



Lac Courte Oreilles
Consumer Financial Services
Regulatory Authority

REGULATION 2023-001

DISPUTE RESOLUTION REGULATION

I. GENERAL PROVISIONS

1.01 Scope.

The Consumer Financial Services Regulatory Authority Dispute Resolution Regulation (“Regulation”) shall govern the practice and procedure of all Formal Dispute Resolution Proceedings under § CMP.2.9.040 of the Tribal Consumer Financial Services Regulatory Code (“Code”).

1.02 Effective Date.

The Regulation shall take effect immediately upon publication by the Authority. The Regulation governs all proceedings in actions brought on or after the date the Authority publishes the Regulation, and all further proceedings in actions then pending.

1.03 Construction of Regulation.

- A. The Regulation shall be construed to secure a fair, efficient, and impartial determination of the issues presented consistent with due process.
- B. The Regulation is meant to supplement, not displace, the Formal Dispute Resolution Procedure created in § CMP.2.9.040 of the Code. If the procedure in the Code conflicts with the Regulation, the procedures in the Code govern.

1.04 Definitions.

For purposes of the Regulation, the definitions in Code § CMP.2.2.010 apply here. Additionally, the following definitions apply:

- A. “Agent” means the Authority’s Regulatory Agent referenced in § 2 CMP.2.3.060 of the Code.
- B. “Authority” means the Consumer Financial Services Regulatory Authority, a tribal governmental agency, established by § CMP.2.3.010 *et seq.* of the Code as the governmental subdivision of the Tribe charged with the implementation of the Code and regulations of the Tribe as defined and described in the Code and pursuant to Tribal law.
- C. “Business Day” means all calendar days except Saturdays, Sundays, and legal public holidays.

- D. "Code" means the Tribal Consumer Financial Services Regulatory Code as approved and adopted by Governing Board Resolution No. 15-88, as amended by Governing Board Resolution Nos. 16-21 and 93-2021.
- E. "Date of Receipt" means the date on which the Authority receives a filing.
- F. "Formal Dispute Resolution Procedure" means the procedure created by § CMP.2.9.040 of the Code.
- G. "Governing Board" means the Tribal Governing Board of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, the governing body of the Tribe as defined and described in the Tribe's Constitution and pursuant to Tribal law.
- H. "Person" means an individual, partnership, association, corporation, limited liability company, or other legal entity, however organized. The term does not include any government or government agency.
- I. "Petition" means a Formal Dispute Resolution Proceeding Petition.
- J. "Petitioner" means a person who files a Petition.
- K. "Presiding Officer" means any examiner appointed by the Authority for the purpose of conducting a hearing. The Presiding Officer may be an agent or an advisor employed under CMP 2.3.100(6)
- L. "Respondent" means a person against whom a proceeding is commenced.
- M. "Regulation" means the Tribal Consumer Financial Services Regulatory Authority Dispute Resolution Regulation.
- N. "Tribal Court" means the Lac Courte Oreilles Band of Lake Superior Chippewa Indians Tribal Court.
- O. "Tribe" means the Lac Courte Oreilles Band of Lake Superior Chippewa Indians.

1.05 Computation of Time.

- A. In computing any period of time prescribed or allowed by this Regulation, the time in which an act is to be done shall be computed by excluding the first day, and including the last, unless the last day is not a business day, in which case the period will run until the end of the next business day.
- B. Unless otherwise specified by the Authority, the date of receipt of a filing by the Authority shall be the date used to determine whether a pleading or other paper has been timely filed.

