



TRIBAL COUNCIL RESOLUTION NO. 2025 - 15

Amendment to Pueblo of Jemez Rules of Criminal Procedure, Rule 16 Trial by Jury

At a duly called meeting of the Tribal Council of the Pueblo of Jemez on the 8th of May, 2025, the following resolution was adopted:

WHEREAS, the Pueblo of Jemez is a federally recognized sovereign tribal government with a Governor and Tribal Council empowered to exercise all government powers, fiscal authority and tribal sovereignty; and

WHEREAS, the Pueblo of Jemez is a federally recognized sovereign tribal government with a Governor and Tribal Council empowered to initiate and carry out programs for the benefit of the Jemez tribal members; and

WHEREAS, on February 28, 2018, the Pueblo of Jemez Tribal Council approved “for the Tribal Court Judge, Tribal Administration with assistance of the pueblo’s legal counsel to revise/modify the Tribal Court structure and to revise the Jemez Tribal Code to avoid challenges from tribal members in federal court for alleged violations of rights afforded under the Indian Civil Rights Act of 1968”; and

WHEREAS, on April 15, 2025, the Tribal Council reaffirmed its 2018 decision to revise the Pueblo’s Tribal Code, in particular Rule 16 Jury Trials and granted authority to the Tribal Court Judge to develop jury trial rules and procedures and to issue an order setting out a mechanism to implement these jury trial rules for criminal cases filed in the Tribal Court, and

WHEREAS, pursuant to the Acknowledgment of Tribal Council Decision Authorizing the Tribal Court to Develop and Implement Jury Trial Rules and Procedures for Criminal Cases, the Tribal Council retained the inherent authority to make changes in the jury trial rules issued by the Court, which changes shall be effective if made prior to commencement of the jury selection process in any criminal case in which a timely request for a jury trial has been made, and

WHEREAS, pursuant to the authority granted by the Tribal Council, the Tribal Court Judge on May 2, 2025, issued an Administrative Order No. 2025- AO-0001 Adopting Jury Rules and Procedures; and

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WHEREAS, the Tribal Council has reviewed and discussed the Administrative Order No. 2025-AO – 0001 issued by the Tribal Court Judge and pursuant to its retained authority as the governing body the Tribal Council hereby modifies the Court's Rules of Procedure for Jury Trials.

NOW THEREFORE BE IT RESOLVED THAT the Tribal Council hereby modifies Paragraph *I. Jury Trials and Paragraph II. Jury Qualification and Selection*, of the Court's Rules of Procedure for Jury Trials to read as follows effective the date of signature of this Resolution and shall be implemented by the Tribal Court for jury trials:

RULE 16 - RULES OF PROCEDURE FOR JURY TRIALS

I. Jury Trials

- a. A Defendant charged with a criminal charge punishable by incarceration may demand trial by jury by filing a written demand with the Tribal Court no later than ten (10) days after the arraignment. The failure of a Defendant to demand a trial by jury as required by this rule shall constitute a waiver of the trial by jury.
- b. The Tribal Court shall not grant a demand for a trial by jury filed after the time fixed has elapsed except upon the written agreement of the Pueblo prosecution and the defense, which agreement shall be filed with the Court and made a part of the record. If such agreement is filed, then, the Tribal Court may, in its discretion, continue the trial date and grant a trial by jury.

II. Jury Qualification and Selection

- a. To be eligible to serve as a juror, a person must be an enrolled tribal member, a spouse of a tribal member residing on Jemez Pueblo lands and/or a non-member permanent resident of the Pueblo of Jemez. A juror must be 18 years of age or older, never have been convicted of a felony in any court, and must

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not be a registered sex offender. Any person or tribal member who is a member of the religious supreme council, heads of the hunt and warrior societies, heads of the women societies, and members of the secular Tribal Council shall not be eligible to serve on a jury panel. Any person serving in an annually appointed tribal official position for the Pueblo of Jemez shall be ineligible to serve on a jury panel during his term of appointment. Also ineligible to serve on a jury panel are the Pueblo's Tribal Administrator, Assistant Tribal Administrator, Tribal Court Staff and Law Enforcement Officers for the Pueblo of Jemez or any person who is a witness or a party in the matter before the court.

i. Permanent Resident: A permanent resident of the Pueblo is a person who rents, owns, or otherwise resides in a dwelling place on the reservation and who resides in that dwelling place other than seasonally or periodically, and who intends to make the reservation his or her permanent home for the indefinite future, and who does not claim residence in any other location for any purpose. A non-member who is authorized by the Governor or Tribal Council to reside on the Pueblo may be a permanent resident of the reservation for the purposes of this section.

ii. Tribal Member: Tribal members must meet the qualifications in section (a) above. Tribal members residing outside the State of New Mexico may be qualified for jury duty. The tribal members who reside outside the

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geographic area described above may serve jury duty by filing a *statement of juror eligibility* with the Tribal Court, if and when selected to serve as a juror.

iii. Non-member Spouse of a Tribal Member: A spouse of Tribal Member is a person who is traditionally and/or legally married to a Pueblo of Jemez member and otherwise meets the juror qualifications.

b. Jurors for trial shall be selected from a list of eligible jurors prepared from the Pueblo of Jemez Enrollment Office.

i. The list of eligible jurors will be provided by Tribal Enrollment, or a designee thereof, and submitted to the Tribal Court no later than January 15th of each year.

ii. The clerk of the court shall eliminate those persons who do not meet the qualifications set forth in Section II.

iii. After the clerk of the court eliminates those individuals on the Tribal Roll that do not qualify, the remaining persons that do qualify will be considered members of the master jury panel or master jury pool list.

c. Selections of panel; jury summons; failure to appear; excuse from jury duty.

i. The Court Administrator and Court Clerks shall draw 30 random names from the master jury list, not less than 35 days before the date set for the beginning of a jury trial. The clerk of the court shall then issue and cause to be served, upon each person who was selected, a jury duty summons.

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- ii. The jury summons shall notify the person being summoned to appear in Court one hour before the time set for trial on the date set for trial.
- iii. Failure of a person served with a jury summons to appear shall constitute contempt of court and the summons shall contain a warning to that effect.
- iv. Any person for whom jury service would be a severe hardship may be excused from service by the Judge, but such excuse from jury duty shall be disfavored. Severe hardship may include, but is not limited to:
 - 1. Having to travel more than 150 miles one-way,
 - 2. Having to stay overnight in order to serve upon a jury, when such has not been ordered by the court or presiding Judge as a condition of sequestering the jury,
 - 3. Interference with employment which would cause severe financial hardship on the person, and
 - 4. Interference with other duties to another court of law.
- v. On the day of the trial, upon the 30 jurors arrival at the courthouse the Judge will have an introductory greeting, welcoming the prospective jurors to the courthouse. The Judge's personal greeting provides the citizens with recognition of the importance of jury service.
- vi. During the Judge's introductory greeting, the clerk shall deposit the ballots in a ballot box containing the names of each of the summoned potential jurors who have appeared by the time set for their appearance.

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Those persons whose names are in the ballot box shall be known as the jury panel. After the Judge calls the court to order, the names of 14 members of the jury, shall be drawn from the ballot box, at random, and be seated in the designated jury area. The clerk shall make a list of the names in the order in which they are called, giving each juror an assigned jury number to identify that juror.

