Notice of

Public Meeting

to be held

February 5, 2015 at 12:15 p.m.

OBC Conference Room - 2nd Floor, Norbert Hill Center

Topic: Rules of Appellate Procedure Amendments

The Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal that would:

- Allow parties to file by private mail, as long as there is delivery tracking and provide proof of delivery to the Clerk upon demand.
- Require the Clerk to notify the Trial Court Clerk when an appeal is filed.
- Increase the amount of time the Court has to hear a case from 120 days to 180 days.
- Require an initial review to be performed by 3 Appellate Judges.
- Require the Court to state reasons for denying an appeal or request for stay within 30 days of receiving the Notice of Appeal
- Allow the Court to permit parties to cite or discuss cases at oral argument that were not cited in a brief.
- Allow audio recordings to be considered a record of the case.
- Give an Appellant 20 days from the Certification of the Record, instead of from when the Notice of Appeal is filed, to serve a brief on the Respondent and file the brief with the Court.
- Expand the definition section.

All community members are invited to attend this meeting to learn more about this proposal and/or to submit comments concerning this proposal.

Public Comment Period—Open until February 12, 2015

During the Public Comment Period, all interested persons may submit written comments regarding this legislative proposal; and/or a transcript of any testimony/spoken comments made during the Public Meeting. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person or by U.S. mail, interoffice mail, e-mail or fax.

For more information about the public meeting process, or to obtain copies of the Public Meeting documents for this proposal, please visit **www.oneida-nsn.gov/Register/PublicMeetings** or contact the Legislative Reference Office (LRO), which is located on the second floor of the Norbert Hill Center, Oneida WI.

Mail: **Legislative Reference Office**
PO Box 365
Oneida, WI 54155

Phone: **(920) 869-4376 or (800) 236-2214**
E-Mail: **LOC@oneidanation.org**
Fax: **(920) 869-4040**

Chapter 154
Rules of Appellate Procedure

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Analysis by the Legislative Reference Office					
Title	Rules of Appellate Procedures (Law)				
Requester	Chief Appellate Judge	**Drafter**	Lynn Franzmeier	**Analyst**	Candice Skenandore
Reason for Request	The Chief Appellate Judge has requested the Law be amended for clarification				
Purpose	The purpose of this Law is to govern the procedures in all actions and proceedings in the Tribe's Court of Appeals				
Authorized/ Affected Entities	Court of Appeals, Court Staff, persons utilizing the Court of Appeals				
Due Process	Court of Appeals				
Related Legislation	Rules of Civil Procedure and the Federal Rules of Appellate Procedure can be used as a guide when this Law does not address an issue; however, those rules must be consistent with existing Oneida Rules of Procedure, Tribal laws or customs of the Tribe				
Policy Mechanism	The Court of Appeals can issue penalties for frivolous appeals, delays and non-compliance with the rules				
Enforcement	The Court of Appeals can issue penalties which may include, among other things, court costs, attorney fees, double costs, interest on the award amount, damages, dismissal of the appeal, summary reversal of the original hearing body decision and/or other actions as the Court of Appeals considers appropriate				

Overview

This Law governs the procedures in all actions and proceedings of the Court of Appeals (Court) and can be used in conjunction with the Rules of Civil Procedure *[See 154.1-1 and 154.4-1]*. The Oneida Business Committee approved emergency amendments to this Law on December 19, 2014, and will now be considering these amendments on a permanent basis. If these amendments are not permanently adopted or are not extended, these emergency amendments will expire on June 19, 2015.

Proposed Amendments

The proposed amendments include the following:

- The definition section has been expanded to include definitions for "initial review", "original hearing body" and "record" as well as separates the definitions of "advocate" and "attorney" *[See 154.3-1 (a), (o), (s) and (v)]*.
- The current Law does not address what happens when the Court denies a request for stay; therefore, language was added that requires the Court to state the reasons for denying an appeal or request for stay within 30 days of the receipt of Notice of Appeal. *[See 154.4-1 (b)]*.

- The Law will now require three Appellate Judges be assigned to perform an initial review of the Notice of Appeal within ten days of filing the Notice of Appeal or the Perfected Notice of Appeal *[See 154.5-2 (b)]*. The current Law does not require an initial review.
- A party can now file required papers to the Court by using private mail so long as it has a delivery tracking feature. In accordance with the current Law, a party filing by mail must do so by using certified mail with a return receipt *[See 154.8-1 (c)]*.
- If a party or Clerk demands, the party filing documents must provide, among other things, proof of delivery of the filing in question. Proof of delivery is not specifically required in the current Law *[See 154.8-2 (a)]*.
- When accepting an appeal, the Clerk must now notify the Trial Court clerk or original hearing body that an appeal has been filed and request that the Trial Court clerk or original hearing body prepare and file with the Court all papers comprising the record of the appealed case within 30 days. When the Clerk certifies the record, it must be served to all parties. The Chief Judge can extend this 30 day timeline for filing and certifying the record for good cause upon a written request from the Trial Court clerk. Currently the Law requires the Appellate Court Clerk, not the Trial Court Clerk, to prepare, to certify and file all the papers comprising the record of appealed cases with the Court. In addition, the current Law does not address extending the filing and certifying the record 30 day timeline *[See 154.8-4]*.
- Audio recordings will be considered a record of the case *[See 154.8-4 (a)]*.
- The Court will have 180 days to complete a case, instead of 120 days which is currently required, not including extensions *[See 154.9-3]*.
- The Appellant has 20 days from when the Certification of the Record is accepted to serve a brief to the Respondent and file the brief with the Clerk. Currently the Appellant has 20 days from when the Notice of Appeal is filed to serve and file the brief *[See 154.11-1 (d)]*.
- The Court can now permit parties to cite or discuss a case at an oral argument that was not cited in one of the briefs *[See 154.12-3]*. The current Law only allows parties to cite or discuss a case if the case has been cited in one of the briefs.

Considerations

This Law will require three Appellate Judges be assigned to perform an initial review of the Notice of Appeal within ten days of the Notice of Appeal or the Perfected Notice of Appeal are filed *[See 154.5-2 (b)]*. There may be times when three Appellate Judges are not available to perform an initial review. In order to avoid burdening the Court, the Legislative Operating Committee may want to consider eliminating the number of Appellate Judges required to perform the initial review which would allow the Law to have more flexibility.

Miscellaneous

A public meeting is scheduled for January 29, 2015. Additional, minor revisions were made that do not affect the content of this Law.

154.1. Purpose and Policy

154.1-1. *Purpose.* The purpose of this Law is to govern the procedure in all actions and proceedings in the divisions that make up the Court of Appeals within the Judiciary that fall under the jurisdiction of the Tribe.

154.1-2. *Policy*. It is the policy of the Tribe that these rules are to be liberally construed to ensure a speedy, fair, and inexpensive determination of every appeal.

154.2. Adoption, Amendment, Repeal

154.2-1. This Law was adopted by the Oneida Business Committee by resolution BC-04-25-14-B.

154.2-2. This Law may be amended or repealed pursuant to the procedures set out in the Oneida Legislative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council.

154.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Law which are considered to have legal force without the invalid portions.

154.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law shall control.

154.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

154.3. Definitions

154.3-1. This section shall govern the definitions of words and phrases used within this Law. All words not defined herein shall be used in their ordinary and everyday sense:

(a) "Advocate" shall mean an Oneida non-attorney advocate as provided by law or other advocate who is presented to the court as the representative or advisor to a party.

~~(a)~~(b) "Agent" shall mean a person authorized to act on behalf of another.

~~(b)~~(c) "Amicus Curiae" shall mean (literally, friend of the court) a person who is not a party to a case, nor solicited by any of the parties, who files a brief to assist the Court by furnishing information or advice regarding questions of law or fact.

