

IN MEMORIAM

VOLUME FIFTEEN IS DEDICATED TO THE MEMORY OF

TOBY F. GROSSMAN

1942 - 2004

Ms. Grossman was the senior staff attorney at the American Indian Law Center, Inc., having joined the Center in 1971. She also served as the administrator of the Southwest Intertribal Court of Appeals.

A lecturer at the UNM School of Law, she regularly taught courses on the Indian Child Welfare Act and tribal government and she co-taught a course of Tribal-State relations.

She specialized in child welfare issues including child abuse and neglect, drafting of tribal codes, as well as assisting several tribes in negotiating Tribal-State agreements on the Indian Child Welfare Act. She trained social workers and judges on child welfare law. She also led the American Indian Law Center team that developed the first Model Children's Code for tribes, as well as Model Codes for Child Welfare, Adoption, and Prevention of Elder Abuse. In these and other areas, local, state, and tribal governments, as well as attorneys, frequently sought her advice and services.

Toby Grossman was a remarkable person, who significantly influenced the law, her many students, the New Mexico legal community, and all of Indian country. Her work has improved the lives of numerous Indian children, most of whom she never had a chance to meet.

She leaves behind an indelible mark on this world.

In the Southwest Intertribal Court of Appeals for the Santa Clara Tribal Court

EMILY HARRINGTON,

Defendant-Appellant,

v.

PUEBLO OF SANTA CLARA,

Plaintiff-Appellee.

**SWITCA No. 00-015-SCPC
SCPTC No. CR 00-207**

Appeal filed November 2, 2000

Appeal from the Santa Clara Tribal Court,
Dennis M. Silva, Judge

Appellate Judge: Stephen Wall

UNPUBLISHED ADVISORY OPINION¹

SUMMARY

The appellate judge recommended that the trial court's decision to deny appellant's motion for continuance be affirmed. The trial court exercised its discretion in determining that appellant's motion was untimely because she filed it on the eve of the trial despite having had sufficient notice of the need for counsel.

November 29, 2004

LARRY MARTINEZ,

Defendant-Appellee,

v.

**KIKO FUNMAKER, SANDRA SUE AND
DAVID RICHARDSON,**

Plaintiffs-Appellants.

**SWITCA No. 00-019-SCPC
SCPTC No. CV 99-276**

Appeal filed April 2, 2001

Appeal from the Santa Clara Tribal Court,
Dennis Silva, Judge

Appellate Judge: Stephen Wall

UNPUBLISHED ADVISORY OPINION

SUMMARY

The appellate judge recommended that the trial court's decision finding a deposit to be refundable be affirmed. The deposit receipt was silent regarding refunds. The trial court had jurisdiction because the transaction occurred on tribal land, the plaintiff chose the forum, and the defendant did not object to that forum until the trial court ruled in plaintiff's favor.

November 29, 2004

¹Santa Clara Pueblo Tribal Council Resolution 99-25, §4(a) (9/30/99) authorizes SWITCA to act as the Pueblo's Appellate Court. §4(d) grants SWITCA full appellate jurisdiction to dispose of appeals in accordance with Santa Clara law and otherwise in such manner as appears to be appropriate to the rendering of a just result. §6 provides that the appellate decisions shall be published in this Reporter. However, due to a belatedly discovered procedural error, several appeals resulted not in decisions but instead in advisory opinions, which was the correct process under the superseded Santa Clara Pueblo Tribal Council Resolutions 93-23 (6/25/93) and 94-14 (4/6/94). In order to address the error in a transparent manner, SWITCA seeks to harmonize §§4(d) and 6 of Resolution 99-25 with its inherent judicial power to perform its functions by publishing the captions and summaries of the advisory opinions in this revised volume. The unpublished advisory opinions may not be cited as precedent. SWITCA regrets the error.

In the Southwest Intertribal Court of Appeals for the Santa Clara Tribal Court

DANIEL BACA,

Petitioner-Appellee,

v.

SHEILA M. MARTINEZ,

Respondent-Appellant.

**SWITCA No. 01-001-SCPC
SCPTC No. DV 95-504**

Appeal filed November 27, 2000

Appeal from the Santa Clara Tribal Court,
Paul Tsosie, Judge

Appellate Judge: Stephen Wall

UNPUBLISHED ADVISORY OPINION

SUMMARY

The appellate judge recommended that the appeal be dismissed for lack of jurisdiction since the notice of appeal was not filed within fifteen days as required by Rule 11 of the Rules of the Southwest Intertribal Court of Appeals.

