Chapter 5

RULES OF THE COMMUNITY COURT

Article I. In General

Article II. Civil Procedure

Article III. Receivers

Article IV. Rules of Criminal Procedure

Division 1. Scope, Purpose and Construction

Division 2. Preliminary Proceedings

Division 3. Rights of Parties

Article VI. Rules of Criminal Appellate Procedure

Article VII. Community Rules of Evidence

Division 1. General Provisions

Division 2. Judicial Notice

Division 3. Presumptions In Civil Cases

Division 4. Relevance and Its Limits

Division 5. Privileges

ARTICLE I. IN GENERAL

Sec. 5-1. Application of law.

(a) In all actions before the courts of the Community, the law of the Community shall be controlling. The law of the Community consists of this Community Code of Ordinances and common law of the Community. The common law of the Community is composed of both the customary law of the Community and the rules of law and decisions of the Community court.

(b) In cases where this Community Code of Ordinances is silent as to an issue of procedural law, the court may, in its discretion, use procedural rules or laws of the United States to fashion a remedy.

(c) In determining issues of law, the Community court may use as a resource cases decided by the courts of the following:

(1) Indian tribes;

(2) The United States; and

(3) The several states and territories of the United States.

(Code 1981, § 5-1; Code 2012, § 5-1; Ord. No. SRO-164-93, § 1, 2-3-1993; Ord. No. SRO-402-2012, § 5-1, 5-30-2012)

Secs. 5-2—5-20. Reserved.

ARTICLE II. CIVIL PROCEDURE*

Secs. 5-21—5-34. Reserved.

Sec. 5-35. Juries.

(a) *Jury trials in civil cases.* Jury trials may be ordered by the court in civil cases only upon the stipulation in writing of all of the plaintiffs and defendants. The court shall have the discretion in cases where such a stipulation is filed with it to either order a jury trial or not. The court's order shall not be subject to appeal.

(b) *Jury trials in traffic violation cases.* There shall be no jury trials in cases where a person is charged with a traffic violation when:

(1) The exclusive penalty is a fine; or

(2) 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.

(c) *Right to jury trial.* In cases where the possibility of imprisonment exists, the defendant shall have the right to elect a trial by jury upon request.

(d) *Jury procedure.*

(1) Jury list to be prepared; cases involving special domestic violence criminal jurisdiction pursuant to chapter 10, article VII, section 10-258 of the Salt River Pima-Maricopa Indian Community Code of Ordinances. Within 30 days prior to January 1 of each calendar year, the Community Council shall cause a jury list to be prepared consisting of the following, which shall be presented to the Community court when it is completed:

a. All of the members of the Salt River Pima-Maricopa Indian Community over the age of 18 years who are not judges of the Community court, employees of the Community court, or employees of the Community police department;

b. All employees of the Community government (excluding enterprises) over the age of 18 years who are not Community members and who are not judges of the Community court, employees of the Community court, or employees of the Community police department.

(2) *Jury list to be prepared; all other criminal cases and civil cases.* Within 30 days prior to January 1 of each calendar year, the Community Council shall cause a jury list to be prepared consisting of all of the members of the Community over the age of 18 years who are not judges of the Community court, employees of the Com-

*__Editor's note—__The Community Court's Rules of Civil Procedure are publically available on the Community Court's internet site. The Court Rules Committee is currently revising the Rules of Civil Procedure and when enacted these amended rules will be codified in this article.

munity court or employees of the Community police department. This list shall be presented to the Community court when it is completed.

(3) *How constituted.* A jury shall consist of six individuals drawn from the jury list. The drawing will be by some disinterested person or persons appointed by the judge. A minimum of ten names shall be drawn from which the selections will be made. Any party to the case may challenge not more than two members of the panel so chosen, except for cause.

(4) *Cause for excusing a prospective juror.* The judge may excuse a prospective juror only if the prospective juror states that any circumstances of relationship or kinship with any of the parties will cause that juror to be biased as to any of the parties, or that a prospective juror's knowledge of facts in regard to the case to be presented will predispose the prospective juror to make a decision without regard to what is presented in the case, and the judge shall excuse a prospective juror in such circumstances only if the judge is satisfied that the juror's statement is true and correct.

(5) *Conduct of voir dire.* Only the judge shall question the prospective jurors in regard to their qualifications to serve on a jury. The parties or their attorneys or advocates may submit questions to the judge for such questioning and the judge may use such questions.

(6) *Verdict.* The judge shall instruct the jury in the law governing the case; and the jury shall bring a verdict for the complainant or the defendant. The judge shall render judgment in accordance with the verdict and existing laws. In civil cases, a majority of four of the six jurors is necessary for a verdict.

(7) *Jurors' fees.* All persons who are subpoenaed to serve as members of a panel from which a jury is to be chosen shall be entitled to compensation for each day or part thereof such services are required in court. The amount of such compensation shall be determined from time to time by resolution of the Community Council. Such compensation shall be uniform for all members of any such panel.

(Code 1981, § 5-25; Code 2012, § 5-25; Ord. No. SRO-161-93, § 1, 1-27-1993; Ord. No. SRO-397-2012, 6-1-2012; Ord. No. SRO-402-2012, § 5-25, 5-30-2012; Ord. No. SRO-540-2022, 2-23-2022, eff. 5-1-2022)

Secs. 5-36—5-58. Reserved.

ARTICLE III. RECEIVERS

Sec. 5-59. Application for appointment.

Application for the appointment of a receiver shall be in the form of a verified petition filed in the Community court. The petition shall set forth the facts supporting the application. The petition shall be accompanied with affidavits concerning the debts of the entity that is the subject of the receivership.

(Code 1981, § 5-50; Code 2012, § 5-50; Ord. No. SRO-98-85, 4-24-1985; Ord. No. SRO-402-2012, § 5-50, 5-30-2012)

Sec. 5-60. Hearing on application.

The Community court shall hold a public hearing within 30 days of the filing of the petition. Notice of the hearing shall be given to all interested parties by registered mail or in such other manner as the court may by order provide.

(Code 1981, § 5-51; Code 2012, § 5-51; Ord. No. SRO-98-85, 4-24-1985; Ord. No. SRO-402-2012, § 5-51, 5-30-2012)

Sec. 5-61. Findings of fact.

The judge of the Community presiding at the hearing shall make findings of fact concerning the eligibility of the receiver, the scope of the receiver's duties, any bond required to be posted

by the receiver, compensation to the receiver and requirements concerning periodic accountings to the Community court.
(Code 1981, § 5-52; Code 2012, § 5-52; Ord. No. SRO-98-85, 4-24-1985; Ord. No. SRO-402-2012, § 5-52, 5-30-2012)

Sec. 5-62. Qualifications of receiver.

(a) The Community court shall not appoint as a receiver a member of the immediate family of any owner of the subject matter of the receivership, any employee or officer of the Community, or any person otherwise interested in the subject matter of the receivership except under the provisions of subsection (b) of this section.

(b) After such notice as the Community court shall find is adequate, and if no party shall have objected, the court may appoint a person interested in the subject matter of the receivership if the court finds the subject matter of the receivership has been abandoned or that the duties of the receiver will consist chiefly of physical preservation of the property (including crops growing thereon), collection of rents or the maturing, harvesting and disposition of crops then growing thereon.
(Code 1981, § 5-53; Code 2012, § 5-53; Ord. No. SRO-98-85, 4-24-1985; Ord. No. SRO-402-2012, § 5-53, 5-30-2012)

Sec. 5-63. Bond.

Before entering upon his or her duties, the receiver, if the Community court so requires, shall file a bond to be approved by the Community court. The bond shall be in the amount fixed by the order of appointment and conditioned that the receiver shall faithfully discharge his or her duties and obey orders of the Community court. The receiver shall make an oath to the same effect, which oath shall be endorsed on the bond. The clerk of the Community court shall thereupon deliver to the receiver a certificate of his or her appointment. The certificate shall contain a description of the property involved in the action.
(Code 1981, § 5-54; Code 2012, § 5-54; Ord. No. SRO-98-85, 4-24-1985; Ord. No. SRO-402-2012, § 5-54, 5-30-2012)

Sec. 5-64. Removal or suspension of receiver; termination of receivership.

(a) *Dismissal of action.* An action wherein a receiver has been appointed shall not be dismissed except by order of the Community court.

(b) *Termination of receivership.* A receivership may be terminated upon motion served with at least ten days notice upon all parties who have appeared in the proceedings. In the notice of hearing, the Community court shall require that a final account and report be filed and served upon all parties served with the notice. The final account and report shall include an audit of the books and records of receivership. An opportunity for written objections to said account shall be provided. In the termination proceedings the court shall take such evidence as is appropriate and shall make such order as is just concerning its termination, including all necessary orders in regard to the fees and costs of the receivership.

(c) *Suspension; removal of receiver.* The Community court may at any time suspend a receiver and may, upon notice, remove a receiver and appoint another.
(Code 1981, § 5-55; Code 2012, § 5-55; Ord. No. SRO-98-85, 4-24-1985; Ord. No. SRO-402-2012, § 5-55, 5-30-2012)

Secs. 5-65—5-90. Reserved.

ARTICLE IV. RULES OF CRIMINAL PROCEDURE

DIVISION 1. SCOPE, PURPOSE AND CONSTRUCTION

Rule 1. Scope.

These rules govern the procedure in all criminal proceedings in the Community court. These rules shall be known as the Salt River Pima-Maricopa Indian Community Rules of Criminal Procedure (SR-RCP).
(Code 2012, § 5-31(rule 1); Ord. No. SRO-395-2012, § 5-31(rule 1), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 1), 5-30-2012)

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.
(Code 2012, § 5-31(rule 2); Ord. No. SRO-395-2012, § 5-31(rule 2), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 2), 5-30-2012)

Rule 2.1. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Advocate means a person who is authorized to practice law before the Community court and who is not a licensed attorney.

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

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.

Code means this Community 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 this Community Code of Ordinances.

Counsel has the same meaning as the term "advocate" or "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 under article II, chapter 4.5 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.
(Code 2012, § 5-31(rule 2.1); Ord. No. SRO-395-2012, § 5-31(rule 2.1), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 2.1), 5-30-2012)

Rule 2.2. Notice.

All parties, attorneys, and advocates are required to ensure that the court has current contact information for purposes of providing notice of hearings, filing deadlines, and other scheduling issues. Notice will be deemed sufficient under this chapter if provided to a party or their attorney or advocate of record through any means reasonably calculated to provide actual notice including personal service, first class mail, or through an electronic mail account on file with the court unless another rule or specific court order requires another form of notice.
(Ord. No. SRO-526-2021, 10-4-2020)

Secs. 5-91—5-120. Reserved.

DIVISION 2. 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.
(Code 2012, § 5-31(rule 3); Ord. No. SRO-395-2012, § 5-31(rule 3), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 3), 5-30-2012)

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 either physically or by electronic means to the court by the arresting officer or the officer's agent without delay.
(Code 2012, § 5-31(rule 3.1); Ord. No. SRO-395-2012, § 5-31(rule 3.1), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 3.1), 5-30-2012)

Rule 3.2. Initial appearance of an arrested person.

(a) *Time limits and purpose.* An arrested person shall be brought before a judge no later than 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) Determine whether probable cause exists to believe a criminal and/or a traffic offense has been committed in violation of this Community Code of Ordinances. If no probable cause is found, the judge shall order the release of the arrested person for the arrested offense.

(b) *Finding of probable cause.* If probable cause is found by the judge, the judge 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 judge shall direct the defendant to meet with his or her counsel within 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.

(e) *A defendant arrested on a failure to appear warrant.* If a defendant is arrested for failing to appear for a court appearance and the defendant has been previously advised of defendant's rights either at initial appearance or arraignment, the judge shall inform the defendant the reason for the arrest and may advise the defendant of the rights enumerated in subsection (a) of this rule. The judge shall also consider the factors under Rule 8, to determine whether the defendant should be detained or released with or without conditions.
(Code 2012, § 5-31(rule 3.2); Ord. No. SRO-395-2012, § 5-31(rule 3.2), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 3.2), 5-30-2012)

Rules committee comment note to subsection (a) of this rule. Although the Rule allows for the defendant's initial appearance to occur within 48 hours of arrest, the court should make best efforts to schedule the initial appearance within 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 72 hours of the person's arrest. If a complaint that bears the signature of a prosecutor is not filed within 72 hours of the person's warrantless arrest, the person shall be released immediately. If a prosecutor's office files a notice of declination of prosecution, the defendant shall be released from custody for the arrested offense.

(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 this Community Code of Ordinances 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 offenses 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 Community shall prosecute all such complaints through an authorized prosecutor, including, but not limited to a special prosecutor.
(Code 2012, § 5-31(rule 3.3); Ord. No. SRO-395-2012, § 5-31(rule 3.3), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 3.3), 5-30-2012)

Rule 4. Arrest warrant; presumption of summons.

(a) *Issuance.* A judge may issue an arrest warrant or summons upon request of the prosecutor, after a complaint has been filed, and the judge 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 or 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 offenses charged. The warrant must be signed by a Community 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 offenses 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 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 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.
(Code 2012, § 5-31(rule 4); Ord. No. SRO-395-2012, § 5-31(rule 4), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 4), 5-30-2012)

Rule 4.1. Search warrants.

Any judge of the 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 this Community Code of Ordinances, 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.
(Code 2012, § 5-31(rule 4.1); Ord. No. SRO-395-2012, § 5-31(rule 4.1), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 4.1), 5-30-2012)

Rule 5. Arraignment.

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

(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 judge shall read the complaint to the defendant in the language that the defendant understands; and

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

a. The right to remain silent.

b. The right to a trial by jury.

c. The right to confront and cross examine his or her accusers, to plead not guilty, and to call witnesses.

d. The right to have the assistance of counsel for the charges.

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 that could be imposed if the defendant were to be found guilty or plead guilty to the charges.

g. After the defendant is advised of his or her rights set forth in subsection (c)(2) of this rule, the defendant shall be asked to enter a plea to the charges. 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.

(Code 2012, § 5-31(rule 5); Ord. No. SRO-395-2012, § 5-31(rule 5), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 4.2), 5-30-2012)

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 or her entry of a not guilty plea, no later than ten days after arraignment, the court shall give notice to the defendant of a trial date.
(Code 2012, § 5-31(rule 5.1); Ord. No. SRO-395-2012, § 5-31(rule 5.1), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 5.1), 5-30-2012)

Secs. 5-121—5-149. Reserved.

DIVISION 3. RIGHTS OF PARTIES

Rule 6. Assistance of counsel.

(a) *Right to be represented by counsel.* 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 judge shall cause to be appointed counsel for the defendant.

(2) If the defendant is facing a sentence of imprisonment greater than one year for

a single offense, the judge shall cause to be appointed an attorney to represent the defendant.

(3) If the defendant is charged with an offense of domestic violence or violation of a protection order arising out of chapter 10, article VII, the judge shall cause to be appointed an attorney to represent the defendant.

(4) The right to be represented shall include the right to consult in private with counsel or the 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.

(5) 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) of this section, in open court, after the court has ascertained that he or she 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 after 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 subsection (b) of this section.

(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 within the Community courts. With the court's permission, a counsel who has not yet been authorized to practice in the Community court, may make a limited appearance on behalf of the defendant upon submission of an application. The counsel shall inform the clerk of the court and the office of the prosecutor or its designee, of all contact information including, but not limited to, mailing address, e-mail address, telephone number and facsimile number.

(e) *Duty of continuing representation.* The 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. The 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. (Code 2012, § 5-31(rule 6); Ord. No. SRO-395-2012, § 5-31(rule 6), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 6), 5-30-2012; Ord. No. SRO-541-2022, 2-23-2022, eff. 5-1-2022)

Rule 6.1. Appointment of counsel for indigent defendant (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. (Code 2012, § 5-31(rule 6.1); Ord. No. SRO-395-2012, § 5-31(rule 6.1), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 6.1), 5-30-2012)

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 months, the defendant may demand a jury trial. The defendant shall demand the jury trial in writing at least 30 days prior to a trial date or another date set by the court. If a demand is not made within the time limits set forth in this rule, 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 months for a conviction for each charged offense, defendant shall be entitled to a jury trial. If a defendant is charged with more than one offense in the complaint and the maximum sentence of imprisonment is greater than six months for a conviction for any of the charged offense in the same complaint, the defendant shall be entitled to a jury trial without a demand. Defendant may waive the right to a jury trial by submitting a written request.

(c) *Traffic offenses without imprisonment.* There shall be no right to a jury trial where a person is charged with a traffic violation when:

(1) The exclusive penalty is a fine; or

(2) 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.

(Code 2012, § 5-31(rule 7); Ord. No. SRO-395-2012, § 5-31(rule 7), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 7), 5-30-2012)

Rule 7.1. Speedy trial rights.

(a) *All defendants.* Every person against whom a complaint is filed shall be tried within 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 120 days from the date of defendant's arraignment for the offenses 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 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 60 days of the order or mandate.

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

(Code 2012, § 5-31(rule 7.1); Ord. No. SRO-395-2012, § 5-31(rule 7.1), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 7.1), 5-30-2012)

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:

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

a. Determine competency of the defendant;

b. If the defendant is incarcerated in another jurisdiction;

c. While the defendant is on absconder status;

d. Defendant's request to prepare for trial; and

e. While the plea agreement is under consideration by the court.

(2) *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.

(Code 2012, § 5-31(rule 7.2); Ord. No. SRO-395-2012, § 5-31(rule 7.2), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 7.2), 5-30-2012)

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.

(Code 2012, § 5-31(rule 7.3); Ord. No. SRO-395-2012, § 5-31(rule 7.3), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 7.3), 5-30-2012)

Rules committee note to this rule. 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.

(1) *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 judge determines that such release will not reasonably ensure the appearance of the defendant for trial.

(2) *Release on conditions.* If the court determines that a release on own recognizance will not reasonably ensure the defendant's appearance for trial or ensure the safety of the Community, the court may release defendant with conditions as follows:

a. Execution of an unsecured personal bond in an amount specified by the court;

b. Execution of a cash bond;

c. Placing the person in the custody of a designated person or organization agreeing to supervise him or her;

d. Restriction on the person's travel, association, curfew or place of residence during the period released;

e. Any other condition which the court deems reasonably necessary, including electronic monitoring.

(3) *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 knowingly violated the terms of conditions of release, the court on its own motion or at the request of the prosecutor may issue a warrant for the arrest of the defendant to determine if the defendant has violated the conditions of release. If the court finds by a preponderance of evidence that the defendant has violated the conditions of release, the court may detain the defendant pending trial.

(4) *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. The defendant shall receive credit for any presentence incarceration towards the offense of conviction.

(5) *Forfeiture of bond.*

a. *Notice and hearing.* If, the court has issued an arrest warrant for the defendant under subsection (3) of this rule, the court shall notify the person posting the bond in writing that the warrant was issued within ten days of the issuance of the warrant. The court shall also set a hearing within a reasonable time not to exceed 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.

b. *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.

c. *Order of forfeiture.* After entering an order of forfeiture, the court shall forward:

1. A copy of the forfeiture order to the defendant, the defendant's counsel, and the person posting the bond; and

2. A copy of a signed forfeiture order to the Community. The bond shall be forfeited to the Community. A forfeiture of bond under this rule does not preclude the court from setting new bond or other conditions of release.

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

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

(8) *Return of bond.*

a. *Termination of proceeding.* 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.

b. *At any time before violation of release conditions.* Upon a motion of the defendant or the Community, if the court finds that there is no further need for an appearance bond, it shall exonerate the appearance bond and order the return of bond to the person who posted the bond.

(Code 2012, § 5-31(rule 8); Ord. No. SRO-395-2012, § 5-31(rule 8), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 8), 5-30-2012)

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. The defendant may waive his or her right to be present pursuant to Rules 9.1 and 9.2. Code 2012, § 5-31(rule 9); Ord. No. SRO-395-2012, § 5-31(rule 9), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 9), 5-30-2012)

Rule 9.1. Defendant's waiver of his or her presence.

(a) *Proceeding in defendant's absence.* A defendant may waive his or her right to be present at a proceeding if the defendant voluntarily absents himself or herself from the proceeding. If the defendant fails to appear for a proceeding, the proceeding in the 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' 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, the 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. The defendant shall not be sentenced in his or 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 or her right to be present for the proceeding shall forfeit his or her right to be present at the proceeding. A defendant may reacquire his or 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.
(Code 2012, § 5-31(rule 9.1); Ord. No. SRO-395-2012, § 5-31(rule 9.1), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 9.1), 5-30-2012)

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 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 or her sentence that he/she is serving in another jurisdiction be credited towards any sentence imposed in his or 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 or 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.
(Code 2012, § 5-31(rule 9.2); Ord. No. SRO-395-2012, § 5-31(rule 9.2), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 9.2), 5-30-2012)

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.* 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 no later than ten days after arraignment. Each party may exercise this right once in any case.

(c) *Reassignment of a judge.* If a change of judge is granted, the case shall be immediately reassigned to another judge.

(d) *Duties of a challenged judge.* Upon filing a motion for a 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 reassigned. The challenged judge may enter an order recusing himself/herself from the case.
(Code 2012, § 5-31(rule 10); Ord. No. SRO-395-2012, § 5-31(rule 10), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 10), 5-30-2012; Ord. No. SRO-548-2022, 9-28-2022)

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 reassigned 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 a defendant, the judge shall order a new trial or proceeding.
(Code 2012, § 5-31(rule 10.1); Ord. No. SRO-395-2012, § 5-31(rule 10.1), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 10.1), 5-30-2012)

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.

(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.* 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 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. The 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 30 days.

(e) *Hearing.* Within 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, if the court:

(1) Finds by preponderance of evidence that the defendant is competent, proceedings shall continue within 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) Determines that the defendant is incompetent the court shall:

a. Release the defendant from custody for the charges if in custody;

b. Dismiss the charges with prejudice;

c. Refer the matter to Community prosecutor's office to pursue civil commitment of the defendant if the defendant poses danger to himself/herself or to the Community or if the defendant is severely disabled;

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 the 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. (Code 2012, § 5-31(rule 10.2); Ord. No. SRO-395-2012, § 5-31(rule 10.2), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 10.2), 5-30-2012)

Secs. 5-150—5-182. Reserved.

DIVISION 4. PRETRIAL MOTIONS AND DISCOVERY

Rule 11. Pleas.

(a) *Entering a plea.*

(1) *Conditional plea.* 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).