BE IT FURTHER RESOLVED THAT the remaining sections of the Jury Trial Rules in the Tribal Court Judge's Administrative Order No. 2025 - AO-0001 as published are approved and shall be implemented by the Tribal Court and incorporated into the Pueblo's Tribal Code Rules of Criminal Procedures.

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CERTIFICATION

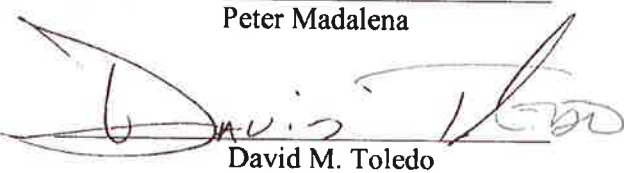
I, THE UNDERSIGNED, as Governor of Pueblo of Jemez do hereby certify that the Jemez Tribal Council at a duly called meeting which was convened and held on the 8th day of May 2025, at Pueblo of Jemez, New Mexico, approved the foregoing resolution that a quorum was present and that 9 voted for and 0 opposed and 2 abstained.

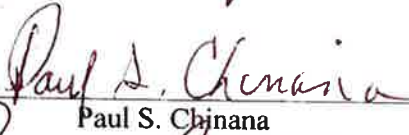

George Skendo, Jr. Governor


ATTEST: 1* Lieutenant Governor

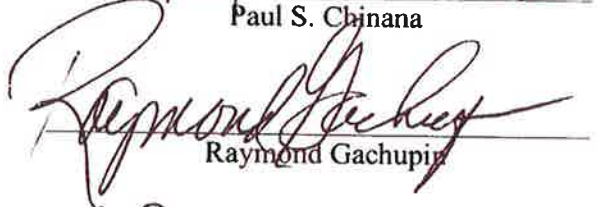
TRIBAL COUNCIL:


Joe Cajero


Peter Madalena


Paul S. Chinana

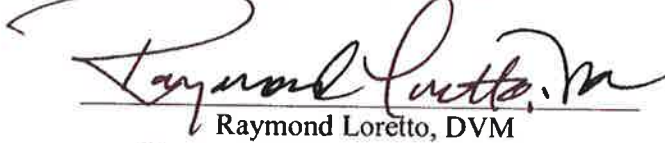

David M. Toledo

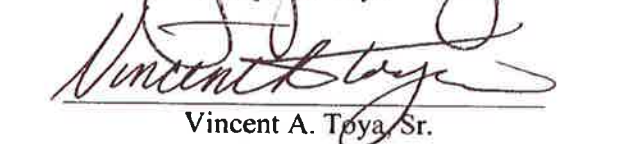

Raymond Gachupin


Dominic Gachupin

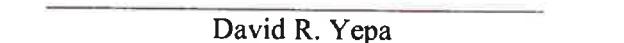

J. Leonard Loretto



Joseph A. Toya


Raymond Loretto, DVM


Vincent A. Toya, Sr.


James Roger Madalena


David R. Yepa


Joshua Madalena

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TRIBAL COUNCIL RESOLUTION No. 2011- 27

Amending Titles I, II and III of the Pueblo of Jemez Tribal Code

At a duly called meeting of the Tribal Council of the Pueblo of Jemez, the following resolution was passed:

WHEREAS, the Pueblo of Jemez is a federally recognized Indian Tribe with inherent powers of self-government and pursuant to its tribal sovereignty has the powers to legislate, enact and amend tribal laws; and

WHEREAS, the Pueblo of Jemez Tribal Council adopted by Resolution 1995-17, the Jemez Pueblo Tribal Code subject to future amendments as provided for in the Code; and

WHEREAS, the Jemez Pueblo Law Enforcement Services, Tribal Courts and the Pueblo's legal counsel have determined that Titles I, II and III of the Pueblo of Jemez Tribal Code are in need of amendments and have recommended revisions to Titles I, II and III; and

WHEREAS, the Tribal Council has determined that these amendments will continue to strengthen our tribal sovereignty, contribute to the judicial needs of the Pueblo and provide for the orderly administration of tribal justice and assure the maintenance of law and order on the Pueblo of Jemez.

NOW THEREFORE BE IT RESOLVED that the proposed amendments to Titles I, II and III of the Pueblo of Jemez Tribal Code, are hereby approved and adopted as laws of the Pueblo and shall become effective September 1, 2011, and

BE IT FURTHER RESOLVED that the newly adopted amendments to Titles I, II and III of the Pueblo of Jemez Tribal Code supersedes all prior code provisions and shall be incorporated into the Pueblo of Jemez Tribal Code.

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TRIBAL COUNCIL RESOLUTION No. 2011- 27
Amending Titles I, II and III of the Pueblo of Jemez Tribal Code

CERTIFICATION

I, the undersigned, as the Governor of the Pueblo of Jemez hereby certify that at a duly called meeting of the Tribal Council held on the 21st day of July, 2011, the foregoing resolution was passed, a quorum being present and that 10 voted for with 0 opposed and 0 abstained.

Michael Toledo Jr.
Michael Toledo Jr., Governor

Attest: George Shredley
1st Lieutenant Governor

TRIBAL COUNCIL:

Joe Cajero
Joe Cajero

Roger Madalena

Paul S. Chinana
Paul S. Chinana

Jose L. Pecos
Jose L. Pecos

Raymond Gachupin
Raymond Gachupin

Arthur Sandia
Arthur Sandia

Frank Loretto
Frank Loretto

Jose Toledo

J. Leonard Loretto

David M. Toledo

Raymond Loretto

Paul Tosa
Paul Tosa

Jose E. Magdalena
Jose E. Magdalena

Vincent A. Toya, Sr.
Vincent A. Toya, Sr.

Joshua Madalena
Joshua Madalena

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RESOLUTION NO. 95-13

WHEREAS, The Pueblo of Jemez, a federally recognized Indian Tribe, has the powers of self-government by reason of its original tribal sovereignty, and

WHEREAS, by virtue of the Pueblo's original tribal sovereignty, the Pueblo of Jemez Tribal Council possesses the power to exercise legislative powers over the activities of all persons, Indian and Non-Indian alike, to protect tribal interests within the lands of Jemez Pueblo, and

WHEREAS, the Pueblo of Jemez Tribal Council is exercising 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 considered the benefits, impacts, disadvantages, and advantages to enacting the Pueblo of Jemez Tribal Law & Order Code which also includes "Exclusion & Removal of Persons", "Wildlife Conservation Code and Hunting, Fishing, & Trapping Regulations", "Repossession of Property", "Traffic Code", and "Real Estate",

WHEREAS, the Tribal Council proclaims that adopting the Pueblo of Jemez Tribal Law & Order Code along with its specific titles as our tribal laws further strengthens our Tribal Sovereignty, protects our land and resources of our Pueblo for ourselves and our children, contributes 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, adopting the Pueblo of Jemez Tribal Law & Order Code with its Titles 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 the Pueblo of Jemez Law & Order Code with comprised sections from Title I through Title VIII is hereby adopted as the tribal laws of the Pueblo of Jemez, subject to future amendments as provided in the Code, and

BE IT FURTHER RESOLVED that the Pueblo of Jemez Law & Order Code with its Titles will become effective on August 23, 1995.

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C E R T I F I C A T I O N

I, the undersigned as Governor of the Pueblo of Jemez do hereby certify that the foregoing resolution was passed at a duly called meeting of the Tribal Council on the 23rd day of February, 1995, in which 6 voted for and 0 voted against.

