



# **Tribal Court Clerk Training: Fundamental Court Processes**

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# **Case Processing**

## **How is a case processed?**

Typically:

Court Clerk accepts a filing. (Civil or criminal complaint or petition)

New case - A docket number is assigned and a case file is opened.

Pending case-The filing is placed in reverse chronological order in the existing case file.

Calendaring

Notice – Service of Process

Proceeding(s)

Order(s)

Appeal

# Checklists

- Assists to keep case files and records organized
- Deadlines (Notices to be sent to parties, receive proofs of service of Notices, etc.)
- Tab requirements in tribal code

# Filings Accepted

- First and foremost please refer to the Tribal Code, Rules of Court, and any written policies
- General basic guidelines:
  - Are the parties identified?
  - If using a form, are all blanks completed?
  - Did the party sign the filing?
  - Is there a filing fee? If so, was it paid?

# File Stamp

- Upon accepting a filing, immediately file stamp it to show that the Tribal Court has accepted it as part of the official case record.
- A responsibility of a court clerk is to accurately and properly preserve the official case record.
- File stamping and organization of documents is critical to accurately and properly preserving the official case record.

# Official Case Record

- When file stamping, be careful that documents filed are not evidence as this information must be introduced through parties at trial
  - Civil case: interrogatories, reports
  - Criminal Case: DWI reports, crash reports, witness statements, etc.
- Ask yourself whether the information needs to be introduced at trial before a judge has access.
- Look at who is filing – are they a party to the case or a witness? Is everyone getting a copy?

# Setting up a Case File

- Documents are file stamped.
- Docket number is assigned.
- Abbreviations for cases are used in the docket number assigned. Ex: CV, CH, JV
- Color coding files or color coding labels may be helpful.

# Setting up a Case File (cont'd)

- **Left-hand side of a case file**
  - Index
  - Notes from the bench
  - Contact information sheet
- **Right-hand side of a case file**
  - All filings accepted by the Tribal Court
  - All orders issued by the Tribal Court
- Arrange the documents in reverse chronological order
- Tab all documents for easy reference and have the number correspond to the number listed in the index
- Use a fastener to keep documents secure



# Organizing Case Files

- What process /procedure helps you stay organized?
  - Tickler system
  - Calendaring
  - Organization bins
- Organize by date accepted
- Finding time to organize case files (closing early, staggered hours, other ideas?)

# Calendaring

- Schedule hearings
- Determine the date to serve notice of hearing
- Trial (typically a bench trial)
  - Witness list
  - Exhibits
- Deadlines
  - Payments
  - Probation or jail time lapses (update if violation occurs)
  - Reports due from probation officers, behavioral health, social service worker, etc.
- Reminders

# Calendar with Outlook

Home Send / Receive Folder View Tell me what you want to do...

New Meeting New Items New Skype Meeting Today Next 7 Days Day Work Week Week Month Schedule View Open Calendar Calendar Groups E-mail Share Publish Calendar Permissions Search People Address Book Find

August 2017 Albuquerque, New Mexico Today 92° F / 67° F Tomorrow 87° F / 66° F Wednesday 87° F / 66° F Search Calendar (Ctrl+E)

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Jul 30	31 9:30am CR-2017-098, CR... 9:30am CV 2017-044, CV...	Aug 1 8:30am CH-2017-022	2	3	4	5
6	7 8:00am CR-2017-098, CR... 8:00am CV-2017-044, CV...	8 8:30am CH-2017-022	9	10	11 8:30am CV-2017-029, CV-2017-021	12
13	14 9:00am CV-2017-044 Br... 10:00am CV-2017-122 J...	15 10:00am CH-2017-022 In the Matter of R.J.	16 9:00am CR-2017-099; CR-2016-120	17	18 8:00am CV-2017-029, CV-2017-021	19
20	21	22	23 8:30am CR-2017-099; CR-2016-120	24	25 10:00am CV-2017-029 S... 10:30am CV-2017-021 L...	26
27	28	29	30 9:00am Pueblo of Sandia... 10:00am CR-2017-099 P...	31		2

# Tickler Filing System- Manual



- Tickler Filing System- allows you to remember important deadlines, easy to use, inexpensive.
- Arranged by days of the month.
- Each day you pull out the folder for the day and complete the tasks filed in the folder.
- If a hearing is scheduled for 12/18 then you would want to file a reminder to mail the notice of hearing on 12/4.
- Once the notice is sent, file the case 1 week out (12/11) to verify that service was completed.

# Docket

- Is it published? Posted?
  - Check tribal code, rules of court, administrative order
- Publishing a docket provides access to justice, but can also be very controversial
  - How does your community feel about a public docket?
- Is there a database for clerks to use to review the status of pending cases, to help with case management?

# Case Management: Using Data

- Grant funding is always available, but you need numbers! (Ex: Number of pending cases, case types, etc.)
- Using numbers to show: Increased work load, high volume of cases, trends in the cases.
- Data should be shared with Tribal Leadership.
- How is your data organized? Make sure that your data is organized in a way that allows you to pull out information easily.



# Case Management: Using Spreadsheets

How does your court organize case data?

