

## CHAPTER 1-2 RULES OF COURT

### GENERAL RULES

**1-2-1 Conduct**

All court proceedings shall be conducted in a dignified and respectful manner. All persons addressing the Court shall arise and shall speak in a clear and courteous manner.

**1-2-2 Time**

All trials, both civil and criminal, shall be commenced at a designated time determined by the judge, with reasonable notice of the time being given to the parties.

**1-2-3 No Discussion with Jurors**

No person, including members of the Court's staff, any of the parties or witnesses, or any other person, shall discuss with any known juror, any case pending before him, or which may come before him, either before or during the trial and any juror who has any personal knowledge about the case or who has discussed it with any of the parties, witnesses or Court officials, shall be excused by the judge.

**1-2-4 No Discussion with Judge**

No witnesses or party to any case shall under any circumstances either before or during trial, attempt to discuss any case pending before the Court with any of the judges, except in open court, and with either the clerk or one of the other judges present, and shall under any circumstances attempt to influence the Court's decision unless in the course of regular Court proceedings.

**1-2-5 Trial by Jury; Notice to Court (10-day Rule)**

The Court must be notified by the defendant ten (10) days prior to a scheduled jury trial that a jury trial is still requested, or the right to a jury trial is waived.

(Adopted 8/2/82, Resolution 1982-442)

**1-2-6 Jury Instructions; When Filed**

All jury instructions submitted for jury trials must be presented to the Court three (3) days prior to the scheduled jury trial. The instructions must be made available to opposing counsel at this time.

(Approved L & J Committee, 3/23/81)

**1-2-7 Withdrawal of Counsel—Criminal**

Whenever a criminal cause has been set for trial, no counsel shall be allowed to withdraw from said cause, except upon written consent of the Court, for good and sufficient reason shown.

(Approved L & J Committee, 3/23/81)

**1-2-8 Service on Papers Filed**

Whenever a party files a brief or other legal document with the Court, that party shall serve a copy of the legal document on opposing counsel three (3) days before trial, and file such certificate of service with the Court.

(Approved L & J Committee, 3/23/81)

**1-2-9 Omnibus Hearing (Pretrial)**

(a) When a plea of not guilty is entered, the Court may set a time for an omnibus hearing. If the hearing is not set at the arraignment, counsel must request the Court not less than twenty (20) days prior to trial and a hearing shall be set for not less than fifteen (15) days prior to trial. Pretrial motions must be submitted to the Court, with a copy to opposing counsel, not less than three (3) days prior to the omnibus hearing.

(b) Failure to raise or give notice at the hearing of any error or issue of which the party concerned has knowledge may constitute waiver of such error or issue.

(c) Stipulations by any party shall be binding upon that party at trial unless set aside or

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modified by the Court in the interests of justice.

(d) At the conclusion of the hearing, a summary memorandum shall be made indicating disclosures made, rulings and orders of the Court, stipulations, and any other matters determined or pending.

(Adopted 4/5/83, Resolution 1983-236)

**1-2-10 Timely Filing of Motions**

A written motion, including those which may be heard ex parte, shall be filed and served on opposing party no later than five (5) days prior to the time specified for the hearing, unless a different period is fixed by these rules, by order of the Court or for good cause shown. Motions shall be supported by affidavit, which shall be served with the motion. Opposing motions and affidavits shall be filed and served on opposing parties no later than one (1) day prior to the hearing, unless the Court permits them to be filed at some other time. All motions shall cite governing rules and/or laws of the Colville Tribe.

(Adopted 5/16/83, Resolution 1983-343)

**1-2-11 Applicable Law**

In all cases the Court shall apply, in the following order of priority unless superseded by a specific section of the Law and Order Code, any applicable laws of the Colville Confederated Tribes, tribal case law, state common law, federal statutes, federal common law and international law.

(Adopted 5/16/83, Resolution 1983-342)

**1-2-12 Criminal/Civil Recording Tape Retention**

Tapes used in the recording of criminal and/or civil matters shall be retained by the Colville Tribal Court for a period of not less than three (3) years from the date of the last recorded matter on the tape.

(Adopted 1/23/84, Resolution 1984-71)

**1-2-13 Criminal File Retention**

Criminal case files shall be retained by the Court for a period of not less than three (3) years after the date of filing, provided:

(a) That the file has been closed at least one (1) year prior to destruction date and that no activity, excluding appeal, has occurred during that period.

(b) That all important information (citation date, charges, arrest warrants, final dispositions, completion dates, etc.) are recorded on permanent index cards that will be retained indefinitely by the Court; and

(c) That all files shall be disposed of in a manner consistent with regards to destruction of these types of documents.

(Adopted 7/12/84, Resolution 1984-489)

**TRIAL PROCEDURE**

**1-2-40 Impanelling the Jury**

In cases to be tried to a jury, the jurors shall be selected in advance of trial under a procedure to be established by the Chief Judge. Six members of the jury shall then be seated.

**1-2-41 Swearing in Witnesses**

All witnesses shall be administered an oath by the judge, clerk or bailiff as follows: "Do you swear (or affirm) to tell the truth in the matter now before you?"

(Amended 8/17/89, Resolution 1989-611)

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**1-2-42      Conduct of Trial**

Plaintiff shall make the opening statement setting forth the charge or claim for relief against the defendant. The defendant shall have an opportunity to make a statement of his position. Upon the conclusion of such statement, the plaintiff shall call such witnesses and produce such exhibits as he may see fit. The plaintiff shall thereafter, in rebuttal, have an opportunity to call such witnesses and produce such evidence as he may see fit to rebut the evidence by the defendant. Both the plaintiff and defendant shall have the right to cross-examine witnesses.

**1-2-43      Final Argument**

Upon the conclusion of the evidence, the plaintiff shall be given an opportunity to argue his case. The defendant shall then be given an opportunity to argue his case, and the plaintiff shall be given an opportunity to make a closing argument. Further argument may be allowed at the Court's discretion.

**JURY INSTRUCTIONS - JUDGMENTS**

**1-2-70      Jury Instructions—Applicable Law**

In all jury cases, after final argument, the judge shall instruct the jury as to the particular section of this Code, or any other applicable law that governs the case and shall read the jury its provisions. Similarly, if a custom of the Tribes governs the case, the judge shall instruct the jury as to the exact custom and manner in which it is to be applied.

