

SAN CARLOS APACHE COURT OF APPEALS

RULES OF APPELLATE PROCEDURE

(Enacted by Tribal Council Resolution NV-15-210)

RULE 1. SCOPE OF RULES

These rules govern procedure in the San Carlos Apache Court of Appeals. Unless otherwise specified, the word "Court" in these Rules refers to the San Carlos Apache Court of Appeals.

RULE 2. APPEALS FROM FINAL JUDGMENTS OR FINAL ORDERS

a. **Notice of Appeal.** A party may appeal from a final judgment or final order of a court of the San Carlos Apache Tribe by filing a written Notice of Appeal with the Clerk of the Court of Appeals within 15 days after the date on which the judgment or order appealed from is filed in the lower court. The Notice of Appeal must specify the party or parties taking the appeal and identify the judgment or order from which appeal is taken. Whenever possible, a copy of the judgment or order appealed from should be attached to the Notice of Appeal. If any party makes a timely motion in the court below for reconsideration of a final judgment or order of that court, or for a new trial, the time within which a Notice of Appeal must be filed begins to run on the date that the disposition of such a motion by the lower court is filed in that court. Extensions on the time for filing a Notice of Appeal will not be granted.

b. **Filing Fee.** Unless a motion to waive or delay payment of the filing fee is made, a party filing a Notice of Appeal must pay a filing fee of \$15.00 to the Clerk of the Court of Appeals at the time the Notice of Appeal is filed. The filing fee must be paid by cashier's check or money order; cash, personal check or credit card are not acceptable forms of payment. The

filing fee requirement does not apply to Notices of Appeal filed on behalf of the San Carlos Apache Tribe, its agencies, departments or enterprises.

c. **Waiver of Filing Fee.** If a party filing a Notice of Appeal is unable to pay the filing fee, the Clerk will nevertheless file the Notice of Appeal. The party must then file a motion asking the Court to waive or defer payment of the fee. Such a motion must be filed within 5 days of filing the Notice of Appeal. If the Court denies the motion to waive or delay payment of the fee, the appellant will have 5 days from the filing of the denial of the motion to pay the fee; if the fee is not paid within this 5-day period, the appeal will be dismissed. If a motion to waive or delay payment of the filing fee is granted, the time for filing the appellant's Opening Brief, as provided in Rule 4(a) of these Rules, will run from the date the order granting the motion is filed.

d. **Motions to Dismiss.** A party that believes that a Notice of Appeal is untimely or legally insufficient, that a required filing fee has not been paid, or that an appeal should be dismissed for any other reason, may file a Motion to Dismiss the appeal. If the Motion to Dismiss is granted, the Court of Appeals will remove the case from its docket. If the Motion to Dismiss is denied, and the Appellant's Opening Brief has not yet been filed, the time within which the Appellant's Opening Brief must be filed will begin to run when the Court's order denying the Motion to Dismiss is filed.

RULE 3. APPEALS FROM NON-FINAL ORDERS

Appeals from non-final orders are permitted only in the discretion of the Court and only if: (i) the order appealed from involves a controlling question of law as to which there is a substantial ground for difference in opinion, and; (ii) an immediate appeal from the order will materially advance the ultimate termination of the litigation. A party seeking to appeal a non-final order must file a Motion

for Leave to Appeal within 5 days of the date of the order appealed from. The motion should set forth the reasons why the conditions stated in the first sentence of this Rule are satisfied. The filing fee required by Rule 2(b) of these Rules applies to Motions for Leave to Appeal non-final orders. If leave to appeal a non-final order is granted by the Court, the Court will establish a briefing schedule at the time leave to appeal is granted.

RULE 4. BRIEFS ON APPEAL

a. **Time for Filing.** Unless the Court orders otherwise, an appellant must file an Appellant's Opening Brief within 45 days of (i) the date the Notice of Appeal is filed, or (ii) the date of disposition of a motion to waive or delay payment of the filing fee, or (iii) the date the Court's denial of a Motion to Dismiss the appeal is filed, whichever is the latest of these three dates. Unless an extension of time to file the Appellant's Opening Brief is granted, the failure of the appellant to file an Appellant's Opening Brief within the time prescribed by the first sentence of this Rule will ordinarily result in dismissal of the appeal. The appellee may file an Appellee's Response Brief within 30 days of being served with the appellant's Opening Brief and the appellant may file an Appellant's Reply Brief within 10 days of being served with the Appellee's Response Brief. Unless an extension of time to file is granted, Response or Reply briefs that are not timely will not ordinarily be considered by the Court.

b. **Content of Briefs.** The Appellant's Opening Brief should contain, in the following order:

- (i) a specific identification of the judgment or order appealed from (a copy of the judgment or order appealed from should be attached);
- (ii) a brief statement of the issues presented for review;
- (iii) a brief description of the proceedings in the lower court;
- (iv) a statement of the relevant facts;
- (v) a brief summary of the decision below;

- (vi) an argument in support of the appeal; and
- (vii) a conclusion specifically stating the relief sought from the Court of Appeals.

