

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY
CRIMINAL RULES OF PROCEDURE



**SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY
CRIMINAL RULES OF PROCEDURE**

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I. SCOPE, PURPOSE & CONSTRUCTION

Rule 1. Scope

These rules govern the procedure in all criminal proceedings in the Salt River Pima-Maricopa Community Tribal Court. These rules shall be known as the Salt River Pima-Maricopa Indian Community Rules of Criminal Procedure (“SR-RCP”).

Rule 2. Interpretation

These rules shall be interpreted to provide for the just determination of every criminal proceeding, to secure simplicity in procedure and fairness in administration, and to eliminate delay and unjustifiable expense.

Rule 2.1. Definitions

“**Advocate**” means a person who is authorized to practice law before the Community Court and who is not a licensed attorney.

“**Attorney**” means a person who meets the following criteria: the person must be a graduate of a law school, licensed to practice law in any State of the United States, and has been authorized to practice law by the Community Court.

“**Arrest**” means the person has been taken into custody by a police officer.

“**Code**” means the Code of Ordinances of the Salt River Pima-Maricopa Indian Community.

“**Community**” or “**SRPMIC**” means Salt River Pima-Maricopa Indian Community.

“**Court**” means the Salt River Pima-Maricopa Indian Community Court as defined in the Code.

“**Counsel**” has the same meaning as an “Advocate” or an “Attorney.”

“**Incompetent**” means a person is unable to understand the criminal proceedings against the person or a person is unable to assist in the person’s own defense in criminal prosecution.

“**Mental Health Professional**” means a licensed psychiatrist or psychologist.

“**Probable Cause**” means an existence of circumstances that would lead to a reasonable belief that a criminal offense was committed or is being committed by the person charged with or arrested for the offense.

“**Prosecutor**” means a person or persons authorized by the Community to represent the Community in criminal cases.

“**Voluntary**” means a person acts of own free will without coercion or force.

“**Working or Business Day**” means any day except weekends and designated Community holidays.

II. PRELIMINARY PROCEEDINGS

Rule 3. Commencement of Criminal Proceeding

Criminal actions are commenced by filing a complaint with the Court or by an arrest of a person without a warrant as set forth in Rule 3.1. Traffic offenses with criminal sanctions may be commenced by a traffic citation, an arrest of a person under Rule 3.1, or by a complaint.

Rule 3.1. Arrest Without a Warrant

If a person is arrested without a warrant, the arresting officer, without unreasonable delay, shall prepare the probable cause statement, which shall be delivered to the Court by the arresting officer or the officer’s agent without delay.

Rule 3.2. Initial Appearance of An Arrested Person

(a) Time Limits and Purpose.

An arrested person shall be brought before the Court no later than forty-eight (48) hours after arrest for the person’s initial appearance. At the arrested person’s initial appearance, the Court shall:

- (1) Obtain the arrested person’s true name, physical and mailing addresses;
- (2) Advise the arrested person of the nature of the charge(s)
- (3) Advise the arrested person of the right to remain silent;
- (4) Advise the arrested person of the right to counsel;
- (5) The Court shall make a determination of probable cause to believe a criminal and/or a traffic offense has been committed in violation of the Code. If no probable cause is found, the Court shall order the release of the arrested person for the arrested offense.

(b) If probable cause is found by the Court, the Court shall:

- (1) Determine the conditions of release pursuant to Rule 8;
- (2) Advise the defendant of the next court appearance date.

(c) Appointment of Counsel.

If an arrested person is appointed counsel under Rule 6, the Court shall direct the defendant to meet with his or her counsel within seventy-two (72) hours after release.

(d) A Defendant Not Arrested.

A defendant who has not been arrested does not have a right to initial appearance under this rule.

Rules Committee Comment.

Note to Subsection (a). Although the Rule allows for the defendant’s initial appearance to occur within forty-eight (48) hours of arrest, the Court should make best efforts to schedule the initial appearance within twenty-four (24) hours of arrest.

Rule 3.3. Complaint Against an Arrested Person; Form of Complaint; Prosecution of Complaint.

(a) Complaint Against an Arrested Person.

If a person was arrested without a warrant, a Prosecutor shall file a complaint bearing a prosecutor's signature within seventy-two (72) hours of the person's arrest. If a complaint that bears the signature of a Prosecutor is not filed within seventy-two (72) hours of the person's warrantless arrest, the person shall be released immediately. If the Prosecutor decides not to file the complaint within seventy-two (72) hours of a defendant's arrest, the Prosecutor shall inform the Court that the Prosecutor will not be filing the complaint within the time allotted under this rule.

(b) Contents of Criminal Complaint.

The complaint shall be in writing and contain a statement of the essential facts constituting the offense charged, the name of the defendant, the approximate date and time of the offense charged, the place where the offense occurred, and a citation of the Code provision under which the offense is charged. The complaint shall bear the original signature of a duly authorized Prosecutor. Technical errors in the complaint that do not deprive the defendant of fair notice of the offense(s) charged shall not be grounds for dismissal and the complaint may be amended for technical errors at the discretion of the Court.

(c) Prosecution of Complaint.

The Salt River Pima-Maricopa Indian Community shall prosecute all such complaints through an authorized prosecutor, including, but not limited to a special prosecutor.

Rule 4. Arrest Warrant; Presumption of Summons

(a) Issuance.

The Court may issue an arrest warrant or summons upon request of the prosecutor, after a complaint has been filed, and the Court determines that there is probable cause to believe the offense has been committed and the defendant committed the offense.

(b) Presumption of Summons.

There shall be a presumption in favor of issuing a summons, unless the Court finds:

- (1) The defendant has no reliable address within the Community at which to receive a summons;
- (2) The defendant has confirmed active warrants in any jurisdiction;
- (3) The nature of the offense poses a threat to the health, safety and welfare of the victim or the Community;
- (4) The offense is related to an escape from lawful custody or resistance of lawful arrest;
- (5) The defendant has other criminal matters pending at the time the offense was alleged to have occurred; or
- (6) The defendant has a history of failures to appear that indicate defendant is unlikely to respond to the summons.

(c) Arrest Warrant Procedure.

An arrest warrant will be issued by the Court when the Judge reasonably believes that the warrant is necessary. The arrest warrant shall be delivered to the defendant at the time of

the arrest or no later than the initial appearance of the defendant. When an arresting officer is not in possession of the arrest warrant at the time of arrest, the officer shall inform the defendant that such a warrant has been issued, that the officer is acting pursuant to the arrest warrant and that a copy of the warrant will be delivered to the defendant by his/her initial appearance.

(d) Form of Warrant.

A warrant must contain the name of the defendant, information by which the person arrested may be identified with reasonable certainty, and a description of the offense(s) charged. The warrant must be signed by a Judge. A warrant of arrest shall not be invalidated, nor shall any person in custody be discharged because the warrant contains technical or clerical errors. The warrant may be amended by any Judge to remedy the defect.

(e) Execution of a Warrant.

A warrant is executed by arresting the defendant. Upon an arrest, the arresting officer shall notify the defendant of the existence of the warrant and of the offense(s) charged. After executing the warrant, the warrant shall be returned to the issuing court before whom the defendant is brought. Only officers authorized under the Salt River Ordinance to make arrests or a federal police officer may arrest a person pursuant to a Community arrest warrant.

(f) Authority for a Warrantless Arrest.

A Salt River Pima-Maricopa Indian Community Police Officer or federal law enforcement officer may arrest a person when the officer has probable cause.

(g) Summons.

A summons shall contain the same information as a warrant, but shall also include the date, time and location that the defendant is ordered to appear. If a defendant fails to appear after having been served with a summons, the Court may issue an arrest warrant.

Rule 4.1. Search Warrants

Any Judge of the Salt River Pima-Maricopa Indian Community shall have the authority to issue warrants for search and seizure of the premises or property of any person, and traits of a person including, but not limited to blood, saliva, voice exemplar, handwriting exemplar, and fingerprints, under the jurisdiction of Community, or under rules of comity. No search warrant shall be issued except on probable cause, supported by a sworn affidavit, that an offense has been committed in violation of the Code, naming or describing the property to be seized and the place to be searched. Service of warrants of search and seizure shall be made only by a Community Police Officer or federal law enforcement officer. If the warrant is domesticated pursuant to rules of comity, the warrant may be executed by the authorized agent of the issuing jurisdiction. All warrants shall bear the signature of a Judge of the Community Court.

Rule 5. Arraignment

(a) Time Period.

Within ten (10) calendar days after initial appearance under Rule 3.2, the defendant shall appear before the Court for arraignment. If a defendant appears on a summons, the arraignment shall proceed on the defendant's first appearance before the Court.

(b) Arrest Without a Warrant.

If a defendant is arrested without a warrant, a complaint meeting requirements of Rule 3.3 must be filed prior to arraignment.

(c) Procedure.

(1) The Court shall read the complaint to the defendant in the language that the defendant understands; and

(2) The Court shall also advise the defendant of the following:

A. The right to remain silent;

B. To a trial by jury;

C. To confront and cross-examine his/her accusers, to plead not guilty, and to call witnesses;

D. The right to have the assistance of counsel for the charge(s);

E. The right to be considered for release pending trial or if the defendant is released, any modification of release conditions;

F. The maximum sentence(s) that could be imposed if the defendant were to be found guilty or plead guilty to the charge(s); and

G. After the defendant is advised of the above rights, the defendant shall be asked to enter a plea to the charge(s). If the defendant refuses or is unable to enter a plea, the Court shall enter a plea of “not guilty” on behalf of the defendant.

(3) A copy of the complaint shall be given to the defendant or to defendant’s counsel.

Rule 5.1. Setting of Trial Date.

If a plea is “not guilty,” the Court shall set a trial date pursuant to Rule 7.1. If the defendant is not notified of a trial date at the time of his/her entry of not guilty plea, no later than ten days after arraignment, the Court shall give notice to the defendant of a trial date.

III. RIGHTS OF PARTIES

Rule 6. Assistance of Counsel

(a) Right to be represented by Counsel.¹

A defendant shall be entitled to be represented by counsel in any criminal proceeding.

1. If the defendant is facing incarceration of one year or less as a sanction for each charged offense, the Court shall appoint counsel for the defendant.

2. If the defendant is facing a sentence of imprisonment greater than one year for a single offense, the Court shall appoint an attorney to represent the defendant.

¹Policy Question: Defense Advocates Office (“DAO”) enters an appearance on behalf of criminal defendants if the defendant’s request the assistance of the office. As proposed, the Court would appoint the DAO as counsel for defendants without a determination of indigent status. If the Council rejects subsection (a) of Rule 6, Rule 6.1 needs to be incorporated into Rule 6 for those defendants facing an incarceration of more than one year for each charged offense to comply with TLOA.

3. The right to be represented shall include the right to consult in private with counsel or counsel's agent 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 thereof.

4. The defendant may reject an appointed counsel and inform the Court of the intention to retain counsel at own expense.

(b) Waiver of Right to Counsel.

A defendant may waive his or her right to counsel under subsection (a), in open court, after the Court has ascertained that the defendant knowingly, intelligently, and voluntarily desires to forego counsel. A defendant may withdraw a waiver of his or her right to counsel at any time. A subsequent retention of counsel shall not entitle the defendant to repeat any previous proceedings. If there is a question of a defendant's competency, defendant shall have appointed counsel until the defendant has been found to be competent.

(c) Unreasonable Delay in Retaining Counsel.

If a defendant appears without counsel at any proceeding having been given a reasonable opportunity to retain counsel, the Court may proceed with the matter, with or without securing a waiver of counsel under sub-section (b).

(d) Notice of Appearance.

At his or her first appearance on behalf of a defendant, privately retained counsel for the defendant shall file a notice of appearance with the Court. No counsel shall make an appearance without first being authorized to practice in the Community Court. With the Court's permission, a counsel who has not yet been authorized to practice in the Community, may make a limited appearance on behalf of the defendant upon submission of an application. Counsel shall inform the Clerk of the Court and the Office of the Prosecutor, or its designee, all contact information including, but not limited to, mailing address, e-mail address, telephone number, and facsimile number.

(e) Duty of Continuing Representation.

Counsel representing the defendant at any proceeding shall continue to represent the defendant in all further proceedings in the Court including filing the notice of appeal unless the Court permits the counsel to withdraw. Counsel's duty to represent the defendant will continue until either a notice of appeal is filed or the time to file the notice of appeal has expired.

Rule 6.1. Appointment of Counsel (*Reserved*).

The Court should appoint counsel for the defendant where defendant faces incarceration as a potential punishment upon finding of guilt for the charged offense if a defendant is unable to obtain counsel at his or her own expense. Before appointing counsel, the Court should first determine that the defendant is indigent. The defendant shall be examined under oath regarding defendant's financial resources by the Court. The Court may order the defendant to reimburse the Community for the whole or partial cost of counsel as a condition of appointment of counsel. The Court shall appoint an attorney to represent the defendant if the defendant is charged with an offense that carries a potential sentence of imprisonment exceeding one year upon a conviction for a single offense. In all other cases, the Court may appoint an advocate or an attorney.

