

**Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians
Court Rules of Appellate Procedure**

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Match-E-Be-Nash-E-Wish-Band of Pottawatomi Indians Court Rules of Appellate Procedure

Section 1. Purpose and Definitions.

- A. **Purpose.** The purpose of these *Rules* is to establish the procedures by which appeals are taken from final judgments, orders or decisions of the Gun Lake Tribal Court to the Gun Lake Supreme Court.
- B. **Definitions.** The following terms shall have the following meanings:
1. "Affidavit" means a written sworn statement of fact voluntarily made under oath or affirmation administered by a person authorized to do so by law.
 2. "*Amicus Curiae*" means a person or group who is not a party to a case, but has a strong interest in the matter and who wishes to submit a brief in the action with the intent of informing or persuading the Court.
 3. "Appellant" means the party filing the appeal.
 4. "Appellee" means the party responding to the appeal.
 5. "Tribe" means the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (Gun Lake Tribe).
 6. "Certificate of Service" means a document in which a party certifies to the Court that any document filed with the Court has been mailed or otherwise served on all other parties. A Certificate of Service form may be obtained from the Court.
 7. "Chief Justice" means Chief Justice of the Gun Lake Supreme Court or his/her designee by order of the Chief Justice.
 8. "Court" and "Tribal Court" are synonymous and mean the trial level court of the Tribe.
 9. "Day" means a calendar day.
 10. "Final judgment" means a decision by the Tribal Court that disposes of all the issues in the case.
 11. "Interlocutory Appeal" means an appeal of a Tribal Court ruling that occurs any time before entry of final judgment.
 12. "Justice" means a judge appointed to the Gun Lake Supreme Court.

13. "Motion" means a written request to the Court for a ruling or order.
14. "Natural Person" means a human being and not a corporation or other legal entity.
15. "Supreme Court" means the appellate level court of the Tribe.
16. "Tribal courts" means the Tribe's trial and appellate courts.

Section 2. Who Has the Right to Appeal.

- A. **Civil Cases.** Any party adversely affected by a final judgment of the Tribal Court in a civil case may appeal.
- B. **Criminal Cases.**
 1. **Appeal on Broad Grounds.** A defendant in a criminal case may appeal, as a matter of right, an order or judgment of conviction on any grounds.
 2. **Appeal Only on Limited Grounds.** The prosecution may not appeal a finding of fact or an acquittal. The prosecution may appeal a decision only to the extent that it raises a question of law and which:
 - a. Resulted in the dismissal of a criminal case on a point of law;
 - b. Modified a jury verdict of guilty in a criminal case;
 - c. Declared a mistrial in a criminal case;
 - d. Quashed an arrest or search warrant;
 - e. Suppressed admissible evidence;
 - f. Suppressed a confession or admission by a defendant; or
 - g. Imposed a sentence that is inconsistent with Tribal law.

Section 3. Subject of Appeal. An appeal is properly brought before the Supreme Court if the judgment of the Tribal Court is final, except in cases during which a party is seeking an interlocutory appeal.

Section 4. Scope of Court's Review. In reviewing a matter on appeal, the Supreme Court may:

- A. Affirm, modify, vacate, or reverse the final judgment of the Tribal Court;

- B. Vacate or reverse a criminal sentence that is inconsistent with Tribal law;
- C. Remand the case to the Tribal Court and direct entry of an appropriate judgment, or require further proceedings; or
- D. Award the costs of the appeal.

Section 5. Procedure for Appeals.

A. Time Period for Appeal.

1. **Civil Cases.** A *Notice of Appeal* to the Supreme Court in civil cases, except civil infractions, must be filed no later than twenty-eight (28) days after the entry of the final Tribal Court judgment unless otherwise specified by Gun Lake Tribal law. In civil infraction cases, notice of appeal must be filed no later than seven (7) days after entry of the Tribal Court judgment.
2. **Criminal Cases.** A *Notice of Appeal* to the Supreme Court in criminal cases must be filed no later than twenty-eight (28) days after the entry of the final Tribal Court judgment;
3. **Cross Appeal.** An Appellee may cross-appeal by filing a *Notice of Cross-Appeal* within twenty-eight (28) days of filing of the *Notice of Appeal*.

B. **Grounds for Granting Late Appeal.** The Supreme Court may grant leave for a late filing of an appeal for good cause or upon a showing of excusable delay by motion of the Appellant accompanied by an affidavit of supporting facts. The Appellant's motion must also include a statement as to whether the opposing party or parties consent or object to the extension.

