

**SOUTHERN UTE INDIAN TRIBAL CODE**

**TITLE 3**

**APPELLATE CODE**

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## TITLE 3

### SOUTHERN UTE INDIAN TRIBAL CODE

#### APPELLATE CODE

##### 3-1-101. Appeals Court.

- (1) **Establishment.** The Southern Ute Indian Tribal Council hereby establishes the Court of Appeals of the Southern Ute Indian Tribe. The Court of Appeals is the appellate body for the Southern Ute Indian Tribal Court.
- (2) **Composition.** The Court of Appeals consists of a roster of Justices approved by the Tribal Council. The Tribe may hire or contract individuals or organizations to serve as Justices for this Court of Appeals. A Chief Justice will select a 3-Justice panel from the roster of Justices approved by the Tribal Council to hear each matter, one of whom will be the Presiding Justice who will be selected by the panel.
- (3) **Jurisdiction and Authority.** Unless otherwise provided by law, the jurisdiction and authority of the Court of Appeals is limited to the following:
  - (a) to hear and decide appeals from the Tribal Court;
  - (b) to issue extraordinary writs of mandamus, prohibition, and contempt;
  - (c) to hear habeas corpus petitions;
  - (d) to hear and decide motions under this Appellate Code.
- (4) **Justices.** The Justices of the Court of Appeals must be attorneys licensed in good standing in any state who have been actively practicing or teaching law for at least 5 years.
  - (a) **Chief Justice.** Annually, the Justices will choose from among themselves a Chief Justice.
  - (b) **Chief Justice Duties.**
    - (i) For each appellate case, the Chief Justice must assign a 3-Justice panel, which may include him or herself.
    - (ii) The Chief Justice may alone review and decide a petition for habeas corpus, but if unavailable, any other Justice may review and decide it.

- (iii) The Chief Justice may dismiss the Notice of Appeal if it does not meet the Code requirements.

**3-1-102. Right of Appeal.**

- (1) **Final Decisions.** Any party may appeal a final decision of the Tribal Court. For appeal purposes, a final decision is one that ends the litigation on the merits and leaves nothing for the Tribal Court to do to determine the parties' rights.
- (2) **Collateral Orders.** A party may appeal a decision even if it does not end the litigation if it is otherwise conclusive, resolves important questions separate from the merits, and is effectively unreviewable on appeal from the final decision in the underlying action.
- (3) **Interlocutory Appeals in Civil Cases.**
  - (a) The Court of Appeals must decide an interlocutory appeal in a civil action if:
    - (i) The appeal is filed within 14 calendar days after the order is served on the parties and one of the following:
      - (A) The appealing party moves the Tribal Court to certify the order, in which case the Tribal Court may, in its discretion, grant certification; or
      - (B) All parties stipulate that the order be appealed, in which case the Tribal Court must certify the order.
    - (ii) The Tribal Court certifies that immediate review may promote a more orderly disposition or establish a final disposition of the litigation, and
    - (iii) The order involves a controlling and unresolved question of law.
  - (b) Denial of a motion for certification is not appealable.
  - (c) If the order is certified for immediate appeal, the party seeking review must file a petition in the court of appeals within 14 calendar days of certification.
- (4) **Interlocutory Appeals in Criminal Cases.**
  - (a) Within 14 calendar days after the order is served on the parties, either by mail or electronically, the Tribe may file an interlocutory appeal from a Tribal Court ruling granting a motion before the trial by the defendant for

return of property, to suppress evidence, or granting a motion to suppress an extra-judicial confession or admission.

- (b) The Tribe must certify to the Tribal Court judge and the Court of Appeals that the suppressed evidence is a substantial part of the proof to be relied on in the pending case and that the appeal is not being taken to cause unnecessary delay in the trial court proceedings.
- (c) Upon filing an interlocutory appeal, the speedy trial requirements are tolled until the appeal is decided.
- (d) Within 14 calendar days after the notice of interlocutory appeal is served, the Tribal Court clerk must certify the record, transmit it to the Court of Appeals, and notify the parties that the certified record is available to inspect and copy.
- (e) Within 14 calendar days after the Tribal Court clerk serves notice that the certified record is available for copying and inspection, the Tribe must file its opening brief and proof of service of its brief. Within 14 calendar days after service of the Tribe's brief, the defendant must file the response brief and proof it was served. The Tribe must file its reply brief and proof of service within 7 calendar days after service of the answer brief.
- (f) The Court of Appeals will decide the matter only on the briefs, unless the Court of Appeals orders oral argument. The defendant need not file a brief and the Court of Appeals must still decide the matter.