**1-2-71      Jury Instructions—Civil**

In a civil jury case, the judge shall instruct the jury that the plaintiff has the burden of proving his case by the greater weight of the evidence and that if they find that he has proved his case by the greater weight of the evidence, then their verdict should be for the plaintiff, but, if on the other hand, they find that he has not proved his case by the greater weight of the evidence, then their verdict should be for the defendant.

**1-2-72      Jury Instructions—Criminal**

In a criminal jury case, in addition to reading the jury the applicable governing law and instructing the jury regarding applicable Tribal customs, the judge shall instruct the jury that the defendant is presumed to be innocent and must be proven guilty beyond a reasonable doubt and that if the jury believes beyond a reasonable doubt that the defendant is guilty, then they should find him guilty, but if they do not believe beyond a reasonable doubt that he is guilty, then they should find him not guilty.

**1-2-73      Jury Instructions By a Party**

In all jury cases, either party may propose instructions to the jury which may be allowed by the judge if he finds that such instructions further the interests of justice.

**1-2-74      Jury Instructions—Final**

In all jury cases, the judge shall instruct the jury that they shall retire to consider the matter and that each juror shall be given an opportunity to state his opinion, that they shall elect a foreman and that their decision shall be by unanimous vote in criminal cases and a majority of at least four in civil matters.

**1-2-75      Verdict and Judgment—Jury Trial**

When the jury members reach a verdict, they shall return the verdict to the judge in open court with the parties present, and the judge shall enter judgment upon the verdict in open court or within a reasonable time after the trial. If the jury is unable to reach a verdict, then a new trial shall be impanelled and the case shall be retried.

**1-2-76      Judgment—Non-Jury Trial**

After final arguments in non-jury cases, the judge shall decide the case and render a judgment in open court or within a reasonable time after the trial.

**1-2-77      Appeal**

Any person aggrieved by the verdict of the jury or the judgment of the Court shall have the right to appeal such decision as provided in the Subchapter on Appellate Proceedings under Chapter 1-1.

**1-2-78      Stay Pending Appeal; Bonds**

If a party is granted an appeal, that party must then, in writing, request a stay of judgment pending the outcome of the appellate procedure. At that time, the appellant must also make provisions for a bond, which is discretionary with the Court.

(Approved L & J Committee, 3/23/81)

**1-2-79      Limited Appeals**

A party requesting an appeal can request such appeal to be limited to conclusions of law, or facts based on the trial court record. Such request must be in writing, and must be submitted to the Court at the same time as the Notice of Appeal.

(Approved L & J Committee, 3/23/86)

**COLVILLE TRIBAL COURT OF APPEALS JURISDICTION AND RULES OF APPELLATE PROCEDURE**

**1-2-101      Purpose**

The purpose of this subchapter shall be to codify and determine the scope of jurisdiction of the Colville Tribal Court of Appeals (“COA”).

(Adopted 9/2/10, Resolution 2010-651)

**1-2-102      [Reserved]**

(Adopted 9/2/10, Resolution 2010-651)

**1-2-103      COURT ADDRESS**

The official address of the COA is: 3 Joe Moses Road, P O Box 150, Nespelem WA 99155. For a timely response, all correspondence should be addressed: “Attention: Court of Appeals Clerk.”

(Adopted 9/2/10, Resolution 2010-651)

**1-2-104      COMPOSITION OF THE COURT OF APPEALS**

(a) The COA consists of a panel of individual justices appointed by the Colville Business Council for terms of six years, including one Chief Justice and the others being Associate Justices, appointed consistent with Amendment X of the Colville Tribal Constitution.

(b) The Chief Justice of the COA shall assign an appellate panel of three justice for each case filed as the presiding panel for the duration of the case. If the Chief Justice is not on the panel, he shall designate one associate justice to act as presiding Justice on the panel.

(c) The COA shall not have jurisdiction to empanel an *en banc* panel of all of the justices of the COA unless:

(1) Following a decision by a three justice appellate panel, a party has properly moved the three justice panel for *en banc* reconsideration and the three justice appellate panel determines *en banc* reconsideration is warranted because there has been the discovery of new evidence that could not reasonably have been discovered at trial, a plain mistake or error of law, or to deny the reconsideration would result in manifest injustice. Provided, the COA shall not have jurisdiction to empanel an *en banc* panel of all of the justices of the COA for reconsideration if the reconsideration would simply serve as a vehicle to relitigate old matters, advance new arguments, or reargue points previously considered by the COA;

(2) Following a decision by a three-justice appellate panel where one justice has issued a

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written dissent, the dissenting justice requests reconsideration by an *en banc* panel.  
(Adopted 9/2/10, Resolution 2010-651)

**1-2-105 CLERK OF THE COURT OF APPEALS**

Budgetary considerations of the Colville Tribes permitting, there will be at least one clerk of the Court of Appeals. The Clerk of the Court of Appeals shall be under the direct supervision of the COA Chief Justice. The Clerk shall perform the following duties, which include, but are not limited to:

- (a) accept documents for filing with the Court of Appeals;
- (b) maintain the files of the COA and shall process documents as necessary for the administration of those files;
- (c) shall publish via electronic mail or otherwise the COA docket to, at least, the Trial Court, the Office of the Reservation Attorney, the Office of the Prosecutor, the Office of the Public Defender, and the Colville Tribes Legal Services Office;
- (d) the clerk will maintain a record of the status of open cases and the justices assigned to each case;
- (e) attend all hearings and keep records of the proceedings;
- (f) assist the justices in research and drafting of opinions and orders as requested by the COA Chief Justices or Presiding Judge Justice of each panel;
- (g) distribute final decisions to the parties and to pertinent law reporters, as designated by the COA Chief Justice or Presiding Justice;
- (h) other duties as assigned by the Chief Justice for the efficient operation of the Court of Appeals.

(Adopted 9/2/10, Resolution 2010-651)

**1-2-106 JURISDICTION**

(a) In accordance with Article VIII, Section 1 of the Constitution of the Confederated Tribes of the Colville Reservation, the scope of the jurisdiction of the COA is to be determined by the Colville Business Council.

