

Title 16

Appellate Process

Chapters:

16.01	Scope of Appellate Rules
16.02	Composition of the Court
16.03	Scope of Review
16.04	Commencing an Appeal
16.05	Acceptance of Review
16.06	Relief Pending Review
16.07	The Review Process
16.08	Decision of the Court of Appeals
16.09	Supplemental Provisions
16.10	Codification

Chapter 16.01

Scope of Appellate Rules

Sections:

16.01.01 Scope

Section 16.01.01 Scope

This title shall govern appeals from decisions of the Jamestown S'Klallam Tribal Court (the Court) in civil and criminal cases, and appeals from other Tribal proceedings specifically providing for appeal under this Title.

Chapter 16.02

Composition of the Court

Sections:

16.02.01 Three Judge Panel

16.02.02 Conflict of Interest

Section 16.02.01 Three Judge Panel

A panel of three (3) judges shall be selected by the Tribal Council to sit as the Court of Appeals when necessary for the dispatch of appeals. The Tribal Council shall select judges which meet the eligibility requirements under this Code.

Section 16.02.02 Conflict of Interest

No person shall be qualified to sit on a panel of the Court of Appeals in any case in which they have a direct interest in the outcome of the case, or wherein any relative by marriage or blood, in the first or second degree is a party. The trial judge who heard the case appealed from shall not sit on the appellate panel.

Chapter 16.03

Scope of Review

Sections:

16.03.01 Appeal as a Matter of Right - Final Dispositions

16.03.02 Appeal by Permission - Rulings Not Yet Final

16.03.03 Basis for Appellate Court Decision

16.03.04 Issues of Law and Fact

Section 16.03.01 Appeal as a Matter of Right - Final Dispositions

Any aggrieved party may seek review of a final order, commitment or judgment of the Court by filing a Notice of Appeal in the Court of Appeals. The Tribe shall not be deemed an aggrieved party under this section as to final judgments of acquittal of a criminal defendant.

Section 16.03.02 Appeal by Permission - Rulings Not Yet Final

An aggrieved party may seek appellate review of acts of the Tribal Court which are not final by filing a notice for permission to appeal in the Court of Appeals. Permission may be granted only if:

- A. The Tribal Court has committed an obvious error which would render further proceedings useless;
- B. The Tribal Court has committed probable error and the decision substantially alters the status quo or substantially limits the freedom of a party to act; or
- C. The Tribal Court has departed so far from the usual and accepted course of judicial proceedings as to call for review by the Court of Appeals.

A Notice for Permission to Appeal must be filed without delay after the Tribal Court allegedly commits one or more of the above acts.

Section 16.03.03 Basis for Appellate Court Decision

The Court of Appeals shall review the record of proceedings from the Tribal Court, appellate brief and oral argument in rendering its decision.

Section 16.03.04 Issues of Law and Fact

The Court of Appeals shall limit its review to issues of law except that the Court of Appeals may review findings of fact in cases tried before a judge sitting without a jury and shall set aside such findings of fact if they are clearly erroneous.

Chapter 16.04

Commencing an Appeal

Sections:

- 16.04.01 Notice of Appeal**
- 16.04.02 Filing Fee**
- 16.04.03 Service of Notice**
- 16.04.04 Content of Notices**
- 16.04.05 Affidavit of Service**

Section 16.04.01 Notice of Appeal

A written notice of appeal must be filed with the Tribal Court and the Court of Appeals Court Clerk within twenty (20) days after the entry of the decision of the Tribal Court which the party filing notice wants reviewed. The notice may be in the form provided by the Court Clerk.

Section 16.04.02 Filing Fee

A filing fee of twenty-five dollars (\$25.00) must accompany any notice of appeal. The filing fee may be waived by the Court of Appeals upon written request of the party for good cause shown.

Section 16.04.03 Service of Notice

Within the time prescribed for filing a notice of appeal, the party filing shall cause a copy of the notice to be served on all parties, or their spokesperson or attorney, and return an affidavit of service to the Court of Appeals.

Section 16.04.04 Content of Notices

The notice of appeal or notice for permission to appeal shall be titled as such and shall:

- A. Specify the party seeking review;
- B. State the case reference number, date of the final decision when applicable, and the grounds for appeal;
- C. Designate those parts of the decision or ruling made by the Tribal Court which the party wants reviewed;
- D. Name the appellate court to which the review is taken; and
- E. Include the names and addresses of all parties and their spokespersons, if any.

Section 16.04.05 Affidavit of Service

An affidavit of service shall contain:

- A. The date of service, the name of the person served, a statement of how service was made, whether personal or by mail;
- B. If service was by mail, the address the document was mailed to and a copy of any receipt; and
- C. The signature of the person who made service.

Chapter 16.05

Acceptance of Review

Sections:

16.05.01 Acceptance of Review - Appeal as a Matter of Right

16.05.02 Acceptance of Review - Appeal by Permission

16.05.03 Scheduling the Appeal Hearing

Section 16.05.01 Acceptance of Review - Appeal as a Matter of Right

The Court of Appeals accepts review of an appeal as a matter of right when a timely notice of appeal is filed.