### **3-1-103. Filing an Appeal.**

- (1) **Notice of Appeal and Cross Appeal.** Parties begin an appeal by filing a Notice of Appeal with the Tribal Court clerk either within 30 calendar days after the judgment or order was served (by mail or electronically) or within 14 calendar days after the order is served for an interlocutory appeal. If a timely Notice of Appeal is filed by a party, any other party may file a Notice of Appeal within 14 calendar days of the date when the first notice of appeal is served, or within the time otherwise prescribed by this subsection, whichever period last expires. The Notice of Appeal must contain:
  - (a) A copy of the Tribal Court decision;
  - (b) A list of the alleged errors; and
  - (c) A request for remedy.

- (2) **Filing Fee.** When filing a Notice of Appeal or cross appeal, the party appealing must pay the filing fee set by the Tribal Court.

**3-1-104. Effect of Filing Notice of Appeal.** Upon filing the Notice of Appeal, the Tribal Court lacks jurisdiction to take any further action in the case regarding issues on appeal.

**3-1-105. Stay of Tribal Court Judgment.**

- (1) **No Automatic Stay.** Unless the law provides otherwise, the Tribal Court's judgment or order will remain in effect during the appeal. A party may file a motion to stay with the Tribal Court. When deciding a motion to stay, the Tribal Court must consider the following factors, as well as other relevant issues raised by the parties:
  - (a) **Probable Success.** Whether the moving party has a reasonable probability of success on the merits of the appeal.
  - (b) **Irreparable Harm to Appealing Party.** Whether there is a danger of real, immediate, and irreparable injury to the appealing party.
  - (c) **Harm to Interested Parties.** Whether a stay will cause substantial harm to other interested parties.
  - (d) **Public Interest.** Whether the stay will serve, rather than do harm to, the public interest.
- (2) **Motion to Compel Tribal Court to Decide.** If the Tribal Court fails to rule on a written motion to stay within 14 calendar days of filing, any party may move the Court of Appeals to order the Tribal Court to rule on the motion to stay. If the Court of Appeals orders the Tribal Court to rule on the motion to stay, and the Tribal Court still fails to rule within 7 calendar days of the Court of Appeals' order, the Presiding Justice will decide the motion to stay or if no Presiding Justice has been selected, the Chief Justice will decide the motion.
- (3) **Review Order Deciding Motion to Stay.** A party may move the Court of Appeals for review of the Tribal Court's decision on the motion to stay. The Court of Appeals will decide the motion on the briefs filed in the Tribal Court, unless ordered otherwise.
- (4) **Bond.** Upon a request for a stay of enforcement of a judgment, conviction, or order, the Tribal Court may require, except from the Tribe and its affiliate entities and officers, that the appealing party post a bond, other appropriate security, conditions of release, or other orders to preserve the status quo.

**3-1-106. Record on Appeal.**

- (1) **Record on Appeal to Review.** Unless the parties agree otherwise, the Tribal Court clerk must certify the entire Tribal Court record to the Court of Appeals and give notice of the certification to the parties, and the record on appeal will consist of the following:
  - (a) All pleadings, exhibits, orders, and other papers filed or issued in the Tribal Court proceeding.
  - (b) Recordings of the Tribal Court hearings.
- (2) **Stipulated Record.** Any agreement between the parties that the record on appeal will be less than the entire Tribal Court record will be filed within 10 calendar days of filing the Notice of Appeal.
- (3) **Transcript.** Any party may pay at its own expense to have a certified court reporter produce a written transcript. An indigent party may move the Tribal Court to pay the fee for a written transcript when it is essential to the appeal.
- (4) **Corrections to the Record.** If anything material to either party is omitted or misstated in the record at any time, the parties may stipulate or the Tribal Court may order a party to correct the record. The Court of Appeals, by motion or on its own initiative, may direct that an omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted.