(b) In accordance with Article VIII, Section 1 of the Constitution of the Confederated Tribes of the Colville Reservation, the COA shall not have jurisdiction to act outside of its separate branch of the Colville tribal government by interfering with the prerogatives of the other branch of the Colville Tribal Government. This includes, but is not limited to, waiving the Colville Tribes' sovereign immunity; finding a waiver of the Colville Tribes' sovereign immunity without clear and unequivocal language duly passed into law by the Colville Business Council; ordering the other branch to adopt legislation; ordering the other branch to make any budgetary decisions; ordering the other branch to make personnel decisions other than that permitted under applicable personnel policy.

(c) The COA shall have jurisdiction only to hear and determine appeals from the Trial Court's final judgments, sentences, disposition orders, and interlocutory appeals as described in 1-2-106(h), and to issue advisory opinions only as prescribed in 1-2-106(j)...

(d) The COA shall not have original jurisdiction over any case or controversy, including, but not limited to, direct appeals of administrative law judge and commission decisions.

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(e) For purposes of filing an appeal with the COA, “final” orders and decisions set out in 1-2-106(c) above are the written orders or decisions issued by the Trial Court that dispose of the substantive issues and not the oral bench orders entered in the matter to be appealed.

(f) The COA shall not have jurisdiction to entertain issues on appeal that have not been fully developed and ruled on by the Trial Court. The COA shall not have jurisdiction to take evidence, hear testimony, or otherwise engage in fact finding reserved for the Trial Court. The COA shall not have jurisdiction to order the Trial Court to take any administrative personnel actions other than that permitted under applicable personnel policy.

(g) In instances when the Trial Court has failed to issue a written final order within a reasonable time, and one of the parties to the action has made a written motion for the issuance of a final order which is not dealt with by the Trial Court within a reasonable time, any party may petition the COA for a Writ of Mandamus to require the Trial Court to issue a final written order. The Petition for a Writ of Mandamus may be heard by the COA Chief Justice or his designee.

(h) The COA shall have jurisdiction to hear interlocutory appeals for issues that concern controlling issues of law for which there is substantial difference of opinion and where a determination will materially advance the ultimate resolution of the case; or where there has been a significant error of law committed at the Trial Court which renders further proceedings useless.

(i) Unless otherwise limited, the COA’s jurisdiction shall be limited to true cases or controversies in law and equity.

(j) The COA shall only possess jurisdiction to issue advisory opinions, including certifications of questions of law, beyond the limits of 1-2-106(i) only when the Colville Business Council duly passes a resolution requesting an advisory opinion of the COA. The COA shall have jurisdiction to deny the Colville Business Council’s advisory opinion request, provided that it supports such a denial with a reasoned written opinion. In the event the COA receives a request for an advisory opinion from a person or entity other than the Colville Business Council, the COA shall forward said request to the Colville Business Council, with a copy to the Office of the Reservation Attorney. COA may attach a written opinion stating its view as to whether or not the Colville Business Council should approve an advisory opinion request resolution. Advisory opinions shall be subject to all jurisdictional requirements set out by the Colville Business Council.

(k) The COA shall not have jurisdiction to request any foreign jurisdiction courts to answer questions of law or equity. In the event the COA shall deem that it needs to request foreign jurisdictions to answer or certify questions of law or equity, the COA may send a written request to the Colville Business Council, with a copy to the Office of the Reservation Attorney, to request a Colville Business Council resolution authorizing such a request to be sent to the foreign jurisdiction court in question. Only if a Colville Business Council resolution authorizing the request has been duly enacted will the COA possess the requisite jurisdiction to make such a request.

(l) Upon proper motion, the COA shall have jurisdiction to enjoin vexatious litigation before the COA and order the Clerk of the COA to handle such injunction appropriately.

(m) The COA shall have limited jurisdiction to empanel an *en banc* panel of all of the justices of the COA in accordance with Colville Tribal Code § 1-2-104 ©.

(n) The COA shall lack jurisdiction to adopt rules of procedure. In the event the COA seeks to amend or otherwise change these statutory rules of procedure, the COA should seek an appropriate code change through the Colville Tribes’ codification process to ensure full public participation and debate through the democratic process.

(Adopted 9/2/10, Resolution 2010-651)

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**1-2-107 TIME**

Time shall be calculated in accordance with Colville Tribal Code § 1-1-366, unless otherwise specified in these rules.

(Adopted 9/2/10, Resolution 2010-651)

**1-2-108 NOTICE OF APPEAL**

(a) A party shall initiate an appeal by filing a written Notice of Appeal (NOA) with the Trial Court within thirty (30) days from the entry of the final judgment, sentence, or disposition order. The Trial Court shall forward the NOA to the COA.

(b) The NOA shall be a written notice which states the name of the case and indicate the party's intention to appeal. It must also state the specific ruling being appealed and the grounds for appeal stated below.

(c) A Notice of Appeal shall be titled as such and shall include:

(1) The name of the parties and their spokespersons, if any. The party filing the appeal shall be designated the appellant and the party responding to the appeal shall be designated the appellee. In minor-in-need-of-care cases, the filing party shall be designated the appellant, and all other parties involved in the case shall be designated as appellees;

(2) The Trial Court case number, date and nature of the decision appealed from;

(3) Those parts of the decision which the party wants reviewed;

(4) Each error of law or procedure being appealed and how it affected the outcome of the case;

(5) A statement that the Appellant has assured the Trial Court that the judgment will be satisfied if affirmed or that the Appellant has asked for a waiver/reduction of the bond.

(6) The relief or order requested.

(d) In all civil actions, the Appellant must attach an Order Setting or Waiving Bond (Order) from the Trial Court pursuant to §1-2-113(b). If the Order is not attached with the NOA, the Appellant will be advised that the Order is required and the Appeal will not be granted without it. Appeals from criminal and minor-in-need-of-care (MINOC) cases do not have to attach the bond order.

(e) An appeal is perfected when all of the applicable elements of this rule are met.

