




United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Northwest Regional Office
911 Northeast 11th Ave
Portland, Oregon 97232

In Reply Refer To:
Division of Tribal Government

Memorandum

To: Superintendent, Puget Sound Agency

From: Northwest Regional Director  Digitally signed by
BRYAN MERCIER
Date: 2023.09.12 17:02:09
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Subject: Tulalip Resolution Number 2023-394, Amending Chapter 2.20 TTC Appeals

The Tulalip Tribes of Washington (Tribes) adopted Resolution 2023-394 (Resolution), amending Chapter 2.20 TTC Appeals, improving the speed at which appeals are processed without compromising the quality of such proceedings, on September 01, 2023. The Tribes state the Resolution is enacted pursuant to their authority at Article VI, Section 1(K) & (L) of the Tulalip Constitution (Constitution). You reviewed, approved, and forwarded the Resolution to us for further Secretarial review as required under Article VI, Section 2, of the Constitution on September 06, 2023. We received your submittal on September 06, 2023. We reviewed the Resolution and find no legal reason to rescind your approval. Therefore, the subject resolution stands effective as of September 12, 2023. Please contact Sharon Jackson, Tribal Government Specialist at Sharon.jackson@bia.gov for comments.

TULALIP TRIBES
ORIGINAL DOCUMENT

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THE TULALIP TRIBES OF WASHINGTON
Resolution 2023-394

Amending Chapter 2.20 TTC Appeals

WHEREAS, the Board of Directors is the governing body of the Tulalip Tribes under the Constitution and Bylaws of the Tribes approved by the United States Commissioner of Indian Affairs and the Secretary of the Interior on January 24, 1936, pursuant to the Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. 5123); and

WHEREAS, under the Tulalip Tribes Constitution Article VI, Sections I(K) & (L), the Board of Directors has the authority to safeguard and promote the peace, safety, morals, and general welfare of the Tulalip Reservation by regulating the conduct of trade and the use and disposition of property upon the reservation, and to promulgate and enforce ordinances governing the conduct of members of the Tribes providing for the maintenance of law and order and the administration of justice by establishing a tribal court and defining its duties and powers; and

WHEREAS, the Board of Directors finds that changes to the Tribes' appellate code along with the provision of additional resources to the court clerk's office will improve the speed at which appeals are processed without compromising the quality of such proceedings;

NOW THEREFORE BE IT ENACTED, by the Board of Directors of the Tulalip Tribes:

Section 1. *Amending chapter 2 20 TTC.* Tulalip Tribal Code Chapter 2.20, Ord. 49 § 4.11, Res. 2010-10, Res. 2011-545, and Res. 2023-232 are hereby amended as indicated by the attached nine-page document, with deletions stricken through and additions underlined.

Section 2. *Effective date.* This ordinance shall be in full force and effect on December September 1, 2023 subject to approval by the Superintendent of the reservation pursuant to the Tulalip Constitution Art. VI, §2.

ADOPTED by the Board of Directors of the Tulalip Tribes of Washington at a regular board meeting assembled on the 1st day of September, 2023, with a quorum present, by a vote of 6 For, 0 Against, and 0 Abstain.

THE TULALIP TRIBES OF WASHINGTON



Teri Gobin, Chair

ATTEST:



Debra Posey, Secretary

2.20.010 Court of Appeals.

- (1) Jurisdiction. The Court of Appeals shall have jurisdiction to hear appeals from the Tulalip Tribal Court, unless otherwise restricted by provision of the Tulalip Tribal Codes.
- (2) Composition. The Tulalip Court of Appeals is the appellate body for the Tulalip Tribes. Panels shall be composed of three Justices. The Chief Justice may, in his discretion, empanel all of the Justices of the Court of Appeals for an en banc panel to decide the issues on appeal.
- (3) Finality. Decisions issued by the Court of Appeals are final.
- (4) Definitions. As used in this title, unless the context otherwise requires, the following definitions shall apply:
 - (a) "Costs" means the costs associated with litigation and any subsequent appeals, which could include the filing fees, service fees, juror fees, witness fees, transcription fees and other related costs.
 - (b) "Days" means calendar days
 - (c) "Fruivolously" means having no sound basis in law or fact.
 - (d) "Judicial days" means business days of the Tulalip Tribal Court.
- (5) Computation of time. When the final day of a time period within which an act under this chapter is to be done falls on a Saturday, Sunday, or holiday, that act must instead be completed by the end of the next business day.

