

**WARM SPRINGS TRIBAL CODE**

**CHAPTER 203**

**APPEALS**

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# WARM SPRINGS TRIBAL CODE

## CHAPTER 203<sup>1</sup>

### APPEALS

#### I. GENERAL

##### **203.001 Constitution of the Court.**

- (1) The Warm Springs Court of Appeals (“Court of Appeals”) shall consist of judges appointed for a term of three years by the Tribal Council.
- (2) The minimum eligibility requirements for Appeals Court Judges shall be as follows:
  - (a) An enrolled Tribal member, or any other person, at least 26 years of age;
  - (b) 3 or more years of experience as a judge or at least 2 years of experience or college study in a related field;
  - (c) No felony convictions;
  - (d) No criminal convictions under the WSTC for twelve (12) months preceding application;
  - (e) Demonstrated to have a high moral character;
  - (f) Physically able to perform the duties of a judge;
  - (g) Demonstrate the ability to solve problems and judge with fairness;
  - (h) Demonstrate knowledge of and ability to appropriately apply accepted tribal custom, traditional laws and the Warm Springs Tribal Code;
  - (i) Pass the Tribal bar examination within six (6) months of assuming office;
  - (j) Demonstrate knowledge of the Indian Civil Rights Act and other appropriate laws, policies and rules; and

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<sup>1</sup> WSTC Chapter 203 was completely restated by Tribal Council Resolution No. 10196 adopted on 6/4/02. Minimum eligibility requirements for Appeals Court Judges (WSTC 203.001(2)), provision for Appeals Court Judges training (WSTC 203.001(5)), levels of compensation for Appeals Court Judges (WSTC 203.001(9)), provision for a Judicial Advisor (WSTC 203.001(10)), and recognition of the Tribal Council’s extraordinary authority to review decision of the Court of Appeals (WSTC 203.005(7)) were added to the WSTC. Other matters were clarified.

- (k) Uphold the Oath of Office. Appeals Judges shall not serve on the Tribal Council or on any other Tribal Board or Committee.
- (3) One of the judges shall be appointed as Chief Judge of the Court of Appeals (“Chief Judge”) by the Tribal Council and shall be responsible for administering the Court of Appeals. The Chief Judge of the Court of Appeals shall determine, in consultation with the Tribal Council, performance requirements and standards for all Appeals Court Judges.
- (4) During the first year following their initial appointment, Appeals Court Judges shall be on a probationary status. During the probationary period, Appeals Court Judges may be removed from the bench at any time without cause by the Tribal Council. Further, failure to pass the Tribal bar examination during the first six (6) months on the bench will result in immediate disqualification from hearing cases and, if not corrected within 90 days, automatic removal from the bench.
- (5) Within thirty (30) days of initial appointment to the bench, each Appeals Court Judge will develop, in coordination with the Chief Judge of the Appeals Court and the Judicial Advisor to the Appeals Court, a personal training plan. Within ninety (90) days of initial appointment to the bench, each Appeals Court Judge will attend an orientation session and at least one (1) training session. Each Appeals Court Judge, along with the Chief Judge of the Appeals Court, shall keep a record of all training and certifications earned and shall submit a copy of all training sessions attended and all certifications earned to the Tribal Council.
- (6) At least three judges assigned by the Chief Judge of the Court of Appeals shall sit as the Court of Appeals panel on each case. Except for those cases where a judge is disqualified or unable to hear the case for any reason, the Chief Judge of the Court of Appeals shall rotate assignments so that each judge sits on an approximately equal number of cases.
- (7) The provisions of WSTC 200.250 through WSTC 200.280 relating to Tribal Court judges shall likewise apply to Judges of the Court of Appeals.
- (8) The Court of Appeals Clerk shall provide administrative support to the Court of Appeals.
- (9) Compensation for the Judges of the Court of Appeals, for the time that judicial services are being rendered to the Tribes, shall be set by the Tribal Council, and shall be comparable to the daily compensation received by the Judges of the Tribal Court.
- (10) The Tribal Council shall appoint an experienced former judge as a Judicial Advisor to the Court of Appeals. The Judicial Advisor shall advise and assist the Court of Appeals judges in the performance of their duties and obligations under this code. The Judicial Advisor, or if he or she is not available, another person designated by the Tribal Council, shall administer the Tribal Bar exam.

