



# PUEBLO OF ISLETA

P.O. BOX 1270  
ISLETA, NM 87022

## PUEBLO OF ISLETA Resolution No. 2015- 071

### **Amending the Ordinance Establishing the Number, Qualifications, Term of Office, Vetting Process and Superintending Authority for Pueblo of Isleta Appellate Court Justices**

The following resolution was passed at a duly called meeting of the Tribal Council of the Pueblo of Isleta:

**WHEREAS**, the Pueblo of Isleta is a federally recognized Indian tribe with a Constitution;

**WHEREAS**, the Pueblo of Isleta Tribal Constitution states: "The council may delegate its appellate authority to such appeal committee, appellate judge or judges or other appellate body as the council may from time to time establish by ordinance duly enacted by the council." Article IX, Sec. 6 (Revised, 1991); and

**WHEREAS**, based on extensive meetings with and recommendations by the Isleta Appellate Court Restructuring Committee, with included the five Appellate Court Justices in office then, the Tribal Council enacted an Ordinance Establishing the Number, Qualifications, Term of Office, Vetting Process and Superintending Authority for Pueblo of Isleta Appellate Court Justices (hereinafter "Ordinance") on August 12, 2011, via Tribal Council Resolution No. 2011-049 (attached);

**WHEREAS**, the Pueblo of Isleta requested Secretary of Interior approval of the Ordinance on August 24, 2011, and the designee for the Secretary of Interior approved the Ordinance on September 28, 2011;

**WHEREAS**, Tribal Council amended the Ordinance on April 23, 2013 (TC Res. No. 2013-036), which was approved by Secretary of Interior within the 120 days requirement then present in Article X of the Pueblo of Isleta Constitution;

**WHEREAS**, Tribal Council desires to amend the Ordinance as described in the attached version, incorporated into this Resolution as **Exhibit A**;

**WHEREAS**, Tribal Council finds it to be in the best interests of the Pueblo to approve the amendments to the Ordinance as described in **Exhibit A**.

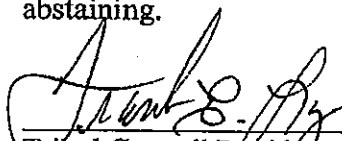
**WHEREAS**, given that the Constitution was amended on September 20, 2014, to remove Secretary of Interior approval of tribal ordinances, Tribal Council hereby finds it unnecessary to transmit this Ordinance for Secretary of Interior approval.

**NOW THEREFORE BE IT RESOLVED** that the Tribal Council hereby amends the Ordinance as described in **Exhibit A**.

**BE IT FURTHER RESOLVED** that such Amendment shall go into effect immediately upon approval of this Resolution by Tribal Council.

**CERTIFICATION**

We, the undersigned officials of the Pueblo of Isleta, hereby certify that the foregoing Resolution was duly adopted by the Pueblo of Isleta Tribal Council at a regular meeting held on the 12<sup>th</sup> day of August, 2015, with a quorum present, with -5- voting for, -2- opposing, and -0- abstaining.

  
\_\_\_\_\_  
Tribal Council President

  
\_\_\_\_\_  
Pueblo of Isleta Governor

**ATTEST:**

  
\_\_\_\_\_  
Tribal Council Secretary



**PUEBLO OF ISLETA  
ORDINANCE**

**Establishing the Number, Salary, Qualifications, Term of Office, Vetting Process and  
Superintending Authority for Pueblo of Isleta Appellate Court Justices**

**PREAMBLE**

**WHEREAS**, the Tribal Council hereby acknowledges the autonomy of the Judicial Branch of the Pueblo of Isleta government, as set forth in the Pueblo of Isleta Tribal Constitution;

**WHEREAS**, the Tribal Council finds it is necessary and proper to establish a separation of powers to avoid appearances of impropriety, unfairness, conflicts of interests, and to ensure a system of checks and balances in Pueblo of Isleta tribal government;

**WHEREAS**, the Tribal Council finds it is necessary and proper that laws be applied consistently to ensure that all persons are protected with equal protection of the law.

