

COLORADO RIVER INDIAN TRIBES

LOCAL RULES OF APPELLATE PROCEDURE "LRAP"

LRAP 1

Definitions and Construction. The definitions in these Rules and in all other Tribal law are construed in pari materia.

(a) "Appeal Acceptance Date" means the date and time of receipt by the Clerk of an Appeals Court order granting an appeal.

(b) "Appellate File" means the appellate case file maintained by the Clerk of Court pursuant to L&O 105 (a)(1),(2),(10) and L&O 211 (b), and containing the designated trial court record, the appellate pleading, the comment record, and any other records or pleading allowed by leave of, or as otherwise ordered by, the Appeals Court.

(c) "Appellate Pleading" means (1) the parties' briefs under LRAP 10; (2) any motion by the appellant to dismiss the petition for appeal or any stipulation by the parties to dismiss the appeal; (3) any record(s), transcript(s), or other statement(s) of fact in the case stipulated to by the parties; (4) any motion by a party to expand the designated trial court record, or for any special hearing before the Appeals Court; (5) any motion or stipulation to disqualify any Judge of the Appeals Court; (6) any briefs by the Attorney General filed per LRCP 14, or when requested by the Appeals Court, or briefs responding thereto by the parties or amici; and (7) any motion(s), response(s), or stipulation(s) for appearance(s) by amici. No other pleading shall be included or allowed, except with leave of, or as otherwise ordered by, the Appeals Court.

(d) "Briefs" mean written documents under LRAP 10 (b)-(d) and in substantial compliance with TRAP 28 (a)-(d) and (g)-(j).

(e) "Comment Record" means the taped, transcribed, or stenographic record made under LRAP 10 (e) and pursuant to L&O 211 (b), of each party's "opportunity to present an argument on all issues raised by the petition for appeal, and to discuss and comment upon all evidence presented to or considered by the Tribal Court and all order and findings of the Tribal Court, insofar as they pertain to those issues."

(f) "Designated Trial Court Record" means one photocopy of every written document filed in the trial court case file, including the petition for appeal, and any affidavit and request for a waiver of fees filed along with the petition under LRAP 13 (c), as well as, one copy of every tape or transcription in or for the trial court case, including any arraignment or status hearing held in the case, verified by the Court Clerk as accurate and complete as of the time set for designation of the trial court record under LRAP 11 (a). No other records shall be included or allowed in the designated trial court record, except with leave of, or as otherwise ordered by, the Appeals Court.

(g) "En Banc" means in communication with each other Judge of the Appeals Court not disqualified under applicable law, whether in person, by conference call, or other wire or electronic means of communication, initiated by the Chief Judge of the Appeals Court or a Judge assigned by that Chief Judge.

(h) "Filing" or "To File" means delivery the Court Clerk at the Clerk's counter at the Tribal Court, 2nd and Mohave, Colorado River Indian Reservation.

(i) "Local Rules of Appellate Procedure" or "LRAP" means the Rules set forth in this document.

(j) "Tribal Rules of Appellate Procedure" or "TRAP" means the Federal Rules of Appellate Procedure pursuant to L&O 211 (f). If a conflict exists between the LRAP and the TRAP, the LRAP shall control.

ANNOTATIONS

LRAP 2

Time, Computation for Appeal Purposes. Time is computed in the same way as in civil cases per LRCP 21, except where amended by LRAP 10. The parties are responsible to file their briefs in accordance with the accurate deadlines, as set forth in LRAP 10.

ANNOTATIONS

LRAP 3

(a) Petition for Appeal and Other Pleading Prior to Grant of Petition for Appeal. Each petition for appeal, and any other pleading prior to an Appeals Court order granting that appeal, shall be filed with the Clerk and is subject to the same caption, form, and requirements as trial Court cases per the LRCP, applicable LRCP, including but not limited to, LRCP 3. Each petition for appeal shall bear the caption of the trial court case from which it arises and a title that readily identifies it to the Clerk of Tribal Court as a "Petition for Appeal." Any intended petition whose title or caption fails to identify it as a petition for appeal, or identifies any other relief in addition, or alternative, to petitioning an appeal, or is not identifiable to the Clerk as a petition for appeal, shall be deemed and treated as a petition or motion to the trial court for reconsideration or some or such other relief as identified in its title or caption.

