

**VIEJAS BAND OF KUMEYAAY INDIANS  
TRIBAL CODE**

**VIEJAS APPELLATE RULES OF COURT**

**Enacted on 08-16-2018**

**Table of Contents**

<b>Section 1 – General Provisions.....</b>	<b>1</b>
1.01 Title.....	1
1.02 Application of Rules.....	1
1.03 Costs of Appeal .....	1
1.04 Documents Violating Rules Not to be Filed.....	1
<b>Section 2 – Service and Filing .....</b>	<b>1</b>
2.01 Service, Filing, and Filing Fees .....	1
2.02 Address and Other Contact Information of Record; Notice of Change .....	2
2.03 Substituting Parties; Substituting or Withdrawing Attorneys .....	3
2.04 Form of Filed Documents.....	3
2.05 Protection of Privacy in Documents and Records .....	4
2.06 Requirements for Signatures of Multiple Parties on Filed Documents .....	4
2.07 Number of Copies of .....	4
<b>Section 3 – Applications and Motions .....</b>	<b>5</b>
3.01 Applications.....	5
3.02 Motions.....	5
3.03 Extending Time .....	5
3.04 Policies and Factors Governing Extensions of Time.....	6
3.05 Extending Time because of Public Emergency .....	7
3.06 Shortening Time .....	8
<b>Section 4 – Taking the Appeal .....</b>	<b>8</b>
4.01 Filing the Appeal .....	8
4.02 Time to Appeal .....	9
4.03 Extending the Time to Appeal.....	10

4.04	Automatic Stay Pending Appeal.....	11
<b>Section 5 – Record on Appeal .....</b>		<b>12</b>
5.01	Record on Appeal .....	12
5.02	Notice Designating the Record on Appeal .....	12
5.03	Audio Recording Transcription of Oral Proceedings .....	12
5.04	Appendixes .....	14
5.05	Failure to Procure the Record.....	17
5.06	Form of the Record.....	17
5.07	When the Record is Complete .....	18
5.08	Filing the Record .....	19
5.09	Augmenting and Correcting the Record.....	19
5.10	Presumption from the Record.....	20
<b>Section 6 – Briefing .....</b>		<b>20</b>
6.01	Briefs by Parties.....	20
6.02	Contents and Form of Briefs .....	20
6.03	Service and Filing of Briefs.....	22
6.04	Appeals in which a Party is both Appellant and Respondent.....	23
6.05	Failure to File a Brief.....	23
6.06	Transmitting Exhibits .....	24
<b>Section 7 – Hearings and Decisions .....</b>		<b>25</b>
7.01	Settlement, Abandonment, Voluntary Dismissal, and Compromise .....	25
7.02	Judicial Notice; Findings and Evidence on Appeal .....	26
7.03	Oral Argument and Submission of the Cause .....	27
7.04	Filing, Finality, and Modification of Decision .....	27
7.05	Remittitur .....	28
7.06	Sanctions.....	29

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**Section 1 – General Provisions**

- 1.01 Title.** The rules in this title shall be referred to as the Viejas Appellate Rules of Court. All references in this title are to these Appellate Rules unless otherwise noted.
- 1.02 Application of Rules.** These Appellate Rules apply to proceedings in the Viejas Court of Appeals (“Court of Appeals”) arising under appeals from the Viejas Tribal Court.
- 1.03 Costs of Appeal.** Fee waivers shall not be available to parties for matters on appeal. All other costs are awardable pursuant to the Tribal-State Compact between the State of California and the Viejas Band, as applicable.
- 1.04 Documents Violating Rules Not to be Filed.** Except as these Appellate Rules provide otherwise, the Court of Appeals clerk must not file any record or other document that does not conform to these Appellate Rules.

**Section 2 – Service and Filing**

**2.01 Service, Filing, and Filing Fees.**

- (A) **Service.**
- (I) Before filing any document, a party must serve, by any method permitted by the Viejas Code of Civil Procedure (“CCP”), one copy of the document on the attorney for each party separately represented, and on each unrepresented party.
  - (II) The party must attach proof of service showing service on each person or entity required to be served under (I) to the document presented for filing. The proof must name each party represented by each attorney served.
- (B) **Filing.** A document is timely if the time to file it has not expired on the date of:
- (I) Its in-person tender to the court clerk; or
  - (II) Its mailing by priority or express mail as shown on the postmark or the postal receipt; or

- (III) Its delivery to a common carrier promising overnight delivery as shown on the carrier's receipt.
- (C) **Filing fees.**
- (I) Any document for which a filing fee is required by court fee schedule or tribal law or regulation must be accompanied at the time of filing by the required fee.
  - (II) Documents for which a filing fee may be required include:
    - (a) A notice of appeal. For purposes of this Rule, "notice of appeal" includes a notice of cross-appeal;
    - (b) A petition for review;
    - (c) The following where the document is the first document filed in the Court of Appeals by a party other than the appellant or petitioner. For purposes of this Rule, a "party other than the appellant" does not include a respondent who files a notice of cross-appeal.
      - (i) An application or an opposition or other response to an application;
      - (ii) A motion or an opposition or other response to a motion;
      - (iii) A respondent's brief;
  - (III) Unless otherwise provided in these Appellate Rules, if a document other than the notice of appeal is not accompanied by the filing fee, the clerk must file the document and must promptly notify the filing party in writing that the court will strike the document unless, within the stated time of not less than 5 court days after the notice is sent, the filing party pays the filing fee.
  - (IV) If the party fails to take the action specified in a notice given under (III), the Court of Appeals shall strike the document.

## **2.02 Address and Other Contact Information of Record; Notice of Change.**

- (A) **Address and other contact information of record.** In any case pending before the court, the court will use the mailing address, telephone number, fax number, and e-mail address that an attorney or unrepresented party provides on the first document filed in that case as the mailing address, telephone number, fax number, and e-mail address of record unless the attorney or unrepresented party files a notice under (B).
- (B) **Notice of change.**
  - (I) An attorney or unrepresented party whose mailing address, telephone number, fax number, or e-mail address changes while a case is pending must promptly serve and file a written notice of the change in the Court of Appeals in which the case is pending.

(II) The notice must specify the title and number of the case or cases to which it applies. If an attorney gives the notice, the notice must include the attorney's Tribal Bar number.

(C) **Multiple addresses or other contact information.** If an attorney or an unrepresented party has more than one mailing address, telephone number, fax number, or e-mail address, only one mailing address, telephone number, fax number, or e-mail address for that attorney or unrepresented party may be used in a given case.

### 2.03 Substituting Parties; Substituting or Withdrawing Attorneys.

(A) **Substituting parties.** Substitution of parties in an appeal must be made by serving and filing a motion in the Court of Appeals.

(B) **Substituting attorneys.** A party may substitute attorneys by serving and filing in the Court of Appeals a substitution signed by the party represented and the new attorney.

(C) **Withdrawing attorney.**

(I) An attorney may request withdrawal by filing a motion to withdraw.

Unless the court orders otherwise, the motion need be served only on the party represented and the attorneys directly affected.

