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Jicarilla Apache Nation Tribal Court Handbook (2009)

Tribal Law Journal Staff

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Tribal Law Journal
University of New Mexico School of Law
Tribal Court Handbook

TLJ, Spring 2009 (Indian Law Section of the State Bar of NM 1991)

JICARILLA APACHE TRIBAL COURT

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NAME OF TRIBE: JICARILLA APACHE

Introduction and Note to Practitioners:

Tribal Court Handbook information contained herein was provided by a representative of the tribal court in response to a questionnaire provided by the Tribal Law Journal. Often information contained within a Tribal Court Handbook will change between Tribal Law Journal updates. Readers are encouraged to utilize the following information as a starting place for information about a tribal court and to verify that information is accurate.

Part One: TRIBAL GOVERNMENT AND GENERAL INFORMATION

The purpose of this Section is to provide certain basic information about your Tribal Court and judicial system. Anyone practicing in Tribal Court will need to know where the Court is located, how it is organized, and who to contact for more information.

1. Contact Persons and Location of Tribal Court:

Name of Tribal Court	Court of the Jicarilla Apache Nation		
Contact Person Name & Title	Terra Julian Court Administrator		
Address	PO Box 128 Dulce, NM 87528		
Phone	(575) 759-7487	Fax	(575) 759-3721
E-mail	janprobationofficer@yahoo.com		

2. Name and address of the Chief Judge of the Tribal Court:

Name	Shawn Perry		
Title	Chief Judge, Court of the Jicarilla Apache Nation		
Address	PO Box 128 Dulce, NM 87528		
Phone	(575) 759-7487	Fax	(575) 759-3721
E-mail			

3. Driving directions to Tribal Court (attach a map if needed):

From Albuquerque, take I-25N for 57 miles, then take exit #282, US 84N for 125 miles, then turn L on US 64 N, then turn L on Narrow Gauge Road, and finally to the New Ishkoteen Judicial Complex at the corner of Narrow Gauge Road and Dulce Rd.

4. What is the official name of your tribe or federally recognized organization?

_____ Jicarilla Apache Nation _____

5. On what is your tribal government based? (Please check one and briefly describe in box)

- An IRA or OIWA constitution
- A non-IRA constitution
- A non-constitutional organizational document (*e.g. tribal legislation*)
- A traditional system (*please describe*)
- Other (*please describe*)

6. Please indicate which organic documents are possessed by the Tribe, and from whom copies are available:

Tribal Document	Available?	Obtain Copy From:
1. Tribal Constitution	X yes <input type="checkbox"/> no	Administration Office – (575) 759-3242
2. Bill of Rights	X yes <input type="checkbox"/> no	Administration Office – (575) 759-3242
3. Organizational Statute	<input type="checkbox"/> yes <input type="checkbox"/> no	
4.	<input type="checkbox"/> yes <input type="checkbox"/> no	
5.	<input type="checkbox"/> yes <input type="checkbox"/> no	

7. Please indicate where your tribal jurisdiction is exercised:

- Within undisputed, clearly established reservation boundaries
- Generally within reservation boundaries, with a few outlying parcels of Indian country
(*Please describe the nature of these parcels: e.g. gaming location; purchased land not used for gaming; land remaining from formerly larger reservation, etc.*)

Purchased lands designated as trust lands for the Nation’s benefit.

- Within Indian country (or dependent Indian community); there are no reservation boundaries
- Please describe disputes regarding the tribe’s territorial jurisdiction, including boundaries; non-Indian owned fee land; dependent Indian community status; state or county roads; or any other:

8. Regular Court Staff:

Name	Title	Phone Number	e-mail address
Devin Tafoya	Criminal Clerk	(505) 759-7487	
Arlinda Gonzalas	Civil Clerk	(505) 759-7487	
Annette Tecube	Juvenile Clerk	(505) 759-7487	
Shelly Amarillo	Domestic Support	(575) 759-7487	
Brianne Trujillo	Probate Clerk	(575) 759-7487	

9. Tribal Court Organization:

Other branches of the Court (if any):

Other Courts in Tribal Court system are checked below:

- Appellate Court (Tribal Council or Southwest Intertribal Court of Appeals)
- Supreme Court
- Lower courts with different subject-matter jurisdiction
- Other: _____
- Other: _____
- Other: _____

10. Number of judges on the Tribal Court: (Please provide list of names, titles, and contact information for each judge)

Judge Positions	# of Full-time Positions	# of Part-time Positions	# of Pro-tem Positions
Trial Court Judges	3	0	1
Specialized Court Judges			
Appellate Court Judges			
Other:			

11. Tribal Prosecutor for the Court :

Name	Stanley Montoya		
Title	Prosecutor		
Address	PO Box 128 Dulce, NM 87528		
Phone	(575) 759-7487	Fax	(57) 759-3721
E-mail			

12. Tribal Government staff person to be contacted for more information regarding Tribal Government:

Name	Deidre Vicenti		
Title	Administration Secretary		
Address	PO Box 507 Dulce, NM 87528		
Phone	(575) 759-3242	Fax	
E-mail			

13. Tribal Justice System Staff: *(Please provide list of names, titles, and contact information for each position)*

Tribal Justice System Position	# of Full-time Positions	# of Part-time Positions	# of Pro-tem Positions
Court Administrators/Clerks	10		
Probation Officers	2		
Prosecutors	1		
Public Defenders	1		
Bailiffs	1		
Juvenile Officers	3		
Other: Receptionist	1		
Other: Janitor	1		

14. Use of Attorneys: *(Please indicate the number of full and part time attorneys or law school graduates your tribal justice system currently utilizes – enter 0 for positions which are not held by attorneys or law school graduates)*

Tribal Justice System Position	# of Full-time Positions	# of Part-time Positions	# of Pro-tem Positions
Judges who are licensed attorneys	1		
Judges who are law school graduates, but not licensed in any state			
Prosecutors who are licensed attorneys	1		
Prosecutors who are law school graduates, but not licensed in any state			
Public defenders who are licensed attorneys	1		
Public defenders who are law school graduates but not licensed in any state	1		

15. Alternative Dispute Resolution and Diversion Programs:

- Does your tribe use Alternative Dispute Resolution (ADR) in the judicial system? Yes No
If yes, please indicate below which ADR methods you use:

Traditional Methods
 Mediation
 Settlement Facilitation
 Arbitration
 Diversion Programs
 Other: _____

Please describe:

Tradition and a formal mediation system are partially implemented; contact the Court Administrator for updated details and procedures.

- Is there additional written material available which describes your tribe’s ADR program(s)?
 Yes No *If yes, who should be contacted to obtain a copy:*

Name			
Title			
Address			
Phone		Fax	
E-mail			

Part Two: TRIBAL BAR PRACTICE

(Please attach additional information for each question if available)

Issue		Comments
1. Are there special requirements to be permitted to practice in tribal court?	X yes <input type="checkbox"/> no	Must pass the 2-hour Jicarilla Bar and be licensed to practice law in NM.
2. Are there requirements regarding knowledge of tribal culture or language:	X yes <input type="checkbox"/> no	To practice probate and child custody law one must have some knowledge of tribal culture and customs.
3. Are advocates who do not have law degrees or are not members of a state bar permitted to practice in tribal court? Please describe requirements.	X yes <input type="checkbox"/> no	Must be an enrolled member of the Tribe and pass Tribal bar exam
4. Do the same requirements apply for state-licensed attorneys?	X yes <input type="checkbox"/> no	Except the membership requirement
5. Does your tribe have a tribal bar examination? If yes, please provide details concerning requirements, how often the exam is administered and how to get more information about being admitted to the tribal bar.	X yes <input type="checkbox"/> no	\$100 fee; offered sporadically, when enough examinees are waiting; must be licensed with state bar or, for advocates, an enrolled member of the Tribe with knowledge of Tribal customs and culture.
6. Can an otherwise licensed attorney who is not a member of the tribal bar be admitted for a single case? If yes, how?	X yes <input type="checkbox"/> no	Petitions can be made when time pressures apply for otherwise non-qualified advocates to appear as Special Attorneys.
7. Can/must an otherwise licensed attorney who is not a member of the tribal bar associate with a member of the tribal bar on a single case? If yes, how?	<input type="checkbox"/> yes X no	Still must pass Tribal Bar exam.
8. Does the tribal bar have a Continuing Legal Education requirement? If yes, please provide details.	X yes <input type="checkbox"/> no	Training is provided on an as needed basis at San Juan College in Farmington.
9. What is the total number of members of the tribal bar?	Approx. 30	
10. Of the total number of members of the tribal bar, how many are licensed attorneys admitted to practice in a state?	Approx. 10	

