



Resolution No. 14-072-VJB

**RESOLUTION OF THE GOVERNING BODY OF THE  
THREE AFFILIATED TRIBES OF THE  
FORT BERTHOLD INDIAN RESERVATION**

**A Resolution Entitled: "M.H.A. Nation Supreme Court, Rules of Appellate Procedure**

**WHEREAS,** This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act and having adopted a Constitution and By-Laws pursuant to said Act; and

**WHEREAS,** The Constitution of the Three Affiliated Tribe generally authorized and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

**WHEREAS,** Article III of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council is the governing body of the Tribes; and

**WHEREAS,** Article VI, Section 5 (l) of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council has the power to adopt resolutions regulating the procedure of the Tribal Business Council and other Tribal agencies; and

**WHEREAS,** Article VI, Section 3(c) of the constitution of The Affiliated Tribes Specifically authorizes and empowers the Tribal Business Council to promulgate ordinances and to adopt rules and regulations governing various matters to be administrated by the Tribal Court system; and

**WHEREAS,** Pursuant to Resolution No-13-096-VJB the Tribal Business Council established Its own M.H.A. Nation Supreme Court; and

**WHEREAS,** It is Necessary for the Governing Body to approve Rules of Appellate Procedure For the MHA Nation Supreme Court.

**NOW, THEREFORE BE IT RESOLVED,** The attached Rules of Appellate Procedure are hereby adopted in their entirety.

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**MANDAN, HIDATSA & ARIKARA NATION SUPREME COURT**  
**RULES OF APPELLATE PROCEDURE**

**Rule 1. SCOPE OF RULES**

These rules shall govern the procedures in appeals from civil and criminal judgments and/or final orders of the Mandan, Hidatsa & Arikara Nation Court and Juvenile Court.

**RULE 2. WHEN AN APPEAL MAY BE TAKEN**

- a) Appeals of right. Any party to an action in the Mandan, Hidatsa & Arikara Nation Court shall have the right to appeal any criminal conviction, any judgment or order in a civil case or juvenile court.

**RULE 3. APPEAL OF RIGHT - HOW TAKEN**

- a) Filing of Notice of Appeal, Civil and Criminal. An appeal of judgment or order of the MHA Nation Court shall be taken by filing a notice of appeal with the Clerk of the MHA Nation Tribal Court (30) days of the date of entry of judgment or order appealed from, provided that upon a showing of excusable neglect, the MHA Nation Tribal Court may extend the time for filing of the notice of appeal by any party for a period not to exceed forty-five (45) days from the expiration of the normal period allowed for the filing of a notice of appeal.
- b) Notice of Appeal -- Form. The notice of appeal, whether it involves a criminal or civil action shall specify the name of the court from which the appeal is taken, the name of the party or parties taking the appeal, the judgment or order from which the appeal is taken and the court to which the appeal is taken.
- c) Service of the Notice of Appeal. The Clerk of the MHA Nation Tribal Court shall serve notice of the filing of notice of appeal, whether a civil or criminal action is involved, by mailing a copy of the notice of appeal to each party and each party's legal representative. The Clerk shall note on each copy when the notice of appeal was filed.

**RULE 4 APPEAL OF TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

- a) Temporary Restraining Order and Preliminary Injunction – How Taken. An

appeal from the granting of a temporary restraining order of preliminary Injunction may be sought by filing a petition for permission to appeal with the clerk of the court within five (5) days after the entry of such order by the MHA Nation Tribal Court.

- b) Form or Contents of Petition. The petition shall contain a statement of the facts necessary to understand the issues and questions of law involved, a statement of the reasons the order should be lifted, and a statement of injuries, damages, or harm being incurred by the petitioner.

**RULE 5. RELEASE – PENDING APPEAL OF A CRIMINAL CONVICTION**

Application for the release of a convicted defendant pending appeal of the judgment of conviction shall first be made in the MHA Nation Court. If the MHA Tribal Court refuses to release pending appeal, or imposes conditions of release, the MHA Nation Court shall state in writing the reasons for the action taken. Thereafter, if an appeal is pending, appellant may motion for release, or modification of conditions of release, to the MHA Nation Supreme Court or a judge thereof. Such a motion shall be determined promptly after appellant and appellee present their oral and/ or written arguments on the motion.

