

**TITLE 3 – COURTS AND RULES OF COURT**  
**PART II – RULES OF COURT**  
**CHAPTER 2-3 – RULES OF APPELLATE PROCEDURE**

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*Amended on January 10, 1990 by Resolution No, C1-67-90.*

*Amended on March 17, 1990 by Resolution No. C3-90-90.*

*Adopted on May 24, 1990 as revised Law & Order Code, Ord. No. 5 by Resolution No. C5-103-90.*

*Amended on October 4, 1990 by Resolution No. C10-2-90.*

*Adopted tribal codes and rescinded all other conflicting codes on May 26, 1992 by Resolution No. C5-42-92.*

*Adopted amendments July 29, 1993 by Resolution No. C7-118-93.*

*Adopted amendments on January 1, 1994 by Resolution C1-02-94.*

*Adopted as Court of Appeals Procedure Act of 2000.*

*January 28, 2003 Adopted Pascua Yaqui Code and Rescinded all prior codes, Resolution No. C01-04-03.*

*Enacted on October 19, 2005 as Ordinance No. 9-04 and by Resolution No. C10-387-05 as Rules of Appellate Procedures Ordinance of 2005.*

*Recodified Pascua Yaqui Tribal Code on Aug. 9, 2006 by Res. No. C08-313-06.*

*Amended on May 12, 2010 by Resolution No. C05-71-10 and Ordinance No. 13-10.*

**Section 10 Purpose (3 PYTC § 2-3-10)**

This ordinance supersedes any existing ordinance whose provisions may conflict with any rules established by this ordinance.

**Section 20 Codification (3 PYTC § 2-3-20)**

This ordinance shall be codified, pursuant to the Codification Ordinance, in Title 1, Chapter 1.

**Section 30 Title and Scope of Rules (3 PYTC § 2-3-30 – Formerly 3 PYTRAP Rule 1)**

These rules shall be known as the Pascua Yaqui Tribe Rules of Appellate Procedure. They shall be cited as 3 PYTC Part II, Chapter 2-3. The use of the acronym PYTRAP to refer to these rules may also be permitted in the discretion of the Court. These rules shall govern all civil, criminal, and special writs proceedings before the Pascua Yaqui Tribe Court of Appeals.

**Section 40 Definitions (3 PYTC § 2-3-40 – Formerly 3 PYTRAP Rule 2)**

- (A) “Appellate court” means the Pascua Yaqui Tribe Court of Appeals.
- (B) “Decision” means a written disposition of an appeal, including a disposition by opinion, memorandum decision, or order.

- (C) “Judgment” means any order that can be appealed, whether denominated an order, a judgment, a decree or otherwise.
- (D) “Transcript” means a reporter’s transcript, a transcription of an electronic recording, a narrative statement pursuant to Rule 9(C), or an agreed statement pursuant to Rule 9(D).
- (E) “Trial de novo” means a new criminal bench trial before a justice of the Court of Appeals using the Court’s appellate jurisdiction.
- (F) “Upon motion” means a motion of a party to the appeal, in accordance with Rule 6(A), and an order of the trial court or the appellate court as the case may be. It shall also include an order of the trial court or appellate court upon its own motion.
- (G) “Upon stipulation” means a stipulation of the parties to the appeal and an order of the trial court or appellate court as the case may be

**Section 50 Suspension of Rules (3 PYTC § 2-3-50 – Formerly 3 PYTRAP Rule 3)**

Except as otherwise provided in Section 50 (B), the appellate court may, upon motion for good cause shown, suspend the requirements or provisions of any of these rules in a particular case, and may order proceedings in accordance with its discretion. These rules shall be construed to do justice

**Section 60 Filing and Service (3 PYTC § 2-3-60 – Formerly 3 PYTRAP Rule 4)**

- (A) Filings; Form of Papers; Number of Copies. All papers that must be filed in the appellate court shall be filed with the appellate court clerk.
  - (1) The papers shall contain a caption stating “Pascua Yaqui Tribe Court of Appeals,” the title of the case, the docket number and a brief descriptive title.
  - (2) All filings, except those provided for by Section 90, shall consist of an original and five copies.
  - (3) Filing may be done by mail, certified mail preferred, addressed to the appellate court clerk, but filing shall not be timely unless the papers are received and stamped by the appellate court clerk within the time fixed for filing.
- (B) Service of all Papers required; Notice by the Court; Manner of Service. Copies of all papers filed by any party shall be served by the party, or person acting for him, on all parties to the appeal no later than the date they are filed.
  - (1) This rule shall not apply to the transcript filed pursuant to Section 90.
  - (2) Service may be personal or by mail.
  - (3) Personal service includes delivery of the copy to counsel or a responsible person at the office of counsel.
  - (4) Service by mail is complete on mailing.
  - (5) The appellate court clerk shall serve papers on parties in accordance with the foregoing.
- (C) Proof of Service. Papers presented for filing shall contain an acknowledgement of service by the person served, or proof of service shall be shown by a statement of the date and manner of service and of the name of the person served and signed by the person who made service.