Section 16.05.02 Acceptance of Review - Appeal by Permission

The Court of Appeals accepts review of an appeal by permission upon granting a motion for permission to appeal. A party seeking permission to appeal must file a motion and accompanying order in the Court of Appeals within ten (10) days of filing a notice for permission to appeal. The Court of Appeals may hold a hearing on the motion and shall give written notice of its decision to the parties and the Tribal Court. Denial of a motion for appeal by permission shall not affect a party's right to appeal final dispositions under section 16.03.01 in this chapter.

Section 16.05.03 Scheduling the Appeal Hearing

The Court of Appeals shall schedule a hearing for oral argument to take place within thirty (30) days of the date the last brief allowed by the Court is filed. The Court Clerk shall have notice of the hearing served on all parties.

Chapter 16.06

Relief Pending Review

Sections:

16.06.01 Stay of the Tribal Court Judgment

16.06.02 Stay of Judgment or Order - Appeal Bond

16.06.03 Release in Criminal Cases

Section 16.06.01 Stay of the Tribal Court Judgment

Petition may be made for an order to stay the judgment or order rendered by the Tribal Court, pending appeal. The petition shall be made first to the Tribal Court at the time of filing a notice of appeal or notice for permission to appeal. If the Tribal Court denies the petition it may be filed with the Court of Appeals. Stays shall be liberally granted. Injunctions shall be obeyed unless suspended by the Tribal Court for good cause shown.

Section 16.06.02 Stay of Judgment or Order - Appeal Bond

A stay may, in the Court's discretion, be conditioned on filing cash or a bond in an amount set by the deciding court. The amount shall be sufficient to guarantee performance of the judgment or order plus interests and costs of appeal if the judgment or order is affirmed. The bond may include an amount that will compensate the other party for any damages which may occur as a result of the stay of judgment or order. Any surety on a bond must be approved by the deciding court.

Section 16.06.03 Release in Criminal Cases

Petition for release following a judgment of conviction shall be filed in the Tribal Court. If the petition is denied, a petition may be filed in the Court of Appeals. The petition shall be considered promptly upon such papers and affidavits as the parties present and after reasonable notice to all parties. The burden of establishing that the defendant will not flee or pose a danger, or that a pending appeal is not frivolous or a delaying tactic, rests with the defendant.

Release after conviction may be contingent upon the posting of bail or bond pursuant to the provisions of this Code.

Chapter 16.07

The Review Process

Sections:

16.07.01	Motions
16.07.02	Appeal Conference, Notice
16.07.03	Appeal Conference, Agreed Orders
16.07.04	The Record on Appeal - Contents and Filing
16.07.05	Cost of Preparing the Record
16.07.06	Statement of Proceedings Absent Transcript
16.07.07	Filing of Briefs
16.07.08	Content of Appellant's Brief
16.07.09	Respondent's Brief
16.07.10	Amicus Curiae Brief
16.07.11	Oral Argument

Section 16.07.01 Motions

An application for an order or other relief shall be made in a motion to the Court of Appeals with proof of service on all other parties. All motions shall include:

- A. A statement of the relief sought;
- B. A statement of the grounds for the relief sought; and
- C. Supporting argument.

All motions shall be accompanied by an appropriate order prepared by the moving party.

Any party may file a response in opposition to a motion within fourteen (14) days after service of the motion. The Court may shorten or extend the time allowed for responding to a motion. No motion shall be accepted for filing unless accompanied by proof of service on opposing parties.

Section 16.07.02 Appeal Conference, Notice

The Chief Judge of the Court of Appeals will decide if an appeal conference is appropriate in each appeal, criminal and civil. The Court Clerk will notify each party if an appeal conference is to be held. The notice shall specify the date, time and place of the conference, whether the parties are required to attend as well as their counsel, and the name of the person designated by the Chief Judge of the Court of Appeals to preside at the appeal conference.

The sections of this Title providing for appeal conferences are intended to provide a less formal setting for dispute resolution, limit the issues to be briefed, and allow parties representing themselves to meet with a judge and ask questions about the appellate process.

Section 16.07.03 Appeal Conference, Agreed Orders

Parties must be prepared to consider settlement (in the case of civil appeals), limitation of the issues to be presented for review, and other matters which may promote the prompt and fair disposition of the appeal. If agreement to all or some of these matters is reached, the judge conducting the conference shall enter an order consistent with the agreement which shall be binding on the parties during the review process.

Section 16.07.04 The Record on Appeal - Contents and Filing

Within twenty (20) days after a notice of appeal is filed or after acceptance of review, the party making the appeal shall obtain a copy of the trial record from the Court Clerk and shall file it with the Court of Appeals. The record shall contain the original papers and exhibits filed in the Tribal Court, a written transcript of the proceedings, if any, three (3) copies of the tape recording of the proceedings and a copy of the docket entries prepared by the Court Clerk.

Section 16.07.05 Cost of Preparing the Record

The party making the appeal shall pay the costs incurred by the Tribal Court in preparing and transmitting the record. The Clerk of Court shall submit a bill of costs to the party making the appeal payment. The costs of preparing and transmitting the record may be waived by the Tribal Court upon a showing of indigence or other reason indicating substantial injustice.