Rule 7. Right to Trial by Jury

(a) *Demand for Jury Trial.* If a defendant is charged with an offense where the maximum sentence of imprisonment after a conviction for each charged offense carries a sentence of imprisonment not exceeding six (6) months, the defendant may demand a jury trial. The defendant shall demand the jury trial in writing at least thirty (30) days prior to a trial date or another date set by the Court. If a demand is not made within the time limits above, the right to jury trial is waived. For good cause, the Court may permit the defendant to request a jury trial after the deadline for demand for jury trial has elapsed.

(b) *Right to Jury Trial.* If a defendant is charged with an offense where the maximum sentence of imprisonment is greater than six (6) months for a conviction for each charged offense, defendant shall be entitled to a jury trial.²

(c) *No Right to Jury Trial for Certain Offenses.* There shall be no right to a jury trial where a person is charged with a traffic violation (1) when the exclusive penalty is a fine or (2) when the Court determines after a request for jury trial is made that no penalty of imprisonment shall be imposed in the event the defendant is found guilty.

Rule 7.1. Speedy Trial Rights

(a) *All Defendants.* Every person against whom a complaint is filed shall be tried within one hundred fifty (150) days of the arraignment except for those excluded periods set forth in Rule 7.2.

(b) *Defendants in Custody.* A defendant who has been ordered detained shall be tried within one hundred twenty (120) days from the date of defendant's arraignment for the offense(s) that was the basis for the order of detention.

(c) *Defendants Released from Custody.* Every person released from custody under Rule 8 shall be tried within one hundred fifty (150) days from arraignment.

(d) *New Trial.* A trial ordered after a mistrial, upon a motion for new trial, or reversed on appeal shall commence within sixty (60) days of the order or mandate.

(e) *Extension of Time Limits.* These time limits may be extended by Rule 7.2.

Rule 7.2. Excluded Periods and Continuances

The following periods shall be excluded from the computation of time limits set forth in Rule 7.1.

(a) *Delays on Behalf of the Defendant.* Delays occasioned on behalf of or for the benefit of the defendant, including but not limited:

- (1) to determine competency of the defendant;
- (2) if the defendant is incarcerated in another jurisdiction;
- (3) defendant's request to prepare for trial; and

² Policy Question. The Committee reached a consensus that a defendant who is facing imprisonment exceeding six months for a single charge should be entitled to a jury without filing a demand. The defendant would have to affirmatively waive the right to a jury trial if the defendant is facing a sentence of imprisonment exceeding six months.

(4) while the plea agreement is under consideration by the Court.

(b) *Interest of Justice.* Any delays resulting from continuances granted by the Court at the request of a party to serve the interest of justice. A continuance may only be granted as long as it is necessary to serve the interests of justice. The Court shall state the specific reasons for the continuance and the excluded period of time.

Rule 7.3. Remedy for Denial of Speedy Trial Rights

(a) *Dismissal.* If the Court determines that the defendant's speedy trial rights under Rule 7.1 have been violated, the Court shall dismiss the complaint upon defendant's motion or on its own motion. The Court shall have the discretion to dismiss the case with or without prejudice.

(b) *Duties of Parties.* All parties shall notify the Court of any speedy trial time violations under Rule 7.1.

Rules Committee Notes.

Note to Rule 7.3. The burden of ensuring that speedy trial rights are not violated should fall on the parties as well as the Court. There may be circumstances where the Court may make mathematical errors and if it is discovered by either party, the matter should be brought to the attention of the Court prior to the speedy trial violation occurring.

Rule 8. Consideration for Release Pending Trial

The Court shall impose conditions that will ensure the appearance of the defendant and the safety of the Community prior to trial.

(a) *Release on Own Recognizance.*

At initial appearance or arraignment, any defendant charged with the violation of law may be ordered released pending trial on own recognizance unless the Court determines that such release will not reasonably assure the appearance of the defendant for trial.

(b) *Release on Conditions.*

If the Court determines that a release on own recognizance will not reasonably assure the defendant's appearance for trial or ensure the safety of the Community, the Court may release defendant with conditions.

1. Execution of an unsecured personal bond in an amount specified by the Court;
2. Execution of a cash bond;
3. Placing the person in the custody of a designated person or organization agreeing to supervise him or her;
4. Restriction on the person's travel, association, curfew, or place of residence during the period released; and
5. Any other condition which the Court deems reasonably necessary, including electronic monitoring.

(c) *Revocation and Modification of Conditions of Release.*

Upon motion of any party or on the Court's own motion and with notice to all parties, the Court may amend the conditions of release at any time. If there is reason to believe that the defendant has violated the terms of conditions of release, the Court on its own motion or at the request of the Prosecutor may order the arrest of the defendant to determine if the defendant has violated the conditions of release. If the Court finds by preponderance

of evidence that the defendant has breached the conditions of release, the Court may detain the defendant pending trial.

(d) Detention after Determination of Guilt. If a defendant is found guilty or pleads guilty to an offense which is likely to result in a sentence of imprisonment, the Court may order that the defendant be taken into custody. Defendant shall receive credit for any pre-sentence incarceration towards the offense of conviction.

(e) Forfeiture of Bond.

(1) *Notice and Hearing.* If at any time it appears to the Court that a defendant who has been released pending trial or sentencing has willfully violated a condition of an appearance bond, it shall issue a bench warrant for the person's arrest. Within ten days after the issuance of the warrant, the Court shall notify the person posting the bond, in writing, that the warrant was issued. The Court shall also set a hearing within a reasonable time not to exceed thirty (30) days requiring the defendant and the person posting the bond to show cause as to why the bond should not be forfeited. The Court shall notify the defendant, the person posting the bond, and the Prosecution of the hearing in writing. The hearing may proceed without the defendant or the person posting the bond if sufficient proof exists that the defendant and the person posting the bond, if any, were given notice of the hearing.

(2) *Forfeiture.* 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 Community as any civil judgment.

(3) After entering an order of forfeiture, the Court shall forward a copy of the forfeiture order to the defendant, the defendant's counsel, the person posting the bond, and to the Community. The bond shall be forfeited to the Community. A forfeiture of bond under this subsection does not preclude the Court from setting new bond or other conditions of release.

(4) Prosecution may be permitted to participate in the bond forfeiture hearing, but shall not be required to participate in the hearing.

(5) The defendant or the person posting the bond may have counsel at his or her own expense at the bond forfeiture hearing.

(f) Return of Bond.

(1) If the defendant has complied with the conditions of release or the case is dismissed prior to trial, the bond shall be returned to the person who posted the bond.

(2) At any time before a violation, if the Court finds that there is no further need for an appearance bond, the Court shall exonerate the appearance bond and order the return of bond to the person who posted the bond.

Rule 9. Defendant's Right to be Present

A defendant shall have a right to be present for arraignment, pretrial proceedings, at every stage of the trial, and at the imposition of sentence. Defendant may waive his or her right to be present pursuant to Rules 9.1 and 9.2.

Rule 9.1. Defendant's Waiver of Presence

(a) Proceeding in Defendant's Absence.

A defendant may waive his/her right to be present at a proceeding if the defendant voluntarily absents himself/herself from the proceeding. If the defendant fails to appear for a proceeding, the proceeding in defendant's absence may occur upon the motion of the Prosecutor if the Court determines that the defendant's absence is voluntary and proceeding in the defendant's absence would be in the interest of justice. In determining whether the defendant's absence is voluntary, the Court shall consider whether the defendant had personal notice of the time of the proceeding, informed of the right to be present at the proceeding, defendant's past appearance or failure to appear for proceeding in the case, and any warning given to the defendant that the matter would proceed if the defendant fails to appear for the matter. Interest of justice factors that the Court may consider are the hardship and inconvenience to victims and/or witnesses, the prejudice to the Prosecutor's case, as well as any inconvenience to the Court if the proceeding does not go forward. Defendant shall not be sentenced in his/her absence without the defendant's written consent.

(b). Disruptive or Disorderly Conduct.

A defendant who voluntarily engages in disruptive or disorderly conduct after having been warned by the Court that the continued disruptive or disorderly conduct will result in forfeiture of his/her right to be present for the proceeding, shall forfeit his/her right to be present at the proceeding. A defendant may reacquire his/her right to be present for the proceeding if the defendant gives personal assurance to the Court of his or her intended good behavior. A defendant may be excluded from the proceeding without any additional warning if the defendant engages in further disruptive or disorderly conduct. If the defendant has been removed under this rule, the Court shall use reasonable means to enable the defendant to hear, observe, or be informed of the proceedings and give the defendant reasonable opportunity to consult with defendant's counsel at reasonable intervals.

(c) Additional Sanctions.

In addition to sanctions imposed for disruptive or disorderly conduct by the defendant, the Court may impose sanctions under Rule 29.2 for contempt.

Rule 9.2. Defendant Serving Sentence in Other Jurisdiction

If a defendant is serving a sentence of imprisonment/jail in another jurisdiction and the defendant has a charge(s) pending in the Court, the defendant may request by writing to the Court and to the Prosecutor to plead guilty to the Community offense(s) and to have his/her sentence that he/she is serving in another jurisdiction be credited towards any sentence imposed in his/her Community charge(s). Under this rule, a defendant and the Prosecutor may reach an agreement on the charge(s) and the sentence for the Court's consideration. A defendant who makes this request agrees to give up his/her right to be present for the guilty plea and sentence hearing. The Court may accept the agreement reached by the defendant and the Prosecutor and make a determination of guilt and impose a sentence without the defendant being personally present. The Clerk of the Court shall forward a copy of the determination of guilt and sentence to the defendant. This rule does not give the defendant the right to resolve the case.

Rule 10. Change of Judge

(a) For Cause.

Prior to trial or a hearing, the Prosecutor or the defendant shall be entitled to a change of judge if the assigned Judge cannot conduct a fair and impartial hearing or trial without prejudice or bias. The party requesting the change of judge must file a motion verified by affidavit of the moving party and must allege specific grounds for the change of judge prior to commencement of the hearing or trial. A party may make an oral request for change of judge with leave of Court. The hearing on the motion for change of judge for cause shall be heard by a judge other than the challenged judge. If the hearing Judge determines by preponderance of evidence that grounds exist for bias or prejudice, the matter shall be reassigned to another judge.

(b) Entitlement.³ (Reserved)

In any criminal case, each party has a matter of right to a change of judge. The party requesting the change in judge shall file a “Notice of Change of Judge” within ten days of arraignment. A party loses the right to change of judge under Rule 10(b) if the party participates in any contested matter in the case, pretrial hearing, or trial before the challenged judge or fails to file the Notice within ten (10) days of arraignment.

(c) Reassignment of a Judge.

If a change of judge is granted for cause, the case shall be immediately re-assigned to another judge.

(d) Duties of a Challenged Judge.

Upon filing a motion for change of judge for cause, the challenged Judge shall proceed no further on the case except to issue temporary orders as may be necessary in the interest of justice before the case can be re-assigned. The challenged Judge may enter an order recusing himself/herself from the case.

Rule 10.1. Unavailability of Judge

If the Judge before whom a trial or other criminal proceeding is pending becomes unavailable, the case shall be immediately re-assigned to another Judge. If, in the opinion of the new Judge, after a review of the record, the continuation of the proceeding would be prejudicial to either the Prosecutor or the defendant, the Judge shall order a new trial or proceeding.

Rule 10.2. Competency to Stand Trial

(a) Policy.

A person shall not be tried, convicted, sentenced or punished for a violation of Community law while, as a result of a mental illness, defect, or disability, the person is unable to understand the proceedings against him or her or to assist in his or her own defense. Mental illness, defect or disability means a psychiatric or neurological disorder that is evidenced by behavioral or emotional symptoms, including congenital mental conditions, conditions resulting from injury or disease, and developmental disabilities. The presence of a mental illness, defect, or disability alone is not grounds for finding a defendant incompetent to stand trial.

³ Currently, only the civil parties have a right to a change of judge as a matter of right.

(b) Procedure.

At any time after a complaint is filed, the defendant or the Prosecutor may request in writing or the Court, on its own motion, may order, an examination of the defendant to determine whether a defendant is competent to understand the proceedings against the defendant. The motion shall state the facts upon which the mental examination is sought. If the Court determines that an examination to determine defendant's competency is warranted, the Court shall order that the defendant undergo a mental health evaluation by a mental health professional to determine the defendant's competency to stand trial. On the motion of the defendant or with the defendant's consent, the Court may order a screening examination for a guilty except insane plea to be conducted by a mental health professional.

(c) Medical Records and Records related to the Offense Conduct.

All available medical records and records related to the offense in the party's control shall be provided to the examining mental health expert by the party seeking the examination within seven days of the Court's order authorizing the examination.

(d) Report of Examination. Within forty-five (45) days of the Court's order authorizing examination of the defendant to determine the defendant's competency to stand trial, the examiner shall submit a written report to the Court. Upon receipt of the report, the Court will copy and distribute the expert's report to defendant's counsel. Defendant's counsel shall have five business days to redact any statements of the defendant or summary of the defendant's statements pertaining to the charged offense from the written report and submit a copy of the report, with any redactions, to the Court for distribution to the prosecution. In any event, statements of the defendant obtained under these provisions regarding the charged offense(s) or other crimes shall not be admissible at or at any subsequent proceeding to determine guilt or innocence, without the defendant's consent. For good cause, the time for filing the report by the examiner may be extended for additional thirty (30) days.

