



HANDBOOK OF APPELLATE PROCEDURE

MENOMINEE TRIBAL COURT

(REVISED JUNE 1991)

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CHAPTER 103. APPEALS AND WRITS OF ERROR

103.01 DEFINITIONS

(1) "Appeal" means a review in the Supreme Court by appeal or writ of error authorized by law of a judgement or order of the trial court.

(2) "Appellate court" means the Supreme Court.

103.02 WRIT OF ERROR.

A writ of error may be sought in the Supreme Court.

103.03 APPEALS IN THE SUPREME COURT (1) APPEALS AS OF RIGHT. A

final judgement or final order of the trial court may be appealed to the Supreme Court as a matter of right unless otherwise expressly provided by law. A final judgement or order entered in accordance with Rule 25 of the Menominee Tribal Court Rules of Procedure or a disposition recorded in docket entries in Chapter 799 cases or traffic regulation, or ordinance violation cases which disposes of the entire matter in litigation as to one or more of the parties, whether rendered in an action or special proceeding.

(2) APPEALS BY PERMISSION. A judgement or order not appealable as a matter of right under sub. (1) may be appealed to the Supreme Court in advance of final judgement or order upon leave granted by the Court if it determines that an appeal will:

(a) Materially advance the termination of the litigation or clarify further proceedings in the litigation;

(b) Protect the petitioner from substantial or irreparable

injury; or

(c) Clarify an issue of general importance in the administration of justice.

103.04 TIME FOR APPEAL TO THE SUPREME COURT.

(1) Initiating the appeal. An appeal to the Court must be initiated within 45 days of entry or judgement appealed from, except as provided in this section or otherwise expressly provided by law.

(2) An appeal of a small claims action or the Menominee Administrative Procedure Act shall be initiated within 15 days after the entry of judgement or order.

(3) An appeal by the Tribe in either a criminal case or a case under ch. 48 shall be initiated within 45 days of entry of judgement or order.

(4) Except as provided in subs. (3) and (6), an appeal in a criminal case or a case under ch. 48, 51, or 55 shall be initiated within 20 days of the date of sentence or entry of the trial court's final judgement or order in ch. 48, 51, or 55 cases.

(5) A person imprisoned on a criminal sentence against whom a civil final judgement or order is rendered has 120 days in which to appeal the civil judgement order.

(6) An appeal by a party other than the Tribe from a judgement terminating parental rights or granting adoption shall be initiated within 40 days. This time may not be increased.

103.05 RELIEF PENDING APPEAL.

(1) Effect of appeal. An appeal does not stay the execution or enforcement of the judgement or order appealed from except as provided in this section or as otherwise expressly provided by law.

(2) Authority to grant relief pending appeal. (a) During the pendency of an appeal the trial court or the Supreme Court may:

1. Stay the execution or enforcement of a judgement or order;
2. Suspend, modify, restore, or grant an injunction; or,
3. Make any order appropriate to preserve the existing state of affairs or the effectiveness of the judgement subsequently to be entered.

(b) Stay may be conditioned upon giving of bond; Proceedings against sureties. Relief available in the Supreme Court under this rule may be conditioned upon the filing of a bond or other appropriate security in the trial court. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the trial court and irrevocably appoints the clerk of court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. A surety's liability may be enforced on motion in the trial court without the necessity of an independent action. The motion and such notice of the motion as the trial court prescribes may be served on the clerk of court, who shall forthwith mail copies to the sureties if their addresses are known.

103.06 FURTHER PROCEEDINGS IN THE TRIAL COURT.

When the record and remittitur are received in the trial court:

(1) If the trial judge is ordered to take specific action, the judge shall do so as soon as possible.

(2) If a new trial is ordered, the trial court, upon receipt of the remitted record, shall place the matter on the trial calendar.

(3) If action or proceedings other than those mentioned in sub. (1) or (2) is ordered, any party may, within one year after receipt of the remitted record by the clerk of court, make an appropriate motion for further proceedings. If further proceedings are not so initiated, the action shall be dismissed except that an extension of the one-year period may be granted, on notice, if the order for the extension is entered during the one-year period.