~~(c)~~(d) "Answer" shall mean a written response in opposition to a brief or petition.

~~(d)~~(e) "Appeal" shall mean a review in the Court of Appeals by appeal or writ of error authorized by law of a judgment or order of the Trial Court or original hearing body.

~~(e)~~(f) "Appellant" shall mean a person who files a notice of appeal.

~~(f)~~(g) "Attorney" shall mean ~~an Oneida non-attorney advocate as provided by law and other advocate~~a person who is admitted to practice law~~ and is presented to the court as the representative or advisor to a party~~.

~~(g)~~(h) "Brief" shall mean a written legal document which aids in the Court's decision by reciting the facts of the case, the arguments being raised on appeal, and the applicable law.

~~(h)~~(i) "Clerk" shall mean the Clerk of the Court of Appeals.

~~(i)~~(j) "Court" shall mean the Court of Appeals of the Tribe.

~~(j)~~(k) "Cross-Appeal" shall mean an appeal brought by the Respondent against the Appellant after the Appellant has already filed an appeal.

~~(k)~~(l) "Days" shall mean calendar days, unless otherwise specifically stated.

~~(l)~~(m) "Docketed" shall mean an appeal that has been filed and assigned a docket number.

~~(m)~~(n) "Electronic" shall mean an electronic communication system, including, but is not limited to E-mail, used for filing papers with the Court or serving papers on any other party.

(o) "Initial Review" shall mean review of the Notice of Appeal to determine if the case is acceptable for appellate review.

~~(n)~~(p) "Interlocutory" shall mean an order or appeal that occurs before the Trial Court or original hearing body issues a final ruling on a case.

~~(o)~~(q) "Joinder" shall mean the joining together of several claims or several parties all in one (1) hearing, provided that the legal issues and the factual situation are the same for all Appellants and Respondents.

~~(p)~~(r) "Judiciary" shall mean the Oneida Tribal Judicial System.

(s) "Original hearing body" shall mean the administrative agency decision-making panel which heard a contested case under the Administrative Procedures Act (or similar law) and from which appeal is permitted by law.

~~(q)~~(t) "Petitioner" shall mean a person filing a petition.

~~(r)~~(u) "Pro se" shall mean advocating on one's own behalf before the Court, rather than being represented by an attorney or advocate.

(v) "Record" shall mean all materials identified in 154.8-4(a) of these Rules.

~~(s)~~(w) "Reply Brief" shall mean a brief of a party to a legal action in answer to points of law raised in an opponent's brief but not in his or her own.

~~(t)~~(x) "Respondent" shall mean a person adverse to the Appellant.

~~(u)~~(y) "Rules" shall mean ~~the Court of Appeals~~these Rules of Appellate Procedure.

~~(v)~~(z) "Stay" shall mean a suspension of a case or a suspension of a particular proceeding, including orders, within a case that prevents enforcement pending appeal or other circumstances.

~~(w)~~(aa) "Trial Court" shall mean the Trial Court of the Tribe.

~~(x)~~(bb) "Tribal" or "Tribe" shall mean the Oneida Tribe of Indians of Wisconsin.

~~(y)~~(cc) "Tribal law" shall mean a code, act, statute, rule, regulation, policy or ordinance enacted by the Oneida General Tribal Council or the Oneida Business Committee.

154.4. General Provisions

154.4-1. These Rules may be used in conjunction with the Rules of Civil Procedure. Matters and proceedings not specifically set forth herein shall be handled in accordance with reasonable justice, as determined by the Court. Where these Rules fail to address an issue, the Federal Rules of Appellate Procedure may be used as a guide, so long as those rules are not inconsistent with existing Oneida Rules of Procedure, Tribal laws, or the customs of the Tribe.

154.4-2. On its own or by a party's motion; the Court may, to expedite its decision or for other good cause, suspend any provision of these Rules in a particular case and order proceedings as it directs.

154.4-3. The Chief ~~Justice~~Judge of the Court shall, when hearing a case, have the authority to compel the production of documents where such is deemed necessary to rendition of the Court's opinion. There shall not be a new trial in the Court. The Court may review both the factual findings and conclusions of law of the Trial Court or original hearing body.

154.5. Initiating the Appeal

154.5-1. *Right of Appeal*. Any party to a civil action, who is aggrieved by a final judgment or order of the Trial Court or original hearing body, may appeal to the Court of Appeals.

(a) In any case brought on appeal, the Appellant may petition the Court for an order staying the judgment or order. A stay shall be granted in all cases in which it is requested unless plain and obvious injustice would result from granting the stay. The Court may

render a stay conditioned upon execution of a bond to guarantee performance of the judgment or order when deemed necessary.

(b) In the event the appeal or request for stay is denied, the Court shall state the reasons for the refusal within thirty (30) days of the receipt of the Notice of Appeal.

154.5-2. *Notice of Appeal.* Any party who is appealing shall appeal in the manner prescribed by this Rule.

(a) Such party shall file with the Clerk a Notice of Appeal from such judgment or order, together with a filing fee, as set by the Court, within thirty (30) days after the day such judgment or order was rendered. A Notice of Appeal shall not be filed by electronic means.

(b) Within ten (10) days of the filing of the Notice of Appeal or the Perfected Notice of Appeal as provided under 154.5-3, three (3) Appellate Judges shall be assigned to perform an Initial Review of the Notice of Appeal.

(1) *Waiver of Fee.* The Chief Judge of the Court may waive the filing fee upon motion for a fee waiver by the Appellant where the Chief Judge of the Court is satisfied the Appellant lacks the means to pay the filing fee. The motion shall include an affidavit demonstrating inability to pay and shall accompany the Notice of Appeal.

~~(b)~~(c) In addition to the Notice of Appeal and filing fee, the following information shall be provided upon the filing of the notice:

(1) A copy of the written decision of the Trial Court or original hearing body;

(2) A short statement explaining what relief is sought by the Appellant;

(3) A short statement explaining the legal grounds for seeking the appeal and justification for the relief requested;

(4) Name, address and phone numbers of all parties, including respondent; and

(5) Name, address and phone numbers of all party attorneys or advocates, if known.

~~(c)~~(d) A cash deposit or bond in an amount equal to the amount of any judgment, plus costs assessed by the Trial Court or original hearing body, or a motion for waiver of this requirement, shall accompany the Notice of Appeal. The deposit/bond requirement may be waived only when, in the judgment of the Court, such deposit/bond is not in the interest of justice and such waiver does not unnecessarily harm the judgment holder. The motion for waiver of the deposit/bond requirement shall be requested with notice to all parties. If the motion for waiver is denied, the deposit/bond shall be submitted within ten (10) days of the denial. The appeal shall be dismissed if the deposit/bond is not paid or waived.

(1) *Exception*. The Tribe, or an officer or agency of the Tribe shall be exempt from the requirement of providing any cash deposit or bond. The exemption under this section shall be automatic and shall not require a motion or waiver.

~~(d)~~(e) An appeal shall not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

154.5-3. *Perfection of Notice*. If the appellant fails to provide a completed Notice of Appeal Form, the filing fee or waiver form, or any required documents or materials, the Appellant shall be notified of any filing deficiencies by the Clerk within five (5) business days and shall have five (5) business days from receipt of this notice to perfect the filing. Failure to perfect the filing within five (5) business days may result in the non-acceptance of the appeal.

