

Appeal Case No. APP-24-001

IN THE COURT OF THE INDIAN APPEALS FOR THE SOUTHERN PLAINS REGION  
ANADARKO, OKLAHOMA

CARLA CARNEY, )  
Ponca Business Committee Member, )  
Plaintiff/Appellant, )  
 )  
v. )  
 )  
PONCA BUSINESS COMMITTEE, )  
OLIVER LITTLECOOK, SR., )  
Chairman, )  
 )  
OLIVER LITTLECOOK SR., )  
Individually and as Ponca Business )  
Committee Member, )  
 )  
ROBERT COLLINS, )  
Individually and as Ponca Business )  
Committee Member, )  
 )  
MATILDA DELAGARZA, )  
Individually and as Ponca Business )  
Committee Member, )  
 )  
DEBORAH MARGERUM, )  
Individually and as Ponca Business )  
Committee Member, )  
 )  
LEOTA WHITE, )  
Individually and as Ponca Business )  
Committee Member, and )  
 )  
EARLY TREY HOWE, III, )  
Individually and as Ponca Business )  
Committee Member, )  
Defendants/Appellees. )

**APPEAL FROM THE PONCA DISTRICT COURT**  
**APPELLEES PONCA TRIBE'S AND PONCA TRIBAL INDIVIDUAL OFFICIALS'**  
**ANSWER BRIEF**

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## **INTRODUCTION**

The intertribal dispute underlying this appeal and this appeal itself go to the very heart of tribal sovereignty and self-governance. An elected Tribal official disagreed with the actions of the Tribal governing body and has challenged that sovereign body and its sovereign immunity in court. Just the entertainment of this appeal jeopardizes and affronts the Tribe's sovereignty.

As discussed herein, the Tribe's Tribal Court, the Ponca District Court ("District Court"), lacks jurisdiction over this intratribal dispute as a matter of Tribal law. Moreover, this Court lacks jurisdiction over this intratribal dispute as a matter of both federal law and, separately, Tribal law. Rather than confront the federal regulations that govern this Court's jurisdiction, Appellant has chosen to ignore them and, instead, attempt to try the merits of her case before this appellate Court. Furthermore, perhaps realizing the deficiencies in her claims and arguments, Appellant repeatedly injects claims not pled in the Complaint and arguments and evidence not raised before the District Court and not in the record. She cannot salvage her already doomed case by grasping at arguments not previously raised or documents not in the record. As shown below, all relief sought by Appellant must be denied because 1) this Court lacks jurisdiction over this appeal; 2) the District Court properly dismissed the case for lack of subject matter jurisdiction; and 3) even if the District Court did commit an error in its decision, that error did not affect a substantial right of a party or the outcome of the case which would be, inevitably, dismissal of Appellant's claims.

## **JURISDICTIONAL STATEMENT**

As briefed in Appellees' Motion to Dismiss, this Court, a Court of Indian Appeals, lacks jurisdiction over this appeal as a matter of federal law. Appellees' Mot. to Dismiss at 4-6. There is no dispute that 25 C.F.R. Part 11, including § 11.118(b) and § 11.118(d), governs Courts of Indian Offenses ("CFR Courts"), including Courts of Indian Appeals, dictating limitations on the

jurisdiction of such courts. Specifically, § 11.118(b) explicitly excludes intratribal disputes from the jurisdiction of CFR Courts and § 11.118(d) explicitly excludes suits against a tribe from the jurisdiction of the CFR Courts, absent an explicit waiver of tribal immunity.<sup>1</sup> *See, e.g., Business & Corp. Reg. Comm'n v. Haney*, 8 Okla. Trib. 619, 2002 WL 34504131, \*1 (Seminole CIO-App. May 14, 2002) (dismissing case involving internal tribal government disputes and/or election disputes for lack of jurisdiction pursuant to 25 C.F.R. § 11.104(b), previous iteration of current 25 C.F.R. §§ 11.118(b) and 11.118(d) (*see* Addendum, 25 C.F.R. § 11.104 (58 Fed. Reg. 54,413 (Oct. 21, 1993))); *Apache Election Bd. v. Chalepah*, 10 Okla. Trib. 556, 2007 WL 912755, \*2 (Apache CIO-App. Nov. 17, 2007) (“there must be ‘*specific*’ delegations of authority to the Court of Indian Offenses for the Court of Indian Offenses to hear intratribal disputes or election disputes” pursuant to 25 C.F.R. Part 11 (emphasis added)); *Lynch v. Yomba Shoshone Tribe*, Case Nos. CVC-YT-003-96, CVC-YT-004-96, CVC-YT-005-96, 1997 WL 34704354, \*2 (Nev. Inter-Tribal C.A. Jul. 16, 1997) (“The Code of Federal Regulations prohibits a court of Indian Offenses from taking jurisdiction over a suit against an Indian tribe . . . A tribe may not be sued in a court of Indian offenses unless its tribal governing body explicitly waives sovereign immunity by resolution or ordinance.”).

Tellingly, Appellant did not even attempt to address this argument in either her Response to Appellees’ Motion to Dismiss or the Jurisdictional Statement in her Appeal Brief. Appellant’s briefing in this Court to date has not made a single mention of the federal regulations that impose “jurisdictional limitations” on a CFR Court’s adjudicative authority. *Caddo Nation of Oklahoma v. Ct. of Indian Offenses for the Anadarko Agency*, No. CIV-14-281-D, 2014 WL 1328378, \*1

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<sup>1</sup> Appellant does not dispute that the Business Committee and its members in their official capacities are vested with Tribal sovereign immunity or that this is an intratribal dispute.

(W.D. Okla. Apr. 1, 2014). In fact, neither the Jurisdictional Statement nor the Statement of the Case in the Appeal Brief even mentions the phrases “sovereign immunity” or “intratribal dispute.” *See* App. Br. 1-9.

In *Kaulaity v. Bear*, the plaintiffs sought a writ of mandamus and injunctive relief against members of the Kiowa Hearing Board and the Kiowa Election Board as a result of the Boards’ exclusion of the plaintiffs as candidates and potential voters. *Kaulaity v. Bear*, 9 Okla. Trib. 186, 2006 WL 6122523, \*1 (Kiowa CIO-App. Jan. 27, 2007). Pursuant to 25 C.F.R. Part 11, the Court of Indian Appeals ruled that the CFR Court did not have subject matter jurisdiction over the case because the Kiowa Tribe had not consented to that court having jurisdiction over an election dispute or internal tribal government dispute. *Id.* at \*2. “Until and unless the Kiowa Tribe passes an appropriate Resolution which specifically gives the [CFR Court] jurisdiction over (1) election disputes; (2) suits against the tribe; or (3) internal tribal government disputes, and does so in strict compliance with its base governing documents, then the [CFR Court] will not be able to resolve such disputes.” *Id.* at \*1; *see also Apache Election Bd*, 10 Okla. Trib. 556. Likewise, here, unless and until the Tribe passes such a resolution, which it has not, the Court has no jurisdiction over this matter pursuant to federal law. Appellant turns a blind eye to governing federal law. This Court cannot.

Rather than facing the federal limitations on CFR Courts, Appellant now argues that this Court has jurisdiction over this appeal under § 617 of the Tribal Court Code approved by Resolution No. 134-07232010,<sup>2</sup> which was purportedly adopted by the Business Committee in 2010. Even if the federal regulations did not preclude this Court from hearing this appeal (they

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<sup>2</sup> Neither Resolution No. 134-07232010 nor the Tribal Court Code is in the record or set out in Appellant’s brief or an addendum thereto as required by Rules of Appellate Procedure Rule 2.15(e).



do), jurisdiction would still be lacking because the resolution on which Appellant now relies and which “adopted” the Tribal Court Code was never approved by the Secretary of the Interior (“Secretary”) as was required by the Ponca Constitution at that time. Appellant argues, incorrectly, that the former Constitutional requirement for Secretarial approval of Tribal laws was limited to criminal ordinances and codes. App. Br. at 16. Had the Tribe intended to limit this approval requirement to just criminal laws, it would have said so in the Constitution. Instead, Article VIII, § 2B of the pre-amendment Constitution stated:

*All law-and-order ordinances adopted by the Ponca Business Committee pursuant to this Article shall be approved by the Secretary of the Interior before they are effective unless otherwise provided by applicable law.*

(Emphasis added.) The plain text of the Constitution did not limit the Secretarial approval requirement to criminal laws—it applied to all “law-and-order” laws. Tribes often reference their entire bodies of law – both civil and criminal laws—as “law and order codes.”<sup>3</sup> In fact, many if not all of these tribes include criminal codes or laws as a *subset* of their law and order codes. *See, e.g.,* Law and Order Code of the Kalispel Tribe of Indians, <https://kalispeltribalcourt.org/law->

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<sup>3</sup> Just some examples of tribal “law and order” codes that are not limited to criminal laws include the Law and Order Code of the Kalispel Tribe of Indians, <https://kalispeltribalcourt.org/law-order-code/>; the Quileute Law and Order Code, <https://quileutenation.org/court/law-and-order-codes/>; the Oglala Sioux Tribe Law and Order Code, <https://thorpe.law.ou.edu/codes/ogllala/ogllalatoc.htm>; the San Juan Southern Paiute Tribe Law & Order Code, <https://www.sanjuanpaiute-nsn.gov/help-category/law-and-order-code>; the Fort McDowell Yavapai Nation Law and Order Code, [https://library.municode.com/tribes\\_and\\_tribal\\_nations/fort\\_mcdowell\\_yavapai\\_nation/codes/the\\_law\\_and\\_order\\_code?nodeId=THFOMCYANALAORCO](https://library.municode.com/tribes_and_tribal_nations/fort_mcdowell_yavapai_nation/codes/the_law_and_order_code?nodeId=THFOMCYANALAORCO); the Southern Ute Law and Order Codes, <https://www.sudrum.com/news/2023/06/16/tribes-law-and-order-codes-now-available-online/>; the San Juan Southern Paiute Tribe Law and Order Code, <https://membersupport.sanjuanpaiute-nsn.gov/portal/en/kb/san-juan-southern-paiute-tribe/law-and-order-code>; the Pyramid Lake Paiute Tribe Law & Order Code, <https://plpt.nsn.us/pyramid-lake-ordinances/>; the Crow Law and Order Code, <http://www.crow-nsn.gov/crow-lawspolicies.html>; the Zuni Tribal Code (referenced therein as a “Law and Order Code,” *see* § 1-1-1), <https://www.ashiwi.org/Documents/ZuniTribalCodeRevised14SEP2022-FINAL.pdf>; and the Law and Order Codes of the Shoshone & Arapaho Tribes, <https://www.wrtribalcourt.com/forms/rules-of-court/tribal-codes/>.

