

TITLE VII - TRIAL AND APPELLATE PROCEDURE

CHAPTER 40 -CIVIL PROCEDURE

Subchapter 1 - PROCEDURE

Sec. 40.1 Process for Civil Action

Any civil proceeding may be instituted, in the Pueblo of Santa Clara Tribal Court by the filing of a complaint with the clerk, stating the names of the plaintiff and the defendant, and the facts constituting the grievance for which relief is requested and the nature of the relief requested. The complaint shall be signed by the plaintiff. Upon the filing of a complaint, the Clerk shall issue a summons to which shall be attached a copy of the complaint directing the defendant to appear before the Tribal Court to answer the complaint at the time and place specified which shall be not more than fifteen (15) days from the date of serving the summons and copy of the complaint. A trial shall thereupon be conducted; or, in the discretion of the Court a later trial date may be set, especially if a counterclaim is filed by the defendant. The general Federal common law shall apply in Civil Procedures of this Code. Before any complaint is filed, there must be a showing by the plaintiff that all other remedies offered by this Code have been exhausted.

Formerly Sec. 14.1, Santa Clara Law and Order Code 1985.

Sec. 40.2 Complaint and Answer

1. The complaint shall contain the title of the action naming the parties as plaintiff and defendant. A plain concise statement of the facts with dates, places, acts, etc., constituting a course of action shall be made together with a demand for relief.

When the demand for relief by the plaintiff is the recovery of property, such property shall be fully described and, if money is demanded, the amount asked for shall be stated.

2. The answer may contain a denial of each allegation of the complaint made by the defendant, or parts thereof, that the facts stated do not constitute a course of action, that there is another action pending between the same parties for the same cause, that the plaintiff has no legal right to sue, that the action was not started within the period of three (3) years following the Acts complained of and for which relief is sought.

3. The defendant may make a counterclaim in his answer to the charge in the complaint and in that event the plaintiff shall have ten (10) days in which to answer and file a copy of his reply with the Clerk of the Court.

Formerly Sec. 14., Santa Clara Law and Order Code 1985.

Sec. 40.3 Service

The summons and complaint shall be served on the defendant by personal service or by mail. Service by mail shall be made by the Clerk by registered or certified mail, return receipt requested. The summons and complaint may be served personally by delivery to the defendant in person, by leaving copies thereof on the door of such abode. Any person designated by the Clerk, over twenty-one (21) years of age other than the plaintiff, may make personal service. The return

receipt on mail delivery shall be kept in the docket as evidence of the receipt of notice and an affidavit of service shall be returned to the Clerk and filed in the docket which shall constitute proof of personal service.

Formerly Sec. 14.3, Santa Clara Law and Order Code 1985.

Sec. 40.4 Filing Fee

Any complaint filed in a civil action before the Tribal Court must be accompanied with the established filing fee determined by the Court.

Formerly Sec. 14.4, Santa Clara Law and Order Code 1985.

Sec. 40.5 Long Arm Service

Any Indian subject to the jurisdiction of the Pueblo of Santa Clara Tribal Court may be served outside the territorial jurisdiction of the Court in the manner provided in with the same force and effect as if the service had been made within the territorial jurisdiction thereof, if such person:

1. Transacts business or does as act leading to a civil action within the Pueblo;
2. Owns, uses or possesses any property or interest therein within the Pueblo;
3. Contracts for services to be rendered or goods to furnished within the Pueblo.

Formerly Sec. 14.5, Santa Clara Law and Order Code 1985.

Sec. 40.6 Right to Jury

Civil cases shall be tried by the Court, unless the case is one to which a party would have a right to a jury trial under the laws of the United States and provided the party entitled to jury trial makes demand therefor to the Court in writing at least five (5) days before the trial date set in the summons and agrees to pay the cost of the jury trial in the first instance by the party or parties demanding the jury trial, but in the event the verdict is in favor of such party, the cost is recoverable from the losing party.

Formerly Sec. 15.1, Santa Clara Law and Order Code 1985.

Sec. 40.7 Trial

If a jury is demanded, the Court shall empanel a jury in the manner provided in this Code and the jury selected to try the case shall reach a verdict by majority vote based upon the preponderance of the evidence. At a trial without a jury, the Court shall hear the evidence and determine the grievance set forth in the complaint and any answer or counterclaim presented by the defendant and determine the relief to be granted, if any. Any party, at the beginning or end of the trial, may move the Court for a judgment for dismissal of the complaint or such other or further relief as the motion may state. The burden of proof is upon the plaintiff. After the plaintiff has rested, the burden of proof shifts to the defendant. Witnesses who give direct testimony may be cross-examined as to their testimony and rebuttal witnesses may be called to testify and be cross-examined. Real evidence may be introduced after a proper foundation has been laid and its relevance to the facts established. The plaintiff must prove the allegations in the

complaint by a preponderance of the evidence.

Formerly Sec. 15. Santa Clara Law and Order Code 1985.

