

# Table of Contents

SECTIONS

- 1. Definitions
- 1A. Acronyms
- 2. Court
- 3. General Provisions
- 4. Appeals
- 5. Interlocutory Appeals
- 6. Habeas Corpus
- 7. Mandamus
- 8. Spokespersons

## Section 1 - Definitions

1-1	Amicus Curiae .....	1
1-2	Appellant.....	1
1-3	Appellee.....	1
1-4	Brief .....	1
1-5	Briefing Schedule .....	1
1-6	Business Days.....	1
1-7	Calendar Days .....	1
1-8	Code .....	1
1-9	Court .....	1
1-10	Court Reporter .....	1
1-11	Defendant .....	1
1-12	Designee .....	2
1-13	Docket .....	2
1-14	<i>En Banc</i> .....	2
1-15	Exception.....	2
1-16	Good Cause.....	2
1-17	<i>Habeas Corpus</i> .....	2
1-18	Hard Copy.....	2
1-19	Interlocutory .....	2
1-20	Initial Hearing.....	2
1-21	Initial Review .....	2
1-22	Issue .....	2
1-23	Jurisdiction .....	2
1-24	Legal Memorandum .....	2
1-25	Mandamus.....	3
1-26	Mandate.....	3
1-27	Motion .....	3
1-28	Oral Record.....	3
1-29	Original Process .....	3
1-30	Panel.....	3
1-31	Perfection of Appeal .....	3

1-32	Petitioner .....	3
1-33	Pro Se .....	3
1-34	Published Decision .....	3
1-35	Relief .....	3
1-36	Remand .....	3
1-37	Respondent .....	3
1-38	Rules .....	3
1-39	Spokesperson .....	4
1-40	Stay of Execution .....	4
1-41	Trial Court .....	4
1-42	Working Copies .....	4
1-43	Writs .....	4

### Section 1A - Acronyms

1A.1	CCAR .....	4
1A.2	CCT .....	4
1A.3	COA .....	4
1A.4	COACR .....	4
1A.5	CTCR .....	4
1A.6	MAR .....	4
1A.7	MFWOM .....	4
1A.8	NOA .....	4
1A.9	NOHCA .....	4
1A.10	NOIA .....	4

### Section 2 - Court

2-1	Purpose .....	4
2-2	Authority to Enact and Applicability of Rules .....	5
2-3	Principles of Construction .....	5
2-4	Court Address .....	5
2-5	Composition of the Court of Appeals .....	5
2-6	<i>En banc</i> Review .....	5
2-7	Clerk of the Court of Appeals .....	6
2-8	Administrator .....	6
2-9	Jurisdiction .....	6
2-10	Waiver of Formal Requirements .....	7

### Section 3 - General Provisions

3-1	Filing .....	7
3-2	Personal .....	7
3-3	Electronic .....	7
3-4	Mail .....	7

3-5	Original/Working Documents .....	8
3-6	Service .....	8
3-7	Affidavit of Service .....	8
3-8	Fees .....	8
3-9	Waiver .....	8
3-10	Waiver Request, Petitioner .....	8
3-11	Waiver Request, Respondent .....	9
3-12	Income Schedule .....	9
3-13	Documents .....	9
3-14	Copies Required .....	9
3-15	Record on Appeal .....	9
3-16	Review of Record .....	10
3-17	Request for Review .....	10
3-18	Inaudible Record .....	10
3-19	Partial Transcript .....	10
3-20	Supplemental Documents .....	10
3-21	Time .....	11
3-22	COA Date .....	11
3-23	Telephonic Appearance .....	11
3-24	Telephonic Hearing .....	11
3-25	Court Costs .....	11
3-26	Motions .....	11
3-27	Reconsideration .....	12
3-28	Motion and Affidavit for Reconsideration; Brief .....	12
3-29	MAR Time .....	12
3-30	MAR Response Brief .....	12
3-31	MAR Decision .....	12
3-32	Limited Motion .....	12
3-33	Mandate .....	13
3-34	When Issued .....	13
3-35	Stipulation .....	13
3-36	Immediate Issuance .....	13

Section 4 - Appeals

4-1	Notice of Appeal .....	13
4-2	Grounds for Appeal .....	14
4-3	Bond/Stay .....	15
4-4	Stay of Execution of Judgment .....	15
4-5	Failure of Trial Court to Rule on Motion to Stay .....	15
4-6	Motion to Stay, Decision .....	15
4-7	Service .....	15
4-8	Fees .....	16
4-9	Waiver .....	16
4-10	Waiver Request, Petitioner .....	16

4-11	Waiver Request, Respondent .....	16
4-12	Initial Hearing .....	16
4-13	Agreed Order .....	17
4-14	Brief, When Due .....	17
4-15	Brief, Length and Size .....	18
4-16	Copies Required .....	18
4-17	Opening Brief .....	18
4-18	Response Brief .....	18
4-19	Reply Brief .....	18
4-20	<i>Amicus Curiae</i> .....	18
4-21	Motions for Extension .....	19
4-22	Effect if Briefs Not Filed .....	19
4-23	Oral Arguments .....	20
4-24	Decision and Opinion with Order .....	20

### Section 5 - Interlocutory Appeals

5-1	Notice of Interlocutory Appeal .....	21
5-2	Written Order .....	21
5-3	Oral Order .....	21
5-4	Contents .....	21
5-5	Perfectd. ....	22
5-6	Grounds for Interlocutory Appeal .....	22
5-7	Service .....	22
5-8	Bond; Stay of Execution .....	22
5-9	Fees .....	22
5-10	Waiver .....	23
5-11	Waiver Request, Petitioner .....	23
5-12	Waiver Request, Respondent .....	23
5-13	Initial Review .....	23
5-14	Brief Due, Appellant .....	24
5-15	Brief Due, Appellee .....	24
5-16	Reply Brief .....	24
5-17	Brief Content .....	24
5-18	Motion for Extension .....	24
5-19	Effects if Briefs Not Filed .....	24
5-20	Order .....	25

### Section 6 - Habeas Corpus

6-1	Notice of Habeas Corpus Appeal .....	25
6-2	Notice Contents .....	25
6-3	Perfectd. ....	26
6-4	Grounds for Habeas Corpus Appeal .....	26

6-5	Service of Habeas Corpus Appeals .....	26
6-6	Fees .....	26
6-7	Bond .....	26
6-8	Initial Review.....	26
6-9	Schedule .....	26
6-10	Order.....	27

### Section 7 - Mandamus

7-1	Motion for Writ of Mandamus .....	27
7-2	Notice of Motion for Writ .....	27
7-3	Contents of MFWOM.....	27
7-4	Fees .....	28
7-5	Bond .....	28
7-6	Initial Review.....	28
7-7	Schedule .....	28
7-8	Order and Writ of Mandamus .....	28

