

SAINT REGIS MOHAWK TRIBE ELECTION BOARD—APPEAL PANEL
POLICY AND PROCEDURES FOR HEARINGS

Section 1. Purpose and Policy

1-1. Purpose. The purpose of this Policy and Procedures is to outline the adopted procedures for the Saint Regis Mohawk Tribe Election Board—Appeal Panel (“Appeal Panel”) and to provide Tribal Members’ notice of such procedures for hearings related to Elections, Candidate eligibility and Referendums. This policy and procedures shall not be construed to create hearing rights where no hearing rights exist under the Saint Regis Mohawk Tribe Updated Election and Referendum Ordinance (TCR 2022-52 or as amended).

1-2. Policy. It is the policy of the Saint Regis Mohawk Tribe (“Tribe” or “SRMT”) that the hearing procedures for the Appeal Panel shall be provided publicly to the Community for each Election, Special Election, Recall Election and Referendum. It is to ensure that all individuals are presented with a fair opportunity to file any appeal that may arise under the Updated Election and Referendum Ordinance (TCR 2022-52 or as amended) and to defend against any such appeal.

1-3. Adoption. This Policy and Procedures was adopted by the Appeal Panel at a duly constituted meeting as evidenced by their signature below. This Policy and Procedures may be updated for each Election cycle or Referendum. Should a provision of this Policy and Procedures or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Policy and Procedures or impact any decision made hereunder. In the event of a conflict between a provision of this Policy and Procedures and a provision of another law, the provisions herein shall control. This Policy and Procedures is adopted under authority of the Updated Election and Referendum Ordinance (TCR 2022-52 or as amended).

Section 2. Definitions

2-1. Definitions. The definitions from the Updated Election and Referendum Ordinance (TCR 2022-52 or as amended) shall govern the definitions of words and phrases used within this Policy and Procedures except as otherwise indicated herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Decision” shall mean the written conclusion of the hearing body concerning the facts and alleged violations of the Updated Election and Referendum Ordinance (TCR 2022-52 or as amended).

(b) “Deliberations” shall mean the confidential process during which the Appeal Panel discuss the issues presented before it.

(c) “Dispositive motion” shall mean a request to the Appeal Panel to entirely dispose of one (1) or more claims in favor of the party making the request without need for a further hearing.

(d) “Evidence” shall mean documentation or testimony presented to the Appeal Panel which supports a party’s claim.

(e) “Ex parte communication” shall mean oral or written, off-the-record communication made to the Appeal Panel without notice to all of the parties that is directed to the merits or outcome of the hearing.

(f) "Appeal Panel" is the deliberative body duly constituted under Section XVI.C.6 of the Updated Election and Referendum Ordinance (TCR 2022-52 or as amended).

(g) "Scheduling order" shall mean the Appeal Panel's order establishing the dates of the hearing and any other relevant deadlines.

(h) "Summons" shall mean an order to appear before the Appeal Panel because someone has filed an appeal regarding the Updated Election and Referendum Ordinance (TCR 2022-52 or as amended).

Section 3. Notice

3-1. Notice. Each notice for either party shall be provided by the Appeal Panel to the email address or mailing address provided to the Appeal Panel.

(a) Candidate Eligibility. Whenever an appeal is filed regarding Candidate Eligibility that the Appeal Panel believes necessitates a hearing, a notice shall be provided to the complainant and to the party against whom the appeal is filed. A copy of the appeal shall be provided to the party against whom the appeal was filed. The Notice shall provide the date, time and place for the hearing which shall be no more than three (3) business days from receiving the appeal. It also shall provide that each party may review public documents relevant to the hearing at the Tribal Clerk's Office. The Tribal Clerk's policies and procedures shall govern the process and certain documents will not be available to copy and only available to review. Any copies of such documents are at the expense of the party requesting the copies (*see* TCR 2012-41; TCR 2013-32). It also shall state that if either party wants to introduce any documents during the hearing or have witnesses, a copy of the documents or list with the names of witnesses with contact information must be provided to the Appeal Panel at least one (1) day in advance of the hearing for the purpose of making the information available to all parties. It also shall state that either party has the right to be represented by counsel or representative of their choice at their own expense.

(b) Overturn Election or Referendum Results. Whenever an appeal is filed regarding overturning election results or referendum results and the Appeal Panel has determined to move forward with a hearing it shall provide Notice to the complainant and the party against whom the appeal was filed. A copy of the appeal shall be provided to the party against whom the appeal is filed or if no one was named and the appeal seeks to overturn the unofficial election results it will be provided to the Candidate-elect that appears to be the target of the appeal. The Notice shall provide the date, time and place for the hearing which shall be no more than five (5) business days after receiving the appeal. It also shall provide that the Candidate-elect or named party may file a response to the appeal to the Appeal Panel within three (3) business days, which will then be provided to the complainant. All such documents filed shall be made available at the Tribal Clerk's office for which either party may have access to review. It also shall provide that each party may review public documents relevant to the hearing at the Tribal Clerk's Office. The Tribal Clerk's policies and procedures shall govern the process and certain documents will not be available to copy and only available to review. Any copies of such documents are at the expense of the party requesting the copies (*see* TCR 2012-41; TCR 2013-32). It also shall state that if either party wants to introduce any documents or witnesses during the hearing or have witnesses, a copy of the documents or list with the names of witnesses with contact information must be provided to the Appeal Panel at least one (1) day in

advance of the hearing for the purpose of making the information available to all parties. It also shall state that either party has the right to be represented by counsel or representative of their choice at their own expense.

Section 4. Procedures

4-1. Hearing Date. On the scheduled hearing date if a party fails to appear, that party waives the right for a hearing. If the complainant fails to appear the Appeal Panel has the discretion to determine how to move forward. If the responding party fails to appear the Appeal Panel may continue with the hearing with only the complainant.

4-2. Ex Parte Communications. The Appeal Panel shall not engage in ex parte communications.

4-3. Order of Hearing. The complainant shall be able to offer an opening statement after which the responding party may offer an opening statement. The complainant shall then present his/her evidence and/or any witnesses. If witnesses are called then the responding party may question the witness. A complainant may be his/her own witness. After the complainant has presented all of the witnesses and documents the responding party may call his/her own witnesses and present his/her own documents. Any witness of the responding party may be questioned by the complainant. A responding party may be a witness. After each party has rested they may present a closing statement with the complainant going first and the responding party going second. The complainant may then offer a rebuttal closing statement. The Appeal Panel shall then excuse the parties and witnesses to deliberate.

4.4. Participants. The Appeal Panel shall have the discretion to determine whether either party may participate via an electronic platform such as zoom that has recording capabilities. The Appeal Panel shall have the discretion to determine whether witnesses may be present while others are testifying. The Appeal Panel shall have discretion to determine who may attend hearings.

4.5. Recording. Each hearing shall be recorded. Such hearings shall be maintained by the Office of Boards and Commissions.

4-6. Evidence. The Appeal Panel shall have the discretion to admit relevant and pertinent evidence without regard to the Tribe's rules of evidence for admissibility. The Appeal Panel may request relevant documents from the Election Board.

4-7. Decisions. Whenever there is a hearing, the Appeal Panel shall issue a written decision.

(a) For Candidate Eligibility a written decision must be rendered within two (2) business days of the hearing.

(b) For hearings regarding overturning election or referendum results a written decision must be rendered within five (5) days of the hearing.

Section 5. Miscellaneous

5.1. Other Procedure. If any procedure is not outlined herein, then the Appeal Panel shall look for the Updated Election and Referendum Ordinance (TCR 2022-52 or as amended) for guidance. If there is no procedure or provision within it then it shall state either orally or in writing what guided its decision.

5.2. Amendments. This Policy and Procedures shall be updated and amended at the discretion of the Appeal Panel.