



PUEBLO OF ISLETA
P.O. BOX 1270 ISLETA, NM 87022

RESOLUTION NO. 2002- 156

**ADOPTION OF THE PUEBLO OF ISLETA
RULES OF CRIMINAL PROCEDURE**

At a duly called meeting of the Tribal Council of the Pueblo of Isleta, the following resolution was passed:

WHEREAS, in order to assure fairness and consistency of all criminal proceedings in the Tribal Court of the Pueblo Isleta and the Isleta Court of Appeals the Tribal Council has determined that it is appropriate to adopt and establish Rules of Criminal Procedure, which are attached to this Resolution entitled the "Pueblo of Isleta Rules of Criminal Procedure", and;

WHEREAS, the Pueblo of Isleta's criminal procedures have prior to adoption of these Rules of Criminal Procedure been primarily directed by certain provisions of the Pueblo of Isleta's Law and Order Code previously adopted by the Tribal Council; and

WHEREAS, in order to avoid possible inconsistencies and uncertainties as to the applicability of certain Rules of Criminal Procedure adopted hereby with portions of the Law and Order Code, it is necessary and appropriate to repeal certain sections of the Pueblo of Isleta's Law and Order Code enumerated below dealing with criminal procedures.

NOW, THEREFORE, BE IT RESOLVED that the Rules of Criminal Procedure in the form attached hereto are hereby adopted and approved; and

BE IT FURTHER RESOLVED that Sections 1-1-10 through 1-1-15 and Sections 1-1-24 through 1-1-27 of the Pueblo of Isleta Law and Order Code are hereby repealed and shall have no further force and effect for matters arising after the effective date of this Resolution; and

BE IT FURTHER RESOLVED that the remainder of the Pueblo of Isleta Law and Order Code and any other duly adopted Resolutions and Ordinances be construed so as to avoid any conflicts and inconsistencies between the provisions thereof

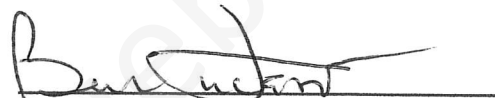
and the Rules of Criminal Procedures adopted hereby; provided, however, that if with respect to any matter covered by the attached Rules of Criminal Procedures there are any conflicts presented, the attached Rules of Criminal Procedure shall govern and control; and

BE IT FURTHER RESOLVED that the Rules of Criminal Procedure as adopted by this Resolution shall apply to all criminal proceedings commenced before the Pueblo's Judiciary. However, in recognition of a transition period, any cases that may have been initiated prior to the Court's application of these Rules of Criminal Procedure shall not be dismissed. Instead, for any action already commenced, the Pueblo's Judiciary shall apply the prior practices and procedures of the Pueblo and the Court until such action is concluded and not subject to further appeal.

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 8th day of July 2002, a quorum present, with 10 voting for, 0 voting against, and 0 abstaining.


Alvino Lucero, Governor
Pueblo of Isleta


Ben Lucero, President
Isleta Tribal Council

Attest:


Seferino Lente, Secretary
Isleta Tribal Council

PUEBLO OF ISLETA RULES OF CRIMINAL PROCEDURE

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PUEBLO OF ISLETA RULES OF CRIMINAL PROCEDURE

CHAPTER ONE GENERAL PROVISIONS

RULE 1.1 SCOPE

- A.** These rules shall govern procedure in all criminal proceedings in the Pueblo of Isleta's Judiciary.

RULE 1.2 PURPOSE AND CONSTRUCTION

- A.** These rules are intended to provide for the just, speedy determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unnecessary delay and expense, and the protection of the fundamental rights of the individual while preserving the public welfare.
- B.** The determination of criminal matters shall be governed in all respects by the provisions of the Pueblo of Isleta Law and Order Code unless otherwise expressly provided.

RULE 1.3 COMPUTATION OF TIME

- A.** Whenever a Rule, Tribal Law, or an order of the Court requires that an action be taken within a certain number of days, the day of the event from which the time limit runs shall not be counted; but the last day shall be counted unless it is a Saturday, Sunday, or tribal holiday. When the last day is a Saturday, Sunday, or tribal holiday, the deadline shall be the first work day following the day that is not counted. Where the time limit is less than seven days, Saturdays, Sundays, and tribal holidays shall not be counted at all.
- B.** When a time limit is counted from or to the time that notice is delivered to a person and the notice is delivered by mail rather than given directly to the person, it shall be presumed that delivery takes place three days after the notice is placed in a United States Postal Service mailbox.

RULE 1.4 TITLE AND CITATION

- A.** These rules shall be known and cited as the Pueblo of Isleta Rules of Criminal Procedure. The official citation to these rules shall be I.CR.R.P.

RULE 1.5 EFFECTIVE DATE

- A. These rules shall apply to all criminal proceedings occurring after the effective date of adoption.

RULE 1.6 JUVENILE PROCEEDINGS; ADULT PROCEEDINGS

- A. Any criminal proceeding against a defendant who at the time of such proceeding is under the age of 18 years shall be conducted by the Court as a closed hearing at which only the defendant, any victim of the alleged crime, any parent or guardian of the defendant, a parent or guardian of a victim under the age of 18, the legal counsel or advocate for the defendant, the Tribal Prosecutor, the Judge, necessary Court staff, any witness(es) presenting testimony to the Court and the jury shall be permitted to be present.
- B. Except as provided in Subsection C, all criminal proceedings against persons 18 years of age and older shall be open to the public; provided that the Court may exclude any person other than a defendant, his or her legal counsel or advocate and the Tribal Prosecutor if the Court determines such exclusion is necessary to maintain order in the Court.
- C. The Court may close a portion of a proceeding against an adult defendant during which testimony is taken from any alleged victim who is under age 18 to persons other than the defendant, his or her legal counsel or advocate, the Prosecutor, the jury and any other person the Court determines should properly attend.

RULE 1.7 RECORDS

- A. The Court's records regarding the disposition of all criminal complaints against defendants 18 years of age and older at the time that the complaint is filed shall be open to the public.
- B. The Court's records regarding the disposition of all criminal complaints against defendants under the age of 18 at the time the complaint is filed shall be sealed and available only to the defendant or a parent or guardian of the defendant, defendant's advocate, the Prosecutor, the Isleta Police Department and any law enforcement personnel of any other government whom the Court determines have good cause for access to such information in connection with an investigation or prosecution of a crime subject to the jurisdiction of such government.

CHAPTER TWO SEARCH AND SEIZURE

RULE 2.1 SEARCH WARRANTS

- A. A search warrant is a written order, signed by a Tribal Court Judge, and directed to a law enforcement officer ordering him or her to conduct a search

and to seize items of property specified in the warrant, or to search for a person for whom an arrest warrant is outstanding.

B. Every search warrant shall:

- (1) identify and describe with particularity the property, place or person(s) to be searched;
- (2) identify and describe the items to be searched for and seized, and/or the person(s) to be searched for;
- (3) specify a time limit after which the warrant is void, in no case longer than 10 days from the date of its issuance.

