

## **Subpart G Rules of Civil Procedure**

### **G-1 Scope of Rules; Construction; Alternate Source**

(a) Scope. These rules govern the procedure in all civil actions and proceedings in the Tribal Court. These rules must be applied to resolve disputes efficiently, reveal the truth, and treat all parties fairly and without prejudice. All cases before the Tribal Court will be conducted in accordance with the Law and Order Code and Pueblo of Pojoaque customs and traditions. These rules apply in criminal matters when no different rule is specified in the Rules of Criminal Procedure contained in Subpart H of the Code.

(b) Mission of the Court. The mission of the Tribal Court is to be fair and unbiased, resolve disputes, maintain rights, and correct wrongs for all cases brought before the Court. Through Tribal laws, rules of court, case law, Tribal custom and common sense in the context of all relevant circumstances, the Pueblo seeks to deal justly in order to protect all inherent rights of the parties.

(c) Construction. These rules will be liberally interpreted and administered to secure a just, speedy, and inexpensive determination of every action. At every stage of the proceeding, the Court may disregard any technical failure to comply with these rules which does not substantively affect the rights of the parties or outcome of the proceedings.

(d) Alternate Source for Rules. In a situation where these rules do not contain a procedure, the parties and the Court may agree on a procedure, or the Court may determine the procedure that will be followed. The Federal Rules of Civil Procedure will apply to any procedures or matters that are not specifically covered in these rules, as long as the Federal Rules do not conflict with these rules or with general principles of fairness and justice as determined and interpreted by the Tribal Court.

(e) Citation Form. These rules shall be known as the Pueblo of Pojoaque Rules of Civil Procedure and will be cited as “PPRCP”.

### **G-2 Sovereign Immunity**

Nothing in these rules shall affect the right of the Pueblo to assert immunity from suit by virtue of its status as a sovereign. The requirements for waivers of sovereign immunity are contained in Subpart J-3.

### **G-3 Time**

(a) How Time is Computed. Whenever a rule or an order requires that an action is taken within a certain number of days:

1. Do not include day of the event that starts the time period;
2. Count every calendar day, including Saturdays, Sundays, and legal holidays; and

3. Include the last day of the time period, but if the last day is a Saturday, Sunday, or Court holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or Court holiday.

4. Any time period ten (10) days or shorter will not include Saturdays, Sundays, or Court holidays.

(b) Extensions of Time. Upon the request of a party and for good cause, the Court may allow an extension of any time limit described in these rules.

#### **G-4 Definitions**

In addition to the definitions provided for in Subpart A-3 of the Law and Order Code, the following definitions apply in this Subpart:

(a) Amendment. A change or addition to a Petition, Answer, counter-claim, or other court pleading.

(b) Answer. The document filed by the party defending against a claim or Petition.

(c) Counter-Claim. A claim or Petition by a respondent against a plaintiff.

(d) Cross-Claim. A claim against another party on the same side of the lawsuit: a respondent against another respondent or a plaintiff against another plaintiff.

(e) Default. Failure to defend a case within the time allowed under the rules or failure to appear in Court when ordered to do so.

(f) Execution. Enforcement of a judgment.

(g) Judgment. The decision of the Court on a case.

(h) Party. A person or company that is being sued or is suing; either the plaintiff or defendant in a criminal case or the petitioner or respondent in a civil case.

(i) Petition. The written statement of facts and request for Court action filed to start a civil lawsuit

(j) Petitioner. The party who files a civil petition.

(k) Pleading. Any papers filed or required to be filed with the Court by a party.

(l) Process. Legal document or documents asserting the Court's power (jurisdiction) to compel a person to appear in the Tribal Court.

- (m) Respondent. The party against whom the petitioner files a civil Petition.
- (n) Service. The manner in which delivery of the Summons or other pleading is made to the other party.
- (o) Stipulation. An agreement between the parties that is submitted to the Court.
- (p) Subpoena. An order of the Court requiring a witness to attend and to testify at a hearing or trial.
- (q) Summons. The document that tells a respondent that he or she is being sued and asserts the power of the Court to hear and determine the case.
- (r) Third-Party Petition. A Petition filed by the respondent against a third-party (i.e., a person not presently a party to the lawsuit) alleging that the third party is or may be liable for all or part of the damages which the petitioner may win from the respondent.
- (s) Waive. Intentionally giving up a claim or right, either by a statement or through action or inaction.