C. **No Automatic Stay of Final Judgments.** The filing of an appeal does not cause an automatic stay of the Tribal Court's judgment. Upon motion and a showing of good cause, the Supreme Court may grant a stay of the final judgment appealed from.

D. **Expedited Appeals.** Upon filing by the Appellant, the Supreme Court may grant leave for an expedited appeal upon a showing of irreparable harm if such appeal is not granted. The motion must also include a statement as to whether the opposing party or parties consents or whether the Appellant made a good faith attempt to obtain consent.

E. **Interlocutory Appeal.** The Supreme Court may grant leave for an interlocutory appeal of a non-final judgment, order, or decision upon a showing, by motion, that the appeal will:

1. Materially advance the termination of the litigation or clarify further proceedings in the litigation;
2. Protect the Appellant from substantial or irreparable injury; or

3. Clarify an issue of general importance in the administration of justice.
- F. **Automatic Stay of Proceedings.** The filing of an interlocutory appeal will automatically stay all proceedings until an action is granted or denied by the Supreme Court. An automatic stay will be dissolved upon the Supreme Court's denial of an appeal. Upon motion and a showing of good cause, the Appellate Court may order that the trial-level proceedings continue.
 - G. **Notice to the Trial Judge.** If an interlocutory appeal is filed, the Appellant must file a copy of the *Notice of Appeal* with the Tribal Court.
 - H. **Appeal Period Tolled.** Any post-trial motion seeking relief from a final order or judgment shall toll the time for appeal.

Section 6. Notice of Appeal.

- A. **Filing Required.** An appeal is made by the proper filing of a *Notice of Appeal* with the Court and the payment of, or a request to waive, the filing fee.
- B. **Content of Notice.** The *Notice of Appeal* must bear the caption, case number of the case in Tribal Court, title of decision or judgment being appealed, and must be labeled "Notice of Appeal." It must have a short statement of the reasons for appeal. The Appellant or the Appellant's attorney must sign and date the notice.
- C. **Defects in Notice.** No appeal may 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 on the other party or parties.
- D. **Docketing of Appeal.** Upon receipt of the *Notice of Appeal* and the filing fee, the Court Administrator shall notify the Supreme Court of the pending appeal.

Section 7. Appellate Filing Fee. Every party that files any appeal or cross-appeal must pay a filing fee as set by the *Schedule of Court Fees*, unless waived by the Supreme Court. An action is not filed until the filing fee has been paid to the Court or waived.

Section 8. Requirements of Filing. All filings must be properly and timely submitted to the Court either in person, electronically, or by mail. The filing party is responsible for ensuring it was received and accepted by the Court.

Section 9. Requirements of Service.

- A. **What Must Be Served.** Any document that is filed with the Court must be served on all parties. A certificate of that service must be filed with the Court.

- B. **Form of Service.** For any document filed subsequent to *the Notice of Appeal*, service may be done by in-hand delivery or by regular first class mail, unless otherwise permitted to electronically file. Service by mail is considered complete upon first-class mailing. Electronic service is considered complete upon the sending of the electronic document.
- C. **Person Served.** Service must be made upon the party's attorney if any. If the party is not represented, service must be made upon the party.
- D. **Initial Pleadings. Process; Manner of Service.** Process of initial pleadings must be served on an individual party either by:
 - 1. Delivering a summons and a copy of the complaint to the Defendant personally; or
 - 2. Sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, and delivery restricted to the addressee. Service is made when the Defendant acknowledges receipt of the mail. A copy of the return receipt signed by the Defendant must be attached to proof showing service.

Section 10. Electronic Filing.

- A. **Electronic Filing.** Electronic filing means the automated transmission of documents, through either email or facsimile, from an attorney or party to the Court.
- B. **Initial Pleadings.** Initial pleadings must only be filed by hand delivery or by mail.
- C. **Electronic Filing Authorized.** Upon leave of the Supreme Court, parties may file pleadings subsequent to the initial pleadings by electronic means. A party seeking to file documents electronically must obtain the consent of opposing parties, and submit the *Consent Agreement* to the Supreme Court. A *Consent Agreement* form may be obtained from the Tribal Court.
- D. **Notification of Receipt.** A party granted leave to electronically file documents has the responsibility of ensuring that filings have been received by the Court.
- E. **Effect of Electronic Filing.** A document filed electronically shall be considered complete when properly submitted and the filing fee is paid to the Court, unless waived by the Supreme Court. If documents are electronically filed, paper filing is unnecessary.
- F. **Form of Electronic Filing.** All electronically filed documents, other than by facsimile, shall be in PDF digital format. Proposed orders shall be filed in an editable format.