- (1) Proof of service may appear on or be annexed to the papers filed.
- (D) Service on Attorney or Guardian Ad Litem; Substitution; Notice.
  - (1) Attorneys and guardians ad litem in the trial court shall be deemed attorneys and guardians ad litem of the same parties in the appellate court until a substitution is made or there has been a proper withdrawal.
  - (2) Service of all papers shall be made under these rules on such attorneys or guardians ad litem until a substitution is made and notice thereof given to all other parties.

**Section 70 Computation; Shortening; or Extension of Time (3 PYTC § 2-3-70 – Formerly 3 PYTRAP Rule 5)**

- (A) Computation of time.
  - (1) In computing any time limits required by these rules, or by order of the appellate court, or by any applicable law, the day of the act, event, or judgment shall not be included.
  - (2) The last day of the period so computed shall be included unless it is a Saturday, Sunday, Pascua Yaqui Tribe holiday, or official court-closure day, in which case the period shall extend to the end of the next business day which is not one of those days.
- (B) Shortening or Extension of Time. The time for doing any act provided for in these rules, or by order of the appellate court, or by any applicable law, may be shortened or extended upon stipulation of the parties and filed with the appellate court, or upon written motion for good cause shown, but the appellate court may not shorten or extend the time for the filing of a notice of appeal.
- (C) Additional Time after Service by Mail. Whenever a party is required or permitted to do an act within a prescribed time period after the filing of a paper and the paper is served on the party by mail, three days shall be added to the prescribed time period.

**Section 80 Motions (3 PYTC § 2-3-80 – Formerly 3 PYTRAP Rule 6)**

- (A) Content of Motions; Response; Reply. An application for an order or other relief shall be made by filing a written motion.
  - (1) The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall specifically state the grounds on which it is based, and shall set forth the relief sought.
  - (2) Any party may file a response to a motion within 15 days after service of the motion.
  - (3) The moving party may file a reply within ten days of service of the response. The reply shall be confined strictly to rebuttal of points made in the response.
- (B) Motion Papers Requiring Supporting Affidavits or Other Evidence. Motion papers which rely on facts that are not in the record, and of which the appellate court cannot take judicial notice, shall be supported by affidavit or other satisfactory evidence.
- (C) Motions for Procedural Orders. Notwithstanding the preceding subsections, motions for procedural orders may be acted upon at any time, without awaiting a response. A procedural motion shall contain an affidavit containing the following:

- (1) The reason why the motion is one for a procedural order and can be acted upon without a response; and
  - (2) A description of all efforts made to secure a stipulation from adverse counsel and the reasons why the stipulation has not been obtained.
  - (3) The chief justice may grant a motion for a procedural order without awaiting a response.
  - (4) Any party adversely affected by the granting of a procedural order may file a motion requesting rehearing, vacation, or modification of the order.
- (D) Motions shall be considered and decided on the record.

**Section 90 Appeal (3 PYTC § 2-3-90 – Formerly 3 PYTRAP Rule 7)**

- (A) Filing the Notice of Appeal; Docketing the Appeal. All appeals shall originate by the filing of a written notice of appeal with the appellate court clerk.
- (1) A copy of the judgment, order, or decision being appealed, signed by the trial judge and dated, must be attached to the notice of appeal.
  - (2) A filing fee, if required, must be paid at the time the notice of appeal is filed.
  - (3) The appellate court clerk shall enter the appeal upon the docket.
  - (4) An appeal shall be docketed under the title given to the action in the trial court with the appellant identified as such, but if the title does not contain the name of the appellant, his name, identified as appellant, shall be added to the title.
- (B) Contents of the Notice of Appeal. The notice of appeal;
- (1) shall state the title of the appellate court and be designated as “Notice of Appeal”;
  - (2) shall designate the party or parties taking the appeal;
  - (3) shall designate the judgment or part thereof that is appealed; and
  - (4) shall be signed by the attorney, or the party taking the appeal if not represented by an attorney.
- (C) Service of the Notice of Appeal. The notice of appeal and any motions or other papers filed in support of an appeal shall be served in accordance with Rule 4(B). Service shall be sufficient notwithstanding the death of a party or counsel.
- (D) Filing of Notice of Appeal with the Trial Court. The appellant shall file a copy of the notice of appeal with the trial court, for purposes of notification, on the same day it is filed with the appellate court.
- (E) Informality. An appeal shall not be dismissed for informality of form as long as it reasonably complies with these rules.
- (F) Interlocutory Appeals. Interlocutory appeals shall not be permitted in civil cases.
- (G) Government Appeals in a criminal matter not allowed. The Pascua Yaqui Tribe or prosecutor shall not appeal a judgment acquitting a defendant in a criminal case.

