

**RINCON BAND OF LUISEÑO INDIANS
RINCON INDIAN RESERVATION, CALIFORNIA**



**RINCON APPELLATE COURT
RULES AND PROCEDURES
RINCON TRIBAL ORDINANCE § 3.800**

**Adopted on July 26, 2006
Amended and Restated on February 12, 2021**

RINCON APPELLATE COURT RULES AND PROCEDURES

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PREAMBLE

On July 26, 2006, the Band's Tribal Council adopted Resolution 2006-15, which designated the Intertribal Court of Southern California ("ICSC") to serve as the Band's judicial branch pursuant to an Intergovernmental Agreement with the ICSC (the "IGA"). On July 7, 2017, the Tribal Council adopted Resolution 2017-33, which approved a Transition Plan pursuant to IGA § 1.4, which authorized a limited withdrawal from membership in the ICSC. On March 14, 2019, the Tribal Council adopted Resolution 2019-13, which repealed and replaced those portions of the IGA designating the ICSC as the court of record for appeals (IGA, Ch.2, §§ 201-208, 210-211; Ch.3, §§ 301-306 as related to the appointment of Appellate Court Judges; and Ch.4 §§ 401-403 as related to appellate court administration). On February 12, 2021, the Tribal Council adopted Resolution 2021-09, which formally established the Rincon Civil Trial Court as its court of record for claims arising on the Rincon Reservation from business or commercial activities as well as patron torts and matters that could be appealed to the Rincon Court of Appeals or to the federal district court.

§ 3.800 **PURPOSE**

This Ordinance shall establish the Rincon Band of Luiseño Indians Court of Appeals and its rules and procedures.

§ 3.801 **DEFINITIONS**

(a) **"Appellate Panel"** means the three (3) judges selected to hear a particular appeal from the List of Judges.

(b) **"Applicable Trial Court"** means the court from which an appeal is being taken (i.e., the Rincon Civil Trial Court or the ICSC Trial Court, whichever is the court whose decision is being appealed to the Rincon Appellate Court.

(c) **"Band"** means the Rincon Band of Luiseño Mission Indians of the Rincon Reservation, California, a federally-recognized Indian tribe exercising jurisdiction over the Rincon Indian Reservation.

(d) **"Court Administrator"** means the person designated by the Tribal Council to execute administrative functions on behalf of the Rincon Court of Appeals operations; however, in the absence of a Court Administrator designated by the Tribal

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Council, the role and duties of the Court Administrator shall be carried out by the Rincon Appellate Court Clerk.

(e) **“Court Clerk”** means an officer of the court whose responsibilities include maintaining records of the court.

(f) **“Day”** means a calendar day, but if the last day is a Saturday, Sunday or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(g) **“ICSC Trial Court”** means the Intertribal Court of Southern California which has jurisdiction over civil cases arising on the Rincon Indian Reservation which do not fall within the jurisdiction of the Rincon Civil Trial Court.

(h) **“Issues of Exceptional Importance”** means a legal issue that may materially impact the rights or obligations of the Rincon Band of Luiseño Indians.

(i) **“Judicial System” or “Tribal Judicial System”** means the judicial system of the Band as described in this Ordinance.

(j) **“List of Judges”** means the judges appointed by the Tribal Council that may be randomly selected to serve on an Appellate Panel or en banc panel.

(k) **“Reservation”** means the Rincon Indian Reservation.

(l) **“Rincon Court of Appeals” or “Rincon Appellate Court”** means the Rincon Band of Luiseño Indians Court of Appeals.

(m) **“Rincon Civil Trial Court”** means the Rincon Civil Trial Court established by the Tribal Council on February 11, 2021, by Resolution 2021-09.

(n) **“Tribal Council”** means the five-member Business Committee established under Section 3(a) of the Articles of Association. “Tribal Council” shall be synonymous with “Business Committee” or “Rincon Business Committee” as used in this Ordinance or any existing or future Tribal Ordinance.

(o) **“Tribal Government”** means the Rincon Tribal Government, the Tribal Council, elected and appointed committees, executive officers, its arms, agencies, departments, instrumentalities, entities and enterprises.

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(p) **“Tribal Law”** means the laws, ordinances, policies and procedures enacted by the Rincon Band or its Tribal Council, including any amendments thereto, Rincon common law, the decisions of the ICSC Trial Court or the Rincon Civil Trial Court, and the Tribe’s Articles of Association.

(q) **“Tribe”** means the Rincon Band of Luiseño Mission Indians of the Rincon Reservation, California, and the agencies, entities, arms and enterprises of the Tribe, as appropriate, either together or separately. “Tribe” means the same as “Band.”

§ 3.802 TRIBAL JUDICIAL SYSTEMS

The judicial system of the Band has previously been established and is hereby recognized and confirmed as a separate branch of the Rincon Tribal Government. The judicial system shall be composed of the the trial court of the Intertribal Court of Southern California (ICSC Trial Court) and the Court of Appeals within the ICSC, the Rincon Civil Trial Court, the Rincon Court of Appeals, such other courts or decision-making bodies as the Tribal Council may designate, and the Judicial Administration Committee.

§ 3.803 GENERAL PROVISIONS

(a) **Short title.** This Ordinance shall be known as the “Rincon Appellate Court Rules and Procedures.”

(b) **Applicable law.** The Rincon Court of Appeals shall apply Tribal Law or, if Tribal Law is silent, then any applicable federal or state law, in that order.

(c) **Applicability.** An appeal permitted under these rules may be taken from either a judgment or order of the Rincon Civil Trial Court or from a judgment or order of the ICSC Trial Court as provided in Section 3.804(b), below. The Rincon Court of Appeals may require, or the parties by mutual agreement may request, the application of some other set of rules, such as the Federal Rules of Appellate Procedure and Ninth Circuit Rules, to be applied in a particular action.

(d) **Jurisdiction reserved.** Nothing herein is intended to limit the civil jurisdiction or inherent sovereignty of the Band.