Section 11. Electronic Service.

- A. **Electronic Service.** Electronic service means the automated transmission of documents, through either email or facsimile, from an attorney or party to an opposing attorney or party.
- B. **Electronic Service Authorized.** The parties must only serve the opposing party by hand delivery or by mail, unless the parties consent to electronic service and submit a consent agreement to the Supreme Court.
- C. **Electronic Service upon Parties.** If the parties consent to electronic service they must provide an email address or facsimile number to be served at by the opposing party, and include this information in the consent agreement filed with the Supreme Court. The transmission of the electronic service from one party's email address or facsimile number to that of the opposing party will constitute notice and service of the filed documents upon the noticed party.
- D. **Certificate of Service Required.** A party electronically serving the opposing party must file a certificate of service. The certificate shall state what was served, the manner in which service was accomplished, the email address or facsimile number the electronic documents were served to, the date and time served, and the parties served.
- E. **Valid Service.** Electronic delivery of documents in conformity with the consent of the parties shall be considered valid and effective personal service. Service upon an email address or facsimile number provided to the Court in a consent order will constitute valid service even if the party being served failed to notify the Court of a change in an email address or facsimile number.

Section 12. Waiver of Fee.

- A. **Applicability.** Only a natural person is eligible for a waiver of the filing fee. A party may apply for a waiver on a form provided by the Court.
- B. **Persons Receiving Public Assistance.** If a party demonstrates by affidavit that the party is primarily supported by public assistance, the payment of the fee as to that party shall be waived.
- C. **Other Indigent Persons.** If a party demonstrates by affidavit that the party is unable to pay required fee, the Court may order the fee waived.
- D. **Reinstatement of Requirement for Payment of Fees.** If the payment of the filing fee has been waived and the appeal is still pending, the Court may on its own motion order the person for whom the fee was waived to pay the fee when the reason for the waiver no longer exists.

Section 13. Bond. Upon notification of the filing of an appeal of a civil judgment, the Tribal Court may, upon motion of the prevailing party, 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 the judgment is affirmed on appeal. Notice of such bond shall be filed with the Supreme Court by the Court Administrator.

Section 14. Service of Notice of Appeal. A copy of the *Notice of Appeal* must be served by the Appellant on all other parties by certified mail, return receipt requested, with delivery restricted to the addressee. A certificate of service of the *Notice of Appeal* must be filed with the Court upon completion of service.

Section 15. Record on Appeal. Within forty-two (42) days of receiving the *Notice of Appeal*, the Court Administrator shall compile and transmit the record, as directed by the Chief Justice, the record to the Supreme Court. The record on appeal consists of:

- A. **Pleadings, Orders, and Judgments.** All documents filed with the Tribal Court, including pleadings, reports, notices, depositions, judgments, orders and decisions.
- B. **Recordings.** Parties who wish to have a portion of the transcript considered by the Supreme Court and are unsure of the relevant portions needed must file a request to receive a copy of the recorded hearings for the case the party wishes to appeal. If the Chief Justice determines the case to consist of sensitive and confidential matters, the Chief Justice may require the party to review the recording at the Tribal Court. The party must designate only the relevant portions of the recording that shall be transcribed by the Court Administrator and submitted to the Supreme Court for review.
- C. **Transcript.** Upon receipt of the *Notice of Appeal*, the Court Administrator shall cause to have prepared a transcript of all or part of the proceedings as designated by the Appellant. The cost of preparing the transcript must be paid by the Appellant unless otherwise ordered by the Chief Justice. If only part of the proceedings is designated by the Appellant for transcription, the Appellee may request additional portions be transcribed at the Appellee's cost. Any party may purchase a copy of the transcript from the Tribal Court. Upon written application, the Chief Justice may waive the cost of preparing a transcript in accordance with Section 12 of this Chapter.
- D. **Docket Entries, Exhibits, and Transcripts.** All relevant docket entries, original electronic or written exhibits, and the transcript shall be included in the record on appeal.
- E. **Public Documents.** A record on appeal is open to public inspection except that (1) papers filed under seal in the Tribal Court, recordings or transcripts of closed hearings held in the Tribal Court, and exhibits submitted or introduced at closed hearings in the Tribal Court, will be maintained under seal while they constitute part of a record on appeal; and (2) papers, recordings, transcripts, exhibits, and other items designated as confidential in the Tribal Court will be maintained as confidential while they constitute part of a record on appeal.

