

Yavapai-Apache Nation

Rules of Criminal Procedure



**YAVAPAI-APACHE NATION
RULES OF CRIMINAL PROCEDURE**

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I. GENERAL PROVISIONS

RULE 1 SCOPE, PURPOSE AND CONSTRUCTION, COMPUTATION OF TIME, DEFINITIONS, SIZE OF PAPER

Rule 1.1 Scope; Repeal of prior laws

These Rules of Criminal Procedure shall govern the procedure in all criminal proceedings in the Yavapai-Apache Nation Tribal Court. To the extent there is any conflict between these Rules and Title 5 – the Yavapai-Apache Nation Criminal Code (“Criminal Code”), the Criminal Code shall be controlling.

These Rules shall supersede and replace all prior rules of criminal procedure and any other prior enactments inconsistent with these Rules and the same are hereby repealed, including Chapter 1 of the Yavapai-Apache Code – The Court and Procedure, adopted by Tribal Council on August 17, 1994 through Tribal Council Resolution Nos. 60-94 and 61-94; Title 6 – Criminal Procedure, adopted by Tribal Council on February 10, 2005 through Tribal Council Resolution No. 15-05; and the Yavapai-Apache Nation Tribal Court Rules of Criminal Procedure adopted by the Tribal Court on January 30, 2012.

Rule 1.2 Purpose and construction

These Rules are intended to provide for the just and speedy determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, the elimination of unnecessary delay and expense, and to protect the fundamental rights of the individual while preserving the public welfare.

Rule 1.3 Computation of time

- A. General time computation. In computing any period of time of more than 24 hours prescribed by these Rules, by order of Court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is not to be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which case the period shall run until the end of the next day which is neither a Saturday, Sunday nor a legal holiday. Legal holidays are those legal holidays of the Yavapai-Apache Nation including administrative holidays as declared by the Chairman or Tribal Council. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. Whenever a party has the right or is required to take some action within a prescribed period after service of a notice or other paper and such service is allowed and made by mail, five (5) days shall be

added to the prescribed period. Mailing includes every type of service except same day hand delivery.

- B. Date of arraignment. In computing any period of time based upon the date of arraignment, if arraignment is not held as provided in Rule [14.1](#), the date that the Defendant receives notice of the next Court date shall be deemed the date of arraignment.

Rule 1.4 Definitions

Whenever they appear in these Rules the terms below shall carry the following meaning:

- A. “Chief Judge” shall mean the Judge or, if more than one (1) Judge, the Judge designated as Chief Judge by the appropriate authority.
- B. “Initial appearance” shall mean first appearance before a Court by a Defendant for the purpose of advising the Defendant of the charge or charges which have been or will be filed, advising the Defendant of his or her rights, and determining conditions of release.
- C. “Arraignment” shall mean first Court appearance before a Court by a Defendant for the purpose of advising the Defendant of the charge or charges which have been filed, entering a plea, and setting additional Court dates as necessary.
- D. “Complaint” shall mean a written statement of the essential facts constituting the offense(s) charged. See General Administrative Rule 02-162
- E. “Petition” shall mean a formal written request presented to the court which shall be verified.

Rule 1.5 Size of paper

All pleadings and other papers filed in any proceeding governed by these Rules shall be on paper measuring 8 1/2 inches x 11 inches. Notwithstanding the foregoing, exhibits or attachments to pleadings may be folded and fastened to pages of the specified size. An exhibit or attachment not in compliance with the foregoing provisions may be filed only if it appears that compliance is not reasonably practicable.

II. PRELIMINARY PROCEEDINGS

RULE 2 COMMENCEMENT OF CRIMINAL PROCEEDINGS

Rule 2.1 Criminal Actions

Criminal actions may be commenced in the Yavapai-Apache Nation Tribal Court by criminal complaint filed directly with the Court in the name of the Nation and filed by the Prosecutor's Office. Class 3, Class 4, Petty offenses, Traffic offenses, Dog at Large and Dog Licensing cases may be commenced by utilizing the Uniform Traffic Ticket and Complaint, or other short form complaint approved by the Yavapai-Apache Nation Tribal Court, or by a long form complaint pursuant to Rule 2.3 of these Rules.

A law enforcement officer may issue a citation in lieu of arrest whenever the officer has reasonable grounds to believe an immediate arrest is not necessary to preserve the public peace and safety with the exception of offenses cited under Title 5, Chapter 11 – Domestic Violence.

A. Contents of the citation.

- (1) The citation shall contain the name and address of the Court, the name or aliases and description of the defendant, a description of the offense charged, and the signature of the law enforcement officer who issued the citation.
- (2) The citation shall contain an agreement by the defendant to appear before a Tribal Judge on a day certain to answer to the charge, but in no case more than five (5) business days after the issuance of the citation, and the signature of the defendant.
- (3) The citation shall contain a notice that upon defendant's failure to appear, an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the court.
- (4) The original of the citation shall be filed with the court on the next business day after the issuance of the citation. One (1) copy of the citation shall be given to the defendant and one (1) copy shall be delivered to the prosecutor.

Rule 2.2 Rights of Defendants

In all criminal proceedings, the Defendant shall have the following rights:

A. To appear and defend in person or by counsel except:

- (1) Trial of traffic or hunting and fishing offenses not resulting in injury to any person, nor committed while using alcohol or non-prescription drugs may be prosecuted without the presence of the Defendant upon a showing that the defendant received actual notice five (5) days prior to the proceeding if no confinement is ordered, and any fine imposed does not exceed fifty dollars (\$50.00.)

- (2) The Defendant may represent himself or be represented by any attorney or advocate admitted to practice before the Tribal court, but no Defendant shall have the right to have appointed professional counsel provided at the Nation's expense.
- (3) Members of the Yavapai-Apache Nation may be represented by the Yavapai-Apache Public Defender's Office at no charge.
- B. To be informed of the nature of the charges against him and to have a written copy thereof;
- C. To testify in his own behalf, or to refuse to testify regarding the charge against him, provided, however, that once a defendant takes the stand to testify on any matter relevant to the immediate proceeding against him, he shall be deemed to have waived all right to refuse to testify in that immediate criminal proceeding.
- D. To confront and cross examine all witnesses against him, subject to any lawful limitations or procedures imposed by the Federal Rules of Evidence.
- E. To compel by subpoena the attendance of witnesses in his own behalf;
- F. To have a speedy public trial by an impartial judge or jury;
- G. The right to trial by jury in all Title 5 complaints;
- H. To appeal in all cases;
- I. To prevent his present or former spouse from testifying against him concerning any matter which occurred during such marriage, except:
 - (1) In any case in which the offense charged is alleged to have been committed against a domestic household member;
 - (2) Any testimony by the spouse in the defendant's behalf will be deemed a waiver of this privilege.
- J. Not to be twice put in jeopardy by the Nation for the same offense.

Rule 2.3 Content of complaint

A long form complaint shall contain a written statement of the essential facts constituting a public offense in accordance with General Administrative Order 02-0162. In the case of Class 3, Class 4, Petty Offenses, traffic offenses, Dog at Large and Dog Licensing cases, a completed Uniform Traffic Ticket and Complaint or other form approved by the court will serve as the Complaint.

Rule 2.4 Duty of Judge upon filing of complaint

If a complaint is signed by a prosecutor or is filed by the use of the Uniform Traffic Ticket and Complaint, the judge shall proceed under Rule 3.1; if not, the Judge shall dismiss the complaint.

The Court shall assign a case number prefix to the complaint that is sufficiently different and unique from the prefix assigned to other types of cases to clearly distinguish criminal matters.