154.6. Appeal by Permission

154.6-1. *Appeal by Permission*. An appeal from an interlocutory order may be sought by filing a Petition for Permission to Appeal with the Clerk within ten (10) business days after the entry of such order with proof of service on all other parties to the action. Within ten (10) business days after service of the petition, an adverse party may file an Answer in opposition. A decision shall be issued in a reasonable time, but no longer than thirty (30) days from the first deliberation unless good cause to extend the deadline is found by the Court. This extension shall be in writing. The petition shall contain:

(a) a statement of the facts necessary to develop an understanding of the question of law determined by the order of the Trial Court or original hearing body; and

(b) a statement of the question itself; and

(c) a statement of the reasons why substantial basis exists for a difference of opinion on the question; and

(d) the relief sought; and

(e) why an immediate appeal may:

(1) materially advance the termination of the litigation;

(2) protect the petitioner from substantial or irreparable injury; or

(3) clarify an issue of general importance in the administration of justice; and

(f) The petition shall include or have a copy of the order of the Trial Court or original hearing body attached thereto.

154.7. Joint, Consolidated, and Cross Appeals

154.7-1. *Joint or Consolidated Appeals*. When two (2) or more parties are entitled to appeal from a Trial Court or original hearing body judgment or order, and their interests make joinder practicable, the parties may file a joint notice of appeal. The parties may then proceed on appeal as a single Appellant.

(a) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the Court.

(b) 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, the person shall proceed as Appellant and co-Appellant, with each co-Appellant to have the same procedural rights and obligations as the Appellant. The Appellant shall be the person who filed first.

154.7-2. *Cross Appeal*. A Respondent who seeks modification of the judgment or order appealed from or of another judgment or order entered in the same action or proceeding shall file a notice of cross-appeal within the time established for the filing of a notice of appeal or ten (10) business days after the receipt of the notice of appeal, whichever is later. The Respondent shall be listed as the cross-Appellant. A cross-Appellant has the same rights and obligations as an Appellant under these Rules.

154.8. Service, Filing and Certification

154.8-1. A paper required or permitted to be filed in the Court shall be filed with the Clerk. The filing party shall supply the Clerk with the original papers and three (3) copies. The filing party shall also provide one (1) copy of the papers for each opposing party or party's attorney or advocate. Filing shall be complete by the close of business on the day which the filing is due. The following methods of filing shall be used, in order of preference:

(a) *In Person*: A party to a pending case, or the party's attorney, advocate or authorized Agent may file papers in person before the Clerk.

(b) *Electronic:* A party to a pending case may file papers electronically to the electronic address, designated for such filings, of the Clerk. A paper filed by electronic means shall constitute a written paper for the purpose of applying these Rules. Upon receipt by the Clerk, any paper filed electronically shall be deemed filed, signed and verified by the filing party.

(c) *By Mail*: A party to a pending case may file papers by ~~certified~~U.S. or private mail with ~~return receipt~~the ability to track the delivery, with cover documents to be addressed to the Clerk. Filing shall not be completed upon mailing, but only upon receipt.

(1) ~~Certified mail shall include the filing~~ Filing of papers is also permitted through the Tribal certified interoffice mail system.

154.8-2. *Proof of Service*. Upon demand by a party or the Appellate Clerk, a party filing documents shall provide one (1) of the following:

~~(a) A paper presented for filing shall contain either of the following:~~

(a) Proof of delivery of the filing in question;

~~(a)~~(b) an acknowledgment of service by the person served; or

~~(b)~~(c) proof of service consisting of a statement by the person who made service certifying:

(1) the date and manner of service;

(2) the names of the persons served;

(3) the mail or electronic addresses, facsimile numbers of the persons served, or the addresses of the places of delivery, as appropriate for the manner of service; and

(4) if served electronically, a writing by the person being served consenting to service by electronic means.

154.8~~.~~-3. *Service of All Papers Required.* A party shall, at or before the time of filing a paper, serve a copy on all other parties to the appeal. Any party may be served by electronic means, if such party consents in writing to service by electronic means. Service on a party represented by an attorney or advocate shall be made on the party's attorney or advocate.

154.8-4. *Certification of the Record.* Upon ~~receipt~~acceptance of the ~~Notice of~~ Appeal ~~and Proof of Service~~, the Clerk shall, notify the Trial Court clerk or original hearing body that an appeal has been filed and request, the Trial Court clerk or original hearing body to prepare, ~~certify~~ and file with the Appellate Court all papers comprising the record of the case appealed~~. The~~ within thirty (30) days. Upon Certification of the Record by the Clerk it shall be served on all parties as provided for in 154.8-3. The time for filing and certifying the record may be extended for good cause by the Chief Judge of the Court upon a written request from the Trial Court clerk or original hearing body.

(a) The record of the case shall consist of all papers filed with the Trial Court or original hearing body, exhibits, ~~the~~a transcript~~/~~ or audio recording of the proceedings, and the final decision of the Trial Court or original hearing body.

154.9. Time Computation

154.9-1. *Deadline Computation*. Time lines are determined by designating the day after notice is received as day one. Computation involving calendar days shall include intermediate Tribally observed holidays and weekend days, provided that if the last day of the period falls on a Saturday, Sunday or Tribally observed holiday, then the next business day shall be the due date.

Computation involving business days shall not include intermediate weekend days or Tribally observed holidays. All papers due to be filed with the Clerk are due prior to the close of business on the last day of the time period.

(a) If notice is mailed, then three (3) days shall be added to the time line in order to determine the due date.

154.9-2. *Extension of Time*. For good cause, the Court may extend the time prescribed by these Rules or by its order to perform any act, or may permit an act to be done after that time expires. But the Court shall not extend the time to file:

(a) a notice of appeal; or

(b) a petition for permission to appeal.

154.9-3. *Time to Complete*. Unless time is extended by the Court with the knowledge of the parties, the time from the filing of the Notice of Appeal to the completion and entry of the final written decision shall not exceed one hundred and ~~twenty (120~~eighty (180) days.

154.10. Motions

154.10-1. *Application for Relief*. An application for an order or other relief in a docketed case shall be made by motion unless these Rules prescribe another form. A motion shall be in writing unless the Court permits otherwise. The moving party shall file all motions with the Clerk and serve opposing parties as provided in 154.8.

154.10-2. *Contents of a Motion*. A motion shall state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

(a) Any affidavit or other paper necessary to support a motion shall be served and filed with the motion. An affidavit shall contain only factual information, not legal argument. A motion seeking substantive relief shall include a copy of the Trial Court's or original hearing body's opinion as a separate exhibit.

154.10-3. *Response to a Motion*. Any party may file a response to a motion, in accordance with 154.11-2. The response shall be filed within ten (10) days after service of the motion unless the Court shortens or extends the time.

154.10-4. *Motion for a Procedural Order*. The Court may act on a motion for a procedural order at any time without awaiting a response. A party adversely affected by the Court's action may file a motion to reconsider, vacate, or modify that action within five (5) days of receipt of notice of the decision.

154.10-5. *Motion for Voluntary Dismissal*. An appellant may dismiss an appeal by filing a motion to dismiss. If not yet docketed in the Court, then the motion shall be filed in the Trial Court or original hearing body. The dismissal of an appeal shall not affect the status of a cross-appeal or the right of a respondent to file a cross appeal.

154.10-6. *Form*. Motions shall be typed, legible and include the case caption. Every motion shall:

(a) Contain a caption heading, the name Judiciary- Court of Appeals, the title of the action, the docket number (if known) and a designation as to the purpose or type of motion.

(b) Contain the names of all parties to the action.

(c) Be organized in sections containing a clear designation, which shall include, but is not limited to:

(1) The facts, events or occurrences which make a specific motion for relief necessary;

(2) The specific relief requested by the moving party;

(3) The applicable law or laws to the motion at hand, including citations; and
(4) The legal reasons the relief should be granted.

(d) Be on 8 ½ by 11 inch paper. The text shall be double-spaced, but quotations more than two (2) lines may be indented and single-spaced. Headings and footings may be single-spaced. Margins must be at least one (1) inch on all four (4) sides. Page numbers may be placed in the margins, but no other text shall appear there.

