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Title 80

Appellate Code

Title 80 – Appellate Code
Amended by Res. #24-025, dated February 6, 2024

TITLE 80
NOOKSACK INDIAN TRIBE CODE OF LAWS
APPELLATE CODE

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80.01 SCOPE OF APPELLATE RULES

80.01.010 Scope of Title

This title governs appeals from decisions of the Nooksack Tribal Court in both civil and criminal matters. "Nooksack Tribal Court" for the purposes of this title shall mean the trial court division and the youth court division of the Nooksack Tribal Court. Nothing contained in this Code shall be construed as a waiver of the sovereign immunity of the Tribe or its officers or enterprises unless explicitly denominated as such.

80.02 ESTABLISHMENT OF THE COURT OF APPEALS

80.02.010 Establishment of Court

The Nooksack Court of Appeals is hereby established and is operative as a division of the Nooksack Tribal Court.

80.02.020 Composition of the Court

A panel of three judges shall be convened to serve as the Court of Appeals. The panel shall be selected, as needed, by the Chief Judge of the Court of Appeals from a roster of eligible judges approved by the Nooksack Tribal Council.

80.02.030 Chief Judge

The Chief Judge of the Nooksack Court of Appeals shall be appointed by the Nooksack Tribal Council. If the Chief Judge has a conflict of interest in a case before the Court of Appeals, the Chief Judge shall designate another Judge of the Court of Appeals to serve as the Chief Judge for that particular case.

80.02.040 Conflict of Interest

The judge who originally heard or decided a case is not eligible to sit on the panel which is hearing the case on appeal.

80.03 COURT DECISIONS THAT MAY BE REVIEWED

80.03.010 Appeal from Final Orders

An aggrieved party who claims, in good faith, that the Nooksack Tribal Court made a mistake in determining a question of fact, a question of law, or a mistake with regard to an issue within the Court's discretion that affected the outcome of the case may seek review in the Court of Appeals of any final order, commitment, or judgment of the Nooksack Tribal Court. The Nooksack Tribe may not appeal a final judgment of acquittal in criminal cases.

80.03.020 Interlocutory Appeals

An aggrieved party may seek review of acts of the Nooksack Tribal Court which are not final by filing a notice with the Court of Appeal for permission to file an interlocutory appeal. Permission to file an interlocutory appeal shall be granted only if the Nooksack Tribal Court has committed

an obvious error which a) would render further proceedings useless; or b) substantially limits the freedom of a party to act.

80.03.030 Scope of Review

The Court of Appeals shall limit its review to a) the record of proceedings from the Nooksack Tribal Court; b) errors of law and procedure raised by the appellant in his or her written brief; and 3) oral argument presented at a hearing before the Court of Appeals.

80.03.040 No Original Jurisdiction

The Court of Appeals is an appellate body only and does not have original jurisdiction to hear and decide non-appellate matters. Only orders, decisions, or other written opinions of the Nooksack Tribal Court may be appealed to the Court of Appeals.

80.04 STARTING AN APPEAL

80.04.010 Notice of Appeal

A written notice of appeal must be filed with the Nooksack Tribal Court within fourteen (14) days after the Court enters the decision which the appellant wants reviewed. If the party first files a motion for a new trial, rehearing, or reconsideration and the motion is denied, the fourteen (14) -day time limit shall be counted from the day the motion is denied. All time limits under this title shall be computed according to section 10.02.050 of the Nooksack Tribal Code.

80.04.020 Filing Fee

Proof of payment of appropriate filing fee must accompany any document presented for filing, including a notice of appeal. Tribal Council, or the Tribal Court, may establish such filing fees for certain documents as are necessary and proper. In the absence of a Tribal Council – established filing fee, or a Court Ordered filing fee schedule, the filing fee for a notice of appeal shall be \$150.00. The filing fee may be waived by the Chief Judge of the Court of Appeals, in his or her discretion, upon written request of the party for good cause shown.

The Court Clerk shall reject and shall not file any document presented for filing which is not accompanied by proof of payment of the applicable filing fee.