(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. The parties are entitled to reassignment of the case to a 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 or 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.

(Code 2012, § 5-31(rule 11); Ord. No. SRO-395-2012, § 5-31(rule 11), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 11), 5-30-2012; Ord. No. SRO-412-2013, 3-1-2013)

Rules committee note to subsection (d) of this rule. There may be limited circumstances where a defendant should be allowed to withdraw his or her plea of guilt or no contest to avoid manifest injustice prior to sentencing. The following are nonexhaustive examples where a defendant should be allowed to withdraw his or 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 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.

(Code 2012, § 5-31(rule 12); Ord. No. SRO-395-2012, § 5-31(rule 12), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 12), 5-30-2012)

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.* If the defendant serves a notice as set forth in subsection (a) of this rule, the prosecutor must disclose in

writing to the defendant or the defendant's counsel 15 days after receiving the defendant's notice:

(1) 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

(2) 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 subsection (a) or (b) of this rule 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 subsections (a) through (c) of this rule.

(e) *Timeliness.* The defendant shall comply with subsection (a) of this rule 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.
(Code 2012, § 5-31(rule 12.1); Ord. No. SRO-395-2012, § 5-31(rule 12.1), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 12.1), 5-30-2012)

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; procedures.*

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 subsection (a) of this rule, 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 subsection (b) of this rule 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 mental health and 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 subsection (a) or (b) of this rule.

(d) *Failure to comply.* If the defendant fails to give notice under subsection (b) of this rule or does not submit to an examination when ordered under subsection (c) of this rule, the court may preclude the defendant from offering any mental health professional's testimony or opinion evidence 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 subsection (a) or (b) of this rule, later withdrawn, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

(f) *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) The 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.

(Code 2012, § 5-31(rule 12.2); Ord. No. SRO-395-2012, § 5-31(rule 12.2), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 12.2), 5-30-2012)

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 days after receiving the defendant's notice, but no later than 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 subsection (a)(3) of this rule, or later, but must serve the request no later than 20 days before trial.

b. *Defendant's response.* Within seven 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 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 subsection (a)(4) of this rule 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 subsection (a) of this rule, later withdrawn, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

(Code 2012, § 5-31(rule 12.3); Ord. No. SRO-395-2012, § 5-31(rule 12.3), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 12.3), 5-30-2012)

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 the offenses are:

(1) Of similar or the same character;

(2) Based upon the same conduct or are otherwise connected together; and/or

(3) Alleged to have been part of a common scheme.

(Code 2012, § 5-31(rule 13); Ord. No. SRO-395-2012, § 5-31(rule 13), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 13), 5-30-2012)

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 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).

(Code 2012, § 5-31(rule 14); Ord. No. SRO-395-2012, § 5-31(rule 14), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 14), 5-30-2012)

Rules committee note to subsection (b) of this rule. Under Indian Civil Rights Act, a defendant has right to confrontation. Any statements of a nontestifying 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:

(1) *Statements.*

a. *Definition.* Whenever it appears in this rule, the term "statement" means:

1. A writing signed or otherwise adopted or approved by a person;

2. A mechanical, electrical or other recording of a person's oral communications or a transcript thereof; and

3. A writing containing a verbatim record or a summary of a person's oral communications.

b. *Superseded notes.* Handwritten notes which have been substantially incorporated into a statement shall not be considered a statement.

(2) *Materials not subject to disclosure.*

a. *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.

b. *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.

(3) *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.

(4) *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.

(Code 2012, § 5-31(rule 15); Ord. No. SRO-395-2012, § 5-31(rule 15), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 15), 5-30-2012)

Rules committee note to this rule. 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 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 therefor, including all Community 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 subsection (a)(4) of this rule. 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.

(e) *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.

(Code 2012, § 5-31(rule 15.1); Ord. No. SRO-395-2012, § 5-31(rule 15.1), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 15.1), 5-30-2012)

Rules committee note to this rule. At the present time, the Community does not have the authority to utilize National Criminal Information Center (NCIC) or 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's 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 lineup;

(2) Speak for identification by witnesses;

(3) Be fingerprinted, palm-printed, footprinted or voiceprinted;

(4) Pose for photographs not involving reenactment 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 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 Rules 12.1 through 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 subsection (b) of this rule, 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 subsection (c)(3) of this section.

(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.
(Code 2012, § 5-31(rule 15.2); Ord. No. SRO-395-2012, § 5-31(rule 15.2), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 15.2), 5-30-2012)

Rule 15.3. Depositions.*

(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 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, and 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

*__Note—__Enactment of SRO-421-2013 unreserved this Rule.

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 14 days after the taking of the deposition or not less than ten 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 Rule 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.

(Code 2012, § 5-31(rule 15.3); Ord. No. SRO-395-2012, § 5-31(rule 15.3), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 15.3), 5-30-2012; Ord. No. SRO-422-2013, § 5-31(rule 15.3), 6-1-2013)

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 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.

(Code 2012, § 5-31(rule 15.4); Ord. No. SRO-395-2012, § 5-31(rule 15.4), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 15.4), 5-30-2012)

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 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 that:

(1) The disclosure would result in a risk or harm outweighing any usefulness of the disclosure to any party; and

(2) 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 nondiscoverable 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. The 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.
(Code 2012, § 5-31(rule 15.5); Ord. No. SRO-395-2012, § 5-31(rule 15.5), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 15.5), 5-30-2012)

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 and 15.2, as it becomes available and exercise due diligence in obtaining and disclosing materials that are subject to disclosure in Rules 15.1 and 15.2.
(Code 2012, § 5-31(rule 15.6); Ord. No. SRO-395-2012, § 5-31(rule 15.6), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 15.6), 5-30-2012)

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.
(Code 2012, § 5-31(rule 15.7); Ord. No. SRO-395-2012, § 5-31(rule 15.7), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 15.7), 5-30-2012)

Rules committee note to this rule. 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 sanctions would promote the interests of justice.

Rule 16. Pretrial conference.

(a) *Pretrial order.* If a pretrial conference is set in a non-jury trial, the court shall set out the pretrial conference at least 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 subsection (b) of this rule, 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 conference shall be held no less than 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.

(e) *Additional pretrial conference.* The court may set additional pretrial conferences either on its own or upon the request of either party.
(Code 2012, § 5-31(rule 16); Ord. No. SRO-395-2012, § 5-31(rule 16), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 16), 5-30-2012)

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 pretrial suppression hearing and at trial, the defendant may be subject to cross examination at trial regarding defendant's previous testimony given at the pretrial 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.
(Code 2012, § 5-31(rule 16.1); Ord. No. SRO-395-2012, § 5-31(rule 16.1), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 16.1), 5-30-2012)

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 or waiver of jury trial demand under this rule shall be made in writing or in open court on the record.
(Code 2012, § 5-31(rule 16.2); Ord. No. SRO-395-2012, § 5-31(rule 16.2), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 16.2), 5-30-2012)

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 charges being held for the dismissed charge and any appearance bond for the dismissed charges shall be exonerated.
(Code 2012, § 5-31(rule 16.13); Ord. No. SRO-395-2012, § 5-31(rule 16.3), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 16.3), 5-30-2012)

Secs. 5-183—5-210. Reserved.

DIVISION 5. TRIAL

Rule 17.1. Jury or nonjury trial.

(a) *Jury size and fees generally.* In general, a jury consists of six individuals drawn from the jury list prepared pursuant to section 5-35(d)(1) and 5-35(d)(2). Any fees payable for jury service shall be pursuant to section 5-35(d)(7).

(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 six persons.

(c) *Nonjury 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. If the trial judge does not issue a decision at the conclusion of the trial, the trial judge shall issue a decision within five business days after the conclusion of the trial.
(Code 2012, § 5-31(rule 17.1); Ord. No. SRO-395-2012, § 5-31(rule 17.1), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 17.1), 5-30-2012; Ord. No. SRO-542-2022, 2-23-2022, eff. 5-1-2022)

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.

(Code 2012, § 5-31(rule 17.2); Ord. No. SRO-395-2012, § 5-31(rule 17.2), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 17.2), 5-30-2012)

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 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.* 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.
(Code 2012, § 5-31(rule 17.3); Ord. No. SRO-395-2012, § 5-31(rule 17.3), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 17.3), 5-30-2012)

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 subsection (d) of this section, 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.

(e) *Court may prohibit.* Notwithstanding the foregoing, for good cause, the court may prohibit or limit the submission of questions to witnesses. (Code 2012, § 5-31(rule 17.4); Ord. No. SRO-395-2012, § 5-31(rule 17.4), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 17.4), 5-30-2012)

Rule 18. 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 noncalling party shall have the opportunity to cross examine the witness. If the noncalling party has exercised its right to cross examine the witness, the party calling the witness shall have a right to conduct a redirect of the witness. The redirect 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 recross examination shall be to the redirect 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.

(10) 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). The

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.

(Code 2012, § 5-31(rule 18); Ord. No. SRO-395-2012, § 5-31(rule 18), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 18), 5-30-2012)

Rule 18.1. Exclusion of witnesses and public.

(a) *Witnesses.* Upon motion of either party or on its own motion, the court shall exclude the witnesses(es) from the courtroom during the opening statements and the testimony of other witnesses. The court shall further direct the witnesses(es) not to discuss the case with any other witnesses until all of the witnesses(es) have testified. Once a witness has testified on direct examination and has been made available to all parties for cross examination, the witness shall be allowed to remain in the courtroom unless the court finds that the presence of the witness would be prejudicial to a fair trial.

(b) *Public.* All proceedings shall be open to the public unless the court finds upon a motion by the defendant, the open proceeding would jeopardize the defendant's right to a fair trial by an impartial jury. If the proceeding is closed to the public, a complete record shall be kept of the closed proceeding and made available following the completion of the case.

(c) *Testimony of a child witness or witness with special needs.* At the request of the prosecutor, the defendant, or the guardian ad litem, if any, the court may take protective steps to protect the child witness during testimony. The protective measures include the use of closed circuit television or other such similar recording device for the purposes of interviewing or court testimony when appropriate, and to have an advocate remain with the child prior to and during any recording sessions. The use of closed circuit television or other such similar recording device is appropriate when the trial court, after hearing evidence, determines this procedure is necessary to protect the particular child witness' welfare; and specifically finds the child would be traumatized, not by the courtroom generally, but by the defendant's presence and finds that the emotional distress suffered by the child in the defendant's presence is more than de minimus.

(d) *Investigator.* If the court orders the exclusion of the witnesses, the court may not exclude the investigator for the defendant or the prosecutor.

(e) *Victim.* If a person is designated as a victim of a crime, the victim shall be allowed to be present in the courtroom for the entire proceeding.

(Code 2012, § 5-31(rule 18.1); Ord. No. SRO-395-2012, § 5-31(rule 18.1), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 18.1), 5-30-2012)

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.

(Code 2012, § 5-31(rule 18.2); Ord. No. SRO-395-2012, § 5-31(rule 18.2), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 18.2), 5-30-2012)

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.

(Code 2012, § 5-31(rule 19); Ord. No. SRO-395-2012, § 5-31(rule 19), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 19), 5-30-2012)

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.
(Code 2012, § 5-31(rule 20.1); Ord. No. SRO-395-2012, § 5-31(rule 20.1), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 20.1), 5-30-2012)

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.
(Code 2012, § 5-31(rule 20.2); Ord. No. SRO-395-2012, § 5-31(rule 20.2), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 20.2), 5-30-2012)

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, witnesses(es) or to view any evidence that was not presented during trial.
(Code 2012, § 5-31(rule 21.1); Ord. No. SRO-395-2012, § 5-31(rule 21.1), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 21.1), 5-30-2012)

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.

(Code 2012, § 5-31(rule 21.2); Ord. No. SRO-395-2012, § 5-31(rule 21.2), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 21.2), 5-30-2012)

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.
(Code 2012, § 5-31(rule 21.3); Ord. No. SRO-395-2012, § 5-31(rule 21.3), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 21.3), 5-30-2012)

Rule 21.4. Assisting jurors 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 judge may direct that further proceedings occur as appropriate.
(Code 2012, § 5-31(rule 21.4); Ord. No. SRO-395-2012, § 5-31(rule 21.4), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 21.4), 5-30-2012)

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.
(Code 2012, § 5-31(rule 21.5); Ord. No. SRO-395-2012, § 5-31(rule 21.5), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 21.5), 5-30-2012)

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. The verdict must be unanimous.
(Code 2012, § 5-31(rule 22.1); Ord. No. SRO-395-2012, § 5-31(rule 22.1), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 22.1), 5-30-2012)

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 himself/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.*
(Code 2012, § 5-31(rule 22.2); Ord. No. SRO-395-2012, § 5-31(rule 22.2), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 22.2), 5-30-2012)

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.
(Code 2012, § 5-31(rule 22.3); Ord. No. SRO-395-2012, § 5-31(rule 22.3), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 22.3), 5-30-2012)

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.
(Code 2012, § 5-31(rule 22.4); Ord. No. SRO-395-2012, § 5-31(rule 22.4), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 22.4), 5-30-2012)

---

*__Note—__At the present time, this Code does not contain any offenses that distinguish the severity of the offense by use of different degrees. This provision should be implemented if this Code changes in the future to distinguish the severity of an offense by use of different degrees.

†__Note—__ At the present time, attempt to commit a crime is not a lesser included offense. If this Code is amended to include attempt as a lesser included crime, this rule should be implemented.

Secs. 5-211—5-246. Reserved.

DIVISION 6. POST-TRIAL PROCEEDINGS AND 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 or her vote in any way;

e. Becoming intoxicated during the course of the trial or deliberations;

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;

(6) The defendant did not receive a fair trial;

(7) If the defendant was tried in absentia, the defendant establishes by preponderance of evidence that the defendant's absence was not voluntary or was through no fault of the defendant.

(c) *Time to file based upon newly discovered evidence.* Any motion for a new trial grounded on newly discovered evidence must be filed within one 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 Community court.

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

(Code 2012, § 5-31(rule 23); Ord. No. SRO-395-2012, § 5-31(rule 23), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 23.1), 5-30-2012)

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.

(Code 2012, § 5-31(rule 24.1); Ord. No. SRO-395-2012, § 5-31(rule 24.1), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 24.1), 5-30-2012)

Rule 24.2. Motion to modify or correct sentence.

The court may correct any unlawful sentence or one imposed in unlawful manner within 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 30 days to file objections to correction of any clerical errors or mistakes after receiving notice.

(Code 2012, § 5-31(rule 24.2); Ord. No. SRO-395-2012, § 5-31(rule 24.2), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 24.2), 5-30-2012)

Rule 25. Sealed proceedings and records.

(a) *Public access.* To ensure the public's 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 Community and the parties in protecting the court's files from public review.

(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 record.* 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.

(Code 2012, § 5-31(rule 25); Ord. No. SRO-395-2012, § 5-31(rule 25), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 25), 5-30-2012)

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.

(Code 2012, § 5-31(rule 26.1); Ord. No. SRO-395-2012, § 5-31(rule 26.1), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 26.1), 5-30-2012)

Rule 26.2. Time for 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 make such determination. One or more of the following sources may be considered:

(1) Statements made by the defendant;

(2) Police reports; and

(3) Other satisfactory information.

(Code 2012, § 5-31(rule 26.2); Ord. No. SRO-395-2012, § 5-31(rule 26.2), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 26.2), 5-30-2012)

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 days after determination of guilt except in cases where a presentence report is required by this Community Code of Ordinances. The date may be extended for good cause.

(b) *Extension of time.* If a presentencing hearing is requested under Rule 26.6, or if good cause is shown, the trial court may reset the date of sentencing within 60 days after the determination of guilt.

(Code 2012, § 5-31(rule 26.3); Ord. No. SRO-395-2012, § 5-31(rule 26.3), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 26.3), 5-30-2012)

Rule 26.4. Presentence report.

(a) *When prepared.* A presentence report shall be prepared in all cases mandated by this Community Code of Ordinances. The court may require a presentence report in all cases in which it has discretion over the penalty to be imposed. A presentence 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 presentence report is ordered, the sentencing date shall not be set earlier than 35 days after determination of guilt.

(b) *When due.* Except when a request under Rule 26.3(a), has been granted, the presentence report shall be delivered to the sentencing judge and to parties at least ten calendar days before the date set for sentencing.
(Code 2012, § 5-31(rule 26.4); Ord. No. SRO-395-2012, § 5-31(rule 26.4), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 26.4), 5-30-2012)

Rule 26.5. Contents of the presentence report.

(a) *In general.* If ordered, the probation officer must conduct a presentence 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 presentence 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) *Presentence report.* The presentence 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 nonargumentative 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 nonincarceration programs and resources available to the defendant;

(3) When the law provides for restitution, information sufficient for a restitution order; any other information that the court requires.

(e) *Exclusions.* The presentence report must exclude the following:

(1) Any diagnoses that, if disclosed, might seriously disrupt a rehabilitation program;

(2) Any sources of information obtained upon a promise of confidentiality; and

(3) Any other information that, if disclosed, might result in physical or other harm to the defendant or others.

(f) *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 presentence report. If a victim is a juvenile, the probation officer shall comply with the provisions of section 11-255.

(g) *Disclosing the report and recommendation.*

(1) *Time to disclose.* Unless the defendant has consented in writing, the probation officer must not submit a presentence report to the court or disclose its contents to anyone until the defendant has pleaded guilty or no contest or has been found guilty.

(2) *Sentence recommendation.* If the probation officer makes a sentencing recommen-

dation to the court, the sentencing recommendation shall be disclosed to the parties.
(Code 2012, § 5-31(rule 26.5); Ord. No. SRO-395-2012, § 5-31(rule 26.5), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 26.5), 5-30-2012)

Rules committee note to subsection (d)(1)(A) of this rule. 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 presentencing 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 presentencing hearing at any time prior to sentencing to consider any mitigating or aggravating information.

(b) *Nature, time and purpose of the presentencing hearing.* A presentencing 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 presentence, diagnostic or mental health reports, the hearing shall be held in open court and a complete record of the proceedings made.
(Code 2012, § 5-31(rule 26.6); Ord. No. SRO-395-2012, § 5-31(rule 26.6), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 26.6), 5-30-2012)

Rule 26.7. Notice of objections; special duty of the prosecutor; corrections to presentence report.

(a) *Notice of objections.* Prior to sentencing or presentence hearing, each party shall notify the court and all other parties of any objection it has to the contents of any presentence 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 presentence report with specific instructions and directions.

(3) Directing a new presentence report to be prepared by a different probation officer.

(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 calendar days of the court's order. Parties shall have three calendar days to file any objections to the new, excised, corrected, or amended presentence report.
(Code 2012, § 5-31(rule 26.7); Ord. No. SRO-395-2012, § 5-31(rule 26.7), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 26.7), 5-30-2012)

Rule 26.8. Presence of the defendant.

The defendant has a right to be present at the presentence hearing and shall be present at sentencing unless a defendant has requested a resolution of his or her case under Rule 9.2.
(Code 2012, § 5-31(rule 26.8); Ord. No. SRO-395-2012, § 5-31(rule 26.8), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 26.8), 5-30-2012)

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 presentence incarceration time that should be credited towards the sentence imposed;

(5) Direct the clerk of court to send to the Community department of corrections or probation office the sentencing order; and

(6) Issue a written judgment within three calendar days of sentencing.

(c) *Sentencing policy.* The court should impose a sentence consistent with the policy set forth in chapter 8.

(Code 2012, § 5-31(rule 26.9); Ord. No. SRO-395-2012, § 5-31(rule 26.9), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 26.9), 5-30-2012)

Rule 26.10. Duty of the court after pronouncing sentence.

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

(1) *Appeal rights.* Inform the defendant of his or her right to appeal from the judgment, sentence or both within the time limits established in this Community Code of Ordinances after 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.

(2) *Right to assistance of counsel.*

a. *Own expense.* 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.

b. *Appointed counsel.* 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.*

(Code 2012, § 5-31(rule 26.10); Ord. No. SRO-395-2012, § 5-31(rule 26.10), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 26.10), 5-30-2012)

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

*__Note—__Enactment of SRO-418-2013 unreserved subsection (2)b of this rule.

payments shall, within five days, notify the prosecutor and the Community 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 days of the failure to make payments.

(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.

(Code 2012, § 5-31(rule 26.11); Ord. No. SRO-395-2012, § 5-31(rule 26.11), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 26.11), 5-30-2012)

Rule 26.12. Resentencing.

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.

(Code 2012, § 5-31(rule 26.12); Ord. No. SRO-395-2012, § 5-31(rule 26.12), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 26.12), 5-30-2012)

Rule 26.13. 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.

(Code 2012, § 5-31(rule 26.13); Ord. No. SRO-395-2012, § 5-31(rule 26.13), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 26.13), 5-30-2012)

Secs. 5-247—5-289. Reserved.

DIVISION 7. PROBATION AND 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 are 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) 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) The length of probation may be for a period of time that exceeds the possible time for incarceration. The length of the 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 and conditions.*

(1) Any person sentenced to incarceration by the Community court who is eligible for parole, under chapter 8, may petition the court for parole by filing a request for parole with the clerk of the court.

(2) A judge of the 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 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 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.

(4) Parole shall not be available to offenders whose charged offense requires mandatory incarceration under this Community Code of Ordinances. 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 each of the sentences that was imposed and the sentence imposed was not mandatory under this Community Code of Ordinances.

(Code 2012, § 5-31(rule 27.1); Ord. No. SRO-395-2012, § 5-31(rule 27.1), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 27.1), 5-30-2012)

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 the 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.

(Code 2012, § 5-31(rule 27.2); Ord. No. SRO-395-2012, § 5-31(rule 27.2), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 27.2), 5-30-2012)

Rule 27.3. Early termination of probation and 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.

(Code 2012, § 5-31(rule 27.3); Ord. No. SRO-395-2012, § 5-31(rule 27.3), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 27.3), 5-30-2012)

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.
(Code 2012, § 5-31(rule 27.4); Ord. No. SRO-395-2012, § 5-31(rule 27.4), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 27.4), 5-30-2012)

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 shall not automatically stay the term of probation. However, upon a request by the Community, the judge may stay the term of probation when the petition to revoke probation has been filed.

(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.
(Code 2012, § 5-31(rule 27.5); Ord. No. SRO-395-2012, § 5-31(rule 27.5), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 27.5), 5-30-2012)

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 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.
(Code 2012, § 5-31(rule 27.6); Ord. No. SRO-395-2012, § 5-31(rule 27.6), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 27.6), 5-30-2012)

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 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 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 tes-

tify. 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 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.