- First: ask what is it that I am measuring?
- Second: what is the most efficient way to organize this data (case type/date filed/case number)
- Third: Input data into a spreadsheet in a way that allows information to be controlled and utilized in different ways.
- Keep in mind that too much data can be confusing, be critical, focus on the objective and who will be reviewing your data?

# Case Management: Efficiency

- How efficiently is the court processing its cases?
- What is “efficient”? At a minimum, there should always be compliance with the Rules of Criminal and Civil Procedure.
- Just because you have statutory deadlines, does not mean you can’t schedule hearings and other proceedings sooner. Think best practices.
- If your court does not have any rules, look to state and federal rules for guidance.
  - Consider adding the Federal Rules of Civil Procedure and Criminal Procedure to your budget requests or review rules online.



# Case Management: Case Closure Ratio

- Tracking the case closure ratio
- High case closure ratios will often indicate a lower backlog of cases.
- Low case closure ratios will mean that more cases are being rolled over into the following year (not good for due process concerns)
- The longer that a case is active means more delay, less cooperation from witnesses, more opportunities for a defendant to reoffend, no immediate consequences.

# Case Management: Case Closure Ratio

- Number of closed cases in the year, divided by the number of cases opened that year.
- Example – In 2017, 54 criminal cases opened and 30 criminal cases closed:
- $30/54 = 55\%$  of cases being closed each year (low)
- 55% would indicate that there is a backlog developing at the court.
- This calculation should be done each month, quarterly, or yearly.
- Criminal cases should generally have a higher closure ratio; Civil cases typically take longer to resolve.

# Case Management: Disposition of Cases

- Track the disposition of cases, how many cases are being dismissed, resolved by a plea agreement, trial?
- If cases are plead, what is ordered by the court? (probation, counseling, mediation, restitution)
- It is useful to look at the recidivism rates, consider what is working and what is not working? (Data can show us whether the process is working)
- Where and how are closed cases stored and for how long?
  - Cases should be preserved for a set period of time and should be placed in a secure location (waterproof, fireproof)

# Service of Process

- Service of Process is important for due process.
- For example: Service of process for a notice of hearing. A party (defendant) does not appear at the hearing. The Judge will hold a hearing on the record and rely on the documentation of the notice to hold the party responsible.
- Review tribal code for time frames to serve documents.
- If tribal code does not include a time frame or there is not a tribal code, notices are served within a reasonable time. This timing could be addressed in a Court Administrative Order or court policy.

# Service of Process (cont'd)

- Methods of proper service (based on tribal law, court rules, Admin. Orders or court policy:
  - Law Enforcement Officers (hand delivery)
  - Mail – Regular U.S. mail, Certified Mail
  - Email (if allowed)
  - Fax
  - Pick up at Tribal Court
- Document attempts to serve, place proofs of service or documentation of attempts to serve in case file with copy of notice, order, etc.
- File stamp



# Service of Process (cont'd)

- Create entry on index for the service of process and tab documents
- The case file must contain documentation of proper service to the parties (certificate of service). Proof of service is vital.
  - “I certified that I mailed first-class the notice of hearing. . . .” or Individual who is served signs log or
  - Other types of proof - publication or posting (if required by tribal law).
- A phone call or email the day before or day of the hearing is NOT reasonable notice.

# Proceedings

- Civil hearings
  - Petition or a complaint is filed.
  - An answer is filed.
- Criminal hearings
  - Arraignment-Plea of not guilty, guilty or no contest
  - Trial (if necessary) and Sentencing
  - Violation of probation may occur and a hearing is held
- Review or status hearing

# Orders

- Orders are the opinion and direction of the Tribal Court.
- Orders contain deadlines for calendaring.
- Orders may specifically state a date for the next hearing or refer to a time frame “within 30 days from date of this Order.”
- All orders must be file stamped to show that they are officially part of the record.
- All parties must receive orders. Proof of service is crucial to show that the order was provided to the party and to document due process.
- Final order is final decision or final judgment.
- Closure order – Helps to track cases that should be archived.



# Communication with the Public

- Educational efforts- court open house, court clinic, brochures
  - More information = less surprises and delays
- Explaining the process versus giving legal advice
- Understanding the question
  - “What is being asked?” Relay what you understood back to the customer

# Communication

## Legal Advice v. Customer Service

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We can	Explain and answer questions about how the court works.	We cannot	Tell you whether or not you should bring your case to court or predict the outcome of a case filed in court.
We can	Encourage you to obtain legal advice from licensed attorney and provide you with the number to the state bar lawyer referral program.  State Bar of NM Referral Program: (505) 797-6066 or 1-800-876-6227	We cannot	Tell you what words to use in your court papers (However we can check your forms for completeness, i.e. signatures, notarization, correct case number, and presence of attachments).

# Internal Communication

- Best practices: have regular staff meetings, take minutes, hold staff accountable
- What do you do when the “process” doesn’t work?
- Regular meetings with service providers to address policy/practice
- Written vs. verbal policies- Strive to have all policies written, what happens if you leave? Someone should be able to come in and have guidance from a policy
- Focus on cross training!