**Section 100 Appeal – When Taken (3 PYTC § 2-3-100 – Formerly 3 PYTRAP Rule 8)**

- (A) Time; Personal Representatives; Cross-Appeal. The notice of appeal shall be filed no later than 30 days from the date the trial judge has signed the decision from which the appeal is taken, unless a different time is provided by law.
  - (1) If a party dies during the time he is entitled to take an appeal, the appeal may be taken by his personal representative within 30 days after the death of the party.
  - (2) A notice of cross-appeal shall be filed within 20 days from the date the notice of appeal is filed.
- (B) Extension of Appeal Time. When any of the following motions is timely filed, the time for appeal is extended, and the time set forth in Section 80 (A) shall be computed from the date the trial judge signs any of the following orders:
  - (1) Granting or denying a motion for judgment notwithstanding the verdict.
  - (2) Granting or denying a motion to amend or make additional findings of fact whether or not granting the motion would alter the judgment.
  - (3) Granting or denying a motion to alter or amend the judgment.
  - (4) Denying a motion for a new trial.
- (C) If more than one of the foregoing motions for extension of appeal time is timely filed, the time for filing the notice of appeal shall be computed from the date the trial judge signs the order which disposes of the last remaining motion.
- (D) When a motion to amend or make additional findings of fact is granted, the time does not begin to run until the amendment or addition has been accomplished by court order, and signed and dated by the trial judge.

**Section 110 Record on Appeal (3 PYTC § 2-3-110 – Formerly 3 PYTRAP Rule 9)**

- (A) Composition of Record on Appeal; Transmission of Record.
  - (1) The papers making up the record on appeal shall be the original papers, exhibits and other objects filed with the trial court clerk, a reporter's transcript, transcription of an electronic recording or narrative or agreed statement, and copies of all entries.
  - (2) The trial court clerk shall number the items comprising the record and make an index that lists the contents of the record with their corresponding numbers.
- (B) The trial court clerk shall transmit the record with the index to the appellate court no later than 30 days from the date the notice of appeal is filed.
  - (1) The trial court clerk shall serve a copy of the index upon all parties to the appeal.
- (C) If additional time is needed, the appellant may obtain an order from the appellate court that extends the time for transmission of the record.
  - (1) The motion for extension of time must be made before expiration of the time for transmittal as originally prescribed or as extended by appellate court order.

- (D) The parties to an appeal may agree by written stipulation that any portion of the trial court record need not be transmitted to the appellate court.
- (E) Either party may include copies of any papers making up the record on appeal as an appendix to their briefs.
- (F) Transcript; Duty of Appellant to Transcribe; Notice to Appellee if Partial Transcript is ordered.
  - (1) No later than ten days after filing the notice of appeal, the appellant shall order from the reporter or a transcriber an original and one copy of a transcript, if any, of such parts of the proceedings necessary for inclusion in the record.
  - (2) If the appellant intends to argue on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such a finding or conclusion.
  - (3) Unless the entire transcript is to be included, the appellant shall, within the time provided in Section 90 (F)(1), file with the appellate court clerk a description of the parts of the transcript which he intends to include in the record and a concise statement of the issues he intends to present on appeal, a copy of which shall be served on appellee.
    - (a) If the appellee deems a transcript of other parts of the proceedings to be necessary, he shall, within ten days after the service of the statement of the appellant, file a statement designating additional parts to be included.
    - (b) If the appellant refuses to order such parts, he shall, within five days, notify the appellee in writing of such refusal.
    - (c) The Appellee may either order the parts or apply to the appellate court for an order requiring the appellant to do so.
    - (d) At any time prior to submission to the appellate court for decision, a party may apply to the appellate court to include any additional part of the transcript.
  - (4) At the time of ordering the transcript, the party ordering shall make satisfactory arrangements with the reporter or transcriber for payment of the cost of the transcript and file notice of the arrangements with the appellate court.
  - (5) The appellant shall file the original transcript with the appellate court clerk and serve a copy on each party to the appeal no later than 30 days from the date the notice of appeal is filed.
- (G) Narrative Statement of the Evidence or Proceedings When the Transcript is Unavailable. The appellant may prepare and file with the appellate court clerk a sworn narrative statement of the evidence or proceedings from the best available means, including appellant's recollection, if a transcript is not available.
  - (1) The sworn statement must be filed within 30 days of the date the notice of appeal is filed.
  - (2) The appellee may file objections or proposed amendments to the sworn statement within ten days after service.
  - (3) If the appellant does not intend to file a sworn statement, he shall notify the appellee and the appellee may file a sworn statement within ten days of notification.
  - (4) The appellant may file objections or proposed amendments within ten days after service.

