

**CHAPTER 7A  
RULES FOR MEMBERSHIP APPEALS TO THE  
TRIBAL JUDICIARY**

**Section 7A.0 Purpose and Definitions**

**7A.001**     **Purpose.** The purpose of these Rules is to establish the appellate procedures to the Tribal Judiciary for any person whose application for membership has been denied, or who has relinquished or been disenrolled by the Tribal Council.

**7A.002**     **Definitions.** The following terms shall have the meaning provided herein:

(A) "Appellant" means the party filing the appeal.

(B) "Respondent" means the party responding to another party's appeal.

(C) "Tribe" means the Little Traverse Bay Bands of Odawa Indians.

**Section 7A.1 Composition of the Tribal Judiciary**

**7A.101**     **Judges of Tribal Judiciary.** The Tribal Judiciary consists of the chief judge and all associate judges of the Tribal Court and the appellate justices of the Tribal Appellate Court.

**7A.102**     **Chief Judge.** The Chief Judge shall serve as the head of the Tribal Judiciary.

The Chief Judge shall be responsible for the administration of the Tribal Judiciary hearing membership appeals as specified in this chapter.

**7A.103**     **Clerk.** The Court Administrator shall have the duties of Clerk for the Tribal Judiciary.

**7A.104**     **Disqualification of a Judiciary member.** Any member of the judiciary is disqualified to sit on the appeal of any membership case in which:

(A) he or she has a direct interest in the outcome; or

(B) he or she is so related to either the appellant, a member of the

respondent Tribal Council or any participant in the appeal as to raise a question of the appearance of a conflict of interest in the judge's ability to render an impartial decision.

**7A.105 Rules of Procedure.**

- (A) The Tribal Judiciary shall employ the rules of procedure it has adopted.
- (B) The decision of the Tribal Judiciary is final, and is not subject to further appeal. The record shall be returned to the Court Administrator.
- (C) All decisions of the Tribal Judiciary shall be filed with the Court Administrator.
- (D) The Court shall apply the substantive law of the Little Traverse Bay Bands of Odawa Indians, and may apply other federal and state law that is not contrary to tribal law.
- (E) All decisions and rulings of the Tribal Judiciary shall be binding unless expressly overruled by subsequent judiciary decision.

**Section 7.2 Jurisdiction of Tribal Judiciary**

**7A.201 Exclusive Jurisdiction.** The Tribal Judiciary shall have exclusive jurisdiction to review the membership decisions of the Tribal Council as provided by Article V, H.5 of the Constitution of the Little Traverse Bay Bands of Odawa Indians.

**7A.202 Who May Appeal.**

- (A) Any person whose application for membership has been denied, or who has relinquished or been disenrolled, shall have a right of appeal to the Tribal Judiciary.
- (B) Such appeal rights do not extend to any person whose petition for membership by adoption into the Little Traverse Bay Bands of Odawa Indians has been denied.

**7A.203 Subject of Appeal.**

An appeal is properly before the Tribal Judiciary following a majority vote of the Tribal Council that affected the appellant's membership.

**7A. 204 Scope of Tribal Judiciary's Review.**

- (A) The Tribal Judiciary shall base its decision upon the documents available to the Citizenship Commission and the Tribal Council and shall not consider at the hearing any new evidence or evidence that was unavailable to them at the time of their decision.
- (B) In reviewing a matter on appeal, the Tribal Judiciary may affirm, modify, vacate, set aside or reverse any decision of the Tribal Council; or may remand the case to the Tribal Council or Citizenship Committee and direct entry of an appropriate judgment, decree or resolution, or require such further proceedings as needed under the circumstances.

**Section 7A.3 Procedure for Appeal**

**7A.301 Time Period to Appeal.**

- (A) Any person whose application for membership has been denied, or who has relinquished or been disenrolled, shall have a right of appeal to the Tribal Judiciary within one (1) year of the Tribal Council's membership action, including denial, relinquishment or disenrollment.
- (B) Failure to file an appeal within the time period provided in this section deprives the Tribal Judiciary of subject matter jurisdiction to hear the appeal. Late appeals shall not be accepted by the Clerk of the Tribal Judiciary.