(e) Hearing.

Within thirty (30) days after the mental health professional's report has been submitted to the Court, the Court shall hold a hearing to determine the defendant's competency. The parties may introduce other evidence regarding the defendant's mental condition, or by written stipulation, submit the matter on the report(s).

(f) Orders.

After the hearing:

- (1) If the Court finds by preponderance of evidence that the defendant is competent, proceedings shall continue within sixty (60) days. The defendant is entitled to repeat any proceeding if there are reasonable grounds to believe defendant was prejudiced by defendant's previous incompetency.
- (2) If the Court determines that the defendant is incompetent the Court shall:
 - (A) Release the defendant from custody for the charge(s) if in custody;
 - (B) Dismiss the charge(s) with prejudice;
 - (C) Refer the matter to Community Prosecutor's Office to pursue civil commitment of the defendant if the defendant poses danger to him/herself or to the Community or if the defendant is severely disabled; and
 - (D). Appoint a *guardian ad litem*.

(g) Confidentiality of the Reports.

The examination reports under this Rule shall be treated as confidential by the Court and counsel in all respects. After the case proceeds to trial or defendant is found to be unable to regain competence, the Court shall order the reports sealed. The Court may order the reports opened only for further competency evaluation or examination or when necessary to assist in mental health treatment or in a proceeding for civil commitment.

IV. PRETRIAL MOTIONS AND DISCOVERY

Rule 11. Pleas

(a) Entering a Plea.

(1) Conditional Plea.⁴ **(RESERVED)** With the consent of the Court and the Prosecutor, a defendant may enter a conditional plea of guilty or no contest, reserving in writing the right to have an appellate Court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.

(2) No Contest Plea. Before accepting a plea of No Contest, the Court must consider the parties' views and the public interest in the effective administration of justice. The Court may not accept a plea of No Contest without the consent of the Prosecutor.

(b) Considering and Accepting a Guilty or No Contest Plea.

(1) Advising and Questioning the Defendant.

Before the Court accepts a plea of guilty or no contest, the Court must address the defendant personally in open court. During this address, the Court must inform the defendant of, and determine that the defendant understands, the following:

- (A) the right to plead not guilty, or having so pled, to persist in that plea;
- (B) the right to a jury trial;
- (C) the right to be represented by counsel at trial and at every other stage of the proceeding;
- (D) the right at trial to confront and cross-examine witnesses who are against the defendant, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;
- (E) the defendant's waiver of these trial rights if the Court accepts a plea of guilty or no contest;
- (F) the nature of each charge to which the defendant is pleading;
- (G) any maximum possible penalty, including imprisonment, fine, and term of probation;
- (H) any mandatory minimum penalty;
- (I) the Court's authority to order restitution; and
- (J) the terms of any plea agreement provision waiving the right to appeal.

(2) Ensuring that a Plea is Voluntary. Before accepting a plea of guilty or no contest, the Court must address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).

⁴ Conditional Plea will be revisited after Rules of Appellate Procedure are written.

(3) Determining the Factual Basis for a Plea. Before entering judgment on a guilty plea, the Court must determine that there is a factual basis for the plea.

(c) Plea Agreement Procedure.

(1) In General. The parties may discuss and reach a plea agreement. The assigned trial Judge must not participate in these discussions without the consent of both parties. If the defendant pleads guilty or no contest to either a charged offense or a lesser or related offense, the plea agreement may specify that the Prosecutor will:

(A) not bring, or will move to dismiss other charges;

(B) recommend, or agree not to oppose the defendant's request for a particular sentence; and

(C) agree that a specific sentence is the appropriate disposition of the case.

(2) Disclosing a Plea Agreement. Plea Agreements shall be entered on the record and in open court unless the Court finds that good cause exists to seal the proceedings.

(3) Rejecting a Plea Agreement. If the Court rejects a plea agreement containing stipulations of the parties, the Court must do the following on the record and in open Court unless the Court finds that good cause exists to seal the proceedings.

(A) inform the parties that the Court rejects the plea agreement;

(B) advise the defendant personally that the Court is not required to follow the plea agreement and give the defendant the opportunity to withdraw the plea;

(C) advise the defendant personally that if the plea is not withdrawn, the Court may dispose of the case less favorably toward the defendant than the plea agreement contemplated; and

(D) advise the parties' the right to re-assignment of the case to another Judge and if requested by either party, the case shall be re-assigned to another Judge.

(d) Withdrawing a Guilty or No Contest Plea.

If the Court rejects a plea agreement, a defendant may withdraw a plea of guilty or no contest plea. After the Court imposes the sentence, the defendant may not withdraw a plea of guilty or no contest, and the plea may be set aside only on direct appeal. The Court may allow a defendant to withdraw his/her guilty or no contest plea prior to sentencing to correct a manifest injustice as long as the defendant's withdrawal of the plea does not prejudice the Community. If the defendant's guilty or no contest plea is withdrawn, all the original charges that existed before any changes or dismissal were made as part of the plea agreement shall be reinstated.

(e) Inadmissibility of a Plea, Plea Discussions, and Related Statements.

If the Court rejects the plea agreement, or the judgment is vacated or reversed, neither the plea discussions nor any statements made at a hearing on the plea shall be admissible against the defendant in any criminal or forfeiture proceedings.

Rules Committee Notes:

Note to Rule 11(d). There may be limited circumstances where a defendant should be allowed to withdraw his/her plea of guilt or no contest to avoid manifest injustice prior to sentencing. The following are non-exhaustive examples where a defendant should be allowed to withdraw his/her plea of guilt or no contest: the plea was entered involuntarily; the defendant did not have effective assistance of counsel where the

defendant was represented by counsel; the defendant did not understand the nature of the charges; there was insufficient factual basis for the plea; or change in law.

Rule 12. Pretrial Motions

(a) Pretrial Motions.

(1) In General. All motions, other than one made during a trial or a hearing, must be made in writing and comply with Rule 31.1. Motions may be made orally with the Court's permission.

(2) Motions That May Be Made Before Trial. A party may raise by pretrial motion any defense, objection, or request that the Court can determine without a trial of the general issue.

(3) Motions That Must Be Made Before Trial. The following shall be raised before trial:

(A) a motion alleging a defect in instituting the prosecution;

(B) a motion alleging a defect in the complaint, but at any time while the case is pending, the Court may hear a claim that the complaint fails to invoke the Court's jurisdiction or to state an offense;

(C) a motion to suppress evidence or suppress statements;

(D) a Rule 15 motion for discovery.

(b) Motions Deadline.

The Court may set a deadline for the parties to make pretrial motions and may also schedule a motion hearing. If the Court does not set a deadline for motions, the motion deadline shall be thirty (30) days prior to trial. Parties may make *motions in limine* at any time. Generally, motions, defenses, or requests not timely raised should be precluded unless the party making the motion did not know the basis for the motion exercising reasonable diligence and the party raises the motion promptly upon learning of the basis of the motion.

(c) Ruling on a Motion.

The Court must decide every pretrial motion before trial unless it finds good cause to defer a ruling. The Court must not defer ruling on a pretrial motion if the deferral will adversely affect a party's right to appeal. When factual issues are involved in deciding a motion, the Court must state its essential findings on the record. 5 day requirement of issuing a written order?

Rule 12.1. Notice of an Alibi Defense.

(a) Notice to Prosecutor. If the defendant intends to raise the defense of alibi, the defendant must serve written notice to the Prosecutor of any intended alibi defense. The defendant's notice must state:

(1) each specific place where the defendant claims to have been at the time of the alleged offense; and

(2) the name/aliases, if available, address, and telephone number of each alibi witness on whom the defendant intends to rely.

(b) Disclosing Prosecutor Witnesses.

(1) Disclosure. If the defendant serves a Rule 12.1(a) notice, the Prosecutor must disclose in writing to the defendant or the defendant's counsel fifteen days after receiving defendant's notice:

(A) the name, address, and telephone number of each witness the Prosecutor intends to rely on to establish the defendant's presence at the scene of the alleged offense; and
(B) each Prosecutor's rebuttal witness to the defendant's alibi defense.

(c) *Continuing Duty to Disclose.* Both Prosecutor and the defendant must promptly disclose in writing to the other party the name, address, and telephone number of each additional witness if:

(1) the disclosing party learns of the witness before or during trial; and
(2) the witness should have been disclosed under Rule 12.1(a) or (b) if the disclosing party had known of the witness earlier.

(d) *Exceptions.* For good cause, the Court may grant an exception to any requirement of Rule 12.1(a)-(c).

(e) *Timeliness.* Defendant shall comply with Rule 12.1(a) within the time period set forth for filing pretrial motions or at any later time the Court sets. The names of the intended alibi witnesses and rebuttal witnesses shall be filed with the Court.

(f) *Failure to Comply.* If a party fails to comply with this rule, the Court may exclude the testimony of any undisclosed witness regarding the defendant's alibi. This rule does not limit the defendant's right to testify.

(g) *Inadmissibility of Withdrawn Intention.* Evidence of an intention to rely on an alibi defense, later withdrawn, or of a statement made in connection with that intention, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

Rule 12.2. Notice of an Insanity Defense; Mental Examination

(a) *Notice of an Insanity Defense.*

A defendant who intends to assert a defense that the person was insane at the time of the alleged offense must so notify the Prosecutor in writing within the time provided for filing a pretrial motion, or at any later time the Court sets, and file a copy of the notice with the clerk. A defendant who fails to give notice is precluded from asserting an insanity defense. The Court may, for good cause, allow the defendant to file the notice late, grant additional trial-preparation time, or make other appropriate orders.

(b) *Notice of Expert Evidence of a Mental Condition.*

If a defendant intends to introduce expert evidence relating to a mental disease or defect or any other mental condition of the defendant bearing on the issue of guilt, the defendant must, within the time provided for filing a pretrial motion or at any later time the Court sets, notify the Prosecutor in writing of such intention and file a copy of the notice with the clerk. The Court may, for good cause, allow the defendant to file the notice late, grant the parties additional trial-preparation time, or make other appropriate orders.

(c) *Mental Examination.*

(1) Authority to Order an Examination and Procedure.

(A) The Court may order the defendant to submit to a mental health examination under Rule 10.2.

(B) If the defendant provides notice under Rule 12.2(a), the Court must, upon the Community's motion, order the defendant to be examined by a mental health professional. If the defendant provides notice under Rule 12.2(b) the Court may, upon

the Community's motion, order the defendant to be examined under procedures ordered by the Court.

(C) The parties may stipulate to determination of mental illness based upon the defendant's past medical records.

(2) Inadmissibility of a Defendant's Statements. No statement made by a defendant in the course of any examination conducted under this rule (whether conducted with or without the defendant's consent), no testimony by the expert based on the statement, and no other fruits of the statement may be admitted into evidence against the defendant in any criminal proceeding except on an issue regarding mental condition on which the defendant has introduced evidence of incompetency or evidence requiring notice under Rule 12.2(a) or (b).

(d) Failure to Comply.

If the defendant fails to give notice under Rule 12.2(b) or does not submit to an examination when ordered under Rule 12.2(c), the Court may exclude any mental health professional's testimony or opinion evidence from the defendant on the issue of the defendant's mental disease, mental defect, or any other mental condition bearing on the defendant's guilt.

(e) Inadmissibility of Withdrawn Intention.

Evidence of an intention as to which notice was given under Rule 12.2(a) or (b), later withdrawn, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

(g) Burden of Proof.

To prevail on the defense of insanity, the defendant shall bear the burden of proof by clear and convincing evidence that at the time of the charged offense:

- (1) defendant had a mental defect or disease; and
- (2) as a result of this mental defect or disease, the defendant lacked substantial capacity either to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law.

Rule 12.3. Notice of a Public Authority Defense

(a) Notice of the Defense and Disclosure of Witnesses.

(1) Notice in General. If a defendant intends to assert a defense of actual or believed exercise of public authority on behalf of a law enforcement agency at the time of the alleged offense, the defendant must notify the Prosecutor in writing and must file a copy of the notice with the Court within the time provided for filing a pretrial motion, or at any later time the Court sets. The notice may be filed under seal with the Court's approval.

(2) Contents of Notice. The notice must contain the following information:

- (A) the law enforcement agency involved;
- (B) the agency member on whose behalf the defendant claims to have acted; and
- (C) the time during which the defendant claims to have acted with public authority.

(3) Response to the Notice. The Prosecutor must serve a written response on the defendant or the defendant's counsel within ten (10) days after receiving the defendant's notice, but no later than twenty (20) days before trial. The response must admit or deny that the defendant exercised the public authority identified in the defendant's notice.

(4) Disclosing Witnesses.

(A) Prosecutor's Request. The Prosecutor may request in writing that the defendant disclose the name, address, and telephone number of each witness the defendant intends to rely on to establish a public-authority defense. Prosecutor may serve the request when the Prosecutor serves its response to the defendant's notice under Rule 12.3(a)(3), or later, but must serve the request no later than twenty (20) days before trial.

(B) Defendant's Response. Within seven (7) days after receiving the Prosecutor's request, the defendant must serve the Prosecutor a written statement of the name, address, and telephone number of each witness.

