

**Southwest Intertribal Court of Appeals – Digest of Cases by Tribal Court of Origin**

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### AK-CHIN INDIAN COMMUNITY

#### **Beltran, Sr. v. Phoenix**

##### **Ak-Chin Casino Resort (2009)..... 20-9**

Appellant filed a Motion to Vacate the Order of Dismissal by the Appellate Court. The Order stemmed from Appellant's appeal from an earlier Order by the lower court granting Defendant Appellees' Motion to Dismiss. The Appellate Court found that the Appellant improperly relied on SWITCA Rule 25(a) in filing the Motion to Vacate and should have filed a written request for the Appellate Court to reconsider its decision to dismiss the appeal under Rule 22(a). Despite the error, the Court, in the interest of justice, treated Appellant's Motion to Vacate as a Written Request to Reconsider the Decision to dismiss the Appeal. Nonetheless, the Appellate Court affirmed the Order of Dismissal determining Appellant's application of the trial court's Rules of Civil Procedure to the Appellate Court, which has its own rules, was in error. The Court also found that Appellant's Notice of Appeal was filed in an untimely manner and thus the Court lacked jurisdiction over the case. Finally, the Court found that Rule 12(b) does not provide a time restraint on the Court to issue a written order denying the appeal. Thus Appellant's argument that the Court failed to find that it was without jurisdiction within 30 days was without merit. Order of Dismissal affirmed.

##### **DeLeon v. Ak-Chin Indian Community (2010)..... 21-2**

Appellant filed a Petition for Rehearing of the Appellate Court's decision. The Appellate Court found upon review of the lower court's decision, the Appellate Court's decision, and Appellant's arguments in his Petition for Rehearing, that there had been no error in the Appellate Court's final judgment. Petition for Rehearing denied.

##### **DeLeon v. Justin (2009).....20-14**

Respondent/Appellant filed an appeal to a case before the lower court captioned as a "Contested Injunction Against Harassment" hearing. The form used by the lower court applies when the defendant is an intimate partner. The Appellate Court determined that the original complaint filed by the Petitioner/Appellee in the lower court lacked factual specificity as to documented events and as to the relationship of the Petitioner/Appellee to the Respondent/Appellant. The appeal was denied and the case was remanded to the lower court with specific instructions to ensure that proper facts be established and verified prior to issuing orders.

##### **Garcia v. Martinez (2011)..... 22-21**

Appellant appealed a one-year-old restraining order and the tribal court's denial of her attempt to impose a similar restraining order upon Appellees. The Appellate Court denied the appeal, finding that the restraining order against the Appellant had expired by its own terms and was moot. The Court also found that Appellant's Notice of Appeal with regard to the restraining order she was denied lacked a sufficient statement of the reasons for reversal as required by SWITCA Rule 11(e)(5). Denied.

##### **Luz v. Ak-Chin Indian Community (2011) ..... 22-7**

Appellant filed a Motion to Withdraw Appeal. Granted and Dismissed.

##### **Luz v. Justin (2009) ..... 20-13**

Respondent/Appellant filed an appeal to a case before the lower court captioned as a "Contested Injunction Against Harassment" hearing. The form used by the lower court applies when the defendant is an intimate partner. The Appellate Court determined that the original complaint filed by the Petitioner/Appellee in the lower court lacked factual specificity as to documented events and as to the relationship of the Petitioner/Appellee to the Respondent/Appellant. The Court also questioned why the Petitioner/Appellee filed the complaint when she did not appear to be the alleged victim. The appeal was denied and the case was remanded to the lower court with specific instructions to the lower court to ensure that proper facts be established and verified prior to issuing orders.

##### **Narcia v. Lewis (2001)..... 12-26**

Appeal dismissed for lack of jurisdiction due to untimely filing of notice of appeal. Even if notice had been timely, appeal would be dismissed for failure to state a basis for review by appellate court.

#### **Peters v. Ak-Chin Indian**

##### **Community (2005)..... 16-20**

Appeal dismissed for lack of jurisdiction because Appellant failed to comply with the Southwest Intertribal Court of Appeals rule of appellate procedure for filing a notice of appeal.

##### **Vance, In the Matter of (2005)..... 16-32**

The appellant, by and through counsel, has now filed a withdrawal of notice of appeal. This Court hereby grants the withdrawal. It is therefore the order of this Court that the above matter be and it is hereby dismissed.

##### **Vincent v. Carlyle (2012)..... 23-3**

The Southwest Intertribal Court of Appeals has received from Appellant a "Motion to Withdraw Appeal" dated November 17, 2011. Appellant's motion is well taken and hereby granted. The appeal in this matter is therefore dismissed with prejudice.

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### **Yarberry v. Ak-Chin Indian**

**Community (2013)** ..... 24-1  
Appellant, who was *pro se*, appealed a verdict of unlawful detainer. The Appellate Court decided *sua sponte* to go beyond the record and consider two letters Appellant filed with her appeal. The letters revealed that Appellant had requested a grievance hearing pursuant to the tribe's home grievance policy and that the housing authority denied her request. The Appellate Court found that the housing authority violated Appellant's right to due process by failing to inform her of her right to appeal to the Community Court in accordance with the home grievance policy. Vacated and remanded.

### **Yarberry v. Ak-Chin Indian**

**Community Housing (2018)** ..... 29-4  
Appeal dismissed because Administrative Appeals Procedures Ordinance divested SWITCA of subject-matter jurisdiction.

### **COCOPAHI INDIAN TRIBE**

#### **Cocopah Indian Tribe v. Valenzuela (1992)**..... 3-6

The Appellate Court accepted Defendant's appeal and ordered the Defendant-appellant to prepare a statement of the evidence and proceedings.

#### **Cocopah Indian Tribe v. Valenzuela (1993)**..... 4-8

Action dismissed, without prejudice, due to the parties' failure to proceed. Said dismissal may be set aside only if a party to this action motions this Court for a hearing within thirty days of this order and can show cause why the dismissal should not stand at said hearing.

#### **Jim v. Cocopah Indian Tribe (1999)** ..... 10-1

State of Arizona properly sought and received a tribal court extradition order for appellant which complied with tribal law. Pursuant to the order, tribal officers arrested appellant peacefully by using a ruse to get his wife out of the family home. The Court holds that law enforcement may use a ruse or pretext to peacefully arrest a person pursuant to a legal arrest warrant to protect innocent persons or to preserve the peace. Affirmed.

#### **Twist, Jr. v. Conners (2001)**..... 12-7

Appeal dismissed for lack of jurisdiction because Appellant failed to state grounds for appeal required by the Cocopah rules of appellate procedure.

### **COLORADO RIVER INDIAN TRIBES**

#### **Zenda v. Colorado River**

**Indian Tribes (2000)** .....11-14

The appellate court adopted the parties' stipulation to dismiss the matter with prejudice, with each party bearing its own costs and attorney's fees. The court struck the portion of the stipulation purporting to vacate and expunge the court's prior opinion because it was moot. The appellate court retained jurisdiction until the parties provide notice of satisfaction of judgment.

### **FORT MOJAVE INDIAN TRIBE**

#### **Evanston v. Evanston (1997)**.....8-4

This matter comes before the appellate court on the petition for appeal filed by Cynthia Evanston. The court, *en banc*, having reviewed the petition for appeal finds that the petitioner has not set forth facts or legal argument which would entitle her to appeal pursuant to section 211 of the Fort Mojave Indian Tribe law and order code. Therefore, it is the order of the court that the petition for appeal should be, and hereby is, denied.

#### **Fort Mojave Indian Tribe v.**

##### **Jenkins (1996)**.....7-1

Appellant appealed his conviction as an adult of criminal charges on the grounds that improprieties were committed by the tribal court. The conviction is reversed and remanded for failure to comply with the Fort Mojave Indian Tribal Law and Order Code, which requires that the appellant, a juvenile, be tried as a juvenile.

#### **Fort Mojave Indian Tribe v.**

##### **Jenkins (1996)**.....7-3

Appellant challenges his conviction for possession and furnishing narcotics because the use of confidential informants violated his rights and he was not able to cross-examine them; the trial court's failure to grant a continuance when appellant's counsel did not take part in jury selection; police failure to describe seized items in the search warrant; and, the jury verdict was contrary to the weight of the evidence. Overwhelming evidence independently corroborated by police testimony supported the seizure of evidence, and hearsay testimony presented by police was harmless error. Failure of the trial court to grant a continuance when a party knows of the withdrawal by counsel for months and only obtains representation hours before trial is to begin is not an abuse of discretion. A conviction will stand if a rational trier of fact can find a defendant guilty beyond a reasonable doubt after viewing all evidence in a light most favorable to the prosecution and the evidence in this case supports the conviction.

#### **Holmes v. Holmes (1997)**..... 8-10

In this dissolution of marriage case, appellant was ordered to pay spousal support to appellee for one year after he received notice that he had to present evidence of his financial status at a hearing. When he did not have

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such evidence, he was given additional time to present his evidence, which he did. The appellant appealed the order claiming that the trial court did not consider his evidence and he offers additional evidence on appeal. The decision below is affirmed.

**Jenkins v. Fort Mojave Tribe (1998) ..... 9-20**

This matter comes before the appellate court on the petition for appeal filed by Victoria Jenkins concerning the expulsion of Kenneth High, Sr., and the response of the Fort Mojave Indian Tribe. The Fort Mojave Indian Tribe's response establishes that the expulsion of Kenneth High, Sr. did not conform to tribal law, and requests this Court to dismiss the petition for appeal and vacate the order of expulsion. The appellate panel appreciates the candor of the Tribe. Therefore, it is the order of this court that the order of expulsion entered by the Fort Mojave Indian Reservation Tribal Court on January 4, 1996, and subsequent orders of the Tribal Court upholding that order should be, and hereby are, vacated and the appeal, having been rendered moot by the response of the Fort Mojave Indian Tribe, is hereby dismissed. It is so ordered.

**K. Children, In the Matter of v.**

**Fort Mojave Indian Tribe (1996)..... 7-6**

Appellants appealed this termination of parental rights case based on lack of jurisdiction over the parties, especially Mrs. K., a non-Indian; findings were not supported by substantial evidence; the validity of expert testimony; and, the lower court's order was insufficient to permit meaningful review. The order is vacated and the case is remanded/or a statement of facts that support subject-matter jurisdiction and personal jurisdiction over each party and for supplemental findings and conclusions of law to either support parental termination for a child or to support the determination that parental rights to a child should not be terminated. Appellants waived their right to object to the expert testimony because their attorney did not object to the expert testimony presented below, nor did appellants object to their attorney's failure to do so and they cannot then challenge it at appeal. While fundamental fairness requires a pragmatic examination of whether a waiver was knowingly given by a *pro se* party, the standard is much higher for a party represented by counsel.

**L.J.Y., In the Matter of a**

**Minor Child v. T.T. (1997) ..... 8-4**

During the hearing on appellee's petition for custody of his child, held the same day as the petition was filed and after appellee alleged that appellant was a negligent parent, the trial court, with no supporting evidence, treated the matter as a neglect petition by the Tribe, and removed the child from appellant's custody to that of the paternal grandparents, first temporarily and thereafter, permanently. The trial court refused to reconsider appellant's petition for reconsideration for the reason that the grounds raised were, by tribal law, left to the jurisdiction of the appellate court. Appellant appealed, alleging substantial violations of tribal and federal law which denied appellant due process and equal protection. Reversed and remanded.

**Valley Well Drilling v. Mojave**

**Valley Raceway (1998)..... 9-18**

Appellant appeals from a judgment granting damages and interest to appellee. The appellate court finds that the award of damages is based on substantial evidence, but the award of interest cannot be sustained because the original contract did not provide for interest to be charged, the Tribal Code does not provide for awards of interest on judgments nor does it regulate interest on a contract, and the trial court did not make findings of fact that would support an award of interest. The judgment awarding damages is affirmed, the award of interest is reversed and the matter is remanded for further proceedings consistent with this opinion.

**HUALAPAI TRIBE**

**Fielding v. Arcadia Fin'l Ltd. (1998)..... 9-25**

Barney Fielding, parent of appellant who is an adult, filed a notice of appeal directly with SWITCA, bypassing the Tribal Court and before a final judgment was issued in this matter. The appeal is dismissed for failure to comply with tribal law or rule or with SWITCA rules. Further, the record is not clear that Barney Fielding had the right to represent appellant because appellant did not consent in writing to the appeal and this is a matter of law for the Tribal Court to determine. The matter is dismissed.

**Gonzales v. Jackson (2004) ..... 15-6**

This matter comes before the Court on its own motion to dismiss the above referenced case and refer it to the newly constituted Hualapai Appellate Court. It is therefore the order of this Court that the above matter be and it is hereby dismissed.

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### **H.G., Minor, In the Matter of v. Gala (2001)..... 12-1**

Appeal dismissed on Appellate Court's own motion because for three years appellants took no action to comply with Appellate Court's order requesting more information and directing the parties to address requirements in the Hualapai appellate rules.

### **Havatone v. Hualapai Election Bd. (1999) ..... 10-3**

A tribal recall election was stayed by this Court pursuant to a motion and appeal by appellants, elected officials subject to a petition for recall. Tribal recall election procedures set by the Tribe's constitution and election procedure ordinance may not be infringed upon by an administrative rule of the election board. Pursuant to the tribal constitution, the right to hold office is an important liberty right which cannot be withheld from an elected official without due process of law which includes notice of any proposed action by an official tribal administrative body and an opportunity to be heard before that body; however, the parties have received proper due process during the legal process, remand would serve no purpose, and the recall election should proceed. Stay lifted. Affirmed in part; reversed in part.

### **Hualapai Indian Nation v. Mukeche (1998) ..... 9-21**

Defendants appealed from an order denying their motion for reconsideration of the court's order denying defendant's motion to dismiss. The trial court ruled the Hualapai Nation and its employees are immune from suit and sovereign immunity had not been waived. Notwithstanding its ruling that the Nation and its officers were immune from suit, the trial court denied a motion to dismiss the claim against the Nation, its Council members, officers, and offices, and the court held the plaintiff has a right to due process to a hearing to prosecute her employment dispute. The trial court requested certification of the case. The appellate court affirms the judgment of the Tribal Court insofar as it holds the Hualapai Nation and its officers immune from suit.

### **Hualapai Nation v. D.N. (1998) ..... 9-2**

Appellant, a juvenile, appeals from a determination by juvenile court that appellant committed several alcohol related offenses for the reasons that counsel was not appointed to represent appellant and inadequate witnesses were presented. The appellate court held that appellant is not entitled to appointed counsel under the Indian Civil Rights Act or under tribal law. Further, appellant failed to comply with tribal appellate procedure to submit sworn statements and the claim of inadequate witnesses is not supported by the record which shows two eye witnesses were presented. The appellate court will not substitute its determination about witness credibility for that of trial court which had the opportunity to see and hear the testimony and will not challenge the lower court's factual decisions if they are supported by substantial evidence, unless there is a

strong showing that the court abused its discretion, acted arbitrarily or capriciously, made a clearly erroneous decision, or made an illegal decision. The decision of the Tribal Court is affirmed.

### **Hualapai Nation v. M.J.M. (1998)..... 9-21**

Appellant M.J.M. having filed a motion to dismiss this appeal on behalf of herself and her minor child T.W., and the appellee Tribe having not filed any objection, this matter is hereby dismissed.