#### **G-5 Jurisdiction**

- (a) The Tribal Court is a court of general jurisdiction.
- (b) The Tribal Court may exercise jurisdiction over any person or subject matter on any basis consistent with the Law and Order Code, the Indian Civil Rights Act of 1968, and other applicable Federal law.

#### **G-6 Statute of Limitations**

- (a) Unless otherwise specifically provided for, a civil lawsuit must be filed with the Court within three (3) years of the event at issue in the case. The three-year period will be counted from the date on which the event was first known to the injured party or should have been known to a reasonable person in the injured party's position.
- (b) Civil suits filed more than three (3) years after this time period will be dismissed.
- (c) This Section shall not apply to claims brought by the Pueblo of Pojoaque.
- (d) Any action against the Pueblo or its officers or employees arising from the performance of their official duties must be commenced within one year of the date the cause of action accrued.

#### **G-7 Representation**

- (a) Pro Se Appearance. Parties may represent themselves.

(b) Non-Attorney Appearance. A party may be represented by a non-attorney advocate with the Court's permission. Whenever a non-attorney represents a party, that person will file a written entry of appearance showing his or her name, address, and telephone number.

(c) Attorney Appearance. Permission for an attorney to practice in the Tribal Court is granted according to the provisions of the Tribal Law and Order Code, Subpart E-4. Whenever an attorney represents a party, the attorney will file a written entry of appearance showing the attorney's name, address, and telephone number. For the purpose of this rule, the filing of any pleading or paper signed by counsel and showing the attorney's name, address, and telephone number constitutes an entry of appearance.

(d) Withdrawal of Representation Requires Court Order. An attorney or non-attorney advocate must obtain an order permitting withdrawal. The Court may place conditions on an order approving withdrawal as justice requires.

(e) Limited Representation. The Tribal Court permits limited-scope representation by a professional attorney according to the standards laid out in Subpart E-4(a)–(b). The attorney shall enter an appearance that outlines the limits of representation.

(f) Sanctions. The Court may impose appropriate sanctions upon an unrepresented party or his or her attorney who is found to have filed a lawsuit, motion, or any other papers for an improper or frivolous purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation. Sanctions may include a fine of up to five hundred dollars (\$500), court costs, and attorneys' fees incurred by the opposing party that were required to resolve the issue.

## **G-8 Interpreters**

If a party or a party's witness requires an interpreter, the party requiring the interpreter must arrange and provide for interpretation at the party's own expense. If testimony is to be interpreted, the interpreter must be court-certified, except with the Court's permission.

## **G-9 Telephonic Appearance**

The Court may hear any matter by telephone conference call where it serves the interests of justice.

## **G-10 Start of a Civil Case**

(a) Beginning a Lawsuit. A party starts a civil lawsuit by filing a written Petition with the Tribal Court along with any filing fees. The Court may waive filing fees for good cause. Every Petition should contain:

1. The name, address, and telephone number of the petitioner and the respondent;
2. A statement of the facts at issue;

3. A statement describing the rights or laws that the petitioner believes were violated (if known);
4. A statement of what the petitioner is asking the Court to order or decide, such as the approximate amount of money requested, return of property, a restraining order, or a child custody determination; and
5. The signature of the petitioner.

No special wording or format is required but petitioners are encouraged to use the Tribal Court's Petition form. The Court Clerk may help petitioners by supplying necessary forms for filing a Petition.

(b) Summons. When a Petition is filed, the Court Clerk will issue and sign a Summons and give it to Tribal Police to be served on the respondent. The Summons will state that the opposing party is required to respond to the Petition within twenty (20) days of service. The Summons will give notice to the respondent that failure to respond may result in a default judgment.