### Section 8 - Spokespersons

8-1	Spokesperson's Responsibilities .....	28
8-2	Representation at Trial.....	29
8-3	Withdrawal After Filing.....	29
8-4	Notice of Appearance.....	29
8-5	Substituted Spokesperson .....	29
8-6	Additional Spokesperson.....	29
8-7	Office Representation.....	29
8-8	Case Preparation.....	30
8-9	Sanctions or Contempt.....	30

**COLVILLE TRIBAL COURT OF APPEALS**  
**COURT RULES**  
(COACR)  
Effective 2023

**SECTION 1 - Definitions**

- 1-1 *AMICUS CURIAE*. Friend of the Court. A person, or entity, with a strong interest in or views on the subject matter of an action, who is not a party to the case. The Court may grant permission for that person, or entity, to file a brief, usually concerning issues of broad public interest; or, the Court may invite a party or entity to file a brief.
- 1-2 *APPELLANT*. The party who files an appeal from a decision of the Tribal Court. The party may be either the prosecution/plaintiff or defendant/respondent.
- 1-3 *APPELLEE*. The party in a case against whom an appeal is taken. In Minor-In-Need-Of-Care cases, appellees are everyone not considered an Appellant.
- 1-4 *BRIEF*. A written document arguing a case before the COA. It contains a summary of the facts of the case, pertinent laws, and arguments on how the law applies to the facts supporting a party's position. A legal memorandum is not a brief.
- 1-5 *BRIEFING SCHEDULE*. A time schedule set for the submission of the briefs. All briefs are due by 3:00 pm on the date specified, unless otherwise ordered by the COA.
- 1-6 *BUSINESS DAYS*. Business days are days that the COA would normally be at work, i.e. Monday through Friday, and exclude Saturday, Sunday, and holidays.
- 1-7 *CALENDAR DAYS*. Calendar days are every day on the calendar, including Saturday, Sunday, and holidays.
- 1-8 *CODE*. Colville Tribal Law and Order Code.
- 1-9 *COURT*. Court of Appeals as established by Colville Tribal Code § 1-1-41 and the Colville Tribal Constitution, Amendment X.
- 1-10 *COURT REPORTER*. The COA shall keep a record of all its published decisions in the Court of Appeals Reporter (CCAR) and the Tribal Reporter (CTCR). Decisions that are published are distributed to the COA's web page, and any other entity which the COA has determined is important to distribute its decisions to.
- 1-11 *DEFENDANT*. The party against whom relief or recovery is sought in an action or suit or the accused in a criminal case.

- 1-12 **DESIGNEE.** Person to whom the Chief Justice appoints as having authority to make specific decisions when the Chief Justice is unavailable to make those decisions.
- 1-13 **DOCKET.** Calendar of cases set on the COA day.
- 1-14 **EN BANC.** Special procedure where all the justices on the COA bench hear a case. Only enacted when the issues are especially complex or are of major importance.
- 1-15 **EXCEPTION.** Objection to order or ruling of Tribal Court. A formal objection by a party during the trial to an action of the court, i.e. refusing a request or overruling an objection, implying that the party excepting does not agree with the decision of the court, and may seek to procure a reversal of the decision.
- 1-16 **GOOD CAUSE.** Legally sufficient ground or reason.
- 1-17 **HABEAS CORPUS,** Writ of. Name given to a variety of writs which serve to bring a party before a court or judge. The primary function of the writ is to release the party from unlawful imprisonment.
- 1-18 **HARD COPY.** A hard copy is a printed copy of information on paper. It may be the original document or copies of the original document.
- 1-19 **INTERLOCUTORY.** Provisional; interim; temporary; not final. Something intervening between the commencement, and the end of a suit which decide some point or matter, but is not a final decision of the whole controversy. Involves a controlling question of law as to which there is substantial ground of difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of litigation.
- 1-20 **INITIAL HEARING.** First hearing after an appeal has been filed. After hearing from the parties, the COA may decide to move forward, limit the issues, or deny the appeal.
- 1-21 **INITIAL REVIEW.** In certain cases, the Chief Justice will review the case to determine if there is sufficient basis shown to proceed with the appeal.
- 1-22 **ISSUE.** A single, certain, and material point, deduced by the allegations and pleadings of the parties, which is affirmed on the one side and denied on the other. A fact, put in controversy/question by the pleadings; such may either be issues of law or fact.
- 1-23 **JURISDICTION.** Area of authority. Area in which a court has authority and power over or types of cases brought before it.
- 1-24 **LEGAL MEMORANDUM.** A legal memorandum is a document that contains the results of your research. It is more focused on facts, objectivity of the case, and the applicable laws. It is used to help create strategy for winning the case. It is read internally and is not seen by the judges or opposing spokespersons.

- 1-25 MANDAMUS, Writ of. Traditionally issued in response to abuses of judicial power. Thus where a Tribal judge refuses to take some action he is required to take or takes some action he is not empowered to take, a party may file a writ of mandamus to compel the judge to comply.
- 1-26 MANDATE. Written notification by the Court Clerk to the reviewed court and the parties that a final terminating appellate decision has been entered, so that the reviewed court may assume jurisdiction over the matter.
- 1-27 MOTION. Application made to a judge or court for purpose of obtaining a rule or order directing some act to be done in favor of the applicant. Notice is always given to the opposing party prior to any review by the COA.
- 1-28 ORAL RECORD. The electronic record of the hearing from the Tribal Court.
- 1-29 ORIGINAL PROCESS. Process is the means used by the court to acquire or exercise its jurisdiction, i.e. personal service at the beginning of a case. Service on the opposing party is effected when the pleadings are sent to the last known address as found in the original trial court file.
- 1-30 PANEL. The three Justices appointed by the Chief Justice, or his designee, to an appeal are be designated as the Panel.
- 1-31 PERFECTION OF APPEAL. Completion of all the steps necessary to file an appeal with the COA. Includes Notice, Service, submission of Fees or Waivers, submission of Bond or Waivers, and any other requirements that are stated in the COACR or Code.
- 1-32 PETITIONER. Party who files a petition to the court, against another person, for an action that the Petitioner is requesting relief.
- 1-33 PRO SE. Acting on one's own behalf, without representation by a spokesperson.
- 1-34 PUBLISHED DECISION. Any decision which is of importance to the Colville Tribes or the legal community may be published. Discretion to publish is with the Chief Justice or the presiding justice of the panel.
- 1-35 RELIEF. The general designation of what a party wants to court to do. It may be specific performance, injunction, or some other act that the court is authorized to impose.
- 1-36 REMAND. The process of sending back to the same court out of which the action was taken for the purpose of having some further action taken on it there.
- 1-37 RESPONDENT. The party who is in opposition of the petitioner.
- 1-38 RULES. Rules adopted by Colville Tribal Court of Appeals.



