

Chapter 1

White Earth Band of Ojibwe Court of Appeals Rules of Appellate Procedure

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Rule 1 Name, Scope, Authority, Title

- (A) **Name:** These rules are generated by the judicial branch of the White Earth Band of Ojibwe, also known as the White Earth Court of Appeals, (hereinafter WECA) and shall be known as such and may be cited as the Rules of Appellate Procedure (RAP).
- (B) **Scope:** These rules shall apply to the appellate proceedings conducted by the White Earth Court of Appeals. These rules may be read in conjunction with the White Earth Rules of Civil Procedure.
- (C) **Authority:** WECA was created as the judicial branch of government for the White Earth Band of Ojibwe and has appellate jurisdiction over all cases and controversies arising within the Reservation at the discretion of the court.
- (D) **Jurisdiction not Limited:** These rules shall not be construed to limit the jurisdiction of the WECA.
- (E) **Construction:** These rules shall be liberally construed in every appeal to secure a swift, fair, and inexpensive adjudication of every appeal.
- (F) **Other Rules:** 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 appellate court. Federal Rules of Civil Procedure, rules of procedure for other States or Tribes may be used as a guide, so long as these guideline rules are not inconsistent with existing Oneida Rules of Procedure, Oneida Laws, or the customs of the Oneida Nation.

Rule 2 Commencement of Appeal

- (A) **Form:** An appeal is commenced with the completion and filing of the Notice of Intent to Appeal form (Notice of Appeal).
- (B) **Fee:** A filing fee of \$25.00 must accompany the Notice of Appeal, or this fee may be waived upon a showing that the appellant is indigent and unable to pay the fee.
- (C) **Time:** A party has twenty (20) business days from the date of receipt of the final original hearing body decision to file a Notice of Appeal. Where another White Earth law of specific application provides a different time frame to file an appeal, that law shall be binding. Failure to comply with this time line may result in the non-acceptance of the Notice of Appeal.
- (D) **Additional Information:** In addition to the Notice of Appeal form and filing fee, the following information shall be provided upon the filing of the Notice:
 - (1) A copy of the written decision of the original hearing body¹.
 - (2) A short statement or statements explaining what relief is sought by the appellant.
 - (3) A short statement or statements explaining the legal grounds for seeking the appeal and justification for the relief requested.
 - (4) A short statement or statements outlining the hearing bodies and/or agencies where the appellant has sought a remedy.
 - (5) Name, address and phone numbers of all parties, including respondents.
 - (6) Name, address and phone number of all parties' advocates, if known.
- (E) **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 so notified of any filing deficiencies by the Clerk within five (5) days and shall have five (5) days from receipt of this notice to perfect the filing. Failure to perfect the filing within five (5) days shall result in the dismissal of the appeal with prejudice.
- (F) **Notice to Respondent(s):** Within five (5) days of filing of a perfected Notice of Appeal, the Clerk of the WECA shall serve notice by certified mail or personal service of the WECA receipt of the Notice of Appeal.

Appellate Panel

In any appeal from the decision of a supervisor and/or manager, a litigant may choose to appeal his/her case to the WECA. The Appellate panel shall consist of the chief judge and/or two associate justices and one representative from the panel of elders at the discretion of the chief judge. The justices may be constituted from the remaining associate judges who did not preside or conduct any portion of the original hearing. If the remaining associate judges cannot serve for any reason, including disqualification (for which a litigant may file an affidavit of conflict of interest), such justices of an Appellate Panel so constitute may only be removed prior to the completion of assigned matters by the White Earth Tribal Council for the removal of a judge of the Tribal Court.

¹ For purposes of these rules, the phrase original hearing body shall be synonymous with that of the decisions(s) made by members of supervision and/or management. The original hearing body serves as the first formal dispute resolution forum. The original hearing body hears witness testimony, receives documents, and makes the initial findings of fact and conclusions of law.