Paul S. Chinana
Paul S. Chinana, Governor
Pueblo of Jemez

ATTEST: Vincent H. Toye

Joe Talado
Councilman

Rosendo Achuyuri
Councilman

Joe V. Coyne
Councilman

Councilman

Paul [unclear]
Councilman

Quint [unclear]
Councilman

Norm L. Peora
Councilman

Councilman

PUEBLO OF JEMEZ RULES OF CRIMINAL PROCEDURE
TITLE II
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**TITLE II
PUEBLO OF JEMEZ RULES OF CRIMINAL PROCEDURE**

CHAPTER 1 SCOPE, PURPOSE AND CONSTRUCTION

RULE 1 SCOPE, PURPOSE AND CONSTRUCTION

These rules govern the procedure in all criminal proceedings in the Jemez Pueblo Tribal Court. Every proceeding in which a person is charged with an offense of any degree and brought to trial and punished is a criminal proceeding. These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and elimination of unjustifiable delays.

CHAPTER 2 PRELIMINARY PROVISIONS

RULE 2 PROSECUTION OF OFFENSES

1. No person shall be punished for an offense except upon a conviction, including a plea or admission of guilt in open court, or a finding of guilt after a trial by the Tribal Court. No incarceration of one accused of an offense before trial shall be deemed a punishment.
2. All criminal proceedings shall be prosecuted in the name of the Pueblo of Jemez as Plaintiff against a person charged with an offense referred to as the Defendant.
3. Criminal proceedings shall be commenced by filing a complaint with the Tribal Court Clerk.

RULE 3 RIGHTS OF DEFENDANT

In all criminal proceedings, the Defendant shall have the following rights:

1. To appear and defend in person;
2. To be informed of the nature of the charges against him/her and to have a copy of the complaint;
3. To testify on his/her own behalf;
4. To confront and cross-examine all witnesses against him/her;
5. To compel by subpoena the attendance of witnesses in his/her behalf;
6. To have a speedy trial; and
7. Not to be twice put in jeopardy by the Tribal Court.

8. All other rights and protections which have been conferred upon the defendant by the Indian Civil Rights Act of 1968, 25 U.S.C. § 1301 et. seq. (As amended Pub. L. 99-570, Title IV, § 4217, Oct. 27, 1986).

CHAPTER 3 PRETRIAL PROCEDURES

RULE 4 COMPLAINT

1. The Complaint is a written statement of the essential facts concerning the offense charged.

2. The complaint must state:

- a. The name and address, if known, of the person accused;
- b. It shall state the essential facts concerning the offense charged;
- c. The general name and code designation of the offense;
- d. The date, place where alleged offense was committed, and the approximate time of the commission of the offense;
- e. The name and address of the person filing the complaint; and
- f. The complaint shall be signed by the Plaintiff attesting under penalty of perjury to the truth of the matters stated in the complaint.

3. Traffic citations may be issued and take the place of the complaint in traffic offense cases.

RULE 5 ARREST - WARRANT OR SUMMONS

1. Upon the issuance of the complaint by the Tribal Court, a warrant of arrest or a summons, shall be issued to bring the Defendant named in the complaint before the Tribal Court.

2. Summons to appear:

a. The court may issue a summons instead of a warrant where the court in its discretion deems that the arrest is not essential. The summons shall direct the Defendant to appear before the Tribal Court at a stated time and place to answer to the complaint. The summons shall notify the Defendant that a warrant for his or her arrest will be issued in the event that he or she fails to appear before the Tribal Court. The summons may be served at any place within the exterior boundaries of the Jemez Indian Reservation and/or it may be served off the reservation by any authorized Law Enforcement Officer.

b. A copy of the complaint shall be served within twenty (20) days of the filing of the complaint by the tribal police, tribal official, or by a person designated by the Tribal Court over the age of eighteen years by delivering a copy to the Defendant. The officer or the person making the service shall make a return of service which shall be filed with the Court Clerk.

3. Warrants for arrest:

a. Where the court deems that an arrest is essential, the court shall issue an arrest warrant which shall be signed by a judge of the Tribal Court and shall contain the name of the Defendant. It shall describe the offense charged in the complaint. It shall command that the Defendant be arrested and incarcerated pending a hearing before the Tribal Court.

b. Before a warrant of arrest can be issued the judges must find that there is probable cause to believe that an offense has been committed within the jurisdiction of the Jemez Tribal Court and that the Defendant has committed the offense. A warrant for the arrest of the Defendant shall issue to any Jemez Tribal Law Enforcement Officer or tribal official authorized to execute the warrant.

4. Execution of warrant:

a. The warrant shall be executed by a Jemez Tribal Law Enforcement Officer or a tribal official. The warrant may be executed at any place within the exterior boundaries of the Jemez Pueblo Indian Reservation.

b. If the Jemez Tribal Law Enforcement Officer or tribal official does not have the warrant in his or her possession at the time of arrest, he or she shall then inform the Defendant that a warrant has been issued, the nature of the charge and shall provide the Defendant with a copy of the arrest warrant and the complaint not later than at the time of entry of the plea by the Defendant.

c. No tribal arrest warrant shall be valid unless it has the signature of the Tribal Court Judge.

d. No members of any authorized police department, or tribal official, shall arrest any person for an offense listed in this Code, without an arrest warrant except (1) when such offense shall occur in the presence of the arresting officers or Tribal Official (2) when the offense is a domestic violence offense; or (3) when a Law Enforcement Officer or tribal official, within 24 hours of the occurrence of a criminal act has probable cause to believe that the person committed the crime, whether the alleged act occurred in the presence of the officer or tribal official.

RULE 6 SEARCH WARRANTS

1. A search warrant is a written order signed by Tribal Court Judge directed to a Law Enforcement Officer or tribal official ordering the officer or tribal official to conduct a search and to secure items or property specified in the warrant. A search warrant shall specifically

describe the property or place to be searched and shall describe specifically the items to be seized.

2. A search warrant authorized under this rule may be issued by the Tribal Court Judge on request of a Tribal Official, Jemez Tribal Law Enforcement Officer or any law enforcement agency.

3. A warrant may be issued under this rule to search for and seize any:

a. Property that constitutes evidence of the commission of a crime.

b. Contraband, the fruits of crime, or things otherwise unlawfully possessed.

c. Property designated or intended for use which is or has been used as the means of committing a criminal offense.

4. The Tribal Court shall have the power to issue a warrant for the search and seizure of property on the premises of any person under the jurisdiction of this Court.

5. A search warrant shall be issued only on sworn statements before the Tribal Court. If the Court is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, the Tribal Court shall issue a search warrant identifying the property and naming or describing the person or place to be searched. A search warrant shall direct that it is served between the hours of 6:00 a.m., and 10:00 p.m., according to local time unless the Tribal Court, by appropriate provision in the warrant and for reasonable cause shown, authorizes its execution at any time.

6. The service of warrants for search and seizure shall be made only by members of the Jemez Tribal Law Enforcement Officer or Tribal Officials. The Tribal Officials or Jemez Tribal Law Enforcement Officer shall execute on the search warrants within five days of the date of issuance. Warrants not used and returned within such time shall be void.

7. The officer taking the property under a search warrant shall give the person from whom or from whose premises the property was taken, a copy of the warrant and a receipt of the property taken. An inventory of the property taken shall be filed with the Tribal Court.