F. Other Papers.

1. Documents shall be open to public inspection unless the Supreme Court otherwise orders, or except as hereafter provided in this subparagraph. If the Tribal Court has restricted disclosure of information, and it is necessary to refer to that information in an appeal, the Appellant or Appellee must attach to the appeal the Tribal Court order that restricted the information. The information will be maintained as sealed or confidential during the pendency of the appeal, unless the Tribal Court or Supreme Court orders otherwise. In addition, the appeal must be written in a manner that does not disclose non-public information.
2. Counsel in appellate matters arising out of closed proceedings in the Tribal Court shall, wherever possible, avoid the use of full names of parties or other detailed identifying information in briefs, motions, and other papers filed with the Supreme Court. Descriptive terms ("the oldest daughter," "the prospective adoptive father"), pseudonyms ("Jane Doe"), first names or initials should be used instead.
3. A motion to file a paper under seal or to treat a paper as a confidential document in the Supreme Court, the response to such a motion, and the order ruling on such a motion, are open to public inspection and shall not themselves be filed under seal.
4. A paper may be submitted with the court along with a motion to file it under seal or to treat it as a confidential document. Unless the Supreme Court otherwise orders, it is not open to public inspection while the motion to file it under seal or confidentially is pending. If the motion is denied, and the paper has been submitted along with the motion, the movant has the option of withdrawing the paper or leaving it on file open to public inspection.

G. General Provisions.

1. Papers that are confidential in the Supreme Court may be examined or copied only by the parties to the case, counsel of record in the case, their agents or employees designated by them, those with a written court order authorizing access, and Tribal Court personnel having need to examine the papers in the performance of their duties. Access to papers filed under seal in the Supreme Court is restricted to the justices or judges of the court in which the papers were filed, the law clerks and staff attorneys assisting them in deciding the case, and persons authorized by written court order.
2. If further restrictions are ordered for good cause (for example, privileged material to which counsel for one party but not the other are entitled to access), the Court Administrator shall enforce those restrictions, including restrictions placed by the Tribal Court upon materials filed with the Tribal Court and included in the record on appeal.
3. A paper shall not be withheld from public inspection because other papers included in the same case file or the same record on appeal have been filed under seal or are confidential and are not open to public inspection.

- H. **Certification.** The Court Administrator shall certify the record as correct and complete as part of the transmittal to the Supreme Court. Such certification and a copy of the *Notice of Transmittal of the Record* to the Supreme Court shall be served on the parties.

Section 16. Briefing. Parties must file written briefs in order to assist the Supreme Court in its review. The following requirements for briefs apply:

- A. **Timing of Briefs.** The Appellant's *Opening Brief* must be filed within twenty-eight (28) days of the issuance of the *Notice of Transmittal of the Record*. Appellee's *Answer Brief* must be filed within (28) days after the Appellant's *Opening Brief* has been filed. The Appellant may file a *Rebuttal Brief* within fourteen (14) days of the filing of the Appellee's *Answer Brief*. Upon motion of a party, the Chief Justice may alter the timing of filing of briefs. Failure by a party to timely file a required brief may be grounds for dismissal of the appeal.
- B. **Content of Briefs.** The Appellant's *Opening Brief* and the Appellee's *Answer Brief* must contain a short statement of the case's procedural history, a brief summary of the facts, a listing of the issues presented, legal arguments in support of, or in opposition to, the appeal, and state whether the lower court's decision should be affirmed or reversed. A *Rebuttal Brief* filed by the Appellant must be limited to responding to new issues raised in the Appellee's *Answer Brief*. If a party wishes to have oral argument, it must be expressed in a separate section at the end of the brief titled "Request for Oral Argument."
- C. **Format of Briefs.** Briefs must be typewritten in Times New Roman, twelve (12) point font, double-spaced, on white paper 8 1/2 by 11 inches in size, with 1 1/2 inch margins. No brief may exceed thirty (30) pages in length, exclusive of appendices, except upon motion and order of the Chief Justice. An original and one (1) copy of each brief must be submitted to the Supreme Court if not electronically filed. Briefs must be filed on the opposing parties by regular first class mail, postage pre-paid, unless otherwise permitted to electronically file. Briefs must be accompanied by a certificate of service upon all parties and/or attorneys.
- D. **Cited Case Law.** Full unpublished opinions and any non-Gun Lake Tribal Court opinions cited in a brief must accompany the brief.
- E. **Amicus Curiae Briefs.** An amicus curiae may file a brief only by leave of the Court granted on motion. The brief may be conditionally filed with the motion for leave. A motion for leave must identify the interest of the applicant and must state the reason why a brief of the amicus curiae is desirable. An amicus brief must comply with Section 12(B)-(D) of this Chapter. In addition to the requirements of Section 12 of this Chapter, a cover page must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. Any amicus curiae must file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support unless the Court upon a finding of good cause grants leave for later filing. If the Court permits later filing it shall specify within what period an opposing party may answer.