[order-code/](#); Quileute Law and Order Code, <https://quileutenation.org/court/law-and-order-codes/>; Oglala Sioux Tribe Law and Order Code, <https://thorpe.law.ou.edu/codes/ogllala/ogllalatoc.htm>. It is not uncommon for a tribal constitution to require Secretarial approval of non-criminal tribal laws, and “the Bureau of Indian Affairs, in assisting the drafting of tribal constitutions, had a policy of including provisions for Secretarial approval.” *Kerr-McGee Corp. v. Navajo Tribe of Indians*, 471 U.S. 195, 198 (1985); *see, e.g., Chegup v. Ute Indian Tribe of the Uintah and Ouray Reservation*, No. 2:19-CV-00286, 2022 WL 4359260 (D. Utah Sept. 19, 2022) (tribal banishment ordinance subject to Secretarial approval pursuant to tribal constitution<sup>4</sup>); *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982) (tribal taxation ordinance subject to Secretarial approval pursuant to tribal constitution). In the context of tribal law, “law and order” laws are clearly not limited to criminal laws. In erroneously finding otherwise, the *Snake* court failed to cite any authority for its position. *Ponca Tribal Election Board v. Snake and Lieb*, 1 Okla. Trib. 209, 232, 1988 WL 521355 (Ponca CIO-App. Nov. 10, 1988). This finding in *Snake* was wrong, and the phrase “law-and-order ordinances” in the Tribe’s pre-amendment Constitution clearly contemplated that all Tribal laws must be approved by the Secretary.

Resolution No. 134-07232010 and the Tribal Court Code cannot confer jurisdiction on this Court because they are invalid. Furthermore, even if valid (it is not), § 617 of the Tribal Court Code does not include an express waiver of Tribal sovereign immunity. According to Appellant, Section 617 of the Tribal Court Code, which is not included in the record and was not even raised until this appeal, provides:

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<sup>4</sup> In addition to requiring Secretarial review of exclusion ordinances, the Constitution of the Ute Indian Tribe requires Secretarial review of all ordinances governing the conduct of tribal members. Ute Indian Tribe Const. Art. VI, § 1(k), available at <https://thorpe.law.ou.edu/IRA/utecons.html>.

**Section 617. Judicial Review of Legislative and Executive Actions**

The District and Supreme Courts shall have the authority to review any act by the Tribal Legislative Body, or any tribal officer, agent, or employee to determine whether that action, and the procedure or manner of taking that action, is Constitutional under the Tribal Constitution, authorized by tribal law, and not prohibited by the Indian Civil Rights Act. If the Court finds that the contemplated action is authorized by the Constitution and tribal Statutes enacted thereto, or the common law, and that the manner in which the authorized action is to be exercised is not prohibited by the Tribal Constitution, Tribal statutes enacted pursuant thereto, or federal law, the Court shall dismiss the case. The Court shall not otherwise review the exercise of any authority committed to the discretion of a tribal officer, agency, agent, or employee by Tribal law unless some specific provision of law authorizes judicial review of the merits of the discretionary decision of action.

Section 617 clearly contains no express and unequivocal waiver of Tribal sovereign immunity.

Without such explicit and unequivocal waiver, Appellees' Tribal sovereign immunity<sup>5</sup> remains intact and bars this Court from hearing this appeal. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978) ("It is settled that a waiver of sovereign immunity 'cannot be implied but must be unequivocally expressed.'" (quotation and citations omitted)). Appellant's claim that the Tribal Court Code vests this Court with jurisdiction over this appeal is simply false. *See* App. Br. at 1. This Court lacks jurisdiction over this appeal as a matter of federal and Tribal law.

**STATEMENT OF THE ISSUE**

There is only one issue properly before this Court: Whether the District Court erred when it ruled that it lacked jurisdiction over Appellant's suit against Appellees as an intratribal dispute. This is the only issue the District Court ruled on in its order of dismissal, and the order of dismissal is the only order from which Appellant appealed. This is the only issue now properly before this Court. The extraneous "issues" asserted in Appellant's brief are merely attempts to distract this Court from the real and sole issue on appeal, the District Court's jurisdiction over

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<sup>5</sup> Except with respect to her flawed *ultra vires* argument, Appellant does not dispute that Appellees are vested with Tribal sovereign immunity.

this intratribal dispute, and to improperly argue the merits of her claims in this appeal. Appellant devotes a significant portion of her Appeal Brief to the merits of the dispute, but arguments as to the merits of her claims are entirely irrelevant because the District Court did not rule on the merits. The issue is whether dismissal was proper, and the question of whether or not Appellees violated Appellant's rights is simply not before this Court. Because this is an intratribal dispute, dismissal was proper and the relief sought in this appeal must be denied.

### **STANDARD OF REVIEW**

Pursuant to 25 C.F.R. § 11.800, an appellate CFR Court "shall review all issues of law presented to it which arose in the case, but shall not reverse the trial division decision unless the legal error committed affected a substantial right of a party or the outcome of the case."<sup>6</sup> While this standard is rather bare, case law precedent from Courts of Indian Appeals provides further guidance. As an appellate court, this Court is "bound to accept the findings of fact of the trial court as set forth in the record, unless they are clearly erroneous." *Gallegos*, 2 Okla. Trib. at 224-25. This Court has previously stated that it is "reluctant to overturn facts found by the trial court, and we will generally refuse to do so unless the court's actions below were clearly erroneous." *Snake*, 1 Okla. Trib. at 243. Because the District Court committed no error in its decision that affected a substantial right of a party or the outcome of the case, the relief sought in this appeal must be denied.

### **STATEMENT OF THE CASE**

Contrary to the tack taken by Appellant, this case is strictly about jurisdiction. Appellant's Statement of the Case little more than a rehashing of her arguments on the merits of

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<sup>6</sup> Appellant's claim that this Court "should review the matter de novo" is flatly wrong under the law. App. Br. 11; *see* 25 C.F.R. § 11.800.

her claims, but with a multitude of added facts not in the record and arguments not raised at the District Court level and, in doing so, Appellant skirts the actual subject of this appeal.

Appellant was elected in 2021 to serve her second term on the Ponca Tribe Business Committee. R. at Tab 1, p. 2. She had been chosen by the Business Committee members to serve as the Secretary-Treasurer during her previous term, and she continued to hold this position following her reelection. *Id.* In October 2023, the Business Committee Chairman notified Appellant that she had been relieved of her position as Secretary-Treasurer of the Business Committee. R. at Tab 28, p. 2. In November 2023, Appellee Business Committee informed Appellant that she had missed meetings and that her seat on the Business Committee had been deemed vacated. R. at Tab 1, p. 5.

On November 26, 2023, Appellant filed a Complaint and Verified Emergency Application for Temporary Restraining Order and for Temporary Injunction with Brief in Support against Appellees in the District Court. R. at Tab 1. Two days later, the District Court entered an order finding no grounds to issue an *ex parte* emergency order. R. at Tab 5. On December 5, Appellees filed a Response in Opposition to Plaintiff's Motion for Temporary Restraining Order. R. at Tab 6. The District Court held a hearing on December 6. *See* R. at Tab 5. Appellee Business Committee then filed a Motion to Dismiss Complaint and Application for Emergency Restraining Order. R. at Tab 8. Shortly thereafter, Appellees filed a motion requesting that the District Court pause the briefing schedule pending a ruling on their Motion to Dismiss, R. at Tab 9, which the Court granted, R. at Tab 11. On January 3, 2024, Appellant filed her response to Appellee Business Committee's Motion to Dismiss. R. at Tab 13. On that same day, Appellant moved for default judgment against the individual Business Committee Members. R. at Tab 13. The District Court found that the default had been cured on January 17. R. at Tab

18. On January 9, Appellees responded in opposition to Appellant’s Motion for Default Judgment. R. at Tab 14. Also on that day, Appellees individual Business Committee Members filed a motion to dismiss Appellant’s Complaint. R. at Tab 15. On January 23, Appellant filed her response to the individual Business Committee Members’ Motion to Dismiss. R. at Tab 19. On February 1, Appellees individual Business Committee Members filed their reply in support of their Motion to Dismiss. R. at Tab 26. A hearing on the Motions to Dismiss was conducted on March 6. R. at Tab 23; Transcr. of Mot. Hrg. (Feb. 2, 2024).