### **Hwal-Bay Ba:J Enterprises v. Vaughn (1995) ..... 6-21**

Appellants, a tribally-created Enterprise, entered into a loan commitment agreement with a bank without approval of the membership through a special election. The agreement waived the Enterprise's sovereign immunity, not the Tribe's immunity; therefore, the Tribe's constitution's requirements that a special tribal election be held for express waivers of tribal sovereign immunity or for encumbering any tribal assets is not applicable: the Enterprise is a distinct, separate entity from the Tribe; the letter does not expose tribal lands to foreclosure or encumbrance; the agreement does not contemplate any lease of tribal property or require the sale or exchange of any natural resources or other tribal asset or require the development on a commercial or industrial basis of tribal natural resources involving more than \$50,000 since land, alone, is not a natural resource and the tribal constitution distinguishes between land and natural resources. Appellee's counsel is sanctioned for filing a second jurisdictional motion with a former tribal appellate judge after the first was denied by this Court and it appears that the second was filed to delay this appeal. Appellants' motion to enjoin further challenges against the Enterprise is denied, since future action by Tribe or Enterprise may not be in constitutional compliance.

### **In the Matter of a Minor Child (1998)..... 9-1**

Appellant appeals from the Tribal Court's determination that her minor child's surname could not be changed from that of the child's biological father because of traditional law. The decision of the Tribal Court is affirmed.

### **Jackson v. Hualapai Tribe (2001)..... 12-4**

Appeal dismissed because Appellant failed to meet the threshold requirements in the Hualapai rules of appellate procedure.

### **Jackson v. Hualapai Tribe (2001)..... 12-5**

Appeal dismissed because Appellant failed to meet the threshold requirements in the Hualapai rules of appellate procedure.

### **Jackson v. Putesoy (2004)..... 15-5**

This matter comes before the Court on its own motion to dismiss the above referenced case and refer it to the

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newly constituted Hualapai Appellate Court. It is therefore the order of this Court that the above matter be and it is hereby dismissed.

### **K.B. and R.E.B., Minors,**

**In the Matter of (2001) ..... 12-1**  
Appeal dismissed on Appellate Court's own motion because for three years appellants took no action to comply with Appellate Court's order requesting more information and directing the parties to address requirements in the Hualapai appellate rules.

### **Manuel v. Manuel, Jr. (2001) ..... 12-9**

Appeal dismissed because Appellant failed to meet the threshold requirements in the Hualapai rules of appellate procedure.

### **Querta v. Jackson-Bravo (2001)..... 12-2**

Appeal dismissed on Appellate Court's own motion because for three years appellant took no action to comply with Appellate Court's order directing the appellant to specify the grounds for appeal as required by the Hualapai appellate rules.

### **R.W., In the Matter of a Minor Child (1998)..... 9-11**

Appellant appeals from determination that she failed to comply with trial court's order, complaining that she was denied due process because a new petition had not been filed for the allegations that she failed to comply with the order, her right to remain silent had been disallowed, and because witnesses did not have direct knowledge of the issues. This Court finds that these allegations are without merit and Tribal Court's order is affirmed.

### **Whatoname v. Hwal'Bay'Ba:J**

**Enterprises (1999)..... 10-1**  
This matter comes before the court on its own motion, pursuant to the Southwest Intertribal Court Rules of Appellate Procedure. This appeal was accepted by the Court for consideration on January 13, 1998. Appellant's opening brief was due 30 days after receipt of the scheduling order. A responsive brief was to be filed 30 days after the receipt of the appellant's opening brief and the scheduling order provided for a reply brief. As of this date, August 18, 1999, no briefs have been filed in this Court and the plaintiff-appellant has done nothing to prosecute this appeal. Dismissed with prejudice.

## **ISLETA PUEBLO**

### **Cruz v. Isleta Gaming Palace (2001).....12-18**

This matter comes before the Court on its own motion to dismiss the above referenced case and refer it to the

newly constituted Isleta Court of Appeals. It is therefore the order of this Court that the above matter be and hereby is dismissed.

### **Jiron v. Lucero (2001) ..... 12-18**

This matter comes before the Court on its own motion to dismiss the above referenced case and refer it to the newly constituted Isleta Court of Appeals. It is therefore the order of this Court that the above matter be and hereby is dismissed.

### **Lucero v. Abeita (2001) ..... 12-17**

This matter comes before the Court on its own motion to dismiss the above referenced case and refer it to the newly constituted Isleta Court of Appeals. It is therefore the order of this Court that the above matter be and hereby is dismissed.

### **Pueblo of Isleta v. Lente (2001) ..... 12-11**

This matter comes before the Court on its own motion to dismiss the above referenced matter because the matter has been resolved. It is therefore the order of this Court that the above matter be and hereby is dismissed.

## **KAIBAB BAND OF PAIUTE INDIANS**

### **Hill v. Bulletts (2005) ..... 16-23**

In civil case alleging false accusations, appellate court affirmed tribal court's decision that civil procedure rule did not require the court to award the full amount requested by appellant, and that tribal court could consider appellee's post-default letter and other relevant evidence in determining whether to award a default judgment. There was insufficient evidence that the court was biased against appellant. Case was remanded to the tribal court to give appellant an opportunity to rebut appellee's letter, and to give tribal court the opportunity to either justify the amount of its monetary award to appellant or to award an amount that is supported by the evidence. On remand, tribal court should consider whether the award was a penalty for contempt of court, whether such penalty is allowed under tribal rules of procedure, and if so, whether a \$1,500 penalty was excessive in this case.

The court clerk's apparent entry of default *sua sponte* raises the question whether a default judgment serves the interests of justice because it prevents a full hearing on the merits, which is a particularly strong preference in communities in which the parties will have continued interactions. Failing to fully air differences may produce future conflicts and resentment, which is why some other tribal courts award default judgments only in extreme situations, especially when the defaulting party is acting *pro se* and may not understand the consequences of his actions.

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**Rogers v. Kaibab Band of Paiute Indians (2016)**..... 27-1  
Appeal denied because notice of appeal was insufficient under Kaibab Paiute and SWITCA rules of appellate procedure.

## **KICKAPOO TRADITIONAL TRIBE OF TEXAS**

**Kickapoo Traditional Tribe of Texas v. Salazar (2019)**..... 30-2  
Appellate court upheld tribe’s termination of “at will” tribal employee without cause and reversed tribal court’s decision to award back pay. Tribal court failed to apply correct *de novo* standard of review to termination letter. No evidence is needed to support termination of “at will” employee without cause. Tribal court erred in upholding termination letter that did not comply with tribe’s Labor and Employment Rights Code.

**Kickapoo Traditional Tribe of Texas v. Salazar (2019)**..... 30-4  
Appellate court denied petition for rehearing because its full review of the petition and the record revealed no error.

**Rodriguez v. Kickapoo Traditional Tribe of Texas (2018)** ..... 29-4  
Appeal dismissed due to appellant’s unopposed Motion to Dismiss with Prejudice.

## **NAMBÉ PUEBLO**

**In the Matter of a Minor Child (2005)**.....16-26  
Tribal council of Pueblo that adheres to customary law and dispute resolution referred child custody case to appellate court under Southwest Intertribal Court of Appeals Rule of Appellate Procedure 3(c) for an advisory opinion summarizing current tribal and federal law and discussing the options available to the governing body.

Because placement of child with maternal aunt was not an involuntary placement based on allegations of abuse or neglect, continued placement need not be related to sufficiency of the evidence for such allegations. Tribal court judge did not abuse her discretion by considering appellant’s actions as a whole when making her decisions. The lack of written tribal standards for removal of a child from a home or for reunification is irrelevant due to the voluntary placement in this case, and because the tribal court judge established written standards for reunification in a July 16, 2003 order.

Pueblo’s law and order code defers to federal law when custom and tradition do not resolve a matter such as time frames to review child custody cases. The federal regulations under the Adoption and Safe Families Act (ASFA) establish such time frames as well as reunification requirements and certain required judicial determinations. Tribal court judge made the necessary determination about temporary custody on July 16, 2003. However, other ASFA regulatory requirements were not met but must be applied on remand.

Visitation decisions fall within the tribal court’s discretion, and there is nothing to indicate that the court was unreasonable in its efforts to meet the parties’ visitation needs.

The appellate court has no jurisdiction to address appellant’s claims that BIA Social Services has no standards for diligent investigation and other matters because the BIA is not under the jurisdiction of any tribal court.

There is no evidence in the record that the guardian *ad litem*’s degree of participation in the court proceedings negatively impacted the appellant.

Issues concerning the structure of a tradition-based tribal court can be addressed only through the Pueblo’s political and cultural processes.

Appellant does not raise legal considerations under the Indian Child Welfare Act. Rather, it is up to appellant to do all things necessary to have a meaningful relationship with his child; the tribal court cannot order that relationship to exist.

Remanded to the tribal court for rehearing and further proceedings in accordance with the ASFA in order to resolve this matter.

**Gomez v. Nambé Pueblo Housing Authority (2017)**..... 28-16  
Appeal denied because notice of appeal was insufficient under SWITCA rules of appellate procedure.

**Gonzales v. Osborn (2013)** ..... 24-5  
Appellant, who was *pro se*, appealed the lower court’s decision in a contractual dispute. Given that the Appellant was *pro se*, the Appellate Court liberally reviewed the application of the Southwest Intertribal Court of Appeals (SWITCA) Rules of Appellate Procedure and found that Appellant’s Notice of Appeal failed to meet the minimum substantive requirements of SWITCA Rule 11(e). The Court noted that the lower court may want to consider creating a form that lists and explains each requirement found in SWITCA Appellate Rule 11(e) to assist and inform potential parties of the court rules regarding appeals. Denied and dismissed.

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### **Mirabal v. Vigil (2012) .....23-24**

Appellant, in his capacity as Governor, appealed an Order to pay stipends to council members who attended a meeting he had canceled. The Appellate Court found that the doctrine of sovereign immunity clearly applied because this matter involved a claim against a tribal official, in his official capacity, for monetary relief from the tribal treasury. The Appellate Court also found that the tribal court erred in basing its judgment on traditional law when the record clearly lacked evidence to support the existence of any traditional law that could apply. Reversed and remanded.

### **Ortiz v. Valdez (2013) ..... 24-7**

Appellant appealed a default judgment granted by the lower court for failure to respond by filing an answer in a matter arising out of a Petition for damage to property. The Appellate Court found that Appellant's Notice of Appeal failed to meet the minimum substantive requirements of Rule 11(e) of the Southwest Intertribal Court of Appeals (SWITCA) Rules of Appellate Procedure. The Court noted that the lower court may want to consider creating a form that lists and explains each requirement found in SWITCA Appellate Rule 11(e) to assist and inform potential parties of the court rules regarding appeals. Denied and dismissed.

### **Romero v. Pueblo of Nambé (2007) ..... 18-6**

Appellant was found guilty on numerous criminal charges. Immediately after the tribal court entered its sentencing order, the Appellant submitted a Notice of Appeal. The Notice of Appeal did not identify specific grounds for the appeal. Despite the lack of information, the Appellate Court allowed the appeal to be heard given that the Appellant was represented *pro se* and the tribal court notice form did not provide all the information required under SWITCA rules. Liberally construing the rules to the notice, the Court determined that Appellant's claims for the appeal were based on a denial of the right to counsel and a failure to apprise the Appellant of his rights against self- incrimination. The Appellate Court held that there was no basis for dismissing the charges or reversing the finding of guilt against the Appellant on either claim. Decision affirmed.

### **Vigil, Jr. v. Pueblo of Nambé (1997) ..... 8-1**

This matter coming before the court on its own motion, the court having issued its order on February 17, 1995, directing that the parties to this appeal comply with rule 17 of the Southwest Intertribal Court of Appeals appellate rules, and the parties having failed to comply with rule 17 to prepare an appellate record, it is hereby ordered that this appeal be dismissed.

### **Vigil v. Vigil (1995)..... 6-3**

Without findings that appellant is incapable of properly managing child support funds, or that children have been

removed from appellant's care during the time for which support was owed, or that the best interest of the children require it, trial court's order placing back-child support in an escrow account is not proper and funds should be released to appellant. Further, Nambé Pueblo law, not New Mexico law, covers the determination and calculation of child support.

### **Yates v. Nambé Pueblo**

#### **Tribal Council (2006)..... 17-1**

Petitioner filed a Petition for Writ of *Habeas Corpus* challenging the legality and propriety of his conviction for Criminal Sexual Penetration of a Child and Criminal Sexual Contact of a Minor. The Appellate Court considered three of Petitioner's arguments and found that: (1) the Respondent denied the Petitioner his right to due process at the trial court level by a lack of notice; (2) the Respondent denied the Petitioner his right to due process at the trial court level and in the Nambé Court of Appeals and the Nambé Supreme Court by its failure to hold a hearing on motions submitted by the Petitioner and then using *ex parte* communications to address issues related to those motions; (3) there was no denial of the Petitioner's right to legal counsel; and (4) the Nambé Pueblo Tribal Court had jurisdiction to hear this matter and the lack of actual notice that Petitioner's actions were a violation of Nambé law was not a denial of due process. No federal law specifically limited the Pueblo's authority to adopt New Mexico law to define crimes that fall within the Pueblo's inherent jurisdiction, and the related tribal council resolution was sufficient notice that New Mexico law would define the crimes in this case.

The Court ordered that a Writ of *Habeas Corpus* be issued if Petitioner were not given a new trial within 90 days. If that condition were not met, then the Petitioner would be released from custody 91 days after the order was signed.



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**Yates v. Pueblo of Nambé (2011)**.....22-10  
Appellant filed a Motion entitled Withdrawal of Appeal.  
Granted and Dismissed.

**Yates v. Pueblo of Nambé (2011)**.....22-10  
Appeal was dismissed due to Appellant's failure to file a  
brief in accordance with SWITCA Rule 26.

**Yates v. Pueblo of Nambé (2011)**.....22-11  
Appeal was dismissed due to Appellant's failure to file a  
brief in accordance with SWITCA Rule 26.

### SAN FELIPE PUEBLO

**San Felipe Pueblo Gaming Enterprise v.  
NIMS, Calvani & Assoc. (2015)**..... 26-2  
Appeal dismissed for lack of jurisdiction due to  
appellant's failure to timely file appeal of court order  
within fifteen days as required by tribal court judge's  
standing order specifying that Southwest Intertribal  
Court of Appeals was to hear and decide appeals  
pursuant to its Rules of Appellate Procedure.

### SAN JUAN PUEBLO/OHKAY OWINGEH

**Abeyta v. All Indian Pueblo  
Housing Authority (1991)**..... 2-3  
The Appellate Court ruled the court could not consider  
the issues raised by Defendant-appellant without a  
stipulated record of the lower court proceedings. The  
Appellate Court remanded the matter to the lower court  
with directions that the record be certified and  
transmitted within ninety days.

**Abeyta v. All Indian Pueblo  
Housing Authority (1992)**..... 3-19  
The Appellate Court ruled that the court could not  
consider the issues raised by Defendant-appellant  
without a stipulated record of the lower court  
proceedings. The Appellate Court remanded the matter  
to the lower court with directions that the record be  
certified and transmitted within ninety days. The  
Appellate Court affirmed the lower court order upon  
finding that the lower court record supported its findings  
of fact and conclusions of law.