- (H) **Agreed Statements in Lieu of Transcript.** In lieu of the transcript, the parties may stipulate to and file with the appellate court clerk an agreed statement setting forth such evidence or proceedings as are essential to a decision of the issues presented by the appeal.
  - (1) The agreed statement shall include a statement of the issues the appellant is presenting on appeal and shall be filed within 30 days of the date the notice of appeal is filed.
- (I) **Correction or Modification of the Record.** If a dispute arises as to whether the record discloses what actually occurred in the trial court, the difference shall be settled by the trial court, and the record made to conform to the truth.
  - (1) If anything material is omitted from the record by error or accident or is misstated, the parties upon stipulation or the trial court upon motion, may direct that the omission or misstatement be corrected.
  - (2) An amended record shall thereafter be transferred to the appellate court.
  - (3) All other questions as to the form and content of the record shall be presented to the appellate court.
- (J) **Several appeals.** When more than one appeal is taken from the same judgment, a single transcript (or narrative statement of the evidence or agreed statement) shall be prepared containing all the matters designated or agreed upon by the parties, without duplication.
- (K) **Certification of Copies of Relevant Portions of Original Record for Preliminary Hearing in the Appellate Court.** If prior to the time the record is transmitted, a party files a motion for dismissal, for a stay pending appeal, or for any intermediate order, that party or the party responding to the motion, shall attach to the motion a copy of those portions of the original record which are relevant.
  - (1) The trial court clerk shall attach to the copy a certification stating that the attached portions of the record are true copies of the trial court record.

**Section 120 Filing the Record (3 PYTC § 2-3-120 – Formerly 3 PYTRAP Rule 10)**

- (A) **Filing the Record.** The appellate court clerk shall file the record upon receipt and immediately give notice to all parties of the date the record was filed.
- (B) **Dismissal for Failure of Appellant to file the record.** If the appellant fails to timely file the record, the chief justice may summarily dismiss the appeal.

**Section 130 Briefs (3 PYTC § 2-3-130 – Formerly 3 PYTRAP Rule 11)**

- (A) **Brief of the Appellant.** The appellant’s brief shall concisely and clearly set forth under appropriate headings and in the order here indicated:
  - (1) A table of contents with page references.
  - (2) A table of citations, which shall alphabetically arrange and index the cases, statutes and other authorities cited, with references to the pages of the brief on which they are cited.
  - (3) A brief statement of the case, a brief statement of the proceedings, and a statement of the disposition in the trial court.

- (4) A statement of facts relevant to the issues presented for review, with appropriate references to the record.
    - (a) The statement shall not contain evidentiary matters unless material to a proper consideration of the issues presented, in which instance reference shall be made to the record or page of the transcript where such evidence appears.
  - (5) A statement of the issues presented for review which will be deemed to include all subsidiary issues.
  - (6) An argument, which shall contain the contentions of the appellant with respect to the issues presented, with citations to the authorities, statutes, and parts of the record relied on.
    - (a) The argument may include a summary.
    - (b) Citations of authorities shall be to the volume and page number of the official reporters or other sources.
  - (7) A short conclusion stating the precise relief sought.
  - (8) An appendix if necessary.
- (B) Brief of the Appellee. The appellee's brief shall conform to the preceding subsection, except that a statement of the case, a statement of the proceedings, a statement of the facts, or a statement of the issues need not be included unless the appellee finds the appellant's statements insufficient or incorrect.
- (C) Reply Brief. The appellant may file a reply brief, but it shall be confined strictly to rebuttal of points argued in the appellee's brief.
  - (1) No further briefs may be filed except in cases of cross-appeal or by leave of the appellate court.
- (D) Reproduction of Tribal Code Provisions, Tribal Council Resolutions, Applicable Statutes, Rules, Regulations and Instructions; the Appendix. If the issues presented require the study of tribal code provisions, tribal council resolutions, rules, applicable statutes, regulations, or instructions given or refused, the relevant parts of any of the foregoing shall be reproduced in the brief or in an appendix to the brief.
  - (1) An appendix may include additional items of the record, as provided in Rule 9(A)(4).
  - (2) An appendix may include extended quotations from cases and authorities where such quotations are required for proper presentation of the issues.
- (E) Briefs in Cases Involving Cross-Appeals. A party who files a cross-appeal may combine in one brief his brief as appellee and as cross-appellant.
  - (1) If the appellant files a further brief, he may combine in one brief his reply brief as appellant, and as cross-appellee.
  - (2) The cross-appellant may file a reply brief on the issues of the cross-appeal.
- (F) Briefs Involving Multiple Appellants or Appellees. In cases involving more than one appellant or appellee, including cases consolidated for appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another.