Section 16.07.06 Statement of Proceedings Absent Transcript

If a record of the proceedings is not available, the party seeking review may prepare a statement of the proceedings using the best available means, including their recollections. The statement shall be served on the respondent who may file objections or amendments within ten (10) days after service. Settlement and approval of the statement shall be made by the Tribal Court.

Section 16.07.07 Filing of Briefs

Within thirty (30) days of filing a notice of appeal or acceptance of review by permission, the party making the appeal shall file with the Court of Appeals a written brief, memorandum or statement in support of their appeal and serve a copy on all parties. The Court of Appeals may allow a longer time for filing briefs, in its discretion. The respondent shall have thirty (30) days after service of appellant's brief in which to file a reply brief, memorandum or statement, and serve a copy on each party. A response or reply brief shall only be allowed a party by permission of the Court. All briefs shall be accompanied by an affidavit of service on opposing parties.

Section 16.07.08 Content of Appellant's Brief

The brief of the party making the appeal should be typed and organized as follows:

- A. Cover page. The front cover page shall state the name of the court and the number of the case, the title of the document (e.g. Brief for Appellant) and the names and addresses of counsel, if any, and the name and address of the appellant;
- B. Tables. A table of contents, with page references, and a table of cases cited in the brief, a list of other authorities relied upon with references to the pages of the brief where used;
- C. Assignments of Error. A separate concise statement of each error a party contends was made by the Trial Court, together with the issues pertaining to the assignments of error;
- D. Statement of the Case. A fair statement of the facts and procedure of the trial which are relevant to the issues presented for review, without argument;
- E. Argument. The argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record; and
- F. Conclusions. A short conclusion precisely stating the relief sought;

Section 16.07.09 Respondent's Brief

The respondent's brief should conform to the format set forth in section 16.07.08 of this chapter and should answer the appellant's brief.

Section 16.07.10 Amicus Curiae Brief

An amicus curiae brief may be filed by a person or Tribe interested in the case by leave of the Court of Appeals. Time for filing shall be set by the court. A party may file a brief in reply to the amicus curiae brief.

Section 16.07.11 Oral Argument

The clerk shall advise all parties of the time and place at which oral argument shall be heard. Each side is allowed thirty (30) minutes for oral argument. Additional time may be granted by the Court where it is deemed necessary. Amicus curiae may present oral argument only by permission of the Court.

Chapter 16.08

Decision of the Court of Appeals

Sections:

16.08.01 Form of Judgment

16.08.02 Entry of Judgment

16.08.03 Costs

16.08.04 Bill of Costs

Section 16.08.01 Form of Judgment

The Court of Appeals may reverse, affirm or modify the Tribal Court decision being reviewed, order a new trial, remand to the Tribal Court, and take any other action as the merits of the case and the interest of justice may require.

Section 16.08.02 Entry of Judgment

Entry of judgment shall be made by the clerk by notation in the docket at the direction of the Court. The clerk shall mail notification of the entry of judgment and a copy of the opinion, if any, to the Tribal Court and to all parties.

Section 16.08.03 Costs

Costs on appeal are those incurred by a party in having the record prepared and transmitted, the premiums paid for any appeal bonds and the fee paid for filing the appeal. Costs of review shall be determined and awarded by the Court of Appeals. Appellant shall pay the costs of review if the appeal is dismissed or if the judgment is affirmed, unless the Court of Appeals orders otherwise. Respondent shall pay the costs if the judgment is reversed, unless the Court of Appeals orders otherwise. In any other case the costs shall be awarded only as ordered by the Court.

Section 16.08.04 Bill of Costs

A party desiring costs to be assessed shall submit an itemized and verified bill of costs which shall be filed with proof of service on all parties within seven (7) days of being notified of entry of judgment. Objections may be filed within seven (7) days of service.

Chapter 16.09

Supplemental Provisions

Sections:

- 16.09.01 Violation of Rule**
- 16.09.02 Damages for Frivolous Appeal**
- 16.09.03 Waiver of Appellate Rules**

Section 16.09.01 Violation of Rule

Failure to comply with the rules set forth in the title may result in revocation of the party's right to participate further in the review process.

Section 16.09.02 Damages for Frivolous Appeal

If the Court of Appeals determines that an appeal is frivolous, it may award damages and costs incurred as a result to the respondent.

Section 16.09.03 Waiver of Appellate Rules

If such actions serve the ends of justice, and will insure that a fair and just determination of the appeal on its merits can be made from the record, the Court of Appeals may, upon a showing of good cause by either party:

- A. Waive the formal requirements for the content of an appellate brief, provided that the document submitted is legible and understandable; or
- B. Extend the time period for filing an appellate brief; or
- C. Modify the procedural requirements of any other section of this Title.

Chapter 16.10

Codification

Sections:

- 16.10.01 Date of Codification**
- Section 16.10.01 Date of Codification**

This title was codified at a Tribal Council meeting on November 8, 2005 with Resolution #38-05.