

**THE PUEBLO OF ISLETA
APPELLATE COURT
RULES OF APPELLATE PROCEDURE
Amended January 24, 2002**

Rule 1. Scope of Rules

The following rules, known as the Rules of Appellate Procedure for the Pueblo of Isleta Appellate Court, govern the procedure for appeals to the Pueblo of Isleta Appellate Court (hereinafter "Appellate Court") and proceedings before the Appellate Court. These rules shall be referenced as the Pueblo of Isleta Rules of Appellate Procedure, and shall be cited as P.O.I.R.A.P.

Rule 2. Jurisdiction; Appointment; Composition of Appellate Court; Terms of Appellate Court Justices; Selection of Chief Justice

- A. The Appellate Court has the authority to exercise appellate review concerning all criminal and civil matters except membership. The jurisdictional authority of the Appellate Court shall include review of interlocutory appeals; writs normally brought before an Appellate Court and certified questions of law.
- B. The Pueblo of Isleta Tribal Council shall appoint the Justices of the Appellate Court.
- C. The Appellate Court shall be composed of five presiding (5) Appellate Court Justices and four (4) alternate Justices. A minimum of three (3) Justices shall hear each appeal. Two of the presiding Justices must be duly licensed attorneys.
- D. The Appellate Court Justices shall serve the following terms in office:
 - 1. The Chief Justice will serve a two-year term;
 - 2. Associate Justices will serve a three-year term.
- E. The Appellate Court Justices shall select from among themselves the Chief Justice of the Appellate Court.

Rule 3. Meetings and Compensation; Reports to the Tribal Council

- A. The presiding Appellate Court Justices shall meet as required by each case for the purpose of case review and preparations for hearing.
- B. The Appellate Court Justices shall meet for the purpose of developing or revising and publishing the Pueblo of Isleta Rules of Appellate Procedure.
- C. The Appellate Court Justices shall be compensated with a stipend of \$150 for each case and \$75 for each meeting or staffing concerning the administration of their duties.
- D. The Appellate Court Justice responsible for preparing the written decision shall be paid the additional sum of \$75.

POIRAP

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Amendments: March 2, 2000, June 8, 2000

November 30, 2000, January 24, 2002

- E. The Appellate Court shall submit reports to the Tribal Council on a quarterly basis.

Rule 4.

Assignment to cases; Recusal from cases; Replacement on cases; Duties

- A. A full panel shall hear each appeal. A full panel shall be composed of five (5) Justices except when the number of appointed Justices is less than five (5), in which case a full panel shall be composed of a minimum of three (3) justices. The Chief Justice shall designate the composition of each full panel.
- B. When a member or members of a panel are removed or excused because of a conflict pursuant to Rule 4.C., the Chief Justice shall designate a replacement from among the remaining Justices, unless there are no Justices available. Where there are no Justices available to designate, a full panel shall consist of the Justices not removed or excused, so long as at least three (3) justices remain on the panel.
- C. A presiding Appellate Court Justice shall recuse or disqualify him or herself if he or she has a conflicting interest or prejudice or if one of the parties is related to him or her as spouse, mother, father, son, daughter, grandmother, grandfather, brother, sister, uncle, aunt, or first cousin.
- D. All Appellate Court Justices shall avoid conflicts of interest and provide an impartial and independent review of the complete record and file in each case. No Appellate Court Justice who has independent personal knowledge of a case shall take into consideration such information when rendering a decision unless the parties have presented such information to the Court.
- E. No Appellate Court Justice may review case files from which he/she has been recused or disqualified, unless such Appellate Court Justice is a party and makes a formal request for the file as a party.
- F. No attorney Appellate Court Justice, during his/her term, shall represent or advise any person involved in any matter properly before the Appellate Court.
- G. All Justices shall be responsible for protecting the integrity of the Appellate Court by following these rules.

Rule 5.

Removal of Appellate Court Justices from Appellate Court

Removal of any Appellate Court Justice shall be in accordance with Article VII of the Pueblo of Isleta Tribal Constitution and all applicable laws of the Pueblo.