RULE 7 SEARCH WITHOUT A WARRANT

1. No Law Enforcement Officer or tribal official shall conduct any search or seize any property upon the Jemez Pueblo Reservation without a valid warrant except:

a. With the consent of the person searched.

b. A search is of an automobile or a person incident to a lawful arrest.

c. When the officer has probable cause to believe that the automobile contains contraband, stolen or embezzled property.

RULE 8 DISPOSITION OF SEIZED PROPERTY

A hearing may be held by the Court to determine the disposition of all property seized by the Law Enforcement Officers. Upon satisfactory proof of ownership, property shall be delivered to the owner unless such property is found by the Court to be used as evidence in a pending case or is considered to be illegally possessed evidence. Property taken as evidence shall be returned to the owner after a final judgment. Property confiscated as contraband shall become the property of the Pueblo of Jemez and may be either destroyed or sold at a public auction, the proceeds of which shall be retained for the benefit of the Pueblo or otherwise lawfully disposed of as ordered by the Court.

RULE 9 PRETRIAL DIVERSION

1. **PURPOSE.** The purpose of Pretrial Diversion Program is to remove those persons from the tribal criminal justice system who are low to medium risk offenders or who are most amenable to rehabilitation and least likely to commit future offenses. The goal of the pretrial diversion program is to reduce adult crime and violence by accepting individuals, who meet the eligibility requirements established by the program and who are referred by the Tribal Court Judge.

2. **FUNCTIONS AND RESPONSIBILITIES.** The Pretrial Diversion Program shall develop structured and cultural based diversion classes and activities, develop alternatives and options to improve services to adult offenders who are eligible for pretrial diversion. The program shall include individual counseling and guidance for participants, victim restitution where applicable and referral resources where participants may be sent for treatment and rehabilitation. The Pueblo of Jemez Probation Officers shall make the initial determination of whether an individual is qualified or eligible to participate in the program in accordance with procedures established in the program. The Tribal Court Judge may on his own refer a defendant for consideration in the program.

3. **SUSPENSION OF CRIMINAL PROCEEDINGS.** If a Defendant is determined to be eligible and the recommendation of the Probation Officer to allow Defendant to participate in the Pretrial Diversion Program is accepted by the Tribal Court Judge, the criminal proceedings against the Defendant shall be suspended on the condition that the Defendant waive his right to a speedy trial and any rights provided under Title II of these Rules of Criminal Procedure and the Indian Civil Rights Act, 25 USC§1302.

4. **PROGRAM PARTICIPATION AND TERMINATION.** If a Defendant does not comply with the terms, conditions and requirements of the Pretrial Diversion Program or of the conditions imposed by the Court to participate in the program, his participation in the program shall be terminated and the Defendant's case shall be placed on the Criminal court docket for prosecution.

The Probation Officer shall be responsible for informing the court of Defendant's noncompliance with the Program and state in writing specifically the reasons for the termination. If the Defendant successfully completes the program as required and meets all of the conditions as imposed, the criminal charge(s) against Defendant shall be dismissed.

RULE 10 ARRAIGNMENT

1. Explanation of Rights. Upon the first appearance of the defendant before the Jemez Tribal Court in response to a summons or warrant or following arrest, the judge shall inform the defendant in Towa or when necessary in English the following:

- a. inform defendant of the offense(s) charged;
- b. the maximum penalty and mandatory minimum penalty, if any, provided for the offense charged;
- c. the right to bail

2. At the arraignment, the Defendant shall be read the complaint and be asked to enter a plea of guilty, not guilty or no contest. The Court shall provide a copy of the complaint to the Defendant if he or she has not already received one.

3. The arraignment shall be held within forty-eight (48) or seventy-two (72) hours, excluding weekends, and holidays after an accused has been arrested and placed in custody. When the stated 48 hours shall have passed without arraignment, the accused shall be immediately released from custody except unless the circumstance may result in harm. The Court prior to release from custody, may issue to the accused a summons for appearance in Court at a later time. Such summons shall clearly state the name of the accused, the charges filed against the accused, and the time and the date when the arraignment will be held. Failure of the accused to appear as required by the summons shall result in the issuance of a warrant for the arrest of the accused. When the accused is brought before the Court, a hearing shall be held to determine whether he should be held in contempt.

4. If the defendant pleads guilty, the judge shall accept the plea only after determining that the plea is made knowingly and voluntarily with a full understanding of the nature of the charge and the consequences of the plea. The judge shall not enter a judgment upon a plea of guilty unless (s)he is satisfied that there is a factual basis for the plea. If a plea of guilty is accepted and judgment entered, the judge shall sentence the defendant immediately or within a reasonable period, giving the defendant an opportunity to inform the court of mitigating facts.

RULE 11 PLEAS

1. A Defendant may plead guilty, no contest, or not guilty to a criminal charge. If the Defendant refuses to plea, a plea of not guilty shall be entered.

2. If the accused plead not guilty to the charge, the Court shall inform the accused of a trial date and impose conditions for bail or other release conditions prior to trial.

3. If the accused pleads guilty to the charge, the Court shall determine whether the plea is made voluntarily or with full understanding of the charges and that the accused understands the consequences of the plea. Upon accepting a plea of guilty, or no contest, the Court may impose a sentence or defer the sentence for a reasonable time in order to obtain any information necessary for the imposition of a just sentence.

RULE 12 BAIL; RELEASE FROM CUSTODY

1. Except as herein provided, all persons arrested for offenses under this Code and incarcerated shall be given the opportunity to make bail and be released pending their trial.

2. Bail shall be set in an amount specified in the bail schedule. A Defendant may obtain a release from jail at any time prior to arraignment by posting the amount of bail specified in the bail schedule for the offense or offenses charged unless otherwise ordered by the Court.

3. The Court may in its discretion release the Defendant on his or her own recognizance if it appears substantially certain, considering all relevant factors that the Defendant will appear for Court at the appointed time.

4. In those cases where a bail has been set the Defendant shall be released after the bond has been deposited with the Court in the amount specified by the Court or the bail schedule.

5. In the event that the Defendant fails to appear as instructed, the Defendant will forfeit any cash deposit and be subjected to a contempt charge for failing to appear for court.

6. Penalty for Failure to Appear

Whoever, having been released pending trial fails to appear before Court as required or fails to surrender for service of sentence pursuant to a Court Order, shall be guilty of Failure to Appear for Court and sentenced in accordance with the penalties as provided in Title III, Section 3-2-82.

7. Penalty for Violations of a Release Condition

A person who has been released pending trial and who has violated a condition of his/her release, is subject to a revocation or release and an order of detention. A Law Enforcement Officer, tribal official, or probation officer may initiate the proceeding for the revocation of an order of release by filing a motion with the court. A judge may issue a warrant for the arrest of the person charged with violating a condition of release and the person shall be brought before a judge for a hearing to determine if the person has violated a condition of release. The Judge shall enter an Order of Revocation and Detention if, after hearing, the Judge finds there is probable cause to believe that the person has committed a federal, state, or tribal crime while on release or violated one or more of the release conditions.