Rule 3 **Service and Filing in General:** the following methods of filing may be used, in order of preference:

- (A) **Service - Method:** Rule 3 of the WECA Rules of Civil Procedure, is incorporated by reference for methods of service to parties. Copies of all papers filed by a party shall be forwarded to opposing parties or parties' counsel, if any.
- (B) **In Person:** A party to a pending case, or the party's advocate or authorized agent may file papers in person before the Court Administrator in the offices of the WECA. Filing must be complete prior to the close of business (4:30 pm) on the day that any filing is due. The party filing shall supply the WECA with an original and three (3) copies, plus one copy for each opposing party or party's counsel, of the entire paper filed for use by the Commission and opposing parties.
- (C) **By Mail:** A party to a pending case may file papers by certified mail, with cover documents to be addressed to the Clerk of Court or Court Administrator. Provided that mailed documents must be received by the Clerk or Court Administrator prior to the close of business on or before the day that the filing is due. The party filing shall supply the WECA with an original and three (3) copies, plus one copy for each opposing party or party's counsel, of the entire paper filed for use by the WECA and opposing parties. Filing shall not be completed upon mailing, but only upon receipt.
- (D) **Filing Methods Limited:** Personal or certified/registered mail filing are the only acceptable methods of officially filing documents related to cases pending before the WECA. Documents sent to the WECA by methods other than in parts B and C above shall not be deemed timely and shall not be admitted into the file of any pending case.
- (E) **Parties with Counsel:** The following rules shall apply when counsel represents a party, whether advocate, paralegal or attorney:
 - (1) Only counsel need be served papers by the WECA or others. Service to a party is assumed to be completed upon service to party's counsel.
 - (2) The filing of a particular paper is only permitted once and shall only be accepted by the party or the party's counsel, but not both. A second filing by one where the other has already been filed shall be rejected and not admitted for consideration by the appellate court due to preventing duplication of service.

Rule 4 Time

- (A) **Business/Calendar Days:** All reference to days in these rules of appellate procedure shall refer to the use of calendar days, unless expressly stated otherwise in another provision of these rules.
- (1) Business day is defined as Monday through Friday, 8:00 am to 4:30 pm, when the governmental and administrative offices of the White Earth Band are typically open to the public, excluding all tribal holidays.
 - (2) Calendar day is defined as Monday through Sunday.
- (B) **Deadline Computation:** Time lines are determined by designating the day after notice is received as day one. Computation involving calendar days shall include intermediate holidays and weekend days, provided that if the last day of the period falls on a Saturday, Sunday or legal holiday, then the next business day shall be the due date. Computation involving business days shall not include intermediate week end days. All papers due to be filed with the WECA are due no later than 4:30 pm on the last day of the time period.
- (1) Deadlines shall be stated as a time line from the date of receipt of notice or an actual date set forth in the notice. If notice is mailed, then three (3) days shall be added to the normal time line in order to determine the due date.
- (C) **Extension of Time:** The Chief Judge or associate justice(s) assigned to a pending appeal may, upon the petition or motion by a party showing good cause, extend any time period set forth herein for any required act or submission.
- (1) Motions for an extension of time shall be submitted no less than two (2) days prior to the due date.
- (D) **Time to Complete:** Unless time is extended by the WECA 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) business days.

Rule 5 Appeal - How Granted

- (A) **As a Right:** A final judgment or final order of any original hearing body (typically supervision and/or management) may be appealed to the WECA as a matter of right unless otherwise expressly provided by law. The WECA retains the discretion to deny acceptance of an appeal where it fails to comply with these Rules of Appellate Procedure.
- (B) **By Permission:** A non-final judgment or order not appealable under section A above may be appealed via an interlocutory appeal² to the WECA prior to a final judgment or order upon leave granted if the chief judge and/or associate justice(s) determines that an interlocutory appeal will:
 - (1) Materially advance the termination of the litigation or clarify further proceedings in the litigation;
 - (2) Protect the petitioner from substantial or irreparable injury; or
 - (3) Clarify an issue of general importance in the administration of justice.
- (C) **Issues Raised not Waived:** Any issue raised before the original hearing body not filed with and resolved by the WECA through an interlocutory appeal may be preserved by either party as an issue for appeal of the final judgment or order.