(II) The proof of service need not include the address of the party represented.

But if the court grants the motion, the withdrawing attorney must promptly provide the court and the opposing party with the party's current or last known address and telephone number.

### 2.04 Form of Filed Documents.

(A) **Form.** Documents filed in the Court of Appeals must be produced on a computer and must comply with the relevant provisions of Section 6.02(B). Handwritten or typewritten documents are prohibited.

(B) **Cover color.**

(I) As far as practicable, the cover of a combined respondent's brief and appellant's opening brief must be yellow, and the cover of a combined reply brief and respondent's brief must be tan.

(II) A brief or petition not conforming to (I) must be accepted for filing, but in case of repeated violations by an attorney or party, the court may proceed as provided in Section 6.02(E)(II).

(C) **Cover information.**

- (I) Except as provided in (II), the cover—or first page if there is no cover—of every document filed in the Court of Appeals must include the name, mailing address, telephone number, fax number (if available), e-mail address (if available), and Tribal Bar number of each attorney filing or joining in the document, or of the party if the party is unrepresented. The inclusion of a fax number or e-mail address on any document does not constitute consent to service by fax or e-mail unless by agreement of the parties.
- (II) If more than one attorney from a law firm, corporation, or public law office is representing one party and is joining in the document, the name and Tribal Bar number of each attorney joining in the document must be provided on the cover. The law firm, corporation, or public law office representing each party must designate one attorney to receive notices and other communication in the case from the court by placing an asterisk before that attorney's name on the cover and must provide the contact information specified under (I) for that attorney. Contact information for the other attorneys from the same law firm, corporation, or public law office is not required but may be provided.

**2.05 Protection of Privacy in Documents and Records.** The provisions on protection of privacy in Rule 1.04 of the Viejas Rules of Court apply to documents and records under these Appellate Rules.

**2.06 Requirements for Signatures of Multiple Parties on Filed Documents.** When a document to be filed in paper form, such as a stipulation, requires the signatures of multiple parties, the original signature of at least one party must appear on the document filed in the Court of Appeals; the other signatures may be in the form of copies of the signed signature page of the document.

**2.07 Number of Copies of Documents filed in the Court of Appeals.** The number of copies of every brief, petition, motion, application, or other document that must be filed in the Court of Appeals must be filed in paper form as follows:

- (A) An original and 4 paper copies of a brief;
- (B) An original and 4 paper copies of any other petition, an answer, opposition or other response to a petition, or a reply;
- (C) Unless the court orders otherwise, an original and 1 copy of a motion or an opposition or other response to a motion;
- (D) Unless the court orders otherwise, 1 set of any separately bound supporting documents accompanying a document filed under (II) or (III);
- (E) An original and 1 copy of an application, other than an application to extend time, or any other document; and

- (F) An original and 1 copy of an application to extend time. In addition, 1 copy for each separately represented and unrepresented party must be provided to the court.

### **Section 3 – Applications and Motions**

#### **3.01 Applications.**

- (A) **Service and filing.** Parties must serve and file all applications in the Court of Appeals, including applications to extend the time to file records, briefs, or other documents, and applications to shorten time. For good cause, the Court of Appeals may excuse advance service.
- (B) **Contents.** The application must state facts showing good cause for granting the application and must identify any previous application filed by any party.

#### **3.02 Motions.**

- (A) **Motion and opposition.**
  - (I) A party wanting to make a motion in the Court of Appeals must serve and file a written motion stating the grounds and the relief requested and identifying any documents on which the motion is based.
  - (II) A motion must be accompanied by a memorandum and, if it is based on matters outside the record, by declarations or other supporting evidence.
  - (III) Any opposition must be served and filed within 15 days after the motion is filed.
- (B) **Disposition.**
  - (I) The court may rule on a motion at any time after an opposition or other response is filed or the time to oppose has expired.
  - (II) On a party's request or its own motion, the court may place a motion on calendar for a hearing. The clerk must promptly send each party a notice of the date and time of the hearing.

#### **3.03 Extending Time.**

- (A) **Computing time.** The CCP governs computing and extending the time to do any act required or permitted under these Appellate Rules.
- (B) **Extending time.** Except as provided otherwise in Section 4.02(B), for good cause the Court of Appeals may extend the time to do any act required or permitted under these Appellate Rules.

- (C) **Application for extension.**
  - (I) An application to extend time must include a declaration stating facts, not mere conclusions, and must be served on all parties.
  - (II) The application must state:
    - (a) The due date of the document to be filed;
    - (b) The length of the extension requested;
    - (c) Whether any earlier extensions have been granted and, if so, their lengths and whether granted by stipulation or by the court; and
    - (d) Good cause for granting the extension, consistent with the factors in Section 3.04(B).
  
- (D) **Relief from default.** For good cause, the Court of Appeals may relieve a party from default for any failure to comply with these Appellate Rules except the failure to file a timely notice of appeal.
  
- (E) **No extension by trial-level court.** A trial-level court may not extend the time to do any act to prepare the appellate record.
  
- (F) **Notice to party.**
  - (I) Counsel must deliver to his or her client or clients a copy of any stipulation or application to extend time that counsel files. Counsel must attach evidence of such delivery to the stipulation or application, or certify in the stipulation or application that the copy has been delivered.
  - (II) The evidence or certification of delivery under (I) need not include the address of the party notified.

### 3.04 Policies and Factors Governing Extensions of Time.

- (A) **Policies.**
  - (I) The time limits prescribed by these Appellate Rules should generally be met to ensure expeditious conduct of appellate business.
  - (II) The effective assistance of counsel to which a party is entitled includes adequate time for counsel to prepare briefs or other documents that fully advance the party's interests. Adequate time also allows the preparation of accurate, clear, concise, and complete submissions that assist the courts.
  - (III) For a variety of legitimate reasons, counsel may not always be able to prepare briefs or other documents within the time specified in these Appellate Rules. To balance the competing policies stated in (I) and (II), applications to extend time in the Court of Appeals must demonstrate good cause under (B). If good cause is shown, the court must extend the time.

- (B) **Factors considered.** In determining good cause the court must consider the following factors when applicable:
- (I) The degree of prejudice, if any, to any party from a grant or denial of the extension. A party claiming prejudice must support the claim in detail.
  - (II) The positions of the client and any opponent with regard to the extension.
  - (III) The length of the record, including the number of relevant trial exhibits. A party relying on this factor must specify the length of the record. A record containing a one-volume appendix and two volumes of audio recording transcription is considered an average-length record.
  - (IV) The number and complexity of the issues raised. A party relying on this factor must specify the issues.
  - (V) Whether there are settlement negotiations and, if so, how far they have progressed and when they might be completed.
  - (VI) Whether counsel responsible for preparing the document is new to the case.
  - (VII) Whether other counsel or the client needs additional time to review the document.
  - (VIII) Whether counsel responsible for preparing the document has other time-limited commitments that prevent timely filing of the document. Mere conclusory statements that more time is needed because of other pressing business will not suffice. Good cause requires a specific showing of other obligations of counsel that have deadlines that as a practical matter preclude filing the document by the due date without impairing its quality; or
  - (IX) Illness of counsel, a personal emergency, or a planned vacation that counsel did not reasonably expect to conflict with the due date and cannot reasonably rearrange.
  - (X) Any other factor that constitutes good cause in the context of the case.

