

**TITLE XV
APPEALS AND HABEAS CORPUS**

CHAPTER 1 CRIMINAL AND CIVIL APPEALS PROCEDURES FOR THE COURT OF APPEALS

Section 15-1-1 Creation of the Court

There is hereby created a Court of Appeals of the Wind River Indian Reservation, Wyoming, which shall be part of the Shoshone and Arapaho Tribal Court.

Section 15-1-2 Jurisdiction of the Court

The Court of Appeals shall have exclusive jurisdiction of all appeals from final orders and judgments of all the Shoshone and Arapaho Tribal Courts and shall have original jurisdiction to issue all writs of habeas corpus on the reservation. The court shall have jurisdiction:

- (1) To take all steps necessary to preserve and protect the jurisdiction of the court.
- (2) During the pendency of any appeal, to release the appellant on his own recognizance or on bail pursuant to Section 15-1-7 (1) of this code.
- (3) To make any order appropriate to preserve the status quo or to protect any ultimate judgment of the court.

Section 15-1-3 Composition of Court

The Court of Appeals of the Shoshone and Arapaho Tribal Court of the Wind River Indian Reservation, Wyoming, shall be made up of three (3) judges of the court, and shall in all cases exclude the judge who presided over the case being appealed.

Section 15-1-4 Records of the Court of Appeals

The Court of Appeals shall keep a record of all proceedings of the court, showing the title of the case, the names and addresses of all parties and attorneys, the briefs, the date of any oral argument, the name of the judges who heard and decided the case, and the judgment, together with any other facts and circumstances deemed of importance to the case.

Section 15-1-5 Right of Appeal

(1) Criminal Appeals by Defendant. A criminal defendant may appeal as of right from any final judgment of conviction, except that convictions from traffic offenses may be appealed only with the permission of the Court of Appeals.

(2) Criminal Appeals by Prosecutor. The prosecutor may appeal to the Court of Appeals from an order or judgment in a criminal case:

- a) Dismissing the entire case, or any one or more counts against the defendant by the court;
- b) Any court order or judgment modifying a jury verdict by finding the defendant not guilty, guilty of a lesser degree of the crime charged, or guilty of a lesser included crime;
- c) Granting a new trial;
- d) Quashing an arrest or search warrant;
- e) Suppressing evidence; or
- f) Suppressing a confession or admission;

except where prohibited by the double jeopardy clause of the Indian Civil Rights Act, 25 U.S.C. Section 1302 (3).

(3) Civil Appeals. An aggrieved party in a civil action may, with permission of the Court of Appeals, appeal from:

- a) Any final order or judgment of the Shoshone and Arapaho Tribal Court;
- b) Any order of the Wind River Tribal Court, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, or dissolving or refusing to dissolve a writ of execution; or
- c) Any order of the Shoshone and Arapaho Tribal Court directing the delivery, transfer or surrender of property.

Section 15-1-6 Notice of Appeal, How and When Taken

(1) Filing Notice of Appeal. An appeal shall be taken by filing a notice of appeal with the clerk of the Shoshone and Arapaho Tribal Court within twenty (20) days after the date

of entry of the judgment or order appealed from; except that an appeal from the granting of a temporary restraining order or a preliminary injunction shall be filed within five (5) days. Upon a showing of good cause, the Shoshone and Arapaho Tribal Court may extend the time of filing the notice of appeal by any party for a period not to exceed thirty (30) days from the expiration of the normal period allowed for the filing of a notice of appeal.

(2) Content of the Notice of Appeal. The notice of appeal shall specify the party or parties taking the appeal and shall designate the judgment, decision or order appealed from. Upon request of a party, the clerk of the Wind River Tribal Court shall prepare the notice of appeal.

(3) Service of the Notice of Appeal. The clerk of the court shall serve notice of the filing of a notice of appeal on all adverse parties by either mailing a copy of the notice of appeal to the party at his last known address or personally serving the party with the notice of appeal, noting in the court register the date the appeal was filed and the date the notice of appeal was served. Failure of the clerk to serve notice shall not affect the validity of the appeal.