**Section 140 Filing Briefs (3 PYTC § 2-3-140 – Formerly 3 PYTRAP Rule 12)**

- (A) Time for Filing Briefs.
  - (1) The appellant shall file his brief and five copies within 30 days after the appellate court clerk mails the notice required by Rule 10(A).
  - (2) The appellee shall file his brief and five copies within 30 days after service of the appellant's brief.
  - (3) The appellant may file a reply brief within 15 days after service of the appellee's brief, or the appellant may file a notice that no reply brief will be filed, at which time the appeal shall be "at issue."
  - (4) Otherwise, the appeal shall be "at issue" upon the filing of the reply brief or 15 days after service of the appellee's brief, whichever first occurs.
- (B) Number of Copies to be served. One copy of each brief shall be served on each party separately represented and proof of service shall be filed with the appellate court.
- (C) Consequences of Failure to Timely File Briefs.
  - (1) If an appellant does not timely file a brief, the appellate court, upon appellee's motion may dismiss the appeal.
  - (2) If the appellee does not timely file a brief, the appeal may be decided on the appellate record.

**Section 150 Amicus Curiae (3 PYTC § 2-3-150 – Formerly 3 PYTRAP Rule 13)**

- (A) Except as provided for in 3 PYTC § 2-5-30(B), an amicus curiae brief shall be filed only with permission of the appellate court.
- (B) The motion shall identify the interest of the applicant, state that the applicant has read the briefs of the parties, and state reasons why applicant's amicus curiae brief is necessary.
- (C) Any response to an amicus curiae brief shall be filed within 15 days after service.
- (D) No further briefs shall be allowed.
- (E) Section 110 shall govern the form of an amicus curiae brief.

**Section 160 Supplemental Citation of Legal Authority (3 PYTC § 2-3-160 – Formerly 3 PYTRAP Rule 14)**

- (A) Any party may supplement the citation of legal authority previously presented in his brief by filing with the appellate court a list of supplemental citations of legal authority.
- (B) The list of supplemental citations shall clearly identify by page number which portion or portions of the party's brief is intended to be supplemented.
- (C) Supplemental citations shall not be accompanied by argument.
- (D) The form of list of supplemental citations shall be governed by Section 110 (A) (2).

**Section 170 Review of Appeal; Conference (3 PYTC § 2-3-170 – Formerly 3 PYTRAP Rule 15)**

- (A) Review of Appeal. The chief justice shall have the authority to review each appeal and summarily dismiss an appeal based on lack of jurisdiction, frivolity, a party's failure to prosecute, filing of interlocutory appeal, and other similar reasons.
- (B) Conference. The appellate court may direct the attorneys for the parties to appear before it for a conference to simplify the issues, and to address other matters which may aid the court in the disposition of the proceeding.
- (C) Supplemental Briefs. The chief justice may order the parties to file supplemental briefs on any issue. The time for filing of briefs shall be set forth in the order for filing of supplemental briefs.

**Section 180 Oral Argument (3 PYTC § 2-3-180 – Formerly 3 PYTRAP Rule 16)**

- (A) Appeal Granted may be scheduled for Oral Argument.
  - (1) The appellate court clerk shall notify the parties of the date, time, and place at which oral argument will be heard at least 15 days prior to the date fixed for the oral argument.
  - (2) The notice shall inform the parties of the appellate court's allocation of time to each side at oral argument.
  - (3) Cases given priority pursuant to Section 280 shall be scheduled as directed by the appellate court.
- (B) Hearing of Appeals in Open Court. Oral arguments shall be heard in open court before a panel consisting of the chief justice and two associate justices.
- (C) Failure to Appear by Either Party. If either party fails to appear at the time set for hearing of the appeal, the appellate court may hear the argument of the party appearing and decide the appeal on the basis of the presentation and the briefs submitted.
- (D) Decision on Record. The appellate court may, within its discretion, or if the parties stipulate, decide the appeal on the record.

**Section 190 Notice of Decisions and Orders (3 PYTC § 2-3-190 – Formerly 3 PYTRAP Rule 17)**

Immediately after a decision is rendered or an order is made in an appeal, the appellate court clerk shall serve a copy of any opinion, memorandum decision, or order respecting the decision on all attorneys of record, and any party not represented by an attorney pursuant to Section 40 (B).

- (1) The date of service shall be entered in the docket.

**Section 200 Costs and Attorney's Fees (3 PYTC § 2-3-200 – Formerly 3 PYTRAP Rule 18)**

- (A) Statement of Costs; Objections. This Rule applies to civil cases only.
  - (1) A party entitled to costs may, within ten days after the appellate court clerk has given notice that a decision has been rendered, file with the clerk a verified itemized statement of costs on appeal.
  - (2) An adverse party may file objections to the statement of costs within five days after service of such statement.

