



**TRIBAL COUNCIL RESOLUTION NO. 2016 - 07**

**APPROVAL OF AMENDMENTS TO TITLE IV & TITLE VI  
OF TRIBAL CODES, ADOPTION OF TITLE XV RULES OF  
CIVIL PROCEDURE**

- WHEREAS, the Pueblo of Jemez, a federally recognized Indian tribe, has powers of self-government by reason of its original tribal sovereignty, and
- WHEREAS, pursuant to Tribal Council Resolution 95-13, the Pueblo of Jemez Tribal Council adopted the Jemez Pueblo Tribal Law and Order Code subject to future amendments as provided for in the Code; and
- WHEREAS, the Pueblo of Jemez Tribal Council exercises the power to legislate and enact civil and criminal tribal laws to control the conduct and activities of tribal members and non-tribal members, and
- WHEREAS, the Pueblo of Jemez Tribal Council has determined that Titles IV, VI, XV the Pueblo of Jemez Tribal Code, adopted in 1995, are in need of amendments; and
- WHEREAS, the Tribal Council has determined that these amendments to the "Pueblo of Jemez Tribal Code" will continue to strengthen our tribal sovereignty, protect our land and resources of our Pueblo for ourselves and our children, contribute to the judicial needs of the Pueblo and provides for the orderly administration of tribal justice, and assures the maintenance of law and order on the Pueblo of Jemez, and
- WHEREAS, amending the Pueblo of Jemez Tribal Code does not alter, affect, or change the traditional procedures and sanctions used in our Tribal Court and neither is the Code intended to limit the powers of the Governors.
- NOW THEREFORE BE IT RESOLVED that Titles IV and VI, of the "**Pueblo of Jemez Tribal Code**" are hereby amended and Title XV Rules of Civil Procedure are hereby adopted.

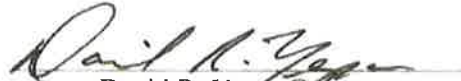
---

***Office of the Governor***

4471 Highway 4, Box 100 • Jemez Pueblo • New Mexico • 87024  
(575) 834-7359 • Fax (575) 834-7331


**CERTIFICATION**

I, THE UNDERSIGNED, as Governor of Pueblo of Jemez do hereby certify that the Jemez Tribal Council at a duly called meeting which was convened and held on the 29th day of January 2016, at Pueblo of Jemez, New Mexico, approved the foregoing resolution that a quorum was present and that 12 voted for and 0 opposed and 0 abstained.

  
David R. Yepa, Governor

ATTEST:   
Lieutenant Governor


**TRIBAL COUNCIL:**

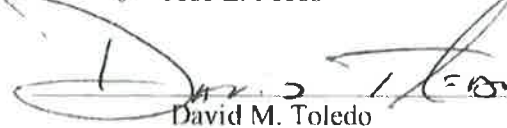
  
Joe Cajero

  
Jose E. Magdalena

  
Paul S. Chinana

  
Jose L. Pecos


  
Raymond Gachupin

  
David M. Toledo

  
Frank Loretto

  
Jose Toledo

  
J. Leonard Loretto

  
Michael Toledo, Jr.

  
Raymond Loretto, DVM

  
Paul Tosa

James Roger Madalena

Vincent A. Toya, Sr.

Joshua Madalena



**Office of the Governor**

## **TITLE XV**

### **PUEBLO OF JEMEZ RULES OF CIVIL PROCEDURE**

#### **RULE 1 PURPOSE AND CONSTRUCTION**

1. This code shall be liberally construed to provide a just and equitable result for the parties to civil actions and members of the Jemez Pueblo community generally, and to secure the just, speedy, and inexpensive determination of every civil action.
2. If a procedure is not specifically pointed out by this code, the Tribal Court may adopt any suitable procedure consistent with the spirit of this code or take any measures reasonably necessary to carry out and protect its jurisdiction.
3. Nothing in this code shall prevent persons involved in a dispute from agreeing to submit their dispute to persons or organizations outside the Court for resolution in an informal manner and nothing herein shall remove the inherent authority of the Tribal Court in a particular case from fashioning and controlling the scope and extent of the proceedings as it deems appropriate.
4. Nothing herein is intended to limit the inherent civil jurisdiction of the Pueblo of Jemez.

#### **RULE 2 COMMENCEMENT OF CIVIL ACTIONS**

1. A civil case shall be brought in the Pueblo of Jemez Tribal Court by filing a complaint or a petition.
2. The complaint shall be filed with the Clerk of the Court and shall state the name of the Plaintiff and the Defendant along with the facts supporting the claim for which relief is requested. The form of relief requested such as damages, declaratory or injunctive relief shall be stated. The complaint shall be signed by the Plaintiff.

3. When the complaint is filed the Clerk shall issue a summons to the Defendants(s). The complaint shall be attached to the summons. The Defendant shall have twenty (20) days from the date he or she is served within which to file an answer to the complaint.

4. Parties may freely amend or supplement their pleadings at any time on such terms as are just, as long as the other party is given notice and an opportunity to respond to or oppose the amendment.

