

Chapter II

BAY MILLS COURT OF APPEALS

201. CREATION OF THE BAY MILLS COURT OF APPEALS - There shall be a Bay Mills Court of Appeals consisting of the three appeals judges. Any number of judges may be appointed as reserve judges, who shall be available to serve on the Court of Appeals to hear a particular appeal for which an appellate judge is disqualified or otherwise unable to sit. The panel shall hear appeals allowed by this Code.
202. JURISDICTION OF COURT OF APPEALS - The jurisdiction of the Court of Appeals shall be.
- A. Exclusive jurisdiction to review the decisions of the Bay Mills Indian Community Tribal Court as provided in this Chapter.
 - B. Exclusive jurisdiction to review the decisions of any tribal licensing entity as provided in this Chapter.
203. DISQUALIFICATION OF APPELLATE JUDGE - An appellate judge is disqualified to sit on the appeal of any case in which:
- A. The judge has a direct interest in the outcome;
 - B. The judge was a witness at the trial;
 - C. The judge served on the jury panel of the trial; or
 - D. The judge is so related to either the appellant or respondent, including an individual who serves as a member of a tribal licensing entity, as to bring into question the judge's ability to render an impartial decision.
204. WHO MAY APPEAL
- A. Decisions of Tribal Court - Any person adversely affected by a decision of the Tribal Court in a civil case may appeal. Any party in a criminal case, except the prosecution, may appeal a judgment or sentence; the prosecution may

appeal a decision to the extent that it raises a question of law, rather than of fact.

- B. Decisions of Tribal Licensing Entity - A person whose request for a license issued by a tribal licensing entity is denied, or whose license is thereafter restricted, suspended, or terminated by the licensing entity, may appeal the decision to the Court of Appeals

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

- A. A final order or judgment of the Tribal Court; or
- B. An order of the Tribal Court denying a request for a substitute judge; or
- C. An order of the Tribal Court affecting a substantial right, and which determines the actions and prevents a judgment from which an appeal may be made; or
- D. A decision of a tribal licensing entity which denies, terminates, suspends or restricts a license required by tribal law or regulation and which the person seeking the license seeks review.

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

- A. Increase or decrease a sentence in a criminal case;
- B. Affirm, modify, vacate, set aside or reverse any judgment, decree or order of the Tribal Court;
- C. Remand the case and direct entry of any appropriate judgment, decree or order, or require further proceedings in the Tribal Court which are determined to be just and equitable under the circumstances; or
- D. Affirm, modify, vacate, set aside, reverse, or remand for further proceedings if determined to be just and equitable under the circumstances any decision of a tribal licensing entity.

207. TIME PERIOD TO APPEAL

- A. Civil Cases - An appeal to the Court of Appeals in civil cases shall be made not later than twenty (20) days after entry of the written judgment or order of the Tribal Court.
- B. Criminal Cases - An appeal to the Court of Appeals in criminal cases shall be made not later than thirty (30) days after the issuance of the written or oral judgment or order of the Tribal Court.
- C. License Decisions - An appeal to the Court of Appeals of a decision relating to a license by a tribal licensing entity shall be made not later than ten (10) days after the decision is issued.
- D. Cross-Appeals - If one party has filed an appeal of a Tribal Court decision within the requisite time period, the other party may file a notice of appeal within fifteen (15) days of receipt of a written notice of the initial appeal.
- E. Untimely Appeals - Subject to the exception contained in (F) below, failure to file an appeal within the time period provided in this Section deprives the Court of Appeals of subject matter jurisdiction to hear the appeal. Late appeals shall be denied filing by the Clerk.
- F. Grounds for Granting Late Appeal - The Court of Appeals may, at its discretion, grant leave to appeal after the expiration of the time allowed for filing, only upon the showing by the appellant, supported by a notarized statement, that there is merit in the basis for appeal and that late filing was not due to appellant's negligence.

208. NOTICE OF APPEAL; PROCEDURE

- A. Filing Required - An appeal is made by filing a notice of appeal with the Clerk. The notice shall be served on the other party simultaneously with filing, and proof of such service shall be filed with the notice.
- B. Content of Notice of Appeal - The notice of appeal shall bear the caption and case number of the case in Tribal Court and shall be labeled "Notice of Appeal." For appeals of licensing decisions, the Notice of Appeal shall identify the appellant and the tribal licensing entity as the

respondent. All notices of appeal shall state the date, decision-maker, and the content of the decision appealed; if such decision is in written form, a copy of the decision must be attached to the Notice. The Notice shall further include a brief statement of the reasons for appeal and the desired outcome of review by the Court of Appeals. The appellant, or an advocate appearing on behalf of appellant, shall sign and date the Notice.