On February 9, the District Court entered the Order at issue in this appeal. R. at Tab 28. In that Order, the District Court found that it “lacks jurisdiction [over this intratribal dispute] pursuant to the Ponca Constitution at Article V, Section 2 and the reservation in Ponca Business Committee Resolution No. 14 FY 1984,” R. at Tab 28, p. 6, and “that jurisdiction is properly before the Business Committee itself,” *id.* at p. 7. The District Court dismissed all claims for lack of subject matter jurisdiction, noting that it “lacks jurisdiction to determine whether the members of the Business Committee acted *ultra vires.*” *Id.* at p. 7-9.

### **SUMMARY OF THE ARGUMENT**

Neither this Court nor the District Court has jurisdiction over this intertribal dispute. Tribal law dictates that only the Business Committee has jurisdiction under these circumstances. Specifically, Article VIII, § 2A of the Ponca Tribal Constitution vests the Business Committee with all Tribal judicial authority. R. at Tab 7. Through Resolution No. 14 FY 1984, the Business Committee chose to delegate a portion of its judicial authority to the Tribal Courts. R. at Tab 8, Ex. 1. However, it expressly retained its exclusive jurisdiction over intratribal disputes, thereby depriving the District Court (the Ponca Tribal Court) of any authority to adjudicate this dispute – as the District Court correctly held. *Id.*; R. at Tab 28. Moreover, even if the District Court erred in

its jurisdictional ruling on intratribal disputes, the result of the case would still have been dismissal. Appellees are immune from suit in their official capacities and the *Ex Parte Young* doctrine does not apply. With respect to their individual capacities, Appellees' conduct was not *ultra vires*. With respect to the ICRA claims, it is settled law that recovery cannot be had against individuals. Furthermore, Appellant could not prevail on any of her "claims" against the individual Appellees, which were not properly pled in the Complaint. In short, the District Court's dismissal of the case for lack of jurisdiction was proper. Even if this Court had jurisdiction to entertain this appeal (it does not), and even if the District Court had jurisdiction over intratribal disputes (it does not), Appellant still could not recover, and the outcome of the case would still be dismissal.

### **ARGUMENT**

#### **A. The District Court correctly ruled that it lacked jurisdiction to hear this dispute.**

The District Court correctly ruled it lacked jurisdiction to entertain Appellant's suit because it involves an intratribal dispute and, pursuant to Article VIII, § 2A of the Ponca Constitution and Ponca Tribal Resolution No. 14 FY 1984, the Business Committee retains exclusive jurisdiction over such matters. R. at Tab 7; R. at Tab 8, Ex. 1. The Ponca Citizenry adopted the Constitution and, in doing so, vested authority in the Business Committee to exercise all judicial powers of the Tribe. Ponca Const. Art. VIII, § 2A. The Constitution further authorizes the Business Committee to "establish a Tribal judicial system to which may [sic] delegate some or all the judicial power of the tribe," but such judicial system only has the authority the Business Committee chooses to grant it. *Id.* The Ponca Citizenry chose to allow the Business Committee to exercise the Tribe's judicial power, including jurisdiction over intratribal disputes. *Id.* Neither this Court nor the District Court can replace the will of the Ponca Citizenry.

Although the Business Committee has chosen to delegate some judicial authority to the Tribal judicial system, it did not do so with respect to intratribal disputes. R. at Tab 8, Ex. 1 (Resolution No. 14 FY 1984). The Business Committee expressly retained such jurisdiction when it established the Tribal Courts through Resolution No. 14 FY 1984. *Id.* Through that Resolution, the Tribe adopted the Court of Indian Offenses as its Tribal Court, “except for civil disputes against the Ponca Tribal Business Committee . . . which we possess and hold as an inherent intratribal area of jurisdiction.” *Id.* Because the Business Committee has retained exclusive jurisdiction over intratribal disputes, the District Court’s dismissal of Appellant’s suit was proper.

Appellant claims that the Tribe’s Constitution and laws require the District Court to review Business Committee actions for compliance with the Tribal Constitution and the Indian Civil Rights Act (“ICRA,” 25 U.S.C. § 1301, *et seq.*), but she cites no specific provision of the Constitution or Tribal law to support this contention. App. Br. at 14. Nor can she, as no such provision exists. Later in her Brief, Appellant asserts that, according to the Tribal Court Code purportedly adopted by Resolution No. 134-07232010, the Tribal Court is the forum for determining the constitutionality and lawfulness of Business Committee actions. App. Br. at 16. However, as addressed above, that Code is of no force and effect because it was never approved by the Secretary. Instead, the provisions of the Ponca Constitution and Resolution No. 14 FY 1984 govern here.

Moreover, this Court cannot consider Appellant’s argument that the “Tribal Court is the forum for determining” this dispute under the Tribal Court Code, which is notably absent from the pre-appeal record in this case and has never been entered into evidence, because this argument was not raised at the District Court level. App. Br. at 16; *see Kiowa Election Bd. v.*



*Lujan*, 1 Okla. Trib. 140, 149, 1987 WL 382994 (Kiowa CIO-App. Nov. 19, 1987) (“Generally, matters which are not presented at the trial level are not appealable.”); *Gallegos v. French*, 2 Okla. Trib. 209, 225, 1991 WL 733411 (Delaware CIO-App. Jun. 4, 1991) (“The parties are [] bound on appeal by the evidence and arguments presented to the trial court.”). Appellant’s Responses to Appellees’ Motions to Dismiss and Appellant’s oral arguments were devoid of any reference to Resolution No. 134-07232010 or the Tribal Court Code. *See R.* at Tabs 12, 14; *Transcr. of Mot. Hrg.* (Feb. 2, 2024). As such, Appellant’s sole argument directly challenging the District Court’s only appealable ruling cannot be considered, so the relief sought in this appeal must be denied.

Appellant also vaguely suggests that the Ponca Tribal Government Code of Conduct (“Code of Conduct”) confers jurisdiction over this dispute on the District Court. *App. Br.* at 17. However, she failed to raise the Code of Conduct in her Complaint. *R.* at Tab 1. Furthermore, she failed to include the Code of Conduct as an addendum to her Appeal Brief or set out the relevant parts of that Code as required by Rules of Appellate Procedure Rule 2.15(e), the Code of Conduct was never submitted in evidence, and it is not in the record. Appellant’s Code of Conduct argument cannot be considered. *See Kiowa Election Bd.*, 1 Okla. Trib. at 149; *Gallegos*, 2 Okla. Trib. at 225.

Because the Business Committee retained exclusive jurisdiction over intratribal disputes pursuant to Resolution No. 14 FY 1984 and Ponca Tribal Constitution Article VIII, § 2A, the District Court properly dismissed this case for lack of jurisdiction.

**B. The District Court’s actions in the 2023 Ponca Tribal Election Board suit are beyond the scope of, and irrelevant to, this appeal.**

As with her arguments regarding the Tribal Court Code, Appellant’s argument that the District Court has created different standards for determining *ultra vires* actions cannot be

considered because that argument was not raised prior to this appeal. See *Kiowa Election Bd.*, 1 Okla. Trib. at 149; *Gallegos*, 2 Okla. Trib. at 225. Moreover, Appellant’s arguments relating to *Ponca Tribe v. Ponca Tribal Election Board*, CIV-2023-023 (Ponca Dist. Ct. 2023) (“2023 Election Board case”), references to filings from that case (*see* App. Br. at 3), and such filings themselves likewise cannot be considered because no court records, orders, or filings from the 2023 Election Board case are part of the record. See *Ostrowski v. Ho-Chunk Nation*, 7 Am. Tribal Law 51, 54 n.2 (Ho-Chunk Nation Sup. Ct. Jun. 1, 2007) (appellate court cannot consider material not in the record in rendering its decision); *Nulf v. Int’l Paper Co.*, 656 F.2d 553, 559 (10th Cir. 1981) (“Matters not appearing in the record will not be considered by the court of appeals.”).

Appellant couches the issue on appeal as whether “the District Court Impermissibly Created Two Standards of Review for Ponca Tribal Disputes Involving Ponca Officials and Allegations of *Ultra Vires* Actions.” App. Br. at 2. But she fails to identify what these two standards are, let alone how they are conflicting. There is no District Court ruling in the record that sets forth any *ultra vires* standard applied in either case. How can this Court determine whether the District Court “impermissibly created two standards” if it does not know what those alleged standards are? This argument is wholly unsupported.

Furthermore, the 2023 Election Board suit is not relevant and, even if it could be considered, it lends no support to Appellant’s case. The District Court in the instant case did not rule on the standard for disputes involving allegations of *ultra vires* actions; it ruled on its jurisdiction over an intratribal dispute. R. at Tab 28, pp. 6-8. In fact, the District Court in this case found that it lacked jurisdiction to even make the determination of whether the Business Committee members acted *ultra vires*. *Id.* pp. 7-8.