(4) Appeals by Permission of Court. In civil and other cases where permission of court is required to appeal, a notice of appeal shall be filed in the manner prescribed in section 15-1-6 (1) herein. Within twenty (20) days after filing the notice of appeal, the appellant shall file with the clerk an application to file an appeal and a short statement of reasons why the appeal should be heard. The clerk shall serve copies of the application and statement on other parties to the case, who may respond within twenty (20) days after receiving it. If the court thereafter agrees to hear the appeal, the parties shall comply with all applicable rules set forth herein.

Section 15-1-7 Stay of Judgment or Order Pending Appeal

(1) Criminal Cases. When the defendant in a criminal case has appealed, the trial judge may continue bail as originally set or may either lower the amount or release the defendant on his own recognizance pending disposition of the appeal. The Court of Appeals may, on petition of the defendant, review any decision of the Wind River Court of Indian Offenses concerning bail.

(2) Civil Cases. In civil cases, the judgment shall be stayed pending action on the request to appeal and appeal itself, if the permission is granted, and any party may request the Court of Appeals to grant or stay an injunction pending appeal. The court may condition a stay or injunction pending appeal on the depositing of cash or a surety bond in an amount deemed satisfactory to the court to cover the amount of the judgment and any costs on appeal. The cash or bond may be deposited at or after the time the notice of appeal is filed. The stay shall be effective when the deposit of cash or bond is approved by the court.

(3) Judgments Against Surety. Any surety to a bond thereby submits himself to the jurisdiction of the Shoshone and Arapaho Tribal Court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond may be served. The liability of a surety may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the surety at his last known address.

Section 15-1-8 Record of the Tribal Court

Within five (5) days after a notice of appeal is filed, the clerk of the Tribal Court shall certify and file with the Court of Appeals all papers comprising the record in the case.

Section 15-1-9 Briefs and Memoranda

Within twenty (20) days after the notice of appeal is filed in a criminal case or permission to appeal is granted, or within such other time as the court allows, the appellant may file a written brief, memorandum, or statement in support of his appeal. An original and one copy for each appellee shall be filed with the clerk who shall mail one copy, registered or certified mail, return receipt requested, to each appellee. The return receipt shall be filed with the clerk.

The appellee shall have fifteen (15) days after receipt of the appellant's brief, memorandum, or statement, or such other time as the court allows, within which to file an answer brief, memorandum, or statement if he desires. An original and one copy for each appellant shall be filed with the clerk who shall mail one copy, registered or certified mail, return receipt requested, to each appellant. The return receipt shall be filed with the clerk.

No further briefs, memorandum or statements shall be allowed without leave of court.

Section 15-1-10 Oral Argument

The Court of Appeals shall assign all criminal cases for oral argument. The Court of Appeals may in its discretion assign civil cases for oral argument or may dispose of civil cases on the briefs without argument. Parties may present their own argument or be represented by counsel at their own expense.

Section 15-1-11 Separate Docket for Court of Appeals

A separate docket shall be maintained for the Court of Appeals in which all actions taken at each stage of the proceedings in the court shall be recorded.

Section 15-1-12 Rules of Court of Appeals

Written rules of Court of Appeals consistent with the provisions of this code may be prescribed by the Court of Appeals. The rules shall be available to the public.

CHAPTER 2 WRITS OF HABEAS CORPUS

Section 15-2-2 Writs of Habeas Corpus

(1) Application. An application for a writ of habeas corpus may be filed by any person or guardian of a person who is wrongfully detained by another. The application shall state the facts constituting such wrongful detention, the name of the person detained and the place of detention, and shall be served upon the clerk of the Court of Appeals.

(2) Hearing. The court must call a hearing on the application within two (2) days after receipt thereof, unless on a weekend or legal holiday, in which case the hearing shall be called the next business day after the weekend or legal holiday. Three (3) judges must sit at the hearing on the application, and the applicant and any counsel retained at the applicant's expense may be present for oral arguments on the merits of the writ. The person detaining the applicant shall be notified of the hearing by the clerk, and may be present at the hearing himself or by counsel retained at his expense. If the judges find after the hearing that the person detained has been unlawfully detained, they shall proceed to issue the writ of habeas corpus and order the applicant's immediate release.

History: Adopted 1987. Restated Nov. 1, 2004, by the Shoshone & Arapaho Tribal Court.