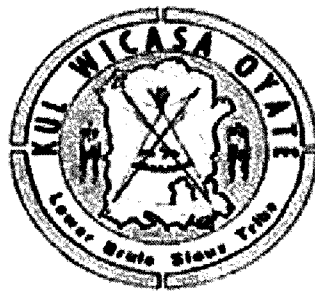


LOWER BRULE SIOUX LAW AND ORDER CODE

RULES OF PROCEDURE COURT OF APPEALS



Updated: June 2024

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LOWER BRULE SIOUX TRIBAL APPELLATE COURT RULES OF PROCEDURE

SCOPE OF RULES and AUTHORITY OF APPELLATE COURT

These Rules shall govern all appeals to the Lower Brule Sioux Tribal Court of Appeals and shall take effect upon adoption by ordinance of the Lower Brule Sioux Tribal Council. Upon such adoption, these Rules shall govern only those appeals filed thereafter.

A. SUBJECT OF APPEAL—An appeal is properly before the Court of Appeals if it concerns:

1. A final order or judgment of the Tribal Court; or
2. An order of the Tribal court denying a request for a substitute judge; or
3. An order of the Tribal Court affecting a substantial right, and which determines the actions and prevents a judgment from which an appeal may be made; or
4. A decision of a tribal licensing authority which denies, terminates, suspends, or restricts a license required by tribal law or regulation and which the person seeking the license seeks review. No such appellate court review is available unless the complainant has first sought review in the Lower Brule Sioux Tribal Court.

B. SCOPE OF COURT OF APPEALS REVIEW—In reviewing a matter on appeal, the Court of Appeals may:

1. Affirm, modify, vacate, set aside, or reverse any judgment, decree, or Order of the Tribal court; or
2. Remand the case and direct entry of any appropriate judgment, decree, or order, or require further proceedings in the Tribal Court which are determined to be just and equitable under the circumstances; or
3. Affirm, modify, vacate, set aside, reverse, or remand for further proceedings any decision of a tribal licensing entity, if determined to be just and equitable under the circumstances.

C. APPELLATE COURT JUDGES—Judges may be elected to the Court of Appeals or appointed pursuant to the provisions of the Lower Brule Sioux Tribe Law and Order Code —Jurisdiction and Judiciary. Any Appellate Court Judge who has been elected or appointed will be subject to a retention vote at the next general election. If a majority of those voting vote to retain the Judge, the Judge will remain on the Court of Appeals. A judge may be removed from the Court of Appeals for

misconduct, malfeasance, or other good cause by a vote of at least four members of the Lower Brule Sioux Tribal Council.

RULES GOVERNING THE LOWER BRULE SIOUX TRIBAL COURT OF APPEALS

NAME OF COURT

Rule 1.

This Court shall be referred to in the caption of all pleadings filed with the Clerk of Court as the Lower Brule Sioux Tribal Court of Appeals. The Lower Brule Sioux Tribe's Constitution and Bylaws, laws, and rules apply in the Court of Appeals.

NOTICE OF APPEAL

Rule 2.

A timely filing of a Notice of Appeal pursuant to the pertinent Rules of Criminal and Civil Procedure, and Rules governing Termination of Parental Rights and Juvenile Matters, commences the appellate process. The Notice of Appeal shall be filed with the Clerk of Court of the Tribal Court. The Clerk of Court of the Tribal Court shall within two (2) working days transfer a certified copy of such to the Clerk of Courts.

CLERK OF COURTS

Rule 3.

The Clerk of the Lower Brule Sioux Tribal Court of Appeals shall take an oath of office and shall be bonded. The Clerk shall not practice as an attorney or counselor in any court while she or he continues in office. The office of Clerk of Court shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, unless otherwise ordered by the Appellate Court.

The Clerk shall keep a book, known as the docket, and shall enter therein each case. Cases shall be assigned consecutive file numbers. The file number of each case shall be noted on the folio of the docket. A numbered case file shall be created for each case with a case activity sheet appended inside the case folder. All papers filed with the Clerk for each case and all process, orders or judgments shall be entered chronologically on the docket and case activity sheet for that case. Entries shall be brief, but shall show the date, nature and title of each document entered. The Clerk shall also keep an alphabetical index of cases contained in the docket by Plaintiff and Defendant names, so that the case number can be easily obtained.