The Appellee's Response Brief shall specify any disagreement with parts (i), (ii), (iii), (iv) and (v) of the Appellant's Opening Brief and shall contain an argument in support of appellee's position. An Appellant's Reply Brief may only respond to matters contained in the Appellee's Response Brief. References in briefs to material in the case file should include the date and title of the material to which reference is made, e.g., "Trial Court Order dated February 30, 2014."

RULE 5. ORAL ARGUMENT

After the appellate briefs have been distributed to the Judges, the Court will determine whether it will hear oral argument. If the Court decides to hear oral argument, the Clerk will so notify the parties. Whenever possible, that notice will be provided at least 20 days prior to the scheduled date of the oral argument. If oral argument is heard, each side's argument will ordinarily be limited to approximately 30 minutes. The appellant will argue first and may reserve up to 10 minutes for rebuttal. If the Court does not order oral argument, the case will be decided on the basis of the briefs and the material in the case file.

RULE 6. TRANSCRIPTS OF LOWER COURT PROCEEDINGS

If a party believes that a written transcript of any proceedings in the lower court would aid in the Court's determination of an appeal, it may move the Court to order that such a transcript be prepared. The motion may seek either a full or a partial transcript of the lower court proceedings. The motion should explain why a transcript would aid the Court's consideration of the case. The party requesting the transcript will be responsible for the costs of preparation unless the Court orders otherwise.

RULE 7. MOTIONS PRACTICE

A party wishing to respond to a motion may do so by filing a response within 5 days of being served with the motion. The moving party may file a reply within 3 days of being served with a response.

RULE 8. FILING OF DOCUMENTS

Whenever a notice, motion, brief or other document is required to be filed by a party, the document must be mailed or delivered by hand to the Clerk of the Court. Filing is deemed accomplished when the document is received at the Clerk's office at a time when the office is open for business. The date of filing will be stamped by the Clerk on the original of each filed document. Within 5 days of the date of filing, all documents filed by a party must be served by that party on all other parties.

RULE 9. SERVICE OF BRIEFS, MOTIONS AND OTHER DOCUMENTS

Whenever a notice, motion, brief or other document is required to be served, service is accomplished by mailing the document or delivering it by hand to the person or entity to be served. The date of service is the date when a document is delivered by hand to the person or entity to be served or 5 days after a document is placed in the United States mail for the purpose of service.

RULE 10. REPRESENTATIVES OF PARTIES

Unless otherwise specified in these Rules, all acts required or permitted to be done by a party may be done by a party's representative and all service upon or notification to a party may be made upon or to a party's representative.

RULE 11. CALCULATION OF TIME

In calculating time pursuant to these Rules, "days" refers to calendar days, including Saturdays, Sundays and legal holidays, except that, when the day on which an act must be done falls on a Saturday, Sunday or legal holiday recognized by the Tribe, the act may be done on the next calendar day that is not a Saturday, Sunday or legal holiday recognized by the Tribe.

RULE 12. EXTENSIONS OF TIME

The Court may, for good cause shown, extend the time for filing any document or performing any act. A request for an extension of time is made by motion addressed to the Court. A motion requesting an extension of time, should state whether any other party objects to the requested extension. Regardless of whether any other party objects, the motion for extension must explain why an extension is required.

RULE 13. MOTIONS FOR STAY OF EXECUTION

A party seeking a stay of execution of a judgment or sentence of the lower court, pending disposition of the party's appeal to the Court of Appeals, must first seek that relief from the lower court. The Court of Appeals will ordinarily consider a motion for such relief only after the lower court has ruled on the request, or when the lower court has failed to rule on the request within a reasonable period of time. The filing of a Notice of Appeal does not remove the lower court's jurisdiction to grant a stay of execution or similar relief pending appeal.

RULE 14. COURT DECISIONS

Decisions of the Court of Appeals will be in writing and will be filed with the Clerk and distributed by the Clerk to the parties. Decisions on motions may be made by a single Judge authorized by the Court to act on motions. Decisions of appeals will ordinarily be filed within 6 months of the oral argument or within 6 months of the filing of the last brief if the case is decided

without oral argument. The Clerk will keep a permanent chronological file of all of the Court's decisions and opinions.

RULE 17. EFFECTIVE DATE

These rules shall be effective from and after December 3, 2015, per Tribal Council Resolution No. NV-15-210, enacted on November 3, 2015.