(e) **Purpose and construction.** These rules shall be liberally construed to provide a just and equitable result for the parties to civil actions and members of the Rincon Reservation community generally, and to secure the just and speedy determination of every appeal.

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(f) Procedures unspecified. If a procedure is not specifically referred to in these rules, the Rincon Court of Appeals may adopt any suitable procedure consistent with the intent of these rules or take any measures reasonably necessary to carry out and protect its jurisdiction.

(g) Relief allowed. The Rincon Court of Appeals may award all forms of relief necessary to the extent of its jurisdiction, including but not limited to: (1) money damages; (2) injunctions; (3) declarations of rights; and (4) such other relief as is just and proper in a particular case. Any judgment awarding money damages against the Band shall not be paid until appropriated by the Tribal Council.

(h) Rules not announced. Where these rules and procedures do not expressly address a question, the *Federal Rules of Appellate Procedure* and *Ninth Circuit Rules*, may be applied by the Court. Where these rules and procedures do not expressly address a question concerning evidence, the *Federal Rules of Evidence* may be applied by the Court.

(i) Survival of actions. All causes of action by a person shall survive to the personal representative of that person if he or she should die or become unable to pursue the action before its completion.

(j) Automatic stay. Any judgement against the Band shall automatically be stayed pending a final decision by the Rincon Court of Appeals.

§ 3.804 PERSONAL AND SUBJECT MATTER JURISDICTION

The Rincon Court of Appeals' jurisdiction extends to the furthest extent permitted under the United States Constitution and Tribal Law.

(a) Personal jurisdiction. Personal jurisdiction attaches:

- (1)** To all persons or entities present or domiciled within the territorial jurisdiction of the Band when served.
- (2)** To all entities and corporations created under the laws of the Band.
- (3)** To all persons, entities, or corporations that have an interest in property situated within the Band's exterior boundaries of the Rincon Reservation.

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- (4) To all persons, entities, and corporations that consent to the Band's jurisdiction.
- (5) To all persons, entities, and corporations that engaged in substantial activities, purposely directed their activities, or availed themselves of the privilege of conducting activities with Band and/or its residents or members or within the exterior boundaries of the Band's Reservation.
- (6) To all persons, entities, and corporations that have such minimum contacts with the Band or a member of the Band that the exercise of personal jurisdiction provides fair play and substantial justice.
- (7) When Tribal Law specifically confers grounds for personal jurisdiction over the person, entity or corporation.
- (8) When any person, entity, or corporation commits, or causes to commit, an act or omission within the territorial jurisdiction of the Band that causes injury to another.

(b) Subject Matter Jurisdiction. This Court shall have subject matter jurisdiction over all cases arising in and appealed from a judgment of (i) the Rincon Civil Trial Court; or (ii) the ICSC Trial Court a, in which the case or controversy is in an amount greater than Seventy-Five Thousand Dollars (\$75,000) or involves one or more legal Issues of Exceptional Importance.

- (1) If the case or controversy in the ICSC Trial Court does not involve an amount greater than \$75,000, but a party believes that the case involves legal Issues of Exceptional Importance and should be heard by the Rincon Appellate Court, the party shall file a motion in the Rincon Civil Trial Court to certify that the case is appropriate for hearing by the Rincon Appellate Court due to the legal Issues of Exceptional Importance involved. Said motion shall be filed within ten (10) days of the filing of the notice of appeal.
- (2) If the Rincon Civil Trial Court refuses or fails to certify a case as appropriate for hearing in the Rincon Appellate Court based on its including legal Issues of Exceptional Importance, the party may file a motion in the Rincon Appellate Court to be heard due to legal Issues of Exceptional Importance being involved. Said motion shall be filed within ten (10) days of the filing of the notice of appeal.

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§ 3.805 APPELLATE COURT ADMINISTRATION

(a) **Administration.** The Judicial Administration Committee shall ensure the proper administration of the Court of Appeals.

(b) **Third-party Administrator.** If the Band enters into an agreement with a third-party administrator to administer the Rincon Court of Appeals on behalf of the Band, the administration of the Rincon Court of Appeals shall be consistent with the terms of that agreement and any provisions of this Section 3.805 that are inconsistent with that agreement shall be disregarded.

(c) **Website for Rincon Court of Appeals.** The Court Administrator shall cause to be prepared and hosted, a website for the Rincon Court of Appeals, subject to review and consultation with the Judicial Administration Committee. This website may be part of and included in the Rincon Tribal Government's website. The Rincon Court of Appeals website shall contain these rules and procedures, fees and other information and materials as described herein, and any features, information, or materials, including fee payment processing, deemed appropriate by the Court Administrator in consultation with the Judicial Administration Committee.

(d) **Administrator of the Court.** The Tribal Council may engage a Court Administrator, who serves as the Rincon Court of Appeals' executive officer, under policy direction from the Judicial Administrative Committee. The Court Administrator is responsible for planning, organizing, coordinating, and directing the management of the Office of the Clerk of the Rincon Court of Appeals. The name of the person occupying the position of Court Administrator shall be published on the Rincon Court of Appeals website, which shall be set up pursuant to subsection (c) above.

(e) **Court Administrator - Duties.** The Court Administrator shall ensure the Clerk of the Rincon Court of Appeals (the "Appellate Court Clerk") understands and faithfully implements these rules and procedures, along with any amendments thereto. The positions of Court Administrator and Appellate Court Clerk may be occupied by the same person(s). The Court Administrator shall:

- (1) Plan and carry-out administrative and operational programs and policies;
- (2) Manage the Appellate Court Office of the Clerk and staff, including recruitment, hiring, promotion, training, continuing education, and discipline;

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- (3) Oversee the operations of oral argument sessions;
- (4) Provide information to the Judicial Administration Committee to develop, administer and monitor the Rincon Court of Appeals' budget;
- (5) Coordinate facility and space planning, and managing procurement of supplies and equipment for the Court;
- (6) Coordinate information systems and business services activities and support, including internet, telephone, and email systems, fax capability, and mail and duplicating services;
- (7) Coordinate court security;
- (8) Represent the Rincon Court of Appeals in contract negotiations as needed and providing oversight of performance under contracts;
- (9) Respond to public inquiries concerning the Rincon Court of Appeals' policies and procedures;
- (10) Meet with the Judicial Administration Committee at least quarterly to review matters affecting administration of the Rincon Court of Appeals, unless the Court has no new activity to review and the Committee decides a meeting is not necessary.
- (11) Provide a quarterly report to the Judicial Administration Committee regarding the court's docket and any issues of concern regarding the court's administration.

