

RULES OF CIVIL PROCEDURE

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**SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY
10005 East Osborn Road
Scottsdale, Arizona 85256**

RESOLUTION NO. SR -2386 -2005

WHEREAS, the Salt River Pima-Maricopa Indian Community ("SRPMIC" or "Community") Council has the authority pursuant to Art. VII § 1 of the SRPMIC Constitution to exercise any power vested in the Community; and

WHEREAS, the Community Council established the Salt River Pima Maricopa Indian Community Court pursuant to Art. VII, §1(c)(2) of the SRPMIC Constitution; and

WHEREAS, the Community Council, in establishing the Court, set forth standards governing the Court which are codified in the SRPMIC Code of Ordinances ("Code"); and

WHEREAS, Article IV, Section 4-41 of the Code authorizes the Chief Judge of the Community Court to develop and propose rules for the governance of the Court and the governance of procedure to be followed in matters before the Court, provided such rules are ultimately considered and commented upon by the Community Council; and

WHEREAS, in the interest of developing rules of court that are useful to all parties appearing therein, the Court has formed a Rules Committee which the Chief Judge chairs and which has membership consisting of all judges of the Community Court, representatives from the Community Council, representatives from the Community Office of General Counsel, and representatives from Prosecution, Defense and Legal Services offices and advocates licensed to practice within the Court; and

WHEREAS, the Rules Committee first met to develop the Rules of Civil Procedure in the Fall of 1999, and has been meeting since then to refine the Rules into the form best addressing the needs of the Community and the Court as presented to the Council this day (Attached and incorporated herein as "Attachment A"); and

WHEREAS, the Rules Committee published notice in the Au-Authum newspaper about the availability of the final draft of the proposed Rules for public review, with comments due no later than March 10, 2004; and

WHEREAS, the Rules Committee did not receive any public comment concerning the published Rules of Civil Procedure and has implemented recommended changes from the Community's Office of General Counsel and from the Community Council itself; and

WHEREAS, the Community Council, after reviewing and actively assisting in the development of the Rules of Civil Procedure, finds it is in the best interests of the Salt River Pima-Maricopa Indian Community to approve adoption of the Rules of Civil Procedure, as presented, to assist in the orderly administration of justice within the Community Court.

NOW THEREFORE BE IT RESOLVED that the Salt River Pima-Maricopa Indian Community Council hereby adopts and accepts as procedure for the Community Court the Rules of Civil Procedure as presented this day (See Attachment "A").

BE IT FURTHER RESOLVED that the Salt River Pima-Maricopa Indian Community Council authorizes and directs the President or Vice President to take all steps reasonably necessary to and in aid of carrying out the purpose and intent of this Resolution.

BE IT FINALLY RESOLVED that the newly adopted Rules of Civil Procedure shall be posted in at least five (5) conspicuous and community places and include notification that the Rules will take effect sixty (60) calendar days after the date of this Resolution.


CERTIFICATION

Pursuant to the authority contained in Article VII, Sections 1(c) and 1(k) of the Constitution of the Community, the foregoing resolution was adopted this 15th day of December, 2004, in a duly called meeting held by the Council in Salt River, Arizona at which a quorum of 9 members were present by a vote of 9 for, 0 opposed, 0 abstention and 0 excused.

**SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY COUNCIL**


Leonard Rivers, Vice President

ATTEST:


Erica Harvier, Secretary

**RULES OF CIVIL PROCEDURE FOR THE
SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY COURT**

I. Definitions, Beginning an Action; Service of Process; Pleadings, Motions and Other Papers

Definitions

"Advocate" means a person duly authorized to practice law before the Salt River Pima-Maricopa Indian Community Court ("Court") under the Rules of admission.

"Answer" means the oral or written response by the defendant to the complaint, as referred to in Rule 5-14.

"Appearance" means making an oral answer or the filing of a written answer or notice of appearance as provided in these Rules. A corporation may appear through a designated corporate officer or advocate, and likewise a partnership may appear through its partner(s) or advocate.

"Attorney" means a person who is certified by the State Bar of Arizona or another state bar association, to practice law in the State of Arizona or other state jurisdictions. As provided in § 4-4 of the Code, attorneys are prohibited from practicing before the Court in most civil cases with a few exceptions. Nothing in these Rules modifies or should be construed to modify this prohibition.

"Clerk" means a person employed as a clerk of the Court.

"Clerk assistance" means assistance provided to parties such as providing forms and assistance in form preparation as referred to in Rule 5-12.

"Code" means the Code of Ordinances of the Salt River Pima-Maricopa Indian Community.

"Comity" means the discretionary process by which the Court might recognize and give effect to a judgment of another tribal, state or federal Court. The Court may change the foreign court's order in its discretion. Distinguish from "Full Faith and Credit" defined later herein.

"Community" means the Salt River Pima-Maricopa Indian Community.

"Complaint" means the pleading filed by the plaintiff, also known as petitioner or complainant, to begin a civil action as referred to in Rule 5-11. Complaint may also include a petition or any type of pleading filed to begin a civil action.

"Counterclaim" means a claim filed by a defendant against the plaintiff as referred to in Rule 5-14.1.

"Court" means the Salt River Pima-Maricopa Indian Community Court as defined in the Code.

"Court Administrator" means the person who has general administrative responsibility for the operation of the Court as provided in the Code.

"Declaratory Judgment" means a judgment that declares the rights and duties, or status of the parties, and is generally used to resolve uncertainties and controversies before obligations are eliminated, rights are invaded or wrongs are committed.

"Decree" means a type of judgment entered by the Court as in a divorce decree.

"Default Notice" means the notification issued by the Court which is required before entry of default judgment, as referred to in Rule 5-16.

"Default Judgment" means the type of judgment which is entered against a party who has failed to appear, failed to pursue an action or refused to defend as referred to in Rule 5-16 and Rule 5-16.1.

"Defendant" means the person named in the complaint, against whom the plaintiff has alleged a claim, and who files the answer, motion to dismiss, request for an extension or other responsive pleading.

"Deposition" means the type of discovery process which may be recorded in any transcription format including but not limited to videographic recording, as referred to in Rule 5-18.2.

"Diligently" means to act in a reasonable and timely manner under the circumstances.

"Discovery" means the process and affirmative obligation used to exchange information relevant in the civil action, as referred to in Rules 5-18, 5-18.1, 5-18.2, 5-19 and 5-19.1.

"Dismiss" means a process by which a civil action is ended.

"Dismissal with Prejudice" means a civil action is ended and cannot be re-filed.

"Dismissal without Prejudice" means a civil action is ended and can be refiled.

"Evidence" means anything entered into the Court record for consideration by the Judge in a bench trial or by the jury in a jury trial.

"File" means the process by which pleadings, motions or other papers are made part of the record in a civil case after presentation by a party, or advocate for a party, to the clerk.

"First class mail" means the mailing of an item with applicable postage through the United States Mail, Federal Express, United Parcel Service and other similar carriers.

"Full Faith and Credit" means the process by which the Court may be required to give recognition and effect to a judgment of tribal, state or federal Court.

"Injunction" means a court order that commands a person and/or party to do something or not to do something.

"Judgment" means an official record signed by a Judge regarding a final decision in a civil action which may also be called a decree, as referred to in Rule 5-24.

"Judicial Notice" means the manner by which facts are established as referred to in Rule 5-23.3.

"Lay Advocate" means a person who is not an advocate or lawyer, but who wishes to represent a relative or friend in a specific case or hearing, free of charge. Lay advocates do not appear in the Court on a regular basis but must still be admitted to appear in the Court by approval of the Chief Judge.