² An interlocutory appeal is an appeal made regarding a single issue or decision reached by the original hearing body (typically supervision and/or management) prior to their final decision of the hearing. The purpose of an interlocutory appeal is to resolve a specific issue or question of law which is necessary prior to the adjudication of the merits of the case at the original hearing body.

Rule 6 Interlocutory Appeals

(A) Time: The time frames for interlocutory appeals shall be accelerated to minimize any delay in the proceedings before the original hearing body. The following time lines shall be used in order to file and resolve an interlocutory appeal:

- (1)** A party aggrieved of an intermediate ruling judgment or order during an original hearing, who wishes to seek intermediate relief, may file an interlocutory appeal with the WECA within ten (10) days of the receipt of the ruling, judgment, or order in question.
- (2)** Initial Review of the interlocutory appeal shall be conducted within five (5) days of the filing. The interlocutory appeal must conform to the criteria for acceptance of a general appeal found in Rule 9(D) and in Rule 5(B)1-3 above.
- (3)** If the interlocutory appeal is accepted for review, the respondent shall have ten (10) days to file a response brief to the interlocutory appeal.
- (4)** Upon receipt of the respondent's brief, a panel of three judicial officers shall deliberate within five (5) days time and issue a decision.

Rule 7 Parties to the Appeal, Multiple Appeals

- (A) **Appellant:** The person or persons filing the appeal is the appellant to the case. If the person filing the appeal is the agent or other representative of an agency, department or other Tribal entity, then the full name of the agency shall be listed as the appellant, followed by the filing person's name.
- (B) **Respondent:** The person or persons against whom appellate relief is sought shall be named as the respondent(s) to the case. If the appellant is seeking relief from an agency action or decision, then that Tribal agency, along with the agency's representative shall be named as the respondent.
- (C) **Joint or Co-Appeals:** If two or more people are each entitled to appeal from the same judgment or order entered in the same action or proceeding before the original hearing body and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may, after filing separate notices of appeal and with the permission of the appellate court, proceed as a single appellant.
 - (1) If the people do not file a joint appeal or elect to proceed as a single appellant, or if joinder is impracticable, they shall be known as appellant and co-appellant, with identical procedural rights and obligations as any single appellant. The appellant shall be that person who has the earlier filing date or time of filing where the people file on the same date.
- (D) **Cross-Appeals:** 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) days after the receipt of the notice of appeal, whichever is later. The respondent shall be listed as the respondent and cross-appellant. A cross appellant has the same rights and obligations as an appellant under these rules.
- (E) **Consolidation of Separate Appeals:** The appellate court may consolidate separate appeals in separate actions or proceedings in the trial court upon its own motion, motion of a party, or stipulation of the parties.

Rule 8 Intervention and Amicus Curiae

(A) Intervention:

- (1)** A person may, upon a timely motion and with the permission of the appellate court, intervene and be treated in all respects as a party to an appeal where:
- (a)** The movant claims an interest relating to the property or transaction which is the subject of the appeal; and
 - (b)** The movant is so situated that the disposition of the appeal may as a practical matter impair or impede the movant's ability to protect that interest; and
 - (c)** The movant's interest is not adequately represented by the existing parties.
- (2)** A person may, upon the timely motion and with the permission of the appellate court, intervene in an appeal when the movant's claim or defense and the main appeal have a question of law or fact in common.
- (3)** A person desiring to intervene shall serve a motion to intervene upon the parties to the main action. This motion shall state the grounds upon which intervention is sought and shall be accompanied by a brief setting forth the arguments for which intervention is sought.

(B) Amicus Curiae (Friend of the Court): A person who is not a party to a case but has some interest in the outcome of an appellate case may, upon a timely motion and with permission of the appellate court, submit an amicus curiae brief in support of one party to the action or to supplement the arguments of a party.