### 3.05 Extending Time because of Public Emergency.

- (A) **Emergency extensions of time.** If made necessary by the occurrence or danger of an earthquake, fire, or other public emergency, or by the destruction of or danger to a building housing the Court of Appeals, the Court of Appeals, notwithstanding any other rule in these Appellate Rules, may by court order extend the time to do any act required or permitted under these Appellate Rules by up to 30 additional days. Any such order must specify the length of the authorized extension.
- (B) **Additional extension.** If made necessary by the nature or extent of the public emergency, the Court of Appeals may extend or renew an order issued under (A) for one additional period of no more than 30 days.

**3.06 Shortening Time.** For good cause, the Court of Appeals may shorten the time to do any act required or permitted under these Appellate Rules.

## Section 4 – Taking the Appeal

### **4.01 Filing the Appeal.**

**(A) Notice of appeal.**

- (I) To appeal from a trial-level court judgment or an appealable order of a trial-level court, an appellant must serve and file a notice of appeal in that trial-level court. The appellant or the appellant’s attorney must sign the notice.
- (II) The notice of appeal must be liberally construed. The notice is sufficient if it identifies the particular judgment or order being appealed.
- (III) Failure to serve the notice of appeal neither prevents its filing nor affects its validity, but the appellant may be required to remedy the failure.

**(B) Fee and deposit.**

- (I) The notice of appeal must be accompanied by the filing fee. The fee may be paid by credit card or check or money order payable to “Clerk, Viejas Court of Appeals, c/o Inter-Tribal Court of Southern California”. Cash is not accepted.
- (II) The appellant must also deposit \$100 with the trial-level court clerk to be credited against any amounts chargeable for the preparation of the record for appeal.
- (III) The clerk must file the notice of appeal even if the appellant does not present the filing fee or the deposit.

**(C) Failure to pay filing fee or deposit.**

- (I) If the appellant fails to pay the fee or deposit to the trial-level court required under (B), or a check for either is dishonored, the trial-level court clerk must promptly notify the appellant in writing that the Court of Appeals will dismiss the appeal unless, within 15 days after the notice is sent, the appellant makes the requisite full payment.
- (II) If the appellant fails to make the payment specified in a notice given under (I), the trial-level court clerk must notify the Court of Appeals of the default.
- (III) If the trial-level court clerk notifies the Court of Appeals of a default under (II), the Court of Appeals must dismiss the appeal, but may vacate the dismissal for good cause.

**(D) Trial-level court clerk’s duties.**

- (I) The trial-level court clerk must promptly send a notification of the filing of the notice of appeal to the attorney of record for each party, to any unrepresented party, and to the Court of Appeals clerk.
  - (II) The notification must show the date it was sent and must state the number and title of the case and the date the notice of appeal was filed. If the information is available, the notification must include:
    - (a) The name, address, telephone number, e-mail address, and Tribal Bar number of each attorney of record in the case;
    - (b) The name of the party each attorney represented in the trial-level court; and
    - (c) The name, address, telephone number and e-mail address of any unrepresented party.
  - (III) A copy of the notice of appeal is sufficient notification under (I) if the required information is on the copy or is added by the trial-level court clerk.
  - (IV) The sending of a notification under (I) is a sufficient performance of the clerk's duty despite the death of the party or the discharge, disqualification, suspension, disbarment, or death of the attorney.
  - (V) Failure to comply with any provision of this subdivision does not affect the validity of the notice of appeal.
- (E) **Notice of cross-appeal.** As used in this Rule, “notice of appeal” includes a notice of cross-appeal and “appellant” includes a respondent filing a notice of cross-appeal.

#### 4.02 Time to Appeal.

- (A) **Normal time.**
  - (I) A notice of appeal must be filed on or before the earliest of:
    - (a) 60 days after the trial-level court clerk serves on the party filing the notice of appeal a document entitled “Notice of Entry” of judgment or a filed-endorsed copy of the judgment, showing the date either was served;
    - (b) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled “Notice of Entry” of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service; or
    - (c) 90 days after entry of judgment.
  - (II) Service under (I)(a) and (b) may be effected by any method permitted by the CCP.
  - (III) If the parties stipulated in the trial court to waive notice of the court order being appealed, the time to appeal under (I)(c) applies unless the court or a

party serves notice of entry of judgment or a filed-endorsed copy of the judgment to start the time period under (I)(a) or (b).

- (B) **No extension of time; late notice of appeal.** Except as provided in Section 3.05, no court may extend the time to file a notice of appeal. If a notice of appeal is filed late, the Court of Appeals must dismiss the appeal.
- (C) **What constitutes entry.** For purposes of this Rule:
  - (I) The entry date of a judgment is the date the judgment is filed in the trial court's judgment book or other official record-keeping system.
  - (II) The entry date of an appealable order that is entered in the minutes is the date it is entered in the permanent minutes. But if the minute order directs that a written order be prepared, the entry date is the date the signed order is filed; a written order prepared under Rule 3.10 of the Viejas Rules of Court is not such an order prepared by direction of a minute order.
  - (III) The entry date of an appealable order that is not entered in the minutes is the date the signed order is filed.
  - (IV) The entry date of a decree of distribution in a probate proceeding is the date it is entered at length in the judgment book or other permanent court record.
  - (V) An order signed electronically has the same effect as an order signed on paper.
- (D) **Premature notice of appeal.**
  - (I) A notice of appeal filed after judgment is rendered but before it is entered is valid and is treated as filed immediately after entry of judgment.
  - (II) The Court of Appeals may treat a notice of appeal filed after the trial-level court has announced its intended ruling, but before it has rendered judgment, as filed immediately after entry of judgment.
- (E) **Appealable order.** As used in (A) and (D), "judgment" includes an appealable order if the appeal is from an appealable order.