No minor omission from or error in the form of the complaint shall be grounds for dismissal of the case unless some significant prejudice against the defendant can be shown to result therefrom. The Nation shall be freely allowed to amend its Complaint to correct all minor errors. Approximate times, dates, locations and other such information is substantial compliance with the general notice pleading requirements. The complaint must only be specific enough to inform the defendant of the offense(s) for which he is charged.

RULE 3 ARREST WARRANT OR SUMMONS UPON COMMENCEMENT OF CRIMINAL PROCEEDINGS

Rule 3.1 Issuance of warrant or summons

- A. Issuance. Upon presentment of a criminal complaint, the Judge shall immediately issue a warrant or summons.
- B. Preference of Summons. Unless good cause exists for the issuance of a warrant, a summons shall issue if the Defendant is not in custody and there is reason to believe that the Defendant will respond to it. If a warrant is requested by the prosecutor, the prosecutor shall state the reasons for the issuance of the warrant rather than a summons.
- C. Subsequent issuance of warrant. If a Defendant who has been duly summoned fails to appear, or there is good cause to believe that he will fail to appear, or the summons cannot readily be served or delivered, an arrest warrant shall issue.
- D. Pre-Disposition Warrant. After the initial appearance and before disposition of a case, when the defendant fails, following proper notice, to appear for a court appearance, the court may issue a warrant to secure defendant's appearance.
- E. Warrants in UTTC Cases. If a person served with a Uniform Traffic Ticket and Complaint provides a written promise to appear in court at a designated time and date evidenced by signing the UTTC or other credible evidence, and thereafter fails to appear, personally or by counsel, on or before that date, the court shall issue a warrant of arrest.

- F. In addition, if a separate proceeding has been commenced by a complaint for failure to appear pursuant to YAN Title 5, Chapter 8, §806, the court shall issue a warrant for arrest thereon.

Rule 3.2 Content of warrant or summons

- A. Warrant. The warrant shall be signed by the issuing Judge and shall contain the name of the Defendant or, if the Defendant's name is unknown, any name or description by which the Defendant can be identified with reasonable certainty. It shall state the offense with which the Defendant is charged and whether the offense is one to which victims' rights provisions apply as prescribed in Rule 37 of these Rules. It shall command that the Defendant be arrested and brought before the issuing Judge or, other authorized Judge of the Yavapai-Apache Nation Tribal Court.
- B. Summons. The summons shall be in the same form as the warrant except that it shall summon the Defendant to appear at a stated time and place within twenty (20) days of the date of service. At the request of the Prosecutor the summons shall command the Defendant to report to a designated place to be photographed and fingerprinted prior to the Defendant's appearance in response to the summons. Failure to so report shall result in the Defendant's arrest at the time of the Defendant's appearance in response to the summons, or the issuance of a warrant in the event Defendant fails to appear in response to the summons, unless good cause for such failure is shown, whereupon the Judge shall direct the Defendant to report immediately for such photographing and fingerprinting.

Rule 3.3 Execution and return of warrant

- A. By whom. The warrant shall be directed to, and may be executed by, all peace officers of the Yavapai-Apache Nation.
- B. Manner of execution. A warrant shall be executed by arrest of the Defendant. The officer need not have the warrant in possession at the time of the arrest, but upon request the officer shall show the warrant to the Defendant as soon as possible. If the officer does not have the warrant in possession at the time of the arrest, he or she shall inform the Defendant of the offense charged and of the fact that a warrant has been issued.
- C. Return. Return of the warrant shall be made either to the Judge who issued it or to the Judge before whom the Defendant makes his or her initial appearance.

Rule 3.4 Service of summons

The summons may be served in the same manner as the summons in a civil action, except that service may not be by publication. In addition, a summons may be served by certified or registered mail, return receipt requested. Return of the receipt shall be prima facie evidence of service.

Rule 3.5 Defective warrant

A warrant of arrest shall not be invalidated, nor shall any person in custody thereon be discharged, because of a defect in form. The warrant may be amended by any Judge to remedy such defect.

RULE 4 INITIAL APPEARANCE

Rule 4.1 Procedure upon arrest

- A. Timeliness of appearance before Judge. A person arrested shall be taken before a Judge without unnecessary delay. This appearance may be by video-conference, or in person. If the person is not brought before a Judge within a reasonable time after arrest, he or she shall immediately be released. "Reasonable time," as used in this Rule, shall mean within 36 hours excluding weekends and Tribally designated holidays and, when a Judge is not available, any period of time necessary to obtain a Judge by use of reasonable efforts.
- B. On arrest without a warrant. After arrest, a complaint, if one has not already been filed, shall promptly be prepared and filed. If a complaint is not filed within 72 hours from the time of the initial appearance before the Judge, the Defendant shall be released from jail, and the Arraignment date, if any, shall be vacated.
- C. Arrest with a warrant.
 - (1) A person arrested within the Nation shall be taken before the Judge who issued the warrant, or, if the Judge is absent or unable to act, the nearest or most accessible Judge in the Yavapai-Apache Nation Tribal Court, subject to § A above.
 - (2) RESERVED.
- D. RESERVED.

Rule 4.2 Initial appearance

- A. In general. At the suspect's initial appearance, the Judge shall:

- (1) Ascertain the suspect's true name and address and, if necessary, amend the formal charges to reflect it, instructing the suspect to notify the Court promptly of any change of address;
- (2) Inform the Defendant of the charges against him or her;
- (3) Inform the Defendant of his or her rights to counsel and to remain silent;
- (4) Determine whether probable cause exists for the purpose of release from custody. If no probable cause is found, the defendant shall immediately be released from custody.
- (5) Consider any views and comments offered by or for the victim concerning the issue of release. The Judge may provide the victim with an opportunity to submit his or her views and comments on the issue of the suspect's release in written form in lieu of an oral statement; and
- (6) Determine the conditions of release in accordance with Rule 7.

B. RESERVED.

C. RESERVED.

RULE 5 PRELIMINARY HEARING

Rule 5.1 Rights to preliminary hearing; waiver; postponement

- A. Right to Preliminary Hearing. When a motion is filed by the Defendant contesting probable cause to support the charges, either at arraignment or prior thereto, the court shall conduct a preliminary hearing before a Yavapai-Apache Tribal Court Judge not later than ten (10) days following the filing of the motion, if the Defendant is in custody and, if the Defendant is not in custody not later than twenty (20) days following the filing of Defendant's motion unless:
 - (1) The complaint has been dismissed;
 - (2) The hearing is waived; or
 - (3) The Judge orders the hearing postponed as provided in Section (C).
- B. Waiver. A preliminary hearing may be waived by written waiver, signed by the Defendant, his or her counsel, and the Prosecutor.

- C. Postponement. When a motion is filed by the Defendant contesting probable cause to support the charges, either at arraignment or prior thereto, if a preliminary hearing has not been commenced within ten days as required in Section (A), the Defendant shall be released from custody automatically, unless he or she is charged with a non-bailable offense; Upon motion of any party, or on his or her own initiative, the Judge may postpone the hearing beyond the 20-day limit specified in Section (A), upon finding that extraordinary circumstances exist and that delay is indispensable to the interests of justice, entering a written order detailing the reasons for his or her finding and giving the parties prompt notice thereof.
- D. Demand for hearing. A Defendant who is in custody may demand that the preliminary hearing be held as soon as practicable, whereupon the Judge shall commence the hearing with only such delay as is necessary to secure the attendance of counsel, court staff, and necessary witnesses.

Rule 5.2 Summoning of witnesses and court record

The Judge shall issue process to secure the attendance of witnesses and the record of the proceedings shall be made by audiotape, videotape or court reporter, at the discretion of the Chief Judge.