Had the District Court actually ruled on whether the Business Committee members acted *ultra vires* in the case below, any standard regarding *ultra vires* actions set forth in the 2023 Election Board case would still be wholly irrelevant to this appeal. Suits against the Election Board are distinguishable from suits against the Business Committee because the Business Committee, the governing body of the Tribe, is the superior sovereign. It is black letter law that there is no immunity against the superior sovereign. *See United States v. White Mountain Apache Tribe*, 784 F.2d 917, 920 (9th Cir. 1986) (“The Tribe’s own sovereignty does not extend to preventing the federal government from exercising its superior sovereign powers.”); *United States v. Red Lake Band of Chippewa Indians*, 827 F.2d 380, 382 (8th Cir. 1987); *Reich v. Mashantucket Sand & Gravel*, 95 F.3d 174, 182 (2d Cir. 1996). Furthermore, contrary to Appellant’s assertion, her claims are not the “same claims” (App. Br. at 22) as the claims in the 2023 Election Board case, which did not involve removal of a Business Committee member. As Appellant herself has admitted, suits against the Election Board are not relevant to this case against the Business Committee. Transcr. of Mot. Hrg. (Feb. 2, 2024) 15:8-10 (Appellant’s counsel referring to the opinion in *Snake*, 1 Okla. Trib. 209, “Your Honor, that case, again, is *not relevant because, one, it’s against the Election Board. . . .*” (emphasis added)). The District Court’s actions in the 2023 Election Board case have no bearing on this appeal.

**C. Appellant’s “lack of forum” argument has no merit.**

Tribal appellate courts have ruled that intratribal disputes over which the courts lack jurisdiction, such as the instant case, are properly resolved by the tribe’s governing body. *See, e.g., Lynch*, 1997 WL 34704354. *Lynch* involved a dispute between tribal council members and a tribal employee who alleged civil rights violations relating to her termination. *Id.* The plaintiff claimed that ICRA “waives a tribe’s sovereign immunity because without such a waiver, a

person might not have the right to judicial review.” *Id.* at \*3. Despite the plaintiff’s concern about the unavailability of a forum, the court ruled that sovereign immunity precluded her claim.

*Id.* The appellate court held that the basis for the suit was an “internal governmental dispute which must be resolved by the tribal council.” *Id.* at \*2.

In *McCormick v. Election Comm. of the Sac and Fox Tribe of Oklahoma*, the plaintiff sued the tribal Election Committee and its members in their individual and official capacities for alleged constitutional and statutory violations relating to their decisions to void an election and hold a new election. 1 Okla. Trib. 8, 1980 WL 128844 (Sac & Fox CIO Feb. 1, 1980). Although it meant there would be no established judicial forum to hear the dispute, the Court of Indian Offenses dismissed the case on sovereign immunity grounds. *Id.* at 19-20. The CFR Court held:

[T]he law is clear that, in the absence of an express and unequivocal waiver of sovereign immunity by the Sac and Fox Tribe, the unfinished business of providing a judicial forum for the resolution of the instant dispute remains exclusively within the province of the Sac and Fox Tribe. In the absence of that authorization, *the tribal judiciary should not presume to fashion a remedy which ignores sovereign immunity, one of the inherent attributes of tribal sovereignty.*

*Id.* at 20 (emphasis added). As in *Lynch* and *McCormick*, the lack of an alternative forum to hear disputes over which the District Court lacks jurisdiction cannot manifest subject matter jurisdiction, and it does not justify the District Court’s or this Court’s abrogation of an inherent attribute of tribal sovereignty—the Tribe’s sovereign immunity.

Appellant erroneously relies on *Lomeli v. Kelly* to support her position that Tribal members must have a “judicial forum” to prohibit unlawful conduct by the Business Committee. App. Br. at 21. First, the *Lomeli* opinion does not state that a “judicial forum” is required, merely a “forum.” *Lomeli v. Kelly*, No. 2013-CI-APL-002, at 8 (Nooksack Tribal Ct. of App. Jan. 15, 2014). Second, *Lomeli* is readily distinguishable from the case at bar because in *Lomeli*, unlike here, the “Nooksack Constitution recognizes that the forum is the Tribal Court.” *Id.* The Ponca

Tribal Constitution contains no such provision. R. at Tab 7. Appellant's claim that the lack of a judicial forum to hear this dispute must vest the District Court with jurisdiction has no merit.

**D. This Court cannot properly consider Appellant's request for an injunction.**

In her Appeal Brief, Appellant bafflingly implores this Court to issue an injunction against Appellees. App. Br. at 23-30. However, whether this Court should grant an injunction is not an issue raised in Appellant's Notice of Appeal. Nor is it an appealable issue. This Court's jurisdiction "extend[s] to all *appeals from final orders and judgments* of the trial division . . . ." 25 C.F.R. § 11.800 (emphasis added). Because the District Court made no ruling on Appellant's request for an injunction in the District Court proceeding, the question of whether an injunction should issue is not properly before this Court. Moreover, federal law does not vest Courts of Indian Appeals with authority to issue injunctions. *See* 25 C.F.R. Part 11. As an appellate court, this Court lacks jurisdiction to grant an injunction. This issue and request for relief cannot be considered by the Court.

**E. Even if the District Court committed legal error (it did not), that error did not affect a substantial right or the outcome of the case.**

1. Sovereign immunity mandates dismissal.

Even if the District Court did err in its decision, the error did not affect a substantial right of a party or the outcome of the case because, even if the District Court was not precluded from hearing intratribal disputes, sovereign immunity would have still mandated dismissal. Despite all the resolutions and codes Appellant cites, valid or otherwise, she has not pointed to a single provision in Tribal law that expressly and unequivocally waives Tribal sovereign immunity. Although she has implied that the 2010 Tribal Court Code acted as a waiver of Tribal sovereign immunity for certain disputes, on its face it did no such thing. The 2010 Tribal Court Code language Appellant quotes in support of this position purports to grant authority to "*review*" acts

by the Business Committee or its officers to determine whether the action or procedure is Constitutional and permissible under ICRA. App. Br. at 1. This power to review is in no way an explicit waiver of sovereign immunity and it does not authorize courts to grant any relief against the Business Committee or its officers. But again, and more importantly, this limited power was never actually conveyed because Resolution No. 134-07232010 and the 2010 Tribal Court Code were never approved by the Secretary and are not valid Tribal law.

As a last-ditch effort to save her case, Appellant points out that “[n]o one has produced any Business Committee edict after 2010 that indicates the Business Committee claims immunity from appeals to the Southern Plains Court when District Court decisions involving it or individual committee members are appealed.” App. Br. at 17. Her implication that the 2010 Tribal Court Code is the most recent governing law on this issue has no merit because, as discussed above, that Code was never lawfully adopted and did not waive Tribal sovereign immunity.

2. The federal *Ex Parte Young* doctrine does not apply in Ponca Tribal Court.

Plaintiff’s argument that she can overcome Appellees’ sovereign immunity by employing the *Ex Parte Young* doctrine is also destined to fail. To begin, *Ex Parte Young* is a federal law doctrine in which the Supreme Court “carved out an exception to Eleventh Amendment immunity for suits against *state* officials seeking to enjoin alleged ongoing violations of *federal* law.” *Guttman v. Khalsa*, 669 F.3d 1101, 1126 (10th Cir. 2012) (emphasis added). The Supreme Court notes that *Ex Parte Young* is necessary “to permit the *federal* courts to vindicate *federal* rights,” and it “rests on the premise—less delicately called a ‘fiction,’ that when a *federal* court commands a *state* official to do nothing more than refrain from violating *federal* law, he is not the *State* for sovereign-immunity purposes.” *Virginia Off. for Prot. & Advoc. v. Stewart*, 563

U.S. 247, 254–55 (2011) (emphasis added). “Of course, *Ex parte Young* is a ‘fiction’ to the extent it sharply distinguishes between a state and an officer acting on behalf of the state, but it is a necessary fiction, *required to maintain the balance of power between state and federal governments.*” *Westside Mothers v. Haveman*, 289 F.3d 852, 861 (6th Cir. 2002) (emphasis added). This discussion on the origins of *Ex Parte Young* and the importance of the “balance of power between state and federal governments” shows that *Ex Parte Young* is not relevant here because this case is not about federal law and federal court—but Tribal law and Tribal Court. The *Ex Parte Young* doctrine and its principles have no role here. Most importantly, there is no explicit Ponca law or precedent that allows the use of the *Ex Parte Young* doctrine. Because there is no lawful authority to use this doctrine, Plaintiff cannot rely on *Ex Parte Young* to circumvent the Tribe’s immunity.

Tribal courts are not bound to apply federal doctrines in adjudicating cases under tribal law. *Eriacho v. Ramah Dist. Court*, 6 Am. Tribal Law 624, 629 n.1 (Sup. Ct. of the Navajo Nation 2005); *see also Norris v. Hopi Tribe*, 1 Am. Tribal Law 357, 362 (App. Ct. of the Hopi Tribe 1998) (regarding due process, “the courts have *discretion* to apply either federal or state standards to the extent that they are consistent with Hopi notions of fairness.” (emphasis added)); *Village of Mishongnovi v. Humeyestewa*, 1 Am. Tribal Law 295, 300 (App. Ct. of the Hopi Tribe 1998) (regarding the federal standing doctrine, tribal customs and traditions “must take precedence in a [tribal] court’s decision of what law to apply before a court reaches the use of *any* foreign law, including federal or [] state law” (emphasis in original)); *Mayes v. Blackfox*, 7 Okla. Trib. 480, 4 Am. Tribal Law 14, 19 (Cherokee Nation Judicial App. Tribunal 2002) (Cherokee courts have chosen to adopt federal standing doctrine in large part “as a guiding principle,” but will balance federal doctrine with tribal concepts on a case-by-case basis).