**Abeyta, In re Estate of (1991)**..... 2-4  
The personal representative of the estate-appellant  
challenged the jurisdiction of the lower court and  
disposition of decedent's estate, particularly an award to  
decedent's companion of nine years. The Appellate  
Court affirmed the lower court's exercise of subject-  
matter and personal jurisdiction as provided by Pueblo  
code. The Appellate Court also affirmed the lower  
court's determination that decedent's companion was not

an heir because the Pueblo does not recognize common  
law marriage but is entitled to compensation for financial  
assistance provided to the decedent prior to his death.

**Archuleta v. Archuleta (1998)** ..... 9-27  
This appeal is dismissed because the appellant failed to  
comply with the Pueblo's Appellate Code in meeting the  
time requirement for filing.

**Bird v. Ohkay Owingeh (2010)**..... 21-15  
Appellant filed a Notice of Appeal. The tribal court took  
two years to provide a record to the Appellate Court.  
The tribal court did not follow its own rules to certify the  
record and did not provide an updated law and order  
code to the Appellate Court. During this time, Appellant  
passed away. The Appellate Court used its inherent  
powers to decide that the appeal was moot because the  
Appellant passed away and the tribal court was not  
cooperative. Dismissed.

**Cata v. Binford (1991)**.....2-1  
Defendant appealed the lower court order to hold  
indefinitely Defendant's final payment of wages and  
benefits, an amount approximately six times the  
judgment to be satisfied. The Appellate Court affirmed  
the lower court's order that Defendant satisfy the civil  
judgment but ruled the lower court's failure to provide a  
show-cause hearing or enforcement-of- judgment  
hearing was a violation of Defendant's due process  
rights. The Appellate Court reversed the lower court's  
order to hold, indefinitely, wages and benefits in  
satisfaction of the civil judgment.

**Chavarria v. Ohkay Owingeh (2015)** ..... 26-1  
Appeal dismissed for lack of jurisdiction because the  
tribe's court of appeals was the proper forum and had  
jurisdiction pursuant to ordinance that enacted tribe's  
Rules of Appellate Procedure.

**Martinez v. Cordova (1991)**.....2-2  
Petitioners-appellants sought visitation beyond that  
provided by the lower court. The Appellate Court, in the  
absence of specific code provisions, found the lower  
court did not err in its exercise of inherent equitable  
powers and affirmed the lower court decision granting  
grandparental visitation to Petitioners- appellants.

**Ortiz v. Trujillo (2019)** ..... 30-4  
Appeal dismissed because appellate court review is  
limited to final judgments, but order under appeal was  
not a final judgment.

**Trujillo v. Romero (2000)**..... 11-12  
Appellant was found negligent in the operation of her  
vehicle by the tribal court when the parties were  
involved in an automobile accident within the boundaries  
of the San Juan Pueblo's reservation in which appellant's  
vehicle emerged from a private driveway and struck

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appellee’s vehicle being driven by appellee’s son on a right-of-way; the decision of the tribal court is supported by the evidence and not clearly erroneous. Affirmed.

### SAN JUAN SOUTHERN PAIUTE TRIBE

#### **James, In the Matter of the Challenge to the Results of the Recall Election Held on**

**Nov. 18, 2006 (2007)..... 18-1**

Appellants appealed the lower court’s dismissal of their complaint challenging the results of a recall election. Two issues were raised on appeal. First, that the lower court erred in upholding the recall results when the Appellants were denied due process which, if provided, would have resulted in different election results. Secondly, that the lower court erred in reversing the actions of the Tribal Council to remove Election Board members when such actions were not at issue before the court. The Appellate Court found that Appellants were provided with sufficient notice through mailings and postings of the recall election and that notice was further evidenced by Appellants’ subsequent actions to void the recall election. Additionally, the Court found that the Appellants had the opportunity to respond to the recall petitions by attending the recall meeting but chose instead to discourage attendance. The Court also found that the Election Board’s actions were put before the lower court when Appellants argued that such actions to hold the recall election were improper due the removal of the Election Board. Decision affirmed.

### SANTA CLARA PUEBLO<sup>1</sup>

#### **Aguilar v. Pueblo of Santa Clara .....16-22**

Appeal dismissed for lack of jurisdiction because Appellant failed to comply with the Santa Clara Pueblo rule of appellate procedure for filing a notice of appeal.

#### **Aguilar v. Pueblo of Santa Clara (2009)..... 20-1**

Petitioner filed a petition for a Writ of *Habeas Corpus* after she was sentenced to a total of 45 days for Aggravated Driving Under the Influence of Intoxicating Liquor or Drugs. The Appellate Court denied the Petition pursuant to SWITCARA #24, which deems a petition denied if it is not acted upon within thirty days after it is filed. The Court noted that the issue was also moot since the Petitioner had already served her sentence. Although the petition was denied, the Court, in the interest of justice, addressed Petitioner's allegations that the lower court denied her due process under Fifth,

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<sup>1</sup> Santa Clara Pueblo cases with an asterisk denote unpublished advisory opinions (a/k/a recommendations) that are not summarized in this digest.

Sixth, and Fourteenth Amendments to the United States Constitution. The Appellate Court determined the correct law to be applied was not the U.S. Constitution but rather the tribe's laws and the SWITCA appellate rules. The Court found that the Petitioner, having pled No Contest, was fully advised of her rights, waived those rights, and was not denied due process under ICRA. Petitioner's claim that she was unfairly sentenced was found to be procedurally insufficient as there were no facts supporting the claim. Finally, the Court found that the Petitioner failed to prove that the tribal court violated the law in the matter. Petition for Writ of *Habeas Corpus* denied.

#### **Baca v. Martinez\* (2004) ..... 15-2**

#### **Bourdon v. Sisneros (2008) ..... 19-1**

Appellants appealed the lower court’s eviction Order. The Appellate Court determined, after a generous and liberal reading, that Appellants’ Notice of Appeal neither stated the alleged errors of the lower court nor indicated the type of relief sought. Finding that severe deficiencies in the Notice of Appeal barred review, the Appellate Court denied the appeal. The Court also noted that it was without jurisdiction to review the Pueblo’s cases involving property and tribal membership. Denied and dismissed.

#### **Buffalo v. Tafoya\* (2005) ..... 16-2**

#### **Burbank v. Pueblo of Santa Clara\* (2005)..... 16-16**

#### **Chavarria v. Pueblo\* (1994) .....5-1**

#### **Chavarria v. Santa Clara Pueblo (2009)..... 20-4**

Appellant filed a letter with the Appellate Court after she was found guilty for a traffic violation. The Appellate Court treated the letter as a Notice of Appeal but denied the appeal, finding that the Notice failed to meet the substantive requirements of SWITCA Appellate Rule 11(e) and it did not sufficiently state a reason for reversal. Dismissed.

#### **Cordova v. Pueblo of Santa Clara\* (2004) ..... 15-7**

#### **Dasheno v. Pueblo of Santa Clara\* (2005)..... 16-32**

#### **Gutierrez v. Pueblo\* (1994) ..... 5-1**

#### **Gutierrez v. Pueblo of Santa Clara\* (2005)..... 16-17**

#### **Gutierrez v. Tafoya\* (2004)..... 15-2**

#### **Gutierrez v. Tafoya (2005)..... 16-16**

This case is published at 21 SWITCA REP. 5 (2010).

#### **Gutierrez v. Tafoya (2010) ..... 21-5**

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The Appellate Court affirmed a judgment against Appellant to pay an amount of money owed to Appellee.

When Appellant failed to pay the full amount of the judgment, Appellee filed an Application for Writ of Execution with the tribal court. The application was granted and the tribal court issued a Writ of Execution that ordered Appellant to auction her personal property to satisfy the judgment. Appellant appealed the Writ of Execution and in her appeal raised issues that pertained to the merits of the judgment. The Appellate Court found that since there was not an abuse of discretion by the tribal court in issuing the Writ of Execution, an appellate review of the Writ of Execution would not be considered because the underlying judgment had already been appealed and affirmed. The Appellate Court also found that *res judicata* and claim preclusion barred review of the issues related to the merits of the judgment because the judgment had been decided with finality by the tribal court and the Appellate Court. Dismissed with prejudice and Writ of Execution affirmed.

**Harrington v. Pueblo of Santa Clara\* (2004) ..... 15-1**

**Harrington v. Pueblo of Santa Clara (2001) .....12-25**

Appeal dismissed because appellant did not assert any error that constituted grounds for appeal. Appellant had no legal right to court-appointed counsel, nor was he denied the right to prepare his defense, testify on his own behalf, subpoena witnesses, or cross-examine them.

**Herrera v. Abeyta\* (2005) ..... 16-9**

**Hickman v. Pueblo of Santa Clara (1997) ..... 8-1**

This matter came before the court on its own motion to dismiss this matter because the court has not been provided the documentation necessary to proceed on this matter. It is hereby ordered that this case be and hereby is dismissed.

**Iacobone v. Pueblo\* (1994) ..... 5-1**

**Martinez v. Funmaker\* (2004) ..... 15-1**

**Naranjo v. Pueblo\* (1994) ..... 5-1**

**Naranjo v. Pueblo of Santa Clara\* (2005) ..... 16-1**

**Naranjo v. Pueblo of Santa Clara  
Housing Authority (2005) .....16-13**

Tribal court order involving violations of a Mutual Help and Occupancy Agreement pertaining to a home was null and void because there was no applicable tribal common law nor ordinance that authorized the judge to issue the order. Rights to equity, responsibility for restitution, and procedures for eviction and forcible entry and detainer are some of the tribal code provisions needed as a basis for landlord-tenant law. No further causes of action for eviction shall be filed in the tribal court until the Pueblo

passes an ordinance regulating landlord-tenant relations and foreclosures on the reservation.

The Pueblo is bound by the Indian Civil Rights Act as it applies to tribal housing programs, so compliance with this statute is an important aspect of the regulation of Indian housing. Part of complying with the ICRA is to legislate the proper procedures for the tribal court to act on a request by the housing authority without violating the homebuyer’s rights. Until the tribal council passes an ordinance identifying the rights and responsibilities of the homeowner and the procedures for eviction, the tribal court has no law to apply to such cases, so any eviction decision would be a violation of the homebuyer’s rights under the ICRA.

**Naranjo v. Suina\* (2004) ..... 15-5**

**Padilla v. Pueblo\* (1994) ..... 5-1**

**Pino v. Pueblo of Santa Clara\* (2005) ..... 16-16**

**Pitts v. Santa Clara Pueblo\* (2004) ..... 15-4**

**Roller v. Pueblo\* (1994) ..... 5-1**

**Roller v. Pueblo of Santa Clara (1997) ..... 8-1**

This matter came before the court on its own motion to dismiss this matter because the court has not been provided the documentation necessary to proceed on this matter. It is hereby ordered that this case be and hereby is dismissed.

**Santa Clara Pueblo v. Gallegos\* (1994) ..... 5-1**

**Santa Clara Pueblo v. Lujan\* (1994) ..... 5-1**

**Santa Clara Pueblo v. Singer\* (1994) ..... 5-1**

**Santa Clara Pueblo v. Sisneros\* (1994) ..... 5-1**

**Santa Clara Pueblo v. Velarde\* (1994) ..... 5-1**

**Santa Clara Pueblo Housing**

**Authority v. Naranjo (2005) ..... 16-19**

In dispute over money owed on a house, the appellate court affirmed the tribal court’s order that resolved the dispute because the matter was properly before the tribal court and there was nothing in the record to indicate that the judge abused his discretion. Most if not all of the problems in this long-pending case were due to appellant’s lack of due diligence.

**Santa Clara Senior Citizens**

**Organization v. Singer\* (2005) ..... 16-4**

**Shije v. Garcia\* (2004) ..... 15-3**

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**Sisneros v. Pueblo\* (1994) ..... 5-1**

**Tafoya v. Pueblo of Santa Clara\* (2004)..... 15-3**

**Tafoya v. Pueblo of Santa Clara\* (2005).....16-12**

**Tafoya v. Santa Clara**

**Pueblo Housing Authority (2009) ..... 20-3**

Appellants appealed a lower court decision to enforce a Stipulated Judgment that required Appellants to vacate their housing unit, that tribal police department forcibly remove the Appellants in the event they fail to voluntarily vacate, and that the Appellants pay court costs and attorney fees and restitution for the reasonable costs of necessary repairs to the housing unit. The Appellate Court denied the appeal finding that the Notice of Appeal was filed clearly beyond the time limitation set by SWITCA Rule 11(a) and thus the Court lacked jurisdiction to hear the matter. Further, the Court noted that the Notice of Appeal failed to meet the substantive requirements of SWITCA Appellate Rule 11(e) and it did not sufficiently state the name of the lower court, any alleged errors of the lower court, nor the type of relief sought. Dismissed.

**Tewa Construction, Baca v.**

**S&S Joint Venture (2005) .....16-22**

Petition for rehearing denied because the appellant failed to comply with the Southwest Intertribal Court of Appeals rule of appellate procedure for filing such petitions.

**Trujillo v. Trujillo (2012)..... 23-1**

Appellant filed a Notice of Appeal that did not specify the judgment she was appealing. The Appellate Court found that the Notice of Appeal was insufficient pursuant to SWITCARA #11(e)(2). The Appellate Court examined the record and it appeared that Appellant was appealing a Court Order Amending Child Support. The Appellate Court directed the Appellant to the tribal court as the proper forum to modify child support. Denied.

**Viarrial v. Tafoya\* (2004)..... 15-3**

**Vigil v. Santa Clara Pueblo Housing (2009) ..... 20-8**

Appellant appealed a lower court decision to enforce a Stipulated Judgment that Appellant vacate her housing unit, that tribal police department forcibly remove the Appellant in the event she did not voluntarily vacate, that the Appellant pay court costs and attorney fees, and that the Appellant pay restitution for past rent due and restitution for the reasonable costs of necessary repairs to the housing unit. The Appellate Court denied the appeal for lack of jurisdiction as the Notice of Appeal was filed after the fifteen-day time limit set by law. Dismissed.

**Wright v. Pueblo of Santa Clara\* (2005)..... 16-1**

**SOUTHERN UTE INDIAN TRIBE**

**A.A.M.B., In the Interest of**

**v. Williams (1993).....4-1**

The State of Colorado filed suit under an assignment of rights executed by the child’s guardian who receives Aid to Families with Dependent Children (AFDC). The state sought to establish paternity of the child in order to obtain contribution and reimbursement for the financial assistance paid to the child’s guardian for the benefit of the child. The trial court established the paternity of the child based upon the father’s admission and awarded child support, but denied past child support. The trial court ruled that past decisions of the court established that child support cannot be imposed retroactively after determination of paternity in the absence of legislative authority. The Appellate Court reversed the decision of the trial court and held that nothing in the Southern Ute Indian Tribal Code prevents the suit by any party supporting the child to obtain retroactive child support from a parent.

**Baca v. Southern Ute Indian Tribe (2012)..... 23-23**

Appellant filed a Notice of Appeal and a Motion for Stay of Judgment pursuant to the SUTIT Appellate Code. The Appellate Court found this matter moot because it received a Review Order and Order Closing the Case from the tribal court. Dismissed.

**Baker v. Southern Ute Dept. of Justice**

**Hearing Division (2004) ..... 15-8**

Appeal dismissed for lack of jurisdiction because notice of appeal was not timely filed under tribal code §3-1-104(1) and SWITCA Rule of Appellate Procedure 8. Appellant’s argument was based on an obsolete version of SWITCA Rule 8.