(C) Time: A person wishing to intervene or file an amicus curiae brief in an appeal shall file a motion to intervene within fifteen (15) days of the entry of the initial review decision accepting the appeal. Parties shall have fifteen (15) days from receipt of the person's motion to file a response brief to the motion to intervene.

Rule 9

Initial Review

- (A) **Time:** Within ten (10) days of the filing of the Notice of Appeal or the perfected Notice of Appeal as provided under Rule 2(E) above, two or three judicial officers shall be assigned to perform an Initial Review of the Notice of Appeal.
- (1) Outside Judicial Officers: Where an active judicial officer of the Appeal is named as a party to a case, a tribal chief judge or associate judge(s) shall be assigned to preside over the appeal. Such assignment shall occur only after a determination by an Appeals Initial Review that such assignment is appropriate.
- (B) **Purpose:** The purpose of Initial Review is to answer threshold questions regarding the jurisdiction of the case and the procedural and material sufficiency of the Notice of Appeal.
- (1) The Initial Review will determine if the case is ripe for appellate review.
- (2) If not ripe for appellate review, the chief judge and/or associate justice(s) will determine what original hearing body has subject matter jurisdiction over the case.
- (3) The chief judge and/or associate justice(s) may affirm or overturn a single issue decision of an original hearing body where that issue has arisen previously in factually similar circumstances and has been settled as a matter of law by prior decisions of the appellate court.
- (C) **Authority not Limited:** The chief judge and/or associate justice(s) shall have full authority to request briefs or schedule hearings in order to obtain answers to the threshold questions.
- (D) **Criteria for Acceptance:** The chief judge and/or associate justice(s) shall accept an appeal for appellate review if one or more of the following elements are sufficiently alleged to exist in the original hearing body decision by the appellant in the Notice of Appeal:
- (1) A violation of constitutional provisions;
- (2) The decision is outside the scope of the authority or otherwise unlawful;
- (3) The decision is clearly erroneous and is against the weight of the evidence presented at the hearing level.
- (4) The decision is arbitrary and/or capricious
- (5) There is exhibited a procedural irregularity which would be considered a harmful error that may have contributed to the final decision which, if the error had not occurred, would have altered the final decision.
- (6) There is a presentation or introduction of new evidence that was not available at the hearing level which, if available, may have altered the final decision.
- (E) **Failure of Allegations:** If the appellant fails to sufficiently allege one of the criteria of Rule 9(D) above such that the chief judge and/or associate justice(s) cannot determine the basis for the allegation or the issue within the original hearing body decision, the appeal may be denied.
- (F) **Contesting a Decision:** An appellant denied acceptance of an appeal may file one motion for reconsideration within five (5) days of receipt of the decision denying acceptance of the appeal under the criteria established in Rule 24 of these Rules of Appellate Procedure, though no response from the respondent is necessary.

Rule 10 **Costs**

- (A) **Filing Fee:** There is a filing fee due upon the filing of any notice of appeal from any decision of an original hearing body, whether or not the decision is final. Appellants may file an affidavit of indigence so that this fee may be waived. Tribal entities or agents filing on behalf of a tribal entity may be intra-tribally billed for the fee.
- (B) **Copy Charge:** Parties who fail to supply a sufficient number of copies for use by the WECA and opposing parties shall be assessed a copy cost per page copied by the WECA.
- (C) **Parties:** The appellate court may, upon its own motion or a motion of a party, assess its administrative and/or court costs and/or the costs of one party against one or both parties where:
 - (1) A party has filed a frivolous appeal or motion without a reasonable expectation of success or with the purpose of harassing or embarrassing the opposing party.
 - (2) A party is found to be in contempt of the appellate court.
 - (3) A party has acted with malicious disregard of another party's rights or with intent to disregard of such rights or with intention disregard of the Appellate Court's orders or Rules of Appellate Procedure.