(e) Be typed in a plain, roman style, although italics or boldface may be used for emphasis. Case names shall be italicized or underlined.

(f) Not exceed twenty (20) pages, unless the Court permits or directs otherwise.

154.11. Briefs

154.11-1. *Briefs Generally*. Briefs shall be used by the Court to aid the Court in its consideration of the issues presented.

(a) *Form*. The brief shall be 1.5 line spaced, typed, 1 inch margins, and on 8.5 x 11 inch paper, and shall be signed by the party or the party's attorney or advocate, if represented. The front cover of a brief shall contain:

(1) the number of the case centered at the top;
(2) the name of the court;
(3) the title of the case;
(4) the nature of the proceeding (e.g., Appeal, Petition for Review) and the name of the court below;
(5) the title of the brief, identifying the party or parties for whom the brief is filed; and
(6) the name, office address, and telephone number of the attorney or advocate representing the party for whom the brief is filed, if represented.

(b) *Length*. The brief shall be no more than twenty (20) pages, one (1) sided, in length, not including any addendums, appendices, attachments, or the tables of contents and authorities.

(c) *Filing*. When a party is represented by an attorney or advocate, only the attorney or advocate shall file briefs and pleadings. The individual shall not file on his or her own unless he or she is pro se. Three (3) copies of each brief shall be filed with the Clerk and one (1) copy to all parties to the appeal.

(d) *Time to Serve and File a Brief*. The Appellant shall serve on the Respondent and file with the Clerk a brief within twenty (20) days after ~~the Notice of Appeal is filed.~~acceptance of the Certification of the Record. The Respondent's brief shall be filed with the Clerk within twenty (20) days of receipt of the Appellant's brief. A reply brief, if necessary, shall be filed within fourteen (14) days of receipt of Respondent's brief. The Court may, on its own, order different time lines for any party's time to file a brief.

(e) *Consequence of Failure to File*. If an Appellant fails to file a brief within the time provided by this Rule, or within an extended time, a Respondent may move to dismiss the appeal. A Respondent who fails to file a brief shall not be heard at oral argument unless the Court grants permission.

154.11-2. *Appellant's Brief*. The Appellant's brief shall contain, under appropriate headings and in the order indicated:

(a) *Content*:

(1) a table of contents, with page references;

(2) a table of authorities-cases (alphabetically arranged), statutes, and other authorities-with references to the pages of the brief where they are cited;

(3) a jurisdictional statement, including:

(A) the basis for the Trial Court's or original hearing body's subject-matter jurisdiction;

(B) the basis for the Court of Appeals' jurisdiction;

(C) the filing dates establishing the timeliness of the appeal; and

(D) an assertion that the appeal is from a final order or judgment that disposes of all parties' claims, or information establishing the Court of Appeals' jurisdiction on some other basis;.

(4) a statement of the issues presented for review;

(5) a statement of the case briefly indicating the nature of the case, the course of proceedings, and the disposition below;

(6) a statement of facts relevant to the issues submitted for review with appropriate references to the record;

(7) a summary of the argument, which shall contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which shall not merely repeat the argument headings;

(8) the argument, which shall contain:

(A) Appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the Appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);

(9) a short conclusion stating the precise relief sought;

(10) a short appendix to include:

(A) relevant docket entries in the Trial Court or original hearing body;

(B) limited portions of the record essential to an understanding of the issues raised;

(C) the judgment, order, or decision in question; and

(D) other parts of the record to which the parties wish to direct the Court's attention; and

(11) where the record is required by law to be confidential, reference to individuals shall be by initials rather than by names.

154.11-3. *Respondent's Brief.* The Respondent's brief shall conform to the same requirements as 154.11-2 (Appellant's Brief).

(a) The Respondent's brief shall address each issue and argument presented by the Appellant's brief.

(b) The Respondent's brief may present additional issues, with the Respondent's positions and arguments on such issues.

154.11-4. *Reply Brief.* The Appellant may file a brief in reply to the Respondent's brief. Unless the Court permits, no further briefs may be filed. A reply brief shall conform to the requirements of 154.11-3 (Respondent's Brief), except that a reply brief shall be no more than fifteen (15) pages, one (1) sided, in length.

154.11-5. *Amicus Curiae Brief.* A person who is not a party to a case but has some interest in the outcome of the case may, upon timely motion and with permission of the Court, submit an

amicus curiae brief in support of a party to the action. The Court may, on its own motion, request amicus participation from appropriate individuals or organizations.

(a) Amicus curiae briefs shall conform to the requirements of 154.11-2 (Appellant's Brief), except as provided in the following:

(1) Amicus curiae shall file his or her brief no later than seven (7) days after the brief of the party being supported is filed. Amicus curiae that do not support either party shall file his or her brief no later than seven (7) days after the Appellant's or Respondent's brief is filed. The Court may grant leave for later filing, specifying the time within which an opposing party shall answer.

154.11-6. *Briefs in a Case Involving Multiple Appellants or Respondent.* In a case involving more than one (1) Appellant or Respondent, including consolidated cases, any number of Appellants or Respondents may join in a brief, and any party may adopt, by reference, a part of another's brief. Parties may also join in reply briefs.

154.12. Oral Argument

154.12-1. *Oral Arguments*. The Court may order oral argument when issues of fact or law remain unclear and/or the positions of the parties on an issue are unclear or otherwise not fully developed. The Court shall direct that an appeal be submitted on briefs only, if:

(a) The appeal is frivolous;

(b) The dispositive issue or issues have been authoritatively decided; or

(c) 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.

154.12-2. *Notice*. The Clerk shall provide notice, of at least ten (10) business days, to all parties when oral arguments are scheduled. The notice shall list the location of the oral argument and the time allowed for each side. The Court shall determine the amount of time for oral arguments. A motion to postpone the argument or to extend the argument timeframe shall be filed at least five (5) business days before the hearing date.

154.12-3. *Citation of Authorities at Oral Argument*. ~~Parties~~Unless permitted by the Court, parties may not cite or discuss a case at an oral argument unless the case has been cited in one (1) of the briefs.

154.13. Entry and Form of Judgment

154.13-1. *Entry*. A judgment is entered when it is noted on the docket. The Clerk shall prepare, sign, and enter the judgment after receiving the Court's opinion.

(a) The decision and opinion of the Court shall be by a majority vote.

(b) The Court may:

(1) Reverse, affirm, or modify the judgment or order as to any or all parties;

(2) Remand the matter to the Trial Court or original hearing body and order a new trial on any or all issues presented; the order remanding a case shall contain specific instructions for the Trial Court or original hearing body;

(3) If the appeal is from a part of a judgment or order, the Court may reverse, affirm or modify as to the part which is appealed;

(4) Direct the entry of an appropriate judgment or order; or

(5) Require such other action or further proceeding as may be appropriate to each individual action.

(c) On the date when judgment is entered, the Clerk shall serve all parties with a copy of the decision and opinion as entered.

154.13-2. *Form*. All decisions of the Court shall be in writing and accompanied by an opinion stating the legal issues and the basis for the decision. Decisions of the Court shall be issued no later than sixty (60) days after the conclusion of oral argument or after the expiration of time to file a *Reply Brief* or *Response Brief* if no oral argument is held.

(a) The time for issuing a decision and opinion may be extended provided all parties are notified of the extension in writing. The notice of extension shall include the cause for and length of such extension.

154.14. Interest of Judgments

154.14-1. Unless the law provides otherwise, if a money judgment in a civil case is affirmed, whatever interest is allowed by law is payable from the date when the Trial Court's or original hearing body's judgment was entered. If the Court modifies or reverses a judgment with a direction that a money judgment be entered in the Trial Court or by the original hearing body, the mandate shall contain instructions about the allowance of interest.