**Baker v. Southern Ute Dept. of Justice**

**Hearing Division (2006) ..... 17-9**

Appellant Hearing Division revoked Appellee’s driving privileges after her arrest for driving under the influence. The trial court reversed the revocation. Appellant argued

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on appeal that there was reasonable suspicion to stop Appellee’s vehicle. Appellee argued that the Appellate Court lacked jurisdiction because Appellant failed to timely file the appeal. Due to a lack of notice of a rule change, Appellant relied on a prior version of the SWITCA filing rule that was posted on the trial court’s website, so due process demanded that the Appellate Court use the prior version to conclude that it had jurisdiction. The Appellate Court reversed the trial court’s decision because there was reasonable suspicion to stop Appellee’s vehicle. The Appellate Court noted that the trial judge’s evidentiary demands exceeded the standard for reasonable suspicion, which requires a showing considerably less than a preponderance of the evidence. Remanded with instructions to reinstate the revocation.

### **Baker v. Southern Ute Indian Tribe (1994) ..... 5-1**

The appeal is dismissed for appellant's failure to comply with the Southern Ute Tribe's statutory requirements for the filing of an appeal. These requirements are jurisdictional and the appellate court cannot proceed if the appealing party fails to comply exactly with the requirements.

### **Burch v. Southern Ute Indian Tribe (1994) ..... 5-2**

The petitioner-appellant appealed the lower court's conviction of reckless driving and disorderly conduct on grounds that she was denied legal counsel and that the proceedings were unfair. The Appellate Court affirms the conviction for disorderly conduct and reverses the conviction of reckless driving.

### **Burch, In the Matter of the Estate of (2010) ..... 21-12**

Appellant filed a Petition for Discretionary Appeal of a Probate Order and Amended Probate Order. Appellant then filed a Notice to Withdraw Discretionary Appeal. The Appellate Court dismissed the appeal pursuant to SWITCARA #36(a).

### **Chavez v. Torres (2001) ..... 12-11**

Appellate court affirmed tribal court’s dismissal of plaintiffs’ complaint for failure to state a claim because tribal court did not commit any reversible errors. Plaintiffs were represented by counsel throughout the proceedings who apparently did not understand the tribal code’s fact-pleading requirements. Both of plaintiffs’ complaints contained only conclusory allegations and restatements of legal tests, and were devoid of the underlying facts required by the tribal code.

### **Cloud v. Southern Ute Indian Tribe (2002) ..... 13-1**

Appellee was awarded damages and court costs for a claim alleging breach of contract, unjust enrichment, and conversion. Appellant alleged erroneous factual findings and judicial bias. Appellee filed a motion to dismiss the appeal because Appellant failed to timely file her opening brief as required by SWITCA rule 26(f).

Although Appellant filed no opening brief, the Appellate Court denied Appellee’s motion because Appellant filed two detailed notices of appeal that described the trial court’s alleged errors. The Court concluded that the trial court’s decision was supported by substantial evidence, there was no abuse of discretion, the decision was not improper in any other respect, and there was no showing of judicial bias. Affirmed.

### **Committee for Better Tribal Gov’t**

#### **v. Southern Ute Election Bd. (1991)..... 2-6**

Respondents-appellants appealed the lower court ruling that an illegally cast vote resulted in a tie and a void recall election. The Appellate Court affirmed the lower court ruling that (1) tribal constitutional issues raised by the voting case gave rise to lower court jurisdiction and (2) the Election Board acted properly in deducting one proxy vote because it was cast improperly. The Appellate Court further ruled that the tribal constitutional provision regarding recall elections requires a majority of voting members to cast a vote in the recall election and a tie vote means the recall is not authorized by a vote of the people and consequently fails.

### **Committee for Better Tribal Gov’t**

#### **v. Southern Ute Election Bd. (1994)..... 5-4**

This matter coming on by the Court's motion, it appearing that this matter is not now before the court and was assigned an appellate number erroneously, it is therefore ordered that this matter be dismissed.

### **D.B., Minor, In the matter of v. Southern Ute**

#### **Indian Tribe (2011) ..... 22-23**

Minor Appellant's mother filed a Notice of Appeal after the lower court found that Appellant had committed several delinquent acts and was sentenced to a jail term and probation. The Notice of Appeal did not request a Stay of Judgment. The Appellate Court dismissed the appeal as moot since the Appellant had completed all his sentencing requirements before the Court had the opportunity to decide the appeal. Dismissed.

### **D.R., a Minor v.**

#### **Southern Ute Indian Tribe (2003)..... 14-4**

In a juvenile delinquency case, Appellant raised three issues on appeal. Appellee contested only one of the issues: whether there was sufficient evidence to support a conviction for underage consumption of alcohol. Appellant argued that the record established only that he had alcohol in his system, but not that any consumption occurred on the reservation. The Appellate Court examined the evidence to determine whether a rational trier of fact could conclude that all elements of the crime were established. The Court found sufficient circumstantial evidence to affirm the conviction, and it reversed the two uncontested issues.

### **Deleo v. Southern Ute**

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**Indian Tribe (1999)**..... 10-6  
Petitioner sought a discretionary appeal from the tribal court's dismissal of his claims because of sovereign immunity, alleging that the tribe had waived its immunity by acquiring an insurance policy which contained a written waiver of sovereign immunity. Such waiver language contained in tribal insurance policies purchased or provided pursuant to the Indian Self-Determination and Education Act does not waive tribal immunity. Affirmed.

**Ferrell v. Richards, Jr. (1990)** ..... 1-12  
Plaintiff-appellant appealed the lower court denial of Plaintiff's request that Defendants-respondents' liability for damages include the costs of repairs made by the second garage, in addition to those costs incurred at the first garage which had failed to repair Plaintiff's auto. The Appellate Court overruled the lower court determination that Defendants could not be held liable for the inability of the first garage to properly repair the automobile and ordered Defendants-respondents to make complete restitution to Plaintiff-appellant. The Appellate Court ruled the Defendants had a duty to return Plaintiff to at least as good a position as existed prior to the commission of the crime.

**Gould v. Southern Ute Tribe (1993)** ..... 4-4  
Appellant sought reversal of the Southern Ute Indian Tribal Council's decision to impose a penalty assessment against him pursuant to the 1989 severance tax ordinance of the Southern Ute Tribe, Tribal Ordinance No. 89-01. Respondent Southern Ute Tribe challenges the timeliness of appellant's appeal and challenges defects in the notice of appeal filed by appellant, Gould. The appellate code of the Southern Ute Indian Tribal Code is silent on the effect of failure to file a timely notice. The SWITCA Rules of Appellate Procedure do address this failure. Appeal dismissed.

**Hayes v. Southern Ute Indian Tribe (2011)**.....22-20  
Appellants filed a letter with the tribal court requesting an appeal after the lower court issued several orders related to a petition brought by tribal social services division for the dependency and neglect of Appellants' minor child. The Appellate Court treated the letter as a formal Notice of Appeal, however it was unclear which order was being appealed. The Court found that it lacked the jurisdiction to hear the Adjudicatory Order because it was filed untimely and decided to treat the Notice of Appeal as an appeal of the Disposition and Removal Order. The Court found the Notice of Appeal to be insufficient in that it failed to meet the requirements of SWITCA Rule 11(e) and neither stated the alleged errors of the lower court nor indicated the type of relief sought. Dismissed.

**Herrera v. Herrera (2015)** ..... 26-4

In appeal from permanent order in dissolution of marriage proceeding, appellate court found that trial court (1) abused and exceeded its jurisdiction with three-year alimony award to wife, and (2) abused its discretion in holding wife entirely responsible for her own attorney fees. Therefore, appellate court vacated trial court's Addendum to Dissolution and remanded case to trial court for a decision ordering ten years of alimony and specific equitable apportionment of attorney fees.

**Howe v. Brown (2001)** ..... 12-27  
The parties agreed to settle the litigation and dismiss the appeal. To that end, the parties filed a joint stipulated motion to dismiss. This court hereby grants that motion, dismissing the appeal with prejudice. Each party is to bear her own costs and attorneys' fees. It is so ordered.

**In the Interests of Minor Children (2000)** ..... 11-6  
Appellant, a prisoner, cites numerous violations of due process in this divorce and child custody appeal, claiming that the trial court discovered the pending state divorce action through improper actions of the tribal judges, improper stipulations were made at a hearing, husband was not provided with notice that the divorce action was being transferred to and consolidated with the child custody matters pending in tribal court, and he was not allowed to present evidence regarding the nature and value of his property, all of which are found to be without merit. Affirmed.

**J.D., Minor, In the Interest of v. Southern Ute Indian Tribe, Division of Social Services (2011)**..... 22-11  
Appellant appealed a lower court Order that her minor son remain a ward of the court, that modified a permanency plan from providing services with the goal of reunification between mother and son to permanent placement of the minor in long-term foster care, and that the Appellant and the minor's father be held jointly and severally liable for their minor son's out-of-home expenses. The Appellate Court affirmed the tribal court's order that the minor remain a ward of the court finding that sufficient evidence exists to show that reunification at the time would not be in the minor's best interest. The Court reversed the lower court's ruling that modified the permanency plan finding that the record lacked sufficient evidence to support abandoning the goal of reunification and that the Tribal Code indicated a strong desire that family ties be preserved and strengthened. Finally, the Court modified the judgment of the lower court determining that there was not adequate justification to impose joint and several liability when both the Appellant and minor's father were equally and separately liable for the costs of their minor son's out-of-home care. Affirmed in part, reversed in part, and remanded.

**J.D., Minor, In the Interest of v. Southern Ute Indian Tribe,**

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### **Division of Social Services (2011) .....22-16**

Appellee filed a Petition for Rehearing raising several substantive and procedural errors made by SWITCA in a case involving a minor found to be a dependent and neglected child. The Appellate Court vacated its prior Order finding that SWITCA was without jurisdiction to accept any appeal filed outside of the fifteen (15) day frame set by SWITCA Rule 11(c). The Court also found that SWITCA erred in failing to determine its own jurisdiction and to issue a written order accepting or denying the appeal in accordance with SWITCA Rule 12. Further, the Court found that since SWITCA took so long to decide the matter, the issue of reunification was moot. Finally, the Court dismissed Appellant's appeal of the imposition of \$8,100.00 in child support, finding that Appellant failed to assert specific errors as grounds for the appeal nor did she state the relief being sought. Vacated and dismissed.

### **K.R., Minor Child and concerning**

#### **Reed v. Thompson (2008) ..... 19-6**

Appellant, a minor child, appealed the lower court's Order Regarding Exclusion of Appellant from the Southern Ute Indian Reservation. The Order did not exclude the Appellant entirely from the reservation and included exceptions that allowed Appellant to remain in the family residence and attend scheduled appointments.

The Appellate Court affirmed the lower court's Order Regarding Exclusion, finding that the tribal court did not err in: (1) making a factual determination of Appellant's membership status based on tribal law; (2) determining that certain provisions of the tribal constitution were inconsistent with other provisions of the tribal constitution; (3) determining that the tribal constitution did not require a preliminary finding by the tribal council before an exclusion proceeding could begin in tribal court; and (4) finding that certain sections of the tribal constitution did not violate double jeopardy and equal protection assurances under ICRA. Further, the Appellate Court also found that the evidence presented to the lower court was sufficient to warrant a finding of facts by the court. The Appellate Court denied the Appellant's Motion to Remand for Trial *De Novo*, finding that although the record contained certain gaps and sections of inaudible testimony, it was sufficient to determine the soundness of applied law to fact in the case.

### **La Plata County Dept. of Social Services**

#### **v. Richards (1996) ..... 7-10**

This appeal is dismissed for failure to comply with the statutorily-required deadline because meeting the required date for filing a notice of appeal is a jurisdictional prerequisite. The appellate court is without jurisdiction to proceed.

### **Lehner v. Garcia (2010) ..... 21-1**

Appellants filed post-trial motions in the tribal court and in the alternative filed a Notice of Appeal of a final judgment awarding pain and suffering/dog anxiety damages. The tribal court denied Appellants' post-trial motions but awarded punitive damages to Appellants. In the meantime, the Appellate Court received Appellants' Notice of Appeal. The Appellate Court found that the tribal court did not abuse its discretion in resolving issues of fact. Appellees filed a Notice of Cross Appeal. The Appellate Court affirmed Appellants' final judgment and punitive award and denied their request for oral argument pursuant to SWITCARA Rule 29(b). The Appellate Court denied and dismissed Appellees' Notice of Cross Appeal as untimely.

### **Mason v. Weaver (1990)..... 1-1**

Respondent-appellant appealed the lower court damage award of court costs as well as the cost of additional insurance for Plaintiff's new car and automobile financing, stating the lower court erred in awarding Plaintiff an amount greater than the fair market value of the car and in failing to apply the collateral source rule. The Appellate Court held that Respondent-appellant was liable for all reasonable costs stemming from Defendant's wrongdoing including the cost of insurance and interest on the loan for Plaintiff-respondent's new automobile. The Appellate Court dismissed as inapplicable Respondent-appellant's contention that the collateral-source rule required invalidation of the lower court's award.

### **L.K., In the Matter of v. M.E.T (1990) ..... 1-4**

Both parties appealed from the lower court's ruling: (1) the Petitioner claimed the court erroneously ruled a putative father was not required to reimburse the state for child support paid by the state to the mother, prior to the determination of the paternity; and, (2) Respondent claimed the lower court wrongly determined it was without jurisdiction to hear the matter. Without a request from Respondent, the Appellate Court declined to address Petitioner's claim because she failed to pay the filing fee required by tribal code and remanded the issue of reimbursement of the state for child support paid to the mother to the lower court. The Appellate Court affirmed the trial court's dismissal, for lack of jurisdiction, of Respondent's petition for custody.

### **M.W., Minor, In the Matter of (2010)..... 21-12**

Appellant appeals an order adjudicating a minor Not Delinquent. The Appellate Court reviewed the appeal *de novo* and determined that the evidence presented at trial was not sufficient to prove that the minor committed the offense of underage possession or consumption of alcohol within the exterior boundary of the reservation. The Appellate Court also determined that the trial court did not err in its interpretation of the underage drinking statute. Affirmed.

