

IOWA TRIBE OF OKLAHOMA
 APPELLATE PROCEDURE
 TITLE 1

APPELATE PROCEDURE

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Section 103. Interlocutory Appeals in Civil Actions

- (A) **Interlocutory Appeals as of Right.** A person may appeal to the Supreme Court by right any order make appealable by law, and the following judgments of orders of the Tribal District Court;
- (1) An order that grants or refuses a new trial or vacates or refuses to vacate a judgment on any grounds including that of newly discovered evidence or the impossibility of making a record.
 - (2) An order that discharges, vacates, or modifies or refuses to discharge, vacate, or modify an attachment.
 - (3) An order that denies, grants, or modifies a temporary injunction, or discharges, vacates, or modifies, or refuses to discharge, vacate, or modify a temporary injunction.
 - (4) An order that discharges, vacates, or modifies, or refuses to discharge, vacate, or modify a provisional remedy which affects the substantial rights of the parties.
 - (5) An order that appoints a receiver, except where the receiver was appointed at an ex parte hearing where a full hearing will be held upon application therefore, refuses to appoint a receiver, or vacates or refuses to vacate the appointment of a receiver, or refuses or grants orders to wind up receiverships or to take steps to accomplish the purposes thereof, such a directing sales or other disposal of property.
 - (6) An order that directs the payment of money pendent elite, except where granted at an ex parte where a full hearing will be held upon application therefore, refuses to direct the payment of money pendent elite, or vacates or refuses to vacate an order directing the payment of money pendent elite.
 - (7) An order that certifies or refuses to certify an action to be maintained as a class action.
 - (8) An order with regard to probate matters:

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- (a) granting, or refusing, or revoking letter testamentary or of administration, or of guardianship, or conservatorship, or
 - (b) admitting, or refusing to admit, a will to probate, or
 - (c) against or in favor of setting apart property, or making an allowance for a widow or child, or
 - (d) against or in favor of setting apart property, or making an allowance for a widow or child, or
 - (e) against or in favor of directing the partition, sale or conveyance of any interest in real property, or
 - (f) settling an account of an executor, or administrator or guardian, or
 - (g) refusing, allowing or directing the distribution or partition of an estate, or any part thereof or the payment of a debt, claim, legacy or distributive share, or
 - (h) refusing or allowing the release of any tax liability, or
 - (i) From any other judgment, decree, or order of the Court in a probate case, or of the Judge thereof, affecting a substantial right.
- (9) Any interlocutory order or decree made immediately appealable by Tribal statute.

(B) Time for Filing Interlocutory Appeals as of Right and Special Rules.

- (1) The party aggrieved thereby may appeal the order to the Supreme Court without awaiting the final determination of the action; by filing the notice of appeal with the District Court Clerk within twenty (20) days after the order is issued.
- (2) If the order discharges or modifies an attachment or preliminary injunction and it becomes operative, the undertaking given upon the allowance of an attachment or preliminary injunction shall

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stay the enforcement of said order and said order shall remain in full force and effect until final order of discharge after appeal shall take effect.

- (3) If the order grants a preliminary injunction, the party seeking to appeal, if he desires to stay said order, shall give within ten (10) days after the order is rendered, an undertaking, with sufficient surety, in such sum as the Court deems proper, to secure the party procuring the injunction the damages he may sustain, including reasonable attorneys fees, if it is finally decided that the preliminary injunction was properly granted. The undertaking shall stay the effect of the preliminary injunction pending appeal.
- (4) Where a receiver shall be or has been appointed, upon the appellant filing an appeal bond, with sufficient sureties, in such sum as may have been required of the receiver by the Court or a Judge thereof, conditioned for the due prosecution of the appeal and the payment of all costs, or damages that may accrue to the Tribe or any officer or person by reason thereof, the authority of the receiver shall be suspended until the final determination of the appeal, and if the receiver has taken possession of any property, real or personal, it shall be returned and surrendered to the appellant upon the filing and approval of the bonds.

(C) **Interlocutory Appeals by Permission.** When a Judge, in making an order or decree in a civil action not otherwise appealable under this Section or another Tribal statute, shall be of the opinion that such order involves a controlling question of law as to which there is substantial grounds for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Supreme Court may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made within ten days after the entry of the order, provided, however, that application for an appeal hereunder shall not stay proceedings in the Tribal District Court, unless the Judge or the Supreme Court, or a Justice of the Supreme Court shall so order.