# Appeals

## What is an Appeal?

- **An appeal is a formal request that a higher court review the decision of a lower court (trial level) to determine if an error occurred and if the appellant is entitled to relief.**
- **Errors may include errors of law, fact, or procedure.**
- **An appeal is not a new trial, cannot present evidence, call witnesses or conduct discovery.**
- **An appeal is also affected by *jurisdiction*. Each tribe's codes and rules provide the structure and process for appeals**
- **An organized lower court case file greatly assists in being ready for an appeal.**

# Who can Appeal?

- A party who files an appeal is called the appellant or petitioner. The appellant is the party who alleges that an error was made in the lower court and requests the appellate court to review the decision.
- The appellant in the appeal can be either the plaintiff (or claimant, petitioner) or defendant (or respondent) depending on the type of case being appealed.
- The other party is called the appellee.

# **The Appellant**

## **(Using SWITCA Rules as Example)**

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

# The Appellee

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

# **Filing an Appeal**

## **{SWITCA Rule 11}**

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



# Example of a Notice of Appeal

The Notice of Appeal shall, at a minimum, include:

**Note:** An address or telephone number of any person should not be included if the lower courts determine that it would place that person in physical jeopardy.

Names  
& Titles  
of  
parties  
of the  
appeal

Name,  
address,  
telephone  
number of  
parties and  
their  
counsel

Insert  
name of  
lower  
court and  
pueblo or  
tribe and  
state

Name of  
party  
appealing  
and the  
name and  
date of  
order  
decided in  
lower  
court

IN THE SOUTHWEST INTERTRIBAL COURT OF APPEALS		
FOR _____	OF	_____
		<u>INSERT PUEBLO/TRIBE, STATE</u>
_____	)	Case No. _____
Appellant/ Defendant	)	
	)	
v.	)	<b>NOTICE OF APPEAL</b>
	)	
_____	)	
Appellee/ Respondent	)	
	)	
<p style="text-align: center;">Now comes the <u>_____</u> [PLAINTIFF/DEFENDANT NAME], and hereby give notice that he/ she is appealing the <u>_____</u> [NAME THE FINAL APPEALABLE ORDER FROM WHICH THE APPEAL IS BEING TAKEN], decision entered by said court on the <u>_____</u> [DAY] of <u>_____</u> [MONTH], <u>_____</u> [YEAR] to the Southwest Intertribal Court of Appeals.</p>		
	→	<u>_____</u> [ATTORNEY FOR APPELLANT OR APPELLANT'S NAME, <i>Pro Se</i> ] <u>_____</u> [ADDRESS/ PHONE NUMBER]
<b>CERTIFICATE OF SERVICE</b>		
<p style="text-align: center;">I certify that a copy of this Notice of Appeal was served by <u>_____</u> [FIRST CLASS MAIL, POSTAGE OR PERSONAL DELIVERY] upon <u>_____</u> [NAME, ADDRESS, PHONE NUMBER OF ALL OPPOSING COUNSEL OR PRO SE LITIGANT] this <u>_____</u> [DAY] of <u>_____</u> [MONTH], 20 ____.</p>		
<u>_____</u> [ATTORNEY FOR APPELLANT OR APPELLANT'S NAME, <i>Pro Se</i> ]		

# **What must be included in the Notice of Appeal**

- **The names, titles, addresses, and telephone numbers of the parties taking the appeal and their counsel.**
- **The name of the court rendering the adverse ruling and the date the ruling was rendered.**
- **A concise statement of the adverse or alleged errors made by the lower court.**
- **The nature of relief being sought; and**
- **A concise statement of the reasons for reversal and modification.**

# **Attorney/ Counsel**

- **Shall file an Entry of Appearance in an appeal, even if he/she is already admitted in the lower court.**
- **Attach a certified copy of his/her admission to practice before the court from which the appeal is taken.**
- **Shall be allowed to practice in the court of appeals so long as that person is in good standing with the lower court and with each court to which the attorney has been admitted. SWITCARA #6**

# **Tribal Court Clerk Duties**

## **(See Handout)**

- **Create and maintain an original appellate file and forward required number of duplicates to SWITCA within 30 days of the filing of the Notice of Appeal.**

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

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

# **Appellate Court Record Preparation**

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

**a) Creating an original appellate file to be retained by the tribal court and the required number of duplicates\* of the appellate court file to be delivered to the Southwest Intertribal Court of Appeals immediately upon completion;**

**b) Checking the tribal court file against the docket sheet to assure all pleadings appear in the file in reverse chronological order.**

# **Appellate Court Record Preparation**

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

# **Appellate Court Record Preparation**

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

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

# **Appeals**

## **Frequently Asked Questions**

- **Can Notice of Appeals be handwritten?**
  - **Yes. Pleadings may be typed or legibly handwritten in blue or black ink.**
- **Authority of appellate court?**
  - **SWITCA shall hear cases based on the authority granted by the pueblo or tribal constitution, legislative authority, or resolution.**
  - **Some Tribes have separate appellate courts, or Tribal Council serves as appellate court.**



**Questions?**

Thank You!