Rule 11 Motions

- (A) Procedure:** A party seeking an order or other relief in a docketed appeal shall file a motion for the order or other relief.
- (1) The motion must state specifically the order or relief sought and the grounds on which the motion is based and may include a statement of the positions of other parties as to the granting of the motion.
- (2) If a motion is supported by brief, affidavit or other paper, then these shall be attached and filed with the motion and designated as exhibits or supporting memoranda.
- (3) Parties to the case may file a response to the motion within ten (10) days of the receipt of the motion, after which time the appellate court will deliberate upon the arguments/positions of the parties, and render a decision which will grant or deny the motion. The appellate court may order additional briefs or a hearing for the issues raised by the motion if the original motion and response are considered insufficient to render a complete decision on the motion.
- (4) Unless expressly stated in these rules or by order of the appellate court, no filed motion shall put a stay on the general proceedings of the appeal at hand or alter the set time lines for the filing of briefs by the parties.
- (B) Exceptions:**
- (1) A motion for procedural orders may be granted or denied by the chief judge, without notice to the opposing party. A party adversely affected by a procedural order may request reconsideration of the order by the full appellate court within five (5) days of receipt of notice of the decision by the chief judge.
- (2) The chief judge and/or associate justice(s), upon receipt of a motion by a party, may order that the opposing party's response be made within five (5) days for procedural motions or motions where the relief requested requires a decision within the normal ten (10) day response period.

Rule 12 Form of Motion

- (A) **Caption:** Every motion shall contain a caption heading, the name White Earth Court of Appeals, the title of the action, the docket number (if known) and a designation as to the purpose or type of motion it is.
- (B) **Parties:** All motions shall contain the names of all of the parties to the action.
- (C) **Content:** All motions shall be organized in sections containing a clear designation, which shall include but not be 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 which are applicable to the motion at hand.
 - (4) The grounds upon which the relief is sought.

Rule 13 Appellant's Brief

- (A) **Time:** The appellant shall file a brief within twenty (20) days of the filing of the Notice of Appeal.
- (B) **Content:** The appellant's brief must contain the following information:
- (1) A table of contents with page references to the portions of the brief, including headings of each section of the argument.
 - (2) A table of cases cited in the brief, arranged alphabetically, with a page reference to where the case is cited in the brief.
 - (3) A statement of the issues presented for review by the appellate court.
 - (4) A statement of the case which should include: the nature of the case; the course of the proceedings to date, and the cases disposition at the trial court or original hearing level, and the facts relevant to the issues presented for review, with appropriate references to the record of the trial court proceedings.
 - (5) The argument, which may be preceded by a summary. The argument shall contain the positions of the appellant with respect to each of the issues presented for review, with the reasons for these positions and citations to applicable laws, authorities, and parts of the record relied upon by the appellant. The argument of the appellant should be separately identified for each issue presented to the appellate court.
 - (6) A short conclusion stating the precise relief sought.
 - (7) All rules, regulations, laws, ordinances, authorities, and portions of the record cited by the appellant shall be attached as an addendum unless previously filed with the appellate court.
 - (8) The appellant's brief may incorporate by clear and specific reference, portions of other documents or material previously submitted to the appellate court in the case at hand.
- (C) **Form:** The brief shall be 1.5 spaced, typed, and on 8.5 x 11 inch paper, and shall be signed by the party or the party's advocate, if represented.
- (D) **Length:** The brief shall be no more than twenty pages in length, unless otherwise indicated by the chief judge and/or associate justice(s), not including any addendums, appendices, attachments, or the tables of contents and authorities.