Rule 5.3 Nature of the preliminary hearing

- A. Procedure. The preliminary hearing shall be held before a Yavapai-Apache Tribal Court Judge who shall admit only such evidence as is material to the question whether probable cause exists to hold the defendant for trial. All parties shall have the right to cross-examine the witnesses testifying personally against them, and to review their previous written statements prior to such cross-examination. At the close of the prosecution's case, including cross-examination of prosecution witnesses by the defendant, the Judge shall determine and state for the record whether the prosecution's case establishes probable cause. The Defendant may then make a specific offer of proof, including the names of witnesses who would testify or produce the evidence offered. The Judge shall allow the Defendant to present the proffered evidence, unless the Judge determines that it would be insufficient to rebut the finding of probable cause.
- B. Inapplicability of Suppression Motions. Rules or objections calling for the exclusion of evidence on the ground that it was obtained unlawfully shall be inapplicable in preliminary hearings.

Rule 5.4 Determination of probable cause

- A. Holding a Defendant to Answer. If it appears from the evidence that there is probable cause to believe that an offense has been committed and that the Defendant committed it, the Judge shall enter a written order holding the Defendant to answer before the Court and, upon request, reconsider the conditions of release.
- B. Amendment of Complaint. The complaint may be amended at any time to conform to the evidence, but the Judge shall not hold the Defendant to answer for a crime different from that charged in the original complaint.
- C. Evidence. The finding of probable cause shall be based on substantial evidence, which may be hearsay in whole or in part in the following forms:
 - (1) Written reports of expert witnesses;
 - (2) Documentary evidence without foundation, provided there is a substantial basis for believing such foundation will be available at trial and the document is otherwise admissible;
 - (3) The testimony of a witness concerning the declarations of another or others where such evidence is cumulative or there is reasonable ground to believe that the declarant will be personally available for trial.
- D. Dismissal upon lack of probable cause. If it appears from the evidence that there is not probable cause to believe that an offense has been committed or that the defendant committed it, the Judge shall dismiss the complaint without prejudice and order that the Defendant shall be released.

Rule 5.5 Preservation of recording

The Court Clerk shall retain and preserve any audiotape or videotape of a preliminary hearing in the same manner as required for the original notes of a court reporter pursuant to [Rule 28.1\(C\)](#) of these Rules.

III. RIGHTS OF PARTIES

RULE 6 ATTORNEYS, APPOINTMENT OF COUNSEL

Rule 6.1 Rights to counsel; waiver of rights to counsel

- A. Right to be represented by counsel. A Defendant shall be entitled to be represented by counsel at their own expense in any criminal proceeding, except in those petty offenses such as traffic violations where there is no

prospect of imprisonment or confinement after a judgment of guilty. The right to be represented shall include the right to consult in private with an attorney, or the attorney'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. At this time there is no right to appointed counsel, however, the Yavapai-Apache Public Defender will represent members of the Yavapai-Apache Nation without charge.

- B. RESERVED.
- C. Waiver of rights to counsel. A Defendant may waive his or her rights to counsel under (A) and (B), in writing, after the Court has ascertained that he or she knowingly, intelligently and voluntarily desires to forego them.
- D. Unreasonable delay in retaining counsel. If a Defendant, or a Defendant who has refused the Yavapai-Apache Public Defender, or conflict counsel, in order to retain private counsel, 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 written waiver.
- E. Withdrawal of waiver. A Defendant may withdraw a waiver of his or her rights to counsel at any time. The Defendant will not be entitled to repeat any proceeding previously held or waived solely on the grounds of the subsequent retention of counsel.

Rule 6.2 Duties of counsel; withdrawal

- A. Notice of appearance. At his or her first appearance in the Yavapai-Apache Nation Tribal Court on behalf of a Defendant, an attorney or counsel, whether privately retained or the Yavapai-Apache Public Defender or conflict counsel, shall file a notice of appearance on behalf of the Defendant unless appointed by the Court to represent the Defendant.
- B. Duty of continuing representation. Counsel representing a Defendant at any stage shall continue to represent him or her in all further proceedings in the trial Court, including filing of notice of appeal, unless the Court permits him or her to withdraw.
- C. Duty upon withdrawal. No attorney shall be permitted to withdraw after a case has been set for trial except upon motion accompanied by the name and address of a substitution attorney, advocate or counsel, together with a signed statement by the substituting attorney that he or she is advised of the trial date and will be prepared for trial.

RULE 7 RELEASE

Rule 7.1 Definitions

- A. "Own recognizance" means release of a person without imposing any bond as a condition of release.
- B. "Secured appearance bond" shall mean an undertaking, on a form approved by the Yavapai-Apache Nation Tribal Court, to pay to the Clerk of the Court a specified sum of money upon failure of a person released to comply with their release conditions secured by deposit with the Clerk of security satisfactory to the Court and equal to or greater than the full amount of the bond.
- C. "Cash appearance bond" shall mean an appearance bond secured by deposit with the Clerk of cash money equal to the full amount of the bond.
- D. "Surety" shall mean a person other than the person released, who executes an appearance bond and binds himself or herself to pay its full amount if the person released fails to comply with its conditions. A surety shall file with an appearance bond an affidavit that he or she is not an attorney, advocate, or person authorized to take bail.

Rule 7.2 Applicability of Rule

This Rule shall not apply to minor traffic offenses.

Rule 7.3 Right to release

- A. Before conviction. All persons charged with a crime but not yet convicted are presumed to be innocent. Except as otherwise provided in these Rules or the Criminal Code, any person charged with a bailable offense must be released pending or during trial on the person's own recognizance, unless the Court determines, in its discretion, that such a release will not reasonably assure the accused's appearance as required or protect other persons or the community from risk posed by the accused. If such a determination is made, the Court may impose the least onerous condition or conditions contained in [Rule 7.4\(B\)](#) that are reasonable and necessary to protect other persons or the community from risk posed by the person or to secure the appearance of the person in court.

In making a decision concerning pretrial release of a person who is arrested, the court shall review the facts of arrest and detention of the person and consider the following factors:

- (1) Whether the accused is a threat to an alleged victim or other person;

- (2) Whether the accused is a threat to the Police Department;
- (3) Whether the accused is reasonably likely to appear in court;
- (4) Past behavior of the accused while on previous pre-trial release(s);
- (5) The accused's past criminal history with an emphasis on crimes of violence, and history of alcohol or substance abuse;
- (6) The accused's current work status;
- (7) The accused's financial resources;
- (8) The accused's character and mental condition; and
- (9) The accused's length of residence in the community.

Concerning the factors listed above, the court may consider any Tribal, State or Federal information available.

- B. After conviction. After a person has been convicted of any offense for which the person will in all reasonable probability suffer a sentence of imprisonment, the person shall not be released on bail or on his or her own recognizance unless it is established that there are reasonable grounds to believe that the conviction may be set aside on a motion for new trial, reversed on appeal, or vacated in any post-conviction proceeding. The release of a person pending appeal shall be revoked if the person fails to prosecute the appeal diligently.
- C. Probation Revocation Release. When a Petition to Revoke Probation has been filed, there is no presumption of release on a person's own recognizance. In making a decision concerning pre-hearing release on a Petition to Revoke Probation, if arrested on a warrant, the Defendant will remain non-bondable until the time of their first court appearance. At that time the court shall consider the factors listed above but will also consider whether or not the Defendant has been accused of additional Tribal, State or Federal crimes during his probation. Allegations of additional criminal behavior while on probation suggest an immediate concern regarding protection of the community and mandate the setting of bond and other conditions of release that will adequately protect the community and other persons from risk posed by the Defendant or to secure the appearance of the Defendant in court.
- D. Burden of proof. Issues under [Rules 7.3\(A\)](#) and [\(B\)](#) shall be determined by the preponderance of the evidence. The Prosecutor shall bear the burden of establishing factual issues under [Rule 7.3\(A\)](#), the Defendant under [Rule 7.3\(B\)](#). The burden of establishing that the Defendant will not flee or pose a danger to any other person or to the community under Rule 7.3 (C) rests on the Defendant.
- F. Release in Banishment Cases. A person banished and arrested for trespass for violating the banishment order is not subject to bail. The accused shall be held without bail on the trespass charge.