"Motion" means a written or oral request to the Court for the Court to take action or make a decision. For further guidance see Rule 5-15.1.

"Notice" means a person has knowledge of the existence of certain facts or a state of affairs, as provided in these Rules.

"Notice of Appearance" means a written document filed with the Court showing a party is represented by an advocate or lay advocate plus listing that

advocate's name, address and telephone number. This document can be a general appearance as described here or as defined in "special appearance."

"Order" means a verbal or written command, direction, or decision from a judge.

"Other Paper" means any document or notice that is not a motion or pleading.

"Party" means any person or entity for or against whom litigation is brought, usually referred to as a plaintiff, defendant, petitioner or respondent.

"Permanent Injunction" means a type of final order commanding a person and/or party to do something or not do something.

"Person" means a human being but may also include a corporation, partnership, unincorporated association, governmental or other similar entity.

"Petition" means a pleading which is generally the same or similar to the complaint.

"Petitioner" means the party, also known as the complainant or plaintiff, who files the complaint against the defendant.

"Plaintiff" means the party, also known as a complainant or petitioner, who files the complaint against the defendant.

"Pleading" means a Complaint, Answer, Counterclaim or Reply to a Counterclaim.

"Preliminary Injunction" means a type of order that commands a person and/or party to do something or not to do something – this order is generally issued prior to a trial for a permanent injunction or to maintain the status quo.

"Privileged" means information stemming from a legally recognized relationship such as, but not limited to, a patient and a physician, where such information is generally not admissible as evidence.

"Process Server" means a person legally authorized by the Court to serve a complaint, order or other documents within the Community, as referred to in Rule 5-13 (c).

"Rebuttal" means that part of the trial when plaintiff introduces evidence in response to the defendant's case .

"Reconsideration, motion for" means a motion to the court to reconsider a previous ruling.

"Respondent" means the party who responds to a petition.

"Response" means the same thing as an answer as defined above.

"Responsive Pleading" means the filing of an Answer, Motion to Dismiss, an extension of time or other defending motion.

"Serve or Service" means the delivery of a complaint, order or other document(s) through personal service, certified mail, or publication and posting as provided in these Rules.

"Special Appearance" means that a person is entering an appearance for the limited purpose of contesting whether the Court has personal jurisdiction.

"Statutory Agent" means the person in an organization or government who, by law, accepts service of process.

"Substitution of Advocate" means the replacement of one advocate of a party by another advocate, usually through the filing of a written notice.

"Substantially Justified" means that a litigation position has a reasonable basis in both law and fact, based upon the totality of the circumstances as determined by the Court.

"Summary Judgment" means a showing that there is no genuine issue as to any material (relevant, important and/or necessary) fact and that the moving party is entitled to a judgment as a matter of applicable law. (See Code 4.1(b)).

"Temporary Restraining Order" means a type of order that commands a person and/or party to do something or not to do something for a limited period of time.

"Verdict" means the written decision of the jury at the end of a civil action where the jury decides the case and if damages or other relief should be allowed.

"Withdrawal of Advocate" means the process by which an advocate ends representation of a client as referred to in Section 1 (XII) of the Rules of Professional Conduct.

Rule 5-11 Complaint and Summons

- (a) A civil action begins when the Plaintiff files a complaint with the Clerk.
- (b) The content of the complaint ordinarily should consist of a:
 - (1) Short and plain statement of the grounds on which the Court's jurisdiction depends;
 - (2) Short and plain statement of the claim showing that the plaintiff is entitled to relief; and
 - (3) Demand for relief including relief in the alternative or of different types.
- (c) The plaintiff or advocate for plaintiff shall verify the complaint by oath or affirmation in the form provided by the Clerk, and the plaintiff or advocate shall sign it.
- (d) When the complaint or amended complaint is filed, the Clerk shall stamp the original with the day and hour on which it was filed, initial the original and issue a summons. The Clerk shall provide plaintiff a stamped copy of the complaint and a stamped copy of the summons.
- (e) The summons shall:
 - (1) Be signed by the Clerk;
 - (2) Contain the name of the Court;
 - (3) Contain the name of the case and case number;
 - (4) Be directed to the defendant;
 - (5) State the time within which the defendant must file an answer; and
 - (6) Notify the defendant that he/she will be in default if no answer is filed.

Rule 5-11.1 Voluntary Dismissal of Complaint

- (a) At any time before the complaint is served on the defendant, the plaintiff may voluntarily withdraw the complaint by the filing of a notice of voluntary withdrawal.
- (b) Upon receipt of the notice of voluntary withdrawal, the Court may enter the dismissal of the complaint without prejudice.
- (c) Alternatively, upon receipt of the notice and at the request of the plaintiff, the Court may dismiss the complaint with prejudice after consultation with the plaintiff.

Rule 5-12 Clerk Assistance

- (a) The Clerk shall give reasonable assistance to any person requesting help if the help is consistent with Rule 5-15.2. Reasonable assistance means helping to prepare and complete a pleading, motion or any other paper to be submitted to the Court. The Clerk may also provide sample forms of pleadings, motions or other papers.
- (b) The Clerk shall not provide any legal advice.

Rule 5-13 Service of Process**(a) Service of Summons and Complaint**

The summons and complaint shall be served together as provided in this Rule.

(b) Service Over Whom

The provisions of this Rule extend to any party. (See Definitions).

(c) Service by Personal Service

- (1) Community Court process servers exclusively perform service of process within the Community. Only Community Process Servers and Clerks under the direction of the Court Administrator are authorized and permitted to carry out service of process of the summons and complaint. Non-Community process servers licensed and regulated by the Supreme Court of Arizona are not authorized to conduct service of process within the Community, unless expressly authorized by the Community Council
- (2) The Community Process Servers and Clerks may serve non-Community documents within the Community only upon Court approval of a petition for comity.
- (3) The summons and complaint shall be served within the time required by Ordinance, and as soon as possible if no time frame is specified.
- (4) The Process Server shall deliver to defendant a copy of the complaint and summons at the defendant's house, residence, or usual place of abode or any other place within the Community. If the defendant is not located, the Process Server should make at least two more delivery attempts at later times. If the third attempt fails, the Process Server may leave a copy

of the summons and complaint with any person, at least 15 years old, at defendant's house, residence, or usual place of abode.

- (5) As to any defendant who is not a living person, the Process Server shall cause a copy of the summons and complaint to be delivered to any statutory agent of the entity or business such person being identified according to the law of the jurisdiction in which the business is organized, or any owner, or officer, or director, or designated employee of the business or entity or statutory agent.
- (6) The Court Administrator may cause process to be served on a person or entity outside the territorial jurisdiction of the Court by use of a process server authorized by the other jurisdiction to serve process in that jurisdiction.

(d) **Service by Certified Mail, Return Receipt & Restricted Delivery**

- (1) Personal Service is the preferred method of service for all persons present within the exterior boundaries of the Community. If a person cannot be personally served in the Community, the Clerk shall cause a copy of the summons and complaint to be mailed 'certified mail, return receipt requested and restricted delivery' to the defendant's last known address within the Community.
- (2) Service by certified mail is also authorized for defendants who are outside the territorial jurisdiction of the Court.

(e) **Service by Publication and Posting**

- (1) When service of process cannot be made by any of the above means, service may be made by publication as provided herein.
- (2) The Process Server or Clerk shall have published a summary of the summons and complaint at least twice in the Community newspaper (or with the tribal newspaper of the defendant if the defendant's tribal affiliation is known and such publication is possible), and at least once in a newspaper of general circulation in Maricopa County for non-Community residents. Also, the summary shall be posted at the Court, PHS Clinic, administration building, Lehi Community Center, and at least one other bulletin board within the Community.

