

PROPOSED ORDINANCE 2008 - 03

Councilmember Susan J. LaFernier introduced the following ordinance.

An ordinance of the Keweenaw Bay Indian Community adopted under the authority of the Constitution and By-Laws of the Keweenaw Bay Indian Community to modify the provisions of the Tribal Code relating to the establishment of an Appellate Division of the Tribal Court and the rules governing the procedure before the Appellate Division of the Tribal Court.

1. Amend Title One of the Tribal Code by repealing existing §1.114 Composition of Appellate Court and §1.115 Appellate Procedures.

2. Amend Title One of the Tribal Code by adding thereto the following new Sections:

§1.114 Jurisdiction of the Appellate Division.

The Appellate Court shall have the jurisdiction to hear and decide appeals, both final and interlocutory, from any order, sentence or judgment, whether civil or criminal in nature, of the Trial Division of the Tribal Court. The Appellate Court shall be the Supreme Court of the Keweenaw Bay Indian Community and its decisions shall be final in any matter brought before it, including the interpretation of the Tribal Constitution and By-Laws, and the interpretation of the provisions of this Code or the rules governing judicial proceedings.

§1.115 Eligibility to Serve as a Justice

1. The following persons are eligible to serve as justices of the Appellate Division:
 - A. Any current or retired judge of a court of another federally recognized Indian tribe;
 - B. Any retire judge of the Tribal Division, or

C. Any lawyer in good standing and admitted to practice in the highest court of any federally recognized Indian tribe, any State, or any territory of the United States.

2. A justice of the Appellate Division shall be a citizen or legal residents of the United States and shall be at least thirty (30) years of age.

3. A justice of the Appellate Division shall not have been convicted of a felony.

§1.116 Composition of the Appellate Division

1. The Appellate Division shall consist of one (1) chief justice and two (2) associate justices.

2. A person qualified to serve as a justice of the Appellate Division may be appointed to serve as a justice of the Appellate Division by the President, subject to the approval of the appointment by the Tribal Council.

3. The justices of the Appellate Division shall each serve for a three (3) year terms, provided, however, that the first justice appointed shall serve a term of one (1) year, the second justice appointed shall serve a term of two (2) years and the third justice appointed shall serve a term of three (3) years. Thereafter, each justice shall serve a term of three (3) years, except that upon retirement or removal of a justice, the next justice appointed to the Appellate Division , and approved by the Tribal Council, shall serve out the remainder of the term of the justice who retired or was removed.

4. A chief justice shall be selected by majority vote of the justices.

5. Each justice shall receive compensation, which shall not be diminished during their terms of service, as an independent contractor, and not as an employee, of the Community pursuant to the terms and conditions of a contract with the Community.

6. A justice may be removed from the Appellate Division for good cause only by the Tribal Council.

§1.117. Appeals as of Right.

Any party to an action or suit shall have the right to appeal a final order, sentence, or judgment of the Trial Division. All other appeals shall be taken by leave of the Appellate Division.

§1.118. Time for Appeal

An appeal shall be filed within fourteen (14) days of the date of entry of an order, sentence, or judgment of the Trial Division.

§1.119. Filing of Notice of Appeal

An appeal shall be taken by filing a notice of appeal with the Clerk of the Trial Division, who for the purposes of the appeal shall act as the Clerk of the Appellate Division.

Failure to file a timely notice of appeal shall result in dismissal of the appeal. Appeals may be consolidated by order of the Appellate Division upon its own motion or upon the motion of a party. The person filing the appeal is referred to as the “appellant” and the other parties to the appeal are referred to as the “appellee”.

§1.120 Contents of the Notice of Appeal.

1. The notice of appeal shall, at a minimum, include:

A. The names, addresses, and telephone numbers of the party or parties taking the appeal and their counsel, if any; and the name, addresses, and telephone numbers of the other party or parties to the proceeding in the Trial Division.

B. A reference to the Trial Division and the case number of the proceeding in the Trial Division.

C. The identification of the order, sentence or judgment of the Trial Division which is being appealed. A copy of the order, sentence or judgment of the Trial Division from which the appeal is taken shall be attached to the notice of appeal.

2. An appeal shall not be dismissed for defects of form or title so long as the appeal is timely.

§1.121. Serving the Notice of Appeal

The appellant shall serve a copy of the notice of appeal on each party to the proceeding before the Trial Division and shall file a proof of service thereof with the Clerk.