(C) Prosecutor's Reply. Within seven (7) days after receiving the defendant's statement, Prosecutor must serve on the defendant or the defendant's counsel a written statement of the name, address, and telephone number of each witness the Prosecutor intends to rely on to oppose the defendant's public-authority defense.

(5) Additional Time. The Court may, for good cause, allow a party additional time to comply with this rule.

(b) Continuing Duty to Disclose.

Both counsel for the defendant and the Prosecutor must promptly disclose in writing to the other party the name, address, and telephone number of any additional witness if:

- (1) the disclosing party learns of the witness before or during trial; and
- (2) the witness should have been disclosed under Rule 12.3(a)(4) if the disclosing party had known of the witness earlier.

(c) Failure to Comply.

If a party fails to comply with this rule, the Court may exclude the testimony of any undisclosed witness regarding the public-authority defense. This rule does not limit the defendant's right to testify.

(d) Protective Procedures Unaffected. This rule does not limit the Court's authority to issue appropriate protective orders or to order that any filings be under seal.

(e) Inadmissibility of Withdrawn Intention.

Evidence of an intention as to which notice was given under Rule 12.3(a), later withdrawn, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

Rule 13. Joinder

Upon a motion by the Prosecutor or the defendant(s), the Court may order that separate cases or separate defendants be tried together as though brought in a single complaint if all offenses and all defendants could have been joined in a single complaint. In determining whether the cases or defendants should be consolidated, the Court shall consider whether: 1) the offenses are of the similar or same character; 2) the offenses are based upon the same conduct or are otherwise connected together; and 3) the offenses are alleged to have been part of a common scheme.

Rule 14. Relief From Prejudicial Joinder

(a) Relief. If the joinder of offenses or defendants in a complaint, or a consolidation for trial appears to prejudice a defendant or the Prosecutor, the defendant(s) or the Prosecutor may request the Court to order separate trials of counts, sever the defendants' trials, or provide any other relief that justice requires.

(b) Defendant's Statements. Before ruling on a defendant's motion to sever, the Court may order the Prosecutor to disclose any of the defendant's statement that the Prosecutor intends to use as evidence. The Court may also order that the defendant's statements be redacted to ensure fairness to defendant(s).

Rules Committee Notes.

Note to Subsection(b). Under the Indian Civil Rights Act, a defendant has right to confrontation. Any statements of a non-testifying defendant that incriminates a co-defendant should not be admitted without proper redaction of the names of the co-defendants.

Rule 15. General Standards Governing Discovery

The following shall apply to all discovery under this rule:

(a) Statements.

(1) **Definition.** Whenever it appears this rule, the term "statement" shall mean:

- (A) A writing signed or otherwise adopted or approved by a person;
- (B) A mechanical, electrical or other recording of a person's oral communications or a transcript thereof; and
- (C) A writing containing a verbatim record or a summary of a person's oral communications.

(2) **Superseded Notes.** Handwritten notes which have been substantially incorporated into a statement shall not be considered a statement.

(b) Materials Not Subject to Disclosure.

(1) **Work Product.** Disclosure shall not be required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the prosecutor, members of the prosecutor's legal or investigative staff or law enforcement officers, or of defense counsel or defense counsel's legal or investigative staff.

(2) **Informants.** Disclosure of the existence of an informant or of the identity of an informant who will not be called to testify shall not be required where disclosure would result in substantial risk to the informant or to the informant's operational effectiveness, provided that the failure to disclose will not infringe the constitutional rights of the accused unless the disclosure is ordered by the Court under Rule 15.4.

(c) Failure to Call a Witness or Raise a Defense.

The fact that a witness' name is on a list furnished under this rule, or that a matter contained in the notice of defenses is not raised, shall not be commented upon at the trial, unless the Court on motion of a party, allows such comment after finding that the inclusion of the witness' name or defense constituted an abuse of the applicable disclosure rule.

(d) Use of Materials.

Any materials furnished to counsel pursuant to this rule shall not be disclosed to the public, but only to others to the extent necessary to the proper conduct of the case.

Rules Committee Note:

Note to Rule 15. The purpose of discovery is to notify the opposition of the party's case-in-chief in return for reciprocal discovery and to avoid unnecessary delay and surprise. The rules pertaining to discovery should be read to promote the purpose behind requiring disclosure. As a practical matter, without liberal disclosure, defendants and the Prosecutor may not be able make an informed decision to settle a case or proceed to trial.

Rule 15.1. Discovery by Prosecutor

(a) Matters Relating to Guilt, Innocence or Punishment.

No later than ten (10) working days after the arraignment or at such time as the Court may direct, Prosecutor shall serve the defendant with copies of the following materials and information within the Prosecutor's possession or control:

- (1) The names and physical addresses, if known, of all persons whom the prosecutor will call as witnesses in the case-in-chief together with relevant written or recorded statements of those witnesses;
- (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 at trial or at sentencing;
- (6) A list of all prior acts of the defendant which the prosecutor will use to prove motive, intent, or knowledge or otherwise use at trial;
- (7) 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 the defendant's punishment therefore, including all SRPMIC conviction(s) that goes to the credibility of the witness(es) whom the prosecutor expects to call at trial;
- (8) Original reports, any supplemental reports, search warrant affidavits and return, and probable cause statements prepared by law enforcement agency in connection with the charged offense.

(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 the prosecutor's possession or control regarding:

- (1) Whether there has been any electronic surveillance of any conversations to which the accused was a party, or of the accused's business or residence;
- (2) Whether a search warrant has been executed in connection with the case; and
- (3) Whether or not the case involved an informant, and, if so, the informant's identity, if the defendant is entitled to know either or both of these facts under Rule 15.5(a);

(c) Additional Disclosure Upon Request and Specification.

The prosecutor, upon written request, shall disclose to the defendant a list of the prior 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 15.1(a)(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 the prosecutor's 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.

(f) Disclosure of Rebuttal Evidence.

Upon receipt of the notice of defenses required from the defendant under Rule 15.2(b) 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.

Rules Committee Note:

Note to Rule 15.1. At the present time, the Community does not have the authority to utilize National Criminal Information Center ("NCIC") and Arizona Criminal Information Center ("ACIC") that are maintained by the Federal Bureau of Investigations and Arizona Department of Public Safety. Mandatory disclosures pertaining to a witness(es) or defendant(s) criminal convictions are limited only to convictions arising in Community Court.

Rule 15.2. Disclosure by Defendant

(a) Physical Evidence.

At any time after the filing of a complaint, upon written request of the prosecutor, the defendant, in connection with the particular crime with which the defendant is charged, shall:

- (1) Appear in a line-up;
- (2) Speak for identification by witnesses;
- (3) Be fingerprinted, palm-printed, foot-printed or voiceprinted;
- (4) Pose for photographs not involving re-enactment of an event;
- (5) Try on clothing;
- (6) Permit the taking of samples of his or her hair, blood, saliva, urine or other specified materials which involve no unreasonable intrusions of his or her body;
- (7) Provide specimens of his or her handwriting; or
- (8) Submit to a reasonable physical or medical inspection of his or her body, provided such inspection does not include psychiatric or psychological examination.

The defendant shall be entitled to the presence of counsel at the taking of such evidence. This rule shall supplement and not limit any other procedures established by law.

(b) General Notice of Defenses.

Within twenty (20) working days after the arraignment or at such other time as the Court may direct, the defendant shall provide the prosecutor with a written notice specifying all

defenses as to which the defendant will introduce evidence at trial, in addition to those required to be disclosed under Rule 12.1-12.3, 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. It may be signed by either the defendant or defendant's counsel, and shall be filed with the Court.

(c) Disclosures by Defendant.

Simultaneously with the notice of defenses submitted under Rule 15.2(b), the defendant shall serve the Prosecutor's Office information and copies of the following:

- (1) The names and physical addresses, if known, of all persons, other than that of the defendant, whom he or she 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 whom the defendant will call at trial, together with the results of the defendant's physical examinations and of 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 defendant 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 15.2(c)(3).

(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, his or her counsel and agents.

Rule 15.3. Depositions [Reserved]

(a) Availability.

Upon motion of any party or a witness, the Court may in its discretion order the examination of any person except the defendant upon oral deposition under the following circumstances:

- (1) A party shows that the person's testimony is material to the case and that there is a substantial likelihood that the person will not be available at the time of trial;
- (2) A party shows that the person's testimony is material to the case or necessary to adequately to prepare a defense or investigate the offense, that the person was not a witness at the preliminary hearing or at the probable cause phase of the juvenile transfer hearing, and⁵ that the person will not cooperate in granting a personal interview.

(b) Motion for Taking Deposition.

A motion for deposition shall specify the time and place for taking the deposition and the name and address of each person to be examined, together with designated papers, documents, photographs or other tangible objects, not privileged, to be produced at the same time and place. The Court may change such terms and specify any additional conditions governing the conduct of the proceeding.

(c) Manner of Taking.

Except as otherwise provided herein or by order of the Court, depositions shall be taken in the manner provided in civil actions. With the consent of the defendant, the Court may order that a deposition be taken on written interrogatories in the manner provided in civil actions. Any statement of the witness being deposed which is in the possession of any party shall be made available for examination and use at the taking of the deposition to any party who would be entitled thereto at trial. A deposition may be recorded by other than stenographic means, such as, by an audio or video recording device. If a deposition is recorded by other than stenographic means, the party taking the deposition shall provide the opposing party with a copy of the recording within fourteen (14) days after the taking of the deposition or not less than 10 days before trial, whichever is earlier. The parties may stipulate, or the Court may order, that a deposition be taken by telephone, consistent with the provisions of Rule 15.3(d).

(d) Presence of Defendant.

A defendant shall have the right to be present at any examination under Rules 15.3(a)(1) and (a)(2). If a defendant is in custody, the officer having custody shall be notified by the moving party of the time and place set for the examination and shall, unless the defendant waives, in writing, the right to be present, produce the defendant at the examination and remain with the defendant during it.

(e) Use.

Depositions may be used in the manner consistent with Rules of Evidence adopted by the Court.

(f) Expenses.

The party seeking the deposition shall bear the cost of the deposition.

(g) Objection to Deposition Testimony.

Objections to the deposition testimony or evidence and the grounds for the objection shall be stated at the time of taking of the deposition.

(h) Deposition by Agreement.

Nothing shall preclude the taking of the deposition, the use of the deposition, by the agreement of the parties with consent of the Court.

Rule 15.4. Disclosure by Order of the Court.

Upon motion of the defendant or the Prosecutor showing that the defendant or the Prosecutor has substantial need in the preparation of defendant's or Prosecutor's case for additional material or information not otherwise covered by Rule 15.1 or Rule 15.2, and that the defendant or the Prosecutor 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 or her. 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.

Rule 15.5. Excision and Protective Orders

(a) Discretion of the 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 five (5) days prior to the date set for trial, or that any other disclosures required by this rule be denied, deferred or regulated when it finds: (1) That the disclosure would result in a risk or harm outweighing any usefulness of the disclosure to any party; and (2) That the risk 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 or excision order, or submitting for the Court's determination the discoverability of any material or information, the Court may permit the party to present the material or information for the inspection of the Judge alone. Counsel for all other parties shall be entitled to be present when such presentation is made, but is not entitled to view the submission.

(d) Preservation of Record.

If the Court enters an order that any material, or any portion thereof, is not discoverable under this rule, the entire text of the material shall be sealed and preserved in the record to be made available to the appellate Court in the event of an appeal.

Rule 15.6. Continuing Duty to Disclose

If at any time after an initial disclosure has been made, any party who 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. Each party shall continue to disclose materials subject to disclosure in Rules 15.1 & 15.2 as it becomes available and exercise due diligence in obtaining and disclosing materials that are subject to disclosure in Rules 15.1 & 15.2.

Rule 15.7. Sanctions

(a) Failure to Comply.

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 this rule or any order 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;
- (4) Precluding a party from calling a witness, offering evidence, or raising a defense not disclosed;
- (5) Declaring a mistrial when necessary to prevent a miscarriage of justice; or
- (6) Dismissal of a case with or without prejudice.

(b) Cessation of Prosecutor's Obligations.

If the defendant fails to comply with Rule 15.2, the prosecution need make no further disclosure except material or information which tends to mitigate or negate defendant's guilt as to the offense charged as set forth in Rule 15.1(a)(7), or as ordered by the Court.

Rules Committee Note:

Note to Rule 15.7. The severity of the sanction imposed should be proportional to the severity of the violation. Only in rare circumstances should a case be dismissed for a discovery violation. Likewise, only in rare circumstances should a defendant be precluded from presenting a defense for a discovery violation. In determining the appropriate sanction, the Court should consider whether the violator acted in good faith or bad faith and whether the sanction(s) would promote the interests of justice.

Rule 16. Pretrial Conference

(a) Pretrial Order.

The Court shall set a pre-trial conference at least thirty (30) days prior to the trial date

(b) Issues Addressed.

If a pretrial conference is ordered, the following issues may be addressed:

- (1) Outstanding pretrial motions;
- (2) Stipulations of fact or particular legal issues to be tried;
- (3) Jury instructions to be given at trial.

(c) Additional Issues Addressed.

