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THE SOUTHWEST INTERTRIBAL COURT OF APPEALS

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INTRODUCTION

The Southwest Intertribal Court of Appeals ("SWITCA") serves tribal governments and tribal court systems by providing an impartial forum for the review of tribal court decisions. A specific grant of jurisdiction from each participating tribal government determines the type of cases to be heard and the type of appellate review to be exercised by SWITCA. The court of appeals is intertribal in that the court is open to and utilized by tribes in the states of New Mexico, Arizona, Southern Colorado and Western Texas. However, the tribes which utilize the court of appeals do so independently of one another.

The basic principals underlying the formation and administration of SWITCA are similar to those utilized by the United Nations. In concept, SWITCA is similar to the International Court of Justice in that SWITCA is open to all tribes within its region. In addition, the jurisdiction of the court is limited to the jurisdiction a member tribe has confirmed to SWITCA, and tribes may exclude certain classes of cases. Tribes bind themselves in advance to accept the jurisdiction of the court by signing resolutions which make specific declarations to that effect. SWITCA applies the law of the tribe which the tribe itself has adopted and recognizes.

I. FORMATION

The Southwest Intertribal Court of Appeals was established in 1988 by the Pueblo of Acoma, the Pueblo of San Juan, and the Pueblo of Zuni. These tribes came together by resolution of their councils to form the court. SWITCA was originally and is currently funded pursuant to a tribal self-determination grant¹ awarded to the Pueblo of Zuni by the Bureau of Indian Affairs' Branch of Judicial Services. The Bureau's intent was to contract for the provision of services to all southwestern tribes wishing to participate in the intertribal appellate court. Today, the Pueblo of Zuni subcontracts with the American Indian Law Center (AILC), at the University of New Mexico School of Law, for the administration of the court's work. Although SWITCA continues to be

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1. These grants are made pursuant to appropriations under the Self-Determination and Educational Assistance Act, 25 U.S.C. § 13 (1988), "for general and incidental expenses in connection with the administration of Indian affairs."

administered through the AILC, the responsibility and authority for establishing court policies lies with a Standing Administrative Committee ("SAC") comprised of chief judges representing pueblos and tribes who are members of the intertribal court, as well as chief judges representing pueblos and tribes who voluntarily participate in SWITCA.

In 1989, the court hired its first administrator, Bettie Rushing, a member of the Muskogee Nation and a former tribal court judge. Ms. Rushing, in conjunction with the first intertribal working group, devised the unique structure of the court. This intertribal working group, which later became the first SAC, was composed of tribal judges and representatives from the Pueblos of Zuni, Acoma, Isleta, Laguna, and San Juan. An exhaustive questionnaire was devised to gather preliminary information regarding the role of the intertribal appellate court and its exercise of appellate judicial powers, the selection and qualification of appellate judges and appellate procedure.

II. THE COURT

An administrator coordinates the operations of the Southwest Intertribal Court of Appeals. All pleadings are filed locally with the tribal court where the appeal originates and are then forwarded to SWITCA. Appeals are handled in accordance with rules of appellate procedure of the member courts. In addition, SWITCA has rules of appellate procedure which apply in the absence of tribal rules.² Any conflict between the SWITCA Rules of Appellate Procedure and tribal rules of procedure are resolved in favor of the tribal rules.

Opinions of the court are recorded in a reporter which contains the opinions published by the court since 1990.³ SWITCA maintains the reporter and updated it in December 1993. The court has used law students from the University of New Mexico to assist with the reporter. Law students also assist with requests received from tribal court judges and with research connected to appellate cases pending before SWITCA.

SWITCA works primarily with the member tribes who utilize SWITCA as an appellate court or as a resource to their existing appellate courts. The court, however, also serves tribal courts who are not members. SWITCA uses judges from non-member courts to serve as appellate judges for member courts and has added to its membership by inviting wide participation in the Standing Administrative Committee. The participation of judges from non-member tribes has ultimately induced several of those tribes to join SWITCA.