(f) **Service by Alternate Means**

If service by one of the means set forth in the preceding subsections of this Rule proves impractical, then service may be made in such a manner as the Court may order upon motion and without notice. Reasonable efforts shall be undertaken to assure that actual notice of the commencement of the action is provided to the person to be served. The summons, complaint, and any Court order shall also be mailed to the last known address of the person to be served.

(g) Proof of Completion of Service of Process

- (1) Service shall be complete when personal service is made, or when the return receipt is signed, or when publication and posting is completed or when the alternate means of service is completed, provided the affidavit of service has been filed.
- (2) Proof of service of the summons and complaint as provided above shall be attested to by an affidavit of the person who served the document(s).
- (3) Service upon a party's advocate shall constitute proper service upon that party, provided a notice of appearance has already been filed.

Rule 5-13.1 Computation of Time

- (a) The day of the act, event or default from which the designated period of time begins to run shall not be counted.
- (b) If the time period is ten (10) days or less, the days shall be counted as business days, meaning intermediate Saturdays, Sundays and legal holidays shall not be counted.
- (c) If the time period is more than ten (10) days, the days shall be counted as calendar days, meaning intermediate Saturdays, Sundays and legal holidays shall be counted.
- (d) The last day of the period is included, unless it is a Saturday, Sunday or legal holiday in which case the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

Rule 5-14 Answer

- (a) The defendant shall file an answer to the complaint or, in the alternative, a motion to dismiss or other responsive pleading

- (b) The answer, motion or responsive pleading may be made orally in open Court or in writing. The Court has discretion to require that an oral answer, motion to dismiss or other responsive pleading be put into writing and filed with the Court.
- (c) The content of the answer should ordinarily:
 - (1) admit or deny every allegation in the complaint;
 - (2) contain a short and plain statement of all defenses;
 - (3) contain a demand for relief including relief in the alternative or of different types; and
 - (4) a counterclaim, if any, as provided in Rule 5-14.1 below.
- (d) A statement that the defendant does not know whether the allegation is true shall be considered a denial.
- (e) Allegations in a complaint other than those as to the amount of damage are admitted when not denied in the answer.
- (f) When a party designates a defense as a counterclaim or a counterclaim as a defense by mistake, the Court shall treat the pleading as if it had been correctly designated.
- (g) The answer, motion to dismiss or other responsive pleading shall be served as provided in Rule 5-20.

Rule 5-14.1 Counterclaim and Reply to Counterclaim

- (a) The defendant ordinarily should file a counterclaim, if any, including a setoff against the plaintiff by combining the counterclaim with the answer.
- (b) The Counterclaim, if any, may be filed as a pleading separate and apart from the answer.
- (c) The content of the counterclaim shall conform substantially to the requirements of a complaint as provided in Rule 5-11. The counterclaim must provide a short and plain statement of the grounds on which the Court's jurisdiction depends, unless the Court already has jurisdiction.
- (d) The plaintiff may file a reply to the counterclaim. The content of the reply shall conform substantially to the requirements of the answer as provided in Rule 5-14.

- (e) The counterclaim and reply to the counterclaim shall be served as provided in Rule 5-20.

Rule 5-14.2 Answer, Motion to Dismiss, Counterclaim and Reply Due Dates

- (a) The defendant shall have thirty (30) calendar days in which to file a written answer, motion to dismiss or other responsive pleading and counterclaim, if any, after service of the complaint is completed. If a shorter or different time period is expressly required by law, the time period required by law shall be followed.
- (b) Alternatively, the defendant shall have thirty (30) calendar days to inform the clerk in writing, by telephone or in person that defendant will file an oral answer, motion to dismiss or other responsive pleading in open court. Upon notification, the Court will set a hearing for this purpose that may be consolidated with any other hearing already scheduled. The Court will enter an order acknowledging the oral answer, motion to dismiss or other responsive pleading if the defendant is not ordered to do so under Rule 5-14 (b).
- (c) After service of a counterclaim is completed, the plaintiff shall have ten (10) business days to file a reply to the counterclaim.
- (d) Upon written request the Court shall grant at least one extension of time not to exceed thirty (30) additional calendar days to file an answer, counterclaim or reply. Any further extension of time must be by order of the Court for good cause shown. An extension shall not be requested or granted once the Court has entered a default notice as provided in Rule 5-16.
- (e) If the Court denies a motion to dismiss or other responsive pleading, the defendant shall have fifteen (15) calendar days to file an answer.

Rule 5-15 Pleadings

- (a) Pleadings shall consist of the complaint, answer, motion to dismiss or other responsive pleading, counterclaim and reply to a counterclaim.
- (b) No other pleadings are allowed other than what subparagraph "(a)" specifies.

Rule 5-15.1 Motions and Other Papers

- (a) A written motion shall be filed to make an application for an order, unless made orally during a hearing or trial. The motion shall specify the action that the applicant is requesting from the Court and the reasons for the action.
- (b) A copy of any written motion shall be served upon the other party as provided in Rule 5-20.
- (c) Any response to a written motion shall be filed no later than ten (10) business days after service of the motion.
- (d) If any new issues are raised in the response, a reply may be filed no later than ten (10) business days after service of the response, and the reply shall be served as provided in Rule 5-20.

Rule 5-15.2 Form of Pleadings, Motions and Other Papers; Corrections of mistakes in pleadings

- (a) Every pleading, motion or other paper must contain:
 - (1) a caption setting forth the name, address and phone number of the party or their advocate if any, the name of the Community Court, the title of the action, the file number if known and title of the pleading or document; and
 - (2) the name, date and signature of the party or their advocate if any at the end followed by a certificate of service when required by Rule 5-20.
- (b) Pleadings, motions and other papers should be on white paper measuring 8 ½ inches wide by 11 inches long where possible. Text should be clearly and legibly handwritten or typed in black ink, double-spaced, and on one side of the paper only. Documents greater than one page in length should be numbered.
- (c) The Court shall interpret all pleadings, motions or other papers in order to do substantial justice. Where possible, the court shall consider defects, ambiguities or technical imperfections (concerns) of pleadings, motions and other papers as follows:
 - (1) Minor concerns shall be interpreted in favor of deciding the issue.

- (2) Major concerns, especially in the case of self-represented individuals, shall be given an opportunity for correction.
- (3) Dismissals and default judgments, based on major and minor concerns, should be avoided.
- (d) The Court shall develop and make available to any person upon request as provided in Rule 5-12 sample forms of complaints, answers, counterclaims, replies to counterclaim(s), motions and responses to motions.

Rule 5-15.3 Amendment of Pleadings, Motions or other Papers

- (a) Prior to a response being filed, any pleading, motion or other paper may be amended once without permission of the Court by filing an amended pleading, motion or other paper. The amended pleading, motion or other paper shall be served as provided in Rule 5-20. However, an amended complaint must be served in the same manner as the original complaint as provided in Rule 5-13 if the original complaint had not been served.
- (b) Once an amended pleading, motion or other paper has been filed with the Court, a motion for permission to further amend must be filed with the Court. The other party shall have ten (10) business days to file a response to the motion. The motion and response to the motion shall be served as provided in Rule 5-20.
- (c) After a party files a response the Court may freely grant the first motion to amend but may require good cause to be shown for any subsequent motions to amend.
- (d) Within five (5) business days after service of the order granting a motion to amend, the amended pleading, motion or other paper shall be filed and served as provided in Rule 5-20.
- (e) The party upon whom an amended pleading, motion or other paper has been served shall have up to ten (10) business days to file a responsive pleading, motion or other paper, and shall serve it as provided in Rule 5-20. If the time period to file an answer to the original complaint has not yet expired, the Defendant shall have thirty (30) calendar days after service of the amended complaint to file an answer or counterclaim.