**RULE 6. RECORD**

- a) Composition of Record on Appeal. The original papers and exhibits filed in the MHA Nation Court, the transcript of the proceedings, if any, and a certified copy of the final judgment or order appealed from shall constitute the record on appeal in all cases, civil and criminal. The clerk of court completes the designation of the trial record by making copies as stated above and attaching them to 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 fifteen (15) business days thereafter.
- b) Statement of Proceedings when No Report or Transcript Made. If no report of the evidence or proceedings at a trial or hearing was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence and proceedings. Said statement shall be filed with the Clerk of the MHA Nation Court. The appellant shall serve a copy of the statement on appellee, and the appellee shall have ten (10) days to raise objections and propose amendments to the statement and file those objections and proposed amendments with the Clerk of the MHA Nation Court. The MHA Nation Court shall settle the

objections, make any necessary amendments, and finally approve the statement for inclusion in the record of appeal.

**RULE 7. TRANSMISSION OF THE RECORD AND COSTS**

- a) The record on appeal, including the transcript or statements of proceedings, shall be completed and turned over to the MHA Nation Supreme Court within thirty (30) days after the notice of appeal is filed by appellant unless the MHA Supreme Court extends the time for good cause shown. Appellant shall take whatever action is necessary to enable the Clerk of the MHA Nation Court to assemble the record.
- b) During the appeal, the parties shall bear their own costs of the appeal. Costs associated with transcripts, copying court files, tapes, documents, other evidence, and other portions of the record shall be paid by the party requesting such copies.
- c) When the record on appeal is complete, the Clerk of the MHA Nation Court shall transmit a complete copy of the record to each Justice of the MHA Nation Supreme Court who have been designated to hear the appeal. The time and date of the transmission shall be noted on each copy of the record.

**RULE 8. FILING AND SERVICE OF DOCUMENTS ON APPEAL**

- a) Filing. Parties to an appeal shall file an original and four (4) copies of any and all papers required or permitted with the Clerk for the MHA Nation Supreme Court.
- b) Service of Papers. Copies of all papers filed with the Clerk of the MHA Nation Supreme Court by parties to an appeal shall be sent by regular mail to opposing parties and their legal representatives by the party filing such papers. All papers filed with the Clerk shall be accompanied by a written statement of the party filing such papers, or his legal representative, certifying that such papers have been mailed to the opposing party(s) or their legal counsel.

**RULE 9. BRIEFS, MEMORANDA, AND STATEMENTS**

Within twenty (20) days after the record of an appealed action is transmitted to the MHA Nation Supreme Court, or in such other time as ordered by the Supreme Court, the appellant shall file a written brief, memorandum, or statement in support of his appeal with the Clerk of Court. The appellee shall

have fifteen (15) days after receipt of appellant's brief, memorandum or statement within which to file a reply brief, memorandum, or statement. Filing and service in either case shall be accomplished in the manner provided in Rule 8. No further response shall be allowed to either party without leave of court.

**RULE 10. AMICUS CURIAE**

In any appellate proceeding, amicus briefs, memoranda or statements shall be permitted only in the following situations:

- 1) When all parties to the action consent to the filing of an amicus curiae brief, memorandum, or statement;
- 2) By leave of court pursuant to a properly filed motion; or
- 3) At the request of the court.

**RULE 11. ORAL ARGUMENT**

- a) The MHA Nation Supreme Court shall decide all appeals upon the briefs, memoranda, and statements filed together with the record of the trial court, without oral arguments unless either party requests oral argument and shows the court that such is necessary and/ or will aid the court in its decision. Nothing in these rules, however, shall preclude the court from ordering oral arguments on its own motion.
- b) When oral arguments are ordered, the clerk of Court shall notify both parties of the specific time, date, and place the arguments are to be heard. At the hearing both appellant and appellee shall have a maximum of twenty (20) minutes to present their respective arguments. Appellant shall be permitted to both open and close the arguments.