80.04.030 Content of Notice of Appeal

A notice of appeal or notice for permission to appeal shall be entitled as such and shall:

- (a) Name the parties and their spokespersons, if any;
- (b) State the case number, date and nature of the decision appealed from;
- (c) Specify those parts of the decision which the party wants reviewed; and
- (d) List each error of fact, law or procedure which the appellant claims was committed by the Nooksack Tribal Court and its effect on the outcome of the case.

80.04.040 Notice of Appeal – Service

The appellant shall serve notice of appeal on all parties within the fourteen (14) day time limit for filing the notice of appeal with the Court. The appellant shall be responsible for returning an affidavit of service to the Court when filing Notice of Appeal per § 80.04.010.

80.05 ACCEPTANCE OF REVIEW

80.05.010 Acceptance of Review of Appeals from Final Orders

The Court Clerk shall provide the Chief Judge of the Court of Appeals with a copy of the Notice of Appeal and affidavits of service filed by the appellant. The Chief Judge shall review the documents and shall accept the appeal on behalf of the Court of Appeals provided:

- (a) The notice of appeal was filed and served within the required time limit of §§ 80.04.010 and 80.04.040;
- (b) The notice of appeal substantially complies with the requirements of § 80.04.030; and
- (c) The appeal appears, on its face, to comply with section § 80.03.010.

The Chief Judge shall notify the parties within forty-five (45) days whether the appeal is accepted or is dismissed for failure to meet the requirements of this section.

80.05.020 Three Judge Review of Decision to Dismiss Appeal from Final Order

A party may make a written request to the Court of Appeals that the full three judge panel reconsider the Chief Judge's decision to dismiss an appeal under § 80.05.010. The request must be filed within five (5) days from the date the notice to dismiss the appeal is served on the party. The decision of the three judge panel shall notify the parties within fourteen (14) days whether the decision to dismiss has been upheld or reversed. The decision of the three judge panel shall be final.

80.05.030 Acceptance of Review for Interlocutory Appeal

The Court Clerk shall provide the Chief Judge of the Court of Appeals with a copy of the Notice to File Interlocutory Appeal filed under § 80.03.020. The Chief Judge may convene a hearing on the motion and shall give written notice of its decision to the parties within 45 days. Denial of a motion for permission to appeal shall not affect a party's right to appeal under § 80.03.010.

80.06 STAY OF JUDGMENT

80.06.010 Automatic Stay; Exceptions

Upon the filing of a notice of appeal, the enforcement of an order or judgment is stayed until the expiration of 14 days after entry of the order or judgment, EXCEPT the following are not stayed after entry, even if an appeal is filed, unless the Court orders otherwise:

- (a) An interlocutory or final judgment in an action seeking injunctive relief or a receivership;
- (b) A judgment or order that directs an accounting;

- (c) Orders in child custody cases; or
- (d) An order regarding jurisdiction, venue, or immunity.

80.06.020 Motion for Stay

- (a) In its discretion and on such conditions for the security of the adverse party as are proper, the Court may stay the execution of or any proceedings to enforce an order or judgment pending the disposition of the appeal, upon such terms as are just. The party seeking a stay pending appeal should use the motion procedure provided under § 80.08.010.
- (b) The Court ordinarily will condition such relief from enforcement of the trial court decision on the furnishing of a supersedeas bond, cash or other security. However, the Court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal by the Nooksack Indian Tribe, its officers, or its agencies.
- (c) In evaluating whether to stay enforcement of such a decision, the Court shall
 - (1) consider whether the moving party can demonstrate that debatable issues are presented on appeal; and
 - (2) compare the injury that would be suffered by the moving party if a stay were not imposed with the injury that would be suffered by the nonmoving party if a stay were imposed.
- (d) Any stay issued by the Court pursuant to this section shall be limited to a stay of the enforcement of an order or judgment.
 - (1) A stay issued pursuant to this section shall not stay the enforcement of a presumptively valid statute, regulation, or ordinance.
 - (2) A stay shall not be granted where it would afford the moving party substantially all the relief it might recover after an appeal on the merits.
- (e) In an appeal of an order regarding jurisdiction, venue, or immunity, no stay may be signed or issued by the Court against the Nooksack Indian Tribe or its officers, employees, or agents until a final order or judgment is issued by the Court.

