Chapter 5

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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 tribal criminal jurisdiction pursuant to chapter 6, article 1, section 6-0(c) and (d) and chapter 10, article VII, section 10-251(b) and (c) 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 Salt River Pima-Maricopa Indian 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 Salt River Pima-

*__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.

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. 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 Salt River Pima-Maricopa Indian 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; Ord. No. SRO-568-2023, 9-20-2023)

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;

(3) Provide written notice to the defendant of his or her rights pursuant to the Indian Civil Rights Act (25 USC §§ 1301-1304), as amended by the Violence Against Women Act Reauthorization Act of 2022.
(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; Ord. No. SRO-569-2023, 9-20-2023)

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 enforce-

ment 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.

(a) If a plea is "not guilty," then the court shall set a hearing date pursuant to Rule 7.1. This hearing may be any of the following:

(1) A trial date; or

(2) A change of plea hearing date; or

(3) A status hearing date.

(b) Setting a change of plea hearing date or a status hearing date rather than a trial date requires the consent of the prosecutor and the defendant.

(c) If a change of plea hearing date or status hearing date is set, then the period of time between the arraignment date and the next scheduled hearing shall be waived pursuant to Rule 7.2.

(d) If a trial date is set, and if the defendant is not notified of a trial date at the time of his or her entry of a not guilty plea, then 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; Ord. No. SRO-565-2023, 9-20-2023)

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, section 10-253, the judge shall cause to be appointed an attorney to represent the defendant.

(4) If the defendant is charged with an offense enumerated in chapter 6, section 6-0(d), the judge shall cause to be appointed an attorney to represent the defendant.

(5) 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.

(6) 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; Ord. No. SRO-569-2023, 9-20-2023)

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)

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*__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 6-41. 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; Ord. No. SRO-592-2025, 6-11-2025)

Secs. 5-317—5-345. Reserved.

DIVISION 9. DEFERRED PROSECUTION AND SENTENCE

Rule 30.1. Deferred prosecution and deferred sentencing.

(a) *Pre-file deferred prosecution.* Whenever before filing of the complaint, the prosecutor determines that it would serve the ends of justice to defer prosecution of the defendant, the prosecutor and the defendant may enter into a written agreement outlining the terms and length of the

period of deferred prosecution. Time limits under Rule 7.2, shall be excluded during the period of deferred prosecution.

(b) *Post-file 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.

(c) *Deferred prosecution agreement.*

(1) Whether before or after the filing of the complaint, the defendant, defense counsel and relevant staff from defense counsel's office, the prosecutor and relevant staff from the prosecutor's office, and others as agreed upon by the parties, may hold an informal conference with the defendant to discuss alternatives to prosecution of any criminal offense, under the following conditions:

a. The facts are admitted and bring the case within the jurisdiction of the Salt River Community Court;

b. Deferred prosecution of the matter would be in the best interests of the defendant and the Community; and

c. The defendant voluntarily consents to disposition of the matter by deferred prosecution.

(2) *Voluntary participation.* This section does not authorize the Community prosecutor to compel any person to appear at any such conference, to produce any papers, or to visit any place.

(3) *Post-filing adjustment.* When the parties agree to deferred prosecution of any complaint or citation, the parties shall file a stipulation that agrees to toll the case, pursuant to subsection (b). The court shall vacate any scheduled hearings and release conditions and order the immediate release any defendant who may be detained for the case.

(4) *Written agreement.* All agreements regarding the deferred prosecution shall be in writing. Copies of the agreement shall be provided to the parties, and shall not be provided to the court.

(5) *Case closure.* Upon satisfactory completion of the deferred prosecution agreement, the Community prosecutor shall not file a complaint or citation and the case shall be closed; or if the deferred prosecution agreement was entered after a complaint or citation was filed, then the court shall dismiss the matter with prejudice upon motion by the prosecutor due to the successful completion of any deferred prosecution agreement.

(d) *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; Ord. No. SRO-565-2023, 9-20-2023)

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)

ARTICLE VIII. REGULATION OF THE PRACTICE OF LAW

DIVISION 1. RULES AND APPLICATION FOR ADMISSION TO PRACTICE

I. Licensing requirement.

No person, including employees or agents of any Salt River Pima-Maricopa Community agencies and departments such as the prosecutor, defense advocate, staff attorney, court solicitor, and legal services, may practice before the Salt River Pima-Maricopa Indian Community Court ("Community court") unless that person has been admitted pursuant to these rules.

Exception: For any case pending before the Community court, any litigant, subject to the approval of the court, may be self-represented or designate a spokesperson who is a relative by blood or any enrolled member of the Community provided that such relative by blood or enrolled member of the Community is not an employee of the Community court and no fee is charged for services rendered.

Minimum requirements: Any applicant for admission to practice before the Community court, whether on a permanent or temporary (pro hac vice) basis, shall meet the following minimum requirements:

(1) Be at least 21 years old at the time of application;

(2) Have completed an application for admission as set forth in these rules;

(3) Provide proof of graduation from high school or completion of a GED unless the applicant provides proof of a college or professional degree;

(4) Provide a certificate of good standing (or the equivalent as determined by the admissions committee) from every state and/or any Tribe within Arizona in which the lawyer currently is licensed to practice;

(5) Demonstrated good character, which shall be determined by the admissions committee.

(Ord. No. SRO-588A-2025, 2-5-2025)

II. Establishment of admissions committee.

(a) The admissions committee ("committee") is established under the budget and control of the court administrator. The committee shall consist of the director of each legal department (or their designee), the presiding judge of the Community court (or their designee), a court

solicitor (as assigned by the court administrator), the court administrator (or their designee), and two Community members at large. The role of committee chair shall be filled by the court administrator (or their designee).

(b) The admissions committee shall be responsible for admission procedures, including but not limited to the following, as more fully set forth in these rules:

(1) Establishment and approval of the character and fitness application for admission;

(2) Establishment and administration of the admissions examination;

(3) Collection and review of character and fitness information;

(4) Conducting interviews or hearings as appropriate regarding any applicant the committee deems to require additional scrutiny;

(5) Making final, non-appealable decisions on admission;

(6) Establishment and administration of the professionalism course;

(7) Ensure compliance with continuing legal education requirements.

(Ord. No. SRO-588A-2025, 2-5-2025)

III. Admissions examination.

Except for advocates already admitted to practice before the Community court on January 1, 2025, each applicant for admission shall take and receive a passing score on an admissions examination. The committee shall establish and administer the admissions examination and shall have authority and discretion to determine the manner of taking the examination, the passing score, and the subject matters covered on the examination; however, the examination shall cover, at a minimum, the Community Code (civil, juvenile, and criminal), the Community's Rules of Professional Conduct, and the Community's Rules of Judicial Conduct. The examination may be in "open book" format and/or include multiple choice questions, short essays, or any combination thereof.

(Ord. No. SRO-588A-2025, 2-5-2025)

IV. Character and fitness application.

(a) The committee shall establish a character and fitness application ("application") that each applicant for admission must complete and sign under oath. No applicant shall be admitted until the committee is satisfied with reasonable promptness that the applicant has the requisite character and fitness to practice in the Community.

(b) The application shall require the applicant to disclose, at a minimum, under penalty of perjury:

(1) Five years of employment information, including the dates of employment, the nature of the employment, the name and contact information for the applicant's direct supervisor at each place of employment, and the reason for leaving each employment. If the applicant was a student during the preceding five years, the applicant's school information will be sufficient to fulfill all or part of this requirement.

(2) All post high school education with full disciplinary records inclusive of actual disciplinary sanctions (whether academic or behavioral) and disciplinary investigations or proceedings that did not result in sanctions.

(3) Any civil action, including divorce or other family matter, in which the applicant was a party in the preceding ten years.

(4) Other professional licenses and any disciplinary investigation or proceedings (or resignation in lieu of an investigation or proceeding) in the preceding seven years, whether or not the investigation or proceeding resulted in disciplinary action.

(5) Any allegation of the unauthorized practice of law in any state or jurisdiction.

(6) Any allegation against the applicant of fraud, perjury, misrepresentation, or false swearing in a judicial or administrative proceeding.

(7) Whether as an adult or a juvenile, the applicant has been served with a criminal summons, questioned, arrested, taken into custody, indicted, charged with, tried for, pleaded guilty to or been convicted of, or ever been the subject of an investigation concerning the violation of any law, statute, ordinance, rule, regulation, or canon (including all incidents, no matter how trivial or minor the infraction or whether guilty or not, whether expunged or not, whether the applicant believes or was advised that they need not disclose any such instance).

(8) Traffic citations in the last seven years (whether guilty or not, expunged or not), including all moving and non-moving violations that resulted in a fine of $50.00 or more.

(9) Military record, if any.

(10) Three references, one of which shall be a professional reference.

(11) Any additional information the applicant believes is relevant to their application for admission.

(c) The committee shall treat the contents of each application as private and confidential. Applications shall not be inspected by any person not directly involved in the admission process.
(Ord. No. SRO-588A-2025, 2-5-2025)

V. Professionalism course.

The committee shall establish and provide for the administration of a professionalism course specific to the Salt River Pima-Maricopa Community and the expectations of the Community Council and Community court as they pertain to standards of professionalism that are and shall be expected of all advocates practicing in the Community. The professionalism course must be completed within one year of admission, or for advocates already admitted on January 1, 2025, before January 1, 2027, with proof thereof provided to the committee in a manner to be established by the committee. The professionalism course shall be taken once only unless ordered by the judicial, attorney and advocate discipline commission ("discipline commission").
(Ord. No. SRO-588A-2025, 2-5-2025)

VI. Continuing legal education.

Each person admitted to practice before the Community court shall complete three hours of continuing legal education ("CLE") annually between July 1 and June 30. The committee shall establish parameters for acceptable CLE to meet this requirement. Each person admitted to practice in the community must provide information related to their CLE requirement in the form of an affidavit to be developed by the committee.

Any advocate who fails to meet CLE requirements shall be designated "inactive" to practice in the Community. Their "inactive" status shall not be considered or deemed disciplinary in nature. An advocate designated as "inactive" can be reinstated to active status if the advocate within five years of being designated "inactive" makes up all their cumulative delinquent CLE requirements and provides an affidavit to that effect to the committee. After five years of "inactive" status for failure to meet CLE requirements, a person wishing to be reinstated must apply for admission as though the applicant were applying for the first time, including successful completion of all admissions requirements. A person may apply for relief from this rule by filing a petition with the committee stating good cause for the requested relief.
(Ord. No. SRO-588A-2025, 2-5-2025)

VII. Ongoing duty to report.

Each advocate admitted to practice in the Community shall have an ongoing duty to report to the committee any final disciplinary sanction or diversion imposed by any other jurisdiction. The report must be made within 30 days of the effective date of the sanction. The committee

shall forward any such report to the discipline commission for consideration for possible disciplinary action.
(Ord. No. SRO-588A-2025, 2-5-2025)

VIII. Pro hac vice admission.

The committee shall establish rules and procedures for admission to practice before the Community court on a temporary basis. The presiding judge shall have final authority to admit or deny an application for pro hac vice admission.
(Ord. No. SRO-588A-2025, 2-5-2025)

IX. Oath of office.

Upon satisfying the qualifications for admission, the court administrator shall arrange for the applicant to be admitted under oath either in open court or by signing a written oath before a notary public. The form of the oath shall be prescribed by the admissions committee and shall include, at a minimum, swearing to support the Constitution of the Salt River Pima-Maricopa Indian Community and conform to all Community laws and regulations and all rules and orders of the Community court.
(Ord. No. SRO-588A-2025, 2-5-2025)

X. Practice pending admission.

An applicant who currently holds an active license to practice law in another tribal or state jurisdiction, and who has been primarily engaged in the active practice of law for three of the five years immediately preceding applying for admission under these rules, may provide legal services before the Community court for no more than 365 days, provided that the applicant:

(1) Is in good standing in all courts and jurisdictions in which the applicant currently is admitted to practice;

(2) Is not currently subject to an order of discipline or the subject of a pending disciplinary or disability investigation in any jurisdiction;

(3) Has first submitted an application for admission to practice before the Community court;

(4) Reasonably expects to fulfill all of the requirements for admission;

(5) Associates with and is supervised by an advocate licensed to practice before the Community court and discloses in writing to the admissions committee and the presiding judge the name and contact information of that advocate;

(6) Provides to the admissions committee and the presiding judge a signed declaration of the licensed advocate certifying the applicant's association with and supervision by that advocate;

(7) Affirmatively states in all communications and court documents that the applicant's application for admission is pending.

(Ord. No. SRO-588A-2025, 2-5-2025)

XI. Certified limited practice students.

The purpose of this provision is to provide law school students supervised instruction and training in the practice of law for a limited time and to provide volunteers opportunities.

(1) To be eligible to become a certified limited practice student, an applicant must:

a. Have successfully completed legal studies amounting to at least two semesters, or the equivalent academic hour , at an ABA accredited law school;

b. Neither ask for nor receive compensation or remuneration of any kind for services rendered by the certified limited practice student from the person on whose behalf the services are rendered (payment by the Community, however, is permitted);

c. Certify in writing that the student has read the Community's Rules of Professional Conduct;

d. Be certified by the dean of the law school that the student is in good academic standing, of good character, and as has either completed, enrolled

in, or is currently attending academic courses in civil procedure, criminal law, evidence, and professional responsibility.

(2) Applicants to become a certified limited practice student shall:

a. Submit an application to the admissions committee in a form to be determined by the committee;

b. Attest that the applicant meets all of the requirements set forth in this rule;

c. Submit a written statement by the applicant's supervising advocate stating the period of time during which the supervising advocate will assume supervisory responsibility for the applicant.

(3) A certified limited practice student shall be authorized to:

a. Appear in Community court in the presence of the supervising advocate on behalf of any person who has consented in writing to that appearance, which consent shall be filed with the court and brought to the attention of the judge presiding over the matter at issue;

b. Prepare pleadings and other documents to be filed in any matter in which the certified limited practice student is eligible to appear in court, provided such pleadings are signed by the supervising advocate;

c. Give legal advice and perform other legal services but only with the consent of the supervising advocate;

d. Use the term certified limited practice student whenever holding themselves out to the court, clients, and the public in respect to any matter in which they are involved pursuant to this rule.

(Ord. No. SRO-588A-2025, 2-5-2025)

DIVISION 2. RULES OF PROFESSIONAL CONDUCT

Preamble.

These rules of professional conduct apply equally to (1) advocates who are licensed to practice law in another jurisdiction and have been approved to practice before the court of the Salt River Pima-Maricopa Indian Community, and (2) advocates who are permitted to represent clients before the court of the Salt River Pima-Maricopa Indian Community but who are not licensed to practice law in any tribe, state or territory of the United States. The rules serve not only as a maxim for practice and advocacy before the court of the Salt River Pima-Maricopa Indian Community, but also to acknowledge and promote the concept that service to others is central to the principles of custom and tradition as understood by the Onk Akimel O'odham and Xalychidom Piipaash people.

A Salt River Pima-Maricopa Indian Community advocate is a legal professional, a representative of clients, and an officer of the Community's court. An advocate has a special responsibility to provide the highest quality of service to each client. As a representative of clients, an advocate performs various functions that require knowledge of the law, keeping up to date with changes in the law, and sensitivity to matters that are culturally relevant. An advocate is responsible to maintain meaningful client communication, to be prompt and diligent in the representation of his or her clients, and to advise each client of his or her legal rights and options as well as assist in the explanation of the possible outcomes of an individual's decisions.

Communications between the advocate and client must be confidential and consistent with these rules of professional conduct or other law. An advocate should use the law's procedures only for legitimate purposes and not to harass or intimidate others. An advocate should demonstrate respect for the legal system and for those who serve it including judges, other advocates, and public officials. An advocate has a duty to uphold the legal process, and at all times, be candid with, and respectful to, the

tribunal. Any participant in the Community judicial system should endeavor to resolve disputes with other participants and address any ethical concern regarding another participant directly before referring a matter for possible disciplinary review. An advocate should comply with the letter and spirit of these rules in order to make the court of the Salt River Pima-Maricopa Indian Community work fairly and efficiently.

The rules of professional conduct are rules of reason that are designed to provide guidance to advocates, the courts, and members of the Community, and to provide a structure for all to understand and guide their conduct in the best interests of clients and the Community's system of justice. The rules also are intended to regulate advocates' conduct and, when necessary, to investigate potential misconduct through the disciplinary process. Disciplinary assessment of an advocate's conduct should be made on the basis of the advocate's knowledge of relevant circumstances at the time of the conduct and with recognition of the fact that advocates must at times act based on incomplete knowledge of relevant facts and at times while making professional decisions that have to balance competing interests.

The rules presuppose a larger legal and cultural context shaping the advocate's role. That context includes court rules and statutes relating to matters of licensure to practice in the Community, laws defining representation of clients in the Community, and substantive and procedural law in general. The rules do not exhaust the cultural, moral, and ethical considerations that should inform an advocate's conduct and professional judgment. No human activity can be completely defined by the legal rules.

The rules are not designed to be a basis for civil liability, or to be used by opposing parties as procedural weapons. Violation of a rule should not in itself give rise to a cause of action against an advocate, nor should it create any presumption in such a case that a legal duty has been breached. Additionally, a violation of a rule does not necessarily warrant disciplinary or non-disciplinary remedies, such as disqualification of an advocate in pending litigation.

Some rules are followed by a comments section. These comments are meant to explain and illustrate the meaning and purpose of the rule. The comments are intended as guides to interpretation of the rules.
(Ord. No. SRO-588A-2025, 2-5-2025)

Subdivision I. Client-Advocate Relationship

Rule 1.1. Competence.

An advocate shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Competent representation includes appearing on time and being prepared for scheduled court proceedings. An advocate may accept representation when reasonable study and preparation can raise his or her competence to that needed for a particular case. In determining whether an advocate employs the necessary knowledge and skill in a particular matter, relevant factors include the complexity of the matter, the advocate's experience, the amount of time to study and prepare the case; and whether it may be helpful either to refer the matter to another advocate who is competent in the field in question, or to work with another advocate on the case. In emergency situations, an advocate may provide limited assistance (as opposed to representation) in a matter in which the advocate does not have the required legal knowledge or skill and when referral to or consultation with another advocate is impractical. This type of emergency assistance shall be limited to that reasonably necessary under the circumstances. To maintain the necessary knowledge and skill, an advocate should keep up to date about changes in the law and its practice, engage in continuing study and education, including cultural awareness and sensitivity, and comply with all continuing legal education requirements to which the advocate is subject.

Rule 1.1. Competence - Comment

Thoroughness and Preparation

[1] In deciding whether to undertake representation of a client, an advocate should consider that competent handling of a particular matter includes:

a. the ability to consider and analyze the factual and legal elements of the problem, and

b. the ability to then apply the methods and procedures that meet the standards of competent practitioners,

c. adequate preparation which is determined in part by what is at stake (major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence), and

d. the advocate's workload.

Cultural Competence

[2] An advocate should endeavor at all times to be culturally competent. An advocate can refer to the SRP-MIC Cultural Resources Department website for information and programs to become culturally competent. To be culturally competent means having the capacity to provide effective legal representation that is grounded in an awareness of and sensitivity to the various people that the SRP-MIC court serves. A cultural group is identified by the shared beliefs, values, customs and behaviors that define it, and is particularly important with racially, ethnically and culturally distinct communities, including those who use a language other than English. Cultural competence is also important for persons with disabilities. Cultural competence and the degree to which an advocate demonstrates appreciation for and understanding of cultural factors are important attributes for an advocate because culture can affect the quality of the advocate-client relationship, the effectiveness of communication between an advocate and client, the advocate's understanding of a client's objectives for the representation, a client's reactions to conflict, a client's perceptions of the legal system, and other aspects of the legal system.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 1.2. Scope of representation and allocation of authority between client and advocate.