Rule 7.4 Conditions of release

A. Mandatory conditions. Every order of release under this Rule shall contain the following conditions:

- (1) That the person appear to answer and submit to the orders and process of the Court having jurisdiction of the case;
- (2) That the person refrain from committing any criminal offense;
- (3) That the person not leave the state of Arizona without written permission of Court;
- (4) If released after judgment and sentence on appeal, that the person diligently prosecute his or her appeal.

B. Additional conditions. An order of release may include one (1) or more of the following conditions reasonably necessary to protect other persons or the community from risk posed by the person or secure a person's appearance:

- (1) Monetary conditions.
 - (a) In deciding whether to impose a monetary condition of release and what amount to impose, the court must make an individualized determination of the person's risk of nonappearance, evidence of which may be failures to appear in any Federal, State or Tribal court, risk to the community, and financial circumstances. The court must not impose a monetary condition that results in unnecessary pretrial incarceration solely because the person is unable to pay the bond. If the court determines a monetary condition is necessary, the court must impose the least onerous of the types of bonds listed above in the lowest amount necessary to protect other persons or the community from risk posed by the person or to secure the person's appearance.
 - (b) The court may require the execution of an appearance bond in a specified amount and the deposit in the registry of the Court, in cash or other security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the performance of the conditions of release; or
 - (c) The court may require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof.

(d) The court may impose electronic monitoring of a defendant as a bond requirement on such terms as the Judge determines appropriate, including the posting of advance payment for the electronic surveillance and monitoring.

(2) Non-monetary conditions.

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

(b) Restrictions on the person's travel, associations, or place of abode during the period of release;

(c) Prohibit the person from possessing any dangerous weapon or engaging in certain described activities or consuming intoxicating liquors or any controlled substance not validly prescribed;

(e) Prohibit the person from contacting the victim;

(f) Require the person to report regularly to and remain under the supervision of an officer of the court;

(f) Return to custody after specified hours.

(g) Any other non-monetary condition that has a reasonable relationship to assuring the safety of other persons or the community from risk posed by the person or securing the person's appearance.

Rule 7.5 Procedure

A. Initial decision. At the Initial Appearance before a Judge, a determination of the conditions of release shall be made. The Court shall issue an order containing the conditions of release and shall inform the accused of the conditions, the possible consequences of their violation, and that a warrant for his or her arrest may be issued immediately upon report of a violation.

B. Subsequent review of conditions. Any person remaining in custody may move for reexamination of the conditions of the person's release whenever the motion alleges the existence of material facts not previously presented to the Court.

C. Amendment of conditions. The Court before which a criminal case is pending may, on its own initiative, at any time modify the conditions of

release, after giving the parties an opportunity to respond to the proposed modification.

- D. Evidence. Release determinations under this Rule may be based on evidence not admissible under the Federal Rules of Evidence.

(3) Appeal from Conditions of Release: Conditions of release are not appealable.

Rule 7.6 Review of conditions; revocation of release

- A. Issuance of warrant or summons. Upon verified petition by a Court Services Officer (Probation Officer or Court personnel) or verified petition by the Prosecutor stating facts or circumstances constituting a breach of the conditions of release, the Court having jurisdiction over the Defendant released may issue a warrant or summons under Rule 3, to secure the Defendant's presence in Court. A copy of the petition shall be served with the warrant or summons.
- B. Hearing; review of conditions; revocation. If, after a hearing on the matters set forth in the petition, the Court finds that the person released has willfully violated the conditions of release, the Court may impose different or additional conditions upon his or her release. The Court may revoke release of a person charged with an offense if, after hearing, the Court finds (1) that there is probable cause to believe that the person committed a criminal offense during the period of release and that the proof is evident or the presumption great as to the present charge; or (2) that the person poses a substantial danger to any person or the community, that no other conditions of release will reasonably assure the safety of the other person or the community, and that the proof is evident or the presumption great as to the present charge.

Rule 7.7 Transfer and disposition of bond

- A. Forfeiture Procedure.
 - (1) Notice and Hearing. If at any time it appears to the Court that the released person has violated a condition of an appearance bond, it shall issue a bench warrant for the person's arrest and send a copy of the minute entry evidencing the issuance of such bench warrant to the bond poster within ten days after the issuance of the warrant. The Court shall also set a hearing within a reasonable time requiring the parties and any bond poster to show cause why the bond should not be forfeited. The Court shall provide notice of the

hearing to the parties and any bond poster by mailing copies of the minute entry to the addresses previously provided by the parties to the Court.

- (2) Forfeiture. If at the hearing, the violation is not explained or excused, the Court may enter an appropriate order of judgment forfeiting all or part of the amount of the bond, which shall be enforced as a civil judgment.

B. Exoneration

- (1) At any time that the Court finds that there is no further need for an appearance bond, it shall exonerate the appearance bond and order the return of any security deposited.
- (2) If the bond poster surrenders the Defendant to the police of the Yavapai-Apache Nation, or delivers to the police an accurate statement stating that the Defendant is incarcerated in this or another jurisdiction, and the police report the surrender or status to the Court, the Court may exonerate the bond.
 - (3) In all other instances, the decision whether or not to exonerate a bond shall be within the sound discretion of the Court.

RULE 8 SPEEDY TRIAL

Rule 8.1 Priorities in scheduling criminal cases

- A. Priority of criminal trials. The trial of criminal cases shall have priority over the trial of civil cases.
- B. Preferences. Defendants in custody and the Defendants whose pretrial liberty may present unusual risks shall be given preference over other criminal cases.
- C. Duty of Prosecutor. The Prosecutor shall advise the Court of facts relevant to determining the order of cases on the calendar.
- D. Duty of defense counsel. The Defendant's counsel shall advise the Court of the impending expiration of time limits in the Defendant's case. Failure to do so may result in sanctions and should be considered by the Court in determining whether to dismiss an action with prejudice pursuant to [Rule 8.6](#).

- E. Extraordinary cases. Within 25 days after the arraignment in Yavapai-Apache Nation Tribal Court, either party may apply in writing to the Court for a hearing to establish extraordinary circumstances requiring the suspension of [Rule 8](#) in a particular case.

Rule 8.2 Time limits

- A. All Defendants. Every person against whom a criminal complaint, information, indictment or petition is filed shall be tried by the Court having jurisdiction of the offense within 182 days of the arrest or service of summons under [Rule 3.1](#) except for those excluded periods set forth in [Rule 8.4](#) below.
- B. Defendants in custody. Every person held in custody by the Yavapai-Apache Nation on a criminal charge shall be tried within 182 days from the date of the person's initial appearance before a Judge on the criminal complaint.
- C. Defendants released from custody. Every person released under [Rule 7](#) shall be tried by the Court having jurisdiction of the offense within 182 days from the date of the person's initial appearance before a Judge on the criminal complaint except for those excluded periods set forth in [Rule 8.4](#) below.
- D. New trial. A trial ordered after a mistrial or upon a motion for a new trial shall commence within 90 days of the entry of the order of the Court. A trial ordered upon the reversal of a judgment by an Appellate Court shall commence within 90 days of the service of the mandate of the Appellate Court.
- E. Extension of time limits. These time limits may be extended pursuant to [Rule 8.5](#).
- F. Trial dates. In all Yavapai-Apache Nation Tribal Court cases except those in which [Rule 8](#) has been suspended pursuant to [Rule 8.1\(E\)](#), the Court shall, either at the time of arraignment or at a pretrial conference, set a trial date for a time certain.

