

## **Subpart F Rules of Procedure – General**

### **F-1 Issuance of Subpoenas**

(a) Upon request of any party to the case or upon the Tribal Court's own initiative, the Tribal Court shall issue subpoenas to compel the appearance and testimony of witnesses, or the production of books, records, documents or any other physical evidence which is relevant and necessary to the determination of the case, over which the court has jurisdiction. The Tribal Court Clerk may act on behalf of the Tribal Court and issue subpoenas which have been signed by a Judge and which are to be served within the exterior boundaries of the Pueblo of Pojoaque.

(b) A subpoena shall bear the signature of the Chief Judge or an Associate Judge of the Tribal Court and it shall state the name of the evidence or witness to be subpoenaed, the title of the proceeding and the place where the witness is to appear or the evidence is to be produced.

### **F-2 Service of Subpoena**

(a) A subpoena may be served at any place within or outside of the exterior boundaries of the Pueblo of Pojoaque, but any subpoena to be served outside the Pueblo shall be issued personally by a Judge of the Tribal Court.

(b) A subpoena may be served by any Tribal Police Officer or other person appointed by the Tribal Court for such purpose. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his place of residence with any competent person eighteen (18) years of age or older, who also resides there.

### **F-3 Failure to Obey Subpoena**

In the absence of a justification satisfactory to the Tribal Court, a person who fails to obey a subpoena may be deemed to be in contempt of court and a bench warrant may be issued for his arrest.

### **F-4 Witness Fees**

(a) Each witness answering a subpoena shall be entitled to a fee as set by rules of the Pueblo Courts and approved by the Tribal Council for each day his services are required in Court. In addition, the Court may offer the payment of reasonable travel and living expenses of the witness.

(b) The fees and expenses provided for in this section shall be paid to the witness upon completion of the trial, but such expenses may be taxed as costs against the defendant if he is found guilty; provided, however, that no defendant shall be incarcerated solely because of his inability to pay such costs immediately.

## **F-5 Trial Procedures**

(a) The time and place of Tribal Court sessions, and all other details of judicial procedure shall be set out in rules of the Court adopted pursuant this Subpart.

(b) The Tribal Court shall not be bound by common law rules of evidence, or the rules of evidence which pertain in state or federal courts.

## **F-6 Jury Trials**

(a) Request for Jury Required. A jury trial shall be held if:

1. Requested by either party in a civil case; or
2. Requested by the defendant in a criminal case where imprisonment is a possible penalty for the offense charged.

(b) Jury Pool. A list of eligible jurors shall be prepared and maintained by the Tribal Council or its representative. Any person over the age of twenty-one (21) years, not subject to judicial restraint by any Court, and who resides within the Pueblo of Pojoaque may be listed as an eligible juror.

(c) Formation. Juries will be comprised of six (6) jurors and one alternate. A person may be excused from serving on a jury upon good cause shown under oath to a Judge. Jurors whose employers provide for compensated leave for jury service shall not be excused by the Court because of work-related responsibilities, except under extraordinary circumstances. The Judge shall consider the needs of the Court to maintain an adequate jury pool before allowing jurors to be excused. Elected Tribal Officials shall be exempt from serving on juries during their terms of office.

(d) Random Selection. The Clerk of the Court will randomly select a minimum of twenty-five (25) names from the jury pool pursuant to a jury pool records maintenance schedule.

(e) Juror Summons. The Court shall issue summons and thereby notify persons selected for jury service. Persons selected for jury service shall be summoned by mail or personal service. Persons who do not appear after proper notice of jury service shall be subject to contempt of Court.

(f) Selection. The Court Clerk shall notify the Court and counsel of the names of the members of the jury pool appearing for selection. In selecting a jury from among the panel members, in all instances the Judge shall conduct the initial questioning of the jurors to establish eligibility, ability to serve and potential bias. When the Court determines that a juror cannot serve, the juror shall be excused. The Judge may use his or her discretion to permit the parties to ask questions and, moreover, may limit examination of jurors when the Judge believes such examination to be improper or unacceptably time consuming.