(a) An advocate shall abide by a client's decisions concerning the objectives of representation, subject to subsections (b), and (d), and shall consult and communicate with the client as to the means by which they are to be pursued. An advocate shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the advocate shall abide by the client's decision, after consultation with the advocate, as to a plea to be entered, whether to waive jury trial, whether to accept or deny a plea agreement, and whether the client will testify. At the outset of a representation, the client may authorize the advocate to take specific action on the client's behalf without further consultation. Absent a material change in circumstances, an advocate may rely on such advance authorization. The client may, however, revoke such authority at any time.

(b) The advocate and the client may agree to limit the scope of the representation. An advocate undertaking a limited-scope representation must have the knowledge and skill to perform those tasks competently and must also know enough to counsel the client regarding the advisability of the action contemplated. The scope of the representation may be limited only if the limitation is reasonable under the circumstances and the client gives written consent after consultation.

(c) An advocate's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

(d) An advocate shall not counsel a client to engage, or assist a client, in conduct that the advocate knows is criminal or fraudulent, but an

advocate may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law. An advocate may not continue assisting a client in conduct that the advocate originally supposed was legally proper but then discovers is criminal or fraudulent. The advocate must, in such a situation, withdraw from the representation of the client in the matter. In some cases, withdrawal alone might be insufficient. It may be necessary for the advocate to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation, or the like. In extreme cases, an advocate may be required to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. See also Rule 1.15.

(e) If the advocate has a fundamental disagreement with the client, the advocate may decline the representation or withdraw from the representation provided the advocate is not prevented from withdrawal pursuant to a court order, Rule 1.16, or other law. Fundamental disagreement shall mean disagreement as to an issue of material importance between the advocate and client that cannot be resolved and that adversely affects the client/advocate relationship. In civil cases, the client may resolve the disagreement by representing themselves, or by discharging the advocate, with the understanding that any subsequent counsel may be retained or appointed at the client's expense. In criminal cases, the client may resolve the disagreement by representing themselves or hiring an advocate, at the client's own expense.

Rule 1.2. Scope of Representation and Allocation of Authority between Client and Advocate - Comment

Allocation of Authority between Client and Advocate

[1] In a case in which the client appears to be suffering diminished mental capacity, the advocate's duty to abide by the client's decisions is to be guided by Rule 1.13.

Limited Scope Representations

[2] Limited-scope representation occurs when an advocate represents or assists a client with part, but not all, of the client's legal matter. Limited representation by government provided advocates differs significantly from limited representation for paying clients. When an advocate is provided by the government, an advocate, not the client, determines what services will be provided. As such, a burden is placed on the advocate to carefully consider when limited representation is offered and the implications limited representation presents in terms of a client's informed consent and the client's ability and means to secure additional representation, if desired.

[3] Although an agreement for limited representation does not exempt an advocate from the duty to provide competent representation, the limitation is a factor to consider when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[4] All agreements concerning an advocate's representation of a client must accord with the Rules of Professional Conduct and other SRP-MIC law. See Rules 1.1, 1.8, and 5.6.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 1.3. Diligence.

An advocate shall act with reasonable diligence and promptness in representing a client. Diligence includes making best efforts to communicate with clients. An advocate should pursue a matter diligently on behalf of a client to the best of the advocate's ability and take whatever lawful and ethical measures are required to advance the client's cause with reasonable speed. To that end, an advocate may have authority to choose the methods in which a matter is pursued and to make strategic decisions designed to advance the client's cause without undue delay.

Rule 1.3 Diligence - Comment

[1] An advocate's duty to act with reasonable promptness does not prevent an advocate from agreeing to a reasonable request for a postponement of a hearing or deadline when it will not negatively affect the advocate's client. However, such actions as failing to communicate with reasonable promptness a plea offer, to notify a client of the receipt of funds on their behalf, failing to promptly remit those funds to clients entitled to receive them, delaying responding to client's inquiries and requests to access their files, and delays in preparing and filing papers on their behalf may be factors for consideration in determining whether violations of the advocate's duty of diligence has occurred.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 1.4. Communication.

(a) An advocate shall:

(1) Promptly inform the client of any decision or circumstance under these rules that require informed consent, as defined in Rule 1.0(e);

(2) Reasonably consult with the client about the methods which the client's goals are to be accomplished and inform the client of relevant limitations on the advocate's conduct if the client expects the advocate to take actions not permitted by the Rules of Professional Conduct or other law;

(3) Keep the client reasonably informed about the status of the matter; and

(4) Promptly comply with reasonable requests for information.

(b) An advocate shall fully explain a matter to the client so the client can make informed decisions regarding the representation. An advocate shall promptly consult with the client and obtain consent prior to taking action unless the client previously has given direction as to how the client wishes the advocate to handle the matter.

(c) In a criminal case, an advocate shall promptly inform a client of all extended plea agreements.

Rule 1.4 Communication - Comment

Communicating with Client

[1] The client should have enough information to help make informed decisions concerning the goals of the representation and the methods by which they are to be used to reach such goals should the client wish to do so. Ordinarily, the information and explanation to be provided is that appropriate for a client who is a comprehending and responsible adult. As an advisor, an advocate should consider both legal and practical information in deciding how to counsel a client. See Rule 2.1.

[2] An advocate should promptly respond to or acknowledge all client communications, including telephone calls, emails, text messages, etc. When a client makes a reasonable request for information, requested information should be provided within a reasonable time. If a prompt response is not possible, then the advocate or a member of the advocate's staff should acknowledge receipt of the request and advise the client as to when a response may be expected. See also Rule. 5.1 and Rule 5.3 for responsibilities of supervisory advocates.

[3] Circumstances may arise in which communication with a client does not occur due to an unavailable or unresponsive client. In these situations, representation becomes difficult, and an advocate may but is not required to withdraw under Rule 1.15. The advocate must still make reasonable efforts to locate and communicate with the client and, if necessary, inform the client of the advocate's intent to withdraw. If an advocate elects to withdraw due to a client's failure to respond or be available to the advocate, the advocate must nevertheless protect client confidences when moving to withdraw. See Rule 1.6.

Clients with Diminished Capacity

[3] Fully informing a client of information sufficient for the client to make informed decisions about the representation may be difficult or impossible where the client is a child or suffers from diminished capacity. In such a situation, the advocate must carefully consider what the client is capable of understanding given the client's age, education, mental capacity, etc. See Rule 1.13.

Withholding Information

[4] In specific circumstances, an advocate may be justified in delaying transmission of information when the client's reaction is likely to be harmful to the client. For example, an advocate might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. An advocate may not withhold information to serve the advocate's own interests or the interests of another person.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 1.5. Fees.

(a) An advocate shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include but are not limited to the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) The fee customarily charged in the locality for similar legal services;

(3) The facts involved in the case and the results obtained;

(4) The time constraints imposed by the client or by the circumstances;

(5) The nature and length of the professional relationship with the client;

(6) The experience, reputation, and ability of the advocate(s) performing the services; and

(7) Whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation, except when the advocate will charge a regularly represented client on the same basis or rate. Changes in the basis or rate of the fee or expenses shall also be communicated to the client in writing and reviewed with the client before or within a reasonable time of the change. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing before the fees or expenses to be billed at higher rates are actually incurred. The requirements of this subsection do not apply to: (1) court-appointed advocates who are paid by a court or other governmental entity, and (2) advocates who provide pro bono short-term limited legal services to a client pursuant to Rule 6.5.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be signed by both the advocate and the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the advocate in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses the client will be responsible for, independent of the outcome of the matter. Upon conclusion of a contingent fee matter, the advocate shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, an accounting showing all of the disbursements of the original recovery amount, the remittance to the client and the method of determination.

(d) An advocate shall not enter into an arrangement for, charge, or collect:

(1) Any fee in a domestic relations matter, the payment or amount of which is

contingent upon the securing of a divorce or the amount of alimony or support, or a property settlement in lieu thereof; or

(2) A contingent fee for representing a defendant in a criminal case.

(3) A fee denominated as "earned upon receipt," "nonrefundable" or in similar terms unless the client is simultaneously advised in writing that the client may nevertheless discharge the advocate at any time and in that event may be entitled to a refund of all or part of the fee based upon the value of the representation pursuant to paragraph (a).

(e) Two or more advocates, or their respective firms, jointly working on a matter may divide a fee if:

(1) The advocates or firms disclose to the client in writing how the fee will be divided and how the advocates or firms will divide respective responsibility for the matter among themselves;

(2) The client consents to the division of the fees in a writing signed by the client;

(3) The total fee is reasonable; and

(4) The division of responsibility among the advocates or firms is reasonable in light of the client's need that the entire representation be completely and diligently completed.

Rule 1.5 Fees - Comment

Reasonableness of Fee and Expenses and Basis or Rate of Fee

[1] The Rule requires that advocates charge fees and expenses that are reasonable under the circumstances. In any client-advocate relationship, an understanding as to fees and expenses must be promptly established. The advocate should furnish the client with at least a simple memorandum, email or copy of the advocate's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of the representation. An advocate may seek reimbursement for the reasonable cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the advocate.

[2] In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, an advocate must consider the factors and any applicable law that are relevant under the circumstances.

Terms of Payment

[3] An advocate may require advance payment of a fee but is obliged to return any unearned portion as described in Rule 1.15(d). An advocate should not enter into an agreement whereby services are to be provided only up to a stated amount when it is likely that more extensive services will be required unless the situation is adequately explained to the client. Otherwise, the client might have to negotiate for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. An advocate should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

[4] An advocate cannot contract for a contingent fee for legal representation when collecting support, alimony or other financial payments pursuant to a Petition for Comity.

Division of Fee

[5] A division of fee is a single billing to a client covering the fee of two or more advocates who are not in the same firm. The client must agree to the arrangement, including the share that each advocate is to receive, and the agreement

must be confirmed in writing by all parties. Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the advocates were associated in a partnership. A referral should be made only when the referring advocate reasonably believes that the other advocate is competent to handle the matter.

Disputes over Fees

[6] Advocates and clients should attempt to resolve disputes over fees amicably before resorting to legal remedies or alternative dispute resolution.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 1.6 Confidentiality of information.

(a) An advocate shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b), (c), (d) or Rule 3.3(a).

(b) An advocate shall reveal such information to the extent the advocate reasonably believes necessary to prevent the client from committing a criminal act that the advocate believes is likely to result in death or substantial bodily harm.

(c) An advocate may reveal intention of the advocate's client to commit a crime and the information necessary to prevent the crime.

(d) An advocate may reveal information relating to the representation of a client to the extent the advocate reasonably believes necessary:

(1) To prevent reasonably certain death or substantial bodily harm;

(2) To prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the advocate's services;

(3) To prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the advocate's services;

(4) To secure legal advice about the advocate's compliance with these rules;

(5) To establish a claim or defense on behalf of the advocate in a controversy between the advocate and the client, to establish a defense to a criminal charge or civil claim against the advocate based upon conduct in which the client was involved, or to respond to allegations in any proceeding or inquiry by the Community executive administration concerning the advocate's representation of the client;

(6) To comply with other law or a court order;

(7) To detect and resolve conflicts of interest arising from the advocate's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the advocate-client privilege or otherwise prejudice the client; or

(8) To respond to questions from the court related to a client's unavailability or failure to communicate with the advocate, with the objective of providing candid and relevant information to the Community court without unduly prejudicing the client's rights or interests.

(e) An advocate shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Rule 1.6 Confidentiality of Information - Comment

[1] Paragraph (a) establishes an advocate's broad duty to maintain and protect client confidences. Subsections (b) - (d) establish narrow exceptions to the duty of confidentiality. Advocates discuss client confidences in a way that might allow a third party to ascertain information about

the client or case. An advocate may use hypotheticals to discuss specific legal issues, as long as the examples do not reveal their client's identity or their case.

Authorized Disclosure

[2] An advocate may discuss information about a client's case when the client has authorized disclosure directly or by implication. Client authority may be implied if disclosure is necessary to carry out the client's objectives for the representation. For example, an advocate may be allowed to admit a fact that would be hard to dispute or admit a fact in order to satisfactorily resolve the case. Advocates that work together in a firm may talk about a client's case unless the client has told the advocate that they may not share case information with coworkers. Keeping client and case information private also applies to advocates who represent the government.

The requirement of maintaining confidentiality of information relating to representation applies to government advocates who may disagree with the policy goals that their representation is designed to advance.

Subsection (d)(6) permits an advocate to disclose information to authorities which the advocate learns during the course of representation, concerning the exploitation or abuse of an elderly or vulnerable person or child, when required to do so under Community law, even if the client does not want the advocate to report the information.

Acting Competently to Preserve Confidentiality

[3] An advocate must keep all client and case information, including information stored in electronic form, provided the advocate has reasonable safeguards in place to prevent the information from being released accidentally or without permission. This duty includes making sure persons who work for and with the advocate understand that client information is private, and reasonable efforts are taken under the circumstances to prevent access or disclosure.

[4] An advocate must be careful with client information when transmitting a communication to others and make sure that only the intended person receives the information. This responsibility does not mean an advocate must use special security measures when the method of communication affords a reasonable expectation of privacy. Whether the advocate sent the information by properly secured means can be decided by the circumstances, including the advocate's actions and whether the law or an agreement might have provided greater protection.

[5] The duty of confidentiality continues after the client-advocate relationship has terminated. See Rule 1.9 (c)(2).

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 1.7. Conflict of interest: Current clients: General.

(a) Except as provided in paragraph (b), an advocate shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) The representation of one client will be directly adverse to another client; or

(2) There is a significant risk that the representation of one or more clients will be materially limited by the advocate's responsibilities to another client, a former client, a third person or a personal interest of the advocate.

(b) Notwithstanding the existence of a conflict of interest under paragraph (a), an advocate may represent a client if each affected client gives informed written consent and each of the following conditions are met:

(1) The advocate reasonably believes that he or she will be able to provide competent and diligent representation to each affected client;

(2) The representation is not prohibited by Community law; and

(3) The representation does not involve the assertion of a claim by one of the advocate's clients against another client represented by the advocate, either in the same litigation or other proceeding in any court or jurisdiction.

Rule 1.7 Conflict of Interest: Current Clients: General - Comment

General Principles

[1] Loyalty and independent judgment are essential in an advocate's relationship with a client. Concurrent conflicts of interest may arise from an advocate's responsibilities to 1) another client; 2) a former client; 3) a third person; or 4) the advocate's own interests.

[2] To understand whether an advocate has a conflict of interest problem under this Rule, and if so, what steps to take, the advocate should: 1) identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict; and 4) if the representation may be undertaken, consult with the clients affected and obtain their informed written consents. If a conflict exists that cannot be waived, or that an affected client declines to waive, the advocate must decline the representation or withdraw from an existing representation.

Identifying Conflicts of Interest: Directly Adverse

[3] Although directly adverse conflicts arise most frequently in litigation, they also arise in transactional matters. For example, if an advocate is asked to represent a seller in negotiations with a buyer represented by the advocate, not in the same transaction but in another, unrelated matter, the advocate could not undertake the matter without informed consent.

Conflict questions may arise in estate planning and estate administration. For example, an advocate may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present.

In estate administration, the client is the person seeking the advocate's services. The client is not the estate, trust or beneficiaries. In order to comply with conflict of interest rules, the advocate should make clear the advocate's relationship to the parties involved. In litigation, factors that an advocate should consider in determining whether the clients need to be advised of an actual or potential conflict include, but are not necessarily limited to, the following: jurisdiction, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved, and the clients' reasonable expectations in retaining the advocate. If there is significant risk of material limitation, then absent informed consent of the affected clients, an advocate should refuse one of the representations or withdraw from one or both matters.

One example of a directly adverse conflict in litigation is an advocate representing different clients charged separately related to the same alleged criminal offense. This could require the advocate to cross-examine Client A, who appears as a witness in a case involving Client B when the testimony could be damaging to Client A.

Personal Interest Conflicts

[4] When advocates representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there is a significant risk that client confidences will be revealed and that the advocates' family relationships will interfere with independent professional judgment. Thus, related advocates (e.g., as parent, child,

sibling or spouse) ordinarily may not represent opposing clients, unless each client gives informed written consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the advocates are associated.

Prohibited Representations

[6] Ordinarily, clients may consent to representation notwithstanding a conflict. As indicated in paragraph (b), however, some conflicts are non-consentable, meaning that the advocate involved may not ask for such agreement or provide representation on the basis of the client's consent. When the advocate represents more than one client, the question of consentability must be resolved as to each client.

[7] Consentability is typically determined by considering whether the client's interests will be adequately protected if they are permitted to give their informed consent. Under paragraph (b)(1), representation is prohibited if the advocate cannot reasonably conclude that competent and diligent representation of both clients is impossible under the circumstances.

[8] Paragraph (b)(2) describes conflicts that are non-consentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although (b)(2) does not preclude an advocate's representation of adverse parties in a mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0(l)), such representation may be precluded by paragraph (b)(1).

Informed Consent

[9] Informed consent requires that each affected client be aware of the relevant circumstances of the conflict, and of reasonably foreseeable effects the conflict may have on the interests of that client, including loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See Rule 1.0(e).

[10] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent- for example, when the advocate represents different clients in related matters and Client A refuses to consent to the disclosure necessary to permit Client B to make an informed decision. In these cases, the advocate cannot properly ask Client B to consent. See Rule 1.6.

Consent Confirmed in Writing

[11] Paragraph (b) requires the advocate to obtain the informed consent of the client, confirmed in writing. Such writing must be executed by the client, or promptly recorded and transmitted to the client following an oral consent, within a reasonable time following the client's consent. The requirement of a writing does not replace the need for the advocate to talk with the client, to explain the risks and advantages - as well as reasonably available alternatives - and to afford the client a reasonable opportunity to discuss options, questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or uncertainty that might later occur.

Revoking Consent

[12] A client who has given consent to a conflict may revoke the consent at any time and by doing so would terminate the advocate's representation.

Consent to Future Conflict

[13] Whether an advocate may properly request a client to waive conflicts that might arise in the future is subject to the test of paragraph (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. A more comprehensive explanation of the types of future representations that might arise - and the actual and reasonably foreseeable adverse consequences - may result in a greater likelihood that the client will have the requisite understanding and that the future conflict waiver will be enforceable.

Special Considerations in Common Representation

[14] With regard to the attorney-client privilege, the prevailing rule is, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation arises between the clients, the privilege will not protect any such communications, and the clients should be so advised before they consent to common representation.

[15] When seeking to establish or adjust a relationship between commonly-represented clients, the advocate should make clear that the advocate's role is not that of partisanship normally expected in other circumstances. Therefore, the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made as a result of the common representation should be fully explained to the clients at the outset of the representation, or immediately as they arise. See Rule 1.2(b).

Organizational Clients

[16] An advocate who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization. Thus, the advocate for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the advocate; there is an understanding between the advocate and the organizational client that the advocate will avoid representation adverse to the organizational client's affiliates; or the advocate's obligations to either the organizational client or the new client are likely to limit materially the advocate's representation of the either client.

[17] An advocate for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The advocate may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the advocate's resignation from the board and the possibility of the corporation's obtaining legal advice from another advocate in such situations. If there is material risk that the dual role will compromise the advocate's independence of professional judgment, the advocate should not serve in both capacities when conflicts of interest arise. The advocate should advise other members of the board that in some circumstances, matters discussed at board meetings while the advocate is present in the capacity of director might not be protected by the attorney-client privilege and that conflict-of-interest considerations might require the advocate's recusal as a director or might require the advocate and the advocate's firm to decline representation of the corporation in a matter.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 1.8. Conflict of interest: Current clients: Specific rules.