1.06 Presiding Officer; Appointment; Powers; Communications.

- A. The Authority shall appoint a Presiding Officer to conduct Formal Dispute Resolution proceedings according to the Code and this Regulation. The powers of the Presiding Officer shall include, but are not limited to:
1. Conducting a full, fair, and impartial hearing;
 2. Taking action to avoid unnecessary delay in the disposition of the proceedings;
 3. Maintaining proper decorum;
 4. Adjourning hearings when necessary to avoid undue disruption of the proceedings;
 5. Administering oaths and affirmations;
 6. Ruling upon offers of proof;
 7. Ruling upon motions and examine witnesses;
 8. Limiting repetitious testimony and time for presentations;
 9. Setting the time and place for continued hearings and fix the time for the filing of briefs and other documents;
 10. Directing the parties to appear, or confer, or both, to consider clarification of issues, stipulations of facts, stipulations of law, settlement, and other related matters;
 11. Requiring the parties to submit prehearing orders and legal memorandum;
 12. Examining witnesses as deemed necessary;
 13. Granting applications for subpoenas and subpoena witnesses and documents to the extent authorized by Tribal law;
 14. Issuing orders necessary to facilitate hearings and take any other appropriate action authorized by Tribal law; and
 15. On motion, or on the Presiding Officer's own initiative, adjourning hearings, except where limited by Tribal law.
- B. Promptly after receipt of notice indicating that the Presiding Officer will preside, or upon discovering facts establishing grounds for disqualification, a party may move to disqualify a Presiding Officer based on actual bias to a particular party, personal prejudice to a particular party, direct or future financial advantage in the outcome of the proceeding, or direct or future pecuniary interest. Any motion must demonstrate the factual basis for disqualification as well as show that the Presiding Officer is so

impaired that a fair procedure and hearing cannot be held before that Presiding Officer. A party's unilateral perception of a basis for disqualification alone cannot serve as a basis for disqualification.

- C. The Presiding Officer may recuse himself at any time and without explanation. No Agent or Presiding Officer may serve as a witness or be called to testify. No Agent or Presiding Officer may be a party to any proceedings before the Authority.
- D. A Presiding Officer who would otherwise be recused or disqualified by the terms of this Regulation may disclose on the record the basis of disqualification and may ask the parties and their attorneys to consider, out of his or her presence, whether to waive disqualification. If, following disclosure, the parties agree that the Presiding Officer should not be disqualified, the Presiding Officer may preside over the proceeding. The agreement shall be incorporated into the hearing record.
- E. If the Presiding Officer is disqualified, incapacitated, deceased, otherwise removed from, or unable to continue a hearing, the Authority may appoint a new Presiding Officer, an outside service provider, or tribunal to preside over the dispute.
- F. Ex Parte Communications Prohibited. Once a dispute is brought forth under the Formal Dispute Resolution Procedure pursuant to § CMP.2.9.040 of the Code, no person shall communicate with the Authority relating to the merits of the dispute without the knowledge and consent of all other parties to the matter, except the Authority may, when circumstances require, communicate with parties or attorneys for scheduling, or other administrative purposes that do not deal with substantive matters or issues on the merits.

1.07 Attorneys; Misconduct; Withdrawal and Substitution.

- A. A party may appear in person, by an attorney, or by a lay advocate.
- B. To appear on behalf of a party, an attorney or lay advocate shall file a notice of appearance with the Authority. After a notice of appearance has been filed or after an appearance is made on the record, service of all papers in a proceeding shall be made upon the person whose name appears on the notice of appearance, at the email address indicated on the notice of appearance.
- C. An appearance shall be effective as service on the party represented.
- D. An attorney or lay advocate who has entered an appearance may withdraw from the case, or be substituted for another attorney or lay advocate, only by order of the Authority. Timely notice of withdrawal or substitution shall be provided to all parties, their attorneys or lay advocates, and the Presiding Officer. Granting withdrawal shall be liberally given.

1.08 Filing; Service of Documents and Other Pleadings.

- A. All filings shall be electronically filed via email to the Authority. The Authority shall maintain an email address for such purposes which shall be made publicly available on the Authority's website. All parties shall be carbon copied on all filings. If an appearance has been filed by an attorney or lay advocate, documents and pleadings shall be served via carbon copy on the attorney or lay advocate of record.
- B. Documents received by the Authority by 11:59 pm Central Time are considered filed and served on the date received.
- C. All filings must include a caption or cover sheet with the following information:
 - 1. Case name;
 - 2. Case number;
 - 3. Document title; and
 - 4. Name, telephone number, and email address of sender.
- D. Unless a motion for leave for additional pages is granted, no filings may be more than fifteen (15) pages.
- E. The Presiding Officer may decline to consider any document or pleading not served pursuant to this Regulation.