154.15. Penalties

154.15-1. *Frivolous Appeals*. If an appeal or cross-appeal is found by the Court to be frivolous, the Court may award to the successful party costs and attorney's or advocate's fees.

(a) Costs may be assessed against the Appellant or cross-Appellant, the (cross)-Appellant's attorney or advocate, or both the (cross)-Appellant and his/her attorney or advocate jointly.

(1) Court costs shall be based on actual cost or defined by the Court.

(b) A finding of a frivolous appeal or cross-appeal shall be made if one (1) or more of the following elements are found by the Court:

(1) The appeal or cross appeal was filed, used, or continued in bad faith, solely for purposes of delay, harassment or injuring the opposing party; or

(2) The party or party's attorney or advocate 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.

154.15-2. *Delay*. If the Court finds that an appeal or cross-appeal was taken for the purpose of delay, it may award one (1) or more of the following to the opposing party:

(a) Double costs;

(b) A penalty of additional interest not exceeding ten percent (10%) on the award amount affirmed;

(c) Damages caused by the delay; and/or

(d) Attorney's or advocate's fees.

154.15-3. *Non-Compliance with Rules*. Failure of a party to comply with a requirement of these Rules or an order of the Court, does not affect the jurisdiction of the Court over the appeal but may be grounds for one (1) or more of the following:

(a) Dismissal of the appeal;

(b) Summary reversal of the Trial Court or original hearing body;

(c) Striking of a paper, document or memorandum submitted by a party;

(d) Imposition of a penalty or costs on a party or party's attorney or advocate; and/or

(e) Other action as the Court considers appropriate.

154.16. Substitution of Parties

154.16-1. *Death of a Party.* Death of a party does not automatically end a party's right to appeal.

(a) *After Notice of Appeal Is Filed.* If a party dies after a notice of appeal has been filed or while a proceeding is pending in the Court, the decedent's personal representative may be substituted as a party on motion filed with the Clerk by the representative or by any party. A party's motion shall be served on the representative. If the Decedent has no representative, any party may suggest the death on the record, and the Court may then direct appropriate proceedings.

(b) *Before Notice of Appeal Is Filed-Potential Appellant.* If a party entitled to appeal dies before filing a notice of appeal, the decedent's personal representative, or if there is no personal representative, the decedent's attorney or advocate of record, may file a notice of appeal within the time prescribed by these Rules. After the notice of appeal is filed, substitution shall be in accordance with 154.16-1(a).

(c) *Before Notice of Appeal Is Filed-Potential Respondent.* If a party against whom an appeal may be taken dies after entry of a judgment or order in the Trial Court or original hearing body, but before a notice of appeal is filed, an Appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution shall be in accordance with 154.16-1(a).

154.16-2. *Substitution for a Reason Other Than Death.* If a party needs to be substituted for any reason other than death, the procedure set in 154.16-1(a) applies.

154.17. Costs

154.17-1. *Costs.* Costs in an appeal shall be as follows unless otherwise ordered by the Court:

(a) Against the appellant when the appeal is dismissed or the judgment or order affirmed;

(b) Against the respondent when the judgment or order is reversed.

154.17-2. *Allowable Costs.* Allowable costs shall include:

(a) Cost of printing and assembling the number of copies and briefs and appendices required by the Rules;

(b) Fees charged by the Court and/or Clerk;

(c) Cost of the preparation of the transcript of testimony of the record of appeal; and

(d) Other costs as ordered by the Court.

154.17-3. *Recovery of Costs.* A party seeking to recover costs in the Court shall file a statement ~~ofhte~~of the costs within fourteen (14) days of the filing of the decision of the Court. An opposing party may file, within eleven (11) days after service of the statement, a motion objection to the statement of costs.

End.

Adopted BC-04-25-14-B

Chapter 154
Rules of Appellate Procedure

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154.1. Purpose and Policy

154.1-1. *Purpose.* The purpose of this Law is to govern the procedure in all actions and proceedings in the divisions that make up the Court of Appeals within the Judiciary that fall under the jurisdiction of the Tribe.

154.1-2. *Policy.* It is the policy of the Tribe that these rules are to be liberally construed to ensure a speedy, fair, and inexpensive determination of every appeal.

154.2. Adoption, Amendment, Repeal

154.2-1. This Law was adopted by the Oneida Business Committee by resolution BC-04-25-14-B.

154.2-2. This Law may be amended or repealed pursuant to the procedures set out in the Oneida Legislative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council.

154.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Law which are considered to have legal force without the invalid portions.

154.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law shall control.

154.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

154.3. Definitions

154.3-1. This section shall govern the definitions of words and phrases used within this Law. All words not defined herein shall be used in their ordinary and everyday sense:

(a) "Advocate" shall mean an Oneida non-attorney advocate as provided by law or other advocate who is presented to the court as the representative or advisor to a party.

(b) "Agent" shall mean a person authorized to act on behalf of another.

(c) "Amicus Curiae" shall mean (literally, friend of the court) a person who is not a party to a case, nor solicited by any of the parties, who files a brief to assist the Court by furnishing information or advice regarding questions of law or fact.

(d) "Answer" shall mean a written response in opposition to a brief or petition.

(e) "Appeal" shall mean a review in the Court of Appeals by appeal or writ of error authorized by law of a judgment or order of the Trial Court or original hearing body.

(f) "Appellant" shall mean a person who files a notice of appeal.

(g) "Attorney" shall mean a person who is admitted to practice law.

(h) "Brief" shall mean a written legal document which aids in the Court's decision by reciting the facts of the case, the arguments being raised on appeal, and the applicable law.

(i) "Clerk" shall mean the Clerk of the Court of Appeals.
(j) "Court" shall mean the Court of Appeals of the Tribe.
(k) "Cross-Appeal" shall mean an appeal brought by the Respondent against the Appellant after the Appellant has already filed an appeal.
(l) "Days" shall mean calendar days, unless otherwise specifically stated.
(m) "Docketed" shall mean an appeal that has been filed and assigned a docket number.
(n) "Electronic" shall mean an electronic communication system, including, but is not limited to E-mail, used for filing papers with the Court or serving papers on any other party.
(o) "Initial Review" shall mean review of the Notice of Appeal to determine if the case is acceptable for appellate review.
(p) "Interlocutory" shall mean an order or appeal that occurs before the Trial Court or original hearing body issues a final ruling on a case.
(q) "Joinder" shall mean the joining together of several claims or several parties all in one (1) hearing, provided that the legal issues and the factual situation are the same for all Appellants and Respondents.
(r) "Judiciary" shall mean the Oneida Tribal Judicial System.
(s) "Original hearing body" shall mean the administrative agency decision-making panel which heard a contested case under the Administrative Procedures Act (or similar law) and from which appeal is permitted by law.
(t) "Petitioner" shall mean a person filing a petition.
(u) "Pro se" shall mean advocating on one's own behalf before the Court, rather than being represented by an attorney or advocate.
(v) "Record" shall mean all materials identified in 154.8-4(a) of these Rules.
(w) "Reply Brief" shall mean a brief of a party to a legal action in answer to points of law raised in an opponent's brief but not in his or her own.
(x) "Respondent" shall mean a person adverse to the Appellant.
(y) "Rules" shall mean these Rules of Appellate Procedure.
(z) "Stay" shall mean a suspension of a case or a suspension of a particular proceeding, including orders, within a case that prevents enforcement pending appeal or other circumstances.
(aa) "Trial Court" shall mean the Trial Court of the Tribe.
(bb) "Tribal" or "Tribe" shall mean the Oneida Tribe of Indians of Wisconsin.
(cc) "Tribal law" shall mean a code, act, statute, rule, regulation, policy or ordinance enacted by the Oneida General Tribal Council or the Oneida Business Committee.