(a) An advocate shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) The transaction and terms on which the advocate acquires the interest are fair and reasonable and are fully disclosed and transmitted in writing in a format that can be reasonably understood by the client;

(2) The client is advised in writing of the desirability of seeking the advice of independent legal counsel on the transaction, and is given a reasonable opportunity to do so; and

(3) The client gives written informed consent to the essential terms of the transaction and the advocate's role in the transaction, including whether the advocate is representing the client in the transaction.

(b) An advocate shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as defined in Rule 1.8 Comment [4].

(c) An advocate shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the advocate or a person related to the advocate any substantial gift, unless the advocate or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent, or other relative or individual with who the advocate or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, an advocate shall not make or negotiate an agreement giving the advocate literary or media rights to a portrayal or account based in substantial part on information relating to the representation

(e) An advocate shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) An advocate may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) An advocate representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) An advocate shall not accept compensation for representing a client from one other than the client unless:

(1) The client gives informed written consent;

(2) There is no interference with the advocate's independence of professional judgment or with the client-advocate relationship; and

(3) Information relating to representation of a client is protected as required under Rule 1.6.

(g) An advocate who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty, unless each client gives informed consent, in a writing signed by the client. The advocate's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) An advocate shall not acquire a proprietary interest in the cause of action or subject matter of litigation the advocate is conducting for a client, except that the advocate may:

(1) Acquire a lien authorized by law to secure the advocate's fee or expenses; and

(2) Contract with a client for a reasonable contingent fee in a civil case.

(i) An advocate shall not:

(1) Make an agreement prospectively limiting the advocate's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) Settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith; or

(3) Make an agreement prospectively limiting the client's right to report the advocate to appropriate professional authorities.

(j) An advocate shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-advocate relationship commenced.

(k) While advocates are associated in a firm, a prohibition in paragraphs (a) through (i) above that applies to any one of them shall apply to all of them.

Rule 1.8 Conflict of Interest: Current Clients: Specific Rules - Comment

Business Transactions between Client and Advocate

[1] Business transactions with clients governed by subsection (a) include those closely related to the subject matter of the representation, for example, when an advocate drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. The Rule also applies to advocates purchasing property from estates they represent and when the advocate accepts an interest in the client's business or other non-monetary property as payment of all or part of a fee.

Use of Information Related to Representation

[2] An advocate shall not use information relating to the representation to the disadvantage of the client as this violates the advocate's duty of loyalty, except as such may apply to the following statement: An advocate does not violate this duty of loyalty when she/he capitalizes on business opportunities made known to him/her during the course of representation if after written disclosure, the client elects to forego the opportunity. The underlying reasoning is that the opportunity cost to a client, or their best foregone alternative, is not to be construed as a disadvantage.

Gifts to Advocates

[3] An advocate may not suggest or accept that a substantial gift be made, for the advocate's benefit, except when the advocate is related to the client as set forth in the Rule. This Rule is not intended to be construed as prohibiting acceptance, within the bounds of good taste, of social amenities consistent with generally prevailing customs. Such gifts may include, among others, presents given at a holiday or as a token of appreciation.

[6] If the gift requires preparing a legal instrument such as a will or conveyance, the client should have the independent advice of another advocate before gifting or conveying. The sole exception to this Rule is where the client is a relative of the advocate receiving the gift.

Financial Assistance

[7] Advocates may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives advocates too great a financial stake in the litigation.

Person Paying for an Advocate's Services

[8] Advocates are frequently asked to represent a client under circumstances in which a third person will compensate the advocate, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that

differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, advocates are prohibited from accepting or continuing such representations unless the advocate determines that there will be no interference with the advocate's independent professional judgment and there is informed written consent from the client. See also Rule 5.4 (c).

Limiting Liability and Settling Claims

[9] Agreements prospectively limiting an advocate's liability for malpractice, whether made at the outset of the representation or at any time when the client is unaware of a claim or potential claim, are prohibited unless the client is independently represented in making the agreement because they are likely to undermine competent and diligent representation. Many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the advocate seeking the agreement. This paragraph does not prohibit an agreement in accordance with Rule 1.2 that defines the scope of representation, although a definition of scope that makes the obligations of representation misleading may be deemed an attempt to limit liability.

[10] Agreements settling a claim or a potential claim for malpractice are not prohibited by this Rule. Nevertheless, the Rule requires that the advocate must first advise such a person in writing of the appropriateness of independent representation in connection with such a settlement and give the client or former client a reasonable opportunity to find and consult independent counsel.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 1.9. Duties to former clients.

(a) An advocate who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) An advocate shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the advocate formerly was associated had previously represented a client

(1) Whose interests are materially adverse to that person; and

(2) About whom the advocate had acquired actual information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) An advocate who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) Use information relating to the representation to the disadvantage of the former client except as these rules would permit or require with respect to a client, or when the information has become generally known; or

(2) Reveal information relating to the representation except as these rules would permit or require with respect to a client.

Rule 1.9 Duties to Former Clients - Comment

[1] After termination of a client-advocate relationship, an advocate has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this Rule.

[2] The scope of the "matter" for purposes of this Rule may depend on the facts of a particular situation or transaction. The advocate's involvement in a matter can also be a question of degree. For example, an advocate who repeatedly handled a type of problem for a former client may not be precluded from later representing another client in a factually distinct

problem of that type, even though the subsequent representation involves a position adverse to the prior client.

[2] Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information obtained in the prior representation would materially advance the client's position in the subsequent matter. For example, an advocate who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce.

Advocates Moving Between Firms and/or Departments

[3] When advocates have been associated within a department and/or firm but then end their association, the question of whether an advocate should undertake representation may involve several competing considerations. The client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. However, the Rule should not be so broadly applied as to preclude other persons from having a reasonable choice of legal counsel. Finally, application of the Rule should not unreasonably hamper advocates from forming new associations and taking on new clients after having left a previous association. Application of paragraph (b) depends on a situation's particular facts, aided by reasonable inferences, deductions or working presumptions about the way in which advocates work together. In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 1.10. Imputation of conflicts of interest: General rule for advocate with a firm.

(a) While advocates are associated in a firm (not including SRPMIC departments addressed in Rule 1.11), none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless

(1) The prohibition is based on a personal interest of the disqualified advocate and does not present a significant risk of materially limiting the representation of the client by the remaining advocates in the firm; or

(2) The prohibition is based upon Rule 1.9(a) or (b) and arises out of the disqualified advocate's association with a prior firm, and

a. The disqualified advocate is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;

b. Written notice is promptly given to any affected former client to enable the former client to review compliance with the provisions of this rule, which shall include a description of the screened advocate's prior representation, a statement that that the client's material confidential information has not been disclosed or used in violation of the rule, a description of the screening procedures employed; a statement of the firm's and of the screened advocates compliance with these rules; a statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures; and

c. Certifications of compliance with these rules and with the screening procedures are provided to the former client by the screened advocate and by a partner of the firm, at reasonable intervals upon the former client's written request and upon termination of the screening procedures.

(b) When an advocate has terminated an association with a firm, the advocates' former firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated advocate and not currently represented by the firm, unless:

(1) The matter is the same or substantially related to that in which the formerly associated advocate represented the client; and

(2) Any advocate remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter. If the only such information is contained in documents or electronically stored information maintained by the firm, and the firm adopts screening procedures that are reasonably adequate to prevent access to such documents or electronically stored information by the remaining advocates, those remaining advocates will not be considered to have protected information within the meaning of this rule.

(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

(d) The disqualification of an advocate associated in a firm with former or current government advocates is governed by Rule 1.11.

Rule 1.10 Imputation of Conflicts of Interest: General Rule for Advocate with a Firm - Comment

Definition of "Firm"

[1] See Rule 1.0(d).

Principles of Imputed Disqualification

[2] The Rule operates to permit a firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by an advocate who formerly was associated with the firm. The Rule applies regardless of when the formerly associated advocate represented the client. The Rule in paragraph (a) does not prohibit representation by others in the firm where the person prohibited from involvement in a matter is a non-advocate, such as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the advocate is prohibited from acting because of events before the person became an advocate, for example, work that the person did as a law student. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the non-advocates and the firm have a legal duty to protect.

[3] The notice required by paragraph (a)(2)(ii) is not a request for a waiver. The recipient of such a notice is not empowered to prohibit the representation at issue but is only given an opportunity to question or object to, if appropriate, the means by which a screen is implemented. The notice is intended to enable the former client to evaluate and comment upon the effectiveness of the screening procedures.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 1.11. Special conflicts of interest for former and current government officers and employees.

(a) Except as law may otherwise expressly permit, an advocate who has formerly served as a public officer or employee of the government is subject to Rule 1.9 and shall not otherwise represent a client in connection with a matter in which the advocate participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its written, informed consent to the representation.

(b) When an advocate is disqualified from representation under paragraph (a), no advocate in a department or firm with which that advocate is associated may knowingly undertake or continue representation in such a matter unless:

(1) The disqualified advocate is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) Written notice is promptly given to the appropriate SRPMIC department to enable it to ascertain compliance with the provisions of this Rule.

(c) Except as law may otherwise expressly permit, an advocate having information that the advocate knows is confidential government information about a person may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this rule is applied, the government is prohibited by Community policy from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A department or firm with which that advocate is associated may undertake or continue representation in the matter only if the disqualified advocate is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, an advocate currently serving as a public officer or employee is subject to Rules 1.7 and 1.9 and shall not:

(1) Participate in a matter in which the advocate participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its written informed consent; or

(2) Negotiate for private employment with any person who is involved as a party or as advocate for a party in a matter in which the advocate is participating personally and substantially.

Rule 1.11 Special Conflicts of Interest for Former and Current Government Officers and Employees - Comment

[1] An advocate representing an SRP-MIC department or agency, whether employed or specially retained by SRP-MIC is subject to these Rules, including the prohibition against concurrent conflicts of interests stated in Rule 1.7 and the protections afforded former clients in Rule 1.9.

[2] This Rule prohibits an advocate from exploiting public office for the advantage of a private client. It is a counterpart of Rule 1.10(b), which applies to advocates moving from one firm to another. For example, an advocate who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the advocate has left government service, except when authorized to do so by the government agency under paragraph (a).

[3] This Rule represents a balancing of interests. An advocate should not be in a position where benefit to a client might affect performance of the advocate's professional functions on behalf of the government. Likewise, a client should not gain an unfair advantage because of an advocate's access to confidential government information about the client's adversary obtainable only through the advocate's government service. The rules governing advocates presently or formerly employed by a government agency should not be so restrictive, however, as to inhibit transfer of employment to and from the government. The provisions in paragraphs (a), (b), and (d) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service.

[4] For purposes of paragraph (a)(1) of this Rule, a "matter" may continue in another form. In determining whether two particular matters are the same, the advocate should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.

[5] An advocate may be subject to the Community Code and policies regarding

conflict of interest, which may limit the extent to which the government agency may give consent under this Rule.

[6] Notice, including a description of the screened advocate's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[7] Rule 1.10 is not applicable to the conflicts of interest addressed by this Rule.

[8] Because of the special problems raised by imputation within an agency, paragraph (d) does not impute the conflicts of an advocate currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such advocates.

[9] Paragraph (c) operates only when the advocate in question has actual knowledge of the information and not with respect to information that merely could be imputed to the advocate.

[10] When an advocate has been employed by one agency and then moves to a second agency, it may be appropriate to treat that second agency as another client for purposes of this Rule.

[11] Paragraphs (a) and (d) do not prohibit an advocate from jointly representing a private party and a government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 1.12. Former judge, arbitrator, mediator or other third-party neutral.

(a) Except as stated in paragraph (d), an advocate shall not represent anyone in connection with a matter in which the advocate participated personally and substantially as a judge or other adjudicative officer or law clerk or solicitor to such a person or as an arbitrator, mediator or other third-party neutral.

(b) An advocate shall not negotiate for employment with any person who is involved as a party or as advocate for a party in a matter in which the advocate is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. An advocate serving as a law clerk or paralegal to a judge or other adjudicative officer may negotiate for employment with a party or advocate involved in a matter in which that person is participating personally and substantially, but only after the advocate, law clerk or paralegal has notified the judge or other adjudicative officer.

(c) If an advocate is disqualified by paragraph (a), no advocate in a firm with which that advocate is associated may knowingly undertake or continue representation in the matter unless:

(1) The disqualified advocate is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) Written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule, including a description of the particular screening procedures adopted; when they were adopted; a statement by the personally disqualified advocate and the new firm that the parties' and tribunal's material confidential information has not been disclosed or used in violation of the rules; and an agreement by the new firm to respond promptly to any written inquiries or objections by the parties or the tribunal about the screening procedure; and

(3) The personally disqualified advocate and the new firm reasonably believe that the steps taken to accomplish the screening of material confidential information will be effective in preventing such information from being disclosed to the new firm and its client.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

Rule 1.12 Former Judge, Arbitrator, Mediator or Other Third-Party Neutral - Comment

[1] This Rule generally parallels Rule 1.11. The term "personally and substantially" signifies that a judge who was a member of a multimember Court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the Court, but in which the former judge did not participate. The fact that a former judge exercised administrative responsibility in a Court does not prevent the former judge from acting as an advocate in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. The term "adjudicative officer" includes such officials as judges pro tempore, referees, special masters, hearing officers and advocates who serve as part-time judges. A part-time judge, judge pro tempore or retired judge recalled to active service, may not act as an advocate in any proceeding in which he or she served as a judge or in any other proceeding related thereto.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 1.13. Organization as client.

(a) An advocate employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If an advocate for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, the advocate shall proceed as is reasonably necessary in the best interest of the organization. Unless the advocate reasonably believes that it is not necessary in the best interest of the organization to do so, the advocate shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if:

(1) Despite the advocate's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action or refusal to act, that is clearly a violation of law, and

(2) The advocate reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the advocate may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the advocate reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to an advocate's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) An advocate who reasonably believes that he or she has been discharged because of the advocate's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the advocate to take action under either of those paragraphs, shall proceed as the advocate reasonably believes necessary to assure that the organization's highest authority is informed of the advocate's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, an advocate shall explain the identity of the client when the advocate knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the advocate is dealing.

(g) An advocate representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

Rule 1.13 Organization as Client - Comment

The Entity as the Client

[1] An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders, and other constituents. Officers, directors, employees, and shareholders are the constituents of the corporate organizational client. The duties defined in this Comment apply equally to unincorporated associations. "Other constituents" as used in this Comment means the positions equivalent to officers, directors, employees, and shareholders held by persons acting for organizational clients that are not corporations.

[2] When one of the constituents of an organizational client communicates with the organization's advocate in that person's organizational capacity, the communication is protected by Rule 1.6. Thus, by way of example, if an organizational client requests its advocate to investigate allegations of wrongdoing, interviews made in the course of that investigation between the advocate and the client's employees or other constituents are covered by Rule 1.6. This does not mean, however, that constituents of an organizational client are the clients of the advocate. The advocate may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.

[3] When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the advocate even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the advocate's province. Paragraph (b) makes clear, however, that when the advocate knows that the organization is likely to be substantially injured by action of an officer or other constituent that violates a legal obligation to the organization or is in violation of law that might be imputed to the organization, the advocate must proceed as is reasonably necessary in the best interest of the organization. As defined in Rule 1.0(f), knowledge can be inferred from circumstances, and an advocate cannot ignore the obvious.

[4] In determining how to proceed under paragraph (b), the advocate should give due consideration to the seriousness of the violation and its consequences, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Ordinarily, referral to a higher authority would be necessary. In some circumstances, however, it may be appropriate for the advocate to ask the constituent to reconsider the matter; for example, if the circumstances involve a constituent's innocent misunderstanding of law and subsequent acceptance of the advocate's advice, the advocate may reasonably conclude that the best interest of the organization does not require that the matter be referred to higher authority. If a constituent persists in conduct contrary to the advocate's advice, it will be necessary for the advocate to take steps to have the matter reviewed by a higher authority in the organization. If the matter is of sufficient seriousness and importance or urgency to the organization, referral to higher authority in the organization may be necessary even if the advocate has not communicated with the constituent. Any measures taken should, to the extent practicable, minimize

the risk of revealing information relating to the representation outside the organization. Even in circumstances where an advocate is not obligated by Rule 1.13 to proceed, an advocate may bring to the attention of an organizational client, including its highest authority, matters that the advocate reasonably believes to be of sufficient importance to warrant doing so in the best interests of the organization.

[5] Paragraph (b) also makes clear that when it is reasonably necessary to enable the organization to address the matter in a timely and appropriate manner, the advocate must refer the matter to higher authority, including, if warranted by the circumstances, the highest authority that can act on behalf of the organization under applicable law. The organization's highest authority to whom a matter may be referred ordinarily will be the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions the highest authority reposes elsewhere, for example, in the independent directors of a corporation.

Relation to Other Rules

[6] The authority and responsibility provided in this Rule are concurrent with the authority and responsibility provided in other Rules. In particular, this Rule does not limit or expand the advocate's responsibility under Rules 1.8, 1.16, 3.3 or 4.1. Paragraph (c) of this Rule supplements Rule 1.6(d) by providing an additional basis upon which the advocate may reveal information relating to the representation, but does not modify, restrict, or limit the provisions of Rule 1.6(d)(1)—(5). Under paragraph (c) the advocate may reveal such information only when the organization's highest authority insists upon or fails to address threatened or ongoing action that is clearly a violation of law, and then only to the extent the advocate reasonably believes necessary to prevent reasonably certain substantial injury to the organization. It is not necessary that the advocate's services be used in furtherance of the violation, but it is required that the matter be related to the advocate's representation of the organization. If the advocate's services are being used by an organization to further a crime or fraud by the organization. Rules 1.6(d)(1) and 1.6(d)(2) may permit the advocate to disclose confidential information. In such circumstances Rule 1.2(d) may also be applicable, in which event, withdrawal from the representation under Rule 1.16(a)(1) may be required.

[7] Paragraph (d) makes clear that the authority of an advocate to disclose information relating to a representation in circumstances described in paragraph (c) does not apply with respect to information relating to an advocate's engagement by an organization to investigate an alleged violation of law or to defend the organization or an officer, employee or other person associated with the organization against a claim arising out of an alleged violation of law. This is necessary in order to enable organizational clients to enjoy the full benefits of legal counsel in conducting an investigation or defending against a claim.

[8] An advocate who reasonably believes that he or she has been discharged because of the advocate's actions taken pursuant to paragraph (b) or (c), or who withdraws in circumstances that require or permit the advocate to take action under either of these paragraphs, must proceed as the advocate reasonably believes necessary to assure that the organization's highest authority is informed of the advocate's discharge or withdrawal.

Government Agency

[9] The duty defined in this Rule applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of advocates may be more difficult in the

government context. See Scope [18]. Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part, or the relevant branch of government, may be the client for purposes of this Rule. Moreover, in a matter involving the conduct of government officials, a government advocate may have authority to question such conduct more extensively than that of an advocate for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of advocates employed by the government may be defined by statutes and regulation. This Rule does not limit that authority. See Scope. Government advocates also may have authority to represent the "public interest" in circumstances where a private advocate would not be authorized to do so.

[10] A government advocate may have an obligation to render advice to a government entity and constituents of a government entity. Normally, the government entity, rather than an individual constituent, is the client. Some government advocates may also be elected officials or the employees of elected officials who have statutory obligations to take formal action against individual constituents under certain circumstances. The government advocate, therefore, must clearly identify the client and disclose to the individual constituents any limitations that are imposed on the advocate's other legal obligations. See ER 1.2(c) and related comments. Further, where a conflict arises between a constituent and the government entity the advocate represents or between constituents of the same government entity, the advocate must make the identity of the client clear to the constituents and determine which constituent has authority to act for the government entity in each instance.