1.09 Notice of Hearing.

- A. At least 14 days before a hearing on a Petition, the Presiding Officer shall issue a notice of hearing. For all other types of hearings, the Presiding Officer shall issue a notice of hearing at least 5 days before the hearing.
- B. All notices shall contain:
 - 1. The address and phone number of the hearing location;
 - 2. A statement of the date, hour, place, and nature of the hearing;
 - 3. A statement of the legal authority and jurisdiction under which the hearing is being held;
 - 4. The action intended by the Presiding Officer, if any;
 - 5. A statement of the issues or subject of the hearing. On request, the Presiding Officer may require a party to furnish a more definite and detailed statement of the issues; and
 - 6. A citation to the applicable law and rules, if any.

1.10 Email Address and Telephone Number of Parties.

- A. All parties to a dispute shall keep the Authority informed of their current email addresses and telephone numbers.
- B. Failure to keep the Authority informed of a current email address or telephone number may result in a proceeding in the absence of a party who fails to appear.

II. COMMENCEMENT OF PROCEEDINGS

2.01 Formal Dispute Resolution Proceeding Petitions.

- A. A Petition may be filed with the Authority upon a Petitioner's dissatisfaction with a Licensee's initial determination made pursuant to § CMP.2.9.030 of the Code.
- B. Each Petition shall contain all of the following information:
 - 1. The Petitioner's name, legal residence, mailing address, if different than the address for the legal residence, email address, and telephone number;
 - 2. The name of the opposing party or parties;
 - 3. A description of the matter in controversy;
 - 4. A statement of the amount or amounts in dispute;
 - 5. A clear and concise statement of the facts upon which the Petitioner relies, except for facts that the opposing party has the burden of proving;
 - 6. The relief sought; and
 - 7. The signature of the Petitioner or Petitioner's attorney or lay advocate.

2.02 Response to Petition.

The Licensee shall have fourteen (14) days from the date of service of the Petition to file a Response. Failure to file a Response may result in a default judgment, as provided in § 5.11 of this Regulation.

2.03 Motions Practice.

- A. All requests for action addressed to the Presiding Officer, other than during a hearing, shall be made by written motion. Motions shall state specific grounds and describe the action or order sought. A copy of all written motions or requests for action shall be served pursuant to this Regulation.
- B. All motions shall be filed at least fourteen (14) days prior to the date set for hearing unless other scheduling provisions prevent compliance with this timeline or the need

for the motion could not reasonably have been foreseen fourteen (14) days prior to hearing.

- C. A response to a motion may be filed within seven (7) days after service of the motion unless otherwise ordered by the Presiding Officer or unless other scheduling provisions prevent compliance with this timeline.
- D. All motions and responses shall include citations of supporting authority and, if germane, supporting affidavits or citations to evidentiary materials of record.
- E. A request for oral argument on a motion shall be made in writing. The Presiding Officer has discretion to require oral argument on a motion or allow or deny oral argument based on a request from a party.
- F. Notice of oral argument on a motion shall be given prior to the date set for hearing.
- G. The Presiding Officer shall rule upon motions within a reasonable time.
- H. Multiple motions may be consolidated for oral argument.
- I. A party may withdraw a motion for oral argument at any time.
- J. Any relief granted by the Presiding Officer in response to a motion should be incorporated in a written order.
- K. **Motions Allowed.** A party may file any motion it deems proper, founded in law or fact, and in good faith. In addition to the guidance in this Section 2.03, the following shall apply:
 - 1. **Motions for an Extension of Time; Expedite.** Requests for extensions of or to expedite any time limit established in the Regulation shall be made by written motion and filed with the Presiding Officer before the expiration of the period originally prescribed or previously extended, except as otherwise provided by Tribal law, or by stipulation of the parties. A motion under this Rule shall be granted only for good cause or on the written stipulation of the parties.
 - 2. **Motions for Dismissal; Summary Disposition.** A party may file a motion to dismiss or a motion for summary disposition of all or part of a proceeding. A motion to dismiss may be filed before a Response to a Petition and will toll the time to respond to the Petition until after the motion to dismiss is decided. A motion for summary judgment may be filed after a Response is filed. The Presiding Officer may grant dismissal or summary disposition on all or part of a proceeding if he or she determines that that any of the following exists: there is no genuine issue of material fact; there is a failure to state a claim for which relief may be granted; or there is a lack of jurisdiction or standing. If the