(Adopted 9/2/10, Resolution 2010-651)

**1-2-109 NOTICE OF INTERLOCUTORY APPEAL**

(a) A party shall initiate an interlocutory appeal by filing a written Notice of Interlocutory Appeal (NOIA) with the Trial Court within ten (10) calendar days from the date of entry of the written order of the Trial Court. The Trial Court shall forward the NOIA to the COA. If no written order has been issued and the party has proof that a request was made, the party may move for a Writ of Mandamus to be issued at the same time as the NOIA is filed. The opposing party has ten (10) days after receipt of the NOIA in which to file a response with the COA on whether they oppose or agree with the interlocutory appeal.

(b) The NOIA shall be a written notice which states the name of the case and indicates the party's intention to appeal. It must also state the specific ruling being appealed and the grounds for the interlocutory appeal stated below.

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(c) The NOIA shall be titled as such and shall include:

- (1) The name of the party and his spokesperson, if any. The party filing the interlocutory appeal shall be designated the appellant and the party responding to the interlocutory appeal shall be designated the appellee;
- (2) The Trial Court case number, date and nature of the decision appealed from;
- (3) The error of law or procedure which is the basis of the interlocutory appeal and how it will affect the outcome of the trial if left unresolved until after final judgment;
- (4) An explanation of how the error of law or procedure meets the requirements necessary for review as an interlocutory appeal; and
- (5) The relief or order requested.

(d) An interlocutory appeal is perfected upon order of the COA.

(Adopted 9/2/10, Resolution 2010-651)

**1-2-110 GROUND FOR APPEAL**

(a) Grounds for requesting a new trial or a limited appeal on issues of law and/or fact shall be limited to one or more of the following:

- (1) Receipt by the jury of any evidence, paper, document or book not allowed by the Court;
- (2) Misconduct of the prosecution, judge or jury;
- (3) Newly discovered evidence material to the party which could not have been discovered with reasonable diligence and produced at the trial, provided, however, the appellant has unsuccessfully made reasonable attempts to bring the matter back before the Trial Court by using appropriate motions;
- (4) Accident or surprise;
- (5) Irregularity in the proceedings of the Court, jury, or prosecution, or any order of the Court, or abuse of discretion, by which the party was prevented from having a fair trial;
- (6) Error of law occurring at the trial and excepted to at the time by the party;
- (7) That the verdict or decision is contrary to the law and the evidence; or
- (8) That substantial justice has not been done.

(b) When the Notice is based on matters outside of the record, the facts shall be shown by affidavit.

(Adopted 9/2/10, Resolution 2010-651)

**1-2-111 GROUND FOR INTERLOCUTORY APPEAL**

The following are grounds for interlocutory appeal:

(a) The Trial Court has committed an obvious error which would render further proceedings useless; or

(b) The issue presented involves a controlling issue of law as to which there is substantial ground for difference of opinion and that an intermediate appeal from the decision may materially advance the ultimate resolution of the litigation; or

(c) The Trial Court has so far departed from the accepted and usual course of judicial proceedings as to call for review by the COA; or

(d) The Trial Court has either granted or denied an affidavit of prejudice for removal of a judge.  
(Adopted 9/2/10, Resolution 2010-651)

**1-2-112     FILING AND SERVICE**

(a) FILING. Except for an NOA or NOIA, all papers required or permitted to be filed in the COA shall be filed with the COA Clerk. Filing may be accomplished by mail or fax as provided for in the following section, addressed to the Clerk, but filing shall not be timely unless the papers are received by the Trial Court within the time fixed for filing. All documents filed shall be by an original and three working copies, unless otherwise ordered.

(b) Any party may file a NOA, NOIA, motion and proposed briefing schedule, or any other pleading allowed by the COA, except briefs and their attachments, by fax under the following rules:

(1) The date and time the pleading is received by the Court's fax machine will constitute constructive filing, if the machine has a date/time indicator built in, otherwise the date and time stamped by the Court staff will be official filing. Only one copy will need to be faxed;

(2) The original document and the three working copies must be received by the Clerk of the COA within five (5) working days of the filing by fax, or the filing date will be changed to the actual date of the filing of the original document;

(3) If the document is filed on a weekend, holiday or during non-working hours, and the date/time on the machine are not accurate because of a power outage, malfunction, or similar problem, the document will be considered filed as of the first working day and hour after the non-work hour, holiday or weekend day.

(4) The party filing by fax is responsible for service on all other parties of the case pursuant to the Tribal laws and these court rules.

(5) It is the responsibility of the party sending the fax to call and confirm the receipt of the fax by the COA.

(6) On documents submitted from a computer to the fax machine, the symbol "/s/", the typed name of the signing party, and the date the original document was actually signed shall be included in the faxed copy. If there is a question about when the document was actually signed, the date on the original document will be used by the Court to settle any dispute.

(7) On documents faxed with a signature, there will be a presumption the signature is valid, unless it is shown that the original document's signature is substantially different from the faxed signature.

(8) There shall be a 20-page limit (including cover page) on any document faxed to the COA, unless advance approval is granted.

(c) SERVICE. Copies of all papers filed by any party shall, at or before the time of filing, be

served by a party or person acting for the party on all other parties to the appeal or, if a party is represented, it shall be served on that party's spokesman. Service may be personal or by mail. Personal service includes delivery of the copy to a secretary or other responsible person at the office of the spokesman. Personal service shall be made by a person not a party to the action. Service by mail shall be by certified, return receipt mail to the last known address of the party.

(d) SERVICE OF INTERLOCUTORY APPEALS. A copy of the NOIA shall be served on the opposing party prior to or within three (3) days of the filing of the NOIA. Service may be perfected as stated in §1-2-112(c) above.

(e) PROOF OF SERVICE. Papers presented for filing shall contain an acknowledgment of service by filing an Affidavit of Service. The Affidavit of Service shall include the case name; case number; legible name of person serving the Affidavit and his signature; legible name of the person being served with the Affidavit; and the time, date and location of the service. If the Affidavit of Service is not presented with the NOA or NOIA, it must be filed within three (3) days of the filing of the NOA or NOIA. Failure to file such an acknowledgment may result in the matter being stricken from the COA docket.