RULE 13 PLEADINGS AND MOTIONS BEFORE TRIAL; DEFENSES AND OBJECTIONS

1. Pleadings in criminal proceedings shall consist of the complaint and the plea of either guilty, not guilty or no contest. All other pleas and motions shall be made in accordance with these rules.
2. Motions raising defenses and objections may be made as follows:
 - a. Any defenses or objections which are capable of determination other than at trial may be raised before trial by motion.
 - b. Defenses and objections based on defects in the complaint may be raised only on motion before trial or such shall be deemed waived.
 - c. Lack of jurisdiction or failure to charge an offense may be raised as defenses or noticed by the court on its on motion at any stage of the proceeding.
 - d. Motion to dismiss for lack of jurisdiction may be made in writing and filed with the Court at least five days before the day set for trial. Such motion will be argued before trial or on the date of trial unless the Court directs otherwise.
 - e. If a motion is decided against a Defendant, the trial shall proceed as if no motion were made. If a motion is decided in favor of a Defendant, the Tribal Court shall alter the proceedings or enter judgment as is appropriate in light of the decision.

RULE 14 JOINDER OF OFFENSES AND OF DEFENDANTS

1. Two or more offenses may be charged in the same complaint in a separate count for each offense if such offenses are of the same character or are based on the same act or transaction or constitute part of a common scheme or plan.
2. Two or more Defendants may be charged in the same complaint if they are alleged to have participated in the same act or transaction constituting an offense or offenses. Such Defendants may be charged in one or more counts together or separately and all such Defendants need not be charged on each count.
3. If it appears that a Defendant is prejudiced by a joinder of offenses or other Defendants for trial together, the Court may order separate complaints and may order separate trials or provide such other relief as justice requires.

RULE 15 TRIAL BY THE COURT

1. **CALL TO ORDER.** The Tribal Court pursuant to its tribal tradition and custom shall open the hearing and determine whether the Defendant, or any witness subpoenaed are present for the hearing.

2. **READING OF COMPLAINT.** The Tribal Court shall read the complaint to the Defendant and cite the provision of the Criminal Code under which Defendant is charged.

3. **PRESENTATION OF EVIDENCE/TESTIMONY.** Evidence shall be presented in support of the charge against the Defendant. In all trials, the testimony of witnesses shall be given under oath in open court subject to the right of cross-examination. Documents and other tangible evidence material and relevant to the case may be received in evidence if properly identified. The admissibility of evidence and the competence and privilege of witnesses shall be governed by the rules traditionally followed by the Tribal Court.

4. **RIGHT TO CONFRONT WITNESSES.** All Defendants charged under this Tribal Code shall have a right to confront the witness against him or her, and the right to cross-examine them.

5. **EXCLUSION OF WITNESSES.** Witnesses may be excluded from the hearing upon a motion or request by a party or at the Court's discretion.

RULE 16 TRIAL BY JURY (RESERVED)

RULE 17 SUBPOENA/ISSUANCE OF SUBPOENA

1. A subpoena is an order of the court issued by a judge or the Clerk of the Court. It shall contain the name of the court, the title of the case, and shall command each person to whom it is directed to attend and give testimony or produce for use at trial documents, objects, names, at the time and place specified.

2. The Clerk shall issue subpoenas to compel the attendance of witnesses, or other persons as the court may direct for a trial, hearing or other proceeding before the Tribal Court.

3. In a criminal case, the complaining witnesses and all witnesses for the Pueblo may be subpoenaed to appear at the date and time set for trial. The Defendant shall have the right to have witnesses subpoenaed to appear in his behalf by notifying the clerk of the court of the names and addresses of such witnesses.

RULE 18 SERVICE OF SUBPOENAS; RETURN OF SERVICE

1. A subpoena may be served any place within the territorial jurisdiction of the Jemez Tribal Court. Subpoenas in criminal cases may be served by Law Enforcement Officer, tribal official or other persons designated by the Court.

2. The person serving a subpoena shall endorse upon the copy served, his name, title, and the place, date, and time of service.

3. Subpoenas in non-criminal cases may be served by any person, over eighteen years of age, not a party to the action.

4. The person serving a subpoena shall make a return to the Clerk stating the name of the case, the name of the person served, the place, date, and time of service, and shall sign his name on the return thereto under a penalty of perjury for the intentional making of a false return.

RULE 19 JUDGMENT

Judgment of conviction shall set forth the plea, the verdict of findings and the sentence imposed. If the Defendant is found not guilty or for any other reason entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the presiding judge and entered by the Court Clerk.

RULE 20 SENTENCE

A sentence shall be imposed without unreasonable delay as provided in this Code. The determination and imposition of the sentence shall be in accordance with the provisions on sentencing set forth in the Pueblo of Jemez Tribal Code for each specific offense. The sentence shall be imposed at a separate sentencing hearing or at the time a person pleads guilty or no contest to a criminal offense or, if the case goes to trial and the person is found guilty, the sentence shall be imposed at the end of the trial. When a defendant is sentenced to pay a fine, the court may permit payment within a definite period or by installment. In the absence of such permission, a fine shall be payable forthwith, and any installment thereof, shall be payable to the Tribal Court.

RULE 21 COST

In every case in which there is a conviction, the costs shall be assessed against the Defendant. Whenever fines or costs are received in the Tribal Court in any criminal action, the Tribal Court shall complete a criminal fine receipt and deliver a copy to the Defendant.

RULE 22 NEW TRIAL (RESERVED)

RULE 23 CLERICAL MISTAKES

Clerical mistakes and errors in judgments, orders, in the record arising from oversight or omission may be corrected by the Court at any time.

RULE 24 RIGHT OF APPEAL; HOW TAKEN (RESERVED)

RULE 25 STAY OF JUDGMENT AND RELIEF PENDING REVIEW (RESERVED)

RULE 26 EXTRADITION

1. Requirements of Extradition.

a. No demand for the extradition of a person charged with a crime in another jurisdiction shall be recognized by the Tribal Court unless such demand is in writing alleging that the accused was present in the demanded jurisdiction at the time of the commission of the alleged crime and that thereafter fled from that jurisdiction. The demand for extradition shall be supported by an affidavit, indictment or information in the jurisdiction of the crime made before a judge there, together with a copy of any warrant which was issued by the executive authority of the demanding jurisdiction. The indictment, information or affidavit must substantially charge the person demanded with having committed a crime under the law of that jurisdiction and a copy of indictment, information, affidavit, must be certified or authenticated by the executive authority.

b. When a demand shall be made on the Tribal Court for the surrender of a person so charged with a crime the Tribal Court shall cause an investigation to be made of the demand and to report to the Tribal Court the situation and circumstances of the person so demanded and whether he should be surrendered.

2. Warrants of Arrest.

a. If the Tribal Court decides that the demand shall be complied with, the Court shall issue an arrest warrant which shall be directed to a Jemez Tribal Law Enforcement Officer or Tribal Sheriff, for execution.

b. Such warrant shall authorize the Jemez Tribal Law Enforcement Officer or Tribal Sheriff to arrest the accused at any time and any place where he may be found within the exterior boundaries of the Pueblo of Jemez and to deliver the accused, subject to the provisions of this Section, to the duly authorized agent of the demanding jurisdiction.

3. Rights of Persons Arrested.

a. The person arrested upon such warrant shall be delivered over to the executive authority demanding him and he shall be informed of the demand made for his surrender and of the crime with which he is charged.

4. Delivery of a Person in violation of Extradition Process.

a. Any State, Municipal, County, BIA Law Enforcement Officer who removes a person from the reservation for extradition without the Tribal Court's order or in willful disobedience of the tribal law may be charged with Trespass and upon conviction thereof shall be fined up to five thousand dollars (\$5,000.00).

RULE 27 REGULATION OF CONDUCT IN TRIBAL COURT ROOM

The Tribal Court shall regulate the conduct of persons in the court room. Further, the Court may forbid the taking of photographs or other visual or audio recordings of the proceeding occurring therein. Any person who violates this rule shall be charged with Contempt.