Rule 14 Respondent's Brief

- (A) **Time:** The respondent shall file a brief in response to the appellant's brief within twenty (20) days of the receipt of the appellant's brief.
- (B) **Content:** The respondent's brief shall comply with the content requirements of Rule 13 (B) 1-8.
 - (1) The respondent's brief shall address each issue and argument presented by the appellant in the appellant's brief.
 - (2) The respondent's brief may present additional issues, with the respondent's positions and arguments on these issues
- (C) **Form:** The brief shall be 1.5 spaced, typed, and on 8.5 x 11 inch paper, and shall be signed by the party or the party's advocate, if represented.
- (D) **Length:** The respondent's brief shall be no more than fifteen pages in length, unless otherwise indicated by the chief judge and/or associate justice(s), not including any addendums, appendices, attachments, or the tables of contents and authorities.

Rule 15 Appellant's Rebuttal Brief

- (A) Time:** The appellant may submit a rebuttal brief within five (5) days of receipt of the respondent's brief.
- (B) Content:** The rebuttal brief shall be organized in accordance with Rule 13 (B), Sections 1-8. The brief shall address only those additional issues presented in the respondent's brief which have not previously been argued by the appellant.
- (C) Form:** The rebuttal brief shall be typed, 1.5 spaced, and upon 8.5 x 11 inch paper and shall be signed by the party or party's advocate, if represented.
- (D) Length:** The rebuttal brief shall be no more than five pages in length, unless otherwise indicated by the chief judge and/or associate justice(s), not including any addendums, appendices, attachments, or tables of contents and authorities.

Rule 16 Miscellaneous Briefs

- (A) Consolidated / Joint Appeals:** Each appellant in a consolidated appeal or a joint appeal and each co-appellant may file a separate brief or a joint brief with another appellant or co-appellant. A joint brief must comply with Rules 13 and 15 above related to appellants' briefs and may not exceed the page limit for a single appellant.
- (B) Cross Appeal:** The parties in a cross appeal have the right as a party in an appeal and may file separate cross-appellant's and cross-respondent's briefs in accordance with the Rules 13 thru 15 above related to parties' briefs.
- (C) Non-Party Briefs:** A person not a party to an action may by motion request permission to file a brief. The motion shall identify the interest of the person and state why a brief filed by that person desirable or necessary.

 - (1)** The non-party brief shall comply with the content and form rules of a respondent's brief.
 - (2)** If permission to file a brief is granted in accordance with Rule 8 above, the non-party brief shall be due fifteen (15) days after permission has been granted.
 - (3)** Each party shall have fifteen (15) days to file a response brief to the non-party brief. Such briefs shall comply with the content and form requirements of Rule 15, for rebuttal briefs.

Rule 17 Relief Pending Appeal

- (A) **Effect of Appeal:** An appeal from a decision, final or otherwise, of an original hearing body (typically supervision and/or management) does not stay the enforcement of the order or judgment appealed from except as provided in these rules, the Rule of Civil Procedure, or other Tribal laws.
- (B) **Stay Upon Appeal:** A party may move the WECA for a stay of enforcement of the lower hearing body order or judgment pending the final adjudication of the appeal. WECA may issue such an order upon its own motion where justice requires.
- (C) **Bond or Other Security:** The stay of enforcement may be conditioned upon the posting of a bond or other appropriate security by the moving party, except that where the Tribe or a Tribal entity is the appellant, no bond shall be necessary.
- (D) **Power not Limited:** During the pendency of an appeal, the appellate court may:
 - (1) Stay the execution or enforcement of a judgment or order;
 - (2) Suspend, modify, restore, or grant an injunction; or
 - (3) Make any order appropriate to preserve the existing state of affairs or the effectiveness of the judgment.

