

PUEBLO OF ACOMA LAWS 2003

**TITLE 3
RULES OF THE PUEBLO OF ACOMA JUDICIARY**

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PUEBLO OF ACOMA LAWS 2003

**TITLE 3
RULES OF THE PUEBLO OF ACOMA JUDICIARY**

Origins: These rules were adopted by the Pueblo of Acoma Tribal Council as part of the 1985 Law and Order Code unless otherwise noted.

Chapter 1. COURT LOCATION

- 3-1-1 Court Sessions. Regular sessions of the Court shall be held as established by order of the Chief Judge.
- 3-1-2 Official Station. The Pueblo of Acoma Tribal Court is designated as the place where current records of the Court shall be kept and as the official station of the clerk of the Court.
- 3-1-3 Location for Filing. The Pueblo of Acoma Tribal Court clerk's office is designated as the place where all pleadings, motions, complaints, and other papers relevant to proceedings before the Acoma Tribal Court shall be filed.

Chapter 2. COURT PROCEEDINGS

- 3-2-1 Originals of Documents. Records or documents in the files of the Courts shall not be taken from the office or custody of the Court clerk except upon the consent of the clerk [or written Court Order].

Annotation: Pueblo of Acoma Laws 2003 supply the bracketed information after Tribal Council amended a version of this section which appeared in Title 3 of the 1985 Law and Order Code of Acoma Pueblo. That section was replaced by Title 1 Acoma Laws 1995, as amended in 1996. See Tribal Council Resolution No. TC-AUG-28-96-3. Cross reference Section 1-5-11(B) Pueblo of Acoma Laws 2003.

- 3-2-2 Notice to Parties. All cases at issue shall be set for trial on their merits at the time and place to be designated by the Court and written notice of not less than ten (10) days shall be given counsel and/or to the parties.
- 3-2-3 Extension of Time. The Court may grant an extension of time to answer or otherwise plead to a complaint or amended complaint, if a written motion is timely filed.
- 3-2-4 Court Decorum. The Chief Judge may issue an order entitled Rules of Court to establish Court procedures governing Court decorum.

Annotation: Tribal Court Administrative Order No. 98-MS-04, entered February 8, 1998, provides that the Tribal Court since October 3, 1997, has adopted and used the Rules of Civil Procedures of the State of New Mexico as applied in the Second Judicial District Court for the State of New Mexico.

3-2-5 Exhibits.

- A. All separate documents, photographs, papers, and written or printed instruments of any nature shall be given separate exhibit numbers with exhibits for the plaintiff numbered numerically and exhibits for the defendant marked alphabetically.
- B. In civil and criminal cases, all exhibits in the custody of the clerk, after judgment becomes final or after final disposition of the action, shall be delivered or mailed by the clerk to the party offering the same or his or her counsel.
- C. Any exhibits refused by a party or counsel shall be destroyed or otherwise disposed of by the clerk upon order of the judge.

3-2-6 Jury Trial.

- A. When a demand for trial by jury is contained within a pleading instead of being separately filed, the demand shall be brought to the attention of the clerk, either orally or in writing, at the time of the filing of the pleading, which shall be made within the prescribed time limit.
- B. Jury trials are not permitted in tax cases.
- C. Rules Governing Jury Trial:
 - 1. In any criminal case where there is a possible jail sentence, a trial by jury may be requested by the defendant at the preliminary hearing or arraignment or by written application to the Court within three (3) days thereafter.
 - 2. A jury shall consist of six (6) persons and one alternate seated by the Chief Judge.
 - 3. Prospective jurors shall:
 - a. Be selected from the Acoma census rolls.
 - b. Reside on the Acoma Indian reservation.
 - c. Be twenty-one (21) years of age or older.

- d. Never have been convicted of a felony.
4. Challenges for cause, upon a showing of good cause, shall be granted by the presiding judge.
 - a. The defense shall be entitled to three (3) preemptory challenges.
 - b. The prosecutor shall be entitled to two (2) preemptory challenges.
5. When the jury has been seated, the jurors' oath shall be administered by the judge.
6. The Court may order the discharge of a juror who becomes sick or is otherwise unable to perform his or her duty and substitute the alternate juror as the sixth person.
7. In the event two (2) or more jurors become sick or are otherwise unable to perform their charged duties, the presiding judge shall declare a mistrial and reset the matter.
8. Verdict of the jury may be rendered by a majority vote:
 - a. Four (4) jurors in a civil case.
 - b. Five (5) jurors in a criminal case.
 - c. If the plaintiff in a civil case or prosecution in a criminal case shall fail to win the required number of juror votes, judgment shall be entered for the defendant and case dismissed.

