



**BOIS FORTE BAND OF CHIPPEWA  
TRIBAL CODE**

**TITLE 3  
RULES OF APPELLATE PROCEDURE**

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## **BOIS FORTE TRIBAL CODE**

### **PREAMBLE**

The purpose of the Bois Forte Tribal Code (BFTC) is to, whenever possible, restore Minobimaadiziwin (the Good Path of Life) to all persons it serves by providing a progressive, non-judgmental path to health and forgiveness, in accordance with the community's traditional practices and values. First and foremost, the Bois Forte Tribal Court shall be guided by the seven defining Anishinabe teachings or core values:

1. *Nibwaakaawin* — Wisdom;
2. *Zaagi'idiwin* — Love;
3. *Minaadendamowin* — Respect;
4. *Zoongide'ewin* — Bravery;
5. *Gwayakwaadiziwin* — Honesty;
6. *Dabaadendiziwin* — Humility; and
7. *Debwewin* — Truth.

*Accordingly, the Bois Forte Tribal Court's focus in all decisions shall be on the impact it will have seven generations in the future.* If necessary, the presiding Judge may consult a community spiritual leader or elder for guidance when endeavoring to adhere to these principles and the Bois Forte Reservation Council may enact a resolution designating appropriate spiritual leaders or elders available for such consultation.

**TITLE 3  
RULES OF APPELLATE PROCEDURE**

**CHAPTER 1: PURPOSE**

**3.1.1. Purpose.**

The purpose of this Appellate Code is to promote the health, welfare, economic security, and political integrity of the Bois Forte Band of Chippewa Indians; to preserve and maintain justice; to accord the equal protection of the laws; and to further provide due process of law by creating an appellate panel to review criminal and civil decisions of the Bois Forte Tribal Court and by adopting rules of appellate procedure.

**CHAPTER 2: BOIS FORTE COURT OF APPEALS; APPELLATE JUSTICES**

**3.2.1. Creation of the Bois Forte Court of Appeals.**

There shall be a Bois Forte Court of Appeals consisting of appellate justices who may consent from time to time to sit on a panel of three to hear appeals from the Bois Forte Tribal Court. The Bois Forte Reservation Tribal Council shall approve a standing slate of appellate justices authorized to hear appeals.

**3.2.2. Appellate Justices, Qualifications.**

At least one or more of the appellate justices selected for each appellate panel shall be learned in law as evidenced by graduation from an accredited law school and having been admitted to practice before a tribal, state, or federal court. Each of the justices shall be knowledgeable about the Bois Forte Tribal Court Code, the Minnesota Chippewa Tribe constitution and by-laws, the Indian Civil Rights Act, 25 U.S.C. Section 1301-03, and the Indian Child Welfare Act, 25 U.S.C., Section 1901 et seq.

**3.2.3. Term of Office.**

Each of the appellate justices selected for the standing panel shall be appointed for a term of four (4) years and may be reappointed at the end of their terms.

**3.2.4. Compensation.**

The Reservation Tribal Council shall from time to time set the amount, terms, and nature of compensation of the appellate justices.

**3.2.5. Duties.**

The duties of the appellate justices selected to sit on a panel shall be to meet as needed for the purpose of fairly, impartially, and timely considering appeals from decisions of the Bois Forte Tribal Court as authorized by the provisions of this Title and to render their written opinion as to

the merits of the appeal. One law-trained member of each panel shall be designated as the Chief Justice and his or her duties are to:

- (a) Preside over the panel hearing the appeal.
- (b) Assign to one member of the panel, which may be himself/herself, the task of writing the opinion of the Court of Appeals.
- (c) Ensure that each of the remaining members of the panel have reviewed that written opinion and have either joined in, concurred in whole or part, dissented in whole or part, or have written a separate opinion which shall be reviewed by the other panel members.
- (d) Confer with the other panel members and rule upon any motions directed by any party to the Court of Appeals pursuant to this Title by issuing such orders as may be necessary to carry out such ruling.

### **3.2.6. Vacancies.**

The Reservation Tribal Council shall promptly fill any vacancy in the standing panel that may occur because of the death, disablement, disqualification, resignation, or removal of an appellate justice, by making temporary appointments if necessary.

