



Preparing A Certified Lower Court Record for Appeals

Example using SWITCA Appellate Rules of Procedure

What is an Appeal?

- ◆ An appeal is a formal request that a higher court review the decision of a lower court (trial level) to determine if an error occurred and if the appellant is entitled to relief.
- ◆ Errors may include errors of law, fact, or procedure.
- ◆ An appeal is not a new trial, cannot present evidence, call witnesses or conduct discovery.
- ◆ An appeal is also affected by jurisdiction. Each tribe's codes and resolutions determine whether a case can be properly reviewed by SWITCA. (i.e. land assignments, discretionary appeals, other limitations).

Who can Appeal?

- ◆ **A party who files an appeal is called the appellant or petitioner.** The appellant is the party who alleges that an error was made in the lower court and requests the appellate court to review the decision.
- ◆ **The appellant in the new case can be either the plaintiff (or claimant) or defendant.**
- ◆ **The other party now becomes the respondent,** the party that likely was successful in the lower court.
- ◆ **If two or more persons are entitled to an appeal, they may file a joint appeal or join in an appeal after filing separately. SWTCARA #11 (2001)**

The Appellant

- ◆ The appellant shall file a Notice of Appeal with the lower court within **15** days of entry of judgment.
- ◆ The appellant shall serve a copy of the Notice of Appeal on all parties within **15** days of the filing of the Notice.
- ◆ The appellant shall file a certification of service with the lower court clerk within **15** days of filing the appeal.
- ◆ In case of a *pro se* appellant, **service and notice required by this subsection may be provided by the lower court clerk.**

The Appellee

- Any appellee may file a written statement challenging the jurisdiction of the court of appeals.
- Must be filed to the lower courts within **15** days after receiving a copy of the Notice of Appeal .
- In multiple party litigation, if an appellee supports the position of the appellant, the appellee may join the appellant's position by filing an appropriate document within **15** days.

Filing an Appeal (SWITCA Rule 11)

- An appeal is filed with the Tribal Court, within **15** days of entry of judgment by the same court.
- Mistakenly filing a Notice of Appeal with SWITCA, the Notice will be transmitted to the lower court by the appellate clerk where it should be filed on the date and time indicated by the appellate clerk.
- Failure to file a timely appeal is jurisdictional and the appellate court shall dismiss the appeal if notice is filed after the date set by law.

Attorney/ Counsel

- Shall file an Entry of Appearance in an appeal, even if he/she is already admitted in the lower court.
- Attach a certified copy of his/her admission to practice before the court from which the appeal is taken.
- Shall be allowed to practice in the court of appeals so long as that person is in good standing with the lower court and with each court to which the attorney has been admitted.

SWITCARA #6

Tribal Court Clerk

- Have the lower court judge who presided over the case from which the appeal is taken certify the accuracy of the record on appeal.
- Create and maintain an original appellate file and forward required number of duplicates to SWITCA within 30 days of the filing of the Notice of Appeal. (Case Management Handout #10).

Note: Clerks may not refuse to file pleadings which appear to be deficient or late, these are questions to be decided by the appellate judge.

- Providing information regarding the process for filing appeals is not providing legal advice. This information is educating your community on the proper functioning of the court.

Appellate Court Record Preparation

Tribal Court Clerks are responsible for processing the tribal court record (all pleadings and papers filed with the tribal court):

- a) Creating an original appellate file to be retained by the tribal court and the required number of duplicates* of the appellate court file to be delivered to the Southwest Intertribal Court of Appeals immediately upon completion;
- b) Checking the tribal court file against the docket sheet to assure all pleadings appear in the file in reverse chronological order.

Appellate Court Record Preparation

- c) Numbering each page of the record proper and preparing a written transcript or preparing the required number of duplicates* of any audio recordings on tape or disk of all proceedings;
- d) Preparing a Certification of the Record on Appeal;
- e) Filing a statement of costs and Certificate of Proof of Satisfaction, if required by tribal law;
- f) Filing a copy of the tribal court order waiving payment of fee, if applicable;

Appellate Court Record Preparation

g) notifying the appellant that the record is ready and of charges payable to the tribal court for preparation (if tribal law requires); and

h) filing all subsequent pleadings and forwarding immediately a copy to the Southwest Intertribal Court of Appeals.

Frequently Asked Questions

- Authority of appellate court?
 - SWITCA shall hear cases based on the authority granted by the pueblo or tribal constitution, legislative authority, or resolution.
- If an attorney cannot submit a certificate of good standing?
 - The attorney shall submit a written explanation of the circumstances.

Frequently Asked Questions

- ◆ Is there a code of ethics an attorney shall follow?
 - ◆ Yes. If the tribe has a written code of ethics, the attorney shall follow it. If not, they are bound by American Bar Association code. **SWITCARA #16.**
- ◆ Can Notice of Appeals be handwritten?
 - ◆ Yes. Pleadings may be typed or legibly handwritten in blue or black ink.

Frequently Asked Questions

- ◆ What if an appeal is filed by mistake?
 - ◆ The appellant shall file a request to dismiss the appeal.
- ◆ What if the appeal has no recording or transcript available?
 - ◆ See SWITCARA #17 (2001).
- ◆ What if the lower court recordings are inadequate?
 - ◆ If the appellate panel determines that the record on appeal is inadequate, the case may be remanded for a hearing *de novo* or any other procedure consistent with the lower court's rules.

Some Final Thoughts

- The Specific Tribal Council Resolution, Tribal Codes, and Tribal Rules of Procedures comprise the laws that provide the correct procedural and substantive law for each case.
- The SWITCA Appellate Rules of Procedure only apply when the Tribal Rules and Codes are silent.