16. Other requirements for a lawyer to practice in Tribal Court:

No state bar disciplinary actions pending.

17. Others that are allowed in practice in Tribal Court:

Part Three: TRIBAL COURT RULES AND PROCEDURE

The purpose of this Section is to provide specific information regarding the rules and procedures necessary to practice in Tribal Court.

18. Tribal Court’s working hours:

8:00am – 5:00pm M-F

19. Language(s) used in Tribal Court:

English and Apache

20. Interpreters are available: X yes no

Contact:

Name	Terra Julian		
Title	Court Administrator		
Address	PO Box 128 Dulce, NM 87528		
Phone	(575) 759-7487	Fax	(575) 759-3721
E-mail			

21. Tribal court filing fees:

\$50 for Tribal members; \$100 for non-members

22. Tribal Court scheduling or docket practices where specific days or weeks are reserved:

- M: Family, Custody, Probate
- T: Civil hearings
- W: Juvenile, Adult Welfare & Protection orders
- Th: Civil and Criminal Pre-Trials
- F: Criminal Bench and Jury Trials
- Everyday: Arraignments

23. Rules of conduct, or etiquette, or rules of ethics, either written or implied, which are required to practice in Tribal Court:

See Tribal Bar

24. The following written rules are available for Tribal Court (Check all that apply):

<input type="checkbox"/> Civil Procedure	<input type="checkbox"/> Evidence	<input type="checkbox"/> Others:
<input checked="" type="checkbox"/> Criminal Procedure	<input type="checkbox"/> Appellate Procedure	
<input type="checkbox"/> Domestic Relations	<input type="checkbox"/> Alternative Dispute Resolution	

25. These rules can be obtained by contacting:

Name	Terra Julian		
Title	Court Administrator		
Address	PO Box 128 Dulce, NM 87528		
Phone	(575) 759-7487	Fax	(575) 759-3721
E-mail			

26. To obtain more information on unwritten Tribal Court rules procedures, contact:

Name	Terra Julian		
Title	Court Administrator		
Address	(see above)		
Phone		Fax	
E-mail			

27. Tribal Court forms can be obtained from:

Is a list of tribal court and related forms available? yes no If yes, please provide a copy.

Name	Elden Lucero		
Title	Receptionist		
Address	PO Box 128 Dulce, NM 87528		
Phone	(575) 759-7487	Fax	(575) 759-3721
E-mail			

28. Jury trials are available for the following types of cases:

Criminal Torts – Injury Traffic Other: _____
 Other: _____ Other: _____

29. Appeals are available for the following types of cases:

Criminal Torts – Injury Traffic Other: _____
 Other: All cases Other: _____

30. Tribal Court decisions and opinions are written oral.

If written, copies of decisions and opinions are available from:

Name	Terra Julian		
Title	Court Administrator		
Address	(see above)		

Phone		Fax	
E-mail			

31. Trial proceedings or hearings are recorded transcribed not recorded.

If recorded or transcribed, proceedings or hearings are available from:

Name	Terra Julian		
Title	Court Administrator		
Address	(see above)		
Phone		Fax	
E-mail			

Part Four: THE JURISDICTION OF TRIBAL COURT

The purpose of this Section is to provide information regarding the law that applies to cases heard in Tribal Court.

32. Information regarding a written Tribal Code can be obtained from:

Name	Deidre Vicenti		
Title	Administration Secretary		
Address	PO Box 507 Dulce, NM 87528		
Phone	(575) 759-3242	Fax	
E-mail			

33. Does the tribe or the court have a definition of “non-member Indian” for jurisdictional or service purposes?

yes no If yes, please indicate what that definition is, and describe whether there are different definitions for different purposes (e.g., tribal services or criminal jurisdiction).