(D) **Petition for Permission to Appeal.** An appeal from an interlocutory order containing the statement prescribed by Section 103© may be

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abolishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

Section 109. The Record on Appeal

- (A) **Composition Of The Record On Appeal.** The original papers and exhibits filed in the Tribal District Court, the transcript or tape recording of the proceedings, if any, and a certified copy of the docket entries prepared by the Clerk of the Tribal District Court shall constitute the record on appeal in all cases.
- (B) **Transcript, Duty of Appellant To Order, Notice Of Partial Transcript.**
- (1) Within 10 days after filing the notice of appeal the appellant shall order from the Clerk or reporter a transcript of such parts of the proceedings not already on file as he deems necessary. The order shall be in writing and within the same period a copy shall be filed with the Clerk of the Tribal District Court. If not such parts of the proceedings are to be ordered, within the same period the appellant shall file a certificate to that effect.
 - (2) If the appellant intends to urge on appeal that a finding or conclusions unsupported by the evidence or is contrary to the evidence, he shall include in the record a transcript of all evidence relevant to such finding or conclusion.
 - (3) Unless the entire transcript is to be included, the appellant shall, within the 10 days time provided in subsection (B)(1) of this Section, file a statement of the issues he intends to present on the appeal and shall serve on the appellee a copy of the order or certificate and of the statement. If the appellee deems a transcript of other parts of the proceedings to be necessary, he shall, within 10 days after the service of the order or certificate and the statement of the appellant, file and serve on the appellant a designation of additional parts to be included. Unless within 10 days after service of such designation the appellant has ordered such parts, and has so notified the appellee, the appellee may within the following 10 days order the parts or move in the Tribal District Court for an order requiring the appellant to do so.

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- (4) At the time of ordering, a party must make satisfactory arrangements with the reporter for payment of the cost of the transcript. If a typewritten transcript is ordered, the Clerk or Reporter shall charge a fee to be set by the Court for each original page, and an additional fee for each copy of an original page. If a copy of a tape recording of the proceedings is ordered, the Clerk or Reporter shall charge a fee to be set by the Court for each tape ordered. All such fees paid on behalf of a Clerk or reporter who is employed by the Tribe and paid a salary from tribal monies shall be deposited in the Court fund, unless specific statutory authority for other disposition of such monies is provided. All such fees paid on behalf of an independent reporter appointed or authorized by the Tribal District Court to record its proceedings, but not paid from tribal fund shall be paid over to such reporter.
- (C) **Procedure When No Transcript Available.** If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceeding from the best available means, including his recollection. The statement shall be served on the appellee, who may serve objections or propose amendments thereto within 10 days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the Tribal District Court for settlement and approval and as settled and approved shall be included by the Clerk of the Tribal District Court in the record on appeal.
- (D) **Agreed Statement As The Record On Appeal.** In lieu of the record on appeal as defined in subsection (A) of this section, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the Tribal District Court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, the statement together with such additions as the Court may consider necessary fully to present the issues raised by the appeal, shall be approved by the Tribal District Court, and shall then be certified to

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the Supreme Court as the record on Appeal and transmitted to the Supreme Court Clerk's records.

- (E) **Correction Or Modification Of The Record.** If any difference arises as to whether the record truly discloses what occurred in the Tribal District Court, the difference shall be submitted to and settled by the Judge of that Court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the Tribal District Court, either before or after the record is transmitted to the Supreme Court, on proper suggestion or its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to form and content of the record shall be presented to the Supreme Court

Section 110. Transmission of Record.

- (A) **Chief Clerk To Serve As Clerk of the Supreme Court.** The Chief Clerk of the Tribal District Court may also serve as the Clerk of the Supreme Court whenever the position of Clerk of the Supreme Court is vacant, or, in the opinion of the Supreme Court such service shall be deemed expedient.
- (B) **Transmission And Filing Of Record.** In all cases, including juvenile and criminal actions, the Clerk in charge of the papers in that case shall, within 15 working days after a Notice of Appeal is filed, prepare, certify, and deliver to the Clerk of the Supreme Court, for filing with the Supreme Court, all papers comprising the record of the case except the transcript. Such shall be notified of the filing of the record with the Supreme Court, and a copy of the index to the record shall be attached to the notice for the benefit of the parties. Copies of any documents contained in the record shall be available to the parties at a cost per page to be set by rule of the Supreme Court.
- (C) **Completion of Record.** Upon receipt of an order for a transcript or additional tape recording, the Clerk or reporter shall acknowledge at the foot of the order the fact that he has received it and the date on which he expects to have the transcript or copy of tape recording completed and shall transmit the order, so endorsed, to