



HABEMATOLEL POMO OF UPPER LAKE

TITLE 2. JUDICIAL

**CHAPTER 2.4. APPELLATE COURT RULES OF
PROCEDURE**

TABLE OF CONTENTS

ARTICLE 1. TITLE.....	3
ARTICLE 2. PURPOSE.....	3
ARTICLE 3. JURISDICTION	3
ARTICLE 4. DEFINITIONS	3
SECTION 4.1. DEFINED TERMS.....	3
ARTICLE 5. GENERAL	4
SECTION 5.1. TYPES OF ORDERS SUBJECT TO APPEAL	4
SECTION 5.2. TIME PERIOD TO FILE AN APPEAL.....	4
ARTICLE 6. APPEALS PROCESS	5
SECTION 6.1. STARTING AN APPEAL – NOTICE OF APPEAL.....	5
SECTION 6.2. PREPARING THE OFFICIAL CASE RECORD.....	6
SECTION 6.3. MOTIONS DURING APPEALS.....	6
SECTION 6.4. BRIEFS.....	6
SECTION 6.5. FORMAT OF BRIEFS	7
SECTION 6.6. FILING AND SERVICE OF BRIEFS	8
SECTION 6.7. ORAL ARGUMENT.....	8
ARTICLE 7. DECISIONS	8
SECTION 7.1. STANDARDS OF REVIEW.....	8
SECTION 7.2. DECISIONS.....	9
ARTICLE 8. OTHER PROVISIONS.....	9
SECTION 8.1. SOVEREIGN IMMUNITY.....	9
SECTION 8.2. AMENDMENTS.....	10
SECTION 8.3. SEVERABILITY	10
SECTION 8.4. EFFECTIVE DATE	10

ARTICLE 1. TITLE

This Chapter shall be titled the Habematolel Pomo of Upper Lake Appellate Court Rules of Procedure and may be cited as the HPUL Appellate Court Rules of Procedure. This chapter shall be codified as Chapter 4 of Title 2 of the Habematolel Pomo of Upper Lake Book of Codes

ARTICLE 2. PURPOSE

The purpose of this Chapter is to provide a fair and consistent form for additional court review of tribal court decisions.

ARTICLE 3. JURISDICTION

The Tribal Court of Appeals has jurisdiction over any appeals from the Tribal Court pursuant to Article XII, Section 11, of the Constitution. The Tribal Court of Appeals also has jurisdiction over all other areas specifically assigned to it by the Constitution or pursuant to Tribal Code. If no Tribal Court is in operation, the Executive Council, or its express designee, shall act as the Tribal Court for all references within this Chapter.

ARTICLE 4. DEFINITIONS

SECTION 4.1. DEFINED TERMS

For purposes of this Chapter, the following terms shall have the meanings ascribed below:

- (A) **“Appellant”** means the party filing the appeal;
- (B) **“Chapter”** shall mean this Chapter 2.4. Appellate Court Rules of Procedure;
- (C) **“Decision”** means a written disposition of an appeal, including a disposition by opinion, memorandum decision, or order;
- (D) **“Executive Council”** shall mean the governing body of the Habematolel Pomo of Upper Lake;
- (E) **“Final decision”** means the final disposition of a case in the Tribal Court;
- (F) **“Reservation”** shall mean all lands within the exterior boundaries of the Habematolel Pomo of Upper Lake Reservation located in Lake County, California and all lands owned by the Tribe both fee and non-fee land and lands held in trust for individuals and all lands considered “Indian lands” under federal, state or tribal law;
- (G) **“Respondent”** means the party responding to the appeal;
- (H) **“Tribal Court”** shall mean the Habematolel Tribal Court established pursuant to Tribal

ordinance. If a Tribal Court is not in operation, the Executive Council or their designee shall operate as the Tribal Court;

- (I) **“Tribal Court Clerk”** means the person who is responsible for the administration of the Tribal Court and the Tribal Court of Appeals, and for such other administrative and ministerial duties as may be prescribed by the Judicial Code, or assigned to them by the Executive Council, Chief Judge, or Chief Justice;
- (J) **“Tribal Court of Appeals”** means mean the appellate and court of last resort for the Habematolel Pomo of Upper Lake Tribal Court System;
- (K) **“Tribal Member”** shall mean an enrolled member of the Habematolel Pomo of Upper Lake;
- (L) **“Tribe”** shall mean the Habematolel Pomo of Upper Lake, a federally- recognized Indian tribe, or an authorized official or agency thereof.

