

## CHAPTER 42 - RULES OF APPELLATE PROCEDURE

### Sec. 42.1 Scope of Rules; Tribal Rules Primary; No Diminishment of Tribal Sovereignty

A. The following rules, known as the rules of appellate procedure for the Southwest Intertribal Court of Appeals, govern the procedure for appeals to the court of appeals and proceedings before the court of appeals and may be adopted by resolution of each participating pueblo and tribe. The rules shall be cited as SWITCARA #\_ (1998).

B. In proceedings before the Southwest Intertribal Court of Appeals, these rules apply in the absence of pueblo or tribal rules or provisions for appellate procedure and may be used to supplement existing pueblo or tribal rules or provisions for appellate procedure.

C. The following rules are not intended to diminish the authority of nor create an implied waiver of sovereign immunity by any participating pueblo or tribe. Any conflict between these rules of appellate procedure and procedural rules of a participating pueblo or tribe shall be determined according to the respective pueblo or tribal rules of procedure.

Adopted by Resolution No. 99-25, 12/15/99. SWITCARA Rule 1.

### Sec. 42.2 Jurisdiction; Composition of the Court; Chief Judge; Panels; Judges' Duties

A. The Southwest Intertribal Court of Appeals is a court of limited jurisdiction. Jurisdiction is granted expressly by participating pueblo and tribal governments in resolutions and protocols on file with each respective government and the Southwest Intertribal Court of Appeals.

B. The Southwest Intertribal Court of Appeals shall consist of a chief judge and all duly selected judges.

C. The chief judge shall be elected annually from the members of the Standing Administrative Committee who serve as judges for a pueblo or tribe.

D. A single judge appellate panel shall hear and decide each appeal unless the appellate chief judge determines that a multiple judge panel is appropriate or a tribal resolution requires a multiple judge panel. A multiple judge appellate panel shall select a presiding appellate judge as soon as possible after appointment and shall decide the case by majority vote.

E. Judges shall avoid conflicts of interest and provide an impartial and independent review of the complete record and file in each case.

Adopted by Resolution No. 99-25, 12/15/99. SWITCARA Rule 2.

### Sec. 42.3 Authority of Appellate Court; Matters Which May be Reviewed; Advisory Opinions

A. The Southwest Intertribal Court of Appeals shall hear cases based on the authority granted by pueblo or tribal constitution, legislative authority, or resolution.

B. Stipulations by parties as to jurisdiction shall be void.

C. Traditional pueblos and tribes adhering to customary law and dispute resolution may request that the Southwest Intertribal Court of Appeals appoint one judge to review questions of

law and render an advisory opinion summarizing current tribal and federal law and discussing the options available to the governing body. No decision or judgment shall be rendered.

D. The appellate court may review any 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.

E. Appeals of final judgments of acquittal by juries in criminal cases shall not be heard.

F. A party may seek review of tribal court action which is not final by filing a request for permission to appeal as permitted under Sec. 42.13 of this Chapter.

Adopted by Resolution No. 99-25. 12/15/99; SWITCARA Rule 4.

#### Sec. 42.4 Determining Tribal Law; Determining Questions of Law Other Than Tribal Law

A. On its own motion or that of a party, a panel may certify a question of tribal law which may control the outcome of a case to the court or council of the pueblo or tribe from which the case was appealed. The Case may be stayed until the question is decided. Once the response is received, the appellate court shall issue its opinion according to these rules.

B. A pueblo or tribal court may certify to the appellate court a question of law which may control the outcome of a case. The appellate chief judge shall assign a panel to determine the question. If the panel determines that the question is one of tribal customary law or there is controlling tribal precedent, the panel shall certify this in writing and advise the lower court that the question cannot be decided by the court of appeals. Otherwise, the panel shall issue an advisory opinion on the question. The panel may request, and the lower court shall provide, copies of all or any portion of the trial record to assist it in its determination.

C. Advisory opinions on certified questions shall not be published unless authorized by the pueblo or tribe.

Adopted by Resolution No. 99-25. 12/15/99; SWITCARA Rule 5.

#### Sec. 42.5 Scope of or Limitations on Review

The court of appeals shall limit its review to the record of the lower court proceeding, issues raised in written briefs, and, where required, oral arguments presented to the appellate court. If there is no record, the appeal shall proceed pursuant to Sec. 42.17 of this chapter. Hearings *de novo* shall not be allowed before the appellate court.

Adopted by Resolution No. 99-25. 12/15/99; SWITCARA Rule 5.

