

ADMINISTRATIVE ORDER 06-003-CA

## 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. "*Appellant*" means the party filing the appeal.
2. "*Band*" and "*Tribe*" are synonymous and mean the Pokagon Band of Potawatomi Indians.
3. "*Chief Judge*" means Chief Judge of the trial court level of the Band or his/her designee by order of the Chief Judge.
4. "*Court*" and "*Tribal Court*" are synonymous and mean the Pokagon Band Tribal Court.
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. "*Failure to Act*" means to not do an act or duty as required by tribal law.
8. "*Respondent*" means the party responding to the appeal.

**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. Subject of Appeal.** An appeal is properly before the Tribal Court if:

- A. the decision of the Tribal Council is final; or

- B. Tribal Council or Enrollment Committee has failed to act upon a person's application for membership as required by tribal law.

**Section 4. 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 5. Tribal Court Decision is Final.** The decision of the Tribal Court shall be final.

### **Section 6. Procedures for Appeal.**

#### **A. Time Period to Appeal.**

1. **Failure to Act upon an Application for Membership.** Notice of appeal may be filed for failure to act upon a person's application for membership by Tribal Council or the Enrollment Committee as required by tribal law.
  2. **Denial of Membership.** Notice of appeal to the Tribal Court must be filed no later than thirty (30) calendar days from the date of receipt of the notification of rejection of membership by Tribal Council. See Enrollment Ordinance, Section 8(A)(ii).
  3. **Disenrollment.** Notice of appeal to the Tribal Court must be filed no later than thirty (30) calendar days from the date of receipt of the notification of disenrollment by Tribal Council. See Enrollment Ordinance, Section 11(B)(v).
  4. **Forfeiture.** Notice of appeal may be filed for forfeiture of a person's membership.
- B. **Untimely Appeals.** Subject to the exception contained in subsection C below, failure to file an appeal within the time period provided in this *Order* deprives the Tribal Court of subject matter jurisdiction to hear the appeal; provided, however that the Tribal Court may grant leave to file a late appeal.
- C. **Grounds for Granting Late Appeal.** The Tribal Court may grant leave, upon motion of the Appellant supported by affidavit, for a late filing of appeal from a final decision for good cause or upon a showing of excusable delay. The Appellant's motion must also include a statement as to whether the opposing party consents or objects to the extension.

- D. **Expedited Appeals.** The Tribal Court may grant leave, upon a showing of irreparable harm by motion of the Appellant supported by affidavit, for an expedited appeal from a final decision. The Appellant's motion must also include a statement as to whether the opposing party consents or objects.
- E. **Stay of Proceedings.** Once a notice of appeal has been filed, upon motion, the Tribal Court may grant a stay of the Tribal Council decision upon a showing of irreparable harm or otherwise if the Court determines it is in the interest of justice.

## **Section 7. Notice of Appeal.**

- A. **Filing Required.** An appeal is made by the proper filing of a notice of appeal with the Tribal Court Administrator 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 Administrator 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 8. Service of Notice of Appeal.** A copy of the notice of appeal must be served by the Tribal Court Administrator on all other parties by first-class mail. A certificate of service must be filed simultaneously with the notice of appeal.

**Section 9. Filing Fee.** The Administrator for the Tribal Court must collect from every party that files an appeal a filing fee as set by the *Court Fee Schedule*.

## **Section 10. 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 11. Scheduling Conference.** Within fourteen (14) calendar days after the filing of the appeal, the Court Administrator must docket a *Scheduling Conference* with the Chief Judge and the parties to set a briefing schedule and to schedule oral argument. The *Scheduling Conference* may be held telephonically.

**Section 12. 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.** Any paper, of whatever kind, that is filed must be served on the parties of the action by the Court Administrator. The Court Administrator shall file a certificate of that service with the Tribal Court and serve the certificate on the parties.
2. **Form of Service.** It is sufficient notification to other parties if service is made by first-class mail. Service is considered complete upon mailing. Personal service on any party may be made if done in compliance with Tribal Court Rules.
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 13. Frivolous Claims.** The Tribal Court may order payment of costs and attorney fees to the Band and Court by any person whose appeal is determined by the Court to be frivolous. See Tribal Constitution, Article V, Section 5.

11/27/06  
Date

  
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Robert T. Anderson  
Chief Justice