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- Monte, In the Matter of v. Monte (2011)**.....22-18  
Appellant filed a Motion to Dismiss Appeal. Granted and dismissed without prejudice.
- Mounts v. Box (2001)**.....12-18  
In breach of contract dispute, appellate court affirmed tribal court's award of damages because there was no reversible error. Tribal court had jurisdiction over appellants under federal and tribal law. Tribal court judge was fair and even-handed with all parties. Tribal court's decision that appellee substantially performed the contract for excavation services was supported by substantial evidence, and there was no abuse of discretion. Alleged alterations of evidence were not material nor were they done to mislead the court, but rather to provide additional information to the court. The trial court's decisions were based on its credibility decisions and findings of fact and were not clearly erroneous. The ruling that appellee reasonably did not understand that he was fired is not clearly erroneous. The doctrine of accord and satisfaction is inapplicable because the disputed debt was not clearly defined where part of the debt was disputed and part was not disputed.
- Naranjo v. Watts (1995)**..... 6-20  
This matter comes before the Court on its own motion pursuant to its inherent power to control the Court's docket. The Court, by letter has been informed by respondent/appellant that she no longer wishes to proceed with this appeal. Appeal dismissed.
- Olguin v. Southern Ute Indian Tribe (2002)** ..... 13-4  
In a dispute over cattle grazing, trial court awarded damages to defendant Tribe. Plaintiffs appealed, but the parties then filed a joint motion to dismiss with prejudice. Motion granted and damages ordered to be paid immediately to Tribe.
- Pate v. Naranjo (2003)**..... 14-6  
In a personal injury suit, the trial court entered a default judgment of liability against all defendants, but awarded actual damages against only one defendant. The trial court declined to award damages for pain and suffering or permanent disability. Appellant contended that the judgment was unfair because the defendants' testimony was untruthful, and she experienced a great deal of pain and suffering from her injuries. However, the Appellate Court dismissed the appeal for lack of jurisdiction because the notice of appeal was not timely filed under SWITCA Rule 8 (2001). Nonetheless, the Appellant suffered no prejudice from the dismissal because the Appellate Court found no clear error in the trial court's determination of fact and witness credibility, and no plain error with respect to damages, so it would have affirmed the judgment below even if the notice of appeal had been filed on time.
- Pate v. Naranjo (2004)**..... 15-5  
Appeal dismissed for lack of jurisdiction because the notice of appeal was not timely filed under SWITCA Rules of Appellate Procedure 8 and 11(c), and the court file reflects that appellant was personally served with notice of the lawsuit despite her claim to the contrary.
- Paul v. Southern Ute Tribe (1997)**.....8-1  
Plaintiffs appeal from a dismissal of their complaint which alleges an arbitrary denial by the Southern Ute Indian Tribal Council of their adoption into the Tribe. The tribal court dismissed the complaint, relying on the tribal constitution and Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978). The tribal court found that the constitution vested sole jurisdiction for membership eligibility in the tribal council and that Santa Clara Pueblo v. Martinez did not provide for a waiver of tribal sovereign immunity, holding that the tribal court lacked jurisdiction and the Tribe and its council members were protected by sovereign immunity. The appellate court affirms the decision that the tribal court lacked jurisdiction and the tribe and its council members are protected by the principle of sovereign immunity. Parenthetically, the appellate court notes that the tribal statute of limitations and the equitable doctrine of laches provide additional protection for the Tribe and its council.
- Pinnecoose v. Board of Commissioners of the Southern Ute Public Housing Authority (1992)**.....3-4  
Petitioner-appellant appealed the lower court denial of Petitioner's claim that the Board of Commissioners' termination of employment was unjust, without legal authority, and in violation of Petitioner's due process and equal protection rights. The Appellate Court affirmed the lower court, (1) ruling that sovereign immunity barred suits against the tribe, the Housing Authority, the Board of Commissioners and its members in their



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official and individual capacities, and (2) dismissing Petitioner's cause of action in its entirety, noting Petitioner-appellant's remedy for any perceived inequity is through the legislature.

### **Pinnecoose v. Pinnecoose (2003)..... 14-7**

Appellant appealed the lower court's denial of his motion to modify or suspend child support. The Appellate Court dismissed the appeal for lack of jurisdiction because the notice of appeal was not timely filed under SWITCA Rule 8 (2001). The Court noted that even if the appeal had been timely, it would have been dismissed due to Appellant's failure to post an appeal bond. An appeal bond does not guarantee a right to appeal, but it does ensure that the money the trial court awarded to Appellee be preserved pending appellate review.

### **Price v. Baker (2002)..... 13-4**

The trial court issued a default judgment against Appellant for failure to appear. Appellant filed a notice of appeal requesting a new judge and a new court date but didn't file a brief, thereby failing to specify alleged errors in the trial court's decision. Finding no obvious error, the Appellate Court dismissed the appeal with prejudice.

### **R.L.W., In the Matter of v. G.N.B. (1992) ..... 3-1**

Petitioner-appellant, the county child support enforcement unit, appealed a lower court ruling that the putative father was not liable for state benefits paid to the children in question, prior to the determination of the paternity. The Appellate Court remanded the case with directions that the lower court determine paternity conclusively as to each child and the amount of support owed to each. The matter of the lower court's ruling regarding the payment of AFDC benefits was taken under advisement pending resolution of paternity.

### **Root v. Southern Ute Indian Tribe (2014)..... 25-1**

Appeal was dismissed due to Appellant's failure to file a brief as ordered by the Appellate Court. The Appellate Court determined that Appellant was provided ample opportunity to file a brief under both Rule 26 of the Southwest Intertribal Court of Appeals Rules of Appellate Procedure (SWITCARA) and Section 3-1-107(2) of the Southern Ute Appellate Code. The Court also noted that Appellant could have filed a Motion for Stay of Judgment pending appeal pursuant to Rule 20 of SWITCARA or Section 3-1-104 of the Southern Ute Appellate Code. Dismissed.

### **Sam v. Southern Ute Indian Tribe (2006)..... 17-11**

Defendant-Appellant, a non-Member, appealed the lower court ruling that denied him a jury selected from a jury array that included non-Members in the pool of potential jurors. The Appellate Court, finding error, reversed the lower court's decision.

### **Santistevan v. Myore (1998)..... 9-20**

The appeal is dismissed on appellee's motion for appellant's failure to file an opening brief.

### **Scott v. Southern Ute Tribe (1993) ..... 4-9**

Petitioner was released inadvertently, without authorization from the tribal court, from custody while serving a sentence for a conviction of assault and battery. Petitioner was aware that his release was a mistake, but did not inquire or report to the tribal court. Upon petitioner's return to custody, a parole hearing was held and petitioner's motion was denied. Petitioner now seeks a writ of *habeas corpus* on the grounds that he is being unlawfully detained and was denied a fair hearing on his motion for parole. Petitioner has failed to demonstrate that the court was prejudiced against him and petitioner was not denied due process in his motion for parole hearing. Petition for writ of *habeas corpus* is denied.

### **Silva v. Southern Ute Indian Tribe (2003)..... 14-11**

The Appellate Court approved the parties' stipulation for settlement, vacated the appeal, and dismissed the interlocutory appeal with prejudice.

### **Southern Ute Indian Tribe v. Bravo (2012)..... 23-5**

Appellant filed a Notice of Appeal/Petition for Discretionary Appeal of an Order granting Appellee a deferred judgment and sentence for driving under the influence. Tribal law allowed the judge broad discretion in sentencing. The Appellate Court found that the judge did not abuse her discretion. The Notice of Appeal was dismissed and the Petition for Discretionary Appeal was denied.

### **Southern Ute Indian Tribe v. Burch (2012)..... 23-22**

Appellant filed a Notice of Appeal stating that the tribal court erroneously amended a sentencing order and altered a plea agreement. The Appellate Court reasoned that the judge was within her discretion to amend the sentencing order pursuant to the tribal code. During the Appellate Court's review of this matter, Appellee violated his probation, was sentenced, and completed his sentencing requirements. The Appellate Court finds this matter moot. Dismissed.

### **Southern Ute Indian Tribe v. Burch (2012)..... 23-30**

Previously, the Appellate Court had dismissed this matter as moot in an "Opinion and Order Dismissing the Appeal." Appellant then filed a motion for reconsideration of that opinion and order, and also requested a formal clarification of that opinion and order.

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The Appellate Court explained that the "Opinion and Order Dismissing the Appeal" should be considered to be an order denying Appellant's petition for discretionary appeal. The Appellate Court further explained that the "clarification" within the "Opinion and Order Dismissing the Appeal" "was a means to inform the Appellant of the Court's opinion so that an amendment to existing tribal law could be explored." Because the petition for discretionary appeal had already been denied by the Appellate Court and the underlying circumstances of the matter have made the case moot, the Appellate Court denied the motion for reconsideration.

### **Southern Ute Indian Tribe v.**

**Bushnell (2003).....14-12**  
Appellants appealed the first phase of a bifurcated trial. The Appellate Court dismissed the appeal for lack of jurisdiction because no final judgment had been issued. The Court noted that SWITCA Rule 13 (2001) sets forth a procedure for interlocutory appeals, but it was not followed.

### **Southern Ute Indian Tribe v.**

**Carmenoros (1991) ..... 2-10**  
Defendant appealed, *pro se*, a lower court conviction as violating his due process rights. The Appellate Court ruled the lower court erred by not notifying Defendant of his right to postpone arraignment pending consultation with counsel. The Appellate Court remanded the case to the lower court with instructions that entry of a plea of not guilty on behalf of Defendant and failure to inform Defendant of the specific penalties for the offense charged did not comply with rights afforded by the tribal code. The Appellate Court denied Defendant-appellant's contention that he did not have adequate access to necessary documents and ruled that the lower court may impose one sentence for several offenses, but cautioned the lower court to comply with the tribal code mandate to explain why a particular sentence is imposed.

### **Southern Ute Indian Tribe v.**

**Ferguson (1991)..... 2-18**  
Defendant appealed the lower court denial of Defendant's motion to dismiss. The Appellate Court ruled that although Duro v. Reina did not render the tribe's original prosecution invalid, it now divested the lower court of subject-matter jurisdiction and the power to impose further criminal sanctions against Defendant-appellant, a non-member Indian. The Appellate Court also addressed an issue not raised by either party and held that the lower court erred in (1) proceeding with the revocation hearing after the expiration of probation, and (2) imposing incarceration upon revocation of probation when incarceration was not originally imposed.

### **Southern Ute Indian Tribe v. Frost (1993)..... 4-8**

The Appellate Court granted defendant's unopposed motion to dismiss.

### **Southern Ute Indian Tribe v. Grove (1990)..... 1-8**

Defendant appealed from a jury verdict finding her guilty of criminal contempt. Two issues were raised on appeal. First, that the evidence was insufficient to convict her of criminal contempt; and second, that the trial judge committed "plain error" in giving a last-minute definition of criminal contempt to the jury and requesting that the jury reach a unanimous verdict within forty-five minutes. The Appellate Court ruled (1) the evidence was insufficient to find the Defendant guilty of criminal contempt because the Defendant's action (verbal abuse of court clerk) did not rise to the level of interfering with the court's proceedings or dignity, and (2) the trial judge committed plain error in issuing instructions which were highly prejudicial. The Appellate Court summarily dismissed Plaintiff-respondent's contention that Defendant-appellant's filing of a Petition for Discretionary Appeal was not timely.

### **Southern Ute Indian Tribe**

#### **v. Hummingbird (1991) ..... 2-15**

Defendant appealed the lower court's conviction claiming Defendant was denied a jury trial, the court improperly proceeded with trial even though a subpoenaed witness failed to appear and the findings of fact failed to support the conviction. The Appellate Court upheld the conviction and affirmed the lower court, ruling that (1) Defendant's failure to pay the jury fee as required was a waiver of the right to a jury trial, (2) Defendant's failure to demand a continuance when witnesses did not appear undermined the contention that the witness could have been helpful, and (3) the evidence presented at trial was sufficient to find the Defendant guilty of careless driving.

### **Southern Ute Indian Tribe v. In the**

#### **Interest of Baby Boy Weaver (2005) ..... 16-13**

The Petitioner-Appellant filed a motion to dismiss, stating that the issue that was the basis for the appeal is moot. The Court granted the motion to dismiss.

### **Southern Ute Indian Tribe v. Naranjo (1992)..... 3-8**

Defendant appealed a conviction of escape claiming the offense was improperly charged, the lower court was without jurisdiction because the alleged offense occurred outside the exterior boundaries of the reservation, and the complaint was invalid. The Appellate Court affirmed Defendant's conviction of escape. The Appellate Court ruled that although Defendant-appellant did not challenge the validity of the complaint at trial, the subject-matter jurisdiction of the court which was dependent upon the complaint could be challenged at any time. The Appellate Court found that the complaint did not comply with tribal code requirements but the technical error did not divest the lower court of subject-matter jurisdiction. The Appellate Court then addressed the sufficiency of the complaint and found that

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Defendant-appellant did not establish that (1) the technical error resulted in prejudice to Defendant, nor that (2) the complaint failed to charge an offense. The Appellate Court, citing Southern Ute Indian Tribe v. Scott, 2 SWITCA REP. 14 (1991), ruled that Defendant's failure to challenge the sufficiency of the complaint at trial resulted in a waiver on appeal. The Appellate Court also found that Defendant's failure to return to a treatment facility, a designated place of custody or confinement, and subsequent apprehension within the exterior boundaries of the tribe's reservation, despite the fact that the offense began outside the boundaries of the reservation, constituted a proper charge of escape and exercise of tribal jurisdiction.

### **Southern Ute Indian Tribe**

#### **v. Rally In the Rockies, Inc. (2008)..... 19-5**

The Appellate Court dismissed Appellant's appeal for failure to post the required appeal bond. The Court notes that an appeal bond serves to discourage frivolous appeals which waste limited resources of the Court and parties. Dismissed.

#### **Southern Ute Indian Tribe v. Scott (1991) ..... 2-14**

Defendant appealed the lower court's denial of Defendant's motion to suppress and motion to dismiss. The Appellate Court affirmed the lower court's decision (1) to grant Defendant's motion to suppress with regard to the roadside test, noting that Defendant was too intoxicated to validly consent, a component of the roadside test, but (2) to allow testimony regarding Defendant's later refusal to take a breathalyzer test as a separate and distinct act. The Appellate Court also affirmed the lower court's refusal to dismiss the complaint due to Defendant-appellant's failure to challenge the complaint in a timely manner.

### **Southern Ute Indian Tribe, Division of Social Services**

#### **In the Interest of K.D.W.,**

#### **Minor Child (2014) ..... 25-3**

Appellant appealed a Permanency Order for a minor issued by the Tribal Court. Following the timely filed Notice of Appeal and prior to the appeal being accepted, Appellant filed a Motion to Reconsider the Permanency Order with the Tribal Court. The Tribal Court issued a Minute Order Regarding the Motion to Reconsider denying Appellant's Motion. The Appellate Court concurred with the Tribal Court's findings in the Minute Order and did not consider the merits of Appellant's appeal as the Appellant failed to object or properly preserve the issues noted in its appeal with the Tribal Court. Affirmed.

#### **Southern Ute Tribe v. Carillo (2014) ..... 25-2**

The Southern Ute Indian Tribe petitioned for discretionary appeal from the sentence resulting from a

probation-revocation order issued by the Tribal Court. Denied.

#### **Southern Ute Tribe v. Herrera (1992) ..... 3-17**

Defendant appealed the lower court's denial of parole. The Appellate Court granted Defendant-appellant's subsequent motion to dismiss the appeal and directed Defendant pay court costs of \$163.23 to the Southern Ute Tribal Court.

#### **Southern Ute Tribe v. Howe (1997)..... 8-12**

This matter coming before the court on the request of the appellant-defendant, Jerome Howe, to dismiss this appeal, and it appearing that the Tribe has no objection to the dismissal, it is therefore ordered that this appeal be and hereby is dismissed.

#### **Southern Ute Tribe v. Jefferson (1990)..... 1-7**

Defendant appealed the lower court conviction of careless driving. The Appellate Court, finding no error, affirmed the lower court's verdict of guilty and conviction of careless driving.

#### **Southern Ute Tribe v. Tucson (1995) ..... 6-1**

Petitioner filed a petition for a writ of *habeas corpus* after being placed in custody of the Southern Ute Law Enforcement Division and Peaceful Spirits Alcohol Treatment Center pursuant to a bench warrant issued by the lower court for petitioner's failure to appear for hearings. The lower court released the defendant prior to his serving court-ordered treatment and respondent has moved for a dismissal of the writ as being moot. The defendant not being in custody, the petition for writ of *habeas corpus* is denied.