Rule 18 Record

- (A) **General:** The record shall consist of all papers filed with the original hearing body (typically supervision and/or management), whether or not admitted for consideration, the exhibits viewed, the transcript/recording of the proceedings, and the final decision of the original hearing body.
- (B) **Open Record:** The record compiled by the WECA for a completed case is Tribal record and open to the public for viewing.
- (1) Any person may request to view the record of any completed case and may receive copies of the entire record or parts thereof, at that person's expense.
 - (2) Records of cases involving juveniles, those persons under eighteen years of age, shall remain confidential and shall only be viewed by the parties and their counsel, judicial officers and staff assigned to the case, and those other persons who first obtain a written release from a party to view specific material in the record.
 - (3) Where a case involves the review and consideration of material or evidence that would normally be considered confidential, such as trade secrets, attorney/client privilege, etc., the appellate court may order that portion of the record sealed and such portion shall be available for viewing only by appellate court personnel assigned to the case, the parties and those agents or representatives specifically authorized by the parties to view the material.
 - (4) Deliberations of the appellate court are confidential, are not part of the appellate record, and are not subject to reproduction.
- (C) **Index of Trial Court Record:** Within twenty (20) days of the acceptance of the appeal, the clerk of court or court administrator of the appellate court shall acquire the record of the original hearing body and create an index for use by the parties and judicial officers. The clerk or court administrator shall number each paper within the record. The index shall consist of a table of contents, identifying each document by the number assigned by the clerk.

Rule 19 Reversal Affirmance or Modification

(A) Powers of Appellate Court: Upon appeal from a judgment or order from an original hearing body decision, the WECA may:

- (1) Reverse, affirm, or modify the judgment or order as to any or all parties;
- (2) Remand the matter and order a new trial/hearing on any or all issues presented;
- (3) If the appeal is from a part of a judgment or order, 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 proceedings as may be appropriate to each individual action.

Rule 20 Oral Argument

- (A) **When:** If, after a review of the briefs by parties, the appellate court finds that issues of fact or law remain unclear and/or the positions of the parties on an issue are unclear or otherwise not fully developed, oral arguments may be scheduled by the appellate court, provided that at least ten (10) days notice to the parties is given. Oral arguments may also be scheduled for consideration of a specific issue raised in a party's motion which the appellate court finds cannot be adequately addressed by review of motions only.
- (B) **Procedure:** The following procedure shall apply when conducting oral arguments:
- (1) Each party shall have twenty (20) minutes to present arguments. This time is exclusive of time taken to answer questions posed by the appellate court chief judge and/or justice(s) assigned to hear the case. Each party may reserve up to five (5) minutes for the purposes of rebuttal of the opposing party's arguments.
 - (2) The appellant shall present that party's argument first. The argument shall consist of the appellant's position or positions on the issues presented in appeal.
 - (3) The respondent shall present that party's argument after the appellant. The argument shall consist of the respondent's position(s) on the issues presented in the appeal.
 - (4) The appellant, if any time was reserved for rebuttal, may present rebuttal arguments addressing the respondent's positions.
 - (5) The respondent, if any time was reserved for rebuttal, may present rebuttal arguments addressing the appellant's positions.
 - (6) The chief judge and/or justice(s) may ask questions of the party currently presenting that party's argument at any time during the presentation. Time taken to answer questions posed by chief judge and/or justice(s) shall not count against the party's twenty (20) minute time limit.

Rule 21 Penalties

- (A) **Frivolous Claims:** If an appeal or cross-appeal is found by the appellate court to be frivolous, the court may award to the successful party costs and attorney's fees.
- (1) Costs may be assessed against the appellant or cross-appellant, the (cross)-appellant's advocate, or both the (cross)-appellant and his/her advocate jointly.
 - (2) A finding of a frivolous appeal or cross-appeal will be made if one or more of the following elements are found by the appellate court:
 - (a) The appeal or cross-appeal was filed, used, or continued in bad faith, solely for the purposes of harassing or injuring the opposing party; or
 - (b) The party or party's 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.
- (B) **Delay:** If the appellate court finds that an appeal or cross-appeal was taken for the purpose of delay, it may award one or more of the following to the opposing party:
- (1) Double costs;
 - (2) A penalty of additional interest not exceeding 10% on the award amount affirmed;
 - (3) Damages occasioned by the delay;
 - (4) Attorney's fees.
- (C) **Non-Compliance with Rules:** Failure of a party to comply with a requirement of these rules or an order of the appellate court, does not affect the jurisdiction of the appellate court over the appeal but may be grounds for one or more of the following:
- (1) Dismissal of the appeal;
 - (2) Summary reversal of the original hearing body decision;
 - (3) Striking of a paper, document or memorandum submitted by a party;
 - (4) Imposition of a penalty or costs on a party or party's advocate; or
 - (5) A finding of contempt against the party in non-compliance.
 - (6) Other action as the appellate court considers appropriate.
- (D) **Substantial Compliance:** The appellate court may, in its discretion and when in the interest of justice, find that any motion or brief filed in substantial compliance with these rules is sufficient to proceed with the completion of the case or resolution of the motion in question.