### **3.2.7. Disqualification of an Appellate Justice.**

An appellate justice is disqualified to sit on the appeal of any case in which:

- (a) The justice has a direct interest in the outcome.
- (b) The justice performed some role in the trial of the case such as a witness, an advocate, a juror, an arbitrator, or any similar function.
- (c) The justice is so related to any party as to bring into question the justice's ability to render an impartial decision.

### **3.2.8. Removal.**

An appellate justice may be removed from office by the Reservation Tribal Council for just cause including but not limited to dereliction of duty, bribery, abuse of power, and unethical conduct or conduct that reflects unfavorably upon the Bois Forte Band of Chippewa. Any such removal shall be in accordance with the Bois Forte Tribal Court Code provisions for removal of trial judges.

## **CHAPTER 3: CLERK OF APPELLATE COURT**

### **3.3.1. Clerk of Appellate Court.**

The Clerk of Court for the Bois Forte Tribal Court shall serve as Clerk for the Court of Appeals. She or he may be assisted by a deputy clerk or clerks as needed for the efficient administration of the work of the Court of Appeals. Such deputy clerks shall be under the supervision of the Bois Forte Judicial Administrator and may be part or full-time and/or perform other outside duties that do not interfere with the function of the appellate court.

### **3.3.2. Selection of Appellate Panels.**

Upon the filing of an appeal, the Clerk of Court shall promptly select justices to serve on the appellate panel by lot or draw from the list of justices approved by the Bois Forte Reservation Tribal Council and shall ensure that at least one of the panel members is law-trained as set forth in Section 3.2.2 of this Code.

### **3.3.3. Duties of Clerk of Appellate Court.**

The Clerk of Court serving as the appellate court clerk shall promptly file all papers, pleadings, orders, materials, etc. in each appellate case; assign an appellate court file number to each appeal; ensure that each appellate justice is provided with a copy of the entire appeal file; file and serve upon all parties the written opinion of the Court of Appeals together with any concurring, dissenting, or separate opinions; and perform any other functions necessary to carry out the purpose of this Title.

## **CHAPTER 4: APPEAL – HOW TAKEN**

### **3.4.1. Jurisdiction of the Court of Appeals.**

The Bois Forte Court of Appeals shall have exclusive jurisdiction to review decisions of the Bois Forte Tribal Court as provided in this Title.

### **3.4.2. Who May Appeal.**

Any party adversely affected by a decision of the Tribal Court in a civil case, including civil child protection and conservation cases, may appeal subject to provisions set forth in Section 3.4.4. Any defendant in a criminal proceeding may appeal a conviction, a sentence, or any other adverse decision of the Tribal Court subject to the provisions set forth in Section 3.4.4. Any juvenile respondent in a delinquency proceeding and/or his or her parent, guardian, or custodian, adversely affected by a decision of Tribal Court may appeal subject to the provisions of Section 3.4.4. The prosecution in a criminal case and in a juvenile delinquency case adversely affected by a decision of the Tribal Court may appeal any such decision subject to the provisions of Section 3.4.4; provided, however, no appeal can be taken by the prosecution from a jury verdict or Tribal Court finding of not guilty or a finding in a delinquency proceeding that no delinquency occurred.

### **3.4.3. Joint and Consolidated Appeals.**

If two or more parties are entitled to appeal from a judgment or order in the same action and their interest are such as to make joinder practicable, they may file a joint Notice of Appeal or may join in the appeal after filing separate timely Notices of Appeal and they may then proceed on appeal as a single appellant. Appeals in separate actions may be consolidated by Order of the Court of Appeals on its own motion or upon motion of a party.

### **3.4.4. Subject of Appeal.**

An appeal is properly before the Court of Appeals if it concerns:

- (a) A final order or judgment of the Tribal Court;
- (b) A criminal conviction arising from a jury or trial court verdict; or
- (c) An order of the Tribal Court affecting a substantial right and which determines the action and prevents a judgment from which an appeal can be made.

### **3.4.5. Scope of Review.**

In reviewing a matter upon appeal, the Court of Appeals may:

- (a) Increase or decrease a sentence imposed in a criminal case but no sentence can be increased beyond the limit set by the Bois Forte Criminal Code for the offense upon which the conviction was based.
- (b) Affirm, modify, vacate, set aside, or reverse any judgment, decree, or order of the Tribal Court including any conviction of a criminal offense, a probation violation, or a finding of delinquency.
- (c) Remand the case and direct entry of any judgment, decree or order, or require such further proceedings in the Tribal Court that are determined to be just and equitable under the circumstances.