RULE 2.2 ISSUANCE OF SEARCH WARRANTS

- A.** Every Tribal Court Judge shall have the power to issue warrants for the search and seizure of the property and premises of any person under the jurisdiction of the Court.
- B.** No search warrant shall be issued except upon a finding by the Tribal Court of probable cause that the search to be authorized by the warrant will discover:
- (1) Stolen or embezzled property, contraband or otherwise criminally possessed property; or
 - (2) Property which has been or is being used to commit a criminal offense; or
 - (3) Property which constitutes evidence of the commission of a criminal offense; or
 - (4) A person for whom an arrest warrant is outstanding.
- C.** Probable cause to issue a warrant must be supported by a written and sworn statement based upon reliable information.

RULE 2.3 EXECUTION AND RETURN OF SEARCH WARRANT

- A.** Search warrants shall only be executed by law enforcement officers. The executing officer shall return the warrant to the Tribal Court within the time limit shown on the face of the warrant. Warrants not returned within such time limit shall be void.

RULE 2.4 SEARCH WITHOUT A WARRANT

- A.** No law enforcement officer shall conduct any search within the Pueblo's jurisdiction without a valid warrant except:
- (1) Incident to making a lawful arrest, in which case the search shall be limited to the individual arrested and the immediate surroundings within his or her reach; or

- (2) With the voluntary consent of the person being searched; or
- (3) When the officer has probable cause to believe that a person suspected of criminal activity is armed and dangerous, and that a search of the suspect is necessary to protect the officer or others, in which case the search is limited to a pat-down for weapons; or
- (4) When the search is of a moving or moveable vehicle and the officer has probable cause to believe that it contains contraband, stolen, or embezzled property, or the fruits or instrumentalities of a crime and in such cases only if the vehicle or its contents could be altered or removed from the officer's custody if the officer delayed the search until a search warrant could be obtained; or
- (5) When property which the officer has probable cause to believe is contraband, stolen, or embezzled, or the fruit or instrumentality of a crime is in plain view of the officer, in which case the officer may search and seize that property.

RULE 2.5 DISPOSITION OF SEIZED PROPERTY

- A. Any law enforcement officer that seizes property by warrant or otherwise, shall make an inventory of all property seized, and a copy of such inventory shall be given to the person from whom the property was taken within 24 hours.
- B. After the entry of a judgment finally disposing of a case, a hearing shall be held by the Tribal Court to determine the disposition of all property seized by any law enforcement agency in connection with that case. Upon satisfactory proof of ownership, the property shall be delivered to the owner unless such property is contraband or is to be used as evidence in a pending case.
- C. Property taken as evidence, other than contraband, shall be returned to the owner after final judgment. Property confiscated as contraband shall become the property of the Pueblo and may be destroyed, sold at public auction, retained for the benefit of the Pueblo, or otherwise lawfully disposed of as ordered by the Court.

CHAPTER THREE PRELIMINARY PROCEEDINGS

RULE 3.1 COMPLAINT

- A. All criminal prosecutions for violation of the Pueblo's criminal laws shall be initiated by the filing of a complaint in the Tribal Court. A complaint is a written statement signed by the Pueblo's Prosecutor charging that a named individual has committed a particular criminal offense. In the absence of the Prosecutor, a police officer or a complaining witness may initiate the filing of a complaint. The complaint shall:

- (1) Describe in ordinary language the offense committed, including the time and place as nearly as may be determined, and the name or description of the person alleged to have committed the offense; and
 - (2) State the section of the Pueblo of Isleta Criminal Law and Order Code allegedly violated.
- B.** The Prosecutor may base the complaint on such information as the Prosecutor shall determine to be reliable and sufficient to establish probable cause that a crime has been committed by the accused.
- C.** The judge before whom the complaint is filed shall, without necessary delay, subpoena and examine such witnesses as he or she deems necessary to the determination of whether or not a warrant or summons should be issued.
- D.** If the complaint, or the complaint together with other sworn statements, is sufficient to establish probable cause to believe that a crime has been committed by the person charged, the Court shall issue a warrant pursuant to Rule 3.3 of this Code, instructing the Isleta Police to arrest the named accused or, in lieu thereof, if there is reason to believe the defendant will respond to a summons, the Court shall issue a summons commanding the accused to appear before the Court at a specified time and place to answer the charge.
- E.** If a defendant who has been duly summoned fails to appear, or there is reasonable cause to believe he or she will fail to appear, or if the summons cannot readily be served or delivered, an arrest warrant shall issue.
- F.** When an accused has been arrested without a warrant, a complaint shall be filed immediately with the Court for review as to whether probable cause exists to hold the accused, and in all cases a complaint shall be filed no later than at the time of arraignment, otherwise the defendant shall be released without prejudice to the subsequent filing of a criminal complaint.

RULE 3.2 ARREST

- A.** Arrest is the taking of a person into custody in order that he or she may be held to answer for a criminal offense.
- B.** No law enforcement officer shall arrest any person for a criminal offense set out in the Pueblo of Isleta Criminal Code except when:
- (1) The officer has a warrant signed by a judge commanding the arrest of such person, or the officer knows for a certainty that such a warrant has been issued.
 - (2) The offense occurred in the presence of the arresting officer; or
 - (3) The officer has probable cause to believe that the person to be arrested has committed an offense.

RULE 3.3 ARREST WARRANTS AND SUMMONS

- A. Every judge of the Tribal Court may issue warrants to arrest, provided, however, that such warrants shall be issued only upon a showing of probable cause in a complaint signed by the Prosecutor or sworn written statements containing reliable information. No Judge shall issue an arrest warrant if he or she finds that there is not probable cause to believe that the offense charged has been committed by the named accused.
- B. Every arrest warrant shall command that the defendant be arrested and brought before the issuing judge, or, if he or she is unavailable, another Tribal Judge, and shall contain the following information:
 - (1) The name of the defendant or, if his or her name is unknown, any name or description by which he or she can be identified with reasonable certainty; and if known, the defendant's address; and
 - (2) The date of issuance of the warrant; and
 - (3) A statement of the offense with which the defendant is charged and a description of the acts which the accused committed which constitute the offense; and
 - (4) The signature of the issuing judge.
- C. A summons shall be in the same form as a warrant except that it shall summon the defendant to appear at a stated time and place within 10 days of the date of service. At the request of the Prosecutor the summons shall command the defendant to report to a designated place to be photographed and fingerprinted prior to his or her appearance in response to the summons. Unless good cause for failure to report for photographing or fingerprinting is shown, such failure shall result in defendant's arrest at the time of appearance in response to the summons, whereupon the judge shall direct the defendant to report immediately for such photographing and fingerprinting.

RULE 3.4 EXECUTION AND RETURN OF WARRANT

- A. The warrant shall be directed to, and may be executed by, any law enforcement officer.
- B. A warrant shall be executed by arrest of the defendant. The officer need not have the warrant in his or her possession at the time of the arrest, but upon request shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his or her possession at the time of the arrest, he or she shall inform the defendant of the offense charged and of the fact that a warrant has been issued.
- C. Return of the warrant shall be made either to the judge who issued it or to the judge before whom the defendant makes his or her initial appearance.