Rule 6.

Notice of Appeal from Tribal Court Decision

- A. Appeals shall be made by filing a written notice of appeal with the Tribal Court Clerk no later than five (5) working days from the date the Tribal Court decision is made orally or in writing, whichever is later. When the Tribal Court decision is made in writing the date for filing the appeal shall be five days after receipt.

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Receipt shall be considered accomplished three days from the date of the mailing of the decision or upon receipt by personal service.

B. Notices of appeal shall include:

1. The names, titles, addresses, and telephone numbers of the parties taking the appeal and their counsel or spokesperson unless the lower court determines that including the address or telephone number of any person would place that person in physical jeopardy;
 2. The name of the court rendering the adverse ruling and the date the ruling was rendered;
 3. A concise statement of the adverse ruling or alleged errors made by the lower court along with a copy of the decision, order or judgment that is being appealed;
 4. The nature of the relief being sought; and,
 5. A concise statement of the reasons for reversal and modification.
- C. The Isleta Tribal Court shall provide the original Notice of Appeal to the Appellate Court, along with the complete record of all proceedings, including all documents filed and recordings made of the proceedings. Parties requesting a transcript of recorded hearings shall pay the Tribal Court for the cost of the requested transcript. If the Appellate Court requests a transcript of recorded hearings, the Tribal Court shall provide the transcripts to the Appellate Court without cost.
- D. When there is nothing in the record to show an appeal was filed in a timely manner by the filing of a written notice of appeal, the Appellate Court shall schedule a status hearing to provide the appellant with the opportunity to prove an appeal was properly and timely filed. If the appellant cannot prove the appeal was filed in a timely manner by the filing of a written notice of appeal, the appeal shall be dismissed.
- E. When there is a record of a written notice of appeal but it is not clear that it was filed in a timely manner, the Appellate Court shall remand the case to the lower court from which the appeal was taken to determine when the notice of appeal was filed and if the lower cannot resolve the issue, then the Appellate Court shall treat the notice of appeal as having been timely filed.
- F. Where an appeal has been pending for over one year, the Appellate Court shall cause notice to be sent to the appellant requesting the appellant to advise the Appellate Court of his/her continued interest in his/her appeal. The Appellate Court may hold status hearings for this purpose.

Rule 7. Matters Which May Be Reviewed

- A. The Appellate Court shall hear all appeals from the Tribal Court filed within the time limits allowed by these Rules.

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- B. The Appellate Court shall determine whether or not the lower court made an error in the application of law, including the failure to apply the customs and traditions of the Pueblo of Isleta, or that the evidence does not support the decision.
- C. The Appellate Court shall remand all matters requiring additional findings of fact to the lower court.
- D. In criminal cases, no appeals shall be allowed by the complaining or prosecuting party.

Rule 8. Deceased Persons With Pending Appeal

- A. In all civil cases, if any of the parties are deceased, the Court shall make reasonable attempts to locate and notify all heirs of the deceased party determined in accordance with tribal law to inform them of the appeal. If the party appealing is deceased, the notice shall include a statement that the heirs may continue the appeal on behalf of the deceased party or his/her estate and that a response indicating the wishes of the heirs must be provided to the Appellate Court within five days of receiving the above notice.
- B. In criminal cases, if the defendant is deceased, the appeal shall be dismissed.

Rule 9. Case Dismissal

- A case shall be dismissed if:
- 1. The appellant files a motion to dismiss his/her appeal; or
 - 2. The case was not filed within the time limits allowed by these Rules.

Rule 10. Continuances

Parties shall direct all requests for continuances, delays or postponements stating their reasons, to the Chief Justice. The request may be made orally at a hearing or in writing. The Chief Justice alone or three Associate Justices acting together may grant or deny the request.

Rule 11. Pleadings/Motions

- A. All requests to the Appellate Court shall be made in writing and filed with the Appellate Court Clerk, except that an oral request may be made in Court in the presence of the other party.
- B. All requests, whether made by pleading or motion, and documents filed with the Appellate Court shall be served on the opposing party by the party filing the request on the day filed and the filing party shall certify to the Appellate Court that service was made on the opposing party.

