



Burns Paiute Tribe

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BURNS PAIUTE TRIBE
Burns Paiute Tribal Council

RESOLUTION NO. 17-12

Adopting Revised Appellate Proceedings Provisions of the Burns Paiute Tribal Code

WHEREAS, the Burns Paiute Tribe (“Tribe”) is a federally recognized Indian Tribe and has adopted a Tribal Constitution (“Constitution”) designating the Burns Paiute Tribal Council as the elected governing body of the Tribe; and

WHEREAS, Article VI, Section (1)(i) of the Constitution authorizes the Tribal Council to enact laws to maintain order, govern conduct, and protect the safety, health, and welfare of all persons within the Tribe’s jurisdiction, and Article VII empowers the Burns Paiute Tribal Court to exercise the judicial authority of the Tribe; and

WHEREAS, on November 3, 2008, the Burns Paiute Tribal Court of Appeals, in Case No. CV-001-08, invalidated parts of sections 1.1.290 and 1.1.291 of the Burns Paiute Tribal Code, which addressed court fees and costs in appellate proceedings; and

WHEREAS, the Tribe has developed revised appellate proceedings provisions to remove the invalidated provisions from the Tribal Code and to provide more detailed and consistent rules and procedures for the Court of Appeals; and

WHEREAS, the Tribal community has been given the opportunity to review the proposed revisions and provide their input; and

WHEREAS, the Tribal Council has reviewed the revised appellate proceedings provisions and considered the community’s input, and has voted to approve the adoption of the revised appellate proceedings provisions.

NOW THEREFORE BE IT RESOLVED, that the Tribal Council hereby expressly, unequivocally, and irrevocably adopts revised appellate proceedings provisions, which are codified as sections 1.1.280 - 1.1.297 of the Tribal Code (and Appendix A and Appendix B), which are attached hereto and hereby incorporated into this Resolution; and

BE IT FURTHER RESOLVED, that any previously-enacted appellate provisions and any other Tribal laws, rules, or policies governing appeals that are contrary to or inconsistent with the newly adopted Tribal Code sections 1.1.280 - 1.1.297 are hereby declared inapplicable and void to the extent of any such conflict or inconsistency.

CERTIFICATION

We, the undersigned Chairperson and Secretary-Treasurer of the Burns Paiute Tribal Council, do hereby certify that: the Tribal Council is composed of seven (7) members, of whom five (5) constitute a quorum; that a quorum was present at a meeting thereof duly and regularly called, noticed, convened, and held on this 13th day of April, 2017; and that the foregoing Resolution was duly adopted by 3 affirmative votes, with 0 opposing, and 2 abstaining. The Chairperson's vote is not required except in the case of a tie.



Tribal Council Chairperson
Joe DeLaRosa

Date: 4-13-17



ATTEST: Secretary-Treasurer
Tracy Kennedy

Date: 4/13/17

APPELLATE PROCEEDINGS

GENERAL PROVISIONS

1.1.280 Court of Appeals; Northwest Intertribal Court System

All appeals from the Burns Paiute Tribal Court shall be heard and decided by the Burns Paiute Tribal Court of Appeals. For each case, the Northwest Intertribal Court System (NICS) shall select and assemble a panel of 3 judges to serve as the Court of Appeals.

(a) No person shall be qualified to serve as a judge on any case in which he or she has a personal interest or in which any relative by marriage or blood, in the first or second degree, is a party. The Tribal Court judge who made the decision being appealed is not eligible to serve on the panel deciding the appeal.

(b) The judge who has served as a judge for the longest time shall serve as the Chief Judge, unless the panel agrees on another judge serving as the Chief Judge.

1.1.281 Tribal Court Clerk

The Clerk of the Burns Paiute Tribal Court ("Court Clerk") shall serve as the Clerk of the Court of Appeals, and shall be the point of contact for the filing of all appellate notices, motions, briefs, and other court papers.

(a) The Court Clerk must submit any appellate notice, motion, brief, or other paper to NICS within 2 business days of receipt.

(b) Upon receipt of any order or opinion issued through NICS, the Court Clerk must:

- (1) Immediately date-stamp and file the order or opinion;
- (2) Promptly mail copies of the order or opinion to the parties; and
- (3) Transmit to NICS proof of filing and mailing within 2 business days.