Clarifying the Advocate's Role

[11] There are times when the organization's interests may be or become adverse to those of one or more of its constituents. In such circumstances the advocate should advise any constituent, whose interest the advocate finds adverse to that of the organization of the conflict or potential conflict of interest, that the advocate cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the advocate for the organization cannot provide legal representation for that constituent individual, and that discussions between the advocate for the organization and the individual may not be privileged.

[12] Whether such a warning should be given by the advocate for the organization to any constituent individual may turn on the facts of each case.

Dual Representation

[13] Paragraph (e) recognizes that an advocate for an organization may also represent a principal officer or major shareholder.

Derivative Actions

[14] Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

[15] The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the advocate's client does not alone resolve the issue. Most derivative actions are a normal incident or an organization's affairs, to be defended by the organization's advocate like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the advocate's duty to the organization and the advocate's relationship with the board. In those circumstances, Rule 1.7 governs who should represent the directors and the organization.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 1.14. Client with diminished capacity.

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the advocate shall, as far as reasonably possible, maintain a normal client-advocate relationship with the client.

(b) When the advocate reasonably believes that the client has diminished capacity, either temporary or prolonged, and the client is at risk of substantial physical, financial or other harm or poses a risk of such harm to others unless action is taken and the advocate cannot adequately act in the client's own interest, the advocate may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, where permissible, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the advocate is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the minimum extent reasonably necessary to protect the client's interests.

Rule 1.14 Client with Diminished Capacity - Comment

[1] When the client is a minor or suffers from a diminished mental capacity, maintaining the ordinary client-advocate relationship may not be possible in all respects. In particular, a severely incapacitated person may have limited or no ability legally binding decisions. Other times, a client with diminished capacity may have the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or 12, may have opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a client suffers a disability does not diminish the advocate's obligation to treat the client with attention, respect and maintain communication.

[3] The client may wish to have family members, legal representatives or other persons participate in discussions with the advocate. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the advocate-client evidentiary privilege. Nevertheless, the advocate must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family members, to make decisions on the client's behalf.

[4] In matters involving a minor, whether the advocate should look to the parents as natural guardians may depend on the type of proceeding or matter in which the advocate is representing the minor. If

the advocate represents the guardian as distinct from the ward and is aware that the guardian is acting adversely to the ward's interest, the advocate may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(d).

[5] In matters involving diminished capacity, competency, and vulnerability, where reasonably necessary protective action is taken by the advocate, the advocate may continue to represent the client in separate proceedings resulting from such protective action, except where such representation is contrary to the client's interest or the advocate-client relationship.

Taking Protective Action

[6] If an advocate reasonably believes that a client is at risk of substantial physical, financial, or other harm unless action is taken, and that a normal client-advocate relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the advocate to take protective measures deemed necessary. This option relates to the advocate's reasoned professional belief as to the client's capacity. It does not relate to the advocate's mere disagreement with the client's objectives if the client has capacity to express such objectives upon understanding the relevant facts and circumstances.

(7) Protective actions may include, without limitation, consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision making tools such as durable powers of attorney or consulting with support groups, professional services, adult- or child-protective agencies, or other individuals or entities that have the ability to protect the client. In taking any protective action, the advocate should be guided by such factors as the wishes, values, and customs and traditions of the client to the extent known, the client's best interests and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

[8] In determining the extent of the client's diminished capacity, the advocate should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term objectives, commitments, and values of the client. In appropriate circumstances, the advocate may seek guidance from a licensed physician or certified psychologist.

[8] If a legal representative has not been appointed, the advocate should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests, balancing these options with the client's interests in maintaining control over the client's decisions and autonomy.

Disclosure of the Client's Condition

[9] Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. If the client has not authorized disclosure, the advocate should disclose only when disclosure is deemed necessary, with no reasonably available alternatives. When taking protective action pursuant to paragraph (b), the advocate is impliedly authorized to make the necessary disclosures, even when the client directs the advocate to the contrary; however, such disclosures should be made to the minimum extent necessary to achieve the objective of protecting the client.

Emergency Legal Assistance

[10] In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, an advocate may take legal action on behalf of such a person even though the person is unable to establish a client-advocate relationship, or to make or express considered judgments about the matter, if a person or another acting in good faith on that person's behalf has consulted with the advocate. Even in such an emergency, however, the advocate should not act unless the advocate reasonably believes that the person has no other advocate, agent or other representative available. The advocate should take legal action on behalf of the person only to the extent reasonably necessary to allay immediate threats of imminent and irreparable harm. An advocate who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the advocate would with respect to a client.

[11] An advocate who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing such confidences only to the extent necessary to accomplish the intended protective action. The advocate should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The advocate should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, an advocate would not seek compensation for such emergency actions taken.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 1.15. Safekeeping property.

(a) An advocate shall hold property of clients or third persons that is in an advocate's possession in connection with a representation separate from the advocate's own property. Funds shall be kept in a separate client trust account maintained in the state where the advocate's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the advocate and shall be preserved for a period of five years after termination of the representation.

(b) An advocate may deposit the advocate's own funds in the client trust account only for the following purposes and only in an amount reasonably estimated to be necessary to fulfill the stated purposes:

(1) To pay service or other charges or fees imposed by the financial institution that are related to operation of the trust account; or

(2) To pay any merchant fees or credit card transaction fees or to offset debits for credit card chargebacks.

(3) Earned fees and funds for reimbursement of costs or expenses may be deposited into a trust account if they are part of a single credit card transaction that also includes the payment of advance fees, costs or expenses and the advocate does not use a credit card processing service that permits the advocate to direct such funds to the advocate's separate business account. Any such earned fees and funds for reimbursement of costs or expenses must be withdrawn from the trust account within a reasonable time after deposit.

(c) An advocate shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the advocate only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client and/or third person has an interest, an advocate shall promptly notify the client and/or third person. Except as stated in this rule or otherwise permitted by law or by agreement between the client, and/or the third person, an advocate shall promptly deliver to the client and/or third person any funds or other property

that the client and/or third person is entitled to receive and, upon request by the client and/or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation an advocate is in possession of property in which two or more persons (one of whom may be the advocate) claim interests, the property shall be kept separate by the advocate. The advocate shall promptly distribute any portion of the property as to which there are no competing claims. Any other property shall be kept separate until one of the following occurs:

(1) The parties reach an agreement on the distribution of the property; or

(2) A court order resolves the competing claims; or

(3) Distribution is allowed under section (f) below.

(f) Where the competing claims are between a client and a third party, the advocate may provide written notice to the third party of the advocate's intent to distribute the property to the client, as follows:

(1) The notice shall be served on the third party in the manner provided under Rule 5-13 of the Salt River Rules of Civil Procedure and must inform the third party that the advocate may distribute the property to the client unless the third party initiates legal action and provides the advocate with written notice of such action within 90 calendar days of the date of service of the advocate's notice.

(2) If the advocate does not receive such written notice from the third party within the 90-calendar-day period and provided that the disbursement is not prohibited by law or court order, the advocate may distribute the funds to the client after consulting with the client regarding the advantages and disadvantages of disbursement of the disputed funds and obtaining the client's informed consent to the distribution, confirmed in writing.

(3) If the advocate is notified in writing of an action filed within the 90-calendar-day period, the advocate shall continue to hold the property separate unless and until the parties reach an agreement on distribution of the property, or a court resolves the matter.

(4) Nothing in this rule is intended to alter a third party's substantive rights.

Rule 1.15 Safekeeping Property - Comment

[1] An advocate should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the advocate's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. An advocate should maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any recordkeeping rules established by law or Court order.

[2] While normally it is impermissible to commingle the advocate's own funds with client funds, paragraph (b) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the funds are the advocate's funds.

[3] Advocates often receive funds from which the advocate's fee will be paid. The advocate is not required to remit to the client funds that the advocate reasonably believes represent fees owed. However, an advocate may not hold funds to coerce a client into accepting the advocate's contention. The disputed portion of the funds must be kept in a trust account and the advocate should suggest means

for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[4] The Rule also recognizes that third parties may have just claims against specific funds or other property in an advocate's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. An advocate may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim has become a matured legal or equitable claim, and unless distribution is otherwise allowed under this Rule, the advocate must refuse to surrender the property to the client until the claims are resolved. In addition to the procedures described in this Rule, when there are substantial grounds for dispute as to the person entitled to the funds, the advocate may file an action to have a court resolve the dispute.

[5] The obligation of an advocate under this Rule are independent of those arising from activity other than rendering legal services. For example, an advocate who serves only as personal representative of an estate or the trustee of a trust is governed by the applicable law relating to fiduciaries even though the advocate does not render legal services in the transaction and is not governed by this Rule.

[6] For purposes of this Rule, "merchant fees" and "credit card transaction fees" are fees that are deducted from the amount of the credit card charge to pay the company that issued the client's credit card, the advocate or the firm's credit card processing service, and the credit card association (e.g., Visa, MasterCard), and related charges. Those fees typically include a percentage of the total amount billed plus a fixed fee, which, unless paid by the advocate or law firm, reduces the amount that can be credited to the client's account. A "chargeback" (or reversal of charges) occurs when a client or former client writes to the credit card company that issued the credit card used to pay an advocate to dispute the amount that should be paid to the advocate or law firm. When a client or former client does so, the advocate's or law firm's account is debited an amount equal to the disputed amount, plus a chargeback fee.

[7] Advocates and firms are permitted, and in some cases may be required, to place their own funds into their trust accounts in very limited circumstances. Advocates and firms that accept payment by credit card for advance fees, costs or expenses must at all times maintain in their trust accounts sufficient funds of their own to pay fees and charges related to operation of the trust account, and to pay all merchant and credit card transaction fees, chargeback fees and related charges. Advocates and firms must make a reasonable determination of the amount of their own funds that may appropriately be kept in their trust accounts to pay trust account and credit card fees and charges. Advocates and firms that use credit card processing services that debit all chargebacks and credit card fees and charges from an operating or business account are not required to maintain their own funds in their trust accounts to cover those charges, since no client or third-party funds will be at risk due to debits from the trust account.

[8] Paragraph (f) allows an advocate to distribute funds or property in the advocate's possession after providing notice to third persons known to claim an interest. Notice under paragraph (f) must be sufficient to allow the third person to take appropriate action to protect its interests. Although there is no one form of notice that will be acceptable, the notice should generally include at least the following: (a) a description of the funds or property in the advocate's possession; (b) the name of the client claiming an interest in the funds and other information reasonably available to the

advocate that would allow the third person to identify the claim or interest; (c) a mailing address, telephone number, and email address where the third party can provide notice to the advocate of the commencement of an action asserting an interest in the funds or property; and (d) the proposed distribution of the funds or property.

[9] Apart from their ethical considerations, advocates may have legal obligations to safeguard third-party funds under applicable case and the Community Code. The notice provisions of paragraph (f) do not alter an advocate's legal obligations and duties to third persons with respect to funds or property in the advocate's possession. An advocate who proposes to distribute funds under this paragraph should carefully safeguard funds in which third persons claim an interest, which may expose the advocate or client to a risk of civil or other liability even if the notice provisions of paragraph (f) are satisfied.

[10] Before making any distribution of funds or property pursuant to paragraph (f), an advocate should explain to the client that the client may remain responsible to satisfy valid claims of third persons, and that the third person's failure to commence an action within the 90-day period of paragraph (f) will not by itself operate to waive, reduce or extinguish the third person's claims, if any, against the client or the funds or property received by the client. Before making any distribution under paragraph (f), the advocate must obtain the client's informed consent, confirmed in writing, to the distribution.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 1.16. Declining or terminating representation.

(a) Except as stated in paragraph (c), an advocate shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) The representation will result in violation of these rules or other law;

(2) The advocate's physical or mental condition materially impairs the advocate's ability to represent the client; or

(3) The advocate is discharged.

(b) Except as stated in paragraph (c), an advocate may withdraw from representing a client if:

(1) Withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) The client insists on undertaking, but has not yet undertaken, a course of action involving the advocate's services that the advocate reasonably believes is criminal or fraudulent;

(3) The client has used the advocate's services to perpetrate a crime or fraud;

(4) The client insists upon taking action that the advocate considers repugnant or with which the advocate has a fundamental disagreement;

(5) The client fails substantially to fulfill an obligation to the advocate regarding the advocate's services and has been given reasonable warning that the advocate will withdraw unless the obligation is fulfilled;

(6) The representation will result in an unreasonable financial burden on the advocate or has been rendered unreasonably difficult by the client; or

(7) Other good cause for withdrawal exists.

(c) An advocate must comply with applicable law requiring notice to or permission of a court when terminating a representation. When ordered to do so by a court, an advocate shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, an advocate shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering original documents and property to which the client is entitled and refunding any

advance payment of fee or expense that has not been earned. Upon the client's request, the advocate shall provide the client with copies of all the client's documents, and all documents reflecting work performed for the client. The advocate may retain documents reflecting work performed for the client to the extent permitted by other law only if retaining them would not prejudice the client's rights.

Rule 1.16 Declining or Terminating Representation - Comment

[1] Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. If an advocate's scope of representation is limited to a specific matter, the relationship ends when the matter has been resolved and the relationship has been terminated. See Rule 1.15. When an advocate handles a matter that produces a result adverse to the client and the advocate and client have not previously agreed that the advocate will handle the matter on appeal, the advocate must discuss the possibility of appeal with the client, including advising the client in writing of time limitations for an appeal, before ending the representation. If the advocate agreed to handle the appeal when stating to the client the scope of representation, then the advocate should continue the representation for the appeal.

Mandatory Withdrawal

[2] When an advocate has been appointed to represent a client, withdrawal ordinarily requires approval of the court. Similarly, court approval or notice to the court is often required by applicable law before an advocate withdraws from pending litigation if the advocate has entered an appearance in the matter on behalf of the client. Difficulty may be encountered if withdrawal is based on the client's demand that the advocate engage in unprofessional conduct. Though the court may request an explanation for the withdrawal, the advocate may be bound to keep confidential the facts that would constitute such an explanation. The advocate's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient.

Discharge

[3] A client has a right to discharge an advocate at any time, with or without cause, subject to the client's liability for payment for an advocate's services.

[4] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to discharge appointed counsel should be given a full explanation of the consequences of such an action. These consequences may include a decision by the appointing or referring authority that new counsel is unjustified or that new counsel would be at the client's expense or that the client could represent himself/herself.

[5] If the client has severely diminished capacity, the client may lack the legal capacity to discharge the advocate, and in any event the discharge may be seriously adverse to the client's interests. The advocate should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

Assisting the Client Upon Withdrawal

[6] Ordinarily, at the close of representation, the client is entitled to the following documents (without limitation): pleadings, legal documents, evidence, discovery, legal research, work product, transcripts, correspondence, drafts, but not internal practice management memoranda. Advocates should inform a client if the advocate retained original instruments, such as wills. Document retention policies should be disclosed to the client, preferably in writing and at the beginning of the relationship. An advocate shall not charge a client for the cost of copying any documents unless the client

already has received one copy of them. The advocate may deliver documents electronically to which the client is entitled, provided the electronic format is of common use and the client can access the documents without expense to the client.

[7] Even if the client has discharged the advocate, the advocate must take all reasonable steps to avoid prejudice to the rights of the client.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 1.17. Sale of law practice.

Reserved.

Rule 1.18. Duties to prospective client.

(a) A person who discusses with an advocate the possibility of forming a client-advocate relationship with respect to a matter is a prospective client.

(b) Even when no client-advocate relationship is formed, an advocate who has had discussions with a prospective client shall not use or reveal information learned in those discussions, except as would be permitted by these rules with respect to information of a former client.

(c) An advocate subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the advocate received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If an advocate is disqualified from representation under this paragraph, no advocate in a department or firm with which that advocate is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the advocate has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) Both the affected client and the prospective client have given informed written consent, or:

(2) The advocate who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

a. The disqualified advocate is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

b. Written notice is promptly given to the prospective client, including a description of the particular screening procedures adopted; when they were adopted; a statement by the personally disqualified advocate and the new firm that the prospective client's material confidential information has not been disclosed or used in violation of the Rules; and an agreement by the new firm to respond promptly to any written inquiries or objections by the prospective client about the screening procedure; and

c. The personally disqualified advocate and the partners of the new firm reasonably believe that the steps taken to accomplish the screening of material confidential information will be effective in preventing such information from being disclosed to the new firm and its client.

Rule 1.18 Duties to Prospective Client - Comment

[1] Prospective clients receive some of the protection afforded clients, but not all, due to the fact that a prospective client reveals information to the advocate during the initial consultation prior to formation of a client-advocate relationship. However, a person who communicates information unilaterally to an advocate, without any reasonable expectation that the advocate is willing to discuss the possibility of forming a client-advocate relationship, is not considered a "prospective client."

[2] In order to avoid acquiring disqualifying information from a prospective client, an

advocate considering whether or not to undertake a new matter should limit the initial interview to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the advocate should so inform the prospective client or decline the representation. If the prospective client wishes to retain the advocate, and if consent is possible under Rule 1.7, then consent from all affected present and former clients must be obtained before accepting the representation.

[3] An advocate may condition conversations with a prospective client on the person's informed written consent that no information disclosed during the consultation will prohibit the advocate from representing a different client in the matter. If the agreement expressly so provides, the prospective client may also consent to the advocate's subsequent use of information received from the prospective client. Even in the absence of an agreement under paragraph (c), the advocate is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the advocate has received from the prospective client information that could be significantly harmful if used against the prospective client in the matter.

[4] Under paragraph (c), the prohibition in this Rule is imputed to other advocates as provided in Rule 1.10, but, under paragraph (d), imputation may be avoided if the advocate obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be avoided if all disqualified advocates are timely screened and written notice is promptly given to the prospective client. Paragraph (d)(1) does not prohibit the screened advocate from receiving a salary or partnership share established by prior independent agreement, but the advocate may not receive compensation directly related to the matter in which the advocate is disqualified.

[5] Notice, including a general description of the subject matter about which the advocate was consulted, and of the screening procedures employed, generally should be documented as soon as practicable after the need for screening becomes apparent.

(Ord. No. SRO-588A-2025, 2-5-2025)

Subdivision II. Counselor

Rule 2.1. Advisor.

In representing a client, an advocate shall exercise independent professional judgment and provide candid advice. When providing advice, an advocate may refer not only to law but to other considerations that may be relevant to the client's situation, including cultural considerations.

Rule 2.1 Advisor - Comment

Scope of Advice

[1] A client is entitled to straightforward advice expressing the advocate's honest assessment, even if the client decides on the client's lawful objectives. An advocate should not be deterred from giving candid advice by the prospect that the advice will be unpleasant to the client.

[2] Although advice consisting of legal considerations usually are of value to a client, an advocate should not hesitate to also advise a client about practical considerations with a client, such as cost or effects on other people. A client may expressly or impliedly ask an advocate for purely technical advice. When such a request is made by a client experienced in legal matters, an advocate may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the advocate's

responsibility as advisor may include indicating that factors other than strictly legal considerations may be involved.

[3] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology, or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. If consultation with a professional in another field reasonably would assist a client in the client's decision making, the advocate should make such a recommendation. At the same time, an advocate's advice may consist of recommending a course of action in the face of conflicting expert recommendations.

Offering Advice

[4] An advocate ordinarily has no duty to give advice that the client has indicated is unwanted, but an advocate may initiate advice to a client when doing so appears to be in the client's interest. For example, when an advocate knows that a client proposes a course of action that appears likely to result in substantial adverse legal consequences to the client, Rule 1.4 may require that the advocate offer advice if the client's proposed course of action is related to the representation. Similarly, when a matter is likely to involve litigation, Rule 1.4 may require the advocate to inform the client of the costs of potential litigation and of forms of dispute resolution that might constitute reasonable alternatives to litigation.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 2.2. Reserved.