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- C. The opposing party shall be provided an opportunity to respond to the request or document filed with the Court before the Court will consider the request or document.

Rule 12. Subpoena Authority

The Appellate Court shall have subpoena authority.

Rule 13. Site visit

The panel hearing a land case may visit the site prior to, during or after hearing the case.

Rule 14. Notice of Hearing

Parties may be notified of hearings by personal service or mail service. Personal service may be executed by the Appellate Court Clerk, the Pueblo process server, a private process server, or the Governor's sheriffs.

Rule 15. Order of Hearings

- A. The presiding Appellate Court Justice shall call the case name and number, identify the parties present, the party appealing, the appellee, and recount the decision of the lower court. Appellant(s) will present their case, including witnesses, first. The appellee(s) will then present their case, including witnesses. Witnesses will be admitted to the hearing to testify one at a time. Hearings may be closed to the public at the request of the parties or at the Appellate Court's discretion.
- B. All hearings before the Appellate Court shall be recorded.

Rule 16. Contempt of Court

A witness shall be held in contempt of court if he disrupts the proceedings by failing to abide by court procedures or engaging in any disorderly conduct, including but not limited to, shouting, using foul, threatening or other inappropriate language or making or threatening physical contact with any person or Appellate Court Justice.

Rule 17. Spokespersons

A party may bring in an Isleta Pueblo spokesperson to speak on his or her behalf.

Rule 18. Attorneys

Parties, at their own expense, may be represented by professional attorneys, if and only if, the attorney has met all the requirements included in the Pueblo of Isleta Law and Order Code, Rules Regarding Professional Attorneys.

Rule 19. Decision

- A. Upon hearing a case, the Appellate Court shall render a decision. The decision shall be in writing and contain the reasoning of the Appellate Court. The decision of the Appellate Court shall be final and binding on the parties. The Appellate Court shall conduct deliberations to arrive at a decision by consensus. In the event that consensus is not achieved, Appellate Court Justices dissenting or concurring with the majority shall be identified in the decision. All decisions of the Appellate Court shall be available to any member of the Pueblo or party upon request and shall be published and preserved in binders.
- B. Decision affecting land or other real property shall be copied to the Pueblo of Isleta Realty Office.

Rule 20. Application of Laws

The Court shall rely on and apply Isleta customs and oral laws in making its decisions and where necessary, shall apply other applicable tribal laws.

Rule 21. Stay of Execution

Upon written request and the posting of a bond by the person appealing a lower court decision, the lower court may stay execution of its order while the case is in appeal.

Rule 22. Notices

- A. All notices required by these Rules shall be made by personal service or by mail service. Where service is done by personal service, if the party is unavailable to accept service, the notice may be served on a person 18 years of age or older at the residence of the party or by posting the notice on the door.
- B. Documents contained in court records shall be presumed to have been served on the parties.

Rule 23. Enforcement Authority

Enforcement of orders of the Appellate Court, including orders of contempt, shall be by tribal law enforcement officers or the tribal sheriffs.

Rule 24. Amendments

These rules may be amended from time to time as deemed necessary by the Appellate Court, upon concurrence of all the Appellate Court Justices present at a duly scheduled meeting.

Rule 25. Computation of Time

- A. All reference to "days" in these Rules shall mean business days.

Rule 26. Availability of Appellate Court Records

- A. The following persons may make a request for Appellate Court records:
1. A party to a case,
 2. An heir to a party,
 3. A person involved in a dispute regarding property involved in the case, or
 4. Any other person with a legitimate reason whose need for the records would affect his or her legal position.

So amended this 24 day of January, 2002.

Edward Abeita
Edward Abeita, Chief Justice

Tony Lucero
Tony Lucero, Associate Justice

Christine Zuni-Cruz
Christine Zuni-Cruz, Associate Justice

Denise Chee
Denise Chee, Associate Justice

William Johnson
William Johnson, Associate Justice

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