Rule 5-15.4 Construction of Pleadings, Motions or other Papers

- (3) If the party does not defend within thirty (30) calendar days, the Court may enter a default judgment against the party as provided in Rule 5-16.1; and
 - (4) The party is warned that a default judgment may have serious, adverse, and irreversible consequences; and
 - (5) The party must file a written answer, motion to dismiss or other responsive pleading but it is too late to request an extension of time or to make an oral answer.
- (d) The Court shall serve upon all parties a copy of the default notice as provided in Rule 5-20.
 - (e) The default notice is effective once it has been served as provided in Rule 5-20.
 - (f) The default notice shall become null and void as long as an answer, motion to dismiss, or other responsive pleading is filed with the Court within thirty (30) calendar days before the default notice becomes effective.
 - (g) The entry and service of a default notice is required before a default judgment may be entered as provided in Rule 5-16.1.

Rule 5-16.1 Default Judgment

- (a) Thirty (30) calendar days after the default notice becomes effective, a party in whose favor the default notice has been entered may motion for entry of a default judgment against the defaulting party. The motion shall be accompanied by an affidavit of the amount due plus any supporting documentation of the claim.
- (b) The motion and affidavit shall be served on all parties as provided by Rule 5-20.
- (c) The defaulting party shall have ten (10) business days from the completion of service of the motion for entry of default judgment and its accompanying affidavit to file an answer, motion to dismiss or other responsive pleading but it is too late to request an extension of time.
- (d) A default judgment shall be denied if a timely answer, motion to dismiss or other responsive pleading is filed, and any default notice shall become null and void.
- (e) **Hearing Not Required**

The Court shall interpret all pleadings, motions or other papers in order to do substantial justice as follows: Where possible, minor defects, ambiguities or technical imperfections with pleadings, motions and other papers shall be interpreted in favor of deciding the issue. Dismissals and defaults based upon defects, ambiguities or technical imperfections shall be avoided whenever possible. The Court should allow parties, especially where self-represented, an opportunity to correct major defects, ambiguities or technical imperfections for pleadings, motions or other papers.

Rule 5-15.5 Motion For Reconsideration

A party, seeking reconsideration of a court ruling, may file a motion for reconsideration with the same judge within ten (10) business days of receipt of the ruling. All motions for reconsideration shall be submitted to the court without oral argument and without response or reply, unless the court otherwise directs. The Court may summarily deny the motion. No motion for reconsideration shall be granted, however, without the court providing an opportunity for response at a minimum, with a reply and/or oral argument being allowed in the discretion of the court. A motion authorized by this Rule shall not operate to extend the time within which a notice of appeal must be filed. The court may grant or deny the motion after any filing of an appeal in the matter.

II. Default Notice and Default Judgment

Rule 5-16 Default Notice

- (a) The Court shall enter a default notice against a party who has failed or refused to defend by filing an answer, motion to dismiss, request for an extension of time or other responsive pleading.
- (b) The Court may enter the default notice up to thirty (30) calendar days after a party has failed or refused to defend within the time periods provided by these Rules, or against a party who, given notice of a hearing date, fails to appear at such hearing.
- (c) The default notice shall state that:
 - (1) An action has been filed against the party and urgent attention is required; and
 - (2) The party has not attended or has refused to attend a hearing or to defend by filing an answer, motion to dismiss, request for extension of time or other responsive pleading; and

The Court may enter a default judgment for a sum certain or which can be made certain by computation without a hearing if the defaulting party does not respond according to subparagraph "(c)" and a hearing is not required by subparagraph "(f)" below.

(f) Hearing Required

(1) In any case involving a minor, an incompetent person, domestic relations, debtor-creditor transactions, claims of \$2,500 and greater or if ordered in the discretion of the Court, a hearing shall be held before entry of default judgment if the defaulting party does not respond according to subparagraph "(c)" above. The purpose of the hearing is to establish factual allegations, investigate any necessary matter and to determine remedies.

(2) Notice of hearing is to be given to the respondent/defendant.

(3) Defendant shall have the right to present evidence on the issue of remedies only, at the hearing.

(g) A default judgment shall be served upon all parties as provided in Rule 5-20.

(h) A default judgment shall conform to the requirements of Rule 5-24 (b).

III. Pre-Trial and Discovery

Rule 5-17 Notice of Trial

(a) Within ten (10) business days after the filing of the last pleading in the action, the Court shall order the parties to appear for trial at a time and place which shall be not less than thirty (30) calendar days nor more than sixty (60) calendar days from the date of service of final pleading. If a shorter or different time period is expressly required by law, the time period required by law shall be followed.

(b) The Court may postpone and continue the trial for not more than thirty (30) calendar days upon the motion of any party for good cause or upon its own motion.

Rule 5-17.1 Pre-trial Conference

- (a) The Court in its discretion or upon request of any party may order the parties and any advocates to participate in a pre-trial conference no less than ten (10) business days before trial. The order shall be served at least five (5) business days prior to the conference and in a manner as provided in Rule 5-20.
- (b) The purpose of the conference is to expedite disposition of the action, establish early and continuing control so that the case will not be delayed because of lack of management, discourage wasteful pretrial activities, improve the quality of the trial through more thorough participation, and facilitate the settlement of the case.
- (c) At the conference, the Court may:
 - (1) resolve any discovery issues or disputes provided a Rule 5-19.1 motion and response has been filed;
 - (2) resolve any pending motions;
 - (3) dismiss any non-meritorious claims or defenses;
 - (4) permit amendment of any pleading, motion or other paper;
 - (5) assist in the identification of any issues of fact which are still at issue;
 - (6) obtain stipulations as to the foundation or admissibility of evidence plus other matters;
 - (7) determine whether any time limits or procedure in the Code or these Rules should be modified or suspended;
 - (8) discuss and establish any applicable time limits;
 - (9) explore peacemaking; and
 - (10) facilitate settlement.
- (d) After any pre-trial conference, the Court shall enter an order reciting the action taken. The order shall control the subsequent course of the proceeding unless modified by a subsequent order.

Rule 5-18 Discovery Scope, Questions, Production and Admissions

- (a) Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to any claim or defense of the party seeking discovery or to any claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other demonstrative things and the identity and location of persons having knowledge of any discoverable matter.

- (b) No later than ten (10) business days after service of the final pleading, any party may by written notice to the other party request the other party to answer written questions; to provide copies of documents, photographs or things; and to admit or deny written statements. The request shall include a copy of the text of Rule 5-19.1.
- (c) The requesting party shall file the original notice of the request with the Clerk of the Court and serve a copy upon the other party as provided in Rule 5-20.
- (e) The receiving party shall have twenty (20) calendar days to comply with the requesting party by answering the written questions, producing the documents, photographs or things and admitting or denying any written statements. The response shall be served on the requesting party as provided in Rule 5-20.
- (f) Upon application and good cause shown, the Court may grant the receiving party only one appropriate extension of time to comply with the requesting party's discovery request.
- (g) The requesting party may pursue a default notice and default judgment as provided in Rules 5-16 & 5-16.1 against the receiving party if no response is made.

Rule 5-18.1 Discovery Disclosure Statement

- (a) Each party shall provide every other party a written disclosure statement within ten (10) business days of receipt of the final pleading. This statement shall consist of:
 - (1) A short and plain statement of the factual basis and legal theory for every claim, defense, counter-claim and reply;
 - (2) The names, addresses, and telephone numbers of all witnesses known to the disclosing party with a short summary of such person's expected testimony; and
 - (3) A listing of the location of all demonstrative evidence, documents or things.
- (b) If no disclosure statement is made, the opposing party may pursue a default notice and default judgment against the non-complying party as provided in Rules 5-16 and 5-16.1.