Rule 2.3. Evaluation for use by third persons.

(a) An advocate may provide an evaluation of a matter affecting a client for the use of a third party if the advocate reasonably believes that creation and provision of the evaluation is compatible with other aspects of the advocate's relationship with the client.

(b) When the advocate knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the advocate shall not provide the evaluation unless the client gives informed written consent.

(c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

Rule 2.3 Evaluation for Use by Third Persons - Comment

Definition

[1] An evaluation may be performed at the client's direction or when impliedly authorized in order to carry out the representation. See Rule 1.2.

[2] A legal evaluation should be distinguished from an investigation of a person with whom the advocate does not have a client-advocate relationship. For example, an advocate retained by a purchaser to analyze a vendor's title to property does not have a client-advocate relationship with the vendor. The question concerns whether the advocate is retained by the person whose affairs are being examined. When the advocate is retained by such a person, the general rules concerning loyalty to client and preservation of confidences apply. Such rules do not apply if the advocate is retained by someone else. For this reason, it is essential to identify the person by whom the advocate is retained. This should be made clear not only to the person under examination, but also to any others to whom the results are to be made available.

[3] Advocates for the government may be called upon to give a formal opinion on the legality of contemplated government agency action. In making such an evaluation, the government advocate acts at the behest of the government as the

client, but for purpose of establishing the limits of the agency's authorized activity. Such an opinion is to be distinguished from confidential legal advice given agency officials. The critical question is whether the opinion is to be made public.

Duties Owed to Third Person and Client

[4] When an advocates' evaluation is intended for the information or use of a third person, a legal duty to that person may or may not arise. That legal question is beyond the scope of this Rule. The advocate should advise the client of the implications of the evaluation, particularly the advocate's actual or potential responsibilities to third persons. The advocate must also be satisfied as a matter of professional judgment that making the evaluation is compatible with other functions undertaken on behalf of the client.

Access to and Disclosure of Information

[5] Information relating to an evaluation is protected by Rule 1.6. Before undertaking an evaluation, an advocate should consult with the client and discuss whether material disadvantages could occur if the advocate discloses confidential information through the evaluation and obtain the client's informed consent to disclosures. See Rules 1.6 and 1.0(e). Whether an advocate can undertake an evaluation might depend on whether the client consents to such disclosures, as the quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily an advocate should have whatever latitude of investigation seems necessary as a matter of professional judgment.

Financial Auditors' Request for Information

[6] When a question concerning the legal situation of a client arises at the instance of the client's financial auditor and the question is referred to the client's advocate, the advocate's response may be made in accordance with procedures such as that set forth in the American Bar Association Statement of Policy Regarding [Advocates'] Responses to Auditors' Requests for Information, adopted in 1975.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 2.4. Advocate serving as third-party neutral.

(a) An advocate serves as a third-party neutral when the advocate assists two or more persons who are not clients of the advocate to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the advocate to assist the parties to resolve the matter.

(b) An advocate serving as a third-party neutral shall inform unrepresented parties that the advocate is not representing them. When the advocate knows or reasonably should know that a party does not understand the advocate's role in the matter, the advocate shall explain the difference between the advocate's role as a third-party neutral and an advocate's role as one who represents a client.

Rule 2.4 Advocate Serving as Third-Party Neutral - Comment

[1] A third-party neutral is a person, such as a mediator, arbitrator or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third-party neutral serves primarily as a facilitator, evaluator or decision maker depends on the particular process that is either selected by the parties or mandated by a court.

[2] In performing this role, the advocate may be subject to court rules or other law that apply either to third-party neutrals generally or to advocates serving as third-party neutrals. Advocates serving as third-party neutrals may also be subject to various codes of ethics as applicable by their licensing jurisdiction. An advocate who serves as a third-party neutral

subsequently may be asked to serve as an advocate representing a client in the same matter. In such scenarios, the advocate should comply with Rule 1.12.

(Ord. No. SRO-588A-2025, 2-5-2025)

Subdivision III. Advocate

Rule 3.1. Meritorious claims and contentions.

An advocate shall not bring or continue an action, conduct a defense, assert a position in litigation, or take an appeal, without a good faith basis in law and fact for doing so that is not frivolous. An advocate shall not present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by a good faith and nonfrivolous argument for an extension, modification, or reversal of existing law. An advocate for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, or involuntary commitment or confinement, may nevertheless defend the proceeding by requiring that every element of the case be established.

Rule 3.1 Meritorious Claims and Contentions - Comment

[1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account should be taken of the law's ambiguities and potential for change.

[2] An action is frivolous if the advocate is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law. The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the advocate expects to develop vital evidence only by discovery. What is required of advocates, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine whether they can make good faith nonfrivolous arguments in support of their clients' positions. An action is not frivolous if the advocate believes that the client's position ultimately may not prevail.

[3] The advocate's obligations under this Rule are subordinate to Tribal or Federal constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting a claim or contention that otherwise would be prohibited by this Rule.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 3.2. Expediting litigation.

An advocate shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Rule 3.2 Expediting Litigation - Comment

[1] Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when an advocate may properly seek a postponement for personal reasons, it is not proper for an advocate to routinely fail to expedite litigation solely for the convenience of the advocate. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent advocate acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 3.3. Candor toward the tribunal.

(a) An advocate shall not knowingly:

(1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the advocate;

(2) Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the advocate to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) Offer evidence that the advocate knows to be false. If an advocate, the advocate's client, or a witness called by the advocate, has offered material evidence and the advocate comes to know of its falsity, the advocate shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. An advocate may refuse to offer evidence, other than the testimony of a defendant in a criminal matter that the advocate reasonably believes is false.

(b) An advocate who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, an advocate shall inform the tribunal of all material facts known to the advocate that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Rule 3.3 Candor Toward the Tribunal - Comment

[1] This Rule governs the knowing or intentional conduct of an advocate who is representing a client in the proceedings of a tribunal. See Rule 1.0(m) for the definition of "tribunal." It also applies when the advocate is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition.

[2] This Rule sets forth the special duties of advocates as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. An advocate acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although an advocate in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the advocate must not allow the tribunal to be misled by false statements of law or fact or evidence that the advocate knows to be false.

Representations by an Advocate

[3] An advocate is responsible for pleadings and other documents prepared for litigation but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the advocate. Compare Rule 3.1. However, an assertion purporting to be on the advocate's own knowledge, as in an affidavit by the advocate or in a statement in open court, may properly be made only when the advocate knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation.

Legal Argument

[4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. An advocate is not required to make a

disinterested exposition of the law but must recognize the existence of pertinent legal authorities.

Offering Evidence

[5] An advocate does not violate this Rule if the advocate offers the evidence for the purpose of establishing its falsity.

[6] If an advocate knows that the client intends to testify falsely or wants the advocate to introduce false evidence, the advocate should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the advocate continues to represent the client, the advocate must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the advocate may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the advocate knows is false.

[7] The duties stated in paragraphs (a) and (b) apply to all advocates, including defense counsel in criminal cases.

[8] The prohibition against offering false evidence only applies if the advocate knows that the evidence is false. An advocate's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. An advocate's knowledge that evidence is false, however, can be inferred from the circumstances.

Remedial Measures

[9] Having offered material evidence in the belief that it was true, an advocate may subsequently come to know that the evidence is false. Or, an advocate may be surprised when the advocate's client, or another witness called by the advocate, offers testimony the advocate knows to be false, either during the advocate's direct examination or in response to cross-examination by the opposing advocate. In such situations or if the advocate knows of the falsity of testimony elicited from the client during a deposition, the advocate must take reasonable remedial measures. In such situations, the advocate's proper course is to speak to the client confidentially, advise the client of the advocate's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate must take further remedial action. If withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the advocate to reveal information that otherwise would be protected by Rule 1.6. It is for the tribunal then to determine what should be done — making a statement about the matter to the trier of fact, ordering a mistrial or perhaps nothing.

Duration of Obligation

[10] A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.

Ex Parte Proceedings

[11] In any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The advocate for the represented party has the correlative duty to make disclosures of material facts known to the advocate and that the advocate reasonably believes are necessary to an informed decision.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 3.4. Fairness to opposing party and counsel.

An advocate shall not:

(1) Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy,

or conceal a document or other material having potential evidentiary value. An advocate shall not counsel or assist another person to do any such act;

(2) Falsify evidence, counsel or assist a witness to testify falsely, or offer a bribe or incentive to a witness that is prohibited by law;

(3) Knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(4) In pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(5) In trial, allude to any matter that the advocate does not reasonably believe is relevant or that will not be supported by admissible evidence, or assert personal knowledge of facts in issue except when testifying as a witness.

(6) Request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

a. The person is a relative or an employee or other agent of a client; and

b. The advocate reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Rule 3.4 Fairness to Opposing Party and Counsel - Comment

[1] The procedure of the adversarial system contemplates that the evidence in a case is to be organized fairly by the opposing parties. Fair competition in the adversarial system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

[2] Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed, or destroyed. For example, destroying material for purposes of impairing its availability in a pending proceeding or one whose commencement can be foreseen is a violation of this Rule. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including electronically stored information.

[3] With regard to paragraph (b), it is not improper to pay a witness's expenses or to compensate an expert witness on terms permitted by law. It is improper to pay a witness any fee for testifying. It is improper to pay an expert witness a contingency fee.

[4] Paragraph (f) permits an advocate to advise a client's employees to refrain from giving information to another party because the employees may identify their interests with those of the client.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 3.5. Impartiality and decorum of the tribunal.

An advocate shall not:

(1) Seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(2) Communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;

(3) Communicate with a juror or prospective juror after discharge of the jury if:

a. The communication is prohibited by law or court order;

b. The juror has made known to the advocate a desire not to communicate; or

c. The communication involves misrepresentation, coercion, duress, or harassment; or

(4) Engage in conduct intended to disrupt a tribunal.

Rule 3.5 Impartiality and Decorum of the Tribunal - Comment

[1] During a proceeding an advocate may not communicate ex parte with persons serving in an official capacity in the proceeding, such as judges, masters, or jurors, unless authorized to do so by law or court order.

[2] The advocate's function is to present evidence and argument so that the cause may be decided according to law. An advocate may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar behavior by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by hostility or theatrics.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 3.6. Trial publicity.

(a) An advocate who is participating or has participated in the investigation or litigation of a matter shall not make an out of court statement that the advocate knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), and subject to Rule 1.6, an advocate may state:

(1) The claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) Information contained in a public record;

(3) That an investigation of a matter is in progress;

(4) The scheduling or result of any step-in litigation;

(5) A request for assistance in obtaining evidence and information necessary thereto;

(6) A warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) In a criminal case, in addition to subparagraphs (1) through (6):

a. The identity, residence, occupation and family status of the accused;

b. If the accused has not been apprehended, information necessary to aid in apprehension of that person;

c. The fact, time and place of arrest; and

d. The identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), an advocate may make a statement that a reasonable advocate would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the advocate or the advocate's client. A statement made pursuant to this paragraph shall be subject to Rule 1.6 and limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No advocate associated in a firm or government agency with an advocate subject to paragraph (a) shall make a statement prohibited by paragraph (a).

Rule 3.6 Trial Publicity - Comment

[1] Certain proceedings may be subject to special laws, rules or court orders governing confidentiality, such as juvenile, family law and mental health proceeding. The Rule applies only to advocate(s) who are, or who have been involved in the investigation or litigation of a case, and their associates.

[2] There are certain subjects that are more likely than not to have a material

prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

(a) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

(b) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(c) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(d) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

(e) information that the advocate knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or

(f) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation, and that the defendant is presumed innocent until and unless proven guilty.

[3] Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to out of court speech. Civil trials may be less sensitive. Non-jury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding.

[4] Finally, out of court statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by another party, another party's advocate, or third persons, where a reasonable advocate would believe a public response is required in order to avoid prejudice to the advocate's client. When prejudicial statements have been publicly made by others, responsive statements may have the effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 3.7. Advocate as witness.

(a) An advocate shall not act as legal counsel at a trial in which the advocate is likely to be a necessary witness unless:

(1) The testimony relates to an uncontested issue;

(2) The testimony relates to the nature and value of legal services rendered in the case; or

(3) Disqualification of the advocate would result in substantial hardship on the client.

(b) An advocate may act as legal counsel in a trial in which another advocate in the advocate's office is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Rule 3.7 Advocate as Witness - Comment

[1] Application of this Rule can be subject to direction or limitations imposed by the tribunal.

[2] This Rule is not intended to impede or alter the role of a Guardian Ad Litem.

[3] Combining the roles of legal counsel and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the advocate and client.

Advocate-Witness Rule

[4] The tribunal has proper objection when the trier of fact may be confused or misled by an advocate serving as both counsel and witness. The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while counsel is expected to explain and comment on evidence given by others.

[5] To determine whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance, substance, and tone of the advocate's testimony, whether one or both parties could reasonably foresee that the advocate would probably be a witness; and the probability that the advocate's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the advocate should be disqualified, due regard must be given to the effect of disqualification on the client.

Conflict of Interest

[6] If there is likely to be substantial conflict between the testimony of the client and that of the advocate, then the representation involves a conflict of interest that requires compliance with Rule 1.7. This would be true even though the advocate might not be prohibited by paragraph (a) from simultaneously serving as counsel and witness because the advocate's disqualification would result in a substantial hardship on the client. If there is a conflict of interest, the advocate must secure the client's written, informed consent.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 3.8. Special responsibilities of a prosecutor.

The prosecutor in a criminal case shall:

(a) Refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) Make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) Not seek to obtain a waiver of important pretrial rights from an unrepresented accused individual unless authorized by law.

(d) Make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) Not subpoena an advocate in a criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:

(1) The information sought is not protected from disclosure by any applicable privilege;

(2) The evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and

(3) There is no other feasible alternative to obtain the information;

(f) Except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making out-of-court comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an out-of-court statement that the prosecutor would be prohibited from making under Rule 3.6 or this rule.

(g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) Promptly disclose that evidence to the court in which the defendant was convicted and to the corresponding prosecutorial authority, and to defendant's counsel or, if defendant is not represented, the defendant and the indigent defense appointing authority in the jurisdiction, and

(2) If the judgment of conviction was entered by a court in which the prosecutor exercises prosecutorial authority, make reasonable efforts to inquire into the matter or to refer the matter to the appropriate law enforcement or prosecutorial agency for its investigation into the matter.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

(i) A prosecutor who concludes in good faith that information is not subject to subsections (g) or (h) of this rule does not violate those subsections even if this conclusion is later determined to have been incorrect.

Rule 3.8 Special Responsibilities of A Prosecutor - Comment

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is afforded procedural justice, that guilt is decided upon the basis of sufficient evidence, and that special precautions are taken to prevent and to rectify the conviction of innocent persons. Competent representation of the Community may require a prosecutor to undertake some procedural and remedial measures. Knowing disregard of these requirements or systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

[2] The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

[3] Paragraph (f) requires a prosecutor to exercise reasonable care to prevent persons assisting or associated with the prosecutor from making improper out-of-court statements, even when such persons are not under the direct supervision of the prosecutor. Ordinarily, the reasonable care standard will be satisfied if the prosecutor issues the appropriate cautions to law-enforcement personnel and other relevant individuals.

[4] Under paragraph (h), once the prosecutor knows of clear and convincing evidence that the defendant was convicted of an offense that the defendant did not commit, the prosecutor must seek to remedy the conviction. Necessary steps may include disclosure of the evidence to the defendant, requesting that the court refer an unrepresented indigent defendant to counsel and, where appropriate, notifying the

court that the prosecutor has knowledge that the defendant did not commit the offense of which the defendant was convicted.

[5] A prosecutor's independent judgment, made in good faith that the new evidence is not of such nature as to trigger the obligations of sections (g) and (h), though subsequently determined to have been incorrect, does not constitute a violation of this Rule.

[6] Evidence is considered new when it was unknown to a trial prosecutor at the time the conviction was entered or, if known to the prosecutor(s), was not disclosed to the defense, either deliberately or inadvertently.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 3.9. Advocate in other proceedings.

An advocate representing a client before the Tribal Council or in an administrative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5.

Rule 3.9 Advocate in Other Proceedings - Comment

[1] In representation before bodies such as the Tribal Council, and in administrative proceedings when such bodies are acting in a rule-making or policy-making capacity, advocates present facts, formulate issues and advance argument in the matters under consideration. The decision-making body should be able to rely on the integrity of the submissions made to it. An advocate appearing before such a body must deal with the body honestly and in conformity with applicable rules.

[2] This Rule only applies when an advocate represents a client in connection with an official hearing or meeting at which the advocate or the client is presenting evidence or argument.

[3] This Rule does not apply to an advocate representing the Tribal government.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 3.10. Credible and material exculpatory information about a convicted person.

(a) When an advocate knows of credible and material evidence that creates a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the advocate shall promptly disclose that evidence to the court in which the defendant was convicted and to the corresponding prosecutorial authority, and to defendant's counsel or, if defendant is not represented, the defendant and the indigent defense appointing authority in the jurisdiction.

(b) This rule does not require disclosure of information otherwise protected by Rule 1.6 or other law.

(c) An advocate who in good faith concludes that information is not subject to this rule does not violate this rule even if that conclusion is later determined to have been erroneous.

(d) This rule does not require disclosure if the advocate knows that appropriate governmental authorities or the convicted defendant already possess the information.

Rule 3.10 Credible and Material Exculpatory Information about a Convicted Person - Comment

Rectifying the conviction and preventing the incarceration of an innocent person are core values of the judicial system and matters of vital concern to the legal profession. Because of the importance of these principles, this Rule applies to all advocates, except prosecutors, whose special duties with respect to disclosure of new, credible, and material exculpatory evidence after conviction are set forth in Rule 3.8 (g)(h) and (i).

(Ord. No. SRO-588A-2025, 2-5-2025)

Subdivision IV. Transactions with Persons Other Than Clients

Rule 4.1. Truthfulness in statements to others.

In the course of representing a client, an advocate shall not knowingly:

(a) Make a false statement of material fact or law to a third person; or

(b) Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client unless disclosure is prohibited by Rule 1.6.

Rule 4.1 Truthfulness In Statements To Others - Comment

Misrepresentation

[1] An advocate is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the advocate incorporates or affirms a statement of another person that the advocate knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements.

Statements of Fact

[2] This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted principles in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud.

Crime or Fraud by Client

[3] Paragraph (b) states a specific application of the principle set forth in Rule 1.2(d) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, an advocate can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the advocate to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation, or the like. In extreme cases, substantive law may require an advocate to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. If the advocate can avoid assisting a client's crime or fraud only by disclosing this information, then under paragraph (b) the advocate is required to do so, unless the disclosure is prohibited under Rule 1.6.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 4.2. Communication with person represented by counsel.

In representing a client, an advocate shall not communicate about the subject of the representation with a person the advocate knows to be represented by another advocate in the matter, unless the advocate has the consent of the other advocate or is authorized to do so by law or a court order.

Rule 4.2 Communication with Person Represented by Counsel - Comment

[1] This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by an advocate in a matter against possible overreaching by other advocates who are participating in the matter, interference by those advocates with the client-advocate relationship and the un-counseled disclosure of information relating to the representation.

[2] This Rule applies to communications with any person who is represented by counsel concerning the matter to which the communication relates.

[3] The Rule applies even though the represented person initiates or consents to the communication. An advocate must immediately terminate communication with a person if, after commencing communication, the advocate learns that the person is one with whom communication is not permitted by this Rule.