**RULE 12. RECONSIDERATION**

- a) The Supreme Court shall entertain Motions for Reconsideration of any final order, decision, or opinion, issued by the Court, provided that the Motion is made within twenty (20) days of issuance of the order, decision, or opinion.
- b) A Motion for Reconsideration is an extraordinary remedy that can only be granted for compelling reasons. A motion for reconsideration may

be presented on the following grounds and no others:

- 1) that some fact, material to the decision, or some question of law decisive of the case submitted by counsel, was overlooked by the Court;
  - 2) the presence of new and material facts (e.g. juror misconduct, etc.) which were fraudulently withheld or could not have been reasonably known to the aggrieved party during the pendency of the appeal proceedings;
  - 3) that the decision is in direct conflict with the Code, other tribal ordinances or resolutions, controlling case law, applicable federal statutes, or fundamental principles of federal Indian law; or
  - 4) that the court employed inappropriate procedures, considered facts outside the record on appeal, or failed to issue an opinion in accordance with Rule 15.
- c) The grounds for reconsideration must be pled with specificity and be supported by facts or law in the appeal record and a supporting brief as in Rule 9.
  - d) A party opposing reconsideration may file a brief in opposition within ten (10) days of the receipt of the movant's motion and brief.
  - e) Oral argument on the issue of reconsideration is within the discretion of the court.
  - f) The Supreme Court may hear additional argument and allow supplemental briefing if necessary. Within thirty (30) days of receipt of the motion or additional argument, the Court may grant or deny the motion for reconsideration and issue an opinion pursuant to Rule 15.

### **RULE 13. FRIVOLOUS APPEALS**

If the MHA Nation Supreme Court finds that a party has filed a frivolous appeal, the Court may award the appellee his just damages plus single or double costs.

### **RULE 14. COSTS**

If an appeal is dismissed by the MHA Nation Supreme Court, appellant shall pay all costs of the appeal. If the judgment of the trial court is affirmed, the court, in its

discretion, may order the appellant to pay all costs of the appeal or direct the parties to pay a designated portion of the costs. If the judgment of the trial court is reversed, the court, in its discretion, may order the appellee to pay all costs of the appeal, or direct the parties to pay a designated portion of the cost.

**RULE 15. FINALTY OF DECISION**

Within three (3) months of the date the last brief was submitted or the last day of oral arguments, the MHA Nation Supreme Court shall deliver its opinion in writing stating the type of order appealed, the facts, the rules of law applied, all conclusions of law and fact, and the decision to the parties in the case. All decisions of the MHA Nation Supreme Court shall be arrived at by a simple majority of the three judge panel. All judgments on appeal are final unless the court grants a motion for reconsideration under Rule 12.




**CERTIFICATION**

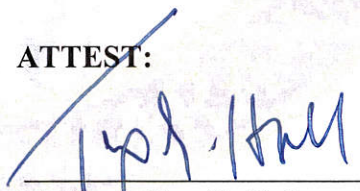
I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby certify that the Tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 5 were present at a Regular Meeting thereof duly called, noticed, convened and held on the 10<sup>th</sup> day of April, 2014, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 5 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman [] Voting. [  ] Not Voting.

Dated this 10<sup>th</sup> day of April, 2014.

  
\_\_\_\_\_  
Executive Secretary V. Judy Brugh  
Tribal Business Council  
Three Affiliated Tribes

**ATTEST:**

  
\_\_\_\_\_  
Chairman Tex G. Hall  
Tribal Business Council  
Three Affiliated Tribes




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Dated this 10<sup>th</sup> day of April, 2014.

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Executive Secretary L. Ken Hall  
Tribal Business Council  
Three Affiliated Tribes

  
Chairman: Mark Fox  
Tribal Business Council  
Three Affiliated Tribes