#### Sec. 42.6 Attorneys, Counselors and Advocates; Admission to Practice in the Court of Appeals; Ethics Code; Conflict of Interest; Suspension or Disbarment; Withdrawing From Representing a Client

A. An attorney, counselor or advocate shall file an entry of appearance in an appeal and attach a certified copy of his or her admission to practice before the court from which the appeal is taken.

B. An attorney shall submit a certificate certifying the attorney's good standing in each state bar to which the attorney has been admitted which shall include a statement under oath certifying that the attorney is not or has not been disbarred, suspended from practice, or subject to disciplinary action of any kind by any bar or court. If the attorney cannot submit such a certificate and has been reinstated to practice, the attorney shall submit a written explanation of the circumstances. If the appellate chief judge does not act within 30 days after the submission of the explanation, the attorney shall be permitted to practice before the court of appeals.

C. An attorney, counselor, or advocate shall be allowed to practice before the court of appeals so long as that person is in good standing with the court from which the appeal is taken and with each court to which the attorney has been admitted.

D. The lower court clerk shall certify the admission of attorneys, counselors, and advocates to practice before the court from which the appeal has been taken.

E. When the attorney, counselor, or advocate has complied with this rule, the appellate court clerk shall issue a notice of the admission to practice before the appellate court and shall provide a copy of the current rules for appellate procedure, attorney or judicial professional conduct, and removal.

F. Attorneys, counselors, and advocates shall be bound by the code of ethics of the tribe from which the appeal is taken. If no written code of ethics exists, they shall be bound by the American Bar Association code unless the Southwest Intertribal Court of Appeals develops a code of ethics, in which case it shall supersede the American Bar Association's code. Persons admitted to practice in other jurisdictions are bound also by the ethics codes of those jurisdictions while practicing in the appellate court.

G. A person who has served as a law clerk or employee of the lower court from which an appeal has been taken shall not appear as counsel or provide professional consultation or assistance in an appeal of any case that arose or was decided during that person's employment.

H. An attorney, counselor, or advocate disbarred or suspended from practice by a pueblo or tribal court shall not be allowed to practice before the court of appeals.

I. The clerk of any pueblo or tribal court who suspends or disbars an attorney, counselor, or advocate shall forward notice of such disbarment or suspension to the court of appeals.

J. An attorney, counselor, or advocate shall not withdraw from representing a party after filing a notice of appeal on behalf of the party after filing an entry of appearance on behalf of a party to an appeal, or after filing a pleading on behalf of a party in an appeal unless:

1. a written motion detailing the reasons for withdrawing is filed; and
2. the appellate panel or the chief judge of the appellate court enters an order allowing the withdrawal.

A withdrawal shall not be allowed if the motion is filed after a briefing schedule has been issued, or within 30 days of the date of oral argument.

Adopted by Resolution No. 99-25. 12/15/99; SWTCARA Rule 6.

**Sec. 42.7 Suspension or Extension of Required Time Schedules** A. In matters of immediate concern likely to seriously impact communities or litigants and upon the written request of either party, the court of appeals may suspend or extend schedules to expedite the determination of a case.

B. This rule shall not be construed to allow the court of appeals the authority to extend the time period for filing an appeal or request for review.

Adopted by Resolution No. 99-25. 12/15/99; SWTCARA Rule 67.

**Sec. 42.8 Computation of time**

The computation of any time period of 15 days or less shall be by the working days of the pueblo or tribal court from which the appeal is taken. The computation of any time period over 15 days shall be by calendar days, provided that, if the last day of any period falls on a weekend, holiday or other non-working day of the pueblo or tribal court from which the appeal is taken, the last day shall be extended to the next working day of the lower tribal court.

Adopted by Resolution No. 99-25. 12/15/99; SWTCARA Rule 68.

**Sec. 42.9 Pleadings; Informality; Handwritten; Place of Filing; Copies; Service of Process; Notice of Service; Filing; Appellate Court**

A. An appeal shall not be dismissed for informality of form or title so long as it complies with Sec. 42.11 of this chapter.

B. Pleadings shall be typewritten or legibly handwritten in black or blue ink and filed with the lower court which shall transmit the required number of copies of documents to the appellate court. The lower court shall retain originals of pleadings.

C. Parties shall file an original plus 2 copies of a pleading for tribes and pueblos requiring one-member appellate panels and an original plus 4 copies for tribes and pueblos requiring three-member appellate panels.

D. Unless otherwise ordered by the appellate court, a copy of each pleading filed in either the lower or appellate court shall be served on every party in the manner required by the lower court and proof of such service shall be filed with the lower court who shall send a copy of the proof to the appellate court.