#### **G-11 Service and Filing**

(a) Service. In order to proceed with the lawsuit, the petitioner must serve (deliver) a copy of the Petition and Summons to each respondent within ninety (90) days of the filing date.

(b) Who may Serve the Papers. Service may be made by a law enforcement officer or any person who is not a party and is eighteen (18) years of age or older.

(c) How Served. The Petition and Summons must be served on the respondent in a way that ensures the respondent knows about the lawsuit and has a reasonable opportunity to defend against it. Service will be made as follows:

1. Personal Service: Service on an individual party or a non-Pueblo business may be made by delivering the documents to the party in person, or on a person over fifteen (15) years old at the party's home or principal place of business. If a person personally refuses to accept service, service shall be deemed performed if the person is informed of the purpose of the service and offered copies of the documents served. The person who delivered the Summons and Petition shall file a statement with the Court that he or she served the papers, stating the name of the person served, the place, date, and time of service, and signing the return of service under penalty of perjury. This is the proof of service.

2. Certified Mail: Service may be made by registered or certified mail, return receipt requested, provided that the envelope is addressed to the respondent and that the respondent signs a receipt for it. The return receipt will be proof of service. Service by mail is complete on the date the receipt is signed by the respondent. Service upon a business of the Pueblo must be made by certified mail.

3. Publication: Service by publication may be made for good cause shown upon order of the Court by publishing the contents of the Summons in a local newspaper of general circulation at least once per week for four (4) weeks and by leaving a copy of the Petition with the Court for the party.

(d) Long Arm Service. Any person subject to the jurisdiction of the Pueblo of Pojoaque Tribal Court may be served outside the territorial jurisdiction of the Pueblo in the manner provided and with the same force and effect as if the service had been made within the exterior boundaries of the Pueblo of Pojoaque.

(e) Time for Service. An action may be dismissed without prejudice if service is not completed within ninety (90) days from the date of the filing of the Petition, unless good cause is shown for the delay or as justice requires. The Court's dismissal of the case means that the petition can be brought again but a new Petition will have to be filed and any fees paid previously will not be applicable to the filing of the new case.

(f) Papers other than Petition. A copy of every pleading or document filed with the Court must be provided to the other party or their advocate, unless the Court orders otherwise.

(g) Service on Officers or Employees of the Pueblo of Pojoaque. If the party to be served is an officer or employee of the Pueblo in their official capacity, service must be made by delivering a copy of the Petition and Summons pursuant to Subpart C-4.

(h) Serving a Minor or Incompetent Person. If the party to be served is a minor or has a guardian, service must be made on his or her parent, guardian, or custodian.

(i) Filing by Fax or E-mail. If less than ten (10) pages total, pleadings may be filed by fax to the Tribal Court. A facsimile copy has the same effect as any other pleading. Pleadings and proposed orders may be electronically filed with the Court Clerk.

## **G-12 Pleadings, Motions, and Orders**

(a) Pleadings. Petitions, counter-claims, cross-claims, and third-party Petitions are permitted. An Answer must be filed to a Petition, a counter-claim, a cross-claim and a third-party Petition. The Court Clerk may help petitioners by supplying necessary forms for filing a Petition.

(b) Motions. Any requests for the Court to issue an order or take action must be in writing and contain a statement of the events at issue and a statement asking the Court for some relief or a specific order. No technical wording is required. Unrepresented parties are encouraged to use the standard motion form.

(c) Construction of Pleadings. All pleadings will be interpreted so as to do substantial justice.

(d) Orders. An order includes every instruction of the Court whether included in a judgment or not, and may be made with or without notice to adverse parties and may be vacated or modified with or without notice.

### **G-13 Answering the Petition**

(a) Filing an Answer. Within twenty (20) days after the respondent receives a copy of the Petition and Summons, he or she must file a written Answer to the Petition and serve a copy on the petitioner.

1. In any action against the Pueblo or its corporations, businesses, or officers or employees in their official capacities, the respondent shall have sixty (60) days to file a written Answer to the Petition and serve a copy on the petitioner.
2. An extension of time to file an Answer may be granted by the Court upon a showing of good cause.

