

Subpart J Civil Actions

J-1 Judgments – Notice

No judgments shall be entered in any suit unless the respondent has received actual notice of such suit or notice was served according to the service rules in Section G-11 and he has a reasonable opportunity to appear in Tribal Court and defend himself. Evidence of receipt of notice shall be kept as a part of the record in the case. In all civil suits, the petitioner may be required to deposit with the Court Clerk a fee or other security in a reasonable amount to cover costs and disbursements in the case.

J-2 Law Applicable in Civil Suits

(a) In all civil suits, the Court shall apply tribal law including any applicable ordinances, acts, regulations, policies, resolutions, Tribal Court decisions, customs, traditions and usages of the Pueblo of Pojoaque.

(b) Where doubt arises as to customs and usages of the Pueblo of Pojoaque, the Tribal Court may request and rely upon the advice of counselors familiar with such customs and usages.

(c) In any matters that are not covered by tribal law or by applicable federal laws and regulations, the Tribal Court may look to the laws of the State of New Mexico for guidance.

J-3 Tribal Waivers of Sovereign Immunity

(a) The Tribal Council only authorizes waivers of sovereign immunity that are approved by a specific Tribal Council resolution and are in writing.

(b) All waivers of sovereign immunity shall explain the scope of the waiver. Scope of the waiver may include the duration of the waiver, the jurisdiction covered in the waiver, the terms of the contract, the limits on damages, or the amount of the contract.

(c) The Tribal Council may authorize any Tribally-chartered or Federally-chartered corporation to waive the corporation's sovereign immunity. The authorization shall be contained in the corporation's articles of incorporation. However, the corporation's waiver of sovereign immunity is limited to the corporation. The waiver of a corporation's sovereign immunity is not a waiver of the Pueblo of Pojoaque's sovereign immunity.

J-4 Judgments in Civil Actions

(a) In all civil cases, judgments shall consist of an order of the Tribal Court awarding money damages to be paid to the injured party or the performance of some other act for the benefit of the injured party.

(b) Where the injury inflicted was the result of carelessness of the respondent, the judgment shall fairly compensate the injured party for the loss suffered.

(c) Where the injury was deliberately inflicted, the judgment may impose any additional penalty upon the respondent.

(d) Where the injury was inflicted as a result of an accident and where both the petitioner and respondent were at fault, the judgment shall compensate the injured party for a reasonable part of the loss he suffered.

J-5 Costs in Civil Actions

The Tribal Court may assess the accruing cost of the case against a party or parties against whom judgment was rendered. Such cost shall consist of the expenses of voluntary witnesses for which either party may be responsible and the fees of jurors in those cases where a jury trial was held and further expenses connected with the proceeding before the Tribal Court as the Court may direct.

J-6 Payment of Judgments

A judgment shall be considered a lawful debt in all proceedings to distribute an Indian decedent's estate.

J-7 Full Faith and Credit to Foreign Judgments

(a) Purpose. Without Tribal Court action, foreign judgments are generally not enforceable within the boundaries of the Pueblo of Pojoaque. This section is intended to provide a uniform and fair procedure for the enforcement of foreign judgments by the Pueblo of Pojoaque Tribal Court.

(b) Definitions. For the purposes of this section:

1. "Issuing Court" means a court of another jurisdiction that issued the foreign judgment for which full faith and credit is being sought.
2. "Foreign Judgment" means any judgment, order, or decree of a court of another Pueblo, tribe, state, or jurisdiction, as well as any other administrative order or notice to withhold income associated therewith.
3. "Proponent" means any person that wishes to enforce a foreign judgment.

(c) Full Faith and Credit. The Tribal Court may give full faith and credit to authentic and properly registered foreign judgments, provided that the issuing court has not declined reciprocal full faith and credit to the judgments of the Pueblo of Pojoaque Courts.

(d) Full Faith and Credit for Child Support Orders.

1. Properly issued foreign judgments that relate to child support enforcement will be given full faith and credit pursuant to 28 U.S.C. § 1738B. Such orders will be considered properly issued where: the issuing court had subject matter jurisdiction over the matter and personal jurisdiction over the parties subject to the foreign judgment; proper service of process under the law of the issuing jurisdiction was made on such parties; and reasonable notice and opportunity to be heard was given to the parties.
2. Foreign judgments concerning child support enforcement shall be registered with the Tribal Court pursuant to Subsection (e).