Furthermore, the Ponca Constitution's structure, as compared to the American legal system and the United States Constitution's structure, strongly supports the inapplicability of *Ex Parte Young*. As highlighted above, the Ponca Constitution, Art. VIII, § 2A, reserves all judicial power to the Business Committee, which can then delegate power to the Tribal Court if the Business Committee so chooses. Because the judicial power lies solely with the Business Committee, it is not up to this Court to start inventing exceptions to the Tribe's immunity in direct defiance of the limited authority the Business Committee has delegated to the Tribal Court.

“‘[O]fficial capacity’ should be construed generously for [] sovereign immunity purposes (*i.e.*, where the tribal official is a potential defendant) . . . .” *The Legislature v. Flyingman*, 11 Okla. Trib. 837, 2009 WL 10271467, at \*8 (Sup. Ct. of the Cheyenne and Arapaho Tribes Dec. 17, 2009). In *Flyingman*, the Supreme Court of the Cheyenne and Arapaho Tribes declined to apply “any *Ex Parte Young*-type reasoning” to government officials’ actions. *Id.* at \*6. Relying on the “different cultural and legal background, and [] different legal history” of the United States as compared to the Tribes, the court held that the Tribal officials’ “official capacity sovereign immunities from civil suit against them for any vote they have cast protects them from any [] suit seeking declaratory and/or injunctive relief.” *Id.* The same reasoning applies here.

In *Grant v. Grievance Committee of Sac and Fox Tribe of Indians of Oklahoma*, individual plaintiffs brought suit against the Sac and Fox Grievance Committee (“Grievance Committee”), a constitutionally created body under the Sac and Fox Constitution, alleging violations of ICRA and the Sac and Fox Constitution. 1 Okla. Trib. 34, No. CIV-80-S3, 1981 WL 165245 (Sac & Fox CIO Jan. 21, 1981). The plaintiffs argued that the Grievance Committee violated their rights by calling a special meeting of Sac and Fox Council (comprised of all Tribal



members age 18 years and over) to remove plaintiffs from office, which the Council did. *Id.* at \*\*1 (Sac & Fox CIO Jan. 21, 1981). Despite the Grievance Committee’s sovereign immunity, the plaintiffs argued that the individual Grievance Committee members could be sued on the grounds that “sovereign immunity is not present because they are acting in excess of authority conferred upon them in that capacity by the Sac and Fox Constitution.” *Id.* at \*\*2. Importantly for this appeal, the plaintiffs’ alleged violations in *Grant*—that the Grievance Committee’s calling of a special meeting violated multiple provisions of the By-Laws of the Sac and Fox Constitution—mirrored the allegations by Appellant here. *See Id.* at \*\*5 (arguing the special meeting was called in violation of Article III, Section 2 of the By-Laws of the Constitution and the call violated Article III, Section 3 of the By-Laws). In this case, Appellant alleges that the Business Committee violated the Ponca Constitution’s ten-day notice requirement for calling meetings, R. at Tab 1, p. 4-5, thus, she claims, the Business Committee acted unlawfully by removing Appellant from office for meetings she was unaware of.

Analyzing whether the Committee members acted outside their authority, the court in *Grant* found that the Committee and its individual members did not, and that the members were immune from suit. *Grant*, 1981 WL 165245 at \*\*8. The Court noted:

The Grievance Committee is vested with broad discretion to determine what acts constitute grounds for a special Council meeting, the burden of proof required to establish those grounds, and the procedures necessary to call a special meeting for the purpose of acting upon complaints of misconduct. While this Court may be of the opinion that vesting such broad discretion in an organ of the Tribe without substantial guidance in its exercise may be impolitic, the limitations or guidelines to be established must come from the Sac and Fox people and not from this Court.

**Because there is no method other than a scope of authority test to distinguish between Grievance Committee action and the collective action of the Grievance Committee members, and because the action of the Grievance Committee is clearly within its delegated authority, this action may not be**

**maintained as against the members of the Grievance Committee in their official capacity.**

The Court finds that the Grievance Committee and its members in their official capacities have not acted outside the authority granted by the Sac and Fox Constitution, and, further, the Court finds that the Grievance Committee and its members have not acted in a fashion forbidden by the Sac and Fox Constitution. Since these actions do not conflict with the terms of the valid constitutional authority conferred on the Grievance Committee, these are actions of the Sac and Fox Tribe and entitled to the bar of sovereign immunity, as a matter of law.

*Id.* (emphasis added). Like the Committee in *Grant*, Appellees here exercised their delegated authority to remove a member, as allowed under the Ponca Constitution. Furthermore, as *Grant* instructs, a plaintiff cannot argue that a defendant did not follow procedures in calling a meeting, and that these actions somehow show the official acted outside their authority. *Grant* forecloses Appellant's ability to rely on *Ex Parte Young*.

To conclude, the Business Committee has explicitly prohibited the filing of civil suits against the Business Committee per Resolution No. 14 FY 1984. The CFR Court recognized and reinforced this principle in *Rhodd v. Election Board*, Case No. CIV-05-06 (Ponca Dist. Ct. May 3, 2005). R. at Tab 8, Ex. 2. Applying these controlling Ponca law authorities, it is clear that, even if the District Court erred in its reasoning for dismissal, the outcome of this case would be the same.

3. ICRA claims cannot lie against individuals.

The District Court would lack jurisdiction over Appellant's ICRA claims against Appellees in their individual capacities, had such claims been properly pled in the District Court Complaint,<sup>7</sup> because courts do not have power to hear ICRA claims against individuals.

Established law and the text of the statute itself make clear that ICRA claims are only actionable against tribal governments or government officials in their official capacities. 25 U.S.C. § 1302. ICRA protects certain rights of individuals as against tribal governments, not against individuals. *Id.* (“No Indian tribe in exercising powers of self-government shall . . .”). In *Grant*, the plaintiffs brought suit under ICRA. In dismissing the suit against the individual Committee Members, the court held:

It is clear that, as a matter of law, no cause of action exists under the Indian Civil Rights Act of 1968 as to the members of the Grievance Committee in their individual capacity. The language of the act, its legislative history, and the case law indicate *that this act cannot authorize civil actions against individuals for its alleged violation, and this Court lacks jurisdiction to proceed on those claims.*

*Id.* at 55 (emphasis added). Even if an ICRA claim had been pled in the Complaint, recovery would be barred because the District Court lacks jurisdiction to proceed on an ICRA claim against individuals.

4. Appellees’ actions were not *ultra vires*.

Recovery against individual Appellants would also be precluded because Appellees’ actions were not *ultra vires*. In *Rhodd*, the plaintiff attempted to rely on the allegedly *ultra vires* actions of the Election Board to argue that the Court had jurisdiction and could grant relief. R. at Tab 8, Ex. 2. Addressing the argument, the Court noted that an act is *ultra vires* when an entity “is without authority to perform it under any circumstances or for any purpose.” *Id.* at p. 3. The Court then stated:

Under that definition, the Ponca Tribal Election Board in this case did not act outside its authority when it made an eligibility determination regarding a

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<sup>7</sup> Although Appellant repeatedly raises alleged ICRA violations in her Appeal Brief, the Complaint does not include a cause of action for an ICRA violation – it merely mentions her allegation that Appellees’ acts were in violation of ICRA in the introduction and Factual Allegations sections of the Complaint and alleges that “this Tribe’s Business Committee faces similar Constitutional and ICRA challenges.” R. at Tab 1, pp. 1, 5, 14. This is insufficient to state a claim under ICRA.

candidate, because it has the authority to make such determinations under the Election Ordinance. Even if the determination is wrong or untimely, the Election Board has been delegated the authority to make those determinations as part of its duty. A candidate's disagreement with the outcome of the decision or the timing of the decision does not mean the Election Board has no authority to make the determination, and therefore its actions is not *ultra vires*, and sovereign immunity is not waived.

*Id.*

The actions complained of here constitute official constitutional duties of the Business Committee, which removed Appellant from her position as Secretary-Treasurer of the Business Committee and then removed her from the Business Committee. R. at Tab 1, pp. 4-5. These actions have explicit constitutional authority. Ponca Const. Art. V, § 1 (removal from Business Committee for three consecutive absences); Ponca Const. Art. III, § 3 (Business Committee shall elect from its own or appoint positions “as may be deemed necessary.”). This means the Business Committee members acted within their authority and did not act *ultra vires*. See *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 102, n.11 (1984) (an officer acts *ultra vires* “only when he acts without any authority whatever”); *United Tribe of Shawnee Indians v. United States*, 253 F.3d 543, 548–49 (10th Cir. 2001) (the *ultra vires* doctrine is “grounded on the officer’s lack of delegated power,” and a “claim of error in the exercise of that power is therefore not sufficient.”).

Like the *Rhodd* case, in which the Election Board had the authority to take the actions subject to the suit, the Business Committee here had the authority to take the removal actions underlying Appellant’s suit. Appellant argues these actions were wrong, but as *Rhodd* instructs, for *ultra vires* to apply, a plaintiff must show more than just wrongful actions. R. at Tab 8, Ex. 2, p. 3. Instead, Appellant here must show that the Business Committee was without authority for its removal actions “under any circumstances or for any purpose.” *Id.* Appellant cannot show

this. Therefore, Appellant could not rely on the *ultra vires* doctrine to keep this case alive. Even if the District Court had erred in dismissing the suit on the grounds that it lacks jurisdiction over this intratribal dispute, the claims against the individual Business Committee members would still have failed and the result still would have been dismissal.