#### **Southern Ute Tribe v. Williams (1995) ..... 6-10**

Under tribal law which takes precedence over SWITCA rules, the filing of briefs is discretionary. Factual issues not raised before or at trial may not be raised for the first time on appeal. Appellee's use of a document entitled "affidavit of probable cause subsequent to warrantless arrest" rather than a complaint to initiate criminal charges is proper where the affidavit meets the tribal law's requirements for a criminal complaint and the affidavit gave adequate notice of the nature of the charges and meets the requirements of the due process section of the Indian Civil Rights Act. The trial court's denial of appellant's challenge for cause of a potential juror was proper when the juror did not hear sufficient facts to prevent the juror from giving a fair verdict. Appellant's conviction is affirmed.

#### **Southern Ute Tribe v. Williams (1995) ..... 6-14**

Under tribal law which takes precedence over SWITCA rules, the filing of briefs is discretionary. Absent fundamental error, factual issues not raised before or at trial may not be raised for the first time on appeal. Appellee's use of a document entitled "affidavit of

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probable cause subsequent to warrantless arrest" rather than a complaint to initiate criminal charges is proper where the affidavit meets the tribal law's requirements for a criminal complaint and the affidavit gave adequate notice of the nature of the charges and meets the requirements of the due process section of the Indian Civil Rights Act. Appellant's conviction is affirmed.

### **Southern Ute Tribe v. Williams (1995)..... 6-17**

Under tribal law which takes precedence over SWITCA rules, the filing of briefs is discretionary. Absent fundamental error, factual issues not raised before or at trial may not be raised for the first time on appeal. Appellee's use of a document entitled "affidavit of probable cause subsequent to warrantless arrest" rather than a complaint to initiate criminal charges is proper where the affidavit meets the tribal law's requirements for a criminal complaint and the affidavit gave adequate notice of the nature of the charges and meets the requirements of the due process section of the Indian Civil Rights Act. Appellant's conviction is affirmed.

### **Southern Ute Tribe Div. of Social Svcs. v.**

#### **Herrera, in the Interest of (2008)..... 19-3**

Appellant appealed tribal Protection Order finding Appellant to be an at-risk adult in need of long-term protection, granting legal guardianship to the Division of Social Services, and ordering the Division to plan and deliver services to Appellant. The Appellate Court denied Appellant's Motion for Trial *De Novo* determining that the existing transcript and recording, while incomplete, were sufficient to determine much of the evidence presented below, and Appellant's Notice of Appeal did not involve questions of fact requiring a more complete record. The Court also denied the Appellee's Motion to Dismiss the Notice of Appeal and Amended Notice of Appeal, finding that the notice was sufficient to meet both the tribal code and SWITCA rules. Additionally, the Court found that Appellant had not failed to timely file a brief. Finally, the Court exercised its discretion not to accept the appeal under the tribal code. Finding that the Notice of Appeal did not raise important legal questions, the Appellate Court denied Appellant's petition for discretionary appeal.

### **Thompson v. Cook (1995)..... 6-2**

Petition for determination of paternity was dismissed without a hearing by the trial court because petition failed to comply with tribal statutory requirements regarding acknowledgement of paternity for a child more than five years old by the alleged father. Appellate Court reversed and remanded to trial court with instructions to hold an evidentiary hearing on the issue of the existence of a valid acknowledgment of paternity in compliance with specific statutes.

### **Three Stars Prod. Co. v. BP America**

#### **Prod. Co. (2011)..... 22-7**

Appellant challenged a lower court Order dismissing Appellant's case for failure to join the United States as an indispensable party. Applying Rule 19 of the Federal Rules of Civil Procedure, the Appellate Court found that: (1) federal statutes and regulations govern the development of tribal minerals and prohibit regulation of tribal property without the consent of the United States; (2) federal and tribal mineral leasing statutes, regulations, and policies pre-empt state regulation, and a Memorandum of Understanding with the Colorado Oil and Gas Conservation Commission requires the Tribe's and Department of Interior's consent; and (3) reallocation of the Tribe's mineral interests requires the approval of the United States as the trust agent of the Tribe. Affirmed.

### **Tree v. MAXCO (2009)..... 20-5**

This matter having come before the Southwest Intertribal Court of Appeals upon an appeal taken by defendant-appellant in the above-styled cause, and this court having thoroughly considered the appeal based upon the record of the lower court, this court finds that there is no error in the lower court's judgment in favor of plaintiff-appellee in the amount of \$7,261.00 plus interest.

### **Weahkee v. Montoya (2011)..... 22-2**

Appellant appealed a Minute Order and a Permanent Restraining Order issued by the tribal court. The Appellate Court found that the tribal court abused its discretion in issuing the Minute Order and Permanent Restraining Order when the evidence was insufficient to warrant an extension of the prior restraining order. The Court noted that Appellees did not meet their burden of proof and failed to show by a preponderance of evidence that a threat existed to their life or health. Appellant's request for full recovery of costs was denied. The Court denied Appellant's request for a revocation of the Amended Permanent Restraining Orders issued in 2007, 2008, and 2009, as well as an order requiring the suppression of these Orders at any future proceeding, deeming the request as unnecessary. Appellant's request for attorney's fees was also denied. Reversed and revoked.

### **Weahkee v. Montoya (2011)..... 22-4**

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Appellant appealed the tribal court's Minute Order and Permanent Restraining Order. The Appellate Court rejected Appellant's jurisdictional argument finding that the tribal court may exercise jurisdiction over non-member Indians that enter the reservation, and that Appellant's alleged actions occurred on the reservation. However, the Court found that the tribal court abused its discretion in issuing the Minute Order and Permanent Restraining Order when the evidence was insufficient to warrant an extension of the prior restraining order. The Court noted that Appellees did not meet their burden of proof and failed to show by a preponderance of evidence that a threat existed to their life or health. Appellant's request for full recovery of costs was denied. The Court advised Appellant to inquire with the tribal court on his request for an apology from the tribal court and an injunction against the Appellees and the Tribe. Reversed and revoked.

### **Weaver, In the Matter of the Estate of (1998)..... 9-17**

The trial court's finding that a child support order was not a judgment and the tribal statute of limitations barred the La Plata County Child Support Enforcement Unit's claim for reimbursement for child support is erroneous and reversed. On its own motion, the appellate court reversed and remanded for the trial court's determination whether, in fact, certain insurance proceeds were part of the estate proceeds. Reversed and remanded.

### **Weaver v. "Peaceful Spirit" Southern Ute**

#### **Treatment Center (1995)..... 6-1**

Upon consideration of the stipulation for dismissal with prejudice submitted by the parties hereto, and the Court being fully advised in the premises hereof, it is ordered that the within action be and hereby is dismissed, with prejudice, each party to pay its own costs.

### **Weaver v. Southern Ute Indian Tribe (1993)..... 4-12**

Appeal from the Southern Ute Tribal Court's decision to forfeit appellant's performance bond for his failure to complete an alcohol treatment program and for failure to show good cause for not complying with the terms of the bond. The Court reviewed only the lower court's jurisdiction in re-imposing appellant's suspended sentence. The appeal is decided on the appellate court's *sua sponte* review and finds that the lower court lacked jurisdiction when it acted to re-impose the suspended sentence. Reversed.

### **Wheeler v. Southern Ute Indian Tribe (2006)..... 17-6**

Appellant appealed the trial court's decision to revoke his one-year probation sentence. Prior to sentencing, Appellant failed to appear at a review hearing, which led the trial court to issue an arrest warrant. Appellant was arrested two years later. Thereafter, Appellee filed its motion to revoke. Appellant argued that the trial court had no jurisdiction to revoke his probation because the one-year sentence had expired. The Appellate Court

held that the warrant tolled the running of the probation term, so the trial court had jurisdiction. Remanded.

### **Williams v. Southern Ute Indian Tribe (1995).....6-4**

Petitioner does not have an absolute right to counsel at this stage of the proceedings. This appellate court has jurisdiction to hear this petition under the Southern Ute Tribe code and under the Southwest Intertribal Court of Appeals rules (SWITCARA) where the tribal resolution has appointed SWITCA to act as the tribe's appellate court and the tribe's code does not deny the privilege to petition for the writ, in fact, preserving English common law remedies until altered by tribal law. Tribal law directs the court to proceed in any manner not inconsistent with its code and SWITCA rules may be applied so long as they are not inconsistent with the tribal code and, in cases where the tribal code is silent, in its place. Both tribal code and SWITCA rules permit a trial court judge to set an appeal bond up to the amount of any fine or judgment imposed and the court had the power to order a cash-only appeal bond pursuant to SWITCA rule. Requiring a cash-only bond does not constitute excessive bail where it is not arbitrary, capricious, or a denial of due process. Petitioner must exhaust tribal court remedies to determine whether his administrative segregation constitutes cruel and unusual punishment in violation of his rights under tribal law where existing tribal law is silent as to tribal standards of cruel and unusual punishment, and therefore, the petition for a writ of *habeas corpus* is denied

### **Yellowbird v. Williams (2005) ..... 16-17**

In a civil case concerning a land assignment, appellate court affirmed tribal court's ruling that *pro se* appellant must vacate property that he had no right to occupy. Although the appellant disagreed with the ruling, he did not present any reasoned arguments to support his disagreement nor any legal grounds to reverse the ruling. The tribal court did not plainly err or reach a decision unsupported by the facts.

## **TONTO APACHE TRIBE**

### **Dosela v. Tonto Apache Tribe (2001)..... 12-3**

Appeal dismissed on Appellate Court's own motion because appellant did not respond to Appellate Court's order setting a schedule to file briefs.

### **Lopez v. Tonto Apache Tribe (2004)..... 15-4**

This matter comes before the Court on its own motion to dismiss the above referenced case and refer it to the newly constituted Tonto Appellate Court. It is therefore the order of this Court that the above matter be and it is hereby dismissed.

### **Tonto Apache Tribe v. Horbatiuk (2004) ..... 15-7**

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This matter comes before the Court on its own motion to dismiss the above referenced case and refer it to the newly constituted Tonto Appellate Court. It is therefore the order of this Court that the above matter be and it is hereby dismissed.

### **Tonto Apache Tribe v. Johnson (2004)..... 15-4**

This matter comes before the Court on its own motion to dismiss the above referenced case and refer it to the newly constituted Tonto Appellate Court. It is therefore the order of this Court that the above matter be and it is hereby dismissed.

### **UTE MOUNTAIN UTE TRIBE C.F.R.<sup>2</sup>**

#### **American Check Advance and**

##### **Title Loan v. Root (2000)..... 11-3**

Construing pleadings based on substance, not simply on the title of a document, the Court rules that the tribal court had subject-matter and personal jurisdiction under the Code of Federal Regulations to hear appellee’s “complaint” because it was an action to enforce the court’s judgment in the non-Indian appellant’s original action in which it submitted itself to tribal jurisdiction. Appellant did not appeal the trial court’s determination that it had no security interest in appellee’s vehicle and the original determination giving full faith and credit to the tribal court’s decision is binding upon the parties, since New Mexico law is controlling under appellant’s contract form. Appellant cannot now raise issues decided by the trial court in its original action which it did not appeal within the time limits allowed. Affirmed.

##### **Citizens State Bank v. Tom (2000)..... 11-1**

The appellant’s notice of private sale of a vehicle repossessed from appellees after they failed to make contractual payments was reasonable and therefore sufficient to meet statutory requirements when the original sale was called off and a second private sale at a date later than that stated in the notice was held. Reversed and remanded.

##### **Citizens State Bank v. Tom (2000)..... 11-2**

The petition for rehearing was denied.

##### **Dale v. Benally (2003)..... 14-3**

In a child support case, the trial court erroneously applied New Mexico law to determine whether Respondent was liable for retroactive child support. The Appellate Court found that Ute Mountain Ute law did not answer this question and that tribal customs would be the second-best law to apply. Because tribal customs were not raised at the trial court level, the Appellate Court remanded the matter for a determination of

whether such customs authorize retroactive child support payments from a non-custodial parent under the facts of this case. If not, then the trial court could seek to resolve the issue under Colorado law.

##### **Heart v. Heart (1998)..... 9-31**

In this action for modification of child support, the funds given to each tribal council member for the purpose of aiding tribal members in emergencies cannot be automatically considered to be income to the council member and only those funds retained by the council member will be considered as income. The order modifying child support may be made retroactive to the date the petition for modification is filed. Reversed in part and remanded.

##### **Heart v. Heart (2000)..... 11-13**

The Code of Federal Regulations applies the Federal Rules of Civil Procedure in the absence of a tribal rule or ordinance to the contrary and the Rules allow post-hearing motions to be heard in a manner determined by judicial discretion and it is proper for the court to use teleconference calls for hearing on the motion; an issue of fact is determined by a trial court and an appellate court may not make such a determination if the trial court does not act. Affirmed.

##### **Knight-Frank v. Mealing (2002)..... 13-2**

Appellant sought to recover withheld per capita payments from Appellee. At the trial court level, Appellee filed a counterclaim and a motion to dismiss. The trial court granted Appellee’s motion but held that the dismissal did not affect Appellee’s counterclaim. Appellant then sought interlocutory appeal, but the Appellate Court held that the interlocutory appeal was not warranted because the trial court did not certify its decision for interlocutory appeal. The Court also held that a collateral-order exception was not applicable in this case because the elements were not met. The Court noted that Appellant would not suffer any prejudice by having to wait until a final order was issued before she could obtain review. Petition for Interlocutory Appeal denied.

##### **Knight-Frank v. Mealing (2002)..... 13-3**

The Appellate Court remanded a motion for admission to practice in the Court of Indian Offenses. The Court further ordered that all motions filed in this case that were submitted to the Court after its denial of interlocutory appeal shall be determined in the first instance by the Court of Indian Offenses.

##### **Knight-Frank, v. Ute Mountain Ute**

##### **Tribal Council (1999)..... 10-1**

Pursuant to the stipulation of the parties and Rule 36 of the Southwest Intertribal Court of Appeals Rules of Appellate Procedure, this appeal is dismissed.

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<sup>2</sup> a/k/a Court of Indian Offenses

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### **Laner v. Parisien (1993)..... 4-18**

This matter having come before the Southwest Intertribal Court of Appeals on Cholann S. Laner's petition for writ of *habeas corpus*, and the Court having determined that it is without jurisdictional authority based on Ute Mountain Ute constitutional or legislative authority, or resolution to review this matter, hereby dismisses the petition for writ of *habeas corpus* as unreviewable by this Court under Rule 3, SWITCA Rules of Appellate Procedure.

### **Lopez v. Wells, Jr. (2001)..... 12-3**

Appeal dismissed on Appellate Court's own motion because for over ten months appellant did not respond to Appellate Court's order setting a schedule to file briefs or affidavits, nor did appellant request more time to comply with the order.

### **Rea v. Madrid (1997)..... 8-4**

This matter coming before the court on its motion to dismiss this case number for being issued improvidently before the matter was filed with this court, and the matter is now before this court as SWITCA no. 97-009·UMUC, it is hereby ordered that this case be and hereby is dismissed.

### **Rea v. Madrid (1998)..... 9-13**

Appellant appeals from the trial court's dismissal for lack of subject-matter jurisdiction of his complaint challenging his termination from tribal employment and alleging denial of due process because tribal employees failed to comply with the Tribe's personnel policies. This is not an action against the Tribe, but against individual employees in their individual and official capacities, both Indian and non-Indian, for failure to comply with tribal law. However, appellant failed to complete or exhaust his administrative process. The dismissal for lack of subject-matter jurisdiction is reversed and the matter is remanded for entry of dismissal without prejudice.