(e) Registration. Any person that wishes to enforce a foreign judgment must register the judgment with the Tribal Court. The procedure for proper registration is as follows:

1. If the judgment is concerning wage garnishment of a Pueblo of Pojoaque employee, the proponent shall contact the Pueblo of Pojoaque Human Resources Department to confirm that the individual is employed by the Pueblo. If the judgment is concerning wage garnishment of a Pueblo of Pojoaque Enterprise employee, the proponent shall contact the Pueblo's Corporate Human Resources Department to confirm employment.
2. The proponent shall file the judgment with the Pueblo of Pojoaque Tribal Court. Proper filing shall be accomplished when the proponent has paid all necessary filing fees and delivered to the Tribal Court a certified copy of the foreign judgment, along with a motion requesting that the Tribal Court recognize and enforce the foreign judgment.
3. In order to ensure due process, the Tribal Court will serve notice of the order upon parties subject to the judgment, consistent with the Pueblo of Pojoaque Rules of Civil Procedure.
4. Parties have ten (10) days to raise objections to enforcement of the judgment. If no objections are made, the Tribal Court will honor and enforce the foreign judgment.

(f) Partial Enforcement. Where a foreign judgment is invalid by reason of a lack of jurisdiction of the issuing court, the Tribal Court may adopt some or all of its provisions as an original order of the Court after determining that the parties subject to the judgment were given sufficient notice and opportunity to present evidence and that the provisions adopted do not contravene Pueblo of Pojoaque law or policy.

J-8 Appeal – Timing & Filing Fees

In all civil cases, any party aggrieved by a judgment may appeal from a decision of the rendering court to the Court of Appeals upon giving notice of such appeal at the time of judgment or within ten (10) days thereafter along with the filing fee and upon giving proper assurance to the Tribal Judge through the posting of a bond or assurance that he or she will satisfy the judgment if it is affirmed. In any case where a party has perfected his or her right to appeal as established herein, the judgment of the Tribal Court shall not be executed until after final disposition of the case by the Court of Appeals.

J-9 Garnishments

Repealed on March 6, 2014.

J-10 Repossessions

The Tribal Court shall have jurisdiction over all repossession requests. The Tribal Court should bear in mind that the traditional policy has been never to honor “self-help” repossessions.

J-11 Unlawful Use of Identification Cards and Documents

(a) It is an unlawful use of an identification card or document within the exterior boundaries of the Pueblo of Pojoaque to:

1. Display or cause to display or have in their possession any identification card that contains a false or fictitious name or date of birth;
2. Display or represent as one’s own any identification card belonging to another person; or
3. Display an altered, forged or fictitious identification card.

(b) Any employee or agent of a wholly-owned Pueblo of Pojoaque business establishment may question any person in their business establishment as to whether they are the person identified on the card or document. No employee or agent of a wholly-owned Pueblo of Pojoaque business establishment is criminally or civilly liable:

1. On account of such questioning; or
2. For immediately reporting to the law enforcement authorities the person suspected of violating this Section of the Law and Order Code.

(c) Any employee or agent of a wholly-owned Pueblo of Pojoaque business establishment who suspects that an identification card is being unlawfully used may take, or copy the information on, that identification card or document until the law enforcement authorities arrive. Such a taking does not render the employee or agent criminally or civilly liable.

(d) Any law enforcement officer may file in Tribal Court a civil petition on any person suspected of violating this Section of the Tribal Law and Order Code.

(e) Penalties. Any person found in violation of this Section may be fined up to two hundred dollars (\$200) by the Tribal Judge.

(f) Destruction of Evidence. Evidence used to violate this Section shall be retained by the Tribal Police. The Tribal Police shall periodically destroy such evidence, per Tribal Court order.

J-12 Civil Liability for Conversion

(a) Conversion of money, assets or property of the Pueblo, or its corporations, is a civil offense.

(b) Conversion is defined as the unauthorized intentional taking or transfer of the Pueblo of Pojoaque's, or its corporations', money, assets or property.

