



ISLETA TRIBAL COURT RULES OF CIVIL PROCEDURE

Part 1 – General Rules

Rule 1.01 Scope and Application

What do these rules apply to?

These rules govern the procedure in the Isleta Tribal Courts in all civil cases, such as contract, property, negligence, and probate matters. These rules shall be construed and administered to secure the just, speedy, and inexpensive determination of every case.

In these Rules, the term “plaintiff/petitioner” includes the party who initiates a civil case. The term “defendant/respondent” includes the party(ies) who must respond to a civil case.

Rule 1.02 Courtroom Conduct

What behavior is expected in the courtroom?

Court proceedings should be conducted with fairness and equality, with respect for all persons present and keeping in mind the responsibilities of those who are charged with the administration of justice.

Rule 1.03 Forms

Does the court have forms I can use to prepare papers to file in my case?

Yes. Forms for a complaint, summons, answer, subpoena, and motions are available online or from the Court Clerk’s office.

Rule 1.04 Time Limits

How do I calculate the time limit set by these rules?

When a rule gives you a certain number of days to do something, do not count the day of the event that starts the time limit. Instead begin counting every day after that, including weekends and holidays.

If a time limit falls on a weekend, holiday, or other day that the court is closed, then the deadline is the next day that the court is open.

Rule 1.05 Assignment of Judges

May I request a different judge?

The court will assign a judge. If you believe the judge assigned to your case has a conflict of interest, you may file Motion for Recusal of Judge, explaining why you think the assigned judge has a conflict of interest. The Chief Judge will determine whether to remove any potentially conflicted judge from the case, under relevant standards of judicial conduct. If necessary, another judge will be assigned.

Rule 1.06 Communication with the Court

May I communicate directly with the judge?

The court will **NOT** accept *ex parte* communications. In limited circumstances such as true emergencies where there is an immediate danger of imminent harm, the proper ex-parte petition or motion can be filed with the court. Phone calls, letters or face-to-face conversations with the Judge are **NOT** permitted if made outside of the presence of all parties involved in the case.

Any evidence related to a case must be presented to all parties of record. In other words, if you want the Judge to have any information regarding a pending case, that information must be sent to all parties of record in the matter before filing it with the court.

Phone calls, emails, and text messages directly to the Judge are not permitted. Any letters or other printed communications such as photos, maps, etc. will be mailed back unread if sent directly to the Judge and not filed with the court clerk.

Rule 1.07 Attorneys and Spokespersons

Who can represent me as a lawyer or spokesperson?

You may be represented by a lawyer or spokesperson as allowed by the Rules Governing the Admission to Practice Before the Pueblo of Isleta Tribal Court.

Rule 1.08 Court Records

Are court records open to the public?

Case files and documents other than judgments are not open to the general public. Parties to a case, and persons or agencies with a personal connection or a legitimate business or governmental interest in the case may request access to a file. Any parties requesting access to records shall file the Request for Records form. Granting access to such documents shall be approved by the Chief Judge.

Rule 1.09 Court Hearings

Are court hearings open to the public?

All courtroom proceedings are open to the public unless the courtroom is closed by an order of the court entered under this rule, or for a matter involving minor children. An agreement of the parties to close the courtroom will not be a sufficient basis for closure. Unless otherwise ordered by the court, the following persons may be present during a closed courtroom proceeding: the parties and their attorneys or spokespersons, witnesses while testifying, and court employees and security personnel. This rule does not affect the Court's inherent authority to impose reasonable time, place, and manner limitations on public access to the courtroom.

Part 2 – Starting a Case

Rule 2.01 Filing a Complaint

How can I start a case?

A civil action is started by filing with the court a complaint consisting of a written statement setting forth briefly the facts and circumstances giving rise to the claim(s).

The complaint should be on, or similar to, the complaint form approved by the court.

Rule 2.02 Service of Summons

What happens after a complaint is filed?

Once the complaint is filed and filing fee (if any) paid, the court clerk will issue a summons. The summons, along with a copy of the complaint, must be served on every person being sued ("defendant/respondent").

Who will serve the summons and complaint on the other party(ies)?

Any person who is at least 18 years old and not a party may serve a summons and complaint.