#### **4.03 Extending the Time to Appeal.**

- (A) **Extension of time.** This Rule operates only to extend the time to appeal otherwise prescribed in Section 4.02(A); it does not shorten the time to appeal. If the normal time to appeal stated in Section 4.02(A) is longer than the time provided in this Rule, the time to appeal stated in Section 4.02(A) governs.
- (B) **Motion for new trial.** If any party serves and files a valid notice of intention to move for a new trial, if the motion is denied, the time to appeal from the judgment is extended for all parties until the earliest of:

- (I) 30 days after the trial-level court clerk or a party serves an order denying the motion or a notice of entry of that order;
  - (II) 30 days after denial of the motion by operation of law; or
  - (III) 180 days after entry of judgment.
- (C) **Motion to vacate judgment.** If, within the time prescribed by Section 4.02 to appeal from the judgment, any party serves and files a valid notice of intention to move—or a valid motion—to vacate the judgment, the time to appeal from the judgment is extended for all parties until the earliest of:
- (I) 30 days after the trial-level court clerk or a party serves an order denying the motion or a notice of entry of that order;
  - (II) 90 days after the first notice of intention to move—or motion—is filed; or
  - (III) 180 days after entry of judgment.
- (D) **Motion to reconsider appealable order.** If any party serves and files a valid motion to reconsider an appealable order, the time to appeal from that order is extended for all parties until the earliest of:
- (I) 30 days after the trial-level court clerk or a party serves an order denying the motion or a notice of entry of that order;
  - (II) 90 days after the first motion to reconsider is filed; or
  - (III) 180 days after entry of the appealable order.
- (E) **Cross-appeal.**
- (I) If an appellant timely appeals from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is extended until 20 days after the trial-level court clerk serves notification of the first appeal.
  - (II) If an appellant timely appeals from an order granting a motion for new trial, an order granting—within 150 days after entry of judgment—a motion to vacate the judgment, the time for any other party to appeal from the original judgment is extended until 20 days after the clerk serves notification of the first appeal.
- (F) **Service; proof of service.** Service under this Rule may be by any method permitted by the CCP. An order or notice that is served must be accompanied by proof of service.

**4.04 Automatic Stay Pending Appeal.** A notice of appeal automatically triggers a stay of enforcement of any judgment of the underlying case until resolution of the appeal.

## Section 5 – Record on Appeal

**5.01 Record on Appeal.** Except as otherwise provided in this chapter, the record on an appeal must contain the records specified in (A) and (B), which constitute the normal record on appeal.

- (A) **Record of written documents.** A record of the written documents from the trial-level court proceedings in the form of an appendix under Section 5.04;
- (B) **Record of oral proceedings.** If an appellant intends to raise any issue that requires consideration of the oral proceedings in the trial-level court, the record on appeal must include a record of these oral proceedings in the form of an audio recording transcription of oral proceedings under Section 5.03.

**5.02 Notice Designating the Record on Appeal.**

- (A) **Time to file.** Within 10 days after filing the notice of appeal, an appellant must serve and file a notice in the trial-level court designating the record on appeal. The appellant may combine its notice designating the record with its notice of appeal.
- (B) **Contents.** The notice must:
  - (I) Specify the date the notice of appeal was filed.
  - (II) Specify whether the appellant elects to proceed with or without a record of the oral proceedings in the trial court. If the appellant elects to include oral proceedings, the notice must designate the recordings of proceedings to be provided to appellant for transcription as required under Section 5.03.
- (C) **Copy to the Court of Appeals.** The clerk must promptly send the Court of Appeals a copy of any notice filed under this Rule.
- (D) **Provision of the Register of Actions.** Once the appellant files a notice under this Rule, the trial-level court clerk must promptly send a copy of the register of actions, if any, to the attorney of record for each party and to any unrepresented party.

**5.03 Audio Recording Transcription of Oral Proceedings.**

- (A) **Securing the Record.**
  - (I) Within 10 days of appellant's filing of a notice designating the record indicating the inclusion of oral proceedings, the clerk of the trial-level court must notify the appellant of the estimated full cost of the audio recordings. The appellant must deposit the cost within 10 days after the

clerk sends the estimate. Failure to pay this cost will trigger the provisions under (C).

- (II) Upon appellant's payment in full to the court, the clerk shall provide a copy of the requested audio recordings within 10 days, unless otherwise arranged by the court and appellant.

**(B) Notice.**

- (I) A notice under Section 5.02 designating inclusion of audio recording of oral proceedings must specify the date of each proceeding and specify portions of designated proceedings that are not to be included.
- (II) If the appellant designates less than all the oral proceedings, the notice must state the points to be raised on appeal; the appeal is then limited to those points unless, on motion, the Court of Appeals permits otherwise.
- (III) If the appellant serves and files a notice designating oral proceedings, the respondent may, within 10 days after such service, serve and file a notice in trial-level court designating any additional proceedings the respondent wants included in the recordings. The respondent is responsible for the cost of any audio recording under this subsection and transcription of said recordings as if they were the appellant.
- (IV) If the appellant elects to proceed without a record of oral proceedings, the respondent cannot require that recordings be provided or audio recording transcription be prepared. But the Court of Appeals, on its own or the respondent's motion, may order the record augmented under Section 5.10 to prevent a miscarriage of justice. Unless the court orders otherwise, the appellant is responsible for the cost of any audio recording transcription the court may order under this subdivision.

**(C) Failure to pay deposit.**

- (I) If the appellant fails to pay the deposit to the trial-level court required under (A)(I), the trial-level court clerk must promptly notify the appellant in writing that the Court of Appeals will dismiss the appeal unless, within 15 days after the notice is sent, the appellant makes the deposit.
- (II) If the appellant fails to take the action specified in a notice given under (I), the trial-level court clerk must notify the Court of Appeals of the default.
- (III) If the trial-level court clerk notifies the Court of Appeals of a default under (II), the Court of Appeals must dismiss the appeal, but may vacate the dismissal for good cause.

**(D) Preparation and service of proposed transcription of audio recordings.**

- (I) If a party designates oral proceedings as part of the record on appeal under Section 5.02, the appellant must, within 30 days of service of the audio recordings of oral proceedings from the trial-level court clerk, prepare and

serve a proposed transcription of the audio recordings on all parties that appeared at the trial.

- (II) If the proposed transcription of audio recordings of oral proceedings are not served and submitted within that time, any other party that appeared at the trial may within 10 days thereafter: (1) prepare, serve on all other parties, and submit to the court a proposed transcription of audio recordings or (2) serve on all other parties and file a notice of motion for an order that a transcription of audio recordings be deemed waived.
  - (III) All transcriptions of audio recordings of oral proceedings must be completed by California-licensed certified shorthand reporters.
- (E) **Finalization of the audio recording transcriptions.** Upon stipulation by the parties to the proposed audio recording transcription provided by appellant pursuant to (B) or after 15 days pass without filed objection to the proposed audio recording transcription from any other party, the proposed audio recording transcription is deemed finalized. The appellant must submit with the trial-level court clerk the finalized audio recording transcription for inclusion in the record and submission to the Court of Appeals pursuant to (H).
- (F) **Objections to proposed transcription of audio recordings.** Parties are encouraged to settle disputes regarding the contents of transcription by agreement. If private settlement is not possible, any party may, within 15 days after the proposed transcription of audio recordings have been served, serve and file objections to the proposed transcription of audio recordings or judgment.
- (G) **Hearing.** The trial-level court may order a hearing on proposals or objections to a proposed transcription of audio recordings. After such hearing, the court shall issue an order within 10 days settling all disputes and finalizing the audio recording transcriptions of the oral proceedings.
- (H) **Submission to the trial-level court clerk.** Within 10 days of the finalization of the audio recording transcriptions of the oral proceedings, the appellant shall submit to the trial-level court clerk a hard-copy original of the transcriptions, with notice to the other parties as prescribed in the CCP.