- 1-39 SPOKESPERSON. A person who has successfully passed the Colville Tribal Bar and who is representing a party in a case. A spokesperson need not be an attorney.
- 1-40 STAY OF EXECUTION. The stopping of execution of a judgment for a limited period of time, usually until the appeal has been decided and returned to the court.
- 1-41 TRIBAL COURT. Tribal Court, and other such lower courts, as established by Colville Tribal Code § 1-1-40 and the Colville Tribal Constitution, Amendment X.
- 1-41 WORKING COPIES. Copies of the original document, submitted and distributed to each of the justices on a panel, to allow them to markup their copy. Three working copies must be submitted for each document filed in the COA, unless otherwise allowed by the COA.
- 1-42 WRITS. An order issued from a court requiring the performance of a specified act, or giving authority to have it done. *See* Mandamus, Habeas Corpus.

### **Section 1A - Acronyms**

- 1A-1 CCAR. Colville Court of Appeals Reporter.
- 1A-2 CCT. Confederated Tribes of the Colville Reservation.
- 1A-3 COA. Court of Appeals.
- 1A-4 COACR. Court of Appeals Court Rules.
- 1A-5 CTCR. Colville Tribal Court Reporter.
- 1A-6 MAR. Motion and Affidavit for Reconsideration.
- 1A-7 MFWOM. Motion for Writ of Mandamus.
- 1A-8 NOA. Notice of Appeal.
- 1A-9 NOHCA. Notice of Habeas Corpus Appeal.
- 1A-10 NOIA. Notice of Interlocutory Appeal.

### **SECTION 2 - Court**

- 2-1 PURPOSE. The purpose of these rules shall be to establish uniform rules for appeals filed in the Colville Tribal (CCT) Court of Appeals (COA), and to give guidance to all parties and spokespersons, in procedures and requirements to be followed in cases before the COA. While the rules are specific, the COA may allow flexibility in their application.

- 2-2 AUTHORITY TO ENACT AND APPLICABILITY OF RULES. The following Rules of the 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. These Rules of the COA apply to each case filed with the COA, unless modified for good cause, at the discretion of the Chief Justice or Presiding Justice of an appellate panel.
- 2-3 PRINCIPLES OF CONSTRUCTION. These rules shall follow the Principles of Construction listed in the Colville Tribal Law and Order Code at § 1-1-7.
- 2-4 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.”
- 2-5 COMPOSITION OF THE COURT OF APPEALS. 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.

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, unless these rules specify differently. If the Chief Justice is not on the Panel, he shall designate one associate justice to act as Presiding Justice on the Panel.

The Presiding Justice of each panel may enter preliminary and/or administrative orders for the timely administration of the case without the signature or concurrence of the other two justices. All major decisions of the COA shall be by majority vote.

- 2-6 *EN BANC* REVIEW. 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.

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.

- 2-7 CLERK OF THE COURT OF APPEALS. There shall be at least one clerk of the COA. The Clerk of the COA shall be under the direct supervision of the Administrator. The Clerk shall perform the following duties, which include, but are not limited to: accept documents for filing with the COA; maintain the files of the COA and process documents as necessary for the administration of those files; maintain a record of the status of open cases and the justices assigned to each case; attend all hearings and keep records of the proceedings; assist the justices in research and drafting of opinions/orders as requested by the Chief Justice or Presiding Justice of each panel; distribute final decisions to the parties and to pertinent law reporters, as designated by the Chief Justice or Presiding Justice; and perform other duties as assigned by the Chief Justice for the efficient operation of the COA.
- 2-8 ADMINISTRATOR. There shall be at least one Administrator of the COA. The Administrator of the COA shall be under the direct supervision of the Chief Justice. The Administrator's duties shall include, but not be limited to: maintain all budgetary requirements of the COA; assist and/or supervise the Clerk in any duties, as needed; maintain the COA Court Reporter and be responsible for publication of pertinent cases; and assist the justices in research and writing, as needed.
- 2-9 JURISDICTION. The COA shall have jurisdiction to hear and determine appeals from the Colville Tribal Court's final judgments, sentences, and disposition orders, pursuant to Amendment X of the Colville Tribal Constitution.
- (a) For purposes of filing an appeal with the COA, "final" orders and decisions set out above are the written orders or decisions issued by the Tribal Court that dispose of the substantive issues, and not the oral bench orders entered in the matter to be appealed.
- (b) The COA will not entertain issues on appeal that have not been fully developed and ruled on by the Tribal Court. As set out in Rule 4-2, and found in the Tribal law, appeals based on errors of law require an exception on the record in order to be considered as perfected for appeal.
- (c) In instances when the Tribal 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 was not dealt with by the Tribal Court within a reasonable time, any party may petition the COA for a Writ of Mandamus to require the Tribal Court to issue a final written order. The Petition for a Writ of Mandamus may be heard by the Chief Justice or his designee.

(d) The COA shall have jurisdiction to hear interlocutory appeals for issues that concern controlling issues of law for which there is 1) substantial difference of opinion and where a determination will materially advance the ultimate termination of the case; 2) where there is a significant question of law under the Tribal Constitution; or 3) where there has been a significant error of law committed at the Tribal Court which renders further proceedings useless.

- 2-10 **WAIVER OF FORMAL REQUIREMENTS.** Upon a finding of good cause by the COA in writing, the COA 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. The order issued herein shall state the reason(s) the waiver has been granted.

### **SECTION 3 - General Provisions**

- 3-1 **FILING.** All papers required or permitted to be filed in the COA shall be filed as an ORIGINAL and THREE WORKING COPIES. All documents will be filed with the COA Clerk or with the Tribal court within the time limits specified.
- 3-2 **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 Tribal Court clerks. The COA will accept the “Filed” stamped date and time by the Tribal Court time clock.
- 3-3 **ELECTRONIC.** Because of the remoteness of the Court and limited resources of some parties, supplemental filing may be allowed in order to meet filing deadlines. Filing may be accomplished by electronic mail (e-mail) or fax. Filing shall not be timely unless the documents are received by the COA Clerk within the date and time fixed for filing. Only one copy of the filing will be sent by e-mail or fax. The party filing by e-mail or fax is responsible for service of the document on all other parties to 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 or fax, unless advance approval is granted. The hard copy of the original and three working copies must be received by the COA within five business days of the sending of the e-mail or fax.
- 3-4 **MAIL.** Any party may serve documents through the U. S. Postal Service by 1<sup>st</sup> class mail to the last know address of the recipient. The documents, including affidavits or service, must

be received by the COA within the time limits specified. The date stamped by the Postal Service will not be considered as timely, except in exceptional circumstances, as it is not the date received by the Court or recipient.