E. The required copies of every pleading shall be sent to the appellate court within 24 hours after the pleading is filed. Required number of copies to be sent are 2 for one member panels and 4 for three member panels.

F. Filing may be done by mail addressed to the clerk of the lower court but shall not be timely unless dated-marked within the time fixed for filing. A date from a postage meter shall

not serve as a substitute for a date mark from the U.S. Postal Service or an independent carrier.

Adopted by Resolution No. 99-25. 12/15/99; SWTCARA Rule 9.

**Sec. 42.10 Fees; Required Payment**

All filing fees shall be paid to and in accordance with the pueblo or tribal court requirements from which the appeal or writ is taken. If the person filing the appeal or writ is unable to pay the fee, a motion to waive the fee may be filed with the pueblo or tribal court for its consideration.

Adopted by Resolution No. 99-25. 12/15/99; SWTCARA Rule 10.

**Sec. 42.11 Notice of Appeal; Where to File; Timeliness; Consolidated Appeals; Contents; Parties; Service; Notice to Court of Appeals; Death of Party; Counsel Appointment; Jurisdictional Challenges; Parties Joining**

A. An appeal shall be taken by filing a notice of appeal with the lower court within 15 days of entry of judgment by that same court, unless appellate provisions of a tribe or pueblo specify otherwise.

B. If the notice of appeal is filed by mistake with the court of appeals, the appellate clerk shall transmit the notice to the lower court where it shall be deemed filed on the date and time indicated by the appellate clerk.

C. Failure to file a timely notice of appeal is jurisdictional and the appellate court shall dismiss the appeal if the notice is filed after the date set by law.

D. If two or more persons are entitled to appeal from a judgment and consolidating their appeals is practicable, they may file a joint appeal or join in an appeal after filing separate timely notices of appeal and proceed as one appeal. Appeals may be consolidated by order of the court of appeals upon its own motion, motion of either party, or stipulation of the parties to several appeals.

E. The notice of appeal shall, at a minimum, include:

1. the names, titles, addresses, and telephone numbers of the parties taking the appeal and their counsel unless the lower court determines that including the address or telephone number of any person would place that person in physical jeopardy;

2. the name of the court rendering the adverse ruling and the date the ruling was rendered;

3. a concise statement of the adverse ruling or alleged errors made by the lower court;

4. the name of the relief being sought; and,

5. a concise statement of the reasons for reversal and modification.

F. All parties to the proceeding in the lower court from which the appeal is taken shall be

deemed parties unless the court of appeals receives written notice from a party to the contrary.

G. 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 affidavits of service with the lower court clerk within 15 days of the filing of the notice of appeal. In the case of a *pro se* appellant, service and notice required by this subsection may be provided by the lower court clerk.

H. The lower court clerk shall transmit a copy of the notice of appeal and any docket entries, including the date and names of persons receiving notice of the appeal, to the appellate clerk after noting on each copy the date and time the notice of appeal was filed, and shall send it by certified mail or its equivalent within 24 hours after receiving the notice, unless the tribal court extends the time by order.

I. The death of a party or counsel shall not affect the validity of the appeal unless the appeal is from a criminal conviction and the defendant dies in which case the appellate court shall dismiss the appeal.

J. Lower and appellate courts shall not be required to appoint or provide counsel for criminal defendants/appellants.

K. Any appellee may file a written statement challenging the jurisdiction of the court of appeals with the clerk of the lower court within 15 days of the filing of the notice of appeal.

L. In multiple party litigation, if an appellee supports the position of the appellant, that appellee may join the appellant's position by filing an appropriate document within 15 days.

Adopted by Resolution No. 99-25. 12/15/99; SWTCARA Rule 11.

#### Sec. 42.12 Acceptance or Denial of Appeal Because of Jurisdiction

A. Upon a preliminary finding of jurisdiction and within 30 days of the filing of any statement as provided by Sec. 42.11 (k) of this chapter, the court shall issue a written order accepting the appeal.

B. If the appellate court finds it is without jurisdiction, a written order denying the appeal shall be issued.

Adopted by Resolution No. 99-25. 12/15/99; SWTCARA Rule 12.

#### Sec. 42.13 Interlocutory Appeal; Request for Permission to File; Timeliness

A. A request for permission to appeal an action or an order of the lower court which is not a final judgment shall be made by filing a request with the respective lower court within 15 days of the action giving rise to the appeal. A copy of the request shall be served within 24 hours on all adverse parties.

B. The requirements set forth in Sec. 42.11 of this chapter shall apply to the filing of a permissive appeal.

C. Within 15 days of service of the request for permission to file an interlocutory appeal, any adverse party may file with the lower court clerk a written response either agreeing with the

request or stating the reasons the appeal should not be granted.