103.07 REVERSAL, AFFIRMANCE OR MODIFICATION OF JUDGEMENT.

Upon an appeal from a judgement or order the Supreme Court may reverse, affirm, or modify the judgement or order as to any or all parties; may order a new trial; and, if the appeal is from a part of a judgment or order, may reverse, affirm, or modify as to the part which is appealed. In all cases the Supreme Court shall remit its judgement or decision to the court below and thereupon the court below shall proceed in accordance with the judgement or decision.

CHAPTER 104. RULES OF APPELLATE PROCEDURE - CIVIL

104.01 DEFINITIONS.

- (1) "Appeal" means a review in the Supreme Court by appeal authorized by law of a judgement or order of the trial court.
- (2) "Appellant" means a person who files a notice of appeal.
- (3) "Co-appellant" means a person who files a notice of appeal in an action or proceeding in which a notice of appeal has previously been filed by another person and whose interests are not adverse to that person.
- (4) "Court" means the Menominee Tribal Supreme Court.
- (5) "Cross-appellant" means a respondent who files a notice of cross-appeal.
- (6) "Respondent" means a person adverse to the appellant or co-appellant.

104.02 INITIATING THE APPEAL.

- (1) Notice of appeal. (a) Filing. A person shall initiate an appeal by filing a notice of appeal with the clerk of court and shall specify in the notice of appeal the judgement or order appealed. The person at the same time shall notify all parties to the original action by sending them a copy of the notice of appeal.
- (b) Time for filing. The notice of appeal must be filed within 45 days of the judgement or order appealed from. The filing of a timely notice of appeal is necessary to give the court jurisdiction over the appeal.

(2) Multiple appeals. (a) Joint or co-appeals. If 2 or more persons are each entitled to appeal from the same judgement or order entered in the same action or proceeding in the trial court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may, after filing separate notices of appeal, proceed as a single appellant. If the persons do not file a joint appeal or elect to proceed as a single appellant, or if their interests are such as to make joinder impractical, they shall proceed as appellant and co-appellant, with each co-appellant to have the same procedural rights and obligations as the appellant.

(b) Cross appeal. A respondent who seeks modification of the judgement or order appealed from or of another judgement or order entered in the same action or proceeding shall file a notice of cross-appeal within the period established by law for the filing of a notice of appeal, or 30 days after the filing of a notice of appeal, whichever is later. A cross-appellant has the same rights and obligations as an appellant under these rules.

(3) Consolidated appeals in separate cases. The court may consolidate separate appeals in separate actions or proceedings in the trial court upon its own motion, motion of a party, or stipulation of the parties.

(4) Matters reviewable. An appeal from a final judgement or final order brings before the court all prior non-final judgements, orders and rulings adverse to the appellant and favorable to the respondent made in the action or proceeding not previously appealed

and ruled upon.

104.03 ITEMS TO BE FILED AND DOCKETED.

(1) Fee to be filed. The appellant shall file with the notice of appeal the fee for docketing an appeal with the Supreme Court.

(2) Docketing in the Supreme Court. The clerk of court shall docket the appeal on receipt of the items referred to in sub. (1) along with the trial court record (docket entries).

(3) Statement on transcript. The appellant shall file with the clerk of court within 10 days of the filing of the notice of appeal, a statement that a transcript is not necessary for prosecution of the appeal, or a statement that a transcript or designated portions thereof have been ordered, arrangements have been made by the appellant for the payment of the cost of the original transcript and all copies for other parties, the date on which the transcript was ordered and arrangements made for payment, and the date on which the transcript is due.

104.04 MOTION FOR RELIEF PENDING APPEAL.

A person seeking relief under Rule 30 (Tribal Court Rules of Civil Procedure) shall file a motion in the trial court unless it is impractical to seek relief in the trial court. A motion to the Supreme Court must show why it was impractical to seek relief in the trial court or, if a motion had been filed in the trial court, the reasons given for its action. A person aggrieved by an order of the trial court granting relief requested may file a motion for relief from that order with the Supreme Court. A judge of the

Court may issue an ex parte order granting temporary relief pending a ruling by the Court on a motion filed pursuant to this rule. A motion filed in this Court under this rule must be filed in accordance with Rule 104.06 of these rules.