dismissal or summary disposition is denied, or if the decision on the motion does not dispose of the entire action, then the action shall proceed to hearing.

3. Motions for Protective Orders; Compel. A party may move for a protective order from unreasonable, oppressive, embarrassing, or disproportionate discovery, or discovery that seeks confidential or privileged information. A party may move to compel discovery responses after the time to serve responses has lapsed. For either motion, the movant must confirm that he has in good faith conferred with other parties in an effort to solve the dispute.
4. Preliminary Injunctive Relief. A party may move for preliminary injunctive relief by showing (1) that the party is likely to succeed on the merits of the dispute; (2) that the party is likely to suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in their favor; and (4) that an injunction is in the public interest.
5. Motions to Stay. A party may move to stay a dispute by showing that without a stay the movant would be substantially prejudiced and that a stay would not substantially prejudice the non-movant.
6. Motions for Sanctions; Strike. A party may move for sanctions or to strike filings when a filing does not serve a proper purpose, is not filed in good faith, is not based on a reasonable interpretation of law, is unsupported by evidence, and/or is otherwise not filed in good faith.
7. Motion to Consolidate Disputes; Bifurcate Proceedings. Any party to a dispute may file to consolidate with another ongoing dispute that shares common questions of law and/or fact so long as consolidation would not prejudice any other party. Any party to a dispute may file to bifurcate any dispute to expedite and/or economize proceeding.
8. Motion for Discovery. Motions for discovery may be filed pursuant to Section 3.01 of this Regulation and must adequately address the expectations of Section 3.01(B) and (C).
9. Motions for Reconsideration. Motions for reconsideration may be filed pursuant to Section 5.12 of this Regulation following a hearing. Under the same standards, motions for reconsideration may be filed requesting reconsideration of any decision or order.

III. DISCOVERY

3.01 Availability; Scope; Timing.

- A. A party may move for discovery after a Response is served and only as allowed under this Regulation. If discovery is allowed, interrogatories and requests for production are permitted.
- B. Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claims or defenses and proportional to the needs of the proceeding.
- C. The Presiding Officer possesses discretion to permit discovery so long as it is narrowly tailored to the precise issues raised in the Petition and/or Response. Generally, a party may obtain discovery of documents and tangible things otherwise discoverable only on a showing that (a) the party seeking discovery has substantial need of the materials in preparation for the hearing; (b) is unable to obtain the substantial equivalent of the materials by other means; and (c) the discovery sought is relevant and necessary to the Authority's review of the Petition and/or Response. In ordering discovery of such materials, the Presiding Officer shall limit discovery to documents and tangible things circumspectly and only to verify allegations of specific facts related to the Petition and/or Response.
- D. The time for completion of discovery shall be set by an order of the Presiding Officer. The order shall:
 - 1. Indicate the final service deadline for any discovery requests;
 - 2. Require that any party serving discovery requests file a certificate of service with the Authority; and
 - 3. Advise the parties that any party may move for a protective order from any discovery requests.

3.02 Stipulations.

- A. The parties may agree upon facts, or any portion of facts, in controversy by written stipulation or by a statement entered into the record.
- B. Stipulations shall be used as evidence at the hearing or subsequent proceedings.
- C. Stipulations are binding on the parties that have acknowledged acceptance of the stipulations.

3.03 Interrogatories

- A. A party may serve written interrogatories to be answered by the party to whom the interrogatories are directed.
- B. Interrogatories shall be answered separately and fully in writing under oath. If an interrogatory is objected to, the reasons for objection shall be stated in place of an answer. The answers shall be signed by the person making them and shall contain

information that is available to the party served or that could be obtained by the party from its employees, agents, representatives, or persons who may testify on the party's behalf.