(f) Recordkeeping. The Court Administrator shall cause the following to occur: there shall be kept a record of all proceedings of the Rincon Court of Appeals, showing the title of the case, the names and addresses of all parties and representatives, the briefs, the date of any oral argument, the names of the judges who heard and decided the case, the judgment, together with any other facts and circumstances deemed of importance to the case. Unless specifically exempted by these rules, other applicable federal or state law, or by order of the Judge(s), the records of the Rincon Court of Appeals shall be public at the administrative offices of the Rincon Court of Appeals.

(g) Rincon Court of Appeals Location and the Office of Clerk of the Court of Appeals. The location of the Rincon Court of Appeals and the Office of the

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Clerk of the Rincon Court Appeals shall be designated by the Tribal Council, and shall be published on the Rincon Court of Appeals website.

(h) Clerk of the Court of Appeals -Duties. The Appellate Court Clerk:

- (1)** Shall accept for filing with the Court of Appeals those documents that meet the requirements specified herein;
- (2)** May reject for filing with the Court of Appeals those documents that do not meet the requirements specified herein;
- (3)** Shall coordinate and schedule all Court of Appeals hearings;
- (4)** Shall coordinate with the Clerk of the applicable court below (either the Rincon Civil Trial Court or the ICSC Trial Court) to obtain all documents in the record in a case under appeal (the “Record on Appeal”);
- (5)** Shall keep written and electronic records of all proceedings of the Rincon Court of Appeals;
- (6)** Shall administer oaths;
- (7)** Shall collect the filing fees described in subsection 3.805(i) and collect any costs or fees as may be ordered by the Rincon Court of Appeals; and
- (8)** Shall render assistance to authorized law enforcement officers of tribal communities, tribal members, and the general public by providing copies of forms offered for use by the Rincon Court of Appeals, along with other documents that may be deemed useful by the Rincon Court of Appeals.

(i) Fees. The Court Administrator shall develop appropriate and reasonable fees for filing documents with the Rincon Court of Appeals which shall be approved the Judicial Administration Committee, and shall cause a fee schedule of said fees to be published on the Rincon Court of Appeals website, which shall be set up pursuant to subsection 3.805(c) above.

(j) Forms. The Court Administrator may develop forms for use by the Rincon Court of Appeals. Once approved by the Judicial Administration Committee, the

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Court Administrator shall cause such forms to be published on the Rincon Court of Appeals website, or made available through the Appellate Court Clerk.

§ 3.806 JUDICIAL ADMINISTRATION COMMITTEE

(a) Creation, appointments, removal. There is hereby established a Judicial Administration Committee consisting of at least three but not more than five persons deemed qualified by their demonstrated depth of experience concerning federal, state, and federal Indian law. Members of the Committee need not reside locally, but must make themselves reasonably available by remote means, i.e., videoconferencing. There shall also be appointed one alternate to serve in the event that any primary committee member is unable to serve for any reason. Members of the Committee shall be appointed by the Council for staggered three-year terms. The initial appointments shall consist of one person appointed for a one-year term, one person appointed for a two-year term, and the remaining persons appointed for three-year terms. A member may be reappointed at the discretion of the Tribal Council. The Tribal Council may remove a Committee member from her or his appointment only in cases of:

- (1) Conviction of a crime by the Committee member involving dishonesty or moral turpitude;
- (2) Disability of the Committee member that renders him or her unfit to serve;
- (3) Malfeasance by the Committee member in the conduct of judicial administration duties as prescribed in these rules; or
- (4) Failure of Committee member to attend three (3) consecutive meetings without cause.

(b) Judicial Administration Committee – authority, duties. The Judicial Administration Committee shall have the following authority and duties:

- (1) To recommend a Court Administrator to be engaged by the Band;
- (2) To give direction to the Court Administrator concerning administration of the Rincon Court of Appeals;
- (3) To recommend for Tribal Council approval administrative policies and rules for the Rincon Court of Appeals, dealing with matters such as

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filing fees, the filing of pleadings and other papers with the Rincon Court of Appeals, publication of decisions, etc. The Committee shall not have authority to establish substantive or procedural rules of Court affecting the rights of parties without the approval of the Tribal Council;

(4) To research and recommend to the Tribal Council potential judges for appointment by the Tribal Council to the Rincon Court of Appeals;

(5) To consider removal of a judge of the Rincon Court of Appeals under the procedures set forth in herein; but

(6) The Judicial Administration Committee shall not have authority to consider the merits, either substantive or procedural, of any case pending before or decided by the applicable trial court or Rincon Court of Appeals, and the Committee shall not consider any such case. This section shall not, however, prevent the Committee from considering prospectively an administrative issue that is otherwise within its purview, simply because the issue was raised in a pending or decided case.

(c) **Judicial Administration Committee – procedures.** The Judicial Administration Committee shall conduct business according to the following procedures, and such other procedures as it may establish not inconsistent with this section:

(1) The Committee shall from time-to-time select from its own members a Chairperson, who shall call meetings of the Committee on his/her own initiative and when so requested by a majority of the members of the Committee or by the Court Administrator;

(2) The Committee shall make all decisions by majority vote of its members; provided that if there are an even number of Committee members and a vote results in a tie, then the vote of the Chairperson shall not be counted. Those decisions shall be final for the Committee and shall be carried out by the Court Administrator unless a decision is modified by the Tribal Council, which shall retain authority to review decisions of the Committee on the Tribal Council's own initiative;

(3) The Committee shall meet at least quarterly with the Court Administrator to review matters affecting administration of the Rincon Court of Appeals, unless the Court has no new activity to review and the Committee decides that a meeting is not necessary;

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- (4) The Committee shall report annually to the Tribal Council regarding the administration of the Rincon Court of Appeals.

