WHITE MOUNTAIN APACHE TRIBE

RULES OF APPELLATE PROCEDURE

Effective November 12, 2015

WHITE MOUNTAIN APACHE

RULES OF APPELLATE PROCEDURE
CIVIL AND CRIMINAL

TABLE OF CONTENTS

RULE 1	SCOPE	1
RULE 2	SCOPE OF REVIEW	1
RULE 3	RECORD OF PROCEEDINGS	1
RULE 4	NOTICE OF APPEAL	1
RULE 5	FILING AND SERVICE	2
RULE 6	TIME FOR TAKING APPEAL	2
RULE 7	BOND ON APPEAL, STAY OF EXECUTION OF JUDGMENT	2
RULE 8	RECORD ON APPEAL	3
RULE 9	TRANSMISSION OF RECORD; DUTY OF TRIAL COURT	4
RULE 10	NEW MATTER IN TRIAL COURT	4
RULE 11	APPELLATE BRIEFS	4
RULE 12	ORAL ARGUMENT	5
RULE 13	PRECEDENCE OF CRIMINAL APPEALS	5
RULE 14	DISPOSITION OF APPEALS	6
RULE 15	MOTION FOR REHEARING	6
RULE 16	WAIVER OF FORMAL REQUIREMENTS	6
RULE 17	COSTS	6

WHITE MOUNTAIN APACHE
RULES OF APPELLATE PROCEDURE

CIVIL AND CRIMINAL

RULE 1 SCOPE

A. These Rules, which shall be known as the White Mountain Apache Rules of Appellate Procedure, shall govern procedure in all appeals to the White Mountain Apache Court of Appeals.

B. The provisions of the White Mountain Apache Government Code shall apply in all respects to the Court of Appeals unless otherwise provided by the Government Code or these Rules.

RULE 2 SCOPE OF REVIEW

A. Court of Appeals review shall consist of consideration and determination of questions of law which arise from Tribal Court final decisions and orders.

B. Court of Appeals review shall be conducted on the basis of the Record of the Trial Court case, as provided by Rule 8 and 9 of these Rules.

C. The Court of Appeals shall not conduct re-trials of factual matters tried in the Trial Court, and shall not consider new evidence, offered for the first time in the Court of Appeals.

RULE 3 RECORD OF PROCEEDINGS

A verbatim record shall be made of all proceedings in the Court of Appeals. The record may be made by a court reporter, or by such electronic means as may be approved by the Chief Justice of the Court of Appeals.

RULE 4 NOTICE OF APPEAL

A. Filing. An appeal shall be taken by filing a written Notice of Appeal with the Trial Court. A Notice of Appeal may be filed by mail, but the notice must be received by the Trial Court within the allotted time.

B. Content of Notice. The Notice of Appeal shall identify the order, judgment, or sentence appealed from. It shall be signed by the appellant or his or her counsel and shall contain the names, addresses and telephone numbers of all parties of their counsel.

RULE 5 FILING AND SERVICE

A. Filing. All papers required or permitted to be filed by these Rules shall be filed with the Clerk of the Court in which they are to be filed. Filing may be accomplished by mail addressed to the Clerk, but filing shall not be timely unless the papers are received by the clerk within the time fixed for filing.

B. Service. Copies of all papers filed by any party shall, at or before the time of filing, be served by a party or person acting for the party on all other parties to the appeal or their counsel. Service may be personal or by mail. Personal service includes delivery of a copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

C. Proof of Service. Papers presented for filing shall contain an acknowledgment of service by the person served or by proof of service in the form of a statement of the date and manner of service and the name of the person served, signed by the person who made service. The clerk may permit papers to be filed without acknowledgment or proof of service but shall require the acknowledgment or proof of service to be filed within five (5) days thereafter.

RULE 6 TIME FOR TAKING APPEAL

A. The Notice of Appeal shall be filed with the Trial Court within ten (10) days after the entry of judgment, or denial of a motion for rehearing or new trial, whichever is later.