**ARTICLE I. PURPOSE, AUTHORITY AND SCOPE**

**Section 1. Purpose**

The purpose of this Ordinance is to establish the number, salary, qualifications, term of office, vetting process and superintending authority for Pueblo of Isleta Appellate Court Justices (hereinafter "Ordinance").

**Section 2. Authority**

This Ordinance is authorized by Article IX, Section 6, of the Pueblo of Isleta Tribal Constitution:

"The council may delegate its appellate authority to such appeal committee, appellate judge or judges or other appellate body as the council may from time to time establish by ordinance duly enacted by the council. The decisions of the council or delegated appellate body shall be final in all appeal cases."

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Pueblo of Isleta Tribal Constitution, Article IX, Sec. 6 (Revised, 1991). This Ordinance shall be consistent with the provisions of the Pueblo of Isleta Law and Order Code, as amended from time to time. This Ordinance supersedes Tribal Council Resolutions No. 99-58, No. 99-59, No. 01-23, and No. 01-94, and any other previous and conflicting Tribal Council resolutions.

### **Section 3. Scope**

The Ordinance shall apply to the Pueblo of Isleta Appellate Court and its Justices. This Ordinance shall apply only to cases filed after enactment of this Ordinance. Cases that are before the Isleta Appellate Court at the time of enactment of this Ordinance shall continue under the previous laws and rules of the Isleta Appellate Court in place prior to enactment of this Ordinance and shall continue without prejudice to any party.

## **ARTICLE II. ESTABLISHMENT**

**Section 1.** The Isleta Appellate Court is empowered to hear all appeals from the Isleta Tribal Court as prescribed in Article IX, Section 6, of the Pueblo of Isleta Tribal Constitution.

**Section 2.** The Isleta Appellate Court shall have all necessary and proper powers in accordance with Article IX of the Pueblo of Isleta Tribal Constitution and this Ordinance. The Isleta Appellate Court shall be empowered to make decisions of law only and shall remand all matters requiring additional findings of fact to the Isleta Tribal Court.

**Section 3.** The Isleta Appellate Court shall issue to the parties and to Tribal Court written decisions to provide the reasoning of the Court for all decisions rendered. In order to ensure consistency and fairness, all decisions of the Court shall be made available upon request. The Isleta Appellate Court may impose a fee to obtain copies of decisions. Justices that dissent or concur specially with the decision of the Court on a given case shall be identified in the decision and shall prepare and submit a written statement containing the reasons for the dissent or special concurrence. All hearings involving parties must be properly recorded.

**Section 4.** The Isleta Appellate Court shall have authority to grant interlocutory appeals<sup>1</sup> from the Isleta Tribal Court, issue writs<sup>2</sup>, and certify questions of law in cases in which the Isleta Appellate Court has jurisdiction. The Isleta Appellate Court shall develop rules to implement such authority.

<sup>1</sup> An appeal that occurs prior to the Tribal Court's final ruling on the case.

<sup>2</sup> A writ is a court's written order, in the name of a state or other competent legal authority, commanding the addressee to do or refrain from doing some specified act. Black's Law Dictionary (7<sup>th</sup> Ed.).

**Section 5.** The Isleta Appellate Court shall have superintending authority over the Isleta Tribal Court. Such authority shall include promulgation of rules, procedures, and policy in accordance with Section 10 of this Article and shall include written reprimand of Tribal Judges made pursuant only to duly enacted judicial standards of conduct promulgated by Isleta Appellate Court.

**Section 6.** The Pueblo of Isleta Tribal Council shall retain exclusive jurisdiction of all cases and controversies regarding membership and enrollment as prescribed in Article II, Section 8, of the Pueblo of Isleta Tribal Constitution. Accordingly, Isleta Appellate Court or Isleta Tribal Court shall not have jurisdiction to hear these cases, except as prescribed in the Constitution.

**Section 7.** The Isleta Appellate Court shall have jurisdiction to hear appeals involving land disputes and probate.

**Section 8.** Notwithstanding the term of office in Article III, Section 5, any Isleta Appellate Court Justice may be removed from office for cause as determined by Tribal Council.