(c) Any person found to have converted the money, assets or property of the Pueblo or its corporations may be civilly liable to the Pueblo or its corporations. The damages may include punitive damages of no more than four (4) times the amount of money or value of goods converted, costs of the lawsuit, and reasonable attorney's fees.

(d) Any person who has been found to have converted the property of the Pueblo of Pojoaque or its corporations is a danger to the Pueblo. The person may be excluded from the Pueblo of Pojoaque's exterior boundaries for an amount of time to be determined by the Tribal Court.

J-13 Harassment Ordinance

(a) Harassment consists of intending to annoy, seriously alarm or terrorize another person when it serves no lawful purpose. The harassment must be such that it would cause a reasonable person to suffer substantial emotional distress.

(b) The allegation of harassment must be on file with the Tribal Police.

(c) Any harassment violation will be subject to a civil petition issued by the Tribal Police.

(d) Any harassment violation will subject to the exclusive jurisdiction of the Tribal Court.

(e) Any person found violating the Harassment Ordinance is subject to a fine of from fifty dollars (\$50) to five hundred dollars (\$500).

J-14 Firearms Registration

(a) All firearms within the Pueblo of Pojoaque shall be registered with the Pueblo of Pojoaque Tribal Police using the Pueblo of Pojoaque Firearms Registration Form.

(b) Anyone possessing an unregistered firearm may be subject to a civil fine of up to five hundred dollars (\$500) and confiscation of the firearm. Anyone falsifying a registration form may be subject to a civil fine of up to five hundred dollars (\$500).

(c) The Pueblo of Pojoaque Firearms Registration Form is attached to this Ordinance and the Form shall be kept on file at the Tribal Police Department.

J-15 Limited Liability of Hotelkeepers to Guests on the Pueblo of Pojoaque

- (a) Hotelkeepers are liable to their guests for loss of guests' property up to a limit of one thousand dollars (\$1,000), if the loss is caused by theft or negligence of a hotelkeeper or hotel employees.
- (b) The hotelkeeper is not responsible for theft or loss of any money, jewels, jewelry or other valuables as the hotel provides suitable safes for the safekeeping of money, jewels, jewelry or other valuables. Safes are available in the room and at the front desk.
- (c) The Limited Liability of Hotelkeepers to Guests policy shall be printed and posted conspicuously within guest rooms.

J-16 Threats or Physical Harm to Elected or Appointed Officials

- (a) Any Indian or non-Indian who threatens physical harm or commits an act of physical harm to an elected or appointed Pueblo of Pojoaque Tribal Official or a person conducting the official duties of the Pueblo of Pojoaque Tribal government shall be subject to this section.
 - 1. An elected or appointed Pueblo of Pojoaque Tribal Official is defined as any person who is elected or appointed by the Pueblo of Pojoaque General Council or Tribal Council to carry out duties on behalf of the Pueblo of Pojoaque.
 - 2. A person conducting the official duties of the Pueblo of Pojoaque Tribal Government is defined as any person who is appointed by the Pueblo of Pojoaque to carry out official Tribal government duties.
 - 3. A threat of physical harm is defined as any verbal or written threat of physical harm against a Tribal Official that is communicated to a third party.
 - 4. An act of physical harm is defined as any intentional bodily touching of a Tribal Official that is intended to harm the Tribal Official.
- (b) A person found guilty under this section may be subject to money damages not to exceed five thousand dollars (\$5,000).

J-17 Heroin Control Act

- (a) The Pueblo of Pojoaque has a zero tolerance policy of heroin and intravenous use of illegal drugs. This policy includes civil and criminal prohibitions and adoption of medical treatment approaches to combat the problem to protect the community and families.
- (b) The Heroin Control Act supersedes all prior conflicting provisions concerning heroin and intravenous use of illegal drugs that are contained in the Tribal Law and Order Code regulations and ordinances, lease agreements or employee handbooks.

(c) A copy of the Heroin Control Act of 2012 shall be made available to all enrolled members of the Pueblo of Pojoaque.

(d) Heroin and Intravenous Use of Illegal Drugs.