## **CHAPTER 5: TIME PERIOD FOR APPEAL**

### **3.5.1. Criminal Cases.**

An appeal to the Court of Appeals in criminal cases shall be made no later than thirty (30) calendar days after entry of the jury verdict or, in court trials, probation violations, sentencing, and the like, no later than thirty (30) calendar days after the issuance by the Tribal Court of its written or oral judgment or order.

### **3.5.2. Juvenile Delinquency Cases.**

An appeal to the Court of Appeals in juvenile delinquency proceedings shall be made no later than thirty (30) calendar days after the issuance by the Tribal Court of its written or oral judgment or order.

### **3.5.3. Civil Cases.**

An appeal to the Court of Appeals in civil cases shall be made no later than twenty (20) calendar days after entry of the written judgment or order of the Tribal Court.

### **3.5.4. Untimely Appeals.**

Subject to the exception contained in Section 3.5.5 below, failure to file an appeal with the period provided by this Section deprives the Court of Appeals of subject matter jurisdiction to hear the appeal. Late appeals shall be denied filing by the Clerk of Court.

### **3.5.5. Grounds for Granting Late Appeals.**

The Court of Appeals may, at its discretion, grant leave to appeal after the expiration of the time allowed for filing, only upon a showing, supported by a sworn affidavit, that there is merit to the appeal and that the late filing was not due to appellant's negligence.

### **3.5.6. Entry Defined.**

A judgment or order from which an appeal may be taken is "entered" when it is filed by the Clerk of Court and mailed to the parties at their last known address or to their attorney of record, if any.

### **3.5.7. Calculating Time to File Appeal.**

The day an order or judgment is entered shall not be counted in computing the number of days to file an appeal. If the 30th day to file an appeal falls on a Saturday, Sunday, or legal holiday, the party filing the appeal shall have until the next regular business day to file.

## **CHAPTER 6: NOTICE OF APPEAL & RELATED RULES**

### **3.6.1. Notice of Appeal; Procedure.**

- (a) **Filing and Service Required.** An appeal is made by filing a written notice of appeal with the Clerk of Court and serving said notice on the opposing party or parties.
- (b) **Content of Notice of Appeal.** The Notice of Appeal shall bear the caption and case number of the case in Tribal Court be labeled "Notice of Appeal" and shall contain the following:

- (1) Proof of service on the adverse party or parties;
  - (2) The names, addresses, telephone numbers, and email addresses, if any, of opposing counsel and the parties they represent of the parties, if unrepresented by counsel;
  - (3) The date and the decision maker (judge or jury) of the decision being appealed;
  - (4) A statement specifying, identifying, and describing the verdict, judgment, or order from which the appeal is being taken. If the decision is in written form certified copy of the decision must be attached to the Notice of Appeal;
  - (5) A brief statement summarizing the reasons for the appeal. If the appeal is based upon an alleged violation of the Bois Forte Tribal Court Code and/or the Indian Civil Rights Act by the Tribal Court, a copy of the section(s) of the Tribal Code and/or federal statute alleged to have been violated shall be attached to the Notice of Appeal; and
  - (6) The Notice of Appeal shall be accompanied by a statement of case and by payment of the filing fee or, in lieu thereof, an affidavit of indigency unless no filing fee is required pursuant to Section 3.6.4 below.
- (c) **Appellant's Statement of Case.** The appellant's statement of case shall be in writing and contain a brief summary of the case's history in the Tribal Court; a concise statement of the facts admitted into evidence before the Tribal Court; a listing of the issues being raised upon appeal and how those issues were decided, if at all, by the Tribal Court; the need, if any, for briefing and or oral argument before the Court of Appeals; and the desired outcome being sought by appellate review.
- (d) **Respondent's Statement of Case.** The respondent(s) may file a statement of case, which shall be in writing and conform to the format required of the appellant by this Section. Respondent's statement of case shall set forth any differences as to the case history, evidentiary facts, issues and Tribal Court rulings, the perceived need for briefing and/or oral argument, and the desired outcome of the appellate review. Respondent's statement of case shall be served upon the appellant and filed with the Clerk of Court no later than fifteen (15) calendar days after service of the Notice of Appeal.