(g) Challenges/Excusals. Each party shall have the right to a maximum of two (2) preemptory challenges for jurors, for which no reason need be given and which the Judge may not refuse to grant.

(h) Compensation of Jurors. Every person who is required to attend Court for selection or service as a juror shall be entitled to fees for each day, unless otherwise compensated through Tribal ordinance. Jurors whose employers provide for compensated leave for jury service shall not be entitled to fees. Jurors shall be compensated at a rate recommended by the Tribal Judge and provided in the rules of the court. Compensation of jurors is considered to be a court cost that shall become the responsibility of the party requesting a jury.

(i) Juror Oath. The jury shall be sworn in by the Court. Any juror who violates the oath may be held in contempt of Court.

(j) Juror Instructions and Deliberations. The Judge shall instruct the jury with regard to the applicable law and the jury shall decide all questions of fact in the basis of that law. The jury shall deliberate in secret and return a verdict of “guilty” or “not guilty.” The Tribal Judge shall render judgment in accordance with the jury verdict. A jury may render a verdict by majority vote in civil cases. In criminal cases a verdict of “guilty” must be either unanimous or by vote of five (5) to one (1).

(k) Discharging Jurors. When the jury has reached a verdict or has determined that it shall be unable to do so, even with additional deliberation, the Court shall discharge the jurors from service.

#### **F-7 Contempt of Court**

(a) The Judges of the Pueblo Courts may rule a person in contempt of Court if he willfully and unjustifiably disrupts, obstructs or otherwise interferes with the due and orderly course of proceedings in the courtroom, after being advised by the Court to cease the interference.

(b) All rulings of and sentences for contempt shall be announced immediately after the acts of contempt occur.

(c) A person found in contempt of court may be sentenced to imprisonment for a period not to exceed thirty (30) days or to pay a fine not to exceed one hundred and fifty dollars (\$150.00), or both.

#### **F-8 Notice Code**

(a) Findings and Purpose.

1. Findings. The Pueblo has a compelling interest in protecting tribal sovereignty and jurisdiction and the validity of tribal laws. Tribal sovereignty and jurisdiction or the validity of tribal law may be questioned in cases in the Tribal Court in which the Pueblo or any political subdivision, department, agency, instrumentality, subsidiary, officer, employee and/or legal entity of any nature whatsoever of the Pueblo is not a party. With adequate, timely, and uniform

notice of cases in the Tribal Court that question tribal sovereignty and jurisdiction or the validity of tribal law, the Pueblo can effectively assess whether and how to participate in such cases.

2. Purpose. The purpose of this Code is to provide the Pueblo with adequate, timely, and uniform notice of any and all cases in the Tribal Court that question tribal sovereignty and jurisdiction or the validity of any tribal law and in which the Pueblo or any political subdivision, department, agency, instrumentality, subsidiary, officer, employee and/or legal entity of any nature whatsoever of the Pueblo is not a party.

(b) Notice Required.

1. Court to Inform Parties. In any action or proceeding in which the Pueblo or any political subdivision, department, agency, instrumentality, subsidiary, officer, employee and/or legal entity of any nature whatsoever of the Pueblo is not a party but which questions tribal sovereignty or jurisdiction or the validity of any tribal law, the Tribal Court will give notice in writing of the action or proceeding to the Office of the Governor and to the Legal Department. The Tribal Court will also serve all parties with a copy of the notice given. Such notice will identify the action or proceeding and will include a brief written explanation of the grounds upon which tribal sovereignty or jurisdiction or the validity of tribal law is being questioned. Any party giving notice under this law will simultaneously file proof with the Tribal Court that notice has been given as required by this Code.
2. Continued Notice. If notice is required under this Code, the Tribal Court or any party will timely serve copies of all subsequent filings and orders in the case on the Legal Department.

(c) Manner and Timing of Notice. Notice required under this Code will be given in writing and simultaneously with the raising of a question about tribal sovereignty or jurisdiction or the validity of any tribal law.

(d) Tribal Participation Following Notice.