(b) Briefs After Grant of Petition for Appeal. Once an appeal is granted, in accordance with L&O 211 (a)(3), each pleading shall bear the caption of the Appeals Court case, unless otherwise ordered by the Appeals Court.

ANNOTATIONS

LRAP 4

(a) Pleading, Court Record, Briefs. The petition for appeal and any other pleading shall accurately quote, copy, reproduce, or cite the page and paragraph of the relevant portions of the written trial court record¹ upon which an argument being presented is based.

(b) Pleading, Law and Authority. Each petition for appeal and any other appellate pleading shall accurately quote, copy, reproduce or cite all law or other authority upon which any argument being presented is based.

ANNOTATIONS

LRAP 5

Non-Record Materials. Attachments or exhibits to a petition for appeal or any other appellate pleading that are not part of the designated trial court record, or allowed by leave of or as otherwise ordered by, the Appeals Court shall not be filed by a party in the appeal nor considered by the Appeals Court.

ANNOTATIONS

¹ Cites may be to the footcount of the taped record if, at the time of filing of the pleading, a written transcript is unavailable.

LRAP 6

(a) **Appeal, Decision, How Made.** The Appeals Court shall hear and decide each petition for appeal, and each appeal, en banc, except for those Judges who are disqualified under applicable law.

(b) **Appeal, Hearing, When Made.** By the close of business on the hearing date of the appeal, the Appeals Court shall be sent the designated trial court record, the parties' briefs, and each party's comment record, and the appeal shall be deemed heard on that date, and the Appeals Court shall render a decision in a timely manner thereafter.

(c) **Appeal, Hearing, Comment Record.** Requests for presentation of the comment record in the direct presence of the Appeals Court Judges shall be made not later than the Twentieth (20th) day after the appeal acceptance date. The granting of such direct presentation shall be in the sole discretion of the Appeals Court.

(d) **Appeal, Hearing, Issues.** Each appeal shall be limited to those issues raised by the petition for appeal, and the Appeals Court shall hear and decide each issue on the designated trial court record, and in consideration of each party's comment record and appellate pleading(s) actually filed in the case, unless the Appeals Court orders otherwise. The Appeals Court shall not be persuaded against a party solely on the basis that the party failed to make a comment record or file an appellate pleading in the case or on the issue.

ANNOTATIONS .

LRAP 7

Petition for Appeal, Filing, When Required, Limitation of Action. To initiate any appeal, a petition for appeal shall be filed not later than the close of business on the twentieth (20th) calendar day after entry by the Tribal Court of the final order or final judgment from which appeal is sought.

ANNOTATIONS

LRAP 8

Petition for Appeal, Pleading, Issues. A petition for appeal shall, at a minimum, contain a short conclusion stating the precise relief sought and a statement of the issues presented for review, which shall be limited to the following: (a) Lack of jurisdiction of the Tribal Court, (b) Irregularities or improprieties in the proceedings, or by the Tribal Court, the jury, any witness, or any party substantially prejudicial to the to the rights of petitioner, (c) Any ruling, order, decision of abuse of discretion which prevented a fair hearing or trial, (d) Newly discovered material evidence which could not, with reasonable care, have been produced at the trial or hearing, (e) Insufficient evidence to support the verdict, decision, order or judgment of the jury or Tribal Court, or (f) An error of law substantially prejudicial to the rights of the appellant. A petition for appeal shall contain all legal and factual contentions that may be asserted for the relief sought, including, but not limited to, any requests for expedited, or special hearing, or any request for a stay (or appeal from a trial court grant or denial of a stay of proceeding to enforce a judgment or order) of any trial court decision or order.

ANNOTATIONS

LRAP 9

(a) Petition for Appeal, Delivery to Appeals Court. Not later than the close of Court on the next business day after a petition for appeal in proper form under LRAP 3 and LRAP 8 is filed, the Clerk shall send the petition to the Appeals Court, along with any affidavit and request for a waiver of fees under LRAP 13 (c). In addition, the Clerk shall specially mark any late or untimely filed petition to so indicate its perceived lateness to the Appeals Court.

(b) Petition for Appeal, Independent Notice to Appeals Court. Any party having any reason to believe delivery of a petition for appeal was not made per LRAP 9 (a) may send a letter or fax directly to the Appeals Court Judges informing them ONLY that a petition for appeal was filed, and the case name and number and the time and date the filing.