At the plaintiff/petitioner's request the court may serve a summons and complaint on one or more of the defendants/respondents.

How may a summons be served?

A summons and complaint may be served by (A) delivering them to the defendant/respondent personally; (B) leaving them at the defendant/respondent's dwelling or usual place of occupancy with someone of suitable age and discretion who resides there; or (C) mailing them to the respondent by certified mail, return receipt requested.

The person making service must complete and sign a certificate of service on a form provided by the court, and file it with the court.

Part 3 – Answers, Motions, and Other Pleadings

Rule 3.01 Responding to a Complaint

How do I respond to a complaint?

After being served, a defendant/respondent must file a written answer, admitting or denying the allegations in the complaint.

When must an answer be filed?

The defendant/respondent shall file an answer with the Tribal Court no later than twenty (20) days from the date of service of the summons. The answer must be served on the plaintiff/petitioner, in person or by mail.

The answer should be on, or similar to, the answer form approved by the court.

How do I write my answer?

The answer shall describe in concise and simple language the reasons why the defendant/respondent denies the claim. Defenses should be stated in the answer rather than in a separate motion.

What are some common defenses to a claim?

Denial of the facts as alleged in the complaint; lack of jurisdiction over the subject matter; lack of jurisdiction over the person; improper venue; incomplete service of process; failure to state a claim upon which relief can be granted; failure to join a required or necessary party.

How do I file a counterclaim?

The defendant/respondent may assert a counterclaim in the answer. The facts and circumstances giving rise to the counterclaim must be briefly described in the answer. The plaintiff/petitioner will have twenty (20) days to file a written reply to the counterclaim.

Rule 3.02 Motions

What is a motion?

A motion is a formal request for the court to make a decision about something related to the case. Motions can be made for a wide variety of purposes, such as to have a hearing postponed, to have a previous order modified, to sanction a party, or even to have the case dismissed. A motion does not activate or open a new cause of action (case).

What are the requirements of a motion?

All motions, except oral motions made during a hearing, shall be in writing and shall state the grounds for the motion and the relief being sought. A copy of every written motion shall be served on each party as provided under these rules.

The motion should be on, or similar to, the answer form approved by the court.

What is an unopposed motion?

It is a motion that both parties agree to, such as to continue a hearing. If the motion is not opposed by the other party, after consulting with the other party, then the court should be informed that it is an unopposed motion.

What is an opposed motion?

It is a motion the other party opposes, or does not agree with. It should be noted in the motion that the other party opposes the motion, or it is assumed to be unopposed.

Is there a deadline to file a response to a motion?

Unless otherwise specifically provided in these rules, any written response shall be filed within fifteen (15) days after service of the motion. If a party fails to file a response within the prescribed time period the court may rule with or without a hearing.

What is a reply brief?

A reply brief is a more detailed writing by the plaintiff/petitioner clarifying or reiterating any arguments of the case. Any reply brief shall be filed within fifteen (15) days after service of any written response.

Can I request a hearing on a motion?

Yes. A request for hearing should be filed at the time an opposed motion is filed. Otherwise, the court will await a response from the non-moving party and a reply from the moving party. The court will then schedule a hearing on the motion.

Is a hearing always necessary for a motion?

A hearing is not always necessary for a motion. The court will wait for the time to expire for responses and replies from the parties before a decision on the motion is made. In some cases, the court will schedule a hearing on the motion unless there is sufficient law and facts within the motion, response and reply to decide the matter without a hearing.

What if my motion is an emergency motion?

The presiding Judge will review the emergency motion and decide if in fact the matter is an emergency. The court will either grant the emergency motion (temporarily) or schedule an emergency hearing on the motion. In both cases however, a hearing will be scheduled to address the matter.

Rule 3.03 Service of Pleadings, Motions and Other Papers**What rules apply to filing papers with the court?**

All papers filed with the court must be served on the other party(ies), by (1) hand delivery, (2) first class U.S. Mail, or (3) any other method that the parties agree upon.

Every pleading or paper filed with the court must include a Certificate of Service, stating the date and the method that party used to serve the pleading or paper on the other parties.

Part 4 – Discovery and Pre-trial

Rule 4.01 Discovery

Do I have to provide information to the court or to other parties before a hearing?