104.05 INTERVENTION.

A person not party to an appeal may file in the court a petition to intervene in the appeal. A party may file a response to the petition within 7 days after service of the petition. The court may grant the petition upon a showing that the petitioner's interest meet the requirements of Rule 8 (Tribal Court Rules of Civil Procedure).

104.06 MOTIONS.

(1) A party seeking an order or other relief in a docketed case shall file a motion for the order or other relief. The motion must state the order or relief sought and the grounds on which the motion is based and may include a statement of the positions of other parties as to the granting of the motion. A motion may be supported by a memorandum. Any party may file a response to the motion within 7 days of service of the motion.

(2) A motion for a procedural order may be acted upon without a response to the motion. A party adversely affected by a procedural order entered without ever having had the opportunity to respond to the motion may move for reconsideration of the order within 7 days of service of the order.

(3) The filing of a motion seeking an order or other relief which may affect the disposition of an appeal or the content of the record or a brief automatically enlarges the time for performing an act required by these rules for a period co-extensive with the time of filing its motion and its disposition.

104.07 RECORD ON APPEAL. (1) Composition of Record. (a) The record on appeal consists of the following unless the parties stipulate to the contrary:

1. The paper by which the action or proceeding was commenced;
2. Proof of summons or other process;
3. Answer or other responsive pleading;
4. Instructions to the jury;
5. Verdict or other findings of the court, and order based thereon;
6. Opinion of the court;
7. Final judgement;
8. Order made after judgement relevant to the appeal and papers upon which the order is based;
9. Exhibits material to the appeal whether or not it was received in evidence;
10. Any other paper or exhibit filed in the court requested by a party to be included in the record;
11. Notice of appeal;
12. Transcript;

13. Certificate of the clerk.

(2) Compilation and approval of the record. The clerk of court shall assemble the record in the order set forth in sub. (1), identify by letter or number each paper, and prepare a list of the numbered or lettered papers. At least 10 days prior to the due date for filing the record in the court, the clerk shall notify in writing each party appearing in the trial court that the record has been assembled and is available for inspection. The clerk shall include with the notice the list of the papers constituting the record.

(3) Defective record. A party who believes the record, including the transcript, is defective or does not accurately reflect what occurred in the trial court may move the court to correct the record. Motions under this subsection may be heard by telephone.

(4) The clerk of court shall transmit the record to the court within 20 days from the filing of the transcript or the filing of a statement that no transcript is necessary for prosecution of the appeal, but in no event more than 90 days after the filing of the notice of appeal unless the court enlarges the time for the transmittal of the record or the preparation of the transcript.

104.08 TRANSCRIPTS.

(1) Within 10 days of the filing of the notice of appeal, the appellant shall make arrangements with the clerk of courts for the preparation of a transcript of the proceedings and service of

copies and file in the court a designation of the portions of the proceedings that have been ordered. Any other party may file within 10 days of service of the appellant's notice, a designation of additional portions to be included in the transcript. This subsection applies to a cross-appeal.

(2) The clerk shall serve copies of the transcript on the parties to the appeal, file the transcript with the Supreme Court within 60 days of the date that the transcript was ordered and arrangements made for payment.

(3) The clerk of court may obtain an extension for filing the transcript for good cause only.

104.09 VOLUNTARY DISMISSAL.

An appellant may dismiss an appeal by filing a notice of dismissal. The notice must be filed in the Court or, if not yet docketed in the Court, in the trial court. The dismissal of an appeal does not affect the status of a cross-appeal or the right of a respondent to file a cross-appeal.

104.10 BRIEFS AND APPENDIX.

(1) Brief of appellant. The appellant shall file a brief within 40 days of filing in the court of the record on appeal. The brief must contain:

(a) A table of contents with page references of the various portions of the brief, including headings of each section of the argument, and a table of cases arranged alphabetically, statutes

and other authorities cited with reference to the pages of the brief on which they are cited.

(b) A statement of the issues presented for review and how the trial court decided them.