Moreover, Appellant’s Complaint here suffers from an even more fundamental problem—she did not plead sufficient facts to support an *ultra vires* claim, namely, that any of the specific individual Appellees acted outside the scope of his or her authority. *See* R. at Tab 1. The Complaint is deficient because it is completely devoid of any actions by *individual Appellees* which violated Appellant’s rights. To begin, the Complaint alleges that Appellees’ wrongful actions were her suspension/removal from her position as Secretary-Treasurer from the Business Committee, and her subsequent removal from the Business Committee. R. at Tab 1, p. 4 (¶ 18). These actions are inherently only Business Committee actions that can be taken by that body as a whole, because the actions of removal and suspension can solely be taken by the Business Committee, and not a single individual official. *See* Ponca Const. Art. III, § 3 (Business Committee can appoint or employ officers such as Secretary-Treasurer); Ponca Const. Art. V, § 2 (Business Committee may suspend committee member). Indeed, the allegations regarding the unlawful conduct are solely grounded in Business Committee actions, and not individual conduct:

- “On October 16, 2023, in contravention of his authority, Defendant Littlecook ordered the Ponca Tribal Administrator to advise Plaintiff she had been relieved of her position as Secretary-Treasurer and to vacate her office.” R. at Tab 1, p. 4 (¶ 19).
- “On November 13, 2023, Plaintiff received a letter, attached as Exhibit “B” from the Chairman declaring that she has missed meetings and that her seat on the Business Committee has been deemed “vacated.” The letter further advised her she was no longer a member of the Ponca Business Committee.” R. at Tab 1, p. 5 (¶ 23).

- “Plaintiff has not received and purportedly has been denied the compensation due her weekly as a member and officer of the Business Committee.” R. at Tab 1, p. 5 (¶ 24).

Defendants Littlecook and the Business Committee members officially and individually have no authority to remove Plaintiff from either her officer position or her Business Committee position, and have no authority to deny her the status and compensation allegedly due her by reason of her elected offices. R. at Tab 1, p. 5 (¶ 25).

All of the complained-of acts are Business Committee actions, and not the actions of individuals. Indeed, the only individual identified at all is Chairman Littlecook, and he merely conveyed to the Tribal Administrator that Appellant needed to leave her office because she had been removed as Secretary-Treasurer by the Committee. The delivery of messages by Chairman Littlecook did not cause Appellant’s alleged harms. Thus, Appellant has failed to properly plead claims against the individual Appellees in their individual capacities.<sup>8</sup>

For the foregoing reasons, whether she had pled sufficient facts to support an *ultra vires* claim or not (she did not), Appellant would be unable to recover under an *ultra vires* theory.

5. No tort claim has been pled.

It is unclear from the District Court Complaint whether Appellant intended to assert a claim sounding in tort against the individual Appellees, but if so, she could not prevail on such a claim because it was not properly pled in the Complaint. The sole reference to tort in the Complaint is found in the Factual Allegations: “The *ultra vires* actions of the individual

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<sup>8</sup> In suits involving individuals, federal courts are clear that a plaintiff must properly plead facts tying the alleged unlawful actions to the individual, and if not, the claims will be dismissed. *See Schroeder v. Kochanowski*, 311 F. Supp. 2d 1241, 1252 (D. Kan. 2004) (noting a named defendant “is neither identified, mentioned, nor indirectly referenced in the body of the Complaint” thus, the complaint “fails to state any claim against Defendant Augustine in either his official or individual capacity.”); *Native Am. Distrib. v. Seneca-Cayuga Tobacco Co.*, 546 F.3d 1288, 1297 (10th Cir. 2008) (dismissing complaint against individuals because “a close reading of the plaintiffs’ complaint makes clear that plaintiffs have failed to state a claim against the Individual Defendants in their individual capacities.”).

defendants are tortious and have caused Plaintiff monetary damages and emotional suffering for which they should be individually liable.” R. at Tab 1, p. 5 (¶ 27). Appellant failed to identify what type of tort she was referring to, let alone establish the elements of such tort. Even if the District Court erred in its decision, Appellant could not prevail on a tort claim.

6. No Government Code of Conduct claim has been pled.

The Appeal Brief also alleges that there is no law that precludes claims against individual officials for violations of the Code of Conduct, App. Br. at 18, but, like her tort claim, this claim was noticeably absent from Appellant’s District Court Complaint, R. at Tab 1. Additionally, as discussed above, Appellant failed to include the Code of Conduct as an addendum to her Appeal Brief or set out the relevant parts as required by Rules of Appellate Procedure Rule 2.15(e), the Code of Conduct was never submitted in evidence, and it is not in the record. Appellant’s arguments with respect to the Code of Conduct cannot be considered by this Court, and Appellant could not recover, regardless of the District Court’s jurisdiction, under a claim not pled.

**CONCLUSION**

**WHEREFORE**, based on the foregoing, Appellees respectfully request that the Court deny all relief sought by Appellant.

Dated this 29th day of May, 2024.

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### **CERTIFICATE OF SERVICE**

I hereby certify that on May 29, 2024, a true and correct copy of the foregoing document was emailed to the following:

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/s/ Joe Keene



## **ADDENDUM**

1. Ponca Const. Art. III
2. Ponca Const. Art. V
3. Ponca Const. Art. VII
4. Ponca Tribal Res. No. 14 FY 1984
5. Indian Civil Rights Act, 25 U.S.C. § 1302
6. 25 C.F.R. § 11.104 (58 Fed. Reg. 54,413 (Oct. 21, 1993))
7. 25 C.F.R. § 11.118
8. 25 C.F.R. § 11.800
9. Rules of Appellate Procedure Rule 2.15

# CONSTITUTION OF THE PONCA TRIBE OF INDIANS OF OKLAHOMA

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## ARTICLE III-GOVERNING BODY

SECTION 1. The governing body of the Ponca Tribe of Indians shall be a Business Committee consisting of seven members elected by a vote of the tribal membership. The term of each committee member shall be four (4) years from the date of installation of office.

SECTION 2. In case their successor shall not have been duly elected and certified, the term of office of the committee member shall be extended until successors shall have been duly elected and certified. In the event a valid election is not initiated by the election board within thirty (30) days of the regularly scheduled date for such election, the Judge of the District Court of the Ponca Tribe is empowered with the duty to appoint five (5) members of the tribe as a special Election Board who shall call an election to be conducted pursuant to the tribal election ordinance within thirty (30) days of their appointment. The Chairman is also authorized to take this action whenever it is impossible for the tribe to conduct an election for whatever reason.

SECTION 3. The Business Committee so organized shall elect from within its own membership (1) a chairman, (2) a vice-chairman, and from within or without, (3) a secretary- treasurer, and may appoint or employ such other officers and committees as may be deemed necessary.

# CONSTITUTION OF THE PONCA TRIBE OF INDIANS OF OKLAHOMA

\* \* \* \*

## ARTICLE V-VACANCIES AND REMOVAL FROM OFFICE

SECTION 1. If a Business Committee or Election Board, as applicable, member shall die, resign, be suspended or recalled by a vote of the Ponca Tribal membership, or shall be found guilty of a felony by any Court of competent jurisdiction following all appeals, or a misdemeanor involving dishonesty, moral turpitude, or of accepting a bribe, or moves away from

Kay or Noble County or fails to attend three (3) consecutive Business Committee or Election Board meetings, as applicable, without proper cause, the position shall be deemed vacated and the Election Board shall call an election for filling the unexpired term.

SECTION 2. The Business Committee by four (4) affirmative votes may suspend any committeeman for neglect of duty or gross misconduct in relation to his duties or official duties. Before any vote for suspension is taken the accused shall be given a written statement of the charges against him at least five (5) days before the meeting at which he is to appear and must be given an adequate opportunity to answer any and all charges at such Business Committee Meeting.

(A) a committeeman is suspended by the Business Committee, it shall be the duty of the Election Board to call a recall election to determine whether the committeeman should be expelled from the Business Committee.

SECTION 3. Upon receipt of a valid petition signed by at least sixty-five percent (65%) of the number of voters who voted in the last regularly scheduled election and who have paid a fee equivalent to the most recent candidate filing fee, it shall be the duty of the Election Board to call and conduct, within forty-five (45) days, a special election to consider the

petition. Only one

(1) official shall be subject of any given recall petition. If a majority of those actually voting shall favor the recall of a member of the Business Committee, the office shall be declared vacant, and the Election Board shall call an election to fill the vacancy for the unexpired term. An election official shall only be subjected to recall proceedings once during any year.

(A) In the event a recall election is not initiated by the election Board within thirty (30) days of receipt of a valid recall petition, the Chairman or his duly authorized representative is authorized to appoint five (5) members of the tribe as a special Election Board who shall conduct an election pursuant to the tribal election ordinance within thirty (30) days of their appointments.

If the Chairman fails to act, the Judge of the District Court of the Ponca tribe is empowered with the duty to appoint five (5) members of the tribe as a special Election Board who shall conduct an election pursuant to the tribal election ordinance within thirty (30) days of their appointments.

# CONSTITUTION OF THE PONCA TRIBE OF INDIANS OF OKLAHOMA

\* \* \* \*

## **ARTICLE VIII-JURISDICTION AND POWERS FOR THE PONCA BUSINESS COMMITTEE**

SECTION 1. The governmental powers of the Ponca Indian Tribe of Oklahoma, a federally recognized sovereign Indian Tribe, shall, consistent with applicable federal laws, extend to all persons, and to all real and personal property including lands and other natural resources, and to all waters and air space, within the Indian Country over which the Ponca Indian Tribe has authority. The governmental powers of the Ponca Indian Tribe shall, consistent with applicable federal laws, also extend outside the exterior boundaries of Ponca Indian Country to any person, or property which are or may hereafter be, included within the jurisdiction of the Tribe under any laws of the United States or of the tribe.

