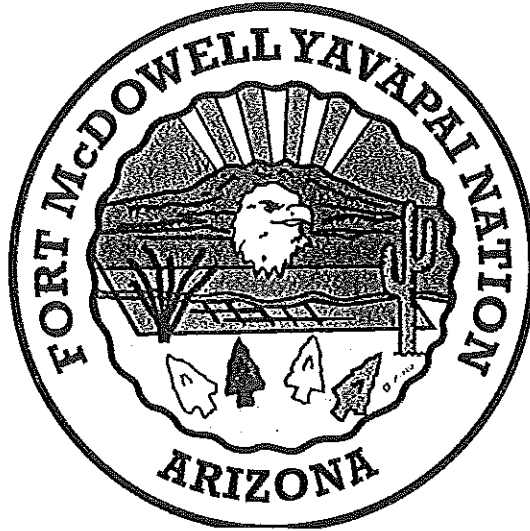


IN THE SUPREME COURT OF THE
FORT McDOWELL YAVAPAI NATION



ORDER

Pursuant to § 4-33 of the Nation's Law and Order Code, the Court hereby adopts the attached Rules of Appellate Procedure.

It is so ordered.

Paul Bender, Chief Justice

Rebecca Tsosie, Justice

Violet Lui-Frank, Justice

May 1, 2004

SUPREME COURT OF THE FORT McDOWELL YAVAPAI NATION

RULES OF APPELLATE PROCEDURE

RULE 1. SCOPE OF RULES

These rules govern procedures in the Supreme Court of the Fort McDowell Yavapai Nation. Unless otherwise specified, the word "Court" in these Rules refers to the Supreme Court of the Nation.

RULE 2. APPEALS FROM FINAL JUDGMENTS OR FINAL ORDERS

a. Notice of Appeal. A party may appeal from a final judgment or final order of a court of the McDowell Yavapai Nation by filing a written notice of appeal with the Clerk of the Supreme Court within 10 days after the judgment or order appealed from is filed in the lower court. The notice of appeal must specify the party or parties taking the appeal and clearly designate the judgment or order from which appeal is taken. If any party makes a timely motion in the court below for reconsideration of a final judgment or order of that court, or for a new trial, the time within which a notice of appeal must be filed begins to run on the date that the disposition of such a motion by the lower court is filed in that court.

b. Filing Fee. Unless a motion to waive or delay payment of the filing fee is made, a party filing a notice of appeal must pay a filing fee of \$50.00 to the Clerk of the Supreme Court at the time the notice of appeal is filed. The filing fee requirement does not apply to notices of appeal filed on behalf of the Fort McDowell Yavapai Nation, its agencies, departments or enterprises. If a party filing a notice of appeal is unable to pay the filing fee, the Clerk will file the notice of appeal and the party must file a motion asking the Court to waive or defer payment of the fee. Such a motion must be filed within 5 days of filing the notice of appeal, and must be accompanied by a completed Affidavit of Financial Status for Waiver or Deferment of Appeal Filing Fee, signed by the appellant. Affidavit forms are available at the office of the

Clerk of the Court. The form must be signed by the party, not by a representative. If the Court denies the motion to waive or delay payment of the fee, the appellant has 5 days from the filing of the denial of the motion to pay the fee; if the fee is not paid within this 5-day period, the appeal will be dismissed. If a motion to waive or delay payment of the filing fee is granted, the time for filing the appellant's opening brief, as provided in Rule 4(a) of these Rules, runs from the date the order granting the motion is filed. The filing fee must be paid in the form of a cashier's check or money order; cash, personal check or credit card are not acceptable forms of payment.

c. Motion to Dismiss. A party that believes that a notice of appeal is untimely or legally insufficient, that a required filing fee has not been paid, or that an appeal should be dismissed for any other reason, may file a motion with the Court to dismiss the appeal. If the motion to dismiss is granted, no further briefs shall be filed and the matter is closed in the Supreme Court. If the motion to dismiss is denied, the time within which the appellant's opening brief must be filed begins to run when the Court's order denying the motion is filed.