(3) 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 the Community by the probationer after being placed on probation by the court which placed the 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.

(d) *Record.* A complete record of the probation violation arraignment, probation violation hearing and disposition shall be made.

(Code 2012, § 5-31(rule 27.7); Ord. No. SRO-395-2012, § 5-31(rule 27.7), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 27.7), 5-30-2012)

Rule 27.8. Admissions by the probationer.

(a) 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:

(1) The nature of the violation of probation to which an admission is offered.

(2) The right to counsel if he or she is not represented by counsel.

(3) The right to cross examine the witnesses who testified against him or her.

(4) The right to present witnesses in his or her behalf and to have the witnesses summoned into court.

(5) The right to be presumed innocent.

(6) 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.

(7) 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.

(b) 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.

(Code 2012, § 5-31(rule 27.8); Ord. No. SRO-395-2012, § 5-31(rule 27.8), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 27.8), 5-30-2012)

Rule 27.9. Revocation of parole.

The same procedures as set forth in Rules 27.5 through 27.8, shall apply to parole revocation procedures except:

(1) The parolee shall not be eligible for release pending the disposition;

(2) If the parolee has been found to have violated the conditions of parole, the parolee shall serve out the remainder of the original sentence.

(Code 2012, § 5-31(rule 27.9); Ord. No. SRO-395-2012, § 5-31(rule 27.9), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 27.9), 5-30-2012)

Rule 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 14 days and the proceedings shall be commenced pursuant to Rule 27.7. Once the court finds the probationer has rejected probation, the probationer shall be ordered to serve the entire suspended sentence immediately.

(Code 2012, § 5-31(rule 27.10); Ord. No. SRO-395-2012, § 5-31(rule 27.10), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 27.10), 5-30-2012)

Secs. 5-290—5-316. Reserved.

DIVISION 8. 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(es) of the witness(es). The party must submit the request for subpoena at least 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 15 days from the original setting, the party's original submission shall satisfy this provision.

(1) *Issuance.* The clerk of the 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 Community 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 days before trial, the party requesting the subpoena shall be notified of the nonservice.

(3) *Failure to obey subpoenas.* Failure to obey a properly served subpoena shall be deemed an offense and shall be punishable under section 6-42.

(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 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 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 or herself available on a given date to appear at a specified place on 30 minutes' notice, if he or she 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 timeframe.

(Code 2012, § 5-31(rule 29.1); Ord. No. SRO-395-2012, § 5-31(rule 29.1), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 29.1), 5-30-2012)

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.
(Code 2012, § 5-31(rule 29.2); Ord. No. SRO-395-2012, § 5-31(rule 29.2), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 29.2), 5-30-2012)

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 24 hours.
(Code 2012, § 5-31(rule 29.3); Ord. No. SRO-395-2012, § 5-31(rule 29.3), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 29.3), 5-30-2012)

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. The 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.
(Code 2012, § 5-31(rule 29.4); Ord. No. SRO-395-2012, § 5-31(rule 29.4), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 29.4), 5-30-2012)

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 section 6-42. 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.
(Code 2012, § 5-31(rule 29.5); Ord. No. SRO-395-2012, § 5-31(rule 29.5), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 29.5), 5-30-2012)

Secs. 5-317—5-345. Reserved.

DIVISION 9. DEFERRED PROSECUTION AND SENTENCE

Rule 30.1. Application for suspension of prosecution.

(a) *Deferred prosecution.* Whenever after filing of the complaint, but prior to a 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 Rule 7.2, shall be excluded during the period of deferred prosecution.

(b) *Deferred sentencing.* Whenever after entry of a 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.
(Code 2012, § 5-31(rule 30.1); Ord. No. SRO-395-2012, § 5-31(rule 30.1), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 30.1), 5-30-2012)

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 days of the entry of the order.
(Code 2012, § 5-31(rule 30.2); Ord. No. SRO-395-2012, § 5-31(rule 30.2), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 30.2), 5-30-2012)

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 deferred prosecution program, the court shall dismiss the charges with prejudice, after giving notice to the prosecutor. If the defendant satisfactorily completes the deferred sentencing program, the court shall vacate the finding of guilt and dismiss the case with prejudice.
(Code 2012, § 5-31(rule 30.3); Ord. No. SRO-395-2012, § 5-31(rule 30.3), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 30.3), 5-30-2012)

Secs. 5-346—5-374. Reserved.

DIVISION 10. MOTIONS AND TIME COMPUTATIONS

Rule 31.1. Motions.

(a) *Form and content.* All motions shall be on 8.5-inch by 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 five 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 eight pages, exclusive of attachments.
(Code 2012, § 5-31(rule 31.1); Ord. No. SRO-395-2012, § 5-31(rule 31.1), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 31.1), 5-30-2012)

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.
(Code 2012, § 5-31(rule 31.2); Ord. No. SRO-395-2012, § 5-31(rule 31.2), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 31.2), 5-30-2012)

Rule 31.3. Requests to be in writing.

All requests for oral arguments or an evidentiary hearing shall be in writing, served upon the opposing party and filed with the clerk.
(Code 2012, § 5-31(rule 31.3); Ord. No. SRO-395-2012, § 5-31(rule 31.3), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 31.3), 5-30-2012)

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 serviceable address on file with the court.
(Code 2012, § 5-31(rule 31.4); Ord. No. SRO-395-2012, § 5-31(rule 31.4), 6-1-2012; Ord. No. SRO-402-2012, § 5-31(rule 31.4), 5-30-2012)

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 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 calendar days shall be added to the prescribed period.
(Code 2012, § 5-31; Ord. No. SRO-395-2012, § 5-31, 6-1-2012; Ord. No. SRO-402-2012, § 5-31, 5-30-2012)

Sec. 5-375. Forms.

Waiver of Counsel

Salt River Pima-Maricopa Indian Community Case # _____
-vs-

_____
Defendant
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

Waiver of Jury Trial

Salt River Pima-Maricopa Indian Community Case # _____
-vs-

_____
Defendant

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 six members of the Community whose decision must be unanimous.

I understand that once 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

(Code 2012, app.; Ord. No. SRO-395-2012, app., 6-1-2012; Ord. No. SRO-402-2012, app., 5-30-2012)

Secs. 5-376—5-433. Reserved.

ARTICLE V. RULES OF CIVIL APPELLATE PROCEDURE

Rule 1. Scope of rule.

These rules govern the procedure in appeal of all civil cases adjudicated by Community court and extraordinary writs in the Community court of appeals. These rules shall be known as Salt River Pima-Maricopa Indian Community Rules of Civil Appellate Procedure (SR-CAP) and shall be liberally construed to promote substantial justice and fairness to parties.
(Code 1981, § 4-32(rule 1); Code 2012, § 4-32(rule 1); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 1), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 1), 3-1-2013)

Rule 1.1. Definitions.

The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Advocate means a person who is authorized to practice law in the Community court and who is not a licensed attorney.

Appellant or *petitioner* means the party seeking the appeal.

Appellate clerk means the clerk of the court of appeals or another person, in the absence of clerk of the court of appeals, who has been designated as the person responsible for docketing and maintaining the records of the court of appeals.

Appellee or *respondent* means the party responding to the appeal.

Attorney means a person who meets the following criteria:

(1) Must be a graduate of a law school;

(2) Licensed to practice law in any state of the United States; and

(3) Has been authorized to practice law in the Community court.

Civil cases mean where a party involved in the case did not face any criminal sanctions as a result of adjudication by Community court.

Code means this Community Code of Ordinances of the Community.

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

Counsel has the same meaning as the term "advocate" or "attorney."

Court administrator means the person responsible for duties under section 4-2.

Court of appeals or *court* means the appellate division of the Community court as defined in this Community Code of Ordinances.

Decision means the disposition by order, opinion or memorandum by the court of appeals.

Juvenile, minor or *child* means a person who was under 18 years old at the time of the initiation of the action in trial court and who was subject to the jurisdiction of the trial court.

Personal administrator means a person who has been appointed by the court to manage the legal affairs of another because of incapacity or death. A personal representative manages and dispenses the assets of an estate according to the law.

Trial court means the Community court that had original jurisdiction to hear the case.

(Code 1981, § 4-32(rule 1.1); Code 2012, § 4-32(rule 1.1); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 1.1), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 1.1), 3-1-2013)

Rule 2. Parties permitted to appeal.

(a) *Final case-dispositive orders and judgments in civil cases.* Any party aggrieved by the verdict or final judgment in a civil action may bring an appeal.

(b) *Special action.* To avoid piecemeal litigation, only final orders and judgments should be appealable. However, a nonfinal order or judgment may be appealed through a special action if the nonfinal order or judgment meets the following criteria:

(1) The order must conclusively determine the disputed question;

(2) Resolve an important issue completely separate from the merits of the action; and

(3) The party will not have issue reviewable on appeal after final judgment.

(c) *Examples.* Some examples of nonfinal orders that may be appealed through a special action are:

(1) A contempt finding for violation of trial court's order compelling disclosure of privileged or confidential information;

(2) An order granting, denying, or modifying of injunctive relief;

(3) A temporary child custody orders; or

(4) An order forfeiting or exonerating bond in criminal cases.

(Code 1981, § 4-32(rule 2); Code 2012, § 4-32(rule 2); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 2), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 2), 3-1-2013)

Rule 3. Time for filing notice of appeal and consolidation of appeals.

(a) *Time for filing.* The party appealing the adverse ruling or judgment shall have 14 calendar days from entry of adverse ruling to file a notice of appeal with the trial court. If the trial court announces its ruling orally and states that a written order or judgment will issue, but does not issue a written order or judgment within five business days, the time for filing the notice of appeal shall run from the fifth day following the oral pronouncement of the trial court's order or judgment. If the trial court does not indicate at the time of oral pronouncement that a written order or judgment will issue, the time period for filing the appeal will run from the date of the oral pronouncement.

(b) *Dismissal of late appeals.* Failure of a party to timely file the notice of appeal shall result in a dismissal of the appeal.

(c) *Extension of time to file appeal.* Upon the party's motion, the trial court may extend the time to file an appeal by an additional 14 calendar days.

(d) *Consolidation of appeals.* Appeals may be consolidated by order of the court of appeals upon its own motion, or upon motion of a party, or by stipulation of the parties to the several appeals.
(Code 1981, § 4-32(rule 3); Code 2012, § 4-32(rule 3); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 3), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 3), 3-1-2013)

Rule 4. Form and contents of the notice of appeal.

(a) *Filing the notice of appeal.* An appeal shall be taken by filing a notice of appeal with the clerk of the trial court within the time limitations set forth in Rule 3 along with a filing fee of $50.00. A notice of cross-appeal shall be filed within five business days after service of the notice of the appeal along with a filing fee of $50.00. If the Community or an agency of the Community is the appellant, cross-appellant, or petitioner, filing fee will not be required.

(b) *Contents of the notice of appeal.* The Notice of appeal shall identify the order or judgment appealed from and shall be signed by the appellant, or if represented by counsel, the appellant's counsel. The caption shall be the same as the trial court caption, including the case number, except the party filing the appeal shall be designated as the appellant or as petitioner.

(c) *Additional information required.* The notice of appeal filed by the appellant shall contain the name, telephone number, email address, and physical and mailing addresses, if known, of the appellant, the appellant's counsel, the appellee, and appellee's counsel. Each party shall be responsible for keeping the court of appeals informed of current addresses, e-mail address, and telephone number. Failure to comply with this subsection shall not be grounds for dismissal, but the party shall comply with the requirements of this subsection within five business days of receiving notice from the appellate clerk regarding any deficiency.

(d) *Service of notice of appeal.* After receiving a notice of appeal, the clerk of the trial court shall file stamp the notice of appeal and forward a file stamped copy to the appellate clerk and appellee or respondent. After receiving a file stamped copy from the clerk of the trial court, the appellate clerk shall assign an appellate docket number.

(e) *Special considerations for appeals involving minors.* Any appeal taken from the order or judgment involving minors shall be filed under seal by the appellate clerk. All opinions, decisions, or orders of the court of appeals shall not identify the minor by the minor's full name and the court of appeals should ordinarily identify the minor by initials of first and last name only.
(Code 1981, § 4-32(rule 4); Code 2012, § 4-32(rule 4); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 4), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 4), 3-1-2013)

Rule 5. Responsibility of the parties; transcripts.

The appellant shall be responsible for arranging the preparation of the transcript of the proceedings and designating the record with the trial

court clerk. If the appellant only orders partial transcripts of the proceedings, the appellant must notify the opposing party of its intention to order partial transcripts. The opposing party then shall have five business days from receipt of the notice to request the additional transcripts. The party requesting the transcripts shall be responsible for the costs of the preparation of the transcripts. Any transcripts shall be prepared by a transcriptionist who has been approved by the Community court. The clerk of the Community court shall maintain a list of transcriptionists who have been approved by the Community court. In lieu of transcripts, the appellant may request that the entire recording of the trial be designated as part of the trial record.
(Code 1981, § 4-32(rule 5); Code 2012, § 4-32(rule 5); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 5), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 5), 3-1-2013)

Rule 6. Record on appeal.

(a) *Composition.* The record on appeal as prepared by the trial court clerk shall include the following:

(1) A certified copy of the transcripts or the entire recording of the trial court proceedings;

(2) All documents, papers, books and photographs introduced into evidence;

(3) All pleadings and documents in the trial court file; and

(4) Minute entries.

The clerk of the trial court shall also prepare an index of the record and make the index part of the record. The parties may request by stipulation deletion of papers, documents or photographs that are deemed unnecessary for the appeal.

(b) *Unavailability of recording of proceedings.* If the recording of the proceeding is unavailable, the clerk of the trial court shall immediately serve on the parties and the appellate clerk the unavailability of the recordings. Within ten business days of the receipt of such notice, the appellant may prepare a statement of the evidence or proceedings from the best available means which shall be filed with the trial judge who presided over the matter and a copy sent to the appellee's counsel or if unrepresented, to appellee. Within ten business days after service of the appellant's statement, the appellee may prepare objections and propose amendments to the appellant's statements and submit them to the trial judge for approval. If the appellant does not prepare a statement of the evidence or proceedings, the appellee may prepare his or her own statement within 21 calendar days of notice of unavailability of the recordings and submit it to the trial court for approval.

(c) *Correction or modification of the record when record is unavailable.* If a dispute arises as to what actually occurred at the trial court, parties shall request the trial court to settle any differences or disputes. The trial court shall have limited jurisdiction to resolve any disputed part of the record and shall resolve the dispute within ten calendar days after the parties have filed their statements under this rule.

(d) *Stipulated record.* In lieu of record on appeal, the parties may prepare and sign a statement of the case showing how the issue(s) presented by the appeal arose and the trial court's ruling.
(Code 1981, § 4-32(rule 6); Code 2012, § 4-32(rule 6); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 6), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 6), 3-1-2013)

Rule 7. Transmission of the record.

(a) *Time for transmission.* Within 14 calendar days after the filing of the notice of appeal, the clerk of the trial court shall transmit to the appellate clerk, a copy of the pleadings, documents, transcripts, recordings, and minute entries and the original paper and photographic exhibits of a manageable size that were filed with the Community court along with an index of the record set forth in this rule.

(b) *Extension of time limits.* The clerk of the trial court may have an additional seven calendar days for transmission of the record by giving notice to the parties and to the appellate clerk. If the clerk of the trial court needs an extension

longer than seven calendar days, the clerk of the trial court must request the extension in writing to the court of appeals.

(c) *Notice to parties.* Upon receipt of the record, the appellate clerk shall docket the date of the receipt of the record and give notice to all parties that the complete record has been filed. A copy of the record shall also be prepared for each party. Each party shall be responsible for obtaining the copy of the record from the appellate clerk.

(d) *Appeals involving minors.* If a party to the appeal is a minor or the appeal involves custody or dependency action under chapter 10 or 11, the clerk of the Community court shall transmit the record on appeal to the appellate clerk within ten calendar days of filing of the notice of appeal. No extension of time to prepare the record shall be allowed unless approved by the court of appeals.
(Code 1981, § 4-32(rule 7); Code 2012, § 4-32(rule 7); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 7), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 7), 3-1-2013)

Rule 8. Filing and service.

(a) *Service.* Copies of all papers filed by any party shall, at or before the time of filing, be served by the party on all other parties to the appeal. Service on a party represented by counsel shall be made on counsel. Service may be personal or by first class or electronic mail. Personal service includes delivery of the copy to the other party's counsel or if unrepresented, to the other party's physical address that is on record with the court of appeals. A party's obligation for service by mail is complete on mailing if the service is made by certified or electronic mail using an electronic mail address on file with the court. The parties may agree to service by means other than by mail or personal service.

(b) *Certification.* All briefs, petitions, motions, and notices presented for filing shall contain a certification of service in the form of a statement of the date and manner of service and the names of the persons served, certified by the person who made service.

(c) *Number of copies.* An original and three copies of all briefs, petitions, motions, responses, replies and notices shall be filed with the appellate clerk.
(Code 1981, § 4-32(rule 8); Code 2012, § 4-32(rule 8); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 8), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 8), 3-1-2013; Ord. No. SRO-526-2021, 10-4-2020)

Rule 9. Time computation and extension of 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, 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, when a period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and designated Community holidays shall be excluded in the computation.

(b) *Extension of time.* When an act is required or allowed to be done at or within a specified time, the court of appeals may order the period extended 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 extend the time period only if good cause exists. The court of appeals may not extend the time for filing the notice of appeal.

(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 business days shall be added to the prescribed period.
(Code 1981, § 4-32(rule 9); Code 2012, § 4-32(rule 9); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-

1980; Ord. No. SRO-402-2012, § 4-32(rule 9), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 9), 3-1-2013)

Rule 10. Motions.

(a) *Form and content.* All motions shall be on 8.5-inch by 11-inch paper and shall contain a short statement of the precise nature of the relief requested and shall be accompanied by a brief memorandum stating the specific factual grounds therefore and indicating the relevant legal points. Each party may file a written response within 15 calendar days after the moving party has complied with service under Rule 8. The moving party may file a reply within seven calendar days after the responding party has complied with service under Rule 8. The reply shall not raise any new issues and shall be directed only to matters raised in a response. If no timely response is filed, the court shall decide the motion based upon the record before the court and the opposing party gives up or loses the right to file a response.

(b) *Length limitations.* A motion including its supporting memorandum and the response, including the supporting memorandum shall not exceed 15 pages, double spaced, exclusive of attachments, and shall be prepared in a proportionally faced typeface, font size 13 or larger. The reply shall not exceed eight pages, double spaced, exclusive of attachments and shall be prepared in a proportionally faced typeface, font size 13 or larger.

(c) *Effect of motions on briefing schedule.* The filing of a motion will not automatically affect the briefing schedule as set in Rule 12 or in Rule 12.1. If a party wishes to reset the briefing schedule, the moving party should request a new briefing schedule at the time of the filing of the motion.

(d) *Notice of supplemental authority.* If after the completion of the briefing and before a decision is issued and a party becomes aware of a significant and pertinent authority, the party may advise the court of the significant and pertinent authority. The party must state why the supplemental authority is significant and pertinent.

(e) *Compliance with Rule 8.* All parties shall comply with requirements set forth in Rule 8.
(Code 1981, § 4-32(rule 10); Code 2012, § 4-32(rule 10); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 10), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 10), 3-1-2013)

Rules Committee Note: The committee had concerns that if the filing of a motion would result in an automatic resetting of the briefing schedule, some individuals may file a frivolous motion to obtain an automatic extension on the briefing schedule. The committee agreed that the court of appeals should have the final say to deny an extension of time to file the briefs if a party files a frivolous motion.

Rule 11. Motion to dismiss.

(a) *Voluntary dismissal.* If all the parties to the appeal file a stipulation requesting the dismissal of the appeal, the appeal shall be dismissed. The appellant may, prior to filing of the appellant's opening brief, move to dismiss the appeal.

(b) *Involuntary dismissal.* The court of appeals may dismiss the appeal upon its own motion or upon motion of the appellee for want of prosecution unless good cause is shown why the appeal should not be dismissed. A failure of the appellant to file a brief will result in dismissal of the appeal.

(c) *Effect of cross-appeals on dismissal of appeal.* If a cross-appeal is pending and the court dismisses the appeal, the cross-appellant may proceed with the cross-appeal. The opening brief for the cross-appellant will be due 21 calendar days from the date that appellant's opening brief was due and the response and reply briefs will conform to Rule 12.
(Code 1981, § 4-32(rule 11); Code 2012, § 4-32(rule 11); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 11), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 11), 3-1-2013)

Rule 12. Briefs.

(a) *Time for filing.* The appellant or petitioner shall have 21 calendar days to file its principal brief after the complete record is transmitted to the court of appeals. The appellee or respondent shall have 21 calendar days to file its principal

brief after the appellant's compliance with service of its principal brief under Rule 8. The appellant may file a reply brief within ten calendar days after the appellee's compliance with service of its

principal brief under Rule 8. The brief is deemed timely filed if it is received by the appellate clerk within the time limits set forth in this rule.

(b) *Form and length of the briefs.* A brief shall be on 8.5-inch by 11-inch paper and shall be stapled or bound so that the brief stays together and shall have a cover page. The front cover page shall contain:

(1) The name of the court;

(2) The assigned appellate case number and the trial court case number;

(3) The title of the case;

(4) The title of the brief (e.g., principal brief);

(5) The name, telephone number and the mailing address of the counsel representing the party or if unrepresented, the name, telephone number and the mailing address of the party.

Except by permission of the court, a principal brief may not exceed 35 pages, double spaced and be prepared in proportionately spaced typeface with a font size 13 or larger. Any reply brief may not exceed 20 pages, double spaced, and be prepared proportionately spaced typeface with a font size 13 or larger.

(c) *Contents of appellant's brief.* The appellant's brief shall include the following:

(1) A table of contents with page references;

(2) A table of authorities, alphabetically arranged with references to the pages mentioned or cited on the brief;

(3) A statement of the case, indicating briefly the basis for the appellate court's jurisdiction, the nature of the case, the course of proceedings and the disposition in the trial court;

(4) A statement of facts relevant to the issues presented for review with appropriate references to the record. The statement of facts shall not contain arguments and may be combined with the statement of the case;

(5) A statement of issue(s) presented for review. The court of appeals will consider the statement of issue(s) presented for review to contain every subsidiary issue fairly comprised;

(6) An argument which shall contain the contentions of the appellant with respect to the issues presented and the reasons with citations to the authorities consistent with section 5-1 and the parts of the record relied upon for the argument. The argument may contain a brief summary. With each issue presented for review, the proper standard of review* shall be identified with relevant authority at the outset of the discussion of the issue; and

(7) A short conclusion stating the precise remedy requested.

