

COLVILLE TRIBAL COURT OF APPEALS
COURT RULES
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June 1, 2014

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COLVILLE TRIBAL COURT OF APPEALS
COURT RULES
(COACR)
Effective June 1, 2014

1. PURPOSE

The purpose of these rules shall be to establish uniform rules for appeals filed in the Colville Tribal Court of Appeals, and to give guidance to all parties, attorneys and non-attorneys, in procedures and requirements to be followed in cases before the Colville Tribal Court of Appeals. While the rules are specific, the Court of Appeals may allow flexibility in their application.

2. AUTHORITY TO ENACT AND APPLICABILITY OF RULES

(a) The following Rules of the Court of Appeals (COA) for the Confederated Tribes of the Colville Reservation (hereinafter COACR) are enacted pursuant to Tribal law and the Constitution of the Confederated Tribes of the Colville Reservation, Amendment X.

(b) These Rules of the COA apply to each case filed with the COA, unless suspended for good cause, at the discretion of the Chief Justice, or Presiding Justice, of an appellate panel.

1. COURT ADDRESS

The official address of the COA is: 3 Joe Moses Road, P O Box 150, Nespelem WA 99155. For a timely response, all correspondence should be addressed: "Attention: Court of Appeals Clerk".

2. COMPOSITION OF THE COURT OF APPEALS

(a) The COA consists of a panel of individual justices appointed by the Colville Tribal Business Council for terms of six years, including one Chief Justice and the others being Associate Justices, appointed consistent with Amendment X of the Colville Tribal Constitution.

(b) The Chief Justice of the COA shall assign an appellate panel of three justices for each case filed as the presiding Panel for the duration of the case. If the Chief Justice is not on the Panel, he shall designate one associate justice to act as Presiding Justice on the Panel.

(c) In cases in which the Chief Justice or the appellate panel determines the issues on appeal are of major importance to the Tribal membership, or when a three-member panel of justices are unable to reach a decision, the Chief Justice may empanel all of the justices of the COA for an *en banc* panel to decide the issues on appeal, provided, however, that any party to an action before the COA may make a motion to the COA for an *en banc* hearing. Any motions made under this section shall be made at or before the initial hearing in the case.

4.1 CLERK OF THE COURT OF APPEALS

There shall be at least one clerk of the Court of Appeals. The Clerk of the Court of Appeals shall be under the direct supervision of the Chief Justice. The Clerk shall perform the following duties, which include, but are not limited to: the clerk will have the authority to accept documents for filing with the Court of Appeals; the clerk will maintain the files of the Court and shall process documents as necessary for the administration of those files; the clerk will maintain a record of the status of open cases and the justices assigned to each case; the clerk will attend all hearings and keep records of the proceedings; the clerk will assist the justices in research and drafting of opinions and orders as requested by the Chief Justice or Presiding Justice of each panel; the clerk

will distribute final decisions to the parties and to pertinent law reporters, as designated by the Chief Justice or Presiding Justice; and other duties as assigned by the Chief Justice for the efficient operation of the Court of Appeals.

1. JURISDICTION

(a) The COA shall have jurisdiction to hear and determine appeals from the Trial Court's final judgments, sentences, and disposition orders. The COA shall also have jurisdiction to hear writs and appeals from the Administrative Court's final decisions in cases where the Trial Court judges also act as judges of the Administrative Court, unless otherwise restricted by a statute.

(b) For purposes of filing an appeal with the COA, "final" orders and decisions set out in part (a) above are the written orders or decisions issued by the Trial or Administrative Court that dispose of the substantive issues and not the oral bench orders entered in the matter to be appealed.

(c) The COA will not entertain issues on appeal that have not been fully developed and ruled on by the Trial Court. As set out below in Rule 7, and found in the Tribal law, appeals based on errors of law require an exception on the record to be perfected.

(d) In instances when the Trial Court has failed to issue a written final order within a reasonable time, and one of the parties to the action has made a written motion for the issuance of a final order which is not dealt with by the Trial Court within a reasonable time, any party may petition the COA for a Writ of Mandamus to require the Trial Court to issue a final written order. The Petition for a Writ of Mandamus may be heard by the Chief Justice or his designee.

(e) The COA shall have jurisdiction to hear interlocutory appeals for issues that concern controlling issues of law for which there is substantial difference of opinion and where a determination will materially advance the ultimate termination of the case; or where there is a significant question of law under the Tribal Constitution; or where there has been a significant error of law committed at the Trial Court which renders further proceedings useless.

5.1 TIME

Time shall be calculated in accordance with Law and Order Code § 1-1-366, unless otherwise specified in these rules.

6. NOTICE OF APPEAL

(a) A party shall initiate an appeal by filing a written Notice of Appeal (NOA) with the Trial Court within thirty (30) days from the entry of the final judgment, sentence, or disposition order. The thirty days shall not include the date of entry of the order, nor intervening weekends and holidays.

(b) The NOA shall be a written notice which states the name of the case and indicate the party's intention to appeal. It must also state the specific ruling being appealed and the grounds for appeal stated below.

(c) A NOA shall be titled as such and shall include:

(1) The name of the parties and their spokespersons, if any. The party filing the appeal shall be designated the appellant and the party responding to the appeal shall be designated the appellee. In minor-in-need-of-care cases, the filing party shall be designated the appellant, and all other parties involved in the case shall be designated as appellees;

(2) The Trial Court case number, date and nature of the decision appealed from;

(3) Those parts of the decision which the party wants reviewed;

(4) Each error of law or procedure being appealed and how it affected the

outcome of the case;

(5) A statement that the Appellant has assured the Trial Court that the judgment will be satisfied if affirmed or that the Appellant has asked for a waiver/reduction of the bond.

(6) The relief or order requested.

(7) Current contact information for the parties, including physical address, mailing address, and phone number. The parties are responsible for keeping the COA notified of their respective current contact information. Failure to keep the COA apprised of this information may result in adverse rulings if the party fails to appear for a hearing or fails to timely respond to motions or other pleadings. If the COA sends mailings to the Last Known Address and the mailing is returned, no further mailings will be sent until the party notifies the COA of his/her correct address.

(d) In all civil actions, the Appellant must attach an Order Setting or Waiving Bond (Order) from the Trial Court (See COACR 9-b). If the Order is not attached with the NOA, the Appellant will be advised that the Order is required and the Appeal may not be granted without it. Appeals from criminal and minor-in-need-of-care (MINOC) cases do not have to attach the bond order.

(e) An appeal is perfected when all of the applicable elements of this rule are met.

(f) The appellant does not need to provide original service of process on the NOA. Appellant may show proof of service of the NOA by providing service by mail to the last known address of the appellee.

6-A. NOTICE OF INTERLOCUTORY APPEAL

(a) A party shall initiate an interlocutory appeal by filing a written Notice of Interlocutory Appeal (NOIA) with the Court of Appeals within ten (10) calendar days from the date of entry of the written order of the Trial Court. If no written order has been issued and the party has proof that a request was made, the party may move for a Writ of Mandamus to be issued at the same time as the NOIA is filed, as per COACR 5(d) above. The opposing party has ten (10) days after receipt of the NOIA in which to file a response with the COA on whether they oppose or agree with the interlocutory appeal. Failure to file this statement may cause the NOIA to be granted by the COA.

(b) The NOIA shall be a written notice which states the name of the case and indicates the party's intention to appeal. It must also state the specific ruling being appealed and the grounds for the interlocutory appeal stated below.

(c) The NOIA shall be titled as such and shall include:

(1) The name of the party and his spokesperson, if any. The party filing the interlocutory appeal shall be designated the appellant and the party responding to the interlocutory appeal shall be designated the appellee;

(2) The Trial Court case number, date and nature of the decision appealed from;

(3) The error of law or procedure which is the basis of the interlocutory appeal and how it will affect the outcome of the trial if left unresolved until after final judgment;

(4) An explanation of law the error of law or procedure meets the requirements necessary for review as an interlocutory appeal; and

(5) The relief or order requested.

(6) Current contact information for the parties, including physical address, mailing address, and phone number. The parties are responsible for keeping the

COA notified of their respective current contact information. Failure to keep the COA apprised of this information may result in adverse rulings if the party fails to appear for a hearing or fails to timely respond to motions or other pleadings. If the COA sends mailings to the Last Known Address and the mailing is returned, no further mailings will be sent until the party notifies the COA of his/her correct address.

(d) An Interlocutory Appeal is perfected upon order of the COA.

(e) The appellant does not need to provide original service of process on the NOIA. Appellant may show proof of service of the NOIA by providing service by mail to the last known address of the appellee.

6. GROUND FOR APPEAL

(a) Grounds for requesting a new trial or a limited appeal on issues of law and/or fact shall be limited to one or more of the following:

(1) Receipt by the jury of any evidence, paper, document or book not allowed by the Court;

(2) Misconduct of the prosecution, judge or jury;

(3) Newly discovered evidence material to the party which could not have been discovered with reasonable diligence and produced at the trial, provided, however, the appellant has unsuccessfully made reasonable attempts to bring the matter back before the Trial Court by using appropriate motions;

(4) Accident or surprise;

(5) Irregularity in the proceedings of the Court, jury, or prosecution, or any order of the Court, or abuse of discretion, by which the party was prevented from having a fair trial;

(6) Error of law occurring at the trial and excepted to at the time by the party;

(7) That the verdict or decision is contrary to the law and the evidence; or

(8) That substantial justice has not been done.

(b) When the Notice is based on matters outside of the record, the facts shall be shown by affidavit.

7-A. GROUND FOR INTERLOCUTORY APPEAL

The following are grounds for interlocutory appeal:

(a) The Trial Court has committed an obvious error which would render further proceedings useless; or

(b) The issue presented involves a controlling issue of law as to which there is substantial ground for difference of opinion and that an intermediate appeal from the decision may materially advance the ultimate termination of the litigation; or

(c) The Trial Court has so far departed from the accepted and usual course of judicial proceedings as to call for review by the COA;

(d) It is a significant question of law under the Colville Tribal Constitution; or

(e) The Trial Court has either granted or denied an affidavit of prejudice for removal of a judge.

6. FILING AND SERVICE

(a) FILING. All papers required or permitted to be filed in the COA shall be filed with the COA Clerk. Filing may be accomplished by personal service, mail, electronic mail (e-mail), or fax as

provided for in the following section, addressed to the Clerk, but filing shall not be timely unless the papers are received by the Clerk within the time fixed for filing. All documents filed shall be by an original and three (3) working copies, unless otherwise ordered.

(1) E-MAIL. Any party may file NOAs, motions, proposed briefing schedules or any other pleading allowed by the COA by e-mail. The date and time sent that is specified on the e-mail message will constitute constructive filing of the document. If no date/time is indicated due to some computer or internet problem, the date and time stamped by the COA staff will be the official filing. Only the pleading will need to be submitted. Any attachments, i.e. case law, shall not be included in the e-mail. The party filing by e-mail is responsible for service on all other parties of the case pursuant to the Tribal laws and these court rules. There shall be a 20-page limit on any document sent by e-mail, unless advance approval is granted.

(2) FAX. Any party may file NOAs, motions, proposed briefing schedules, or any other pleading allowed by the Court, by fax under the following rules:

(i) The date and time the pleading is received by the Court's fax machine will constitute constructive filing, if the machine has a date/time indicator built in, otherwise the date and time stamped by the Court staff will be official filing. Only one copy will need to be faxed. Only the pleading will need to be submitted. Any attachments, i.e. case law, shall not be included in the fax.

(ii) If the document is filed on a weekend, holiday or during non-working hours, and the date/time on the fax machine are not accurate because of a power outage, malfunction, or similar problem, the document will be considered filed as of the first working day and hour after the non-work hour, holiday or weekend day.

(iii) The party filing by fax is responsible for service on all other parties of the case pursuant to the Tribal laws and these court rules.

(iv) It is the responsibility of the party sending the fax to call and confirm the receipt of the fax by the COA.

(v) There shall be a 20-page limit (including cover page) on any document faxed to the COA, unless advance approval is granted.

(3) PERSONAL. A party may file any document with the COA by personally coming to the COA and giving it to the COA Clerk. If the COA Clerk is unavailable, the document may be left with any of the Trial Court clerks. The COA will accept the "Filed" stamped date and time by the Trial Court time clock.

(4) ORIGINAL/WORKING DOCUMENTS. The original document and the three

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(b) SERVICE. Copies of all papers filed by any party shall, at or before the time of filing, be served by a party or person acting for the party on all other parties to the appeal or their spokesman. Service may be personal or by mail. Personal service includes delivery of the copy to a secretary or other responsible person at the office of the spokesman. Personal service shall be made by a person not a party to the action. Service by mail shall be by first class mail to the last known address of the party.

(b-1) SERVICE OF INTERLOCUTORY APPEALS. A copy of the NOIA shall be served on the opposing party prior to or within three (3) days of the filing of the NOIA. Service may be perfected as stated in Rule 8-b above.

(c) PROOF OF SERVICE. Papers presented for filing shall contain an acknowledgment of service by filing an Affidavit of Service. The Affidavit of Service shall include the case name; case number; legible name of person serving the Affidavit and his signature; legible name of the person being served with the Affidavit; and the time, date and location of the service. If the Affidavit of Service is not presented with the NOA or NOIA, it must be filed within three (3) days of the filing of the NOA or NOIA. Failure to file such an acknowledgment may result in the matter being stricken from the COA docket.

(d) SUPPLEMENTAL DOCUMENTS. If a party to an appeal wants to supplement the record from the Trial Court file, he must submit a Motion & Affidavit to Supplement and attach a list of the documents requested. Each document listed must be identified by the title of the document, the date signed or filed, and any other identifier that will help the clerk pull the correct document from the Trial Court file. The Motion and attached list must be served on the opposing party at least ten (10) days prior to the Initial Hearing (if the documents are needed to determine if the appeal should move forward or not) or may be submitted at the Initial Hearing (if the documents are only

necessary for briefing purposes). The Affidavit of Service must be filed within three (3) days of service on the opposing party.

If the opposing party does not agree to the acceptance of the documents for review, he must file his objection within three (3) working days after receipt of the Motion & Affidavit, but not less than one (1) working day prior to the Initial Hearing. If the supplemental request is made after the Initial hearing, the objection must be made within five (5) days from receipt of the Motion. The Court may decide the matter on the written material or it may order a hearing to be held.

9. BOND ON APPEAL/INTERLOCUTORY APPEAL; STAY OF EXECUTION OF JUDGMENT

(a) CRIMINAL CASES. The Trial Court shall set bond requirements pending the disposition of a perfected appeal in all criminal cases, pursuant to the Colville Tribal Law and Order Code, upon the request of the defendant for a Stay of Execution of Judgment pending the filing and perfection of an Appeal.

(b) CIVIL CASES. The appellant in any case may request, and the Trial Court may grant, a stay of execution of the judgment pending the appeal. Except when the appellant is the Tribe or any of its subdivisions, agents, enterprises, or officers acting in their official capacity, the Trial Court may require as a condition to the granting of such a stay, the appellant post a bond, or guarantee control by the Court of sufficient assets of the appellant to satisfy the judgment in the event it is affirmed.

(c) FAILURE OF TRIAL COURT TO RULE ON MOTION TO STAY. In instances when the Trial Court has failed to rule on a written motion to stay in a reasonable time, any party may petition the Court of Appeals for a Writ of Mandamus to require the Trial Court to rule on the Motion to Stay. The Petition for a Writ of Mandamus may be heard by the Chief Justice or his designee.

(d) MOTION TO STAY, DECISION. Where the Trial Court has entered a written decision on the motion to stay, either party may request a review by the COA to determine if the Trial Court's decision should be affirmed or denied. The review will be on the written documents only, unless the Panel decides otherwise. The request for review must be made within ten (10) days of the written decision.

(e) INTERLOCUTORY APPEAL. There shall be no bond required for interlocutory appeals. A stay of proceedings may be entered at the discretion of the Trial Court. Immediate review of the decision on the stay may be made by the Chief Justice or his designee. The Chief Justice may affirm, reverse or refer the matter to the Panel for determination.

10. FEES ON APPEAL/INTERLOCUTORY APPEAL

(a) FEES. Filing fees will be charged in all civil appeals cases except for minor-in-need-of-care cases. The appellant shall be required to pay a filing fee when filing the Notice of Appeal. The fee shall be \$50 and is non-refundable.

Filing fees shall be charged for interlocutory appeals in all cases, except for minor-in-need-of-care cases. The filing fee shall be submitted with the NOIA. The filing fee shall be \$35.00 and is non-refundable.

No fee shall be required for any criminal appeals or for appeals taken by the Confederated Tribes of the Colville Reservation, their agents or corporations.

(b) WAIVER. In cases where the appellant has insufficient assets and income to pay the filing fee, or where such payment would work an undue hardship, the Chief Justice or his designee may waive part or all of the fee.

(c) WAIVER REQUEST. Any appellant who feels he is eligible for such a waiver may petition the COA for an order waiving the filing fee. The petition shall be accompanied by a signed affidavit

setting forth petitioner's assets and income. Forms will be provided to the appellant upon request made to the COA Clerk. If a finding of indigence has already been made for the appellant at the trial level, the appellant may file with the COA a copy of the order waiving the filing fee at the trial level along with an affidavit (Affidavit: No Substantial Change in Circumstances) stating there has been no substantial changes to his income since the order was entered. If the Appellant was the Respondent at the Trial Court, he must file a waiver/reduction of fee request and the Affidavit: No Substantial Change in Circumstances will not apply.

(d) INCOME SCHEDULE. The COA shall adopt a schedule showing the maximum income and assets for which a waiver by the Court shall be mandatory. Real property held in trust by the United States shall be excluded from the schedule. Assets and income exceeding this amount will not preclude the COA from granting such a waiver, but waiver will be purely at the discretion of the Chief Justice.

10. RECORD ON APPEAL; AGREED STATEMENTS

(a) The record on appeal shall consist of:

(1) The electronic recordings of the trial proceedings, particularly those recordings reflecting the portions of the trial proceedings being appealed. The appellant shall provide to the appellate panel a designation of the electronic record to be copied in the proposed briefing order. The COA Clerk shall request copies of said recordings for the panel.

(2) The parties may give notice at the initial hearing of any further documents from the trial record they wish the appellate panel to consider.

(b) Instead of using the electronic recordings of the proceedings in Trial Court, the parties may prepare and sign an agreed statement or designation of the record on appeal. An agreed statement shall show how the issues presented by the appeal arose and were decided in the Trial Court, setting forth only so much of the facts averred and proved or thought to be proved as are essential to a decision of the issues presented. Notice that a statement is being prepared shall be served promptly on the Trial Court. A copy of the agreed statement shall be submitted for the Trial Court's review at the time of the filing of the briefs. The Trial Court may make such additions as it considers necessary to present the appeal fully and accurately. If nothing is received from the Trial Court within twenty (20) days of the notice to the Trial Court, the record is presumed to be complete.

(c) The parties may present a written transcript of only those parts of the record that are relevant to the issues on appeal. The parties shall consult among themselves, extract those portions of the transcript they agree to present, and submit it to the COA with signatures of all parties stating, to the best of their knowledge, the submitted transcript is a true and correct copy of the record on appeal. Notice that a transcript is being prepared shall be served promptly on the Trial Court. The agreed transcript shall be submitted for the Trial Court's review no later than the Initial Hearing. The Trial Court may make such additions as it considers necessary to present the appeal fully and accurately. If nothing is received from the Trial Court within ten (10) days of the notice to the Trial Court, the transcript is presumed to be correct.

(d) If the appellate panel finds the copy of the electronic recording is inaudible it may require the appellant to file a certified written transcript of the relevant parts of the original record, if such a transcript can be made. If not, the case may be vacated and remanded to the Trial Court for a new hearing so that an adequate record can be made.

12. INITIAL HEARING

(a) After the appellate panel has received the record on appeal, but no later than sixty (60) days from such receipt, the COA Clerk shall cause the matter to be set on the next regular COA docket day for the initial hearing as required by Tribal law. At the initial hearing the appellate panel shall decide:

- (1) Whether the facts and/or laws as presented warrant a limited appeal on issues of law and/or of fact; or
- (2) Whether a new trial should be granted, at which time the case will be summarily remanded to the Trial Court for a new trial to be set by the Court in a timely fashion; or
- (3) Whether the appeal should be denied or dismissed.

(b) If the appellate panel finds issues exist to allow the appeal to go forward, a briefing schedule shall be ordered to be prepared by the parties which includes the specific language for the issues being briefed. The briefing schedule shall be submitted within fourteen (14) days of the initial hearing. If no briefing schedule is submitted the provisions of Rule 13(a) shall apply. If the proposed briefing schedule is submitted but no briefing order is timely issued by the presiding justice, the parties are to file their briefs in accordance with the time guidelines set in the proposed briefing schedule.

(c) Any party may make a motion for a telephonic conference call in lieu of the initial hearing. The motion and affidavit must specify extraordinary circumstances to show why the hearing should be held by a telephonic conference call. Such motions may be granted at the discretion of the Presiding Justice. If the motion is granted it is the responsibility of the moving party to set up the conference call, and assume the cost of the call.

(d) In lieu of the initial hearing, and subject to the discretion of the Presiding Justice of the panel assigned to the case, the parties may submit an agreed order stating the following:

- (1) The exact nature of the issues on appeal, citing to specific rulings of the Trial court alleged to be in error;
- (2) A designation of the tapes to be reviewed by the appellate panel;
- (3) Any notices required in Rule 11, above; and
- (4) A proposed briefing schedule.

(e) The agreed order stating the above shall be filed no later than seven (7) working days before the scheduled initial hearing in order to give adequate notice to the justices assigned to the case, or it may be denied.

12-A. INTERLOCUTORY APPEAL - INITIAL REVIEW

(a) Upon filing of the NOIA, the Chief Justice, or his designee, shall review the notice to determine if there are adequate grounds stated to proceed with the interlocutory appeal. The Chief Justice or his designee, shall have broad discretion to accept or deny the interlocutory appeal.

(b) If the NOIA meets the criteria for acceptance, the Chief Justice shall appoint a panel of three (3) justices to review the merits of the interlocutory appeal. A briefing schedule shall be made on the issue(s) identified by the Chief Justice. The issues may be decided on the briefs or the Panel may order oral arguments. If a hearing is required, the oral argument date shall be set and notice given to the parties.

(c) If the NOIA has been denied, the matter shall be remanded back to the Trial Court. The Chief Justice, on his own or with the assistance of other justices, may determine (1) that the NOIA did not meet the criteria but was of enough significance to merit an initial review by the COA, or (2) that

the NOIA did not meet the criteria and was of such a nature which might merit sanctions by the COA for frivolousness.

12.1 MOTIONS

A written motion shall be filed and served on opposing party no later than five (5) days prior to the time specified for the hearing or time deadline which the motion addresses, unless a different period is fixed by these rules or by order of the Court or for good cause shown. Motions shall be supported by affidavit, which shall be served with the motion. Opposing motions and affidavits shall be filed and served on opposing parties no later than one (1) day prior to the hearing or time deadline, unless the Court permits them to be filed at some other time. All motions shall cite governing rules and/or laws of the Colville Tribe. Motions for which no time deadline is apparent may be filed at any time. Opposition to those motions must be filed within five (5) days of service of the original motion. All motions shall be legible and signed with the signor's name legibly printed below the signature. If the Motion is illegible or COA clerk is unable to decipher the name of the signer, the motion may be declined for filing by the COA.

13. APPELLATE BRIEFS

(a) TIME. One (1) original and three (3) copies of the appellant's brief shall be filed within thirty (30) days after the Initial Hearing, unless otherwise ordered by the appellate panel. One (1) original and (3) three copies of the appellee's brief shall be filed within twenty (20) days after service of the appellant's brief on the appellee. No reply briefs shall be filed unless authorized by the appellate panel.

(b) CONTENTS. Briefs shall not exceed thirty (30) pages in length, exclusive of an appendix, except by order of the Court for good cause shown. Briefs which are not clearly legible may be stricken by the appellate panel.

(1) The appellant's brief shall include:

- (i) A short statement of the case, including such facts as are material to the issues presented on appeal, with appropriate references to the record;
- (ii) A concise argument containing the contentions of the party, the reasons therefore, and necessary supporting legal authority (using Blue Book citation rules); and
- (iii) A short conclusion stating the exact relief sought.

(2) The appellee's brief shall be of like character and arrangement as that of the appellant's brief, except that no statement of the case is required unless the appellee finds the statement presented by the appellant to be insufficient or incorrect.

(3) The parties shall provide four (4) legible copies of the pertinent laws, cases, treatises, regulations, rules, instruction, and any other authorities cited in their briefs for the appellate panel, provided that no copies are required for any cases cited from the Colville Tribal Court of Appeals Reporter. Any legal authority cited shall adhere to the rules governed by *The Bluebook, A Uniform System of Citation*. These documents shall be submitted at the same time as the brief. Failure to submit the cited case law with the brief could delay submission of the brief to the panel which could impact their decision in the matter.

(c) *AMICUS CURIAE*. A spokesman, person, or entity through a spokesman, may appear as *amicus curiae* in any proceeding by request of the Court of Appeals, or by permission of the Court of

Appeals upon written request served upon all parties. The request shall set forth the interest of the applicant in the appeal or proceeding and the name of the party in whose support the *amicus curiae* would appear, and is subject to the filing and service requirements of COACR 8. The application shall also state whether permission is sought to file an *amicus* brief or participate in oral arguments, or both. Any objections to the appearance of an *amicus curiae* shall be made by motion within fourteen (14) days of service of the application. Approval to appear as *amicus curiae* shall be by written order of the Court of Appeals which shall specify the manner of appearance by the *amicus curiae* and state the time for filing of any *amicus* briefs. An *amicus* brief permitted by order of the Court of Appeals may contain a statement of the case, points and authorities, and additional argument on any issue raised by the parties in the appeal or as allowed by order of the Court of Appeals.

(d) MOTIONS FOR EXTENSION. Motion for Extending the time to file a brief shall be filed at least five (5) working days prior to the requesting party's submission deadline, with proof of service on the other party or parties, unless the motion is a joint motion by the parties. If an extension request is not granted prior to the original brief deadline, a hearing on the motion may be set by the Court of Appeals Clerk on the docket of the next scheduled Court of Appeals date.

(e) EFFECT IF BRIEFS NOT FILED. The following applies when briefs are not filed pursuant to a briefing order:

(1) If the appellant does not file an initial brief which has been ordered pursuant to an established briefing schedule, nor request an extension on the filing of the brief as set forth in subsection (d) above, the appeal may be subject to dismissal by the Court of Appeals.

(2) If the appellant does not brief all of the issues cited in the Notice of Appeal, the issues not briefed may be considered waived and the appellant may not be allowed to raise them at oral arguments.

(3) If the appellee does not file a response brief which has been ordered pursuant to an established briefing schedule, nor request an extension on the filing of the brief as set forth in subsection (d) above, the Court may decide the appeal based on the appellant's brief and the trial record, subject to Rule 14.

(4) If the appellee does not brief all of the issues cited in the Notice of Appeal, the issues not briefed may be considered waived and the appellee may not be allowed to raise them at oral arguments.

13-A. INTERLOCUTORY APPEAL BRIEFS

(a) TIME. One (1) original and three (3) copies of the appellant's brief shall be filed within ten (10) days after the Order Accepting the Interlocutory Appeal (IA) is served, unless otherwise ordered by the appellate panel. One (1) original and three (3) copies of the appellee's brief shall be filed within ten (10) days after the due date of appellant's opening brief, unless otherwise ordered by the appellate panel. No reply briefs shall be filed unless authorized by the appellate panel. All briefs filed shall have any cited case law and statutes attached to the briefs (See COACR 13(3)(b)).

(b) CONTENTS. Briefs shall not exceed ten (10) pages in length, exclusive of an appendix, except by order of the COA for good cause shown. Briefs not clearly legible may be stricken by the appellate panel. The statement and arguments of the briefs shall comply with the requirements set out in COACR 13(b) above.

(c) MOTIONS FOR EXTENSION. Motions for extension of time to file a brief will only be granted in exceptional circumstances at the discretion of the presiding judge of the panel.

(d) EFFECTS IF BRIEFS NOT FILED. Same as COACR 13(e) above.

14. ORAL ARGUMENTS

(a) The appellate panel will make its decision based on the written filed documents and records of the case, and the oral arguments, if heard. Either party may request an oral argument hearing. The Court may decide to hear oral arguments after determining the issues or after reviewing the briefs.

(b) If oral arguments are to be heard, they will be set on the next available docket day for the Court of Appeals no later than sixty (60) days from the filing of the last brief filed or, if allowed.

(c) All requests for oral arguments by the parties not made orally or in writing at the time of the initial hearing shall be done by written Motion and Affidavit to the appellate panel. The request must be filed with the Clerk of the Court of Appeals no later than the time set for filing the response brief.

14. PRELIMINARY/ ADMINISTRATIVE ORDERS

(a) The Chief Justice of the Court of Appeals shall issue orders designating the appellate panels and presiding justice for each appeal filed.

(b) The Presiding Justice may enter preliminary and/or administrative orders for the timely administration of the case without the signature or concurrence of the other two justices.

16. FINAL ORDERS AND OPINIONS

(a) The appellate panel will issue a written order or opinion within sixty (60) days of the filing of the last appellate brief or the oral arguments hearing, whichever is later, unless otherwise announced by the panel. In the case where the panel finds it needs more time to write the opinion than that originally set, it shall notify the parties of the extension, and give a reasonable time for the parties to expect an opinion. Dissenting and concurring opinions shall be filed within fifteen (15) days of the filing of the majority opinion.

(b) All cases shall be decided by a majority vote. If no majority can be reached, an order shall issue stating so, and the Chief Justice shall assign the appeal to another panel or call an *en banc* panel pursuant to Rule 4-c.

(c) Within seven (7) days of the issuance of the written order or opinion, the Court of Appeals Clerk shall send the order or opinion to the Trial Court, and serve copies on the parties and the appellate panel.

17. MOTION FOR RECONSIDERATION; FINALITY OF ORDER OR OPINION

Any party who is in disagreement with the final decision of the COA, except for decisions on motions for reconsideration, may request that the COA review its decision.

1) MOTION AND AFFIDAVIT; BRIEF. The party who is in disagreement with a decision must file a Motion and Affidavit for Reconsideration with service on opposing party. The Motion and Affidavit must be accompanied by a brief which states with particularity, the points of law which the moving party contends the COA overlooked, misapprehended or wrongly decided. The brief shall be limited to five (5) pages in length, unless otherwise authorized by the COA. Accompanying legal authority shall not count towards the page limit.

2) TIME. The Motion and Affidavit for Reconsideration must be filed within ten (10) days of service of the decision or order. Notice of Service on opposing party must accompany the Motion and Affidavit.

- 3) RESPONSE BRIEF. Within ten (10) days after service of the Motion for Reconsideration, opposing party may file a response brief to such motion, with service on the moving party. The response brief shall be limited to five (5) pages in length, unless otherwise allowed by the COA, and shall be similar in form to the moving party's brief. Notice of Service on opposing party must accompany the response brief.
- 4) DECISION. The Motion for Reconsideration shall be decided on the briefs filed. No oral argument will be allowed unless requested by the COA.
- 5) ONLY ONE MOTION PERMITTED. Each party may file only one Motion for Reconsideration, even if the COA modifies its decision or changes the language in the opinion rendered by the COA.
- 5) FURTHER APPEAL. No further appeal may be taken from a final decision or order of the Court of Appeals.

17.A MANDATE

- a) MANDATE DEFINED. A "mandate" is the written notification by the COA clerk to the Trial or Administrative Court and to the parties of a final appellate decision terminating review.
- b) WHEN ISSUED. The clerk of the COA will issue the mandate:
 - 1) no less than fifteen (15) days after the final opinion or order has been distributed, unless a Motion for Reconsideration has been timely filed; or
 - 2) If a Motion for Reconsideration has been filed and decided, no less than fifteen (15) days after the reconsideration order or opinion has been distributed; or
 - 3) upon stipulation by the parties that a Motion for Reconsideration will not be filed.
 - 4) IMMEDIATE ISSUANCE. Mandates may be issued immediately when an appeal has been dismissed upon a motion to dismiss by the appellant.

18. WAIVER OF FORMAL REQUIREMENTS

Upon a finding of good cause by the Presiding Justice of the appellate panel in writing, and for the reasons stated, the panel may extend the time for filing an appellate brief, accept a brief or pleading which does not conform to the formal requirements set out herein, but which is legible and understandable, or modify the procedural requirements set out herein in order to insure that a fair and just determination of the appeal on its merits can be made from the record.

19. SPOKESPERSONS RESPONSIBILITIES

It shall be the responsibility for every person who is representing a party before the COA to be a member in good standing with the Colville Tribal Court Bar and to diligently represent the position of his client, to the best of his ability and ethical constraints. A spokesman who represented a party at the trial level will be recognized as the spokesman of record for that party at the COA, without further notice to the COA being required by the spokesman. When a spokesman represented the client at trial and filed the Notice of Appeal and then wishes to withdraw, replacement of the spokesman will only be granted in exceptional circumstances. To accomplish this, the original spokesman must file a Motion to Withdraw citing the exceptional circumstance(s) and the new spokesperson must file a Notice of Appearance before the change will be allowed. If the party was unrepresented at the trial level, a spokesman wishing to appear on behalf of a client must file a Notice of Appearance prior to any appearance before the COA and/or any documents being filed by the spokesman. Any other changes will be handled as follows:

(a) **SUBSTITUTED COUNSEL.** If the spokesman of record is unable to appear at a hearing, he must notify the Court of Appeals in writing not less than one week before the hearing that a member of his office or another spokesman, representing either the appellant or the appellee, will be substituting as spokesman, for that hearing only. This Notice of Substitution must be filed with the Court of Appeals Clerk, with a copy served on the other party or parties. If this is not done, the Court of Appeals may not recognize the substituted spokesman.

(b) **ADDITIONAL COUNSEL.** If another spokesman is going to join the original spokesman by appearing before the COA or submitting a brief, that spokesman must file a written Notice of Appearance, with the concurrence of the original spokesman, prior to any action being done by the additional spokesman.

(c) **OFFICE REPRESENTATION.** If there are multiple spokesmen from one office or firm who will be representing a client or clients for the duration of an appeal, each spokesman must be clearly identified and must sign the Notice of Appeal. Each spokesman will then be allowed to represent that client in the COA. However, only a spokesman who actually drafts or is responsible for drafting a document should be identified as the originator and sign that document. If the office wishes to withdraw from representation, each spokesman who signed the Notice of Appeal or filed a Notice of Appearance, must also be clearly identified and sign the Notice of Withdrawal. Failure to identify all the spokesmen or obtain all the signatures may allow the COA to deny withdrawal of those spokesmen. Any other document may be signed by only one of the spokesmen of record without concurrence or signing by the other spokesmen.

(d) **CASE PREPARATION.** Any spokesman before the Court of Appeals will be expected to be thoroughly familiar, not only with the briefs in the matter, but with the whole record. Further, the spokesman will be expected to be ready to answer any questions put to him by the COA on the record below and the legal issues in the case. Each spokesman representing a party in an appeal must diligently represent that client's interests in the case, to the best of his ability and ethical standards.

(e) **SANCTIONS OR CONTEMPT.** The Court of Appeals may consider contempt or sanctions against any person violating these rules.

20. COSTS.

COURT COSTS OF APPEAL. The Court of Appeals may impose such costs as the interests of justice dictate, which may include, but are not limited to, the actual costs of convening the Court of Appeals, mileage and similar costs. When considering the imposition of costs, the Court of Appeals shall consider the nature of the claim, the finances of the parties, and any other potential hardship such costs may impose on the litigants.

CERTIFICATION OF QUESTIONS OF LAW RULE
Rule 21 (Enacted 10-27-2009)

21. (a) Purpose.

The purpose of this rule is to allow foreign jurisdiction courts the ability to ask the COA to answer specific questions of law for pending litigation that have not already been answered by constitutional provision, appellate decision, statute or rule of the Colville Tribe, and to allow the COA to request foreign jurisdiction courts to answer specific questions of law in pending litigation that have not already been answered by constitutional provision, appellate decision, statute or rule

of that jurisdiction.

(b) Definition[s].

In this rule:

(1) "foreign jurisdiction" means: United States Supreme Court; federal circuit courts; any state of the United States; the District of Columbia; the Commonwealth of Puerto Rico; any territory or insular possession subject to the jurisdiction of the United States; Canada; any province of Canada; Mexico; any Mexican state; or, any other tribe, band or village of native Americans which is federally recognized or formally acknowledged by a state.

(c) Power to Certify.

The COA, on the motion of a party to pending litigation or on its own motion, may certify a question of law to the highest court of any foreign jurisdiction if:

- (1) the pending litigation involves a question of law to be decided under the law of the other jurisdiction;
- (2) the answer to the question may be determinative of an issue in the pending litigation;
- (3) the resolution of the question must be necessary and desirable to dispose of a pending case or proceeding; and
- (4) the question is one for which an answer is not provided by a controlling constitutional provision, appellate decision, statute or rule of the foreign jurisdiction.

(d) Power to Answer.

The COA may answer a question of law certified to it by the highest court of a foreign jurisdiction if:

- (1) the pending litigation involves a question of law to be decided under the law of the Colville Tribes;
- (2) the answer to the question may be determinative of an issue in the pending litigation;
- (3) the resolution of the question must be necessary and desirable to dispose of a pending case or proceeding; and
- (4) the question is one for which an answer is not provided by a controlling constitutional provision, appellate decision, statute or rule of the Colville Tribes.

(e) Power to Reformulate Question.

The COA may reformulate a question of law certified to it.

(f) Applications - when and where filed

A certification order may be made to the COA at any time. The order and all supporting documents shall be filed with the Clerk of COA.

(g) Certification Order; Record.

The foreign jurisdiction court certifying a question of law to the COA shall issue a certification order. Before responding to a certified question, the COA may require the certifying court to deliver all or part of its record to the COA.

If the COA is certifying a question of law to a foreign jurisdiction court, the COA shall comply with

the procedures specified by the foreign jurisdiction court under that jurisdiction's certification of questions law or rule.

(h) Contents of Certification Order.

A certification order to the COA must contain:

- (1) the question of law to be answered;
- (2) a statement of the facts relevant to the question, showing fully the nature of the controversy out of which the question arose;
- (3) a statement acknowledging that the COA may reformulate the question; and
- (4) the names and addresses of counsel of record and parties appearing without counsel.

If the parties cannot agree upon a statement of facts, the certifying court shall determine the relevant facts and state them as a part of its certification order.

If the COA is certifying a question of law to a foreign jurisdiction court, the COA shall comply with the procedures specified by the foreign jurisdiction court under that jurisdiction's certification of question law or rule.

(I) Initial Review-Certification Request to COA

Upon receipt of the Certification Order, the Chief Justice, or his designee, shall review the order to determine if there is adequate information stated to proceed with the issue. The Chief Justice, or his designee, shall have broad discretion to accept or deny certification of the question(s) of law.

(j) Notice; Response.

The COA, acting as a receiving court, shall notify the certifying court of acceptance or rejection of the question and, in accordance with notions of comity and fairness, respond to an accepted certified question as soon as practicable.

(k) Procedures.

If the question presented meets the criteria for acceptance, the Chief Justice shall appoint a panel of three (3) justices to:

- 1) review the merits of the question;
- 2) determine if briefing is necessary; and,
- 3) set a schedule for proceeding.

If briefing is required, the COA shall set the briefing schedule pursuant to the time lines set in COACR 13-A, unless otherwise ordered by the COA.

If the question presented does not meet the criteria for acceptance, the Chief Justice shall deny and remand the question to the foreign jurisdiction court.

(l) Opinion.

The COA shall state in a written opinion the law answering the certified question and send a copy of the opinion to the certifying court, counsel of record, and parties appearing without counsel. The opinion will be published, unless requested not to publish by the certifying court or otherwise ordered by the COA.

(m) Cost of Certification.

Fees and costs are the same as in civil appeals docketed before the COA and must be equally divided between the parties unless otherwise ordered by the certifying court.

(n) Severability.

If any provision of this Rule or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Rule which can be given effect without the invalid provision or application, and to this end the provisions of this Rule are severable.