- (c) The Court may exclude any undisclosed witnesses or evidence as inadmissible at any further proceeding or trial.

Rule 5-18.2 Oral Deposition of Parties and Witnesses

- (a) No less than ten (10) business days before trial, each party may depose any other party or witness of any other party.
- (b) The parties shall by written stipulation provide how depositions may be taken, before any person, at any time or place, upon any notice and in any manner including but not limited to video recording. The parties may stipulate as to limiting the extent of the admissibility at trial of any information given during the deposition, subject to Rule 5-23.4.

Rule 5-19 Subpoena of Trial Witnesses

- (a) Any party who will call witnesses at trial, shall file a written request for a subpoena with the Clerk no later than ten (10) business days after receiving the Notice of Trial, unless otherwise prohibited by the Code.
- (b) Upon receipt of the request, the Clerk shall cause a subpoena to be issued and served upon the witness commanding their presence at trial to testify, production of documents, or both.
- (c) The Court shall adopt a uniform subpoena including a statement that the requesting party shall pay its witnesses the daily witness fee plus mileage.
- (d) The requesting party shall pay witnesses a fee of \$10.00 per day plus mileage at the rate provided by law no later than ten (10) business days after such person has appeared.
- (e) The subpoena and a copy of the text of Rule 5-19.1 printed on the subpoena shall be served as provided in Rule 5-20.
- (f) A witness may file a motion for order to show cause when a requesting party fails to pay the applicable fee and mileage as provided in "(d)" above.

Rule 5-19.1 Discovery, Deposition and Witness subpoena Objections

- (a) Unless a written objection is filed with the Clerk, a person receiving a Rule 5-18 discovery request, Rule 5-18.2 deposition request or Rule 5-19 subpoena shall comply with the request.

- (b) A written objection must:
 - (1) Be filed with the Court no later than five (5) business days after service of the discovery request or subpoena;
 - (2) Clearly express the grounds and legal basis for the objection; and
 - (3) Provide a description of the nature of the document, communication or item not being produced.
- (c) It is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.
- (d) The party requesting discovery shall have five (5) business days to file a written response to the objection.
- (e) The objection and response shall be served as provided in Rule 5-20.
- (f) The Court shall hold a hearing within five (5) business days after the response is filed, and shall grant the motion and quash the discovery request if it finds that the objection is timely and proper grounds and legal basis for the objection have been proven. If the objection is untimely or without merit, the discovery request or subpoena shall become immediately enforceable.
- (g) The Court may limit the frequency and extent of discovery if the Court determines that the:
 - (1) discovery sought is unreasonably cumulative or duplicative, or obtainable from some other source that is either more convenient, less burdensome, or less expensive;
 - (2) party seeking discovery has had ample opportunity for discovery in the action to obtain the information sought; or
 - (3) discovery is unduly burdensome or expensive, given the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

Rule 5-20 Service of Pleadings, Motions, Other Papers, Court Notices, Court Orders, etc.

- (a) Except for the summons and complaint - Motions, other papers, Court summons, Court notices, Subpoenas and Court orders shall be served by first class mail unless the Court orders otherwise.
- (b) At the end of every pleading, motion or other paper there shall be a certification signed by the sending party, dated and addressed to the other party that such document was sent via first class mail or was hand delivered. The sending party has an affirmative duty to serve every pleading, motion or other paper upon every other party.
- (c) The Court shall cause a default notice, default judgment, final judgment or dismissal order to be served by personal service or certified mail, return receipt requested and restricted delivery. If personal service or by certified mail is not successful, service may be made by publication and posting in the manner provided in Rule 5-12 (f).
- (d) At the end of every Court notice, order, summons etc. there shall appear a certification that the Court served the party, advocate and witnesses, if any.
- (e) Service by first class mail shall be deemed complete upon receipt but not longer than ten (10) business days after the mailing.
- (f) Each party, and advocate(s) for any party, have an affirmative and continuing duty to provide the Court a current mailing address. Service at a party's last known address shall constitute proper service.

Rule 5-21 Settlement Before Trial

- (a) Immediately before beginning the trial, the Judge shall encourage the parties to make an earnest effort to settle the case.
- (b) If settlement is fully successful, the Judge shall enter judgment according to the terms and conditions of the settlement and may impose jury costs as appropriate.
- (c) If settlement is only partially successful, the Judge shall enter an order to that effect. Parties may stipulate in writing to factual issues and narrow the issues for trial.
- (d) If settlement is not fully successful, the Court may proceed with trial or vacate the trial date and continue the trial date for a period of time not to exceed thirty (30) calendar days. The Court may impose jury costs against any party, for any delay, as appropriate.

- (e) All communications, verbal or written, made by any party or any other person during the course of the settlement(s) are strictly confidential and shall not be used in formal court proceedings.

Rule 5-21.1 Settlement Before Trial

RESERVED

Rule 5-22 Failure to Appear

- (a) The Court may enter a default notice and default judgment against any party failing to appear in person or through advocate, if any, at pre-trial or failure of a party to appear in person at trial as provided in Rules 5-16 & 5-16.1. A party and advocate, if any, may file a notice to waive in person appearance at any other proceeding.
- (b) In the alternative to default notice and default judgment, the Court may vacate the pretrial or trial and continue it for a period of time not to exceed thirty (30) calendar days.

Rule 5-22.1 Dismissal by the Court for Failure to Prosecute

- (a) The Court may dismiss, upon its own motion or the motion of a party, any complaint or counterclaim for failure to prosecute.
- (b) A dismissal under subsection "(a)" above is without prejudice unless the Court states it is with prejudice.

IV. Trial

Rule 5-23 Trial Procedure

- (a) After the Jury, if any, is sworn, the Court shall instruct the Jury concerning its duties, its conduct, the order of proceedings, the procedure for submitting any written questions, and the law that will govern the proceeding.
- (b) The Court shall allow each party to make an opening statement not to exceed thirty (30) minutes. The Court may enlarge the time upon the

request of a party. Each party may read its respective complaint, answer, counterclaim or reply.

- (c) The Court shall swear in each witness. Witnesses shall be subject to direct examination, cross-examination and if allowed by the Court re-direct examination and re-cross examination. Witnesses may also be subject to questioning by the Court.
- (d) The plaintiff shall present its case in chief by introducing evidence consisting of witness testimony and any demonstrative evidence.
- (e) The defendant shall then present its case in defense by introducing evidence consisting of witness testimony and any demonstrative evidence.
- (f) The plaintiff may then introduce any rebutting evidence, if any.
- (g) Jurors, if any, shall be permitted to submit to the Court written questions directed to witnesses or the Court. The Court shall give parties or their advocates, if any, an opportunity to object to the question out of the presence of the jury. For good cause shown the Court may prohibit or limit the submission of questions to witnesses.
- (h) The plaintiff followed by the defendant shall be permitted to make a closing argument which shall not exceed thirty (30) minutes. The Court may enlarge the time upon the request of a party.

Rule 5-23.1 Evidence

- (a) Any party offering demonstrative evidence at trial shall first ask that the Clerk mark the evidence as a trial exhibit, and the evidence shall be presented to the witness for identification. As a courtesy to the Court, the party or their advocate may mark exhibits prior to trial.
- (b) The party offering the exhibit shall provide the Court with the reason(s) for use of the exhibit and its importance to the case. Such reason(s) can be provided through the testimony of a witness, who shall properly identify and authenticate the exhibit.
- (c) The exhibit shall be presented to the other party and then to the Judge for inspection.
- (d) The party offering the exhibit shall then move to have the exhibit entered into evidence.