(c) A statement with reasons as to whether oral argument is necessary.

(d) A statement of the case, which must include: a description of the nature of the case; the procedural status of the case leading up to appeal; the disposition in the trial court; and a statement of facts relevant to the issues presented for review, with appropriate references to the record.

(e) An argument, arranged in the order of the statement of issues presented. The argument on each issue must be preceded by a one sentence summary of the argument and is to contain the contention of the appellant, the reasons therefore, with citations to the authorities, statutes, and parts of the record relied on as set forth in the Uniform System of Citation.

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

(g) Reference to individuals by initials rather than by names when the record is required by law to be confidential.

(2) Appendix. The appellant shall include in his brief a short appendix to include relevant docket entries in the trial court and limited portions of the record essential to an understanding of the issues raised.

(3) Respondents brief. The respondent shall file a brief within 15 days of the service of the appellant's brief. The brief

must conform with sub. (1), except that the statement of the issues and the statement of the case may be excluded.

(4) Reply brief. The appellant shall file within 15 days of the service of the respondent's brief a reply or statement that a reply will not be filed.

(5) Consolidated and joint appeals. Each appellant in consolidated appeals or a joint appeal and each co-appellant may file a separate brief or a joint brief with another appellant or co-appellant. A joint brief must not exceed the page allowance for a single appellant.

(6) Cross appeal. The parties in a cross-appeal have the same right as a party in an appeal.

(7) Non-party briefs. (a) A person not a party may by motion request permission to file a brief. The motion shall identify the interest of the person and state why a brief filed by that person is desirable.

(b) The motion shall be filed not later than 10 days after the respondent's brief is filed and the brief shall be filed within the time specified by the court.

(8) Number, form, and length of Briefs and Appendices. (a) Number. A person filing a brief or appendix shall file 5 copies with the court and serve 1 copy on each party or other number as the court may direct.

(b) Form. A brief and appendix must conform to the following specifications:

1. Produced by standard typographic printing or by a

duplicating or copying process of a typewritten original that produces a clear, black image on white paper. Carbon copies cannot be filed.

2. Produced on 8 1/2 by 11 inch paper.

3. Typewritten; pica, 10 spaces per inch, type; double spaced; 1 1/2 inch margin on left side and 1 inch margin on the other three sides.

4. Securely bound on left side only with heavy strength staples. A brief may be bound by methods authorized in writing by the clerk of court.

(c) Length. Those portions of appellant's or respondent's brief referred to in sub. (1)(d), (e), and (f) shall not exceed 30 pages. Appellant's reply brief or a brief filed under sub. (7) shall not exceed 10 pages.

(9) Each brief or appendix shall have a front and back cover. The front cover shall contain the name of the court, the caption and number of the case, the judge appealed from, the title of the document, and the name and address of counsel filing the document. The covers of the appellant's brief shall be blue; the respondent's red; a person other than a party, green; a reply brief, gray, and the appendix, if separately printed, white.

104.11 ASSIGNMENT AND ADVANCEMENT OF CASES.

The court may take cases under submission in such order and upon such notice as it determines. A party may file a motion to advance the submission of a case either before or after the briefs

have been filed. The motion should recite the nature of the public or private interest involved, the issue in the case, and how delay in submission will be prejudicial to the accomplishment of justice.

104.12 SUMMARY DISPOSITION.

(1) The court upon its own motion or upon the motion of a party may dispose of an appeal summarily.

(2) A party may file at any time a motion for summary disposition of an appeal. Section 104.06 governs the procedure on the motion.

104.13 ORAL ARGUMENT.

(1) The court shall determine whether a case is to be submitted with oral argument or on briefs only.

(2) The court may direct that an appeal be submitted on briefs only if:

(a) The arguments of the appellant:

1. Are plainly contrary to relevant legal authority that appear to be sound and are not significantly challenged;

2. Are on their face without merit and for which no relevant authority is cited or discovered; or

3. Involve solely questions of fact and the fact findings are clearly supported by sufficient evidence; or

(b) The briefs fully present and meet the issues on appeal and fully develop the theories and legal authorities on each side so that oral argument would be of such marginal value that it does not justify the additional expenditure of court time or cost to the

litigant.