### **RULE 3 STATUTE OF LIMITATIONS**

The general statute of limitations for a civil action shall be two (2) years from the accrual of the action, or when the Plaintiff first discovers the nature of the injury or cause of action, its possible cause and the possible identity of the party whose actions or inaction led to Plaintiff's injuries or harm.

### **RULE 4 SERVICE**

1. The Summons and Complaint shall be served on the Defendant by hand delivery by a Tribal Official, Tribal Law Enforcement Officer (personal service) or certified mail, return receipt requested. Service at a Defendant's usual place of residence by posting or by personal delivery to a person over the age of 18 who is a resident of the Defendant's usual residence shall also be valid. Service shall not be done by the Plaintiff or other party to the action.

2. Personal service by mail shall be made by a person who is over the age of 18 and who is not a party; or by a Court-approved process server.

3. The return of service shall be given to the Clerk, who shall file the return in the case file.

4. If the Defendant(s) cannot be found, the Plaintiff may apply to the court for leave to serve the Defendant(s) by publication in a newspaper of general circulation where the Defendant(s) is known or believed to be located. The Plaintiff shall provide the Tribal Court with an affidavit of

publication showing that the notice of suit has been published at least two times over a four week period.

5. The Plaintiff's failure to serve the Defendant(s) within six (6) months of filing the complaint shall result in a dismissal of the action without prejudice.

#### **RULE 5 COMPUTATION OF TIME**

1. Whenever a rule, tribal law, or an order of the court requires that an action be taken within a certain number of days, the day of the event from which the time limit runs shall not be counted; but the last day shall be counted unless it is a Saturday, Sunday, or tribal holiday. When the last day is a Saturday, Sunday, or tribal holiday, the deadline shall be the first work day following the day that is not counted.

2. When a time limit is counted from or to the time that notice is delivered to a person and the notice is delivered by mail rather than given directly to the person, it shall be presumed that delivery takes place three days after the notice is placed in a United States Postal Service mailbox.

3. On request of a party, and if good cause exists, the judge may allow an extension of any time limit prescribed by a Rule of Civil Procedure or Rule of Court.

#### **RULE 6 NON-RESIDENT SERVICE**

Any person subject to the jurisdiction of the Tribal Court may be served outside the territorial jurisdiction of Pueblo of Jemez Pueblo in the manner described in the above section, which shall have the same force and effect as if the service had been made within the territorial jurisdiction of the Pueblo.

## **RULE 7 PRE-TRIAL PROCEDURE**

1. In the interest of saving time, simplifying issues, and avoiding unnecessary litigation, the Judge may schedule a pretrial conference with all parties in a civil action. The pretrial conference may, in the Court's discretion, be held in an informal setting and conducted without formal procedures. The parties and the Judge should discuss areas where the parties are in agreement and areas where they disagree. The discussion shall have the purposes of identifying and disposing of issues that can be resolved without trial, identifying the issues of law remaining to be decided and, if necessary, limiting the testimony of witnesses and presentation of evidence. Any agreements reached shall be stated on the record or put in writing and signed by the parties.

2. The parties may file such pre-trial motions as are necessary, including motions for immediate injunctive relief with or without notice to the opposing side. Responses to pre-trial motions shall be due within fourteen (14) days of service of the motion, and replies shall be due within seven (7) days of service of the response.

3. The Tribal Court may order the parties to participate in a pre-hearing conference to resolve procedural, discovery and evidentiary issues prior to trial. It shall be mandatory that the parties participate in the pre-hearing conference if so ordered by the Tribal Court.

## **RULE 8 DISCOVERY**

1. It is the policy of the Tribal Court that the truth will be revealed more readily if all parties in a civil case have access to all information and evidence related to the case. In preparation for trial, therefore the parties may ask each other for, and shall make available to each other, all information in each other's possession or control which will be used as evidence in the case, or which can reasonably be expected to lead to evidence.

2. In order to facilitate fair trials and avoid unfair surprise in civil cases, it shall be the policy of the Jemez Tribal Court to allow a party to obtain information about the other party's case.
3. Methods of discovering and exchanging information may include submission of written questions to the other party, requesting admissions of facts, requesting witnesses' names, interviewing the other party's witnesses, and requesting the other party to produce documents or property for inspection. Such requests for information shall be as clear and specific as possible.
4. A party who receives a request for information shall respond within fourteen (14) days unless the Court approves an extension. Failure to respond shall be grounds for the other party to seek a Court order compelling a response.
5. If the parties disagree about whether information is required to be disclosed, the Court shall decide the dispute. If the Court deems it appropriate, conditions may be placed on the release of information to protect confidential material.
6. The parties may engage in such discovery as is necessary for the prosecution and defense of their cases. The parties may apply to the Tribal Court for enforcement of discovery requests and subpoenas or for protective orders.

#### **RULE 9 NOTICE OF TRIAL AND CONTINUANCE**

1. The Tribal Court shall issue a written notice of hearing or trial to the parties.
2. A hearing may be continued upon motion by one or more parties with good cause shown. Such motions shall be filed not less than two (2) business days prior to the hearing.