The Court may identify other issues to be resolved at the pretrial conference. Where issues at the pretrial conference go beyond those set forth in Rule 16 (b), the Court shall give notice to the parties of the issues to be addressed at the time the notice of pretrial conference is sent out by the Court.

(d) Mandatory when Jury Trial Set.

When a request for a jury trial is made or when the defendant is entitled to a jury trial, a pretrial conference shall be scheduled at the time of the request. The pretrial shall be held no less than fifteen (15) days before the trial date. At the pretrial conference the prosecutor and the defendant shall:

- (1) Finalize the list of witness to be called at the trial. After the pretrial conference, no additions to the list shall be allowed except upon a showing to the Court that the existence of the witness or the content of the witness; proposed testimony could not have been discovered earlier;
- (2) Finalize the list of exhibits and mark them for identification.
- (3) Specify what additional pretrial motions will be filed;
- (4) Determine whether the parties have reached a disposition.

Rule 16.1. Procedure on Pretrial Motions to Suppress

(a) Duty of Court to Inform Defendant.

Whenever an issue concerning the constitutionality of the use of specific evidence against the defendant arises before trial, and the defendant is not represented by counsel, the Court shall inform the defendant that:

- (1) The defendant may, but need not, testify at a pretrial hearing on the circumstances surrounding the acquisition of the evidence;

- (2) If the defendant testifies at the hearing, the defendant will be subject to cross-examination;
- (3) If the defendant testifies at the hearing, the defendant does not waive his or her right to remain silent during the trial; and
- (4) If the defendant testifies at the hearing, neither this fact nor defendant's testimony at the hearing shall be mentioned at the actual trial unless the defendant testifies at trial concerning the same matters. If a defendant testifies at both the pre-trial suppression hearing and at trial, the defendant may be subject to cross-examination at trial regarding defendant's previous testimony given at the pre-trial suppression hearing.

(b) Burden of Proof on Pretrial Motions to Suppress Evidence.

The prosecutor shall have the burden of proving, by a preponderance of the evidence, the lawfulness in all respects of the acquisition of all evidence which the prosecutor will use at trial.

Rule 16.2. Withdrawal of Jury Trial Request or Waiver of Jury Trial

(a) Withdrawal of Jury Trial Demand.

Demand for jury trial shall only be withdrawn on consent of the defendant.

(b) Form of Withdrawal or Waiver.

A withdrawal of jury trial demand or waiver of jury trial under this rule shall be made in writing or in open court on the record.

Rule 16.3. Dismissals of Prosecution

(a) On Prosecutor's Motion.

The Court, on motion of the Prosecutor shall order that a prosecution be dismissed at any time upon finding that the purpose of the dismissal is not to avoid the provisions of Rule 7.1.

(b) On Defendant's Motion.

The Court, on motion of the defendant, shall order that a prosecution be dismissed upon finding that the complaint is insufficient as a matter of law.

(c) Record.

The Court shall state, on the record, its reasons for ordering dismissal of any prosecution.

(d) Effect of Dismissal.

Dismissal of a prosecution shall be without prejudice to commencement of another prosecution, unless the Court order finds that the interests of justice require that the dismissal be with prejudice.

(e) Release of Defendant; Exoneration of Bond.

When a prosecution is dismissed, the defendant shall be released from custody only on the charge(s) being held for the dismissed charge and any appearance bond for the dismissed charge(s) shall be exonerated.

V. TRIAL

Rule 17.1. Jury or Nonjury Trial

(a) Jury Size. In General.

A jury consists of six (6) members of the Community, drawn from the jury list.

(b) Stipulation for a Smaller Jury. At any time before the verdict, the parties may, with the Court's approval, stipulate in writing or pronounce in open court that the jury may consist of fewer than 6 persons.

(c) Non-jury Trial. In a case tried without a jury, the Court must find the defendant guilty or not guilty or if applicable, not guilty by reason of insanity. If a party requests, before the finding of guilty or not guilty, the Court must state its specific findings of fact in open court or in a written decision or opinion.

Rule 17.2. Challenges

(a) Challenge to the Panel.

Either party may challenge the panel on the ground that in its selection there has been a material departure from the requirements of law. Challenges to the panel shall specify the facts on which the challenge is based. Challenges shall be made and decided before any individual juror is examined.

(b) Challenge for Cause.

When there is reasonable ground to believe that a juror cannot render a fair and impartial verdict, the Court, on its own initiative, or on motion of any party, shall excuse the juror from service in the case. A challenge for cause may be made at any time, but may be denied for failure of the party making it to exercise due diligence.

(c) Peremptory Challenges.

(1) In General. Both parties shall be allowed two peremptory challenges. A party may exercise fewer than the allowable peremptory challenge(s) subject to limitations in Rule 17.3(g).

(2) If an alternate juror is selected under Rule 17.3(h), neither party shall be entitled to additional peremptory challenges.

Rule 17.3. Procedure for Selecting the Trial Jury

(a) Swearing Panel.

All members of the panel shall swear or affirm that they will truthfully answer all questions concerning their qualifications.

(b) Calling Jurors for Examination.

The Court or clerk shall then call to the jury box a number of jurors equal to the number to serve plus the number of alternates plus the number of peremptory challenges allowed the parties. Alternatively, and at the Court's discretion, all prospective jurors may be examined by Court and counsel. There shall be at least ten names drawn from the jury list.

(c) Inquiry by the Court.

The Court shall initiate the examination of jurors by identifying the parties and their counsel, briefly outlining the nature of the case, and explaining the purposes of the examination. The Court shall ask any questions which it thinks necessary to determine the prospective jurors' qualifications to serve in the case on trial.

(d) Voir Dire Examination.

The Court shall conduct a thorough oral examination of prospective jurors. Upon the request of any party, the Court shall permit that party a reasonable time to conduct a further oral examination of the prospective jurors. The Court may impose reasonable

limitations with respect to questions allowed during a party's examination of the prospective jurors, giving due regard to the purpose of such examination. In addition, the Court may terminate or limit voir dire on grounds of abuse. Nothing in this rule shall preclude the use of written questionnaires to be completed by the prospective jurors, in addition to oral examination. Parties are encouraged to submit written proposed voir dire questions at least seven (7) days prior to trial.

(e) Scope of Examination.

The examination of prospective jurors shall be limited to inquiries directed to challenge for cause or to information to enable the parties to exercise intelligently their peremptory challenges.

(f) Challenge for Cause.

At any time that cause for disqualifying a juror appears, the Court shall excuse the juror before the parties are called upon to exercise their peremptory challenges. Challenges for cause shall be made out of the hearing of the jurors, but a record shall be made.

(g) Exercise of Peremptory Challenges. Following examination of the jurors, the parties shall exercise their peremptory challenges on the clerk's list by alternating strikes, beginning with the prosecutor, until the peremptory challenges are exhausted. Failure of a party to exercise a challenge in turn shall operate as a waiver of the party's remaining challenges, but shall not deprive the other party of any remaining challenges. If the parties fail to exercise the full number of challenges allowed, the clerk shall strike the jurors on the bottom of the list until only the number to serve, plus an alternate, if any remain. Peremptory challenges shall be made outside the presence of the jurors.

(h) Selection of Jury and An Alternate Juror(s).

The persons remaining in the jury box or on the list of the panel of prospective jurors shall constitute the jurors for the trial. Just before the jury retires to begin deliberations, the clerk shall, by lot, determine the juror or jurors to be designated as an alternate. The alternate, upon being physically excused by the Court, shall be instructed to continue to observe the admonitions to jurors until the alternate juror is informed that a verdict has been returned or the jury has been discharged. In the event a deliberating juror is excused due to inability or disqualification to perform required duties, the Court may substitute an alternate juror, unless disqualified, to join in the deliberations. If an alternate joins the deliberations, the jury shall be instructed to begin deliberations anew. In general, the Court may empanel no more than two alternate jurors in addition to the regular jury.

Rule 17.4. Preparation of Jurors

(a) Oath. Each juror shall take the following oath:

Do you swear or affirm that you will give careful attention to the proceedings, abide by the Court's instructions, and render a verdict in accordance with the law and evidence presented to you?

(b) Preliminary Instructions. Immediately after the jury is sworn, the Court shall instruct the jury concerning its duties, its conduct, the order of proceedings, the procedure for submitting written questions of witnesses or of the Court as set forth in Rule 17.4(d), and the elementary legal principles that will govern the proceeding.

(c) Note Taking; Access to Juror Notes and Notebooks.

The Court shall instruct the jurors that they may take notes regarding the evidence presented. The Court shall provide materials suitable for this purpose. In its discretion, the Court may authorize documents and exhibits to be included in notebooks for use by jurors during trial to aid them in performing their duties. Jurors shall have access to their notes and notebooks during recesses and deliberations. After the jury has rendered its verdict, the notes shall be collected by the bailiff or clerk who shall destroy them promptly.

(d) Juror Questions.

Jurors shall be instructed that they are permitted to submit to the Court written questions directed to witnesses or to the Court; and that opportunity will be given to counsel to object to such questions out of the presence of the jury. Notwithstanding the foregoing, for good cause the Court may prohibit or limit the submission of questions to witnesses.

Rule 18.1. Trial Proceedings

(a) Order of Proceedings.

The trial shall proceed in the following order unless otherwise directed by the Court:

- (1) The complaint shall be read and the plea of the defendant stated.
- (2) The prosecutor may make an opening statement.
- (3) The defendant may then make an opening statement or may defer such opening statement until the close of the prosecution's evidence.
- (4) The prosecutor shall offer the evidence in support of the charge.
- (5) The party calling the witness shall proceed first with direct examination. The non-calling party shall have the opportunity to cross-examine the witness. If the non-calling party has exercised its right to cross-examine the witness, the party calling the witness shall have a right to conduct a re-direct of the witness. The re-direct shall be limited in scope to areas covered on cross-examination. Re-cross examination shall not be permitted without explicit permission of the Court and if permission is granted, the scope of the re-cross examination shall be to the re-direct examination.
- (6) The defendant may then make an opening statement if it was deferred, and offer evidence in his or her defense. If the defendant has no evidence to offer and deferred making an opening statement, defendant shall not be allowed to make an opening statement.
- (7) If a defendant offers evidence in his or her defense, the Prosecutor may offer rebuttal evidence.
- (8) The parties may present closing arguments, the Prosecutor proceeding first and then defense, and finally Prosecution's rebuttal.
- (9) The judge shall then charge the jury.

With the permission of Court, the parties may agree to any other method of proceeding.

(b) Proceedings When Defendant is Charged With Prior Convictions.

In all prosecutions in which a prior conviction is alleged as a sentencing enhancement, the procedure shall be as follows:

- (1) The trial shall proceed initially as though the sentencing allegations were not alleged. When the complaint is read all reference to prior offenses or sentencing allegations shall be omitted. During the trial of the case, no instructions shall be given, reference made,

nor evidence received concerning the sentencing allegations, except as permitted by the Court after Notice of Intent to use the prior conviction(s) has been provided to the defendant prior to trial.

(2) If the verdict is guilty, the trial Judge shall determine, unless the defendant has admitted to the allegation, the existence of the allegation or prior conviction(s). Defendant may only be tried on the prior convictions that have been previously disclosed under Rule 15.1. The Prosecutor shall bear the burden of proof beyond a reasonable doubt.

Rule 18.2. Presence of Defendant

The defendant has the right to be present at every stage of the trial, including impaneling of the jury, the giving of jury instructions, and the return of the verdict. If the defendant has been given notice of the trial date and the Court determines, after reviewing the factors identified in Rule 9.1, that the defendant voluntarily has not appeared for trial, the trial may proceed in the absence of the defendant at the request of the Prosecutor.

Rule 19. Directed Verdict

(a) Before Verdict.

On motion of the defendant or on its own motion, the Court shall enter a judgment of acquittal of one or more offenses charged in the complaint after the evidence on either side is closed if there is no substantial evidence to warrant a conviction. The Court's decision on a defendant's motion shall not be reserved, but shall be made with all possible speed. Proceedings under this Rule shall be conducted outside the presence of the jury.

(b) After Verdict.

A motion for judgment of acquittal made before the verdict may be renewed by a defendant within ten days after the verdict was returned.

Rule 20.1. Requests for Instructions and Forms of Verdict

At the close of the evidence or at such earlier time as the Court directs, counsel for each party shall submit to the Court counsel's written requests for instructions and forms of verdict and shall furnish copies to the other parties.

Rule 20.2. Rulings on Instructions and Forms of Verdict

(a) Conference.

The Court shall confer with counsel and inform them of its proposed action upon requests for instructions and forms of verdict prior to final argument to the jury.

(b) Duty of the Court.

The Court shall not inform the jury which instructions, if any, are included at the request of a particular party.

(c) Waiver of Error.

No party may assign as error on appeal the Court's giving or failing to give any instruction or portion thereof or to the submission or the failure to submit a form of verdict unless the party objects thereto before the jury retires to consider its verdict,

stating distinctly the matter to which the party objects and the grounds for the objection.

(d) Jurors' Copies.

The Court's preliminary and final instructions on the law shall be in written form. A copy of the final instructions shall be furnished to jurors before the jury retires for deliberations.

Rule 21.1. Retirement of Jurors

(a) Retirement.

