



## **Southwest Intertribal Court of Appeals Duties of the Tribal Court Clerk**

Each tribal code is different and it is important to review your Appellate Code and the specific Tribal Council Resolution to determine when and what cases may be taken on appeal to SWITCA. In general, appeals may be taken in civil, criminal, contempt, children's and family court cases and upon application for extraordinary writs and removal proceedings.

All appellate pleadings and documents are filed with the office of the Tribal Court Clerk(s). Clerks are responsible for processing, maintaining and safeguarding all Tribal Court and Appellate Court pleadings, records and files.

Efficient and effective management of appellate court records depends upon the accuracy and timeliness of processing the necessary documents. Clerks must accept all documents and pleadings filed with the court. Clerks may not refuse to file pleadings which appear to be deficient or late, these are questions to be decided by the appellate judge(s).

Tribal Court Clerks are responsible for maintaining the original appellate files for the Tribal Court and forwarding the required number of duplicates\* to the Southwest Intertribal Court of Appeals. Maintenance of court files includes keeping a complete index of all cases, indicating the date of filing of each document or pleading, retention of the original appellate case files, and processing appeals. Tribal Court Clerks are responsible for receiving and accounting for all appellate filing fees, forfeitures, bonds, inventory or other fees.

\*The required number of duplicate copies of the appellate file and the transcript or audio recordings on tape or disk (of all proceedings) depends on the number of appellate judges required to hear the appeal pursuant to tribal law.

Confidentiality Cases should not be discussed with anyone outside the court. Confidential court documents should not be left on desk tops, counters, or where they may be seen by the public.

File stamps are used by the Tribal Court Clerks to indicate the papers are properly filed with the Tribal Court. Clerks should immediately enter the date, time, name of court and clerk's name of the first page of all pleadings and papers filed with the Tribal Court. Original documents, photographs or objects filed or introduced into evidence with the Tribal Court may be returned if a clear and legible copy or adequate written description is substituted in the file. (If there is any doubt about substitution of original documents, request the guidance of the Court Administrator and/or Chief Judge).

Notice of Appeal is filed with the tribal court. The Notice of Appeal should contain: a) the party or parties taking the appeal, including name, title, address and telephone number, and their counsel; b) the name of the court rendering the adverse ruling and the date the ruling was rendered; c) a concise statement of the adverse ruling or alleged errors made by the lower court; d) the nature of the relief being sought; and, e) a concise statement of the reasons for reversal and modification. (See SWITCARA #11(e)(2001)).

Service of Notice of Appeal is the responsibility of Tribal Court Clerks. Service of the Notice of Appeal is made on 1) Southwest Intertribal Court of Appeals; 2) each party other than the appellant (the person bringing the appeal) or their counsel; 3) Trial Judge; 4) clerk or court reporter who recorded the trial or hearing. Notice of Appeal in criminal cases should also be served on the prosecutor and public defender.

Stay of Proceedings and Stay of Execution pending final determination of the appeal is generally provided by tribal code and may be ordered by the tribal court judge. The tribal court judge may require a bond to enforce the judgment or assure the appearance of the appellant; all bonds and fees are paid to the tribal court. A Stay continues in effect until final disposition of the appeal.

Interlocutory Appeals may be filed during trial and similar to the Notice of Appeals, they are filed with the tribal court. An interlocutory appeal must be approved by at least two appellate judges of the Southwest Intertribal Court of Appeals and the trial court record must be filed immediately with SWITCA.

### **SPECIAL NOTE REGARDING CRIMINAL APPEALS**

General rules and responsibilities required for all appeals apply to criminal appeals but tribal criminal codes and appellate rules may require additional study and action by Tribal Court Clerks.

Appeal by the prosecution is generally not allowed by tribal code, appellate rules or tribal court practice. It is best to review your tribal code, rules and discuss this issue with the Chief Judge and Criminal Court Judge.

Conditions of release pending appeal are generally contained in the tribal code or appellate rules. Defendants are usually entitled to bail at the time of filing the Notice of Appeal and the Tribal Court may impose conditions of release sufficient to assure the defendant will appear.

Petition to review of terms of release or refusal of release may be filed by the defendant with the Tribal Court at any time after the filing of the Notice of Appeal.

### **GENERAL CLERICAL DUTIES**

Upon receipt of the Notice of Appeal, Tribal Court Clerks, with accuracy and timeliness, must:

1. File the Notice of Appeal;
2. File certificates of service of the Notice of Appeal;
3. Prepare date report or document kept by the tribal court regarding appeals filed; and
4. If fees are waived by the tribal court judge, file the order.

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

1. Creating an original appellate file to be retained by the tribal court and the required number of duplicates\* of the appellate court file to be delivered to the Southwest Intertribal Court of Appeals immediately upon completion;
2. Checking the tribal court file against the docket (index) sheet that must be created and included in the appellate file, with numbered tabs separating each pleading or document, to assure all pleadings appear in the file in reverse chronological order;
3. Numbering each page of the record proper and preparing a written transcript or preparing the required number of duplicates\* of any audio recordings on tape or disk of all proceedings;
4. Preparing a Certification of the Record on Appeal;
5. Filing a statement of costs and Certificate of Proof of Satisfaction;
6. Filing a copy of the tribal court order waiving payment of fee, if applicable;
7. Notifying the appellant that the record is ready and of charges payable to the tribal court for preparation, if applicable; and
8. Filing all subsequent pleadings or documents and forwarding immediately a copy to the Southwest Intertribal Court of Appeals. Parties to the appeal are responsible for informing Tribal Court Clerks of all exhibits to be forwarded to SWITCA. Tribal Court Clerks shall immediately forward all documents to the Appellate court. Appellate Judges may designate exhibits to be forwarded to the Southwest Intertribal Court of Appeals.

\* The required number of duplicate copies of the appellate file and the transcript or audio recordings on tape or disk (of all proceedings) depends on the number of appellate judges required to hear the appeal pursuant to tribal law. For most tribal courts, the lower court must send two copies of the certified appellate file (record on appeal). For tribal courts requiring a panel of three appellate judges, the lower court must send four copies of the appellate file.

Please contact SWITCA to confirm the number of appellate files required to be prepared for each appellate case and for a sample of the docket (index) sheet and the formatting of the numbered tabs separating each pleading or document.