The Standing Administrative Committee is composed of chief judges from both member and non-member courts of SWITCA. The committee has a chairperson and vice-chairperson.⁴ The court administrator acts as

2. S.W.I.T.C.A. R. APP. P. 1(a)(1992).

3. Southwest Indian Tribal Court of Appeals Reporter, vols. 1-4, *cited as* _____ SWITCA _____ (tribe/year).

4. The Standing Administrative Committee meets quarterly to conduct business. Judicial education sessions are held in conjunction with these meetings. These judicial education sessions are open to all tribal appellate and trial judges within SWITCA's service area.

the recording secretary for the committee. Committee meetings are open to tribal representatives of both member and non-member tribes. The committee is responsible for advising the administrator and directing the development of the court. Since 1989, the committee has developed court rules through its Rules Committee, such as *Rules of Appellate Procedure*, *Internal Rules of Procedure*, *Judicial Misconduct and Removal Rules and Procedures*, and *Standing Administrative Committee Rules*.⁵

The participation of both member court and non-member court judges in the committee allows for member courts to draw upon the expertise of other tribal court judges, and allows for intertribal communication and participation in the operation of a court which is intertribal by design. As the number of member courts increase, however, participation in the SAC and other SWITCA affairs will ultimately be limited to member courts due to financial constraints. At present, the inclusive format of the SAC has fostered intertribal communication on issues of importance to tribal courts and has assisted the court in its growth.

A chief judge presides over SWITCA. Under current rules, a chief judge serves a six-month term and is appointed on a rotating basis from the membership of the SAC. The chief judge is the official representative of the court and is responsible for reviewing all issues requiring an immediate response or decision in accordance with tribal appellate law.

When oral arguments are scheduled in a case, they are scheduled for a hearing at the tribal court where the appeal has arisen. Attorneys appearing before the court must be licensed or admitted to appear in the tribal court below.

III. NON-BINDING PARTICIPATORY COURT OPTIONS

SWITCA has recruited tribes by offering a flexible design that allows tribes to determine the extent of the power and jurisdiction to be exercised by the court. SWITCA suggested alternative means by which judicial support services could be provided in its initial communication with tribes. These included:

- a. An independent court of last resort created by act or resolution of each participating tribe which exercises full appellate powers;
- b. An independent appellate court created by act or resolution of each participating tribe, but which provides only advisory opinions to the participating tribe;
- c. An independent intermediary appellate court created by act or resolution of each participating tribe from which appeals are taken to the supreme court of the participating tribe; and

5. The rules are available from the Southwest Intertribal Court of Appeals at the American Indian Law Center, University of New Mexico School of Law.

- d. The provision of judges and support services to participating tribes which would authorize by resolution the selection of a three judge panel to hear appeals as defined by the Tribal Code. By appointment, judges would exercise tribal judicial powers and fall within the inherent judicial immunity of the tribe.

Tribes were informed that any grant of appellate jurisdiction to SWITCA must be expressly conferred and all limitations clearly defined by the tribe. Additionally, the alternatives require an express grant of judicial immunity by each member tribe. Currently, SWITCA judges are limited to the exercise of those judicial powers which are expressly conferred by each participating tribe. These options recognize the need for more traditional tribes to retain exclusive jurisdiction over traditional issues and to limit appellate review by an intertribal court to non-traditional matters such as taxation, incorporation, contract or consumer issues.

IV. COURT MEMBERS

Membership usage of SWITCA varies from tribe to tribe. The use of SWITCA by the tribes is governed primarily by tribal preference. Tribal law governs the general structure and procedure of the court, as well as the appointment criteria used by SWITCA when convening single judge or multiple judge panels:

- In February 1990, the Southern Ute Tribe of Colorado became the first member tribe of the Southwest Intertribal Court of Appeals. The Southern Ute Tribe utilizes SWITCA to hear all appeals from the Southern Ute Tribal Court. SWITCA designates a single appellate judge to hear an appeal. The majority of SWITCA cases have been appeals from the Southern Ute Tribal Court.
- In June 1990, the Ute Mountain Ute Tribe designated SWITCA to serve as the appellate court to hear two specific cases on appeal.
- The Pascua Yaqui Tribe of Arizona became a member of SWITCA in July 1990. The Pascua Yaqui Tribe utilizes SWITCA in cases where the tribe's permanent appellate judge may have a conflict of interest.
- The Pueblo of San Juan became a member of SWITCA in July 1990. The Pueblo of San Juan's resolution provides for the use of SWITCA as an intermediary court of appeals between the tribal court and the council, which serves as the final appellate body.
- In March 1991, the Pueblo of Nambe authorized SWITCA to act as an independent appellate court on behalf of the tribe. Under Nambe's authorizing resolution, the tribal council retains the right to refer cases for appellate decision to the court.
- The Cocopah Indian Tribe of Arizona has designated SWITCA to provide appellate court review for the Cocopah Tribal Court. Under this resolution, the court is to be comprised of a three-judge panel.
- Last March, the Zuni Tribal Council designated SWITCA to act as an independent Zuni appellate court for appeals of final orders taken from the Zuni Tribal Court. The Zuni resolution further

provided that a three-judge panel be convened to hear appeals and consist of two Native judges appointed by SWITCA and one non-participating Zuni tribal judge.