SECTION 2A. The Ponca Business Committee shall be authorized to exercise all executive, legislative, and judicial powers of the Tribe including such powers as may in the future be restored or granted to the Tribe by any laws of the United States or other authority. The Ponca Business Committee may, if it deems appropriate, establish a Tribal judicial system to which may delegate some or all the judicial power of the tribe.

SECTION 3. This Constitution and the laws enacted by the Ponca Business Committee shall be the supreme law of the Ponca Indian Tribe and all persons subject to its jurisdiction; however, the Business Committee shall exercise its power consistent with the provisions of this Constitution and federal law.

SECTION 4. In addition to the powers authorized by Section 2 of the Article, the Ponca Business Committee shall be authorized to exercise those powers set forth in the Tribe's corporate charter under the Oklahoma Indian Welfare Act.



# Ponca Tribe of Oklahoma

Box 2, White Eagle ♦♦ (405) 762-8104 ♦♦ Ponca City, Oklahoma 74601

Ext. ....

## RESOLUTION

No. 14 FY 1984

Whereas, the Ponca Tribal Business Committee is the sovereign authority of the Ponca Tribe under the Constitution and By-Laws of the Ponca Tribe ratified September 20, 1950, and

Whereas, a Tribal Resolution is the legal instrument by which complicated and controversial tribal issues of a particular subject area may be resolved, decided, and disposed, and

Whereas, The Ponca Tribal Business Committee reserves the right to uphold, elaborate, rescind, and amend any and all resolutions promulgated by current and previous business committees, and

Whereas, the Ponca Tribe has adopted, through Resolution Number 34, FY 1979, the Code of Federal Regulations (CFR) 25, Part II, Law and Order, and the Bureau of Indian Affairs has established Court Rules, Court of Indian Offenses, Anadarko Area Office jurisdiction, with Court Judges, Associate Judges, and special criminal officers, and

Whereas, the Ponca Tribal Constitution, Article VIII, Jurisdiction and Powers of the Ponca Tribal Business Committee, Section 2A states, "The Ponca Tribal Business Committee may, if it deems appropriate, establish a Tribal Judicial System to which it may delegate some or all of the judicial powers of the tribe, and

Whereas, the experience of compromising the sovereign authority of the Ponca Tribe for these past five years has, in some regards, been cumbersome and unsatisfactory, now therefore be it

Resolved pursuant to the Constitution and By-Laws, Article VIII, of the Sovereign Ponca Tribe of Oklahoma, retains the Court Rules, Court of Indian Offenses, Anadarko Area jurisdiction, applicable to our tribe in operations of our law and order system; except for civil disputes against the Ponca Tribal Business Committee and its Election Board, which we possess and hold as an inherent intratribal area of jurisdiction.

## CERTIFICATION

The foregoing Resolution of the Ponca Tribal Business Committee, at a legally called session in which a quorum was present, was duly adopted and approved on 12-16, 1983 by the affirmative vote of 6 for; 0 against; and 0 absent.

Sylvester Kemble  
Helen Overland  
Minister Dwyer

Burgess C. Pensoneau  
Dan Jones  
Steve L. Pensoneau

EXHIBIT "A"

United States Code Annotated

Title 25. Indians (Refs & Annos)

Chapter 15. Constitutional Rights of Indians (Refs & Annos)

Subchapter I. Generally (Refs & Annos)

25 U.S.C.A. § 1302

§ 1302. Constitutional rights

Effective: July 29, 2010

[Currentness](#)

**(a) In general**

No Indian tribe in exercising powers of self-government shall--

- (1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;
- (2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
- (3) subject any person for the same offense to be twice put in jeopardy;
- (4) compel any person in any criminal case to be a witness against himself;
- (5) take any private property for a public use without just compensation;
- (6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense (except as provided in subsection (b));

(7)(A) require excessive bail, impose excessive fines, or inflict cruel and unusual punishments;

(B) except as provided in subparagraph (C), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 1 year or a fine of \$5,000, or both;

(C) subject to subsection (b), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 3 years or a fine of \$15,000, or both; or

(D) impose on a person in a criminal proceeding a total penalty or punishment greater than imprisonment for a term of 9 years;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

**(b) Offenses subject to greater than 1-year imprisonment or a fine greater than \$5,000**

A tribal court may subject a defendant to a term of imprisonment greater than 1 year but not to exceed 3 years for any 1 offense, or a fine greater than \$5,000 but not to exceed \$15,000, or both, if the defendant is a person accused of a criminal offense who--

(1) has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or

(2) is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.

**(c) Rights of defendants**

In a criminal proceeding in which an Indian tribe, in exercising powers of self-government, imposes a total term of imprisonment of more than 1 year on a defendant, the Indian tribe shall--



(1) provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; and

(2) at the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;

(3) require that the judge presiding over the criminal proceeding--

(A) has sufficient legal training to preside over criminal proceedings; and

(B) is licensed to practice law by any jurisdiction in the United States;

(4) prior to charging the defendant, make publicly available the criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances) of the tribal government; and

(5) maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.

**(d) Sentences**

In the case of a defendant sentenced in accordance with subsections (b) and (c), a tribal court may require the defendant--

(1) to serve the sentence--

(A) in a tribal correctional center that has been approved by the Bureau of Indian Affairs for long-term incarceration, in accordance with guidelines to be developed by the Bureau of Indian Affairs (in consultation with Indian tribes) not later than 180 days after July 29, 2010;

(B) in the nearest appropriate Federal facility, at the expense of the United States pursuant to the Bureau of Prisons tribal prisoner pilot program described in section 304(c) of the Tribal Law and Order Act of 2010;

(C) in a State or local government-approved detention or correctional center pursuant to an agreement between the Indian tribe and the State or local government; or

(D) in an alternative rehabilitation center of an Indian tribe; or

(2) to serve another alternative form of punishment, as determined by the tribal court judge pursuant to tribal law.

**(e) Definition of offense**

In this section, the term “offense” means a violation of a criminal law.

**(f) Effect of section**

Nothing in this section affects the obligation of the United States, or any State government that has been delegated authority by the United States, to investigate and prosecute any criminal violation in Indian country.

**CREDIT(S)**

(Pub.L. 90-284, Title II, § 202, Apr. 11, 1968, 82 Stat. 77; Pub.L. 99-570, Title IV, § 4217, Oct. 27, 1986, 100 Stat. 3207-146; Pub.L. 111-211, Title II, § 234(a), July 29, 2010, 124 Stat. 2279.)

25 U.S.C.A. § 1302, 25 USCA § 1302

Current through P.L. 118-46. Some statute sections may be more current, see credits for details.

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58 FR 54406-01, 1993 WL 420575(F.R.)  
RULES and REGULATIONS  
DEPARTMENT OF COMMERCE  
Bureau of Indian Affairs  
25 CFR Part 11  
RIN: 1076-AA01

Law and Order on Indian Reservations

Thursday, October 21, 1993

\*54406 AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is revising its regulations governing Courts of Indian Offenses to provide those courts with a complete and updated code of laws, and to clarify the jurisdiction of those courts and their relationship to tribal governments and the Department of the Interior.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Judicial Services, Bureau of Indian Affairs, 1849 C St., NW., Mail Stop 2611-MIB, Washington, DC 20240-4001, telephone number (202) 208-4400.

SUPPLEMENTARY INFORMATION: This rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Proposed regulations were published in the Federal Register on October 24, 1985 (50 FR 43235). The period of public comment closed on December 23, 1985. Numerous comments were received and reviewed. As a result, some changes were made as discussed in detail below.

\* \* \* \* \*

\*54413 (b) Any civil action commenced in a Court of Indian Offenses shall be barred unless the complaint is filed within three years after the right of action first accrues.

25 CFR § 11.104

**§11.104 Jurisdictional limitations.**

(a) No Court of Indian Offenses may exercise any jurisdiction over a Federal or state official that it could not exercise if it were a tribal court.

(b) Unless otherwise provided by a resolution or ordinance of the tribal governing body of the tribe occupying the Indian country over which a Court of Indian Offenses has jurisdiction, no Court of Indian Offenses may adjudicate an election dispute or take jurisdiction over a suit against the tribe or adjudicate any internal tribal government dispute.

(c) The decision of the BIA on who is a tribal official is binding in a Court of Indian Offenses.

(d) The Department of the Interior will accord the same weight to decisions of a Court of Indian Offenses that it accords to decisions of a tribal court.

(e) A tribe may not be sued in a Court of Indian Offenses unless its tribal governing body explicitly waives its tribal immunity by tribal resolution or ordinance.

**Subpart B—Courts of Indian Offenses; Personnel; Administration**

**25 CFR § 11.200**

**§11.200 Composition of court.**

- (a) Each court shall be composed of a trial division and an appellate division.
- (b) A chief magistrate will be appointed for each court who will, in addition to other judicial duties, be responsible for the administration of the court and the supervision of all court personnel.
- (c) Appeals shall be heard by a panel of three magistrates who were not involved in the trial of the case.
- (d) Decisions of the appellate division are final and are not subject to administrative appeals within the Department of the Interior.