34. Does the tribe exercise jurisdiction over members off-reservation?

yes no If yes, please specify subject matter and circumstances (check all that apply):

Indian Child Welfare Act

Hunting, Fishing or Subsistence

Other: Adult welfare

Other: Domestic Violence

35. Does a significant number of non-member Indians live within the tribe’s jurisdiction?

yes no Comments:

36. Do a significant number of non-Indians visit tribal lands on a regular basis?

yes no If yes, please indicate the types of visits (check all that apply):

Gaming

Resort

Smokeshop

Tourism

Hunting/Fishing

Other: _____

Transients on Interstate Highway

Transients on Other Highways

37. Are there problems presented by these visitors, such as increased traffic violations, hunting or wood cutting violations?

yes no If yes, please describe these problems and indicate whether disputes are presently settled in tribal court or other forum (please specify forum, such as state court):

Criminal intoxication

38. Are there federal laws or treaty provisions that *specifically* limit *your* tribe's jurisdiction over non-members or non-Indians (as opposed to limitations on all tribes)?

yes X no If yes, please indicate the specific law or provision and the limitation:

Federal Statute: _____ over
 Non-Indians Non-member Indians

Treaty Provision: _____ over
 Non-Indians Non-member Indians

39. Over which groups of persons does your tribal constitution or traditional system permit jurisdiction?

Tribal Constitution

- Tribal Members Only
- X All persons, civil
- All persons, criminal
- All Indians, civil
- All Indians, criminal

Traditional System

- Tribal Members Only
- All persons, civil
- All persons, criminal
- All Indians, civil
- All Indians, criminal

40. Has the tribe, by tribal **legislation**, limited its jurisdiction to members?

yes X no If yes, is the jurisdiction General over all actions, or as to specific matters (please specify the subject matters):

Part Five: TRIBAL CODES

The purpose of this Section is to provide information regarding any Tribal Codes that apply to practice in Tribal Court.

41. Does your tribe's Constitution or Tribal Code contain a Bill of Rights? X yes no
 If yes, are copies available? Indian Civil Rights Provisions

42. Does your tribe have a written code? X yes no
 If no, go to Section Seven, State Jurisdiction on page xxx of this questionnaire
 If yes, the code is based on:
 written customary law
 a modern (Western-style) code
 Both customary law and modern (Western-style) code

43. Is a copy of the tribal code readily available to any person who wants it? X yes no
 If yes, where can a copy be obtained?
 Name: Only at Administrative Offices Phone: (575) 759-3424 Cost: \$
 If no, please specify reason:
 Giving out the Code is at the discretion of the Tribal Government.

44. Has the tribal code ever been comprehensively codified? X yes no
 If yes, when was the last time the tribal codified? Date: 2004

45. Please indicate which of the following are covered in your tribal code (check all that apply):

<p>HOUSING AND LAND USE</p> <p>X Evictions <input type="checkbox"/> Housing authority actions X Trespass <input type="checkbox"/> Land assignments <input type="checkbox"/> Land use X Landlord-tenant <input type="checkbox"/> Grazing/Farming</p> <p><input type="checkbox"/> Other: _____ <input type="checkbox"/> Other: _____</p> <p>TRIBAL AFFAIRS</p> <p><input type="checkbox"/> Enrollment <input type="checkbox"/> TERO and other employment rights <input type="checkbox"/> Elections <input type="checkbox"/> Voter Registration <input type="checkbox"/> Eligibility to run for office <input type="checkbox"/> Recounts <input type="checkbox"/> Campaign Financing <input type="checkbox"/> Other election disputes <input type="checkbox"/> Appeals</p> <p><input type="checkbox"/> Other: _____ <input type="checkbox"/> Other: _____</p>	<p>FAMILY LAW (Domestic Relations)</p> <p>X Marriage X Divorce X Child Support and Enforcement X Visitation X Paternity X Guardianship X Abuse and Neglect X Out of home placement X Children in Need of Supervision (CHINS) X Adoption (including ICWA) X Probate (Estate distributions) X Domestic Violence X Elder Protection</p> <p><input type="checkbox"/> Other: _____ <input type="checkbox"/> Other: _____</p> <p>JUVENILE JUSTICE</p> <p>X Status offenses (curfew, truancy, underage possession of alcohol, etc.) X Non-status offenses (criminal)</p> <p><input type="checkbox"/> Other: _____ <input type="checkbox"/> Other: _____</p>
--	---