Rule 8.3 Right to speedy trial of persons in prison within or without the Yavapai-Apache Nation

- A. **RESERVED**
- B. Persons within the Yavapai-Apache Nation.

- (1) Any person who is imprisoned in the Yavapai-Apache Nation may request final disposition of any untried complaint pending against the person in the Yavapai-Apache Nation. The request shall be in writing addressed to the Court in which the charge is filed and to the Prosecutor charged with the duty of prosecuting it, and shall set forth the place of imprisonment.
- (2) Within 30 days after a detainer has been filed against a prisoner incarcerated within the Yavapai-Apache Nation, the Prosecutor charged with the duty of prosecuting the charge from which the detainer results, shall inform the prisoner of the detainer and of the prisoner's right to request its final disposition under [Rule 8.3 \(B\)\(1\)](#).
- (3) Within 182 days after sending such a request to the Court and Prosecutor, the prisoner shall be brought to trial upon the charge.
- (4) The escape from custody of a prisoner subsequent to the prisoner's request for final disposition of an untried complaint shall void the request.

Rule 8.4 Excluded periods

The following periods shall be excluded from the computation of the time limits set forth in [Rules 8.2](#) and [8.3](#):

- A. Delays occasioned by or on behalf of the Defendant, including, but not limited to, delays caused by an examination and hearing to determine competency, the Defendant's absence or incompetence, or his or her inability to be arrested or taken into custody in the Yavapai-Apache Nation.
- B. Delays resulting from extension of the time for disclosure under Rule 15.6.
- C. Delays necessitated by congestion of the trial calendar, but only when the congestion is attributable to extraordinary circumstances, in which case the Chief Judge may suspend the provisions of [Rule 8](#).
- D. Delays resulting from continuances in accordance with [Rule 8.5](#), but only for the time periods prescribed therein.
- E. Delays resulting from joinder for trial with another Defendant as to whom the time limits have not run when there is good cause for denying severance. In all other cases, severance should be granted to preserve the applicable time limits.

Rule 8.5 Continuances of trial dates

- A. Form of motion. A continuance of a trial may be granted on the motion of a party. Any motion must be in writing or on the record and state with specificity the reason(s) justifying the continuance.
- B. Grounds for motion. A continuance of any trial date shall be granted only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice. A continuance may be granted only for so long as is necessary to serve the interests of justice. In ruling on a motion for continuance, the Court shall consider the rights of the Defendant and any victim to a speedy disposition of the case. If a continuance is granted, the Court shall state the specific reasons for the continuance on the record.

Rule 8.6 Denial of speedy trial

Violations. If the Court determines after considering the exclusions of Rule 8.4, that a time limit established by [Rules 8.2\(A\), 8.2\(B\), 8.2\(C\), 8.2\(D\), 8.3\(A\), 8.3\(B\)\(2\), or 8.3\(B\)\(3\)](#) has been violated, it shall on motion of the Defendant, or on its own initiative, dismiss the prosecution with or without prejudice.

Rule 8.7 Acceleration of Trial

Where special circumstances relating to the victim so warrant, the court may accelerate the trial to the earliest possible date that is consistent with the defendant's right to a fair trial. If necessary, the Chief Judge shall assign another judge of the court to preside at trial in order to insure that the trial commences as scheduled.

RULE 9 PRESENCE OF THE DEFENDANT, WITNESSES AND SPECTATORS

Rule 9.1 Defendant's waiver of right to be present

Except as otherwise provided in these Rules, a Defendant may waive the right to be present at any proceeding by voluntarily absenting himself or herself from it. The Court may infer that an absence is voluntary if the Defendant had personal notice of the time of the proceeding, the right to be present at it, and a warning that the proceeding would go forward in his or her absence should he or she fail to appear.

Rule 9.2 Defendant's forfeiture of right to be present

- A. Disruptive conduct. A Defendant who engages in disruptive or disorderly conduct after having been warned by the Court that such conduct will result in the Defendant's expulsion from a proceeding shall forfeit his or her right to be present at that proceeding.
- B. Re-acquisition of right. The Court shall grant any Defendant so excluded a reasonable opportunity to return to the Court upon the Defendant's personal assurance of good behavior. Any subsequent disruptive conduct on the part of the Defendant may result in his or her exclusion without additional warning.
- C. Continuing duty of Court. The Court shall employ every feasible means to enable a Defendant removed from a proceeding under this Rule to hear, observe or be informed of the further course of the proceeding, and to consult with counsel at reasonable intervals.

Rule 9.3 Exclusion of witnesses and spectators

- A. Witnesses. The Court shall, and at the request of either party shall, exclude prospective witnesses from the Courtroom during opening statements and the testimony of other witnesses. The Court shall also direct them not to communicate with each other until all have testified. If the Court finds that a party's claim that a person is a prospective witness is not made in good faith, the person shall not be excluded from the Courtroom. Once a witness has testified on direct examination and has been made available to all parties for cross-examination, the witness may be allowed to remain in the Courtroom unless the Court finds, upon application of a party or witness, that the presence of the witness would be prejudicial to a fair trial. Notwithstanding the foregoing, the victim, as defined in [Rule 37\(A\)](#) of these Rules, shall have the right to be present at all proceedings at which the Defendant has such right.
- B. Spectators. All proceedings shall be open to the public, including representatives of the news media, unless the Court finds, upon application of the Defendant or the Prosecutor, that an open proceeding presents a clear and present danger to the Defendant's right to a fair trial by an impartial jury. A complete record of any closed proceedings shall be kept and made available to the public following the completion of trial or disposition of the case without trial.
- C. Protection of witness. The Court may, in its discretion, exclude all spectators including the press during the testimony of a witness whenever reasonably necessary to prevent embarrassment or emotional disturbance of the witness.

- D. Investigator. If an exclusion order is entered, both the Defendant and the Prosecutor shall nevertheless be entitled to the presence of one (1) investigator at counsel table.

RULE 10 CHANGE OF JUDGE OR PLACE OF TRIAL

Rule 10.1 Change of Judge for cause

- A. Grounds. In any criminal case, prior to the commencement of a hearing or trial, the Nation or any Defendant shall be entitled to a change of Judge if a fair and impartial hearing or trial cannot be had by reason of the interest or prejudice of the assigned Judge.
- B. Procedure. Within 10 days after discovery that grounds exist for change of judge, but not after commencement of a hearing or trial, a party may file a motion verified by affidavit of the moving party alleging specifically the grounds for the change. Except for the commencement of a hearing or trial, no event occurring before the discovery shall constitute a waiver of rights to change of Judge for cause. Allegations of interest or prejudice which prevent a fair and impartial hearing or trial may be preserved for appeal.
- C. Hearing. Promptly after the filing of the motion, the Chief Judge shall provide for a hearing on the matter before a Judge other than the Judge challenged. The hearing Judge shall decide the issues by the preponderance of the evidence and following the hearing, shall return the matter to the Chief Judge who shall as quickly as possible assign the action back to the original Judge or make a new assignment, depending on the findings of the hearing Judge. If a new assignment is to be made it shall be made in accordance with the provisions of this Rule.
- D. Time for filing. A notice of change of Judge shall be filed, or informal request made, within 10 days after any of the following:
- (1) Arraignment, if the case is assigned to a Judge and the parties are given actual notice of such assignment at or prior to the arraignment;
 - (2) Filing of the mandate ordering reversal, remand or new trial from an Appellate Court with the Clerk of the Yavapai-Apache Nation Tribal Court;
 - (4) In all other cases, actual notice to the requesting party of the assignment of the case to a Judge.