- (3) If no objections are filed, the appellate court may compute the costs in accordance with these rules.
  - (4) If objections are filed, the party entitled to costs may reply within five days after service of the objections.
  - (5) The appellate court shall then determine the amount of costs, if any, to be allowed.
- (B) **Costs of Briefs; Appendices.** The allowance for the cost of the necessary copies of briefs and appendices shall be the amount actually and necessarily expended.
- (C) **Claim for Attorney's Fees.**
- (1) When attorney's fees are claimed pursuant to statute, decisional law, or contract, a request for allowance of attorney's fees in connection with the prosecution or defense of the appeal shall be made in the briefs on appeal or by written motion filed and served prior to oral argument.
  - (2) If recovery of attorney's fees is allowed by the appellate court in its decision, a statement of the amount claimed for such fees may be included in the statement of costs prescribed by Section 180 (A).
  - (3) The statement of the amount claimed for attorney's fees shall set forth any relevant statutory or contractual provision and any other factors relevant to the determination of a reasonable fee. Counsel shall also attach and submit an affidavit containing an itemized statement of hours, indicating the following:
    - (a) The date on which the service was performed;
    - (b) The time and costs expended on such date;
    - (c) The nature of the service; and
    - (d) The name and title of the persons performing the service.
- (D) Nothing herein shall be deemed a waiver of the Pascua Yaqui Tribe sovereign immunity, and the Court shall not have authority to enter any award of costs or attorney's fees absent a written waiver of the Tribe's sovereign immunity made in accordance with Tribal law.

**Section 210      Petition for Reconsideration (3 PYTC § 2-3-210– Formerly 3 PYTRAP Rule 19)**

- (A) Any party seeking reconsideration of an appellate court decision shall file a petition with a supporting memorandum with the appellate court clerk within 15 days after the clerk has served a copy of the decision on the parties.
- (1) The petition shall not be amended except by leave of court.
  - (2) Any adverse party may file a response to the petition within 15 days after having been served the petition and memorandum.
- (B) **Contents.** A petition for reconsideration and supporting memorandum shall be directed solely to discussion of those specific points or matters of law in which it is claimed the appellate court erred.

- (C) Petitions Set for Oral Argument. After a petition for reconsideration is filed, the justices who heard the appeal may decide the petition on the record or set it for oral argument with notice to all parties.
  - (1) No single justice shall have authority to modify the decision or to order any temporary stay of execution of an appellate court decision.
- (D) Petitions not permitted. Unless permitted by specific order of the appellate court, no party shall file a petition for reconsideration of:
  - (1) An order denying a petition for reconsideration; or
  - (2) an order declining to accept jurisdiction of a petition for special action; or
  - (3) a decision denying an appeal.

**Section 220 Closing of Case on Appeal (3 PYTC § 2-3-220 – Formerly 3 PYTRAP Rule 20)**

- (A) Return of Record.
  - (1) If a petition for reconsideration has not been filed within the time set for filing, the appellate court clerk shall return the trial court record to the trial court clerk along with the appellate court's decision.
  - (2) If a petition for reconsideration has been filed, the record shall not be returned until the disposition of the petition.
- (B) Dismissal in the Appellate Court.
  - (1) If the parties to an appeal file a stipulation that the proceedings be dismissed, specifying the terms as to payment of costs, and after all necessary fees are paid, the chief justice shall dismiss the case.
  - (2) An appeal may be dismissed on motion of the party appealing or if there are multiple appellants, the appeal may be dismissed only to the appellant motioning for dismissal.

**Section 230 Substitution of Parties (3 PYTC § 2-3-230 – Formerly 3 PYTRAP Rule 21)**

- (A) Death of a Party. If a party to an appeal dies while the appeal is pending, the action shall not abate unless otherwise provided by law.
  - (1) The personal representative of the deceased party may be substituted in his place, upon motion and supporting affidavit or any relevant document filed with the appellate court by the representative, or by any party.
  - (2) The motion shall be served upon all parties to the appeal.
  - (3) If the deceased party has no representative, then any party may advise the appellate court of the death and proceedings shall then be had as the appellate court may direct.
- (B) Substitution for Other Causes. If a substitution of a party is necessary for any reason other than death, substitution shall be made in accordance with the procedure prescribed in Subsection (A).
- (C) Public Officers; Death or Separation from Office.

- (1) When a public officer in his official capacity is a party to an appeal, and while the action is pending he ceases to hold office, the action shall not abate and his successor shall be automatically substituted as a party.
- (2) Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded.
- (3) An order of substitution may be entered at any time, but failure to enter such an order shall not affect the substitution.
- (4) When a public officer in his official capacity is a party to an appeal, he may be described as a party by his official title rather than by name, but the appellate court may require that his name be added.