[4] This Rule does not prohibit communication with a represented person, or an employee or agent of such a person, concerning matters outside the representation. For example, the existence of a controversy between a Community agency and a private party, or between two organizations, does not prohibit an advocate from communicating with non-advocate representatives of the other regarding a separate matter. Nor does this Rule preclude communication with a represented person who is seeking advice from an advocate who is not otherwise representing a client in the matter. An advocate may not make a communication prohibited by this Rule through the acts of another. Parties to a matter may communicate directly with each other, and an advocate is not prohibited from advising a client concerning a communication that the client is legally entitled to make. Also, an advocate having independent justification or legal authorization for communicating with a represented person is permitted to do so.

[5] Communications authorized by law may include communications by an advocate on behalf of a client who is exercising a constitutional or other legal right to communicate with the government. Communications authorized by law may also include investigative activities of an advocate representing Community entities, directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings. When communicating with the accused in a criminal matter, an advocate must comply with this Rule in addition to honoring the constitutional rights of the accused. The fact that a communication does not violate a Tribal or Federal constitutional right is insufficient to establish that the communication is permissible under this Rule.

[6] An advocate who is uncertain whether a communication with a represented person is permissible may seek a court order. An advocate may also seek a court order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this Rule, for example, where communication with a person represented by counsel is necessary to avoid reasonably certain injury.

[7] In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's advocate concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Consent of the organization's advocate is not required for communication with a former constituent. If a constituent of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule.

[8] The prohibition on communications with a represented person only applies in circumstances where the advocate knows that the person is in fact represented in the matter to be discussed. This means that the advocate has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. Thus, the advocate cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

[9] In the event the person with whom the advocate communicates is not known to

be represented by counsel in the matter, the advocate's communications are subject to Rule 4.3.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 4.3. Dealing with unrepresented person.

In dealing on behalf of a client with a person who is not represented by counsel in regard to the subject matter of the communication, an advocate shall not state or imply that the advocate is unbiased to a client's interests. When the advocate knows or reasonably should know that the unrepresented person misunderstands the advocate's role in the matter, the advocate shall make reasonable efforts to correct the misunderstanding. The advocate shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the advocate knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

Rule 4.3 Dealing with Unrepresented Person - Comment

[1] An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that an advocate is unbiased by loyalties or is a neutral authority on the law even when the advocate represents a client. In order to avoid a misunderstanding, an advocate will typically need to identify the advocate's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person.

[2] The Rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the advocate's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the advocate will compromise the unrepresented person's interests is so great that the Rule prohibits the giving of any advice, apart from the advice to obtain counsel. Whether an advocate is giving impermissible advice may depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur. This Rule does not prohibit an advocate from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the advocate has explained that the advocate represents an adverse party and is not representing the person, the advocate may inform the person of the terms on which the advocate's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the advocate's own view of the meaning of the document or the advocate's view of the underlying legal obligations.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 4.4. Respect for rights of third persons.

(a) In representing a client, an advocate shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) An advocate who receives a document or electronically stored information relating to the representation of the advocate's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender and preserve the status quo for a reasonable period of time in order to permit the sender to take protective measures.

Rule 4.4 Respect for Rights of Third Persons - Comment

[1] Responsibility to a client requires an advocate to subordinate the interests of others to those of the client, but that responsibility does not imply that an advocate may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtain-

ing evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-advocate relationship.

[2] Paragraph (b) recognizes that advocates sometimes receive documents or electronically stored information that were mistakenly sent or produced by opposing parties or their advocates. If an advocate knows or reasonably should know that such a document or electronically stored information was sent inadvertently, then this Rule requires the advocate to promptly notify the sender in order to permit that person to take protective measures. Whether the advocate is required to take additional steps, such as returning the original document or electronically stored information, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document or electronically stored information has been waived. Similarly, this Rule does not address the legal duties of an advocate who receives a document or electronically stored information that the advocate knows or reasonably should know may have been wrongfully obtained by the sending person. For purposes of this Rule, "document or electronically stored information" includes, in addition to paper documents, e-mail and other forms electronically stored information, including embedded data, or metadata, or other electronic modes of transmission subject to being read or put into readable form.

[3] Some advocates may choose to return a document or delete electronically stored information unread, for example, when the advocate learns before receiving it that it was inadvertently sent. Where an advocate is not required by applicable law to do so, the decision to voluntarily return such a document or delete electronically stored information is a matter of professional judgment ordinarily reserved to the advocate.

(Ord. No. SRO-588A-2025, 2-5-2025)

Subdivision V. SRPMIC Legal Departments, Advocate Firms, and Associates

Rule 5.1. Responsibilities of partners, managers, and supervisory advocates.

(a) A partner, director or supervisor in an advocate firm, department or organization, and an advocate who individually or together with other advocates possesses comparable managerial authority in a firm, department or organization shall make reasonable efforts to ensure that the firm, department or organization has in effect measures giving reasonable assurance that all advocates in the firm, department or organization conform to the rules of professional conduct.

(b) An advocate having direct supervisory authority over another advocate shall make reasonable efforts to ensure that the other advocate conforms to the rules of professional conduct.

(c) An advocate shall be responsible for another advocate's violation of the rules of professional conduct only if:

(1) the advocate orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the advocate is a partner, director, supervisor or has comparable managerial authority in the law firm, department or organization in which the other advocate practices, or has direct supervisory authority over the other advocate, and knows of the conduct at a time when its consequences can be avoided or mitigated, but fails to take reasonable remedial action.

Rule 5.1 Responsibilities of Partners, Managers, and Supervisory Advocates - Comment

[1] Paragraph (a) requires advocates with managerial authority within a firm, department or organization to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all advocates in the firm, department or organization will conform to the Rules of

Professional Conduct. Such policies and procedures may or may not be in writing, but they must be clearly communicated to all subordinate advocates. Such policies should include all aspects of compliance with the Rules including, but not limited to, those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced advocates are properly supervised. An advocate with general managerial authority cannot oversee or know about each action of a subordinate advocate. If reasonable policies are in place and have been communicated, an advocate with general managerial authority should only be held responsible for the actions of another advocate if either or both of the conditions of subsection (c) exist.

[2] Paragraph (c) defines the duty of a partner, director, supervisor, or other advocate having comparable managerial authority in a law firm, department or organization, as well as an advocate who has direct supervisory authority over performance of specific legal work by another advocate or personnel. Whether an advocate has supervisory authority in particular circumstances is a question of fact. Partners, directors, supervisors and advocates with comparable authority have at least indirect responsibility for all work being done by the firm, department or organization, while a partner, director or supervisor in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm, department or organization advocates engaged in the matter. Appropriate remedial action by a partner, director or supervisor would depend on the immediacy of that advocate's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct once the supervisor has notice of the misconduct. For example, if a supervising advocate knows that a subordinate misrepresented a matter to an opposing party or the tribunal, the supervisor as well as the subordinate has a duty to correct promptly the resulting misrepresentation.

[3] The duties imposed by this Rule on managing and supervising advocates do not alter the personal duty of each advocate in a firm, department or organization to abide by the Rules of Professional Conduct.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 5.2. Responsibilities of a subordinate advocate.

(a) An advocate is bound by the rules of professional conduct notwithstanding that the advocate acted at the direction of another person.

(b) A subordinate advocate does not violate the rules of professional conduct if the subordinate advocate acts in accordance with a supervisory advocate's reasonable resolution of an arguable question of professional duty.

Rule 5.2 Responsibilities of a Subordinate Advocate - Comment

[1] Although an advocate is not relieved of responsibility for a violation by the fact that the advocate acted at the direction of a supervisor, that fact may be relevant in determining whether an advocate had the knowledge required to render conduct a violation of the Rules. When an advocate in a supervisor-subordinate relationship encounters a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. If the question can reasonably be answered only one way, then the duty of both advocates is clear, and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily rests in the supervisor, and a subordinate may be guided accordingly.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 5.3. Responsibilities regarding non-advocate assistants.

With respect to a non-advocate employed or retained by or associated with an advocate:

(a) A partner, and an advocate who individually or together with other advocates possesses comparable managerial authority in a firm, department or organization shall make reasonable efforts to ensure that the firm, department or organization has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the advocate; and

(b) An advocate having direct supervisory authority over a non-advocate shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the advocate; and

(c) An advocate shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by an advocate only if:

(1) The advocate orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) The advocate is a partner or has comparable managerial authority in the firm, department or organization in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 5.3 Responsibilities Regarding Non-Advocate Assistance - Comment

[1] Advocates generally employ assistants in their practice, including legal administrative assistants, secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the advocate in rendition of the advocate's professional services. An advocate must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment. Such instructions may or may not be in writing, but they must be clearly communicated to all non-advocate assistants. Instructions should include all aspects of these Rules, including but not limited to, the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising non-advocates should take account of the fact that they do not have legal training and are not subject to professional discipline.

[2] Paragraph (a) requires advocates with managerial authority within a law firm, department or organization to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that non-advocates in the firm and/or department will act in a way compatible with the Rules of Professional Conduct. An advocate with general managerial authority cannot oversee or know about each action of a non-advocate assistant. If reasonable measures are in place and have been communicated, an advocate with general managerial authority should only be held responsible for the actions of a non-advocate assistant if either or both of the conditions of subsection (c) exist.

[3] An advocate may use non-advocates outside the firm, department or organization to assist the advocate in rendering legal services to the client. When using such services, an advocate must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the advocate's professional obligations. When retaining or directing a non-advocate outside the firm, department or organization, an advocate should communicate directions appropriate under the circumstances to give

reasonable assurance that the non-advocate's conduct is compatible with the professional obligations of the advocate.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 5.4. Professional independence of an advocate.

(a) An advocate or law firm shall not share legal fees with a non-advocate, except that:

(1) An agreement by an advocate with the advocate's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the advocate's death, to the advocate's estate or to one or more specified persons;

(2) An advocate who purchases the practice of a deceased, disabled, or disappeared advocate may, pursuant to the provisions of Rule 1.16, pay to the estate or other representative of that advocate the agreed-upon purchase price;

(3) An advocate or law firm may include non-advocate employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) An advocate may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the advocate in the matter.

(b) An advocate shall not form a partnership with a non-advocate if any of the activities of the partnership consist of the practice of law.

(c) An advocate shall not permit a person who recommends, employs, or pays the advocate to render legal services for another to direct or regulate the advocate's professional judgment in rendering such legal services.

(d) An advocate shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) A non-advocate owns any interest therein, except that a fiduciary representative of the estate of an advocate may hold the stock or interest of the advocate for a reasonable time during administration;

(2) A non-advocate is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) A non-advocate has the right to direct or control the professional judgment of an advocate.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 5.5. Unauthorized practice; multi-jurisdictional practice.

(a) An advocate shall not practice law in the SRPMIC Community Court in violation of the regulation of Community advocates or assist another in doing so.

(b) An advocate who is not admitted to practice in this jurisdiction shall not:

(1) Establish an office or other systematic and continuous presence in this jurisdiction for the practice of advocacy, except as authorized by these rules or other Community law; or

(2) Hold out to the public or otherwise represent that the advocate is admitted to practice advocacy in this jurisdiction.

(c) An advocate admitted in another tribal, state, or federal jurisdiction and who is not disbarred, on inactive status or suspended from practice in any jurisdiction, may provide advocacy services on a temporary basis in this jurisdiction if one of the following conditions is met:

(1) The services are undertaken in association with an advocate who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) The services are in a pending proceeding, or reasonably related to a pending proceeding before the Community court, if the advocate or a person the advocate is assisting, is authorized by law or order to appear in such proceeding;

(3) The services are in or reasonably related to a pending arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are

reasonably related to the advocate's practice in a jurisdiction in which the advocate is admitted to practice, and are not services for which the forum requires pro hac vice admission; or

(4) The services are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the advocate's practice in a jurisdiction in which the advocate is admitted to practice.

(d) An advocate who is admitted in another tribal, state or federal jurisdiction, and who is not disbarred, on inactive status or suspended from practice in any jurisdiction, may provide advocacy services in this jurisdiction that:

(1) Are provided to the advocate's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) Are services that the advocate is authorized to provide by federal law or other law of this jurisdiction.

(e) Any advocate who engages in the practice of advocacy in multiple jurisdictions, whether authorized in accordance with these rules or not, shall be subject to the rules of professional conduct regarding advocate discipline.

Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law - Comment

[1] An advocate may practice only in a jurisdiction in which the advocate is authorized to practice. An advocate may be admitted to practice in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice by an advocate, whether through the advocate's direct action or by the advocate assisting another person. For example, an advocate may not assist a person in practicing advocacy in violation of the rules governing professional conduct in that person's jurisdiction.

[2] The definition of the practice of advocacy is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice to those authorized to practice protects the public against rendition of advocacy services by unqualified persons. This Rule does not prohibit an advocate from employing the services of paraprofessionals and delegating functions to them, so long as the advocate supervises the delegated work and retains responsibility for their work. See Rule 5.3.

[3] An advocate may provide professional advice and instruction to non-advocates whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants, and persons employed in government agencies. Advocates also may assist independent non-advocates, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, an advocate may counsel non-advocates who wish to proceed pro se.

[4] Other than as authorized by law or this Rule, an advocate who is not admitted to practice generally in this jurisdiction violates paragraph (b)(1) if the advocate establishes an office or other systematic and continuous presence in this jurisdiction for the practice of advocacy. Presence may be systematic and continuous even if the advocate is not physically present here. Such an advocate must not hold out to the public or otherwise represent that the advocate is admitted to practice in this jurisdiction.

[5] There is no single test to determine whether an advocate's services are provided on a "temporary basis" in this jurisdiction and may therefore be permissible under paragraph (c). Services may be "temporary" even though the advocate provides services in this jurisdiction on a recurring basis, or for an extended period

of time, as when the advocate is representing a client in a single lengthy negotiation or litigation.

[6] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if an advocate admitted only in another jurisdiction associates with an advocate licensed to practice in this jurisdiction. For this paragraph to apply, however, the advocate admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[7] Advocates who are not admitted to practice before the SRP-MIC Court may, however, be authorized by law, order or policy of another tribunal or administrative agency to appear before such tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), an advocate does not violate this Rule when the advocate appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires an advocate who is not admitted to practice in this jurisdiction to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the advocate to obtain that authority.

[8] In some circumstances, an advocate who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the advocate is not licensed to practice in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction.

[9] Paragraph (c)(4) permits an advocate admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the advocate's practice in a jurisdiction in which the advocate is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that non-advocates may perform but that are considered the practice of law when performed by advocates.

[10] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the advocate's practice in a jurisdiction in which the advocate is admitted. A variety of factors evidence such a relationship. The advocate's client may have been previously represented by the advocate or may be resident in or have substantial contacts with the jurisdiction in which the advocate is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the advocate's work might be conducted in that jurisdiction, or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions. In addition, the services may draw on the advocate's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law. Advocates desiring to provide pro bono advocacy services on a temporary basis in a jurisdiction that has been affected by a major disaster, but in which they are not otherwise authorized to practice, as well as advocates from the affected jurisdiction who seek to practice temporarily in another jurisdiction, but in which they are not otherwise authorized to practice, should consult the American Bar Association's Model Court Rule on Provision of Legal Services Following Determination of Major Disaster.

[11] An advocate who practices in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 5.6. Restrictions on right to practice.

An advocate shall not participate in offering or making:

(a) A partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of an advocate to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) An agreement in which a restriction on an advocate's right to practice is part of the settlement of a client controversy.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 5.7. Responsibilities regarding law-related services.

(a) An advocate may provide law-related services to clients and to others as defined in paragraph (b), either:

(1) By the advocate in circumstances that are not distinct from the advocate's provision of legal services to clients; or

(2) By a separate entity which is controlled by the advocate individually or with others.

Where the law-related services are provided by the advocate in circumstances that are not distinct from the advocate's provision of legal services to clients, the advocate shall be subject to the provisions of the rules of professional conduct in the course of providing such services. In circumstances in which law-related services are provided by a separate entity controlled by the advocate individually or with others, the advocate shall not be subject to the rules of professional conduct, in the course of providing such services, only if the advocate takes reasonable measures to assure that a person obtaining the law-related services knows that the services of the separate entity are not legal services and that the protections of the client-advocate relationship do not apply.

(b) The term law-related services denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a non-advocate.

Rule 5.7 Responsibilities Regarding Law-Related Services - Comment

When an advocate performs law-related services or controls an organization that does so, there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the law-related services are performed fails to understand that the services may not carry with them the protections normally afforded as part of the client-advocate relationship. The recipient of the law-related services may expect, for example, that the protection of client confidences, prohibitions against representation of persons with conflict interests, and obligations of an advocate to maintain professional independence apply to the provision of law-related services when that may not be the case.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 5.8. Accepting appointments.

An advocate shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(a) Representing the client is likely to result in violation of the rules of professional conduct or other law;

(b) Representing the client is likely to result in an unreasonable financial burden on the advocate; or

(c) The client or the cause is so repugnant to the advocate as to be likely to impair the client-advocate relationship or the advocate's ability to represent the client.

Rule 5.8 Accepting Appointments - Comment

[1] An advocate ordinarily is not obliged to accept a client whose character or cause the advocate regards as repugnant. The advocate's freedom to select clients is, however, qualified. An advocate may be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

Appointed Counsel

[2] For good cause an advocate may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the advocate could not handle the matter competently, see Rule 1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the advocate as to be likely to impair the client-advocate relationship or the advocate's ability to represent the client. An advocate may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

[3] An appointed advocate has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-advocate relationship, such as the obligation to refrain from assisting the client in violation of the Rules.

(Ord. No. SRO-588A-2025, 2-5-2025)

Subdivision VI. Public Service

Rule 6.1. Membership in legal services organization.

Reserved.

Rule 6.2. Law reform activities affecting client interests.

Reserved.

Rule 6.3. Nonprofit and court-sponsored limited legal service programs.

(a) An advocate who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the advocate or the client that the advocate will provide continuing representation in the matter:

(1) Is subject to Rules 1.7 and 1.9(a) only if the advocate knows that the representation of the client involves a conflict of interest; and

(2) Is subject to Rule 1.10 only if the advocate knows that another advocate associated with the advocate in a law firm is disqualified by Rules 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this rule.

(c) Rule 1.5 does not apply to a representation governed by this rule and for which the advocate does not charge a fee.

Rule 6.3 Nonprofit and Court-Sponsored Limited Legal Service Programs - Comment

[1] Legal service organizations, courts and various nonprofit organizations have established programs through which advocates provide short-term limited legal services - such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by an advocate. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-advocate relationship is established, but there is no expectation that the advocate's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for an advocate to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] An advocate who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(b). If a short-term limited representation would not be reasonable under the circumstances, the

advocate may offer advice to the client, but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because an advocate who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the advocate knows that the representation presents a conflict of interest for the advocate, and with Rule 1.10 only if the advocate knows that another advocate in the advocate's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with the other matters being handled by the advocate's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating advocate to comply with Rule 1.10 when the advocate knows that the advocate's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, an advocate's participation in a short-term limited legal services program will not preclude the advocate's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of an advocate participating in the program be imputed to other advocates participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, an advocate undertakes to represent the client in the matter on an ongoing basis, Rules 1.5, 1.7, 1.9(a) and 1.10 become applicable.

(Ord. No. SRO-588A-2025, 2-5-2025)

Subdivision VII. Information About Legal Services

Rule 7.1. Communications concerning an advocate's services.

An advocate shall not make or knowingly permit to be made on the advocate's behalf a false or misleading communication about the advocate or the advocate's services. A communication is false or misleading if it contains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading.

Rule 7.1 Communications Concerning an Advocate's Services - Comment

[1] This Rule governs all communications about an advocate's services, including advertising permitted by Rule 7.2. Whatever means are used to make known an advocate's services; statements about them must be truthful.

[2] Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the advocate's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the advocate or the advocate's services for which there is no reasonable factual foundation. Whether a communication about an advocate or legal services is false or misleading is based upon the perception of a reasonable person.