Rule 10.2 RESERVED.

Rule 10.3 Waiver and renewal

- A. Waiver. A party loses the right under [Rule 10.1](#) when the party allows a proceeding to commence or continue without objection after learning of the cause for challenge or if the party participates before that Judge in any contested matter in the case, an omnibus hearing, any pretrial hearing, a proceeding under [Rule 17](#), or the commencement of trial.
- B. Renewal. When an action is remanded by an Appellate Court for a new trial on one or more offenses charged in the criminal complaint, all rights under [Rule 10.1](#) are renewed, and no event connected with the first trial shall constitute a waiver.

Rule 10.4 Transfer to another Judge

- A. Designation of new Judge. After a motion under [Rule 10.1](#) has been granted, the case shall be transferred immediately to the Chief Judge who shall reassign the case to a new Judge. If there are multiple Defendants, notice of change of Judge by one or more Defendants pursuant to [Rule 10.1](#) does not require a change of Judge as to the other Defendants, even though such notice of change of Judge may result in severance for trial purposes.
- B. Proceedings on transfer. When a transfer is ordered, the Judge or Clerk shall transmit to the new Judge all papers in the proceeding. In addition, if the case is transferred to another jurisdiction, the Clerk shall transmit to the Clerk of the Court to which the proceedings are transferred all papers in the proceeding, any evidence in the Clerk's custody, and any appearance bond or security taken. The file shall retain the original case number and designation.

Rule 10.5 Duty of Judge upon filing of motion or request under Rules 10.1

When a motion for change of Judge is timely filed under this Rule, The Judge shall proceed no further in the action, except to make such temporary orders as may be necessary in the interest of justice before the action can be transferred to the Chief Judge or the Chief Judge's designee. However, if the named Judge is the Chief Judge, s/he shall continue to perform the functions of the Chief Judge.

RULE 11 INCOMPETENCY AND MENTAL EXAMINATIONS

Rule 11.1 Definition and effect of incompetency

A person shall not be tried, convicted, sentenced or punished for a public offense, except for proceedings pursuant to the entry of an insanity plea or defense, 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.

Rule 11.2 Motion to have the Defendant's mental condition examined

- A. Motion for Rule 11 examination. At any time after a criminal complaint or petition is filed, any party may request in writing, or the Court on its own motion may order, an examination to determine whether a Defendant is competent to stand trial, or to investigate the Defendant's mental condition at the time of the offense. The motion shall state the facts upon which the mental examination is sought.
- B. Guilty except Insane. On the motion of, or with the consent of the Defendant, the Court may order a screening examination for a guilty except insane plea pursuant to YAN 5-5-505 to be conducted by the mental health expert.
- B. Medical and criminal history records. All available medical and criminal history records shall be provided to the Court within five (5) working days of filing the motion for use by the examining mental health expert.
- C. Preliminary examination. The Court may order that a preliminary examination be conducted to assist the Court in determining if reasonable grounds exist to order further examination of the Defendant.
- D. Jurisdiction. Should the Court determine that reasonable grounds exist for further competency hearings, it shall immediately order appointment of a mental health expert, if one has not already been appointed. The Yavapai-Apache Nation Tribal Court shall have exclusive jurisdiction over all competency hearings. If the Court determines that competence is not an issue, the matter shall be set for trial.

Rule 11.3 Appointment of experts

- A. Grounds for appointment. If the Court determines that reasonable grounds for an examination exist, it shall appoint a mental health expert to examine the Defendant and to testify regarding the Defendant's mental condition.

- B. Definition of mental health expert. The term "mental health expert" shall mean:
- (1) Any physician who is licensed as a medical doctor (M.D.) or doctor of osteopathy (D.O.), or
 - (2) Any psychologist who is licensed to treat in a clinical setting. The mental health expert should be familiar with competency standards; familiar with the treatment, training, and restoration programs that are available in this Community; and approved by the Court.
- C. **RESERVED**
- D. Custody status of the Defendant during competency proceedings. Custody status of the Defendant shall be determined pursuant to the following factors:
1. The defendant's willingness to appear at a designated time and place for an outpatient examination. The court may make appearance a condition of the defendant's pretrial release.
 2. The defendant's willingness to submit to an outpatient examination as a condition of pretrial release.
 3. An adequate examination of the defendant is impossible without the confinement of the defendant.
 4. The defendant is a threat to public safety.
- E. Experts' report. The experts' report shall be provided to the Court within 10 days after the examination has been completed and shall include the following information:
1. The name of each mental health expert who examined the defendant.
 2. A description of the nature, content, extent and results of the examination and any test conducted.
 3. The facts on which the findings are based.
 4. An opinion as to the competency of the defendant.
 5. The nature of the mental disease, defect or disability that is the cause for any incompetency opinion.

6. The defendant's prognosis (if found to be incompetent).
7. The most appropriate form and place of treatment, based on the defendant's therapeutic needs and potential threat to public safety (if found to be incompetent).
8. Whether defendant is incompetent to refuse treatment and should be subject to involuntary treatment (if found to be incompetent).
9. If the mental health examiner determines that the defendant is currently competent by virtue of ongoing psychotropic medication, the report shall address the necessity of continuing that treatment and shall include a description of any limitations that the medication may have on competency.

F. Experts' reports on Guilty except Insane pleas.

- (1) If the Defendant raises a defense of guilty except insane, on request of the Court or any party, with the consent of the Defendant, and if a reasonable basis exists to support the plea, the mental health expert who is appointed pursuant to Rule 11.3 shall provide a screening report to evaluate competency that includes the following provisions:
 - a. The mental status of the defendant at the time of the offense.
 - b. If the expert determines that the defendant suffered from a disease, defect or disability at the time of the offense, the relationship of the disease, defect or disability to the alleged offense.
- (2) If the Defendant's state of mind at the time of the offense will be included in the examination, the Court shall not appoint the expert to address this issue until the Court receives the medical and criminal history records of the Defendant.
- (3) Within ten working days after the expert is appointed, the parties shall provide any additional medical or criminal history records that are requested by the Court or the expert.

G. Additional expert assistance. The Court may, in its discretion, appoint additional experts and order the Defendant to submit to physical, neurological, or psychological examination, if necessary for an adequate determination of the Defendant's mental competency.

Rule 11.4 Disclosure of mental health evidence

- A. Reports of appointed experts. The reports of experts made pursuant to [Rule 11.3](#) shall be submitted to the Court within ten working days of the completion of the examination and be made available to all parties, except that any statement or summary of the Defendant's statements concerning the offense charged shall be made available only to the Defendant. Upon receipt, Court staff will copy and distribute the expert's report to the Court and to defense counsel. Defense counsel is responsible for editing a copy for the Nation which is to be returned to Court staff within 24 hours of receipt and thereafter made available to the Nation.
- B. Reports of other experts. At least 15 working days prior to any hearing, the parties shall make available to the opposite party for examination and reproduction the names and addresses of mental health experts who have personally examined a Defendant or any evidence in the particular case, together with the results of mental examinations and of scientific tests, experiments, or comparisons, including all written reports and statements, made by them in connection with the particular case.