2.20.020 Right of appeal.

- (1) Who May Appeal. Any party who claims, in good faith, that the Tulalip Tribal Court made a mistake in interpreting the law or a mistake in procedure which affected the outcome of the case shall have the right to appeal.
- (2) Appealable Orders. An appeal is properly before the Court of Appeals if it concerns an appealable order, unless otherwise restricted by provision of the Tulalip Tribal Codes. An appealable order is:
 - (a) A final judgment or order of the Tribal Court; or
 - (b) An order denying appellant's request for recusal; or
 - (c) An order affecting a substantial right and which determines the action and prevents a judgment from which an appeal might be made.
- (3) Appeals by the Tulalip Tribes in a Criminal Case. In addition to an appeal pursuant to subsection (2) of this section, the Tulalip Tribes shall have the right to appeal from the following in a criminal case:

(a) A decision, judgment, or order of the trial court dismissing a charge or complaint, vacating a verdict or judgment, or granting a new trial, as to any one or more counts, or any part thereof;

(b) An order granting a motion by the defendant for return of property or to suppress or exclude any evidence, provided, that the Tribes certifies that the appeal is not taken for purposes of delay and the evidence is substantial proof of a fact material in the proceeding;

(c) A sentence in a criminal case that includes provision(s) that are unauthorized by law, or omits provision(s) required by law; and/or

(d) The Tribes may appeal any decision declaring an act of the Tulalip Tribes' Board of Directors to be unconstitutional and/or in violation of the Indian Civil Rights Act, so long as jeopardy has not attached.

If the Tulalip Tribes files a pretrial appeal pursuant to this section, or a motion for reconsideration pursuant to TTC 2.20.110, speedy trial shall toll until the Court of Appeals issues a final order resolving the appeal. The Tribes shall then have 45 days, or the remainder of speedy trial, whichever is greater, to bring the defendant to trial following the defendant's next appearance on the trial court's criminal calendar.

The Tribes may not appeal a verdict of not guilty in a criminal case.

(4) Appeals in a Civil Case Without Final Judgment. In civil cases, the Tulalip Court of Appeals shall have jurisdiction over appeals:

(a) From interlocutory orders of the Tulalip Tribal Court that grant, continue, modify, refuse, or dissolve injunctions, or refuse to dissolve or modify injunctions;

(b) Over any order that the Trial Court certifies, or that all parties to the litigation have stipulated, that involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation; or

(c) When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross claim, or third party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination in the judgment, supported by written findings, that there is no just reason for delay and upon an express direction for the entry of judgment. The findings may be made at the time of entry of judgment or thereafter on the court's own motion or on motion of any party. In the absence of such findings, determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties.

and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

The Tulalip Court of Appeals may, in its discretion, permit the appeal if the appeal is made within 10 judicial days after the entry of the written order and service on the parties. In granting the appeal, the Tulalip Court of Appeals may stay the proceedings in the trial court.

2.20.030 Notice of Appeal.

(1) **Timing.** Any party who wishes to appeal an appealable order of the Tribal Court shall, within 15 judicial days after the appealable order is entered, file a written Notice of Appeal with the Clerk of the Trial Court and serve each party of record with a copy of the Notice of Appeal. For good cause shown, the time for Notice of Appeal may be extended in the discretion of the Court of Appeals. Such request for extension must be filed within the original 15 judicial day timeline for appeal. If a party first asks for a new trial, rehearing, or reconsideration, and the motion is denied, the 15 judicial day time limit shall be counted from the day when the motion is denied.

(2) **Form.** The Notice of Appeal must specify the party or parties taking the appeal and designate the judgment, order, or part thereof being appealed. The Notice of Appeal must also state the reason or grounds for appeal. The party filing the appeal shall attach the appealable order to the Notice of Appeal. All filings submitted by mail shall be clearly marked "Court of Appeals" on the envelope.

(3) **Service.** The party filing the Notice of Appeal shall cause service of the Notice of Appeal to be made on all parties by personal service or by mail to the last known address of the party. A copy of proof of service on all parties must be filed with the Clerk at the same time the Notice of Appeal is filed or within five judicial days after filing.

2.20.040 Bond on appeal and stay of execution of judgment.

(1) **Criminal Cases.** Upon the request of the defendant for a stay of execution of judgment pending the filing and perfection of an appeal, the Trial Court shall set bond requirements pending the disposition of a perfected appeal in all criminal cases, pursuant to this code.