- (e) Any objection to the motion shall be made at this time. Objections shall be in proper form and state a proper basis according to the basic principles of the law of evidence.
- (f) The party offering the exhibit may respond to the objection or may request to make a formal offer of proof argument. If the Court agrees to hear the offer of proof argument, the argument(s) of the parties shall be heard outside the presence of the jury.
- (g) Before any ruling the party offering the exhibit may withdraw the motion and take necessary steps to cure the objection. Also, the other party may withdraw its objection.
- (h) The Court shall then Rule on the motion and objection, if any, and either allow the exhibit to be entered into evidence or disallow the exhibit to be entered into evidence.

Rule 5-23.2 Witness Testimony

- (a) After being called to the stand and sworn in, each witness shall be subject to questioning as provided in Rule 5-23 (c).
- (b) After being asked a question by one party, the other party may object to the question before the witness answers it. Parties or their advocate(s), if any, may object to questions made by the Court.
- (c) If an objection is made, the Court may instruct the witness not to answer the question until the Court Rules on the motion. In its ruling on the objection, the Court may strike any answer made after or during an objection.
- (d) The objection shall be in proper form according to the basic principles of the law of evidence.
- (e) A response may be made to the objection including a formal offer of proof. If the Court agrees to hear the offer of proof argument, the argument and response shall be heard outside the presence of the jury.
- (f) Objections and responses to objections may also be made to witness answers.
- (g) Before any ruling is made, the question may be withdrawn and necessary steps may be taken to cure the objection. Also an objection may be withdrawn.

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- (h) The Court shall then Rule on the objection and either allow or not allow the witness to answer the question.

Rule 5-23.3 Judicial Notice

Upon motion of a party or its own motion, the Court may acknowledge or may order the jury to acknowledge a fact that is not subject to reasonable dispute in that it is either generally known within the jurisdiction of this Court or is capable of accurate and ready determination by reference to sources whose accuracy cannot be reasonably questioned.

Rule 5-23.4 Use of Discovery and Depositions at Trial

- (a) Any response or statement made by a party or witness in response to any discovery request or during a deposition may always be entered into evidence for the limited purpose of contradicting or impeaching the trial or hearing testimony of that party or witness.
- (b) Unless stipulated otherwise under Rule 5-18.2 (b) above, the deposition of a party may be used for other purposes, in addition to impeachment, by an adverse party at trial.
- (c) The deposition of any person other than a party may be used by another party for other purposes at trial when:
- (1) the offering party has been unable to procure the attendance of the witness by subpoena;
 - (2) the witness is at a distance greater than fifty (50) miles from the place of trial;
 - (3) the witness is unable to testify because of age, illness, infirmity or incarceration;
 - (4) the witness is deceased subsequent to the taking of the deposition; or
 - (5) there are circumstances of an exceptional nature warranting the use of the deposition.
- (d) Anytime an excerpt of a deposition is admitted at trial, any party other than the offering party may introduce any other excerpts of the deposition.

Rule 5-23.5 Jury Trial

- (a) Jury trials may be ordered by the Court in a civil case only upon written stipulation of the parties.
- (b) The written stipulation shall be filed within ten (10) business days of receipt of the notice of trial as provided in Rule 5-17 above.
- (c) The Court shall have discretion as to whether to award a jury trial, and such decision is not subject to appeal.
- (d) The Court shall empanel the jury according to procedures in the Code.

Rule 5-23.6 Judgment as a Matter of Law in a Jury Trial

- (a) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the Court may determine the issue against the party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated.
- (b) Motions for judgment as a matter of law may be made at any time before trial. Such motion shall specify the judgment sought and the law and facts on which the moving party is entitled to the judgment.
- (c) If the motion is denied, the Court shall submit the action to jury.
- (d) If the motion is granted, the judgment shall conform to the requirements of Rule 5-24 (b).

Rule 5-23.7 Summary Judgment

- (a) **For Claimant.** A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after service of process upon the adverse party or after service of a summary judgment motion by the adverse party, move for summary judgment in the party's favor with or without supporting affidavits.
- (b) **For Defending Party.** A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for summary judgment in its favor as to all or any part of a claim.
- (c) **Motion and Proceedings.** A party opposing the motion shall file affidavits, memoranda or both within fifteen (15) calendar days after

service of the motion. The moving party shall have five (5) business days thereafter to serve a reply memoranda and affidavit.

- (d) **Determination of motion.** Summary judgment shall be granted if the pleadings, depositions, answers to questions and admissions, together with affidavits, if any, show that there is no genuine issue as to any material (relevant, important and/or necessary) fact and the party is entitled to judgment as a matter of law.
- (e) **Partial Summary Judgment.** If the Court grants only partial summary judgment, the Court shall ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. The Court shall specify the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and proceed as is just. The facts so specified shall be deemed established, and the trial shall be conducted accordingly.
- (f) **Affidavits.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth specific facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated. Sworn or certified copies of all papers or parts referred to in an affidavit shall be attached and served. A response to an adverse party's affidavit must set forth specific facts showing that there is a genuine factual issue for trial. The response may not rest on mere allegations or denial in the pleadings. Otherwise, summary judgment, if appropriate, shall be entered.
- (g) **Insufficient Affidavits.** When the affidavits of a party asking for summary judgment are not sufficient, the Court may refuse the motion for Summary Judgment or may permit more time for further discovery or additional affidavits.
- (h) **Bad Faith Affidavits.** When a party presents an affidavit in bad faith or solely for the purpose of delay, the Court shall order this offending party to pay the other party the reasonable expenses and advocate fees incurred for their required response to such bad faith affidavit(s).

V. Judgment

Rule 5-24 Judgment and Damages

(a) Timing of Judgment

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The Court shall make and enter a judgment within twenty-five (25) calendar days after the conclusion of a bench trial or the return of the jury verdict. The Court may direct the parties to submit a form of judgment within ten (10) business days after trial. The Court, on its own motion, may extend the time but no extension shall exceed an additional thirty (30) calendar days.

(b) Judgment

Every judgment shall:

- (1) Be in written form;
- (2) Have a full caption designating all parties, without any erasures or interlineations;
- (3) Have a recital commencing "The above entitled and numbered cause having come regularly for trial on the ____ day of ____ [month], ____ [year]." The recital shall indicate whether a bench or jury trial was held, which parties were present and represented, the name of the advocate representing a party, if applicable, and whether evidence was presented;
- (4) Have findings of fact, conclusions of law and orders, as appropriate. The Court has discretion to make special findings as it deems appropriate. Findings by the Jury shall always be general;
- (5) Have an order that describes the relief the Court is granting. Relief in civil cases may consist of an award for money damages to be paid to the injured party; the surrender of certain property to the injured party; or the performance of some other act for the benefit of the injured party. In actions for divorce, annulment or separate maintenance, the Court may enter such judgments as are consistent with the Code;
- (6) Be signed the Judge and dated;
- (7) Be entered by filing the original with the clerk who will affix a filing stamp and clerk initials; and
- (8) Be served as provided in Rule 5-20.

(c) Damages in cases of bodily injury

Where the injury inflicted was the result of negligence of the defendant, the judgment shall fairly compensate the injured party for the loss suffered.

(d) Damages in cases involving contracts

Damages will be assessed under the common law as defined in Section 5-1 of the Code.