Yes. At least ten (10) days before a hearing, you must provide a list of the witnesses you intend to call and a list of the items you intend to offer into evidence. The list must be filed with the court and served on the other parties. The court may modify this deadline and may impose other pre-trial requirements, on its own or on motion by a party.

Can I see another party's proposed evidence before the hearing?

If another party asks to see any of the items you intend to offer into evidence at a hearing, you must make them available at a reasonably convenient time and place. You have the same right to see the items that another party intends to offer.

Can I get additional information or items from other parties to use in my case?

You may ask the court to order another party to produce information or items that they have not already voluntarily provided under this rule.

You can ask the court to order further discovery if appropriate. The court may order a person to answer written questions, sit for oral questioning under oath or produce papers, tangible items, or property for you to inspect.

Rule 4.02 Subpoenas

May a person who is not a party be required to come to court to testify or provide evidence?

Yes. A party can ask the court to issue a subpoena, on a form approved by the Court. A subpoena commands a person or organization to attend a trial or hearing and give testimony, or produce records, documents, or items in its possession for inspection.

A subpoena may be served by any person who is not a party and is not less than 18 years of age. Proof of service shall be made by filing with the clerk a return of service stating when, where, and how the subpoena was served.

Rule 4.03 Pre-trial Conference

Will the court hold a pre-trial conference or issue a scheduling order before the trial?

By filing a motion, or by oral motion during the court proceeding any party can ask the court for a pre-trial conference, or the court on its own may order the parties to appear before the court to expedite the disposition of the case. Witnesses may not be called or subpoenaed for a pretrial conference unless ordered by the court.

The court may enter a scheduling order that limits the time:

- i. to join other parties and to amend the pleadings;
- ii. to file and hear motions; and
- iii. to complete any permitted discovery.

The scheduling order may also include:

- i. the dates for pre-trial conferences or hearings before trial;
- ii. a trial date; and
- iii. any other matters deemed appropriate by the court.

Part 5 – Trials

Rule 5.01 Trial to the Court

Will a judge or a jury decide my case?

Bench Trials will be held before the presiding judge. Jury trials will not be available in civil cases.

Rule 5.02 Trial Testimony

What rules apply to testimony at a trial?

The court will administer an oath to every witness.

At a party's request, the court will order witnesses excluded so that they cannot hear other witnesses' testimony, or the court may do so on its own. This rule does not authorize excluding a party or a person such as an expert witness whose presence is essential to a party's being able to present its case.

Witnesses may testify in Tiwa or in English. A party, attorney or spokesperson who requires translation of testimony given in English or Tiwa is responsible for providing their own interpreter.

For other languages, the court may at any time appoint an interpreter of its choosing, and may set reasonable compensation to be paid by one or more parties, unless a waiver is approved by the court.

Rule 5.03 Evidence

What rules apply to admission of evidence at trial?

The court will rule on whether particular testimony or other evidence will be admitted or excluded, using common law principles and guided by state or federal rules of evidence.

Part 6 – Judgment and Dismissal

Rule 6.01 Judgment

What is a judgment?

A judgment is a final order or decree of the court that decides or resolves the contested issues.

Can a judgment be entered without a hearing or trial?

Yes. A default judgment may be entered if a party does not respond or appear as required by these rules or an order of the court. A summary judgment may be entered if there are no facts being disputed.

Rule 6.02 Default Judgment

What entitles a party to a default judgment?

When a party against whom a claim is made has failed to file a response or make an appearance required by the court or by these rules, the court may enter judgment for the relief that the other side requested. The court shall require adequate proof that the party had notice of the claim and of any relevant hearing(s). If the party filed a pleading or appeared at an earlier hearing, that party must be served with notice that a default judgment has been requested.

Rule 6.03 Summary Judgment

What is a summary judgment?

Summary judgment is when the court decides the matter based entirely on the pleadings without going to trial.

What entitles a party to a summary judgment?

The court will grant summary judgment if there is no genuine dispute of any material fact and one party is entitled to judgment as a matter of law. A summary judgment may pertain only to some issues, leaving others to be determined at trial.

How do I ask for summary judgment?