**203.005 Decisions of the Court.**

- (1) The Court of Appeals shall render a written decision.
- (2) The decision shall cite the legal basis for the determination as well as clearly outline the reasons in support of the decision.
- (3) The decision of the Court of Appeals must be agreed upon by a majority of the judges on the panel.

**203.010 Definitions.**

- (1) "Appeal" is a procedure providing for review of decisions of the Tribal Court to determine whether or not the orders and judgments of the Tribal Court upon a matter were in accordance with applicable law.
- (2) "Affirm Judgment" is the finding by the Court of Appeals that the order or judgment of Tribal Court is in accordance with law.
- (3) "Brief" is a written argument submitted to convey to the Court of Appeals the essential facts of a case; a statement of the questions of law involved; the law that is urged to be applied; and, the application that the person submitting desires be made of the law by the Court of Appeals.
- (4) "Grounds" is the basis for a belief, action, or argument.
- (5) "Party" means an individual who is a plaintiff, defendant, or intervener in a civil or criminal action.
- (6) "Reverse Judgment" is the setting aside of a Tribal Court order or judgment by the Court of Appeals upon finding that the Tribal Court was in error.
- (7) "Stay of Judgment" is a halt in a judicial proceeding where by its order the Tribal Court will not take further action until some event occurs.
- (8) "Tribal Court" is the Warm Springs Reservation Tribal Court, described in Warm Springs Tribal Code, Chapter 200.

**II. JURISDICTION**

**203.015 Court of Appeals.** The Court of Appeals shall have jurisdiction to hear appeals from final judgments and other final orders of the Tribal Court.

**203.020 Criminal Jurisdiction.** In a criminal case, the final decision for appeal is that judgment of the Tribal Court which ends in a conviction and sentencing of the criminal defendant.

- (1) In addition to the right of appeal from the final judgment, a criminal defendant is permitted appeal from an order after judgment which substantially and adversely affects significant rights.
- (2) Generally, there will be no right of appeal where a criminal defendant has voluntarily entered a plea of guilty to the charge. An exception exists in those cases where it is alleged that the guilty plea was entered by the Defendant without the necessary knowledge or understanding of the plea; or where there was coercive influence; or, where the defendant had been denied a reasonable right to counsel.

**203.025 Civil Jurisdiction.** In a civil case, a final decision is one which terminates a formal hearing and leaves the Tribal Court with no further involvement in the matter but to carry out the judgment. To constitute an appealable final decision, the judgment must show on its face that it is a complete determination of the controversy clearly expressing the intention of the Tribal Court Judge that it be the final action taken in the case. An order or judgment of Contempt of Court is appealable.

**203.030 Custody Jurisdiction.** In a custody case, the Tribal Court may issue temporary judgments or orders affecting rights of the parents or guardians:

- (1) Appeals of temporary judgments or orders are limited to those which substantially affect the basic rights of the persons affected who do not prevail. A Temporary Custody Order shall be exempt from all Stay of Judgment actions, whether the Temporary Custody Order is appealed or not;
- (2) Appeal of a temporary custody order or judgment may be filed at any time from the time that the order originally issues to the point where it becomes a final judgment.

### III. PROCEDURES

**203.100 Filing of Notice.** Request for a hearing on appeal will begin with the filing of a Notice of Appeal.

- (1) A Notice of Appeal must include the following information:
  - (a) Name(s) of the party or parties seeking the appeal;
  - (b) Case number of the order, judgment or sentence being appealed;
  - (c) Identification of the specific order, judgment or sentence being appealed;

- (d) Grounds for appeal.
- (2) If not filed within 30 days from the date of entry of the order or judgment being appealed, the Notice of Appeal will be automatically denied. The time provided in this Chapter for acts to be performed shall be computed excluding the first day and including the last day. If the last day is a Saturday, Sunday or other legal holiday, the act must be performed on the next judicial day.
- (3) Where a Notice of Appeal has been filed, it will be referred to the panel which shall rule upon the request and grant or deny the right to an appeal hearing.
- (4) Where a Notice of Appeal has been denied for any reason, other than failure to make a timely filing, the party filing the Notice of Appeal has the right to refile the Notice of Appeal within ten (10) days from date of Notice of Denial of the original Notice of Appeal.
- (5) A Notice of Appeal will be denied if it does not contain stated grounds which note with particularity an error, defect or irregularity which affected the outcome of the trial and prejudiced the rights of a party.
- (6) A hearing on appeal will be granted where the appeal is based upon any of the following grounds:
- (a) Lack of any evidence to support the factual determination;
  - (b) Failure to apply applicable law;
  - (c) Violation of provisions of the Indian Civil Rights Act of 1968 (25 U.S.C. Section 1302);
  - (d) A challenge to the jurisdiction of the Tribal Court;
  - (e) A major procedural error which would substantially prejudice the rights of appellant;
  - (f) The availability of new evidence not available at the time of trial which could have substantially affected the outcome of the case. Any such alleged new evidence shall be fully explained and documented in the appeal notice;
  - (g) A decision in the case which is in conflict with the Constitution or bylaws of the Confederated Tribes, a tribal Ordinance or an accepted tribal custom or tradition;
  - (h) A decision which would, in any manner, limit, endanger, or adversely affect the sovereign immunity of the Confederated Tribes;