The Clerk shall prepare, under the direction of the Court, a calendar of cases awaiting argument. Preference shall be given to criminal or juvenile court appeals.

Immediately upon the entry of an order or judgment, the Clerk shall serve notice of entry by certified mail, return receipt requested upon each party to the proceeding with a copy of any opinion respecting the order or judgment and shall note the date of mailing on the case activity sheet for that case

including a copy of all cover letters in the file. Service on a party represented by an attorney or counselor of record shall be made on the attorney or counselor. Certified mail return receipts shall be stapled to the copy of the document mailed with such when returned by the postal service.

The Clerk shall have custody of the records and papers of the Court. She or he shall not permit any original record or paper to be taken from her or his custody except as authorized by order of the Court. Original records transmitted from the Tribal Court shall be returned to that court upon disposition of the case appeal. The Clerk shall preserve copies of all briefs and other documents filed.

COUNSELORS AND ATTORNEYS

Rule 4.

Any counselor or professional attorney qualified to practice before the Lower Brule Sioux Tribal Court shall be eligible for admission to the bar of the Lower Brule Sioux Tribal Court of Appeals. An applicant shall file with the Clerk of the Court of Appeals, on a form prescribed by the Clerk, an application for admission containing her or his personal statement showing eligibility for membership. The applicant shall take and subscribe to the following oath or affirmation:

I, _____, do solemnly swear that I will conduct myself as an attorney and counselor of this Court uprightly and according to law; and I will support the Constitution and Bylaws, Treaties and Laws of the Lower Brule Sioux Tribe.

Thereafter, upon written or oral motion of a member of the bar of the Court, or upon the Court's own motion, the Court will act upon the application.

This Court of Appeals may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action against any counselor or attorney who practices before it for failure to comply with these rules, or violation of the above oath or affirmation, or for conduct unbecoming a member of the bar of the Court. Disciplinary action may consist of either suspension or disbarment.

All attorneys or counselors admitted to the bar of the Court of Appeals shall be issued a written certificate by the Clerk of Court.

CONTENTS OF NOTICE OF APPEAL

Rule 5.

A Notice of Appeal shall contain the following information:

1. The name and address and phone number (if available) of the party taking the appeal and of the party, counselor or attorney of record (if represented).
2. The date and title of the Tribal Court order or judgment from which the appeal is taken.
3. The names, addresses and phone numbers (if available) of all other parties to the Tribal Court action and their counselors or attorneys of record.

4. An itemization of all assignments of error or legal or factual issues desired to be considered in the appeal.
5. A Certificate of Service indicating service of the Notice of Appeal upon all opposing parties and the date and manner of such service.

DESIGNATION OF RECORD

Rule 6.

The party taking the appeal shall also file with the Clerk of Court of the Court a Designation of Record indicating all pleadings and papers filed with the Tribal Court which will constitute the record on appeal. Such Designation shall be filed with the Notice of Appeal with a Certification of Service indicating service of such upon all opposing parties and the date and manner of such service. Such Designation shall include the date, time and portion of any Tribal Court hearing which the appellant believes must be transcribed for the appeal.

The Respondent shall have ten (10) days after service of the Designation of Record upon Respondent to file a Respondent's Statement of Issues and Designation of Record indicating any additional issues, record documents or transcripts which the Respondent would like included in the appeal.

Copies of the Designation of Appeal and the Respondent's Statement of Issues and Designation of Record shall be served upon the Clerk of Court of the Tribal Court who shall, within the time allowed by the applicable Rules of Criminal and Civil Procedure, transmit only those portions of the record indicated by the parties. The Tribal Clerk shall include a table of contents indicating the names and dates of all documents included chronologically.

CONTENTS AND FORM OF BRIEFS

Rule 7.

All briefs shall be served and filed in accordance with appropriate portions of the Law and Order Code of the Lower Brule Sioux Tribe's most recent revision.

The brief of the appellant shall contain:

1. A table of contents, with page references, and a table of cases (alphabetically arranged), statutes or other authorities cited, with references to the pages of the brief where they are cited.
2. A statement of issues presented for review.
3. A statement of the case, indicating the nature of the case, the course of proceedings in Tribal Court, and its disposition in Tribal Court.
4. An argument, which shall contain the contentions of the Appellant with respect to the issues presented, the reasons therefore, with citations to the authorities, statutes and parts of the record relied upon.