- Santa Clara Pueblo became SWITCA's most recent member in June 1993. The Santa Clara resolution provides for SWITCA to render advisory opinions to the Santa Clara Pueblo Council which serves as the court of appeal for Santa Clara Pueblo. SWITCA is currently working with the pueblo on the development of rules governing SWITCA's issuance of advisory opinions and which develop an internal process for the handling of these appeals.

CONCLUSION

Membership in the court is an option strictly within the exclusive control of tribes within SWITCA's service area. Many tribes operate their own appellate systems. However, many tribes cannot economically maintain both a trial court and an appellate court system. Where the appellate caseload of some tribes may not warrant the expense required to develop rules and procedures, case filing systems, and associated costs, or where appeals involve technical areas of the law, SWITCA is available as a resource. Alternatively, if the appellate caseload of a tribe becomes too large and costly for a tribe, SWITCA has provided a resource. SWITCA's service to tribes is not meant to replace the development of tribal appellate systems. Nor does SWITCA require tribes to join the court. The formative years of SWITCA have shown that while most tribes guard their jurisdiction very closely, the flexibility SWITCA provides to tribes to determine what amount of jurisdiction is to be placed in the Southwest Intertribal Court of Appeals, has allowed the court to see continual growth in its membership. While SWITCA has suggested to tribes ways in which appellate services can be provided, tribes themselves have the ability to structure the use of the court to fit the needs, concerns and unique differences of each tribe. This is perhaps the most unique aspect of the court. SWITCA will continue to remain open to membership of tribes until such time as the court cannot financially service any more tribes.

Intertribal collaborative efforts have always been viewed as efforts worthy of special recognition and respect. These "international" initiatives which seek to create alliances between tribes for various purposes have a long history. Perhaps the words spoken by John Ross, Principal Chief of the Cherokee Nation, before an international council of seventeen tribes representing 10,000 Indians called at Tahlequah in 1843, echo the thoughts of those who have worked on the formation of a court which seeks to serve the individual needs of several tribes, and who look forward to other tribes joining the collaborative effort:

Brothers: . . . [Y]ou have listened . . . shaking the right hand of friendship at the great council fire, newly kindled . . . in the west . . . and our heart has been made glad on the interesting occasion. Brothers: When we look into the history of our race, we see some green spots that are pleasing to us. We also find many things to make the heart sad. . . . [O]ur hearts rejoiced in the goodness of our creator in having . . . united the heart and the hand of the red man.

. . . We should, therefore, extend the hand of friendship from tribe to tribe . . . between every nation of red men within the reach of our voice.

Brothers: . . . [T]ribes that were once separated by distance have become neighbors, and some of them, hitherto not known to one another have met and become acquainted. There are, however, numerous tribes to whom we are still strangers.

Brothers: It is for . . . extending from nation to nation . . . for adopting such international laws as may be necessary . . . that you have been invited to attend the present council.

Brothers: Let us so then act that . . . we may always live as brothers of the same family.⁶

The court is currently developing a Vision Statement to underscore its basic principles and to direct its future course. The court will continue to be shaped by tribal forces while adhering to the basic principle upon which it is founded: to provide an impartial forum for the review of tribal court decisions.

SOUTHWEST INTERTRIBAL COURT OF APPEALS

P.O. Box 4456, Station A
Albuquerque, New Mexico 87196
(505) 277-5462

Chief Judge:	Honorable Neil Flores (Chief Judge, Colorado River Tribal Court)
Court Clerk:	Vacant
Standing Administrative Committee Chairman:	Honorable William Bluehouse Johnson (Chief Judge, Laguna Tribal Court)
Rules Committee Chair:	Honorable Allan Toledo (Chief Judge, Taos Pueblo Court)
Court Administrator:	Vacant (Ms. Toby Grossman - Acting Court Administrator)

6. W.C. VANDERWORTH, *INDIAN ORATORY* 108-09 (1971). Ross made this plea in June, 1843. The "international" council remained in session four weeks. This speech was given at the beginning of the session.