1.1.282 Filing and Service of Court Papers

All briefs, motions, and other court papers filed with the Court of Appeals must be filed with the Court Clerk and served on all other parties as follows:

(a) Court papers must be filed with the Court in person or by mail. If papers must be filed with the Court by a certain date, they must be received by the Court Clerk by the close of business on that date. When a paper is due on a day that the Tribal Court is closed, the paper shall be due on the next day that the Tribal Court is open.

(b) For purposes of this subchapter, “day” means a calendar day, unless otherwise specified.

(c) Copies of filed court papers must be served on all other parties to the appeal, either at the time of or before filing. Service may be personal (hand-delivered), or sent by mail to the party’s last known address. Service by mail is complete on mailing. Service on a party represented by counsel must be made on counsel.

(d) Proof of service on all parties must be filed with the Court Clerk within 5 business days of the filing of the brief, motion, or other court paper. A sample certificate of service is set forth in Appendix B.

1.1.283 Parties

The party initiating an appeal shall be known as the “appellant,” and all other parties to the appeal shall be known as the “respondents.”

INITIATING AN APPEAL

1.1.284 Grounds for Appeal

Any party who claims, in good faith, that the Tribal Court made a mistake in interpreting the law or in a procedure that affected the outcome of the case may initiate an appeal, except that the Tribe may not appeal a verdict of “not guilty” in a criminal case.

1.1.285 Notice of Appeal: Deadline

To appeal, a written Notice of Appeal must be filed with the Court Clerk and served on all parties within 20 days of the date of the Tribal Court decision being appealed. If a party first requests a new trial, rehearing, or reconsideration, and the motion is denied, the 20-day time limit for filing a Notice of Appeal starts on the day the motion is denied.

1.1.286 Notice of Appeal: Contents; Filing Fee; Acceptance

(a) A Notice of Appeal must be titled “Notice of Appeal” and must include:

(1) The case number, title or description, and date of the Tribal Court decision being appealed;

(2) The names, addresses, and telephone numbers of the parties and their counsel (attorneys or spokespersons), if any;

(3) A brief description of the error of law or procedure made by the Tribal Court and of how the error effected the outcome of the case; and

(4) A copy of the Tribal Court order or judgment being appealed.

(b) A sample Notice of Appeal is provided in Appendix A.

(c) Upon filing a Notice of Appeal, the appellant must pay a filing fee of \$75.00, except that no filing fee is required in an appeal filed by the Tribe.

(d) The Court Clerk must provide a copy of the Notice of Appeal and certificate of service to NICS and to the Tribal Court judge who made the decision being appealed within one business day of receipt.

1.1.287 Stays; Bond

The filing of an appeal does not automatically suspend (stay) the Tribal Court order or judgment being appealed. The appellant must file a written motion to request a stay. A stay shall be granted in all other cases in which it is requested, unless manifest injustice would result from the stay. A stay may be conditioned upon the posting of a bond.

(a) Upon receipt of a Notice of Appeal, the Tribal Court may order the appellant to post a bond or give some other assurance that he or she will serve the sentence, perform the order or judgment, or pay any ordered fine, judgment, and/or court costs, if the decision is affirmed on appeal.

(b) In a criminal case, the defendant shall not be released from incarceration pending appeal if the Tribal Court finds that his or her release would jeopardize the safety of the community or that a bond or other assurance is inadequate to assure his or her appearance.

1.1.288 Motions

A party wishing to request Court action or raise a question of procedure must file a written motion with the Court Clerk and serve a copy of the motion on all parties.

(a) Parties may file a written response to a motion within 5 business days of receipt.

(b) Upon receipt of a motion, the Court Clerk must, within one business day, provide a copy of the motion and certificate of service to NICS and to the Tribal Court judge who made the decision being appealed.

1.1.289 Initial Review

(a) The Court of Appeals shall conduct an initial review of a Notice of Appeal to determine whether:

(1) The Notice of Appeal was filed and served by the deadline and includes all of the information required by section 1.1.286 of this subchapter; and

(2) The appeal appears, on its face, to present a valid issue for appeal, in accordance with section 1.1.284 of this subchapter.