(d) *Contents of appellee's brief.* The appellee's brief shall contain the same contents as appellant's brief except that no statement of the case is required.

(e) *Contents of reply brief.* The reply brief shall be confined to the response to questions of law or fact raised by the appellee's brief.

(f) *No further brief.* Unless the court of appeals permits a party to file additional briefing, no further briefing shall be allowed.

(g) *Noncompliance.* The court of appeals may strike a brief which does not substantially conform to the requirements of this rule or is illegible. After striking the brief, the court may permit the party to file an amended brief in compliance with this rule and set a new briefing schedule.

(h) *Briefs involving multiple appellants or appellees.* In cases involving more than one appellant or appellee, including cases consolidated for appeal, any number of appellant or appellee may join in a single brief and the appellant or appellee may adopt by reference any part of the brief of another.

(i) *Time to file briefs where a minor is a party to appeal or subject of the appeal.* If a party to the appeal is a minor or the appeal involves custody or dependency action under chapter 10 or 11, an appellant/petitioner shall have 14 calendar days after the complete appellate record is transmitted to the court of appeals to file the principal brief.

An appellee/respondent shall 14 calendar days after the appellant's compliance with service of its principal brief under Rule 8. An appellant shall have seven calendar days after the appellee/respondent's compliance with of its principal brief under Rule 8 to file a reply brief.

(Code 1981, § 4-32(rule 12); Code 2012, § 4-32(rule 12); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 12), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 12), 3-1-2013)

Subsection (c)(6). To assist the practitioners, the Committee has drafted an outline regarding the applicable standard of review. Please see Committee Note attached as an Appendix.

Rules Committee Note: The court of appeals should give latitude to pro-per litigants in complying with Rule 12. The court should exercise its discretion and not strike a brief filed by a pro-per litigant even if the brief does not substantially comply with the requirement of Rule 12 and accept the brief if accepting the brief would promote justice and fairness.

Rule 12.1. Briefs on cross-appeals.

(a) *Applicability.* This rule applies to a case in which a cross-appeal is filed.

(b) *Designation of appellant.* The party who files a notice of appeal first is the appellant for the purposes of this rule. If notices are filed on the same day, the plaintiff in the prior proceeding is the appellant. These designations may be modified by the parties' agreement or by court order. The trial clerk shall be responsible for designating and notifying the parties of their status either as an appellant or as an appellee.

(c) *Briefs.*

(1) *Appellant's principal brief.* The appellant must file a principal brief in the appeal. That brief must comply with Rule 12(b) and (c).

(2) *Appellee's principal and response brief.* The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That appellee's brief must comply with Rule 12(b) and (c), except that the brief need not include a statement of the case or a statement of the facts unless the appellee is dissatisfied with the appellant's statement.

(3) *Appellant's response and reply brief.* The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 12(b) and (c), except that none of the following need appear unless the appellant is dissatisfied with the appellee's statement in the cross-appeal:

a. The jurisdictional statement;

b. The statement of the issues;

c. The statement of the case;

d. The statement of the facts; and

e. The applicable standard of review.

(4) *Appellee's reply brief.* The appellee may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 12(b) and (c) and must be limited to the issues presented by the cross-appeal.

(5) *No further briefs.* Unless the court permits, no further briefs may be filed in a case involving a cross-appeal.

(d) *Time to serve and file a brief.* Briefs must be served and filed as follows:

(1) The appellant's principal brief, within 21 calendar days after the record is filed;

(2) The appellee's principal and response brief, within 21 calendar days after the appellant's compliance with service of its principal brief under Rule 8;

(3) The appellant's response and reply brief, within 21 calendar days after the appellee's compliance with service of its principal and response brief under Rule 8; and

(4) The appellee's reply brief, within ten calendar days after the appellant's compliance with service of its response and reply brief under Rule 8.

(e) *Additional time limitation to file briefs where any party to the cross-appeal is a minor.* If any party to the appeal is a minor or the appeal involves custody or dependency action under chapter 10 or 11, an appellant shall have 14 calendar days after the complete appellate record is trans-

mitted to the court of appeals to file the principal brief. An appellee/respondent shall have 14 calendar days to file a principal and response brief after the appellant's compliance with service of the appellant's principal brief under Rule 8. An appellant shall have seven calendar days to file a response and reply brief after the appellee's compliance with service of appellee's principal and response brief under Rule 88. An appellee shall have seven calendar days to file a reply brief after appellant's compliance with service of appellant's response and reply brief under Rule 88.
(Code 1981, § 4-32(rule 12.1); Code 2012, § 4-32(rule 12.1); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 12.1), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 12.1), 3-1-2013)

Rule 12.2. Accelerated appeals.

At any time after filing of the appeal, but before the due date of the appellant's opening brief, the parties may file a stipulated motion to accelerate the briefing schedule.
(Code 1981, § 4-32(rule 12.2); Code 2012, § 4-32(rule 12.2); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 12.2), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 12.2), 3-1-2013)

Rule 13. Oral arguments.

(a) *Request and setting of oral arguments.* Any party may request an oral argument prior to the date that the reply brief is due. The request must be made in writing. If no request for oral arguments is made, the court of appeals may still schedule oral arguments. If the court grants a party's request for oral arguments or sets one on its own initiative, the appellate clerk shall schedule the oral arguments to occur within 30 calendar days of the completion of the briefing and notify the parties of the date and place for oral arguments at least 14 calendar days prior to the date fixed for oral arguments. The court of appeals may consider the appeal without oral arguments if the court of appeals finds that the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral arguments.

(b) *Time limitations.* Unless ordered otherwise by the court of appeals, each side may have 30 minutes for oral arguments. Arguments of multiple parties or amicus curiae for the appellant or appellee shall be allocated by the parties to conform to these limits. A party does not have use all of the time allowed. The appellant opens and concludes the argument.

(c) *Hearing of appeals in open court.* All oral arguments, except where a minor is a party to or the subject of the appeal, shall be heard in open court. A recording of the oral arguments shall be made.

(d) *Failure to appear at oral arguments.* If a party fails to appear, the court of appeals may hear arguments from the party who is present, and the case will be decided on the briefs and the argument heard. If neither party appears for oral arguments, the case will be decided on the briefs.
(Code 1981, § 4-32(rule 13); Code 2012, § 4-32(rule 13); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 13), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 13), 3-1-2013)

Rule 14. Stay of appeal.

The court of appeals on motion of the party or on its own initiative may stay an appeal while a motion for new trial is pending. If any stay is ordered, the appellate clerk shall notify all parties and the clerk of the trial court. Any proceedings in the court of appeals, including the preparation of the record, shall be stayed until further order of the court of appeals. The appellant shall have 14 calendar days to notify the appellate clerk after the trial court rules on the motion for new trial either to reinstate the appeal or to dismiss the appeal.
(Code 1981, § 4-32(rule 14); Code 2012, § 4-32(rule 14); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 14), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 14), 3-1-2013)

Rule 15. Disposition and orders.

(a) *Ancillary orders.* The court of appeals may issue such orders as needed for the effective administration of the court of appeals.

(b) *Disposition.* The court of appeals may reverse, affirm, or remand the action of the trial court and issue any necessary and appropriate orders.
(Code 1981, § 4-32(rule 15); Code 2012, § 4-32(rule 15); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 15), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 15), 3-1-2013)

Rule 16. Stays and injunctive relief.

(a) *Motion for stay.*

(1) *Initial motion in the trial court.* A party must ordinarily move first in the trial court for a stay of the judgment or order of a trial court pending appeal.

(2) *Motion in the court of appeals; conditions on relief.* A motion for stay of the judgment or order of a trial court pending appeal may be made to the court of appeals.

a. Requirements.

1. The motion must show that moving first in the trial court would be impracticable; or the trial court denied the motion or failed to afford the relief requested and state any reasons given by the trial court for its action.

2. The motion must also include the reasons for granting the relief requested and the facts relied on, originals or copies of affidavits or other sworn statements supporting facts subject to dispute, and relevant parts of the record.

b. The moving party must give reasonable notice of the motion to all parties.

c. A motion under this rule must be filed with the appellate clerk and normally will be considered by a three-justice panel of the court of appeals. In an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single justice. If a single justice decides the motion, any party may request a three-justice panel to reconsider the matter by filing the request within five business days of the decision.

d. The court may condition relief on a party's filing a bond or other appropriate security in the trial court.

(b) *Automatic stays of judgments involving monetary awards.* If a judgment is award of monetary amount only, a judgment shall be stayed upon the party filing a bond equal to the amount of the monetary award with the clerk of the trial court.
(Code 1981, § 4-32(rule 16); Code 2012, § 4-32(rule 16); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 16), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 16), 3-1-2013)

Rule 17. Certified questions.

(a) *Requirements.* The trial court may certify a question for special action in its order involving Community law to the court of appeals if it meets the following criteria:

(1) The certified question must control the outcome of the case pending before the trial court;

(2) The certified question involves a controlling question of law as to which there is substantial ground for difference of opinion;

(3) An immediate appeal from the order may materially advance the ultimate termination of the litigation; and

(4) The parties stipulate to the submission of the certified question.

(b) *Time for filing and content.* If the parties receive certification from the trial court, the parties may file a joint petition seeking special action and containing the following:

(1) The question of law to be answered;

(2) A statement of all relevant facts necessary to answer the certified question; and

(3) A copy of an order, or opinion, or parts of the record for an understanding of the matters set forth in the petition.

(c) *Compliance with Rule 8.* All parties shall comply with requirements set forth in Rule 8.

(d) *Acceptance of jurisdiction.* The court of appeals shall review the certification request and may accept jurisdiction.

(1) If jurisdiction is accepted, the court of appeals may order the parties to file additional briefs addressing the certified question.

(2) If briefing is ordered, the order shall set forth the time periods for filing briefs and may also set a date for oral arguments.

(3) If the jurisdiction is not accepted, the court of appeals should issue an order explaining why it is declining jurisdiction.

(e) *Stay of proceedings.* An appeal under this rule shall stay proceedings in the trial court.
(Code 1981, § 4-32(rule 17); Code 2012, § 4-32(rule 17); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 17), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 17), 3-1-2013)

Rule 18. Composition of justices.

A panel consisting of three justices will consider and decide the merits of any appeals, petitions, or motions. Any justice disqualified under section 4-36(b) or (c) shall not serve on the appellate panel. If a justice is disqualified, another qualified justice shall be chosen to complete the three-justice panel. The parties shall be advised of the assignment of justices by notice from the appellate clerk. A party shall have five business days after receiving notice of assigned justices to file a motion to disqualify a justice for cause.
(Code 1981, § 4-32(rule 18); Code 2012, § 4-32(rule 18); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 18), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 18), 3-1-2013)

Rule 19. Opinions and disposition.

(a) *Time limitations.* The court of appeals shall issue an opinion, memorandum or order within 30 calendar days after hearing oral arguments or completion of any supplemental briefing, whichever occurs later.

(b) *Disposition by opinion.* The court of appeals should issue an opinion when a majority of the justices determines that the disposition:

(1) Establishes, alters, modifies or clarifies a rule of law;

(2) Calls attention to a rule of law which appears to have been generally overlooked;

(3) Criticizes existing law;

(4) Involves a legal or factual issue of unique interests or substantial public importance; or

(5) If the disposition of a matter is accompanied by separate concurring or dissenting opinion of a justice.

(c) *Disposition by memorandum.* Memorandum decisions and orders shall not be used as precedent nor cited in any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

(d) *Precedent.* Only opinions shall be used as precedent.

(e) *Designation of disposition.* The disposition of the case shall contain in the caption the designation opinion, memorandum or order.

(f) *Notification to parties.* After the court of appeals issues its opinion, memorandum, or order, the appellate clerk, shall forward a copy of the decision, memorandum or order to all parties within one business day.
(Code 1981, § 4-32(rule 19); Code 2012, § 4-32(rule 19); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 19), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 19), 3-1-2013)

Rule 20. Entry of judgment.

(a) *Entry.* A judgment is entered when it is recorded in the docket. The appellate clerk must enter the judgment within 21 calendar days after receiving the court's opinion, memorandum or order if a petition for panel rehearing is not requested. If a petition for panel rehearing has been filed, the appellate clerk shall enter the judgment within five calendar days after the court of appeals has ruled on the petition for panel rehearing.

(b) *Notice to parties.* Within one business day after the judgment is entered, the appellate clerk shall serve a copy of the judgment by mail, electronic delivery, or by personal service to the parties a copy of the opinion, memorandum, order or the judgment, and the date the judgment was entered.

(Code 1981, § 4-32(rule 20); Code 2012, § 4-32(rule 20); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 20), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 20), 3-1-2013)

Rule 21. Petitions for panel rehearing.

(a) *Time to file.* Except as otherwise provided in this rule, a petition for panel rehearing may be filed within 15 calendar days after the appellate court issues its decision or memorandum by filing an original and three copies of the petition with the appellate clerk. The opposing party is not required to file an answering petition unless ordered by the court. The court should not grant a panel rehearing without first giving the opposing party an opportunity to file an answering petition.

(b) *Grounds for panel rehearing.* A petition for panel rehearing may be presented only on the following grounds:

(1) A fact or law, material to the decision, was overlooked by the panel of the court of appeals;

(2) The decision is in conflict with an express statute or controlling decision; or

(3) The court of appeals employed inappropriate procedures or considered facts outside the record on appeal.

(c) *Time limitations for decision.* Upon a majority vote of the panel, the court of appeals may grant or deny the petition for rehearing within 15 calendar days after receipt of the petition or answering petition, if any. If granted, the parties shall submit briefs as provided in Rule 12 on the issues permitted to be raised. The court of appeals may grant oral arguments.

(Code 1981, § 4-32(rule 21); Code 2012, § 4-32(rule 21); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 21), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 21), 3-1-2013)

Rule 22. Issuance of mandate.

(a) *Petition for rehearing not filed.* When no petition for rehearing is filed, the clerk of the court of appeals shall issue a mandate within seven business days of the expiration of time for filing a petition for rehearing. The mandate consists of the certified copy of the judgment and a copy of the court's opinion or memorandum.

(b) *Petition for rehearing filed.* A mandate shall not issue until the court of appeals has disposed of a petition for rehearing.

(c) *Effective date of mandate.* The mandate will be effective from the date the mandate is issued. The issuance of the mandate shall terminate the proceeding in the court of appeals.

(Code 1981, § 4-32(rule 22); Code 2012, § 4-32(rule 22); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 22), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 22), 3-1-2013)

Rule 23. Substitution of parties.

(a) *Death of a party.* If a party to an appeal dies while the appeal is pending;

(1) The personal administrator of the deceased party may be substituted in the deceased party's place, upon motion of any party.

(2) The motion shall be served upon all parties to the appeal.

(3) If the deceased party has no personal administrator, then any party may advise

the court of appeals of the death and the court of appeals will direct appropriate proceedings.

(b) *Substitution for reasons other than death.* If a substitution of a party is necessary for any reason other than death, substitution shall be made in accordance with the procedure prescribed in subsection (a)(1) of this section.

(c) *Public officers; death or separation from office.* When a public officer in his or her official capacity is a party to an appeal and ceases to hold the office while the appeal is pending, his or her successor shall be automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but failure to enter such an order shall not affect the substitution. When a public officer in his or her official capacity is a party to an appeal, he/she may be described as a party by his or her official title rather than by name, but the appellate court may require that his/her name be added.
(Code 1981, § 4-32(rule 23); Code 2012, § 4-32(rule 23); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 23), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 23), 3-1-2013)

Rule 24. Withdrawal of counsel.

A counsel who files the notice of appeal, motions, briefs, or petitions in the court of appeals is considered counsel of record until the court of appeals allows the counsel to withdraw as counsel of record.
(Code 1981, § 4-32(rule 24); Code 2012, § 4-32(rule 24); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 24), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 24), 3-1-2013)

Rule 25. Amicus curiae.

(a) *Only permitted with leave of court.* An amicus curiae brief shall be filed only with permission of the court of appeals.

(b) *Motion for leave to file.* The motion for leave to file must be accompanied by the proposed brief and state:

(1) The interest of the applicant; and

(2) The reasons why applicant's amicus curiae brief is necessary and why the matters asserted by the applicant are relevant.

(c) *Contents of brief.* An amicus brief must comply with Rule 12(b). An amicus brief does not need to comply with Rule 12(c), but must include the following:

(1) A table of contents, with page references;

(2) A table of authorities;

(3) The identity of the amicus curiae;

(4) The counsel or party who authored the brief; and

(5) A certificate of service in compliance with Rule 8.

(d) *Time to file.* An amicus curiae brief supporting a party shall be filed within seven days of the filing of the principal brief by the party being supported. If the amicus curiae brief does not support either the appellant or the appellee, the brief shall be filed within seven days of the filing of the appellee's principal brief.
(Code 1981, § 4-32(rule 25); Code 2012, § 4-32(rule 25); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 25), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 25), 3-1-2013)

Rule 26. Extraordinary writs.

(a) *Writs of mandamus and prohibition.* A party petitioning for a writ of mandamus or of prohibition shall file a petition with the appellate clerk along with the filing fee of $50.00 within the time limitations set forth in Rule 3. If the Community or an agency of the Community is the petitioner, filing fee will not be required. The filing fee shall not be required if the party has been given permission to proceed as indigent. The petition shall contain:

(1) A statement of acts necessary for an understanding of the issues presented;

(2) A statement of issues presented;

(3) A reason why the writ should be issued;

(4) A statement of the relief sought;

(5) A copy of any order, or opinion, or parts of the record which is necessary for an understanding of the matters set forth in the petition; and

(6) A certification of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service.

(b) *Designation of parties.* All parties to the proceeding in the trial court, other than the petitioner are respondents for all purposes under this rule.

(c) *Compliance with Rule 8.* The petitioner shall comply with requirements set forth in Rule 8.

(d) *Action on the petition.*

(1) If the court of appeals is of the opinion that the writ should not be granted, it shall summarily deny the petition. Otherwise, the court of appeals shall order the respondent to answer within a fixed period of time.

(2) The appellate clerk shall serve the order on all respondents. Two or more respondents may file a joint answer.

(3) The court of appeals may invite or order the trial court to address the petition or may invite an *amicus curiae* to address the petition. A trial court is not permitted to file an answer without leave of the court of appeals.

(4) The appellate clerk shall advise the parties of the date of oral argument if ordered by the court of appeals. Rule 13 shall govern the procedure for arguments and, for purposes of Rule 13, petitioner shall be substituted in as appellant and respondent shall be substituted as appellee.

(5) The appellate clerk shall send a copy of the final disposition order to the trial court.

(e) *Other extraordinary writs.* Petitions for extraordinary writs, other than those for mandamus, prohibition, or habeas corpus shall conform so far as practicable to the procedures prescribed in this rule.
(Code 1981, § 4-32(rule 26); Code 2012, § 4-32(rule 26); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 26), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 26), 3-1-2013)

Rule 27. Writ of habeas corpus.

(a) *Filing and contents.* An application for writ of habeas corpus shall be filed with the appellate clerk along with a filing fee of $25.00. If the Community or an agency of the Community is the petitioner, filing fee will not be required. The filing fee shall not be required if the party has been given permission to proceed as indigent. The petition shall state at a minimum the following:

(1) The name and location of the petitioner;

(2) The name and address of the person having custody or will have custody of the petitioner;

(3) The date of judgment or conviction and the terms and length of confinement;

(4) The criminal offenses involved, and any pleas entered;

(5) The reasons the petitioner believes he/she is being held illegally, with facts supporting each reason; and

(6) The relief sought.

(b) *Service of petition.* The petition shall be served on the prosecutor's office and the person having custody of the petitioner, who shall be the respondent. Service shall be made on the respondent on the same date the petition is filed with the appellate court clerk.

(c) *Answer; reply.* The respondent shall file an answer to the petition within 14 calendar days of the date the petition is filed with the appellate court clerk. The petitioner may file a reply to the answer within seven calendar days of service of the answer or notify the appellate court clerk that a reply will not be filed.

(d) *Application to Community court.* A party must apply to Community court for writ of habeas corpus before seeking relief from the court of appeals. If a party seeks writ of habeas corpus without first seeking relief in the Community court, the court may summarily dismiss the request for writ of habeas corpus or transfer the case to the Community court.
(Code 1981, § 4-32(rule 27); Code 2012, § 4-32(rule 27); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 27), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 27), 3-1-2013)

Rule 28. Appeal as indigent.

A party who desires to proceed on appeal as indigent shall file with the court of appeals a motion for leave so to proceed together with a sworn statement showing the party's inability to pay the fees and costs of the appeal or to give security, the party's belief that the party is entitled to redress, and a statement of the issues the party intends to present on appeal. If the court of appeals grants the request, the payment of fees or costs or the giving of security is waived. If the court of appeals denies the request, the party shall have 15 calendar days to submit necessary filing fees, costs, or security. If a party fails to submit the fees, costs, or security after being denied indigent status, the party's appeal, special action, or writ shall be dismissed by the appellate clerk.
(Code 1981, § 4-32(rule 28); Code 2012, § 4-32(rule 28); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 28), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 28), 3-1-2013)

Rule 29. Interest on civil judgments.

If a judgment for money is affirmed, whatever interest is allowed by law and ordered by the trial court shall be payable from the date the judgment was rendered in the trial court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the trial court, the judgment shall contain instructions with respect to interest.
(Code 1981, § 4-32(rule 29); Code 2012, § 4-32(rule 29); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 29), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 29), 3-1-2013)

Rule 30. Prevailing party may be entitled to costs.

The court shall have the discretion to award costs on appeal and in original proceedings to the successful party against the other party; provided, however, that costs awarded to appellant in special proceedings to review the trial court's rulings, orders, or judgments will ordinarily be assessed against the real party in interest, namely, the party interested in upholding the trial court's action, rather than against the Community or the Community court.
(Code 1981, § 4-32(rule 30); Code 2012, § 4-32(rule 30); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 30), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 30), 3-1-2013)

Rule 31. Sealed proceedings and records.

(a) *Public access.* Except for appeals involving minors, the public should have access to the court files to ensure the public's perception of the integrity and fairness of the courts. The presumption may be overcome when a compelling reason exists that the public's right of access is outweighed by the interests of the Community and the parties in protecting the court's files from public review.