### **3.6.2. Docketing of Appeal.**

Upon receipt of the Notice of Appeal and any filing fee required by the Court of Appeals, the Clerk of Court shall docket the appeal, assign an appellate court file number, and notify the appellate judges of the pending appeal.

### **3.6.3. Service.**

Service of the Notice of Appeal and all other papers required to be served by this Title

upon any party shall be made personally or by first-class mail, sufficient postage affixed, addressed to the recipient at his or her residence, last known address the party has provided to the Clerk of Court, or addressed to his or her legal counsel, if any. Service by mail is complete on mailing; however, whenever a party is required or permitted to do an act within a prescribed period, three (3) calendar days shall be added to the prescribed period after service by mail.

#### **3.6.4. Filing Fee.**

There shall be no fee required for an appeal from any decision in a criminal or juvenile delinquency proceeding. There shall be no fee required in any appeal, filed by or on behalf of the Bois Forte Band of Chippewa, its agencies, divisions, and/or employees acting in their official capacity. There shall be no fee required of an appellant in a civil proceeding who has filed a sworn affidavit of indigence or has been found by either the Tribal Court or the Court of Appeals to be indigent. In all other cases, there shall be a filing fee of One Hundred (\$100.00) Dollars, to be paid at the time of filing to the Clerk of Court.

#### **3.6.5. Bond.**

Upon notification of the filing of an appeal of a civil judgment or order or criminal fine, the Tribal Court may order the filing of a bond or cash equivalent thereof in an amount sufficient to guarantee payment or satisfaction of the judgment or fine, including costs, in the event the judgment or fine is affirmed on appeal. The Court of Appeals may waive this requirement upon the petition of the appellant.

### **CHAPTER 7: EFFECT ON DECISION**

#### **3.7.1. Effect on Decision by Filing Appeal.**

The filing of an appeal does not cause an automatic stay of the decision appealed. A motion seeking a stay shall be addressed in writing to the Court of Appeals either before or after the filing of the Notice of Appeal. In criminal appeals, the appellant may be released on bail, or continued to be released on bail, pending the final determination of the appeal.

### **CHAPTER 8: RECORD OF APPEAL**

#### **3.8.1. Record of Appeal.**

Upon receiving the Notice of Appeal, the Clerk of Court shall compile for transmittal to the Court of Appeals the record of the case, consisting of:

- (a) **Pleadings, Orders, and Judgments.** All written documents filed with the Tribal Court, including, but not limited to, pleadings, reports, notices, depositions, orders, judgments, jury instructions, and verdicts, shall constitute the written record of the case on appeal. The Clerk of Court shall certify the contents of the records as true, correct, and complete as part of the transmittal to the Court of Appeals.

- (b) **Hearing Transcript(s).** The Clerk of Court shall also prepare a computer disc copy of the proceedings in Tribal Court for each party and each member of the appeals panel. Any party may request a typed transcript of the proceedings in the trial court. Any justice sitting on the appellate panel may request that the proceedings in the trial court be transcribed, in which case copies of said transcript shall be furnished to all parties without charge. The cost of a transcript requested by any party shall be borne by that party unless waived by written Order of the Tribal Court pursuant to a petition for waiver of costs, bond, and/or fees. The party requesting a transcript may specify, in writing to the Clerk which proceedings or part thereof, is necessary for the Court of Appeals to review the Tribal Court's decision. If only portions of the proceedings are requested, any other party may request in writing within fifteen (15) calendar days of the initial request, transcription of any other portion and shall pay the costs of preparation to the Clerk unless waived by written Order of the Tribal Court pursuant to a petition or motion for waiver of costs.
- (c) **Notice of Record Transmittal.** The Clerk of Court shall serve upon each of the parties and file with the Court of Appeals a notice of transmittal of the record, identifying each item included therein, together with a copy of any transcript.
- (d) **Effect of Transmittal.** No appeal issue may be considered by the Court of Appeals until the Notice of Record Transmittal has been served and filed with the appellate court clerk.