- 3-5 ORIGINAL/WORKING DOCUMENTS. The original document and the three working copies must be received by the Clerk of the COA within five business days of the filing by electronic filing, or the filing date will be changed to the actual date of the filing of the original document.
- 3-6 SERVICE. Copies of all papers filed by any party shall, at or before the time of filing, be served on all other parties to the appeal or their spokesperson. Service may be personal, electronic, or by mail. Personal service includes delivery of the copy to the opposing party, a secretary or other responsible person at the office of the opposing party's spokesperson. 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. Electronic service shall be to the known e-mail address or the last known fax number of the party or spokesperson.
- 3-7 AFFIDAVIT OF SERVICE. Documents 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; name of the document; 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 document it must be filed within three business days of the filing of the document.
- 3-8 FEES. Fees will be charged in all appeals, with specific exemptions. Fees will be submitted to the COA Clerk or may be left with the Tribal Court clerk, who will then submit the fee to the COA within five business days. Specific fees required are listed in each section of these rules.
- 3-9 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.
- 3-10 WAIVER REQUEST, Petitioner. Any appellant who feels he is eligible for a waiver of a filing fee may make a motion to the COA for an order waiving the fee. The motion shall be accompanied by a signed affidavit setting forth petitioner's assets, income, debts, and expenses. Forms will be provided to the appellant upon request made to the COA. If a finding of indigency has already been made for the petitioner/appellant at the trial level, the appellant may file with the COA a copy of the order waiving the filing fee from the Tribal

Court along with an affidavit (Affidavit: No Substantial Change in Circumstances) stating there have been no substantial changes to his financial circumstances since the order was entered.

- 3-11 **WAIVER REQUEST, Respondent.** If the appellant was the respondent at the Tribal Court, he must file a motion if he wishes a waiver or reduction of the filing fee. The “Affidavit: No Substantial Change in Circumstances” does/will not apply, unless it concerns a cross-claim. The waiver motion must be accompanied by a signed affidavit setting forth petitioner’s assets, income, debts, and expenses. Forms will be provided to the appellant upon request made to the COA.
- 3-12 **INCOME SCHEDULE.** The COA shall adopt a schedule showing the maximum income and assets for which a waiver by the COA shall be mandatory. Real property held in trust by the United States shall be excluded as an asset. Assets and income exceeding the maximum amount in the Income Schedule will not preclude the COA from granting such a reduction/waiver because of other circumstances. The reduction/waiver will be at the discretion of the Chief Justice or his designee.
- 3-13 **DOCUMENTS, Specifications.** Documents which are not clearly legible may be stricken by the COA. Documents shall be on paper 8½x11 inches (letter-size) and contain a one-inch margin on all sides. Documents shall have writing and/or pictures on only one side of the page. If more than one page, each page of the main document must be sequentially numbered. Cited case law will not have to be numbered if the case law already has numbering.
- 3-14 **COPIES REQUIRED.** The parties shall provide an original and three legible copies of each document filed in the COA, with proper service on the opposing party(ies). The filing party will also provide four copies of pertinent laws, cases, treatises, regulations, rules, instruction, and any other authorities cited in their documents for the appellate panel (one attached to the original document and other three attached to the working copies), provided that no copies are required for any cases cited from the Colville Tribal Court of Appeals Reporters (CCAR or CTCR). Any legal authority cited shall adhere to standard legal citation rules.
- 3-15 **RECORD ON APPEAL.** The record on appeal shall consist of all documents contained in the Tribal Court file which directly pertain to the issues identified in the Notice and the oral record. The oral record is the electronic recording of hearings and the trial proceedings. Documents shall be copied from the Tribal Court file by the COA Clerk and shall be made a part of the COA file. The parties shall receive notice of the documents retrieved from the Tribal Court file.

- 3-16 REVIEW OF RECORD. It will be at the discretion of the COA if it will review the oral record. If the COA determines that the oral record needs to be reviewed, it will request the record from the Tribal Court. The oral record shall be sent electronically in a manner acceptable to the COA. The parties may receive one copy of the oral record without charge. Any additional records may be charged a nominal fee. A party may make a motion for a written transcript, which, if granted, will be made at the sole expense of the requesting party.
- 3-17 REQUEST FOR REVIEW. If either party wishes the COA to review the record, that party shall provide to the COA, by motion and affidavit, a designation of the electronic record to be copied in the proposed briefing order. If granted, the COA shall request copies of the designated recordings for the COA and the parties. There shall be no charge for the first recording requested for the parties. Any subsequent recordings of the same record may be subject to fees charged by the Tribal Court, at its discretion.
- 3-18 INAUDIBLE RECORD. If the COA 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 Tribal Court for a new hearing so that an adequate record may be made.
- 3-19 PARTIAL TRANSCRIPT. The parties may jointly present a written transcript of the electronic record that they relevant to the issues identified in their case on appeal. The partial transcript shall be submitted to the COA with signatures of all parties stating, to the best of their knowledge, it is a true and correct copy of the portions of the electronic record transcribed relevant to the appeal. Notice that a partial transcript shall be served promptly on the Tribal court for review no later than the Initial Hearing. The Tribal Court has 20 calendar days from the Notice to present its comments regarding the submitted partial transcript. If no comments are submitted by the Tribal Court after 20 calendar days the partial transcript will be presumed to be correct.
- 3-20 SUPPLEMENTAL DOCUMENTS. The parties may give notice before or at the initial hearing of any further documents from the trial record they wish the COA to consider.

(a) If a party to an appeal wants to supplement the record from the Tribal Court file, he must file and serve a Motion and Affidavit to Supplement and attach a list of the documents requested, not less than ten calendar days prior to the Initial Hearing (if the documents are needed to determine if the appeal should move forward or not) or he may be submit them at the Initial Hearing (if the documents are only necessary for briefing purposes).

(b) If any party does not agree to the proposed supplementation of the record, he must file and serve an objection within five business days after receipt of the Motion and Affidavit to Supplement, but not less than one business day prior to the Initial Hearing. 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 Tribal Court file.

(c) If the Motion to Supplement is made after the Initial Hearing, the objection must be made within five business days from receipt of the Motion.

(d) The COA may decide the matter on the written material or it may order a hearing to be held.