ENVIRONMENTAL

- Housing
- Building
- Sanitation
- Solid Waste
- Water
- Air
- Noise

Other: _____

Other: _____

CIVIL COMMITMENTS

- Mental Health
- Substance Abuse
- Juvenile commitment
- Physical disability
- Developmentally disabled (severely retarded) or other disorder (stroke, persistent vegetative state) disability

Other: _____

Other: _____

TRAFFIC

- DWI
- Speeding
- Reckless Operation
- Driver's Licenses
- Vehicle Licenses
- Insurance requirements

Other: _____

Other: _____

COMMERCIAL TRANSACTIONS

- Contracts
- Consumer protection
- Collection of debts

Other: _____

Other: _____

TORTS

- Personal Injury
- Defamation, libel, slander

Other: _____

Other: _____

CRIMINAL LAW

- Assault and battery
- Harassment and stalking
- Kidnapping
- Trespass
- Property damage
- Larceny
- Extortion
- Embezzlement
- Receiving stolen property
- Illegal kickbacks
- Marital and familial offenses (e.g. bigamy, unlawful cohabitation, incest)
- Sexual offenses (other than children as victims)
- Alcohol and other intoxicants (including selling, possession, bootlegging, trafficking, distributing, etc.)
- Homicide (murder & lesser offenses involving the death of a human being)
- Crimes against children & dependents, including sex crimes
- Bribery
- Perjury and false affirmations
- Malicious prosecution
- Conspiracy to commit a crime
- Worthless checks
- Welfare fraud
- Securities fraud
- Racketeering
- Election fraud or interfering with elections
- Computer crimes (e.g. computer access with intent to defraud or embezzle, unauthorized computer use)
- Controlled substances (e.g. drug selling, possession, distribution, trafficking, etc.)
- Crimes against public peace (e.g. disorderly conduct, unlawful assembly, rioting)
- Interference with law enforcement (e.g. resisting, evading, obstruction, assault, battery, refusing to aid, concealing identity, aiding a felon, escape from jail, assisting escape, bringing contraband into jail)
- Official misconduct (e.g. demanding or receiving illegal fees, making false vouchers, paying or receiving tribal money for services not provided)

Other: _____

Other: _____

Other: _____

<p>COURT PROCEDURES</p> <ul style="list-style-type: none"> <input type="checkbox"/> Criminal Court procedures (e.g. requirements for filing a complaint, time limits for hearings and motions, format for documents) <input checked="" type="checkbox"/> Civil Court procedures (e.g. requirements for filing a petition or complaint, time limits for hearings and motions, format for documents) <input type="checkbox"/> Juvenile or Children’s Court procedures (e.g. requirements for filing a petition, time limits for hearings and motions, format for documents) <input checked="" type="checkbox"/> Appellate Court procedures (e.g. requirements for allowing appeals, time limits, notice of appeal) <input type="checkbox"/> Administrative Court procedures (e.g. from decisions made by tribal departments such as housing, personnel, land use & realty, environmental, membership, or elections board) <input type="checkbox"/> Procedures for appeals from council (legislative) decisions. <input type="checkbox"/> Code of Judicial or Professional Responsibility <input type="checkbox"/> Other: _____ <input type="checkbox"/> Other: _____ 	<p>OTHER CODE PROVISIONS (Please specify):</p>
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46. Has your tribe waived its immunity from suit in court? yes no

If no, go to question 46.