§1.122. Effect of Filing the Notice of Appeal

1. The filing of a notice of appeal shall not automatically stay the order, sentence, or judgment of the Trial Division.
2. Application for a stay of the order, sentence, or judgment shall be made to the Trial Division.
3. The Trial Division may require the appellant to post a bond or other security as a condition of granting a stay of the order, commitment, or judgment.

§1.123. Contents of the Record on Appeal

Appeals to the Appellate Division are heard on the original record of the Trial Division. The record on appeal shall include the original or certified copies of all papers and pleadings filed in Trial Division in the case appealed , including the:

1. Complaint, including all amended complaints;
2. Answers, counterclaims, cross-claims, and replies, and all amendments thereto;
3. Pretrial order;
4. Stipulations;
5. Jury instructions to which exceptions were taken;
6. Exhibits received in to evidence;
7. Verdict or findings of fact and conclusions of law;
8. Opinion or memorandum of decision;
9. Judgment or order appealed from; and
10. Transcript of the Trial Division proceedings.

§1.124 Transcript of the Trial Division Proceedings.

Within ten (10) days after filing the notice of appeal, the appellant shall order a transcript of the Trial Division proceedings and serve a proof of service thereof on all parties to the case appealed and the Clerk. When the transcript is complete, the appellant shall serve a copy of the transcript on the parties in the case on appeal and file a copy of the transcript with the Clerk for inclusion in the record on appeal. Unless otherwise directed by the Trial Division, the appellant shall pay the cost of preparing the transcript.

§1.125 Preparation of Record on Appeal

1. Upon receipt of the notice of appeal, the Clerk shall compile the record on appeal.
2. When the record on appeal is complete:
 - A. The Clerk shall Serve notice of preparation of the record on appeal, identifying each item included, on each of the parties; and
 - B. Serve a copy of the record on appeal on the appellate if requested by and at the cost of the appellant.
3. Within 21 days after the appellant receives the notice of the preparation of the record on appeal from the Clerk, the appellant shall serve a copy of the record on appeal upon each of the appellees, at the cost of the appellant, however, copies of documents in the appellee's possession need not be provided.
4. The Appellate Division shall not act on any appeal until the proof of service on appellees of the record on appeal has been filed with the Clerk.

§1.126 Brief of Facts, Legal Arguments and Authorities.

1. Within thirty (30) days of receiving the notice of preparation of record on appeal, the appellant shall file with the Appellate Division four (4) copies of appellant's brief of the facts, legal arguments and legal authorities in support of appellant's appeal.
2. Within thirty (30) days of receiving the appellant's brief, the appellee shall file with the Appellate Division four (4) copies of its brief in support of appellee's opposition to the appeal.
3. Within fifteen (15) days of receiving appellee's brief in opposition to the appeal, appellant may file with the Appellate Division four (4) copies of a reply brief.

§1.127 Pre-Argument Conference

At any time prior to oral argument on an appeal or consideration of the appeal for a decision by the Appellate Division, the Appellate Division may direct the parties, and their respective legal counsel, to participate in a settlement discussion by appearing before the court in person or by telephone. If a case is scheduled for a pre-argument conference, participation in the conference is mandatory, however the court may except

the case from participation in the pre-argument conference on a motion for good cause shown if it finds that a conference in that case would be inappropriate or non-productive.

§1.128 Oral Argument.

Oral arguments on the appeal may be requested by either party or scheduled upon the order of the Appellate Division.

§1.129. Finality of Decisions.

All decisions of the Appellate Division are final.

§1.130 Supplemental Rules of the Appellate Division

MCR Sections 7.203, et seq., of the Michigan Rules of Court (MCR) may be used in an appeal to the Appellate Division to supplement the procedural rules for appeals to the Appellate Division that are provided for herein. In the event that there is any conflict between the MCR and the rules for appeals to the Appellate Division that are provided for herein, the rules for appeals to the Appellate Division that are provided for herein shall control. The Appellate Division shall use its discretion in the application of MCR so as to prevent manifest injustice in any case and to assure that the application of MCR do not result in form superseding substance in any case on appeal.

3. This amendatory ordinance shall take Immediate Effect and the reading of the minutes of the meeting of the Tribal Council pertaining to the adoption of this ordinance is hereby waived.

Motion by _____ Seconded by _____

Ayes ____ Nays ____ Abstained ____ Not Present ____

Adopted ____ (Yes) ____ (No)

Date: _____