November 22, 2004

JULENE GUTIERREZ,

Respondent-Appellant,

v.

BIANCA TAFOYA,

Petitioner-Appellee.

**SWITCA No. 01-003-SCPC
SCPTC No. JV-00-220**

Appeal filed December 8, 2000

Appeal from the Santa Clara Tribal Court,
Paul Tsosie, Judge

Appellate Judge: Stephen Wall

UNPUBLISHED ADVISORY OPINION

SUMMARY

The appellate judge recommended that the appeal be dismissed for lack of jurisdiction since the notice of appeal was not filed within fifteen days as required by Rule 11 of the Rules of the Southwest Intertribal Court of Appeals.

November 22, 2004

In the Southwest Intertribal Court of Appeals for the Santa Clara Tribal Court

FAYE VIARRIAL,
Defendant-Appellant,

13(d) because there was no final order from the trial court on appellant's motion to amend the final decree.

November 22, 2004

v.

ARTHUR TAFOYA,
Plaintiff-Appellee.

ZACHARY TAFOYA,
Defendant-Appellant,

SWITCA No. 01-005-SCPC
SCPTC No. CV-01-068

v.

PUEBLO OF SANTA CLARA,
Plaintiff-Appellee.

Appeal filed March 20, 2001

Appeal from the Santa Clara Tribal Court,
Dennis Silva, Judge

SWITCA No. 01-007-SCPC
SCPTC No. CR 01-046

Appellate Judge: Stephen Wall

Appeal filed April 2, 2001

Appeal from the Santa Clara Tribal Court,
Dennis Silva, Judge

UNPUBLISHED ADVISORY OPINIION

The appellate judge recommended that the lower court decision be affirmed because the tribal court made no errors that would warrant a new trial.

Appellate Judge: Stephen Wall

November 22, 2004

UNPUBLISHED ADVISORY OPINION

SUMMARY

The appellate judge recommended that the tribal court's denial of appellant's motion to dismiss be affirmed because appellant used an obsolete version of the tribal code, the apparently erroneous cite to the wrong code section and use of a word in the complaint that was not in the pertinent tribal code section did not interfere with appellant's ability to prepare his defense, and breathalyzer evidence was irrelevant to a charge of possession of alcoholic beverages.

November 29, 2004

KIMBERLY R. SHIJE,
Respondent-Appellant,

v.

JASON D. GARCIA,
Petitioner-Appellee.

SWITCA No. 01-006-SCPC
SCPTC No. DV-01-013

Appeal filed March 5, 2001

Appeal from the Santa Clara Tribal Court,
Paul Tsosie, Judge

Appellate Judge: Stephen Wall

UNPUBLISHED ADVISORY OPINION

SUMMARY

The appellate judge recommended that the appeal be dismissed for lack of jurisdiction under SWITCA Rule

In the Southwest Intertribal Court of Appeals for the Tonto Apache Tribal Court

ORDER

REGINA PITTS,

Defendant-Appellant,

v.

PUEBLO OF SANTA CLARA,

Plaintiff-Appellee.

**SWITCA No. 01-009-SCPC
SCPTC No. CR 01-105**

Appeal filed April 3, 2001

Appeal from the Santa Clara Tribal Court,
H. Paul Tsosie, Presiding Judge

Appellate Judge: Stephen Wall

UNPUBLISHED ADVISORY OPINION

SUMMARY

The appellate judge recommended that the decision of the lower court be affirmed because the tribal court judge correctly refused to admit un-notarized written statements into evidence, there was sufficient evidence that appellant was with an expelled person in the Santa Clara community on at least three occasions, and appellant made no timely effort to disqualify the tribal court judge.

December 8, 2004

LOUISE LOPEZ,

Appellant,

v.

TONTO APACHE TRIBE,

Appellee.

**SWITCA NO. 01-011-TATC
Tonto No. CR-01-001**

Appeal filed June 22, 2001

Appeal from the Tonto Apache Tribal Court
Edwin Lawrence, Judge

Appellate Judge: Albert Banteah

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.

SO ORDERED.

November 10, 2004

TONTO APACHE TRIBE,

Appellee,

v.

JERI JOHNSON,

Appellant.

**SWITCA NO. 01-012-TATC
Tonto Nos. CR00-003 - CR00-066**

Appeal filed July 13, 2001

Appeal from the Tonto Apache Tribal Court
Edwin Lawrence, Judge

SWITCA Chief Judge: Albert Banteah

ORDER

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.