D. The appellate court shall issue its order granting or denying the request within 30 days after the request is filed.

Adopted by Resolution No. 99-25. 12/15/99; SWITCARA Rule 13.

Sec. 42.14 Acceptance of Interlocutory Appeal; Procedure; Timeliness

A. The chief judge or a designate shall review the lower court order granting an interlocutory appeal and the case record and determine that it complies with tribal law or, in lieu thereof, with these rules. Such appeals shall be granted only if the lower court has committed an obvious error which would render further lower court proceedings useless or substantially limit the freedom of a party to act and a substantial question of law is presented which would determine the outcome of the appeal.

B. An interlocutory appeal shall be heard by the court of appeals as required by these rules.

C. Sec. 42.7 on suspension of time schedules may apply.

Adopted by Resolution No. 99-25. 12/15/99; SWITCARA Rule 14.

Sec. 42.15 Certification of the Record; Duty of Lower Court; Duty of Appellate Chief Judge; Parties to Receive Copy of Certification

A. The accuracy of the record on appeal shall be certified by the lower court judge who presided over the case from which the appeal is taken.

B. The lower court clerk shall transmit by certified mail or its equivalent the complete record and all duly numbered copies of original documents to the appellate court clerk within 15 days of the filing of notice of appeal.

C. The chief judge of the court of appeals or a designate shall certify that the record of each case referred for appeal or advisory opinion includes:

1. Documentation that the appeal was filed on a definite date and time with the proper tribal court or pueblo official according to the applicable rules, and

2. Documentation that other parties were given notice of the appeal. If written notice has not been given within 15 days of receipt after the notice of appeal is received by the court of appeals, the clerk of the court of appeals shall send notice to the other parties by certified mail, return receipt requested.

D. The lower court clerk shall mail a copy of the certification of the record to the parties.

E. If the lower court judge who presided over the case is no longer available, the chief judge of the lower court may certify the record if all parties agree that the record and the statement of evidence and proceedings are correct. If the parties cannot agree, the case shall be remanded or a hearing *de novo*.

**Sec. 42.16 Record for Appeal; Contents; Transcription of Audio Recordings**

A. The record for appeal shall include photocopies of each original pleading, motion, order, opinion and final judgment, as well as exhibits filed with the lower court, a written transcript or a duplicate of the audio recordings, and docket entries. In the absence of an audio recording, a certified statement of the evidence and proceedings may be filed as provided by Sec. 42.17 of this chapter.

B. Within 15 days of the filing of the notice of appeal where applicable, the appellant shall file a written request for a full transcript or certified audio recording of the proceedings and pay by certified check or money order the estimated cost of preparation of the record with the clerk of the lower court unless the cost is waived by the lower court upon a showing of good cause.

C. A party other than the appellant may request a written transcript or certified audio-recording if the appellant does not so request and shall so request within 30 days after the filing of the notice of appeal. The party making such a request shall pay the cost of preparing the transcript or recording unless waived by the lower court upon a showing of good cause.

**Sec. 42.17 Appeal With No Record; Duty of Parties and Lower Court to Develop Record**

A. If no audio recording or transcript of the proceedings is available, the appellant shall prepare a statement of the evidence and proceedings within 30 days of the filing of the notice of appeal. The appellant shall serve the statement upon the appellee and file the statement and proof of service with the lower court. The appellee has 15 days from receipt of the statement to file objections and amendments. The lower court judge who presided over the case shall review the statement, objections and amendments, order corrections, and certify the corrected statement to the court of appeals within 15 days of receipt.

B. If the issues on appeal are mutually agreed upon, the parties may file a statement of the evidence and proceedings with the lower court clerk. The lower court judge who presided over the case on appeal shall review the statement for accuracy, order corrections, and certify to the court of appeals the corrected statement within 15 days of receipt.

C. If the lower court judge who presided over the case is no longer available, the chief judge of the lower court may certify the record if all parties agree that the record and the statement of evidence and proceedings are correct. If the parties cannot agree, the case shall be remanded for a hearing *de novo*.

**Sec. 42.18 Inadequate Record**

If an appellate panel determines that the record on appeal is inadequate, the case may be remanded for a hearing *de novo* or any other procedure consistent with the lower court's rules or with Sec. 42.17 of this chapter.



Sec. 42.19 Bond; When Required, Limits

The lower court may require the appellant to deposit a bond with the lower court to guarantee the judgment will be enforceable. The security required shall not be greater in value than the amount of the judgment or fine imposed, plus costs.