- C. The party to whom the interrogatories are directed shall serve a copy of the answers on the party or the party's attorney or lay advocate submitting the interrogatories and on all other parties or their attorneys or lay advocates within fourteen (14) days after service of the interrogatories.
- D. The Presiding Officer may issue an order compelling a response if one is not received in the time specified under § 3.03(C) of this Regulation.
- E. To the extent that answers are admissible as evidence before the tribunal, answers to interrogatories may be used against the party making them, and an adverse party may introduce an answer that has not been previously offered in evidence by a party.
- F. The Presiding Officer may limit interrogatories, as justice requires, to protect the answering party from annoyance, expense, embarrassment, oppression, or violation of a privilege.
- G. A party who has given a response that was complete when made is under a duty to supplement the response to include information thereafter acquired.

3.04 Requests for Production of Documents and Tangible Things for Inspection, Copying, or Photographing; Inspection of Property.

- A. A party may serve upon another party a request to produce documents, papers, books, records, accounts, letters, photographs, objects, or tangible things, which are not privileged, which come within the scope of discovery permitted by § 3.01(B) of this Regulation, and which are in the party's possession.
- B. A party upon whom a request is served shall serve a response to the request within fourteen (14) days of service of the request. If a party upon whom a request is served does not comply with the request, then the Presiding Officer may, upon motion or its own initiative, order the party to produce any designated documents, papers, books, records, accounts, letters, photographs, objects, or tangible things, which are not privileged and come within the scope of discovery permitted by § 3.01(B) of this Regulation, and which are in the party's possession.
- C. If the party or person upon whom a request is served claims that the item is not in his, her, or its possession or that he, she, or it does not have information calculated to lead to discovery of the item's whereabouts, then he, she, or it may be ordered to submit to examination before the Presiding Officer or to other means of discovery regarding the claim.

- D. Failure to comply with an order requiring a response to discovery requests may result in a default judgment.

IV. PRETRIAL PROCEDURES

4.01 Prehearing Conferences.

- A. The Presiding Officer may hold a prehearing conference to resolve matters prior to the hearing.
- B. A prehearing conference may be convened to address matters including, but not limited to, any of the following:
 - 1. Factual and legal issues;
 - 2. Stipulations;
 - 3. Requests for official notice;
 - 4. Identification and exchange of documentary evidence;
 - 5. Admission of evidence;
 - 6. Identification and qualification of witnesses;
 - 7. Motions;
 - 8. Order of presentation;
 - 9. Scheduling;
 - 10. Position statements;
 - 11. Settlement; or
 - 12. Any other matter that will promote the orderly and prompt conduct of the hearing.
- C. Prehearing conferences may be conducted in person, by telephone, by videoconference, or other electronic means at the discretion of the Presiding Officer.
- D. When a prehearing conference has been held, the Presiding Officer shall issue a prehearing order which states the actions taken or to be taken with regard to any matter addressed at the prehearing conference.
- E. If a prehearing conference is not held, the Presiding Officer may issue a prehearing order to regulate the conduct of proceedings.
- F. If a party fails to appear for a prehearing conference after proper notice, the Presiding Officer may proceed with the conference in the absence of that party.

- G. A party who fails to attend a prehearing conference is subject to any procedural agreement reached, and any order issued, with respect to matters addressed at the conference.

V. HEARINGS

5.01 Location.

The Presiding Officer shall designate a location for all hearings under the § CMP.2.9.040 of the Code.

5.02 Timing.

A hearing on the merits of a Petition shall take place, except as otherwise determined by the Authority, no less than ten (10) days and no more than sixty (60) days after the Authority receives the Petition.