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(e) Mitigation and Apportionment of Damages

Where the complainant and the defendant were both at fault, the judgment shall compensate the injured party for a portion of the loss suffered, comparing the respective fault of the parties. Where there are multiple defendants at fault, findings shall apportion liability among all defendants according to the defendant's respective fault. The damages shall be limited to the corresponding percentage of fault of the defendant.

(f) Costs

The Court may assess costs against the non-prevailing party in favor of the party prevailing on most issues. Costs are limited to fees paid to the Clerk of the Court, service of process, jury fees, and deposition transcript charges. The party seeking an award of costs shall file a motion and statement of costs no later than ten (10) business days after completion of service of the judgment. Costs may be assessed against a party or an advocate only if there is a finding by the court that a non-prevailing party's position was not substantially justified in fact or law.

(g) Stay of entry and of execution; installment payment

- (1) The Court may, in the interests of justice, temporarily postpone the effect of a judgment.
- (2) The filing of an appeal shall operate as an automatic stay of execution of a judgment. The appellate Court may lift the stay under the common law and conditions set forth in any existing Community Rules of Appellate Procedure. Until such Rules are adopted, the common law and Section 5-1 of the Code shall control.
- (3) The Court may inquire into the financial capacity of the party requesting a stay of judgment.
- (4) The Court may order partial payments under such terms and conditions that result in a steady reduction of the judgment until it is fully satisfied.
- (5) If a partial payment is missed without just cause, the Court may vacate the stay of execution of judgment.
- (6) A prevailing party may seek all remedies including a writ of execution where no stay of execution of judgment is in effect.

(h) Notice of Satisfaction of Judgment

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Once a judgment has been fully satisfied, the prevailing party shall, within thirty (30) calendar days of satisfaction, file a written notice with the Court acknowledging that the judgment has been satisfied. If the prevailing party does not submit a written notice, the opposing party may file a notice with the Court, with a copy to the prevailing party.

Rule 5-24.1 Motion to Correct Judgment

- (a) The Court, upon its own motion or a party's request, may correct a judgment for any clerical mistake(s) or error(s).
- (b) The Court, upon its own motion or a party's request, may correct a judgment where there is a mistake, miscalculation or misrecital of a sum of money, or of a name as evidenced by records of the action and after notice to the parties.
- (c) A motion to correct can be made at anytime before satisfaction of the judgment. However, once an appeal is filed, a motion to correct requires leave of the appellate Court.
- (d) A motion under this Rule automatically extends the time deadline to file an appeal an additional fifteen (15) calendar days once a ruling has been made on the motion.

Rule 5-24.2 Motion Regarding Excessive or Insufficient Damages

- (a) Within 15 calendar days after a jury verdict, a party may file a motion to set aside and reduce findings regarding damages.
- (b) Within 15 calendar days after a jury verdict, a party may file a motion to set aside and increase findings regarding damages.
- (c) The Court shall grant or deny a respective motion to reduce or increase damages based upon the legal sufficiency of the damages and from the facts and evidence at trial.
- (d) A motion under this Rule automatically extends the time deadline to file an appeal an additional fifteen (15) calendar days once a ruling has been made on the motion.

Rule 5-24.3 Motion for New Trial

- (a) Within fifteen (15) calendar days after service of a judgment, a party may file a motion for a new trial.

- (b) The motion shall be accompanied by information establishing any of the following grounds:
- (1) Irregularity in the proceedings of the Court, jury or prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair trial;
 - (2) Misconduct of the jury or prevailing party;
 - (3) Material evidence, newly discovered, which with reasonable diligence could not have been discovered and produced at trial;
 - (4) Trial error on evidence or jury instructions;
 - (5) Excessive or insufficient damages;
 - (6) The verdict is a result of passion or prejudice;
 - (7) The verdict, decision, findings of fact or judgment is not justified by the evidence or is contrary to law; or.
 - (8) Any other grounds justifying a new trial.

A motion under this Rule automatically extends the time deadline to file an appeal an additional fifteen (15) calendar days once a ruling has been made on the motion.

Rule 5-24.4 Motion to Set Aside Final Judgment

- (a) No later than six (6) months after service of the final judgment or the decision of the appellate division, if any, a party may file a motion pursuant to (b) 1,2,3 to set aside the judgment. There is no time limit for a motion pursuant to (b) 4 5 6
- (b) The motion shall be accompanied by information establishing any of the following grounds:
- (1) Mistake, inadvertence, surprise or excusable neglect;
 - (2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 5-24.3;

- (3) Fraud, misrepresentation or other misconduct of an adverse party;
 - (4) The judgment is void;
 - (5) The judgment has been satisfied, released or discharged, or a prior judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
 - (6) Any other reason justifying relief from operation of the final judgment.
- (c) A motion under this rule does not affect the finality of the judgment or suspend its operation.
- (d) A party shall have thirty (30) calendar days to file a response to a motion under this rule before the Court rules on the motion.

Rule 5-25 Waiver of Filing and other Court Fees

- (a) All actions filed where the filing and other Court fees are sought to be waived because of financial hardship, require the filing of a motion and a sworn declaration of financial status.
- (b) The declaration shall be executed under penalty of perjury and must contain the following information:
- (1) A statement as to current employment including the amount of wages or salary per month and the name and address of the current employer.
 - (2) A statement, if not currently employed, as to the date of last employment and the amount of wages or salary per month which was received.
 - (3) A statement as to the amount of any money received within the past twelve months from any source.
 - (4) A statement of cash on hand or available.
 - (5) A statement of all real and personal property and their approximate value, excluding ordinary household furnishings and clothing.
 - (6) A statement of all legal dependants.
 - (7) A statement that because of poverty there is an inability to pay the cost of the proceeding.
- (c) The Court shall grant the waiver if the person's monthly income is \$300.00 or less, not including gaming per capita payments and any land lease payments paid or owing to such person.

Rule 5-25.1 Recognition by Full Faith and Credit or Comity

- (a) The Court shall recognize a final judgment of another Tribal, State or Federal Court if expressly required by applicable law.
- (b) The Court shall have discretion to grant comity to any final judgment of another Tribal, State or Federal Court according to the following procedure:
 - (1) The party petitioning for comity shall file with the Court a petition requesting comity plus a certified copy of the final judgment of another Tribal, State or Federal Court, and shall also attach to the petition an affidavit setting forth the name and address of the party seeking enforcement and the name and address of the responding party.
 - (2) The party seeking enforcement shall serve, as provided in Rule 5-12 (d), a notice to the opposing party – such notice shall provide copies of the judgment, the petition, affidavit, and the text of subparagraph “(3)” below.
 - (3) Any objection to the enforcement of a final judgment shall be filed in writing within twenty (20) calendar days after service of the above notice.
 - (4) If a written objection is filed within this time period, the Court may, in its discretion, set a time period for a reply and/or set the matter for hearing.
- (c) The Court in its discretion may decline to grant comity to a final judgment of another Tribal, State or Federal Court on any grounds, including but not limited to:
 - (1) The judgment was obtained by extrinsic fraud;
 - (2) The judgment conflicts with another final judgment that is entitled to recognition;
 - (3) The judgment is inconsistent with the parties’ contractual choice of forum;
 - (4) The judgment is inconsistent with Community principles of traditional and customary fairness;
 - (5) Recognition of the judgment or the cause of action upon which it is based is against fundamental public policy of the Community;
 - (6) The judgment circumvents this Court’s jurisdiction; or
 - (7) For any other reason which the Court, in its sole discretion, deems justifiable.