(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 record.* Sealed and redacted court records shall not be accessible to the public or unauthorized court personnel without a court order. Sealed and redacted re-

cords shall be kept in a sealed envelope with notice that access is allowed only with an order of the court.

(Code 1981, § 4-32(rule 31); Code 2012, § 4-32(rule 31); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 31), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 31), 3-1-2013)

Rule 32. Suspension of rules.

Except for provisions in Rule 3(c), the court of appeals may, on its own or a party's motion, upon good cause, suspend the requirements or provisions of any of these rules in a particular case and may order proceedings in accordance with its direction.

(Code 1981, § 4-32(rule 32); Code 2012, § 4-32(rule 32); Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32(rule 32), 5-30-2012; Ord. No. SRO-411-2013, § 4-32(rule 32), 3-1-2013)

APPENDIX

Rules Committee Note to Rule 12(c)(6): The Rules require the parties to advise the court of appeals of the applicable standard of review on appeals. The following is a brief outline of standard of review and errors. This committee note is not intended to bind the court of appeals, but is a guide for parties filing an appeal with the court of appeals. A party using this outline should remember that the committee note is for reference only and the court of appeals will be the ultimate decider of the applicable standard of review and errors that will be used in the Community.

Generally, there are four standards of review: *de novo*, abuse of discretion, clearly erroneous, and substantial evidence.

The de novo review literally means to review anew or afresh. The court of appeals gives no deference to the lower court's determination and reviews the case as if the court of appeals was sitting as the trial court. Questions of statutory interpretation, jurisdiction, and questions of law are generally subject to *de novo* review.

A second standard and much more deferential to the trial court's decision is Abuse of Discretion. A trial court is given wide latitude in exercising its decision making authority. Questions involving discovery issues, sanctions for violations of discovery, exclusion of evidence/witnesses, and denial/grant of motion to continue would be reviewed for abuse of discretion. A trial court would abuse its discretion if the trial court's decision is based upon an erroneous interpretation of the law or the court makes a clearly erroneous finding of fact.

A third standard of review is clearly erroneous. The standard gives great deference to the trial court's findings of fact. It is not whether the court of appeals would have reached a different outcome if it were the finder of facts, but whether the trial court's findings are plausible in context to the entire record. To find that a trial court's findings are clearly erroneous, the court of appeals would have to be definitively and firmly convinced that the trial court made a mistake.

A fourth standard of review is substantial evidence for jury verdicts. Substantial evidence is defined as whether a reasonable person might accept as adequate to support a conclusion even if it is possible to draw a contrary conclusion from the evidence. Additionally, the court of appeals will not assess the credibility of the witnesses or weigh the evidence.

Sometimes, the applicable standard of review will be determined by its context where it involves a mixed question of law and facts. It will be a *de novo* review if the question of law dominates the review or a clearly erroneous standard if the question of fact is the predominant issue.

Even if a party had objected to the error, the court of appeals may uphold the outcome at the trial if the error is harmless. An error is harmless if it is more probable than not that the prejudice resulting from the error did not materially affect the verdict.

In addition to the harmless error, there are additional types of errors that the court of appeals may review.

Structural Error. Structural errors infect the entire trial process which undermines the integrity of the judicial proceeding. Examples of structural errors include: denial of right to counsel, trial by a biased judge, denial of public trial, denial of jury trial, and denial of right to self-representation. If a structural error occurs, the court of appeals will not conduct any prejudice analysis. Instead, there will be an automatic reversal of the conviction.

Invited Error. If a trial judge takes a certain action(s) at the request of the party, the party cannot then later claim that the trial judge erred by granting the party's request. Examples include jury instructions and evidentiary rulings. In these situations, the party would be denied relief based upon an invited error doctrine.

Fundamental Error. A fundamental error is an "error going to the foundation of the case, error that takes from the defendant a right essential to his or her defense, and error of such magnitude that the defendant could not possibly have received a fair trial." *Arizona v. Hunter*, 688 P.2d 980 (1984). The error has to be clear, egregious, and only curable by a new trial or sentence. The defendant also bears the burden of proof that the error was fundamental and that the error caused prejudice. Examples include misleading jury instructions on the burden of proof and illegal sentences. Arizona uses fundamental error analysis.

Plain Error. To obtain relief under plain error, the defendant must show that the error is plain, that affects substantial rights and the error seriously affected the fairness, integrity or public reputation of judicial proceedings. An error is plain if it is clear or obvious. The defendant also bears the burden to show that the defendant was prejudiced by the error. Additionally, the court of appeals decision to grant/deny relief is discretionary even if the court notices the plain error.

(Code 1981, § 4-32; Code 2012, § 4-32; Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-402-2012, § 4-32, 5-30-2012; Ord. No. SRO-411-2013, § 4-32(app.), 3-1-2013)

Secs. 5-434—5-465. Reserved.

ARTICLE VI. RULES OF CRIMINAL APPELLATE PROCEDURE

Rule 1. Scope of rule.

These rules govern the appeal procedure in all criminal cases and juvenile cases adjudicated under chapter 11, article VI, Juvenile Justice. These rules shall be known as the Salt River Pima-Maricopa Indian Community Criminal Rules of Appellate Procedure (SR-RAP) and shall be liberally construed to promote substantial justice and fairness to parties.
(Code 1981, § 4-33(rule 1); Code 2012, § 4-33(rule 1); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 1), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 1), 3-1-2013)

Rule 1.1. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Advocate means a person who is authorized to practice law in the Community court and who is not a licensed attorney.

Appellant or *petitioner* means the party seeking the appeal.

Appellate clerk means the clerk of the court of appeals or another person, in the absence of clerk of the court of appeals, who has been designated as the person responsible for docketing and maintaining the records of the court of appeals.

Appellee or *respondent* means the party responding to the appeal.

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 in the Community court.

Code means this Community Code of Ordinances of the Community.

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

Counsel has the same meaning as the term "advocate" or "attorney."

Court administrator means the person responsible for duties under section 4-2.

Court of appeals or *court* means the appellate division of the Community court as defined in this Community Code of Ordinances.

Decision means the disposition by order, opinion, or memorandum by the court of appeals.

Juvenile, minor or *child* means a person who was under 18 years old at the time of the initiation of the action in trial court and who was subject to the jurisdiction of the trial court.

Trial court means the Community court that had original jurisdiction to hear the case.
(Code 1981, § 4-33(rule 1.1); Code 2012, § 4-33(rule 1.1); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 1.1), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 1.1), 3-1-2013)

Rule 2. Appeal rights in criminal cases.

(a) *Final orders and judgments.*

(1) Defendants may appeal final entry of judgment, final orders, and sentence.

(2) Community may only appeal the following adverse orders or judgment:

a. A dismissal of a case opposed by the Community;

b. Any modification of a jury verdict;

c. An illegal sentence; or

d. An order granting a new trial.

(b) *Special actions.* To avoid piecemeal litigation, only final orders and judgments should be appealable. However, a nonfinal order or judgment may be appealed through a special action if the nonfinal order or judgment meets the following criteria:

(1) The order must conclusively determine the disputed question;

(2) Resolve an important issue completely separate from the merits of the case; and

(3) The party will not have the issue reviewable on appeal after final judgment.

(c) *Examples.*

(1) Some examples of nonfinal orders or judgments that may be appealed through a special action are:

a. Order of forfeiture/return of bond;

b. Denial of motion to dismiss on double jeopardy grounds;

c. Contempt finding for violation of trial court's order compelling disclosure of privileged or confidential information; or

d. Lack of jurisdiction.

(2) Community may pursue through special action:

a. Quashing an arrest or search warrant; and

b. The suppression of evidence, confession or statements.

(d) *Exclusion of speedy trial time.* The time period while the special action is pending shall be excluded from speedy trial time in Rule 7.1 rules of criminal procedure.

(Code 1981, § 4-33(rule 2); Code 2012, § 4-33(rule 2); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 2), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 2), 3-1-2013)

Rule 2.1. Appeal rights in juvenile cases.

A party aggrieved by a final order, decree, or judgment in a juvenile proceeding adjudicated under section 11-25(a)(1) may file an appeal. The juvenile or the Community, who has been adversely affected by the trial court's ruling, may appeal a grant or denial of transfer request made under section 11-25(f).

(Code 1981, § 4-33(rule 2.1); Code 2012, § 4-33(rule 2.1); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 2.1), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 2.1), 3-1-2013)

Rule 3. Time for filing notice of appeal, special action, and consolidation of appeals.

(a) *Time for filing.* The party appealing the adverse ruling or judgment shall have 14 calendar days from entry of adverse ruling to file a notice of appeal with the trial court. If the trial court announces its ruling orally and states that a written order or judgment will issue, but does not issue an order within five business days, the time for filing the notice of appeal shall run from the fifth day following the oral pronouncement of the trial court's order or judgment. If the trial court does not indicate at the time of oral pronouncement that a written order or judgment will issue, the time period for filing the appeal will run from the date of the oral pronouncement.

(b) *Dismissal of late appeals.* Failure of a party to timely file the notice of appeal shall result in a dismissal of the appeal.

(c) *Extension of time to file appeal.* Upon the party's motion, the trial court may extend the time to file an appeal by an additional 14 calendar days.

(d) *Consolidation of appeals.* Appeals may be consolidated by order of the court of appeals upon its own motion, or upon motion of a party, or by stipulation of the parties to the several appeals.

(Code 1981, § 4-33(rule 3); Code 2012, § 4-33(rule 3); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 3), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 3), 3-1-2013)

Rule 4. Form and contents of the notice of appeal.

(a) *Filing the notice of appeal.* An appeal shall be taken by filing a notice of appeal with the clerk of the trial court within the time limitations set forth in Rule 3. A notice of cross-appeal shall be filed within five business days after service of the notice of the appeal.

(b) *Contents of the notice of appeal.* The notice of appeal shall identify the order, judgment, or sentence appealed from and shall be signed by the appellant, or if represented by counsel, the appellant's counsel. The caption shall be the same as the trial court caption, including the case number, except the party filing the appeal shall be designated as the appellant or as petitioner.

(c) *Additional information required.* The notice of appeal filed by the appellant shall contain the name, telephone number, e-mail address, and physical and mailing addresses, if known, of the

appellant, the appellant's counsel, the appellee, and appellee's counsel. Each party shall be responsible for keeping the court of appeals informed of current addresses and telephone number. Failure to comply with this subsection shall not be grounds for dismissal, but the party shall comply with the requirements of this subsection within five business days of receiving notice from the appellate clerk regarding any deficiency.

(d) *Service of notice of appeal.* After receiving a notice of appeal, the clerk of the trial court shall file stamp the notice of appeal and forward a file stamped copy to the appellate clerk and appellee(s) or respondent(s). After receiving a file stamped copy from the clerk of the trial court, the appellate clerk shall assign an appellate docket number.

(e) *Special considerations for appeals involving juveniles.* Any appeal taken from the order or judgment involving juveniles shall be filed under seal by the appellate clerk. All opinions, decisions, or orders of the court of appeals shall not identify the juvenile by the juvenile's full name and the court of appeals should ordinarily identify the juvenile by initials of first and last name only.
(Code 1981, § 4-33(rule 4); Code 2012, § 4-33(rule 4); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 4), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 4), 3-1-2013)

Rule 5. Responsibility of the parties.

The appellant shall be responsible for arranging the preparation of the transcript of the proceedings and designating the record with the trial court clerk. If the appellant only orders partial transcripts of the proceedings, the appellant must notify the opposing party of its intention to order partial transcripts. The opposing party then shall have five business days from receipt of the notice to request the additional transcripts. The party requesting the transcripts shall be responsible for the costs of the preparation of the transcripts. Any transcripts shall be prepared by a transcriptionist who has been approved by the Community court. The clerk of the Community court shall maintain a list of transcriptionists who have been approved by the Community court. In lieu of transcripts, the appellant or appellee may request that the entire recording of the trial be designated as part of the trial record.
(Code 1981, § 4-33(rule 5); Code 2012, § 4-33(rule 5); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 5), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 5), 3-1-2013)

Rule 6. Record on appeal.

(a) *Composition.* The record on appeal as prepared by the trial court clerk shall include the following:

(1) A certified copy of the transcripts or the entire recording of the trial court proceedings;

(2) All documents, papers, books and photographs introduced into evidence;

(3) All pleadings and documents in the trial court file; and

(4) Minute entries.

The clerk of the trial court shall also prepare an index of the record and make the index part of the record. The parties may request by stipulation deletion of papers, documents, or photographs that are deemed unnecessary for the appeal.

(b) *Unavailability of recording of proceedings.* If the recording of the trial court proceeding is unavailable, defendant's conviction and sentence shall be vacated and new trial ordered unless the defendant consents to submission of the appeal or special action on a stipulated record. If a juvenile is a party to the appeal and the recording of the trial proceeding is unavailable, the juvenile's disposition shall be vacated and a new delinquency proceeding ordered.

(c) *Stipulated record.* In lieu of record on appeal, the parties may prepare and sign a statement of the case showing how the issue(s) presented by the appeal arose and the trial court's ruling.
(Code 1981, § 4-33(rule 6); Code 2012, § 4-33(rule 6); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-

1980; Ord. No. SRO-402-2012, § 4-33(rule 6), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 6), 3-1-2013)

Rule 7. Transmission of the record.

(a) *Time for transmission.* Within 14 calendar days after the filing of the notice of appeal, the clerk of the trial court shall transmit to the appellate clerk a copy of the pleadings, documents, transcripts, recordings, and minute entries and the original paper and photographic exhibits of a manageable size that were filed with the Community court along with an index of the record set forth in Rule 6.

(b) *Extension of time limits.* The clerk of the trial court may have an additional seven calendar days for transmission of the record by giving notice to the parties and to the appellate clerk. If the clerk of the trial court needs an extension longer than seven calendar days, the clerk of the trial court must request the extension in writing to the court of appeals.

(c) *Notice to parties.* Upon receipt of the record, the appellate clerk shall docket the date of the receipt of the record and give notice to all parties that the complete record has been filed. A copy of the record shall also be prepared for each party. Each party shall be responsible for obtaining the copy of the record from the appellate clerk.

(d) *Appeals involving juveniles.* If any party to the appeal is a juvenile, the Clerk of the Community court shall transmit the record on appeal to the appellate clerk within ten calendar days of filing of the notice of appeal. No extension of time to prepare the record shall be allowed unless approved by the court of appeals.
(Code 1981, § 4-33(rule 7); Code 2012, § 4-33(rule 7); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 7), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 7), 3-1-2013)

Rule 8. Filing and service.

(a) *Service.* Copies of all papers filed by any party shall, at or before the time of filing, be served by the party on all other parties to the appeal. Service on a party represented by counsel shall be made on counsel. Service may be personal, or by first class or electronic mail. Personal service includes delivery of the copy to the other party's counsel or if unrepresented, to the other party's physical address that is on record with the court of appeals. A party's obligation for service by mail is complete on mailing if the service is made by certified or electronic mail using an electronic mail address on file with the court. The parties may agree to service by means other than by mail or personal service.

(b) *Certification.* All briefs, petitions, motions, and notices presented for filing shall contain a certification of service in the form of a statement of the date and manner of service and the name(s) of the person(s) served, certified by the person who made service.

(c) *Number of copies.* An original and three copies of all briefs, petitions, motions, responses, replies, and notices shall be filed with the appellate clerk.
(Code 1981, § 4-33(rule 8); Code 2012, § 4-33(rule 8); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 8), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 8), 3-1-2013; Ord. No. SRO-526-2021, 10-4-2020)

Rule 9. Time computation and extension of 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, 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, when a period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and designated Community holidays shall be excluded in the computation.

(b) *Extension of time.* When an act is required or allowed to be done at or within a specified time, the court of appeals may order the period

extended 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 extend the time period only if good cause exists. The court of appeals may not extend the time for filing the notice of appeal.

(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 business days shall be added to the prescribed period.
(Code 1981, § 4-33(rule 9); Code 2012, § 4-33(rule 9); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 9), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 9), 3-1-2013)

Rule 10. Motions.

(a) *Form and content.* All motions shall be on 8.5-inch by 11-inch paper and shall contain a short statement of the precise nature of the relief requested and shall be accompanied by a brief memorandum stating the specific factual grounds thereof and indicating the relevant legal points. Each party may file a written response within 15 calendar days after the moving party has complied with service under Rule 8. The moving party may file a reply within seven calendar days after the responding party has complied with service under Rule 8. The reply shall not raise any new issues and shall be directed only to matters raised in a response. If no response is timely filed, the court shall decide the motion based upon the record before the court and the opposing party gives up or loses the right to file a response.

(b) *Length limitations.* A motion, including its supporting memorandum, and the response, including the supporting memorandum shall not exceed 15 pages, double spaced, exclusive of attachments, and shall be prepared in a proportionally faced typeface, font size 13 or larger. The reply shall not exceed eight pages, double spaced, exclusive of attachments and shall be prepared in a proportionally faced typeface, font size 13 or larger.

(c) *Effect of motions on briefing schedule.* A filing of a motion will not automatically affect the briefing schedule as set in Rule 12 or Rule 12.1. If a party wishes to reset the briefing schedule, the moving party should request a new briefing schedule at the time of the filing of the motion.

(d) *Notice of supplemental authority.* If after the completion of the briefing and before a decision is issued and a party becomes aware of a significant and pertinent authority, the party may advise the court of the significant and pertinent authority. The party must state why the supplemental authority is significant and pertinent.

(e) *Compliance with Rule 8.* All parties shall comply with requirements set forth in Rule 8.
(Code 1981, § 4-33(rule 10); Code 2012, § 4-33(rule 10); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 10), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 10), 3-1-2013)

Rules Committee Note: The Committee had concerns that if the filing of a motion would result in an automatic resetting of the briefing schedule, some individuals may file a frivolous motion to obtain an automatic extension on the briefing schedule. The Committee agreed that the court of appeals should have the final say to deny an extension of time to file the briefs if a party files a frivolous motion.

Rule 11. Motion to dismiss.

(a) *Voluntary dismissal.* If all the parties to the appeal file a stipulation requesting the dismissal of the appeal, the appeal shall be dismissed. The appellant may, prior to filing of the appellant's opening brief, move to dismiss the appeal.

(b) *Involuntary dismissal.* The court of appeals may dismiss the appeal upon its own motion or upon motion of the appellee for want of prosecution unless good cause is shown why the appeal should not be dismissed. A failure of the appellant to file a brief will result in dismissal of the appeal.

(c) *Effect of cross-appeals on dismissal of appeal.* If a cross-appeal is pending and the court dismisses the appeal, the cross-appellant may proceed with the cross-appeal. The opening brief for the cross-appellant will be due 21 calendar days from the date that appellant's opening brief was due and the response and reply briefs will conform to Rule 12.
(Code 1981, § 4-33(rule 11); Code 2012, § 4-33(rule 11); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 11), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 11), 3-1-2013)

Rule 12. Briefs.

(a) *Time for filing.* The appellant or petitioner shall have 21 calendar days to file its principal brief after the complete record is transmitted to the court of appeals. The appellee or respondent shall have 21 calendar days to file its principal brief after the appellant's compliance with service of its principal brief under Rule 8. The appellant may file a reply brief within ten calendar days after the appellee's compliance with service of its principal brief under Rule 8. The brief is deemed timely filed if it is received by the appellate clerk within the time limits set forth in this subsection.

(b) *Form and length of the briefs.* A brief shall be on 8.5-inch by 11-inch paper and shall be stapled or bound so that the brief stays together and shall have a cover page. The front cover page shall contain:

(1) The name of the court;

(2) The assigned appellate case number and the trial court case number;

(3) The title of the case;

(4) The title of the brief (e.g., principal brief);

(5) The name, telephone number, and the mailing address of the counsel representing the party or if unrepresented, the name, telephone number, and the mailing address of the party.

Except by permission of the court, a principal brief may not exceed 25 pages, double spaced and be prepared in a proportionately spaced typeface, font size 13 or larger. Any reply brief may not exceed 15 pages, double spaced and be prepared in a proportionately spaced typeface, font size 13 or larger.

(c) *Contents; appellant.* The appellant's brief shall include the following:

(1) A table of contents with page references;

(2) A table of authorities, alphabetically arranged with references to the pages mentioned or cited on the brief;

(3) A statement of the case, indicating briefly the basis for the appellate court's jurisdiction, the nature of the case, the course of proceedings and the disposition in the trial court;

(4) A statement of facts relevant to the issues presented for review with appropriate references to the record. The statement of facts shall not contain arguments and may be combined with the statement of the case;

(5) A statement of issue(s) presented for review. The court of appeals will consider the statement of issue(s) presented for review to contain every subsidiary issue fairly comprised;

(6) An argument which shall contain the contentions of the appellant with respect to the issues presented and the reasons with citations to the authorities consistent with section 5-1 and the parts of the record relied upon for the argument. The argument may contain a brief summary. With each issue presented for review, the proper standard of review* shall be identified with relevant authority at the outset of the discussion of the issue; and

(7) A short conclusion stating the precise remedy requested.

(d) *Contents; appellee.* The appellee's brief shall contain the same contents as appellant's brief except that no statement of the case is required.

(e) *Contents; reply brief.* The reply brief shall be confined to the response to questions of law or fact raised by the appellee's brief.

(f) *No further briefs.* Unless the court of appeals permits a party to file additional briefing, no further briefing shall be allowed.

(g) *Noncompliance.* The court of appeals may strike a brief which does not substantially conform to the requirements of this rule or is illegible. After striking the brief, the court may permit the party to file an amended brief in compliance with Rule 12 and set a new briefing schedule.

(h) *Briefs involving multiple appellants or appellees.* In cases involving more than one appellant or appellee, including cases consolidated for appeal, any number of appellant or appellee may

join in a single brief and the appellant or appellee may adopt by reference any part of the brief of another.

(i) *Time to file briefs where any party to an appeal is a juvenile.* If any party to the appeal is a juvenile, an appellant/petitioner shall have 14 calendar days after the complete appellate record is transmitted to the court of appeals to file the principal brief. An appellee/respondent shall 14 calendar days after appellant's compliance with service of its principal brief under Rule 8 to file a principal brief. An appellant/petitioner shall have seven calendar days after appellee/respondent's compliance with service of its principal brief under Rule 8 to file a reply brief.