#### 5.04 Appendixes.

- (A) **Appendixes required.** The form of the record of written documents from the trial-level court proceedings shall be by appendixes prepared by the parties. The parties may prepare separate appendixes or they may stipulate to a joint appendix.
- (B) **Contents of appendix.**
  - (I) A joint appendix or an appellant's appendix must contain:

- (a) All items (i)-(vi), below, showing the dates necessary to determine the timeliness of the appeal under Section 4.02 or Section 4.03:
    - (i) The notice of appeal;
    - (ii) Any judgment appealed from and any notice of its entry;
    - (iii) Any order appealed from and any notice of its entry;
    - (iv) Any notice of intention to move for a new trial, or motion to vacate the judgment, or for reconsideration of an appealed order, and any order on such motion and any notice of its entry;
    - (v) Any notices or stipulations to prepare trial-level audio recording transcriptions; and
    - (vi) The register of actions, if any.
  - (b) Any other document filed or lodged in the case in trial-level court or any exhibit admitted in evidence, refused, or lodged that is necessary for proper consideration of the issues, including, for an appellant's appendix, any item that the appellant should reasonably assume the respondent will rely on;
  - (c) The notice of election; and
  - (d) For a joint appendix, the stipulation designating its contents.
  - (II) An appendix must not:
    - (a) Contain documents or portions of documents filed in trial-level court that are unnecessary for proper consideration of the issues.
    - (b) Incorporate any document by reference except as provided in (II).
  - (III) All exhibits admitted in evidence, refused, or lodged are deemed part of the record, whether or not the appendix contains copies of them.
  - (IV) A respondent's appendix may contain any document that could have been included in the appellant's appendix or a joint appendix.
  - (V) An appellant's reply appendix may contain any document that could have been included in the respondent's appendix.
- (C) **Document or exhibit held by other party.** If a party preparing an appendix wants it to contain a copy of a document or an exhibit in the possession of another party:
- (I) The party must first ask the party possessing the document or exhibit to provide a copy or lend it for copying. All parties should reasonably cooperate with such requests.
  - (II) If the attempt under (I) is unsuccessful, the party may serve and file in the Court of Appeals a notice identifying the document or specifying the exhibit's trial court designation and requesting the party possessing the document or exhibit to deliver it to the requesting party or, if the possessing party prefers, to the Court of Appeals. The possessing party must comply with the request within 10 days after the notice was served.

- (III) If the party possessing the document or exhibit sends it to the requesting party non-electronically, that party must copy and return it to the possessing party within 10 days after receiving it.
  - (IV) If the party possessing the document or exhibit sends it to the Court of Appeals, that party must:
    - (a) Accompany the document or exhibit with a copy of the notice served by the requesting party; and
    - (b) Immediately notify the requesting party that it has sent the document or exhibit to the Court of Appeals.
  - (V) On request, the Court of Appeals may return a document or an exhibit to the party that sent it non-electronically. When the remittitur issues, the Court of Appeals must return all documents or exhibits to the party that sent them, if they were sent non-electronically.
- (D) **Form of appendix.**
- (I) An appendix must comply with the requirements of Section 5.06.
  - (II) In addition to the information required on the cover of a brief by Section 6.02(B)(X), the cover of an appendix must prominently display the title “Joint Appendix” or “Appellant’s Appendix” or “Respondent’s Appendix” or “Appellant’s Reply Appendix.”
  - (III) An appendix must not be bound or transmitted electronically as one document with a brief.
- (E) **Service and filing.**
- (I) A party preparing an appendix must:
    - (a) Serve the appendix on each party, unless otherwise agreed by the parties or ordered by the Court of Appeals; and
    - (b) File the appendix in the Court of Appeals.
  - (II) A joint appendix or an appellant’s appendix must be served and filed with the appellant’s opening brief.
  - (III) A respondent’s appendix, if any, must be served and filed with the respondent’s brief.
  - (IV) An appellant’s reply appendix, if any, must be served and filed with the appellant’s reply brief.
- (F) **Cost of appendix.**
- (I) Each party must pay for its own appendix.
  - (II) The cost of a joint appendix must be paid:
    - (a) By the appellant;
    - (b) If there is more than one appellant, by the appellants equally; or
    - (c) As the parties may agree.

- (G) **Inaccurate or noncomplying appendix.** Filing an appendix constitutes a representation that the appendix consists of accurate copies of documents in the trial-level court file. The Court of Appeals may impose monetary or other sanctions for filing an appendix that contains inaccurate copies or otherwise violates this Rule.

**5.05 Failure to Procure the Record.** If a party fails to timely do an act required to procure the record, the trial-level court clerk must promptly notify the Court of Appeals of the default, and the Court of Appeals may impose one of the following sanctions:

- (A) If the defaulting party is the appellant, the Court of Appeals may dismiss the appeal. If the appeal is dismissed, the Court of Appeals must promptly notify the trial-level court. The Court of Appeals may vacate the dismissal for good cause.
- (B) If the defaulting party is the respondent, the Court of Appeals may order the appeal to proceed on the record designated by the appellant, but the respondent may obtain relief from default under Section 3.03(D).

**5.06 Form of the Record.**

- (A) **Computer readability.**
  - (I) Any court, party, or other person entitled to a transcription of the audio recordings of the oral proceedings below may request that it be delivered in computer-readable form, except that an original transcript shall be on paper.
  - (II) The computer-readable transcription shall be stored on disks or USB data drive, in standard ASCII code, unless otherwise agreed by the appellant and the court, party, or other person requesting the transcription.
  - (III) Each disk or drive shall be labeled with the case name and court number, the dates of proceedings contained therein, and the page and volume numbers of the data contained therein.
  - (IV) Except where modifications are necessary to reflect corrections of a transcription, each disk as produced by the appellant shall contain the identical volume divisions, pagination, line numbering, and text of the certified original paper transcript or any portion thereof.
  - (V) Each disk or drive shall be sequentially numbered within the series.
- (B) **Format.**
  - (I) *General.* For any appendix or audio recording transcription:
    - (a) All documents filed must have a page size of 8 ½ by 11 inches;
    - (b) The pages must be white or unbleached and of at least 20-pound weight;
    - (c) The pages must be bound on the left margin.