**Section 240 Opinions (3 PYTC § 2-3-240 – Formerly 3 PYTRAP Rule 22)**

- (A) When Disposition by Opinion. Dispositions of matters before the appellate Court shall be by opinion when a majority of the justices acting determine that it:
  - (1) establishes, alters, modifies or clarifies a rule of law, or
  - (2) calls attention to a rule of law which appears to have been generally overlooked, or
  - (3) criticizes existing law, or
  - (4) involves a legal or factual issue of unique interests or substantial public importance, or
  - (5) if the disposition of a matter is accompanied by separate concurring or dissenting expression.
- (5) All other dispositions shall be in the form of orders or memorandum decisions.
- (B) Disposition as Precedent. Memorandum decisions and orders shall not be used as precedent nor cited in any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case. Only opinions shall be used as precedent.
- (C) Designation of Disposition. The disposition of the case shall contain in the caption the designation “Opinion,” “Memorandum Decision,” or “Order.”

**Section 250 Stay of Execution (3 PYTC § 2-3-250 – Formerly 3 PYTRAP Rule 23)**

- (A) Filing Requirements.
  - (1) The appellant may file with the trial court a motion for a stay of execution of its judgment, order, or conviction at any time after the decision is final.
  - (2) If the trial court denies the motion, it shall set forth its reasons in writing.
- (B) Documents Forwarded. All original documents, orders, and other papers filed in the trial court relating to the stay of execution shall be included in the record on appeal and forwarded to the appellate court.
- (C) Motion for Stay Denied.

- (1) If the trial court denies the motion for stay, and only in such case, a petition for a stay may be filed with the appellate court clerk, and the chief justice may grant the stay upon any conditions that protect the interests of the parties.
- (2) The trial court's order denying the stay shall be attached to the petition to the appellate court.
- (3) If the trial court grants the stay, a copy of the order granting the stay shall be filed with the appellate court clerk.

**Section 260 Extraordinary Writs (3 PYTC § 2-3-260 – Formerly 3 PYTRAP Rule 24)**

- (A) Writs of Mandamus and Prohibition. The applicant for a writ of mandamus or of prohibition shall file a petition and the appropriate fee, if any, with the appellate court clerk. The petition shall contain;
  - (1) a statement of the facts necessary for an understanding of the issues presented;
  - (2) a statement of the issues presented;
  - (3) an argument with respect to the issues presented;
  - (4) a statement of the relief sought; and
  - (5) copies of any order, or opinion, or parts of the record which is necessary for an understanding of the matters set forth in the petition.
- (B) Service of Petition. The petition for a writ of mandamus or of prohibition shall be served on the respondent judge, and if not a judge, then on the party against whom the writ is sought, and upon all parties to the action in the trial court pursuant to Rule 4.
- (C) Action on the Petition.
  - (1) If the appellate court is of the opinion that the writ should not be granted, it shall summarily deny the petition.
  - (2) Otherwise, the appellate court shall grant an alternative writ and order the respondent to show cause why the writ should not be made permanent.
  - (3) The response to the petition shall be filed by the respondent within the time fixed by the appellate court.
  - (4) The appellate court clerk shall serve the order on the respondent and all parties to the action. All parties in the trial court, other than the petitioner, may be deemed respondents.
  - (5) The respondent judge may advise the appellate court clerk and all parties by letter that he does not intend to respond to the petition, but the petition shall not be taken as admitted.
  - (6) The appellate court clerk shall advise the parties of the date of oral argument if ordered by the appellate court.
- (D) Other Extraordinary Writs. Petitions for extraordinary writs, other than those for mandamus, prohibition, or habeas corpus shall conform so far as practicable to the procedures prescribed in this rule.”

**Section 270 Habeas Corpus (3 PYTC § 2-3-270 – Formerly 3 PYTRAP Rule 25)**

- (A) Filing; Contents. An application for writ of habeas corpus shall be filed with the appellate court clerk. The petition shall state at a minimum the following:
- (1) The name and location of the petitioner;
  - (2) The name and address of the person having custody or will have custody of the petitioner;
  - (3) The date of judgment or conviction and the terms and length of confinement;
  - (4) The criminal offenses involved, and any pleas entered;
  - (5) The reasons the petitioner believes he is being held illegally, with facts supporting each reason; and
  - (6) The relief sought.
- (B) Service of Petition. The petition shall be served on the prosecutor's office and the person having custody of the petitioner, who shall be the respondent. Service shall be made on the respondent on the same date the petition is filed with the appellate court clerk.
- (C) Answer; Reply. The respondent shall file an answer to the petition within ten days of the date the petition is filed with the appellate court clerk. The petitioner may file a reply to the answer within ten days of service of the answer or notify the appellate court clerk that a reply will not be filed.

