

MIAMI TRIBE OF OKLAHOMA
APPELLATE CODE
RULES OF APPELLATE PROCEDURES

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SECTION 1 SCOPE OF RULES

These Rules shall govern the procedures in appeals in the Miami Tribe of Oklahoma Court of Appeals (hereinafter referred to as “Miami Tribe Court of Appeals”) from civil and criminal judgments and/or final orders of the Miami Tribe of Oklahoma District Court (hereinafter referred to as “Miami Tribe District Court”).

SECTION 2 AUTHORITY AND PURPOSE

This Code is enacted pursuant to authority vested in the Miami Tribe of Oklahoma pursuant to the Tribal Constitution, Article VI, Section 1.

SECTION 3 WHEN AN APPEAL MAY BE TAKEN

- A. Appeals of Right: Any party to an action in the Miami Tribe District Court shall have the right to appeal any criminal conviction or any judgment or order in a civil case before the court, except as provided in part (B) of this Section or where it may conflict with provisions in the Civil, Criminal, or Juvenile Codes.
- B. Discretionary Appeals: The following judgments and orders are within the Miami Tribe District Court of Appeals’ sole discretion to hear, and a party must petition for permission to appeal such matters:
 - 1) Conviction of any traffic offense;
 - 2) Order of Eviction; and
 - 3) Judgment rendered through the small claims procedures of the Miami Tribe District Court.

SECTION 4 HOW AN APPEAL IS TAKEN

- A. Filing Application for Discretionary Appeals: An application for a discretionary appeal must be filed within ten (10) days of the date of entry of judgment or order appealed from. An application for a discretionary appeal must include a statement of reasons for why the Miami Tribe District Court of Appeals should grant the appeal. If an application for discretionary appeal is not granted by the Miami Tribe District Court of Appeals within thirty (30) days after the application is filed, then the application is denied.
- B. Filing of Notice of Appeal – Appeals of Right: An appeal of right of a judgment or order of the Miami Tribe District Court shall be taken by filing a Notice of Appeal with the Clerk of Court of the Miami Tribe of Oklahoma District Court within thirty (30) days of the date of entry of judgment or order appealed from, provided that upon a showing of excusable neglect, the Court may extend the time for filing of the Notice of Appeal by any party for a period not to exceed ten (10) days from the expiration of the normal period allowed for the filing of a Notice of Appeal.
- C. Filing of Notice of Appeal – Discretionary Appeals: A discretionary appeal of a judgment or order of the Miami Tribe District Court shall be taken by filing a Notice of Appeal with the Clerk of Court of the Miami Tribe of Oklahoma District Court within thirty (30) days of the order granting the application for discretionary appeal.

- D. Notice of Appeal – Form: The Notice of Appeal, whether it involves a criminal or civil action, shall specify the name of the Court from which the appeal is taken, the name of the party or parties taking the appeal, and the judgment or order from which the appeal is taken and the Court to which the appeal is taken.
- E. Service of the Notice of Appeal: The Clerk of Court shall serve notice of the filing of the Notice of Appeal, whether a civil or criminal action is involved, by mailing a copy of the Notice of Appeal to each party and each party’s legal representative. The Clerk shall note on each copy when the Notice of Appeal was filed.

SECTION 5 APPEAL OF TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION

- A. Temporary Restraining Order and Preliminary Injunction – How Taken: An appeal from the granting of a temporary restraining order of preliminary injunction may be sought by filing a petition for permission to appeal with the Clerk of Court within five (5) days after the entry of such order by the Miami Tribe District Court.
- B. Form or Contents of Petition: The petition shall contain a statement of the facts necessary to understand the issue and questions of law involved, a statement of the reasons the order should be lifted, and a statement of injuries, damages or harm being incurred by the petitioner.

SECTION 6 STAY OR INJUNCTION PENDING APPEAL

- A. Initial Motion in the Miami Tribe District Court: A party must ordinarily move first in the Miami Tribe District Court for the following relief:
 - 1) A stay of the judgment or order of the Miami Tribe District Court pending appeal;
 - 2) Approval of a supersedeas bond; or
 - 3) An order suspending, modifying, restoring, or granting an injunction while an appeal is pending.
- B. Motion in the Miami Tribe Court of Appeals: A motion for relief mentioned in Section 6(A) may be made to the Miami Tribe Court of Appeals if such motion has been made first in the Miami Tribe District Court and has been denied or if the moving party shows that moving first in the Miami Tribe District Court would be impracticable.

SECTION 7 RELEASE PENDING APPEAL OF A CRIMINAL CONVICTION

Application for the release of a convicted defendant pending appeal of the judgment of conviction shall first be made in the Miami Tribe District Court. If the Miami Tribe District Court refuses to release pending appeal, or imposes conditions of release, the Miami Tribe District Court shall state in writing the reasons for the action taken. Thereafter, if an appeal is pending, appellant may motion for release, or modification of conditions of release, to the Miami Tribe Court of Appeals. Such a motion shall be determined promptly after appellant and appellee present their oral and/or written arguments on the motion.