(Code 1981, § 4-33(rule 12); Code 2012, § 4-33(rule 12); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 12), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 12), 3-1-2013)

Note—Subsection (c)(6). To assist the practitioners, the Committee has drafted an outline regarding the applicable standard of review. Please see Committee Note attached as an Appendix.

Rules Committee Note: The court of appeals should give latitude to pro-per litigants in complying with Rule 12. The court should exercise its discretion and not strike a brief filed by a pro-per litigant even if the brief does not substantially comply with the requirement of Rule 12 and accept the brief if accepting the brief would promote justice and fairness.

Rule 12.1. Briefs on cross-appeals.

(a) *Applicability.* This rule applies to a case in which a cross-appeal is filed.

(b) *Designation of appellant.* The party who files a notice of appeal first is the appellant for the purposes of this rule. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order. The trial clerk shall be responsible for designating and notifying the parties of their status either as an appellant or as an appellee.

(c) *Briefs.*

(1) *Appellant's principal brief.* The appellant must file a principal brief in the appeal. The brief must comply with Rule 12(b) and (c).

(2) *Appellee's principal and response brief.* The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. The appellee's brief must comply with Rule 12(b) and (c), except that the brief need not include a statement of the case or a statement of the facts unless the appellee is dissatisfied with the appellant's statement.

(3) *Appellant's response and reply brief.* The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. The brief must comply with Rule 12(b) and (c), except that none of the following need appear unless the appellant is dissatisfied with the appellee's statement in the cross-appeal:

a. The jurisdictional statement;

b. The statement of the issues;

c. The statement of the case;

d. The statement of the facts; and

e. The applicable standard of review.

(4) *Appellee's reply brief.* The appellee may file a brief in reply to the response in the cross-appeal. The brief must comply with Rule 12(b) and (c) and must be limited to the issues presented by the cross-appeal.

(5) *No further briefs.* Unless the court permits, no further briefs may be filed in a case involving a cross-appeal.

(d) *Time to serve and file a brief.* Briefs must be served and filed as follows:

(1) The appellant's principal brief, within 21 calendar days after the record is filed;

(2) The appellee's principal and response brief, within 21 calendar days after the appellant's compliance with service of its principal brief under Rule 8;

(3) The appellant's response and reply brief, within 21 calendar days after the appellee's compliance of service of its principal and response brief under Rule 8; and

(4) The appellee's reply brief, within ten calendar days after the appellant's compliance with service under Rule 8 of its response and reply brief.

(e) *Additional time limitation to file briefs where any party to cross-appeal is a juvenile.* If any party to the cross-appeal is a juvenile, an appellant/petitioner shall have 14 calendar days after the complete appellate record is transmitted to the court of appeals to file its principal brief. An appellee/respondent shall have 14 calendar days to file a principal and response brief after the appellant's compliance with service of its principal brief under Rule 8. An appellant shall have 14 calendar days to file a response and reply brief after appellee/respondent's compliance with service of its principal and response brief under Rule 8. An appellee/respondent shall have seven calendar days to file a reply brief after appellant/petitioner's compliance with service of its response and reply brief under Rule 8.
(Code 1981, § 4-33(rule 12.1); Code 2012, § 4-33(rule 12.1); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 12.1), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 12.1), 3-1-2013)

Rule 13. Oral arguments.

(a) *Request and setting of oral arguments.* Any party may request an oral argument prior to the date that the reply brief is due. The request must be made in writing. If no request for oral arguments is made, the court of appeals may still schedule oral arguments. If the court grants a party's request for oral arguments or sets one on its own initiative, the appellate clerk shall schedule the oral arguments to occur within 30 calendar days of the completion of the briefing and notify the parties of the date and place for oral arguments at least 14 calendar days prior to the date fixed for oral arguments. The court of appeals may consider the appeal without oral arguments if the court of appeals finds that the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral arguments.

(b) *Time limitations.* Unless ordered otherwise by the court of appeals, each side may have 30 minutes for oral arguments. Arguments of multiple parties or amicus curiae for the appellant or appellee shall be allocated by the parties to conform to these limits. A party does not have use all of the time allowed. The appellant opens and concludes the argument.

(c) *Hearing of appeals in open court.* All oral arguments, except where a juvenile is a party to the appeal, shall be heard in open court. A recording of the oral arguments shall be made.

(d) *Failure to appear at oral arguments.* If a party fails to appear, the court of appeals may hear arguments from the party who is present, and the case will be decided on the briefs and the argument heard. If neither party appears for oral arguments, the case will be decided on the briefs.
(Code 1981, § 4-33(rule 13); Code 2012, § 4-33(rule 13); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 13), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 13), 3-1-2013)

Rule 14. Stay of appeal.

The court of appeals on motion of the party or on its own initiative may stay an appeal while a motion for new trial is pending. If any stay is ordered, the appellate clerk shall notify all parties and the clerk of the trial court. Any proceedings in the court of appeals, including the preparation of the record, shall be stayed until further order of the court of appeals. The appellant shall have 14 calendar days to notify the appellate clerk after the trial court rules on the motion for new trial either to reinstate the appeal or to dismiss the appeal.
(Code 1981, § 4-33(rule 14); Code 2012, § 4-33(rule 14); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 14), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 14), 3-1-2013)

Rule 15. Disposition and orders.

(a) *Ancillary orders.* The court of appeals may issue such orders as needed for the effective administration of the court of appeals.

(b) *Disposition.* The court of appeals may reverse, affirm, or remand the action of the trial court and issue any necessary and appropriate orders.
(Code 1981, § 4-33(rule 15); Code 2012, § 4-33(rule 15); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 15), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 15), 3-1-2013)

Rule 16. Stays.

(a) *Motion for stay.*

(1) *Initial motion in the trial court.* A party must ordinarily move first in the trial court for a stay of the judgment or order of a trial court pending appeal.

(2) *Motion in the court of appeals; conditions on relief.* A motion for stay of the judgment or order of a trial court pending appeal may be made to the court of appeals.

a. Requirements.

1. The motion must show that moving first in the trial court would be impracticable;

2. The trial court denied the motion or failed to afford the relief requested and state any reasons given by the trial court for its action; or

3. The motion must also include the reasons for granting the relief requested and the facts relied on, originals or copies of affidavits or other sworn statements supporting facts subject to dispute, and relevant parts of the record.

b. The moving party must give reasonable notice of the motion to all parties.

c. A motion under this rule must be filed with the appellate clerk and normally will be considered by a three-justice panel of the court of appeals. In an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single justice. If a single justice decides the motion, any party may request a three-justice panel to reconsider the matter by filing the request within five business days of the decision.

d. The court may condition relief on a party's filing a bond or other appropriate security in the trial court.

(b) *Stay of sentence.* The trial court may stay the execution of sentence if the trial court determines that reasonable grounds exist to believe that the conviction may be set aside, reversed, or vacated. The court of appeals, on motion of the defendant, may move the lower court for release of defendant from custody if the court of appeals determines it would be justified under the facts of the case.
(Code 1981, § 4-33(rule 16); Code 2012, § 4-33(rule 16); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 16), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 16), 3-1-2013)

Rule 17. Certified questions.

(a) *Requirements.* The trial court may certify a question for special action in its order involving Community law to the court of appeals if it meets the following criteria.

(1) The certified question must control the outcome of the case pending before the trial court;

(2) The certified question involves a controlling question of law as to which there is substantial ground for difference of opinion;

(3) An immediate appeal from the order may materially advance the ultimate termination of the litigation; and

(4) Both the Community and the defendant stipulate to the submission of the certified question.

(b) *Time for filing and content.* If the parties receive certification from the trial court, the parties may file a joint petition seeking special action and containing the following:

(1) The question of law to be answered;

(2) A statement of all relevant facts necessary to answer the certified question; and

(3) Copies of an order, or opinion, or parts of the record necessary for an understanding of the matters set forth in the petition.

(c) *Compliance with Rule 8.* All parties shall comply with requirements set forth in Rule 8.

(d) *Acceptance of jurisdiction.* The court of appeals shall review the certification request and may accept jurisdiction.

(1) If jurisdiction is accepted, the court of appeals may order the parties to file additional briefs addressing the certified question.

(2) If briefing is ordered, the order shall set forth the time periods for filing briefs and may also set a date for oral arguments.

(3) If the jurisdiction is not accepted, the court of appeals should issue an order explaining why it is declining jurisdiction.

(e) *Stay of proceedings.* An appeal under this rule shall stay proceedings in the trial court.

(f) *Exclusion of speedy trial time.* The time period while the special action through certified question is pending shall be excluded from speedy trial time in Rule 7.1 of the rules of criminal procedure.

(Code 1981, § 4-33(rule 17); Code 2012, § 4-33(rule 17); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 17), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 17), 3-1-2013)

Rule 18. Composition of justices.

A panel consisting of three justices will consider and decide the merits of any appeals, petitions, or motions. Any justice disqualified under section 4-36(b) and (c) shall not serve on the appellate panel. If a justice is disqualified, another qualified justice shall be chosen to complete the three-justice panel. The parties shall be advised of the assignment of justices by notice from the appellate clerk. A party shall have five business days after receiving notice of assigned justices to file a motion to disqualify a justice for cause.

(Code 1981, § 4-33(rule 18); Code 2012, § 4-33(rule 18); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 18), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 18), 3-1-2013)

Rule 19. Opinions and disposition.

(a) *Time limitations.* The court of appeals shall issue an opinion, memorandum, or order within 30 calendar days after hearing oral arguments or completion of any supplemental briefing, whichever occurs later.

(b) *Disposition by opinion.* The court of appeals should issue an opinion when a majority of the justices determines that the disposition:

(1) Establishes, alters, modifies, or clarifies a rule of law;

(2) Calls attention to a rule of law which appears to have been generally overlooked;

(3) Criticizes existing law;

(4) Involves a legal or factual issue of unique interests or substantial public importance; or

(5) If the disposition of a matter is accompanied by separate concurring or dissenting opinion of a justice.

(c) *Disposition by memorandum.* Memorandum decisions and orders shall not be used as precedent nor cited in any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

(d) *Precedent.* Only opinions shall be used as precedent.

(e) *Designation of disposition.* The disposition of the case shall contain in the caption the designation opinion, memorandum or order.

(f) *Notification to parties.* After the court of appeals issues its opinion, memorandum, or order, the appellate clerk shall forward a copy of the decision, memorandum, or order to all parties within one business day.
(Code 1981, § 4-33(rule 19); Code 2012, § 4-33(rule 19); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 19), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 19), 3-1-2013)

Rule 20. Entry of judgment.

(a) *Entry.* A judgment is entered when it is recorded in the docket. The appellate clerk must enter the judgment within 21 calendar days after receiving the court's opinion, memorandum, or order if a petition for panel rehearing is not requested. If a petition for panel rehearing has been filed, the appellate clerk shall enter the judgment within five business days after the court of appeals has ruled on the petition for panel rehearing.

(b) *Notice to parties.* Within one business day after the judgment is entered, the appellate clerk shall serve a copy of the judgment by mail, electronic delivery, or by personal service to the parties a copy of the opinion, memorandum, order, or the judgment, and the date the judgment was entered.
(Code 1981, § 4-33(rule 20); Code 2012, § 4-33(rule 20); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 20), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 20), 3-1-2013)

Rule 21. Petitions for panel rehearing.

(a) *Time to file.* Except as otherwise provided in this rule, a petition for panel rehearing may be filed within 15 calendar days after the appellate court issues its decision or memorandum by filing an original and three copies of the petition with the appellate clerk. The opposing party is not required to file an answering petition unless ordered by the court. The court should not grant a panel rehearing without first giving the opposing party an opportunity to file an answering petition.

(b) *Grounds for panel rehearing.* A petition for panel rehearing may be presented only on the following grounds:

(1) A fact or law, material to the decision, was overlooked by the panel of the court of appeals;

(2) The decision is in conflict with an express statute or controlling decision; or

(3) The court of appeals employed inappropriate procedures or considered facts outside the record on appeal.

(c) *Time limitations for decision.* Upon a majority vote of the panel, the court of appeals may grant or deny the petition for rehearing within 15 calendar days after receipt of the petition or answering petition, if any. If granted, the parties shall submit briefs as provided in Rule 12 on the issues permitted to be raised. The court of appeals may grant oral arguments.
(Code 1981, § 4-33(rule 21); Code 2012, § 4-33(rule 21); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 21), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 21), 3-1-2013)

Rule 22. Issuance of mandate.

(a) *Petition for rehearing not filed.* When no petition for rehearing is filed, the clerk of the court of appeals shall issue a mandate within seven business days of the expiration of time for filing a petition for rehearing. The mandate consists of the certified copy of the judgment and a copy of the court's opinion or memorandum.

(b) *Petition for rehearing filed.* A mandate shall not issue until the court of appeals has disposed of a petition for rehearing.

(c) *Effective date of mandate.* The mandate will be effective from the date the mandate is issued. The issuance of the mandate shall terminate the proceeding in the court of appeals.
(Code 1981, § 4-33(rule 22); Code 2012, § 4-33(rule 22); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 22), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 22), 3-1-2013)

Rule 23. Death of party.

The death of the defendant or the juvenile while the appeal is pending shall result in the dismissal of the appeal. Any conviction, sentence, or adjudication that was the subject of the appeal shall also be vacated.
(Code 1981, § 4-33(rule 23); Code 2012, § 4-33(rule 23); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 23), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 23), 3-1-2013)

Rule 24. Withdrawal of counsel.

A counsel who files the notice of appeal, motions, briefs, or petitions in the court of appeals is considered counsel of record until the court of appeals allows the counsel to withdraw as counsel of record.
(Code 1981, § 4-33(rule 24); Code 2012, § 4-33(rule 24); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 24), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 24), 3-1-2013)

Rule 25. Amicus curiae.

(a) *Only permitted with leave of court.* An amicus curiae brief shall be filed only with permission of the court of appeals.

(b) *Motion for leave to file.* The motion for leave to file must be accompanied by the proposed brief and state:

(1) The interest of the applicant; and

(2) Reasons why applicant's amicus curiae brief is necessary and why the matters asserted by the applicant are relevant.

(c) *Contents of brief.* An amicus brief must comply with Rule 12(b). An amicus brief does not need to comply with Rule 12(c), but must include the following:

(1) The table of contents, with page references;

(2) A table of authorities;

(3) The identity of the amicus curiae;

(4) The counsel or party who authored the brief; and

(5) A certificate of service in compliance with Rule 8.

(d) *Time to file.* An amicus curiae brief supporting a party shall be filed within seven days of filing of the principal brief by the party being supported. If the amicus curiae brief does not support either the appellant or the appellee, the brief shall be filed within seven days of the filing of the appellee's principal brief.
(Code 1981, § 4-33(rule 25); Code 2012, § 4-33(rule 25); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 25), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 25), 3-1-2013)

Rule 26. Sealed proceedings and records.

(a) *Public access.* Except for appeals involving juveniles, the public should have access to the court files to ensure the public's perception of the integrity and fairness of the courts. The presumption may be overcome when a compelling reason exists that the public's right of access is outweighed by the interests of the Community and the parties in protecting the court's files from public review.

(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 record.* 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.
(Code 1981, § 4-33(rule 26); Code 2012, § 4-33(rule 26); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 26), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 26), 3-1-2013)

Rule 27. Suspension of rules.

Except for provisions in Rule 3(c), the court of appeals may, on its own or a party's motion, upon good cause, suspend the requirements or provisions of any of these rules in a particular case and may order proceedings in accordance with its direction.

(Code 1981, § 4-33(rule 27); Code 2012, § 4-33(rule 27); Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-402-2012, § 4-33(rule 27), 5-30-2012; Ord. No. SRO-411-2013, § 4-33(rule 27), 3-1-2013)

APPENDIX

Rules Committee Note to Rule 12(c)(6): The Rules require the parties to advise the court of appeals of the applicable standard of review on appeals. The following is a brief outline of standard of review and errors. This committee note is not intended to bind the court of appeals, but is a guide for parties filing an appeal with the court of appeals. A party using this outline should remember that the committee note is for reference only and the court of appeals will be the ultimate decider of the applicable standard of review and errors that will be used in the Community.

Generally, there are four standards of review: *de novo*, abuse of discretion, clearly erroneous, and substantial evidence.

The de novo review literally means to review anew or afresh. The court of appeals gives no deference to the lower court's determination and reviews the case as if the court of appeals was sitting as the trial court. Questions of statutory interpretation, jurisdiction, and questions of law are generally subject to *de novo* review.

A second standard and much more deferential to the trial court's decision is Abuse of Discretion. A trial court is given wide latitude in exercising its decision making authority. Questions involving discovery issues, sanctions for violations of discovery, exclusion of evidence/witnesses, and denial/grant of motion to continue would be reviewed for abuse of discretion. A trial court would abuse its discretion if the trial court's decision is based upon an erroneous interpretation of the law or the court makes a clearly erroneous finding of fact.

A third standard of review is clearly erroneous. The standard gives great deference to the trial court's findings of fact. It is not whether the court of appeals would have reached a different outcome if it were the finder of facts, but whether the trial court's findings are plausible in context to the entire record. To find that a trial court's findings are clearly erroneous, the court of appeals would have to be definitively and firmly convinced that the trial court made a mistake.

A fourth standard of review is substantial evidence for jury verdicts. Substantial evidence is defined as whether a reasonable person might accept as adequate to support a conclusion even if it is possible to draw a contrary conclusion from the evidence. Additionally, the court of appeals will not assess the credibility of the witnesses or weigh the evidence.

Sometimes, the applicable standard of review will be determined by its context where it involves a mixed question of law and facts. It will be a *de novo* review if the question of law dominates the review or a clearly erroneous standard if the question of fact is the predominant issue.

Even if a party had objected to the error, the court of appeals may uphold the outcome at the trial if the error is harmless. An error is harmless if it is more probable than not that the prejudice resulting from the error did not materially affect the verdict.

In addition to the harmless error, there are additional types of errors that the court of appeals may review.

Structural Error. Structural errors infect the entire trial process which undermines the integrity of the judicial proceeding. Examples of structural errors include: denial of right to counsel, trial by a biased judge, denial of public trial, denial of jury trial, and denial of right to self-representation. If a structural error occurs, the court of appeals will not conduct any prejudice analysis. Instead, there will be an automatic reversal of the conviction.

Invited Error. If a trial judge takes a certain action(s) at the request of the party, the party cannot then later claim that the trial judge erred by granting the party's request. Examples include jury instructions and evidentiary rulings. In these situations, the party would be denied relief based upon an invited error doctrine.

Fundamental Error. A fundamental error is an "error going to the foundation of the case, error that takes from the defendant a right essential to his or her defense, and error of such magnitude that the defendant could not possibly have received a fair trial." *Arizona v. Hunter*, 688 P.2d 980 (1984). The error has to be clear, egregious, and only curable by a new trial or sentence. The defendant also bears the burden of proof that the error was fundamental and that the error caused prejudice. Examples include misleading jury instructions on the burden of proof and illegal sentences. Arizona uses fundamental error analysis.

Plain Error. To obtain relief under plain error, the defendant must show that the error is plain, that affects substantial rights and the error seriously affected the fairness, integrity or public reputation of judicial proceedings. An error is plain if it is clear or obvious. The defendant also bears the burden to show that the defendant was prejudiced by the error. Additionally, the court of appeals decision to grant/deny relief is discretionary even if the court notices the plain error.

(Amd. to Ord. No. SRO-33-75, § 1.9(b), 5-5-1980; Ord. No. SRO-411-2013, § 4-33(app.), 3-1-2013)

Sec. 5-466. Notice of appeal form.

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, Plaintiff/Appellee,	NOTICE OF APPEAL

vs. Case # _____
DEFENDANT X. DOE,
Defendant/Appellant.

Notice is hereby given that Defendant X. Doe appeals to the Salt River Pima-Maricopa Indian Community Court of Appeals from the jury verdict and judgment and sentence entered in this action on _____ by the Community Court. The sentence imposed was xx months of imprisonment.

Respectfully submitted this _____ day of _____, 20____.

_____
Attorney Doe

I hereby certify that on the _____ of a copy of the foregoing was mailed to Community Prosecutor.

_____
Attorney Doe

(Amd. to Ord. No. SRO-33-75, § 1.9(c), 5-5-1980; Ord. No. SRO-411-2013, § 4-33(app.), 3-1-2013)

Secs. 5-467—5-495. Reserved.

ARTICLE VII. COMMUNITY RULES OF EVIDENCE

DIVISION 1. GENERAL PROVISIONS

Rule 101. Title; definitions.

(a) *Title.* These rules may be known and cited as the Salt River Pima-Maricopa Indian Community Rules of Evidence ("SRE").

(b) *Definitions.* In these rules:

Advocate means a person authorized to practice law before the Community or relevant jurisdiction.

Attorney means a person who is licensed to practice law in the State of Arizona or another state or relevant jurisdiction.

Civil case means a civil action or proceeding.

Counsel means an advocate or attorney.

Criminal case includes a criminal proceeding.

Public office includes a public agency.

Record includes a written correspondence, memorandum, report, or data compilation; a reference to any kind of written material or any other medium includes electronically stored information.
(Ord. No. SRO-421-2013, Rule 101, 6-1-2013)

Rule 102. Purpose and applicability of the rules.

(a) *Purpose.* The purpose of these rules is to establish rules for the admission of reliable and relevant evidence in order to best administer court proceedings to determine the truth, to promote the fair administration of justice, and to ensure that these rules are consistent with the right of the people of the Community to maintain the integrity and culture of the Community.

(b) *To courts and judges.* These rules apply to all courts of the Community and masters and referees in actions, cases, and proceedings and to the extent hereinafter set forth.

(c) *To cases and proceedings generally.* Unless otherwise specifically provided in other provisions of the Community Code of Ordinances, these

rules apply generally to civil cases and proceedings, to contempt proceedings except those in which the court may act summarily, and to criminal cases and proceedings except as otherwise provided in the Salt River Community Court Rules of Criminal Procedure. A party who wishes to have the Salt River Rules of Evidence apply to domestic relations or child dependency cases must give notice to the court and to the opposing party at least 30 days prior to a hearing or trial.

(d) *Exceptions.* These rules, except for those on privilege, do not apply to the following:

(1) The court's determination, under Rule 104(a), on a preliminary question of fact governing admissibility; and

(2) Miscellaneous proceedings such as:

a. Extradition or rendition;

b. Issuance of an arrest warrant, criminal summons, or search warrant;

c. Sentencing;

d. Granting or revoking probation; and

e. Considering whether to release on bail, whether to modify or revoke bail conditions, or otherwise.

