stated. A party who is not represented by counsel shall sign his or her pleading and state his or her name and address.

(c) The signature constitutes a certificate by the counsel or party that he or she has read the pleading; that, to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or cause unnecessary delay or expense of litigation.

(c) If a pleading is not signed, the Court shall strike it unless promptly signed after the omission is called to the attention of the person whose signature is required.

RULES OF APPELLATE PROCEDURE
KLAMATH TRIBAL CODE
Title 2 Chapter 16

(d) If a pleading is signed in violation of this Section, the Court hearing the appeal, upon motion or its own initiative, shall impose upon the violator an appropriate sanction, including but not limited to an order to pay the reasonable expenses and reasonable counsel fees of the other party or parties incurred because of the filing of the pleading.

16.20 Record on Appeal.

(a) The original pleadings, papers, and exhibits filed in any Administrative Agency or a Lower Tribal Court, the transcripts of proceedings, if any, and a certified copy of any docket entries prepared by the Agency or Lower Tribal Court whose decision is being appealed shall constitute the record on appeal.

(b) Within ten (10) days after the filing of the notice of appeal, the Agency or the Lower Tribal Court whose decision is being appealed shall certify and file with the Court hearing the appeal the record on appeal.

(c) If no report of the evidence or proceedings at a hearing was made or is available, the Agency or the Lower Tribal Court whose decision is being appealed shall so certify to the Court hearing the appeal within five (5) days after the filing of the notice of appeal.

(d) Upon receipt of the record on appeal, the Clerk of the Court shall file it and transmit a notice to each party stating that the record on appeal has been filed and the date on which it was filed. Upon a request by a party and payment of a copying fee of twenty-five cents (25¢) per page or such other fee established by rule of court, the Clerk of the Court shall transmit a copy of the record on appeal to such party.

(e) If a party determines that parts of the record have been omitted and are necessary for the appeal, he or she may move the Court hearing the appeal for an order adding those parts to the record on appeal.

16.21 Statement of the Evidence or Proceedings When No Report Was Made or When a Transcript is Unavailable. If the Agency or Court whose decision is being appealed certifies that no report of the evidence or proceedings at a hearing or trial was made or is available, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his or her recollection. The appellant shall file the statement with the Court hearing the appeal within ten (10) days after the filing of such certification. The appellant also shall serve the statement on the

**RULES OF APPELLATE PROCEDURE
KLAMATH TRIBAL CODE
Title 2 Chapter 16**

appellee, who may file with the Court hearing the appeal objections or proposed amendments within five (5) days after service. Thereafter, the Court hearing the appeal shall determine the composition of the record on appeal.

16.22 Briefs.

(a) Within thirty (30) days after filing their respective notices of appeal, or within such other time as the Court allows, the appellant and cross-appellant, if any, may each file a written brief in support of their appeals. They shall file one (1) original of such brief and serve one (1) copy on each appellee or cross-appellee. Each brief shall contain, under appropriate headings and in the order indicated:

- (1) a short statement of the issues presented for review;
- (2) a statement of the case indicating the nature of the case, the course of proceedings, and the disposition in the Lower Tribal Court or Agency below;
- (3) a statement of the facts relevant to the issues presented for review;
- (4) an argument containing the contentions as to the issues presented and the reasons therefor, with citations to the Klamath Tribal Code and any regulations promulgated thereunder, other applicable authorities and statutes, and parts of the record on appeal relied on; and
- (5) a short conclusion stating the precise relief sought.

(b) Within twenty (20) days after receipt of the appellant's or cross-appellant's brief, or within such other time as the Court allows, the appellee or cross-appellee may file an answer brief. The appellee or cross-appellee shall file one (1) original of such answer brief and serve one (1) copy on each appellant or cross-appellant. The answer brief shall conform to the requirements of Subsection (a) of this Section, except that a statement of the issues or of the case need not be made unless the appellee or cross-appellee is dissatisfied with the statement of the appellant or cross-appellant.

(c) The appellant or cross-appellant may file a brief in reply to the answer brief within fourteen (14) days after service of the answer brief.

(d) No further briefs, memoranda, or statements may be filed without leave of the Court

RULES OF APPELLATE PROCEDURE
KLAMATH TRIBAL CODE
Title 2 Chapter 16

hearing the appeal.

(e) Except by permission of the Court hearing the appeal, original briefs shall not exceed thirty (30) pages, answer briefs shall not exceed thirty (30) pages, and reply briefs shall not exceed ten (10) pages.

16.23 Brief of an *Amicus Curiae*. A person may file a brief *amicus curiae*, as a "friend of the court," only if accompanied by the written consent of all parties, by leave of the Court hearing the appeal granted on a motion, or at the request of the Court hearing the appeal. A motion shall identify the interest of the applicant and shall state why a brief *amicus curiae* is desirable.

