

# PUEBLO OF SANTA ANA

## RESOLUTION OF THE TRIBAL COUNCIL

Resolution No. 07-R-16

**Re: Resolution Adopting Rules of the Pueblo of Santa Ana Court of Appeals**

**WHEREAS**, the Pueblo of Santa Ana is a federally recognized Indian tribe governed under a traditional form of government, and possessing all the inherent sovereign powers of self-government; and

**WHEREAS**, the Tribal Council of the Pueblo of Santa Ana is the duly recognized decision and policy making body for the Pueblo of Santa Ana; and

**WHEREAS**, the Tribal Council established the Pueblo of Santa Ana's Judicial Branch consisting of a Traditional Court and a Contemporary Court; and

**WHEREAS**, the Pueblo of Santa Ana recognizes the importance of creating clear rules of process in the event an appeal is taken from a decision by the Contemporary Court;

**NOW THEREFORE, BE IT RESOLVED**, that the Tribal Council of the Pueblo of Santa Ana hereby adopts the attached Rules of the Court of Appeals, Pueblo of Santa Ana ("Rules"); and

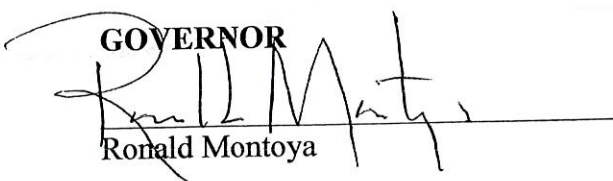
**BE IT FURTHER RESOLVED** that these Rules shall become effective as of the date of this Resolution and shall govern appeals heard after the date of enactment of these Rules; and

**BE IT FURTHER RESOLVED** that the Governor and/or his designee shall take such action as is necessary to carry out the intent of this resolution.

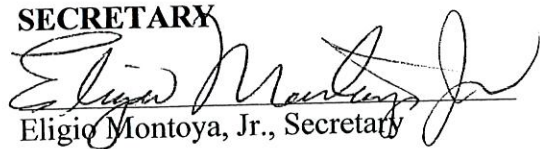
### CERTIFICATION

I, the undersigned, as Governor of the Pueblo of Santa Ana, hereby certify that the Tribal Council of the Pueblo of Santa Ana at a duly called meeting convened on the 24<sup>th</sup> day of May, 2007, at the Pueblo of Santa Ana, at which a quorum was present, approved the foregoing Resolution, and that 12 voted for and 2 were opposed.