154.4. General Provisions

154.4-1. These Rules may be used in conjunction with the Rules of Civil Procedure. Matters and proceedings not specifically set forth herein shall be handled in accordance with reasonable justice, as determined by the Court. Where these Rules fail to address an issue, the Federal Rules of Appellate Procedure may be used as a guide, so long as those rules are not inconsistent with existing Oneida Rules of Procedure, Tribal laws, or the customs of the Tribe.

154.4-2. On its own or by a party's motion; the Court may, to expedite its decision or for other good cause, suspend any provision of these Rules in a particular case and order proceedings as it directs.

154.4-3. The Chief Judge of the Court shall, when hearing a case, have the authority to compel the production of documents where such is deemed necessary to rendition of the Court's opinion.

There shall not be a new trial in the Court. The Court may review both the factual findings and conclusions of law of the Trial Court or original hearing body.

154.5. Initiating the Appeal

154.5-1. *Right of Appeal*. Any party to a civil action, who is aggrieved by a final judgment or order of the Trial Court or original hearing body, may appeal to the Court of Appeals.

(a) In any case brought on appeal, the Appellant may petition the Court for an order staying the judgment or order. A stay shall be granted in all cases in which it is requested unless plain and obvious injustice would result from granting the stay. The Court may render a stay conditioned upon execution of a bond to guarantee performance of the judgment or order when deemed necessary.

(b) In the event the appeal or request for stay is denied, the Court shall state the reasons for the refusal within thirty (30) days of the receipt of the Notice of Appeal.

154.5-2. *Notice of Appeal*. Any party who is appealing shall appeal in the manner prescribed by this Rule.

(a) Such party shall file with the Clerk a Notice of Appeal from such judgment or order, together with a filing fee, as set by the Court, within thirty (30) days after the day such judgment or order was rendered. A Notice of Appeal shall not be filed by electronic means.

(b) Within ten (10) days of the filing of the Notice of Appeal or the Perfected Notice of Appeal as provided under 154.5-3, three (3) Appellate Judges shall be assigned to perform an Initial Review of the Notice of Appeal.

(1) *Waiver of Fee*. The Chief Judge of the Court may waive the filing fee upon motion for a fee waiver by the Appellant where the Chief Judge of the Court is satisfied the Appellant lacks the means to pay the filing fee. The motion shall include an affidavit demonstrating inability to pay and shall accompany the Notice of Appeal.

(c) In addition to the Notice of Appeal and filing fee, the following information shall be provided upon the filing of the notice:

(1) A copy of the written decision of the Trial Court or original hearing body;

(2) A short statement explaining what relief is sought by the Appellant;

(3) A short statement explaining the legal grounds for seeking the appeal and justification for the relief requested;

(4) Name, address and phone numbers of all parties, including respondent; and

(5) Name, address and phone numbers of all party attorneys or advocates, if known.

(d) A cash deposit or bond in an amount equal to the amount of any judgment, plus costs assessed by the Trial Court or original hearing body, or a motion for waiver of this requirement, shall accompany the Notice of Appeal. The deposit/bond requirement may be waived only when, in the judgment of the Court, such deposit/bond is not in the interest of justice and such waiver does not unnecessarily harm the judgment holder. The motion for waiver of the deposit/bond requirement shall be requested with notice to all parties. If the motion for waiver is denied, the deposit/bond shall be submitted within ten (10) days of the denial. The appeal shall be dismissed if the deposit/bond is not paid or waived.

(1) *Exception*. The Tribe, or an officer or agency of the Tribe shall be exempt from the requirement of providing any cash deposit or bond. The exemption under this section shall be automatic and shall not require a motion or waiver.

(e) An appeal shall not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

154.5-3. *Perfection of Notice*. If the appellant fails to provide a completed Notice of Appeal Form, the filing fee or waiver form, or any required documents or materials, the Appellant shall be notified of any filing deficiencies by the Clerk within five (5) business days and shall have five (5) business days from receipt of this notice to perfect the filing. Failure to perfect the filing within five (5) business days may result in the non-acceptance of the appeal.

154.6. Appeal by Permission

154.6-1. *Appeal by Permission*. An appeal from an interlocutory order may be sought by filing a Petition for Permission to Appeal with the Clerk within ten (10) business days after the entry of such order with proof of service on all other parties to the action. Within ten (10) business days after service of the petition, an adverse party may file an Answer in opposition. A decision shall be issued in a reasonable time, but no longer than thirty (30) days from the first deliberation unless good cause to extend the deadline is found by the Court. This extension shall be in writing. The petition shall contain:

(a) a statement of the facts necessary to develop an understanding of the question of law determined by the order of the Trial Court or original hearing body; and

(b) a statement of the question itself; and

(c) a statement of the reasons why substantial basis exists for a difference of opinion on the question; and

(d) the relief sought; and

(e) why an immediate appeal may:

(1) materially advance the termination of the litigation;

(2) protect the petitioner from substantial or irreparable injury; or

(3) clarify an issue of general importance in the administration of justice; and

(f) The petition shall include or have a copy of the order of the Trial Court or original hearing body attached thereto.

154.7. Joint, Consolidated and Cross Appeals

154.7-1. *Joint or Consolidated Appeals.* When two (2) or more parties are entitled to appeal from a Trial Court or original hearing body judgment or order, and their interests make joinder practicable, the parties may file a joint notice of appeal. The parties may then proceed on appeal as a single Appellant.

(a) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the Court.

(b) 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, the person shall proceed as Appellant and co-Appellant, with each co-Appellant to have the same procedural rights and obligations as the Appellant. The Appellant shall be the person who filed first.

154.7-2. *Cross Appeal.* A Respondent who seeks modification of the judgment or order appealed from or of another judgment or order entered in the same action or proceeding shall file a notice of cross-appeal within the time established for the filing of a notice of appeal or ten (10) business days after the receipt of the notice of appeal, whichever is later. The Respondent shall be listed as the cross-Appellant. A cross-Appellant has the same rights and obligations as an Appellant under these Rules.

154.8. Service, Filing and Certification

154.8-1. A paper required or permitted to be filed in the Court shall be filed with the Clerk. The filing party shall supply the Clerk with the original papers and three (3) copies. The filing party shall also provide one (1) copy of the papers for each opposing party or party's attorney or advocate. Filing shall be complete by the close of business on the day which the filing is due. The following methods of filing shall be used, in order of preference:

(a) *In Person*: A party to a pending case, or the party's attorney, advocate or authorized Agent may file papers in person before the Clerk.

(b) *Electronic:* A party to a pending case may file papers electronically to the electronic address, designated for such filings, of the Clerk. A paper filed by electronic means shall constitute a written paper for the purpose of applying these Rules. Upon receipt by the Clerk, any paper filed electronically shall be deemed filed, signed and verified by the filing party.

(c) *By Mail*: A party to a pending case may file papers by U.S. or private mail with the ability to track the delivery, with cover documents to be addressed to the Clerk. Filing shall not be completed upon mailing, but only upon receipt.

(1) Filing of papers is also permitted through the Tribal certified interoffice mail system.

154.8-2. *Proof of Service*. Upon demand by a party or the Appellate Clerk, a party filing documents shall provide one (1) of the following:

(a) Proof of delivery of the filing in question;

(b) an acknowledgment of service by the person served; or

(c) proof of service consisting of a statement by the person who made service certifying:

(1) the date and manner of service;

(2) the names of the persons served;

(3) the mail or electronic addresses, facsimile numbers of the persons served, or the addresses of the places of delivery, as appropriate for the manner of service; and

(4) if served electronically, a writing by the person being served consenting to service by electronic means.