16.24 Oral Arguments. In its discretion, the Court hearing an appeal may assign appeals for oral argument or may dispose of them on the briefs without argument. Parties may present their own argument or be represented by counsel at their own expense.

16.25 Separate Docket. The Klamath Tribal Court and Klamath Supreme Court shall maintain a separate docket in which all actions taken at each stage of the appellate proceedings shall be recorded.

16.26 Scope of Review.

(a) Except where otherwise required by the Klamath Tribal Code, appeals shall not be *de novo*, and the Courts shall not consider any new or additional evidence that is not a part of the record on appeal. The Klamath Tribal Court and Klamath Supreme Court shall consider an appeal only to the same extent and upon the same evidence as asserted in the Agency or Lower Tribal Court proceedings. The Klamath Tribal Court and Klamath Supreme Court shall decide appeals based on errors of law appearing upon the record on appeal, which occurred in the Agency or Lower Tribal Court proceedings; *provided* that this Section shall not preclude an appellate Court from considering jurisdictional questions or, in its discretion, questions involving fundamental error affecting substantial rights of a party.

(b) A Court hearing an appeal shall not reverse, modify, remand, or otherwise set aside the final judgment being appealed unless it finds the decision to be:

(1) in violation of or not in accordance with Klamath Tribal Law or other applicable law; or

RULES OF APPELLATE PROCEDURE
KLAMATH TRIBAL CODE
Title 2 Chapter 16

(2) clearly erroneous in view of the entire record on appeal.

(c) In considering an appeal, unless otherwise required by the Klamath Tribal Code, the Court shall give judgment without regard to the decision of questions that were in the discretion of the Lower Tribal Court or Agency from which the appeal is taken or to technical errors, defects, or exceptions that do not affect substantial rights of the parties.

16.27 Entry of Judgment.

(a) The Klamath Supreme Court shall issue a written decision on every appeal heard within one hundred and twenty (120) days of the date on which a notice of appeal is filed under this Chapter. The decision shall affirm, reverse or vacate, modify, and/or remand the final judgment of the Lower Tribal Court.

(b) The Klamath Tribal Court shall issue a written decision on every administrative appeal heard within one hundred and twenty (120) days of the date on which a notice of appeal is filed under this Chapter. The decision shall affirm, reverse or vacate, modify, and/or remand the final judgment of the Agency.

(c) The notation of a judgment in the docket of the Court hearing the appeal constitutes entry of the judgment on appeal. On the date the judgment is entered or within one (1) day thereafter, the Clerk of the Court shall mail to all parties notice of the date of entry of the judgment and a copy of the opinion, if any, or of the judgment, if no opinion was written.

(d) All judgments rendered on an appeal to the Klamath Supreme Court shall be final and not further appealable in any court or forum.

(e) All judgments rendered on an administrative appeal to the Klamath Tribal Court shall be final and not further appealable in any court or forum.

16.28 Interest on Judgments. Unless otherwise provided by a Court order, if a judgment for money in a civil or administrative appeal is affirmed, whatever interest is allowed by the Klamath Tribal Code shall be payable from the date such judgment originally was entered in the Agency or the Lower Tribal Court. If a judgment is modified or reversed with a direction that a new judgment for money be entered in the Agency or the Lower Tribal Court, as the case may be, the mandate shall contain instructions with respect to the allowance of interest. Pre-judgment interest, if appropriate, may be ordered at the discretion of the Court hearing the appeal.

RULES OF APPELLATE PROCEDURE
KLAMATH TRIBAL CODE
Title 2 Chapter 16

16.29 Damages and Costs for Frivolous Appeals. If the Court hearing the appeal determines that an appeal or cross-appeal is frivolous, it may award just damages and costs to the appellee or cross-appellee; *provided* that no such damages and costs may be imposed against the Klamath Tribes or an Agency or officer thereof unless such imposition is expressly authorized by the Klamath Tribal Code or the Klamath Tribes.

16.30 Costs.

(a) Except as otherwise provided by the Klamath Tribal Code and subject to the provisions of Subsection (b) of this Section, if the Court hearing the appeal dismisses an appeal or cross-appeal, costs shall be taxed against the appellant or Cross-appellant unless otherwise agreed by the parties or ordered by the Court. If a judgment is affirmed, costs shall be taxed against the appellant and Cross-appellant unless otherwise ordered. If a judgment is reversed or vacated, costs shall be taxed against the appellee or cross-appellee unless otherwise ordered. If a judgment is affirmed or reversed in part, costs shall be allowed only as ordered by the Court hearing the appeal.

(b) In cases involving the Klamath Tribes or an Agency or officer thereof, if an award of costs against the Klamath Tribes is expressly authorized by the Klamath Tribal Code or the Klamath Tribes, the Court hearing the appeal shall award costs in accordance with this Section; otherwise, the Court hearing the appeal shall not award costs against the Klamath Tribes or an Agency or officer thereof.