After instructing the jury, the Court shall appoint or instruct the jurors to elect a foreperson. The jurors shall then retire in the custody of a court officer and consider their verdict.

(b) Permitting the Jury to Disperse.

The Court may in its discretion permit the jurors to disperse after their deliberations have commenced, instructing them when to reassemble. The Court shall further instruct the jury that they are not to discuss the matter among themselves unless all jurors are reassembled. The jury shall be also admonished not to converse with involved parties or to view any evidence that was not presented during trial.

Rule 21.2. Materials Used During Deliberation

Upon retiring for deliberation the jurors shall take with them:

- (1) Forms of verdict approved by the Court, which shall not indicate in any manner the punishment subscribed to the offense(s);
- (2) All jurors' copies of written or recorded instructions;
- (3) Their notes; and
- (4) Such tangible evidence as the Court in its discretion shall direct.

Rule 21.3. Further Review of Evidence and Additional Instructions

After the jurors have retired to consider their verdict, if they desire to have any testimony repeated, or if they or any party request additional instructions, the Court may recall them to the courtroom and order the testimony read or give appropriate additional instructions. The Court may also order other testimony read or give other instructions, so as not to give undue prominence to the particular testimony or instructions requested. Such testimony may be read or instructions given only after notice is given to the parties and the parties shall have a right to be present before any testimony is read to the jury or any additional instructions are given.

Rule 21.4. Assisting Jury at Impasse

If the jury advises the Court that it has reached an impasse in its deliberations, the Court may, in the presence of counsel, inquire of the jurors to determine whether and how Court and counsel can assist them in their deliberative process. After receiving the jury's response, if any, the Court may direct that further proceedings occur as appropriate.

Rule 21.5. Discharge

The Court shall discharge the jurors when:

- (1). Their verdict has been recorded as set forth in Rule 22.1;

- (2). Upon expiration of such time as the Court deems proper, it appears that there is no reasonable probability that the jurors can agree upon a verdict; or
- (3) A necessity exists for their discharge.

Rule 22.1. Jury Verdict

The verdict of the jury shall be in writing, signed by all of the jurors and returned to the judge in open court.

Rule 22.2. Types of Verdicts

(a) General Verdicts.

Except as otherwise specified in this rule, the jury shall in all cases render a verdict finding the defendant either guilty or not guilty.

(b) Insanity Verdicts.

When the jury determines that a defendant is not guilty by reason of insanity, the verdict shall so state. If the jury returns a verdict of not guilty by reason of insanity, the Court shall refer the matter to Prosecutor's Office to pursue civil commitment of the defendant if the defendant poses danger to him/herself or to the Community or if the defendant is severely disabled.

(c) Different Offenses.

If different counts or offenses are charged in the complaint, the verdict shall specify each count or offense of which the defendant has been found guilty or not guilty.

(d) Different Degrees (Reserved).

When the verdict of guilty is to an offense which is divided into degrees, the verdict shall specify the degree of which the defendant has been found guilty.

Rule 22.3. Conviction of Necessarily Included Offenses (Reserved)

Forms of verdicts shall be submitted to the jury for all offenses necessarily included in the offense charged, an attempt to commit the offense charged or an offense necessarily included therein, if such attempt is an offense. The defendant may not be found guilty of any offense for which no form of verdict has been submitted to the jury.

Rule 22.4. Polling of the Jury

After the verdict is returned and before the jury is discharged, the jury shall be polled at the request of any party or upon the Court's own initiative. If the responses to the jurors do not support the verdict, the Court may direct them to retire for further deliberations or they may be discharged.

VI. POST-TRIAL PROCEEDINGS & SENTENCING

Rule 23. Motions for New Trial

(a) Defendant's Motion.

Upon the defendant's motion, the Court may vacate any judgment and grant a new trial if the interest of justice so requires. If the case was tried without a jury, the Court may take additional testimony and enter a new judgment.

(b) Grounds.

The Court may grant a new trial for any of the following reasons:

- (1) The verdict is contrary to law or the weight of the evidence;
- (2) The prosecutor was guilty of misconduct;
- (3) A juror(s) has been guilty of misconduct by:
 - (A) Receiving evidence not properly admitted during the trial;
 - (B) Deciding verdict by lot;
 - (C) Perjuring himself/herself or willfully failing to respond fully to a direct question posed during the voir dire examination;
 - (D) Receiving a bribe or pledging his/her vote in any way;
 - (E) Becoming intoxicated during the course of the trial or deliberations; or
 - (F) Conversing before the verdict with any interested party about the outcome of the case;
- (4) The Court has erred in the decision of a matter of law, or in the instruction of the jury on a matter of law to the substantial prejudice of a party;
- (5) Newly discovered evidence that was discovered after trial and the defendant had exercised due diligence in securing the newly discovered evidence prior to trial and the evidence would have probably changed the outcome of the trial; and
- (6) Defendant did not receive a fair trial.

(c) Time to File Based Upon Newly Discovered Evidence. Any motion for a new trial grounded on newly discovered evidence must be filed within 1 year after the verdict or finding of guilty. If an appeal is pending, the Court may not grant a motion for a new trial until the Appellate Court confers jurisdiction back to the Court.

(d) Other Grounds. Any motion for a new trial grounded on any reason other than newly discovered evidence must be filed within thirty (30) days after the verdict or finding of guilty, or within such further time as the Court sets during the thirty (30) day period.

Rule 24.1. Motion to Vacate Sentence

The defendant or the Prosecutor may move to vacate the sentence if no jurisdiction existed at the time of the conviction or the conviction was obtained in violation of the Community Constitution or Laws. The parties shall have one year from the entry of judgment under this Rule to seek to vacate the sentence.

Rule 24.2. Motion to Modify or Correct Sentence

The Court may correct any unlawful sentence or one imposed in unlawful manner within thirty (30) days of the entry of judgment and sentence after giving notice to the parties. The Court may correct any clerical errors or mistakes with notice to parties. Parties shall have thirty (30) days to file objections to correction of any clerical errors or mistakes after receiving notice.

Rule 25. Sealed Proceedings & Records

(a) Public Access.

To ensure public perception of the integrity and fairness of the Courts, the public should have access to the Court files. The presumption may be overcome when a compelling reason exists that the public's right of access is outweighed by the interests of the public

and the parties in protecting the Court's files from public review.⁶

(b) Request for Sealing of Record or Proceeding.

The Court, any party, or any interested person may request to seal or redact the Court records. If the Court sets a hearing, a reasonable notice of a hearing must be given to the parties. The Court may order the Court files and records in the proceeding, or any part thereof, to be sealed or redacted if the Court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh the public interest.

(c) Access to Sealed or Redacted Records.

Sealed and redacted court records shall not be accessible to the public or unauthorized court personnel without a Court order. Sealed and redacted records shall be kept in a sealed envelope with notice that access is allowed only with an order of the Court.

Rule 26.1. Definitions for Post-Verdict Proceedings

(a) Judgment.

The term judgment means the adjudication of the Court based upon the verdict of the jury, upon the plea of the defendant, or upon its own finding following a bench trial that the defendant is guilty or not guilty.

(b) Sentence.

The term sentence means the pronouncement by the Court of the penalty imposed upon the defendant after a judgment of guilt.

(c) Determination of Guilt.

The term determination of guilt means a verdict of guilty by a jury, a finding of guilt by the Court following a bench trial, or the acceptance of the plea of guilty or no contest.

Rule 26.2. Time of Rendering Judgment

(a) Upon Acquittal.

When a defendant is acquitted of any charge, or of any count of any charge, judgment pertaining to that count or to that charge shall be pronounced and entered immediately.

(b) Upon Conviction.

Upon a determination of guilt on any charge, or on any count of any charge, judgment pertaining to that count or to that charge shall be pronounced and entered together with the sentence.

(c) Factual Determination.

In the event the trial Court did not make an affirmative finding of a factual basis for the plea pursuant to Rule 11, before the entry of the judgment of guilt the trial Court shall

⁶ This is a policy question for the Council as to who should have access to the Court records. Criminal hearings are generally open to the public and the public should be able to review the record of what happened at those hearings. Unnecessary limiting access to court records breeds distrust of the Courts and the public will unnecessarily question the integrity of the Courts. Moreover, an appellate review of the trial court's proceedings is limited in scope. If the appellate court makes a decision based upon the record, the public should know what records were considered by the appellate court in arriving at its decision.

make such determination. One or more of the following sources may be considered: statements made by the defendant; police reports; and other satisfactory information.

Rule 26.3. Date of Sentencing; Extension

(a) Date of Sentencing.

Upon a determination of guilt, the Court may immediately proceed to sentencing unless the Court upon its own motion or upon a request of the parties may set another date for sentencing. The sentencing shall be held within five (5) days after determination of guilt. The date may be extended for good cause.

(b) Extension of Time.

If a pre-sentencing hearing is requested under Rule 26.6, or if good cause is shown, the trial Court may reset the date of sentencing within sixty (60) days after the determination of guilt.

Rule 26.4. Pre-sentence Report

(a) When Prepared.

A presentence report shall be prepared in all cases mandated by statute. The Court may require a pre-sentence report in all cases in which it has discretion over the penalty to be imposed. A pre-sentence report shall not be prepared until after the determination of guilt has been made or the defendant has entered a plea of guilty or no contest. If a pre-sentence report is ordered, sentencing date shall not be set earlier than thirty-five (35) days after determination of guilt.

(b) When Due.

Except when a request under Rule 26.3(a) has been granted, the pre-sentence report shall be delivered to the sentencing judge and to parties at least ten (10) calendar days before the date set for sentencing.

Rule 26.5. Contents of the Pre-sentence Report

(a) In General.

If ordered, the probation officer must conduct a pre-sentence investigation and submit a report to the Court before the Court imposes its sentence.

(b) Restitution.

The probation officer must make reasonable efforts to obtain restitution information and submit a report that contains sufficient information for the Court to order restitution.

(c) Interviewing the Defendant.

The probation officer who interviews a defendant as part of a pre-sentence investigation must, on request, give the defendant's counsel reasonable notice of the time and place of the interview and a reasonable opportunity to attend the interview.

(d) Pre-sentence Report.

The pre-sentence report must contain the following information:

(1)The defendant's history and characteristics, including:(A) any verified criminal convictions of the defendant regardless of the jurisdiction of the conviction; (B) the defendant's financial condition; and (C) any circumstances affecting the defendant's behavior that may be helpful in imposing sentence or in correctional treatment;

(2) Verified information, stated in a non argumentative style, that assesses the financial, social, psychological, and medical impact on any individual against whom the offense has been committed; when appropriate, the nature and extent of non-incarceration programs and resources available to the defendant;

(3) When the law provides for restitution, information sufficient for a restitution order; and

(4) any other information that the Court requires.

Exclusions. The presentence report must exclude the following: (A) any diagnoses that, if disclosed, might seriously disrupt a rehabilitation program; (B) any sources of information obtained upon a promise of confidentiality; and (C) any other information that, if disclosed, might result in physical or other harm to the defendant or others.

(e) Victim Input. The probation officer shall make reasonable efforts to obtain the views of the victim regarding the offense and to obtain victim's recommendation regarding sentencing. The victim's input shall be included in the pre-sentence report. If a victim is a juvenile, the probation officer shall comply with the provisions of Section 11-83.

(f) Disclosing the Report and Recommendation.

Time to Disclose. Unless the defendant has consented in writing, the probation officer must not submit a pre-sentence report to the Court or disclose its contents to anyone until the defendant has pleaded guilty or no contest or has been found guilty.

Sentence Recommendation. If the probation officer makes a sentencing recommendation to the Court, the sentencing recommendation shall be disclosed to the parties.

Rules Committee Notes.

Note to Subsection (d)(1)(A). Under Section 8-2, the Court is required to consider defendant's prior conduct in determining the sentence to be imposed. Additionally, under section 8-6, the Court is required to consider the issues that may have contributed to the offense conviction. The Committee attempted to strike a balance by only including verified criminal convictions and excluding arrests that did not result in a conviction. The Committee felt that the Judge should know the defendant's prior criminal record, regardless of the jurisdiction of the conviction, to ensure that the needs of the defendant will be addressed and to protect the Community. A Judge may presume the accuracy of verified criminal conviction records unless rebutted by the party opposing the use of the criminal conviction.

Rule 26.6. Request for Aggravation or Mitigation Hearing

(a) Request for a Pre-Sentencing Hearing.

When the Court has discretion as to the penalty to be imposed, it may on its own initiative, and shall on the request of any party, hold a pre-sentencing hearing at any time prior to sentencing to consider any mitigating or aggravating information.

(b) Nature, Time and Purpose of the Pre-sentencing Hearing.

A pre-sentencing hearing shall not be held until the parties have had an opportunity to examine any reports prepared under Rules 26.4 and 26.5. At the hearing any party may introduce any reliable, relevant evidence, including hearsay, in order to show aggravating or mitigating circumstances, to show why sentence should not be imposed, or to correct or amplify the pre-sentence, diagnostic or mental health reports, the hearing shall be held

in open court and a complete record of the proceedings made.

Rule 26.7. Notice of Objections; Special Duty of the Prosecutor; Corrections to Presentence Report

(a) Notice of Objections.