Chapter 3. PERSONS PERMITTED TO PRACTICE BEFORE COURT

3-3-1 Lay Counsel.

- A. Lay counsel may practice in the Courts of the Pueblo of Acoma.
 1. Each litigant in a civil case and every defendant in a criminal proceeding shall have the right to lay counsel of his or her choice to represent him or her at his or her own expense and is solely responsible for lay counsel's appearance.
 2. If a defendant in a criminal proceeding has no such representation and cannot afford to obtain representation, then where conviction could result in confinement in a jail, the judge

may appoint lay counsel to represent him or her at no expense to him or her, upon a showing of good cause by the defendant.

- B. All lay counsel who wish to be admitted to practice before the Court of the Pueblo of Acoma may be admitted to practice upon approval of application in writing by order of the Chief Judge, provided he or she:
1. Is an enrolled member of the Pueblo of Acoma.
 2. Is twenty-one (21) years of age or older.
 3. Has not been convicted of a felony.
 4. Is of good moral character.
 5. Demonstrates to the Court a thorough knowledge of this code, the rules of the tribal judiciary and knowledge of the culture, traditions, and laws of the Acoma people.
 6. May not testify as a witness at the trial thereof, except upon permission of the Court.
 7. May be disbarred by the Chief Judge for cause upon notice and a hearing and finding of cause by the Chief Judge.

Origins: This section was adopted as part of the 1985 Law and Order Code. It was amended in 1996 by Tribal Council Resolution No. TC-OCT-30-96-3 to delete paragraphs pertaining to a tribal bar exam.

- C. Acoma law enforcement employees may prosecute criminal code violations and present evidence in such cases. They need not be members of the Pueblo of Acoma, provided they meet all other requirements of Section 3-3-1(B) above.

3-3-2

Professional Attorneys.

- A. Professional attorneys may practice before the Courts of the Pueblo of Acoma provided that any such attorney is properly admitted to practice before the Courts.
- B. Any person appearing as a party in a criminal action shall have the right to be represented by a professional attorney of his or her choice and at his or her expense.
- C. Professional attorneys may appear in taxation matters before the Courts of the Pueblo of Acoma.

- D. In all civil matters, professional attorneys must request the approval of the Tribal Court judge and the Governor of the Pueblo to appear on behalf of a party.
1. No later than fifteen (15) days after the receipt of a request for approval, the Tribal Court Judge, with the concurrence of the Governor, must grant or deny the request. If no action is taken before fifteen (15) days after the receipt of the request for approval, the request shall be deemed to be approved.
 2. Notwithstanding any other part of this section, where a party seeks emergency relief from the Acoma Tribal Court, a professional attorney may appear without prior approval of the Tribal Court judge if a request for approval is submitted to the Tribal Court and the Governor at the time that the petition for emergency relief is filed with the Court.
 3. Any denial of a request for approval for a professional attorney to appear in Tribal Court can be appealed to the Tribal Council and the determination of the Tribal Council shall be final.

Origins: This section was adopted as part of the 1985 Law and Order Code. It was amended in 1996 by Tribal Council Resolution No. TC-OCT-30-96-3 to delete entire prior section which required Tribal Council approval for any professional attorney to appear on behalf of a client in tribal court and replacing it with this language.

- E. An attorney who is a member of the New Mexico State Bar, or any attorney certified and eligible to practice before the courts of any other State or the United States, is eligible to be admitted to practice before the Courts of the Pueblo of Acoma.
- F. To practice before the Courts of the Pueblo of Acoma, an attorney must certify or show:
1. That he or she is a member of the New Mexico State Bar or that he or she is certified and eligible to practice before the courts of any other State of the United States.
 2. That he or she will abide by the Rules of the Courts of the Pueblo of Acoma and any orders issued by the Courts.
 3. That he or she is knowledgeable and is generally informed about the people and their traditions and customs.
 4. Payment of a fee of fifty dollars (\$50) per annum.

