

## Tribal Court Procedures for Appeal of Membership Issues

The following procedures for any appeals of membership issues are hereby adopted by the Pokagon Band Tribal Judiciary as mandated by the *Tribal Constitution*, Article V, Section 5.

### Section 1. Definitions.

A. **Definitions.** The following terms shall have the following meanings:

1. "*Band*" and "*Tribe*" are synonymous and mean the Pokagon Band of Potawatomi Indians.
2. "*Chief Judge*" means Chief Judge of the Tribal Court of the Band or his/her designee.
3. "*Court*" and "*Tribal Court*" are synonymous and mean the trial level court of the Band.
4. "*Court of Appeals*" means the appellate level court of the Band
5. "*Day*" means calendar day.
6. "*Final Decision*" means a decision by the Tribal Council that disposes of all the issues in the matter.
7. "*Final judgment*" means a decision by the Tribal Court that disposes of all the issues in the case.
8. "*Failure to Act*" means not to do an act or duty as required by tribal law.
9. "*Petitioner*" means the party filing the appeal in the Tribal Court.
10. "*Respondent*" means the party responding to the appeal in the Tribal Court.

**Section 2. Right of Appeal.** Any person whose application for membership has been denied or not acted upon, who has been disenrolled, or whose membership has been forfeited shall have the right of appeal for declaratory relief to the Tribal Court. See *Tribal Constitution*, Article V, Section 5.

**Section 3. Scope of Review of the Tribal Court.** If the Tribal Court “...concludes that the necessary facts for the Tribal Council’s action, or failure to act, were not supported by reasonable evidence, or that the Council applied the Band’s enrollment laws incorrectly, it shall so declare and return the matter to the Enrollment Committee for further consideration and a new recommendation to Tribal Council.” See Tribal Constitution, Article V, Section 5.

**Section 4. Time Period to File Appeal.**

- A. **If Appealing a Final Enrollment Decision.** Notice of appeal to the Tribal Court must be filed no later than sixty (60) days from the date that the person entitled to bring the appeal receives notice of the final enrollment decision; or
- B. **Other Appeals.** Notice of appeal to the Tribal Court must be filed no later than “...one-hundred and eighty (180) days from the date that the person entitled to bring the appeal knows or should know that a right to appeal has arisen if formal notice is not provided and is required by the *Enrollment Code*, if notice is not required by the *Enrollment Code*, or if the appeal concerns a failure to perform a non-discretionary act required by law.” See Enrollment Code, Section 12.

**Section 5. Notice of Appeal.**

- A. **Filing Required.** An appeal is made by the proper filing of a notice of appeal with the Tribal Court and the payment of the filing fee or a waiver of the fee.
- B. **Docketing of Appeal.** Upon receipt of the notice of appeal and the filing fee, the Tribal Court Clerk must notify the Chief Judge of the pending appeal.
- C. **Effect on Tribal Council Decision by Filing Appeal.** The filing of an appeal does not cause an automatic stay of the Tribal Council’s decision.

**Section 6. Service of Notice of Appeal.** A copy of the notice of appeal and a certificate of service of the notice of appeal must be served by the Tribal Court on all parties pursuant to Section 9(B)(2).

**Section 7. Filing Fee.** The Tribal Court must collect from every party that files an appeal a filing fee as set by the *Schedule of Court Fees*.

**Section 8. Waiver of Fees.**

- A. **Applicability.** Only a natural person is eligible for a waiver of the appellate filing fees under this section.

- B. **Persons Receiving Public Assistance.** If a party demonstrates by notarized affidavit that the party is primarily supported by public assistance, the payment of fees required by law or court rule as to that party must be waived.
- C. **Other Indigent Persons.** If a party demonstrates by notarized affidavit that the party is unable to pay fees required by law or court rule, the Court may order those fees waived.
- D. **Reinstatement of Requirement for Payment of Fees.** If the payment of fees has been waived under this section, the Court may on its own motion order the person for whom the fees were waived to pay those fees when the reason for the waiver no longer exists, if the matter is still pending.