(3) The court shall determine the amount of time for oral argument allowed to each party in a case either by general or special order.

104.14 RECONSIDERATION.

The court may on its own motion reconsider a decision or opinion at any time prior to remittitur. A motion for reconsideration is not permitted.

104.15 COSTS AND FEES.

(1) Costs. (a) Costs in a civil appeal are allowed as follows unless otherwise ordered by the court;

1. Against the appellant when the appeal is dismissed or the judgement or order affirmed;
2. Against the respondent when the judgement or order is reversed;
3. In all other cases as allowed by the court.

(b) Allowable costs include:

1. Costs of printing and assembling the number of briefs and appendices required by the rules;
2. Fees charged by the clerk of court;
3. Cost of the preparation of the transcript of testimony or for appeal bonds;
4. Other costs as directed by the court.

(c) A party seeking to recover costs in the court shall

file a statement of the cost within 14 days of the filing of the decision of the court. An opposing party may file within 7 days of the service of the statement a motion objecting to the statement of the costs.

(2) Fees. (a) The clerk of court shall charge the following fees:

1. For filing an appeal, cross-appeal, or other proceeding, \$100.00.

2. For making a copy of the record, paper, or opinion of the court and comparing it to the original, \$1.25 for each page.

3. For comparing for certification of a copy of a record entry or paper, when the copy is furnished by the person requesting its certification, 25 cents for each page.

4. For a certificate and seal, \$1.00, except for an attorney's certificate of good standing, \$3.00.

(b) The Tribe is exempt from payment of the fees set forth in par. (a) 1 through 4, except that the clerk is not obligated to supply the Tribe with free copies of opinions.

(c) The clerk may refuse to file, docket, record, certify, or render any other service without payment of the fees established by this section.

(3) Frivolous appeals. (a) If an appeal or cross-appeal is found to be frivolous by the court, the court shall award to the successful party costs and fees under this section.

(b) The costs and fees awarded under par.(a) may be assessed fully against the appellant or cross-appellant or the

attorney representing the appellant or cross-appellant or may be assessed so that the appellant or cross-appellant and attorney each pay a portion of the costs and fees.

(c) In order to find an appeal or cross-appeal to be frivolous under par. (a), the court must find one or more of the following:

1. The appeal or cross-appeal was filed, used, or continued in bad faith, solely for purposes of harassing or maliciously injuring another.

2. The party or the party's attorney knew, or should have known, that the appeal or cross-appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification, or reversal of existing law.

104.16 DISCRETIONARY JURISDICTION PROCEDURE.

(1) A person shall seek leave of the court to appeal a judgement or order not appealable as of right under s. 103.03(1), by filing within 10 days of the entry of the judgement or order a petition and supporting memorandum, if any. The petition must contain:

(a) A statement of issues presented by the controversy;

(b) A statement of the facts necessary to an understanding of the issues;

(c) A statement showing that immediate review of the order or judgement, rather than an appeal from the final judgement in the

case or proceeding, will materially advance the termination of the litigation or clarify further proceedings therein, protect a party from substantial or irreparable injury, or clarify an issue of general importance in the administration of justice.

(2) An opposing party in the trial court shall file a response with supporting memorandum, if any, within 10 days of service of the petition.

(3) If the court grants leave to appeal, the procedure for appeals from final judgements are applicable to further proceedings in the appeal, except that the entry of the order granting leave to appeal has the effect of the filing of the notice of appeal.

104.17 SUPERVISORY WRIT AND ORIGINAL JURISDICTION TO ISSUE PREROGATIVE WRIT.

(1) A person may request the court to exercise its supervisory jurisdiction or its original jurisdiction to issue a prerogative writ over a court and the judge presiding therein or other person or body by filing a petition and supporting memorandum. The petitioner shall name as respondents the court and judge or other person or body and all parties in the action or proceeding. The petition must contain:

- (a) A statement of the issues presented by the controversy;
- (b) A statement of the facts necessary to an understanding of the issues;
- (c) The relief sought; and,
- (d) The reasons why the court should take jurisdiction.