5. Submit a sworn oath of office.

Origins: This section was adopted as part of the 1985 Law and Order Code. It was amended in 1996 by Tribal Council Resolution No. TC-OCT-30-96-3 to delete paragraph pertaining to a tribal bar exam.

3-3-3 Counsel Oath of Office. The Chief Judge shall notify any attorney or lay counsel who applies to practice before the Courts of the Pueblo of Acoma if he or she has been admitted to practice and require the attorney to take the following oath:

I, _____ do solemnly swear (or affirm):

I have read the Code of Law and I am familiar with its contents;

I will support the Laws of the Pueblo in all respects;

I will abide by the rules established by the Pueblo of Acoma and the Acoma Tribal Court;

I will at all times maintain the respect due to the Acoma Tribal Court and its officers;

I will not counsel or speak for any suit or proceeding which appears to be unjust or any defense except as I believe to be honestly debatable under the Law of the Pueblo of Acoma;

I will employ such means only as are consistent with truth and honor and never seek to mislead a judge or jury by any false statements; and,

I will abstain from all offensive conduct in the Court of Justice.

3-3-4 Tribal Bar Exam and Continuing Education.

Origins: Originally part of the 1985 Law and Order Code, this section was amended in 1996 by Tribal Council Resolution No. TC-OCT-30-96-3, deleting the entire section which pertained to a tribal bar exam and replacing provisions concerning judicial continuing education.

Annotations: Cross reference to Section 1-5-6(F) Pueblo of Acoma Laws 2003.

3-3-5 [Reserved for Future Use].

Origins: The 1985 Law and Order Code addressed appointment of a tribal prosecutor in this section. In 1996 the Tribal Council restated and revised those provisions in the adoption of a restated Title 1 in Tribal Council Resolution No. TC-AUG-28-96-3.

Annotation: Cross reference to the provision addressing

Chapter 4. SPECIAL COURT ORDERS

3-4-1 Subpoenas.

- A. Every judge of the Courts of the Pueblo of Acoma shall have the power to issue subpoenas for the attendance of witnesses either on his or her own motion or any parties to the case.
- B. Service of subpoenas shall be by any qualified member of the law enforcement staff or other officer of the Court or by any person appointed by the Court for that purpose, who is not a party to the action.
- C. In civil actions, the Acoma Pueblo Police Department may assess reasonable fees and costs for the services of process.

3-4-2 Contempt of Court.

- A. Any person may be charged with contempt of court for any of the following reasons:
 - 1. Disorderly, contemptuous, or insolent behavior committed in the immediate view and presence of the Court and directly tending to interrupt its proceedings or to impair the respect due to its authority.
 - 2. Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of the Court.
 - 3. Willful disobedience of any process or order lawfully issued by the Court.
 - 4. Resistance willfully offered by any persons to the lawful order or the process of the Court.
 - 5. The unlawful refusal of any person to be sworn or affirmed or refusal to answer any material questions except where refusal is based on grounds specified in the Indian Civil Rights Act of April 11, 1968 (82 Stat. 77), (25 U.S.C. 1301).
 - 6. The publication of a false or grossly inaccurate report of the proceedings of any Court.
 - 7. Any person who shall request a jury trial and fails to appear on

the date jury trial is scheduled.

- B. The Court may sentence a person found to be in contempt of court:
 - 1. To confinement at labor for a period of not more than six (6) months.
 - 2. To pay a fine of not more than five hundred dollars (\$500).
 - 3. Both a fine and imprisonment as noted above.
 - 4. May impose such court costs as the Court deems reasonably appropriate.
 - 5. Issue such orders as are necessary to enable the person to purge himself or herself of the contempt.
- C. There is no right to a jury in a contempt hearing and no appeal from such conviction.

3-4-3

Default Judgment. When a defendant defaults in the payment of a judgment or any installment thereof, the Court on its own motion shall order the defendant to show cause why he or she is not in contempt and may issue a summons or an arrest warrant for the defendant's appearance.