Adopted by Resolution No. 99-25. 12/15/99; SWITCARA Rule 19.

Sec. 42.20 Stay of Judgment or Injunction Pending Appeal; Motion; Bond; Appellate Court Motion

A. A motion for a stay of judgment or injunction pending appeal shall be filed with the clerk of the lower court, and shall include:

1. Name, address, and telephone number of the party requesting the motion;
2. the reasons for the motion;
3. affidavits or sworn statements supporting the motion;
4. relevant parts of the record; and
5. proof of service of the motion on all parties.

B. The lower court judge shall issue an order granting or denying the motion within 15 days of the motion being filed.

C. A copy of the motion and of the order shall be transmitted to the appellate court within 24 hours after being filed.

D. The appellate panel may move the lower court for a stay of judgment if the lower court has failed to issue a stay and the panel determines it would be justified under the facts of the case.

Adopted by Resolution No. 99-25. 12/15/99; SWITCARA Rule 20.

Sec. 42.21 Release Pending Appeal of a Conviction; Procedure; Appellate Court Motion

A. Application for release after a judgment of conviction and pending appeal shall be made to the lower court. The application for release shall be heard after reasonable notice to the appellee. Notice shall include copies of the motion, affidavits, documents, and relevant portions of the record. A petition for *habeas corpus* shall be filed pursuant to Sec. 42.24 of this chapter.

B. The lower court may consider the following when reviewing the application for release:

1. whether the defendant will flee the reservation;
2. whether the defendant poses a threat to the community or an individual; and,
3. whether a bond shall continue or be imposed if an appeal is taken prior to

sentencing.

C. The appellate panel may move the lower court for release of the petitioner if the panel determines it would be justified under the facts of the case.

Adopted by Resolution No. 99-25. 12/15/99; SWTCARA Rule 22.

Sec. 42.22 Reconsideration of Decision to Dismiss Appeal; Procedure; Finality

A. Within 15 days of service of the order dismissing an appeal, except when the request to dismiss is at the request of appellant, a party may file with the pueblo or tribal court a written request for the appellate court to reconsider the decision to dismiss the appeal. The lower court clerk shall transmit the request to the appellate court within 24 hours after it is filed.

B. The decision of the appellate panel is final.

Adopted by Resolution No. 99-25. 12/15/99; SWTCARA Rule 22.

Sec. 42.23 Writs of *Mandamus* and Prohibition; Contents of Petition.; Procedure; Time Limits; Denial Without Action

A. A party may file with the pueblo or tribal court a petition for a writ of *mandamus* or prohibition directed at the presiding judge(s) of the lower court which shall be forwarded to the court of appeals within 24 hours after filing. The petition shall include:

1. the names or titles, addresses, and telephone numbers of the persons against whom relief is sought unless the lower court determines that including the address or telephone number of any person would place that person in physical jeopardy;

2. a statement of the facts necessary to understand the issues presented;

3. a statement of the issues and the relief sought;

4. a statement of the reasons why the writ should issue; and,

5. copies of any order, opinion, final judgment, or parts of the record essential to understanding the petition.

B. The tribal court clerk shall serve the person against whom the writ is sought within 24 hours after filing.

C. Within five days after the petition is filed, the appellate chief judge or a designate shall determine whether the petition shall be granted. If the petition is granted, the appellee shall be ordered to answer the petition and appear for hearing. The appellate clerk shall advise the appellee of the dates on which briefs are to be filed and, where determined appropriate by the appellate panel, to appear to show cause why the writ should not issue.

D. The denial of a petition for a writ is not a final decision on the merits of a case. If the petition is not acted upon within thirty days after it is filed, it shall be considered denied.

Adopted by Resolution No. 99-25. 12/15/99; SWTCARA Rule 23.

Sec. 42.24     Writ of *Habeas Corpus*; Contents of Petition; Procedure; Time Limits; Denial Without Action

A. A party may file with the lower court a petition for a writ of *habeas corpus* directed to the chief judge of the lower court which shall be forwarded to the court of appeals within 24 hours after filing for the purpose of determining if the current or future custody of the petitioner is in violation of law. The petition shall state:

1. the name and location of the petitioner;
2. the name and address of the person having or who will have custody of the petitioner:
3. Whether the petitioner is in custody pursuant to a judgment of a pueblo or tribal court, as well as the name of the deciding judge and court;
4. the date of the judgment or conviction and the length of confinement;
5. the nature of the case or offenses involved. and the plea entered;
6. all grounds on which the petitioner is being held unlawfully and a Summary of the facts supporting each ground; and,
7. the relief the petitioner is seeking.