- 3-21 TIME. Time shall be calculated in accordance with Law and Order Code § 1-1-366, unless otherwise specified in these rules. Business days will be designated as Monday through Friday, excluding holidays. Calendar days will be designated as all days, Sunday through Saturday, not excluding holidays.
- 3-22 COA DATE. The COA holds hearings on the third Friday of every month, unless extreme exceptional circumstances arise and are approved by the Chief Justice, or his designee.
- 3-23 TELEPHONIC APPEARANCE. Any party may make a motion for a telephonic appearance call in lieu of personally attending a hearing. The motion and affidavit must specify extraordinary circumstances to show why the person should appear by telephone. Such motions may be granted at the discretion of the COA.
- 3-24 TELEPHONIC HEARING. If a party or parties wish to have a hearing held by telephonic or online means, a motion for such hearing must be filed at least ten business days prior to the scheduled hearing and must specify the extraordinary circumstances for the request. A joint motion may be made. If granted, the Court may require the moving party to assume the costs of the telephone call and be responsible for setting it up.
- 3-25 COURT COSTS. In any case where the COA has found it to be frivolous, the COA may impose such costs as the interests of justice dictate, which may include, but are not limited to, the actual costs of convening the COA. When considering the imposition of costs, the COA shall consider the nature of the claim, the finances of the parties, and any other potential hardship such costs may impose on the litigants.
- 3-26 MOTIONS. A written motion shall be filed and served on all other parties no later than five business 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 COA 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 all other parties no later than one business day prior to the hearing or time deadline, unless the COA permits them to be filed at some other time. All motions shall cite governing rules and/or laws of the Colville Tribes. Motions for which no time deadline is apparent may be filed at any time. Opposition to those motions must be filed within five business days of service of the original motion.

All motions shall be legible and signed with the movant's name legibly printed below the signature. The COA case number must be included. If the Motion is illegible or COA is unable to decipher the name of the movant, the motion may be declined for filing by the COA. The party submitting the motion will be notified of this action.

- 3-27 RECONSIDERATION. 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.
- 3-28 MOTION AND AFFIDAVIT FOR RECONSIDERATION; BRIEF. A party requesting reconsideration of a decision must file a Motion and Affidavit for Reconsideration (MAR) with service on all other parties. The MAR 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 pages in length, unless otherwise authorized by the COA. Accompanying legal authority shall not count towards the page limit.
- 3-29 MAR TIME. The MAR must be filed and served within ten calendar days of service of the decision or order. Proof of service on all parties must accompany the MAR.
- 3-30 MAR RESPONSE BRIEF. Within ten calendar days after service of the MAR, 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 COA, and shall be similar in form to the moving party's brief. Proof of service on all parties must accompany the response brief.
- 3-31 MAR DECISION. The MAR shall be decided on the briefs filed. No oral argument will be allowed unless ordered by the COA.
- 3-32 LIMITED MOTION. Only one MAR shall be considered by the COA, and thus, even if the COA modifies its original decision or changes the language in its opinion in response to one

party's MAR, no party may file a motion for further reconsideration. The COA's order on reconsideration is final and not subject to any further review.

- 3-33 MANDATE A "mandate" is the written notification by the Clerk to the Tribal Court and to the parties of a final appellate decision terminating further review.
- 3-34 WHEN ISSUED. The Clerk will issue the mandate no less than 15 calendar days after the final decision, opinion or order, of the COA has been distributed and/or published, unless a Motion for Reconsideration has been timely filed.
- 3-35 STIPULATION. The mandate may be issued upon receipt of a stipulation by the parties that a Motion for Reconsideration will not be filed.
- 3-36 IMMEDIATE ISSUANCE. Mandates may be issued immediately when an appeal has been dismissed upon a motion to dismiss by the appellant or when otherwise ordered by the COA.

#### **SECTION 4 - Appeals**

- 4-1 NOTICE OF APPEAL. A party shall initiate an appeal by filing a written Notice of Appeal (NOA) with the Tribal Court or COA within 30 calendar days from the entry of the final judgment, sentence, or disposition order. The 30 days shall not include the date of entry of the order. If the NOA is filed at the Tribal Court, the Tribal Court shall forward the NOA to the COA within five business days of filing.
  - (a) 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.
  - (b) 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 Tribal Court case number, date and nature of the decision appealed;
    - (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 Tribal Court that the judgment will be satisfied if affirmed or that the Appellant has asked for a waiver/reduction of the bond, if required;

(6) The relief or order requested; and

(7) Current contact information for the parties, or spokesperson, 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 appeal is perfected when all of the applicable elements of these rules are met.

4-2 GROUND FOR APPEAL. 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:

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

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

(c) 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 Tribal Court by using appropriate motions;

(d) Accident or surprise;

(e) 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;

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

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

(h) That substantial justice has not been done.

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

4-3 BOND/STAY. The Tribal Court shall set bond requirements pending the disposition of a perfected appeal in all cases, pursuant to the Colville Tribal Law and Order Code § 1-2-78, upon the request of the defendant for a Stay of Execution of Judgment pending the filing and perfection of an Appeal.

4-4 STAY OF EXECUTION OF JUDGMENT. The appellant in any case may request, and the Tribal 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 Tribal Court may require as a condition to the granting of such a stay, that the appellant post a bond, or guarantee control by the Tribal Court of sufficient assets of the appellant to satisfy the judgment in the event it is affirmed.

4-5 FAILURE OF TRIBAL COURT TO RULE ON MOTION TO STAY. In instances when the Tribal Court has failed to rule on a written motion to stay in a reasonable time, any party may petition the COA for a Writ of Mandamus to require the Tribal Court to rule on the Motion to Stay. The Petition for a Writ of Mandamus may be ruled on by the Chief Justice or his designee without going to a COA panel.

4-6 MOTION TO STAY, DECISION. Where the Tribal Court has entered a written decision on the motion to stay, either party may request a review by the COA to determine if the Tribal Court's decision should be affirmed or denied. The review will be on the written documents only, unless the COA decides otherwise. The request for review must be made within ten calendar days of the written decision.

4-7 SERVICE. The appellant is not required to serve a NOA by original process (i.e. personal, certified mail, or publication). Service is required as follows:

(a) REPRESENTED. If an appellee is represented in the Tribal Court by a spokesperson, service of the NOA shall be accomplished either by delivering a copy of the NOA to the spokesperson or by mailing a copy of the NOA to the appellee's spokesperson of record at the spokesperson's last known address shown in the Tribal Court file.

(b) PRO SE. If an appellee is self-represented, service of the NOA shall be accomplished either by delivering a copy of the NOA to the appellee or by mailing a copy of the NOA to the appellee at his/her last known address shown in the Tribal Court file.

(c) TIME. Service of the NOA as provided in this Rule shall be completed prior to or within three days of the time of the filing of the NOA. Proof of mailing shall be filed with the COA prior to the Initial Hearing.

4-8 FEES. Fees will be charged as follows.

(a) FEES, Civil. 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.

(b) FEES, Criminal. No fee shall be required for any criminal appeals.

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

(d) FEES, Minor-In-Need-Of-Care. No fee shall be required for minor-in-need-of -care appeals.

4-9 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.

4-10 WAIVER REQUEST, Petitioner. COACR 3-10 shall apply to waiver requests under this section.