§ 3.807 APPELLATE COURT JUDGES - SELECTION

(a) Establishment of a List of Judges.

(1) The Judicial Administration Committee shall at all times seek to maintain a List of Judges composed of at least twelve judges. The List of Judges shall be updated from time to time, but not less than every 2 years, by the Judicial Administrative Committee to remove any names of prospective judges who are no longer available or willing to serve on the Court of Appeals and to replace those names with appropriately qualified individuals. Should vacancies arise at any time, the Judicial Administrative Committee shall take immediate steps to seek a replacement for that position.

(2) To be named to the List of Judges, the individual must either:

(A) have at least ten years of experience in the aggregate as a judge or federal magistrate in any of the following courts: (i) Federal Court of Appeals, (ii) Federal District Court, (iii) California State Supreme Court, (iv) California State Court of Appeals, or (v) California Superior Court, and have knowledge and experience with federal Indian law; or

(B) be a law professor generally recognized as an expert in the field of federal Indian law.

(b) Random Selection of judges from List of Judges.

(1) A random case assignment system for the purpose of assigning a judge to each new appeal will be maintained. Except for en banc hearings, all cases will be randomly assigned three Judges, one of whom must be a law professor generally recognized as an expert in the field of federal Indian law. For en banc hearings, there shall be a panel of seven (7) judges, two of whom shall be law professors, but none of the judges assigned to the en banc panel shall have participated on the hearing panel.

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- (2) After a judge has been randomly selected from the List of Judges, the Judicial Administration Committee shall confirm that judge's availability to hear the appeal.
- (3) If a judge is not available, he or she shall be replaced pursuant to the random selection process set forth in subsection 3.807(b)(1) above.
- (4) After a judge receives a case assignment, that judge must participate in that case to its resolution, unless the judge recuses herself or himself or is disqualified from handling the case under the provisions of section 3.808 herein.
- (5) The Appellate Court Clerk shall notify all parties or counsel of record within seven (7) Days of the selection of the three (3) judges (collectively, the "Appellate Panel") assigned to hear an appellate case or of the seven (7) judges for an en banc rehearing.

§ 3.808 APPELLATE COURT JUDGES – RECUSAL/REMOVAL

(a) **Recusal of Appellate Court Judge.** Any judge shall disqualify himself or herself in any proceeding in which his/her impartiality might reasonably be questioned.

- (1) He/she shall also disqualify himself/herself in the following circumstances:
 - (A) Where he/she has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
 - (B) Where in private practice he/she served as lawyer in the matter in controversy, or a lawyer with whom he/she previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;
 - (C) Where he/she has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

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(D) He/she knows that he/she, individually or as a fiduciary, or his/her spouse or minor child residing in his/her household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(E) He/she or his/her spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

(2) A judge should inform himself/herself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself/herself about the personal financial interests of his/her spouse and minor children residing in his /her household.

(3) No judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection 3.808(b). Where the ground for disqualification arises only under subsection 3.808(a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(b) Removal of Appellate Court Judge. The Tribal Council may remove a judge permanently upon the recommendation of the Judicial Administrative Committee only in cases of:

(1) Conviction of a crime involving dishonesty or moral turpitude.

(2) Disability that renders her/him unfit to serve.

(3) Malfeasance in the conduct of judicial duties.

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- (4) Inability to provide judicial service.

§ 3.809 PROCEDURE TO CONSIDER REMOVAL OF A JUDGE

Upon a petition for removal, based on a statement of grounds for removal, a judge should be removed from her/his position on an Appellate Panel after the following procedures have been afforded:

(a) The judge shall be provided with a detailed written description of the charges made against her/him as the grounds of his/her proposed removal;

(b) The Judicial Administration Committee shall conduct a hearing at which it considers the charges; the Committee shall give persons with knowledge of the alleged impropriety an opportunity to present relevant information, and shall give the judge an opportunity to respond to the charges. During such response, the judge shall have a right to confront his/her accusers and other witnesses, to present witnesses, and to be represented by a spokesperson at his/her own expense;

(c) The Committee shall, after conducting the hearing, submit a written report to the Tribal Council detailing the information presented at the hearing and, by majority vote of the Committee, recommending whether the judge should be removed from her/his position on an Appellate Panel;

(d) The Tribal Council, after consideration of the Committee's report, shall determine whether to remove the judge from his/her position. A judge shall be removed only upon the affirmative vote of a majority of the Tribal Council.

§ 3.810 VACANCIES

If a judicial vacancy occurs, the Tribal Council shall appoint a qualified replacement to fill the position after due consideration of the recommendation for replacement made by the Judicial Administration Committee.

§ 3.811 APPELLATE PANEL

(a) **Duties and powers.** When assigned to an appellate case, Judges on the Appellate Panel shall have the duty and authority to:

- (1) Hear appeals in cases and proceedings under the Rincon Court of Appeals' jurisdiction, and to affirm, reverse, modify, or remand the applicable trial court decision and to hear requests for reconsideration;

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- (2) Determine the meaning, interpretation, and application of Tribal law, and where appropriate, other applicable authorities; and
- (3) Issue any order or writ necessary and proper to the exercise of the powers and the general authority of the Rincon Court of Appeals, including those necessary to compel compliance with orders of the Rincon Court of Appeals, and sanction parties or other persons or entities for failure to comply.

(b) Records and publication of opinions.

- (1) The Tribal Court of Appeals shall be a court of record, and shall keep thorough records of all proceedings.
- (2) The Court Administrator, with approval by the Judicial Administration Committee, may forward to the Indian Law Reporter copies of decisions of the Rincon Court of Appeals, after taking steps, where appropriate, to protect the anonymity or confidentiality of parties.