(b) Signature and Contact Information. The respondent must sign the Answer and provide a mailing address, telephone number, and email address, if applicable.

(c) Defenses and Denials. In the Answer, the respondent will state in short and plain terms his or her defenses to each of the petitioner's claims. The Answer will admit or deny the statements. The respondent may deny a part of a statement and admit the rest. If the respondent does not have knowledge about a statement or claim, he or she will state that. The respondent has a duty to admit what he or she knows is true.

(d) Defenses. If applicable, the respondent must raise the following defenses before filing an Answer:

1. Lack of personal jurisdiction;
2. Insufficient or incomplete Summons and/or Petition; or
3. Insufficient service of Summons and/or Petition.

Any of the above defenses not raised before filing an Answer will be considered waived. If the respondent raises one of these defenses in a motion before filing an Answer, the time-limit to file an Answer will be suspended until the Court has ruled on the motion. The respondent may raise other defenses in the Answer.

(e) Affirmative Defenses. In responding to a pleading, a party should affirmatively state any defense, including (1) accord and satisfaction, (2) arbitration and award, (3) contributory negligence, (4) discharge in bankruptcy, (5) duress, (6) estoppel, (7) failure of consideration, (8) fraud, (9) illegality, (10) laches, (11) license, (12) payment, (13) release, (14) res judicata, (15) statute of frauds, (16) statute of limitations, (17) waiver, and any other matter constituting

an avoidance or affirmative defense. If these affirmative defenses are not pled at the time the answer is filed, they may be asserted later with the Court's permission.

(f) Counter-Claim. A respondent may file a counter-claim against the petitioner following the same rules that apply to Petitions. A counter-claim must arise from the same events raised in the Petition. A counter-claim may be deemed waived if not filed as a counter-claim to the Petition.

(g) Motion for Judgment on the Pleadings. At any time, but not to delay trial, any party may ask the Court for a judgment on the pleadings. If, in a motion for judgment on the pleadings, matters outside the pleadings are presented to the Court, the motion will be treated as a Motion for Summary Judgment (Section G-35) and all parties will be given reasonable opportunity to present to the Court all material relevant to a Motion for Summary Judgment.

(h) Default Judgment. The respondent may be subject to a default judgment if he or she does not file an Answer.

#### **G-14 Form of Pleadings**

(a) Caption. Every pleading should contain a caption heading including the name of the Court, the title of the action, the Court file number (if known), and a designation as to what kind of pleading it is (e.g., Petition, Answer, Motion). All pleadings will contain the names of the parties. In the case of multiple parties, the name of the first party on each side may be used on all pleadings filed after the original Petition. Unrepresented parties are encouraged to use forms provided by the Court.

(b) Paragraphs. All claims or defenses should be made in numbered paragraphs. Each paragraph should be limited to a statement of a single set of circumstances. Claims or defenses founded upon separate transactions or occurrences should be set forth in separate counts or defenses.

(c) Signatures. The signature of the party, or counsel, must be on a pleading submitted to the Court. The signature is a certification that the pleading is submitted in good faith, that the matters of fact or law are believed to be true and accurate, and that the pleading is based on a reasonable investigation of the statements of fact or law.

(d) Substantial Compliance. For unrepresented parties, or in the interests of justice, substantial compliance with the rules for form of pleadings shall suffice.

#### **G-15 Amending Pleadings; Dismissing Petition**

(a) Amending Before Trial. A petitioner may change the Petition without the Court's permission before the respondent files an Answer if a copy of the changed Petition is delivered to all parties according to the Rules for serving Petitions. After the respondent has answered the Petition, the Court may allow the petitioner to amend the Petition if the change would not be unfair to the respondent.

(b) Amending at Trial. When issues or evidence that were not raised in the pleadings are heard at trial, the Court may take such issues or evidence into account without amending the pleadings.

(c) Dismissing the Petition. The Court will allow a petitioner to withdraw the Petition and will dismiss the case at any time the petitioner requests unless the respondent has filed a counter-claim against the petitioner or dismissal of the case would otherwise be unfair to the respondent. The Court may order a petitioner who withdraws a complaint to pay all of the respondent's costs associated with the Petition.