16.31 Voluntary Dismissal. If the parties to an appeal and/or cross-appeal sign and file with the Clerk of the Court an agreement that the appeal and/or cross-appeal be dismissed, specifying the terms as to payment of costs, and pay whatever fees are due, the Court shall dismiss the appeal and/or cross-appeal. An appeal and/or cross-appeal may be dismissed on the motion of the appellant upon such terms as may be agreed upon by the parties or ordered by the Court hearing the appeal.

16.32 Substitution of Parties. If a party dies while a proceeding is pending in the Court hearing the appeal, the personal representative of the deceased party may be substituted as a party on motion filed by the personal representative with the Clerk of the Court hearing the appeal. If a substitution of a party is necessary for any reason other than death, substitution shall be similarly effected.

16.33 Rules of Court. The Chief Judge of the Klamath Tribal Court, in consultation with Justices of the Klamath Supreme Court, may promulgate rules of court to govern further appellate practice, subject to the approval of the Tribal Council. Rules of court shall not conflict with the procedural

RULES OF APPELLATE PROCEDURE
KLAMATH TRIBAL CODE
Title 2 Chapter 16

provisions of this Chapter.

16.34 Extraordinary Writs: Mandamus and Prohibition.

(a) The issuance of an extraordinary writ by the Klamath Supreme Court shall be in its discretion, which shall be sparingly exercised only when: the writ is in aid of the Court's appellate jurisdiction, exceptional circumstances warrant the exercise of the Court's discretionary powers, and adequate relief cannot be had in any other form or from any other Court.

(b) Any person may apply to the Klamath Supreme Court for a writ of mandamus, which seeks to compel a judge or judges of a Lower Tribal Court to perform an act which Klamath Tribal Law or applicable federal law recognizes as a duty, or a writ of prohibition, which seeks to prohibit a judge or judges of a Lower Tribal Court from exceeding the jurisdiction of such Lower Tribal Court, or both in the alternative. A petition requesting such a writ, directed to a judge or judges of the Lower Tribal Courts, shall be filed with the Clerk of the Court along with proof of service on the respondent judge or judges and all parties to the action in the Lower Tribal Court from which relief is sought. All persons served shall be deemed respondents for the purposes of this Section. The petition shall contain:

- (1) the names of all judges against whom relief is sought;
- (2) a statement of the issues presented and of the relief sought;
- (3) a statement of the facts necessary to an understanding of the issues presented by the application;
- (4) a statement of the reasons why the writ should issue; and
- (5) copies of any order or opinion or parts of the record that may be essential to an understanding of the matters set forth in the petition.

(c) Upon receipt of a fee of one hundred dollars (\$100.00), the Clerk of the Court shall docket the petition and submit it to the Klamath Supreme Court.

(d) If the Klamath Supreme Court is of the opinion that the writ should not be granted, it shall deny the petition. Otherwise, it shall order that an answer to the petition be filed by the respondents within the time fixed by the order. The Clerk of the Court shall serve the order on all

**RULES OF APPELLATE PROCEDURE
KLAMATH TRIBAL CODE
Title 2 Chapter 16**

respondents. If any judge named as a respondent does not wish to respond to the petition, he or she shall advise the Clerk of the Court, petitioner, and all other respondents in writing.


(e) In its discretion, the Klamath Supreme Court may require briefs and oral arguments and, in such an event, the Clerk of the Court shall advise the respondents and parties of the dates on which briefs are to be filed and of the date of any oral arguments.

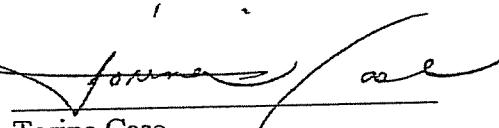
(f) The Klamath Supreme Court shall give proceedings for extraordinary writs preference over ordinary appeals, and all decisions of the Klamath Supreme Court with respect to extraordinary writs shall be final. Entry of judgment of a writ shall be handled in the same manner as for other ordinary appeals.

16.35 Severability. If any provisions of this Chapter or the application of any provision to any person or circumstance is held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remainder of this Chapter and its application to any other person or circumstances and, to this end, the provisions of this Chapter are severable.

Certification

We, the undersigned, Tribal Council Chairman and Secretary of the Klamath Tribes, do hereby certify that at a Regular General Council meeting held on the 22nd day of November, 2003 with a quorum present, the General Council took action and duly adopted this Ordinance by a vote of 58 for, 0 opposed, and 2 abstentions by General Council Resolution 2003-3.


Allen Foreman
Chairman
The Klamath Tribes


Torina Case
Secretary
The Klamath Tribes