- (d) The text must be reproduced as legibly as printed matter;
  - (e) The contents must be arranged chronologically;
  - (f) The pages must be consecutively numbered, except as provided in (F), beginning with volume one's cover as page 1 and continuing throughout the transcript, including the indexes, certificates, and cover pages for subsequent volumes, and using only Arabic numerals (i.e., 1, 2, 3); and
  - (g) The margin must be at least 1 ¼ inches from the left edge.
- (II) *Line numbering.* In the audio recording transcription, the lines on each page must be consecutively numbered and must be double-spaced or one-and-a-half-spaced; double-spaced means three lines to a vertical inch.
- (III) *Sealed and confidential records.* The record on appeal must maintain all confidences relating to sealed and confidential records.
- (IV) *Indexes.*
- (a) An appendix must contain, at the beginning of the first volume, alphabetical and chronological indexes listing each document and the volume, where applicable, and page where it first appears;
  - (b) The audio recording transcription must contain:
    - (i) Alphabetical and chronological indexes listing the volume, where applicable, and page where each witness's direct, cross, and any other examination begins; and
    - (ii) An index listing the volume, where applicable, and page where any exhibit is marked for identification and where it is admitted or refused. The index must identify each exhibit by number or letter and a brief description of the exhibit.
  - (c) Each index prepared under this paragraph must begin on a separate page.
- (V) *Volumes.* An appendix or audio recording transcription must be produced in volumes of no more than 300 pages.
- (VI) *Cover.*
- (a) The cover of each volume of an appendix or audio recording transcription must state the title and trial court number of the case, the name of the participating trial judge, the names and addresses of appellate counsel for each party, the volume number, the total number of volumes in the transcript, and the inclusive page numbers of that volume.
  - (b) In audio recording transcriptions, in addition to the information required by (a), the cover of each volume must state the dates of the proceedings reported in that volume.

## 5.07 When the Record is Complete.

- (A) **Record consisting of written documents only.** If the appellant elected to proceed without a record of the oral proceedings in the trial court, the record is complete either when the parties submit a joint appendix or when the time has expired for submission of the respondent's appendix or the appellant's reply appendix.
- (B) **Record consisting of written documents and oral proceedings.** If the appellant elected to proceed with a record of the oral proceedings in the trial court, the record is complete when the record of written documents from the trial court is complete as provided in (A) and the finalized audio recording transcription is delivered to the trial-level court clerk under Section 5.03;

#### **5.08 Filing the Record.**

- (A) **Trial-level court clerk's duties.** When the record is complete, the trial-level court clerk must promptly send the original to the Court of Appeals and copies to the parties.
- (B) **Reviewing court clerk's duties.** On receiving the record, the Court of Appeals clerk must promptly file the original and send notice of the filing date to the parties.

#### **5.09 Augmenting and Correcting the Record.**

- (A) **Augmentation.**
  - (I) At any time, on motion of a party or its own motion, the Court of Appeals may order the record augmented to include:
    - (a) Any document filed or lodged in the case in trial-level court; or
    - (b) A transcript of oral proceedings not designated under Section 5.06. Unless the court orders otherwise, the appellant is responsible for the cost of any additional transcription the court may order under this subdivision.
  - (II) A party must attach to its motion a copy, if available, of any document or transcription that it wants added to the record. The pages of the attachments must be consecutively numbered, beginning with the number one. If the Court of Appeals grants the motion it may augment the record with the copy.
- (B) **Corrections.**
  - (I) On motion of a party, on stipulation, or on its own motion, the Court of Appeals may order the correction or certification of any part of the record.
  - (II) The Court of Appeals may order the trial-level court to settle disputes about omissions or errors in the record.

- (C) **Notice.** The Court of Appeals clerk must send all parties notice of the receipt and filing of any matter under this Rule.

**5.10 Presumption from the Record.** The Court of Appeals will presume that the record in an appeal includes all matters material to deciding the issues raised. If the appeal proceeds without an audio recording transcription of oral proceedings, this presumption applies only if the claimed error appears on the face of the record.

## **Section 6 – Briefing**

### **6.01 Briefs by Parties.**

#### **(A) Parties' briefs.**

- (I) Each appellant must serve and file an appellant's opening brief.
- (II) Each respondent must serve and file a respondent's brief.
- (III) Each appellant may serve and file a reply brief.
- (IV) Instead of filing a brief, or as part of its brief, a party may join in or adopt by reference all or part of a brief in the same or a related appeal.

### **6.02 Contents and Form of Briefs.**

#### **(A) Contents.**

- (I) Each brief must:
  - (a) Begin with a table of contents and a table of authorities separately listing applicable legal authority;
  - (b) State each point under a separate heading or subheading summarizing the point, and support each point by argument and, if possible, by citation of legal authority; and
  - (c) Support any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears.
- (II) An appellant's opening brief must:
  - (a) State the nature of the action, the relief sought in the trial court, and the judgment or order appealed from;
  - (b) State that the judgment appealed from is final, or explain why the order appealed from is appealable; and
  - (c) Provide a summary of the significant facts limited to matters in the record.

#### **(B) Form.**

- (I) A brief may not be handwritten, but may be reproduced by any process that produces a clear, black image of letter quality. All documents filed must have a page size of 8 ½ by 11 inches. If filed in paper form, the paper must be white or unbleached and of at least 20-pound weight.
- (II) Any conventional font may be used. The font may be either proportionally spaced or monospaced.
- (III) The font style must be roman; but for emphasis, italics or boldface may be used or the text may be underscored. Case names must be consistently either italicized or underscored. Headings may be in uppercase letters.
- (IV) Except as provided in (XI), the font size, including footnotes, must not be smaller than 13-point, and both sides of the paper may be used.
- (V) The lines of text must be unnumbered and at least one-and-a-half-spaced. Headings and footnotes may be single-spaced. Quotations may be block-indented and single-spaced. Single-spaced means six lines to a vertical inch.
- (VI) The margins must be at least 1 ½ inches on the left and right and 1 inch on the top and bottom.
- (VII) The pages must be consecutively numbered. The page numbering must begin with the cover page as page 1 and use only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the cover page.
- (VIII) The brief must be filed unbound.
- (IX) The brief must be signed.
- (X) The cover must be in the color prescribed by Section 2.04(B). In addition to providing the cover information required by Section 2.04(C), the cover must state:
  - (a) The title of the brief;
  - (b) The title, trial court number, and Court of Appeals number of the case;
  - (c) The names of the trial court and each participating trial judge;
  - (d) The name of the party that each attorney on the brief represents.

(C) **Length.**

- (I) A brief must not exceed 14,000 words, including footnotes. Such a brief must include a certificate by appellate counsel or an unrepresented party stating the number of words in the brief. The person certifying may rely on the word count of the computer program used to prepare the brief.
- (II) The tables required under (A)(I), the cover information required under (B)(X), a certificate under (I), any signature block, and any attachment under (D) are excluded from the limits stated in (I) or (II).
- (III) A combined brief in an appeal governed by Section 6.04 must not exceed double the limits stated in (I) or (II).

- (IV) On application, the Court of Appeals may permit a longer brief for good cause.
- (D) **Attachments to briefs.** A party filing a brief may attach copies of exhibits or other materials in the appellate record or copies of relevant tribal, state, or federal regulations or rules, or other similar citable materials that are not readily accessible. These attachments must not exceed a combined total of 10 pages, but on application the Court of Appeals may permit additional pages of attachments for good cause. A copy of an opinion required to be attached to the brief by court order does not count toward this 10-page limit.
- (E) **Noncomplying briefs.** If a brief does not comply with this Rule:
  - (I) The Court of Appeals clerk may decline to file it, but must mark it “received but not filed” and return it to the party; or
  - (II) If the brief is filed, the Court of Appeals may, on its own or a party’s motion, with or without notice:
    - (a) Order the brief returned for corrections and refiling within a specified time;
    - (b) Strike the brief with leave to file a new brief within a specified time; or
    - (c) Disregard the noncompliance.