(2) **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 Tribes 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.

(3) **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.

(4) Decision on Motion to Stay. Where the Trial Court has entered a written decision on the motion to stay, either party may request a review by the Court of Appeals 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.

2.20.050 Dismissal.

(1) Motion to Dismiss. On the request of the appealing party, an appeal shall be dismissed at any time. On the request of the appellee, an appeal may be dismissed in the discretion of the Court. If the Court of Appeals determines that an appeal was filed frivolously and without good faith, it shall dismiss the appeal. If a party fails to comply with the appellate rules or a valid order of the Court, the Court may dismiss the appeal or make other rulings as appropriate.

(2) Imposition of Costs and Attorney's Fees. When a motion to dismiss is granted based on the frivolous nature of the appeal, the Court shall impose costs against the appellant. Attorney's fees may be imposed, when provided by contract or other Tulalip law, in the discretion of the Court.

2.20.060 Record on appeal.

- (1) The trial court record consists of all exhibits and papers filed in a case plus the audio recording of all court hearings in the case and any transcripts made of those hearings. Upon receipt of a notice of appeal, the Court Clerk shall promptly make sure that the case record is complete and in order and shall make the record available to all parties for inspection and copying at the parties' expense.
- (2) Initial designation of the record. Within 10 judicial days after the notice of appeal is filed, the appellant should designate the record by serving on all other parties and filing with the clerk a designation of the portions of the trial court record they want the clerk to copy and provide to the appellate panel. If the appellant fails to designate the record within 10 judicial days of filing the notice of appeal, the appellee may designate the record within an additional judicial 10 days. If neither party designates the record, the entire trial court record shall constitute the record on appeal.
- (3) Supplemental designation of the record. Any party may supplement the initial designation of the record prior to the filing of the party's last brief. Each party is encouraged to designate only that part of the record that is needed to review the issues presented to the Court of Appeals.
- (4) Transcripts. A party may independently have a transcription prepared of some or all of the court hearings in the trial court record at the party's expense and may submit such transcript as part of that parties initial or supplemental designation of the record.
- (5) Submittal of record to the Court of Appeals. The Clerk shall deliver a copy of the initial designated record and any supplemental designation to the Court of Appeals within 5 judicial days of receipt of same from the party. If no record is designated, the Clerk shall deliver a copy of the trial court record to the Court of Appeals within 30 judicial days of the filing of the notice of appeal.

(6) Inaudible Record. If the appellate panel finds that a relevant part of the audio record is inaudible, it may vacate and remand to the Trial Court for a new hearing so that an adequate record can be made.

2.20.070 Briefs and motions.

The parties shall be required to submit their arguments in written briefs. The Court of Appeals shall promptly notify all parties of a schedule for the filing of briefs. The schedule shall require the appellant to file the opening brief, followed by a response brief from the appellee. The appellant may then file a reply brief.

(1) Briefs. All briefs shall be filed with the Clerk. An original and three copies shall be submitted, with any case law cited to be attached in its entirety to the brief. Briefs shall not exceed 30 pages in length, excluding the attached case law. Briefs which are not clearly legible may be stricken by the Court of Appeals.

(a) Appellant's Brief. 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 appellant;
- (iii) The relevant supporting legal authority; and
- (iv) A short conclusion stating the specific relief sought by the appellant.

(b) Appellee's Brief. The appellee's brief shall include:

- (i) A statement of the case is not required, unless the appellee finds the statement presented by the appellant to be insufficient or incorrect;
- (ii) A response to the contentions of the appellant;
- (iii) The relevant supporting legal authority; and
- (iv) A short conclusion.

(c) Amicus Curiae. A person 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. 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 10 judicial 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.

(d) **Motions for Extending Time to File Brief.** Motions for extending the time to file a brief shall be filed at least five judicial days prior to the requesting party's submission deadline, with proof of service on all parties, unless the motion is a joint motion by the parties. Motions for extending time may be ruled upon by the Presiding Justice or the Chief Justice.

(e) **Failure to File Brief.** If the appellant fails to file an opening brief which has been ordered pursuant to an established briefing schedule, and no extension of time has been granted, the appeal may be subject to dismissal by the Court of Appeals. If the appellant fails to brief all 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 argument.

(f) **Supplemental Briefs.** If deemed necessary by the Presiding Justice, supplemental briefing may be ordered.