(e) *Other laws and rules.* A Community law or a rule may provide for admitting or excluding evidence independently from these rules.
(Ord. No. SRO-421-2013, Rule 102, 6-1-2013)

Rule 103. Rulings on evidence.

(a) *Preserving a claim of error.* A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:

(1) If the ruling admits evidence, a party, on the record:

a. Timely objects or moves to strike; and

b. States the specific ground, unless it was apparent from the context; or

(2) If the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.

(b) *Not needing to renew an objection or offer of proof.* Once the court rules definitively on the record, either before or at trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

(c) *Court's statement about the ruling; directing an offer of proof.* The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court may direct that an offer of proof be made in question-and-answer form.

(d) *Preventing the jury from hearing inadmissible evidence.* To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.
(Ord. No. SRO-421-2013, Rule 103, 6-1-2013)

Rule 104. Preliminary questions.

(a) *In general.* The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.

(b) *Relevance that depends on a fact.* When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof will be introduced later.

(c) *Conducting a hearing outside the presence of a jury.* The court must conduct any hearing on a preliminary question so that the jury cannot hear it if:

(1) The hearing involves the admissibility of a confession;

(2) A defendant in a criminal case is a witness and so requests; or

(3) Justice so requires.

(d) *Cross-examining a defendant in a criminal case.* By testifying on a preliminary question, a defendant in a criminal case does not become subject to cross-examination on other issues in the case.

(e) *Evidence relevant to weight and credibility.* This rule does not limit a party's right to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.
(Ord. No. SRO-421-2013, Rule 104, 6-1-2013)

Rule 105. Limiting evidence.

If the court admits evidence that is admissible against a party or for a purpose, but not against another party or for another purpose, the court, on timely request, must restrict the evidence to its proper scope and instruct the jury accordingly. However, if evidence is admitted under Rules 404(b) or 413, the court must instruct the jury regarding the limited use of such evidence unless the opponent of the offered evidence objects.
(Ord. No. SRO-421-2013, Rule 105, 6-1-2013)

Rule 106. Remainder of or related writings or recorded statements.

If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part, or any other writing or recorded statement, that in fairness ought to be considered at the same time.
(Ord. No. SRO-421-2013, Rule 106, 6-1-2013)

Secs. 5-496—5-520. Reserved.

DIVISION 2. JUDICIAL NOTICE

Rule 201. Judicial notice of adjudicative facts.

(a) *Scope.* This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) *Kinds of facts that may be judicially noticed.* 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 if the fact:

(1) Is generally known within the jurisdiction of this court; or

(2) Is capable of accurate and ready determination by reference to sources whose accuracy cannot be reasonably questioned.

(c) *Taking notice.* The court:

(1) May take judicial notice on its own; or

(2) Must take judicial notice if a party requests it and the court is supplied with the necessary information.

(d) *Timing.* The court may take judicial notice at any stage of the proceeding.

(e) *Opportunity to be heard.* On timely request, a party is entitled to be heard on the appropriateness of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

(f) *Instructing the jury.* In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.
(Ord. No. SRO-421-2013, Rule 201, 6-1-2013)

Secs. 5-521—5-555. Reserved.

DIVISION 3. PRESUMPTIONS IN CIVIL CASES

Rule 301. Presumptions in civil cases generally.

In a civil case, unless an ordinance or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. But this rule does not shift the burden of persuasion, which remains on the party who had it originally.
(Ord. No. SRO-421-2013, Rule 301, 6-1-2013)

Secs. 5-556—5-585. Reserved.

DIVISION 4. RELEVANCE AND ITS LIMITS

Rule 401. Test for relevant evidence.

Evidence is relevant if:

(1) The evidence has any tendency to make a fact more or less probable than it would be without the evidence; and

(2) The fact is of consequence in determining the action.

(Ord. No. SRO-421-2013, Rule 401, 6-1-2013)

Rule 402. General admissibility of relevant evidence.

Relevant evidence is admissible unless any of the following provides otherwise:

(1) Applicable Community law;

(2) Applicable federal law; or

(3) These rules.

Irrelevant evidence is not admissible.

(Ord. No. SRO-421-2013, Rule 402, 6-1-2013)

Rule 403. Exclusion of relevant evidence for special circumstances.

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of any one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

(Ord. No. SRO-421-2013, Rule 403, 6-1-2013)

Rule 404. Character evidence; crimes or other acts.

(a) *Character evidence.*

(1) *Prohibited uses.* Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

(2) *Exceptions for a defendant or victim in a criminal case.* The following exceptions apply in a criminal case:

a. A defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;

b. Subject to the limitation in Rule 412, a defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may:

1. Offer evidence to rebut it; and

2. Offer evidence of the defendant's same trait; and

c. In a homicide case or in a case where the victim is incapacitated and unable to testify as a result of the crime alleged to be perpetrated by the defendant against the victim, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

(3) *Exceptions for a witness.* Evidence of a witness' character may be admitted under Rules 607, 608, and 609.

(b) *Crimes, wrongs, or other acts.*

(1) *Prohibited uses.* Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) *Permitted uses; notice in a criminal case.* This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. The prosecutor must provide notice of the general nature of any such evidence that the prosecutor intends to offer at trial pursuant to rules of criminal procedure.

(3) *Preliminary questions determined by the court.* Before the offered evidence may be admitted, the court must determine that the evidence offered is admissible under Rules 401, 402, and 403 and that the evidence is sufficient to permit the trier of fact to find that the defendant committed the other acts.

(Ord. No. SRO-421-2013, Rule 404, 6-1-2013)

Rules Committee Note: If the evidence is admitted under Rule 404(b), the court should give the following or a similar limiting instruction unless the opponent of the offered evidence objects: "Evidence of other acts has been presented. You may consider [this act] [these acts] only if you find that the Community has proved by preponderance of evidence that the defendant committed [this act][these acts]. You may only consider [this act] [these acts] to establish the defendant's [motive], [opportunity], [intent], [preparation], [plan], [knowledge], [identity], [absence of mistake or accident]. You must

not consider [this act] [these acts] to determine the defendant's character or character trait, or to determine that the defendant acted in conformity with the defendant's character or character trait and therefore committed the charged offense. Evidence of these acts does not lessen the Community's burden to prove the defendant's guilt beyond a reasonable doubt"

Rule 405. Methods of proving character.

(a) *By reputation or opinion.* When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person's conduct.

(b) *By specific instances of conduct.* When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.
(Ord. No. SRO-421-2013, Rule 405, 6-1-2013)

Rule 406. Habit; routine practice.

Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.
(Ord. No. SRO-421-2013, Rule 406, 6-1-2013)

Rule 407. Subsequent remedial measures.

When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:

(1) Negligence;

(2) Culpable conduct;

(3) A defect in a product or its design; or

(4) A need for a warning or instruction.

But the court may admit this evidence for another purpose, such as impeachment or, if disputed, proving ownership, control, or the feasibility of precautionary measures.
(Ord. No. SRO-421-2013, Rule 407, 6-1-2013)

Rule 408. Compromise offers and negotiations.

(a) *Prohibited uses.* Evidence of the following is not admissible, on behalf of any party, either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

(1) Furnishing, promising, or offering, or accepting, promising to accept, or offering to accept, a valuable consideration compromising or attempting to compromise the claim; and

(2) Conduct or a statement made during compromise negotiations about the claim, except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.

(b) *Exceptions.* The court may admit this evidence for another purpose, such as proving a witness' bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.
(Ord. No. SRO-421-2013, Rule 408, 6-1-2013)

Rule 409. Offers to pay medical and similar expenses.

Evidence of furnishing, promising to pay, or offering to pay medical, hospital, or similar expenses resulting from an injury is not admissible to prove liability for the injury.
(Ord. No. SRO-421-2013, Rule 409, 6-1-2013)

Rule 410. Pleas, plea discussions and related statements.

(a) *Prohibited uses.* In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:

(1) A guilty plea that was later withdrawn;

(2) A no contest plea;

(3) A statement made during a proceeding on either of those pleas under rules of criminal procedure Rule 11 or a comparable federal or state procedure; or

(4) A statement made during plea discussions with an attorney or advocate for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.

(b) *Exceptions.* The court may admit a statement described in subsection (a)(3) or (4) of this rule:

(1) In any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or

(2) In a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

(Ord. No. SRO-421-2013, Rule 410, 6-1-2013)

Rule 411. Liability insurance.

Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness' bias or prejudice or proving agency, ownership, or control.

(Ord. No. SRO-421-2013, Rule 411, 6-1-2013)

Rule 412. Sex-offense cases: the victim's sexual behavior.

(a) *When inadmissible.* In a criminal case in which a person is accused of a sexual offense against another person, the following is not admissible:

(1) Evidence of reputation or opinion regarding the other sexual behavior of the victim of the sexual offense alleged.

(2) Evidence of specific instances of sexual behavior of an alleged victim with persons other than the accused offered on the issue of whether the alleged victim consented to the sexual behavior with respect to the sexual offense alleged.

(b) *Exceptions.* The rule does not require the exclusion of evidence of:

(1) Specific instances of sexual behavior if offered for a purpose other than the issue of consent, including proof of the source of semen, pregnancy, disease, injury, mistake or the intent of the accused;

(2) False allegations of sexual offenses; or

(3) Sexual behavior with other than the accused at the time of the event giving rise to the sexual offense alleged.

(c) *Procedure to determine admissibility.*

(1) *Motion.* If a party intends to offer evidence under subsection (b) of this rule, the party must:

a. File a motion that specifically describes the evidence and states the purpose for which it is to be offered;

b. Do so at least 45 days before trial unless the court, for good cause, sets a different time;

c. Serve the motion on all parties; and

d. Notify the victim or, when appropriate, the victim's guardian or representative.

(2) *Hearing.* Before admitting evidence under this rule, the court must conduct a closed hearing and give the victim and parties a right to attend and be heard.

Unless the court orders otherwise, the motion, related materials, and the record of the hearing must be and remain sealed.

(d) *Definition of "victim."* In this rule, "victim" includes an alleged victim.

(Ord. No. SRO-421-2013, Rule 412, 6-1-2013)

Rule 413. Character evidence in sexual misconduct cases.

In a criminal case in which a defendant is charged with having committed a sexual offense, or a civil case in which a claim is predicated on a

party's alleged commission of a sexual offense, evidence of other crimes, wrongs, or acts may be admitted by the court if relevant to show that the defendant had a character trait giving rise to an aberrant sexual propensity to commit the offense charged. In such a case, evidence to rebut the proof of other crimes, wrongs, or acts, or an inference therefrom, may also be admitted.

(1) In all such cases, the court shall admit evidence of the other act only if it first finds each of the following:

a. The evidence is sufficient to permit the trier of fact to find that the defendant committed the other act.

b. The commission of the other act provides a reasonable basis to infer that the defendant had a character trait giving rise to an aberrant sexual propensity to commit the crime charged.

c. The evidentiary value of proof of the other act is not substantially outweighed by danger of unfair prejudice, confusion of issues, or other factors mentioned in Rule 403.

In making that determination under Rule 403, the court shall also take into consideration the following factors, among others:

1. Remoteness of the other act;
2. Similarity or dissimilarity of the other act;
3. The strength of the evidence that defendant committed the other act;
4. Frequency of the other acts;
5. Surrounding circumstances;
6. Relevant intervening events;
7. Other similarities or differences; and
8. Other relevant factors.

d. The court shall make specific findings with respect to each of subsections (1)a, b, and c of this rule.

(2) In all cases in which evidence of another act is admitted pursuant to this subsection, the court shall instruct the jury as to the proper use of such evidence.

(3) In all criminal cases in which the prosecution intends to offer evidence of other acts pursuant to this rule, the prosecution shall make disclosure to the defendant as to such acts as required by rules of criminal procedure. The defendant shall make disclosure as to rebuttal evidence pertaining to such acts as required by rules of criminal procedure. In all civil cases in which a party intends to offer evidence of other acts pursuant to this rule, the parties shall make disclosure as required by the rules of civil procedure.

(Ord. No. SRO-421-2013, Rule 413, 6-1-2013)

Rules Committee Notes: If the evidence is admitted under Rule 413, the court should give the following or a similar limiting instruction unless objected by the opponent of the evidence being offered. "Evidence of other sexual acts has been presented. [Evidence to rebut this has also been presented.] You may consider this evidence in determining whether the defendant had a character trait that predisposed [him] [her] to commit the [crime] [crimes] charged. You may determine that the defendant had a character trait that predisposed [him] [her] to commit the [crime] [crimes] charged only if you decide that the Community has proved by clear and convincing evidence that:

1. The defendant committed these acts; and
2. These acts show the defendant's character predisposed [him] [her] to commit abnormal or unnatural sexual acts.

You may not convict the defendant of the [crime] [crimes] charged simply because you find that [he][she] committed these acts, or that [he] [she] had a character trait that predisposed [him][her] to commit the [crime] [crimes] charged. Evidence of these acts does not lessen the Community's burden to prove the defendant's guilt beyond a reasonable doubt."

Secs. 5-586—5-613. Reserved.

DIVISION 5. PRIVILEGES

Rule 501. Privilege in general.

(a) *Applicability of these rules.* This article shall govern claims of privilege and shall apply to all stages of a case or proceeding unless any of the following provides otherwise:

(1) An applicable Community law;

(2) Applicable federal law; or

(3) These rules.

But in a civil case, Community law governs privilege regarding a claim or defense for which Community law supplies the rule of decision.

(b) *Privileged communication and waiver.*

(1) To be privileged, a communication must come within these rules and the communication must occur during the relationship covered by these rules.

(2) Generally the privilege does not cease upon the termination of the relationship.

(3) The privilege does not extend to communications in furtherance of an illegal purpose or fraud.

(4) Communications not made in confidence, e.g., intended to be relayed to third parties, made in the presence of third parties, etc., are not within the privilege.

(5) Waiver of the privilege can only be effected by the holder; e.g., by the client or patient, and not by the professional. In matters of nonprofessional privilege, the waiver can only be effected by the one making the communications.

(6) A third person unknown to the privilege holder cannot testify about the communication between the parties if the conversation took place in a location where there was a reasonable expectation of privacy.

(c) *Inadvertent disclosure.* The disclosure does not operate as a waiver if:

(1) The disclosure is inadvertent;

(2) The holder of the privilege or protection took reasonable steps to prevent disclosure; and

(3) The holder promptly took reasonable steps to rectify the error, including following the applicable Salt River Rules of Civil Procedure, if any.

(d) *Disclosure made in a federal, state, or another tribal court proceeding.* When the disclosure is made in a proceeding in a federal, state, or another tribal court and is not subject of a court order concerning waiver, the disclosure does not operate as a waiver in a Community proceeding if the disclosure:

(1) Would not be a waiver under this rule if it had been made in a Community proceeding; or

(2) Is not a waiver under the law governing the federal, state or other tribal proceeding where the disclosure occurred.

(e) *Controlling effect of a court order.* A Community court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court- in which event the disclosure is also not a waiver in any other proceeding.

(f) *Controlling effect of a party agreement.* An agreement on the effect of disclosure in a Community proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

(g) *Definition of "confidential communication".* "Confidential communication" means information disclosed between parties having a relationship defined under Rules 502 through 507 that was not intended to be disclosed to any third party.
(Ord. No. SRO-421-2013, Rule 501, 6-1-2013)

Rule 502. Counsel-client privilege and work product; limitations on waiver.

(a) "Client" is a person, corporation, public officer, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer or an advocate, or who, consults with a lawyer or an advocate with the view of obtaining professional legal services from the lawyer or advocate.

(b) For purposes of this rule, "counsel' means a person authorized or reasonably believed by the client to be authorized to practice law in the Community, state, or relevant jurisdiction.

(c) A counsel shall not, without consent of the client, be examined as to any communication made by the client to counsel or the counsel's advice given in the course of professional representation.

(d) The counsel's staff, including secretary, clerk, stenographer, etc., shall not be examined concerning any fact or knowledge that was acquired in such capacity.

(e) Exceptions. There is no privilege under this rule where:

(1) The services sought or obtained were to enable someone in the furtherance of a crime or fraud, which the client knew or reasonably should have known to be a crime or fraud;

(2) The communication is relevant to an issue of an alleged breach of duty by the counsel to the client, or by the client to client's counsel; or

(3) The communication is relevant to a matter of common interest between two or more clients if the communication was made by any of them to a counsel retained or consulted in common, when offered in an action between any of the clients.

(Ord. No. SRO-421-2013, Rule 502, 6-1-2013)

Rule 503. Physician-patient privilege.

A physician, health care provider, or mental health professional shall not, without the consent of the patient, be examined as to any communication made by the patient with reference to any physical or mental disease or disorder or supposed physical or mental disease or disorder or as to any such knowledge obtained by personal examination of the patient. The patient has the privilege to refuse to disclose and to prevent any other person from disclosing confidential communications, made for the purpose of diagnosis, treatment, or consultation of the patient's physical or mental condition, among himself/herself, the physician or any persons who are participating in the diagnosis, treatment or consultation under the direction of the physician.

(1) A "physician" "health care provider" or "mental health professional" is a person authorized in a state or tribe or reasonably believed by the patient to provide medical or mental health services, treatment, diagnosis or consultation including a person trained in the Native American healing practices. This provision also applies to staff of physician, health care provider, or mental health professional.

(2) A "patient" is a person who consults, or is examined or interviewed by a physician, health care provider, or mental health professional.

(3) The patient, by placing his or her medical condition at issue, e.g., by filing a personal injury suit, waives this privilege.

(Ord. No. SRO-421-2013, Rule 503, 6-1-2013)

Rule 504. Religious or spiritual communications.

A person has a privilege to refuse to disclose and prevent another from disclosing a confidential communication by the person to the person's spiritual advisor in his or her professional capacity as a spiritual advisor.

(1) A "spiritual advisor" is a minister, priest, rabbi, Native American spiritual advisor or other similar functionary of a religious organization, including such which is recognized by the customs of the Tribe, or an individual reasonably believed to be so by the person consulting the spiritual advisor.

(2) A spiritual advisor may claim the privilege on behalf of the person, if that person has not done so nor waived the privilege. Such authority to assert the privilege by the spiritual advisor is presumed unless evidence is presented to overcome the presumption.

(Ord. No. SRO-421-2013, Rule 504, 6-1-2013)

Rule 505. Marital privilege.

(a) In any action before the court, as to events occurring during the marriage, a husband may not be examined for or against his wife, without her consent, nor a wife for or against her husband without his consent, except as provided in subsection (c) of this rule.

(b) Communications. Neither husband nor wife may be examined during the marriage or after the marriage as to any communications made by one

or the other during the marriage without the consent of the other, i.e., the speaker. Only the speaker may waive the privilege.

(c) Privileges under this rule shall not apply under the following circumstances:

(1) In any action for divorce or a civil action by one against the other;

(2) In a criminal action or proceeding for a crime committed by one against the other or against any person residing in the same household; and

(3) In any judicial proceeding for abandonment, failure to support or provide for, or failure or neglect to furnish the necessities of life to the spouse or the minor children.

(d) For this subsection to apply, the party invoking the privilege shall be married to a person of an opposite sex and hold a valid marriage license from a state.
(Ord. No. SRO-421-2013, Rule 505, 6-1-2013)

Secs. 5-614—5-630. Reserved.

DIVISION 6. WITNESSES

Rule 601. Competency to testify in general.

Every person is competent to be a witness unless these rules or an applicable ordinance provide otherwise.
(Ord. No. SRO-421-2013, Rule 601, 6-1-2013)

Rule 602. Need for personal knowledge.

A witness may testify about a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness' own testimony. This rule does not apply to a witness' expert testimony under Rule 703.
(Ord. No. SRO-421-2013, Rule 602, 6-1-2013)

Rule 603. Oath or affirmation to testify truthfully.

Before testifying in the Community court, every witness shall first state before the judge, parties, and spectators that the witness will testify truthfully pursuant to an oath prescribed by the court. It must be in a manner designed to impress that duty on the witness' conscience.
(Ord. No. SRO-421-2013, Rule 603, 6-1-2013)

Rule 604. Interpreter.

All interpreters before the court are subject to the administration of an oath or affirmation to make a true interpretation. An interpreter must be qualified and must give an oath or affirmation to make a true translation.
(Ord. No. SRO-421-2013, Rule 604, 6-1-2013)

Rule 605. Judge's competency as a witness.

The presiding judge may not testify as a witness at the trial. A party need not object to preserve the issue.
(Ord. No. SRO-421-2013, Rule 605, 6-1-2013)

Rule 606. Juror's competency as a witness.

(a) *At the trial.* A juror may not testify as a witness before the other jurors at the trial. If a juror is called to testify, the court must give a party an opportunity to object outside the jury's presence.

(b) *During an inquiry into the validity of a verdict.*

(1) *Prohibited testimony or other evidence.* During an inquiry into the validity of a verdict, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.

(2) *Exceptions.* A juror may testify about whether:

a. Extraneous prejudicial information was improperly brought to the jury's attention;

b. An outside influence was improperly brought to bear on any juror; or

c. A mistake was made in entering the verdict on the verdict form.

(Ord. No. SRO-421-2013, Rule 606, 6-1-2013)

Rule 607. Who may impeach a witness.

Any party, including the party that called the witness, may attack the witness' credibility.

(Ord. No. SRO-421-2013, Rule 607, 6-1-2013)

Rule 608. A witness' character for truthfulness or untruthfulness.

(a) *Reputation or opinion evidence.* A witness' credibility may be attacked or supported by testimony about the witness' reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness' character for truthfulness has been attacked.

(b) *Specific instances of conduct.* Except for criminal convictions under Rule 609, extrinsic evidence is not admissible to prove specific instances of witness' conduct in order to attack or support the witness' character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

(1) The witness; or

(2) Another witness the witness being cross-examination has testified about.

By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness' character for truthfulness.

(Ord. No. SRO-421-2013, Rule 608, 6-1-2013)

Rule 609. Impeachment by evidence of a criminal conviction.

(a) *In general.* For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established with public record, if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect and:

(1) If the crime was punishable as a serious offense under subsection (e) of this rule; or

(2) For any crime regardless of the punishment if the court can readily determine that establishing the elements of the crime required proving, or the witness' admitting, a dishonest act or false statement.

(b) *Limit on using the evidence after ten years.* If more than ten years have passed since the witness' conviction or release from confinement for it, whichever is later, the conviction may not be used under this rule.