### **Soto v. Lancaster (1998)..... 9-4**

Appellant appeals from tribal trial court dismissing appellant's complaint filed pursuant to tribal personnel policies for the reason that tribal personnel director was a non-Indian and CFR does not permit jurisdiction over a non-Indian. Appellate court holds that CFR court has subject-matter jurisdiction over a claim made against a person who is not a member of a federally recognized Indian tribe for actions taken in their official capacity as a tribal employee. Further, an action against an employee in his individual or official capacity for failure to comply with tribal law is not a case against the Tribe. Reversed and remanded.

### **Soto v. Lancaster (2003)..... 14-8**

The Appellate Court considered two actions: (1) Appellees' petition for rehearing on a prior motion to

dismiss, and (2) Appellant's motion for rehearing. Both were denied, and the case was remanded to the trial court for enforcement of the judgment previously affirmed by the Appellate Court.

Appellees' petition asserted a lack of jurisdiction, stating that the Southwest Intertribal Court of Appeals was no longer the Tribe's appellate court because the Tribal Council enacted a resolution stating so. However, the Tribal Council did not receive Secretarial approval for the resolution as required by the Tribe's Constitution. Accordingly, the Appellate Court held that the resolution had no legal force to deprive the Appellate Court of jurisdiction. In addition, Appellee's petition sought to declare the Appellate Court's prior judgment on a motion to dismiss void under Federal Rule of Civil Procedure (FRCP) 60 because none of the appellate judges had been confirmed by the Tribal Council in the last four years, so they had no authority to act. The Court held that FRCP 60 applies to the district court's judgment, not to appellate review thereof. Moreover, the BIA had not affirmatively dismissed any of the judges on the appellate panel. If the Tribe were to challenge the appellate panel's authority, the proper initial forum would be the Department of Interior administrative appeals system, not the tribal court system.

Appellant's motion for rehearing sought to treat tribal common law as an affirmative defense under FRCP 8(c). The Appellate Court held that tribal common law does not fall under the category of affirmative defenses that are listed in the FRCP. Instead, the Code of Federal Regulations requires the trial court to consider tribal common law if it is consistent with federal regulations. The Court found that the trial court's consideration of tribal common law in this case was totally inconsistent with the pertinent federal regulations.

### **Soto v. McCulley (2002) ..... 13-5**

Appellant petitioned for a writ of *mandamus* to order and direct Appellee magistrate to issue a timely decision on a matter pending in the Court of Indian Offenses. The Appellate Court determined that an order to show cause was not necessary and that there was good cause to issue the writ.

### **Soto v. McCulley (2003) ..... 14-5**

Respondent successfully complied with a writ of *mandamus* that was previously issued against him. The writ became null and void as of the date of compliance, so on its own motion the Appellate Court dismissed the writ with prejudice.

## **WHITE MOUNTAIN APACHE TRIBE**

### **Lupe v. McCreery (2019) ..... 30-1**

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Appeal denied because appellant failed to file a timely notice of appeal, which is a jurisdictional issue. Given very long delay in this case, the appellate court urged the tribal court to diligently follow its own appellate rules in future cases.

### **Naha v. White Mountain**

**Apache Tribe (2018) ..... 29-5**  
Appeal dismissed for lack of jurisdiction due to mootness because Appellant's release from incarceration before appellate court considered his appeal deprived appellate court of an actual controversy to adjudicate. Tribal court is encouraged to utilize SWITCA rules in future proceedings in which tribal court's rules are silent with regard to a particular procedure that is addressed by SWITCA rules.

### **ZUNI PUEBLO**

**Besselente v. Pueblo of Zuni (2016).....27-14**  
Appeal dismissed due to Appellant's failure to file a brief in accordance with Appellate Court's order; related motion for reconsideration denied because Appellant's reasons were vague and insufficient.

**Booqua v. Lateyice (2015)..... 26-3**  
Appeal dismissed because the parties voluntarily withdrew their notices of appeal.

**Chapela v. Zuni Tribal Council (2016).....27-21**  
Suit against tribal officers acting within scope of official duties was barred by sovereign immunity. Tribal court judge's failure to recuse himself was harmless error that did not undermine confidence in the judicial system.

**Chapman v. Pueblo of Zuni (2010) ..... 21-8**  
Appellant appealed the tribal court's conviction of Careless Driving and Great Bodily Injury by Motor Vehicle. The tribal traffic code categorizes violations within the sentencing structure of the tribal criminal code. Appellant represented himself *pro se* at trial and the tribe was represented by a prosecutor, who was law-trained. Upon review of the record, the Appellate Court decided that the trial lacked fundamental fairness because the prosecutor took advantage of Appellant's lack of judicial knowledge and the trial judge accepted the prosecutor's behavior instead of protecting the *pro se* party. The Appellate Court found in regard to the conviction of Careless Driving that the evidence at trial did not meet the standard of proof. The Appellate Court also found that since the Appellant was not guilty of Careless Driving, the charge of Great Bodily Injury by Motor Vehicle must be dismissed. Conviction reversed.

**Cooyate v. Banteah (2016) ..... 27-7**

Appeal from April 8, 2011 tribal court decision and order that interpreted Zuni Constitution and caused great controversy. This is a rare case in which SWITCA found it necessary to interpret a tribe's constitution and in which tribe's most respected religious leaders submitted affidavits asking SWITCA to resolve longstanding conflicts and uncertainty.

SWITCA declined to disturb the validity of the April 8, 2011 decision and order insofar as it was the rule of law at Zuni Pueblo from 2011 to 2014. Moving forward, however, the decision and order was vacated in its entirety.

Held: (1) Oath of office administered to current tribal council was constitutional because it was done pursuant to the Zuni Constitution as duly amended in fall 2014; (2) Four or fewer tribal council members do not comprise a constitutional quorum; (3) Head Cacique may now delegate his constitutional authority to administer the oath of office "to a religious leader in accordance with Zuni religious hierarchy"; and (4) There is no requirement in the Zuni Constitution that an incumbent tribal council must hold over until the members of a tribal council-elect are duly installed into office.

**Cooyate v. Chapela (2012)..... 23-6**  
Petitioners filed a Petition for Expedited Writ of *Mandamus* and Prohibition with the Appellate Court. Upon review of Respondent's Orders and his arguments at the show-cause hearing, the Appellate Court determined that Respondent lacked regard for Petitioners' due process rights and abused his discretion in issuing Orders. The Appellate Court found that it was premature to prevent the imposition of attorneys' fees because the complete record would need to be before this Court and, therefore, ordered the tribal court to forward the entire record. The Appellate Court also found that the Respondent could not continue to preside over this matter in a fair and impartial manner based upon his Orders and his own admission and behavior at the show-cause hearing. Petition issued.

**Draper v. Pueblo of Zuni (2016)..... 27-3**  
Appeal dismissed due to Appellant's failure to file a brief in accordance with Appellate Court's order.

**Eriacho v. Panteah (2016) ..... 27-21**  
Appeal denied because notice of appeal was insufficient under Zuni and SWITCA rules of appellate procedure.

**Eriacho v. Panteah (2016) ..... 27-43**  
Motion for reconsideration denied because notice of appeal was insufficient to perfect an appeal under Zuni and SWITCA rules. Appellants' counsel had a higher duty than a *pro se* litigant to strictly adhere to court rules and procedures.



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### **Gaspar v. Pueblo of Zuni (2016).....27-44**

Guilty verdict for endangering the welfare of a child was reversed and vacated because it was not supported by substantial evidence and was not in accordance with law in case in which lay prosecutor did not specify which prong of the charge he was attempting to prove, nor did judge address either prong of the charge.

### **Griego v. Pueblo of Zuni (2006) .....17-13**

Appeal dismissed due to Appellant’s failure to timely file his brief as required by the Zuni Rules of Civil Procedure. Remanded for further proceedings in accordance with the conviction and sentence.

### **Guardian v. Pueblo of Zuni (2016) ..... 27-4**

Appeal dismissed due to Appellant’s failure to file a brief in accordance with Appellate Court’s order.

### **Hannaweeke v. Pueblo of Zuni (2008) .....19-12**

Appellant filed three separate Notices of Appeal. The first Notice of Appeal was filed after the Appellant was found guilty on several criminal charges. The second Notice of Appeal was filed after the lower court imposed the Appellant's sentence and assessed court costs and fines. The third Notice of Appeal was filed after the lower court held a separate restitution hearing at which the Appellant was found liable for damages to the victims and Appellant agreed to pay restitution. The Appellate Court determined that the third Notice of Appeal, containing seven grounds for appeal, was the only appropriate Notice of Appeal filed. On the first four grounds, the Appellate Court found that: (1) the lower court did not fail to establish its jurisdiction; (2) nothing in the record indicated that the judge's finding that a crime had been committed was in error; (3) the fact that the Appellant was incarcerated pending the separate civil restitution hearing on the criminal matter did not deny her right to due process nor support a finding of reversible error; and (4) the bail set by the trial judge was not excessive and was within the discretionary authority of the judge. With regard to the last three grounds pertaining to the restitution hearing, the Appellate Court found that the tribal rules of civil procedure created confusion in the matter, specifically the rule controlling pretrial conferences which provided that the pretrial process be made available in both civil and criminal cases. The Appellate Court stated that this gave the impression that issues such as restitution in this case are civil rather than criminal. The Court found this to be problematic particularly in light of the nature of rights that attach to a defendant in all hearings related to a criminal action. The case was remanded to the lower court with specific instructions for resolving the issue of restitution.

### **Hannaweeke v. Pueblo of Zuni (2011) ..... 22-6**

Appellant filed a Notice of Appeal after the lower court found Appellant guilty on several criminal charges and

sentenced him to serve a jail term and probation, ordered him to pay court costs and fines, and restitution to the victims. The Appellate Court determined that only one of Appellant's twelve claims raised as grounds to overturn the conviction was properly preserved for appeal. The Court concluded that the lower court judge did not abuse her discretion by allowing photographs of injuries resulting from Appellant's crimes to be submitted into evidence. Further, the Court found that a proper foundation was asserted to admit the photographs into evidence. Affirmed.

### **Hannaweeke v. Pueblo of Zuni (2016) ..... 27-1**

Appeal denied because notice of appeal was insufficient under Zuni and SWITCA rules of appellate procedure. Tribal court should discontinue service of process by email because this method is not authorized by the Zuni Rules of Civil Procedure.

### **Henio v. Silversmith (2019) ..... 30-5**

Appeal denied for lack of appellate jurisdiction because notice of appeal was insufficient under SWITCA Appellate Rule 11.

### **Hustito, In the Matter of the Estate of (2005) ..... 16-6**

The appellate court remanded this civil probate action to the trial court with instructions because the evidence presented was inadequate to enable the trial court to decide the issues raised in this case. Therefore, the trial court’s December 30, 2002 Order was set aside. After holding a hearing at which the parties shall be allowed to present evidence, the trial court shall make the necessary determinations outlined in this opinion.

### **In the Matter of a Minor Child (2001) ..... 12-8**

On Appellate Court’s own motion, appeal dismissed for lack of jurisdiction and remanded to trial court for final judgment.

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### **JHW, a Minor child, In the Matter**

**of the Custody (2010).....21-10**  
Respondent appealed a custody order. Since both parties were *pro se*, the Appellate Court was mindful of fundamental fairness when reviewing the record. The only evidence presented in the children's court was the testimony of each party and the home studies conducted by the tribal social worker. The tribal children's code and tribal domestic relations code provided procedures, requirements, and standards to follow in awarding custody of a child, including the presumption that the mother is to have custody of a young child and to consider the best interest of the child. The Appellate Court found that the record lacked sufficient evidence to overcome the presumption that the mother was to have custody or to determine the best interest of the child. Remanded for rehearing.

**Johnson v. Pueblo of Zuni (2015).....26-11**  
Appeal dismissed due to Appellant's failure to file a brief in accordance with Appellate Court's order.

**Kallestewa v. Sice (2017).....28-17**  
Appeal denied because notice of appeal was insufficient under Zuni and SWITCA rules of appellate procedure.

**Karen and Manuel G., In the Matter of Cessation of Parental Rights (2010)..... 21-3**  
Appellants filed a Notice of Appeal to an Order of Denial of Cessation of Parental Rights with respect to the "G children." The Appellate Court found that the process, as mandated by tribal law, to appoint a guardian *ad litem* to represent the children's best interest was not followed. The Appellate Court also found that the Order of Denial of Cessation of Parental Rights was unclear, conclusory, and did not refer to any specific law even though the tribal code provides for procedures to follow and criteria to consider in terminating parental rights. The Appellate Court held that the children's court must adhere to the tribal law and process when making a determination of parental rights. Vacated and remanded.

**L.E., as Guardian of P.K., a Minor v. Zuni Public School District (2005)..... 16-9**  
In civil action arising out of an illegal sexual relationship between high school teacher and minor student, the appellate court affirmed the tribal court's approval of a traditional settlement and of appellant's motion to dismiss the public school district that was an agency of the State of New Mexico. The tribal court complied with the Zuni Rules of Civil Procedure in dismissing appellant's claims against the district. The appellate court overruled the tribal court's order granting the district's later motions to alter, amend, or set aside the traditional settlement and to dismiss for lack of jurisdiction because as a previously dismissed non-party to the case, the district lacked standing to file the motions. The case was remanded to the tribal court.

**L.E., as Guardian of P.K., a Minor v. Zuni Public School District (2007) ..... 18-5**  
The Appellants filed a Motion for Reconsideration and Memorandum in Support of Motion for Reconsideration. The Appellate Court denied the motion upon a finding that the Appellants did not raise any new issues nor cite any authority that was not already fully considered by the panel prior to entering its decision and order. Motion denied.

**Lalio v. Pueblo of Zuni (2015) .....26-12**  
Notice of appeal denied because Southwest Intertribal Court of Appeals has no jurisdiction to hear appeals that would decide pending motions in the tribal court. Tribal court's final decisions may be appealed to SWITCA. Purported final decision of Zuni Court of Appeals that was rendered almost four months after that court was abolished was a nullity that should not be considered by the tribal court.

**Leekity v. Pueblo of Zuni (2018) ..... 29-1**  
Tribal court issued judgment and sentence (commitment or probation) finding Appellant guilty of sexual assault, intoxication, and disorderly conduct. Appellate court is not a fact-finder that re-weighs evidence to make a new determination of guilt or innocence. Appellant must overcome presumption that conviction is valid. Although Appellant disagrees with trial court's assessment of the evidence, nothing in the record is cited nor would support a finding by appellate court that evidence was improper as a matter of law or that it created reasonable doubt. Possible inconsistencies in victim's testimony are not determinative given the entire record before the tribal court. The evidence presented sufficiently supports the conviction of sexual assault, so tribal court committed no error. Tribal court's decision is affirmed and matter is remanded to implement the judgment and impose the sentence.

**Lementino v. Bowannie (2011) ..... 22-22**  
Appellant filed a Notice of Appeal alleging, *inter alia*, a violation of equal protection under tribal laws resulted in a denial of due process when a hearing date was moved up. The Appellate Court denied the appeal, finding that Appellant was allowed to present his case, that he presented his case, that he never requested a continuance nor objected to the change in date, and that time was of the essence in the matter. The Court also rejected Appellant's second argument, finding that Section 9A of the Zuni Range Code, pertaining to trespass of livestock, could not be a basis for the appeal as Appellees had established a constructive easement across Appellant's grazing area. Denied.