SO ORDERED.

November 10, 2004

In the Southwest Intertribal Court of Appeals for the Santa Clara Tribal Court

HOWARD NARANJO,

Defendant-Appellant,

v.

JOSEPH & CHARLOTTE SUINA,

Petitioners-Appellees.

**SWITCA No. 01-014-SCPC
SCPTC No. CV 01-321**

Appeal filed April 30, 2001

Appeal from the Santa Clara Tribal Court,
H. Paul Tsosie, Presiding Judge

Appellate Judge: Stephen Wall

UNPUBLISHED ADVISORY OPINION

SUMMARY

The appellate judge recommended that the damages award of the lower court be affirmed because the appellate court could not consider new evidence of the damages consisting of pictures that the appellant first tried to introduce with his notice of appeal. The tribal court made no error.

December 8, 2004

CARLA JACKSON,

Appellee,

v.

CALVIN PUTESOY, JR.,

Appellant.

**SWITCA NO. 02-001-HTC
Hualapai No. AP-02-01-HTC**

Appeal filed February 7, 2002

Appeal from the Hualapai Tribal Court
Tammy Walker, Judge

Appellate Judge: Albert Banteah

ORDER

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.

SO ORDERED.

June 30, 2004

DEBRA PATE,

Plaintiff-Appellant,

v.

**STARLENE NARANJO, TONECE BACA, and
STEVE RIVERA,**

Defendants-Appellees.

**SWITCA No. 02-005-SUTC
SUTC No. 01-CV-57**

Appeal filed October 13, 2003

Appeal from the Southern Ute Tribal Court
Elaine Newton, Judge

Appellate Judge: Melissa L. Tatum

ORDER DISMISSING APPEAL

SUMMARY

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.

This matter comes before the Southwest Intertribal Court of Appeals from the Southern Ute Tribal Court and arises out of a personal injury lawsuit. The trial court entered a default judgment on liability against each defendant, but found that the plaintiff had established damages only as against Naranjo. Pate filed a notice of appeal, and on August 1, 2003, this Court dismissed the appeal because it was not timely filed. On October 13, 2003, Starlene Naranjo filed a letter with the trial court requesting to appeal a judgment entered against her on September 11, 2002. Naranjo's request is now before this Court.

In the Southwest Intertribal Court of Appeals for the Hualapai Tribal Court

Under the relevant court rules, the notice of appeal must have been filed within 15 days of the final judgment. This requirement is jurisdictional. SWITCA Rule 11(c) (2001). In other words, if the notice is not timely filed, this Court cannot hear the appeal. The Southern Ute Appellate Code does not contain a rule explaining how to compute the time for purposes of the notice of appeal. The SWITCA rules, however, do contain such a computation rule. SWITCA Rule 8 (2001). This Court has previously addressed this issue and has determined that the SWITCA rules govern the computation of time for appeals arising out of the Southern Ute Tribal Court. Baker v. Southern Ute Indian Tribe, 5 SWITCA 1, 2 (1993); Gould v. Southern Ute Tribe, 4 SWITCA 4, 6 (1993).

SWITCA Rule 8, provides that “the computation of any time period over 11 days shall be by calendar days.” Thus, the last possible day to file an appeal was September 26, 2002. Naranjo’s notice of appeal was filed on October 13, 2003, clearly well past the allowed time. In the notice of appeal, however, Naranjo claims she never received notice of the lawsuit, either in person or by mail.

As is set forth in the trial court’s October 13, 2003 order, however, the court file reflects that Naranjo was personally served with notice of the lawsuit on May 2, 2001. After that time, all notice and papers were sent to Naranjo by mail. While the court record does not indicate whether Naranjo actually received the mail, it is clear from the file that the mail was not returned to the court clerk. Once Naranjo received personal notice of the lawsuit, it was her responsibility to keep the court informed of her correct address.

If a party does not file a notice of appeal within the established time frame, this Court cannot hear the appeal. Given the documentation in the court file showing Naranjo received notice of the lawsuit, this Court sees no need to explore whether that time frame can be waived if a party is never informed of a pending lawsuit. Accordingly, Naranjo’s appeal is dismissed.

IT IS SO ORDERED.

July 13, 2004

DIANE GONZALES,

Appellee,

v.

INA JACKSON,

Appellant.