B. The petition shall be presented to and reviewed by the appellate chief judge or a designate. If a petition does not comply substantially with the requirements of this section, it shall be returned to the petitioner with a statement of the reasons for its return.

C. If the petition and exhibits are in order, the appellate chief judge or a designate shall order a copy of the petition and order be served, by certified mail, on the appellee and the appellee's representative.

D. The appellee's answer shall be filed within 15 days after the petition is filed and shall respond to each allegation in the petition.

E. The appellate chief judge or a designate shall review the petition, answer, transcript, and record, and determine whether adequate relief can be ordered or whether an evidentiary hearing is required. If an evidentiary hearing is required, it shall be held within 30 days of filing of the writ and a decision issued unless the appellate chief judge or a designate determines otherwise. If an evidentiary bearing is not required, the judge shall dispose of the petition as justice requires.

F. If the petition is not acted upon within thirty days after it is filed, it shall be considered denied.

Sec. 42.25 Motions; Where Filed; Contents; Proof of Service; Responses; Emergencies

A. A party may file a motion not otherwise specified in these sections with the clerk of the lower court. All motions shall include:

1. a statement of the relief sought;
2. a statement of the grounds for the relief sought; and,
3. arguments and affidavits or other documents in support of the motion.

B. The party requesting relief shall file with the lower court clerk proof of service of the motion on all parties to the appeal.

C. Within 15 days after being served, any party may file with the clerk of the lower court a response to the motion and also shall file proof of service of the response on all parties to the appeal.

D. The chief judge of the appellate panel may determine that a motion requires emergency action and issue a temporary order until the response is received, and the panel can make a final determination.

Adopted by Resolution No. 99-25. 12/15/99; SWTCARA Rule 25.

Sec. 42.26 Filing and Serving Briefs; Schedule; Failure to File

A. Unless the appellate panel orders otherwise, within 30 days of being served notice indicating that the court of appeals has accepted the appeal, the appellant shall file with the clerk of the lower court a written brief or statement in support of the appeal.

B. Unless the appellate panel orders otherwise, the appellee shall file an answer brief within thirty days of service of appellant's brief and file written proof of such service with the lower court. No additional fee for the filing of appellee's brief shall be charged.

C. Unless the appellate panel orders otherwise, the appellant may file a reply brief within fifteen days after being served a copy of the answer brief and file written proof of service on the other parties with the lower court. No other briefs shall be filed.

D. The party submitting a brief shall file with the lower court proof of service of the brief upon counsel, in the absence of counsel, upon the parties to the appeal. Service may be made personally or by certified mail or its equivalent. The original and, required number of copies of the brief shall be filed with the clerk of the lower court.

F. If the appellant fails to file a brief within the time provided by this rule, or as extended, the appellee may file a motion for dismissal of the appeal with the clerk of the lower court who shall notify the appellate court within 24 hours. If an appellee fails to file a brief, the appellee may not be heard at oral argument except by permission of the court.

Adopted by Resolution No. 99-25. 12/15/99; SWTCARA Rule 26.

Sec. 42.27 Form and Content of Briefs; *Pro Se* Parties

A. Briefs or statements by *pro se* parties may be hand-written provided that they are printed clearly in black or blue ink. A party may request relief from complying with subsections (b) 1, 3, 6, 7, and 10 of this section. The request for relief may be included in the party's brief or statement.

B. Briefs shall include the following:

1. a cover page stating the name of the court, the numbers assigned to the case by lower and appellate courts, the name and address of the party filing the brief, and the names and addresses of all other parties and of counsel where appropriate;
2. a table of contents with page references, a table of cases alphabetically arranged, authorities relied upon including titles and page numbers, and the location in the brief by page and paragraph number where they are referenced;
3. a brief statement of the case, not to exceed one page, which indicates the nature of the case, the course of the proceedings, and disposition in the court below;
4. a statement of the facts relevant to the issues presented for review with appropriate references to the record;
5. an argument in support of the issues presented for review, with citations to cases, authorities, and the record, addressing all issues raised in appellant's notice of appeal; those issues not covered shall be considered as abandoned;
6. a short conclusion precisely stating the relief sought, not to exceed one page;
7. pages measuring 8 ½" x 11", double spaced and consecutively numbered;
8. parties referred to as appellant and appellee;
9. copies of pertinent laws, rules, or regulations being reviewed attached as addenda; and
10. except by permission of the court of appeals, principal briefs not to exceed twenty pages and reply briefs not to exceed twelve pages, exclusive of the table of contents, the table of citations and attachments.