Sec. 40.8 Witnesses and Evidence

The Court shall order by subpoena the appearance of any individual as a witness in a hearing or trial upon request from either party. Upon the failure of any person to answer such subpoena, the Court may order a Law Enforcement Officer to bring such person before the Court to determine if that person shall be held in Contempt. The Court may also order the production of books, records of other physical evidence, and compel compliance therewith in the same manner.

Formerly Sec. 15.3, Santa Clara Law and Order Code 1985.

Sec. 40.9 Judgment of Court or Jury At the conclusion of the proceeding, the Court or Jury shall render a judgment in favor of the plaintiff, if allegations are proved beyond a preponderance of the evidence, or the defendant, if the allegations are not so proven, in such amount or order such other relief as the evidence and the law may require or as the jury may find. In a damage case,

1. Where the injury inflicted was the result of carelessness of the defendant, the judgment shall fairly compensate the injured party of the loss suffered.
2. Where the injury was willfully inflicted, the judgment may impose an additional penalty upon the defendant for the benefit of the injured: party, not to exceed triple the amount of the judgment.
3. Where the plaintiff and defendant were both at fault, the judgment; shall be at the discretion of the court or jury.

Formerly Sec. 16.1, Santa Clara Law and Order Code 1985.

Sec. 40.10 Costs in Civil Action

Unless the Court provides otherwise, Court costs incurred by the winning party shall be included in any -judgment. including filing fees, service fees, expense of involuntary witnesses, expert witness fees, compensation of jurors, and other incidental expenses. Costs shall not be allowable against the Pueblo of Santa Clara or any agency thereof which may be party in a civil case.

Formerly Sec.16.2 Santa Clara Law and Order Code 1985.

Sec. 40.11 Default Judgment

Upon failure of a defendant to appear at the time stated in the summons, the other party may proceed to offer evidence including proof that the defendant was served with a summons, and the Court may render a judgment granting such relief as demanded in the complaints provided that the defaulting party may apply in writing for a new trial within ten (10) days of a default judgment, after showing good cause for his failure to answer the summons. Upon failure of plaintiff without just cause to appear at the time set by the summons for hearing,

the Court shall dismiss the cause with prejudice.

Formerly Sec. 16.3, Santa Clara Law and Order Code 1985.

Sec. 40.12 Appeal
(Repealed)

Formerly Sec.16.4 Santa Clara Law and Order Code 1985; REPEALED, Res. No. 96-13, Aug. 16, 1996; new version enacted by Res. No. 99-29, Dec. 1, 1999; *see* Sec. 36.30.

Sec. 40.13 Enforcement of Judgment

The Court may enforce judgments in civil proceedings by issuing a writ of execution against any eligible personal property of the party against whom judgment is rendered which is located or found within the jurisdiction of the Pueblo returnable not less than ten (10) days after the day of issuance. The writ of execution will be served by a Law Enforcement Officer.

1. Whenever a judgment orders the payment of damages and costs and payment is not made within the time specified therein and when the party against whom judgment is rendered has sufficient funds to his credit at the Northern Pueblos Agency to pay all or part of the judgment, the Clerk shall require the party to sign Form 5-139 and deliver the signed form and a copy of the judgment to the Superintendent who shall pay over to the Court the amount specified in the judgment or such lesser amount as may be held to the credit of such party.

2. A judgment shall be considered a lawful debt in all procedures to distribute a defendant's estate.

3. No judgment of the Court for money shall be enforceable after five (5) years from the date of entry, unless the judgment shall have been renewed once before the date of expiration by institution of appropriate proceedings in the Court by the judgment creditor filing an application for renewal and the Court thereupon shall order the judgment renewed and extended for an additional year.

4. An unsatisfied judgment may be filed as a lien against funds owing the defendant by the Pueblo of Santa Clara by having the Clerk deliver a copy of the judgment to the Governor or the Treasurer of the Tribe and they shall pay over to the Court the amount specified in the judgment as funds become available to the credit of such party.

5. Satisfaction of a judgment is not a burden of the Court or its Clerk and the judgment creditor must notify the Court in writing of full or partial satisfaction.

6. The writ of execution may specify personal property to be seized in satisfaction of any judgement and any property seized may be subject to sale by the Court to satisfy the judgment after ten (10) days- notice by posting public notice of such sale. The sale will be conducted by the Clerk and sale will be to the highest bidder for cash, but not less than the appraised value of the property. The proceeds of such sale will be paid by the Clerk as follows:

A. All costs of the sale;

B. All unpaid Court costs;

- C. The amount of the unsatisfied judgment;
- D. Any balance will be paid to defendant; and
- E. Any unpaid amount of the judgment shall remain unsatisfied.

7. A judgment shall be satisfied when there is filed with of the Court:

A. An officer's or Court Clerk's return on an execution showing the amount of the judgment and all costs have been paid in full.

B. Statement signed and acknowledged by the judgment creditor that the judgment has been paid in full filed with the Court; and

C. By order of the Court, made on a motion by the judgment debtor, the agent or heirs after a hearing in which all interested parties were given an opportunity to be heard.

Formerly Sec. 16.5, Santa Clara Law and Order Code 1985.