154.8-3. *Service of All Papers Required.* A party shall, at or before the time of filing a paper, serve a copy on all other parties to the appeal. Any party may be served by electronic means, if such party consents in writing to service by electronic means. Service on a party represented by an attorney or advocate shall be made on the party's attorney or advocate.

154.8-4. *Certification of the Record.* Upon acceptance of the Appeal, the Clerk shall, notify the Trial Court clerk or original hearing body that an appeal has been filed and request, the Trial Court clerk or original hearing body to prepare, and file with the Appellate Court all papers comprising the record of the case appealed within thirty (30) days. Upon Certification of the Record by the Clerk it shall be served on all parties as provided for in 154.8-3. The time for filing and certifying the record may be extended for good cause by the Chief Judge of the Court upon a written request from the Trial Court clerk or original hearing body.

(a) The record of the case shall consist of all papers filed with the Trial Court or original hearing body, exhibits, a transcript or audio recording of the proceedings, and the final decision of the Trial Court or original hearing body.

154.9. Time Computation

154.9-1. *Deadline Computation*. Time lines are determined by designating the day after notice is received as day one. Computation involving calendar days shall include intermediate Tribally

observed holidays and weekend days, provided that if the last day of the period falls on a Saturday, Sunday or Tribally observed holiday, then the next business day shall be the due date. Computation involving business days shall not include intermediate weekend days or Tribally observed holidays. All papers due to be filed with the Clerk are due prior to the close of business on the last day of the time period.

(a) If notice is mailed, then three (3) days shall be added to the time line in order to determine the due date.

154.9-2. *Extension of Time*. For good cause, the Court may extend the time prescribed by these Rules or by its order to perform any act, or may permit an act to be done after that time expires. But the Court shall not extend the time to file:

(a) a notice of appeal; or

(b) a petition for permission to appeal.

154.9-3. *Time to Complete*. Unless time is extended by the Court with the knowledge of the parties, the time from the filing of the Notice of Appeal to the completion and entry of the final written decision shall not exceed one hundred and eighty (180) days.

154.10. Motions

154.10-1. *Application for Relief.* An application for an order or other relief in a docketed case shall be made by motion unless these Rules prescribe another form. A motion shall be in writing unless the Court permits otherwise. The moving party shall file all motions with the Clerk and serve opposing parties as provided in 154.8.

154.10-2. *Contents of a Motion.* A motion shall state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

(a) Any affidavit or other paper necessary to support a motion shall be served and filed with the motion. An affidavit shall contain only factual information, not legal argument. A motion seeking substantive relief shall include a copy of the Trial Court's or original hearing body's opinion as a separate exhibit.

154.10-3. *Response to a Motion.* Any party may file a response to a motion, in accordance with 154.11-2. The response shall be filed within ten (10) days after service of the motion unless the Court shortens or extends the time.

154.10-4. *Motion for a Procedural Order*. The Court may act on a motion for a procedural order at any time without awaiting a response. A party adversely affected by the Court's action may file a motion to reconsider, vacate, or modify that action within five (5) days of receipt of notice of the decision.

154.10-5. *Motion for Voluntary Dismissal.* An appellant may dismiss an appeal by filing a motion to dismiss. If not yet docketed in the Court, then the motion shall be filed in the Trial Court or original hearing body. The dismissal of an appeal shall not affect the status of a cross-appeal or the right of a respondent to file a cross appeal.

154.10-6. *Form.* Motions shall be typed, legible and include the case caption. Every motion shall:

(a) Contain a caption heading, the name Judiciary- Court of Appeals, the title of the action, the docket number (if known) and a designation as to the purpose or type of motion.

(b) Contain the names of all parties to the action.

(c) Be organized in sections containing a clear designation, which shall include, but is not limited to:

(1) The facts, events or occurrences which make a specific motion for relief necessary;

(2) The specific relief requested by the moving party;
(3) The applicable law or laws to the motion at hand, including citations; and
(4) The legal reasons the relief should be granted.

(d) Be on 8 ½ by 11 inch paper. The text shall be double-spaced, but quotations more than two (2) lines may be indented and single-spaced. Headings and footings may be single-spaced. Margins must be at least one (1) inch on all four (4) sides. Page numbers may be placed in the margins, but no other text shall appear there.

(e) Be typed in a plain, roman style, although italics or boldface may be used for emphasis. Case names shall be italicized or underlined.

(f) Not exceed twenty (20) pages, unless the Court permits or directs otherwise.

154.11. Briefs

154.11-1. *Briefs Generally*. Briefs shall be used by the Court to aid the Court in its consideration of the issues presented.

(a) *Form*. The brief shall be 1.5 line spaced, typed, 1 inch margins, and on 8.5 x 11 inch paper, and shall be signed by the party or the party's attorney or advocate, if represented. The front cover of a brief shall contain:

(1) the number of the case centered at the top;
(2) the name of the court;
(3) the title of the case;
(4) the nature of the proceeding (e.g., Appeal, Petition for Review) and the name of the court below;
(5) the title of the brief, identifying the party or parties for whom the brief is filed; and
(6) the name, office address, and telephone number of the attorney or advocate representing the party for whom the brief is filed, if represented.

(b) *Length*. The brief shall be no more than twenty (20) pages, one (1) sided, in length, not including any addendums, appendices, attachments, or the tables of contents and authorities.

(c) *Filing*. When a party is represented by an attorney or advocate, only the attorney or advocate shall file briefs and pleadings. The individual shall not file on his or her own unless he or she is pro se. Three (3) copies of each brief shall be filed with the Clerk and one (1) copy to all parties to the appeal.

(d) *Time to Serve and File a Brief*. The Appellant shall serve on the Respondent and file with the Clerk a brief within twenty (20) days after acceptance of the Certification of the Record. The Respondent's brief shall be filed with the Clerk within twenty (20) days of receipt of the Appellant's brief. A reply brief, if necessary, shall be filed within fourteen (14) days of receipt of Respondent's brief. The Court may, on its own, order different time lines for any party's time to file a brief.

(e) *Consequence of Failure to File*. If an Appellant fails to file a brief within the time provided by this Rule, or within an extended time, a Respondent may move to dismiss the appeal. A Respondent who fails to file a brief shall not be heard at oral argument unless the Court grants permission.

154.11-2. *Appellant's Brief*. The Appellant's brief shall contain, under appropriate headings and in the order indicated:

(a) *Content*:

(1) a table of contents, with page references;

(2) a table of authorities-cases (alphabetically arranged), statutes, and other authorities-with references to the pages of the brief where they are cited;

(3) a jurisdictional statement, including:

(A) the basis for the Trial Court's or original hearing body's subject-matter jurisdiction;

(B) the basis for the Court of Appeals' jurisdiction;

(C) the filing dates establishing the timeliness of the appeal; and

(D) an assertion that the appeal is from a final order or judgment that disposes of all parties' claims, or information establishing the Court of Appeals' jurisdiction on some other basis.

(4) a statement of the issues presented for review;

(5) a statement of the case briefly indicating the nature of the case, the course of proceedings, and the disposition below;

(6) a statement of facts relevant to the issues submitted for review with appropriate references to the record;

(7) a summary of the argument, which shall contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which shall not merely repeat the argument headings;

(8) the argument, which shall contain:

(A) Appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the Appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);

(9) a short conclusion stating the precise relief sought;

(10) a short appendix to include:

(A) relevant docket entries in the Trial Court or original hearing body;

(B) limited portions of the record essential to an understanding of the issues raised;

(C) the judgment, order, or decision in question; and

(D) other parts of the record to which the parties wish to direct the Court's attention; and

(11) where the record is required by law to be confidential, reference to individuals shall be by initials rather than by names.

154.11-3. *Respondent's Brief.* The Respondent's brief shall conform to the same requirements as 154.11-2 (Appellant's Brief).