80.06.030 Release in Criminal Cases

Upon receipt of a Notice of Appeal and after the Chief Judge gives the parties an opportunity to be heard, the Chief Judge may set terms and conditions governing the release of a person convicted of a crime, the disposition of property which has been used as evidence or is the subject of the judgment, and other matters necessary to preserve the Court's jurisdiction while the appeal is being considered.

80.06.040 Bond

The Chief Judge may require the party who appeals a judgment to deposit cash or other security with the Court while the appeal is being processed if there is a clear showing that some security is needed to guarantee that the Court's judgment will be enforceable later. The security required shall not be greater in value than the amount of judgment or fine imposed by the trial court, plus costs.

The Court must not require a bond, obligation, or other security from the appellant on an appeal by the Nooksack Indian Tribe, its officers, or its enterprises, or on an appeal directed by a department of the Tribal government.

80.07 RECORD ON APPEAL

80.07.010 Preparation of the Record

The record on appeal shall be made up of the papers and exhibits filed in the trial court, a written transcript of the proceedings, and a copy of the tape recordings. Within ten (10) days of the date the Court receives notice from the Court of Appeals that review has been accepted, the Clerk shall prepare three copies of the record and send them to the Judges on the Court of Appeals. The Clerk shall make the record available to all parties for inspection and copying at the parties' expense.

80.07.020 Cost of Preparing the Record

A party who requests a copy of the record shall bear the costs of preparing it unless waived by the Court, in its discretion for good cause shown.

80.08 THE REVIEW PROCESS

80.08.010 Motions

An application for an order or other relief during an appeal shall be made in a motion to the Court of Appeals with proof of service on all other parties. All motions shall include:

- (a) A statement of the relief sought;
- (b) A statement of the grounds for the relief sought; and
- (c) Supporting argument.

Any party may file a response in opposition to a motion within five (5) working days after service of the motion. The Chief Judge may rule on the motion alone or after consulting with the associate judges on the appellate panel. The Court may shorten the time allowed for responding to a motion. No motion shall be accepted for filing unless accompanied by proof of service on opposing parties.

80.08.020 Filing Briefs

Within fifteen (15) days of notice that the Court of Appeals accepts review, the party making the appeal shall file with the Court of Appeals a written brief or statement in support of his appeal and serve a copy on all parties. The Court of Appeals may allow additional time for filing, in its discretion. The respondent shall have fifteen (15) days after service of appellant's brief in which to file a reply brief or statement and shall serve a copy on each party. The appellant shall be allowed a response, in the Court's discretion. All briefs shall be accompanied by an affidavit of service on opposing parties.

80.08.030 Content of Appellant's Brief

The brief of the party making the appeal shall be typed and organized as follows:

- (a) Cover page. The front cover page shall state the name of the court and the number of the case, the title of the document (e.g. Brief for Appellant) and the names and addresses of counsel, if any, and the name and address of the appellant.
- (b) Tables. A table of contents, with page references, and a table of cases cited in the brief, a list of other authorities relied upon with references to the pages of the brief where used.
- (c) Trial Court Errors. A separate concise statement of each error a party contends was made by the trial court, together with the issues pertaining to the errors.
- (d) Statement of the Case. A fair statement of the facts and procedure of the trial which are relevant to the issues presented for review, without argument.
- (e) Argument. The argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record.
- (f) Conclusions. A short conclusion precisely stating the relief sought.
- (g) All pages of the brief shall be numbered.

80.08.040 Respondent's Brief

The respondent's brief should answer the appellant's brief and conform to the basic format of the appellant's brief.

80.08.050 Hearing – Scheduling

The Court of Appeals shall schedule a hearing for oral argument to take place within fifteen (15) days of the date the last brief allowed by the Court is filed. The Court Clerk shall serve notice on all parties.

80.08.060 Hearing – Conduct

The parties may present any arguments raised in the briefs at the hearing. The party who appealed shall speak first. Each side is allowed forty minutes for oral argument. Additional time may be allowed by the Court where it is deemed necessary.