(2) The court may deny the petition ex parte or may order the respondents to file a response with a supporting memorandum, if any, and may order oral argument on the merits of the petition. The respondents shall respond with a supporting memorandum within 10 days of service of the order. A respondent may file a letter stating that he or she does not intend to file a response, but is not admitting to the petition.

(3) The court, upon consideration of the petition, responses, supporting memoranda and argument, may grant or deny the petition or order such additional proceedings as it considers appropriate.

104.18 TEMPORARY RELIEF.

A petitioner may request in a petition filed under s. 104.16 or 104.17 that the court grant temporary relief upon the terms and conditions it considers appropriate.

SUBCHAPTER I. MISCELLANEOUS PROCEDURES IN THE SUPREME COURT.

104.19 FILING AND SERVICE OF PETITIONS.

(1) A person shall file any paper required to be filed by these rules with the Clerk of Court, Menominee Tribal Court, P.O. Box 429, Keshena, Wisconsin 54135.

(2) Any paper required or authorized to be served on the Tribe in appeals and other proceedings in criminal cases in the Supreme Court shall be served upon the Tribal Prosecutor.

104.20 ENLARGEMENT OF TIME.

(1) Except as provided for in par. (2), the court upon its own motion or upon good cause shown by motion, may enlarge or reduce the time prescribed by these rules or court order for doing any act, or waive or permit an act to be done after the expiration of the prescribed time.

(2) Notwithstanding the provisions of par. (1), the time for filing a notice of appeal or cross-appeal of a final judgement or order may not be enlarged.

104.21 PENALTIES FOR DELAY OR NON-COMPLIANCE WITH RULES.

(1) Delay; extra costs and damages. If the court finds that an appeal was taken for the purpose of delay, it may award: (a) double costs; (b) a penalty in addition to interest not exceeding 10% on the amount affirmed; (c) damages occasioned by the delay; and, (d) reasonable attorney fees.

(2) Non-compliance with rules. Failure of a person to comply with a requirement of these rules, other than the timely filing of a notice of appeal or cross-appeal, does not affect the jurisdiction of the court over the appeal but is grounds for dismissal of the appeal, summary reversal, striking of a paper, imposition of a penalty, or costs on a party or counsel, or other action as the court considers appropriate.

104.22 APPLICABILITY OF RULES OF CIVIL PROCEDURE.

An appeal to the court is governed by the rules of civil procedure as to all matters not covered by these rules unless the circumstances of the appeal or the context of the rule requires a contrary result.

104.23 COUNSEL OR GUARDIAN APPOINTED IN TRIAL COURT.

An attorney or guardian ad litem appointed by a lower court in a case or proceeding appealed to the court shall continue to act in the same capacity in the court until the court relieves the attorney or guardian.

CHAPTER 105. OTHER EXTRAORDINARY WRITS

105.01 HABEAS CORPUS.

(1) every person restrained of personal liberty may prosecute a writ of habeas corpus to obtain relief from such restraint.

(2) In this chapter, unless the context requires otherwise, judge includes the Supreme Court and trial court and each justice and judge thereof; and prisoner includes every person restrained of personal liberty; and imprisoned includes every such restraint; and respondent means the person on whom the writ is to be served.

105.02 PETITION FOR WRIT.

Application for the writ shall be by petition, signed either by the prisoner or by some person in their behalf, and may be made to the Supreme Court or the trial court of the Menominee Indian Tribe, or any justice or trial court judge of the Menominee Tribal Courts.

105.03 PETITION; CONTENTS.

Such petition must be verified and must state in substance:

(1) That the person in whose behalf the writ is applied for is restrained of personal liberty, the person by whom imprisoned and the place where, naming both parties, if their names are known, or describing them if they are not.

(2) The cause or pretense of such imprisonment according to the best of petitioner's knowledge and belief.

(3) Of what the illegality of the imprisonment consists.

105.04 WRIT, WHEN SUFFICIENT.

Such writ shall not be disobeyed for any defect in form. It shall be sufficient if sec. 105.02 of this chapter is substantially complied with.