ARTICLE 5. GENERAL

SECTION 5.1. TYPES OF ORDERS SUBJECT TO APPEAL

The following types of orders are subject to appeal:

- (A) Final decisions issued by the Tribal Court that contain findings of fact and conclusions of law by written order.
- (B) Non-final orders issued by the Tribal Court that authorizes the parties to appeal the decision to the Tribal Court of Appeals by written order. Appeals from non-final orders are permitted only in the discretion of the Court and only if (i) the order appealed from involves a controlling question of law to which there is a substantial ground for difference in opinion, and (ii) an immediate appeal from the order will materially advance the ultimate termination of the litigation.

SECTION 5.2. TIME PERIOD TO FILE AN APPEAL

- (A) Unless indicated otherwise in Tribal Law, an appeal of a final decision to the Tribal Court of Appeals shall be made no later than thirty (30) calendar days after the entry of the final decision of the Tribal Court.
- (B) An appeal of a non-final order to the Tribal Court of Appeals shall be made no later than five (5) business days after the non-final order of the Tribal Court.
- (C) The failure to file an appeal within the time periods provided in this Rule deprives the Tribal Court of Appeals jurisdiction to hear the appeal.

- (D) Notwithstanding the provisions of this Rule, the Tribal Court of Appeals may, at its discretion, grant relief from a late appeal upon a showing of good cause.

ARTICLE 6. APPEALS PROCESS

SECTION 6.1. STARTING AN APPEAL – NOTICE OF APPEAL

- (A) All appeals are initiated by the filing of a Notice of Appeal and the payment of the filing fee with the Tribal Court Clerk within the time periods set forth above.
- (B) A Notice of Appeal shall include:
 - (1) The Notice of Appeal form that shall be the first page and shall be dated and signed by the attorney for Appellant or by Appellant, if self-represented.
 - (2) The Notice of Appeal form must include a brief description of the errors that the party is asserting the Tribal Court made in their decision or order. These errors must conform to one of the errors described in Section 7.1.
 - (3) The Notice of Appeal must include a copy of the Tribal Court’s final written decision or non-final written order (with authorization to appeal).
- (C) When a party files a late appeal, the appeal must be accompanied by a written request to accept a late appeal and provide an explanation as to why there is good cause for the Tribal Court of Appeals to accept the late appeal.
- (D) Upon receipt of the Notice of Appeal and the filing fee, the Tribal Court Clerk shall file stamp the Notice of Appeal and transmit the original to the Tribal Court of Appeals.
- (E) The Tribal Court Clerk is responsible for serving copies of the Notice of Appeal on the parties and the Tribal Court Judge.
- (F) The filing of the Notice of Appeal shall automatically stay the effect of the final decision or non-final order of the Tribal Court.
- (G) The Chief Justice from the Tribal Court of Appeals shall review the Notice of Appeal to consider whether it complies with this rule.
- (H) The Tribal Court of Appeals shall have ten (10) calendar days to decide whether the Notice of Appeal complies with this Rule or request further information from the parties.
- (I) If the Tribal Court of Appeals determine that the Notice of Appeal meets the timelines for the appeal and the requirements of this section, the case will proceed on appeal.
- (J) If the Tribal Court of Appeals determines the Notice of Appeal is late or legally insufficient, or that a required filing fee has not been paid, the Appeal will be rejected, and the matter will be closed. In some cases, the Tribal Court of Appeals may decide the defect in the

Notice of Appeal can be corrected in which case the party will be given a prescribed amount of time to attempt to correct the defect.