5.03 Record.

- A. The Presiding Officer shall maintain an official record of each case or proceeding.
- B. The record shall include all of the following:
1. Notice of hearings and orders of adjournment;
 2. Prehearing orders;
 3. Motions, pleadings, briefs, petitions, requests, agency rulings, and intermediate written rulings;
 4. Evidence presented;
 5. A statement of matters officially noticed;
 6. Offers of proof, objections, and rulings;
 7. An official recording of the proceeding prepared by the Presiding Officer;
 8. Transcripts, if ordered by the Presiding Officer or submitted by a party prior to issuance of a final decision;
 9. Final orders or orders on reconsideration; and
 10. Written notation of any ex parte communications referred to on the record.

5.04 Telephone and Electronic Hearings.

The Presiding Officer may conduct all or part of a hearing by telephone, video-conference, or other electronic means.

5.05 Hearing by Brief.

- A. The Presiding Officer may direct that the hearing be conducted by submission of briefs.
- B. After consulting with the parties, the Presiding Officer shall prescribe the time limits for submission of briefs and provide direction on whether filings are to be either simultaneous or successive.

5.06 Hearing Procedure.

- A. A party may make or waive opening and closing statements.
- B. The Petitioner shall present any case first.
- C. The Respondent shall then present any response.
- D. The Petitioner may then have an opportunity to rebut the Respondent.
- E. The parties may submit tangible or testimonial evidence as allowed by § 5.07 of this Regulation.
- F. The Presiding Officer may question any party or witness at any time.

5.07 Evidence; Admissibility; Objections; Submission in Written Form; Documentary Evidence; Official Notice; Record.

- A. The Presiding Officer may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.
- B. Irrelevant, immaterial, or unduly repetitious evidence may be excluded.
- C. Claims of privilege shall be evaluated using federal authority from within the United States Circuit Court, Seventh Circuit.
- D. Objections to offers of evidence may be made and shall be noted in the record.
- E. For the purpose of expediting a hearing, and when the interests of the parties will not be substantially prejudiced, the Presiding Officer may require submission of all or part of the evidence in written form.
- F. The Presiding Officer may take official notice of judicially cognizable facts, and general, technical, or scientific facts within the Authority's specialized knowledge.
- G. Evidence in a proceeding shall be offered and made a part of the record if admitted by the Presiding Officer.

5.08 Witnesses

- A. The testimony of all witnesses shall be upon oath or affirmation.

- B. Witnesses may be sequestered by the Presiding Officer on his or her own initiative, or upon request of a party.
- C. Opposing parties shall be entitled to cross examine witnesses.
- D. The Presiding Officer may limit the number of witnesses to prevent cumulative or irrelevant evidence, and to prevent unnecessary delay.

5.09 Post-Hearing Brief.

A party may request an opportunity to submit a post-hearing brief. The Presiding Officer may grant or deny the request based on the nature of the proceedings. The Presiding Officer may also require a post-hearing brief on his or her own initiative.

5.10 Final Decisions and Orders.

- A. As required by CMP.2.9.040(4), the Authority shall issue a written final decision within thirty (30) days of a hearing.
- B. A written final decision shall include separate sections entitled “findings of fact” and “conclusions of law.” Findings of fact shall include a concise statement of the underlying supporting facts. Each conclusion of law shall be supported by authority or reasoned opinion.
- C. A decision or order shall be based on the record as a whole or a portion of the record. A decision or order shall be supported by competent, material, and substantial evidence.
- D. A written final decision shall state that it is a final action and may be appealed to the Tribal Court according to the procedures in the Tribal Court Rules of Civil Procedure Code.
- E. A copy of the decision or order shall be mailed on the date it is entered and issued to each party and any attorneys of record.

5.11 Default Judgment

- A. If a party fails to attend or participate in a scheduled proceeding after a properly served notice, the Presiding Officer may conduct the proceedings without participation of the absent party. The Presiding Officer may issue a default order or other dispositive order which shall state the grounds for the order.
- B. Within seven (7) days after service of a default order, the party against whom it was entered may file a written motion requesting the order be vacated. If the party demonstrates good cause for failing to attend a hearing or failing to comply with an order, the Presiding Officer may reschedule, rehear, or otherwise reconsider the

matter as required to serve the interests of justice and the orderly and prompt conduct of proceedings.

5.12 Request for Reconsideration.

- A. A party may file a request for reconsideration and the Authority may grant the request for reconsideration upon a showing of material error.
- B. A request for reconsideration shall state with specificity the material error claimed.
- C. A request for reconsideration which presents the same issues previously ruled on, either expressly or by reasonable implication, shall not be granted.
- D. A request for reconsideration shall be filed within fourteen (14) days after the issuance of a decision or order.

5.13 Remedies

The Authority may impose the following remedies on a Licensee if it has been found to have violated the Code:

- A. Order immediate compliance with the Code;
- B. Suspend or revoke a Licensee's License;
- C. Issue monetary relief to the prevailing party; and/or
- D. Order any additional relief which the Presiding Officer deems appropriate.

5.14 Awarding costs and fees; finding; hearing; evidence; reduction or denial of award; final action; amount of costs and fees; applicability of section.

- A. Upon a motion by the prevailing party, the Presiding Officer that conducts a contested case may award to a prevailing party, other than a Licensee, the costs and fees incurred by the party in connection with that contested case, if the Presiding Officer finds that the nonprevailing party's position to the proceeding was frivolous.
- B. As used in this section, "costs and fees" means the normal costs incurred by a party in a dispute resolution proceeding under this Regulation, and includes all of the following:
 - 1. The reasonable and necessary expenses of expert witnesses;
 - 2. Reasonable and necessary attorney or lay advocate fees including those for purposes of appeal; and
 - 3. Any other costs and fees allowed by applicable Tribal law or regulation.

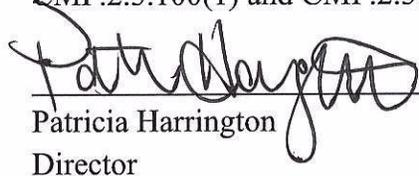
- C. The party seeking an award of costs and fees shall present evidence establishing all of the following:
1. That the position of the agency Licensee was frivolous.
 2. That the party is a prevailing party. As used in this Section, "Prevailing Party" means the party in whose favor a judgment, decree, or final order, after appeal (if any), is rendered with respect to the claims or defenses, when based on the entire record.
 3. The amount of costs and fees sought by including an itemized statement showing the rate at which the costs and fees were computed.
 4. That a final order was entered and the time has lapsed for the nonprevailing party to file an appeal (other than for the judicial review of costs and fees provided for in section).
- D. To find that position was frivolous, the Presiding Officer shall determine by a preponderance of evidence that at least 1 of the following conditions has been met:
1. The party's primary purpose in initiating the action, or defense to the action, was to harass, embarrass, or injure the prevailing party.
 2. The party had no reasonable basis to believe that the facts underlying its legal position were in fact true.
 3. The party's legal position was devoid of arguable legal merit.
- E. The Presiding Officer may reduce the amount of the costs and fees to be awarded, or deny an award, to the extent that the prevailing party engaged in conduct which unduly and unreasonably protracted the contested case.
- F. The final action taken by the Presiding Officer under this section in regard to costs and fees shall comply with the requirements in Section 5.10.
- G. The amount of costs and fees awarded under this section shall include those reasonable and necessary costs actually incurred by the prevailing party, fees for reasonable and necessary attorney, and any costs allowed by law or by a regulation promulgated under the Code.
- H. The amount of fees awarded under this section shall be based upon the prevailing market rate for the kind and quality of the services furnished. An attorney or agent fee shall not be awarded at a rate of more than \$75.00 per hour unless the Presiding Officer determines that special circumstances existed justifying a higher rate or an applicable regulation promulgated by the Authority provides for the payment of a higher rate.

PROMULGATION

Pursuant to the Code § CMP.2.3.120, on, this regulation was proposed and notice was sent to the Tribe and Licensees via email and the proposal was open for comment until. There were no comments on the proposal. Accordingly, the regulation is duly promulgated and effective upon certification.

CERTIFICATION

This regulation was duly promulgated pursuant to the Authority's powers under the Code §§ CMP.2.3.100(1) and CMP.2.3.120 on.



Patricia Harrington
Director