**3-1-107. Sending the Record.**

- (1) **Certification and Notice.** The Tribal Court clerk must certify the record on appeal, send it to the Court of Appeals promptly after the Notice of Appeal is filed, and serve notice on all parties that the record has been certified and is available for inspection and copying.
- (2) **Numbering.** The Tribal Court clerk must individually and consecutively number each page of the record.
- (3) **Physical Exhibits.** The Tribal Court clerk need not send a physical exhibit if the Court of Appeals does not request it. When the clerk certifies the record, the clerk will list those physical exhibits not being sent.

**3-1-108. Briefs.** The parties must submit their arguments through written briefs. After the record on appeal is sent to the Court of Appeals, the Court of Appeals must issue a briefing schedule for filing briefs. For a case properly before the Court of Appeals, the Court of Appeals must allow the parties to file briefs before issuing its decision.

- (1) **Briefs Allowed.** No briefs other than those listed in this Section are permitted, except by order of the Court of Appeals. The Court of Appeals may request supplemental briefing of relevant issues.
- (a) **Opening Brief.** The opening brief of the appealing party must be filed within the time set in the briefing schedule and must include:
- (i) A statement of the relevant facts;
  - (ii) A concise argument explaining the legal errors made by the Tribal Court;
  - (iii) Citations to the relevant legal authority supporting the argument;
  - (iv) Citations to the relevant portions of the record on appeal that support the argument; and
  - (v) A short conclusion stating the specific relief sought.
- (b) **Response Brief.** The response brief must be filed within the time set in the briefing schedule, and must include:
- (i) A response to the legal arguments made in the opening brief;
  - (ii) Citations to the relevant legal authority supporting the response;
  - (iii) Citations to the relevant portions of the record on appeal that support the argument.
  - (iv) A short conclusion.
- (c) **Reply Brief.** A reply brief may be filed after the response brief is served within the time set in the briefing schedule and must only address issues raised in the response brief.
- (d) **Briefs in Cases for Cross-Appeals.** If a cross-appeal is filed, the party first filing the Notice of Appeal is deemed to be the appellant and the party responding to that first Notice of Appeal is deemed to be the appellee for the purposes of this rule. The appellant will file the opening brief. A cross-appellant will file a single brief as appellee and cross-appellant when the appellee's brief is due. This brief will be entitled "opening-answer brief" and must contain the issues and argument involved in the cross-appeal and the answer to the appellant's brief. The appellant's answer to the argument of the crossappeal, and the reply to appellee's answer brief, will be included in a brief entitled "answer-reply brief." The cross-appellant may

then file a reply brief confined strictly to reply to those arguments raised in the cross-appeal.

- (e) **Nonparty Briefs.** Any nonparty may request to file a brief addressing the issues on appeal. A requester must state their interest in the case. The request must be served on all parties. Objections to the request to file a nonparty brief must be filed within 14 calendar days of service of the request. The Court of Appeals has discretion to decide whether to grant the request. The Court of Appeals may itself request a nonparty to file a brief.
- (f) **Extensions.** A party may seek to extend the deadline for filing a brief, by filing a motion not later than 10 calendar days before the deadline set by the briefing schedule.
- (g) **Failure to File.** If the appealing party fails to file the opening brief within the required time, the Court of Appeals must dismiss the appeal, except it may consider an appeal when a Notice of Appeal alleges lack of subject matter jurisdiction of the Tribal Court. If the appealing party fails to brief an issue cited in the Notice of Appeal, the Court of Appeals may consider it waived.
- (h) **Supplemental Authorities.** If relevant and controlling legal authorities come to a party's attention before the Court of Appeals issues its decision, but after the party's brief has been filed, a party must promptly notify the Court of Appeals and all other parties, setting forth the citations. The notice must state the relevance of the supplemental citations, referring either to the page of the brief or to a point argued orally. The notice must not exceed 350 words. Any response must be made promptly and must be similarly limited.

### **3-1-109. Motions.**

- (1) **Must be in Writing.** Parties must present requests to the Court of Appeals by written motion with a sufficient statement of the issue and requested relief.
- (2) **Response.** The opposing party may respond within 10 calendar days from the date of service, or as otherwise ordered by the Court of Appeals.