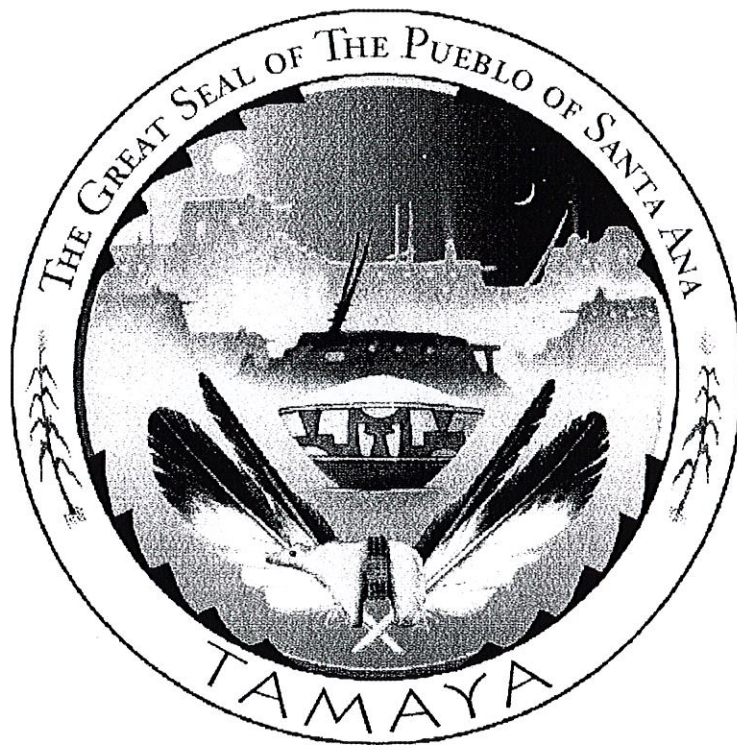
**GOVERNOR**

  
Ronald Montoya

**SECRETARY**

  
Eligio Montoya, Jr., Secretary

# **PUEBLO OF SANTA ANA RULES OF THE TRIBAL COURT OF APPEALS**



**ADOPTED BY RESOLUTION No. 07-R-16  
MAY 24, 2007**

**Pueblo of Santa Ana  
Rules of the Tribal Court of Appeals**

**Table of Contents**

DEFINITIONS.....	1
Rule 1. SCOPE OF RULES .....	1
Rule 2. JURISDICTION .....	1
Rule 3. COMPOSITION OF THE COURT OF APPEALS .....	1
Rule 4. FUNCTION OF THE COURT OF APPEALS .....	2
Rule 5. HOW AND WHEN TO APPEAL.....	2
Rule 6. DUTY OF THE CONTEMPORARY COURT CLERK TO INFORM GOVERNOR..	3
Rule 7. HOW TO CALCULATE TIME FOR APPEAL .....	3
Rule 8. STAY OR INJUNCTION PENDING APPEAL .....	4
Rule 9. RECORD ON APPEAL .....	4
Rule 10. FILING AND SERVICE .....	5
Rule 11. COMPUTING TIME .....	6
Rule 12. MOTIONS .....	7
Rule 13. BRIEFS .....	8
Rule 14. ORAL ARGUMENTS.....	9
Rule 15. ADMISSION OF ATTORNEYS .....	9
Rule 16. ADDITIONAL RULES .....	9



## **DEFINITIONS**

- Affidavit:** A sworn statement about facts personally known to the person making the affidavit.
- Appellant:** The party that asks the Court of Appeals to change the decision or order of the Contemporary Court.
- Docket:** The official list kept by the Court Clerk of the actions taken and all documents filed on the case.
- Motion:** A motion is a written request made by a party to the Court of Appeals to take action on any aspect of the appeal. The party requesting the action is referred to as the moving party.
- Pro se:** A party to a case that is not represented by legal counsel.

### **Rule 1. SCOPE OF RULES**

These Rules govern procedure in the Pueblo of Santa Ana Tribal Court of Appeals (hereinafter "Court of Appeals"). These Rules are complementary to the tradition and custom that govern the appellate process in the Santa Ana Court system.

### **Rule 2. JURISDICTION**

- (a) The Court of Appeals shall have subject matter jurisdiction to hear and decide civil and criminal cases appealed from the Pueblo of Santa Ana Contemporary Court as long as the appeal is not prohibited by Pueblo of Santa Ana law, code, resolution or ordinance (collectively referred to hereinafter as "Santa Ana Law").
- (b) Appeals from the Pueblo of Santa Ana Traditional Tribal Court, as defined pursuant to Pueblo of Santa Ana law, shall continue to be heard through the traditional court of appeals. The traditional appellate procedure may, but is not required to, utilize any aspect of these rules.

### **Rule 3. COMPOSITION OF THE COURT OF APPEALS**

- (a) The Court of Appeals shall be composed of a five (5) member Panel. The members of the Panel shall be appointed by the Tribal Council. The Tribal Council shall appoint Panel members as soon as practical after an appeal is filed.

- (b) Any Tribal Council member is eligible to serve on the Court of Appeals, unless the Tribal Council member:
  - (1) is related by blood or marriage in the first or second degree to any of the parties in the appeal (parent, grandparent, child, sibling, first cousin, aunt or uncle);
  - (2) has a probable or vested financial interest in any outcome of the case; or
  - (3) is employed by a tribal program or private employer that is a party to the appeal or that has an interest in any outcome of the case. Employees of Santa Ana Pueblo and its enterprises are not excluded unless the appeal concerns the particular entity or department with whom the employee works.
- (c) In its discretion, the Tribal Council may choose to hear the appeal through the appellate panel or as the Tribal Council sitting as a whole.