- A. If good faith is shown or the defendant is indigent, the Court may allow additional time for payment or require labor on behalf of the Pueblo of Acoma.
- B. Upon refusal of the defendant to cooperate, the Court may order the seizure and sale of any personal property of the defendant found within the exterior boundaries of the Pueblo of Acoma to satisfy the fine assessed pursuant to this Code.
- C. The Pueblo of Acoma Courts are authorized and directed to cooperate fully with courts outside the jurisdiction of the Pueblo of Acoma so that any judgment issued by the Pueblo of Acoma Courts can be fully satisfied.

3-4-4

Disposition of Fines, Fees, and Other Payments Made to the Court. Any funds paid to the Courts of the Pueblo of Acoma as a result of the provisions of this Code or other lawful orders of the Court, shall be paid to the clerk of the Court:

- A. Who shall issue a receipt therefore.
- B. Shall deposit the funds into the designated Acoma Tribal Court

account to include appropriate account recording.

- C. These funds shall be available for expenditure on operating expenses of the tribal judiciary and law enforcement services.

3-4-5 Disposition of Equipment and Property Confiscated by the Court, to Include Lost/Abandoned Property.

- A. Any property, including equipment, which may have been confiscated by lawful order of the Court under the provisions of this law shall be sold by order of the Court at public auction after five (5) days notice to the debtor and proceeds thereof deposited by the clerk of the Court into the designated Court account.
- B. Any excess over the original debt and incurred liquidation expenses derived from said sale shall return to the debtor.
- C. The funds shall be recorded upon the designated tribal account of the Pueblo and shall be available for operating expenses of the judiciary and law enforcement services.
- D. This section and manner of disposition shall also apply to property which is deemed to be lost or abandoned.

3-4-6 New Trial. The grounds for a new trial as set by the Courts of the Pueblo of Acoma are as follows:

- A. Receipt by the jury of evidence not authorized by the Court.
- B. Determination by the jury of a verdict through intimidation.
- C. Determination by the jury of a verdict without a fair expression of opinion.
- D. When the Court has failed to instruct the jury correctly as to the law or has improperly admitted prejudicial materials as evidence or has made other errors at law.
- E. When, for other cause, the defendant has not received a fair and impartial trial.
- F. New evidence discovered and not available at the time of original trial.
- G. On such other grounds that will provide due and proper justice, as found by the Judge.

3-4-7 Dismissal of Cases on File. All cases pending or on the docket of the Court

both civil and criminal, upon which no action has been taken for a period of three (3) years after filing, are dismissed without prejudice.

Annotation: Originally part of the 1985 Law and Order Code. At the time of enactment it also provided: "that any party to such case may within six (6) months after final approval of this code move to have the case renewed or reinstated."

Chapter 5. PRETRIAL MATTERS

3-5-1 Cooperation by Federal and State Employees. Employees of the United States government and the State of New Mexico, particularly those who are engaged in law and order, social services, and health and educational work, may be requested by the Court to assist the Court in carrying out its duties; however, no such employees shall obstruct, interfere with, or in any matter, attempt to influence the functions of the Court.

3-5-2 Pre-Trial Conferences.

- A. A pre-trial conference as provided for herein may be held in all civil cases once the case is at issue.
- B. A pre-trial conference as provided herein shall be held in all criminal jury trial cases once the case is at issue by virtue of the defendant entering a plea of not guilty.
- C. A pre-trial conference in civil cases and criminal jury trial cases shall be held as provided here at such time prior to trial as the Chief Judge shall order.
- D. All plaintiffs and all defendants shall be required to attend the pre-trial conference in a civil case. The parties may, upon obtaining the advance consent of the judge, bring with them such other persons, including the attorney, advocate, or lay counselor, as will tend to further the resolution of the issues of the case.
- E. The defendant and complaining witness shall be required to attend the pre-trial conference in a criminal jury trial case. The arresting officer and such other witnesses, as either side may desire to summon, may be required to attend the pre-trial conference in a criminal jury trial case.

3-5-3 Pre-Trial Conference Procedures.

- A. The procedures established in this Section are intended to establish a means whereby both civil and criminal disputes can be settled in the

traditional, customary manner by discussion between the parties before a trusted, impartial tribal authority prior to resorting to formal trial procedures incorporated as a part of the Code.