80.08.070 Additional Evidence

The Court of Appeals may make an exception to the rule that appellate review shall be restricted to the record and may allow the presentation of additional evidence a) if the evidence was not available at the time of the trial court proceedings; and b) refusal to consider the evidence would result in a clear injustice.

80.08.080 Waiver of Rules and Extension and Reduction of Time

The Court may, on its own initiative or on motion of a party, waive or alter the provisions of any of these rules and enlarge or shorten the time within which an act must be done in a particular case in order to serve the ends of justice.

80.08.090 Accelerated Review

The appellate court on its own motion or on motion by a party for good cause shown may set any review proceeding for accelerated disposition. The accelerated review shall be done by motion. The motion must include (a) the name of the party filing the motion; (b) the disposition of the trial court; (c) a statement of the disposition urged by the moving party; (d) copies of the clerk's papers and a written verbatim report of those portions of the disposition proceeding that are material to the motion; (e) an argument for the relief the party seeks; and (f) a statement of any other issues to be decided in the review proceeding. Unless otherwise specified by the Court, the motion procedure, including a party's response, is governed by 80.08.010.

80.09 JUDGMENT

80.09.010 Form of Judgment

The Court of Appeals' decision shall be made by a majority vote of the judges. The Court may dismiss an appeal, affirm or modify the decision being reviewed, reverse the decision in whole or in part, order a new trial, or take any other action as the merits of the case and the interest of justice may require.

80.09.020 Written Opinion

The Court of Appeals shall prepare a written opinion within thirty (30) days of the hearing. The Court Clerk shall mail a copy of the opinion to the lower Court and to all parties.

80.09.030 Costs

Costs on appeal are those incurred by a party in having the record copied, costs of service, the premiums paid for any appeal bonds, and the fee paid for filing the appeal. Costs of review shall be determined and awarded by the Court of Appeals. Appellant shall pay the costs of review if the appeal is dismissed or if the judgment is affirmed. Respondent shall pay the costs if the judgment is reversed. In any other case the costs shall be awarded only as ordered by the Court. The Chief Judge of the Court of Appeals may, in his discretion, waive all or part of the costs incurred, if justice so requires.

80.09.040 Bill of Costs

A party desiring costs to be assessed shall submit an itemized and verified bill of costs which shall be filed with proof of service on all parties within seven (7) days of being notified of entry of judgment. Objections may be filed within seven (7) days of service.

80.10 SUPPLEMENTAL PROVISIONS

80.10.010 Violation of Rule:

Failure to comply with the rules set forth in the title may result in revocation of the party's right to participate further in the review process.

80.10.020 Damages for Frivolous Appeal:

If the Court of Appeals determines that an appeal is frivolous, it may award damages and costs to the respondent.

80.10.030 Severability:

If any part of this title or its application to any person or circumstance is held to be invalid, the remainder of this title or its application to other persons or circumstances is not affected.

80.10.040 Effective Date:

This Ordinance shall be in full force and effect following its adoption by the Council, and shall apply retroactively to all matters then-pending before the Court.

LEGISLATIVE HISTORY

1. Title Adopted on June 10, 1986 – Resolution No. 86-30
2. Title Amended on January 8, 2008 – Resolution No. 08-14
3. Title Amended on August 27, 2013 – Resolution No. 13-137
4. Title Amended on August 30, 2013 – Resolution No. 13-139
5. Title Amended on October 7, 2016 – Resolution No. 16-147
6. Title Amended on February 6, 2024 – Resolution No. 24-025

CERTIFICATION

I, the undersigned, as Chairman of the Nooksack Tribal Council, do hereby certify: that the Nooksack Tribal Council is composed of eight members, of which (4) were present, constituting a quorum, at a dully called meeting thereof, duly and regularly called, noticed, convened, and held this 6th day of February 2024; that Title 80 Appellate Code was adopted by resolution #24- 025at said meeting by a vote of 5 for; 0 against; and 0 abstentions; and that since its adoption Title 80 Appellate Code has not been altered, rescinded, or amended in any way.

Dated this 6th day of February, 2024.



RoseMary LaClair, Chairwoman

ATTEST:



Frank Leyva, Secretary