RULE 28 PROBATION

1. When a sentence of imprisonment has been imposed on Defendant convicted of a charge, the Tribal Court may in its discretion suspend the sentence and release the person on supervised or unsupervised probation under any conditions found reasonable and appropriate by the Court.
2. Any person who violates the terms of probation may be required by the Court to serve the sentence originally imposed or such part of the sentence as may be determined to be suitable giving consideration to all circumstances, provided that such revocation of probation shall not be ordered without a hearing before the Court at which time the offender shall have the opportunity to explain his or her action.

RULE 29 RESTRAINING ORDERS

1. Non-emergency Restraining Orders

- a. Restraining Orders may be issued upon the written request of a victim; a minor child or incompetent person's legal guardian, custodian, or parent; or upon the discretion of the Court whenever it is apparent that the life, safety, or general welfare of the person is at risk.
- b. The restraining orders shall restrict persons from being in physical contact with each other, communicating with each other, entering the other person's place of residence or the Court may place other conditions as it deems appropriate.
- c. The Court may issue a restraining order whenever a person has been accused or convicted of having committed an offense which by its nature places another in imminent fear for his or her life, safety or welfare.
- d. Restraining orders shall expire upon their own terms within ninety (90) days of their issuance. No restraining order shall be extended without notice to all parties and a hearing to determine whether the victim's safety is still at risk.

2. Emergency Restraining Orders

- a. A temporary restraining order may be granted without written or oral notice to the adverse party only, if, upon application, it clearly appears from specific facts shown by written statement or by criminal complaint that immediate and irreparable injury, loss, or damage will result to a person or persons seeking protection. A temporary restraining order issued without notice to the adverse party shall:
 - i. Expire by its own terms not more than ten (10) days from the date of issue;
 - ii. State the alleged grounds upon which it was issued;
 - iii. Indicate a time and day at which time the parties to the Order will appear before the Court for a hearing to determine whether the Court will continue to restrain the parties;

iv. Be served on the offender immediately upon its issuance.

3. Violation of Restraining Orders

a. If the Court receives information that any party has violated the terms of a restraining order issued pursuant to this Rule, the Court may issue a warrant for the arrest of such person and hold a hearing to determine whether he or she shall be held in contempt of court or violating the restraining order.

RULE 30 DISMISSAL OF ACTIONS

1. Voluntary Dismissal. At the discretion of the Tribal Court a complaint filed against an individual may be voluntarily dismissed by the Tribal Court.

2. Dismissal for Failure to Prosecute. Any criminal charged within the Tribal Court's jurisdiction which is pending for more than six (6) months from the date of the arrest of the Defendant or the filing of a complaint, whichever is later, against a Defendant without commencement of a trial by the Tribal Court shall be dismissed with prejudice unless the Tribal Court finds that any delays were caused by the Defendant.



PUEBLO OF JEMEZ


ACKNOWLEDGMENT OF TRIBAL COUNCIL DECISION AUTHORIZING
THE TRIBAL COURT TO DEVELOP AND IMPLEMENT JURY TRIAL RULES AND PROCEDURES
FOR CRIMINAL CASES IN THE PUEBLO OF JEMEZ TRIBAL COURT
APRIL 15, 2025

At a duly called Tribal Council Meeting convened on April 15, 2025, the Tribal Council discussed the Jemez Tribal Court's lack of rules and procedures to provide a defendant in a criminal case a jury trial if and when requested by a defendant. The Tribal Council recognizes that under the Indian Civil Rights Act, a criminal defendant facing imprisonment has the right upon request, to a trial by jury. This lack of a process to provide for jury trials has been used by criminal defendants appearing before the Tribal Court as a means to have their criminal charges dismissed or as grounds to challenge their convictions by seeking writs of habeas corpus in the federal courts to get their convictions reversed.


To correct this deficiency and to provide for a fair administration of justice, the Pueblo of Jemez Tribal Council decided that jury trial rules and procedures are essential and must be developed. The Tribal Council also decided that the Tribal Court Judge should be authorized to develop jury trial rules and procedures and to issue an order setting out a mechanism to implement these jury trial rules for criminal cases filed with the Tribal Court when jury trials are timely requested by a defendant. The Tribal Council retains the inherent authority to make changes in the jury trial rules issued by the Court, which changes shall be effective if made prior to commencement of the jury selection process in any criminal case in which a timely request for a jury trial has been made.

The foregoing is a true and accurate representation of the discussions and decisions of the Tribal Council which occurred at a duly-called Tribal Council meeting on April 15, 2025.

ATTEST:


George Sheshlo, Jr.
Governor

4/17/25
Date


Carnell Chosa
1st Lt. Governor

4.17.25
Date

Office of the Governor

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

**IN THE TRIBAL COURT
PUEBLO OF JEMEZ
STATE OF NEW MEXICO**

**FILED
JEMEZ PUEBLO TRIBAL COURT**

DATE: 5 / 2 / 2025

Kiana Gachupin
COURT CLERK

Administrative Order No. 2025-AO-0001

**ADMINISTRATIVE ORDER
ADPOTION OF JURY RULES AND PROCEDURES**

The Pueblo of Jemez Tribal Court Judge Betsy R. Salcedo acting in accordance with the authority granted in the ACKNOWLEDGMENT OF TRIBAL COUNCIL DECISION AUTHORIZING THE TRIBAL COURT TO DELEVOP AND IMPLEMENT JURY TRIAL RULES AND PROCEDURES FOR CRIMINAL CASES IN THE PUEBLO OF JEMEZ TRIBAL COURT issued April 15, 2025.

hereby ORDERS the following:

A. RULES OF PROCEDURE FOR JURY TRIALS

I. Jury Trials

- a. A Defendant charged with a criminal charge punishable by incarceration may demand trial by jury by filing a written demand with the Tribal Court no later than fifteen (15) business days after the arraignment. The failure of a Defendant to demand a trial by jury as required by this rule shall constitute a waiver of the trial by jury.
- b. The Tribal Court shall not grant a demand for a trial by jury filed after the time fixed has elapsed except upon the written agreement of the Pueblo prosecution and the defense, which agreement shall be filed with the Court and made a part of the record. If such agreement is filed, then, the Tribal Court may, in its discretion, continue the trial date and grant a trial by jury.

II. Jury Selection

- a. To be eligible to serve as a juror, a person must be a tribal member, a spouse of a

tribal member, a regular full-time tribal employee and/or a permanent resident of the Pueblo of Jemez. A juror must be 18 years of age or older, never have been convicted of a felony in any court, and must not at the time the list is prepared, be holding the office of Tribal Judge, Governor, Tribal Police Officer, Tribal Administrator, Assistant Tribal Administrator, Court Staff, Tribal Official, Tribal Council Member, Head of any Jemez Society, nor be a witness or a party in the matter before the court.

i. Permanent Resident: A permanent resident of the Pueblo is a person who rents, owns, or otherwise resides in a dwelling place on the reservation and who resides in that dwelling place other than seasonally or periodically, and who intends to make the reservation his or her permanent home for the indefinite future, and who does not claim residence in any other location for any purpose. A non-member may be a permanent resident of the reservation for the purposes of this section.

ii. Tribal Member: Tribal members must meet the qualifications in section (a) above. Tribal members residing outside the State of New Mexico may be qualified for jury duty. The tribal members who reside outside the geographic area described above may serve jury duty by filing a *statement of juror eligibility* with the Tribal Court, if and when selected to serve as a juror.

iii. Non-member Spouse of a Tribal Member: A spouse of Tribal Member is a person who is traditionally and/or legally married to a Pueblo of Jemez member and otherwise meets the juror qualifications.

iv. Regular Full-time employee: an employee who works a regularly scheduled forty (40) hour work week for the Pueblo of Jemez.

b. Jurors for trial shall be selected from a list of eligible jurors prepared from the Pueblo of Jemez Census Roll and Pueblo of Jemez Human Resources list.