Rule 11.5 RESERVED

Rule 11.6 RESERVED

Rule 11.7 Privilege

- A. General restriction. No evidence of any kind obtained under these provisions shall be admissible at any proceeding to determine guilt or innocence unless the Defendant presents evidence intended to rebut the presumption of sanity.
- B. Privileged statements of the Defendant.
 - (1) No statement of the Defendant obtained under these provisions, or evidence resulting therefrom, concerning the events which form the basis of the charges against the Defendant shall be admissible at the trial of guilt or innocence, or at any subsequent proceeding to determine guilt or innocence, without his or her consent.
 - (2) No statement of the Defendant, or evidence resulting therefrom obtained under these provisions, concerning any other events or transactions, shall be admissible at any proceeding to determine the Defendant's guilt or innocence of criminal charges based on such events or transactions.

Rule 11.8 Records

The reports of the experts shall be treated as confidential by the Court and counsel in all respects, except the reports of other experts may be disclosed by the Court and counsel to other mental health experts in related proceedings concerning Defendant's mental health. After the case proceeds to trial or the Defendant is found to be unable to regain competence, the Court shall order the mental health experts' reports sealed. The Court may order the reports opened only for further competency or sanity evaluation, statistical study or when necessary to assist in mental health treatment pursuant to restoration of competency.

IV. PRETRIAL PROCEDURE

RULE 12 RESERVED

RULE 13 CRIMINAL COMPLAINTS

Rule 13.1 Definitions; timeliness

- A. RESERVED.
- B. Criminal. A criminal complaint is a written statement charging the commission of a criminal offense, signed and presented to the Court by the Prosecutor.
- C. Timeliness. A complaint shall be filed in the Yavapai-Apache Nation Tribal Court within seventy-two (72)) hours after the Defendant's initial appearance. Failure to file a timely complaint shall be grounds for dismissal of the prosecution on motion of the Defendant under [Rule 16.6\(B\)](#). Prosecution may only be reinitiated within the time limits proscribed by Title 5.

Rule 13.2 Nature and contents

- A. In general. The criminal complaint shall be a plain, concise statement of the facts sufficiently definite to inform the Defendant of the offense charged.
- B. Charging the offense. The criminal complaint shall state for each count the official or customary citation of the statute, ordinance, Rule, regulation or other provision of law which the Defendant is alleged to have violated.
- C. Notice of necessarily included offenses. Specification of an offense in a criminal complaint shall constitute a charge of that offense and of all offenses necessarily included therein.

Rule 13.3 Joinder

- A. Offenses. Provided that each is stated in a separate count, two (2) or more offenses may be joined in a criminal complaint, if they:
- (1) Are of the same or similar character, or
 - (2) Are based on the same conduct or are otherwise connected together in their commission, or
 - (3) Are alleged to have been a part of a common scheme or plan.
- B. Defendants. Two (2) or more Defendants may be joined when each Defendant is charged with each offense included, or when the several offenses are part of a common conspiracy, scheme or plan, or are otherwise so closely connected that it would be difficult to separate proof of one from proof of the others.
- C. Consolidation. If such offenses or such Defendants are charged in separate proceedings, they may be joined in whole or in part by the Court or upon motion of either party, provided that the ends of justice will not be defeated thereby.

Rule 13.4 Severance

- A. In general. Whenever two (2) or more offenses or two (2) or more Defendants have been joined for trial, and severance of any or all offenses, or of any or all Defendants, or both, is necessary to promote a fair determination of the guilt or innocence of any Defendant of any offense, the Court may on its own initiative, and shall on motion of a party, order such severance.
- B. As of right. The Defendant shall be entitled as of right to sever offenses or Defendants joined only by virtue of Rule 13.3(A) (1), unless evidence of the other offense or offenses would be admissible under Federal Rules of Evidence if the offenses were tried separately.
- C. Timeliness and waiver. A Defendant's motion to sever offenses or Defendants must be made at least 20 days prior to trial and, if denied, renewed during trial at or before the close of the evidence. If a ground not previously known arises during trial, the Defendant must move for severance at or before the close of the evidence. Severance is waived if a proper motion is not timely made and renewed.
- D. Jeopardy. No motion by the Prosecutor to sever offenses or the Defendant's may be granted after trial has commenced unless the

Defendant consents. Severance of offenses during trial upon motion of the Defendant or with the Defendant's consent shall not bar a subsequent trial of that Defendant on the offenses severed.

Rule 13.5 Amendment of the charges; defects in the charging document

- A. Prior convictions. The Prosecutor may amend a criminal complaint to add an allegation of one (1) or more prior convictions within the time limits of [Rule 16.1 \(B\)](#).
- B. Altering the charges, amendment to conform to the evidence. The criminal complaint limits the trial to the specific charge or charges stated in the complaint. The charge may be amended only to correct mistakes of fact or remedy formal or technical defect, unless the Defendant consents to the amendment. The charging document shall be deemed amended to conform to the evidence adduced at any Court proceeding.
- C. Defects in charging document. No issue concerning a defect in the charging document shall be raised other than by a motion filed in accordance with [Rule 16](#).

RULE 14 ARRAIGNMENT

Rule 14.1 When held

- A. In general. No later than 72 hours after Initial Appearance an arraignment shall be held before the trial Court, excluding weekends and Tribally designated holidays.
- B. Special situations. When an arraignment cannot be held within the time specified in Section (A) because the Defendant is in custody elsewhere, or for good cause shown, it shall be held as soon as possible thereafter.
- C. Exceptions. An arraignment need not be held in cases where:
 - (1) The Defendant's attorney has previously notified the Court in writing of the Defendant's plea of not guilty.
 - (2) **RESERVED**
- D. Combined Proceedings. When the Defendant's first Court appearance occurs after the filing of the criminal complaint, the arraignment may be held in conjunction with the initial appearance before the Judge.

Rule 14.2 Presence of the Defendant

The Defendant shall be arraigned personally before the Tribal Court or by video connection.

Rule 14.3 Proceedings at arraignment

The Court shall:

- A. Ascertain the Defendant's plea of not guilty, guilty, or no contest. Unless the Defendant pleads guilty or no contest, the Court shall enter a plea of not guilty on his or her behalf.
- B. Hear and decide motions concerning the conditions of release under [Rule 7](#). Unless the arraignment is held in conjunction with the Defendant's initial appearance before a Judge under [Rule 4.2](#), a contested release motion shall be heard only if five (5) days prior notice of the motion has been given.
- C. Set the date for trial or pretrial conferences.
- D. Advise the parties in writing of the dates set for further proceedings and other important deadlines.
- E. Advise the Defendant of the Defendant's right to be present at all future proceedings and that any proceeding may be held regardless of the Defendant's absence, or that the Defendant may be charged with an offense and a warrant issued for the Defendant's arrest in the event Defendant fails to appear for a future court date.
- G. Advise the Defendant of the right to jury trial, if applicable.

RULE 15 DISCOVERY

Rule 15.1 Disclosure by Yavapai-Apache Nation

- A. Initial Disclosure. At the arraignment or the first court setting after the initial appearance, the prosecution shall make available to the defendant all then existing original and supplemental reports prepared by a law enforcement agency in connection with the particular crime with which the defendant is charged.
- B. Supplemental Disclosure. Matters relating to guilt, innocence or punishment. No later than 30 days after the first pre-trial conference setting, or at such time as the Court may direct, the Prosecutor shall make available to the Defendant for examination and reproduction the following

material and information, except as provided by [Rule 37 \(B\)](#), within the Prosecutor's possession or control:

- (1) The names and addresses of all persons whom the Prosecutor will call as witnesses in the case-in-chief together with their relevant written or recorded statements;
- (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 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 is aware of and will use at trial. Also see Rule 16.1 for additional time limits for alleging prior convictions;
- (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 prior felony convictions of witnesses whom the Prosecutor expects to call at trial.