Adopted by Resolution No. 99-25. 12/15/99; SWTCARA Rule 27.

Sec. 42.28 Pre-Hearing Conference and Order

A. The appellate panel may direct the parties and their counsel to appear before the court or participate in a telephone conference call for a pre-hearing conference to consider settlement, simplify issues, or consider any other matters which may expedite the proceedings.

B. The appellate panel shall issue an order which recites the action taken at the conference and the agreements made by the parties. When entered, the order will control all

subsequent proceedings unless modified by the appellate court to prevent injustice.

Adopted by Resolution No. 99-25. 12/15/99; SWTCARA Rule 28.

**Sec. 42.29 Request for Oral Argument; When Allowed; Withdrawal of Request; Order**

A. Any party may request oral argument in writing within 30 days after notice of appeal is filed.

B. Oral argument shall not be allowed, unless the appellate panel finds that it will assist the panel in making its determination.

C. The requesting party may withdraw the request for oral argument and shall do so in writing no later than five working days before the date of the scheduled hearing. A motion to withdraw the request will not be honored unless the chief judge of a panel enters an order allowing its withdrawal.

D. The appellate panel shall issue its order denying oral argument, or allowing oral argument and setting the date, location, and time allowed to each party for oral argument.

Adopted by Resolution No. 99-25. 12/15/99; SWTCARA Rule 29.

**Sec. 42.30 Oral Argument Hearing; Notice; Request for Postponement or Additional Time; Telephone Conference; Procedure; Failure to Appear**

A. The appellate clerk shall send to the clerk of the lower court within 24 hours after an order is filed the original of the order issued by the panel denying or allowing oral argument. The lower court clerk shall serve copies of the order on all parties as required by Sec. 32.29 of this chapter within 24 hours after receiving it.

B. A request for postponement of the oral argument or for additional time shall be made by motion filed with the appellate clerk at least 15 days in advance of the date set for hearing. Such request shall not be granted unless the reasons supporting the request are compelling.

C. Oral argument may be ordered by telephone conference if the panel determines it is appropriate.

D. The appellate panel shall determine the time allowed for oral argument.

E. At the hearing, the parties to the appeal may present any arguments raised in the briefs. The appellant shall begin the argument and may request a portion of the allocated time be reserved for rebuttal.

F. If appellant fails to appear or if neither party appears, the appeal may be dismissed.

Adopted by Resolution No. 99-25. 12/15/99; SWTCARA Rule 30.

Sec. 42.31 Decision; Content and Form of Judgment

A. The appellate panel may dismiss the appeal, affirm or modify the decision being review, reverse the decision in whole or in part, order a new trial, or take any other action as the merits of the case and the interest of justice may require.

B. The decision of the appellate panel shall be issued in writing. The appellate clerk shall send the original of the opinion and judgment to the lower court by certified mail. The lower court clerk shall serve all parties with a copy of the opinion and judgment and file an affidavit of service with the appellate clerk.

Adopted by Resolution No. 99-25. 12/15/99; SWITCARA Rule 31.

Sec. 42.32 Entry of Judgment

The appellate clerk shall prepare and file the judgment following receipt of the opinion of the appellate court. Filing the judgment with the appellate court constitutes entry of the judgment.

Adopted by Resolution No. 99-25. 12/15/99; SWITCARA Rule 32.

Sec. 42.33 Interest on Money Judgments

A. If a judgment for money in a civil case is affirmed by the appellate panel or the case is dismissed, interest allowed by applicable law shall be computed from the date the judgment was entered by the lower court.

B. If a judgment is modified or reversed by the appellate panel with directions that a judgment for money be entered, the appellate panel may determine and award interest at its discretion.

Adopted by Resolution No. 99-25. 12/15/99; SWITCARA Rule 33.

Sec. 42.34 Costs of Appeal; Request for Costs A. The costs for appeal include preparing the transcript, copying the record, serving notice, the premium paid for an appeal bond, and the fee paid for filing the appeal.

B. No later than 15 days after appeal judgment is filed, the prevailing party may file with the appellate clerk a request for costs which shall be served upon all parties.

C. The appellate court may determine and award costs at its discretion.

Adopted by Resolution No. 99-25. 12/15/99; SWITCARA Rule 34.

Sec. 42.35 Petition for Rehearing; Contents of Petition; Procedure

A. Within 15 days of receipt of the entry of the appellate judgment, a petition for rehearing, except as provided by these rules, may be filed with the lower court clerk who shall transmit the petition to the court of appeals within 24 hours. The petition for rehearing shall state:

1. the points of law or fact the petitioner believes the court of appeals overlooked

or misunderstood; and,

2. Arguments in support of each point.

B. No oral argument on the petition for rehearing shall be allowed unless the chief judge of the appellate panel determines that oral argument could assist in a determination.