**Section 9.** All cases before the Isleta Appellate Court shall be heard by, presided over, and decided by a Hearing Panel, which shall consist of a minimum of three (3) Appellate Justices to be determined by the Chief Justice. Every effort shall be made to include at least one (1) Lay Justice. All decisions made by the Isleta Appellate Court shall be signed by all Hearing Panel members. Any decision not rendered by the full Hearing Panel shall be null and void.

**Section 10. Policies, Procedures, and Rules**

1. The Isleta Appellate Court shall develop and maintain policies, procedures and rules for the Isleta Judiciary, including but not limited to: rules of civil procedure, rules of criminal procedure, and rules of evidence.

2. Notification and Approval. The Isleta Appellate Court shall notify Tribal Council, Governor, and Tribal Court of promulgated policies, procedures, and rules, including those policies, procedures, and rules promulgated by Tribal Court. Such policies, procedures and rules shall be reviewed and approved by Tribal Council prior to being enforceable and going into effect.

3. Publication. Once approved by Tribal Council, the Isleta Appellate Court shall, within ten (10) days of approval, publish such new and amended policies, procedures and rules to the community.

## ARTICLE III. GENERAL PROVISIONS

### Section 1. Number of Justices

There shall be five (5) Appellate Court Justices, to include the following: one (1) Chief Justice and four (4) Associate Justices. Two (2) Justices shall be Law Trained with preference given as follows: Pueblo of Isleta Tribal Member, a Pueblo of Isleta Descendant, and another member of a federal recognized Indian tribe. Three (3) Lay Justices shall be a Pueblo of Isleta Tribal Member and/or Pueblo of Isleta Descendant.

Appellate Justices Pro Tem may be appointed, as follows: The Chief Justice shall make recommendations in writing to Tribal Council when the Isleta Appellate Court is in need of a Justice or Justices Pro Tem. Such recommendation shall include a recommendation on who could serve as Justice Pro Tem. Tribal Council shall make an appointment after consideration of the recommendation. A Justice Pro Tem shall be employed by contract in a form approved by Tribal Council and shall be compensated as determined by Tribal Council.

### Section 2. Duties

The duties of each Isleta Appellate Court Justice shall include, but not be limited to: hearing and deciding court cases, rule-making, non-court case administrative functions related to the Isleta Appellate Court, and training. Justices and staff are prohibited from taking out of the office original files or other documents that contain court case-specific information.

### Section 3. Compensation

Compensation rates and terms of payments to Isleta Appellate Court Justices shall be set by Tribal Council through Tribal Council Resolution, by majority vote with quorum present at a duly called meeting.

### Section 4. Qualifications

1. Educational Requirement. The minimum educational requirement for a Law Trained Appellate Court Justice shall be a Juris Doctorate and in good standing with the State Bar in which admitted. Preference shall be given to a licensed attorney who has practiced in the field of Native American Indian law. The minimum educational requirement for two Lay Justices shall be a High School Diploma or G.E.D and shall be able to understand the Tiwa language. One Lay Justice shall be fluent in the Tiwa and English languages and shall be knowledgeable of the Pueblo's customs and traditions. These qualifications and preferences shall be determined by Tribal Council.

2. Other Relevant Qualifications. Tribal Council may develop other relevant qualifications for Law Trained and Lay Justices from time to time, through formal Tribal Council action by majority vote at a duly called meeting with quorum present.

#### **Section 5. Term of Office**

1. The term of office for each Appellate Court Justice shall be for an initial two years, to coincide with the term of office of Tribal Council. After the initial term, the subsequent Tribal Council shall vote to either reaffirm or appoint a new Justice or Justices. Tribal Council shall consider reaffirmation of existing Justices to create continuity and stability in the Isleta Appellate Court, but shall not be bound to reaffirm the Justice or Justices. A sitting Justice shall remain in office until such time as Tribal Council removes the Justice, or until the term of office of the Justice expires and Tribal Council has appointed a replacement.

2. Notwithstanding the foregoing, the term of an Appellate Court Justice shall expire upon removal as prescribed in in this Ordinance.

3. At the beginning of each term or when a vacancy exists, the Appellate Court Justices shall select a Chief Justice from among them who is law trained, whose name shall be conveyed to Tribal Council for approval by majority vote at a duly called meeting with quorum present.