RULE 3.5 SERVICE OF SUMMONS

- A. The summons may be served in the same manner as the summons in a civil action, except that service may not be by publication. A summons may be served by certified or registered mail, return receipt requested. Return of the receipt shall be prima facie evidence of service.

RULE 3.6 DEFECTIVE WARRANT

- A. A warrant of arrest shall not be invalidated, nor shall any person in custody thereon be discharged because of a defect in form. The warrant may be amended by any Tribal Judge to remedy such defect.

RULE 3.7 NOTIFICATION OF RIGHTS AT TIME OF ARREST

- A. **Immediately** upon arrest the suspect shall be advised of the following rights.
 - (1) That he or she has the right to remain silent; and
 - (2) That any statements made by the suspect may be used against him or her in Court; and
 - (3) That the suspect has the right to obtain counsel at his or her own expense and to have counsel present during all questioning.

RULE 3.8 PROCEDURE UPON ARREST

- A. **Timeliness.** A person arrested shall be taken before a Tribal Judge without unnecessary delay. If he or she is not brought before a Tribal Judge within 48 hours after arrest, the defendant shall immediately be released.
- B. A person arrested shall be taken for an initial appearance before the Tribal Judge who issued the arrest warrant, if the arrest was with a warrant, or, if the issuing judge is unavailable, or if the arrest was without a warrant, before the first available Tribal Judge. Upon defendant's appearance before the judge, a complaint, if one has not already been filed, shall promptly be prepared and filed. If a complaint is not filed within 48 hours from the time of the initial appearance before the judge, the defendant shall be released from jail without prejudice to the subsequent filing of a criminal complaint.
- C. The Chief Judge shall take such steps as are necessary to assure that a Tribal Judge is available every day of the week for initial appearances as required by subsection "A" above.

RULE 3.9 INITIAL APPEARANCE

- A. At the initial appearance of any person who was arrested without a warrant, the Court shall, after informing the accused of his or her rights, first determine whether or not probable cause exists to continue to detain and prosecute the accused, and if not, shall order the prosecution dismissed and the accused released from custody immediately.

B. At defendant's initial appearance, the judge shall:

- (1) Determine the defendant's true name and address and, if necessary, amend the formal charges to reflect it, instructing the defendant to notify the Court promptly of any change of address;**
 - (2) Inform the defendant of the charges against him or her;**
 - (3) Inform the defendant of his or her rights to counsel at defendant's own expense and the right to remain silent; and**
 - (4) Determine the conditions of release in accordance with Rules 3.11 and 3.12.**
- C. When a defendant is brought before the judge for the initial appearance, he or she shall, in addition to the procedures set forth in Sections A and B, be arraigned if counsel is present or waived. If counsel is not present or waived, the defendant, upon signing a waiver of arraignment time requirements, may be granted a reasonable time in which to obtain counsel before the arraignment.**

RULE 3.10 BAIL - RELEASE PRIOR TO TRIAL

- A. Every defendant shall be released pending and during trial on his or her own recognizance, unless the Court determines, based upon findings of fact made at the initial appearance, or a later hearing to modify the conditions of release, that such a release will not reasonably assure his or her appearance for all future hearings or that the accused poses a threat to another person.**
- B. No defendant shall be held without bail unless the Court determines, based upon findings of fact made at the initial appearance, or a later hearing to modify the conditions of release, that there is a grave risk that the defendant, while released, will commit a crime or flee the jurisdiction of the Tribal Court.**
- C. Every person entitled to release under the terms of this section shall be entitled to release from custody pending and during trial under whichever one or more of the following conditions is deemed by the judge to be the least restrictive alternative which will reasonably assure the appearance of the person at any lawfully required hearing:**
- (1) Release on personal recognizance upon signing by the accused of a written promise to appear at Tribal Court at the time stated in said written promise and at all other lawfully required times;**
 - (2) Release to the custody of a designated person or organization agreeing to assure the appearance of the accused;**
 - (3) Release with reasonable restrictions on the travel, association, or place of residence of the accused during the period of release;**

- (4) Release after deposit by the accused or a bondsman of bond in either cash or other sufficient collateral in an amount specified by the judge. The judge, in his or her discretion, may require that the accused post only a portion of the total bond, the full sum to become due if the accused fails to appear as ordered;
- (5) Release after execution of a bail agreement by two responsible members of the community;
- (6) Release upon any other condition deemed by the judge to be reasonably necessary to assure the appearance of the accused as required.

RULE 3.11 CONDITIONS OF RELEASE

- A. Procedure.** At the initial appearance before a judge, a determination of the conditions of release shall be made. The defendant shall have the opportunity to be heard by the Court with respect to the conditions of release. The Court shall issue an order containing the conditions of release and shall inform the accused of the conditions, the possible consequences of their violation, and that a warrant for his or her arrest may be issued immediately upon the sworn report of a violation.
- B. Conditions.** Every order of release on bond or defendant's own recognizance shall require that the defendant:
 - (1) Appear to answer and submit to the orders and process of the Court;
 - (2) Refrain from committing any criminal offense;
 - (3) Not depart from the reservation without permission of the Court;
 - (4) If released after judgment and sentence pending appeal, defendant shall be responsible to diligently prosecute thier appeal.

RULE 3.12 MODIFICATION AND REVOCATION OF RELEASE

- A. Defendant's motion.** Any person remaining in custody after the initial appearance, may move for reexamination of the conditions of release based upon the existence of material facts not previously presented to the Court.
- B. Court's motion.** The Court may, on its own initiative, at any time modify the conditions of release, after giving the parties an opportunity to respond to the proposed modification.
- C. Prosecutor's motion.**
 - (1) Upon verified petition submitted by the Prosecutor stating facts or circumstances constituting a breach of the conditions of release, the Court may issue a warrant or summons to secure the defendant's presence in Court. A copy of the petition shall be served with the warrant or summons.

- (2) If, after a hearing on the matters set forth in the petition, the Court finds that the person released has not complied with the conditions of release, the Court may modify the conditions or revoke release.

RULE 3.13 DISPOSITION OF BOND

- A. Forfeiture.** If at any time it appears to the Court that a condition of an appearance bond has been violated, the Court shall require the parties and any surety to show cause why the bond should not be forfeited, setting a hearing thereon within 15 days. If at the hearing the violation is not explained or excused, the Court may enter an appropriate order of judgment forfeiting all or part of the amount of the bond, which shall be enforceable by the Prosecutor as any civil judgment.
- B. Exoneration.** At any time that the Court finds that there is no further need for an appearance bond, it shall exonerate the appearance bond and order the return of any security deposited.