[3] A communication that truthfully reports an advocate's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the advocate's services

or fees with the services or fees of other advocates may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead a prospective client.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 7.2. Advertising.

(a) Subject to the requirements of Rules 7.1 and 7.3, an advocate may advertise services through written, recorded or electronic communication, including public media.

(b) An advocate shall not give anything of value to a person for recommending the advocate's services, except that an advocate may

(1) Pay the reasonable costs of advertisements or communications permitted by this rule;

(2) Pay the usual charges of a legal service plan or a not-for-profit or qualified advocate referral service;

(3) Pay for a law practice in accordance with Rule 1.16; and

(4) Refer clients to an advocate pursuant to an agreement not otherwise prohibited under these rules that provides for the other person to refer clients or customers to the advocate, if

a. The reciprocal referral agreement is not exclusive, and

b. The client is informed of the existence and nature of the agreement.

(c) Any communication made pursuant to this rule shall include the name and contact information of the advocate responsible for its content.

(d) Every advertisement (including advertisement by written solicitation) that contains information about the advocate's fees shall be subject to the following requirements:

(1) Advertisements and written solicitations indicating that the charging of a fee is contingent on outcome or that the fee will be a percentage of the recovery shall disclose:

a. That the client will be liable for expenses regardless of outcome unless the repayment of such is contingent upon the outcome of the matter; and

b. Whether the percentage fee will be computed before expenses are deducted from the recovery.

(2) Range of fees or hourly rates for services may be communicated provided that the client is informed in writing at the commencement of any client-advocate relationship that the total fee within the range which will be charged or the total hours to be devoted will vary depending upon that particular matter to be handled for each client and the client is entitled without obligation to an estimate of the fee within the range likely to be charged;

(3) Fixed fees for specific routine legal services, the description of which would not be misunderstood or be deceptive, may be communicated provided that the client is informed in writing at the commencement of any client-advocate relationship that the quoted fee will be available only to clients whose matters fall within the services described and that the client is entitled without obligation to a specific estimate of the fee likely to be charged;

(4) An advocate who advertises a specific fee, range of fees or hourly rate for a particular service shall honor the advertised fee, or range of fees, for at least 90 days unless the advertisement specifies a shorter period; provided, for advertisements in the yellow pages of telephone directories or other media not

published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication.

(e) Advertisements on the electronic media may contain the same information as permitted in advertisements in the print media. If a law firm advertises on electronic media and a person appears purporting to be an advocate, such person shall in fact be an advocate employed full-time at the advertising law firm. If a law firm advertises a particular legal service on electronic media, and an advocate appears as the person purporting to render the service, the advocate appearing shall be the advocate who will actually perform the service advertised unless the advertisement discloses that the service may be performed by other advocates in the firm.

(f) Communications required by paragraphs (c) and (d) shall be clear and conspicuous. To be "clear and conspicuous", a communication must be of such size, color, contrast, location, duration, cadence, and audibility that an ordinary person can readily notice, read, hear, and understand it.

Rule 7.2 Advertising - Comment

[1] This Rule permits public dissemination of information, to include, but not limited to, flyers, email postings, newspaper advertisements, concerning an advocate's name or firm name, address, email address, website, and telephone number; the kinds of services the advocate will undertake; the basis on which the advocate's fees are determined, including prices for specific services and payment and credit arrangements; an advocate's foreign language ability; names of references and other information that might invite the attention of those seeking legal assistance.

[2] Neither this Rule nor Rule 6.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Paying Others to Recommend an Advocate

[3] Advocates are not permitted to pay others for channeling professional work. An advocate may compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. See Rule 5.3 for the duties of advocates and with respect to the conduct of non-advocates who prepare marketing materials for them.

[4] An advocate also may agree to refer clients to another advocate, in return for the undertaking of that person to refer clients or customers to the advocate. Such reciprocal referral arrangements must not interfere with the advocate's professional judgment as to making referrals or as to providing substantive legal services.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 7.3. Solicitation of clients.

(a) An advocate not employed by the Community shall not by in-person, live telephone or real-time electronic contact solicit professional employment from the person contacted or employ or compensate another to do so when a motive for the advocate's doing so is the advocate's pecuniary gain, unless the person contacted:

(1) Is an advocate; or

(2) Has a family, close personal or prior professional relationship with the advocate.

(b) An advocate shall not solicit professional employment from a prospective client or knowingly permit solicitation on the advocate's behalf from the person contacted by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) The prospective client has made known to the advocate a desire not to be solicited by the advocate;

(2) The solicitation involves coercion, duress or harassment; or

(3) The solicitation relates to a personal injury or wrongful death and is made within 30 days of such occurrence.

(c) Every written, recorded or electronic communication from an advocate soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).

Rule 7.3 Solicitation of Clients - Comment

[1] A solicitation is a targeted communication initiated by an advocate that is directed to a specific person and that offers to provide, or can be understood as offering to provide, legal services. In contrast, an advocate's communication directed to the general public or an advocate's communication in response to a request for information usually does not constitute a solicitation. Paragraph (a) is not intended to prohibit an advocate from participating in constitutionally protected activities of public or charitable legal- service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

[2] The requirement in Rule 7.3(c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by advocates, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 7.4. Communication of fields of practice and specialization.

(a) An advocate may communicate the fact that the advocate does or does not practice in particular fields of law.

(b) An advocate shall not state or imply that an advocate is certified as a specialist in a particular field of law, unless:

(1) The advocate has been certified as a specialist by an organization that has been approved by an appropriate authority or that has been accredited by the American Bar Association; and

(2) The name of the certifying organization is clearly identified in the communication.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 7.5. Firm names and letterheads.

Reserved.

Rule 7.6. Political contributions to obtain legal engagements or appointments by judges.

Reserved.

Subdivision VIII. Maintaining the Integrity of the Profession

Rule 8.1. Admission and disciplinary actions.

Any applicant for admission to the practice in SRPMIC Court, or in connection with a disciplinary action, shall not:

(a) Knowingly make a false statement of material fact; or

(b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

Rule 8.1 Admission and Disciplinary Actions - Comment

[1] The duty imposed by this Rule extends to persons seeking admission and to admitted advocates. Hence, if a person makes a material false statement in connection

with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to an advocate's own admission or discipline as well as that of others. Thus, it is a separate professional offense for an advocate to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the advocate's own conduct. Paragraph (b) of this Rule also requires correction of any prior misstatement in the matter that the applicant or advocate may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

[2] This Rule is subject to the provisions of the Fifth Amendment of the United States Constitution and corresponding provisions of tribal and state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

[3] An advocate representing an applicant for admission to practice in the Community, or representing an advocate who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-advocate relationship, including Rule 1.6 and in some cases, Rule 3.3.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 8.2. Judicial and legal officials.

(a) An advocate shall not make a statement that the advocate knows to be false or make a statement with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer, or public legal officer.

(b) An advocate who is an applicant or candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

Rule 8.2 Judicial and Legal Officials - Comment

[1] To maintain the fair and independent administration of justice, advocates are encouraged to continue traditional efforts to defend judges and courts that have been unjustly criticized.

[2] When an advocate seeks judicial office, the advocate should be bound by applicable limitations on political activity.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 8.3. Reporting professional misconduct.

(a) An advocate who has personal knowledge that another advocate has committed a violation of the rules of professional conduct that raises a substantial question as to that advocate's honesty, trustworthiness or fitness as an advocate in other respects, shall inform the appropriate professional authority in accordance with the Community Code and regulations. The term "fitness" refers to an advocate's mental and physical ability to carry out the duties and responsibilities of the advocate's role.

(b) An advocate who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority in accordance with the Community Code and regulations.

(c) This rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by an advocate or judge while participating in an approved advocate assistance program to the extent that such information would be confidential if it related to the representation of a client.

Rule 8.3 Reporting Professional Misconduct - Comment

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Advocates have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would involve violation of Rule 1.6. However, an advocate should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

[3] If an advocate were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement is unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the advocate is aware. Similar considerations apply to the reporting of judicial misconduct.

[4] The duty to report professional misconduct does not apply to an advocate retained to represent an advocate whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client-advocate relationship.

[5] Information about an advocate's or judge's misconduct or fitness may be received by an advocate in the course of that advocate's participation in an approved advocates or judicial assistance program or employee assistance program. In that circumstance, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages advocates and judges to seek treatment through such a program. Conversely, without such an exception, advocates and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 8.4. Misconduct.

It is professional misconduct for an advocate to:

(a) Violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) Commit a criminal act that reflects adversely on the advocate's honesty, trustworthiness or fitness as an advocate in other respects;

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) Engage in conduct that is prejudicial to the administration of justice;

(e) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the rules of professional conduct or other law;

(f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

(g) File a notice of change of judge for cause, for an improper purpose, such as obtaining a trial delay or other circumstances.

(h) Knowingly manifest by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, gender identity or socioeconomic status, when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting

the foregoing factors does not violate this rule. A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.

Rule 8.4 Misconduct - Comment

[1] Paragraph (a), does not prohibit an advocate from advising a client concerning action the client is legally entitled to take.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses that have no specific connection to fitness for the practice of law. Although an advocate is personally answerable to the entire criminal law, an advocate should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] Advocates holding public office assume legal responsibilities going beyond those of other citizens. An advocate's abuse of public office can suggest an inability to fulfill the professional role of an advocate. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

[4] Paragraph (g) makes it professional misconduct for an advocate to file a notice of change of judge for cause for an improper purpose. The purpose of the rule is to allow a party to ask for a new judge when a party may perceive a bias that does not rise to disqualification under the rules.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 8.5. Disciplinary authority; choice of law.

(a) *Disciplinary authority.* An advocate admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the advocate's conduct occurs. An advocate not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the advocate provides or offers to provide any legal services in this jurisdiction. An advocate may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) *Choice of law.* In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) For conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) For any other conduct, the rules of the jurisdiction in which the advocate's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. An advocate shall not be subject to discipline if the advocate's conduct conforms to the rules of a jurisdiction in which the advocate reasonably believes the predominant effect of the advocate's conduct will occur.

Rule 8.5 Disciplinary Authority; Choice of Law - Comment

Disciplinary Authority

[1] Extension of the disciplinary authority of this jurisdiction to other advocates who

provide or offer to provide legal services in this jurisdiction is for the protection of the Members of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. The fact that the advocate is subject to the disciplinary authority of this jurisdiction may be a factor in determining whether personal jurisdiction may be asserted over the advocate for civil matters.

Choice of Law

[2] When an advocate's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the advocate's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the advocate's conduct conforms to the rules of a jurisdiction in which the advocate reasonably believes the predominant effect will occur, the advocate shall not be subject to discipline under this Rule.

[3] If two admitting jurisdictions were to proceed against an advocate for the same conduct, they should, applying this rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against an advocate on the basis of two inconsistent rules.

(Ord. No. SRO-588A-2025, 2-5-2025)

DIVISION 3. RULES OF JUDICIAL CONDUCT

Preamble.

An independent, fair, and impartial judiciary is indispensable to our system of justice. The Community legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our community. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

This Code establishes standards for the ethical conduct of judges. It is not intended as an exhaustive guide for the conduct of judges, who are governed in their judicial and personal conduct by general ethical standards as well as by the Code. The Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary agencies.

(Ord. No. SRO-588A-2025, 2-5-2025)

Scope.

This Code consists of three canons, numbered rules under each canon, and comments that generally follow and explain each rule. Scope and terminology sections provide additional guidance in interpreting and applying the Code. An application section establishes when the various rules apply to a judge or judicial candidate.

The canons state principles of judicial ethics that all judges must observe. Although a judge may be disciplined only for violating a rule, the canons provide important guidance in interpreting the rules. Where a rule contains a permissive term, such as "may" or "should," the conduct being addressed is committed to the personal and professional discretion of the judge in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion.

The comments that accompany the rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper applica-

tion of the rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Second, the comments identify aspirational goals for judges. To implement fully the principles of this Code as articulated in the canons, judges should strive to exceed the standards of conduct established by the rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

The rules in the Code are rules of reason that should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The rules should not be interpreted to impinge upon the essential independence of judges in making judicial decisions.

The black letter of the rules is binding and enforceable. It is not intended, however, that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the rules and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

The Code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.
(Ord. No. SRO-588A-2025, 2-5-2025)

Terminology.

Appropriate authority means the authority having responsibility for initiation of disciplinary process in connection with the violation to be reported.

Contribution means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure.

De minimis, in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge's impartiality.

Domestic partner means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married.

Economic interest means ownership of more than a de minimis legal or equitable interest. Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) An interest in the individual holdings within a mutual or common investment fund;

(2) An interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;

(3) A deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(4) An interest in the issuer of government securities held by the judge.

Fiduciary includes relationships such as executor, administrator, trustee, or guardian.

Impartial, impartiality, and *impartially* means absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge.

Impending matter is a matter that is imminent or expected to occur in the near future.

Impropriety includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge's independence, integrity, or impartiality.

Independence means a judge's freedom from influence or controls other than those established by law.

Integrity means probity, fairness, honesty, uprightness, and soundness of character.

Judge means any person who is authorized to perform judicial functions within the Community judiciary, including a judge of a court of record, or pro tempore judge.

Knowingly, knowledge, known, and *knows* means actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

Law encompasses court rules as well as Community ordinances, regulations, statutes, constitutional provisions, and applicable case law.

Member of the judge's family means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship.

Member of a judge's family residing in the judge's household means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

Nonpublic information means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in dependency cases or psychiatric reports.

Pending matter is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition.

Third degree of relationship includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece.
(Ord. No. SRO-588A-2025, 2-5-2025)

Application.

The application section establishes when the various rules apply to a judge or judicial candidate.
(Ord. No. SRO-588A-2025, 2-5-2025)

Part A. Applicability of this Code.

The provisions of the code apply to all Community judges.

Part A - Comment

The rules in this code have been formulated to address the ethical obligations of any person who serves a judicial function within the Community judicial branch, and are premised upon the supposition that a uniform system of ethical principles should apply to all those authorized to perform judicial functions.
(Ord. No. SRO-588A-2025, 2-5-2025)

Part B. Pro tempore judge.

(a) A pro tempore judge is a person appointed pursuant to Sections 4-31(a)(9) and 4-96(a) of the Community Code, who serves or expects to serve repeatedly on a less than full-time basis, but under a separate appointment by a presiding judge for each limited period of service or for each matter.

(b) A pro tempore judge is not required to comply:

(1) except while serving as a judge with Rules 1.2 (promoting confidence in the judiciary), 2.4 (external influences on judicial conduct), 2.10 (judicial statements on pending and impending cases), 3.2 (appearance before governmental bodies and consultation with government officials), 3.3 (acting as a character witness); or

(2) at any time with Rules 3.4 (appointments to governmental positions), 3.7 (participation in educational, religious, charitable, fraternal, or civic organizations and activities), 3.8 appointments to

fiduciary positions), 3.9 (service as arbitrator or mediator, 3.10 (practice of law), 3.11 (financial, business, or remunerative activities), 3.13 (acceptance and reporting of gifts, loans, bequests, benefits, or other things of value), and 3.15 (reporting requirements).

(c) A person who has been a pro tempore judge shall not act as an advocate in a proceeding in which the judge has served as a judge or in any other proceeding related thereto except as otherwise permitted by Rule 1.12(a) of the Community's Rules of Professional Conduct.

(d) A pro tempore judge who serves once or only sporadically in a specialized division of a court or in a court without specialized divisions may appear as a advocate in such specialized division or court during such service.

(e) A pro tempore judge who serves repeatedly on a continuing scheduled basis for a type or category of case shall not appear as an advocate in the same type or category of cases.

(f) A pro tempore judge who is appointed to perform judicial functions of a nonappealable nature on a continuing scheduled basis shall not appear as an advocate in other proceedings involving the function of the court in which the service was performed, but may appear as an advocate in all other areas of practice before the court.

Part B - Comment

[1] The restrictions of Part B apply to the members of a pro tempore judge's firm.

[2] The purpose of Part B is to allow the greatest possible use of pro tempore judges to augment judicial resources in order to reduce case backlogs and the time necessary to process cases to disposition while minimizing any potential for the appearance of impropriety.

[3] The language of Part B is intended to allow, at a minimum, the following practices:

(a) An advocate sits as a pro tempore judge for one family law trial and during this time appears in family law cases as an advocate in other matters.

(b) An advocate sits as a pro tempore juvenile judge on a continuing scheduled basis and during this time appears in court as an advocate in all types of proceedings except for juvenile matters.

(c) An advocate sits as a pro tempore judge in weekend detention/initial appearance hearings and thereafter appears as an advocate in criminal cases except that the advocate does not appear in detention/initial hearings on behalf of clients.

(Ord. No. SRO-588A-2025, 2-5-2025)

Part C. Time for compliance by new judges.

A person to whom this Code becomes applicable shall comply immediately with its provisions, except that those judges to whom Rules 3.8 (appointments to fiduciary positions) and 3.11 (financial, business, or remunerative activities) apply shall comply with those rules as soon as reasonably possible, but in no event later than one year after the Code becomes applicable to the judge.

Part C - Comment

If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Rule 3.8, continue to serve as fiduciary, but only for that period of time necessary to avoid serious adverse consequences to the beneficiaries of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Rule 3.11, continue in that activity for a reasonable period but in no event longer than one year.

(Ord. No. SRO-588A-2025, 2-5-2025)

CANON 1

Rule 1.1. Compliance with the law.

A judge shall comply with the law, including the Code of Judicial Conduct.

Rule 1.1 Compliance with the Law - Comment

For a discussion of the judge's obligation when applying and interpreting the law, see Rule 2.2 and the related comment.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 1.2. Promoting confidence in the judiciary.

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule 1.2 Promoting Confidence in the Judiciary - Comment

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the rule is necessarily cast in general terms.

[4] Judges should participate in activities that promote ethical conduct among judges and advocates, support collegiality and professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Actual improprieties include violations of law, court rules, or provisions of this code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge. An appearance of impropriety does not exist merely because a judge has previously rendered a decision on a similar issue, has a general opinion about a legal matter that relates to the case before him or her, or may have personal views that are not in harmony with the views or objectives of either party. A judge's personal and family circumstances are generally not appropriate considerations on which to presume an appearance of impropriety.

[6] A judge should initiate and participate in activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this code.

[7] A judge may respond to or issue statements in connection with allegations concerning the judge's conduct in a matter or to false, misleading, or unfair allegations or attacks upon the judge's character or reputation.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 1.3. Avoiding abuse of the prestige of judicial office.

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

Rule 1.3 Avoiding Abuse of the Prestige of Judicial Office - Comment

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

[2] A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge; however, see Rule 3.3 regarding testimony as a character witness in a proceeding. The judge may use judicial letterhead if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.

[3] Judges may cooperate with appointing authorities and screening committees in the judicial selection process, by recommending quali-

fied candidates for judicial office, and by responding to inquiries from and volunteering information to such entities concerning the professional qualifications of a person being considered for judicial office.

[4] A judge who writes or contributes to publications of for-profit entities should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this rule or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.
(Ord. No. SRO-588A-2025, 2-5-2025)

CANON 2

Rule 2.1. Giving precedence to judicial duties.

The judicial duties of a judge take precedence over all of a judge's other activities.

Rule 2.1 Giving Precedence to Judicial Duties - Comment

[1] To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. See Canon 3.

[2] Judicial duties are those prescribed by law, including this Code. In addition, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 2.2. Impartiality and fairness.

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Rule 2.2 Impartiality and Fairness - Comment

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[3] A good faith error of fact or law does not violate this rule. However, a pattern of legal error or an intentional disregard of the law may constitute misconduct.