5. A short conclusion stating the precise relief sought.
6. A request for oral argument, if argument is desired, after the conclusion, stating the reasons why argument is needed and why the Court should not decide the matter based on the briefs and record. The Court may on its own motion grant oral argument.

The brief of the Respondent shall conform to the requirements outlined above for Appellant's brief.

Notwithstanding the provisions of Rule 37(i) of the Lower Brule Sioux Rules of Civil Procedure, the Appellant shall be entitled to file a reply brief within ten (10) days subsequent to service of Respondent's brief.

All briefs filed with this Court shall be limited to twenty-five (25) pages, exclusive of pages containing the table of contents, tables of citations, and any addendum included as exhibits, unless otherwise ordered by the Court. All briefs shall be submitted on 8-1/2" x 11" paper only and shall be typed and double spaced unless otherwise ordered by the Court. Consecutive sheets shall be attached at the left margin.

Appellant's brief shall be served and filed with a blue cover; Respondent's brief shall be served and filed with a red cover; Reply briefs shall be served and filed with a gray cover.

Amicus Curiae briefs, which may be filed with leave of court, shall be served and filed after leave is granted with green covers. Amicus Curiae briefs shall conform to the requirements of the Appellant's brief.

SCHEDULING ORDERS BY THE CLERK OF COURTS

Rule 8.

The Clerk of the Court shall have discretion to enter orders on behalf of the Court of Appeals in procedural matters, including but not limited to:

- (A) Transmittal of records of the Tribal Court Clerk of Court to the Court of Appeals.
- (B) Preparation of transcripts.
- (C) Briefing schedules.
- (D) Scheduling of oral arguments and other hearings.
- (E) Extensions of briefing schedules.

ORAL ARGUMENTS

Rule 9.

In all cases where oral argument is granted, Appellants and Respondents shall be limited to thirty (30) minutes each to present their case, unless otherwise ordered by the Court. The Appellant is entitled to open and conclude argument, allocating his or her time accordingly.

MOTIONS

Rule 10.

All motions to the Court of Appeals shall be considered and decided based upon the motion and any accompanying memoranda. Oral argument on any motion shall not be allowed unless requested by the Court. The original and three (3) copies of all motions shall be filed with the Clerk. All motions shall be submitted on 8-1/2" x 11" paper, shall state with particularity the grounds on which the motion is based, and shall set forth the order of relief sought. Any party may file a response in opposition to a motion within seven (7) days after service of the motion, unless otherwise ordered by the Court. Motions for procedural orders may be acted upon at any time by the Court without awaiting a response thereto.

A motion for a stay filed with the Court of Appeals shall not be considered unless the moving party or parties certifies that a motion for stay was denied by the Tribal Court, or a request for a stay was denied by the pertinent licensing authority. All motions for stay shall include attached thereto a copy of all Tribal Court or licensing authority Orders, decisions, judgments, decrees, or opinions concerning the similar motion made in that Court.

SUMMARY DISPOSITION

Rule 11.

The parties may, at any time, file a motion for summary disposition, i.e., summary affirmance or summary reversal. Such a motion shall have attached thereto any relevant pleading filed in the Tribal Court together with a written memorandum in support thereof. The Respondent must file a motion to dismiss for lack of jurisdiction within fifteen (15) days after the Notice of Appeal is filed unless leave to file such motion is otherwise granted by the court. Such motion shall conform to Rule 10.

EXPEDITED PROCEDURE

Rule 12.

The court for good cause shown on the motion of any party, or on its own motion, may advance any case to be heard and may accelerate the briefing schedule so as to ensure that at a minimum, opening briefs will be filed prior to the date scheduled for oral argument.

EX PARTE COMMUNICATION

Rule 13.

There shall be no ex parte communication between any judge of the Appellate Court and any counselor or attorney of record, or other interested party, in regard to any case on appeal. Conferences may be scheduled with the judges or a judge when appropriate, through the Clerk of Court after all counselors, attorneys or interested parties have been given notice and an opportunity to appear.