(b) Within 30 days of the filing of the Notice of Appeal, the Court of Appeals shall issue a written decision either accepting the appeal or dismissing the appeal for failure to meet the requirements of this subchapter.

1.1.290 Dismissing an Appeal

(a) The Court of Appeals shall dismiss an appeal:

(1) At the appellant's request, at any time; or

(2) If the Court determines that the appeal was filed frivolously and without good faith. An appeal is "frivolous" if it has no sound basis in law or fact.

(b) The Court of Appeals may dismiss an appeal:

(1) At the respondent's request, in the discretion of the Court; or

(2) If a party fails to comply with the appellate rules or a valid order of the Court.

(c) When dismissing an appeal, the Court of Appeals shall order the appellant to pay all costs of a dismissed appeal, in accordance with section 1.1.296 of this subchapter.

1.1.291 Preparation of the Record

(a) If the Court of Appeals accepts an appeal, the Court Clerk shall, within 14 days of notice of the acceptance:

(1) Provide a copy of the record to NICS. The record shall consist of all documents filed in the case, a copy of all relevant Tribal laws, and the audio recording of all Tribal Court proceedings relevant to the appeal; and

(2) Make the record available to all parties for inspection and copying, at the parties' expense; and

(b) The Court of Appeals may request a written transcript of the proceedings if the audio recording is inaudible. If transcription is required:

(1) The Court Clerk shall arrange for transcription as soon as possible; and

(2) The appellant shall bear the costs of transcription, unless the Court of Appeals orders another party to pay such costs.

REVIEW BY THE COURT OF APPEALS

1.1.292 Scope of Review

The Court of Appeals shall limit its review to the record, any error of law and/or procedure raised in the appellant's brief, and any oral arguments presented at a hearing before the Court of Appeals. New evidence may not be introduced on appeal, unless the Court of Appeals finds that the evidence was not available at the time of the Tribal Court proceedings and refusal to consider the evidence would result in a clear injustice.

1.1.293 Briefs

(a) A brief is a party's written statement of their side of the case.

(1) To succeed on appeal, the appellant's brief must convince the Court of Appeals that the Tribal Court made a mistake in interpreting the law or in procedure that affected the outcome of the case.

(2) The respondent's brief responds to the appellant's arguments, and tries to convince the Court of Appeals to uphold the Tribal Court's decision.

(b) Upon acceptance of an appeal, the Court of Appeals shall set a schedule for the filing of briefs. The appellant must file the opening brief, followed by briefs from the respondents. The appellant may then file a reply brief. The Court of Appeals may order supplemental briefing, as needed.

(1) All briefs must be filed with the Court Clerk by the deadline. The party filing a brief must serve a copy of the brief on all parties.

(2) The Court of Appeals may not consider any brief filed after the deadline, unless an extension has been granted. A motion for an extension must be filed with the Court and served on all parties prior to the deadline for filing the brief.

(3) If the appellant fails to file an opening brief by the deadline and no extension has been granted, the Court of Appeals shall dismiss the appeal and order the appellant to pay all costs of the appeal.

(c) The appellant's brief must include:

(1) A short summary of the case, including the facts relevant to the issues presented on appeal, with references to the part of the record where each fact appears;

(2) A short statement of each error of law or procedure made by the Tribal Court, the legal reasons why the appellant believes the Tribal Court was wrong, and how the error effected the outcome of the case. Citations to legal authority may be included;

(3) A short conclusion stating the specific relief sought by the appellant; and

(4) A request for a hearing, if the appellant wishes to present his or her arguments orally. If the appellate brief does not include a hearing request, oral arguments will be deemed waived and the appeal will be decided based on the briefs and the record on appeal, unless the Court of appeals orders a hearing.

(d) The respondent's brief must answer the appellant's brief and follow the format of the appellant's brief, except that a summary of the case is not required unless the respondent finds the appellant's summary to be insufficient or incorrect.

(e) All briefs must be printed or typewritten, on white 8 ½ x 11" paper, with double spaced typing. The Court shall reject any briefs that are not legible.

(1) The pages of all briefs must be numbered. Briefs may not exceed 15 pages in length, excluding any attached case law. Where cases are consolidated, the combined brief of the appellants or the respondents may not exceed 15 pages.

(2) An appendix is not required, but may be used to provide copies of laws, case law, quotations from the transcripts, or other relevant information.