RULE 3.14 ARRAIGNMENT

- A.** Arraignment shall be held in open Court with the defendant present, and, unless time is waived by the defendant with the concurrence of the Court, shall take place within ten (10) days after the initial appearance.
- B.** At the arraignment the Court shall:
- (1) Determine the defendant's plea of not guilty, guilty or no contest. Unless the defendant pleads guilty or no contest, the Court shall enter a plea of not guilty on the defendant's behalf;
 - (2) Hear and decide motions concerning the conditions of release;
 - (3) Set the date for pre-trial conference and trial.
 - (4) Advise the parties in writing of the dates set for further proceedings and other important deadlines.

RULE 3.15 RIGHTS OF ACCUSED AT ARRAIGNMENT

- A.** Before an accused is required to plead to any criminal charge the judge shall:
- (1) Advise the accused that he or she has the right to remain silent; to be tried by a jury if accused of a crime which is punishable by imprisonment; to be represented by counsel at his or her own expense; and that the arraignment will be postponed if the accused desires to consult with counsel and waives arraignment time requirements; and
 - (2) Read to the accused, and determine that he or she understands, the complaint and the section of the Pueblo of Isleta Criminal Law and Order Code that he or she is charged with violating, including the possible penalties that may be imposed.

RULE 3.16 NOT GUILTY PLEA

- A. If the accused pleads "not guilty" to the charge, the judge shall then inform him or her of the trial date and set conditions for release prior to trial.

RULE 3.17 PLEA OF GUILTY OR NO CONTEST

- A. A plea of guilty or no contest may be accepted only when made by the defendant personally in open Court.
- B. A plea of guilty may be accepted only if voluntarily and intelligently made. Before accepting a plea of guilty or no contest, the Court shall address the defendant personally in open Court, informing the defendant of, and determining that he or she understands:

- (1) The nature of the charge to which the plea is offered.
- (2) The nature and range of possible sentence for the offense to which the plea is offered.
- (3) The rights the defendant gives up by pleading guilty or no contest, including:
 - (a) the right to counsel at defendant's own expense, if he or she is not represented;
 - (b) the right to a trial;
 - (c) the right to plead not guilty;
 - (d) the right to a jury if accused of a crime punishable by imprisonment;
 - (e) the right to confront and cross-examine his or her accusers;
 - (f) the right to subpoena witnesses; and
 - (g) the right to an appeal.

- C. Before accepting a plea of guilty or no contest, the Court shall address the defendant personally in open Court and determine from the defendant that there is a factual basis for the plea, that the defendant wishes to give up the rights of which he or she has been advised, and that the plea is voluntary and not the result of force, threats, or promises (other than a plea agreement).

- D. A plea of no contest may be accepted only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.

RULE 3.18 PLEA NEGOTIATIONS

- A. The prosecutor and the defendant may negotiate concerning, and reach an agreement on, any aspect of the disposition of the case. However, the Prosecutor or the Court shall not in any manner reduce, waive, suspend or

otherwise eliminate the defendant's obligation to pay at least one-half (1/2) of the fine established in the Pueblo of Isleta Criminal Code.

- B. The terms of a plea agreement shall be in writing and shall be signed by the defendant, his or her counsel, if any, and the prosecutor. Any party may revoke an agreement before the Court accepts it.
- C. The parties shall file the agreement with the Court, which shall address the defendant personally and determine that he or she understands and agrees to its terms, that the written document contains all the terms of the agreement, and that the plea is entered in conformance with Rule 3.18.
- D. After making such determinations, the Court shall either accept or reject the tendered negotiated plea. The Court shall not be bound by any provision of the plea agreement regarding the sentence or the term and conditions of probation to be imposed, if, after accepting the agreement and reviewing a pre-sentence report, it rejects a provision as inappropriate.
- E. If the Court rejects an agreement or any provision thereof, it shall give the defendant an opportunity to withdraw the plea. The Court will further advise the defendant that if he or she allows the plea to stand, then the disposition of the case may be less favorable than that contemplated by the agreement.
- F. When a plea agreement or any term thereof is accepted, the agreement or such term shall become part of the record. However, if no agreement is reached, or if the agreement is revoked, rejected by the Court, or withdrawn or if the judgment is later vacated or reversed, neither the plea discussion nor any resulting agreement, plea or judgment, nor statements made at a hearing on the plea, shall be admissible against the defendant in any criminal or civil action or administrative proceeding.
- G. If a plea is withdrawn after submission of the pre-sentence report, the judge, upon request of the defendant, may disqualify himself or herself.

RULE 3.19 WITHDRAWAL OF PLEA

- A. The Court, in its discretion, may allow withdrawal of a plea of guilty or no contest when to do so would be in the interest of justice. Upon withdrawal, the charges against the defendant as they existed before any amendment, reduction or dismissal made, as part of a plea agreement shall be reinstated automatically.

RULE 3.20 PRE-TRIAL CONFERENCE

- A. At any time after arraignment the Court, at the request of any party or upon its own motion, may order one or more conferences to consider such matters as will promote a fair and expeditious trial. Such a conference shall be held only if the defendant is represented by counsel, or knowingly and voluntarily waives the right to counsel at the conference. At the conclusion of the conference the Court shall prepare and file a memorandum of the matters agreed upon and any orders that the Court deems appropriate to the case.

RULE 3.21 MOTIONS

- A.** At any time after the arraignment, either party may, by filing a written motion, or by making an oral motion in open Court in the presence of all other parties, request that the Court issue a particular order.
- B.** Such motions may include, but are not limited to:
 - (1)** Motions to suppress evidence that was illegally seized, or that was the product of the fruits of an illegal search or seizure;
 - (2)** Motions to prevent the introduction of evidence because it is unfairly prejudicial, inflammatory, or irrelevant nature;
 - (3)** Motions to exclude witnesses from the courtroom until they are called to testify and to instruct them not to discuss the case.

CHAPTER FOUR RIGHTS OF THE PARTIES

RULE 4.1 RIGHT TO COUNSEL

- A.** A defendant shall be entitled to representation by counsel or by a spokesperson at his or her own expense in any criminal proceeding. The right to be represented shall include the right to consult with counsel as soon as feasible after a defendant is taken into custody, at reasonable times thereafter, and sufficiently in advance of a proceeding to allow adequate preparation.
- B.** Attorneys or Spokespersons must be authorized to practice before the Pueblo's Judiciary pursuant to Rule 9.1
- C. Waiver.** A defendant may waive the right to counsel after the Court has determined that he or she knowingly, intelligently and voluntarily desires to forego that right. A defendant may withdraw a waiver of the right to counsel at any time, but will not be allowed to repeat any proceeding already held solely on the grounds of the waiver and consequent lack of counsel.

RULE 4.2 SPEEDY TRIAL; PRIORITIES

- A.** The trial of criminal cases shall have priority over the trial of civil cases, except for cases concerning the health, safety or welfare of children.
- B.** The trial of Defendants in Custody and defendants whose pretrial liberty may present unusual risks shall be given preference over other criminal cases.
- C. Duty of Prosecutor.** The Prosecutor shall advise the Court of facts relevant to determining the order of cases on the calendar and shall advise the Court of any impending expiration of time limits in the defendant's case. Failure to do so may result in sanctions and should be considered by the Court in determining whether to dismiss an action with prejudice pursuant to Rule 4.4.