4. Appellate Court Justices may be re-appointed in the same manner as appointed through the Vetting Process described in Section 7 of this Article.

5. In the event of a resignation of an Appellate Court Justice, the resigning Justice shall give a written notice of resignation to the other Justices and to Tribal Council. Upon receiving such notice, Tribal Council shall follow the procedures outlined in Section 7 of this Article.

6. Each and every Appellate Court Justice wishing to run for public office at the Pueblo of Isleta shall voluntarily resign as Appellate Court Justice on the date of filing candidacy with the Pueblo of Isleta. Such voluntary resignation shall be accomplished by filing a written resignation with the Tribal Council on the date of filing of candidacy. If the Appellate Court Justice does not voluntarily resign within that timeframe, Tribal Council shall immediately issue a written order withdrawing the appointment of the Appellate Court Justice. In no event shall a Appellate Court Justice who has unsuccessfully run for public office at the Pueblo of Isleta automatically re-assume the position of Appellate Court Justice for the remainder of the term.

## **Section 6. Immunity, Indemnification, and Appointment Status**

1. As an appointed official of the Pueblo of Isleta, each and every Appellate Court Justice shall possess sovereign immunity and judicial immunity with respect to conduct of his official duties as Appellate Justice. Notwithstanding such immunity, if the Appellate Court Justice is a party to or is threatened to be made a party to such action, suit or proceeding, whether civil, criminal, administrative, or investigative, arising out of his service as Appellate Court Justice, the Pueblo of Isleta shall indemnify and hold Appellate Justice or Appellate Justices harmless against all expenses, liabilities, and losses (including without limitation, attorney's fee, judgments, fines and settlement payments).

2. As a condition to such indemnification, the Appellate Court Chief Justice shall promptly notify Governor and Tribal Council of any such pending or threatened action against an Appellate Court Justice or Justices and allow the Pueblo of Isleta to select legal counsel at its expense to assert sovereign immunity and otherwise defend the Appellate Court Justice or Justices.

3. Appointment Status. Except as provided in Section 5.2 of this Ordinance, all Appellate Court Justices shall be appointed officials of the Pueblo of Isleta. An Isleta Appellate Court Justice is not an appointed official for purposes of Article VII of the Pueblo of Isleta Tribal Constitution.

## **Section 7. Vetting Process**

When the need arises for an Appellate Court Justice or Justices, the Tribal Council shall issue a public notice requesting candidates or nominations for the appointment(s). Tribal Council can also consider individuals who have not declared a candidacy or who have been nominated, including incumbent Justices. The Tribal Council by majority vote shall then appoint the Appellate Court Justice when it finds that the individual is qualified to serve.

## **ARTICLE IV. INTERACTION WITH EXECUTIVE AND LEGISLATIVE BRANCHES OF THE PUEBLO OF ISLETA**

### **Section 1. Regular Meetings**

The Chief Justice shall hold meetings with the Tribal Council and Governor on a quarterly basis or as requested by Tribal Council. Additionally, the Chief Justice shall also call a meeting with Tribal Council and Governor at the beginning of each new Tribal Council term (an initial meeting) and at the end of each new Tribal Council term (a recap meeting). The purpose of the meeting(s) will be to discuss general issues of the Appellate Court and resolve issues that

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may arise, such as docket management and timely filing of decisions and orders. Under no circumstances will court-case specific information other than court-case number be discussed at such meeting.

**Section 2. Written Report**

In anticipation of each meeting, the Chief Justice shall provide a written report to Tribal Council and Governor on issues to be discussed at each meeting. Such report shall include, at a minimum, a list of current cases by case number, the type of case, the procedural history of each case, the date in which each case was filed, a list of cases that were resolved prior to the previous meeting, and a list of outstanding cases by case number.

**ARTICLE V. MISCELLANEOUS PROVISIONS**

**Section 1. Severability Clause**

In the event any provision or provisions of this Ordinance are found invalid by a court of competent jurisdiction, the remaining provision or provisions shall remain valid and in force.

**Section 2. Amendments**

Tribal Council may amend this Ordinance from time to time as needed. Such amendment shall not become effective until adopted by majority vote of Tribal Council at a duly called meeting with quorum present.