(f) CERTIFICATION OF DOCUMENTS FROM TRIAL COURT. If a party to an appeal wants to supplement the record from the Trial Court, he must have the Trial Court certify that the documents are true and correct copies of the original documents on file. Each document must be identified and certified, though multiple documents may be identified in one certification document (Certification). The Certification must identify the Court staff member responsible for the copy and his authority to certify documents. The Certification needs to list the title of each document, the date signed or filed or some other identifier, and the certification language that it is a "True and Correct Copy of the Original", or something similar. It must be signed by the Court staff person, with the name legibly printed below the signature. The Certification must be stapled to the documents and filed in accordance with this Court rule. Any certification requested prior to the Initial Hearing must be filed no less than 10 working days prior to the hearing. Any certification request made after the Initial hearing must be filed pursuant to §1-2-118, Motions.

Failure to follow these procedures may cause the COA to decline to accept the documents for review.

If the opposing party does not agree to the acceptance of the documents for review, he must file his objection within 3 working days after receipt of the Notice of Certification, but not less than 1 working day prior to the Initial Hearing. If the certification request is made after the Initial hearing, the objection must be made within 5 days from receipt of the Notice of Certification. The Court may decide the matter on the written material or it may order a hearing to be held.

(Adopted 9/2/10, Resolution 2010-651)

#### **1-2-113 BOND ON APPEAL/INTERLOCUTORY APPEAL; STAY OF EXECUTION OF JUDGMENT**

(a) CRIMINAL CASES. The Trial Court shall set bond requirements pending the disposition of a perfected appeal in all criminal cases, pursuant to the Colville Tribal Code, upon the request of the defendant for a Stay of Execution of Judgment pending the filing and perfection of an Appeal.

(b) CIVIL CASES. The appellant in any case may request, and the Trial Court may grant, a stay of execution of the judgment pending the appeal. Except when the appellant is the Tribe or any of its subdivisions, agents, enterprises, or officers acting in their official capacity, the Trial Court may require as a condition to the granting of such a stay, the appellant post a bond, or guarantee control by the Court of sufficient assets of the appellant to satisfy the judgment in the event it is affirmed.

(c) FAILURE OF TRIAL COURT TO RULE ON MOTION TO STAY. In instances when the Trial Court has failed to rule on a written motion to stay in a reasonable time, any party may

petition the Court of Appeals for a Writ of Mandamus to require the Trial Court to rule on the Motion to Stay. The Petition for a Writ of Mandamus may be heard by the COA Chief Judge or his designee.

(d) MOTION TO STAY, DECISION. Where the Trial Court has entered a written decision on the motion to stay, either party may request a review by the COA to determine if the Trial Court's decision should be affirmed or denied. The review will be on the written documents only, unless the Panel decides otherwise.

(e) INTERLOCUTORY APPEAL. There shall be no bond required for interlocutory appeals. A stay of proceedings may be entered at the discretion of the Trial Court. Immediate review of the decision on the stay may be made by the COA Chief Justice or his designee. The COA Chief Judge Justice may affirm, reverse or refer the matter to the Panel for determination.

(Adopted 9/2/10, Resolution 2010-651)

#### **1-2-114 FEES ON APPEAL/INTERLOCUTORY APPEAL**

(a) FEES. Filing fees will be charged in all civil appeals cases except for minor-in-need-of-care cases. The appellant shall be required to pay a filing fee when filing the Notice of Appeal. The fee shall be \$50, paid to the COA, and is non-refundable. The Trial Court shall forward all fees paid to the COA.

Filing fees shall be charged for interlocutory appeals in all cases, except for minor-in-need-of-care cases. The filing fee shall be submitted with the NOIA. The filing fee shall be \$35.00, paid to the COA, and is non-refundable. The Trial Court shall forward all fees paid to the COA.

No fee shall be required for any criminal appeals or for appeals taken by the Confederated Tribes of the Colville Reservation, its officers, agencies or corporations.

(b) WAIVER. In cases where the appellant has insufficient assets and income to pay the filing fee, or where such payment would work an undue hardship, the COA Chief Justice or his designee may waive part or all of the fee.

(c) WAIVER REQUEST. Any appellant who feels he is eligible for such a waiver may petition the COA for an order waiving the filing fee. The petition shall be accompanied by a signed affidavit setting forth petitioner's assets and income. Forms will be provided to the appellant upon request made to the COA Clerk. If a finding of indigence has already been made for the appellant at the trial level, the appellant may file with the COA a copy of the order waiving the filing fee at the trial level along with an affidavit (Affidavit: No Substantial Change in Circumstances) stating there has been no substantial changes to his income since the order was entered. If the Appellant was the Respondent at the Trial Court, he must file a waiver/reduction of fee request and the Affidavit: No Substantial Change in Circumstances will not apply.

(d) INCOME SCHEDULE. The COA shall adopt a schedule showing the maximum income and assets for which a waiver by the Court shall be mandatory. Real property held in trust by the United States shall be excluded from the schedule. Assets and income exceeding this amount will not preclude the COA from granting such a waiver, but waiver will be purely at the discretion of the COA Chief Justice.

(Adopted 9/2/10, Resolution 2010-651)

#### **1-2-115 RECORD ON APPEAL; AGREED STATEMENTS**

(a) The record on appeal shall consist of:

(1) The electronic recordings of the trial proceedings, particularly those recordings reflecting the portions of the trial proceedings being appealed. The appellant shall provide to the appellate panel a designation of the electronic record to be copied in the proposed

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briefing order. The COA Clerk shall request copies of said recordings for the panel.

(2) The appellant shall, and the appellee may, file four (4) certified copies of documents from the trial record he wishes the appellate panel to consider. The certified copies shall be filed no later than ten (10) days before the initial hearing.

(3) The parties may give notice at the preliminary hearing of any further documents from the trial record they wish the appellate panel to consider, and must file four (4) certified copies of these documents no later than five (5) working days from the initial hearing, or as ordered by the COA.

(b) Instead of using the electronic recordings of the proceedings in Trial Court, the parties may prepare and sign an agreed statement or designation of the record on appeal. An agreed statement shall show how the issues presented by the appeal arose and were decided in the Trial Court, setting forth only so much of the facts averred and proved or thought to be proved as are essential to a decision of the issues presented. Notice that a statement is being prepared shall be served promptly on the Trial Court. A copy of the agreed statement shall be submitted for the Trial Court's review at the time of the filing of the briefs. The Trial Court may make such additions as it considers necessary to present the appeal fully and accurately. If nothing is received from the Trial Court within twenty (20) days of the notice to the Trial Court, the record is presumed to be complete.