(c) *Effect of a pardon, annulment, or certificate of rehabilitation.* Evidence of a conviction is not admissible if:

(1) The conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year; or

(2) The conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) *Pendency of an appeal.* A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency of the appeal is also admissible.

(e) *Serious offense.* A "serious offense" for purposes of this rule is defined as any offense designated a Class A offense under this Community Code of Ordinances, even if the offense was committed prior to the enactment of section 8-3(a), or any offense committed outside this jurisdiction that would be punishable as a Class A offense if committed within this jurisdiction.

(Ord. No. SRO-421-2013, Rule 609, 6-1-2013)

Rule 610. Religious beliefs or opinions.

Evidence of a witness' religious beliefs or opinions is not admissible to attack or support the witness' credibility.
(Ord. No. SRO-421-2013, Rule 610, 6-1-2013)

Rule 611. Mode and order of examining witnesses and presenting evidence.

(a) *Control by the court; purposes.* The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

(1) Make those procedures effective for determining the truth;

(2) Avoid wasting time; and

(3) Protect witnesses from harassment or undue embarrassment.

(b) *Scope of cross-examination.* A witness may be cross-examined on any relevant matter.

(c) *Leading questions.* Leading questions should not be used on direct examination except as necessary to develop the witness' testimony. Ordinarily, the court should allow leading questions:

(1) On cross-examination; and

(2) When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.
(Ord. No. SRO-421-2013, Rule 611, 6-1-2013)

Rule 612. Writing used to refresh a witness' memory.

(a) *Scope.* This rule gives an adverse party certain options when a witness uses a writing to refresh memory:

(1) While testifying; or

(2) Before testifying, if the court decides that justice requires the party to have those options.

(b) *Adverse party's options; deleting unrelated matter.* An adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness' testimony. If the producing party claims that the writing includes unrelated matter, the court must examine the writing in camera, delete any unrelated portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must be preserved for the record.

(c) *Failure to produce or deliver the writing.* If a writing is not produced or is not delivered as ordered, the court may issue any appropriate order. But if the prosecution does not comply in a criminal case, the court must strike the witness' testimony or, if justice so requires, declare a mistrial.
(Ord. No. SRO-421-2013, Rule 612, 6-1-2013)

Rule 613. Witness' prior statements.

(a) *Showing or disclosing the statement during examination.* When examining a witness about the witness' prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's counsel.

(b) *Extrinsic evidence of a prior inconsistent statement.* Extrinsic evidence of a witness' prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subsection (b) does not apply to an opposing party's statement under Rule 801(d)(2).
(Ord. No. SRO-421-2013, Rule 613, 6-1-2013)

Rule 614. Court's calling or examining a witness.

(a) *Calling.* The court may call a witness on its own if none of the parties object. Each party is entitled to cross-examine the witness.

(b) *Examining.* The court may examine a witness regardless of who calls the witness. A party may object to the court's examining a witness at that time. The court shall allow each party to ask follow-up question(s) to the witness after the court completes its questioning. The follow-up question(s) by a party shall be limited in scope to the matters inquired into by the court.
(Ord. No. SRO-421-2013, Rule 614, 6-1-2013)

Rule 615. Excluding witnesses.

At a party's request, the court must order witnesses excluded so that they cannot hear other witnesses' testimony. On its own, the court may order witnesses excluded. But this rule does not authorize excluding:

(1) A party who is a natural person;

(2) An officer or employee of a party, after being designated as the party's representative by its counsel;

(3) A person, whose presence, a party shows to be essential to presenting the party's claim or defense;

(4) A person authorized by applicable law to be present; or

(5) A victim of crime, as defined by applicable law, who wishes to be present during proceedings against the defendant.

(Ord. No. SRO-421-2013, Rule 615, 6-1-2013)

Secs. 5-631—5-664. Reserved.

DIVISION 7. OPINIONS AND EXPERT TESTIMONY

Rule 701. Opinion testimony by lay witnesses.

If the witness is not testifying as an expert, the witness' testimony in the form of opinion or inferences is limited to those opinions or inferences which are:

(1) Rationally based on the perception of the witness;

(2) Helpful to a clear understanding of his or her testimony or the determination of a fact in issue; and

(3) Not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

(Ord. No. SRO-421-2013, Rule 701, 6-1-2013)

Rule 702. Testimony by expert witnesses.

(a) *Scientific based evidence.* A witness who is qualified as an expert by experience, training, or education may testify in the form of an opinion or otherwise if:

(1) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(2) The testimony is based on sufficient facts or data;

(3) The testimony is the product of reliable principles and methods; and

(4) The expert has reliably applied the principles and methods to the facts of the case.

(b) *Non-scientific based evidence.* A witness qualified as an expert based upon specialized knowledge or skill may testify in the form of an opinion or otherwise if a witness' specialized knowledge or skill will assist the trier of fact to understand the evidence or to determine a fact in issue.

(Ord. No. SRO-421-2013, Rule 702, 6-1-2013)

Rule 703. Bases of an expert's opinion testimony.

(a) An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed.

(b) If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted.

(c) But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

(Ord. No. SRO-421-2013, Rule 703, 6-1-2013)

Rule 704. Opinion on an ultimate issue.

(a) *In general; not automatically objectionable.* Testimony in the form of an opinion otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

(b) *Exception.* In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.
(Ord. No. SRO-421-2013, Rule 704, 6-1-2013)

Rule 705. Disclosing the facts or data underlying an expert's opinion.

Unless the court orders otherwise, an expert may state an opinion, and give the reasons for it, without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.
(Ord. No. SRO-421-2013, Rule 705, 6-1-2013)

Rule 706. Court appointed expert witnesses.

(a) *Appointment process.* On a party's motion or on its own, the court may order the parties to show cause why expert witnesses should not be appointed and may ask the parties to submit nominations. The court may appoint any expert that the parties agree on and any of its own choosing. The court may only appoint someone who consents to the appointment.

(b) *Expert's role.* The court must inform the expert of the expert's duties. The court may do so in writing and have a copy filed with the clerk or may do so orally at a conference in which the parties have an opportunity to participate. The expert:

(1) Must advise the parties of any findings the expert makes;

(2) May be deposed by any party;

(3) May be called to testify by the court or any party; and

(4) May be cross-examined by any party, including the party that called the expert.

(c) *Compensation.* The court shall determine the appropriate compensation:

(1) In a criminal case or in a civil case involving just compensation under SRPMIC Const., Article XII Bill of Rights num. 6, from any funds that are provided by law; and

(2) In any other civil case, by the parties in the proportion and at the time that the court directs, and the compensation is then charged like other costs.

(d) *Disclosing the appointment to the jury.* The court may authorize disclosure to the jury that the court appointed the expert.

(e) *Parties' choice of their own experts.* This rule does not limit a party in calling its own experts.
(Ord. No. SRO-421-2013, Rule 706, 6-1-2013)

Secs. 5-665—5-693. Reserved.

DIVISION 8. HEARSAY

Rule 801. Definitions that apply to this division within this Community Code of Ordinances; exclusions from hearsay.

(a) *Statement.* "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

(b) *Declarant.* "Declarant" means the person who made the statement.

(c) *Hearsay.* "Hearsay" means a statement that:

(1) The declarant does not make while testifying at the current trial or hearing; and

(2) A party offers in evidence to prove the truth of the matter asserted in the statement.

(d) *Statements that are not hearsay.* A statement that meets the following conditions is not hearsay:

(1) *A declarant-witness' prior statement.* The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

a. Is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;

b. Is consistent with the declarant's testimony and is offered to rebut an express or implied charge that the

declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or

c. Identifies a person as someone the declarant perceived earlier.

(2) *An opposing party's statement.* The statement is offered against an opposing party and:

a. Was made by the party in an individual or representative capacity;

b. Is one the party manifested that it adopted or believed to be true;

c. Was made by a person whom the party authorized to make a statement on the subject;

d. Was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or

e. Was made by the party's co-conspirator during and in furtherance of the conspiracy.

The statement must be considered, but does not by itself establish the declarant's authority under subsection (2)c of this rule; the existence or scope of the relationship under subsection (2)d of this rule; or the existence of the conspiracy or participation in it under subsection (2)e of this rule.

(Ord. No. SRO-421-2013, Rule 801, 6-1-2013)

Rule 802. The rule against hearsay.

Hearsay is not admissible unless any of the following provides otherwise:

(1) An applicable law; or

(2) These rules.

(Ord. No. SRO-421-2013, Rule 802, 6-1-2013)

Rule 803. Exceptions to the rule against hearsay; regardless of whether the declarant is available as a witness.

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

(1) *Present sense impression.* A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

(2) *Excited utterance.* A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) *Then-existing mental, emotional, or physical condition.* A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health). This does not include a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

(4) *Statement made for medical diagnosis or treatment.* A statement that:

a. Is made for, and is reasonably pertinent to, medical diagnosis or treatment; and

b. Describes medical history; past or present symptoms or sensations; their inception; or their general cause.

(5) *Recorded recollection.* A record that:

a. Is on a matter the witness once knew about, but now cannot recall well enough to testify fully and accurately;

b. Was made or adopted by the witness when the matter was fresh in the witness' memory; and

c. Accurately reflects the witness' knowledge.

If admitted, the record may be read into evidence, but may be received as an exhibit only if offered by an adverse party.

(6) *Records of a regularly conducted activity.* A record of an act, event, condition, opinion, or diagnosis if:

a. The record was made at or near the time by, or from information transmitted by, someone with knowledge;

b. The record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

c. Making the record was a regular practice of that activity;

d. All these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with an applicable law permitting certification; and

e. Neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.

(7) *Absence of a record of a regularly conducted activity.* Evidence that a matter is not included in a record described in subsection (6) of this rule if:

a. The evidence is admitted to prove that the matter did not occur or exist;

b. Record was regularly kept for a matter of that kind; and

c. Neither the possible source of the information nor other circumstances indicate a lack of trustworthiness.

(8) *Public records.* A record or statement of a public office if:

a. It sets out:

1. The office's activities;

2. A matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or

3. In a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and

b. Neither the source of information nor other circumstances indicate a lack of trustworthiness.

(9) *Public records of vital statistics.* A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.

(10) *Absence of a public record.* Testimony, or a certification under Rule 902, that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that:

a. The record or statement does not exist; or

b. Matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.

(11) *Records of religious organizations concerning personal or family history.* A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) *Certificates of marriage, baptism, and similar ceremonies.* A statement of fact contained in a certificate:

a. Made by a person who is authorized by a religious organization or by law to perform the act certified;

b. Attesting that the person performed a marriage or similar ceremony or administered a sacrament; and

c. Purporting to have been issued at the time of the act or within a reasonable time after it.

(13) *Family records.* A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.

(14) *Records of documents that affect an interest in property.* The record of a document that purports to establish or affect an interest in property if:

a. The record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;

b. The record is kept in a public office; and

c. A law authorizes recording documents of that kind in that office.

(15) *Statements in documents that affect an interest in property.* A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose, unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.

(16) *Statements in ancient documents.* A statement in a document that is at least 20 years old and whose authenticity is established.

(17) *Market reports and similar commercial publications.* Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.

(18) *Statements in learned treatises, periodicals, or pamphlets.* A statement contained in a treatise, periodical, or pamphlet if:

a. The statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and

b. The publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence, but not received as an exhibit.

(19) *Reputation concerning personal or family history.* A reputation among a person's family by blood, adoption, or marriage, or among a person's associates or in the Community, concerning the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.

(20) *Reputation concerning boundaries or general history.* A reputation in a Community, arising before the controversy, concerning boundaries of land in the Community or customs that affect the land, or concerning general historical events important to that Community, state, or nation.

(21) *Reputation concerning character.* A reputation among a person's associates or in the Community concerning the person's character.

(22) *Judgment of a previous conviction.* Evidence of a final judgment of conviction if:

a. The judgment was entered after a trial or guilty plea, but not a nolo contendere plea;

b. The conviction was for a crime punishable by death or by imprisonment for more than one year;

c. The evidence is admitted to prove any fact essential to the judgment; and

d. When offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

The pendency of an appeal may be shown, but does not affect admissibility.

(23) *Judgments involving personal, family, or general history or a boundary.* A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter:

a. Was essential to the judgment; and

b. Could be proved by evidence of reputation.

(Ord. No. SRO-421-2013, Rule 803, 6-1-2013)

Rule 804. Exceptions to the rule against hearsay; when the declarant is unavailable as a witness.

(a) *Criteria for being unavailable.* A declarant is considered unavailable as a witness if the declarant:

(1) Is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;

(2) Refuses to testify about the subject matter despite a court order to do so;

(3) Testifies to not remembering the subject matter;

(4) Cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or

(5) Is absent from the trial or a hearing and the statement's proponent has been unable, by process or other reasonable means to procure the declarant's attendance or testimony, or in the case of a hearsay exception under subsection (b)(2), (3), or (4) of this rule.

But this subsection (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

(b) *The exceptions.* The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

(1) *Former testimony.* Testimony that:

a. Was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

b. Is now offered against a party who had, or, in a civil case, whose predecessor in interest had, an opportunity and similar motive to develop it by direct, cross, or redirect examination.

(2) *Statement under the belief of imminent death.* In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

(3) *Statement against interest.* A statement that:

a. A reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

b. If it is offered in a criminal case as one that tends to expose the declarant to criminal liability, is supported by corroborating circumstances that clearly indicate its trustworthiness.

(4) *Statement of personal or family history.* A statement about:

a. The declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

b. Another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

(5) *Statement offered against a party that wrongfully caused the declarant's unavailability.* A statement offered against a party that wrongfully caused, or acquiesced in wrongfully causing, the declarant's unavailability as a witness, and did so intending that result.

(c) *Only applicable to civil cases:* A proponent may offer a former testimony of an expert witness given as a witness at a trial, hearing, or lawful deposition against a party if the party had an opportunity to develop the former testimony by direct, cross, or redirect examination regardless of the witness' unavailability if:

(1) The proponent first gives notice to the opposing party its intent to use this rule at least 30 days in advance; and

(2) The court determines that such admission would be in the interest of justice.

A proponent may also offer the former testimony of an expert witness given at a trial, hearing, or lawful deposition against a party if the party's predecessor in interest had an opportunity and similar motive to develop the former testimony by direct, cross, or redirect examination regardless of the witness' unavailability if the proponent complies with the requirements under subsections (c)(1) and (c)(2) of this rule. The parties may also stipulate to the use of former testimony.
(Ord. No. SRO-421-2013, Rule 804, 6-1-2013)

Rule 805. Hearsay within hearsay.

Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.
(Ord. No. SRO-421-2013, Rule 805, 6-1-2013)

Rule 806. Attacking and supporting the declarant's credibility.

When a hearsay statement, or a statement described in Rule 801(d)(2)c, d, or e, has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.
(Ord. No. SRO-421-2013, Rule 806, 6-1-2013)

Rule 807. Residual exception.

(a) *In general.* Under the following circumstances, a hearsay statement is not excluded by the rule against hearsay even if the statement is not specifically covered by a hearsay exception in Rule 803 or 804:

(1) The statement has equivalent circumstantial guarantees of trustworthiness;

(2) It is offered as evidence of a material fact;

(3) It is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and

(4) Admitting it will best serve the purposes of these rules and the interests of justice.

(b) *Notice.* The statement is admissible only if, before the trial or hearing, the proponent gives an adverse party reasonable notice of the intent to offer the statement and its particulars, including the declarant's name and address, so that the party has a fair opportunity to challenge it.
(Ord. No. SRO-421-2013, Rule 807, 6-1-2013)

Rules Committee Note to Rule 807: Hearsay evidence that has sufficient indicia of reliability and trustworthiness based upon accepted customs and cultural values of different Tribes, such as oral family history, should be admitted under Rule 807 if it would serve the purposes stated under Rule 102.

Secs. 5-694—5-725. Reserved.

DIVISION 9. AUTHENTICATION AND IDENTIFICATION

Rule 901. Authenticating or identifying evidence.

(a) *In general.* To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

(b) *Examples.* The following are examples only, not a complete list, of evidence that satisfies the requirement:

(1) *Testimony of a witness with knowledge.* Testimony that an item is what it is claimed to be.

(2) *Nonexpert opinion about handwriting.* A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.

(3) *Comparison by an expert witness or the trier of fact.* A comparison with an authenticated specimen by an expert witness or the trier of fact.

(4) *Distinctive characteristics and the like.* The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

(5) *Opinion about a voice.* An opinion identifying a person's voice, whether heard firsthand or through mechanical or electronic transmission or recording, based on hearing the voice at any time under circumstances that connect it with the alleged speaker.

(6) *Evidence about a telephone conversation.* For a telephone conversation, evidence that a call was made to the number assigned at the time to:

a. A particular person, if circumstances, including self-identification, show that the person answering was the one called; or

b. A particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.

(7) *Evidence about public records.* Evidence that:

a. A document was recorded or filed in a public office as authorized by law; or

b. A purported public record or statement is from the office where items of this kind are kept.

(8) *Evidence about ancient documents or data compilations.* For a document or data compilation, evidence that it:

a. Is in a condition that creates no suspicion about its authenticity;

b. Was in a place where, if authentic, it would likely be; and

c. Is at least 20 years old when offered.

(9) *Evidence about a process or system.* Evidence describing a process or system and showing that it produces an accurate result.

(10) *Methods provided by a law or rule.* Any method of authentication or identification allowed by the Community Code of Ordinances.

(Ord. No. SRO-421-2013, Rule 901, 6-1-2013)

Rule 902. Evidence that is self-authenticating.

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

(1) *Domestic public documents that are sealed and signed.* A document that bears:

a. A seal purporting to be that of the United States; any tribe, any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and

b. A signature purporting to be an execution or attestation.

(2) *Domestic public documents that are not sealed but are signed and certified.* A document that bears no seal if:

a. It bears the signature of an officer or employee of an entity named in Rule 902(1)(A); and

b. Another public officer who has a seal and official duties within that same entity certifies under seal, or its equivalent, that the signer has the official capacity and that the signature is genuine.

(3) *Foreign public documents.* A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester, or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of

certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either:

a. Order that it be treated as presumptively authentic without final certification; or

b. Allow it to be evidenced by an attested summary with or without final certification.

(4) *Certified copies of public records.* A copy of an official record, or a copy of a document that was recorded or filed in a public office as authorized by law, if the copy is certified as correct by:

a. The custodian or another person authorized to make the certification; or

b. A certificate that complies with Rule 902(1), (2), or (3), or the Community Code of Ordinances.

(5) *Official publications.* A book, pamphlet, or other publication purporting to be issued by a public authority.

(6) *Newspapers and periodicals.* Printed material purporting to be a newspaper or periodical.

(7) *Trade inscriptions and the like.* An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.

(8) *Acknowledged documents.* A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.

(9) *Commercial paper and related documents.* Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

(10) *Presumptions under a Community law.* A signature, document, or anything else that a Community law declares to be presumptively or prima facie genuine or authentic.

(11) *Certified domestic records of a regularly conducted activity.* The original or a copy of a domestic record that meets the requirements of Rule 803(6)a—c, as shown by a certification of the custodian or another qualified person that complies with the Community Code of Ordinances. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record, and must make the record and certification available for inspection, so that the party has a fair opportunity to challenge them.

(12) *Certified foreign records of a regularly conducted activity.* In a civil case, the original or a copy of a foreign record that meets the requirements of Rule 902(11), modified as follows: the certification, rather than complying with the Community Code of Ordinances, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of Rule 902(11).

(Ord. No. SRO-421-2013, Rule 902, 6-1-2013)

Rule 903. Subscribing witness' testimony.

A subscribing witness' testimony is necessary to authenticate a writing only if required by the law of the jurisdiction that governs its validity.
(Ord. No. SRO-421-2013, Rule 903, 6-1-2013)

Secs. 5-726—5-750. Reserved.

DIVISION 10. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

Rule 1001. Definitions that apply to this division within this Community Code of Ordinances.

In this division within this Community Code of Ordinances:

(1) A "writing" consists of letters, words, numbers, or their equivalent set down in any form.

(2) A "recording" consists of letters, words, numbers, or their equivalent recorded in any manner.

(3) A "photograph" means a photographic image or its equivalent stored in any form.

(4) An "original" of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, "original" means any printout, or other output readable by sight, if it accurately reflects the information. An "original" of a photograph includes the negative or a print from it. If data is stored in a computer, an electronic device capable of capturing digital images, or similar device, any printout or other output readable by sight, shown to reflect the data accurately is an original.

(5) A "duplicate" means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

(Ord. No. SRO-421-2013, Rule 1001, 6-1-2013)

Rule 1002. Requirement of the original.

An original writing, recording, or photograph is required in order to prove its content unless these rules or a federal statute provides otherwise.
(Ord. No. SRO-421-2013, Rule 1002, 6-1-2013)

Rule 1003. Admissibility of duplicates.

A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.
(Ord. No. SRO-421-2013, Rule 1003, 6-1-2013)

Rule 1004. Admissibility of other evidence of content.

An original is not required and other evidence of the content of writing, recording, or photograph is admissible if:

(1) All the originals are lost or destroyed, and not by the proponent acting in bad faith;

(2) An original cannot be obtained by any available judicial process;

(3) The party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or

(4) The writing, recording, or photograph is not closely related to a controlling issue.

(Ord. No. SRO-421-2013, Rule 1004, 6-1-2013)

Rule 1005. Copies of public records to prove content.

The proponent may use a copy to prove the content of an official record, or of a document that was recorded or filed in a public office as authorized by law, if these conditions are met: the record or document is otherwise admissible; and the copy is certified as correct in accordance with Rule 902(4) or is testified to be correct by a witness who has compared it with the original. If no such copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.
(Ord. No. SRO-421-2013, Rule 1005, 6-1-2013)

Rule 1006. Summaries to prove content.

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot

be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.
(Ord. No. SRO-421-2013, Rule 1006, 6-1-2013)

Rule 1007. Testimony or statement of a party to prove content.

The proponent may prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.
(Ord. No. SRO-421-2013, Rule 1007, 6-1-2013)

Rule 1008. Functions of the court and jury.

Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 1004 or 1005. But in a jury trial, the jury determines, in accordance with Rule 104(b), any issue about whether:

(1) An asserted writing, recording, or photograph ever existed;

(2) Another one produced at the trial or hearing is the original; or

(3) Other evidence of content accurately reflects the content.

(Ord. No. SRO-421-2013, Rule 1008, 6-1-2013)