RULE 4.3 SPEEDY TRIAL; TIME LIMITS

- A. All Defendants.** Every person against whom a complaint has been filed shall be tried within 180 days of the arraignment.
- B. In Custody.** Every person held in custody on a criminal charge shall be tried within 120 days from the date of initial appearance or within 90 days from the date of arraignment, whichever is lesser.
- C. Out of Custody.** Every person released pending trial shall be tried within 120 days from the date of initial appearance or within 90 days from the date of arraignment, whichever is greater.
- D. New Trial.** A trial ordered after a mistrial, upon a motion for a new trial, or upon the reversal of a judgment by the Court of Appeals shall begin within 60 days of the entry of the order requiring a new trial.
- E.** The calculation of the time limits prescribed by this Rule shall not include any delay caused by or on behalf of the defendant, including, but not limited to, delays caused by an examination and hearing to determine competency, the defendant's absence or incompetence, or his or her unavailability to be arrested or taken into custody on the reservation.

RULE 4.4 DENIAL OF SPEEDY TRIAL; DISMISSAL

- A.** If the Court determines that a speedy trial time limit established by these Rules has been violated, it shall, on motion of defendant or on its own initiative, dismiss the prosecution, with or without prejudice, as justice requires.

RULE 4.5 ISSUANCE OF SUBPOENAS

- A.** Upon the request of any party to a case or upon the Tribal Court's own initiative, the Court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence which is relevant, necessary to the determination of the case, and not an undue burden on the person possessing the evidence.
- B.** A subpoena shall bear the signature of a Tribal Judge, and it shall state the name of the Court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

RULE 4.6 SERVICE OF SUBPOENAS

- A.** A subpoena may be served at any place within or without the confines of the Reservation, but any subpoena served outside the Reservation shall be served by a person authorized to serve subpoenas according to the law of the jurisdiction in which the subpoena is served.
- B.** Except as provided in subsection A above for the service of subpoenas outside of the Reservation, a subpoena may be served by any law enforcement officer or other person appointed by the 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 or her place of residence with any competent person that is 16 years of age or older who also resides there.

- C. Proof of service of the subpoena shall be filed with the Clerk of the Court by noting on a copy of the subpoena the date, time, and place that it was served and noting the name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the subpoena.

RULE 4.7 FAILURE TO OBEY SUBPOENA

- A. Upon determining that any person has failed to obey a subpoena without a justification satisfactory to the Court, the Court may issue an Order to Show Cause why that person should not be held in contempt of Court, and a bench warrant for his or her arrest, and direct that the Order and warrant be served upon the person. Willful evasion of service of a subpoena shall be considered failure to obey a subpoena.
- B. Upon the arrest of the person made the subject of the Order to Show Cause, that person shall be given the opportunity to justify to the Court his or her failure to obey the subpoena. If the Court determines that the failure to obey the subpoena was unjustified, the Court may find the person in contempt of Court and sentence him or her pursuant to the applicable contempt provisions of the Pueblo of Isleta Criminal Law and Order Code.

RULE 4.8 RIGHT TO IMPARTIAL JUDGE; RECUSAL

- (a) The Parties shall be entitled to appear before an impartial judge that has no personal interest in the pending matter in all proceedings conducted in accordance with these rules.
- (b) No Tribal Court Judge shall preside over any proceeding in which the defendant or victim of the crime charged is the parent, child, grandchild or sibling of the judge, or the spouse of any such person or the judge, nor shall a Tribal Court Judge preside over any proceeding arising out of or affecting a matter in which the Judge has a financial interest.
- (c) In addition to the mandatory grounds for recusal stated at paragraph B, if other circumstances may affect or appear to affect a Tribal Court Judge's impartiality, the Judge shall render a determination on the record as to any such matter may affect his or her impartiality, and if it will so affect the Tribal Judge's impartiality, the Judge shall recuse him or her-self.
- (d) Either party may move for recusal under paragraph B, or a determination of impartiality and possible recusal under paragraph C. Either party may file an interlocutory appeal of a Tribal Judge's denial of a motion to recuse alleging the conditions for mandatory recusal under paragraph B.

RULE 4.9 MULTIPLE CHARGES

- A. If any criminal complaint charges a defendant with the commission of two or more offenses at the same time, said defendant shall be arraigned and tried for all such offenses as the same time.

RULE 4.10 MULTIPLE DEFENDANTS

- A. If two or more defendants are charged with the same or similar offenses arising out of the same fact situation, all such defendants shall be tried jointly unless the presiding judge determines that the defenses of any one or more of such defendant's will be antagonistic to any of the other defendant's, in which case each defendant shall be tried separately.

RULE 4.11 WITNESSES SEQUESTERED

- A. At all trials, each witness other than the accused shall remain out of the courtroom except at such time as he or she it actually testifying.

RULE 4.12 RIGHT AGAINST SELF-INCRIMINATION

- A. No defendant shall be compelled to be a witness against himself or herself, nor shall any presumption of guilt arise from a defendant's refusal to testify.

CHAPTER FIVE DISCOVERY

RULE 5.1 DISCLOSURE BY THE TRIBE

- A. **Matters relating to guilt, innocence or punishment.** No later than 15 days after the arraignment, the prosecutor shall make available to the defendant for examination and reproduction the following material and information within the Prosecutor's possession or control.
 - (1) The names and addresses of all person whom the Prosecutor will call as witnesses in the case-in-chief together with their relevant written or recorded statements;
 - (2) All statements of the defendant and of any person who will be tried with the defendant;
 - (3) The names and addresses of experts who have personally examined a defendant or any evidence in the particular case, together with the results of physical examinations and of scientific tests, experiments or comparisons, including all written reports or statements made by them in connection with the particular case;
 - (4) A list of all papers, documents, photographs or tangible objects which the Prosecutor will use at trial or which were obtained from or purportedly belong to the defendant;

- (5) A list of all prior convictions of the defendant which the Prosecutor will use to prove motive, intent, or knowledge or otherwise use at trial;
 - (6) All material or information which tends to mitigate or negate the defendant's guilt as to the offense charged, or which would tend to reduce his or her punishment, including all prior felony convictions of witnesses whom the Prosecutor expects to call at trial.
- B. Possible collateral issues.** At the same time the prosecutor shall inform the defendant and make available to the defendant for examination and reproduction any written or recorded material or information within his possession or control regarding:
- (1) Whether there has been any electronic surveillance of any conversations to which the accused was a party or of his or her business or residence;
 - (2) Whether a search warrant has been executed in connection with the case;
 - (3) Whether or not the case has involved an informant, and if so, his or her identity; provided, however, that disclosure of the existence or identity of an informant who will not be called to testify shall not be required where disclosure or identification would result in substantial risk to the informant or to his or her operational effectiveness, unless the failure to disclose will infringe upon the rights of the accused under the Indian Civil Rights Act.
- C. Additional disclosure upon request and specification.** The Prosecutor, upon written request, shall disclose to the defendant a list of the prior felony convictions of a specified defense witness which the Prosecutor will use to impeach the witness at trial, and make available to the defendant for examination, testing, and reproduction any specified items contained in the list submitted under Rule 5.1A(4). The Prosecutor may impose reasonable conditions, including an appropriate stipulation concerning chain of custody, to protect physical evidence produced under this section.
- D. Extent of Prosecutor's duty to obtain information.** The Prosecutor's obligation under this rule extends to material and information in the possession or control of members of his or her staff and of any other persons who have participated in the investigation or evaluation of the case and who are under the Prosecutor's control.
- E. Disclosure by Order of the Court.** Upon motion of the defendant showing substantial need in the preparation of his or her case for additional material or information not otherwise covered by Rule 5.1, and that defendant is unable without undue hardship to obtain the substantial equivalent by other means, the Court in its discretion may order any person to make it available to him. The Court may, upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

- F. Disclosure of rebuttal evidence.** Upon receipt of the notice of defenses required from the defendant under Rule 5.2B, the Prosecutor shall disclose the names and addresses of all persons whom the Prosecutor will call as rebuttal witnesses together with their relevant written or recorded statements.

RULE 5.2 DISCLOSURE BY DEFENDANT

- A. Physical evidence.** At any time after the filing of the complaint, upon written request of the Prosecutor, the defendant, in connection with the particular crime with which he or she is charged, shall:

- (1) Appear for a line-up;
- (2) Speak for identification by witnesses;
- (3) Be fingerprinted, palm-printed, foot-printed, or voice-printed;
- (4) Pose for photographs not involving reenactment of an event;
- (5) Try on clothing;
- (6) Permit the taking of samples of his or her hair, blood, saliva, urine, or other specific materials which involve no unreasonable intrusions of his or her body;
- (7) Provide specimens of his or her handwriting; or
- (8) Submit to reasonable physical or mental inspection of his or her body, which may include psychiatric or psychological examination, but only after a hearing wherein the Court will have complete discretion to either compel or deny a motion under this provision.
- (9) Defendant shall be entitled to the presence of counsel at the taking of such evidence at his or her own expense. This rule shall supplement and not limit any other procedures established by law.

- B. Notice of defenses.** Within 20 days after the arraignment, or within twenty (20) days after the prosecutor had made the disclosures required by this Code, whichever is the longer time, the defendant shall provide the Prosecutor with a written notice specifying all defenses as to which he or she will introduce evidence at trial, including, but not limited to, alibi, insanity, self-defense, entrapment, impotency, marriage, insufficiency of a prior conviction, mistaken identity, and good character. The notice shall specify for each defense the persons, including the defendant, whom the defendant will call as witnesses at trial in support thereof. The Notice shall be signed by the defendant, if pro se, or by defense counsel if the defendant is represented. A copy of the Notice shall be filed with the Court.

- C. Disclosures by defendant.** Simultaneously with the notice of defenses submitted under Rule 5.2B., the defendant shall make available to the Prosecutor for examination and reproduction:

- (1) The names and addresses of all persons other than the defendant, whom the defense will call as witnesses at trial, together with all statements made by them in connection with the particular case;
 - (2) The names and addresses of experts to be called by the defendant at trial, together with the results of physical examinations and of the scientific tests, experiments or comparisons, including all written reports and statements, made by them in connection with the particular case; and
 - (3) A list of all papers, documents, photographs and other tangible objects, which the defense will use at trial.
- D. Additional disclosure upon request and specification.** The defendant, upon written request, shall make available to the Prosecutor for examination, testing, and reproduction any specified items contained in the list submitted under Rule 5.2.
- E. Extent of defendant's duty to obtain information.** The defendant's obligation under this rule extends to material and information within the possession or control of the defendant, and his or her defense counsel and agents.
- F. Disclosure by order of the Court.** Upon motion of the Prosecutor showing that he or she has substantial need in the preparation of the case for additional material or information not otherwise covered by Rule 5.2, that he or she is unable without undue hardship to obtain the substantial equivalent by other means, and that disclosure thereof will not violate the defendant's rights under the Indian Civil Rights Act, the Court in its discretion may order any person to make such material or information available to the Prosecutor. The Court may, upon request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

RULE 5.3 EXCISION AND PROTECTIVE ORDERS

- A. Discretion of Court to Deny, Defer or Regulate Discovery.** Upon motion of any party showing good cause the Court may at any time order that disclosure of the identity of any witness be deferred for any reasonable period of time not to extend beyond 5 days prior to the date set for trial, or that any other disclosures required by these rules be denied, deferred or regulated when it finds:
- (1) That the disclosure would result in a risk of harm outweighing any usefulness of the disclosure to any party; and
 - (2) That the risk of harm cannot be eliminated by a less substantial restriction of discovery rights.
- B. Discretion of the Court to authorize excision.** Whenever the Court finds, on motion of any party, that only a portion of a document or other material is discoverable under these rules, it may authorize the party disclosing it to

excise that portion of the material which is non-discoverable and disclose the remainder.

- C. Protective and excision order proceedings.** On motion of the party seeking a protective order or excision order, or a determination the discoverability of any material information, the Court may permit the party to present the material or information or the inspection of the judge outside of the presence of the jury. Counsel for all other parties shall be entitled to be present when such presentation is made.
- D. Preservation of Record.** If the Court enters an order that any material, or any portion thereof, is not discoverable under these rules, the entire text of the material shall be sealed and preserved in the record to be made available to the Court of Appeals in the event of an appeal.

RULE 5.4 CONTINUING DUTY TO DISCLOSE

- A.** If at any time after a disclosure has been made any party discovers additional information or material which would be subject to disclosure had it then been known, such party shall promptly notify all other parties of the existence of such additional material, and make an appropriate disclosure.

RULE 5.5 SANCTIONS

- A.** If at any time during the course of the proceeding it is brought to the attention of the Court that a party has failed to comply with any provisions of these discovery rules or any other issued pursuant thereto, the Court may impose any sanction which it finds just under the circumstances, including, but not limited to:
 - (1) Ordering disclosure of the information not previously disclosed.
 - (2) Granting a continuance.
 - (3) Holding a witness, party, or counsel in contempt of Court.
 - (4) Precluding a party from calling a witness, offering evidence, or raising a defense not disclosed; and
 - (5) Declaring a mistrial when necessary to prevent a miscarriage of justice.

CHAPTER SIX TRIAL PROCEDURE

RULE 6.1 TRIAL PROCEDURE; EVIDENCE

- A.** The time and place of Court sessions, and all other details of judicial procedure not determined by these Rules shall be set out in Rules of the Court; provided, however, that no Rule of the Court shall abridge any right granted or protected by these Rules, or otherwise circumvent the purpose of these rules.

- B.** The Federal Rules of Evidence may be considered in any criminal trial proceeding or evidentiary hearing. However, the Federal Rules of Evidence are not necessarily binding upon the Pueblo's Judiciary. The Pueblo's Judiciary shall have discretion to admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony.
- C.** The Federal Rules of Privilege shall have effect unless such privilege is waived.
- D.** Basic principles of relevancy, materiality and probative force shall govern the proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted.

RULE 6.2 JURY TRIAL

- A.** Any person accused of a crime for which imprisonment is specified in the Pueblo of Isleta Criminal Code as a possible penalty shall be granted a jury trial, pursuant to Isleta Tribal Council Resolution # 2001-134 entitled, "Pueblo of Isleta Jury Trial Rules and Procedures."
- B.** The procedures for jury selection shall be as established in Isleta Tribal Council Resolution # 2001-134 entitled, "Pueblo of Isleta Jury Trial Rules and Procedures."

CHAPTER SEVEN POST VERDICT PROCEEDINGS

RULE 7.1 SENTENCING

- A.** Any person who has been convicted of a criminal offense in the Tribal Court may be sentenced to one or a combination of the following penalties:
 - (1)** Imprisonment for a period permitted by the Pueblo of Isleta Criminal Code provision specifying the punishment for the offense, and in no case greater than Six Months for each offense, except that imprisonment will not be imposed if the judge has previously reached a determination under Section 6.2.B that the penalty of imprisonment will not be imposed and has tried the offense.
 - (2)** A monetary fine in an amount permitted by the Pueblo of Isleta Criminal Code provision specifying the punishment for the offense, and in no case greater than five hundred dollars (\$500.00) for each offense.
 - (3)** Community Service for the benefit of the Pueblo.
 - (4)** Rehabilitative measures.

- B. Upon a finding of guilt or a plea agreement, the Court shall not eliminate, waive, or otherwise reduce any fine authorized to be imposed by more than one-half of such penalty assessment.
- C. **Civil Restitution.** In addition to or instead of the penalties provided in subsection "A" above, the Court shall require a convicted offender who has inflicted injury upon the person or property of another to make restitution or compensate the injured person by means of the surrender of property, payment of money, or the performance of any other act for the benefit of the injured party which is reasonable related to the offense committed. Testimony of the victim shall be considered in the determination of the appropriate disposition under this section.
- D. **Pre-sentence Reports.** In determining the appropriate sentence, the judge may consider pre-sentence reports prepared by the parties, testimony of the victim, and any other factors, which the judge deems relevant.
- E. **Indigency.** If, solely because of indigency, a convicted offender is unable to immediately pay a fine, the Court shall allow such person a reasonable period of time to pay the entire sum or allow him or her to make reasonable installment payments at specified intervals until the entire sum is paid. If the offender defaults on such payments, the Court shall find the offender in contempt of Court and may imprison such person accordingly and may enter an order to garnish such offender's wages or per capita distribution.

RULE 7.2 PROBATION; REVOCATION

- A. Where a sentence of imprisonment or a fine has been imposed on a convicted offender the Court may, in its discretion, suspend the serving of such sentence and release the person on probation under any reasonable conditions deemed appropriate by the Court.
- B. Any person who violates the terms of his or her probation may be required by the Court to serve the sentence originally imposed or such part of it as the Court may determine to be suitable giving consideration to all the circumstances; provided, that such revocation of probation shall not be ordered without a hearing before the Court at which the offender shall have the opportunity to explain his or her actions. The Defendant shall be provided Notice of a hearing and the evidence shall be disclosed to the Defendant 10 days prior to the hearing.

RULE 7.3 PAROLE; REVOCATION

- A. Any person sentenced by the Court to detention or community service shall be eligible for parole only after serving at least two thirds of his or her sentence, at such time and under such reasonable conditions as are set by the Court.
- B. Any person who violates the conditions of his or her parole may be required by the Court to serve the whole of the original sentence, provided that such

parole revocation shall not be ordered without a hearing before the Court at which the offender shall have the opportunity to explain his or her actions.

RULE 7.4 MOTION FOR NEW TRIAL

- A. Power of the Court.** When the defendant has been found guilty by a jury or by the Court, the Court on motion of the defendant, or on its own initiative with the consent of the defendant, may order a new trial.
- B. Timeliness.** A motion for a new trial shall be made not later than 10 days after the verdict has been rendered.
- C. Grounds.** The Court may grant a new trial for any of the following reasons.
 - (1) The verdict is contrary to law or to the weight of evidence;
 - (2) The prosecutor has been guilty of prosecutorial misconduct;
 - (3) A juror or jurors have been guilty of juror misconduct;
 - (4) The Court erred in the decision on a matter of law, or in the instruction of the jury on a matter of law to the substantial prejudice of a party;
 - (5) For any other reason not due to his own fault the defendant has not received a fair and impartial trial.

RULE 7.5 APPEAL BOND

- A.** At the time of sentencing, the trial Court may fix the amount of bond to be posted in the event an appeal is filed, or may specify that the appeal may be taken on the defendant's own recognizance, or may deny bail. In a case in which the defendant has been sentenced to jail time, determination of the amount of bond, conditions of release, or denial of release shall be based upon a new evaluation of the case pursuant to Rules 3.11 and 3.12 of these Rules. After conviction, the burden of establishing that the defendant will not flee or pose a danger to the community rests with the defendant.
- B.** Execution of the sentence shall be stayed pending appeal when the defendant posts an appeal bond in accordance with the order of the trial Court, or when the appeal is taken on the defendant's own recognizance.
- C.** If the trial Court does not allow the appeal to be taken while the defendant is on his own recognizance, or determines that the defendant be held without bond, the defendant may petition the Court of Appeals, at any time after the entry of the order of the trial Court setting a bond, or denying release, to stay the execution of sentence and to allow the defendant to be released upon his or her own recognizance or to set a bond, or to otherwise modify conditions of release. If the Court of Appeals denies the requested relief, the appeal may be taken, but the execution of sentence shall not be stayed until the defendant has met the conditions established by the trial Court.

- D. Any defendant in custody during the appeal shall receive the same benefits in the computation of the sentence as if no appeal had been taken.
- E. Failure of defendant to prosecute the appeal shall result in revocation of release and execution of the sentence.

RULE 7.6 RIGHT TO APPEAL

- A. The defendant may file an appeal with the Isleta Tribal Court of Appeals. Defendants must file written appeals as follows:

- (1) within thirty days from the entry of any final judgment;
- (2) within ten days after entry of an order denying relief on a petition to review conditions of release pursuant to the Rules of Criminal Procedure; or
- (3) by filing an application for an order allowing an appeal in the Appellate Court within ten days after entry of an interlocutory order or decision in which the Court, in its discretion, makes a finding in the order or decision that the order or decision involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from such order or decision may materially advance the ultimate termination of the litigation.

- B. The Prosecution may file an appeal in a criminal proceeding with the Isleta Tribal Court of Appeals. The Prosecution must file written appeals as follows:

- (1) within thirty days from a decision, judgment or order dismissing a complaint, indictment or information as to any one or more counts;
- (2) within ten days from a decision or order of the Tribal Court suppressing or excluding evidence or requiring the return of seized property, if the Prosecutor certifies to the Court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.