## **CHAPTER 9: BRIEFING; ORAL ARGUMENT; MOTIONS**

### **3.9.1. Briefing.**

The appellant shall file a written brief concerning the issue(s) on appeal in order to assist the Court of Appeals in its review. The following requirements for briefing shall apply:

- (a) **Time to File Brief.** The appellant shall file its brief within thirty (30) calendar days of receiving notice of transmittal of the record to the Court of Appeals. If respondent wishes to file a brief, he/she must do so within fifteen (15) calendar days of receiving appellant's brief. A reply brief, limited only to previously unaddressed matters raised in respondent's brief, may be submitted by the appellant within fifteen (15) calendar days of receiving respondent's brief.
- (b) **Format of Briefs.** Briefs shall be typewritten, double-spaced, on white paper 8 ½ by 11 inches in size. No brief shall exceed thirty (30) pages in length, including its table of contents, table of authorities, statement of facts, and statement of case. Reply briefs shall not exceed fifteen (15) pages. Four (4) copies of each brief shall be submitted for filing to the Court of Appeals. One copy of each brief shall be served upon each opposing party and an Affidavit of Service shall be filed with the appellate court clerk.
- (c) **Content of Briefs.** The appellant's brief shall contain a short statement of the case's history and a listing of the issues presented on appeal and how, if at all, the issues were

decided. All briefs shall contain a table of contents, a table of authorities, an argument, a conclusion, and a listing of attached exhibits, if any.

### **3.9.2. Oral Argument.**

If any of the parties have requested oral argument and/or if any of the appellate justices believe that oral argument will be helpful, the Chief Justice shall order that the same be scheduled to be heard after briefing is completed. Written notice of such scheduling date, time, and place shall be sent to the parties and/or their counsel. The length of the oral argument shall be determined by the appellate judges and shall be stated in the notice scheduling oral argument. Oral argument may be held through teleconference or video conferencing technology at the discretion of the Chief Justice of the panel hearing the appeal.

### **3.9.3. Motions Before the Court of Appeals.**

Any party requesting action by the Court of Appeals on a matter unrelated to its decision on a pending appeal, such as waiver of filing fee or stay pending appeal, shall file a written motion with the Clerk of the Court serving as the appellate court clerk clearly stating the action requested and the reasons why the Court should do what is asked of it. Any motion shall be served upon all other interested parties, who may file within five (5) calendar days of receipt a response with the Court of Appeals indicating agreement or disagreement with the motion and the reasons therefor. The Court of Appeals shall issue a written order disposing of any motion filed.

## **CHAPTER 10: STANDARD OF REVIEW; ISSUES PRESERVED**

### **3.10.1. Standard of Review.**

In deciding an appeal, the Court of Appeals shall apply the following standards:

- (a) A finding of fact by a judge shall be sustained unless clearly erroneous.
- (b) A finding of fact by a jury shall be sustained if there is any admissible and credible evidence to support it.
- (c) A factual inference by a judge or a jury shall be reviewed as a finding of fact if more than one reasonable inference can be drawn from the fact(s).
- (d) A finding, whether explicit or implicit, of witness credibility shall be reviewed as a finding of fact.
- (e) A conclusion of law shall be reviewed without deference to the trial court's determination, *i.e.*, review is de novo.
- (f) A stipulated uncontested fact is reviewed as a conclusion of law.
- (g) An unambiguous contract term is reviewed as a conclusion of law.

- (h) A matter that is a mixture of law and fact is reviewed by the standard applicable to each element.
- (i) A matter that is determined as within the Tribal Court's discretion shall be sustained if it is reflected in the record that the Tribal Court exercised its discretionary authority and applied the appropriate legal standard to the facts.
- (j) A sentence and the imposition of fine, forfeiture, and/or other penalty, excluding the assessment of damages, shall be reviewed as a discretionary authority of the Tribal Court.
- (k) A matter committed to the discretionary authority of the Tribal Court shall not be subject to the substituted judgment of the Court of Appeals.

### **3.10.2. Issues Preserved on Appeal.**

In deciding an appeal, the Court of Appeals shall consider issues pursuant to these requirements:

- (a) Unless a miscarriage of justice would result, the Court of Appeals shall not consider issues that were not raised before the Tribal Court.
- (b) An issue not raised before the Tribal Court nor raised in the Notice of Appeal in either the appellant's or the respondent's statement of case shall not be reviewed by the Court of Appeals.
- (c) No issue that is moot at the time of briefing or oral argument shall be decided by the Court of Appeals unless it is capable of repetition yet likely to evade review by its nature.
- (d) Facts that are not in the record shall not be presented to the Court of Appeals and, if presented, shall not be considered by that Court.