(c) The parties may present a written transcript of only those parts of the record that are relevant to the issues on appeal. The parties shall consult among themselves, extract those portions of the transcript they agree to present, and submit it to the COA with signatures of all parties stating, to the best of their knowledge, the submitted transcript is a true and correct copy of the record on appeal. Notice that a transcript is being prepared shall be served promptly on the Trial Court. The agreed transcript shall be submitted for the Trial Court's review no later than the Preliminary Hearing. The Trial Court may make such additions as it considers necessary to present the appeal fully and accurately. If nothing is received from the Trial Court within ten (10) days of the notice to the Trial Court, the transcript is presumed to be correct.

(d) If the appellate panel finds the copy of the electronic recording is inaudible it may require the appellant to file a certified written transcript of the relevant parts of the original record, if such a transcript can be made. If not, the case may be vacated and remanded to the Trial Court for a new hearing so that an adequate record can be made.

(Adopted 9/2/10, Resolution 2010-651)

#### **1-2-116 INITIAL HEARING**

(a) After the appellate panel has received the record on appeal and prior to any initial hearing, the COA shall review any and all motions to dismiss for not have of jurisdiction. If the appellate panel finds that there is no possibility that it has jurisdiction over the case the COA shall dismiss the case *sua sponte*.

(b) After the appellate panel has received the record on appeal, but no later than sixty (60) days from such receipt, the COA Clerk shall cause the matter to be set on the next regular COA docket day for the initial hearing as required by Tribal law. At the initial hearing the appellate panel shall decide:

(1) Whether the COA has jurisdiction over the appeal.

(2) Whether the facts and/or laws as presented warrant a limited appeal on issues of law and/or of fact; or

(3) Whether a new trial should be granted, at which time the case will be summarily remanded to the Trial Court for a new trial to be set by the Court in a timely fashion; or

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(4) Whether the appeal should be denied or dismissed.

(c) If the COA finds that it does not have jurisdiction, the case shall be dismissed. If the appellate panel finds issues exist to allow the appeal to go forward, a briefing schedule shall be ordered to be prepared by the parties for the COA Chief Justice or Presiding Justice's signature. The briefing schedule shall be submitted within fourteen (14) days of the initial hearing. If no briefing schedule is submitted the provisions of §1-2-119(a) shall apply.

(d) Any party may make a motion for a telephonic conference call in lieu of the initial hearing. The motion and affidavit must specify extraordinary circumstances to show why the hearing should be held by a telephonic conference call. Such motions may be granted at the discretion of the Presiding Justice. If the motion is granted it is the responsibility of the moving party to set up the conference call, and assume the cost of the call.

(e) In lieu of the initial hearing, and subject to the discretion of the Presiding Judge Justice, the parties may submit an agreed order stating the following:

(1) The exact nature of the issues on appeal, citing to specific rulings of the Trial Court alleged to be in error;

(2) A designation of the tapes to be reviewed by the appellate panel;

(3) Any notices required in § 1-2-115; and

(4) A proposed briefing schedule.

(f) The agreed order stating the above shall be filed no later than seven (7) working days before the scheduled preliminary hearing in order to give adequate notice to the justices assigned to the case, or it may be denied.

(Adopted 9/2/10, Resolution 2010-651)

#### **1-2-117 INTERLOCUTORY APPEAL - INITIAL REVIEW**

(a) Upon filing of the NOIA, the COA Chief Justice, or his designee, shall review the notice to determine if there are adequate grounds stated to proceed with the interlocutory appeal. So long as the COA has jurisdiction, the COA Chief Justice or his designee shall have broad discretion to accept or deny the interlocutory appeal.

(b) If the NOIA meets the criteria for acceptance, the COA Chief Justice shall appoint a panel of three (3) justices to review the merits of the interlocutory appeal. A briefing schedule shall be made on the issue(s) identified by the COA Chief Justice. The issues may be decided on the briefs or the Panel may order oral arguments. If a hearing is required, the oral argument date shall be set and notice given to the parties.

(c) If the NOIA has been denied, the matter shall be remanded back to the Trial Court. The COA Chief Justice, on his own or with the assistance of other justices, may determine (1) that the NOIA did not meet the criteria but was of enough significance to merit an initial review by the COA, or (2) that the NOIA did not meet the criteria and was of such a nature which might merit sanctions by the COA for frivolousness.

(Adopted 9/2/10, Resolution 2010-651)

#### **1-2-118 MOTIONS**

A written motion shall be filed and served on opposing party no later than five (5) days prior to the time specified for the hearing or time deadline which the motion addresses, unless a different period is fixed by these rules or by order of the Court or for good cause shown. Motions shall be supported by affidavit, which shall be served with the motion. Opposing motions and affidavits shall be filed and served on opposing parties no later than one (1) day prior to the hearing or time

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deadline, unless the Court permits them to be filed at some other time. All motions shall cite governing rules and/or laws of the Colville Tribes. All motions shall be legible and signed with the signor's name legibly printed below the signature. If the motion is illegible or COA clerk is unable to decipher the name of the signor, the motion may be declined for filing by the COA.

(Adopted 9/2/10, Resolution 2010-651)

#### 1-2-119 **APPELLATE BRIEFS**

(a) **TIME.** One original and three copies of the appellant's brief shall be filed within thirty (30) days after the Initial Hearing, unless otherwise ordered by the appellate panel. One original and three copies of the appellee's brief shall be filed within twenty (20) days after service of the appellant's brief on the appellee. No reply briefs shall be filed unless authorized by the appellate panel.

(b) **CONTENTS.** Briefs shall not exceed thirty (30) pages in length, exclusive of an appendix, except by order of the Court for good cause shown. Briefs which are not clearly legible may be stricken by the appellate panel.

(1) The appellant's brief shall include:

(i) A short statement of the case, including such facts as are material to the issues presented on appeal, with appropriate references to the record;

(ii) A concise argument containing the contentions of the party, the reasons therefore, and necessary supporting legal authority (using Blue Book citation rules); and

(iii) A short conclusion stating the exact relief sought.

(2) The appellee's brief shall be of like character and arrangement as that of the appellant's brief, except that no statement of the case is required unless the appellee finds the statement presented by the appellant to be insufficient or incorrect.