1. Intervention. Upon timely motion, the Pueblo may intervene as a matter of right in any action or proceeding in the Tribal Court that questions tribal sovereignty or jurisdiction or the validity of any tribal law. Upon intervening under this Code, the Pueblo may assert any and all available claims and defenses and may present any and all admissible evidence relating to the question of its sovereignty or jurisdiction or the validity of any tribal law, and is entitled to the same relief, including costs, as if the Pueblo had instituted a separate action or proceeding; provided that, the Pueblo will not be required to pay costs of litigation in any action or proceeding in which it has intervened under this Code. Intervention under this Code does not abridge, limit, or otherwise affect the right of the Pueblo to commence, maintain, defend, or otherwise intervene in actions or proceedings in the Tribal Court.

2. Amicus Curiae. Upon timely motion or application, the Tribe may appear as *amicus curiae* (friend of the court) in any action or proceeding that questions tribal sovereignty or jurisdiction or the validity of any tribal law.
3. Information Sharing and Consultation. In any action or proceeding in the Tribal Court that questions tribal sovereignty or jurisdiction or the validity of any tribal law in which the Pueblo does not intervene or appear as *amicus curiae*, the Pueblo may nevertheless share important knowledge with any party involved in the action or proceeding. This could include assistance in responding to formal discovery requests or acting as an informal consultant.
4. No Participation. The Pueblo may timely determine that it is in the best interest of the Pueblo not to intervene, appear as *amicus curiae*, or otherwise participate in an action or proceeding in the Tribal Court that questions tribal sovereignty or jurisdiction or the validity of any tribal law.
5. Authority to Determine Participation. Before determining participation on behalf of the Pueblo under this Code in any specific action or proceeding in Tribal Court, the Chief Legal Counsel will obtain the approval of the Governor and of the Tribal Council for cases involving challenges to tribal sovereignty.
6. Timeliness of Participation Determinations. Unless the Tribal Court orders otherwise, where timely and proper notice has been given under this Code, the Pueblo will notify the Tribal Court and parties in writing within sixty (60) days of receipt by the Pueblo of such notice of any determination to participate in any action or proceeding by way of intervention or appearance as *amicus curiae*.

(e) Failure to Give Notice.

1. Failure to Give Notice Not Jurisdictional or Waiver of Rights. The failure of the Tribal Court or a party to give notice as required by this Code does not deprive the Tribal Court of jurisdiction and is not a waiver or modification of any rights otherwise timely asserted by any party. Any notice given under this Code is not a substitute for, or a waiver or a modification of, any other pleading requirement under tribal law.
2. Late Notice. If the Tribal Court or a party discovers that notice to the Pueblo under this law should have been but has not been given, the Tribal Court or party will promptly give notice in writing to the Pueblo as required by this Code. The Tribal Court may stay the action or proceeding at any stage to allow compliance with this Code. If final judgment has already been entered, the Pueblo may motion or apply for rehearing as of right, the Tribal Court will entertain promptly any such motions or applications for rehearing by the Pueblo, and in disposing of such motions the Tribal Court, for good cause shown, may vacate a judgment or any portion thereof.

3. Civil Sanctions. The Tribal Court may impose civil sanctions on any party for willful or unreasonable failure to give notice as required by this Code, and may use other reasonable means to cure any significant harm caused by failure to give notice as required by this Code.

(f) Tribal Jurisdiction and Sovereign Immunity from Suit Unaffected.

1. Jurisdiction. Nothing in this Code shall be deemed or construed to deprive, limit, or extend the jurisdiction of the Tribal Court.
2. Sovereign Immunity from Suit. Notice required under this Code does not authorize a party to name the Pueblo or any political subdivision, department, agency, instrumentality, subsidiary, officer, employee and/or legal entity of any nature whatsoever of the Pueblo as a party to any action or proceeding. Nothing in this Code shall be deemed or construed as a waiver or limitation of the sovereign immunity from suit of the Pueblo or any political subdivision, department, agency, instrumentality, subsidiary, officer, employee and/or legal entity of any nature whatsoever of the Pueblo.