§ 3.812 RULES OF APPELLATE PROCEDURE

(a) Who may appeal. Any party aggrieved by any final order, or judgment of the Rincon Civil Trial Court or the ICSC Trial Court may appeal such order, or judgment to the Rincon Court of Appeals, provided that the Rincon Court of Appeals has personal and subject matter jurisdiction, by filing a notice of appeal with the applicable trial court within forty-five (45) Days after such order, or judgment has been entered. If the Appellant claims subject matter jurisdiction based on legal Issues of Exceptional Importance, the certification required by Section 3.804(b) must be filed along with the notice of appeal. The appellant or the appellant's attorney must sign the notice. No extension of the forty-five (45) Day period shall be granted.

(b) Filing the appeal.

(1) Notice of appeal.

(A) The notice of appeal shall specify the parties to the appeal, the order, or judgment appealed from, a short statement of the reasons or grounds for the appeal, and the basis for subject matter jurisdiction pursuant to Section 3.804 above. Copies of the notice

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of appeal shall be served by the appellant upon all other parties in the case, with a courtesy copy to the Rincon Court of Appeals.

(B) Failure to serve the notice of appeal neither prevents its filing nor affects its validity, but the appellant shall be required to remedy the failure.

(2) Fee and deposit.

(A) The notice of appeal must be accompanied by the filing fee. The fee may be paid by credit card or as otherwise instructed on the on the applicable trial court's website. Cash is not accepted.

(B) The appellant must also deposit \$100 with the applicable trial court clerk to be credited against any amounts chargeable for the preparation of the Record on Appeal.

(C) The applicable trial court clerk must file the notice of appeal even if the appellant does not present the filing fee or the deposit.

(3) Failure to Pay Filing Fee or Deposit.

(A) If the appellant fails to pay the fee or deposit to the applicable trial court as required under subsection 3.812(b)(2), or if payment is dishonored, the applicable trial court clerk must promptly notify the appellant in writing by first class mail that the applicable trial court will dismiss the appeal unless, within fifteen (15) Days after the notice is sent, the appellant makes the requisite full payment.

(B) If the appellant again fails to make the payment as specified in a notice given under subsection 3.812(b)(3)(A), the applicable trial court clerk must notify the Rincon Court of Appeals of the default.

(C) If the Rincon Court of Appeals is notified of a default under subsection 3.812(b)(3)(B), the Rincon Court of Appeals must dismiss the appeal, but may vacate the dismissal for good cause.

(c) Names of Parties. The party filing the appeal shall be referred to as the appellant and the party against whom the appeal is taken shall be referred to as the appellee. The name of the case shall be the same as that used in the applicable trial court.

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(d) Duties of the Applicable Trial Court Clerk—notice of appeal. The applicable trial 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 Appellate Court Clerk. Upon a showing of good cause, the Rincon Appellate Court Clerk may grant an extension of time to file the Record on Appeal.

(1) 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 that each attorney represented in the trial-level court; and

(C) The name, address, telephone number and e-mail address of any unrepresented party.

(2) A copy of the notice of appeal is sufficient notification under subsection 3.812(d) if the required information is on the copy or is added by the applicable trial court clerk.

(3) The sending of a notification under subsection 3.812(d) is a sufficient performance of the applicable trial court clerk’s duty despite the death of the party or the discharge, disqualification, suspension, disbarment, or death of the attorney.

(4) Failure to comply with any provision of this subdivision does not affect the validity of the notice of appeal.

(e) Certification of the Record of Appeal. Within fifteen (15) Days after a notice of appeal is filed, the applicable trial court clerk shall prepare, certify, and file with the Court of Appeals all papers comprising the record of the case appealed (the “Record on Appeal”).

(f) Notice of receipt of record on appeal to parties. The Appellate Court Clerk shall forthwith give written notice to all parties of the Rincon Court of Appeals’ receipt of the certified Record on Appeal.

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(g) Maintenance of appellate court docket. A separate docket shall be maintained by the Appellate Court Clerk to record each stage of the proceedings of each case appealed.

(h) Briefing schedule. Within thirty (30) Days following the date that the Rincon Court of Appeals provides notice of the receipt of the certification of the Record on Appeal, the appellant shall file a written brief, memorandum or statement in support of the appeal pursuant to the requirements set forth herein. The appellee shall have thirty (30) Days following receipt of the appellant's brief, memorandum or statement to file a response. Any reply brief by appellant shall be filed within fifteen (15) Days following receipt of appellee's response brief.

(i) Consequence of failure to file. If an appellant fails to file a brief within the time provided by this rule, or within a court-approved extended time, an appellee may move to dismiss the appeal.

(j) Format of documents. No brief, memorandum or written statement shall exceed 40 pages in length. The size of the paper upon which the brief, memorandum or statement is written shall be eight and one-half inches by eleven inches. The font shall be a minimum of 14-point Times New Roman or similar. The document shall be double-spaced. The cover of the appellant's brief must be blue; the appellee's red; an intervenor's or amicus curiae's green; any reply brief gray; and any supplemental brief tan.

(k) Motions.

(1) Motion and opposition.

(A) A party wanting to make a motion in the Rincon 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.

(B) A motion must be accompanied by a memorandum of law.

(C) Any opposition must be served and filed within fifteen (15) Days after the motion is filed, unless otherwise provided under these rules.

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(2) Disposition.

(A) 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, provided that a response is allowed under these rules.

(B) On a party's request or its own motion, the Rincon Court of Appeals may place a motion on calendar for a hearing. The Rincon Appellate Court Clerk must promptly send each party a notice of the date and time of the hearing. Motions may be heard telephonically with the consent of the Appellate Panel.

(1) Filing.

(1) Filing with the Appellate Court Clerk. A paper required or permitted to be filed in the Rincon Court of Appeals must be filed with the Rincon Appellate Court Clerk. Filing may be performed by electronic means at an email address to be designated for the purpose.