- i. The list of eligible jurors will be provided by Tribal Enrollment, or a designee thereof, and submitted to the Tribal Court no later than January 15th of each year.
 - ii. The clerk of the court shall eliminate those persons who do not meet the qualifications set forth in Section II.
 - iii. After the clerk of the court eliminates those individuals on the Census Roll that do not qualify, the remaining persons that do qualify will be considered members of the master jury panel or master jury pool list.
- c. Selections of panel; jury summons; failure to appear; excuse from jury duty.
- i. The Court Administrator and Court Clerks shall draw 30 random names from the master jury list, not less than 35 days before the date set for the beginning of a jury trial. The clerk of the court shall then issue and cause to be served, upon each person who was selected, a jury duty summons.
 - ii. The jury summons shall notify the person being summoned to appear in Court one hour before the time set for trial on the date set for trial.
 - iii. Failure of a person served with a jury summons to appear shall constitute contempt of court and the summons shall contain a warning to that effect.
 - iv. Any person for whom jury service would be a severe hardship may be excused from service by the Judge, but such excuse from jury duty shall be disfavored. Severe hardship may include, but is not limited to:
 1. Having to travel more than 150 miles one-way,
 2. Having to stay overnight in order to serve upon a jury, when such has not been ordered by the court or presiding Judge as a condition of sequestering the jury,
 3. Interference with employment which would cause severe financial

hardship on the person, and

4. Interference with other duties to another court of law.

v. On the day of the trial, upon the 30 jurors arrival at the courthouse the Judge will have an introductory greeting, welcoming the prospective jurors to the courthouse. The Judge's personal greeting provides the citizens with recognition of the importance of jury service.

vi. During the Judge's introductory greeting, the clerk shall deposit the ballots in a ballot box containing the names of each of the summoned potential jurors who have appeared by the time set for their appearance. Those persons whose names are in the ballot box shall be known as the jury panel. After the Judge calls the court to order, the names of 14 members of the jury, shall be drawn from the ballot box, at random, and be seated in the designated jury area. The clerk shall make a list of the names in the order in which they are called, giving each juror an assigned jury number to identify that juror.

III. Removal for cause; examination by Court and parties.

a. After the first 14 members of the jury panel have been seated, the Judge shall examine each of them as to their qualifications, and excuse any who appear to be biased, prejudiced, unable to fairly and effectively perform the duties of a juror or otherwise not qualified to serve as a juror. The Judge shall permit the parties or their counsel to similarly examine and ask for the removal of jurors for cause, without any limit to the number of jurors so challenged or removed, except that all such challenges must be made in good faith and may not be discriminatory based on race, religion, gender, sexual orientation, or age. The Judge shall excuse any juror he or she believes to be unqualified, directing him or her to leave the jury area. The names of such persons shall be crossed off the list by the clerk.

b. After all disqualified jurors have been excused from the jury area; enough additional ballots shall be drawn by the clerk to replace the disqualified persons with members of the jury panel to assure a panel of 14. The clerk shall add their names to the list in the order in which they were called. The procedure for challenge for cause shall continue until 14 qualified persons are seated in the jury area.

c. After the 14 qualified persons have been seated in the jury area, each party shall have the right to remove any three persons from the jury without stating any reason. The parties shall alternately remove jurors, or waive their turn to do so, until they have exhausted their peremptory challenges.

d. The clerk of the court shall then select six names on the list and those persons shall be the jurors for the trial. The remaining two individuals will be the alternates. The list of eight (8) individuals shall be submitted to the Judge.

e. The alternate jurors shall act in all respects as a juror, except that he or she shall not participate nor vote during jury deliberation unless one of the other jurors has been excused by the Judge during the course of the trial.

IV. Order of Trial

a. The order of trial shall be as follows:

i. a qualified jury shall be selected and sworn to try the case.

ii. initial instructions shall be given by the Tribal Court Judge.

iii. the Pueblo may make an opening statement; the defense may then make an opening statement or may reserve such opening statement until after the conclusion of the Pueblo's case.

iv. the Pueblo shall submit its evidence.

v. out of the presence of the jury, the Tribal Court shall determine the

sufficiency of the evidence, whether or not a motion for directed verdict is made, or determine the legal arguments relating to evidence and issues before the Court.

vi. the defense may then make an opening statement if they have reserved to make an opening statement *in chief*.

vii. the defense may submit its evidence.

viii. the Pueblo may submit evidence in rebuttal.

ix. the defense may submit evidence in surrebuttal.

x. at any time before submission of the case to the jury, the court may for good cause shown, permit the Pueblo or defense to submit additional evidence.

xi. out of the presence of the jury, the Tribal Court shall determine the sufficiency of the evidence, whether or not a motion for directed verdict is made.

xii. the instructions shall be determined in accordance with Section V.; the Tribal Court shall then instruct the jury.

xiii. the Pueblo may make the closing argument.

xiv. the defense may make its closing argument.

xv. the Pueblo may make closing rebuttal argument only.

V. Instructions to Jurors

a. **Required instructions.** The Tribal Court must instruct the jury upon all questions of law essential for a conviction of any crime and submit the written instructions to the jury.

b. **Requested instructions.** At the close of the Defendant's case, or earlier if ordered by the Judge, the parties shall tender requested instructions in writing with two (2) hard copies and by electronic delivery to the Court's email court.clerk@jemezpuablo.org. The original and such copies shall be given to the court, and a copy shall be served on

opposing counsel. The original shall have a blank place for the court to insert a number (No.) but shall contain no title or other notations. The copies shall indicate the following information:

- i. [Plaintiff's] [Defendant's] Requested Instruction No.
- ii. Legal Authority with citation for tendered instruction should be indicated.

c. **Advisement of parties; filing:** The Tribal Court shall advise the parties of the instructions to be given and:

- i. number the originals of the instructions to be given.
- ii. mark one (1) copy of each instruction tendered as either given to the jury or refused by the Court to tender to Jury and initial the copies.
- iii. file such marked copies with the court clerk.

d. **Objections to Jury instructions:** Except as provided in Paragraph (a) of this rule, for the preservation of error in the charge instruction, objection to any instructions to be given must be sufficient to alert the mind of the Tribal Court to the claimed vice therein that is the basis for the objection. If the objection is that the Court has failed to instruct on any issue that requires an instruction needed by the jury, a correct written instruction must be tendered by the objecting party before the jury is instructed. Before the jury is instructed, counsel shall be given an opportunity to so object or tender instructions, on the record and in the presence of the court.

e. **Use in jury room:** Written instructions of the court shall go to the jury room, but no instruction which goes to the jury room shall contain any notation not approved by the Judge.