Prior to sentencing or pre-sentence hearing, each party shall notify the Court and all other parties of any objection it has to the contents of any pre-sentence report prepared under Rule 26.5. The party shall state the reason and any applicable authority for the objection.

(b) Special Duty of the Prosecutor.

The prosecutor shall disclose any information upon discovery by the prosecutor, if not already disclosed, which would tend to reduce the punishment to be imposed.

(c) Corrections to Presentence Report.

In the event that the Court sustains any objections to the contents of a presentence report, the Court may take such action as it deems appropriate under the circumstances, including, but not limited to:

- (1) Excision of objectionable language or sections of the report;
- (2) Ordering a new pre-sentence report with specific instructions and directions;
- (3) Directing a new pre-sentence report to be prepared by a different deputy probation officer; and
- (4) Directing the probation officer to make corrections to the presentence report.

(d) Disclosure of Corrected Presentence Report.

If the Court exercises its authority under subsection (c) of this Rule, the probation officer shall disclose the new, excised, corrected, or amended presentence report to the parties within ten (10) calendar days of the Court's order. Parties shall have three (3) calendar days to file any objections to the new, excised, corrected, or amended pre-sentence report.

Rule 26.8. Presence of the Defendant

Defendant has a right to be present at the pre-sentence hearing and shall be present at sentencing unless a defendant has requested a resolution of his/her case under Rule 9.2.

Rule 26.9. Pronouncement of Judgment and Sentence

(a) Pronouncement of Judgment.

In pronouncing judgment, the Court shall set forth the defendant's plea, the offense of which the defendant was convicted or found guilty, and a determination of whether any sentencing enhancements are applicable.

(b) Pronouncement of Sentence.

The Court shall:

- (1) Give the defendant an opportunity to speak on his or her own behalf;
- (2) State that it has considered the time the defendant has spent in custody, if any, on the present charge;
- (3) Explain to the defendant the terms of the sentence or probation;
- (4) Specify the commencement date for the term of imprisonment and any pre-sentence incarceration time that should be credited towards the sentence imposed;

- (5) Direct the Clerk of Court to send to the Salt River Pima-Maricopa Indian Community Department of Corrections or probation office the sentencing order; and
- (6) Issue a written judgment within twenty-four (24) hours if the Court sentences the defendant to a term of imprisonment and within five (5) calendar days if the sentence is other than imprisonment.

(c) Sentencing Policy.

The Court should impose a sentence consistent with the policy set forth in Chapter 8.

Rule 26.10. Duty of the Court after Pronouncing Sentence

After trial, the Court shall, in pronouncing judgment and sentence:

(a) Appeal Rights.

Inform the defendant of his or her right to appeal from the judgment, sentence or both within five business⁷ days of the entry of judgment and advise the defendant that failure to file a timely appeal will result in the loss of the right to appeal.

(b) Right to Assistance of Counsel.

(1) If the sentence of imprisonment is one year or less for each offense of conviction, the Court shall advise the defendant that the defendant has the right to retain counsel at the defendant's own expense.

(2) If the sentence of imprisonment is more than one year for each offense of conviction, the Court shall advise the defendant that the defendant has a right to an assistance of attorney and if the defendant is unable to obtain an attorney at the defendant's own expense, an attorney will be appointed on behalf of the defendant.

Rule 26.11. Fines and Restitution

(a) Method of Payment--Installments.

The Court may permit payment of any fine or restitution, or both, to be made within a specified period of time or in specified installments. Restitution shall be payable as promptly as possible in light of the defendant's ability to pay.

(b) Method of Payment--To Whom.

The payment of a fine, restitution, or both, shall be made to the Court, unless the Court expressly directs otherwise. Monies received from the defendant shall be applied first to satisfy the restitution order and the payment of any restitution in arrears. The Court or the agency or person authorized by the Community to accept payments should, as promptly as practicable, forward restitution payments to the victim.

(c) Action Upon Failure to Pay a Fine.

(1) For Defendants Not on Probation. If a defendant fails to pay a fine or any installment thereof within the prescribed time, the agency or person authorized to accept payments shall, within 5 days, notify the Prosecutor and the Court.

(2) For Defendants on Probation. If a defendant on probation fails to pay a fine, restitution or any installment thereof within the prescribed time, the agency or person authorized to accept payments shall give notice of such delinquency to the defendant's probation officer within five (5) days of the failure to make payments.

⁷ Under § 4-34, a defendant has a right to file a notice of appeal within five days. It does not specify whether it's five calendar days or five business days.

(3) Court Action Upon Failure of Defendant Not on Probation to Pay Fine or Restitution. Upon the defendant's failure to pay a fine or restitution, the Court shall require the defendant to show cause why said defendant should not be held in contempt of Court and may issue a summons or a warrant for the defendant's arrest.

Rule 26.13. Re-sentencing

Where a judgment or sentence, or both, have been set aside on appeal or on a post-trial motion, the Court may not impose a sentence for the same offense, or a different offense based on the same conduct, which is more severe than the prior sentence unless: (1) it concludes, on the basis of evidence concerning conduct by the defendant occurring after the original sentencing proceeding, that the prior sentence is inappropriate; (2) the original sentence was unlawful and on remand it is corrected and a lawful sentence imposed; or (3) other circumstances exist under which there is no reasonable likelihood that the increase in the sentence is the product of actual vindictiveness by the sentencing judge.

Rule 26.14. Entry of Judgment and Sentence

The judgment of conviction and sentence shall be complete and valid as of the time of their oral pronouncement in open court. If the written judgment differs from oral pronouncement, the oral pronouncement shall control unless the sentences has been modified or corrected pursuant to Rules 24.1 and 24.2.

VII. PROBATION & PAROLE

Rule 27.1. Manner of Imposing Probation and Parole

(a) *Probation.* The sentencing Court may impose on a probationer such conditions that will promote rehabilitation. In addition, the appropriate probation officer or other person designated by the Court may impose on the probationer regulations which are necessary to implement the conditions imposed by the Court and not inconsistent with them. All conditions and regulations shall be in writing, and a copy of them given to the probationer. The probationer shall sign an acknowledgment of conditions and regulations of probation at the time of sentencing.

(1) *Conditions of Probation.* Probation conditions shall be imposed to assist persons convicted to address the issues that may have contributed to the conviction. Conditions may include, but shall not be limited to: counseling and treatment for drug abuse, alcohol abuse, and/or other issues that may affect criminal behaviors. Probation conditions shall be reasonably related to the offender's conviction, the safety of the Community, and the rehabilitation of the offender.

(2) *Duration of Probation.* The length of probation may be for a period of time that exceeds the possible time for incarceration. The length of probation term shall be as long as necessary to address any of the issues that may have contributed to the conviction, but the length of probationary period shall not exceed the maximum time permitted under Chapter 8.

(b) Parole Eligibility & Conditions.

(1) Any person sentenced to incarceration by the Community Court who is eligible for parole under Chapter 8 of the Salt River Code may petition the Court for parole by filing a request for parole with the Clerk of the Court.

(2) A judge of the Salt River Community Court must conduct a hearing prior to issuing any order granting parole. No parole shall be granted without an order bearing the signature of the judge of the Salt River Community Court. The Prosecutor and the victim shall have an opportunity to address the Court prior to any grant of parole. The Court shall notify the Prosecutor and the victim at least five (5) business days prior to the hearing.

(3) Parole shall be supervised by a probation officer and conditions of parole shall be imposed consistent with Chapter 8 of the Salt River Community Code.

(4) Parole shall not be available to offenders whose charged offense requires mandatory incarceration under the Code. If a defendant is serving multiple sentences of incarceration that have been ordered to serve consecutively, the defendant shall not be eligible for parole until the defendant has served at least one-half of the each sentence that was imposed and the sentence imposed was not mandatory under the Code.

Rule 27.2. Modification and Clarification of Conditions and Regulations

(a) Notice Prior to Modification or Clarification.

The sentencing Court may modify or clarify any condition which it has imposed and any regulation imposed by a probation officer after notice has been provided to the Prosecutor and the defendant of proceedings.

(b) Time for Request.

At any time prior to absolute discharge, a probationer, probation officer, counsel for the defendant, or prosecutor, may request the sentencing Court to modify or clarify any condition or regulation. Additionally, persons entitled to restitution pursuant to a Court order, based upon a change of circumstances, may request the sentencing Court at any time prior to absolute discharge to modify the manner in which restitution is paid.

(c) Hearing.

The Court may, where appropriate, hold a hearing on any request for modification or clarification. The Court should hold a hearing on the requests for modification if it would adversely affect the probationer. The Court also may accept a probationer's written consent to an adverse modification of the terms of probation without a hearing. A probationer is not entitled to a hearing if the modification is in the defendant's favor or the request is for a clarification of the terms of probation.

(d) Acknowledgement.

A written copy of any modification or clarification shall be given to the probationer.

Rule 27.3. Early Termination of Probation & No Early Termination of Parole

(a) Eligibility for Early Termination of Probation.

After having been placed on probation for one-half of the term ordered and upon motion of the probation officer, the Prosecutor's motion, or the defendant's motion or on its own initiative, the sentencing Court, after notifying the Prosecutor, may terminate probation and discharge the probationer absolutely. The probation term shall not be terminated

early if the defendant owes any restitution. If the Prosecutor objects to the early termination, the Court shall conduct a hearing before proceeding under this Rule.

(b) No Early Termination of Parole.

A person placed on parole is ineligible for early termination of parole.

Rule 27.4. Order and Notice of Discharge

Upon expiration or early termination of probation, the probationer is discharged absolutely. Upon early termination, the Court, upon request, shall furnish the probationer with a copy of the order of discharge.

Rule 27.5. Initiation of Revocation Proceedings; Securing the Probationer's Presence; Notice

(a) Petition to Revoke Probation.

If there is reasonable cause to believe that a probationer has violated a written condition or regulation of probation, the probation officer or the Prosecutor may petition the sentencing Court to revoke probation. If the petition is filed by the probation office, the probation office shall forward a copy of the petition to the Prosecutor. A petition to revoke probation that has been signed by a judge shall toll the term of probation period from the date signed by the judge.

(b) Securing the Probationer's Presence.

After a petition to revoke has been filed, the Court may issue a summons directing the probationer to appear on a specified date for a revocation hearing or may issue a warrant for the probationer's arrest. Unless a summons has been requested by the probation officer or the Prosecutor, the Court should issue a warrant for the arrest of the probationer.

Rule 27.6. Initial Appearance after Arrest

When a probationer is arrested on a warrant issued under Rule 27.5(b), his or her probation officer, if any, shall be notified within twenty-four (24) hours by the Court, and the probationer shall be taken before the Court at next scheduled initial appearance. The Court shall advise the probationer of his or her rights to counsel under Rule 6, inform the probationer that any statement he or she makes prior to the hearing may be used against him or her, right to call witness(es) and to have those witness(es) summoned to Court, right to cross-examine the witness(es) who are testifying against the defendant, set the date of the revocation hearing, and make a release determination under Rule 8. A presumption of detention shall exist unless the defendant establishes good cause.

Rule 27.7. Revocation of probation

(a) Probation Violation Arraignment.

- (1) The probation violations arraignment shall be held on the date stated on the summons or within seven (7) days of the probationer's initial appearance under Rule 27.6 before the Court.
- (2) The Court shall inform the probationer of each alleged violation of probation and the probationer shall admit or deny each allegation.
- (3) If no admission is made or if an admission is not accepted, the Court will set a

violation hearing. Both parties may consent to the violation hearing proceeding immediately.

(b) Probation Violation Hearing.

(1) A hearing to determine whether a probationer has violated a written condition or regulation of probation shall be held before the sentencing Court within ten (10) days after the probation violation arraignment. The Court, upon the request of the probationer or the Prosecutor, made in writing or in open court on the record, may set the hearing date beyond the ten day time limitation for good cause.

(2) The probationer shall be present at the hearing unless the probationer voluntarily absents himself or herself.

(3) A violation must be established by a preponderance of the evidence. Each party may present evidence and shall have the right to cross-examine witnesses who testify. The Court may receive any reliable evidence not legally privileged, including hearsay.

(4) If the Court finds that a violation of a condition or regulation of probation occurred, it shall make specific findings of the facts which establish the violation and shall set a disposition hearing.

(c) Disposition.

(1) The disposition shall be held immediately after a determination that a probationer has violated a condition or regulation of probation.

(2) Upon a determination that a violation of a condition or regulation of probation occurred, the Court may revoke, modify or continue probation. If probation is revoked, the Court shall pronounce sentence in accordance with the procedures set forth in Rules 26.10 through 26.14. Upon revocation, the Court may reinstate the original suspended sentence or upon a motion by the Prosecutor, the Court may reduce the original sentence. Probation shall not be revoked for violation of a condition or regulation of which the probationer has not received a written copy.

(e) Disposition Upon Determination of Guilt of Subsequent Offense.

If there is a determination of guilt, as defined by Rule 26.1(c), of a subsequent criminal offense committed in Community by the probationer after being placed on probation by the Court which placed a probationer on probation, no violation hearing shall be required and the Court shall set the matter down for a disposition hearing at the time set for entry of judgment on the new criminal offense. The Prosecutor shall not be precluded from proceeding on a violation based upon the subsequent charged offense where the defendant was acquitted or where the subsequent charge was dismissed.