A party seeking to recover upon a claim or counterclaim may, at any time after an answer or a reply is filed, move for a judgment on the pleadings in his favor upon all or any part thereof. There must be enough facts in the pleadings that allow the court to rule on the issue as a matter of law.

When do I file the motion for summary judgment?

The motion shall be served on the other party at least five (5) days before the time fixed for the hearing. The judgment sought shall be stated in the pleading on file. The motion shall show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Can the court rule on the pleadings without a motion being filed by a party?

Yes. The court may, on its own motion, enter judgment on the pleadings if there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A judgment on the pleadings may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. At least fifteen (15) days before entering such judgment on the pleadings, the court shall provide written notice of its intention to the parties to enter the judgment unless objections are received by a certain date.

Rule 6.04 Correction of Judgment

How can mistakes in a judgment be corrected?

Clerical mistakes, oversights, and omissions in a judgment may be corrected by the court, by motion of a party or by the court on its own.

Rule 6.05 Voluntary Dismissal

Can a plaintiff/petitioner dismiss the case after it has been filed and served on the other party?

Yes. A complaint may be dismissed by the plaintiff/petitioner without order of the court.

How does a plaintiff/petitioner dismiss the complaint?

A complaint may be dismissed by the plaintiff/petitioner by filing a notice of dismissal at any time before the defendant/respondent files an answer or other responsive pleading. If an answer or other responsive pleading has been filed, then a stipulation of dismissal must be signed by all parties in the action and filed.

Rule 6.06 Involuntary Dismissal

Can the case be dismissed by the defendant/respondent?

Yes. If the plaintiff/petitioner fails to prosecute the case or to comply with these rules or any order of the court, a defendant/respondent may move for dismissal of an action or of any claim against defendant/respondent.

Can the plaintiff's/petitioner's case be dismissed during a trial?

Yes. After the plaintiff/petitioner has completed the presentation of evidence, the defendant/respondent, without waiving the right to offer evidence in the event the motion to dismiss is not granted, may move for a dismissal on the grounds that on the facts and the law the plaintiff/petitioner has shown no right to be provided relief. The court may then determine whether to grant the motion or continue until all evidence has been presented.

Rule 6.07 Dismissal for Failure to Prosecute

Can the court dismiss the complaint on its own?

Yes. If an action has been pending for six (6) months from the date the complaint is filed, and the plaintiff/petitioner or defendant/respondent asserting a counterclaim have failed to take any available steps to have the claims resolved, the court shall file and serve on the parties a thirty (30) day notice stating that the court intends to dismiss the claims for failure to prosecute. If the plaintiff/petitioner or defendant/respondent asserting a counterclaim fails to take any available steps to bring the case to trial or otherwise prosecute the claims within thirty (30) days after service of the notice, the court shall dismiss the claims.

Part 7 – Appeals

Rule 7.01 How to Take an Appeal Note: should we change to How to File an Appeal

How do I appeal to the Appellate Court?

A party desiring to appeal a final order must file a notice of appeal with the clerk of the Tribal Court, within the time allowed by the Rules of Appellate Procedure (as amended Dec. 18, 2019).

A party may not appeal a non-final order unless the Tribal Court judge issues a written statement in accordance with Rule 4(b) of the Rules of Appellate Procedure (as amended Dec. 18, 2019). A non-final order must be appealed within the time allowed under Rule 4(b)(2).

Rule 7.02 Stay Pending Appeal

Will the judgment take effect during an appeal?

Filing an appeal does not by itself prevent a final order from taking effect. A final order is effective while the appeal is pending unless the Tribal Court or Appellate Court issues an order suspending it (a “Stay”).

A motion for stay must first be filed in the Tribal Court, which will grant or deny it within fifteen (15) days, with any terms or conditions, including a monetary bond, that the court deems necessary to ensure that the winning party will receive the benefit of the ruling if it is affirmed on appeal.

A party may appeal the Tribal Court’s grant or denial of a stay by filing a motion for stay in the Appellate Court.

Isleta Tribal Court Rules of Civil Procedure, effective this 18th day of August, 2023.

Felicia L. Jojola
Felicia L. Jojola, Chief Judge
Isleta Tribal Court

R. Toya
Roshanna K. Toya, Chief Justice
Isleta Appellate Court