- (d) A final judgment of another Tribal, State or Federal Court shall not be granted comity if the Court finds that there was a lack of personal jurisdiction over the parties or a lack of subject matter jurisdiction over the action, or substantial due process was not afforded a party to the action.
- (e) After receipt of a written objection and a hearing, the Court shall issue a certificate stating that either the judgment "shall be" or "shall not be" granted comity according to standards in subsections "(c)" and "(d)" above.
- (f) Upon the granting of comity, a final judgment of another Tribal, State or Federal Court shall be recognized and enforced by the Court to the same extent and shall have the same effect as any final judgment, order, or decree of this Court.

Rule 5-25.2 Temporary Restraining Order

(a) Temporary Restraining Order

A temporary restraining order may be issued prior to a hearing upon a motion for preliminary injunction or to maintain the status quo. A temporary restraining order may be requested as part of the complaint or by separate motion and filed with the complaint. A sworn affidavit alleging the facts as described in Rule 5-25.2 (c)(1-4) shall be filed with the complaint or motion. The affidavit shall also state how notice was provided to the adverse party or adverse party's advocate or confirm to the requirements of subsection (c) below if notice was not given.

(b) Notice

Subject to the requirements of subsection (c) below, the moving party shall provide notice to the adverse party or the adverse party's advocate stating that the moving party is requesting the Court to grant a temporary restraining order.

(c) Requirements for a Temporary Restraining Order Without Notice

A temporary restraining order may be granted without written or oral notice to the adverse party or their advocate only if either of the following conditions are satisfied:

- (1) The affidavit filed with the motion for temporary restraining order states specific facts which persuade the Court that immediate and

irreparable injury, loss, or damage will result to the moving party before the adverse party or party's advocate can be heard in opposition.

- (2) The moving party certifies to the court, in writing: (i) that the moving party made reasonable efforts to give notice to the adverse party of the restraining order action, or (ii) specific reasons that prevented service of such notice upon the adverse party; or (iii) other reasons that the Court finds as good cause why notice should not be given.

(d) **Issuance**

Every temporary restraining order granted shall:

- (1) Be made the same day as the application;
- (2) Be endorsed with the date and hour of issuance;
- (3) Be filed immediately with the Clerk and entered of record;
- (4) Specify the injury, loss or damage that will occur, with a statement explaining why it is irreparable;
- (5) State why the order was granted without notice, if applicable; and
- (6) State the date upon which the order will expire, which shall not exceed fifteen (15) calendar days after issuance, unless within the time allowed, the adverse party consents to an extension, or the Court grants an extension for good cause.

(e) **Preliminary Injunction and Temporary Restraining Orders**

When a temporary restraining order is granted without notice, the motion and hearing for a preliminary injunction shall be made within the effective time period of the temporary restraining order. A preliminary injunction hearing will have priority over other matters. At the hearing on the preliminary injunction the party who obtained the temporary restraining order shall demonstrate his right to a preliminary injunction. If the right to a preliminary injunction is not demonstrated, the Court shall dissolve the temporary restraining order.

(f) **Hearing to Dissolve Temporary Restraining Order**

Unless the Court shortens the time, on two (2) business days notice to the party who obtained the temporary restraining order without notice, the adverse party may move for its dissolution or modification. The Court shall hear the motion for dissolution or modification.

(g) **Service**

Service of all papers and matters related to a Restraining Order shall be effective upon one of the following methods of service.

- 1.) Direct notice from the Judge to the restrained party in open court.
- 2.) Service by the Community Police Department of all Temporary Restraining Orders, Preliminary Injunctions, and all associated Notices of Hearing.
- 3.) An Ex Parte Temporary Restraining Order shall be effective upon its service on the restrained party.

Rule 5-25.3 Injunctions

(a) Preliminary Injunction

A preliminary injunction may be requested as part of a complaint, or may be made by separate motion and filed with the complaint. A sworn affidavit alleging the facts as described in subsection (c)(1-4) below must be filed with the complaint or motion.

(b) Notice of Hearing

The Court shall provide notice to the adverse party and a hearing before issuing a preliminary injunction.

(c) Required Factual Findings

At the hearing for a preliminary injunction, the moving party shall present evidence sufficient for the Court to find all of the following:

- (1) That the moving party has or is claiming a protectable right or interest and has a likelihood of success on the merits;
- (2) That irreparable injury, loss, or damage to that right or interest is likely to occur unless the preliminary injunction is issued;
- (3) That the threatened injury, loss, or damage is substantial in nature or character; and
- (4) Damages alone are not an adequate remedy.

(d) Consolidation of Hearing with Trial on the merits

Before or after the commencement of the hearing of a request for a preliminary injunction, the Court may order trial on the merits to be moved up and consolidated with the hearing of the petition.

Where consolidation is not ordered, any evidence received at the hearing becomes part of the record and need not be offered and received again at trial.

(e) **Form and Scope of Injunction or Temporary Restraining Order**

Every order granting an injunction or temporary restraining order shall set forth the following:

- (1) Only parties to the action, their officers, agents, servants, employees and advocate who receive actual notice of the order by personal service can be bound by the order.
- (2) The order shall set out the jurisdiction of the Court over the person(s).
- (3) The specific reasons for its issuance which shall include in reasonable detail the nature of the right or interest protected, the particular injury, loss, or damage which is threatened, and that damages alone are not adequate.
- (4) A description in reasonable detail, and not solely by reference to the complaint or other document, of the act or acts to be restrained.

(f) **Dissolution or modification**

Motions to dissolve or modify a preliminary injunction without determining the merits of the action may be heard after an answer or other responsive pleading is filed, upon notice to the adverse party. If, upon hearing the motion, it appears that there are not sufficient grounds for the injunction, it shall be dissolved, or if it appears that the injunction is too broad, it shall be modified accordingly.

(g) **Injunction Bond**

Before issuing a preliminary injunction or temporary restraining order the Court in its discretion may order that the moving party provide security, in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. If appropriate the Court may require a non-financial form of bond.

(h) **Securities and Proceedings Against Sureties**

By giving security in the form of a bond or stipulation or other property pledged as security with one or more sureties, each surety submits to the jurisdiction of the Court and irrevocably appoints the Court Administrator of the Court as its agent upon whom any papers affecting its liability on the bond may be served. A surety's liability may be enforced on motion and notice of a motion shall be served on the Court Administrator, who shall mail copies to the sureties if their addresses are known or are reasonably ascertainable.

(i) **Disobedience**

Disobedience of an injunction or restraining order may be treated as a form of civil contempt. Anyone alleging a violation shall file a motion for order to show cause with the Court, and the Court shall hold an order to show cause hearing to determine whether someone is in contempt.

(j) **Injunction Standards**

Judges of the Community Court may grant injunctive relief in any of the following circumstances:

- (1) When it appears that the party applying for the relief is entitled to the relief demanded, and such relief or any part thereof requires the restraint of some act prejudicial to the applicant;
- (2) When, in pending litigation, it appears that a party is doing some act respecting the subject of litigation, or threatens or is about to do some act, or is procuring or suffering some act to be done, in violation of the rights of the applicant, which would tend to render the judgment ineffectual; or
- (3) In all other cases when applicant is entitled to an injunction under the principles of fairness.

Rule 5-25.4 Sovereign Immunity

Adoption of these Rules shall not constitute or be construed as a waiver of the sovereign immunity of the Salt River Pima-Maricopa Indian Community.

Rule 5-25.5 Interpretation

Where possible the Code and these Rules should be harmonized and both given full effect. If any of these Rules squarely conflict with the Code however, these Rules control and the Code is considered to have been repealed by implication.

Rule 5-25.6 Savings

If any part of these Rules is found to be invalid, such decision shall not affect the validity of the remaining portions.

Rule 5-25.7 Effective Date

The effective date for these Rules shall be sixty (60) calendar days after their approval by resolution of the Community Council.