(d) Involuntary Dismissal. If the petitioner fails to prosecute the case or to comply with these rules or a court order, a respondent may move to dismiss the case or any claim. Costs may be assessed against the petitioner.

#### **G-16 Pre-Trial Conferences**

The Court may order the attorneys and any unrepresented parties to appear for one or more pre-trial conferences whenever it appears that a conference might simplify the issues, discourage wasteful pre-trial activities, reduce trial time, or promote settlement of the case.

#### **G-17 Parties**

(a) Real Party in Interest. Every legal action must be carried out in the name of the real party in interest, except a personal representative or other person in a fiduciary position can sue in his or her own name without joining the party for whose benefit the action is maintained. Real parties in interest may include businesses and other entities.

(b) Guardian Ad Litem. When a minor or incompetent adult who does not have a guardian is a party, the Court shall appoint a guardian ad litem to represent the minor or incompetent person. The guardian ad litem does not have to be a professional attorney.

#### **G-18 Adding Parties to a Case**

(a) Joining Parties. To the extent possible, all interested parties, including businesses or other entities, may be joined in a case. Failure to join a party over whom the Court has no jurisdiction will not require dismissal of the case unless it would be impossible to reach a just result without that party. The failure to join a party may be taken into account to assure that justice is served.

(b) Intervention. A party may intervene and be treated as a party in cases where property in which the party has an interest may be affected or a question of law or fact common to a party's claim may be litigated. If a motion to intervene is granted, the other parties are allowed twenty (20) days after service to answer the pleading of the intervenor.

(c) Substitution of Parties. If a party dies, becomes incompetent, transfers interest, or separates from some official capacity, a substitute party may be joined or substituted as justice requires.

## **G-19      Discovery**

(a) Purpose of Discovery. The purpose of discovery is to ensure that the parties have access to and share all information and evidence related to a case in order to resolve disputes efficiently and reveal the truth. Each party has an obligation to share all non-privileged information and evidence related to a case.

(b) Scope of Discovery. Parties may obtain discovery regarding any matter that is relevant to the case and not privileged, even if the information would not be admissible at trial, so long as the information requested appears reasonably calculated to lead to the discovery of admissible evidence.

(c) Interrogatories. A party may submit written interrogatories (questions) to any other party who must answer them in writing, under oath, within thirty (30) days.

(d) Depositions. A party may take the oral deposition of an adverse party or non-party witness under oath, giving at least ten (10) days' notice and specifying the time and place of the deposition.

(e) Production, Entry, or Inspection. A party may request that another party produce any documents or things in his or her custody for inspection or copying or request permission to enter and inspect property reasonably related to the case. The opposing party shall reply within ten (10) days as to whether or not such requests will be allowed and if not, why not.

(f) Protective Order. A party against whom discovery is sought may move the Court for a protective order to prevent undue annoyance, harassment, embarrassment, oppression, or undue burden or expense. The Court may order that the discovery cease or proceed only upon specified conditions.

(g) Failure to Make Discovery. If a party fails to respond or appear for discovery as provided in this rule, the opposing party may ask the Court for, or the Court on its own motion may issue, an order to compel the other party to perform. The Court may award costs. If a party fails to perform after being ordered to do so by the Court, the Court may, upon motion, order that a certain fact, claim, or defense is deemed established or strike part of a claim or defense, dismiss the case, or, in an aggravated case, render a judgment by default against the non-complying party.

(h) Use of Discovery. Answers to interrogatories and depositions may be used in a motion, hearing, or trial to impeach testimony or for any relevant purpose.

(i) Continuing Duty to Supplement; Witness List. A party is under a continuing duty to supplement responses to discovery requests if the responding party obtains: (1) information that shows a prior response was incorrect or no longer true; (2) the identity and location of persons having knowledge of discoverable material; (3) the identity of each person expected to be called as an expert witness at trial; (4) the identity of any other person expected to be