#### **RULE 10 TRIALS**

1. All civil cases shall be tried by the Court without a jury. At the trial the Tribal Court shall hear testimony and take evidence only on the allegations set forth in the complaint or motion. Procedure at trial shall be as follows unless otherwise agreed by the parties and the Court:

- a. The party bringing the action may make an opening statement summarizing what he or she intends to prove, after which the defendant or respondent may make an opening statement summarizing his or her defense;
- b. The plaintiff or petitioner shall call witnesses or present other evidence in support of his or her case to the Court. The Tribal Court shall order the appearance of any person as a witness in a hearing at the request of any party. The witnesses shall testify under oath and be subject to cross-examination by the defendant. Following cross-examination of witnesses, the plaintiff or petitioner shall have a second opportunity to question the witness about matters raised in cross-examination. When the plaintiff has presented all of his or her witnesses and evidence he or she shall inform the Court that the plaintiff's case is completed;
- c. After the plaintiff's case has been presented, the defendant or respondent may move the Court to dismiss the case. If the Court, after considering the evidence in the light most favorable to the party bringing the action, finds that there is insufficient evidence to support the case, the action shall be dismissed;
- d. If the action is not dismissed, the defendant or respondent shall call witnesses or present evidence. A witness shall testify under oath and be subject to cross-examination by the plaintiff or petitioner, after which the defendant shall have a second opportunity to question the witness about matters brought up during cross-examination;
- e. The Court, in its discretion, may allow the party bringing the action to present additional witnesses or evidence to rebut any new matters presented in the defendant's case, but no evidence or testimony which is merely cumulative or repetitive of the plaintiff's case in chief shall be allowed;

f. The parties shall have the opportunity to present final remarks to the Court. Because the party bringing the action has the burden of proving his or her civil case, he will have an additional opportunity to rebut the opposing party's remarks;

g. The Court shall consider all the evidence and announce a judgment or issue a written decision at a later time.

#### **RULE 11 JUDGMENT**

At the conclusion of the hearing, the Tribal Court shall render a judgment in favor of the Plaintiff or the Defendant in such an amount that is requested or is just or any other relief that the Tribal Court deems just, including such relief as may be available under Pueblo of Jemez Pueblo law, traditions and customs.

#### **RULE 12 DEFAULT JUDGMENT**

Upon the failure of a Defendant to answer or appear at the time ordered, the Plaintiff may proceed to offer evidence that the Defendant was served with the Summons and Complaint, and the Tribal Court may render a default judgment granting the relief requested. Provided however, the defaulting party may apply in writing for a new hearing within ten (10) days of a default judgment, if good cause is shown for his/her failure to answer or appear at the time set by the summons or court order for hearing. If the Plaintiff fails to appear without just cause at the time set for hearing, the Tribal Court may dismiss the cause with or without prejudice.

#### **RULE 13 ENFORCEMENT OF JUDGMENT**

1. The Court may enforce judgment in civil cases by issuing an order against any personal property of the party against whom judgment is rendered when the property is located within the territorial jurisdiction of the Pueblo. The order shall be served by a law enforcement officer. After ten (10)

days of the issuance of the order if the Party against whom an order was issued does not voluntarily bring in the property, the law enforcement officer may go to the location of the property and seize it.

2. A judgment shall be considered a lawful debt in the probate of a decedent's estate.
3. An unsatisfied judgment may be filed as a lien against any funds, salary, or debt owing the Defendant. The prevailing party may apply to the Tribal Court for an order garnishing the non-prevailing party's wages to satisfy a judgment.

#### **RULE 14 RECONSIDERATION**

1. A party aggrieved by the judgment may within ten (10) days of the judgment file a motion for reconsideration if the party believes that the Tribal Court has made an error of fact or law. No new evidence shall be submitted with a motion for reconsideration.
2. The Judge may grant reconsideration and change the judgment if one of the following is found to be true:
  - a. The original judgment was reached as a result of fraud or mistake;
  - b. There is newly discovered evidence which could have affected the outcome of the case and which could not have been discovered with reasonable effort at the time of trial; or
  - c. The Court did not have jurisdiction over the subject matter.

#### **RULE 15 COURT COSTS; LITIGATION COSTS**

Court costs may be included in the judgment. Litigation costs shall be awarded only if provided for by statute, rule, or contract.

#### **RULE 16 RULES OF PROCEDURES, EVIDENCE; FOREIGN LAW**

1. The time and place of court sessions and all other rules of civil procedure not covered by the provisions of this Chapter shall be governed by rules of court issued or adopted by the Tribal Court upon its own motion or the motion of a party.
2. The Tribal Court may promulgate or adopt such rules of evidence as are necessary for the administration of justice.
3. The Tribal Court upon its own motion or the motion of a party may adopt the rulings or case law of foreign jurisdictions in so far as such law does not conflict with federal or tribal law, traditions and customs. The law of foreign jurisdictions is not otherwise applicable in the Tribal Court.