1. Any person who buys, possesses, sells or uses heroin within the exterior boundaries of the Pueblo of Pojoaque shall be considered a threat to the public health, safety and welfare.
2. Any person who admits to or is arrested for heroin or intravenous use of illegal drugs within the exterior boundaries of the Pueblo shall be considered a threat to the public health, safety and welfare and shall undergo mandatory drug testing at the time of arrest. Law enforcement shall present such findings to the Court and Tribal Officials at the time of arraignment.
3. Any person who is found guilty in any court of law of heroin or intravenous use of illegal drugs shall be considered a threat to the public health, safety and welfare.
4. Any Tribal Police Officer who suspects a person of heroin use or intravenous use of illegal drugs may petition the Tribal Court for scientific testing of the suspected user.
5. Any allegation of suspicion shall be supported by written and verified facts before scientific testing is ordered by the Tribal Court.
6. If the person suspected of heroin or intravenous use of illegal drugs tests positive for the use, they have violated the law and shall be considered a threat to the public health, safety and welfare.

(e) Penalties.

1. Any person who is a threat to the health, safety and welfare of the Pueblo of Pojoaque under the provisions of this Section shall be subject to the following penalties:
 - A. A fine of up to five thousand dollars (\$5,000) per violation.
 - B. Exclusion from the exterior boundaries of the Pueblo for a duration to be determined by the Tribal Court.
 - C. Immediate termination of employment and Tribal benefits for a duration to be determined by the Tribal Court.
 - D. The violator may be responsible for payment of treatment costs.
 - E. A neglected child adjudication of unlimited duration for any parent of an Indian child when the parent is a threat to the public health, safety and welfare under the provisions of this Section.

(f) Rescission of Penalties.

1. The Tribal Court shall provide a written Order to the person who is determined to be a threat to the public health, safety and welfare. The Order shall set out the conditions under which any of the penalties imposed may be rescinded.

2. In the case of neglected child adjudication, the parent has two (2) years in which to successfully comply with the Tribal Court's Order. If the parent has not successfully complied with the Tribal Court's Order within two (2) years, termination of parental rights shall be initiated by the Pueblo of Pojoaque Social Services Department. The two (2) years may be extended by the Tribal Court with a written justification for the extension.

J-18 Graffiti and Vandalism Ordinance

(a) This Section shall apply to Tribal Members and visitors to the Pueblo who are over the age of sixteen (16) at the time the offense was committed.

(b) Graffiti and vandalism is defined as intentionally or maliciously defacing or destroying any Pueblo property, any real property of another, or any personal property of another, when the graffiti or other material used for the graffiti or vandalizing is ink, paint, spray paint, crayon, charcoal, acid, or any physical force that is applied without the consent or reasonable grounds to believe that there is consent of the Pueblo or the owner of the property.

(c) For the first offense, whoever commits graffiti or vandalizes is subject to fines up to one thousand dollars (\$1,000), eighty (80) hours of mandatory community service, and shall be required to make restitution to the Pueblo or the property owner.

(d) For the second offense, any visitor who commits graffiti or vandalizes shall be excluded from the Pueblo for life, and shall be required to make restitution to the Pueblo or the property owner.

(e) For the second offense, any Tribal Member who commits graffiti or vandalizes shall lose all Tribal privileges and services for one (1) year, and shall be required to make restitution to the Pueblo or the property owner.

(f) For the third offense, any Tribal Member who commits graffiti or vandalizes shall lose all Tribal privileges and services for five (5) years, shall be excluded from the Pueblo for five years, and shall be required to make restitution to the Pueblo or the property owner.

J-19 Civil Forfeiture Code

(a) Property is subject to forfeiture in a civil proceeding only upon a showing of probable cause that the property could be used to commit or facilitate commission of a crime under Tribal, State, or Federal law.

(b) Any property obtained from proceeds of criminal activity is subject to forfeiture. Conviction in Tribal, State, or Federal courts is not a prerequisite to forfeiture proceedings.

