

IN THE APPELLATE COURT OF THE CONFEDERATED SALISH AND KOOTENAI
TRIBES OF THE FLATHEAD RESERVATION, PABLO, MONTANA

CASEY J. COUTURE and	*	
MARK J. COUTURE,	*	
	*	Cause No. <u>AP-CV-004-93</u>
Appellants,	*	
vs.	*	
	*	
	*	ORDER DISMISSING APPEAL
CONFEDERATED SALISH AND	*	
KOOTENAI TRIBES,	*	
	*	
Respondent.	*	
	*	

On October 26, 1992 the trial court ruled that Casey and Mark Couture violated Ordinance 44D of the Confederated Salish and Kootenai Tribes by transporting big game within the exterior boundaries of the Reservation while accompanied by a non-member of the Tribes. On November 27, 1992 the lower court assessed each a \$500 fine, with \$250 suspended if certain conditions were met.

On December 11, 1992 the Coutures filed a notice of appeal. The case was transferred to the Civil Appellate Court on February 16, 1993. Pursuant to Rule 10(b) of the Tribal Court Appellate Procedures, the Coutures' appellate brief was to have been filed on or about March 16, 1993. To date, no brief has been filed, nor has appellant moved the Court for an extension of time.

While the Tribe has not moved for dismissal, Chapter II, §3 of the Tribal Law and Order Code authorizes this Court to apply federal law in appropriate circumstances. Rule 3(a) of the Federal Rules of Appellate Procedure provides in relevant part that "[f]ailure of an appellant to take any step other than the timely

filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the court of appeals deems appropriate, which may include dismissal of the appeal."

Rule 3(a) explicitly authorizes the court of appeals to dismiss an appeal for the failure of the appellant to comply with the requirements of the rules, including failure to file a brief. See 9 Moore's Federal Practice, ¶ 203.12, "Effect of Failure to Take Further Steps After Filing Notice of Appeal," (1993). Further, it is usually held that an issue not briefed is waived. Therefore, if no brief is filed, there are no issues before the court unless, perhaps, the court of appeals were to inquire into issues sua sponte. See Id. 3-58, n. 19. This Court will not do so here.

Failure to file a timely brief is culpable and will not be excused. See Stotler and Co. v. Able, 837 F.2d 1425, 1427 (7th Cir. 1988). Failure of an appellant to comply with appeal requirements by filing briefs in the appellate court is in itself sufficient to justify dismissal of the appeal. See Stevens v. Security Pacific National Bank, 538 F.2d 1387, 1389 (9th Cir. 1976).

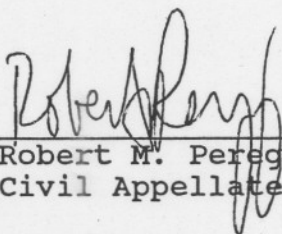
The ultimate sanction of dismissal rests in the sound discretion of the court in light of all of the circumstances. Moore, supra, at 3-60. In this case, appellants are represented by Tribal Court advocates. Their brief was due over two months ago, and they have not filed for an extension of time. In view of these considerations, this Court considers the appeal to have been

abandoned. See Moore, supra, at 3-58, n. 19.

In light of the above, and in the interests of the sound and orderly administration of justice, the APPEAL IS DISMISSED.

SO ORDERED this 18th day of May, 1993.




Robert M. Peregoy, Chairman
Civil Appellate Panel

CERTIFICATE OF SERVICE

I, Susie Loughlin, Chief Clerk of Court hereby do certify that I caused true and correct copies of the attached ORDER DISMISSING APPEAL on this 25th day of May 1993 to the parties first named at the addresses shown by depositing said in the U.S. Mail, postage prepaid at Pablo, Montana or by hand-delivering on this date stated below:

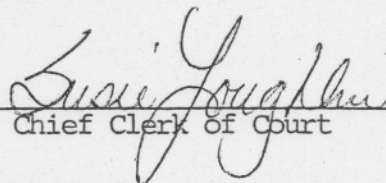
Winona Tanner
Court Advocate Department

Leslie Kallowat
Court Advocate Department

Majel Bird
Tribal Prosecutor

Casey and Mark Couture
1030 Second Street
St. Maries, ID 83861

May 25th, 1993
Date


Chief Clerk of Court