**25 CFR § 11.201**

**§11.201 Appointment of magistrates.**

- (a) Each magistrate shall be appointed by the Assistant Secretary—Indian Affairs or his or her designee subject to confirmation by a majority vote of the tribal governing body of the tribe occupying the Indian country over which the court has jurisdiction, or, in the case of multi-tribal courts, confirmation by a majority of the tribal governing bodies of the tribes under the jurisdiction of a Court of Indian Offenses.
- (b) Each magistrate shall hold office for a period of four years, unless sooner removed for cause or by reason of the abolition of the office, but is eligible for reappointment.
- (c) No person is eligible to serve as a magistrate of a Court of Indian Offenses who has ever been convicted of a felony or, within one year of the date of service or application, of a misdemeanor.
- (d) No magistrate shall be qualified to act as such wherein he or she has any direct conflicting interest, real or apparent.
- (e) A tribal governing body may set forth such other qualifications for magistrates of the Court of Indian Offenses as it deems appropriate, subject to the approval of the Assistant Secretary—Indian Affairs, or his or her designee.
- (f) A tribal governing body may also recommend requirements for the training of magistrates of the Court of Indian Offenses to the Assistant Secretary—Indian Affairs.

**25 CFR § 11.202**

**§11.202 Removal of magistrates.**

Any magistrate of a Court of Indian Offenses may be suspended, dismissed or removed by the Assistant Secretary—Indian Affairs, or his or her designee, for cause, upon the written recommendation of the tribal governing body, and, in the case of multi-tribal courts, upon the recommendation of a majority of the tribal governing bodies of the tribes under the jurisdiction of a Court of Indian Offenses, or pursuant to his or her own discretion.

**25 CFR § 11.203**

**§11.203 Court clerks.**

- (a) Except as may otherwise be provided in a contract with the tribe occupying the Indian country over which the court has jurisdiction, the chief magistrate shall appoint a clerk of court for the Court of Indian Offenses within his or her jurisdiction, subject to the superintendent's approval.
- (b) The clerk shall render assistance to the court, to local law enforcement officers and to individual members of the tribe in the drafting of complaints, subpoenas, warrants, commitments, and other documents incidental to the functions of the court. The clerk shall also attend and keep a record of all proceedings of the court and manage all monies received by the court.
- (c) The clerk of court shall forward any monies received on judgments due to the person, agency, or corporation to which entitled, within 30 days unless directed otherwise by a magistrate of the Court of Indian Offenses.

**25 CFR § 11.204**

**§11.204 Prosecutors.**

Except as may otherwise be provided in a contract with the tribe occupying the Indian country over which the court has jurisdiction, the superintendent shall appoint a prosecutor for each Court of Indian Offenses within his or her jurisdiction.

25 CFR § 11.205

**§11.205 Standards governing appearance of attorneys and lay counselors.**

(a) No defendant in a criminal proceeding shall be denied the right to counsel.

(b) The chief magistrate shall prescribe in writing standards governing the admission and practice in the Court of Indian Offenses of professional attorneys and lay counselors.

25 CFR § 11.206

**§11.206 Court records.**

(a) Each Court of Indian Offenses shall keep a record of all proceedings of the court containing the title of the case, the names of the parties, the complaint, all pleadings, the names and addresses of all witnesses, the date of any hearing or trial, the name of any magistrate conducting such hearing or trial, the findings of the court or jury, the judgment and any other information the court determines is important to the case.

(b) The record in each case shall be available for inspection by the parties to the case.

(c) Except for cases in which a juvenile is a party or the subject of a proceeding, and for cases whose records have been sealed by the court, all case records shall be available for inspection by the public.

(d) Such court records are part of the records of the BIA agency having jurisdiction over the Indian country where the Court of Indian Offenses is located and shall be protected in accordance with 44 U.S.C. 3102.

25 CFR § 11.207

**§11.207 Cooperation by Bureau of Indian Affairs Employees.**

(a) No employee of the BIA may obstruct, interfere with, or control the functions of any Court of Indian Offenses, or influence such functions in any manner except as permitted by Federal statutes or the regulations in this part or in response to a request for advice or information from the court.

(b) Employees of the BIA shall assist the court, upon its request, in the preparation and presentation of facts in the case and in the proper treatment of individual offenders.

25 CFR § 11.208

**§11.208 Payment of judgments from individual Indian money accounts.**

(a) Any Court of Indian Offenses may make application to the superintendent who administers the individual Indian money account of a defendant who has failed to satisfy a money judgment from the court to obtain payment of the judgment from funds in the defendant's \*54414

Code of Federal Regulations

Title 25. Indians

Chapter I. Bureau of Indian Affairs, Department of the Interior

Subchapter B. Law and Order

Part 11. Courts of Indian Offenses and Law and Order Code (Refs & Annos)

Subpart A. Application; Jurisdiction (Refs & Annos)

25 C.F.R. § 11.118

§ 11.118 What are the jurisdictional limitations of the Court of Indian Offenses?

Effective: August 11, 2008

Currentness

(a) A Court of Indian Offenses may exercise over a Federal or State official only the same jurisdiction that it could exercise if it were a tribal court. The jurisdiction of Courts of Indian Offenses does not extend to Federal or State employees acting within the scope of their employment.

(b) A Court of Indian Offenses may not adjudicate an election dispute, take jurisdiction over a suit against a tribe, or adjudicate any internal tribal government dispute, unless the relevant tribal governing body passes a resolution, ordinance, or referendum granting the court jurisdiction.

(c) In deciding who is a tribal official, BIA will give deference to a decision of the Court of Indian Offenses, acting as a tribal forum by resolution or ordinance of a tribal governing body under paragraph (b) of this section.

(d) A tribe may not be sued in a Court of Indian Offenses unless its tribal governing body explicitly waives its tribal immunity by tribal resolution or ordinance.

SOURCE: 58 FR 54411, Oct. 21, 1993; 73 FR 39859, July 11, 2008, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; 42 Stat. 208, 25 U.S.C. 13; 38 Stat. 586, 25 U.S.C. 200.

Notes of Decisions (86)

Current through May 7, 2024, 89 FR 38835. Some sections may be more current. See credits for details.

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Code of Federal Regulations

Title 25. Indians

Chapter I. Bureau of Indian Affairs, Department of the Interior

Subchapter B. Law and Order

Part 11. Courts of Indian Offenses and Law and Order Code (Refs & Annos)

Subpart H. Appellate Proceedings

25 C.F.R. § 11.800

§ 11.800 Jurisdiction of appellate division.

Currentness

The jurisdiction of the appellate division shall extend to all appeals from final orders and judgments of the trial division, by any party except the prosecution in a criminal case where there has been a jury verdict. The appellate division shall review all issues of law presented to it which arose in the case, but shall not reverse the trial division decision unless the legal error committed affected a substantial right of a party or the outcome of the case.

SOURCE: 58 FR 54411, Oct. 21, 1993; 73 FR 39859, July 11, 2008, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; 42 Stat. 208, 25 U.S.C. 13; 38 Stat. 586, 25 U.S.C. 200.

Current through May 7, 2024, 89 FR 38835. Some sections may be more current. See credits for details.

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## Rule 2.15 Briefs

### (a) Form of a Brief.

(1) Cover. The front cover of a brief must contain:

- (A) the number of the case centered at the top;
- (B) the name of the court;
- (C) the title of the case as used in the trial court;
- (D) the nature of the proceeding (e.g., appeal, application for writ, motion, etc) and the name of the court, agency, or board below;
- (E) the title of the brief, identifying the party or parties for whom the brief is filed; and
- (F) the name, office address, and telephone number of counsel representing the party for whom the brief is filed.

(2) Binding. The original brief must be bound in the upper left corner and each copy must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open.

(3) Paper Size, Line Spacing, and Margins. The brief must be on 8 1/2 by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(4) Length. A principal brief may not exceed 30 pages, and a reply brief 15 pages.

(b) Appellant's Brief. The appellant's brief must contain, under appropriate headings and in the order indicated:

(1) a table of contents, with page references;

(2) a table of authorities - cases (alphabetically arranged), statutes, and other authorities, with references to the pages of the brief where they are cited;

(3) a jurisdictional statement that sets out the statutory or regulatory authority of this court to review the decision of the trial court or tribunal;

(4) a statement of the issues presented for review;

(5) a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record;

(6) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;

(7) the argument, which must contain appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies;

(8) a short conclusion stating the precise relief sought; and

(9) a notation that a copy was provided to the opposing party(ies).

(c) Appellee's Brief. The appellee's brief must conform to the requirements of the appellant's brief, except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement:

- (1) the jurisdictional statement;
- (2) the statement of the issues; and
- (3) the statement of the case.

(d) Reply Brief. The appellant may file a brief in reply to the appellee's brief. Unless the court permits, no further briefs may be filed. A reply brief must contain a table of contents, with page references, and a table of authorities - cases (alphabetically arranged), statutes, and other authorities - with references to the pages of the reply brief where they are cited.

(e) Reproduction of Statutes, Ordinances, Rules, Regulations, etc. If the court's determination of the issues presented requires the study of statutes, ordinances, rules, regulations, etc., the relevant parts must be set out in the brief or in an addendum at the end.

(f) Cross appeals. The party who files a notice of appeal first is the appellant for the purposes of this rule and Rules 2.30 and 2.34. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant.

(g) Unless the court permits otherwise, no brief may exceed 30 pages in length.