**Rule 4. FUNCTION OF THE COURT OF APPEALS**

- (a) Upon review of the briefs as prescribed in these Rules, the Court of Appeals can do the following:
  - (1) affirm the decision, judgment or order of the Contemporary Court;
  - (2) overturn the decision, judgment or order of the Contemporary Court;
  - (3) remand the case to the Contemporary Court with specific instructions; or
  - (3) require a new hearing.
- (b) The Court of Appeals shall not function as a trial court to rehear a case on appeal. Likewise, the Court of Appeals will not hear new factual evidence nor decide issues of fact.

**Rule 5. HOW AND WHEN TO APPEAL**

- (a) A party wishing to challenge the decision of the Contemporary Court must file a notice of appeal with the Pueblo of Santa Ana Contemporary Court Clerk within thirty (30) days of the final decision, judgment or order of the Contemporary Court. It is recommended that the appellant use the forms provided by the Contemporary Court Clerk.
- (b) The notice of appeal must:
  - (1) name the party or parties filing the appeal by naming each one in the caption or body of the notice;
  - (2) name the other party or parties in the Contemporary Court case;
  - (3) identify the judgment, order or part thereof being appealed;

- (4) state the legal reasons or basis for claiming the Contemporary Court was wrong; and
  - (5) be signed by the party or parties or by counsel representing the party or parties.
- (c) If the appeal is mistakenly filed in the Governor's Office, the Governor shall send the notice of appeal to the Contemporary Court Clerk within the next three (3) business days and it shall be filed as of the date received in the Governor's office.
  - (d) The appellant must serve the notice of appeal on all other parties on the same date the notice is filed.
  - (e) An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

**Rule 6. DUTY OF THE CONTEMPORARY COURT CLERK TO INFORM GOVERNOR**

The Contemporary Court Clerk must promptly send a copy of the notice of appeal and of the docket entries to the Pueblo of Santa Ana Governor. The Contemporary Court Clerk must note, on each copy, the date when the notice of appeal was filed.

**Rule 7. HOW TO CALCULATE TIME FOR APPEAL**

- (a) The notice of appeal for both civil and criminal cases must be filed with the Contemporary Court Clerk within thirty (30) days after the Contemporary Court judgment or order appealed from is entered.
- (b) A notice of appeal filed after the Contemporary Court announces a decision, order or conviction—but before the entry of a judgment, order or conviction—is treated as filed on the date of the entry.
- (c) If one party files a notice of appeal, any other party may file a notice of appeal within fourteen (14) days after the date when the first notice was filed.
- (d) If a defendant in a criminal trial timely makes any of the following motions in the Contemporary Court after a decision, order or conviction of the Contemporary Court, the notice of appeal must be filed within thirty (30) days after the entry of the order disposing of the last such remaining motion. This provision applies to a timely motion:
  - (1) for judgment of acquittal; or
  - (2) for a new trial.



**Rule 8. STAY OR INJUNCTION PENDING APPEAL**

- (a) A party must request from the Contemporary Court:
  - (1) a stay of the judgment or order of a Contemporary Court pending appeal;
  - (2) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.
- (b) A motion for the relief sought in Rule 10(a)(1) may be made to the Court of Appeals if the stay is denied by the Contemporary Court. Such motion must:
  - (1) state the reasons given by the Contemporary Court for its action;
  - (2) state the reasons for granting the relief requested and the facts relied on;
  - (3) attach originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and
  - (4) attach relevant parts of the record.
- (c) The requesting party must give notice of the motion to all parties on the same date the motion is filed with the Contemporary Court Clerk.