### **3-1-110. Filing and Service.**

- (1) **File Papers with Clerk.** Any paper required or permitted to be filed in the Court of Appeals will be filed with the Tribal Court clerk. The Tribal Court clerk will serve as the clerk for the Court of Appeals only to receive filings and serve court orders.



- (2) **File by Mail or Electronically.** Parties may file by mail or electronically with the Tribal Court clerk.
- (3) **Service.** Each party must serve on all other parties a copy of all documents filed with the Court of Appeals, which service is complete when sent, not received. Parties must include proof of service when the documents are filed.
- (4) **Computing Time.** For computing any period of time in this Code, the relevant provision in the Civil Procedure Code, as may be amended, applies.

**3-1-111. Oral Argument.** Upon motion by either party or by order of the Court of Appeals, oral argument may be held after briefing. Parties may not present arguments orally that have not been properly raised in the Notice of Appeal and briefed. The Court of Appeals may set time limits and other procedures for oral arguments. If the appellee fails to appear for argument, the Court of Appeals must hear appellant's argument. If the appellant fails to appear for argument, the Court of Appeals may hear the appellee's argument. If neither party appears, the case may be decided on the briefs or dismissed.

**3-1-112. Standard of Review.** In deciding an appeal, the Court of Appeals will apply the following standards:

- (1) **Factual Findings.**
  - (a) Jury decisions will be sustained, unless no evidence in the record supports them.
  - (b) A finding of fact will be sustained unless clearly erroneous.
- (2) A conclusion of law will be reviewed without deference to the Tribal Court's determination;
- (3) A matter within the discretion of the Tribal Court will be sustained if the record reflects that the Tribal Court exercised its discretionary authority, applied the appropriate legal standard to the facts, and did not abuse its discretion, even if an alternative decision could have been reached.

**3-1-113. Appellate Decision.** The Court of Appeals may affirm, modify, or reverse the Tribal Court's decision in whole or in part, order a new trial, remand to the Tribal Court for further proceedings, or make any other ruling that appropriately disposes of the issues raised on appeal. The Court of Appeals will issue a written decision and serve it on all parties. The decision will be made by a majority vote of the Justices serving on the panel for the appeal under consideration.

- 3-1-114. Costs.** The Court of Appeals may award costs incurred by the prevailing party to the prevailing party.
- 3-1-115. Attorney's Fees.** Attorney's fees incurred on appeal are not awardable, unless otherwise provided by contract or law.
- 3-1-116. Post-Judgment Interest.** Unless the law provides otherwise, if a money judgment in a civil case is affirmed, postjudgment interest as provided by law is payable from the date when the Tribal Court's judgment was entered. If the Court of Appeals modifies or reverses a judgment with a direction that a money judgment be entered, the opinion must contain instructions about the allowance of interest.
- 3-1-117. Frivolous or Groundless Appeal – Damages and Costs.** If the Court of Appeals determines that an appeal is frivolous or groundless, it may award reasonable attorney's fees for defending against the frivolous or groundless appeal.
- 3-1-118. Application of State and Federal Law.** Where not contrary to tribal or applicable federal law, the Court of Appeals may consider state and federal law as persuasive authority.

## **TITLE 3**

### **APPELLATE CODE**

#### **History and Amendments<sup>1</sup>**

Title 3 adopted by Tribal Resolution No. 80-120, approved by the Bureau of Indian Affairs and effective on February 20, 1981.

Title 3 section and page numbering scheme revised and amended by Tribal Resolution No. 89-34, and effective on March 21, 1989.

Resolution No. 2015-227 repealed and replaced prior versions of Title 3, approved by the Bureau of Indian Affairs and effective on January 1, 2016.

Resolution No. 2021-151 repealed and replaced the Appellate Code with a reformatted Appellate Code for online publication that contained only minor technical corrections, no substantive revisions, that the Bureau of Indian Affairs concurred it did not need to formally approve (April 25, 2023).

Resolution No. 2023-079 authorized on-line publication of the 2021-151 reformatted Appellate Code and provided an effective date of May 25, 2023.

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<sup>1</sup> This page does not constitute an official part of any code. Information contained on this page is solely for informational and historical purposes and is from sources deemed reliable.