(2) Filing: method and timeliness.

(A) Non-electronic filing.

(i) In general. If a paper cannot be filed electronically, the filing party must directly contact the Rincon Appellate Court Clerk for instructions regarding filing the paper. In any event, filing is not timely unless the Rincon Appellate Court Clerk receives the paper within the time fixed for filing.

(ii) Number of copies. For every brief, petition, motion, application, or other document filed in the Rincon Court of Appeals in paper form, the original plus three (3) copies must be submitted to the Rincon Appellate Court Clerk.

(A) Electronic filing and signing.

(i) By a represented person. A person represented by an attorney may file electronically at an email address to be designated for that purpose.

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(ii) By an unrepresented person. A person not represented by an attorney may not file electronically unless allowed by court order.

(iii) Signing. A filing made through an electronic filing mechanism offered by the Rincon Court of Appeals together with that person's name on a signature block, constitutes the person's signature.

(iv) Same as a written paper. A paper filed electronically is the same as a written paper for purposes of these rules.

(4) Clerk's refusal of documents. In the case of a party not represented by counsel, the Rincon Appellate Court Clerk may not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules. The Rincon Appellate Court Clerk may, however, request the unrepresented party to refile the papers in a more proper form.

(5) Privacy protection. An appeal in a case whose privacy protection was governed by Tribal Law or applicable California or federal law is governed by the same rule on appeal.

(m) Service of all papers required. Unless a rule requires service by the Rincon Appellate Court Clerk, a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal or review. Service on a party represented by counsel must be made on the party's counsel. Papers required to be served may be served electronically on an opposing party only with that party's written consent.

(n) Manner of service on a party.

(1) Non-electronic service may be any of the following:

(A) personal, including delivery to a responsible person at the office of counsel;

(B) by U.S. mail; or

(C) by third-party commercial carrier for delivery within three (3) days.

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(2) Only if consented to in writing by the party being served, electronic service of a paper may be made by sending it by electronic means that the person to be served consented to in writing.

(3) When reasonable, considering such factors as the immediacy of the relief sought, distance, and cost, service on a party must be by a manner at least as expeditious as the manner used to file the paper with the court.

(4) Service by U.S. mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete on filing or sending, unless the party making service is notified that the paper was not received by the party served.

(o) Proof of service.

(1) A paper presented for filing must contain either of the following:

(A) an acknowledgment of service by the person served; or

(B) proof of service consisting of a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served; and

(iii) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

(2) Proof of service may appear on or be affixed to the papers filed.

(p) Excerpts of record. Parties are to prepare excerpts of record. The purpose of the excerpts of record is to provide each member of the Appellate Panel with those portions of the record necessary to reach a decision. The parties should ensure those parts of the record necessary to permit an informed analysis of their positions are included in the excerpts. Excerpts of record must be filed in all cases.

(1) Unrepresented litigants. Appellants and appellees proceeding without counsel need not file the initial excerpts, supplemental excerpts or further excerpts of record described in this subsection.

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(2) Appellant's initial excerpts of record. The appellant shall submit the initial excerpts of record at the time appellant's opening brief is submitted. The excerpts shall be separate from the brief. Unless filed and served electronically, appellant shall file four (4) paper copies of the excerpts at the time the brief is submitted, bound separately from the brief. If the initial excerpt of record is served electronically, appellant shall serve one paper copy on each of the other parties who has not consented to be served electronically and shall serve one copy electronically on any party who has consented to be served electronically.

(3) Required contents of the excerpts of record.

(A) In all appeals, the excerpts of record shall include:

- (i) the notice of appeal;
- (ii) the trial court docket sheet;
- (iii) the judgment or interlocutory order appealed from;
- (iv) the final pretrial order, or, if the final pretrial order does not set out the issues to be tried, the final complaint and answer, petition and response, or other pleadings setting out those issues;
- (v) where the appeal is from the grant or denial of a motion, those specific portions of any affidavits, declarations, exhibits or similar attachments submitted in support of or in opposition to the motion that are essential to the resolution of an issue on appeal;
- (vi) any opinion, findings of fact or conclusions of law relating to the judgment or order appealed from;
- (vii) any other orders or rulings, including minute orders, sought to be reviewed;
- (viii) where an issue on appeal is based upon a challenge to the admission or exclusion of evidence, that specific portion of the reporter's transcript recording any discussion by court

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or counsel involving the evidence, offer of proof, ruling or order, and objections at issue;

(ix) where an issue on appeal is based upon a challenge to any other ruling, order, finding of fact, or conclusion of law, and that ruling, order, finding or conclusion was delivered orally, that specific portion of the reporter's transcript recording any discussion by court or counsel in which the assignment of error is alleged to rest;

(x) where an issue on appeal is based on written exhibits (including affidavits), those specific portions of the exhibits necessary to resolve the issue; and

(xi) any other specific portions of any documents in the record that are cited in appellant's briefs and necessary to the resolution of an issue on appeal.

(4) Appellee's supplemental excerpts of record.

(A) If appellee believes that the excerpts of record filed by appellant exclude items which are required under this rule, or if argument in the answering brief requires review of portions of the reporter's transcript or other documents not included by appellant in the excerpts, appellee shall, at the time appellee's brief is submitted, submit supplemental excerpts of record, prepared pursuant to this rule, comprised of the omitted items. The supplemental excerpts shall be separate from the brief and may be submitted electronically. If submitted electronically, on the same day the further excerpts are submitted, appellee shall serve one paper copy of such excerpts of record on any other party who has not agreed to receive electronic service and shall serve one copy electronically on any party who has agreed to electronic service. If appellee does not submit the supplemental excerpts electronically, appellee shall file the four (4) paper copies of the supplemental excerpts at the time the brief is submitted, bound separately from the brief, and serve one paper copy on each of the other parties.