(f) Record.

A complete record of the probation violation arraignment, probation violation hearing, and disposition shall be made.

Rule 27.8. Admissions by the Probationer

Before accepting an admission by a probationer that he or she has violated a condition or regulation of probation, the Court shall address the probationer personally and shall determine that he or she understands the following:

- (a) The nature of the violation of probation to which an admission is offered;
- (b) The right to counsel if he or she is not represented by counsel;
- (c) The right to cross-examine the witnesses who testified against him or her;

- (d) The right to present witnesses in his or her behalf and to have the witnesses summoned into Court;
- (e) The right to be presumed innocent;
- (f) That by admitting a violation of a condition or regulation of probation, the probationer will waive the right to have the appellate court review the proceedings by way of direct appeal; and
- (g) If the alleged violation involves a criminal offense for which he or she has not yet been tried, the probationer shall be advised that regardless of the outcome of the present proceeding, he or she may still be tried for that offense, and any statement made by the probationer at the proceeding may be used to impeach his or her testimony at the trial. The Court shall also determine that the probationer waives these rights, that his or her admission is voluntary and not the result of force, threats or promises and that there is a factual basis for the admission.

27.9. Revocation of Parole

Same procedures as set forth in Rules 27.5 through 27.8 shall apply to parole revocation procedures except the following:

- (a) The parolee shall not be eligible for release pending the disposition;
- (b) If the parolee has been found to have violated the conditions of parole, the parolee shall serve out the remainder of the original sentence.

27.10. Rejection of Probation

Any probationer may reject probation. A probationer who wishes to reject probation must notify the probation office or the Court. Upon request by the probationer of his or her intention to reject probation, the Court shall set the matter for a hearing within fourteen (14) days and the proceedings shall be commenced pursuant to Rule 27.7. Once the Court finds the probationer has rejected probation, probationer shall be ordered to serve the entire suspended sentence immediately.

Rule 28. Reserved

IX. POWERS OF THE COURT

Rule 29.1. Subpoenas

(a) Content.

A subpoena must state the court's name and the title of the proceeding, and command the witness to attend and testify at the time and place the subpoena specifies. The party requesting the subpoena must provide the Clerk of the Court with the name and the current address of the witness(es). The party must submit the request for subpoena at least fifteen (15) days prior to the trial or hearing date or by any deadlines set by the Court. If a hearing or trial date is continued for less than fifteen (15) days from the original setting, the parties' original submission shall satisfy this provision.

(1) Issuance. The clerk of the Salt River Pima-Maricopa Indian Community Court may issue subpoenas for the attendance of witnesses on the request of any of the parties to the

case, which subpoenas shall bear the signature of the clerk issuing it. (2) Service. Subpoenas shall be served by the Salt River police or such other person authorized to serve subpoenas within the Community. Subpoenas shall be served within the Community in the same manner as civil summons and complaints are served. If a subpoena has not been served at least five (5) days before trial, the party requesting the subpoena shall be notified of the non-service.

(3) Failure to obey subpoenas. Failure to obey a properly served subpoena shall be deemed an offense and shall be punishable under sections 5.5-42 or 6-42 of the Code.

(b) Producing Documents and Objects.

(1) In General. A subpoena may order the witness to produce any books, papers, documents, data, or other objects the subpoena designates. The Court may direct the witness to produce the designated items to the requesting party before trial

(2) Quashing or Modifying the Subpoena. On motion made promptly, the Court may quash or modify the subpoena if compliance would be unreasonable or oppressive.

(c) Place of Service.

In the Salt River Pima-Maricopa Indian Community: A subpoena requiring a witness to attend a hearing or trial may be served at any place within the exterior boundaries of the Community. If the witness resides outside the exterior boundaries of the Salt River Pima-Maricopa Indian Community, the witness still may be served by certified mail with return receipt.

(d) Alternative Form of Subpoena.

Any subpoena requiring attendance at a criminal proceeding may, at the option of the requesting party, allow the person subpoenaed to hold himself/herself available on a given date to appear at a specified place on thirty (30)minutes' notice, if (s)he can provide on the return of service a telephone number at which the witness can be reached during regular court hours on that date and produce themselves at trial within the same time frame.

Rule 29.2. Contempt of Court

Any person who willfully disobeys a lawful writ, process, order, or judgment of a court by doing or not doing an act or thing forbidden or required, or who engages in any other willfully disobedient conduct which obstructs the administration of justice, or which lessens the dignity and authority of the Court, may be held in contempt of the Court.

Rule 29.3. Procedure for Contempt Committed in the Presence of the Court

(a) Summary Procedure.

The Court may summarily find in contempt any person who commits contempt in the actual presence of the Court and timely notifying the person of such finding. The Judge shall prepare and file a written order reciting the grounds for the finding, including a statement that the Judge saw or heard the conduct constituting the contempt.

(b) Punishment.

The Court shall inform the person of the specific conduct on which the contempt finding is based upon and give the person a brief opportunity to present evidence or argument relevant to the sanction to be imposed. For each incident of contempt, the Court may not impose a fine exceeding \$500.00 or incarceration exceeding twenty-four (24) hours.

Rule 29.4. Disposition and Notice of Contempt Committed Outside the Presence of the Court

If a person commits contempt outside the presence of the Court, a person shall not be found in contempt without a hearing held after notice of the charge. The hearing shall be set so as to allow a reasonable time for the preparation of the defense; the notice shall state the time and place of the hearing, and the essential facts constituting the contempt charged, the notice may be given orally by the Judge in open court in the presence of the person charged, or by an order to show cause. The defendant is entitled to subpoena witnesses on his or her behalf and will have a right to be represented by counsel if facing incarceration as a form of sanction. Defendant shall not be held in custody pending the contempt proceeding. The Court must request the Prosecutor to prosecute the contempt unless the interest of justice requires appointment of a special prosecutor. Punishment for conviction under this section shall be controlled by Rule 29.5.

Rule 29.5. Punishment for Contempt and Disqualification of Judge

The Court may not punish a person under the provisions of this rule by imprisonment or a fine greater than allowed under §§ 5.5-42 or 6-42 of the Code. If the conduct involves gross disrespect or a personal attack upon the character of the judge, or if the Judge's conduct is so integrated with the contempt that the judge contributed to or was otherwise involved in it, the citation will be referred to another Judge who shall hold a hearing to determine the guilt and imposition of any sentence.

X. DEFERRED PROSECUTION & SENTENCE

Rule 30.1. Application for Suspension of Prosecution

(a) Deferred Prosecution. Whenever after filing of the complaint, but prior to plea of guilty or trial, the prosecutor determines that it would serve the ends of justice to defer prosecution of the defendant, the Prosecutor with the written stipulation of the defendant, shall notify the court of the intention to suspend prosecution. Upon receipt of such notice, the Court shall order that further proceedings be suspended for up to two years. Time limits under 7.2 shall be excluded during the period of deferred prosecution.

(b) Deferred Sentencing. Whenever after entry of plea of guilty, the prosecutor determines that it would serve the ends of justice to defer sentencing to allow the defendant to participate in a rehabilitation program, the Prosecutor with the stipulation of the defendant may by written motion, apply to the Court to defer sentencing. After filing of the motion by the prosecutor for deferred sentencing, the Court may order that the sentencing be deferred for up to two years.

Rule 30.2. Resumption of Prosecution and Sentence

(a) Deferred Prosecution. If the defendant fails to fulfill the terms of the deferred prosecution, the prosecutor may file a written motion requesting that the order suspending prosecution be vacated. The prosecutor shall serve a copy of the written motion to the defendant or to defendant's counsel. Upon filing of the motion to resume prosecution, the Court shall vacate the order suspending prosecution and order that the prosecution of the defendant be resumed.

(b) *Deferred Sentence.* If the defendant fails to fulfill the conditions of the deferred sentence, the prosecutor may file a written motion requesting that the order deferring sentence be vacated and the matter be set for sentencing. The prosecutor shall serve a copy of the written motion to the defendant or to defendant's counsel. Upon filing of the motion for setting of the sentencing date, the Court shall vacate the order deferring sentencing and order that a sentencing date be set within five (5) days of the entry of the order.

Rule 30.3. Dismissal of Prosecution

At the expiration of time period for suspension of prosecution or deferred sentencing, the Court shall order the prosecution dismissed. If the defendant satisfactorily completes the terms of the deferred prosecution, the Court shall dismiss the charges with prejudice, after giving notice to the Prosecutor. If the defendant satisfactorily completes the terms of the deferred sentencing, the Court shall vacate the finding of guilt and dismiss the case with prejudice.

XI. MOTIONS AND TIME COMPUTATIONS

Rule 31.1. Motions.

(a) *Form and Content.*

All motions shall be on 8.5 x 11 inch paper and shall contain a short precise statement of the precise nature of the relief requested, shall be accompanied by a brief memorandum stating the specific factual grounds therefore and indicating the precise legal points and shall be served to the opposing party. Each party may file a written response within 15 days and serve a response to the moving party. The moving party may file a reply within 5 days of after service of response. The reply shall not raise any new issues and shall be directed only to matters raised in a response. If no response is filed, the motion shall be deemed submitted on the record before the Court.

(b) *Length Limitations.*

A motion including its supporting memorandum and the response, including the supporting memorandum shall not exceed 15 pages, exclusive of attachments. The reply shall not exceed 8 pages, exclusive of attachments.

Rule 31.2. Hearing, Oral Arguments

Upon request of any party or on its own motion, the Court may set any motion for argument or an evidentiary hearing.

Rule 31.3. Requests to be in Writing.

All requests for oral arguments or an evidentiary hearing shall be in writing, served upon opposing party and filed with the clerk.

Rule 31.4. Service and Filing

A party shall file motions or other pleadings under these rules by filing an original with the Clerk of the Community Court and serving a copy to the opposing party. The party

shall serve a copy of the motion by United States Postal Service mail or personal service to the opposing party. If the parties consent to service by electronic means, a party is in compliance with the service requirement under these rules by serving an electronic copy to the consenting party by verifiable electronic means. The parties shall be required to keep an updated and service-able address on file with the court.

Rule 31.5. Time

(a) Computation.

In computing any time period, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or Community designated holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days. In any event that the Community Council authorizes less than a full business day as a holiday, that entire day shall be excluded from time computation. Unless specified as calendar days or specific number of hours, when a period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and designated Community holidays shall be excluded in the computation.

(b) Enlargement of Time.

When an act is required or allowed to be done at or within a specified time, the Court may order the period enlarged if the request is made before the expiration of the specified time period prescribed with or without cause. If the request is made after the expiration of the specified time period, the Court may enlarge the time period only if good cause exists.

(c) Additional Time after Service by Mail.

Whenever a party has the right or is required to do an act within a specified period of time after the service of notice or other paper upon that party and the notice or other paper is served by mail, five (5) calendar days shall be added to the prescribed period.

APPENDIX



SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY COURT

SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY

-vs-

Defendant

WAIVER OF COUNSEL

Case # _____

The purpose of this form is to advise you of your right to have counsel assist you and to allow you to give up that right if you choose.

I have been informed of my right to have counsel represent me at every stage of the proceedings in this case, and that if I cannot afford to hire my own counsel, this Court will assign the Defense Advocate Office to represent me. I have been advised that I may withdraw this waiver upon due notice to the Court at any time and that if waiver of counsel is withdrawn, I have the right to appointed or retained counsel at any stage of the proceedings. I understand that I will not be entitled to repeat any proceeding held or waiver prior to that withdrawal solely on the ground of the subsequent appointment or retention of counsel.

I CHOOSE TO PROCEED IN THIS MATTER WITHOUT COUNSEL AND WAIVE MY RIGHT TO ASSISTANCE OF COUNSEL.

Signature of Defendant

Date

CERTIFICATE OF JUDGE

I hereby certify that the above named defendant has been informed, by me, of the right to assistance of counsel in accordance with Rule 6 of Salt River Pima-Maricopa Indian Rules of Criminal Procedure; that the defendant has knowingly elected to proceed without counsel and

_____ has executed a waiver of counsel in my presence;

_____ has refused to sign a waiver.

Signature of Judge

Date



SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY COURT

SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY

-vs-

Defendant

WAIVER OF JURY TRIAL

Case # _____

The purpose of this form is to advise you of your right to trial by jury and to allow you to give up that right if you choose.

I understand that I have been charged with a crime of _____
_____ and that if I am
found guilty, I can be given severe punishment, including imprisonment, a fine, and other penalty.

I understand that I am entitled to a trial by jury on these charges. The right to a trial by jury means the right to have my guilt or innocence decided by a six members of the Community whose decision must be unanimous.

I understand that one I made the decision to give up my right to jury trial, I may only change my mind only with the permission of the Court, and may not change my mind at all once the trial has actually begun.

DO NOT SIGN THIS FORM IF YOU WANT TO HAVE JURY TRIAL.

Signature of Defendant

Date

I have explained to the defendant the right to a trial by jury and consent to the defendant's waiver of it.

Signature of Defense Counsel

Date

CERTIFICATE OF JUDGE

I approve of the waiver of the jury trial in this case.

Signature of Judge

Date