If yes, please indicate which of the following applies:

- General Waiver
- Limited Waiver (check all that apply)
 - For tort claims against the tribe
 - For civil rights claims against the tribe
 - For specific business activities
 - As to special tribal public agencies (e.g. housing authority)
 - As to tribally-owned business enterprises
- Other: _____
- Specific to:
 - Tribal Court
 - Federal Court
 - State Court

47. Is the civil jurisdiction of your tribe limited by any federal statute? yes no

If yes, please indicate the statute:

Part Six: INTERGOVERNMENTAL RELATIONS

48. Does your tribe, pueblo, or village have any agreements to RECEIVE services from or to use facilities of a state, county, municipality, or other tribe? X yes no

If yes, please complete the following chart:

Type of Service	Type of Agreement	Agreement is With:
Cross Deputization	<input type="checkbox"/> Contracts <input type="checkbox"/> Other formal agreements <input type="checkbox"/> Informal agreements	
Shelter Care	<input type="checkbox"/> Contracts <input type="checkbox"/> Other formal agreements <input type="checkbox"/> Informal agreements	
Treatment/Counseling	X Contracts <input type="checkbox"/> Other formal agreements <input type="checkbox"/> Informal agreements	Facilities in Phoenix, AZ, Ignacio and Pagosa Springs, CO and Wyoming
Detention Facilities	<input type="checkbox"/> Contracts <input type="checkbox"/> Other formal agreements <input type="checkbox"/> Informal agreements	
Correction Facilities	<input type="checkbox"/> Contracts <input type="checkbox"/> Other formal agreements <input type="checkbox"/> Informal agreements	
<i>Other (Please Describe)</i>	<input type="checkbox"/> Contracts <input type="checkbox"/> Other formal agreements <input type="checkbox"/> Informal agreements	

49. Does your tribe, pueblo, or village have any agreements to PROVIDE services or the use of facilities TO a state, county, municipality, or other tribe? yes X no

If yes, please complete the following chart:

Type of Service	Type of Agreement	Agreement is With:
Cross Deputization	<input type="checkbox"/> Contracts <input type="checkbox"/> Other formal agreements <input type="checkbox"/> Informal agreements	
Shelter Care	<input type="checkbox"/> Contracts <input type="checkbox"/> Other formal agreements <input type="checkbox"/> Informal agreements	
Treatment/Counseling	<input type="checkbox"/> Contracts <input type="checkbox"/> Other formal agreements <input type="checkbox"/> Informal agreements	
Detention Facilities	<input type="checkbox"/> Contracts <input type="checkbox"/> Other formal agreements <input type="checkbox"/> Informal agreements	
Correction Facilities	<input type="checkbox"/> Contracts <input type="checkbox"/> Other formal agreements <input type="checkbox"/> Informal agreements	
<i>Other (Please Describe)</i>	<input type="checkbox"/> Contracts <input type="checkbox"/> Other formal agreements <input type="checkbox"/> Informal agreements	

Part Seven: STATE & OTHER GOVERNMENTAL JURISDICTION

The purpose of this Section is to provide information regarding jurisdiction that has been granted by your tribe to any state or other governmental entity.

50. Has any state government been granted jurisdiction over any portion of your reservation by treaty, federal legislation, or tribal legislation? yes no

If yes, jurisdiction was granted by (Check all that apply, and describe briefly):

<input type="checkbox"/> Treaty: (Please specify and describe)	
<input type="checkbox"/> Federal Legislation (P.L. 83-280 or other – please specify and describe)	
<input type="checkbox"/> Tribal Legislation (Please specify and describe)	

51. Is state jurisdiction limited? yes no

If yes, jurisdiction is limited to:

P.L. 280 does not apply

<input type="checkbox"/> Persons: (Please specify and describe)	
<input type="checkbox"/> Subject Matter: (Please specify and describe)	

52. Does your tribe exercise concurrent jurisdiction with the state? yes no

If yes, concurrent jurisdiction is over:

<input type="checkbox"/> Persons: (Please specify and describe)	
<input type="checkbox"/> Subject Matter: (Please specify and describe)	

53. Does your tribe receive services from the state and municipal governments, law enforcement and court systems under state jurisdiction? yes no

If yes, the services provided are the result of:

- Agreement or Contract Federal Court order or settlement

The services provided are: