

FILED JUL 24 2020

By 

IN THE SUPREME COURT OF THE OSAGE NATION
PAWHUSKA, OKLAHOMA

In re:

Civil Appeals

RULE OF COURT

CHAPTER 7: CIVIL APPEALS RULES

Rule 1: General

- 1.1. The Chief Justice is responsible for promulgating Rules of Court governing practice before the Trial Court and Supreme Court under 5 ONC § 1-118.
- 1.2. These rules shall be liberally interpreted to promote justice and promote the fair consideration of all appeals before the Supreme Court.
- 1.3. These rules shall govern all appeals filed with the Osage Nation Supreme Court unless they specifically conflict with a substantive law of the Osage Nation, in which case the provisions of the substantive law will govern the appeal.
- 1.4. These rules supersede and replace the Rules for Civil Appeals adopted on June 28, 2007.

Rule 2: Definitions

- 2.1. Masculine words shall include the feminine, and singular words shall include the plural, and vice versa.
- 2.2. Words shall be given their plain meaning and technical words shall be given their usually understood meaning where no other meaning is specified.
- 2.3. Whenever a term is defined for a specific part of applicable Osage Nation law, that definition shall apply to all parts of these rules unless a contrary meaning is clearly intended.
- 2.4. "Appellant" means the party filing the appeal.
- 2.5. "Appellee" means the party not filing the appeal.
- 2.6. "Intervenor" means a nonparty authorized by the Trial Court to participate in legal proceedings before it.
- 2.7. "Party" means a plaintiff, petitioner, defendant, respondent, or intervenor.
- 2.8. "Final decision" means the final disposition of a case in the Trial Court.

- 2.9. “Non-final orders” means an interlocutory order of the Trial Court that does not constitute the final disposition of a case.
- 2.10. “Supreme Court” or “Court” means the Osage Nation Supreme Court.
- 2.11. “Supreme Court Clerk” means the clerk of the Supreme Court.
- 2.12. “Trial Court Clerk” means a clerk of the Trial Court.
- 2.13. “Decision,” as used in these rules, shall mean a written disposition of an appeal by the Supreme Court, including a disposition by opinion, memorandum decision, or order.

Rule 3: Types of Orders Subject to Appeal

- 3.1. A party may appeal final decisions issued by the Trial Court that contain findings of fact and conclusions of law by written order.
- 3.2. A party may appeal non-final orders issued by the Trial Court when the Trial Court authorizes the parties to appeal the non-final order to the Supreme Court by written order:
- (a) Either party may file a motion—or the parties may file a joint motion—with the Trial Court Clerk requesting the Trial Court’s authorization to appeal a non-final order. The Trial Court must issue an order on the motion in writing within a reasonable period of time.
 - (b) The Trial Court may also include language in its non-final order stating whether the non-final order may be appealed to the Supreme Court.
- 3.3. Appeals from non-final orders are permitted only in the discretion of the Trial Court upon a finding that:
- (a) the order appealed from involves a controlling question of law as to which there is a substantial ground for difference in opinion, and
 - (b) an immediate appeal from the order will materially advance the ultimate termination of the litigation.

Rule 4: Time Period to File an Appeal

- 4.1. An appeal of a final decision to the Supreme Court shall be made no later than thirty (30) calendar days after the entry of the final decision of the Trial Court.
- 4.2. An appeal of a non-final order to the Supreme Court shall be made no later than five (5) business days after the Trial Court’s order authorizing an appeal of the non-final order.
- 4.3. The failure to file an appeal within the time periods provided in this Rule deprives the Supreme Court jurisdiction to hear the appeal, except that the Supreme Court may, at its discretion, grant relief from a late appeal upon a showing of good cause, provided the appellant:
- (a) files a motion to accept a late filing with its Notice of Appeal; and

(b) the motion establishes good cause for the delay in filing a timely appeal.

The motion must also be filed within a reasonable time from the date of the entry of the final decision.

Rule 5: Starting an Appeal – Notice of Appeal; Supreme Court Review

- 5.1. All appeals are initiated when a party files a Notice of Appeal with the Trial Court Clerk and pays of the filing fee within the time periods set forth above. The Appellant's attorney must also file an entry of appearance.
- 5.2. A Notice of Appeal shall:
 - (a) be dated and signed by the attorney for Appellant or by Appellant, if self-represented.
 - (b) include a brief description of the errors that the party is asserting the Trial Court made in its final decision or non-final order. These errors must conform to one of the errors described in Section 12.1 of this Chapter.
 - (c) include a copy of the Trial Court's final written decision or non-final written order with authorization to appeal.
- 5.3. When a party files an untimely appeal, the party must follow Rule 4.3 above.
- 5.4. Upon receipt of the Notice of Appeal and the filing fee, the Trial Court Clerk shall file stamp the Notice of Appeal and transmit the document to the Supreme Court.
- 5.5. The Supreme Court Clerk is responsible for serving copies of the Notice of Appeal on the parties and the Trial Court Judge.
- 5.6. The filing of the Notice of Appeal shall automatically stay the effect of the final decision or non-final order of the Trial Court.
- 5.7. At least two justices from the Supreme Court shall review the Notice of Appeal to consider whether it complies with this Chapter.
- 5.8. The Supreme Court shall have 21 calendar days to decide whether the Notice of Appeal complies with this Chapter or request further information from the Appellant.
- 5.9. If the Supreme Court determines that the Notice of Appeal meets the timelines for the appeal and the requirements of this section, the case will proceed on appeal. The Supreme Court shall issue an order accepting the appeal. Copies of this Rule shall be provided to the parties with a copy of the Supreme Court's order accepting the appeal.
- 5.10. If the Supreme Court determines the Notice of Appeal is untimely or legally insufficient, or that a required filing fee has not been paid, the appeal will be rejected, and the matter will be closed. In some cases, the Supreme Court may decide the defect in the Notice of Appeal can be corrected, provided that if the Supreme Court finds that the defect in the Notice of Appeal can be corrected, it may notify the party and provide a due date upon which to submit a corrected Notice of Appeal.

Rule 6: Preparing the Official Case Record

- 6.1. Within 30 days of serving copies of the Notice of Appeal the Supreme Court Clerk shall compile for transmittal to the Supreme Court the official record of the case on appeal.
- 6.2. All written documents filed with the Trial Court, including pleadings, reports, notices, depositions, orders and judgments, shall constitute the written record of the case on appeal. The Supreme Court Clerk shall certify the contents of the record as true, correct, and complete as part of the transmittal to the Supreme Court.
- 6.3. If the proceedings in the Trial Court were recorded by an audio device, the Supreme Court Clerk shall preserve the recording in a format that will permit the Supreme Court Justices to access the recording.
- 6.4. Within 15 days of service of the Notice of Appeal, either party may request a transcript of a recorded hearing to be included in the official record. The request shall identify the date of each hearing for which a transcript is requested. If a transcript of recorded hearings is requested, the Supreme Court Clerk shall obtain a written transcript and the party requesting it shall pay the cost of transcription. Copies of the transcript must be provided to all parties and the Supreme Court. The Court may also order a transcript of recorded hearings, in which case the cost of transcription shall be paid by the Judicial Branch.
- 6.5. The Supreme Court Clerk will serve the certified official record on all parties and transmit it to the Supreme Court.

Rule 7: Motions During Appeals

- 7.1. Any party requesting action by the Supreme Court on a matter unrelated to its decision on a pending appeal, such as a waiver of filing fee, shall file a motion with the Supreme Court Clerk clearly stating the action requested and the reasons why the Supreme Court should grant the motion.
- 7.2. The party filing the motion shall serve a copy on all other parties. The non-moving party may file a response indicating agreement or disagreement with the motion within ten (10) calendar days of receipt.
- 7.3. The Supreme Court shall issue a written order disposing of any motion filed. The Court may in its sole discretion set a hearing to discuss the motion.