4-11 WAIVER REQUEST, Respondent. COACR 3-11 shall apply to waiver requests under this section.

4-12 INITIAL HEARING. After the COA has received the Notice of Appeal, but no later than 60 calendar days from such receipt, the COA shall cause the matter to be set on the next regular COA docket day for the initial hearing as required by Tribal law, unless delayed for cause. At the initial hearing the appellate panel shall decide:

(a) Whether the facts and/or laws as presented warrant a limited appeal on issues of law and/or of fact; or

(b) Whether a new trial should be granted, at which time the case will be remanded to the Tribal Court for a new trial to be set by the Tribal Court in a timely fashion; or

(c) Whether the appeal should be denied or dismissed.

(d) If the COA finds issues exist to allow the appeal to go forward, a briefing schedule shall be ordered to be prepared by the parties. The briefing schedule shall include the specific language for the issues being briefed and which part of the oral record will need to be requested from the Tribal Court. The briefing schedule and a proposed order shall be submitted within 14 calendar days of the initial hearing. If no briefing schedule is submitted the provisions of COACR 4-14 shall apply.

(e) If the parties are unable to agree on a proposed schedule, they must notify the COA of their disagreement and may each submit a proposed schedule. The COA will then issue an order pursuant to Rule 4-14 and may consider the parties respective submissions.

4-13 AGREED ORDER. In lieu of the Initial Hearing, and subject to the discretion of the COA, the parties may submit an “Agreed Order In Lieu of Hearing” stating the following:

(a) The exact nature of the issues on appeal, citing to specific rulings of the Tribal Court alleged to be in error;

(b) A designation of the oral record to be reviewed by the COA;

(c) Any notices required; and

(d) A proposed briefing schedule.

The agreed order stating the above shall be filed no later than seven business days before the scheduled Initial Hearing in order to give adequate notice to the Justices assigned to the case, or the agreed order may be denied.

4-14 BRIEF, When Due. One original and three working copies of the appellant’s opening brief shall be filed within 30 calendar days after the Initial Hearing, unless otherwise ordered by the COA. One original and three working copies of the appellee’s response brief shall be filed within 20 calendar days after service of the appellant’s opening brief on the appellee. No reply briefs shall be filed unless authorized by the COA. If authorized, the reply brief will be due within ten calendar days after service of the response brief.

- 4-15 BRIEF, Length and Size. Briefs shall not exceed 30 pages in length, exclusive of an appendix and attachments, except by order of the COA for good cause shown. Briefs which are not clearly legible may be stricken by the COA. Briefs shall be on paper 8½x11 inch (letter-size) and contain a one-inch margin on all sides. Documents shall have writing on only one side of the page. If more than one page, each page of the document must be sequentially numbered. Cited case law will not have to be numbered if the case law already has numbering. If allowed, the reply brief will be limited to ten pages in length.
- 4-16 COPIES REQUIRED. The parties shall provide four legible copies of the pertinent laws, cases, treatises, regulations, rules, instruction, and any other authorities cited in their briefs for the appellate panel (one attached to the original document and three attached to the working copies), provided that no copies are required for any cases cited from the Colville Tribal Court of Appeals Reporters (CCAR or CTCR). Any legal authority cited shall adhere to standard legal citation rules.
- 4-17 OPENING BRIEF. The appellant's opening brief shall include:
- (a) A short statement of the case, including such facts as are material to the issues presented on appeal, with appropriate references to the record;
  - (b) A concise argument containing the contentions of the appellant, the reasons therefore, and necessary supporting legal authority (using standard legal citation rules); and
  - (c) A short conclusion stating the exact relief sought.
- 4-18 RESPONSE BRIEF. The appellee's response brief shall be of like character and arrangement as that of the appellant's opening 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.
- 4-19 REPLY BRIEF. There will be no reply brief allowed unless specifically authorized by the COA. If a reply brief is allowed, it shall be limited to the issues argued in the opening and response briefs. Any other issues will not be allowed or considered by the COA.
- 4-20 *AMICUS CURIAE*. A spokesperson, person, or entity through a spokesperson, may appear as *amicus curiae* in any proceeding by request of the COA, or by permission of the COA 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 3-6 and 3-7. 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 14 calendar days of service of the application. Approval to appear as *amicus curiae* shall be by written order of the COA 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 COA 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 COA. Format and service requirement for *amicus curiae* briefs and other filings shall be subject to the requirements of these Rules applicable to other parties. If the *amicus* brief is not filed timely, the COA may disregard the late brief in its deliberations.

4-21 MOTIONS FOR EXTENSION. Motion for Extending the time to file a brief shall be filed at least five business days prior to the moving party's submission deadline, with proof of service on the other party or parties prior to filing, unless the motion is a joint motion by the parties. Opposing party must file any objection within two business days of service of the motion if he does not agree with the motion. If an extension request is not granted or denied prior to the original brief deadline, all deadlines will be stayed until the COA makes a ruling on the motion to extend. A written order may be issued immediately or a hearing on the motion may be set by the COA on the docket of the next scheduled COA date. If the parties wish immediate notification of the decision, they must submit their e-mail addresses on their documents. No guarantee will be made that the decision notice will be e-mailed promptly. It is still the responsibility of the party to contact the COA for such timely notifications.

4-22 EFFECT IF BRIEFS NOT FILED. The following applies when briefs are not filed pursuant to a briefing order:

(a) APPELLANT. If the appellant does not file an opening 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 Rule 4-21 above, the appeal may be subject to dismissal by the COA. Appellee may file a brief citing his position to support dismissal of the appeal or a motion to dismiss.

(b) ISSUES. 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.

(c) APPELLEE. 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 Rule 4-21 above, the COA may decide the appeal based on the appellant's opening brief and the trial record.

(d) ISSUES. 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 argument, if said oral arguments have been scheduled.

#### 4-23 ORAL ARGUMENTS

(a) The COA 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 COA 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, unless good cause is shown for a later date.

(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 COA. The request must be filed with the COA no later than the time set for filing the response brief. An original and three copies must be filed, with notice of service on opposing party.

#### 4-24 DECISION AND OPINION WITH ORDER

(a) The COA will issue a written decision or 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.

(c) Within 30 calendar days of the issuance of the written decision, opinion and/or order, the COA shall send the decision, opinion and/or order to the Tribal Court and serve copies on the parties.

(d) The decision whether to publish a decision shall rest with the COA. Published opinions shall involve major issues of law, procedure or be of concern to a large number of individuals, among other considerations. Non-published opinions shall be of no precedential value, but may be used as guidance in coming to an informed decision in subsequent matters.