B. Upon its receipt by the Trial Court, the Notice of Appeal shall be marked on its first page with the date of receipt.

C. The date of receipt of the Notice of Appeal by the Trial Court shall be the basis for computation of all time periods dependant on filing the Notice of Appeal.

RULE 7 BOND ON APPEAL; STAY OF EXECUTION OF JUDGMENT; DISPOSITION OF BOND

A. Criminal cases.

1. Matters regarding bonds in criminal appeals shall be determined pursuant to Rule 7.5 of the Rules of Criminal Procedure.

2. Modification and Disposition of Bond. The modification and disposition of all criminal appeals bonds, whether posted pursuant to an order of the Trial Court or an order of the Court of Appeals, shall be determined by the Court of Appeals pursuant to Rules 3.13 and 3.14 of the Rules of Criminal Procedure.

B. Civil cases.

1. Stay of enforcement of judgment. Except in cases involving the custody of children, the appellant in any case may request, and the Trial Court may grant, a stay of execution of the judgment pending the appeal. Except when the appellant is the Tribe or any of its subdivisions, agents, enterprises, or officers acting in their official capacity, the court may require as a condition to the granting of such a stay that the appellant post a bond in such amount as will compensate the appellee for any damages occurring as a result of the stay, and/or guarantee control by the court of sufficient assets of the appellant to satisfy the judgment in the event the judgment is affirmed.

2. Cost bond. Except when the appellant is the Tribe or any of its subdivisions, agents, enterprises, or officers acting in their official capacity, the Trial Court may require that the appellant post a cost bond in an amount which will secure the costs of appeal in the event the appeal is dismissed or the judgment affirmed, or which will secure such costs as the Court of Appeals may direct if the judgment is modified.

3. Disposition of bond. After the Court of Appeals has issued its opinion, it shall upon the motion of any party, or upon its own motion, order such disposition of any appeal bond which may have been posted as it deems just and consistent with these Rules.

4. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits itself to the jurisdiction of the White Mountain Apache Tribal Court and irrevocably appoints the Clerk of the Court as its agent upon whom any papers affecting its liability on the bond or undertaking may be served. Its liability may be enforced on motion in the Tribal Court without the necessity of an independent action. Upon receipt of any notice of such motion, the Clerk of the Court shall forthwith mail copies to the sureties if their addresses are known.

RULE 8 RECORD ON APPEAL, AGREED STATEMENTS

A. Within five (5) days after the filing of the Notice of Appeal, the appellant shall request that the court reporters or transcribers prepare the transcript. Thereupon, each court reporter or transcriber shall promptly prepare the transcript.

B. The parties may stipulate with the approval of the Trial Court, or the Trial Court may order on the motion of a party, that the tape recording of the Trial Court proceedings may be sent to the Court of Appeals without transcription. The Court of Appeals, however, may independently order a transcription of the tape at appellant's expense if, in its discretion, it determines that a transcription is required for a fair and just determination of the appeal.

C. Instead of using the record of proceedings in the Trial Court, the parties may prepare and sign an agreed statement or designation as to the record on appeal. An agreed statement shall show how the issues presented by the appeal arose and where decided in the Trial Court, setting forth only so much of the facts averred and proved as are essential to a decision of the issues presented. Notice that a statement is being prepared shall be served promptly on the Trial Court and the appropriate court reporters and transcribers. The agreed statement shall be submitted for the Trial Court's approval within twenty (20) days of filing the Notice of Appeal. The Trial Court may make such additions as it considers necessary to present the appeal fully.

RULE 9 TRANSMISSION OF RECORD; DUTY OF TRIAL COURT

A. Unless otherwise indicated by stipulation or designation of the parties or action of the Trial Court or the Court of Appeals pursuant to these Rules, the record on appeal shall consist of the originals of all materials and exhibits in the file of the Trial Court and the transcript.

B. Within thirty (30) days of the filing of the Notice of Appeal, the Trial Court and the court reporters or transcribers shall prepare the record, including any transcripts, certify that it is true, correct, and complete as ordered, and transmit it to the Court of Appeals. Prior to the end of the thirty (30) day period, the appellant shall pay to the Clerk of the Court the fees determined by Rule of Court for any transcripts. Unless waived by the Court due to indigency of the appellant, failure of the appellant to pay the required fees for the transcript within the thirty (30) day period shall result in dismissal of the appeal.