**Rule 9. RECORD ON APPEAL**

- (a) The following items constitute the record on appeal:
  - (1) the original documents and exhibits filed in the Contemporary Court;
  - (2) the transcript of proceedings, if any;
  - (3) all court orders or entries; and
  - (4) a certified copy of the docket entries prepared by the Contemporary Court clerk.
- (b) If written transcripts of the Contemporary Court proceedings exist, or if certified audio recordings were produced by the Contemporary Court, it is the duty of the party that is appealing to produce such transcripts or audio recordings. Such transcripts or audio recordings shall be accompanied by a document certified by the Contemporary Court as to authenticity.
- (c) If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record all evidence relevant to the finding or conclusion.
- (d) If a written transcript or certified audio recordings are unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. Such statement must be served on

the other party or parties, who may serve objections or proposed revisions within ten (10) days after being served the statement. The statement and any objections or proposed revisions must then be submitted to the Contemporary Court for settlement and approval. As settled and approved, the statement must be included by the Contemporary Court in the record on appeal.

- (e) In place of the record on appeal, the parties may prepare, agree, sign, and submit to the Contemporary Court a statement of the case showing how the issues presented by the appeal arose and were decided by the Contemporary Court. The statement must set forth only those facts proved that are essential to the Court of Appeals' resolution of the issues. Once approved by the Contemporary Court, the statement must be submitted in a timely manner to the Court of Appeals, with notice to the parties.
- (f) A party who files a notice of appeal must do what is necessary to enable the Contemporary Court clerk to assemble the record.

#### **Rule 10. FILING AND SERVICE**

- (a) Filing
  - (1) The Contemporary Court Clerk shall maintain the docket for the Court of Appeals. All filings for the Court of Appeals must be filed with the Contemporary Court Clerk.
  - (2) Filings may be accomplished by mail addressed to the Contemporary Court Clerk but filing is not timely unless the Contemporary Court Clerk receives the papers within the time fixed for filing.
  - (3) The filing party must, at or before the time of filing a paper, send a copy to the other parties to the appeal ("Service"). Service on a party represented by legal counsel must be made on the party's counsel.
- (b) Manner of Service
  - (1) Service may be any of the following:
    - (i) personal, if pro se, and, if represented by legal counsel, delivery to a responsible person at the office of legal counsel;
    - (ii) by mail;
    - (iii) by third-party commercial carrier for delivery within three (3) days; or,
    - (iv) by facsimile.



- (2) Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by facsimile is complete on successful transmission, unless the party making service is notified that the paper was not received by the party served.
- (c) Proof of Service
  - (1) A paper presented for filing must contain either of the following:
    - (i) an acknowledgment of service by the person served; or
    - (ii) proof of service consisting of a statement by the person who made service certifying:
      - (A) the date and manner of service;
      - (B) the names of the persons served; and
      - (C) their mailing address or facsimile number, or the address of the places of delivery, as appropriate for the manner of service.
  - (2) When a brief is filed by mailing or dispatch according to these Rules, the proof of service must also state the date and manner which the document was mailed or dispatched to the Contemporary Court Clerk.
- (d) The parties are recommended to use the forms adopted by the Court of Appeals.

**Rule 11. COMPUTING TIME**

- (a) The following rules apply in computing any period of time specified in these Rules:
  - (1) Exclude the day of the act, event, or default that begins the period.
  - (2) Exclude intermediate Saturdays, Sundays and legal holidays when the period is less than eleven (11) days.
  - (3) Include the last day of the period unless it is a Saturday, Sunday or legal holiday.
  - (4) If the final day to file falls on a Saturday, Sunday, or tribally or federally recognized holiday, the first business day the Contemporary Court is open after the required filing deadline.
  - (5) As used this rule, "legal holiday" means a federal holiday or official tribal holiday set forth by the Governor or Tribal Council.

- (b) For good cause, the Court of Appeals may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires. [But the Court of Appeals may not extend the time to file a notice of appeal.] Such extension of time will be granted by order of the Court of Appeals and must be granted before expiration of the original expiration date. The Contemporary Court Clerk will serve the order on all parties.

## **Rule 12. MOTIONS**

- (a) In general.
  - (1) A party shall request an order or other relief by motion to the Court of Appeals unless these Rules prescribe another form. A motion must be in writing unless the Court of Appeals permits otherwise.
  - (2) Contents of a Motion. A motion must state with particularity the grounds of the motion, the relief sought, and the legal argument necessary to support it.
  - (3) Any affidavit or other paper necessary to support a motion must be served and filed with the motion. An affidavit must contain only factual information, not legal argument. A motion seeking substantive relief must include a copy of the Contemporary Court's opinion or ruling as a separate exhibit to the motion.
  - (4) A motion shall include the case number, the name of the court, the title of the case, identification of the parties, and a descriptive title indicating the purpose of the motion.
  - (5) A motion or response under these Rules must not exceed twenty (20) pages, unless the Court of Appeals permits or directs otherwise.
- (b) Response. Any party may file a response to a motion. Such response will conform with the requirements of a motion set forth above. The response must be filed within ten (10) days after service of the motion, unless the Court of Appeals shortens or extends the time. A response may include a motion for affirmative relief. If so, the title of the response must alert the Court of Appeals to the request for affirmative relief.
- (c) Reply to Response. There shall be no Replies to the Response unless ordered by the Court of Appeals.
- (d) The Court of Appeals may act on a motion for a procedural order or request for extension of time to file at any time without awaiting a response. A party

adversely affected by the Court of Appeals action may file a motion to reconsider, vacate or modify the action.

- (e) A motion will be decided without oral argument. A ruling on a motion shall be written in an order and served on the parties in a timely manner.

### **Rule 13. BRIEFS**

- (a) A brief must contain the following:
  - (1) a statement of the issues presented for review;
  - (2) a statement of the case briefly indicating the nature of the case, the course of proceedings, and the disposition below;
  - (3) a statement of facts relevant to the issues submitted for review with appropriate references to the record;
  - (4) the argument, which must contain:
    - (i) the party's contentions and the reasons for them, with reference to legal authority relied upon for the party's contentions; and
    - (ii) a short conclusion stating the precise relief sought.
- (b) Response Brief. The other party or parties may file a brief in response to the originally filed brief. A response brief will conform with the requirements of a brief set forth above, if applicable, and must contain a rebuttal to the asserted facts or arguments made by the other party.
- (c) Reply Brief. There shall be no Replies to the Response Brief unless ordered by the Court of Appeals.
- (d) If the Court of Appeals' determination of the issues presented requires the study of statutes, regulations, ordinances, resolutions, or other authority, the relevant parts of such authority may be set out in the brief, in an addendum at the end, or may be supplied to the Court of Appeals in pamphlet form.
- (e) In a case involving more than two parties, including consolidated cases, any number of parties may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.
- (f) Serving and Filing Briefs. The appellant must serve and file a brief within forty (40) days after the record is filed. The responding party or parties must serve and file a brief of its own within thirty (30) days after the original brief is served.



- (g) Consequences of Failure to File. If an appellant fails to file a brief within the time provided by this rule, or within an extended time, the other party or parties may move the Court of Appeal to dismiss the appeal. The Court of Appeals has discretion to grant such motions.
- (h) Briefs of pro se parties. The Court of Appeals shall not reject a brief filed by a pro se party for failing to follow formalities of form.

**Rule 14. ORAL ARGUMENTS**

All Motions and Appeals shall be submitted on the briefs with no oral argument unless the Court of Appeals chooses in its discretion to hear argument, at which time it will issue a written order to inform the parties of the process to be followed for the oral argument.

**Rule 15. ADMISSION OF ATTORNEYS**

All attorneys practicing before the Santa Ana Court of Appeals must comply with the rules of Contemporary Court regarding admission to practice.

**Rule 16. ADDITIONAL RULES**

- (a) Nothing in these Rules will divest the Court of Appeals from responding by written order to address matters not covered by these Rules.
- (b) The Court of Appeals may also revise these Rules or create additional rules which will be presented to the Pueblo of Santa Ana Tribal Council and will become effective upon consideration and adoption of the Tribal Council.
- (c) Parties may look to the Federal Rules of Appellate Procedure for additional guidance, although no other rules will be binding on the Court of Appeals.