## **CHAPTER 11: ORDERS; JUDGMENTS; DECISIONS**

### **3.11.1. Content of Order or Judgment Appeal.**

Orders and judgments subject to an appeal shall contain the following in order to facilitate justice by the Court of Appeals:

- (a) In any proceeding tried to a judge without a jury, the judge shall make separate findings of facts and conclusions of law. The Tribal Court may do this orally on the record in open court or issue a written opinion and order.
- (b) In the absence of findings of fact by the Tribal Court, the Court of Appeals may affirm

the judgment if supported by the record, reverse the judgment if the record does not support it, or remand the case for the issuance of findings and conclusions.

### **3.11.2. Decisions of the Court of Appeals.**

All decisions of the appellate court upon appeal, and all determinations of motions, shall be made as follows:

- (a) **Panel Majority.** Any decision of the Court of Appeals shall be made by the majority of judges on the panel. If no majority is reached on a decision, the jury verdict, order or judgment of the Tribal Court is upheld.
- (b) **Content.** In the exercise of its jurisdiction, the decision of the Court of Appeals shall be in written form which shall state the facts and issues to be decided, the rules of law applied, and the reasoning of the Court. The Chief Justice shall select the justice, including himself/herself, to write the decision, which, upon completion, shall be circulated among the panel members. If the decision receives the approval of one or more of the remaining justices, it shall be the majority decision of the Court.
- (c) **Dissenting Opinion.** Any member of the panel who disagrees with the majority decision in whole or part may issue a written dissent, which shall comply with the content requirements of subsection (b) above and be circulated among the panel members for their consideration. If the dissenting opinion receives majority approval, it shall become the majority decision in whole or in part as the case may be.
- (d) **Order.** The Court of Appeals shall issue an order conforming to the decision, which shall direct the Tribal Court in its disposition of the case that is the subject of the appeal. Such order shall include the continuance or termination of any order relating to a stay and the posting of bond. The order, or a subsequent order entered pursuant to a proper motion served and filed by either party, shall address the issue of reimbursement of costs, if any, incurred by the prevailing party.
- (e) **Distribution of Decision.** Within two (2) calendar days of issuance, the Clerk of Court serving as the appellate court clerk shall transmit by first class mail a copy of the decision to each interested party, to the Clerk of the Tribal Court; and to the editor of the Bois Forte News or other appropriate publication, and shall inform all of the date on which the decision was filed.
- (f) **Official Reporter.** Any decision that determines an issue of law shall be exported to the official reporter of the Court of Appeals. The Indian Law Reporter is designated as the Court's official reporter.

## **CHAPTER 12: DISMISSAL; REMAND**

### **3.12.1. Voluntary Dismissal.**

If the parties to an appeal execute and file with the appellate court clerk a stipulation that

the proceedings be dismissed, the matter will be dismissed upon approval of the Court of Appeals.

### **3.12.2. Involuntary Dismissal and/or Sanctions.**

The Court of Appeals may, after a hearing upon its own motion or motion of any aggrieved party, issue an order dismissing the appeal, taxing costs, or imposing reasonable sanctions against a party which has failed or neglected to comply with the provisions of this Code and said failure or neglect has resulted in unreasonable delay and/or harm to the other party.

### **3.12.3. Remand.**

The Clerk of Court serving as the appellate court clerk shall transmit the entire record of the Tribal Court, together with the decision and order of the Court of Appeals and any motions and orders made in furtherance thereof, to the Clerk of Tribal Court within fifteen (15) calendar days of disposition.

## **CHAPTER 13: RULES OF COURT**

### **3.13.1. Rules of Court.**

A majority of the justices of the Court of Appeals may make and amend such rules as are deemed by them from time to time appropriate for the proper and efficient administration of the Court. Such rules shall be filed with the appellate court clerk. The Bois Forte Judicial Administrator shall promptly transmit a copy of such rules as issued to the Bois Forte Reservation Tribal Council for its approval and copies shall be made available as issued to the editor of the Bois Forte News or other appropriate publication, to all persons admitted to practice before the Tribal Court, and to all interested parties to an appeal.