**7A.302 Notice of Appeal.**

- (A) Filing Required. An appeal is made by the filing of a notice of the membership appeal with the Court Clerk, with the payment of the filing fee or request of waiver of the filing fee, and proof of service on the respondent Tribal Council. The notice of membership appeal and any other documents filed with the Court shall be served on the respondent Tribal Council simultaneously with the filing.
- (B) Content of Notice. The notice of appeal shall bear the caption and case number of the case and shall be labeled "Notice of Membership Appeal." It shall state the date of the Tribal Council action and include a brief statement of the reasons for the appeal and what relief the petitioner is requesting from the

Tribal Judiciary. The appellant or the attorney appearing on appellant's behalf shall sign and date the notice.

- (C) Defects in Notice. No appeal shall be dismissed for defects in the notice of appeal, if the matter appealed is clear from the document and it has been properly filed and served.
- (D) Docketing of Appeal. Upon receipt of the notice of appeal, filing fee or request of waiver of the fee, and proof of service, the Clerk of the Tribal Judiciary shall docket the appeal and notify the Tribal Judiciary of the pending appeal.
- (E) Effect on Decision by Filing Appeal. The filing of an appeal does not cause an automatic stay of the Tribal Council's decision. A motion seeking a stay should be addressed to the Tribal Judiciary after the filing of the notice of appeal.

**7A.303**     **Service of Notice of Membership Appeal**. A copy of the Notice of Membership Appeal shall be served by the appellant on all other parties. It is sufficient notification to the respondent if service is made by first class mail; service is considered complete upon mailing. Personal service on the respondent may be made upon the Tribe's General Counsel or upon the Chairman or Secretary of the Tribal Council at the Tribal Governmental Offices during regular business hours.

**7A.304**     **Appellate Filing Fee**. The Clerk of the Tribal Judiciary shall collect from each party who files an appeal a filing fee of \$25.00. The fee may be waived by order of the Tribal Judiciary at its discretion when the appellant submits with the Notice of Membership Appeal an affidavit of indigency.

**7A.305**     **Record on Appeal**.

- (A)     Upon receiving the Notice of Membership Appeal, the Clerk for the Tribal Judiciary shall request from the Enrollment Department the appellant's enrollment file, consisting of any and all documents the Citizenship Committee and Tribal Council relied upon in making its decision.
- (B)     The Enrollment Officer shall certify the contents of the record as true, correct, and complete as part of the transmittal to the Tribal Judiciary.
- (C)     Once the enrollment file has been received, the Court Administrator shall timely compile for transmittal to the Tribal

Judiciary and each party the record of the case, including a notice of record transmittal, identifying each item included.

- (D) The Court Administrator shall schedule an Appellate Scheduling Conference with the parties to determine the need for oral arguments, the briefing schedule and requirements, the schedule for motions, requested remedies, and the issues to be presented.

**7A.306** **Briefing.** Parties are encouraged and may be required by court order to file written briefs concerning the issue(s) on appeal, in \ order to assist the Tribal Judiciary in its review. If briefing is made, the following requirements apply:

- (A) **Time to File Brief.** If appellant wishes or is ordered to file a brief, he or she must do so within twenty-eight (28) days of issuing of the scheduling order unless the Tribal Judiciary sets a different scheduling order. If respondent wishes to file a brief, it must do so within fourteen (14) days of receiving appellant's brief. A reply brief may be submitted by appellant within fourteen (14) days of receiving respondent's brief.
- (B) **Format of Briefs.** Briefs shall be typewritten, double-spaced, on white paper which is no more than 8 1/2 by 11 inches in size. No brief shall exceed fifty (50) pages in length.
- (C) **Content of Briefs.** The first brief to be filed shall contain a short statement of the case history and a listing of the issues presented on appeal and how, if at all, the issues were decided by the Tribal Council. All briefs shall contain an argument and a conclusion, stating clearly the precise action requested from the Tribal Judiciary.

**7A.307** **Oral Argument.** Unless waived by both appellant and respondent, all appeals will be scheduled for oral argument after briefing is concluded. The length of argument shall be set by the Tribal Judiciary, and shall be stated in the scheduling order.

**7A.308** **Motions before the Tribal Judiciary.** Any party requesting action by the Tribal Judiciary on a matter unrelated to its decision on the pending appeal, such as a waiver of the filing fee or a stay pending appeal, shall file a motion with the Court Administrator, clearly stating the action requested and the reasons why the Tribal Judiciary should do what is asked of it. Any motion shall be served on all other interested parties, who may within fourteen (14) days of receipt, file a response with the Tribal Judiciary. The Tribal Judiciary shall issue a

written order disposing of any such motion filed.