**Lementino v. Hooee (2016)..... 27-39**  
Appellant converted Appellees' steer and appealed the tribal court's restitution award against him. SWITCA set

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aside the award because it was not supported by substantial evidence. It also set aside the tribal court's holding that all parties were contributorily negligent because it was not supported by substantial evidence and was not in accordance with law. SWITCA remanded the case for a determination of the value of the steer when it was converted, and for the tribal court's reconsideration of its finding that the parties were equally negligent in light of Appellant's unreasonable and bad-faith conduct.

### **Lonjose v. Pueblo of Zuni (2017)..... 28-1**

Tribal court abused its discretion and did not act in accordance with Rules of Criminal Procedure when, in light of evidence raising reasonable doubt as to Appellant's competence to stand trial, court refused to order Appellant to undergo a mental health evaluation.

Court has independent duty to appoint interpreter, or court itself can act as interpreter, if court is made aware that defendant or witness does not understand English language well, unless defendant expressly waives right to interpreter.

Judge's actions leading up to trials indicated that he was not an impartial decision maker while presiding over both cases because he wholly disregarded another judge's order and forced Appellant to face two trials with two weeks' notice, which was arbitrary and an abuse of discretion, in violation of Appellant's due process rights.

Even though rule contemplates written request from the defendant in order to compel disclosure from police department or tribal prosecutor, due process and fundamental fairness impose a continuing duty on police and prosecutors to disclose potentially exculpatory evidence to defendant, so the rule may be read to recognize this duty.

If there are new proceedings in this matter on remand, Appellant has right to counsel at tribe's expense because judge conferred this right on Appellant in exchange for Appellant's waiver of his right to a speedy trial. Appellant keeps this right to counsel at tribe's expense whether he is deemed to be competent or not, as a finding of incompetence would arguably create a greater need for counsel to act on behalf of Appellant's best interests. This holding is not based on tribe's constitution, but rather on the rights created in Appellant by judge's order.

Because trials were held within six-month time limit of tribe's Rules of Criminal Procedure, tribal court did not violate Appellant's right to speedy trial. Rule 26 also applies when new trial is ordered, thus a new six-month 'clock' begins to run upon the date of issuance of this opinion (should tribe wish to prosecute this case on remand).

Ambiguous evidence was presented at trial to demonstrate Appellant's *mens rea* that he either knew alleged victim's age, or that he was indeed aware of substantial and unjustifiable risk that alleged victim was under sixteen years old, and that he consciously disregarded that risk when he engaged in each of three acts of sexual intercourse with her. If tribe wishes to make unlawful sexual intercourse a strict liability offense, it must amend tribal code accordingly. Under current code, the three convictions for unlawful sexual intercourse were reversed because they were not in accordance with law, and they were remanded for new trial.

It was an abuse of discretion for judge to cut off Appellant's cross-examination of alleged victim as to possible other sexual partners. By doing so, judge effectively deprived Appellant of opportunity to develop a defense with respect to charge of spreading venereal disease. Appellant's conviction on this charge was therefore reversed and remanded. Should tribe elect to re-try Appellant on remand, Appellant must be allowed to ask alleged victim whether someone else could have been source of venereal disease.

### **Lucio v. Pueblo of Zuni (2005)..... 16-4**

Tribal court issued judgment and sentence finding Appellant guilty of driving under the influence of intoxicating liquor or drugs. The appellate court found that the evidence was sufficient to support the guilty verdict. The tribal court's decision is affirmed, and the case is remanded for proceedings to implement the portion of the sentence that was stayed.

### **Lunasee v. Ponchuella-Wallace (2010)..... 21-11**

Upon motion by the Petitioner-Appellant and upon review of the case file, this matter is hereby dismissed.

### **M.B., a Minor v. Pueblo of Zuni (2016) ..... 27-30**

Children's Court order transferring jurisdiction of petitions to Tribal Court to try Appellant as an adult was an abuse of discretion, arbitrary, not supported by substantial evidence, and violated Children's Code. Children's Court's failure to follow the law and to appoint counsel violated Appellant's due process rights. Children's Court's refusal to allow expert testimony via video conference was arbitrary and violated Children's Code and Appellant's due process rights. Children's Court's refusal to consider recommendations of expert, juvenile probation officer, or Zuni Tribal Social Services was an abuse of discretion, was arbitrary, and violated Children's Code and Appellant's due process rights. Unreasonable delays violated Appellant's right to speedy delinquency proceeding. Therefore, order transferring jurisdiction to tribal court was reversed, and SWITCA ordered tribal court to dismiss the underlying petitions with prejudice.

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### **Mutte v. Pueblo of Zuni (2009).....20-11**

Appellant filed an appeal from a jury verdict finding Appellant guilty of Aggravated Assault and Domestic Violence. The Appellee filed a Notice of Cross Appeal challenging the release of the Appellant on bond pending the outcome of his appeal. Appellant's request that the "plain error" rule be applied to the issues raised in the appeal was granted in accordance with Rule 41 of the tribal Rules of Criminal Procedure. The Appellate Court found that although tribal code was silent on the issue of mistrial, the presence of a relative of the victim on the jury panel can be regarded as undue influence on the jury panel, justifying the need for a new trial. Additionally, the Court noted that on remand the lower court should consider and address the issues of the proper presentation of jury instructions and written requests for specific jury instructions. On the cross appeal, the Court found that the tribal Rules of Criminal Procedure and Tribal Code required the judge to determine the nature and extent of necessary conditions to be placed on a person who has been found guilty of a crime involving domestic violence, and that the only way to make this determination would be through a hearing on the motion.

The Court found that the judge abused her discretion in releasing the Appellant without a hearing on his Motion for Stay of Execution. Remanded for a new trial.

### **Pinto v. Pueblo of Zuni (2018)..... 29-1**

Appeal dismissed due to Appellant's failure to file a brief or a motion seeking an extension of time.

### **Poblano v. Pueblo of Zuni (2006)..... 17-7**

Appellant filed a notice of appeal and motion for stay of judgment and release pending appeal on his conviction for driving under the influence of intoxicating liquor and for other offenses. Appellant argued that (1) the prosecutor did not prove his guilt beyond a reasonable doubt, (2) the burden of proof was shifted to him by the introduction of evidence of his refusal to submit to chemical testing, and (3) another individual had been acquitted by the same court on "the same" set of facts that resulted in his conviction. The Appellate Court concluded that the evidence was sufficient to support the trial court's verdict and that the trial court committed no error. The assertion that another individual was acquitted on the "same facts" was irrelevant to the Court's determination that the evidence was sufficient.

### **Pueblo of Zuni v. Dewa (2016)..... 27-5**

Notice of appeal denied because allowing appeal would violate the Double Jeopardy Clauses of the Zuni Constitution, the Indian Civil Rights Act, and the United States Constitution after defendant found not guilty in final judgment resulting from a bench trial.

### **Pueblo of Zuni v. Epaloos (1997)..... 8-4**

This matter coming before the court on its motion, it appearing that the Zuni Pueblo tribal court has dismissed this matter and it has become moot, it should be dismissed by the Southwest Intertribal Court as well. Therefore, it is ordered that this cause be and hereby is dismissed.

### **Pueblo of Zuni v. Haloo (2011)..... 22-1**

Appellant appealed the judgment of the lower court. The Appellate Court denied the appeal finding that the Notice of Appeal did not fulfill the minimum requirements of either the tribal Rules of Civil Procedure or SWITCA Rules. The Court also noted that it would not assume what issues are being appealed nor would it consider objections that were raised for the first time on appeal. Appeal denied.

### **Pueblo of Zuni v. Lucio (2016)..... 27-4**

Notice of appeal denied because allowing appeal would violate the Double Jeopardy Clauses of the Zuni Constitution, the Indian Civil Rights Act, and the United States Constitution after defendant found not guilty in final disposition and judgment order resulting from a bench trial.

### **Pueblo of Zuni v. Romancito (2011)..... 22-2**

Appellee filed a Motion for Dismissal. The Appellate Court found that the Appellant failed to file a brief as ordered by the Court within the required time frame and thus granted the dismissal.

### **Pueblo of Zuni v. Tsabetsaye (2011)..... 22-18**

The trial court, by failing to allow the Appellant to call witnesses on his behalf, violated the Appellant's due process rights under the Zuni Tribal Constitution and violated the Appellant's right under the Indian Civil Rights Act to compulsory process for obtaining witnesses in his favor. Reversed and remanded.

### **Pueblo of Zuni v. Vicenti (2012)..... 23-1**

Appellant objected to his criminal conviction of Domestic Violence in his Notice of Appeal. The Appellate Court decided that the tribal court properly authenticated the evidence and weighed the credibility of the testimony pursuant to tribal law and the Federal Rules of Evidence. Therefore, the evidence was admissible. Denied.

### **Pueblo of Zuni v. Wyaco (2003)..... 14-1**

After considering Appellants' motion in limine, the trial court suppressed the evidence and dismissed the charges against Appellants for possession of marijuana. At the time of arrest, Appellants were in their pickup truck, with the engine off, in the parking portal of their house. The trial court concluded that Appellants had a reasonable expectation of privacy that should not have been interfered with unless an officer had a valid search warrant or arrest warrant. On appeal, Appellee argued

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that the parking portal was impliedly open to the public, and that the officer’s observation of criminal activity was sufficient to establish probable cause to arrest. After considering the Zuni Rules of Criminal Procedure and the record, the Appellate Court found that the officer’s initial entry into Appellants’ driveway and parking portal was lawful because such “curtilage” is impliedly open to the public for reasonable purposes. Therefore, the officer’s observance of evidence in plain view was lawful and sufficient to establish probable cause. The Appellate Court declined to adopt Appellants’ argument that the Zuni Constitution should be read more narrowly than the U.S. Constitution because case law supporting such an argument had been overturned. Accordingly, the Appellate Court reversed the trial court’s decision, reinstated the charges, and remanded the case for further proceedings.

**Quam v. Pueblo of Zuni (2005) ..... 16-2**

Tribal court issued a judgment and sentence finding Appellant guilty of intoxication, simple assault, and domestic violence. The appellate court found that the evidence was sufficient to support the guilty verdict. The trial court’s decision is affirmed, and the case is remanded for proceedings to implement the judgment of conviction and impose the sentence.

**Ramone v. Zuni Children’s Court (2012).....23-20**

Petitioner filed a petition for a Writ of *Habeas Corpus*, arguing that the children’s order limiting her custody for ninety days was a restraint of her and her daughter’s liberties. The Appellate Court determined that the Writ of *Habeas Corpus* was not an appropriate remedy at this time because the ninety-day continuance indicated that tribal remedies had not been exhausted and a final order had not been issued. Denied.

**Romancito v. Pueblo of Zuni (2015) .....26-10**

Appeal dismissed due to Appellant’s failure to file a brief in accordance with Appellate Court’s order.

**Sandy v. Pueblo of Zuni (2016) .....27-25**

Guilty verdict of indecent exposure was reversed and vacated because it was invalid as an abuse of discretion that was not supported by substantial evidence and was clearly erroneous. Warrantless entry into Appellant’s home constituted an unreasonable search and seizure in violation of the Zuni Constitution because the totality of the circumstances right before entry did not demonstrate that a serious crime was in progress or imminent, and there were no indications of any exigent circumstance.

The Zuni Tribal Court is strongly urged to vacate all convictions resulting from the underlying arrest, and should consider retaining the power to correct manifest injustice and illegal sentences.

**Shack v. Lewis (1998)..... 9-28**

Appellant apparently resigned as lieutenant governor of the Pueblo and the Pueblo Council appointed appellee Othole to fill the office and ordered a special election to fill appellee’s former position as head councilman. Appellant at some point before the Council’s action withdrew his resignation, but the Council proceeded and appellant filed this action to halt the special election alleging that the appellees violated the Zuni Constitution and laws, including traditional or customary law. Trial court granted appellees’ motion for summary judgment and this appeal followed. The appellate court reversed and remanded finding that summary judgment was improper and the trial court should have held an evidentiary hearing to determine the role customary or traditional law plays in the resignation of an elected official. Reversed and remanded.

**Shack v. Pueblo of Zuni (2015)..... 26-11**

Appeal dismissed due to Appellant’s failure to file a brief in accordance with Appellate Court’s order.

**Sheche v. Pueblo of Zuni (2016) ..... 27-3**

Appeal dismissed due to Appellant’s failure to file a brief in accordance with Appellate Court’s order.

**Toya v. Ramone (2012)..... 23-3**

This Court finds that Petitioners-Appellants’ allegations that the Zuni Tribal Court misinterpreted the Zuni Tribal Code § 11-3-9 when it awarded mother physical custody of her minor child and violated the Petitioners-Appellants’ Constitutional Rights, is without merit and the Trial Court’s order is affirmed.

**Tsabetsaye v. Pueblo of Zuni (2016)..... 27-6**

Appeal denied because notice of appeal was insufficient under SWITCA rules of appellate procedure.

**Vicenti v. Pueblo of Zuni (2016) ..... 27-15**

SWITCA affirmed order of summary judgment for civil trespass relating to violation of a grazing permit because Appellant failed to offer evidence or a feasible argument that would cause SWITCA to determine that there was a factual dispute that should proceed to trial. For reasons of fairness and justice, due process requires that Appellant’s long-pending counterclaims of unjust enrichment and misrepresentation be remanded to be considered by Zuni Tribal Court.

Decision and order of abolished Zuni Tribal Court of Appeals was a nullity and void *ab initio*. Appellant’s allegations of bias and prejudice and his claim of inordinate delay and irreparable prejudice were without merit because they were not supported by the record, nor by legal authority or analysis.

**Walema v. Waikaniwa (2015)..... 26-10**

Appellant filed a motion to dismiss appeal. Granted and dismissed.

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**Wemytewa v. Chapela (2012) .....23-13**

Petitioner filed a Petition for an Emergency Writ of *Mandamus* and Prohibition with the Appellate Court. Upon review of the record, tribal law, and show-cause hearing, the Appellate Court found that Respondent repeatedly abused his discretion and exceeded his jurisdiction by imposing sanctions on Petitioner's counsel and Petitioner. The Appellate Court ordered the disqualification of the judge from presiding further on the matter and ordered the tribal court to vacate all attorneys' fees and to refrain from imposing any future attorneys' fees. Petition issued.

**Wolf, Sr. v. Pueblo of Zuni (2008).....19-10**

Appellant appealed a Default Judgment of guilt entered by the lower court after the Appellant failed to appear for a pre-jury conference. The Appellate Court dismissed the judgment, finding that the Order was a violation of the Appellant's rights under the tribal code and ICRA since there was no specific authorization for conducting a pre-jury conference on the same terms as the pre-trial conference. The Court also determined that the Order violated Appellant's rights under the tribal code and ICRA by infringing on Appellant's rights without a knowing waiver by the Appellant. Finally, the Appellate Court found that the Order represented an abuse of discretion by the judge who failed to weigh her discretion against the intent of the tribal rules of civil procedure and Appellant's rights under the tribe's rules of criminal procedure and ICRA. The case was remanded to the lower court for jury trial.

**Yatsatie v. Pueblo of Zuni (2015) .....26-12**

Appeal dismissed due to Appellant's failure to file a brief in accordance with Appellate Court's order.

3/18/2020