## **SECTION 5 - Interlocutory Appeals**

- 5-1 **NOTICE OF INTERLOCUTORY APPEAL.** An appellant seeking review of an order which is not a final judgment, sentence or disposition order may petition the COA for an interlocutory order by filing a Notice of Interlocutory Appeal (NOIA). The NOIA must include sufficient information to allow the COA to make a determination on whether there is a sufficient basis to proceed with the interlocutory appeal.
- 5-2 **WRITTEN ORDER.** If the court has issued a written order, the appellant shall file and serve a Notice of Interlocutory Appeal (NOIA) within 14 calendar days from the date of entry of the written order of the Tribal Court.
- 5-3 **ORAL ORDER.** An appellant seeking review of an oral order which is not a final judgment, sentence or disposition order and who has filed a motion with the court for a written order to be issued may seek Interlocutory Review by the COA. Appellant shall file and serve a Notice of Interlocutory Appeal (NOIA) within 30 calendar days from the date of the filing of the motion requesting entry of the written order. Appellant must include a copy of the filed-stamped motion with the NOIA. Appellant may move for a Writ of Mandamus to be issued at the same time as the NOIA is filed, as per Rule 2-9(c).
- 5-4 **CONTENTS.** The NOIA shall be titled as such and shall include:
- (a) The name of the appellant 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;
  - (b) The Tribal Court case number, date and nature of the decision appealed from;
  - (c) 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;
  - (d) An explanation of how the error of law or procedure meets the requirements necessary for review as an interlocutory appeal;
  - (e) The relief or order requested; and
  - (f) 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 as listed in the underlying Tribal Court file and the mailing is returned, no further mailings will be sent until the party notifies the COA of his/her correct address.

(g) Failure to present sufficient information to the COA may cause the NOIA to be denied.

5-5 PERFECTED, When. An Interlocutory Appeal is perfected upon order of the COA when all requirements have been sufficiently met.

5-6 GROUNDS FOR INTERLOCUTORY APPEAL. The following are grounds for interlocutory appeal:

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

5-7 SERVICE. A copy of the NOIA shall be served on the opposing party prior to or within three calendar days of the filing of the NOIA. Service may be perfected as stated in Rules 3-6 and 3-7.

5-8 BOND; STAY OF EXECUTION. There shall be no bond required for interlocutory appeals. A stay of proceedings may be entered at the discretion of the Tribal 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.

5-9 FEES. Filing fees shall be charged for interlocutory appeals. The filing fee shall be submitted with the NOIA.

(a) Civil. Filing fees will be charged in all civil appeals cases except for minor-in-need-of-care cases. The fee shall be \$35 and is non-refundable.

(b) Criminal. No fee shall be required for any NOIA.

(c) Colville Tribes. No fee shall be required for any NOIA taken by the Confederated Tribes of the Colville Reservation, their agents or corporations.

(d) Minor-In-Need-Of-Care. No fee shall be required for minor-in-need-of -care NOIAs.

5-10 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 COA may waive part or all of the fee. 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, income, debts, and expenses. Forms will be provided to the appellant upon request made to the COA.

5-11 WAIVER REQUEST, Petitioner. See COACR 3-9.

5-12 WAIVER REQUEST, Respondent. See COACR 3-10.

5-13 INITIAL REVIEW. Upon filing of the NOIA, the Chief Justice, or his designee, shall review the NOIA to determine if there are adequate grounds stated to proceed with the interlocutory appeal. The Chief Justice may find that the determination should be made with the assistance of other justices, and shall so appoint two justices to assist him. The Chief Justice or his designee, shall have broad discretion to accept or deny the interlocutory appeal.

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

(b) If the NOIA meets the criteria for acceptance, and the issue(s) are of such a compelling nature that further review is not necessary, the COA may remand the case back to the Tribal Court for further action consistent with the order of the COA.

(c) If the NOIA has been denied, the matter shall be remanded to the Tribal Court to take action consistent with the decision of the COA.

(d) 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.

5-14 BRIEF DUE, Appellant. One original and three working copies of the appellant's opening brief shall be filed within ten calendar days after the Order Accepting the Interlocutory Appeal is served, unless otherwise ordered by the COA.

5-15 BRIEF DUE, Appellee. One original and three working copies of the appellee's response brief shall be filed within ten calendar days after the due date of appellant's opening brief, unless otherwise ordered by the COA.

5-16 REPLY BRIEF. No reply briefs shall be filed unless authorized by the COA.

5-17 BRIEF CONTENT. All briefs filed shall have a short statement of the case, including such facts as are material to the issues presented on appeal; a concise argument, including the contentions of the appellant; necessary case law and statutes; and a short conclusion stating the exact relief sought. shall not exceed ten 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 COA.

5-18 MOTION FOR EXTENSION. Motions for extension of time to file a brief will only be granted in exceptional circumstances at the discretion of the COA.

5-19 EFFECTS IF BRIEFS NOT FILED. The following applies when briefs are not filed pursuant to a briefing order:

(a) Appellant. If the appellant does not file an opening 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 Rule 4-21, the appeal may be subject to dismissal by the COA. Appellee may file a brief citing his position to support dismissal of the appeal or a motion to dismiss.

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

(c) Appellee. 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 Rule 4-21, the COA may decide the appeal based on the appellant's opening brief and the trial record.

(d) Issues Waived. If the appellee does not brief all of the issues cited in the NOIA, the issues not briefed may be considered waived and the appellee may not be allowed to raise them at oral argument.

5-20 ORDER. Upon the completion of the briefs, or after oral argument, the COA will review the record and issue an Order. The Order will either affirm or deny the Interlocutory Appeal. A Motion for Reconsideration may be filed by either party, pursuant to COACR 3-27. The decision to publish the decision will be at the discretion of the COA.

## **SECTION 6 - Habeas Corpus**

6-1 NOTICE OF HABEAS CORPUS APPEAL. An appellant seeking appellate review of a decision of the Tribal Court pertaining to a habeas corpus petition shall file and serve a Notice of Habeas Corpus Appeal (NOHCA) in the same manner as required for a NOA. The NOHCA shall be a written notice which states the name of the case and indicates the appellant's intention to appeal. It must also state the reasons the appellant believes the judgment to be in error. The NOHCA must be filed and served within 30 calendar days of entry of the Tribal Court order granting or denying the writ of habeas corpus.

6-2 NOTICE CONTENTS. The NOHCA shall be titled as such and shall include:

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

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

(c) The error of law or procedure which is the basis of the habeas corpus appeal;

(d) An explanation of how the law the error of law or procedure meets the requirements necessary for review as a habeas corpus appeal;

(e) The relief or order requested; and

(f) Current contact information for the parties, including physical address, mailing address, facility where being held, 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 as listed in the underlying Tribal Court file and the mailing is returned, no further mailings will be sent until the party notifies the COA of his/her correct address.