(3) The parties shall provide four (4) legible copies of the pertinent laws, cases, treatises, regulations, rules, instruction, and any other authorities cited in their briefs (one original, and three (3) copies) for the appellate panel. Any legal authority cited shall adhere to the rules governed by *The Bluebook, A Uniform System of Citation*. These documents shall be submitted at the same time as the brief.

(c) **AMICUS CURIAE.** A spokesman, or person or entity through a spokesman, may appear as *amicus curiae* in any proceeding by request of the COA, or by permission of the Court of Appeals upon written request served upon all parties. The request shall set forth the interest of the applicant in the appeal or proceeding and the name of the party in whose support the *amicus curiae* would appear, and is subject to the filing and service requirements of §1-2-112. The application shall also state whether permission is sought to file an *amicus* brief or participate in oral arguments, or both. Any objections to the appearance of an *amicus curiae* shall be made by motion within fourteen (14) days of service of the application. Approval to appear as *amicus curiae* shall be by written order of the COA which shall specify the manner of appearance by the *amicus curiae* and state the time for filing of any *amicus* briefs. An *amicus* brief permitted by order of the Court of Appeals may contain a statement of the case, points and authorities, and additional argument on any issue raised by the parties in the appeal or as allowed by order of the Court of Appeals.

(d) **MOTIONS FOR EXTENSION.** Motion for extending the time to file a brief shall be filed at least five (5) working days prior to the requesting party's submission deadline, with proof of service on the other party or parties, unless the motion is a joint motion by the parties. If an extension request is not granted prior to the original brief deadline, a hearing on the motion may be set by the COA Clerk on the docket of the next scheduled COA date.

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(e) EFFECT IF BRIEFS NOT FILED. The following applies when briefs are not filed pursuant to a briefing order:

(1) If the appellant does not file an initial brief which has been ordered pursuant to an established briefing schedule, nor requests an extension on the filing of the brief as set forth in subsection (d) above, the appeal may be subject to dismissal by the COA.

(2) If the appellant does not brief all of the issues cited in the Notice of Appeal, the issues not briefed may be considered waived and the appellant may not be allowed to raise them at oral arguments.

(3) If the appellee does not file a response brief which has been ordered pursuant to an established briefing schedule, nor request an extension on the filing of the brief as set forth in subsection (d) above, the Court may decide the appeal based on the appellant's brief and the trial record, subject to §1-2-121.

(Adopted 9/2/10, Resolution 2010-651)

**1-2-120 INTERLOCUTORY APPEAL BRIEFS**

(a) TIME. One original and three copies of the appellant's brief shall be filed within ten (10) days after the Order Accepting the Interlocutory Appeal (IA) is served, unless otherwise ordered by the appellate panel. One original and three copies of the appellee's brief shall be filed within ten (10) days after the due date of appellant's opening brief, unless otherwise ordered by the appellate panel. No reply briefs shall be filed unless authorized by the appellate panel. All briefs filed shall have any cited case law and statutes attached to the briefs.

(b) CONTENTS. Briefs shall not exceed ten (10) pages in length, exclusive of an appendix, except by order of the COA for good cause shown. Briefs not clearly legible may be stricken by the appellate panel. The statement and arguments of the briefs shall comply with the requirements set out in Rule §1-2-119.

(c) MOTIONS FOR EXTENSION. Motions for extension of time to file a brief will only be granted in exceptional circumstances at the discretion of the presiding judge of the panel.

(d) EFFECTS IF BRIEFS NOT FILED. Same as §1-2-119(e).

(Adopted 9/2/10, Resolution 2010-651)

**1-2-121 ORAL ARGUMENTS**

(a) The appellate panel will make its decision based on the written filed documents and records of the case, and the oral arguments, if heard. Either party may request an oral argument. The Court may decide to hear oral arguments after determining the issues or after reviewing the briefs.

(b) If oral arguments are to be heard, they will be set on the next available docket day for the Court of Appeals no later than sixty (60) days from the filing of the appellee's brief or any reply briefs, if allowed.

(c) All requests for oral arguments by the parties not made orally or in writing at the time of the initial hearing shall be done by written motion and affidavit to the appellate panel. The request must be filed with the Clerk of the Court of Appeals no later than the time set for filing the response brief.

(Adopted 9/2/10, Resolution 2010-651)

**1-2-122 PRELIMINARY ORDERS**

(a) The Chief Justice of the Court of Appeals shall issue orders designating the appellate panels for each appeal filed.

(b) The Presiding Justice may enter preliminary orders for the timely administration of the case without the signature of the other two justices.

(Adopted 9/2/10, Resolution 2010-651)

**1-2-123 FINAL ORDERS AND OPINIONS**

(a) The appellate panel will issue a written order or opinion within one hundred and twenty days (120) days of the filing of the last appellate brief or the oral arguments hearing, whichever is later. In the event the COA fails to issue a written order or opinion within this 120-day deadline, this shall constitute prima facie evidence that the COA justices sitting on the case in question have failed to perform their duties under 1-1-103(f). Dissenting and concurring opinions shall be filed within fifteen (15) days of the filing of the majority opinion.

(b) All cases shall be decided by a majority vote

(c) Within seven (7) days of the issuance of the written order or opinion, the Court of Appeals Clerk shall send the order or opinion to the Trial Court, and serve copies on the parties and the appellate panel.