- C. Docketing of Appeal - Upon receipt of the Notice of Appeal and any filing fee required by the Court of Appeals, the Clerk shall docket the appeal and notify the appellate judges of the pending appeal.
209. SERVICE OF NOTICE OF APPEAL - A copy of the Notice of Appeal shall be served by appellant on all other parties by first class mail. Proof of service shall be filed with the Clerk simultaneously with the Notice of Appeal.
210. FEE FOR APPEAL FILING - The Clerk shall collect from each party who files an appeal a filing fee, the amount of which shall be established by the Court of Appeals. The established fee may be waived by order of the Court of Appeals when the appellant submits with the Notice of Appeal an affidavit of indigence.
211. BOND - Upon notification of the filing of an appeal of a civil judgment or order, the Tribal Court may order the filing of a bond or cash equivalent thereof in an amount sufficient to guarantee payment or satisfaction of the judgment, including costs, in the event that judgment is affirmed on appeal. The Court of Appeals may waive this requirement upon the petition of appellant.
212. EFFECT ON DECISION BY FILING APPEAL - The filing of an appeal does not cause an automatic stay of the decision appealed. A motion seeking a stay shall be addressed to the Court of Appeals before or after the filing of the Notice of Appeal.
213. RECORD OF APPEAL - Upon receiving the Notice of Appeal, the Clerk of Tribal Court shall compile for transmittal to the Court of Appeals the record of the case, consisting of:
- A. Pleadings, Orders and Judgments - All written documents filed with the Tribal Court, including pleadings, reports,

notices, depositions, orders and judgments, shall constitute the written record of the case on appeal. The Clerk of Tribal Court shall certify the contents of the records as true, correct, and complete as part of the transmittal to the Court of Appeals. In an appeal of a licensing entity decision, any written or oral record of the decision-making process by the licensing entity shall be transmitted within twenty (20) days of the service of the Notice of Appeal to the Court of Appeals.

- B. **Hearing Transcript(s)** - The Clerk of Tribal Court shall also prepare a transcript of the proceedings in Tribal Court, the cost of which shall be borne by the appellant. The transcription fee shall be paid by appellant, unless it is waived by order of the Trial Court pursuant to appellant's petition for waiver of costs and fees. The appellant may specify, in writing, to the Clerk which proceedings, or parts thereof, is needed for the Court of Appeals to review the Tribal Court's decision. If only portions of the proceeding are requested, any other party may request within fifteen (15) days of appellant's request, transcription of any other portion, and shall pay the costs of its preparation to the Clerk. If the proceedings of the licensing entity are recorded, a transcription shall be provided to the Court of Appeals upon receipt by the licensing entity of an order of the Court requiring its transmittal.
 - C. **Notice of Record Transmittal** - The Clerk shall file a notice of transmittal of the record, identifying each item included therein, together with a copy of any transcript, on each of the parties. The recording party of proceedings of the licensing entity shall likewise file a notice of transmittal.
 - D. **Effect of Transmittal** - No appeal issue may be considered by the Court of Appeals until the notice of transmittal has been filed with the Clerk.
214. **BRIEFING** - Parties are encouraged, but not required, to file written briefs concerning the issue(s) on appeal, in order to assist the Court of Appeals in its review. If briefing is made, the following requirements apply:
- A. **Time to File Brief** - If appellant wishes to file a brief he/she must do so within thirty (30) days of receiving notice of transmittal of the record to the Court of Appeals. If

respondent wishes to file a brief, he/she must do so within fifteen (15) days of receiving appellant's brief, or within forty-five (45) days of receiving notice of transmittal of the record, whichever should first occur. A reply brief may be submitted by appellant within fifteen (15) days of receiving respondent's brief.

- B. **Format of Briefs** - Briefs shall be typewritten, double-spaced, on white paper which is no more than 8 ½ by 11 inches in size. No brief shall exceed fifty (50) pages in length. Four (4) copies of each brief shall be submitted.
- C. **Content of Briefs** - The first brief to be filed shall contain a short statement of the cases' history and a listing of the issues presented on appeal and how, if at all, the issues were decided. All briefs shall contain an argument and a conclusion, stating clearly the precise action sought from the Court of Appeals.

215. **ORAL ARGUMENT** - Unless waived by appellant and respondent, all appeals will be scheduled for oral argument after briefing is concluded. The length of argument shall be set by the appellant judges hearing the appeal and shall be stated in the notice scheduling argument.

216. **MOTIONS BEFORE THE COURT OF APPEALS** - Any party requesting action by the Court of Appeals on a matter unrelated to its decision on a pending appeal, such as waiver of filing fee or stay pending appeal, shall file a motion with the Clerk of the Court of Appeals clearly stating the action requested and the reasons why the Court should do what is asked of it. Any motion shall be served on all other interested parties, who may file within five (5) days of receipt a response with the Court indicating agreement or disagreement with the Court motion. The Court of Appeals shall issue a written order disposing of any motion filed.

217. **STANDARD OF REVIEW** - In deciding an appeal, the Court of Appeals shall apply the following standards:

- A. **Finding of fact** by a judge or a tribal licensing entity shall be sustained unless clearly erroneous.