- C. No appeal shall be taken when the double jeopardy clause of the Isleta Tribal Constitution or the Indian Civil Rights Act prohibits further prosecution.

- D. All appeals must be submitted in writing to the Appeals Court. The party submitting the appeal must provide the opposing party a copy of the appeal that is filed and certify to the Appeals Court that a true and accurate copy of the appeal has been provided to the opposing party.

- E. Notice of the appeal must be filed with the Isleta Tribal Court.

- F. The Isleta Court of Appeals shall endeavor to hear criminal appeals in an expeditious manner without delay. The Isleta Court of Appeals shall limit the scope of the appeal to the question of law presented.

CHAPTER EIGHT RULES FOR RESTITUTION

RULE 8.1. RESTITUTION

- A. All persons incarcerated by order of the Isleta Tribal Court shall be obligated to pay restitution to the Pueblo of Isleta for the expenses of incarceration for his or her confinement incurred by the Pueblo of Isleta.
- B. All persons found guilty in the Isleta Tribal Court for committing a criminal offense against any person within the jurisdiction of the Pueblo of Isleta shall be obligated to pay restitution to the victim(s) of such criminal offense as appropriate.
- C. Persons may be entitled to payment of restitution for any financial loss directly related to the criminal conduct of the offender which may include any property damage, lost wages, or any other provable financial damage. Testimony of the victim shall be considered in the determination of the appropriate amount and form of restitution under this Rule.

RULE 8.2 DEFINITIONS

- A. **"Restitution"** means requiring a person found guilty of criminal conduct to compensate the victims of such criminal conduct for any financial loss suffered due to the criminal conduct or to reimburse the Pueblo for any costs incurred by the Pueblo for the incarceration of such person.
- B. **"Personal property"** means any tangible property that is movable.
- C. **"Necessity"** means food, shelter, or any other personal property that is necessary to live.
- D. **"Execution"** means the legal process of seizing and selling property to satisfy an obligation to make full restitution pursuant and limited to this enactment.

RULE 8.3 PRIORITY

- A. The victim(s) of the person(s) found guilty of committing a particular criminal offense shall be entitled to receive payment of full restitution prior to the Pueblo of Isleta.

- B. The Pueblo of Isleta shall be entitled to full restitution after all victim(s) have received payment of full restitution.
- C. The rights of any person(s) entitled to receive payment of child support from the defendant shall be satisfied prior to any obligation for payment of restitution.

RULE 8.4. ENFORCEMENT

- A. The Prosecutor for the Pueblo of Isleta shall ensure that the provisions of this enactment and Tribal Court Orders issued pursuant hereto are properly enforced.
- B. The Isleta Tribal Court may enter an appropriate order to garnish the wages of the person owing restitution to a victim(s) or to the Pueblo of Isleta.
- C. The Isleta Tribal Court may enter an appropriate order to garnish any per capita payment of a person owing restitution to a victim(s) or to the Pueblo of Isleta.
- D. The personal property of a person owing restitution shall be subject to execution and levy to satisfy any obligation for payment of restitution by Order of Tribal Court. The personal property subject to execution and levy is any property that is determined not to be a necessity by the Court. The Isleta Tribal Court shall be authorized to enter any appropriate order or writ to enforce the obligation to make full restitution.

RULE 8.5 COMMUNITY SERVICE

- A. When a person is unable to make full payment of a fine or make restitution in full, the Court shall order such person to perform community service for the benefit of the Pueblo. Community service shall be ordered only if the Tribal Court determines that a person owing restitution to the Pueblo does not pose any danger to any member of the community.
- B. Community service shall consists of cutting weeds or picking up litter from designated areas.
- C. One (1) hour of community service shall equate to a rate of \$ 10.00.
- D. The Prosecutor for the Pueblo shall ensure that a person ordered to perform community service has performed the service satisfactorily. The Prosecutor shall coordinate monitoring of an individual ordered to perform community service with the Isleta Police Department. The Isleta Police Department shall monitor individuals ordered to perform community service and advise the Prosecutor whether the person(s) are performing the community service satisfactorily.

- E. If a person fails to perform community service in a manner that is satisfactory to the Prosecutor, the Prosecutor shall immediately advise the Court, and the Court shall enter an appropriate order to ensure that the Court's sentence is effectuated.

CHAPTER NINE ATTORNEYS AND SPOKESPERSONS

RULE 9.1 ATTORNEYS AND SPOKESPERSONS

- A. Defendants are entitled to legal representation in all criminal proceedings in the Tribal Court or the Isleta Court of Appeals by an attorney or by a lay person at his or her own expense. A defendant may also choose to represent himself or herself.

B. ATTORNEYS

1. Before an attorney may be permitted to practice before the Pueblo's Judiciary, the attorney must submit the following to the Isleta Tribal Court:
 - (a) an application with his full name, physical address, mailing address, phone number and telefax number;
 - (b) a certificate of good standing from the New Mexico Supreme Court;
 - (c) a check or money order in the amount of \$ 200.00, this provision does not apply to any attorney or person representing the Pueblo or employed by the Pueblo to provide legal representation to indigent persons;
2. Upon receipt of the application along with payment of fee, the Chief Judge of the Tribal Court or an associate judge shall determine whether such applicant is in good standing and has submitted all necessary information. Upon a satisfactory determination, the judge shall administer an oath to the applicant to uphold the Tribal Constitution and Laws of the Pueblo. Thereafter, the Court shall issue such person a certificate, which authorizes the practice of law before the Pueblo's Judiciary.
3. The authorization to practice before the Pueblo's Judiciary shall be valid for one year. Thereafter, attorneys must renew their authorization to practice before the Pueblo's Judiciary by updating all information and remitting payment of \$ 200.00. It shall not be necessary to re-administer the oath to attorneys renewing their application, unless their authorization to practice has been expired for more than 90 days.
4. The Tribal Court and the Isleta Appeals Court shall provide all attorneys authorized to practice before the Pueblo of Isleta's Judiciary a copy of the

most current Isleta Law and Order Code and any Rules of Procedures at no additional charge.

C. SPOKESPERSONS

1. Defendants in criminal proceedings may choose to be represented by persons that are not licensed attorneys. Such persons shall be identified as a "spokesperson." A spokesperson shall not be required to submit an application to practice before the Isleta Tribal Courts or to remit payment of \$ 200.00, if such person does not engage in the regular practice of law before the Pueblo's Judiciary. However, a spokesperson shall be required to comply with all provisions contained in Rule 9.1B, if such person engages in the regular practice of law before the Pueblo's Judiciary and assesses any type of fee on a criminal defendant. For purposes of this section, the regular practice of law means providing legal representation in more than one criminal case annually.
 2. Spokespersons or Defendants appearing Pro Se shall pay \$ 25.00 to obtain a copy of the Criminal Law and Order Code and all Rules of Criminal Procedure.
- D.** No person is entitled to legal representation, in any judicial proceeding, by a person that is not duly authorized to practice law before the Pueblo's Judiciary.