(Adopted 9/2/10, Resolution 2010-651)

**1-2-124 MOTION FOR RECONSIDERATION; FINALITY OF ORDER OR OPINION**

Any party who is in disagreement with the final decision of the COA, except for decisions on motions for reconsideration, may request that the COA review its decision. In the event the party seeks reconsideration *en banc* the COA shall have jurisdiction only as described in Sec 1-2-104 of this Chapter.

a) MOTION AND AFFIDAVIT; BRIEF. The party who is in disagreement with a decision may file a Motion and Affidavit for Reconsideration with service on opposing party. The Motion and Affidavit must be accompanied by a brief which states with particularity, the points of law which the moving party contends the COA overlooked, misapprehended or wrongly decided. The brief shall be limited to five (5) pages in length, unless otherwise authorized by the COA. Accompanying legal authority shall not count towards the page limit.

b) TIME. The Motion and Affidavit for Reconsideration shall be filed within ten (10) days of service of the decision or order. Notice of Service on opposing party shall accompany the Motion and Affidavit.

c) RESPONSE BRIEF. Within ten (10) days after service of the Motion for Reconsideration, opposing party may file a response brief to such motion, with service on the moving party. The response brief shall be limited to five (5) pages in length, unless otherwise allowed by the COA, and shall be similar in form to the moving party's brief. Notice of Service on opposing party must accompany the response brief.

d) DECISION. The Motion for Reconsideration shall be decided on the briefs filed. No oral argument will be allowed unless requested by the COA.

e) ONLY ONE MOTION PERMITTED. Each party may file only one Motion for Reconsideration, even if the COA modifies its decision or changes the language in the opinion rendered by the COA.

f) FURTHER APPEAL. No further appeal may be taken from a final decision or order of the Court of Appeals.

(Adopted 9/2/10, Resolution 2010-651)

**1-2-125 MANDATE**

a) MANDATE DEFINED. A "mandate" is the written notification by the COA clerk to the Trial

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or Administrative Court and to the parties of a final appellate decision terminating review.

b) WHEN ISSUED. The clerk of the COA will issue the mandate:

- 1) No less than fifteen (15) days after the final opinion or order has been distributed, unless a Motion for Reconsideration has been timely filed; or
- 2) If a Motion for Reconsideration has been filed and decided, no less than fifteen (15) days after the reconsideration order or opinion has been distributed; or
- 3) Upon stipulation by the parties that a Motion for Reconsideration will not be filed.

(Adopted 9/2/10, Resolution 2010-651)

#### **1-2-126 SPOKESPERSONS RESPONSIBILITIES**

It shall be the responsibility for every person who is representing a party before the COA to be a member in good standing with the Colville Tribal Court Bar and to diligently represent his client, to the best of his ability and ethical constraints. A spokesperson who represented a party at the trial level will be recognized as the spokesperson of record for that party at the COA, without further notice to the COA being required by the spokesperson. When a spokesperson represented the client at trial and filed the Notice of Appeal and then wishes to withdraw, replacement of the spokesperson will only be granted in exceptional circumstances. To accomplish this, the original spokesperson must file a Motion to Withdraw citing the exceptional circumstance(s) and the new spokesperson must file a Notice of Appearance before the change will be allowed. If the party was unrepresented at the trial level, a spokesperson wishing to appear on behalf of a client must file a Notice of Appearance prior to any appearance before the COA and/or any documents being filed by the spokesperson. Any other changes will be handled as follows:

(a) SUBSTITUTED COUNSEL. If the spokesperson of record is unable to appear at a hearing, he must notify the Court of Appeals in writing not less than one week before the hearing that a member of his office or another spokesperson, representing either the appellant or the appellee, will be substituting as spokesman, for that hearing only. This Notice of Substitution must be filed with the Court of Appeals Clerk, with a copy served on the other party or parties. If this is not done, the Court of Appeals may not recognize the substituted spokesperson.

(b) ADDITIONAL COUNSEL. If another spokesperson is going to join the original spokesperson by appearing before the COA or submitting a brief, that spokesman must file a written Notice of Appearance, with the concurrence of the original spokesperson, prior to any action being done by the additional spokesperson.

(c) OFFICE REPRESENTATION. If there are multiple spokesperson from one office or firm who will be representing a client or clients for the duration of an appeal, each spokesperson must be clearly identified and must sign the Notice of Appeal. Each spokesperson will then be allowed to represent that client in the COA. However, only a spokesperson who actually drafts or is responsible for drafting a document should be identified as the originator and sign that document. If the office wishes to withdraw from representation, each spokesperson who signed the Notice of Appeal or filed a Notice of Appearance, must also be clearly identified and sign the Notice of Withdrawal. Failure to identify all the spokespersons or obtain all the signatures may allow the COA to deny withdrawal of those spokesmen. Any other document may be signed by only one of the spokesmen of record without concurrence or signing by the other spokesmen.

(d) CASE PREPARATION. Any spokesman before the Court of Appeals will be expected to be thoroughly familiar, not only with the briefs in the matter, but with the whole record. Further, the spokesman will be expected to be ready to answer any questions put to him by the COA on the record below and the legal issues in the case. Each spokesman representing a party in an appeal must diligently represent that client's interests in the case, to the best of his ability and ethical standards.

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(e) **SANCTIONS OR CONTEMPT.** The Court of Appeals may consider contempt or sanctions against any person violating these rules.

(Adopted 9/2/10, Resolution 2010-651)

**1-2-127**     **COSTS**

With the exception of orders requiring a party to pay an opposing party's attorney's fees and any COA filing fees, the COA shall not have jurisdiction to order any party to pay any other costs associated with cases before the COA.

(Adopted 9/2/10, Resolution 2010-651)

**1-2-128**     **Conflict of Interest Disqualification**

In addition to disqualifications provided for in section 1-1-143, no person shall be qualified to sit on a panel of the Court of Appeals in any case wherein he has any direct interest or wherein any relative by marriage or blood, in the first or second degree, is a party. The judge who originally tried the case shall not sit on the Court of Appeals panel hearing the same case.

(Adopted 9/2/10, Resolution 2010-651)

**1-1-290**     **Tax Appeals**

Any party contesting the assessment of any taxes owed to the Tribes, or any party appealing a judgment for taxes owed or a judgment for any other remedy with regard to taxes validly assessed in accordance with the Constitution and By-Laws of the Colville Confederated Tribes, must pay the assessed tax or judgment before he may appeal under this subchapter. Upon the payment of such taxes and upon the posting of a \$100.00 bond for costs, the appealing party may be granted a stay of execution as to the part of the judgment other than the taxes found to be owing, and that part of the judgment shall not be carried out unless and until affirmed by the Appellate Court. Any forfeiture of seized goods shall be stayed pending the appeal, and the Tribes shall hold the goods in a safe place until the final resolution of the case. If the goods are perishable or threaten to decline quickly in value, the Tribes may sell such goods in a commercially reasonable manner and hold the amount realized until the final resolution of the case.

(Adopted 9/2/10, Resolution 2010-651)