**Section 280 Certification of Question (3 PYTC § 2-3-280 – Formerly 3 PYTRAP Rule 26)**

- (A) Filing; Form. The trial court, or any court of any jurisdiction, may certify a question involving Pascua Yaqui Tribal law to the appellate court. The certified question must control the outcome of the case pending before the certifying court. The certification order shall be filed with the appellate court clerk and set forth the following:
- (1) The question of law to be answered;
  - (2) A statement of all facts necessary to answer the certified question;
  - (3) The names of counsel or parties appearing in the case and their addresses and telephone numbers; and
  - (4) Any other matters deemed material to answering the certified question.
- (B) Acceptance of Jurisdiction. The chief justice shall review the certification order and either accept or deny jurisdiction and provide notice to the certifying court and the parties of the decision.
- (1) If jurisdiction is accepted, the chief justice may order the parties to file briefs addressing the certified question.
  - (2) The schedule for filing briefs, the time periods for filing briefs, and oral argument, if permitted, shall be set forth by order.
  - (3) The certified question shall be answered by a panel of three justices.

**Section 290 Trial de Novo in Criminal Cases (3 PYTC § 2-3-290 – Formerly 3 PYTRAP Rule 27)**

- (A) Filing; Time; Service. The defendant’s petition for trial de novo before the appellate court shall be filed with the appellate court clerk no later than 20 days after the judgment convicting the defendant is signed by the trial court judge.
- (1) A copy of the petition shall be served on the prosecutor’s office and the trial court clerk on the same date that it is filed with the appellate court clerk.
- (B) Form; Jury Trial. The petition for trial de novo shall set forth the criminal charges, the name of defendant’s counsel and address, if represented, and if not represented, the defendant’s name and address.
- (1) No jury trial shall be allowed in a trial de novo before the appellate court.
- (C) Review; Designation of Justice; Record; Pre-hearing conference; Criminal Rules.
- (1) The chief justice shall designate a justice of the appellate court to preside over the trial de novo proceedings.
- (2) The presiding justice shall hold a conference with the parties to discuss whether the defendant has an adequate remedy by appeal.
- (3) If the remedy should be by appeal, the petition for trial de novo shall be treated as a notice of appeal.
- (4) If the presiding justice is satisfied that a trial de novo is appropriate then a bench trial shall be conducted as if no trial had been held before the trial court.
- (5) No trial court record, including a transcript, shall be produced for submission to the appellate court if a trial de novo is granted.
- (6) The Pascua Yaqui Rules of Criminal Procedure shall apply to the trial de novo proceeding as far as practical.

**Section 300 Cases Given Priority (3 PYTC § 2-3-300 – Formerly 3 PYTRAP Rule 28)**

Notices of appeal involving custody of a child, adoption, elections, applications for extraordinary writs and habeas corpus, and other cases within the discretion of the appellate court shall be given priority.

- (1) The appellant or petitioner shall inform the appellate court clerk, in writing, of such priority at the time of filing the notice of appeal or petition or immediately thereafter.

**Section 310 Withdrawal of Counsel (3 PYTC § 2-3-310 – Formerly 3 PYTRAP Rule 29)**

Whenever counsel has once filed papers in an appeal, such counsel shall be deemed to be counsel of record until a proper withdrawal is made and notice of such withdrawal is filed with the appellate court.

**Section 320 Disqualification of Justice (3 PYTC § 2-3-320 – Formerly 3 PYTRAP Rule 30)**

- (A) Motion; Time.
- (1) Any justice may be disqualified on motion of a party or on the justice’s own motion.
- (2) A motion to disqualify a justice shall be filed within 30 days of the date the notice of appeal is filed.

- (3) The motion shall state specifically the grounds on which it is based and it shall be supported by affidavit or other satisfactory evidence.
- (B) Naming New Justice.
  - (1) When any justice is disqualified, the chief justice shall name another justice to complete the panel.
  - (2) No judge who heard a case on the merits in the trial court shall be named as justice to hear the same case before the appellate court.

**Section 330 Sanctions (3 PYTC § 2-3-330 – Formerly 3 PYTRAP Rule 31)**

- (A) Where the appeal is frivolous or taken solely for the purpose of delay, or where a motion is frivolous or filed solely for the purpose of delay, or where any party has been guilty of an unreasonable infraction of these rules, the appellate court may impose upon the offending attorney or party or both, such penalties or damages (including contempt, withholding or imposing of costs, or imposing of attorney's fees) as the circumstances of the case and the discouragement of like conduct in the future may require.
- (B) The offending party shall be given reasonable notice and an opportunity to show cause to the contrary before the appellate court imposes sanctions, if any, under this rule.

**DISPOSITION TABLE**

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