### 6.03 Service and Filing of Briefs.

- (A) **Time to file.**
  - (I) An appellant must serve and file its opening brief within:
    - (a) 40 days after the record is filed in the Court of Appeals, if the appeal proceeds with an audio recording transcription; or
    - (b) 70 days after the record is filed in the Court of Appeals, if the appeal proceeds without an audio recording transcription.
  - (II) A respondent must serve and file its brief within 30 days after the appellant files its opening brief.
  - (III) An appellant must serve and file its reply brief, if any, within 20 days after the respondent files its brief.
- (B) **Extensions of time.**
  - (I) Except as otherwise provided by tribal law or policy or when the time to file the brief has previously been extended under (III), below, the parties may extend each period under (A) by up to 60 days by filing one or more stipulations in the Court of Appeals before the brief is due. Stipulations must be signed by and served on all parties.
  - (II) A stipulation under (I) is effective on filing. The Court of Appeals may not shorten a stipulated extension.

- (III) Before the brief is due, a party may apply to the Court of Appeals for an extension of each period under (A) on a showing that there is good cause and that:
  - (a) The applicant was unable to obtain—or it would have been futile to seek—the extension by stipulation; or
  - (b) The parties have stipulated to the maximum extension permitted under (I) and the applicant seeks a further extension.
- (IV) A party need not apply for an extension or relief from default if it can file its brief within the time prescribed by Section 6.06(A). The clerk must file a brief submitted within that time if it otherwise complies with these Appellate Rules.

#### **6.04 Appeals in which a Party is both Appellant and Respondent.**

- (A) **Briefing sequence and time to file briefs.** In an appeal in which any party is both an appellant and a respondent:
  - (I) The parties must jointly—or separately if unable to agree—submit a proposed briefing sequence to the Court of Appeals within 20 days after the second notice of appeal is filed.
  - (II) After receiving the proposal, the Court of Appeals must order a briefing sequence and prescribe briefing periods consistent with Section 6.03(A).
  - (III) Extensions of time are governed by Section 6.03(B).
- (B) **Contents of briefs.**
  - (I) A party that is both an appellant and a respondent must combine its respondent’s brief with its appellant’s opening brief or its reply brief, if any, whichever is appropriate under the briefing sequence that the Court of Appeals orders.
  - (II) A combined brief must address the points raised in each appeal separately but may include a single summary of the significant facts.
  - (III) A party must confine a reply brief, or the reply portion of a combined brief, to points raised in its appeal.

#### **6.05 Failure to File a Brief.**

- (A) **Notice to file.** If a party fails to timely file an appellant’s opening brief or a respondent’s brief, the court may impose one of the following sanctions:
  - (I) If the brief is an appellant’s opening brief, the court may dismiss the appeal;
  - (II) If the brief is a respondent’s brief, the court may decide the appeal on the record, the opening brief, and any oral argument by the appellant.

- (B) **Combined brief.** A party that is both an appellant and a respondent under Section 6.04 may file its combined respondent's brief and appellant's reply brief within the period specified in the notice under (A).

## 6.06 Transmitting Exhibits.

- (A) **Notice of designation.**
  - (I) Within 10 days after the last respondent's brief is filed or could be filed, a party wanting the Court of Appeals to consider any original exhibits that were admitted in evidence, refused, or lodged but that were not copied in the appendix under Section 5.04 must serve and file a notice in trial-level court designating such exhibits.
  - (II) Within 10 days after a notice under (I) is served, any other party wanting the Court of Appeals to consider additional exhibits must serve and file a notice in trial-level court designating such exhibits.
  - (III) A party filing a notice under (I) or (II) must serve a copy on the Court of Appeals.
- (B) **Transmittal.** Unless the Court of Appeals orders otherwise, within 20 days after the first notice under (A) is filed:
  - (I) The trial-level court clerk must put any designated exhibits in the clerk's possession into numerical or alphabetical order and send them to the Court of Appeals. The trial-level court clerk must also send a list of the exhibits sent. If the exhibits are not transmitted electronically, the trial-level court clerk must send two copies of the list. If the Court of Appeals clerk finds the list correct, the Court of Appeals clerk must sign and return a copy to the trial-level court clerk.
  - (II) Any party in possession of designated exhibits returned by the trial-level court must put them into numerical or alphabetical order and send them to the Court of Appeals. The party must also send a list of the exhibits sent. If the exhibits are not transmitted electronically, the party must send two copies of the list. If the Court of Appeals clerk finds the list correct, the clerk must sign and return a copy to the party.
- (C) **Application for later transmittal.** After the periods specified in (A) have expired, a party may apply to the Court of Appeals for permission to send an exhibit to that court.
- (D) **Request and return by reviewing court.** At any time the Court of Appeals may direct the trial-level court or a party to send it an exhibit. On request, the Court of Appeals may return an exhibit to the trial-level court or to the party that sent it. When the remittitur issues, the Court of Appeals must return all exhibits not transmitted electronically to the trial-level court or to the party that sent them.

## Section 7 – Hearings and Decisions

### **7.01 Settlement, Abandonment, Voluntary Dismissal, and Compromise.**

**(A) Notice of settlement.**

- (I) If a case settles after a notice of appeal has been filed either as a whole or as to any party, the appellant who has settled must immediately serve and file a notice of settlement in the Court of Appeals. If the record has not been filed in the Court of Appeals, the appellant must also immediately serve a copy of the notice on the trial-level court clerk.
- (II) If the case settles after the appellant receives a notice setting oral argument or a prehearing conference, the appellant must also immediately notify the Court of Appeals of the settlement by telephone or other expeditious method.
- (III) Within 45 days after filing a notice of settlement—unless the court has ordered a longer time period on a showing of good cause—the appellant who filed the notice of settlement must file either an abandonment under (B), if the record has not yet been filed in the Court of Appeals, or a request to dismiss under (C), if the record has already been filed in the Court of Appeals.
- (IV) If the appellant does not file an abandonment, a request to dismiss, or a letter stating good cause why the appeal should not be dismissed within the time period specified under (III), the court may dismiss the appeal as to that appellant.

**(B) Abandonment.**

- (I) Before the record is filed in the Court of Appeals, the appellant may serve and file in trial-level court an abandonment of the appeal or a stipulation to abandon the appeal. The filing effects a dismissal of the appeal and restores the trial-level court’s jurisdiction.
- (II) The trial-level court clerk must promptly notify the Court of Appeals and the parties of the abandonment or stipulation.

**(C) Request to dismiss.**

- (I) After the record is filed in the Court of Appeals, the appellant may serve and file in that court a request or a stipulation to dismiss the appeal.
- (II) On receipt of a request or stipulation to dismiss, the court may dismiss the appeal and direct immediate issuance of the remittitur.

**(D) Approval of compromise.** If a guardian or conservator seeks approval of a proposed compromise of a pending appeal, the Court of Appeals may, before

ruling on the compromise, direct the trial court to determine whether the compromise is in the ward's best interests and to report its findings.