Section 17. Oral Argument. Subject to the discretion of the Supreme Court, a party's request for oral argument will be granted. A motion of an amicus curiae to participate in the oral argument may be granted only for compelling reasons.

- A. **Arguments.** Each party shall have thirty (30) minutes to present their arguments to the Supreme Court.
- B. **Rebuttal.** The Appellant may reserve time from appellant's allotted thirty (30) minutes for rebuttal. The rebuttal must only address what is stated in the Appellee's oral argument. It is the responsibility of the Appellant to announce the reservation of rebuttal time at the beginning of the argument.
- C. **Request for Extension of Time.** Upon the request of a party, the Supreme Court has discretion to grant additional time for argument if one or more of the following circumstances is present:
 1. The complexity of the case's legal issues or factual disputes over the record require additional time; or
 2. The interest of justice or fundamental fairness requires additional argument time.

Section 18. Motions Before the Supreme Court. All motions must bear the caption and case number, and must be labeled "Motion" with a short title of what the party is requesting. Any motion filed with the Court must clearly state its purpose, along with the relevant facts and reasons for the request. A motion must be signed and dated by the party, or by the party's attorney. Any opposition to a motion must be filed within fourteen (14) days of service of the motion. The Chief Justice may act on any motion, or refer it to the full Supreme Court for consideration.

Section 19. Supreme Court Decisions. All decisions of the Supreme Court shall be made as follows:

- A. **Panel Majority.** The decision of the Supreme Court to affirm or reverse the Tribal Court judgment or order shall be made by the majority of the judges on the panel. If no majority is reached on a decision, the final judgment or order of the Tribal Court is upheld.
- B. **Content.** The opinion of the Supreme Court shall be in writing and include the following: a statement of facts, a discussion of issues decided, an explanation of the reasoning and law applied, and a request for affirmance or reversal. The Chief Justice shall decide which of the justices in the majority will write the opinion.
- C. **Order.** If the decision is one of reversal, the Supreme Court shall issue an order with directions to the Tribal Court. Such order shall include the continuance or termination of any order relating to a stay or the posting of bond, if any.

- D. **Precedent.** Decisions of the Supreme Court are binding precedent for the Tribe.
- E. **Dissenting and Concurring Opinions.** Any member of the panel who disagrees with the majority's decision or reasoning may issue a written dissent or concurrence.
- F. **Distribution of Opinion.** The Court Administrator shall transmit by first class mail a copy of the opinion to each party and amicus curiae, if any, at their address of record within five (5) days of issuance.
- G. **Official Reporter.** Any decision that determines an issue of law shall be retained and reported as Tribal substantive law. The Court Administrator shall report filed decisions to the official reporter of the Supreme Court. The Court Administrator shall also report final opinions to Court-approved tribal court public reporters.

Section 20. Remand. Upon receipt of an order of remand by the Supreme Court, the Court Administrator shall promptly transmit a copy of the opinion and order to the Tribal Court. Upon such transmittal, jurisdiction over the case is returned to the Tribal Court.

Section 21. Court Administration.

- A. **Standards for Computing Time Requirements.** In computing the period of time prescribed by these *Rules* or by any order of the Supreme 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.
- B. **Practice Before the Tribal Court.** Any person who is admitted to practice before the Tribal Court is thereby admitted to practice before the Supreme Court.
- C. **Rules of Court.** The Justices of the Supreme Court may make or amend such *Rules* as are deemed appropriate for the proper and efficient administration of all appellate matters. Such *Rules* shall be filed with the Court Administrator and made publicly available.

Section 22. Short Title and Citation Format.

- A. **Short Title.** These *Rules* are titled "Rules of Appellate Procedure."
- B. **Citation.** The official abbreviated citation form to these *Rules* is: MBPI RAP.