SECTION 6.2. PREPARING THE OFFICIAL CASE RECORD

- (A) Within thirty (30) days of serving copies of the Notice of Appeal the Tribal Court Clerk shall compile for transmittal to the Tribal Court of Appeals the official record of the case on appeal.
- (B) All written documents filed with the Tribal Court, including pleadings, reports, notices, depositions, orders and judgments, shall constitute the written record of the case on appeal. The Tribal Court Clerk shall certify the contents of the record as true, correct, and complete as part of the transmittal to the Tribal Court of Appeals.
- (C) If the proceedings in the Tribal Court were recorded by an audio device, the Tribal Court Clerk shall preserve the recording in a format that will permit the Tribal Court of Appeals Judges to access the recording.
- (D) Within fifteen (15) days of serving the Notice of Appeal, a party may request a transcript to be included in the official record. If a transcript of recorded hearings is requested, the court will secure a written transcript and the party requesting it shall pay the cost of transcription. Copies of the transcript must be provided to all parties and the Tribal Court of Appeals.
- (E) Tribal Court Clerk will serve a certified official record on all parties and transmit it to the Tribal Court of Appeals.

SECTION 6.3. MOTIONS DURING APPEALS

Any party requesting action by the Tribal Court of Appeals on a matter unrelated to its decision on a pending appeal, such as a waiver of filing fee, shall file a motion with the Tribal Court Clerk clearly stating the action requested and the reasons why the Tribal Court of Appeals should grant the motion. Any motion shall be served on all other parties, who may file within five (5) calendar days of receipt a response indicating agreement or disagreement with the motion. The Tribal Court of Appeals shall issue a written order disposing of any motion filed.

SECTION 6.4. BRIEFS

- (A) The Appellant must serve and file an Opening Brief within thirty (30) calendar days after being served with the official record of the case by the Tribal Court Clerk. The Appellant's brief must contain, under appropriate headings and in the following order:
 - (1) A jurisdictional statement indicating:
 - (a) The basis for the Tribal Court of Appeals jurisdiction, with citations to applicable provisions of the Tribe's Constitution, Codes, Ordinances Rules, or Regulations, and stating relevant facts establishing jurisdiction; and that

- (b) The appeal is from a final order or judgment that disposes of all parties' claims, a non-final order with authorization to appeal from the Tribal Court or information establishing the Tribal Court of Appeals jurisdiction on some other basis.
 - (2) A statement of the issues presented for review.
 - (3) A concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record.
 - (4) A summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief.
 - (5) The argument, which must contain the Appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the Appellant relies; and
 - (6) A short conclusion stating the precise relief sought.
- (B) The Respondent must serve and file a Respondent's Brief within twenty (20) calendar days after the Appellant's Opening Brief is served on Respondent. The Respondent's brief must contain at least:
- (1) A statement of the issues presented for review.
 - (2) A concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record.
 - (3) A summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief; and
 - (4) The argument, which must contain the Respondent's contentions and the reasons for them, with citations to the authorities and parts of the record on which the Respondent relies.
- (C) The Appellant may serve and file a Reply Brief within ten (10) calendar days after service of the Respondent's and at least three (3) calendar days before oral argument, if any, unless the Tribal Court of Appeals, for good cause, allows a later filing.

SECTION 6.5. FORMAT OF BRIEFS

- (A) Briefs must comply with the Trial Court Rules of Procedure.

- (B) The Appellant’s Opening Brief and the Respondent’s Brief may not exceed twenty-five (25) pages, and a Reply Brief may not exceed fifteen (15) pages, unless leave to file an over-sized brief has been granted by the Tribal Court of Appeals.
- (C) Any citations in the brief must be attached as an appendix and bound in any reasonable form or provided in digital format.

SECTION 6.6. FILING AND SERVICE OF BRIEFS

- (A) A copy of each brief must be filed with the Tribal Court Clerk and one copy must be served on the other parties by first class mail, postage prepaid, or by electronic means if agreed upon by the parties and in compliance with the Trial Court Rules of Procedure.
- (B) If the Appellant fails to file an Opening Brief within the time provided by this rule, the Respondent may move to dismiss the appeal. A Respondent who fails to file a Respondent’s Brief within the time provided will not be eligible to participate in oral argument unless authorized by the Tribal Court of Appeals, and the Tribal Court of Appeals will proceed without further argument from the Respondent.