## **7.02 Judicial Notice; Findings and Evidence on Appeal.**

### **(A) Judicial notice.**

- (I) To obtain judicial notice by the Court of Appeals, a party must serve and file a separate motion with a proposed order.
- (II) The motion must state:
  - (a) Why the matter to be noticed is relevant to the appeal;
  - (b) Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court;
  - (c) If judicial notice of the matter was not taken by the trial court, why the matter is subject to judicial notice under the Viejas Evidence Code; and
  - (d) Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.
- (III) If the matter to be noticed is not in the record, the party must serve and file a copy with the motion or explain why it is not practicable to do so. The pages of the copy of the matter or matters to be judicially noticed must be consecutively numbered, beginning with the number 1.

**(B) Findings on appeal.** Upon motion by a party, the Court of Appeals may make factual determinations contrary to or in addition to those made by the trial court, but only when trial court findings are not supported by substantial evidence. The factual determinations may be based on the evidence adduced before the trial court either with or without the taking of evidence by the Court of Appeals. The Court of Appeals may for the purpose of making the factual determinations or for any other purpose in the interests of justice, take additional evidence of or concerning facts occurring at any time prior to the decision of the appeal, and may give or direct the entry of any judgment or order and may make any further or other order as the case may require. This Rule shall be liberally construed to the end among others that, where feasible, causes may be finally disposed of by a single appeal and without further proceedings in the trial court except where in the interests of justice a new trial is required on some or all of the issues. The party's motion must include proposed findings.

### **(C) Evidence on appeal.**

- (I) A party may move that the Court of Appeals take evidence.
- (II) An order granting the motion must:
  - (a) State the issues on which evidence will be taken;
  - (b) Specify whether the court, a justice, or a special master or referee will take the evidence; and

- (c) Give notice of the time and place for taking the evidence.
- (III) For documentary evidence, a party may offer the original, a certified copy, a photocopy, or, in a case in which electronic submission is permitted, an electronic copy. The court may admit the document in evidence without a hearing.

### 7.03 Oral Argument and Submission of the Cause.

- (A) **Oral argument not automatic.** Oral argument is not automatic in the Court of Appeals. In all appeals, either the appellant or respondent must request oral arguments in their first brief filed with the Court of Appeals.
- (B) **Notice of argument; location.** Upon proper request under (A), the clerk of the Court of Appeals must send a notice of the time and place of oral argument to all parties at least 20 days before the argument date. The Court of Appeals may shorten the notice period for good cause; in that event, the clerk must immediately notify the parties by telephone or other expeditious method. All oral arguments shall take place on the Viejas Reservation.
- (C) **Conduct of argument.** Unless the Court of Appeals orders otherwise:
  - (I) The appellant, petitioner, or moving party has the right to open and close. If there are two or more such parties, the court must set the sequence of argument.
  - (II) Each side is allowed 30 minutes for argument. If multiple parties are represented by separate counsel, the court may apportion or expand time.
  - (III) Only one counsel may argue for each separately represented party.
- (D) **When the cause is submitted.** A cause is submitted when the court has heard oral argument or, if no oral argument is had, the time has expired to file all briefs and papers, including any supplemental brief permitted by the court.

### 7.04 Filing, Finality, and Modification of Decision.

- (A) **Filing the decision.**
  - (I) The clerk of the Court of Appeals must promptly file all opinions and orders of the court and promptly send copies showing the filing date to the parties and, when relevant, to the lower court.
  - (II) A decision by opinion must identify the participating justices, including the author of the majority opinion and of any concurring or dissenting opinion, or the justices participating in a “by the court” opinion.
- (B) **Finality of decision.**

- (I) Except as otherwise provided in this Rule, the Court of Appeals decision in an appeal, including an order dismissing an appeal involuntarily, is final 30 days after filing.
  - (II) The Court of Appeals denial of a petition for stay pending appeal is final upon filing.
- (C) **Modification of decision.**
- (I) The Court of Appeals may modify a decision until the decision is final in that court. If the office of the clerk is closed on the date of finality, the court may modify the decision on the next day the office is open.
  - (II) An order modifying an opinion must state whether it changes the appellate judgment. A modification that does not change the appellate judgment does not extend the finality date of the decision. If a modification changes the appellate judgment, the finality period runs from the filing date of the modification order.
- (D) **Consent to increase or decrease in amount of judgment.** If the Court of Appeals decision conditions the affirmance of a money judgment on a party's consent to an increase or decrease in the amount, the judgment is reversed unless, before the decision is final under (B), the party serves and files a copy of a consent in the Court of Appeals. If a consent is filed, the finality period runs from the filing date of the consent. The clerk must send one filed-endorsed copy of the consent to the trial-level court with the remittitur.

#### **7.05 Remittitur.**

- (A) **Issuance of remittitur.** The Court of Appeals must issue a remittitur after a decision in an appeal, if applicable.
- (B) **Clerk's duties.**
- (I) The clerk of the Court of Appeals must issue a remittitur immediately after the issues a remittitur; and
  - (II) The clerk must send the lower court the Court of Appeals remittitur and a filed-endorsed copy of the opinion or order.
- (C) **Immediate issuance, stay, and recall.**
- (I) The Court of Appeals may direct immediate issuance of a remittitur only on the parties' stipulation or on dismissal of the appeal.
  - (II) On a party's or its own motion or on stipulation, and for good cause, the court may stay a remittitur's issuance for a reasonable period or order its recall.
  - (III) An order recalling a remittitur issued after a decision by opinion does not supersede the opinion or affect its publication status.

- (D) **Notice.** The remittitur is deemed issued when the clerk enters it in the record. The clerk must immediately send the parties notice of issuance of the remittitur, showing the date of entry.

## 7.06 Sanctions.

- (A) **Grounds for sanctions.** On motion of a party or its own motion, the Court of Appeals may impose sanctions, including the award or denial of costs where not disallowed by law or tribal/state gaming Compact, on a party or an attorney for:
  - (I) Taking a frivolous appeal or appealing solely to cause delay;
  - (II) Including in the record any matter not reasonably material to the appeal's determination;
  - (III) Filing a frivolous motion; or
  - (IV) Committing any other unreasonable violation of these Appellate Rules.
- (B) **Motions for sanctions.**
  - (I) A party's motion under (A) must include a declaration supporting the amount of any monetary sanction sought and must be served and filed before any order dismissing the appeal but no later than 10 days after the appellant's reply brief is due.
  - (II) If a party files a motion for sanctions with a motion to dismiss the appeal and the motion to dismiss is not granted, the party may file a new motion for sanctions within 10 days after the appellant's reply brief is due.
- (C) **Notice.** The court must give notice in writing if it is considering imposing sanctions.
- (D) **Opposition.** Within 10 days after the court sends such notice, a party or attorney may serve and file an opposition, but failure to do so will not be deemed consent. An opposition may not be filed unless the court sends such notice.
- (E) **Oral argument.** Unless otherwise ordered, oral argument on the issue of sanctions must be combined with oral argument on the merits of the appeal.