RULE 3. APPEALS FROM NON-FINAL ORDERS

Appeals from non-final orders are permitted only in the discretion of the Court and only if (i) the order appealed from involves a controlling question of law as to which there is a substantial ground for difference in opinion, and (ii) an immediate appeal from the order will materially advance the ultimate termination of the litigation. A party seeking to appeal a non-final order must file a motion asking for leave to appeal within 5 days of the date of the order. The motion must set forth the reasons why the conditions stated in the first sentence of this Rule are satisfied. The filing fee required by Rule 2(b) of these Rules applies to motions for leave to appeal non-final orders. If leave to appeal a non-final order is granted by the Court, the Court will establish a briefing schedule at the time leave to appeal is granted.

RULE 4. BRIEFS ON APPEAL

a. Time for Filing. Unless the Court orders otherwise, an appellant must file an opening brief within 30 days of (i) the date of filing of the notice of appeal, or (ii) the date of disposition of a motion to waive or delay payment of the filing fee, or (iii) the date of filing of the Court's denial of a motion to dismiss the appeal, whichever is the latest of these three dates. Unless an extension of time to file the appellant's opening brief is granted, the failure of the appellant to file an opening brief within the time prescribed by the first sentence of this Rule will result in dismissal of the appeal unless the Court determines that extraordinary circumstances exist. The appellee may file a response brief within 30 days of being served with the appellant's opening brief and the appellant may file a reply brief within 10 days of being served with the appellee's response brief. Unless an extension of time to file is granted, response or reply briefs that are not timely will not be considered by the Court unless the Court determines that extraordinary circumstances exist.

b. Content of Briefs. The opening brief must contain, in the following order:

- (i) a specific identification of the judgment or order appealed from;
- (ii) a statement of the issues presented for review;
- (iii) a procedural statement of the case, briefly describing the nature of the case and the proceedings in the lower court;
- (iv) a statement of the relevant facts;
- (v) a brief summary of the decision below;
- (vi) an argument in support of the appeal; and
- (vii) a short conclusion stating the precise relief sought from the Court.

The appellee's response brief shall specify any disagreement with parts (i), (ii), (iii), (iv) and (v) of the appellant's opening brief and, in addition, shall contain an argument in support of appellee's position and a brief conclusion. A reply brief may only respond to matters contained in the response brief. Except for brief quotations, material that will be contained in the record on appeal (see Rule 5 of these Rules) should not be reproduced in the parties' briefs or in appendices to the briefs, but will be before the Court as part of the record on appeal. References in briefs to material that will be in the record on appeal should include the date and title of the material to which reference is made, e.g., "Trial Court Order dated February 30, 2003."

c. Appendices to Briefs. Parties may attach appendices to their briefs reproducing materials relevant to the Court's consideration of the case that are not contained in the record on appeal.

RULE 5. THE RECORD ON APPEAL

a. Contents of the Record on Appeal. The Clerk of the Court will prepare a record on appeal for each appeal after all briefs have been filed. The record on appeal will consist of the judgment or order appealed from, any opinion issued in connection with that judgment or order, and any other material filed in the lower court (including the transcript of record, if any) that any party designates for inclusion in the record on appeal. Each party shall make such designation in writing to the Clerk of the Court at the time of filing its initial brief, and the appellant may designate additional material when filing a reply brief. Materials should be designated for inclusion in the record on appeal only if relevant to the Court's decision of the issues on appeal.

b. Form of the Record on Appeal. After all briefs are filed, the Clerk will assemble the record on appeal, consisting of the material specified in subsection (a) of this Rule. The materials in the record on

appeal will be arranged in chronological order, beginning with the earliest filed materials and ending with the most recently filed material. The record on appeal will be bound separately from the appellate briefs.

c. Distribution to the Court of Briefs and the Record on Appeal. Once all briefs have been filed and the record on appeal has been assembled, the Clerk will distribute the briefs and the record on appeal to the Justices. One copy of each brief and one copy of the record on appeal will be distributed to each Justice and one copy of the record on appeal will be distributed to each party. The Clerk will retain at least one copy of each brief and of the record on appeal for the Court's records.

