

SOUTHWEST INTERTRIBAL COURT OF APPEALS SELF-HELP GUIDE TO APPEALS FROM TRIBAL COURT

This guide is general and doesn't give legal advice, so it is not intended to meet your specific needs.

WHO CAN APPEAL?

If you think the tribal court made a mistake in your case, you have the right to appeal that court's decision to the Southwest Intertribal Court of Appeals (SWITCA). An appeal can be a complicated, time-consuming process, so you may want to hire an attorney, counselor, or advocate to handle your appeal. If you don't know how to find an attorney or can't afford one, community organizations may be able to help you find one. The tribal court clerk might have a list of these organizations. You can also appeal your case as a *pro se* party, which is a person who participates in a tribal court case or an appeal without the assistance of an attorney, counselor, or advocate. In other words, *pro se* parties represent themselves in court proceedings; they are their *own* attorney, counselor, or advocate.

WHAT CAN I APPEAL?

Ask the tribal court clerk for the tribe's own Rules of Appellate Procedure (if any) to find the answer to this question. The **SWITCA Rules of Appellate Procedure** apply to your appeal only (1) if there are no tribal rules of appellate procedure, or (2) as needed to supplement the tribal rules. The **SWITCA Rules** are available at <https://www.ailc-inc.org/wp-content/uploads/SWITCA-Appellate-Rules.pdf>. If you need to use the **SWITCA Rules**, read Rule 41 first because it lists definitions that may help you if you appeal your case as a *pro se* party.

SWITCA Rule of Appellate Procedure 3(d) allows you to appeal only the tribal court's "final judgment, order, or commitment ending litigation and requiring nothing more than execution of the judgment and giving rise to good faith claims that an error of law or procedure affected the outcome of the case." Sometimes it's hard to know if a judgment is final. If you appeal from an order that is not final and appealable, SWITCA may dismiss your appeal, but you will not lose your right to appeal. Once a final, written judgment or order is filed by the tribal court, you can file a new appeal with SWITCA.

The exception to this general rule is **SWITCA Rule of Appellate Procedure 13**, which allows you to request permission to appeal a tribal court's action or order that is not a final judgment. Some tribes may have similar rules. These appeals are called interlocutory appeals.

HOW AND WHEN CAN I APPEAL?

You begin by filing a notice of appeal in the tribal court. You must file the notice of appeal within the time limit set in the tribe's rules of appellate procedure (ask the tribal court clerk for the rule that states the time limit). If the tribe has no such rules, then under **SWITCA Rule of Appellate Procedure 11(a)** you must file a notice of appeal within 15 calendar days after the tribal court files its final, written judgment or order in your case. It is very important that you file your notice of appeal on time. If you file your notice late, you will lose your right to appeal forever if the tribe's rules do not allow extensions of the time limit. Indeed, **SWITCA Rule of Appellate Procedure 11(c)** requires SWITCA to dismiss your appeal if you file your notice of appeal after the deadline.

WHY SHOULD I APPEAL?

The tribal court personnel can't tell you why you should or shouldn't appeal because that would be giving legal advice, which they can't do. If you disagree with the tribal court's decision and think the court made a mistake, you can appeal. Before deciding whether to appeal, you may want to talk to an attorney. But you need to act fast so that you don't lose your right to appeal by missing the filing deadline.

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IMPORTANT RECOMMENDATIONS

Here are some important recommendations when preparing the documents you need to file if you decide to appeal after carefully reading and thinking about this reality-check:

1. **VERY IMPORTANT REALITY-CHECK *BEFORE* YOU DECIDE TO APPEAL:** If you decide to appeal the tribal court judgment in your case, do not expect to win because fewer than one out of five SWITCA cases get reversed on appeal. The purpose of appellate courts including SWITCA is not to re-try your case to give you a better result. Instead, SWITCA'S purpose is to ensure that everyone whose case is decided by a tribal court is treated fairly. If the tribal court treated you fairly but you lost, SWITCA can't do anything about that, even if the SWITCA judge thinks you have the better case. SWITCA doesn't re-weigh the evidence or decide which side has presented a more credible case. For example, if there is one witness for the prosecution in a criminal case and 10 for the defense, but the judge or jury believes the prosecution's one witness, SWITCA won't reverse that determination on the ground that the judge or the jury should have believed the 10 witnesses. SWITCA will reverse only if the tribal court made an error of law and/or procedure. SWITCA decides cases based only on the record of the tribal court case. You may not present any new evidence to SWITCA.
2. If you decide to appeal: Always read the relevant tribal or SWITCA rule of appellate procedure about the document before you prepare it, and make sure your document complies exactly with the rule.
3. Be sure that your document stays within any page limit in the applicable rule (for example, see ***SWITCA Rule 27(b)(10)***). A good rule of thumb is the shorter, the better. In other words, make your points complete but short and focused--not repetitious or rambling.
4. For documents that require citations (like briefs):
 - A. For every statement of fact that you make, cite a page or pages of the record, transcript, or exhibits, or a specific time in the audio recording. Put citations to facts in parentheses after your statements. For example:
 - "The judge wouldn't admit the handwritten receipt from a salvage yard for my purchase of a windshield that I had to replace after the appellee shattered the old one with a large rock. I complained that this was not fair because the seller said that was the only receipt he could give me." (Transcript page 10-11). This correct citation directs the SWITCA judge to the specific pages of the transcript containing the judge's allegedly wrong ruling and your claim that the judge made a mistake. It would be incorrect to simply cite: (Transcript).
 - "The judge did not allow my sister to testify about the threats that my neighbor shouted at me. I complained that this was not fair because she overheard those threats from our living room." (Audio Recording 10:35-12:52). This correct citation directs the SWITCA judge to listen to the audio recording starting at 10 minutes, 35 seconds from the beginning to hear the judge make an allegedly wrong verbal ruling and your claim that the judge made a mistake. It would be incorrect to simply cite: (Audio Recording).
 - B. For every statement of law that you make, cite the specific page or section of one or more codes, cases, ordinances, resolutions, rules, regulations, or constitutional provisions. The citations to law don't have to be in parentheses. For example:
 - "[Name of Tribe] Law and Order Code Section 203(A)(1) allows a driver to pass a vehicle on the right when that vehicle is about to make a left turn." This correct citation directs the SWITCA judge to a specific law that is relevant to an appeal from a traffic ticket and fine. It would be incorrect to simply cite the "Law and Order Code" without any specific section.
 - "Under SWITCA Rule of Appellate Procedure 11(c), SWITCA must dismiss an appeal for lack of jurisdiction when the notice of appeal is filed more than 15 days after the tribal court order. San Felipe Gaming Enterprise v. Nims, Calvani and Associates, 26 SWITCA REP. 2 (2015)." (Lack of jurisdiction means that SWITCA has no power to decide an appeal.) This correct citation

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directs the SWITCA judge to volume 26, page 2 of the published SWITCA cases where the case with the name above can be found. It would be incorrect to simply cite “a 2015 SWITCA case” without the case name, volume number and page number.

- C. If you want to see if there is a past SWITCA case like yours, visit <https://www.ailc-inc.org/our-work/switca/> to access the *Digest of Cases by Court of Origin*, which summarizes each case. If the *Digest* leads you to one or more cases that sound like yours, you may access those cases in the *SWITCA Reporter* by using the cite (the numbers next to the case name). For example, on page 29 of the *Digest*, if you want to read *Toya v. Ramone* (2012), 23-3, you will find this case in Reporter Volume 23 starting at page 3. The *SWITCA Rules of Appellate Procedure Annotated*, which gather selected case summaries under the relevant rule, are another helpful finding tool. Each case in the *Reporter* is a “precedent,” which is a decided case that can be the basis for deciding an identical or similar case that arises later. The strongest case for you to cite would be an identical or similar one that originated in the same tribal court as yours did (called “binding precedent”). An identical or similar case that originated in a different tribal court also might help you (called “persuasive precedent”).

Remember: The purpose of each citation is to direct the SWITCA judge to a specific part of the record or a specific law or case so that the SWITCA judge can fairly evaluate and analyze the alleged errors described in your notice of appeal. Each one of your citations helps the SWITCA judge quickly and easily find a different “needle in the haystack” that is the record of your tribal court case. The more specific and precise your citations, the more you will help the SWITCA judge do his or her job well. Although good citations won’t necessarily cause the SWITCA judge to rule in your favor, vague citations probably won’t help you prove the errors of law and/or procedure that you think the tribal court judge made in your case.

5. File early. If you plan to file a document early, then you usually will file it on time, even if an emergency arises.
6. Put the tribal court and SWITCA case numbers on all documents that you file (except the notice of appeal, which will not have a SWITCA case number until and unless the notice is accepted and the appeal is assigned to a judge or a panel of judges).
7. All the documents you file must be typewritten or handwritten legibly in black or blue ink.
8. If you have any questions, the tribal court clerk or SWITCA court clerk may be able to help you. Although the clerks can answer procedural questions and may be able to direct you to specific rules, they can’t give you legal advice.
9. Generally speaking, SWITCA liberally¹ reviews a *pro se* party’s compliance with appellate rules. Gonzales v. Osborn, 24 SWITCA REP. 5, 6² (2013). Nevertheless, you will help your case if you do your best to comply exactly with the rules because you want SWITCA to evaluate the merits of your appeal, not to dismiss your case or ignore an important document because you missed the filing deadline or didn’t comply with another required procedure.
10. Be courteous to everyone. You catch more flies with honey than with vinegar.

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¹ In a way that is not precise or strict; loosely.

² This is an example of a “pinpoint” cite. This pinpoint cite would help SWITCA judges by directing them to page 6 of Volume 24, where the text about liberal review appears in the Gonzales v. Osborn opinion that starts on page 5 of Volume 24.