C. If a petition for rehearing is granted, the appellate panel shall make a final disposition of the case as it considers appropriate.

Adopted by Resolution No. 99-25. 12/15/99; SWITCARA Rule 35.

Sec. 42.36 Voluntary Dismissal; Stipulation; Motion

A. The court of appeals may issue an order dismissing the appeal upon the filing of a stipulation for dismissal which specifies the terms as to payment of costs and fees due and is signed by all parties.

B. The court of appeals may issue an order dismissing the appeal on the motion of the appellant and upon such terms as may be agreed upon by the parties or fixed by the court.

Adopted by Resolution No. 99-25. 12/15/99; SWITCARA Rule 36.

Sec. 42.37 Substitution of Personal Representative for a Party

The personal representative of a party who dies during the proceedings may be substituted for the party upon a motion filed by the representative or by stipulation upon approval of the appellate panel.

Adopted by Resolution No. 99-25. 12/15/99; SWITCARA Rule 37.

Sec. 42.38 Severability

If any part of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter or its application to other persons or circumstances is not affected.

Adopted by Resolution No. 99-25. 12/15/99; SWITCARA Rule 38.

Sec. 42.39 Rules by Court of Appeals

A. In all matters or cases not provided for by these rules, the appellate court may regulate its practice in a manner consistent with these rules.

B. The Standing Administrative Committee of the Southwest Intertribal Court of Appeals may amend these rules whenever it determines it is proper to do so.

Adopted by Resolution No. 99-25. 12/15/99; SWITCARA Rule 39.

Sec. 42.40 Facsimile; Transmission of Documents; Responsibility of Transmitting Party; Hard Copy Required

A. The lower court or a party may transmit facsimile documents to the court of appeals, provided that the documents have been filed first with the lower court. It is the obligation of the sending party to confirm that the documents were properly sent and received.



B. The court of appeals may transmit documents by facsimile and such documents shall have the full force and effect of the original documents on the date of transmission.

C. Hard copies of documents shall be sent to the proper court following transmission by facsimile.

Adopted by Resolution No. 99-25. 12/15/99; SWITCARA Rule 40.

Sec. 42.41 Definitions

As used in these rules:

A. "Advocate" is any person admitted or allowed to practice in a tribal court who has not graduated from an American Bar Association-accredited law school.

B. "Appellate court" refers to the Southwest Intertribal Court of Appeals.

C. "Appellate panel" or "panel" ordinarily refers to a group of judges who hear and decide an appeal. However certain tribes require only one appellate judge while others require three or more to decide an appeal and the term is used for both situations.

D. "Attorney" means a person who has graduated from an American Bar Association accredited law school and is admitted to practice in a tribal, state, or federal court.

E. "Counselor", see, "advocate".

F. "File" or "filing" means to formally deposit documents into the custody of a court.

G. "Filing by mail" means formally depositing documents into the custody of a court using an independent service or carrier such as the U.S. Postal Service or a recognized private service.

H. "Final judgment or decision" means a judgment or decision which leaves nothing open to dispute and which ends the action between the parties unless it is reversed or set aside by an appellate court.

I. "Hearing *de novo*" means a hearing in which a court hears a matter as a trial court or a court of original and not appellate jurisdiction.

J. "Lower court" refers to the tribal or pueblo court from which an appeal arises.

K. "Motion" means any request for an order from the court other than the complaint or petition.

L. "Party" is any person or entity who files a legal action in a court or against whom a legal action is brought.

M. "Pleading" means the formal statements of a party to a lawsuit about the party's claims or defenses, the purpose being to provide notice of what is expected at trial. Ordinarily, pleadings consist of a complaint or petition, answer, reply to the answer if it contains new claims, third party complaint and answers to the third party complaint. In the case of appeal, pleadings ordinarily consist of the notice of appeal and the response to the notice.

N. "*Pro se*" means that a person or party to an appeal is without the assistance of an attorney, counselor, or advocate.

O. "Proof of service" is written documentation that a document has been served or given to a person who may be a party or a witness and ordinarily includes the date, time, and name of the person served, and name and signature of the person who made service.

Santa Clara Pueblo adopted Southwest Inter-Tribal Court of appeals as the Appellate Court for the Pueblo 12/15/99, Resolution No. 99-25. SWITCARA Rule 41, adopted 3/21/98.