RULE 6. ORAL ARGUMENT

After the appellate briefs and the record on appeal have been distributed to the Justices, the Court will determine whether it will hear oral argument. The parties will be notified by the Clerk regarding whether oral argument will be heard and, if argument is to be heard, when the argument will take place. If oral argument is heard, each side's argument will be limited to 30 minutes unless the Court orders otherwise. The appellant will argue first and may reserve up to 10 minutes for rebuttal.

RULE 7. TRANSCRIPTS OF LOWER COURT PROCEEDINGS

If a party believes that a written transcript of any proceedings in the lower court would aid in the Court's determination of an appeal, it may move the Court to order that such a transcript be prepared. The motion may seek either a full or a partial transcript of the lower court proceedings. The motion should explain why a transcript would aid the Court's consideration of the case. If the Court orders a transcript to be prepared, it will determine responsibility for the costs of preparation. The party requesting the transcript will be responsible for the costs of preparation unless the Court orders otherwise in the interests of justice. If a transcript is prepared, it will be included by the Clerk in the record on appeal.

RULE 8. MOTIONS PRACTICE

A party wishing to respond to a motion may do so by filing a response within 5 days of being served with the motion. The moving party may file a reply within 3 days of being served with a response.

RULE 9. FILING

Whenever a notice, motion, brief or other document is required to be filed, the document is to be mailed or delivered by hand to the Clerk of the Court. Filing is deemed accomplished when the document is received at the Clerk's office at a time when the office is open for business. The date of filing will be stamped by the Clerk on the original of each filed document. Within 5 days of the date of filing, all filed documents must be served on all parties by the party required to file the document.

RULE 10. SERVICE

Whenever a notice, motion, brief or other document is required to be served by a party, service is accomplished when the party mails the document or delivers it by hand to the person or entity to be served. The date of service is the date when a document is delivered by hand to the person or entity to be served or 5 days after a document is placed in the United States mail for the purpose of service.

RULE 11. REPRESENTATIVES OF PARTIES

Unless otherwise specified in these Rules, all acts required or permitted to be done by a party may be done by a party's representative and all service upon or notification to a party may be made upon or to a party's representative.

RULE 12. CALCULATION OF TIME

In calculating time pursuant to these Rules, "days" refers to calendar days, including Saturdays,

Sundays and legal holidays, except that, when the day on which an act must be done falls on a Saturday, Sunday or legal holiday recognized by the Nation, the act may be done on the next calendar day that is not a Saturday, Sunday or legal holiday.

RULE 13. EXTENSIONS OF TIME

The Court may, for good cause shown, extend the time for filing any document or performing any act, except that the time for filing a notice of appeal may not be extended unless the party demonstrates that it did not receive timely notice of the judgment or order appealed from. A request for an extension of time is made by motion addressed to the Court. Before seeking an extension of time, the party requesting the extension must determine whether any other party objects to the request and the motion for extension must state whether there is such an objection. The motion for extension must explain why an extension is required, regardless of whether any other party objects to the request.

RULE 14. MOTIONS FOR STAY OF EXECUTION

A party seeking a stay of execution of a judgment or sentence of the lower court, pending disposition of the party's appeal to the Supreme Court, must first seek that relief from the lower court. The Supreme Court will ordinarily consider a motion for such relief only after the lower court has ruled on the request, or when the lower court has failed to rule on the request after the passage of a reasonable period of time. The filing of a notice of appeal does not remove the lower court's jurisdiction to grant a stay of execution or similar relief pending appeal.

RULE 15. COURT DECISIONS

Decisions of the Supreme Court will be in writing and will be filed with the Clerk and distributed by

the Clerk to the parties. Decisions on motions may be made by a single Justice authorized by the Court to act on motions. Decisions of appeals will be filed within 6 months of the oral argument or within 6 months of the filing of the last brief if the case is decided without oral argument. The Clerk will keep a permanent chronological file of the Court's decisions of motions and appeals. This file shall be available to the public upon request.

RULE 16. EFFECTIVE DATE

These rules shall be effective from and after May 1, 2004.