(a) The Respondent's brief shall address each issue and argument presented by the Appellant's brief.

(b) The Respondent's brief may present additional issues, with the Respondent's positions and arguments on such issues.

154.11-4. *Reply Brief.* The Appellant may file a brief in reply to the Respondent's brief. Unless the Court permits, no further briefs may be filed. A reply brief shall conform to the requirements of 154.11-3 (Respondent's Brief), except that a reply brief shall be no more than fifteen (15) pages, one (1) sided, in length.

154.11-5. *Amicus Curiae Brief.* A person who is not a party to a case but has some interest in the outcome of the case may, upon timely motion and with permission of the Court, submit an amicus curiae brief in support of a party to the action. The Court may, on its own motion, request amicus participation from appropriate individuals or organizations.

(a) Amicus curiae briefs shall conform to the requirements of 154.11-2 (Appellant's Brief), except as provided in the following:

(1) Amicus curiae shall file his or her brief no later than seven (7) days after the brief of the party being supported is filed. Amicus curiae that do not support either party shall file his or her brief no later than seven (7) days after the Appellant's or Respondent's brief is filed. The Court may grant leave for later filing, specifying the time within which an opposing party shall answer.

154.11-6. *Briefs in a Case Involving Multiple Appellants or Respondent.* In a case involving more than one (1) Appellant or Respondent, including consolidated cases, any number of Appellants or Respondents may join in a brief, and any party may adopt, by reference, a part of another's brief. Parties may also join in reply briefs.

154.12. Oral Argument

154.12-1. *Oral Arguments*. The Court may order oral argument when issues of fact or law remain unclear and/or the positions of the parties on an issue are unclear or otherwise not fully developed. The Court shall direct that an appeal be submitted on briefs only, if:

(a) The appeal is frivolous;

(b) The dispositive issue or issues have been authoritatively decided; or

(c) 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.

154.12-2. *Notice*. The Clerk shall provide notice, of at least ten (10) business days, to all parties when oral arguments are scheduled. The notice shall list the location of the oral argument and the time allowed for each side. The Court shall determine the amount of time for oral arguments. A motion to postpone the argument or to extend the argument timeframe shall be filed at least five (5) business days before the hearing date.

154.12-3. *Citation of Authorities at Oral Argument*. Unless permitted by the Court, parties may not cite or discuss a case at an oral argument unless the case has been cited in one (1) of the briefs.

154.13. Entry and Form of Judgment

154.13-1. *Entry*. A judgment is entered when it is noted on the docket. The Clerk shall prepare, sign, and enter the judgment after receiving the Court's opinion.

(a) The decision and opinion of the Court shall be by a majority vote.

(b) The Court may:

(1) Reverse, affirm, or modify the judgment or order as to any or all parties;

(2) Remand the matter to the Trial Court or original hearing body and order a new trial on any or all issues presented; the order remanding a case shall contain specific instructions for the Trial Court or original hearing body;

(3) If the appeal is from a part of a judgment or order, the Court may reverse, affirm or modify as to the part which is appealed;

(4) Direct the entry of an appropriate judgment or order; or

(5) Require such other action or further proceeding as may be appropriate to each individual action.

(c) On the date when judgment is entered, the Clerk shall serve all parties with a copy of the decision and opinion as entered.

154.13-2. *Form*. All decisions of the Court shall be in writing and accompanied by an opinion stating the legal issues and the basis for the decision. Decisions of the Court shall be issued no

later than sixty (60) days after the conclusion of oral argument or after the expiration of time to file a *Reply Brief* or *Response Brief* if no oral argument is held.

(a) The time for issuing a decision and opinion may be extended provided all parties are notified of the extension in writing. The notice of extension shall include the cause for and length of such extension.

154.14. Interest of Judgments

154.14-1. Unless the law provides otherwise, if a money judgment in a civil case is affirmed, whatever interest is allowed by law is payable from the date when the Trial Court's or original hearing body's judgment was entered. If the Court modifies or reverses a judgment with a direction that a money judgment be entered in the Trial Court or by the original hearing body, the mandate shall contain instructions about the allowance of interest.

154.15. Penalties

154.15-1. *Frivolous Appeals*. If an appeal or cross-appeal is found by the Court to be frivolous, the Court may award to the successful party costs and attorney's or advocate's fees.

(a) Costs may be assessed against the Appellant or cross-Appellant, the (cross)-Appellant's attorney or advocate, or both the (cross)-Appellant and his/her attorney or advocate jointly.

(1) Court costs shall be based on actual cost or defined by the Court.

(b) A finding of a frivolous appeal or cross-appeal shall be made if one (1) or more of the following elements are found by the Court:

(1) The appeal or cross appeal was filed, used, or continued in bad faith, solely for purposes of delay, harassment or injuring the opposing party; or

(2) The party or party's attorney or advocate 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.

154.15-2. *Delay*. If the Court finds that an appeal or cross-appeal was taken for the purpose of delay, it may award one (1) or more of the following to the opposing party:

(a) Double costs;

(b) A penalty of additional interest not exceeding ten percent (10%) on the award amount affirmed;

(c) Damages caused by the delay; and/or

(d) Attorney's or advocate's fees.

154.15-3. *Non-Compliance with Rules*. Failure of a party to comply with a requirement of these Rules or an order of the Court, does not affect the jurisdiction of the Court over the appeal but may be grounds for one (1) or more of the following:

(a) Dismissal of the appeal;

(b) Summary reversal of the Trial Court or original hearing body;

(c) Striking of a paper, document or memorandum submitted by a party;

(d) Imposition of a penalty or costs on a party or party's attorney or advocate; and/or

(e) Other action as the Court considers appropriate.

154.16. Substitution of Parties

154.16-1. *Death of a Party*. Death of a party does not automatically end a party's right to appeal.

(a) *After Notice of Appeal Is Filed*. If a party dies after a notice of appeal has been filed or while a proceeding is pending in the Court, the decedent's personal representative may be substituted as a party on motion filed with the Clerk by the representative or by any party. A party's motion shall be served on the representative. If the Decedent has no representative, any party may suggest the death on the record, and the Court may then direct appropriate proceedings.

(b) *Before Notice of Appeal Is Filed-Potential Appellant*. If a party entitled to appeal dies before filing a notice of appeal, the decedent's personal representative, or if there is no personal representative, the decedent's attorney or advocate of record, may file a notice of appeal within the time prescribed by these Rules. After the notice of appeal is filed, substitution shall be in accordance with 154.16-1(a).

(c) *Before Notice of Appeal Is Filed-Potential Respondent*. If a party against whom an appeal may be taken dies after entry of a judgment or order in the Trial Court or original hearing body, but before a notice of appeal is filed, an Appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution shall be in accordance with 154.16-1(a).

154.16-2. *Substitution for a Reason Other Than Death.* If a party needs to be substituted for any reason other than death, the procedure set in 154.16-1(a) applies.

154.17. Costs

154.17-1. *Costs.* Costs in an appeal shall be as follows unless otherwise ordered by the Court:

(a) Against the appellant when the appeal is dismissed or the judgment or order affirmed;

(b) Against the respondent when the judgment or order is reversed.

154.17-2. *Allowable Costs.* Allowable costs shall include:

(a) Cost of printing and assembling the number of copies and briefs and appendices required by the Rules;

(b) Fees charged by the Court and/or Clerk;

(c) Cost of the preparation of the transcript of testimony of the record of appeal; and

(d) Other costs as ordered by the Court.

154.17-3. *Recovery of Costs.* A party seeking to recover costs in the Court shall file a statement of the costs within fourteen (14) days of the filing of the decision of the Court. An opposing party may file, within eleven (11) days after service of the statement, a motion objection to the statement of costs.

End.

Adopted BC-04-25-14-B