SECTION 6.7. ORAL ARGUMENT

- (A) The Tribal Court of Appeals must issue the terms of oral argument by written order. Oral argument must be allowed in every case unless the Tribal Court of Appeals determines that oral argument is unnecessary for any of the following reasons:
 - (1) The appeal is frivolous.
 - (2) The dispositive issue or issues have been authoritatively decided; or
 - (3) The facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.
- (B) The Tribal Court of Appeals must issue its decision regarding oral argument by written order.

ARTICLE 7. DECISIONS

SECTION 7.1. STANDARDS OF REVIEW

- (A) Pursuant to Article XII, Section 11, of the HPUL Constitution, all matters of law and procedure may be decided by the Court of Appeals. Findings of Fact shall be made by the Tribal Court, an appeal is not a new trial. The Court of Appeals shall reverse the Tribal Court only upon a determination that the lower court’s conclusions are:
 - (1) Arbitrary and capricious, which means the Tribal Court judge made a ruling that is an abuse of the Tribal Court’s discretion and clearly at odds with the evidence presented; or

- (2) Contrary to law, which means the Tribal Court judge erred in its application of the law to the facts.

(B) The appellate court will not consider any new evidence.

SECTION 7.2. DECISIONS

- (A) Generally, the Chief Justice or the Associate Justice or Temporary Justice assigned to the case, shall preside over all cases and issue all decisions.
- (B) In cases where a panel of justices are presiding over an appellate matter, all decisions of the Tribal Court of Appeals shall be made by the majority of appellate judges. If no majority is reached on a decision, the order of judgment of the Tribal Court shall be upheld. The Tribal Court of Appeals shall determine which of its members in the majority shall write the decision. Any member of the Tribal Court of Appeals who disagrees with the majority's decision may issue a written dissent.
- (C) The decision of the Tribal Court of Appeals must be in written form, and state the facts, the issues to be decided, the rules of law applied, and the reasoning of the Tribal Court of Appeals.
- (D) The Tribal Court of Appeals shall issue an order that conforms to its decision, which shall direct the Tribal Court in its disposition of the case on appeal. The Tribal Court of Appeals shall decide all appeals no later than ninety (90) calendar days after the last brief permitted by these Rules is filed, unless the Tribal Court of Appeals determines that extenuating circumstances exist justifying an exception to this Rule. In such circumstances, the Tribal Court of Appeals shall issue notice to the parties of the date the decision will be due.
- (E) Within five (5) days of issuance, the Tribal Court Clerk shall transmit by first class mail, postage prepaid a copy of the written decision to each party at their address of record and may deliver a copy by electronic means if the parties agree in advance.
- (F) Any decision that determines an issue of law shall be retained and filed as Tribal substantive law and shall become binding precedent.
- (G) All decisions of the Tribal Court of Appeals are final and there is no other right to appeal within the Tribe's court system.

ARTICLE 8. OTHER PROVISIONS

SECTION 8.1. SOVEREIGN IMMUNITY

Nothing in the provisions of this Chapter constitutes consent by the Habematolel Pomo of Upper Lake or its sub-organizations to be sued in any court. Neither this Title nor any action (or inaction) taken by the Habematolel Pomo of Upper Lake or its sub-organizations pursuant to this Title represents a waiver of the Tribe's sovereign immunity for any purpose.

SECTION 8.2. AMENDMENTS

This Chapter, or any section herein, may be amended by the Chief Justice of the Court of Appeals or by a majority vote of the Executive Council.

SECTION 8.3. SEVERABILITY


If any part of this Chapter is found void and without legal effect, the remainder of the Chapter shall continue to remain in full force and effect, as though such part had not been contained therein.

SECTION 8.4. EFFECTIVE DATE

This Chapter shall take effect on the date it is adopted by the Chief Justice of the Court of Appeals.

CERTIFICATION

As the duly appointed Chief Justice of the Court of Appeals of the Habematolel Pomo of Upper Lake, I do hereby certify that I approve of these Appellate Court Rules of Procedure which I hereby adopt.



Chief Justice Christine Williams
Tribal Court of Appeals
Habematolel Pomo of Upper Lake

August 17, 2022

Date