- B. A finding of fact by a jury shall be sustained if there is any credible evidence to support it.
 - C. A factual inference drawn by a judge, licensing entity, or jury shall be reviewed as a finding of fact if more than one reasonable inference can be drawn from the fact(s).
 - D. Any finding, whether explicit or implicit, of witness credibility shall be reviewed as a finding of fact.
 - E. A conclusion of law shall be reviewed by the Court without deference to the Tribal Court's determination or that of the tribal licensing entity, i.e., review is de novo.
 - F. A stipulated or uncontested fact is reviewed as a conclusion of law.
 - G. An unambiguous contract term is reviewed as a conclusion of law.
 - H. A matter which is a mixture of law and fact is reviewed by the standard applicable to each element.
 - I. A matter which is determined within the Tribal Court discretion shall be sustained if it is reflected in the record that the Tribal Court exercised its discretionary authority and applied the appropriate legal standard to the facts. The same standard of review shall apply to decisions of a tribal licensing entity.
 - J. A sentence and the imposition of fine, forfeiture, and/or other penalty, excluding the assessment of damages, shall be reviewed as a discretionary determination of the Tribal Court or tribal licensing entity.
 - K. A matter committed to the discretion of the Tribal Court or tribal licensing entity shall not be subject to the substituted judgment of the Court of Appeals.
218. ISSUES PRESERVED ON APPEAL - In deciding an appeal, the Court of Appeals shall consider issues pursuant to these requirements.

- A. Unless a miscarriage of justice would result, the Court of Appeals will not consider issues that were not raised before the Tribal Court or a tribal license entity.
 - B. An issue raised before the Tribal Court, but not argued either by brief or orally, shall not be reviewed by the Court of Appeals.
 - C. No issue which is moot at the time of argument shall be decided by the Court of Appeals unless it is capable of repetition yet likely to evade appellate review, due to its nature.
 - D. Facts which are not in the record shall not be presented in any manner to the Court of Appeals, and if presented, shall not be considered by that Court.
219. CONTENT OF ORDER OR JUDGMENT APPEALED - Orders and judgments subject to an appeal shall contain the following, in order to facilitate justice by the Court of Appeals.
- A. In any proceeding tried to a judge without a jury, the judge shall make separate findings of fact and conclusions of law. The Tribal Court may do this orally on the record in open court or issue a written opinion and order.
 - B. In any civil matter tried to a jury, the jury shall make a special verdict on each issue of fact placed before it.
 - C. In the absence of findings of fact by the Tribal Court or the tribal licensing entity, the Court of Appeals may affirm the judgment if supported by the record, reverse the judgment if the record does not support it, or remand the case for the issuance of findings and conclusions.
220. DECISIONS OF THE COURT OF APPEALS - All decisions of the Court on an appeal, and all determinations of motions, shall be made as follows:
- A. Panel Majority - Any decision of the Court of Appeals shall be made by the majority of the judges on the panel. If no majority is reached on a decision, the order or judgment of the Tribal Court or tribal licensing entity is upheld.

- B. **Content** – In the exercise of its jurisdiction the decision of the Court of Appeals shall be in written form, which shall state the facts, the issues to be decided, the rules of law applied, and the reasoning of the Court. The panel shall determine which of its members in the majority shall write the decision.
 - C. **Order** – The Court shall issue an order conforming with the decision, which shall direct the Tribal Court or the tribal licensing entity in its disposition of the case which is the subject of appeal. Such order shall include the continuance or termination of any order relating to a stay and the posting of bond.
 - D. **Dissenting Opinions** – Any member of the panel who disagrees with the majority’s decision may issue a written dissent, which shall comply with the content requirements of subsection (B), above.
 - E. **Distribution of Decision** – Within two days of issuance, the Clerk of the Court of Appeals shall transmit by first class mail a copy of the decision to each interested party and to the Clerk of Tribal Court and shall inform all of the date on which the decision was filed.
 - F. **Official Reporter** – Any decision which determines an issue of law shall be reported to the official reporter of the Court of Appeals. The Indian Law Reporter is the Court’s official reporter.
221. **REQUEST FOR RECONSIDERATION OF DECISION** – A request for reconsideration may be filed with the Clerk of the Court of Appeals, if made within fourteen (14) days of the decision’s filing with the Clerk. A copy of the request must be served upon all other parties and on the Tribal Court.
- A. **Content** – The request must identify the exact element of the decision which is to be reconsidered, the reasons for the request, and any authority upon which the party relies.
 - B. **Response** – Any other party may file a response to the request within ten (10) days of receiving it.

- C. **Effect of Request** - A request for rehearing shall stay all proceedings until the Court of Appeals issues its decision on the matter.
 - D. **Determination** - The panel which issued the decision which is the subject of the request shall also decide the request for rehearing. The request may be granted or denied, and if granted, the parties are entitled to brief under Section 214 and oral argument under Section 215.
222. **REMAND** - The Clerk of the Court of Appeals shall transmit the entire record of the Tribal Court, together with the decision and order of the Court of Appeals, to the Clerk of Tribal Court or the tribal licensing entity within fifteen (15) days of the deposition.
223. **RULES OF COURT** - The judges of the Court of Appeals may make and amend such rules as are deemed by them appropriate for the proper and efficient administration of the Court. Such rules shall be filed with the Clerk of the Court of Appeals and made available as issued to all persons admitted to practice.