[4] It is not a violation of this rule for a judge to make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard, provided that such accommodations do not deprive other parties of their right to a fair and efficient adjudication of the issues.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 2.3. Bias, prejudice, and harassment.

(a) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(b) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status (including same sex marriages), socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others who are subject to the judge's direction and control, to do so.

(c) A judge shall require advocates in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status (including same sex marriages), socioeconomic status, or political affiliation, against parties, witnesses, advocates, or others.

(d) The restrictions of paragraphs (b) and (c) do not preclude judges or advocates from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

Rule 2.3 Bias, Prejudice, and Harassment - Comment

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Facial expressions and body language may convey to parties and advocates in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

[5] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the code if undertaken by the judge.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 2.4. External influences on judicial conduct.

(a) A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(b) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(c) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

Rule 2.4 External Influences on Judicial Conduct - Comment

An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 2.5. Competence, diligence, and cooperation.

(a) A judge shall perform judicial and administrative duties competently, diligently, and promptly.

(b) A judge shall reasonably cooperate with other judges and court officials in the administration of court business.

(c) A judge shall participate actively in judicial education programs and shall complete mandatory judicial education requirements.

Rule 2.5 Competence, Diligence, and Cooperation - Comment

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

[3] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their advocates cooperate with the judge to that end.

[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 2.6. Ensuring the right to be heard.

(a) A judge shall accord to every person who has a legal interest in a proceeding, or that person's advocate, the right to be heard according to law.

(b) A judge may encourage parties to a proceeding and their advocates to settle matters in dispute, but shall not coerce any party into settlement.

Rule 2.6 Ensuring the Right to Be Heard - Comment

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the advocates and the parties if the case remains with the judge if settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, or is on appellate review, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, (6) whether the matter is civil or criminal, and (7) whether the judge involved in the settlement discussions will also be involved in the decision on the merits.

[3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision-making during trial or on appeal and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11(A)(1).
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 2.7. Responsibility to decide.

A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.

Rule 2.7 Responsibility to Decide - Comment

[1] Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

[2] A judge is not ethically obligated to automatically recuse himself or herself from a case in which one of the litigants has filed a complaint against the judge.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 2.8. Decorum, demeanor, and communication with jurors.

(a) A judge shall require order and decorum in proceedings before the court.

(b) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, advocates, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of advocates, court staff, court officials, and any court personnel who are subject to the judge's direction and control.

(c) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

Rule 2.8 Decorum, Demeanor, and Communication with Jurors - Comment

[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

[2] Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case. With certain qualifications judges may speak to a discharged jury following the return of a verdict. This rule does not preclude a judge from communicating with jurors personally, in writing, or through court personnel to obtain information for the purpose of improving the administration of justice.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 2.9. Ex parte communication.

(a) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their advocates, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

a. The judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

b. The judge makes provision to promptly notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding.

(3) A judge may consult with other judges, or with court personnel whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities. If in doing so the judge acquires factual information that is not part of the record, the judge shall make provision promptly to notify the parties of the substance of the information and provide the parties with an opportunity to respond. The judge may not abrogate the responsibility personally to decide the matter.

(4) A judge may, with the consent of the parties, confer separately with the parties and their advocates in an effort to settle matters pending before the judge.

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

(b) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision to promptly notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(c) Except as otherwise provided by law, a judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(d) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this rule is not violated by court staff, court officials, and other court personnel subject to the judge's direction and control.

Rule 2.9 Ex Parte Communication - Comment

[1] To the extent reasonably possible, all parties or their advocates shall be included in communications with a judge. A judge may also direct judicial staff, without invoking the notice and disclosure provisions of this rule, to screen written ex parte communications and to take appropriate action consistent with this rule.

[2] Whenever the presence of a party or notice to a party is required by this rule, it is the party's advocate, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

[3] The proscription against communications concerning a proceeding includes communications with persons who are not participants in the proceeding, except to the limited extent permitted by this rule.

[4] A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

[5] The prohibition against a judge independently investigating the facts in a matter extends to information available in all mediums, including electronic.

[6] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this code.

[7] An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

[8] A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

[9] If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 2.10. Judicial statements.

(a) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(b) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(c) A judge shall require court personnel who are under the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (a) and (b).

(d) Notwithstanding the restrictions in paragraph (a), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(e) Subject to the requirements of paragraph (a), a judge may respond directly or through a third party in writing, via social media or broadcast media or otherwise to allegations in the media or elsewhere concerning the judge's

conduct in a matter or to false, misleading, or unfair allegations or attacks upon the judge's character or reputation.

Rule 2.10 Judicial Statements - Comment

[1] This rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.

[2] This rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an administrative capacity, the judge may comment publicly on the merits of the case. In cases in which the judge is a litigant in a nominal capacity, such as a special action, the judge must not comment publicly except as otherwise specifically permitted by this rule.

[3] Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connections with allegations concerning the judge's conduct in a matter or to false, misleading, or unfair allegations or attacks upon the judge's character or reputation.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 2.11. Disqualification.

(a) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's advocate, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

a. A party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

b. Acting as an advocate in the proceeding;

c. A person who has more than a de minimis interest that could be substantially affected by the proceeding; or

d. Likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest, as defined by this code or Community law, in the subject matter in controversy or in a party to the proceeding.

(4) The judge, while a judge, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The judge:

a. Served as an advocate in the matter in controversy, or was associated with an advocate in the preceding four years who participated substantially as an advocate in the matter during such association;

b. Served in governmental employment, and in such capacity participated personally and substantially as an advocate or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

c. Was a material witness concerning the matter; or

d. Previously presided as a judge over the matter in another court.

(b) A judge shall keep reasonably informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(c) A judge subject to disqualification under this rule, other than for bias or prejudice under paragraph (a)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their advocates to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and advocates agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

(d) Official communications received in the course of performing judicial functions as well as information gained through training programs and from experience do not in themselves create a basis for disqualification.

Rule 2.11 Disqualification - Comment

[1] Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (a)(1) through (5) apply.

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] The rule of necessity may override the rule of disqualification. For example, a judge might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] The fact that an advocate in a proceeding is affiliated with a firm or Community department with which a member of the judge's family is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (a), or a member of the judge's family is known by the judge to have an interest in the firm or Community Department that could be substantially affected by the proceeding under paragraph (a)(2)(iii), the judge's disqualification is required.

[5] A judge should disclose on the record information that the judge believes the parties or their advocates might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[6] "Economic interest," as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(a) an interest in the individual holdings within a mutual or common investment fund;

(b) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant;

(c) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(d) an interest in the issuer of government securities held by the judge.

[7] A advocate in a government agency does not ordinarily have an association with other advocates employed by that agency within the meaning of Rule 2.11(a)(6)(i); a judge formerly employed by a government agency, however,

should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 2.12. Supervisory duties.

(a) A judge shall require court personnel who are under the judge's direction and control to act in a manner consistent with the judge's obligations under this code.

(b) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

Rule 2.12 Supervisory Duties - Comment

[1] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 2.13. Administrative appointments.

(a) In making administrative appointments, a judge:

(1) Shall exercise the power of appointment impartially and on the basis of merit; and

(2) Shall avoid nepotism, favoritism, and unnecessary appointments.

(b) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

Rule 2.13 Administrative Appointments - Comment

[1] Appointees of a judge include assigned counsel, officials such as guardian. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (a).
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 2.14. Disability and impairment.

A judge having a reasonable belief that the performance of an advocate or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to Community assistance or similar program.

Rule 2.14 Disability and Impairment - Comment

[1] "Appropriate action" means action intended and reasonably likely to help the judge or advocate in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include, but is not limited to, speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this rule. Assistance programs have many approaches for offering help to impaired judges and advocates, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or advocate to the appropriate authority, agency, or body. See Rule 2.15.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 2.15. Responding to judicial and advocate misconduct.

(a) A judge having knowledge that another judge has committed a violation of this code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.

(b) A judge having knowledge that an advocate has committed a violation of the Community Rules of Professional Conduct that raises a substantial question regarding the advocate's

honesty, trustworthiness, or fitness as an advocate in other respects shall inform the appropriate authority.

(c) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this code shall take appropriate action.

(d) A judge who receives information indicating a substantial likelihood that an advocate has committed a violation of the rules of professional conduct shall take appropriate action.

(e) Acts of a judge in the discharge of disciplinary responsibilities required or permitted by Rule 2.15 are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

Rule 2.15 Responding to Judicial and Advocate Misconduct - Comment

[1] Taking action to address known misconduct is a judge's obligation. Paragraphs (a) and (b) impose an obligation on the judge to report to the appropriate disciplinary authority the known serious misconduct of another judge or an advocate that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or advocate. Ignoring or denying known misconduct among one's judicial colleagues or members of the advocacy profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

[2] A judge who does not have actual knowledge that another judge or an advocate may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (c) and (d). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority. Similarly, actions to be taken in response to information indicating that an advocate has committed a violation of the Community Rules of Professional Conduct may include but are not limited to communicating directly with the advocate who may have committed the violation, or reporting the suspected violation to the appropriate authority.

[3] If a judge were obliged to report every act of misconduct, the failure to report any violation would itself be a professional offense. Such a requirement is unenforceable. This Rule limits the reporting obligation to those offenses that the judiciary must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the advocate is aware.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 2.16. Cooperation with disciplinary authorities.

(a) A judge shall cooperate and be candid and honest with judicial and advocate disciplinary authorities.

(b) A judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a judge or an advocate.

Rule 2.16 Cooperation with Disciplinary Authorities - Comment

[1] Cooperation with investigations and proceedings of judicial and advocate discipline agencies, as required in paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

[2] Judicial employees have a right to cooperate or communicate with the Commission on Judicial Conduct at any time, without fear of reprisal, for the purpose of discussing potential or actual judicial misconduct.
(Ord. No. SRO-588A-2025, 2-5-2025)

CANON 3

Rule 3.1. Extrajudicial activities in general.

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not:

(a) Participate in activities that will interfere with the proper performance of the judge's judicial duties;

(b) Participate in activities that will lead to frequent disqualification of the judge;

(c) Participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality or demean the judicial office;

(d) Engage in conduct that would appear to a reasonable person to be coercive; or

(e) Make use of court premises, staff, stationery, equipment, or other resources, except for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

Rule 3.1 Extrajudicial Activities in General - Comment

[1] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal, or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

[2] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities and furthers public understanding of and respect for courts and the judicial system.

[3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, political affiliation, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule 3.6.

[4] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(a), might create the risk that the person solicited would feel obligated to respond favorably or would do so to curry favor with the judge.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 3.2. Appearances before governmental bodies and consultation with government officials.

A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:

(a) In connection with matters concerning the law, the legal system, or the administration of justice;

(b) In connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or

(c) When the judge is acting in a matter involving the judge's personal interests or when the judge is acting in a fiduciary capacity.

Rule 3.2 Appearances Before Governmental Bodies and Consultation with Government Officials - Comment

[1] Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.

[2] In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 2.10, governing public comment on pending and impending matters, and Rule 3.1(c), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

[3] In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial positions and must otherwise exercise caution to avoid using the prestige of judicial office.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 3.3. Acting as a character witness.

A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

Rule 3.3 Acting as a Character Witness - Comment

A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 3.4. Appointments to governmental positions.

A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.

Rule 3.4 Appointments to Governmental Positions - Comment

[1] Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.

[2] A judge may represent his or her community, country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a government position.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 3.5. Use of nonpublic information.

A judge shall not intentionally disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties.

Rule 3.5 Use of Nonpublic Information - Comment

[1] In the course of performing judicial duties a judge may acquire information of commercial or other value that is unavailable to the public.

The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.

[2] This rule is not intended to affect a judge's ability to act on information as necessary to protect the health or safety of any individual if consistent with other provisions of this code.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 3.6. Affiliation with discriminatory organizations.

(a) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.

(b) A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (a). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

(c) A judge's membership or participation in a religious organization as a lawful exercise of the freedom of religion, or a judge's membership or participation in an organization that engages in expressive activity from which the judge cannot be excluded consistent with the judge's lawful exercise of his or her freedom of expression or association, is not a violation of this rule.

Rule 3.6 Affiliation with Discriminatory Organizations - Comment

[1] A judge's public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired.

[2] An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization stigmatizes excluded persons as inferior and odious, whether it perpetuates and celebrates cultures, historical events, and ethnic or religious beliefs, identities, or traditions, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

[3] When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.

[4] This rule does not prohibit a judge's national or state military service.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 3.7. Participation in educational, religious, charitable, fraternal, or civic organizations and activities.

(a) A judge may not directly solicit funds for an organization. However, subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

(1) Assisting such an organization or entity in planning related to fund-raising, volunteering services or goods at fund-raising events, and participating in the management and investment of the organization's or entity's funds;

(2) Soliciting contributions for such an organization or entity, but only from members of the judge's family or from judges over whom the judge does not exercise supervisory or appellate authority;

(3) Soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;

(4) Appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may do so only if the event concerns the law, the legal system, or the administration of justice.

(5) Making or soliciting recommendations to such a public or private fund-granting organization or entity in connection with its fund-granting programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and

(6) Serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

a. Will be engaged in proceedings that would ordinarily come before the judge; or

b. Will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(b) A judge may encourage advocates to provide pro bono legal services.

(c) Subject to the preceding requirements, a judge may:

(1) Provide leadership in identifying and addressing issues involving equal access to the justice system; develop public education programs; engage in activities to promote the fair administration of justice; and convene or participate or assist in advisory committees and community collaborations devoted to the improvement of the law, the legal system, the provision of services, or the administration of justice.

(2) Endorse projects and programs directly related to the law, the legal system, the administration of justice, and the provision of services to those coming before the courts, and may actively support the need for funding of such projects and programs.

(3) Participate in programs concerning the law or which promote the administration of justice.

Rule 3.7 Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities - Comment

[1] The activities permitted by paragraph (a) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations. An organization concerned with the law, the legal system, and the administration of justice may include an accredited institution of legal education, whether for-profit or not-for-profit.

[2] Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.

[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute participation in violation of paragraph (a)(4). It is also generally permissible

for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

[4] Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.

[5] In addition to appointing advocates to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging advocates to participate in pro bono legal services, if in doing so the judge does not employ coercion or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training advocates to do pro bono legal work, and participating in events recognizing advocates who have done pro bono work.

[6] A judge may be an announced speaker at a fund-raising event benefitting indigent representation, scholarships for law students, or accredited institutions of legal education.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 3.8. Appointments to fiduciary positions.

(a) A judge shall not accept appointment to serve in a fiduciary position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(b) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves, or one under its appellate jurisdiction.

(c) A judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.

(d) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.

Rule 3.8 Appointments to Fiduciary Positions - Comment

A judge should recognize that other restrictions imposed by this code may conflict with a judge's obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 3.9. Service as arbitrator or mediator.

A judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the judge's official duties unless expressly authorized by law.

Rule 3.9 Service as Arbitrator or Mediator - Comment

[1] This rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of assigned judicial duties. Rendering dispute resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is expressly authorized by law.

[2] Pro tempore judges may be exempt from this section. See Application, Part B.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 3.10. Practice of law.

A judge shall not practice law or serve as an advocate. A judge may represent himself or herself and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family, but is prohibited from serving as the family member's advocate in any forum.

Rule 3.10 Practice of Law - Comment

[1] A judge may act as his or her own advocate in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3.

[2] Pro tempore judges may be exempt from this section. See Application, Part B.

[3] Judges who are actively acting as advocates at the time of their appointment to the bench are encouraged to become familiar with ethical considerations immediately affecting the transition from advocate to judge.

[4] This rule does not prohibit the practice of law pursuant to military service.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 3.11. Financial, business, or remunerative activities.

(a) A judge may hold and manage investments of the judge and members of the judge's family.

(b) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any for-profit business entity except that a judge may manage or participate in:

(1) A business closely held by the judge or members of the judge's family; or

(2) A business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(c) A judge shall not engage in financial activities permitted under paragraphs (a) and (b) if they will:

(1) Interfere with the proper performance of judicial duties;

(2) Lead to frequent disqualification of the judge;

(3) Involve the judge in frequent transactions or continuing business relationships with advocates or other persons likely to come before the court on which the judge serves; or

(4) Result in violation of other provisions of this Code.

Rule 3.11 Financial, Business, or Remunerative Activities - Comment

[1] Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. See Rule 2.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.11.

[2] As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this rule.

[3] A judge's uncompensated participation as an officer, director, or advisor of an organization concerned with the law, the legal system, or the administration of justice is not prohibited by this rule. See Rule 3.7, Comment 1.

[4] To the extent permitted by Rule 1.3, a judge's participation as a teacher at an educational institution is not prohibited by this rule. See Rule 3.12, Comment 1.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 3.12. Compensation for extrajudicial activities.

A judge may accept reasonable compensation for extrajudicial activities permitted by this code or other law unless such acceptance would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

Rule 3.12 Compensation for Extrajudicial Activities - Comment

[1] A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2.1.

[2] Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 3.15.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 3.13. Acceptance and reporting of gifts, loans, bequests, benefits, or other things of value.

(a) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

(b) Unless otherwise prohibited by law or by paragraph (a), a judge may accept the following:

(1) Items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(2) Gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including advocates, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under Rule 2.11;

(3) Ordinary social hospitality;

(4) Commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(5) Rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(6) Scholarships, fellowships, and similar benefits or awards granted on the same terms and based on the same criteria applied to other applicants;

(7) Books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use;

(8) Gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of a judge residing in the judge's household, but that incidentally benefit the judge;

(9) Gifts incident to a public testimonial;

(10) Invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:

a. An event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

b. An event associated with any of the judge's educational, religious, charitable, fraternal, or civic activities permitted by this Code, if the same invitation is offered to non-judges who are engaged in similar ways in the activity as is the judge.

Rule 3.13 Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value - Comment

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 prohibits the acceptance of such benefits except in circumstances where the risk of improper influence is low and subject to applicable financial disclosure requirements. See Rule 3.15.

[2] Gift-giving among friends and relatives is a common occurrence and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (b)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances but may require public reporting.

[3] The receipt of ordinary social hospitality, commensurate with the occasion, is not likely to undermine the integrity of the judiciary. However, the receipt of other gifts and things of value from an attorney or party who has or is likely to come before the judge will be appropriate only in the rarest of circumstances.

[4] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

[5] If a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to influence the judge indirectly. A judge should remind family and household members of the reporting requirements imposed upon judges by Rule 3.15 and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.
(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 3.14. Reimbursement of expenses and waivers of fees or charges.

(a) Unless otherwise prohibited by Rules 3.1 and 3.13(a) or other law, a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.

(b) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, domestic partner, or guest.

Rule 3.14 Reimbursement of Expenses and Waivers of Fees or Charges - Comment

[1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this code.

[2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other

incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this code.

[3] A judge must determine whether acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

(a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity.

(b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;

(c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;

(d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;

(e) whether information concerning the activity and its funding sources is available upon inquiry;

(f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11;

(g) whether differing viewpoints are presented; and

(h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

(Ord. No. SRO-588A-2025, 2-5-2025)

Rule 3.15. Financial reporting requirements.

Reserved.

Rule 3.16. Conducting weddings.

(a) The performance of wedding ceremonies by a judge is a discretionary function rather than a mandatory function of the court.

(b) A judge shall not interrupt or delay any regularly scheduled or pending court proceeding in order to perform a wedding ceremony.

(c) A judge shall not advertise his or her availability for performing wedding ceremonies.

(d) A judge shall not charge or accept a fee, honorarium, gratuity, or contribution for performing a wedding ceremony during court hours.

(e) A judge may charge a reasonable fee or honorarium to perform a wedding ceremony during non-court hours, whether the ceremony is performed in the court or away from the court.

(Ord. No. SRO-588A-2025, 2-5-2025)