Rule 22 Subpoenas

- (A) **Issuance:** Subpoenas may be ordered by the appellate court and issued by the clerk of court and/or court administrator to compel the submission of specific documents or information to be used for consideration in the case.
- (1) Parties may submit a motion to the appellate court for the issuance of a subpoena upon a showing that an adverse party or witness is refusing to submit relevant documents, property, or other evidence for discovery or is refusing to appear before the appellate court.
- (2) A response from said adverse party or witness may be submitted to explain such a refusal.
- (B) **Service:** May be made following the requirements of service above or by any person not a party to the action, over the age of eighteen (18) years.
- (C) **Endorsement:** The person serving a subpoena shall endorse upon the copy served the person's name, title and the time, date and place of service.
- (D) **Return to Clerk:** The person serving shall sign a return statement before the clerk stating the name of the case, the name of the person served, the place, date and time of service.
- (E) **Failure to Appear or Submit:** Failure to appear by a person properly served a subpoena or failure to submit required papers by order of subpoena may be deemed by the appellate court to be contempt on the part of the failing person.
- (F) **Subpoena Not Needed:** A person present before the appellate court may be required to testify in the same manner as if such presence had been compelled by a subpoena.

Rule 23 Deliberations

- (A) **When:** The chief judge and/or justice(s) assigned to the appellate court shall meet to deliberate upon the motions and/or briefs of parties upon receipt of the moving party's brief and the opposing party's response to the brief.
- (1) The appellate court may deliberate and deny or otherwise dismiss a motion by a party prior to the opposing party's receipt of the motion. Otherwise, the appellate court shall delay deliberation on any motion or until after a response brief has been filed or the due date for receipt of the response brief has expired.
- (2) The appellate court shall not deliberate upon the merits of any appeal until after receipt of the appellant's brief, respondent's brief, and appellant's rebuttal brief, or until after the expiration of the due date for the filing of such documents.
- (B) **Definition:** A deliberation is the meeting of all judicial officers assigned to a case for the purpose of reaching a decision upon one or more issues presented, whether or not a final decision is reached at that time.
- (C) **Majority Decision:** No decision on any issue may be reached unless the chief judge and/or justice(s) assigned to the case participate in the deliberation. Decisions of the appellate court shall be determined by the chief judge and/or justice(s) assigned to the case.
- (D) **Other:** The appellate court may meet and deliberate upon any issue presented by a party or upon the appellate court's own initiative in order to consider any matter for the purpose of assisting in the disposition of the case.

Rule 24 Reconsideration

- (A) **Time:** Either party may file a motion for reconsideration of a final appellate court decision within fifteen (15) days of receipt of the final decision or twenty (20) days from publication, whichever time is lesser.
- (B) **Criteria:** Reconsideration will only be granted under the circumstances where the moving party proves by a substantial weight of the evidence presented in the motion that there is new evidence in existence which was not considered by the appellate court and which is likely to have altered the final decision if this evidence had be introduced.
- (C) **Definition:** New evidence is defined as evidence of any sort which existed at the time of the final appellate court decision but which was unknown or unavailable to the parties despite a diligent search for it.
- (D) **Process:** Upon filing of a motion for reconsideration, the opposing party will receive notice of the motion and will be granted fifteen (15) to file a response brief, after which a deliberation of the appellate court will occur and a decision issued.