#### **Section 7.4 Decision of the Tribal Judiciary**

**7A.401** **Standard of Review.** In deciding an appeal, the Tribal Judiciary shall apply the following standards:

- (A) A finding of fact by the Tribal Council shall be sustained unless clearly erroneous.
- (B) A factual inference drawn by the Tribal Council shall be reviewed as a finding of fact if more than one reasonable inference can be drawn from the fact(s).
- (C) A conclusion of law shall be reviewed by the Tribal Judiciary without deference to the Tribal Council's determination, i.e., review is *de novo*.
- (D) A stipulated or uncontested fact shall be sustained unless clearly erroneous.
- (E) A mixture of law and fact is reviewed by the standard applicable to each element.
- (F) A matter which is determined within the Tribal Council's discretion shall be sustained if it is reflected in the record that the Tribal Council exercised its discretionary authority and applied the appropriate legal standard to the facts.

**7A.402** **Issues Preserved on Appeal.** In deciding an appeal, the Tribal Judiciary shall consider issues pursuant to these requirements:

- (A) Facts which are not in the record shall not be presented to the Tribal Judiciary, and if presented, shall not be considered.
- (B) No issue which is moot at the time of argument shall be decided by the Tribal Judiciary unless it is capable of repetition and likely to evade appellate review, due to its nature.

**7A.403** **Content of Tribal Council's Written Action.** Tribal Council action which may be subject to an appeal under these rules should contain the following, in order to facilitate justice by the Tribal Judiciary:

- (A) Tribal Council should make separate findings of fact and

conclusions of law in writing.

- (B) In the absence of written findings of fact and conclusions of law by the Tribal Council, the Tribal Judiciary will strive to achieve justice by affirming the judgment if supported by the record, reversing the judgment if the record does not support it, or remanding the case for the issuance of findings and conclusions.

**7A.404** **Decisions of the Tribal Judiciary.** All decisions of the Tribal Judiciary on appeal, and all determinations of motions, shall be made as follows:

- (A) Panel Majority. Any decision of the Tribal Judiciary shall be made by a majority of the judges on the panel. If no majority is reached on a decision, the decision of the Tribal Council is upheld.
- (B) Content. The decision of the Tribal Judiciary shall be in written form, which shall state the facts as determined by the court, the issues to be decided, the rules of law applied, and the reasoning of the Court. The Tribal Judiciary shall determine who shall write the majority decision.
- (C) Order. The Tribal Judiciary shall issue an order which shall direct the Tribal Council in its disposition of the case which is the subject of appeal. Such order shall include the continuance or termination of any order relating to a stay issued by the Tribal Judiciary.
- (D) Dissenting Opinions. Any member of the panel who disagrees with the majority's decision may issue a written dissent, which shall comply with the content requirements of subsection (B) above.
- (E) Distribution of Decision. Within two(2) business days of issuance, the Court Administrator shall transmit by first class mail a copy of the decision to the appellant and to the Secretary of the Tribal Council and its attorney, and shall inform all of the date on which the decision was filed.

### **Section 7.5 Tribal Judiciary Administration**

**7A.501** **Authority to Waive Requirements.** The Tribal Judiciary may, upon good cause shown by written motion of a party, enlarge the time any party has to comply with these rules, or waive the page limitation for

briefing.

- 7A.502**     **Standards for Computing Time Requirements.** In computing the period of time prescribed by these rules or by any order of the Tribal Judiciary, the day of the act or event from which the period begins to run is not included. The last day of the period is included, unless it falls on a Saturday, Sunday, or legal holiday; in that event, the last day of the period falls on the next regular business day.
- 7A.503**     **Practice before the Tribal Judiciary.** Any person who is admitted to practice before the Tribal Court is also admitted to practice before the Tribal Judiciary under these rules.
- 7A.504**     **Rules of Court.** The Tribal Judiciary may amend these rules as appropriate for the proper and efficient administration of the Court. Such amended rules shall be filed with the Clerk of the Court for the Tribal Judiciary, and be made available within a reasonable period of time after are issued to all persons admitted to practice before the Tribal Court.

#### **7.6 Short Title & Effective Date**

- 7A.601**     **Short Title:** These rules and procedures may be cited as the Rules and Procedures for Membership Appeals.
- 7A.602**     **Effective Date:** These Rules and Procedures for Membership Appeals were approved unanimously by the Tribal Judiciary on April 21, 2008 and became effective on that date.

---

Honorable JoAnne Gasco, Tribal Judiciary Chief Judge