## Section 9. Court Administration.

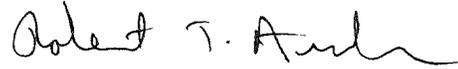
- A. **Standards for Computing Time Requirements.** In computing the period of time prescribed by these procedures or by any order of the Court, the day of the act or event after which the period begins to run is not included, unless the Administrative Order specifically provides for a different computation of the period of time. The last day of the period is included, unless it falls on a Saturday, Sunday or Tribal holiday. In that event, the last day of the period runs until the end of the next regular business day.
- B. **Requirements of Service.**
  - 1. **What Must Be Served.** A copy of any filing, of whatever kind, must be provided to the opposing party by the Tribal Court.
  - 2. **Manner of Service.** The Court Clerk shall:
    - a. deliver a copy of the filing to a party personally; or
    - b. send a copy of the filing by certified mail, return receipt requested, and delivery restricted to the addressee.
      - 1) Service is made when a party acknowledges receipt of the mail.
      - 2) A copy of the return receipt signed by a party must be attached to documentation completed by the Court Clerk demonstrating proof of service.
    - c. The Court Clerk shall file a certificate of that service and provide a copy of the certificate to the parties.
  - 3. **Person Served.** Service must be made upon the party's attorney. If the party is not represented, service must be made upon the party.

**Section 10. Appeal to the Court of Appeals.** An appeal to the Court of Appeals shall be governed by the *Court Rules of Appellate Procedure*.

**Section 11. Frivolous Claims.** Either the Tribal Court or the Court of Appeals may order payment of costs to the Band by any person whose appeal is determined by the Court to be frivolous. See *Tribal Constitution*, Article V, Section 5.

5.15.14

Date



Robert T. Anderson  
Chief Justice

## JUDICIAL HISTORY

### ADOPTION

On November 27, 2006: Administrative Order 06-003-CA *Tribal Court Procedures for Appeal of Membership Issues* was unanimously adopted by the Tribal Judiciary.

### AMENDMENTS

On May 15, 2014: Amendments were made to this Administrative Order to conform to amendments of the *Constitution* and *Enrollment Code*. The amendments are as follows:

- (1) revision of the order caption number suffix of the Administrative Order from 06-003-**CA** to 06-003-**TJ** to conform to the Constitutional language of "Tribal Judiciary";
- (2) deletion of Section 1(A)(1) definition for "Appellant";
- (3) revision of the new Section 1(A)(2) definition of "Chief Judge";
- (4) revision of the new Section 1(A)(3) definition of "Court" and "Tribal Court";
- (5) addition of a definition for "Court of Appeals" at Section 1(A)(4);
- (6) addition of a definition for "Final Judgment" at Section 1(A)(7);
- (7) addition of a definition for "Petitioner" at Section 1(A)(9);
- (8) revision of the new Section 1(A)(10) definition of "Respondent";
- (9) deletion of the words "Court Administrator" and replaced with "Tribal Court" or "Court staff";
- (10) deletion of Section 3. *Subject of Appeal*;
- (11) deletion of Section 5. *Tribal Court Decision is Final*;
- (12) deletion of Section 6. *Procedure for Appeal*;
- (13) addition of a new Section 4. *Time Period to File Appeal* to conform to the amendments in the *Enrollment Code*;
- (14) revision of the new Section 6. *Service of Notice of Appeal* to clarify service of the notice of appeal;
- (15) revision of Section 9(B). *Requirements of Service*;
- (16) deletion of Section 11. *Scheduling Conference*;
- (17) addition of a new Section 10. *Appeal to the Court of Appeals* to conform to the *Constitution* and *Enrollment Code*; and
- (18) revision of the new Section 11. *Frivolous Claims* to include the Court of Appeals and remove attorney fees.