105.05 ISSUANCE OF WRIT; RETURN; HEARING; DECISION.

(1) A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

(2) The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.

(3) The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.

(4) When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.

(5) Unless the application for the writ and return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained.

(6) The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

(7) The return and all suggestions made against it may be amended, by leave of court, before or after being filed.

(8) The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

105.06 EVIDENCE.

On hearing of an application for a writ of habeas corpus to inquire into the legality of the detention of a person pursuant to a judgement, the following are admissible in evidence: certificate of the judge who presided at the trial resulting in the judgement; depositions; affidavits; interrogatories; documentary evidence; and, other evidence the Court deems necessary.

105.07 WRITS OF MANDAMUS AND PROHIBITION AND OTHER EXTRAORDINARY

WRITS. (1) Application for a writ of mandamus or of prohibition shall be filed in accordance with the procedures outlined in sec. 104.17 of these rules.

(2) Application for extraordinary writs other than those provided for in sub. (1) of this rule shall be made by petition filed with the clerk of court with proof of service on the parties named as respondents. Proceedings on such application shall conform, so far as practicable, to the procedure prescribed in sec. 104.17 of these rules.

(3) All papers may be typewritten. Three copies shall be filed with the original, but the court may direct that additional copies be furnished.

CHAPTER 106. CRIMINAL APPEALS

106.01 DEFINITIONS.

(1) "Post-conviction relief" means any relief not applicable under s. 106.04.

106.02 MISDEMEANOR APPEALS.

Appeals in misdemeanor actions are made to the Supreme Court as provided in ch. 103.

106.03 TRIBAL APPEALS.

(1) The Tribe may appeal from a criminal judgement or order within the time period specified in s. 103.04(3) and in the manner provided in chs. 103 and 104. The Tribe may appeal from the following:

(a) Final order or judgement adverse to the Tribe made before jeopardy has attached, after of waiver of jeopardy, or after the setting aside of a verdict or finding of guilt.

(b) Order granting postconviction relief.

(c) Judgement and sentence or order of probation not authorized by law.

106.04 POSTCONVICTION PROCEDURE.

(1) After the time period specified in s. 103.04(4), an appeal may not be made except where the sentence is subject to "collateral attack," including, but not limited to:

(a) The sentence was imposed in violation of the Menominee Tribal Constitution or Laws;

(b) The court was without jurisdiction; or

(c) The sentence was in excess of that authorized by law.

(2) A motion for such relief is part of the original criminal action and may be made at any time.

(3) Unless the motion and the record of the action show conclusively that the prisoner is not entitled to relief, the court shall:

(a) Serve notice upon the Tribal Prosecutor, who shall file an answer within the response time prescribed by the court.

(b) Grant a prompt hearing.

(c) Determine the issues and make findings of fact and conclusions of law. If the court finds the sentence to have been correctly challenged, the court shall vacate or otherwise correct the sentence or proceedings as necessary.

(4) All grounds for relief available to a prisoner must be raised in his original, supplemental, or amended motion. Where the ground is finally adjudicated, or is not raised, or is voluntarily and knowingly waived and results in a conviction or sentence, it may not be used as the basis of a subsequent motion, unless the court finds sufficient reason why it was not asserted or inadequately raised.

(5) The court may determine the motion without requiring the prisoner present at the hearing.

(6) Proceedings under this section are considered civil in nature, and the burden of proof shall be on the prisoner.

(7) An appeal may be made on the order entered on the motion as from a final judgement.

(8) A petition for a writ of habeas corpus made by or on behalf of a prisoner who is authorized to apply for relief under this section shall not be considered where the applicant has failed to apply for relief under this section, unless the remedy under this section is shown to be inadequate or ineffective to test the legality of his or her detention.

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SUPREME COURT RULE ..

Pursuant to Article V, section 6, of the Menominee Tribal Constitution, the Supreme Court of the Menominee Indian Tribe hereby adopts the following rule. (Rules of Appellate Procedure)

BY THE COURT:

Robert Kettecon
Chief Justice

Sarah L. Skubitz
Associate Justice.

Wendell Kenote
Associate Justice

DATED THIS 10th DAY OF June, 19 91.