1.1.294 Hearings; Pre-argument Conferences

(a) If a hearing is request or ordered, NICS shall schedule the hearing for no fewer than 30 days and no more than 90 days after the last brief is filed. The Court Clerk shall notify all parties of the time and place of the hearing.

(b) The Court of Appeals may, in its discretion, order parties and their counsel to appear for a pre-argument conference to take any appropriate action to aid or simplify the proceedings and/or and to determine whether the case can be resolved without a hearing.

(c) At the hearing, the parties may present oral arguments relevant to the issues raised by the appeal. The appellant speaks first, followed by the respondent(s). The appellant may then respond briefly to arguments made by the respondent(s). The judges may set limits on the amount of time each party is allowed to speak.

1.1.295 Decision on Appeal

(a) The Court of Appeals shall have 90 days from the oral argument to issue a written decision. The decision of the Court of Appeals shall be made by a majority vote of the judges. The Court of Appeals may dismiss an appeal, affirm or modify the Tribal Court decision being reviewed, reverse the decision in whole or in part, order a new trial, or take any other action as the merits of the case and the interest of justice may require.

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

(1) The Tribal Court's findings of fact shall be sustained unless clearly erroneous.

(2) Conclusions of law shall be reviewed de novo (anew).

(3) A matter that is within the discretion of the Tribal Court shall be sustained if the record shows that the Tribal Court applied the appropriate legal standard to the facts and did not abuse its discretion.

1.1.296 Costs

Costs on appeal may include the costs of having the record copied, costs of service, the premiums paid for any appeal bonds, and the fee paid for filing the appeal. Attorney's fees may be imposed when provided by contract or Tribal law, in the discretion of the Court. Except as otherwise provided by law, otherwise agreed, or ordered by the Court:

(a) If an appeal is dismissed or the Tribal Court decision is affirmed, the Court shall order the appellant to pay costs, except that if the defendant prevails in a criminal case, costs shall not be assessed against the Tribe.

(b) If the Tribal Court decision is reversed, the Court shall order the respondent to pay costs.

(c) If a Tribal Court decision is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the Court.

(d) The Court of Appeals may, in its discretion, waive all or part of the costs incurred, if justice so requires.

1.1.297 Finality

The decision of the Court of Appeals shall be final.

Appendix A: NOTICE OF APPEAL

IN THE NORTHWEST INTERTRIBAL COURT OF APPEALS

)	
Appellant,)	NOTICE OF APPEAL
v.)	From Burns Paiute Tribal Court
)	Case No.: _____
)	
)	
Respondent.)	

NOTICE OF APPEAL

1.

_____ (*name of party(s) filing the appeal*) hereby gives notice of appeal to the Northwest Intertribal Court of Appeals from the _____ (*title or description of order or judgment being appealed*) entered by the Burns Paiute Tribal Court on _____ (*date*).

2.

The parties to this appeal are:

	<u>Appellant(s):</u> (the party(s) filing the appeal)	<u>Respondent(s):</u> (the other party(s) to the case)
Name(s):		
Address(es):		
Phone Number(s):		
Name and address of attorney or spokesperson, if any:		

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3.

The Tribal Court made the following error(s) of law or procedure:

4.

The Tribal Court's error(s) effected the outcome of the case as follows:

5.

A copy of the Tribal Court order or judgment being appealed is attached to this Notice of Appeal.

Signature of Party, Attorney, or Spokesperson

Date

Printed Name: _____

Appendix B: CERTIFICATE OF SERVICE

IN THE NORTHWEST INTERTRIBAL COURT OF APPEALS

_____ ,)	
Appellant,)	CERTIFICATE OF SERVICE
)	
v.)	Burns Paiute Tribal Court
)	Case No. _____
)	
_____ ,)	
Respondent.)	

CERTIFICATE OF SERVICE

I certify that I served the following document(s) in the above-referenced case:

on the following person: _____ (full name)

on: _____, 20____ (date), by: (check one and complete)

Personal Service: I am not a party to the case. I personally handed the documents to the person named above at the following location:

_____.

Service by Mail. I mailed the documents to the person named above, by first class U.S. mail, to his or her last known address, which is:

_____.

Signature of Person Completing Service

Date

Printed Name: _____

Address: _____