SECTION 8 DESIGNATION OF RECORD

- A. Composition of Record on Appeal: The original papers and exhibits filed in the Miami Tribe District Court, the transcript of the proceedings, if any, and a certified copy of the final judgment or order appealed from shall constitute the record on appeal in all cases, civil and criminal.
- B. Statement of Proceedings When No Report or Transcript Made: If no report of the evidence or proceedings at a trial or hearing was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence and proceedings. Said statement shall be filed with the Clerk of Court. The appellant shall serve a copy of the statement on appellee, and the appellee shall have ten (10) days to raise objections and propose amendments to the statement and file those objections and proposed amendments with the Clerk of Court. The Miami Tribe District Court shall settle the objections, make any necessary amendments and finally approve the statement for inclusion in the record of appeal.

SECTION 9 TRANSMISSION OF THE RECORD

- A. The record on appeal, including the transcript or statements of proceedings, shall be completed and turned over to the Miami Tribe Court of Appeals within thirty (30) days after the Notice of Appeal is filed by appellant. Appellant shall take whatever action is necessary to enable the Clerk of Court to assemble the record, including paying for the cost of preparing transcripts.
- B. When the record on appeal is complete, the Clerk of Court shall transmit a complete copy of the record to each Appellate Justice of the Miami Tribe Court of Appeals designated to hear the appeal. The time and date of the transmission shall be noted on each copy of the record.
- C. Upon transmission of the record on appeal to the Appellate Justices, the Clerk of Court shall maintain a docket and filings for the Miami Appellate Court.

SECTION 10 FILING AND SERVICE OF DOCUMENTS OF APPEAL

- A. Filing: Parties to an appeal shall file an original and four (4) copies of any and all papers required or permitted with the Clerk of Court.
- B. Service of Papers: Copies of all papers filed with the Clerk of Court in any appellate case, by parties to an appeal, shall be sent by certified mail to opposing parties or their legal representatives by the party filing such papers. All papers filed with the Clerk of Court shall be accompanied by a written statement of the party filing such papers or his/her legal representative, certifying that such papers have been mailed to the opposing party(s) or his legal representative(s).

SECTION 11 APPEAL BRIEFS – SUBMISSION TIMELINE

Within thirty (30) days after the record on appeal has been submitted by the Clerk of Court to the Appellate Court, appellant shall submit to the Appellate Court a brief in support of his/her appeal. Appellee shall have thirty (30) days after the date of filing of appellant’s brief to file a brief in

response to appellant's brief. Appellant shall then have ten (10) days after the date of filing of appellee's response to file a reply brief. No further response shall be allowed to either party without leave of court.

SECTION 12 AMICUS CURIAE

In any appellate proceeding, amicus briefs, memoranda or statements shall be permitted only in the following situations:

- 1) When all parties to the action consent to the filing of an amicus curiae brief, memorandum or statement;
- 2) By leave of court pursuant to a properly filed motion; or
- 3) At the request of the court.

SECTION 13 ORAL ARGUMENT

A. Provision For: Oral argument must be allowed in every case unless a majority of the assigned Appellate Justices, having examined the briefs and record, find that oral argument is unnecessary for any of the following reasons:

- 1) The appeal is frivolous;
- 2) The dispositive issue or issues have been authoritatively decided; or
- 3) The facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

B. Procedure: The Clerk of Court shall notify all parties of the specific time, date, and place the arguments are to be heard. At the hearing both appellant and appellee shall have a maximum of twenty (20) minutes to present their respective arguments. Appellant shall be permitted to both open and close the arguments.

SECTION 14 DECISION

All decisions of the Miami Tribe Court of Appeals shall be arrived at by a simple majority of the three judge panel. All decisions shall be issued in written form and all judgments on appeal shall be final.

SECTION 15 FRIVOLOUS APPEALS

If the Miami Tribe Court of Appeals finds that a party has filed a frivolous appeal, the Court may award the appellee his just damages, including but not limited to attorney's fees, plus single or double costs.

SECTION 16 COSTS

A. If an appeal is dismissed by the Miami Tribe Court of Appeals, appellant shall pay all costs of the appeal. If the judgment of the trial court is affirmed, the court, in its discretion, may order the appellant to pay all costs of the appeal or direct the parties to pay a designated portion of the costs. If the judgment of the trial court is reversed, the court, in its discretion may order the appellee to pay all costs of the appeal or direct the parties to pay a designated portion of the cost.

B. Costs of the appeal include the following costs:

- 1) Filing fees for filing the appeal;
- 2) Costs to prepare a transcript of the proceedings as required by Section 8; and
- 3) Costs for producing copies of documents as required by Section 10.

C. Costs of the appeal do not include attorney's fees.

SECTION 17 ISSUANCE OF MANDATE

A mandate of the Miami Tribe Court of Appeals shall issue **ten (10)** days after entry of judgment in the appeal.