- 6-3 PERFECTED. The habeas corpus appeal is perfected upon order of the COA.
- 6-4 GROUNDS FOR HABEAS CORPUS APPEAL. The following are grounds for a habeas corpus appeal:
- (a) Error of law;
  - (b) Irregularity in the proceedings;
  - (c) Abuse of discretion; or
  - (d) That substantial justice has not been done.
- 6-5 SERVICE OF HABEAS CORPUS APPEALS. A copy of the NOHCA shall be served on the party allegedly illegally holding the appellant prior to or within one day of the filing of the NOHCA.
- 6-6 FEES. There shall be no filing fee required for habeas corpus appeals.
- 6-7 BOND. There shall be no bond required for habeas corpus appeals. A stay of proceedings may be entered at the discretion of the Tribal 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.
- 6-8 INITIAL REVIEW. The Chief Justice, or his designee, shall initially review the habeas corpus appeal and determine if there is sufficient basis to move forward or if it should be denied. If the habeas corpus appeal moves forward, the Chief Justice, or his designee, shall appoint a panel to hear the appeal. If the habeas corpus appeal is found not to have sufficient basis to move forward, the appeal will be remanded to the Tribal Court for action consistent with the COA's order. The Chief Justice may find that the determination should be made with the assistance of other justices, and shall so appoint two justices to assist him.
- 6-9 SCHEDULE. If the habeas corpus appeal moves forward, the COA will set an Initial Hearing to determine the issue(s) to be reviewed, and to set a briefing schedule.

- 6-10 ORDER. Upon the completion of the briefs, or after oral argument, the COA will review the record and issue an Order. The Order will either affirm or deny the Habeas Corpus Appeal. A Motion for Reconsideration may be filed by either party, pursuant to COACR 3-27. The decision to publish the decision will be at the discretion of the COA.

### **SECTION 7 - Mandamus**

- 7-1 MOTION FOR WRIT OF MANDAMUS (MFWOM). If, after a reasonable amount of time, a Tribal Court judge refuses to take some action he is required to take or takes some action he is not empowered to take, and the party has filed a written request to the Tribal Court for the Tribal Court judge to act but there still is no compliance, the party may file for a Writ of Mandamus requesting the COA to order the Tribal Court judge to comply. The MFWOM must be filed within 30 calendar days of the last written motion to the court for action.
- 7-2 NOTICE OF MOTION FOR WRIT. The MFWOM must be served on the Tribal Court, in addition to service on opposing parties, on or before the filing of the MFWOM to the COA. Service shall be done pursuant to COACR 3-6 and 3-7.
- 7-3 CONTENTS OF MFWOM. The MFWOM shall be titled as such and shall include:
- (a) The name of the appellant and his spokesperson, if any. The party filing the MFWOM shall be designated the appellant; the Tribal Court, and any other opposing party, shall be designated the appellee;
  - (b) The Tribal Court case number, date the motion requesting action was filed (a copy of the motion must be attached to the MFWOM);
  - (c) Description of either what the Tribal Court did not do, or what it did do that it was not empowered to do;
  - (d) The relief or order requested; and
  - (e) 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



as listed in the underlying Tribal Court file and the mailing is returned, no further mailings will be sent until the party notifies the COA of his/her correct address.

(f) Failure to present sufficient information to the COA may cause the MFWOM to be denied.

- 7-4 FEES. There shall be no fees required for MFWOM.
- 7-5 BOND. There shall be no bond required for MFWOM. A stay of proceedings may be entered at the discretion of the Tribal 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.
- 7-6 INITIAL REVIEW. The Chief Justice, or his designee, shall initially review the MFWOM and determine if there is sufficient basis to move forward or if it should be denied. If the MFWOM moves forward, the Chief Justice, or his designee, shall appoint a panel to hear the appeal. If the MFWOM is found not to have sufficient basis to move forward, the appeal will be remanded to the Tribal Court for action consistent with the COA's order. The Chief Justice may find that the determination should be made with the assistance of other justices, and shall so appoint two justices to assist him.
- 7-7 SCHEDULE. If the MFWOM moves forward, the COA will set an Initial Hearing to determine the issue(s) to be reviewed, and to set a briefing schedule.
- 7-8 ORDER and WRIT OF MANDAMUS. Upon the completion of the briefs, or after oral argument, the COA will review the record and issue an Order and Writ of Mandamus. The Order will either affirm or deny the Motion. A Motion for Reconsideration may be filed by either party, pursuant to COACR 3-27. The decision to publish the decision will be at the discretion of the COA.

## **SECTION 8 - Spokespersons**

- 8-1 SPOKESPERSON'S 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.

- 8-2 REPRESENTATION AT TRIAL. A spokesperson who represented a party at the trial level will be recognized as the spokesperson of record for that party at the COA, without further notice to the COA being required by the spokesperson.
- 8-3 WITHDRAWAL AFTER FILING. When a spokesperson represented the client at trial and filed the Notice of Appeal and then wishes to withdraw, replacement of the spokesperson will only be granted in exceptional circumstances. To accomplish this, the original spokesperson 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.
- 8-4 NOTICE OF APPEARANCE. If the party was unrepresented at the trial level, a spokesperson 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 spokesperson.
- 8-5 SUBSTITUTED SPOKESPERSON. If the spokesperson of record is unable to appear at a hearing, he must notify the COA in writing not less than one week before the hearing that a member of his office or another spokesperson, representing his client, will be substituting as spokesperson, for that hearing only. This Notice of Substitution must be filed with the COA, with a copy served on the other party or parties. If this is not done, the COA may not recognize the substituted spokesperson.
- 8-6 ADDITIONAL SPOKESPERSON. If another spokesperson is going to join the original spokesperson by appearing before the COA or submitting a brief, that spokesperson must file a written Notice of Appearance, with the concurrence of the original spokesperson, prior to any action being done by the additional spokesperson.
- 8-7 OFFICE REPRESENTATION.
- (a) If there are multiple spokespersons from one office or firm who will be representing a client or clients for the duration of an appeal, each spokesperson must be clearly identified and must sign the Notice of Appeal. Each spokesperson will then be allowed to represent that client in the COA. However, only a spokesperson who actually drafts or is responsible for drafting a document should be identified as the originator and sign that document.
- (b) If the office wishes to withdraw from representation, each spokesperson 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 spokespersons or obtain all the signatures may allow the COA to deny withdrawal of those spokespersons.

(c) Any other document may be signed by only one of the spokesperson of record without concurrence or signing by the other spokesperson.

8-8 CASE PREPARATION. Any spokesperson before the Court of Appeals will be expected to be thoroughly familiar with the briefs in the matter and the whole record. Further, the spokesperson 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 spokesperson 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.

8-9 SANCTIONS OR CONTEMPT. The Court of Appeals may consider contempt or sanctions against any spokesperson violating these rules.