Rule 8: Briefs

- 8.1. The Appellant must serve and file an Opening Brief within 30 calendar days after being served with the official record of the case by the Supreme Court Clerk or with the transcripts of recorded hearings whichever is later.
- 8.2. The Appellant's opening brief must contain, under appropriate headings and in the

following order:

(a) A jurisdictional statement indicating:

- (1) The basis for the Supreme Court's jurisdiction, with citations to applicable provisions of the Nation's Constitution, Codes, Rules, or Regulations, and stating relevant facts establishing jurisdiction; and that
- (2) The appeal is from a final order or judgment that disposes of all parties' claims, a non-final order with authorization to appeal from the Trial Court or information establishing the Supreme Court's jurisdiction on some other basis.

(b) A statement of the issues presented for review.

(c) A concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record.

(d) A summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief.

(e) The argument, which must contain the Appellant's assertions and the reasons for them, with citations to the authorities and parts of the record on which the Appellant relies; and

(f) A short conclusion stating the precise relief sought.

(g) The Appellant shall attach as an appendix all supporting documents to the Opening Brief, which shall contain copies of all documents, including, but not limited to, all cases and statutes cited in the brief, except those statutes codified in the Osage Nation Codes.

8.3. The Appellee must serve and file a Responsive Brief within 30 calendar days after the Appellant's Opening Brief is served on Respondent. If no Opening Brief is filed, the Appellee may file its own brief in chief that meets the same requirements as the Responsive Brief or the Appellee may file a motion to dismiss the appeal.

8.4. The Responsive Brief must contain at least:

(a) A statement of the issues presented for review.

(b) A concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record.

(c) A summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief; and

(d) The argument must contain the Appellee's assertions and the reasons for them, with citations to the authorities and parts of the record on which the Appellee relies.

- 8.5. The Appellant may file a Reply Brief following the Responsive Brief. The Appellant must serve and file its Reply Brief within 15 calendar days after service of the Responsive Brief and at least three (3) calendar days before oral argument, if any, unless the Supreme Court, for good cause, allows a later filing. No Reply Brief may be filed if the Appellant failed to timely file an Opening Brief without the Supreme Court's authorization.

Rule 9: Format of Briefs

- 9.1. All briefs shall be double-spaced on 8-1/2 by 11-inch white paper with one-inch margins on all sides. The font shall be 12-point Times New Roman.
- 9.2. The Appellant's Opening Brief and the Appellee's Responsive Brief must not exceed 30 pages, and a Reply Brief must not exceed 15 pages. The Supreme Court may grant a request to file an over-sized brief in its sole discretion.
- 9.3. Briefs and appendices shall contain a table of contents and an index of authorities and shall be bound in any reasonable manner. Appendices, however, may be provided in digital format instead of printed form.

Rule 10: Filing and Service of Briefs

- 10.1. A copy of each brief and appendix must be filed with the Supreme Court Clerk and one copy must be served on the other parties by first class mail, postage prepaid, or by electronic means if agreed upon by the parties. The filing party must also provide an electronic copy of its brief and appendix to the Supreme Court Clerk for distribution to the Supreme Court.
- 10.2. If the Appellant fails to file an Opening Brief within the time provided by this Chapter, the Appellee may move to dismiss the appeal or the Supreme Court may dismiss the appeal on its own motion. An Appellee who fails to file a Responsive Brief within the time provided will not be eligible to participate in oral argument or further briefing unless authorized by the Supreme Court, and the Court will proceed to review the merits of the appeal without further argument from the Appellee.

Rule 11: Oral Argument

- 11.1. The Court may schedule oral argument for an appeal when it determines the decisional process would be significantly aided by oral argument or when it is required by law.
- 11.2. The Court may conduct oral argument by telephone or videoconference.
- 11.3. The Court must issue its decision regarding oral argument and the terms of oral argument, if applicable, by written order.

Rule 12: Standards of Review

12.1. The following standards apply to the Supreme Court when deciding an appeal:

- a. **Factual Errors:** Determinations applying to the facts of a case shall be upheld or sustained unless the Trial Court judge made a “clearly erroneous” finding, which means that the finding is clearly at odds with the evidence presented or, based on the entire evidence, the Supreme Court has a definite and firm conviction that the Trial Court made a mistake. Any finding, whether explicit or implicit, of witness credibility shall be reviewed as a finding of fact.
- b. **Conclusions of Law Errors:** A conclusion of law shall be reviewed by the Supreme Court as new, or *de novo*, meaning the appellate court uses the Trial Court record but reviews the evidence and the law without giving any weight to the Trial Court’s conclusions or findings.
- c. **Procedural Errors:** A matter that is determined within the Trial Court’s procedural discretion shall be reviewed for abuse of discretion. The Supreme Court shall affirm such decisions if it is apparent from the record that the Trial Court properly exercised its discretionary authority and applied the appropriate legal standard to the facts.
- d. **Appeals from jury trials:** An appeal of a jury verdict will be granted only if the Supreme Court makes a finding of “reversible error.” A reversible error causes a result that would not have occurred had the Trial Court not committed a legal or procedural error.

Rule 13: Decisions

13.1. All decisions of the Court relating to an appeal, and all determinations of motions shall be made as follows:

- a. All decisions of the Court shall be made by the majority of Justices. If no majority is reached on a decision, the order of judgment of the Trial Court shall be affirmed.
- b. The decision of the Supreme Court must be in written form, and state the facts, the issues to be decided, the rules of law applied, and the reasoning of the Court. The Court shall determine which of its members shall write the decision, or the Court may assign authorship among the Justices as needed.

13.2. The Supreme Court’s order shall direct the Trial Court in its disposition of the case on appeal. The Court shall decide all appeals no later than ninety (90) calendar days after the last brief permitted by this Chapter is filed, unless a majority of the Justices hearing the appeal determine that extenuating circumstances exist justifying an exception to this Chapter. In such circumstances, Supreme Court shall issue notice to the parties of the date the decision will be due.

- 13.3. Any member of the Court who disagrees with the majority's decision may issue a written dissent.
- 13.4. Within five (5) days of issuance, the Supreme Court Clerk shall transmit by first class mail, postage prepaid a copy of the written decision to each party at their address of record, and may deliver a copy by electronic means if the parties agree in advance.
- 13.5. Any decision that determines an issue of law shall be retained and filed as Osage substantive law and shall be relied on as binding precedent.
- 13.6. All decisions of the Supreme Court shall be indexed and published by posting on the Judicial Branch's website and/or posting printed copies at the Court Clerk's office.

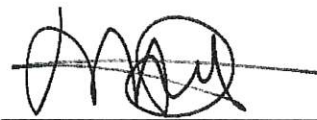
Rule 14: Rules Not Announced

- 14.1. The Supreme Court may issue other directives or orders to ensure the timely resolution of appeals filed:
- (a) When the interests of justice require it;
 - (b) To avoid prejudice to the parties; and/or
 - (c) To ensure basic due process requirements are satisfied.

Rule 15: Effective Date; Modification; Severability

- 15.1. These rules shall take effect as of the date set forth below.
- 15.2. These rules may be modified by order of the Osage Nation Supreme Court Chief Justice in accordance with 5 ONC § 1-118 but shall not be construed to impact pending cases.
- 15.3. If any provision of these Rules is declared invalid, then the remaining provisions shall be unaffected.

SO ORDERED: July 24, 2020



Meredith D. Drent
Chief Justice
Osage Nation Supreme Court