- B. The procedures require that formal Court authority be involved by the filing of a complaint, but anticipate that a great percentage of cases can be settled by traditional and customary means.
- C. The procedures set forth herein shall not be interpreted or applied to deny any person any right otherwise guaranteed by Pueblo or federal law.
- D. The Chief Judge shall issue an appropriate Court order directing specific procedures to involve traditional remedies.
- E. Traditional remedies must be exhausted or appear ineffective prior to further action by the Court.
- F. Upon obtaining the advance consent of the judge assigned to conduct the pre-trial conference, either side may summon other persons, including the prosecuting or defense attorney(s), advocate(s), or lay counselor(s), as will tend to further the resolution of the issues of the case and the proper disposition of the defendant, should guilt be admitted.
- G. Such other persons may, but need not include, the defendant's spouse or other family members and any social workers, probation officers, or similar persons who have professional training.
- H. Pre-trial conference(s) as provided herein shall not be open to the public.
- I. The judge conducting the pre-trial conference shall listen to the motions of the parties and attempt to work out a settlement of all or some of the issues of the case.
- J. There shall be no transcript made of the proceedings at the pre-trial conference nor shall any statement made therein by any person be used for any purpose should the case ultimately come to trial.

3-5-4

Criminal Defendants in Pre-Trial Conferences.

- A. A defendant in a criminal pre-trial conference shall not be required to testify, cooperate, or otherwise participate in the pre-trial conference.
- B. The judge conducting the pre-trial conference in a criminal case shall explain these matters to the defendant at the beginning of the

conference and [shall cause a record to be made], if a settlement involving an admission of guilt is reached.

- C. The judge shall further determine the voluntariness of the defendants plea or agreement and determine that the defendant understands the rights he or she is giving up to the same extent as would be determined by the Court if a guilty plea had been offered originally.
- D. No settlement of any issue in a criminal case shall be made at the pre-trial conference except by the voluntary agreement, taken by the judge conducting the pre-trial conference, of the defendant.
- E. The defendant in a criminal case shall be afforded the opportunity to consult with counsel of his or her choosing, and at his or her own expense, if he or she so desires, prior to agreeing to any judgment or order settling his or her case or any issue thereof or agreeing to a pre-trial order.

Annotation: Pueblo of Acoma Laws 2003 supply the bracketed information at subsection B to provide the necessary information.

3-5-5

Disposition of Cases at Pre-Trial Conference.

- A. No settlement of any issue in a civil case shall be made at the pre-trial conference except with the voluntary agreement, taken by the judge conducting the pre-trial conference, of all parties involved in the determination of the issue(s).
- B. In the event a complete settlement of the case is worked out, the judge conducting the pre-trial conference shall cause a record to be made of such settlement by means of an order or judgment entered in the record of the case.
- C. In the event that some of the issues are not agreed to, the judge shall cause a pre-trial order to be prepared, stating what issues have been settled and what issues remain to be tried, and such pre-trial order shall supersede the pleadings for purposes of framing the issues for trial.
- D. If an agreement is reached on some or all of the issues presented in the case, such agreement may be recorded by the judge conducting the pre-trial conference, or Court clerk at the judge's direction, and may be embodied in a final or interlocutory order or judgment or in a pre-trial order prepared to govern the conduct of any trial subsequently held.
- E. Such settlement shall not be inconsistent with the laws, ordinances,

customs, and traditions of the Tribe.

- F. The pre-trial order may also contain agreement, stipulations, or orders by the Court as to the production of witnesses and evidence and the conduct of discovery before trial.
- G. If a trial appears necessary, the Court clerk shall, at the time of the pre-trial conference, obtain the names of all persons to be subpoenaed as witnesses and prepare and arrange for service of the necessary subpoenas.

Chapter 6. [Reserved for Future Use].

Origins: This Chapter addressed Amendment of Acoma Pueblo Court Rules. In 1996 the Tribal Council restated and revised those provisions in the adoption of a restated Title 1 in Tribal Council Resolution No. TC-AUG-28-96-3.

Annotation: Cross reference to the provision addressing amendment of Court rules at Section 1-4-3(E) Pueblo of Acoma Laws 2003.

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