C. Upon filing of the record, the Court of Appeals shall forthwith notify the parties in writing of the date of its filing and the schedule for the filing of briefs.

RULE 10 NEW MATTER IN TRIAL COURT

A. After the Notice of Appeal is filed and before the record is transmitted to the Court of Appeals, no new matter may be filed in the Trial Court by any party to any appeal, except matters relating to the correction or modification of the record, matters relating to stays of the execution of judgment or sentence and motions for extensions of time for the transmission of the record.

B. After the record has been transmitted to the Court of Appeals, no new matter may be filed in the Trial Court unless and until jurisdiction is revested in the Trial Court by order of the Court of Appeals.

RULE 11 APPELLATE BRIEFS

A. Time. The appellant's brief shall be filed within twenty (20) days after the service on the parties by the Court of Appeals of notice of filing of the record of proceedings or the denial of a motion for a new trial, whichever is later. The appellee's brief shall be filed

within twenty (20) days after service of the appellant's brief on appellee. No reply briefs shall be filed unless authorized by the Court of Appeals.

B. Briefs shall not exceed fifteen (15) pages in length exclusive of any appendix, except by order of the Court for good cause shown. Briefs which are not clearly legible may be stricken by the Court of Appeals.

C. Contents.

1. The appellant's brief shall include:

a. A short statement of the case, including such facts as are material to the issues presented on appeal, with appropriate references to the record.

b. A concise argument containing the contentions of the party, the reasons therefor, and necessary supporting citations.

c. A short conclusion stating the precise relief sought.

2. The appellee's brief shall be of like character and arrangement as that of the appellant except that no statement of the case is required unless the appellee finds the statement presented by the appellant to be insufficient or incorrect.

3. The appellate brief for either party may include an appendix which may contain pertinent laws, treatises, regulations, rules, instructions or extended quotations from cases and authorities where such quotations are required for proper presentation.

RULE 12 ORAL ARGUMENT

At any time the Court of Appeals may order oral argument upon its own initiative. If a party wishes oral argument, the request shall be made in the caption of the appellate brief at the time the brief is filed. The Court may require a statement explaining why oral argument should, or need not, be permitted. Oral argument shall be allowed when requested by a party unless a panel of three (3) judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary because the appeal is frivolous, or the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

RULE 13 PRECEDENCE OF CRIMINAL APPEALS

Appeals in criminal cases shall have precedence over all other appeals except those from juvenile actions or where otherwise provided by law.

RULE 14 DISPOSITION OF APPEALS

A. Ancillary orders. The Court of Appeals may issue such orders in aid of the proceedings as it deems necessary.

B. The Court of Appeals shall issue a written opinion and mandate within forty-five (45) days of the filing of the last appellate brief in the case, or the hearing of oral argument, whichever is later.

C. Upon issuance of the opinion, the Clerk of the Court of Appeals shall forthwith transmit the opinion and mandate and the Trial Court's file to the Trial Court, and serve copies of the opinion upon the parties.

RULE 15 MOTION FOR REHEARING

A. Any party desiring rehearing of a decision or order of the Court of Appeals which finally disposes of the case, except for an order denying rehearing, may file a motion for rehearing within ten (10) days after service of the decision or order. Accompanying the motion shall be a brief which states, with particularity, the points of law which the party contends the court has decided wrongly. Within ten (10) days thereafter, the opposing party may file a response to such motion. On a motion for rehearing there shall be no oral argument unless requested by the court.

B. No further appeal may be taken from a final decision or order under these Rules.

RULE 16 WAIVER OF FORMAL REQUIREMENTS

Upon a showing of good cause, the Court of Appeals may extend the time for filing an appellate brief, accept a brief or pleading which does not conform to the formal requirements of these Rules but which is legible and understandable, or modify the procedural requirements of these Rules in order to insure that a fair and just determination of the appeal on its merits can be made from the record.

RULE 17 COSTS

Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed or ordered by the Court; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as order by the Court.