VI. Submission to Jury:

a. **Foreperson.** The Tribal Court shall direct the jury to select one of its

members as foreperson to preside over its deliberations. If an alternate is selected as the foreperson, one of the six jurors will be randomly selected to be the alternate.

b. **Forms of verdict.** Before the jury retires, the court shall submit to the jury the written forms of verdict for its use in returning their verdict.

c. **Exhibits.** The jury shall be furnished with all exhibits received in evidence as requested and approved by the Judge.

VII. Additional Instructions to Jury Following Retirement; Communications Between Court and Jury

a. **Upon jurors' request.** After the jurors have retired to consider their verdict, if they desire additional instructions or to have any testimony read to them or hear recorded testimony, they may in the discretion of the Tribal Court be returned to the courtroom and the court may give them such additional instructions or may order such testimony read to them or recording to testimony played. Such instruction shall be given, and such testimony read or played only after notice to, and in the presence of, the attorneys and the Defendant(s).

b. **Recall of jurors by court.** The Tribal Court may recall the jurors after they have retired to consider their verdict to give them additional instructions, or to correct any erroneous instructions it has given them. Such additional or corrective instructions under recall may be given only after notice to and in the presence of the attorneys and the Defendant(s).

c. **Additional evidence prohibited.** After the jurors have retired to consider the verdict, the Tribal Court shall not recall the jurors to hear additional evidence not presented prior to the jury entering its deliberations.

d. **Communications; Judge and jury.** The Defendant shall be present during all

communications between the Tribal Court Judge and the jury unless the Defendant has signed a written waiver of the right to be personally present. All communications between the Judge and the jury must be in open court in the presence of the Defendant and counsel for the parties unless the Defendant waives on the record the right to be present or unless the communication involves only a ministerial matter. Unless requested by counsel for the Defendant, communications between the court and the jury on a ministerial matter may be made through writing after notice to all counsel without recalling the Defendant.

VIII. Return of Verdict; Mistrial; Discharge of Jurors

- a. **Return.** The verdict shall be unanimous and signed by the foreperson. It shall be returned by the jury to the Tribal Court Judge in open court.
- b. **Several Defendants.** If there are two or more Defendants, the jury at any time during its deliberations may return a verdict with respect to any Defendant as to whom it has agreed.
- c. **Several counts.** If there are two or more counts, the jury may at any time during its deliberations return a verdict with respect to any count upon which it has agreed. The Court shall accept a partial verdict as counts that are unanimously agreed upon and any counts for which the jury cannot agree on unanimously will be entered by the Court as a hung jury on those counts, which may be triable by another jury if the prosecution so requests to the Court within 30 business days.
- d. **Conviction of lesser offense.** If so instructed, the jury may find the Defendant guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged, or an attempt to commit an offense necessarily included therein. If the jury has been instructed on one or more lesser included offenses, and the

jury cannot unanimously agree upon any of the offenses submitted, the Tribal Court shall poll the jury by inquiring as to each degree of the offense upon which the jury has been instructed beginning with the highest degree and, in descending order of degree, inquire as to each lesser degree until the court has determined at what level of the offense the jury has disagreed. If upon a poll of the jury it is determined that the jury has unanimously voted not guilty as to any degree of an offense, a verdict of not guilty shall be entered for that degree (and for each greater degree of the offense) if a greater degree offense is charged.

e. Poll of jury. When a verdict is returned and before it is recorded, the jury shall be polled upon the request of any party or upon the request of Tribal Court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations.

f. Irregularity of verdict. No irregularity in the rendition or reception of verdict of which the parties have been made aware may be raised unless it is raised before the jury is discharged. No irregularity in the recording of a verdict shall affect its validity unless the Defendant was in fact prejudiced by such irregularity. After the jury has been discharged, the jury may be reconvened in order to assist the court with assessing the irregularity and to determine the proper remedy.

g. Discharge of jury. After the jury has retired to consider their verdict, the Tribal Court shall discharge the jury from the cause when:

- i. their verdict has been received.
- ii. the court finds there is no reasonable probability that the jury can agree upon a

verdict.

iii. some other necessity exists for their discharge. The court may in any event

discharge the jury if the parties' consent to its discharge.

h. **Mistrial; jury disagreement.** An order declaring a mistrial for jury disagreement, referred to as a "hung jury" shall be issued in writing and shall expressly reserve the right to retry the Defendant.

IX. Presence of the Defendant; Appearance of Counsel

a. **Presence required.** Except as otherwise provided by these rules, the Defendant shall be present at all proceedings, including the arraignment, all hearings and conferences, argument, the jury trial and during all communications between the Tribal Court and the trial jury.

b. **Waiver of personal presence.** The Defendant may waive the right to be personally present:

i. for a specific hearing or proceeding, by an oral waiver on the record; or

ii. by executing a written waiver substantially in the form approved by the

Tribal Court. The waiver must be approved by the Defendant's counsel and the court prior to the hearing.

c. **Continued presence not required.** The further progress of the trial, including the

return of the verdict, and the imposition of sentence shall not be prevented if the Defendant waives the right to be personally present or whenever a Defendant who was initially present:

- i. is voluntarily absent after the trial has commenced (whether or not he has been informed by the Tribal Court of his obligation to remain during the trial); or
- ii. engages in conduct which the court determines, by clear and convincing evidence, to be so disruptive as to justify the exclusion of the Defendant from further proceedings. If a Defendant is excluded from the proceedings under this subparagraph, the court shall provide the Defendant with a timely opportunity to regain the right to be personally present so long as the Defendant agrees to refrain from any further disruptive conduct.

d. Presence not required. A Defendant need not be present in the following situations:

- i. a Defendant (corporation or other organization) other than a person may appear by counsel for all purposes; or
- ii. when the proceeding involves only a conference or hearing upon a question of law.

X. Conduct of Trial

a. Oath of witnesses. The Tribal Court Judge shall administer the following oath to each witness: “Do you swear or affirm that the testimony you will give in this case will be the truth, the whole truth and nothing but the truth, under penalty of law?”

b. **Evidence.** The Rules of Evidence for the Tribal Court, so far as they are applicable and not in conflict with these rules, shall apply to and govern the trial of criminal cases.

XI. Motion for New Trial

a. **Motion.** When the Defendant has been found guilty, the Tribal Court on motion of the Defendant, or on its own motion, may grant a new trial if required in the interest of justice and pursuant to the Rules of Evidence.


b. **Evidence on motion.** When a motion for new trial calls for a decision on any question of fact, the court may consider proposed evidence of such alleged facts on such motion by affidavit or otherwise.

c. **Time for making motion for new trial.** A motion for new trial based on the ground of newly discovered evidence may be made only before final judgment and sentence, but if an appeal is pending the court may grant the motion only on remand of the case. A motion for new trial based on any other grounds, other than based on an appeal, shall be made within ten (10) days after verdict or finding of guilty or within such further time as the court may fix during the ten (10) day period.

d. **Procedure; hearing.** When the Defendant has been found guilty by a jury or by the Tribal Court, a motion for new trial may be dictated into the record and may be argued immediately after the return of the verdict or the finding of the court. Such oral motion shall thereafter be in writing and filed with the clerk even if allowed to initially be orally presented after the verdict. Such motion, written or oral, shall fully set forth the grounds upon which it is based.

e. **Waiver.** Failure to make a motion for a new trial shall not constitute a waiver of any appealable error which has been properly brought to the attention of the Tribal Court.

IT IS SO ORDERED THIS 2ND DAY OF MAY 2025



Betsy R Salcedo, Judge
Jemez Pueblo Tribal Court