**SWITCA NO. 03-006-HTC
Hualapai No. CV03-028**

Appeal filed September 8, 2003

Appeal from the Hualapai Tribal Court
Delbert W. Ray, Sr., Judge

Appellate Judge: Albert Banteah

ORDER

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.

SO ORDERED.

June 30, 2004

In the Southwest Intertribal Court of Appeals for the Tonto Apache Tribal Court

TONTO APACHE TRIBE,

Appellee,

v.

ILENE S. HORBATIUK,

Appellant.

**SWITCA NO. 03-007-TATC
Tonto Nos. CR-03-002 and 03-005**

Appeal filed September 19, 2003

Appeal from the Tonto Apache Tribal Court
Tao Etpison, Judge

Appellate Judge: Albert Banteah

ORDER

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.

SO ORDERED.

November 10, 2004

BILLY CORDOVA,

Defendant-Appellant,

v.

PUEBLO OF SANTA CLARA,

Plaintiff-Appellee.

**SWITCA No. 03-009-SCPC
SCPTC No. EX-03-332**

Appeal filed October 17, 2003

Appeal from the Santa Clara Tribal Court,
Joseph Naranjo, Presiding Judge

Appellate Judge: Stephen Wall

UNPUBLISHED ADVISORY OPINION

SUMMARY

The appellate judge recommended that the tribal court's decision to expel the appellant from the Santa Clara Reservation be affirmed because the tribal court determined at a show-cause hearing that the appellant failed to meet his burden of proof to show why he should not be expelled. The tribal court did not have to establish any standard of proof to complete the expulsion.

December 8, 2004

In the Southwest Intertribal Court of Appeals for the Southern Ute Tribal Court

MAYA BAKER,

Petitioner-Appellee,

v.

**SOUTHERN UTE DEPARTMENT OF JUSTICE,
HEARING DIVISION,**

Respondent-Appellant.

**SWITCA NO. 04-008-SUTC
SUTC No. 04-AP-106**

Appeal filed August 10, 2004

Appeal from the Southern Ute Tribal Court
Elizabeth Callard, Judge

Appellate Judge: Melissa L. Tatum

JURISDICTION ORDER

SUMMARY

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.

This matter comes before the Southwest Intertribal Court of Appeals from the Southern Ute Tribal Court, and arises out of the trial court's reversal of the Hearing Officer's decision to revoke Baker's driving privileges. The Hearing Division has appealed.

Under the rules of this Court, the Appellate Code of the Southern Ute Indian Tribe governs this action (Southern Ute Indian Tribal Code §§3-1-101 through 3-1-112). The SWITCA rules serve to supplement the Southern Ute's Appellate Code. SWITCARA #1(b) (2001). The S.U.I.T.C. provides for both appeals as of right and for discretionary appeals. S.U.I.T.C. §3-1-102(1).

Regardless of whether the appeal is as of right or discretionary, there are two requirements that must be satisfied. First, the notice of appeal must be filed within fifteen days of the entry of final judgment. S.U.I.T.C. §3-1-104(1). This requirement is jurisdictional. SWITCARA #11(c) (2001); see also *Baker v. Southern Ute Indian Tribe*, 5 SWITCA 1 (1993). In other words, if the notice is not timely filed, this Court cannot hear the appeal. Second, this Court can hear appeals only from

final judgments.

The trial court's judgment is dated July 19, 2004. The Notice of Appeal was filed August 9, 2004. The notice of appeal must have been filed within 15 days of the final judgement. The Southern Ute Appellate Code does not contain a rule explaining how to compute the time for purposes of the notice of appeal. The SWITCA rules, however, do contain such a computation rule. SWITCARA #8 (2001). This Court has previously addressed this issue and has determined that the SWITCA rules govern the computation of time appeals arising out of the Southern Ute Tribal Court. *Baker v. Southern Ute Indian Tribe*, 5 SWITCA 1, 2 (1993); *Gould v. Southern Ute Tribe*, 4 SWITCA 4, 6 (1993).

The Hearing Division argues that the appeal was timely filed because it was filed within 15 working days of the final judgment. The Hearing Division cites to SWITCA Rule 8 for the proposition that "working days" is the correct method to compute time. The Hearing Division's argument, however, is based on an old version of the rules. SWITCA Rule 8 was amended in 2001 to provide that "the computation of any time period over 11 days shall be by calendar days."

Under the current method of computing time, the Hearing Division's notice of appeal was filed 21 days after the trial court entered its judgment. Thus, this Court lacks jurisdiction and cannot hear the appeal.

IT IS SO ORDERED.

October 14, 2004