Subchapter 2 - PRE -TRIAL CONFERENCE

Sec. 40.14 Pre-Trial Conference

The procedures established in this Section are intended to established a means whereby both civil and criminal disputes can be settled in the traditional and customary manner by discussion between the parties before a trusted, impartial tribal authority prior to resorting to formal trial procedures and are incorporated as a part of the Code. The procedures require that formal Court authority be invoked by the filing of a complaint but anticipate that a great percentage of cases can be settled by traditional and customary means, administered thereafter by the Tribal Court. The procedures set forth herein shall not be interpreted or applied to deny any person any right otherwise guaranteed by Santa Clara Pueblo or Federal law, including the Indian Civil Rights Act.

Formerly Sec. 7.1, Santa Clara Law and Order Code 1985.

Sec. 40.15 Applicability

The procedures established in this Section shall apply in all cases, both civil and criminal, if, at the appropriate times referred to herein, there are two (2) or more judges of the Tribal Court holding office on either a temporary or permanent appointment and one is available to participate as provided herein.

Formerly Sec. 7.2, Santa Clara Law and Order Code 1985.

Sec. 40.16 Civil Case

A pre-trial conference as provided herein may be held in all civil cases once the case is at issue.

Formerly Sec. 7.3, Santa Clara Law and Order Code 1985.

Sec. 40.17 Criminal Cases (Jury Cases Only)

A pre-trial conference as provided herein shall be held in all criminal cases once the case is at issue by virtue of the defendant entering a plea of not guilty and request for jury to a complaint.

Formerly Sec. 7.4, Santa Clara Law and Order Code 1985.

Sec. 40.18 Time At such other time prior thereto as the Chief Judge shall order, a pre-trial conference shall be held as provided therein.

Formerly Sec. 7.5, Santa Clara Law and Order Code 1985.

Sec. 40.19 Attendance - Civil Cases

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 assigned to conduct the pre-trial conference, bring with them such other persons, including their attorney, advocate or lay counselor, as will tend to further the resolution of the issues of the case.

Formerly Sec. 7.6, Santa Clara Law and Order Code 1985.

Sec. 40.20 Attendance - Criminal Cases

The defendant, complaining witness, arresting officer and such other witnesses as either side may desire to summon, shall be required to attend the pre-trial conference in a criminal case. 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 attorneys, advocates or lay counselors, as will tend to further the resolution of the issues of the case and the proper dispositions of the defendant, should guilt be admitted. 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 having professional training.

Formerly Sec. 7.7, Santa Clara Law and Order Code 1985.

Sec. 40.21 Conduct of Pre-Trial Conference

There shall be no record or transcript made of the proceedings at the pre-trial conference nor shall any statements made therein by any person be used for any purpose should the case ultimately come to trial. If agreement is reached on some or all of the issues presented in the case, such agreement shall 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.

Formerly Sec. 7.8, Santa Clara Law and Order Code 1985.

Sec. 40.22 Public and Attorneys

Pre-trial conference as provided herein shall not be open to the public, but professional attorneys, advocates or lay counselors or other parties may be allowed by the Judge to attend as representatives of the parties or otherwise (unless parties themselves).

Formerly Sec. 7.9, Santa Clara Law and Order Code 1985.

Sec. 40.23 Judge's Function

The Judge conducting the pre-trial conference shall listen to the positions of the parties and attempt to work out a settlement of all or some of the issues of the case. Such settlement shall not be inconsistent with the, laws, ordinances, customs, and traditions of the Tribe.

Formerly Sec. 7.10, Santa Clara Law and Order Code 1985.

Sec. 40.24 Disposition of Cases

In the event a 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. 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 supercede the pleadings for purposes of framing the issues for trial. The pre-trial order may also contain agreements, stipulations, or orders by the Court as to the production of witnesses and evidence and the conduct of discovery before trial. If 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.

Formerly Sec. 7.11, Santa Clara Law and Order Code 1985.

Sec. 40.25 Voluntary Agreements

No settlement of the 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. No settlement of any issue in a criminal case shall be made at the pre-trial conference except with the voluntary agreement, taken by the Judge conducting the pre-trial conference, of the defendant. The defendants in criminal cases shall be afforded the opportunity to consult with counsel of their choosing (at their own expenses) if they so desire, prior to agreeing to any judgment or order settling the case or any issue thereof or agreeing to a pre-trial order.

Formerly Sec. 7.12, Santa Clara Law and Order Code 1985.

Sec. 40.26 Criminal Defendants

A defendant in a criminal pre-trial conference shall not be required to testify, cooperate or otherwise participate in the pre-trial conference. 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, if a settlement involving an admission of guilt is reached, determine the voluntariness of the agreement and determine that the defendant understands the rights being given up to the same extent as would be determined by the Court if a guilty plea had been offered originally.

Formerly Sec. 7.13, Santa Clara Law and Order Code 1985.

Sec. 40.27 Unsettled Cases

All cases not settled either in whole or in part at the pre-trial conference shall be scheduled for trial and a trial held before a Judge, other than the Judge conducting the pre-trial conference, as if no such pre-trial conference had been held, except that any pre-trial order agreed to by the parties prior to the trial shall be controlling at the trial.

Formerly Sec. 7.14, Santa Clara Law and Order Code 1985.