(c) Items Subject to Forfeiture. The following are subject to forfeiture whenever they appear within the exterior boundaries of the Pueblo of Pojoaque:

1. All controlled substances and all controlled substance analogs which have been manufactured, distributed, dispensed or acquired in violation of the federal Controlled Substances Act (21 U.S.C. 801, *et seq.*), the federal Controlled Substances Import and Export Act (21 U.S.C. 951 *et seq.*), any offense under New Mexico State law involving manufacturing, distributing, or possessing with intent to manufacture or distribute a controlled substance (as defined in section 102 of the federal Controlled Substances Act (21 U.S.C. 802));
2. Any marijuana over the amount of two ounces;
3. Cocaine, or any of its derivatives, in any amount;
4. Methamphetamine, or any of its derivatives, in any amount;
5. Heroin, or any of its derivatives, in any amount;
6. All raw materials, products and equipment of any kind, including firearms, which are used or intended for use in manufacturing, compounding, processing, delivering, importing or exporting any of the substances described in Paragraphs 1 through 5;
7. All property which is used or intended for use as a container for property described in Paragraphs 1 through 6;
8. All conveyances, including aircraft, vehicles or vessels, which are used or intended for use to transport or in any manner to facilitate the transportation of property described in Paragraphs 1 through 6;
9. All books, records and research products and materials, including formulas, microfilm, tapes and data, which are used or intended for use in trafficking of Paragraphs 1 through 6;
10. Narcotics paraphernalia or money which is a fruit or instrumentality of any crime involving Paragraphs 1 through 6; and
11. Property obtained from proceeds of criminal activity.

(d) Exceptions to Forfeiture of Conveyances. Notwithstanding Subsection (a):

1. No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture, unless it appears that the owner or other person

in charge of the conveyance is a consenting party to the possession or trafficking in substances listed in Subsection (a), Paragraphs 1 through 6.

2. No conveyance is subject to forfeiture when the possession or trafficking in substances listed in Subsection (a), Paragraphs 1 through 6 was done without the owner's knowledge or consent.

3. Forfeiture of a conveyance encumbered by a bona fide security interest shall be subject to the interest of a secured party if the secured party neither had knowledge of nor consented to the act or omission.

(e) Forfeiture Procedure.

1. Property subject to forfeiture and disposal under the Civil Forfeiture Code may be seized by the Pueblo of Pojoaque Tribal Police upon an Order issued by a Tribal Official or the Tribal Court.

2. Seizure may be made without an Order when the Tribal Police have probable cause to believe that the property is listed in Subsection (a).

3. Property taken or detained under this Section shall not be subject to replevin, but is deemed to be in the custody of the Tribal Police.

4. The Pueblo shall begin forfeiture proceedings in the Tribal Court no later than thirty (30) days after the property is seized.

5. The forfeiture procedure shall follow all guarantees of the Indian Civil Rights Act.

6. Property is subject to forfeiture in the civil proceeding only upon a showing of probable cause that the property could be used to commit or facilitate commission of a crime under Tribal, State, or Federal law.

7. A Tribal Court Order shall direct the disposal of any forfeited property.

J-20 Skateboard, Scooter, Roller Skates, and Bicycles Ordinance

(a) Any person riding a skateboard, scooter, roller skates, or bicycle on the sidewalks of businesses located in the main shopping area of the Pueblo of Pojoaque or at the Towa Golf Course shall be in violation of this Ordinance. The main shopping area includes the Supermarket, strip shopping center, and all other surrounding businesses.

(b) The Realty Department shall post notices throughout the main shopping area that it is a violation of the Law and Order Code to operate a skateboard, scooter, roller skates, or bicycle on the sidewalks within the shopping area. The notice shall also state that violators are subject to fines and/or confiscation of the skateboards and scooters. The Towa Golf Course shall notify all persons in an appropriate manner of this Ordinance.

(c) Any Pueblo of Pojoaque Tribal Police Officer may enforce this Ordinance by issuing the alleged violator a civil citation, noting the date, time, and nature of the offense. A copy of the civil violation shall be given to the alleged violator. The citation shall give the alleged violator the option of paying a fine or appearing before the Tribal Court to contest the citation.

(d) Any violation of this Ordinance shall be subject to the exclusive jurisdiction of the Tribal Court.

(e) The fines shall be fifty dollars (\$50.00) for the first offense. Second violations shall be subject to confiscation of the skateboard, scooter, roller skates, or bicycle. Violators are also responsible for any destruction or injuries caused by their actions.

(f) The Court, in its sole discretion, may order community service at the rate of ten dollars (\$10.00) per hour in lieu of a fine.