(B) If appellant did not file excerpts of record under subsections 3.812(p)(2)-(3), the contents of appellee's supplemental excerpts are

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limited to the applicable trial court docket sheet, the notice of appeal, the judgment or order appealed from, and any specific portions of the record cited in appellee's brief.

(5) Further excerpts of record.

(A) If the reply brief requires review of portions of the reporter's transcript or other documents not included in the previously filed excerpts, appellant shall, at the time the reply brief is submitted, submit further excerpts of record. The further excerpts shall be separate from the brief and may be submitted electronically. If submitted electronically, on the same day the further excerpts are submitted, appellant shall serve one paper copy of such excerpts of record on any other party who has not agreed to receive electronic service and one copy electronically on any party who has agreed to electronic service. If appellant does not file electronically, appellant shall file the four (4) paper copies of the excerpts at the time the brief is submitted, bound separately from the brief, and serve one paper copy on each of the other parties.

(B) If a supplemental brief filed pursuant to court order requires review of portions of the reporter's transcript or other documents not included in any previously filed excerpts, the party filing the supplemental brief, shall, at the time the supplemental brief is submitted, submit further excerpts of record. The further excerpts shall be separate from the brief. On the same day the excerpts are submitted electronically, the filing party shall serve one paper copy of such excerpts of record on any other party that has not agreed to electronic service. If appellant does not file electronically, appellant shall file the four (4) paper copies of the excerpts at the time the brief is submitted, bound separately from the brief, and serve one paper copy on each of the other parties.

(q) Format of excerpts of record. Parties shall follow format instructions in the *Federal Rules of Appellate Procedure* and *Ninth Circuit Rules* when preparing excerpts of record.

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§ 3.813 APPELLATE PANEL PROCEDURE

(a) **Decision by majority vote.** The Appellate Panel shall by majority vote decide all cases based upon the brief, memoranda or written statements filed, the trial record, and oral arguments, if any.

(b) **Oral argument.** If the Appellate Panel hears oral argument, each side is allowed thirty (30) minutes of oral argument. The amount of time allowed may be modified by the Appellate Panel.

(c) **The decision.** The Appellate Panel shall issue a written decision on all cases. The decision of the Appellate Panel shall either affirm, reverse, or modify the decision of the trial court or it may remand the matter for further proceedings or retrial in accordance with its directions. All decisions of the Appellate Panel are final thirty (30) Days after the filing of a decision.

(d) **Considerations governing reversal, modification, or remand of the applicable trial court decision.** Except as provided, the decision of the trial court will be reversed, modified, or remanded only:

- (1) Where there has been an abuse of discretion that prevented a party from receiving a fair trial;
- (2) Where there has been misconduct by a party or Judge;
- (3) Where there has been error as to interpretation and/or application of the law or the facts by the Judge; or
- (4) Where the verdict or decision is contrary to the law and the evidence.

(e) **Request for rehearing.** A party to an appeal in which a judgment has been rendered by the Rincon Appellate Court may request an Appellate Panel rehearing or an en banc rehearing by filing a petition in the Rincon Court of Appeals requesting an Appellate Panel Rehearing or a Rehearing en banc within fifteen (15) Days after the filing of the decision in the case. If the party requests both an Appellate Panel rehearing and an en banc rehearing, then the party must file one petition for both. The filing of a Petition for an Appellate Panel rehearing or for a rehearing en banc is not required to exhaust a party's remedies in the Rincon Court of Appeals.

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(1) Appellate Panel rehearing.

(A) A petition for rehearing by the Appellate Panel that decided the case must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must be based on at least one of the following grounds:

- (i) the decision contains a material omission or misstatement of fact;
- (ii) the decision is based upon a material mistake of law;
- (iii) the decision is based upon an issue that was neither raised, nor briefed by the parties; or
- (iv) the directions to the applicable trial court in the decision need to be clarified or altered.

(B) Oral argument is not permitted, without special approval of the Court.

(C) Unless the Appellate Panel requests, no answer to a petition for panel rehearing is permitted.

(D) If a petition for panel rehearing is granted, the Appellate Panel may do any of the following:

- (i) make a final disposition of the case without further argument;
- (ii) restore the case to the calendar for further argument or resubmission; or
- (iii) issue any other appropriate order.

(2) Rehearing en banc. Upon the receipt of a petition for rehearing en banc or at the request of one or more of the judges on the Appellate Panel, five (5) judges including one (1) law professor of the Rincon Appellate Court may order that a rehearing en banc be held. The request for

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rehearing en banc must be filed within fifteen (15) Days of the decision of the Appellate Panel.

(A) The petition for en banc consideration must begin with a statement that either:

(i) The Appellate Panel decision conflicts with federal law or with a decision of the United States Supreme Court or the United States Court of Appeals for the Ninth Circuit and a decision by the Court en banc is therefore necessary to secure and maintain uniformity of the court's decisions; or

(ii) The proceeding involves one or more legal Issues of Exceptional Importance, each of which must be concisely stated; for example, a petition may assert that a proceeding presents one or more legal Issues of Exceptional Importance if it involves an issue(s) on which the panel decision conflicts with the authoritative decisions of the United States Court of Appeals for the Ninth Circuit.

(B) The briefing schedule shall be the following: Within thirty (30) Days following the date that the en banc hearing is approved by the required number of judges, as set forth above, the appellant shall file a written brief, memorandum or statement in support of the appeal. The appellee shall have thirty (30) Days following receipt of the appellant's brief to file a response. Any reply brief by appellant shall be filed within fifteen (15) Days following receipt of appellee's brief.

(C) The format of the documents and the page limits shall be the same as set forth in Section 3.812(j).

(f) Sanctions. If, after notice to appellant with a reasonable opportunity to respond, the Appellate Panel determines that an appeal has been made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, it may impose sanctions upon a party and/or its legal counsel.

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(g) **Relief from default.** For good cause, the Rincon Court of Appeals may relieve a party from default for any failure to comply with these rules except the failure to file a timely notice of appeal.