(2) **Motions.** A party who wishes to raise a question of procedure or request Court action during an appeal shall present the issue to the Court of Appeals in a written motion. Motions must conform to the requirements for briefs in this chapter. All motions shall be filed with the Trial Court Clerk and served on the opposing party. The Trial Court Clerk shall immediately send a copy of all motions and replies to motions to the Administrator of the Court of Appeals and to the Presiding Justice. The Presiding Justice may rule on the motion alone or after consulting with the Associate Justices; provided that the Court must allow at least five judicial days for the opposing party to respond in writing to the motion. A motion filed by an adverse party that would result in the dismissal or resolution of an appeal may only be granted by a majority vote of all three Justices. The Clerk shall provide the parties with a copy of the Court's ruling.

(3) **Service of Briefs and Motions.** The party filing the brief or motion shall serve it on all parties by personal service or by mail. Proof of service on all parties must be filed with the Court Clerk within five judicial days of the filing of the brief or motion.

2.20.080 Oral argument.

The Court of Appeals may order oral argument at any time upon its own initiative and shall do so upon the request of a party. At oral argument, the parties may present arguments relevant to the issues raised by the appeal. Parties may not present arguments orally that have not been properly raised in a written brief or motion. The appellant shall speak first, followed by the appellee. The appellant may then respond briefly in rebuttal. The Judges may set a limit on the time each party is allowed to speak.

2.20.090 Standard of review.

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

(1) A finding of fact by a Judge shall be sustained unless clearly erroneous;

(2) A factual inference drawn by a Judge or jury shall be reviewed as a finding of fact if more than one reasonable inference can be drawn from the fact;

(3) Any finding by the Judge, whether explicit or implicit, of witness credibility shall be reviewed as a finding of fact;

(4) A conclusion of law shall be reviewed de novo, or without deference to the Tribal Court's determination;

(5) Construction of an unambiguous contract term is reviewed as a conclusion of law;

(6) A matter which is a mixture of law and fact is reviewed by the standard applicable to each element;

(7) A sentence and the imposition of fine, forfeiture, or other penalty, excluding the assessment of damages, shall be reviewed as a discretionary determination of the Tribal Court;

(8) A matter which is within the discretion of the Tribal Court shall be sustained if it is reflected in the record that the Tribal Court exercised its discretionary authority, applied the appropriate legal standard to the facts, and did not abuse its discretion. A matter committed to the discretion of the Tribal Court shall not be subject to the substituted judgment of the Court of Appeals.

2.20.100 Decision on appeal.

Cases appealed pursuant to these rules shall be decided on the basis of the Trial Court record and any written or oral arguments presented by the parties in accordance with the requirements of these rules. The Court of Appeals may affirm the Trial Court decision, modify the Trial Court decision in whole or in part, reverse the Trial Court decision in whole or in part, order a new trial, or make any other ruling which disposes of the issues raised by the appeal.

(1) Form. The Court of Appeals shall put the decision on appeal in writing and deliver a copy to all parties. The decision on appeal shall be made by a majority vote of the Justices. The Court of Appeals shall have 60 days from the later of oral argument or the filing of the last brief to render a decision, unless the Presiding Justice determines there is good cause for an extension with notice to all parties.

(2) Costs. The prevailing party shall be entitled to costs.

(3) Attorney's Fees. Attorney's fees may only be awarded in accordance with Chapter 2.05 TTC.

2.20.110 Motions for reconsideration.

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

(1) Motion and Brief. The party who is in disagreement with a decision must file a motion for reconsideration with service on the opposing party. The motion must be accompanied by a brief which states with particularity the points of law which the moving party contends the Court of Appeals overlooked, misapprehended, or wrongly decided. The brief shall be limited to five

pages in length, unless otherwise authorized by the Court of Appeals. Accompanying legal authority shall not count towards the page limit.

(2) **Time.** The motion for reconsideration must be filed within 10 judicial days of service of the decision or order. Notice of service on the opposing party must accompany the motion.

(3) **Response Brief.** Within 10 judicial days after service of the motion for reconsideration, the opposing party may file a response brief to such motion, with service on the moving party. The response brief shall be limited to five pages in length, unless otherwise allowed by the Court of Appeals, and shall be similar in form to the moving party's brief. Notice of service on the 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 Court of Appeals.

(5) **Only One Motion Permitted.** Each party may file only one motion for reconsideration, even if the Court of Appeals modifies its decision or changes the language in the opinion rendered by the Court of Appeals.

(6) **Further Appeal.** No further appeal may be taken from a final decision or order of the Court of Appeals.