- (i) A sentence or an award of damages in excess of that permitted by applicable law.
- (7) Except as provided in the following Section 203.100(8), upon the timely filing of Notice of Appeal, a Stay of Judgment may be granted by the Tribal Court and shall have the effect of deferring execution of order, judgment or sentence. Such stay will remain in effect until the following occurs:
- (a) The Notice of Appeal is denied for insufficient grounds;
  - (b) The Court of Appeals, after a hearing, shall lift the stay;
  - (c) A final decision is rendered by the Court of Appeals; or
  - (d) A violation of Stay of Judgment conditions.
- (8) There shall be no Stay of Judgment where the Tribal Court determines, after a hearing, that:
- (a) A stay is not in the best interests of the parties or would impose a substantial risk to the community, to parties or witnesses, or to the defendant;
  - (b) There is a custody order as provided in Section 203.030(1) of this code; or
  - (c) The Tribal Court has ordered participation of a party in a remedial program reasonably necessary for the protection of the health, welfare, or safety of the individual and the Community.

Where a Stay of Judgment is denied, the Tribal Court shall enter a written order, which shall include findings of the grounds upon which the Tribal Court based its Order Denying Stay of Judgment. A party who is denied a Stay of Judgment may file a Notice of Appeal of Denial of Stay of Judgment with the Court of Appeals and the appeal of that Order Denying Stay of Judgment shall be heard by the Court of Appeals as an expedited appeal and a decision rendered within seven (7) working days of the date of Notice of Appeal of Denial of Stay of Judgment.

- (9) Only those parties who were adversely affected by the Tribal Court decision will have standing to file a Notice of Appeal.

**203.105 Appellate Hearings.** Once a valid and timely filing of a Notice of Appeal has been made, the Rules of Court will govern the administration, scheduling and conduct of the appeals hearing. A copy of the Rules of Court will be provided all parties at the time the Notice of Appeal is filed.

- (1) In no case will a party have a right to a hearing before a jury on appeal.

- (2) An appeal hearing will be based solely on the record of the Tribal Court and the argument presented.
- (3) The Court of Appeals may reverse or affirm the order or judgment of the Tribal Court. In the event of the reversal of an order or judgment of the Tribal Court, the case shall be remanded to the Tribal Court, for further proceedings, consistent with the decision of the Court of Appeals. The Court of Appeals may order a new trial if justice requires that it be done.
- (4) Before the appeals hearing, each party may submit a written brief for consideration by the court of Appeals. Briefs will be limited to the following and be no longer than five (5) typewritten pages:
  - (a) A brief statement of the case.
  - (b) A statement of the issues.
  - (c) Argument on the issues.
  - (d) A conclusion including a statement of the relief sought.
- (5) Parties may waive oral argument. If one party fails to appear in person or by representative, the Court of Appeals may allow the opposing party to present argument.
- (6) The failure of both parties to appear will result in dismissal of the appeal.
- (7) The panel will render its decision in writing signed by the Judges of the Court of Appeals within 30 days after the hearing. The failure of the Court of Appeals to render a decision within thirty (30) days after the hearing shall be considered as affirming the order or judgment of the Tribal Court. Subject only to the extraordinary authority of the Tribal Council to review action taken by virtue of the delegated powers, set forth in Article V, Section 1(s) of the Tribal Constitution, the decision of the Court of Appeals will be final.

**203.110 Effective Date.** This Chapter shall be effective immediately, except for Section 203.001(2), which shall become effective ninety (90) days after the date of Tribal Council enactment of this revised Chapter.