§ 3.814 COMMUNICATIONS WITH THE RINCON APPELLATE COURT

All communications to the Rincon Appellate Court shall be directed to the Appellate Court Clerk pursuant to the contact information provided on the Court's website. Parties and counsel shall not submit filings directly to or communicate with any judge. Filings shall be submitted only to the Rincon Appellate Court Clerk.

§ 3.815 ATTORNEYS AND LAY COUNSELORS

(a) **Membership.** Representation before the Rincon Court of Appeals may be provided by a lay spokesperson or a licensed attorney. Representation can be provided only by persons who have been admitted as members of the Rincon Band Bar of the Court of Appeals ("Rincon Appellate Court Bar") and who have paid the bar admission fee.

(b) **Rules of practice.** The rules in this section shall govern membership in the Rincon Appellate Court Bar and practice before the Rincon Court of Appeals. Because the practice of law is intimately concerned with the administration of justice, these rules are minimum standards only. The Rincon Court of Appeals may, from time to time, impose additional requirements for admission and practice as justice requires.

(c) **Requirements for admission.** To qualify as a member of the Rincon Appellate Court Bar, a person must meet the following requirements:

- (1) The applicant must be of good moral character. The applicant is required to bring to the Rincon Court of Appeals' attention any matters raising questions regarding the applicant's mental or emotional stability, and any past conduct reflecting upon the applicant's honesty and integrity.
- (2) The applicant must be familiar with Tribal Law and the rules and procedures of the Rincon Court of Appeals and understand their application.
- (3) The applicant must execute the Oath of admission to the Rincon Appellate Court Bar.

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(4) The applicant must pay the required admission fee to the Rincon Appellate Court Clerk.

(5) The applicant, if a licensed attorney, must be in good standing with a federal or state court or bar.

(d) A licensed attorney may not become a member of the Rincon Appellate Court Bar if he or she has been disbarred or resigned during pendency of any disciplinary investigation by competent authority of any other tribe, state, federal or foreign jurisdiction. If the applicant becomes reinstated following any disbarment or resignation due to any disciplinary investigation, then the applicant may apply for membership in the Rincon Appellate Court Bar.

(e) The Rincon Appellate Court Clerk shall ensure the Oath of admission is executed by the admitted applicant.

(f) The Court Administrator shall admit to the Rincon Appellate Court Bar any applicant who meets these requirements and pays the required admittance fee, and shall issue to the individual a certificate of membership. A written and/or electronic record of those admitted to the Rincon Appellate Court Bar shall be maintained by the Court Administrator.

(g) **Rules of discipline.** A member of the Rincon Appellate Court Bar appearing at the Rincon Court of Appeals may be subjected to disciplinary sanctions, up to and including disbarment, for any of the following:

(1) The commission of any act constituting dishonesty, or impugning the member's good moral character.

(2) Violation of any provision of the member's Oath of admission to practice before the Rincon Court of Appeals.

(3) Disobedience or violation of any Rincon Court of Appeals order.

(4) Suspension or other disciplinary action taken against the member by an authority of another jurisdiction, except that disbarment, or resignation during pendency of any disciplinary investigation, by competent authority in any other tribe, state, federal or foreign jurisdiction shall subject the member to automatic disbarment from the Rincon Appellate Court Bar

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until such time as the person has been reinstated in such other jurisdiction in which the person has been disbarred.

- (5) Undertaking any action constituting a conflict of interest.
- (6) Engaging in any disrespectful conduct towards the Rincon Court of Appeals.

(h) Disciplinary procedures.

(1) Any person may file a complaint against a member of the Rincon Appellate Court Bar with the Court Administrator, which shall be forwarded to the Judicial Administration Committee for determination. The decision of the Judicial Administration Committee shall be final.

(2) The Appellate Panel may take any disciplinary measures it deems necessary against a member of the Rincon Appellate Court Bar pursuant to these rules.

§ 3.816 REPRESENTATION BY COUNSEL

At his or her own expense, a person may have assistance of counsel in any proceeding before the Rincon Court of Appeals.

§ 3.817 IMPROPER INTERFERENCE WITH COURT PROHIBITED

Neither the Tribal Council nor any Tribal Council member, employee, or other person or entity shall interfere with the administration of justice under these rules. Interference prohibited by this section includes, but is not limited to:

- (a) Termination of employment of a judge by means other than those set forth in these rules;
- (b) Actions to remove a judge from consideration of a case other than by a motion to recuse or other procedures set forth in these rules;
- (c) Actions designed to influence the outcome of a case other than:
 - (1) By presentation of argument and legal authority to the Rincon Court of Appeals as a party to the case or as an amicus curiae;

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(2) In the case of the Tribal Council, by amendment of Tribal Law by means of procedures authorized in the Articles of Association.

§ 3.818 MISCELLANEOUS

(a) **Language.** In construing these rules and procedures, the present tense includes the past and future tenses, and the future tense includes the present tense.

(b) **Continuity.** When reference is made to any portion of these rules and procedures, the reference shall apply to all amendments made hereafter.

(c) **Primacy of ordinance.** To the extent any other tribal ordinance is inconsistent with these rules and procedures, the provisions in these rules will apply.

(d) **Construction.** Section headings shall be used only for reference to format and not in construing these rules and procedures.

(e) **Severability.** If any provision of the rules and procedures in these rules, or the application thereof to any person or circumstance, shall be held unconstitutional or invalid by the Band, only the invalid provision shall be severed and the remaining provision and language of these rules shall remain in full force and effect.

(f) **No waiver of immunity.** All inherent sovereign rights of the Band as a federally-recognized Indian are hereby expressly reserved. Nothing in these rules shall be deemed or construed to be a waiver of the Band's sovereign immunity from unconsented suit.

(g) **Adoption.** This Ordinance shall become effective upon its approval by majority vote of the Tribal Council at a duly noticed meeting.

(h) **Amendments.** This Ordinance may be amended at any duly noticed Tribal Council meeting.