ANNOTATIONS

LRCP 36 (e)

APPELLATE BRIEFS AND DELIVERY TO THE APPEALS COURT

LRAP 10

Unless the Appeals Court orders otherwise:

**Clerk's
Actions**

(a) On the appeal acceptance date, the Clerk of Court shall do the following:

(i) set a hearing under the authority of the Appeals Court for a date forty-five calendar (45) days from the appeal acceptance date and calendar a schedule of briefs by the parties and the hearing date; and make notice(s) thereof for the parties;

(ii) designate the trial court record and make the appellate file under LRAP 11 (a), and

(iii) send to each Appellate Judge and serve on each party in the case, and on the Attorney General when required by LRCP 14, a copy of the notice of hearing and schedule of briefs, the petition for appeal, and the Appeals Court order granting the appeal.

**Appellant's
Appellate
Pleading**

(b) Not later than the close of business on the twentieth (20th) day after the appeal acceptance date, the Appellant shall file an opening brief (brief by Appellant) and all other appellate pleading Appellant shall file in the case.

**Appellee's
Appellate
Pleading**

(c) Not later than the close of business on the fortieth (40th) day after the appeal acceptance date, the Appellee shall file an answer brief (brief by Appellee) and all other appellate pleading Appellee shall file in the case.

**Appellant's
Reply Brief
and Pleading**

(d) Not later than the close of business on the forty-second (42nd) day after the appeal acceptance date, the Appellant shall file a brief in reply and any answer or other reply to any other appellate pleading filed by Appellee. Any briefs or other motions or pleading filed after the close of business on the third business day before the hearing date will not be accepted for filing.

**Party's
Comment Record**

(e) On the date and time set for the hearing, each party to the appeal shall given a total of fifteen (15) minutes, commencing with the Appellant, to make their comment record, which shall be taped or stenographically recorded by the Clerk of Court under the authority of L&O 105 (7), and filed in the appellate file.

**Delivery of
Appellate
File to
Appeals Court**

(f) The Clerk shall send the appellate file to the Appeals Court by the close of court business on the day of the hearing.

LRAP 10 (Cont.)

(g) **Amici Briefs and Records.** Unless ordered otherwise by the Appeals Court, briefs by amici approved by the Appeals Court shall be filed not later than the time set for the Appellee's answer brief under LRAP 10 (c), and briefs by the Attorney General per LRCP 14, or at the request of the Appeals Court, shall be filed no later than the time set for the Appellant's Reply brief under LRAP 10 (d). Comment records by amici shall be made after the parties, and those by the Attorney General shall be last.

(h) **Transcripts, Lost or Differing Records.** Typed or written transcripts made or ordered by the Court Clerk or any party shall not change the above deadlines, but the Clerk shall send such transcripts to the Judges of the Appellate Court, and make them available for requesting parties pursuant to LRAP 13, not later than the close of business the day after their completion, unless the Appeals Court orders otherwise. Where Court transcripts and tapes vary on material portions of the record necessary for deciding the appeal, the Appeals Court shall decide the accurate version, or direct the trial court to so determine and forward its findings to the Appeals Court.

ANNOTATIONS

LRCP 43 (2)

LRAP 11

(a) **Clerks Set Aside of File and Schedule of Briefs and Hearing.** On the appeal acceptance date, the Clerk of Court shall immediately designate and set aside for copying and verification the trial court record, and shall start the appellate file by assigning that file a new appellate court case number and filing therein a copy of the notice of hearing, schedule of briefs, and the Appeals Court order granting the appeal.

(b) **Late Filings.** After the appeal acceptance date, except for the designated trial court record, the appellate pleading, the comment record, and any other filings ordered by the Appeals Court, no other copies, tapes, records, pleading or other filings, of any kind, shall be included in the appellate file, nor be sent to the Appeals Court, but any such filings that are neither part of the designated trial court record, nor the appellate pleading, nor comment record, nor authorized by the Appeals Court, shall be filed in the trial court file, only, and shall be of no force or effect while the appeal is pending, unless the Appeals Court orders otherwise.

ANNOTATIONS

LRAP 12

Designated Trial Court Record, Verification. The Clerk of Court completes designation of the trial court record by making the copies identified in LRAP 1 (f) and attaching to them a verified cover letter attesting to their accuracy and completeness, and entering those copies into the appellate file as soon after the appeal acceptance date as reasonably possible, but in no event more than five (5) business days thereafter.

ANNOTATIONS

LRAP 13

Availability of Records

(a) Trial Court File: At all times the trial court tape(s) and file(s), including the petition for appeal, are subject to LRAP 13 (c), except from the appeal acceptance date to the completion of the designation of the trial court record, as set forth in LRAP 12, during which time, the trial court record shall not be accessible to any party or trial court judge.

(b) Appellate File: From the starting of the file on the appeal acceptance date and at all times thereafter, the appellate file is subject to LRAP 13 (c).

(c) Court Tapes, Records Requests, Inspection, Copies, Typed Transcripts, and Fees: In appeals these are made, requested and provided in the same way they are in Trial Court cases per the LRCP, except that any fee waiver by a party to an appeal shall be automatically accepted and forwarded to the Appeals Court for determination of the waiver along with the petition for appeal or appeal under L&O 211 (a)(1).

ANNOTATIONS

LRAP 14

(a) Petition for Rehearing. A petition for rehearing of any appellate decision may be filed within fourteen (14) calendar days of the entry of the opinion by the Appeals Court and shall proceed under TRAP 40.

ANNOTATIONS

LRAP 14

(b) **Precedent.** All decisions of the Appellate Courts of the Tribes after the effective date of these Rules are memorandum decisions that shall not be regarded as opinions of binding precedent in any other cases, although such decisions may be referred to, or cited, for informative purposes, except where the Appeals Court has ordered the publication of such opinions in the official reporter for the Courts of the Tribes, as precedent for the Courts of the Tribes per this Rule. See Annotation Comment, below.

(c) **Distribution.** Notwithstanding LRAP 14 (b), upon receipt of an appellate memorandum decision or opinion for publication, the Court Clerk shall forthwith send copies thereof to each party, and to each Deputy and Trial Judge, who shall review it for instruction, and to the Attorney General and the Tribal Council for their information, and shall send copies of each opinion for publication to the official reporter, and add such opinion to Insert C to these Rules, which Insert shall serve as the official reporter for cases and amendments to the Rules of Court, until such time as the Tribal Court or Council create one.

(d) **Retroactivity.** No opinion of the Appeals Court shall have retroactive effect on any case arising in fact or filed prior to the date of its issuance, unless otherwise expressly ordered by the Appeals Court.

ANNOTATIONS

Cf. Arizona Rules of Civil Appellate Procedure, Rule 28 (Memorandum decision becomes an opinion cited as precedent only in certain circumstances); L&O 110 (A).
Comment: The only opinions of binding precedent are (1) Appeals Court opinions published per LRAP 14 (b) after the effective date of these Rules, and (2) Appeals Court opinions prior to the effective date of these Rules. All Appeals Court opinions for publication and important memorandum decisions after the effective date of these Rules are included on Insert C, until such time as the Tribal Court or Tribal Council create an official reporter. Most, if not all, Appeals Court opinions prior to the effective date of these Rules are included in the annotations to this publication. In addition, at the time of publication of these Rules, most, if not all, opinions published in the Indian Law Reporter from the trial Courts of the Tribes, i.e., the Tribal and Juvenile Courts, were also included in the annotations to this publication. The overall idea was to include all available cases at the time. It should be noted, however, that neither publication as an annotation herein, nor in the Indian Law Reporter, of any trial, i.e., Tribal or Juvenile, Court opinions converts them into binding precedent in any way. Trial Court opinions, and even Appeals Court memorandum decisions, are annotated, cited or referred to, in these Rules as elsewhere for the information of parties and judges, only.

LRAP 15

(a) **Standing Order.** The Chief Judge of the Appeals Court, in his or her discretion, has authority to establish and promulgate Rules of Procedures and make standing or administrative orders applicable to cases or procedures of the same type or class.

(b) **Suspension of Rule or Standing Order.** Except as otherwise directed by the Chief Justice, an Appellate Judge may, for good cause, and with prior notice to all parties in the affected case, suspend any rule, or standing or administrative order in that case only.

ANNOTATIONS

See Rules of Appellate Court: LRAP; L&O 211 (d)(Authority to Establish and Promulgate Appellate Rules); Cf. L&O 202 (c) and Rules of Tribal Court: LRCP; LRCS; LRP632; LRCP; LRJP; LRSP and LRPOSC; LRCP 45.