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 Defendant was a party, or of the Defendant's business or residence;
- (2) Whether a search warrant has been executed in connection with the case;

- (3) Whether or not the case has 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 15.4\(B\)\(2\)](#).
- C. Additional disclosure upon request and specification. The Prosecutor, upon written request, shall disclose to the Defendant a list of the prior felony convictions of a specified defense witness which the Prosecutor will use to impeach the witness at trial, and make available to the Defendant for examination, testing, and reproduction any specified items contained in the list submitted under [Rule 15.1\(B\)\(4\)](#). The Prosecutor may impose reasonable conditions, including an appropriate stipulation concerning chain of custody, to protect physical evidence produced under this section.
- D. Extent of Prosecutor's duty to obtain information. The Prosecutor's obligation under this Rule extends to material and information in the possession or control of members of the Prosecutor's staff and of any other persons who have participated in the investigation or evaluation of the case and who are under the Prosecutor's control.
- E. Disclosure by order of the Court. Upon motion of the Defendant showing that he or she has substantial need in the preparation of his or her case for additional material or information not otherwise covered by [Rule 15.1](#), and that the Defendant 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.
- F. Disclosure of rebuttal evidence. Upon receipt of the notice of defenses required from the Defendant under [Rule 15.2 \(B\)](#) the prosecutor shall disclose the names and addresses of all persons whom the prosecutor will call as rebuttal witnesses together with their relevant written or recorded statements.

Rule 15.2 Disclosure by the Defendant

- A. Physical evidence. At any time after the filing of a criminal complaint, upon written request of the Prosecutor, the Defendant shall:
- (1) Appear in a line-up;
 - (2) Speak for identification by witnesses;
 - (3) Be fingerprinted, palm-printed, footprinted or voice-printed;

- (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 in connection with the particular crime with which he or she is charged. 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. Notice of defenses. No later than 45 days after the first pre-trial conference 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, including, but not limited to: alibi, insanity, self-defense, entrapment, impotency, marriage, insufficiency of a prior conviction, mistaken identity, and good character. The notice shall specify for each defense the person, 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 the Defendant. Simultaneously with the notice of defenses submitted under [Rule 15.2 \(B\)](#), the Defendant shall make available to the Prosecutor for examination and reproduction:
- (1) The names and addresses 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 examination and of scientific tests, experiments or comparisons, including all written reports and statements, made by them in connection with the particular case, and
 - (3) A list of all papers, documents, photographs and other tangible objects which the Defendant will use at trial.

- D. Additional disclosure upon request and specification. The Defendant, upon written request, shall make available to the Prosecutor for examination, testing, and reproduction any specified items contained in the list submitted under Rule 15.2 (C)(3).
- E. Extent of the 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 attorneys and agents.
- F. Disclosure by order of the Court. Upon motion of the Prosecutor showing that he or she has substantial need in the preparation of his or her case for additional material or information not otherwise covered by [Rule 15.2](#) that the Prosecutor is unable without undue hardship to obtain the substantial equivalent by other means, and that disclosure thereof will not violate the Defendant's constitutional rights, the Court in its discretion may order any person to make such material or information available to him or her. The Court may, upon request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.
- G. **RESERVED**

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 and those excluded by Rule 37 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, was not a witness at the probable cause phase, and that the person will not cooperate in granting a personal interview, or,
 - (3) A witness shows that he or she is incarcerated for failure to give satisfactory security that he or she will appear to testify at a trial or hearing.
- B. Motion for taking deposition. A motion for deposition shall specify the time and place for taking the deposition and the name and address of each person to be examined, together with designated papers, documents, photographs or other tangible objects, not privileged, to be produced at the

same time and place. The Court may change such terms and specify any additional conditions governing the conduct of the proceeding.

- C. Manner of taking. Except as otherwise provided herein or by order of the Court, depositions shall be taken in the manner provided in civil actions. With the consent of the Defendant, the Court may order that a deposition be taken on written interrogatories in the manner provided in civil actions. Any statement of the witness being deposed which is in the possession of any party shall be made available for examination and use at the taking of the deposition to any party who would be entitled thereto at trial. A deposition may be recorded by other than stenographic means, such as, by an audio 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 10 days before trial, whichever is earlier. The parties may stipulate, or the Court may order, that a deposition be taken by telephone, consistent with the provisions of [Rule 15.3 \(D\)](#).
- D. Presence of the Defendant. A Defendant shall have the right to be present at any examination under [Rules 15.3\(A\)\(1\)](#) and [\(A\)\(3\)](#). 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 him or her during it.
- E. Use. Depositions may be used in the manner provided for prior recorded testimony in [Rule 19.3\(C\)](#).

Rule 15.4 General standards

In all discovery under this Rule the following shall apply:

- A. Statements.
 - (1) Definition. Whenever it appears in [Rule 15](#), the term "statement" shall mean,
 - (a) A writing signed or otherwise adopted or approved by a person,
 - (b) A mechanical, electrical or other recording of a person's oral communications or a transcript thereof, and
 - (c) A writing containing a verbatim record or a summary of a person's oral communications.

- (2) Superseded notes. Handwritten notes which have been substantially incorporated into a statement shall no longer themselves be considered a statement.

- B. Materials not subject to disclosure.
 - (1) Work product. Disclosure shall not be required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the Prosecutor, members of the Prosecutor's legal or investigative staff or law enforcement officers, or of defense counsel or defense counsel's legal or investigative staff.
 - (2) Informants. Disclosure of the existence of an informant or of the identity of an informant who will not be called to testify shall not be required where disclosure would result in substantial risk to the informant or to the informant's operational effectiveness, provided the failure to disclose will not infringe the constitutional rights of the accused.

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

- D. Use of materials. Any materials furnished to an attorney 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.

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 5 days prior to the date set for trial, or that any other disclosures required by this Rule be denied, deferred or regulated when it finds:
 - (1) That the disclosure would result in a risk or harm outweighing any usefulness of the disclosure to any party, and
 - (2) That the risk cannot be eliminated by a less substantial restriction of discovery rights.

- B. Discretion of the Court to authorize excision. Whenever the Court finds, on motion of any party, that only a portion of a document or other material is discoverable under these Rules, it may authorize the party disclosing it to excise that portion of the material which is 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. Counsel for all other parties shall be entitled to be present when such presentation is made.
- D. Preservation of record. If the Court enters an order that any material, or any portion thereof, is not discoverable under this Rule, the entire text of the material shall be sealed and preserved in the record to be made available to the Appellate Court in the event of an appeal.

Rule 15.6 Continuing duty to disclose

If at any time after a disclosure has been made any party discovers additional information or material which would be subject to disclosure had it been previously known, such party shall promptly notify all other parties of the existence of such additional material, and make an appropriate disclosure.

Rule 15.7 Sanctions

- A. 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; and
 - (5) Declaring a mistrial when necessary to prevent a miscarriage of justice.

- B. 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 the Defendant's guilt as to the offense charged as set forth in [Rule 15.1\(A\)\(7\)](#), or as ordered by the Court.

Rule 15.8 Non-severability

Should the provisions of [Rules 15.2\(B\) or \(C\)](#) be found unenforceable, then the provisions of [Rules 15.1\(A\)\(1\) \(relating to witness statements\), \(B\), and \(C\)](#) shall also be inoperable, null and void.

RULE 16 PRETRIAL MOTION PRACTICE; OMNIBUS HEARING

Rule 16.1 General provisions

- A. Scope of Rule. This Rule shall govern the procedure to be followed in all criminal cases between arraignment and trial, unless specifically provided by another Rule.
- B. Making of motions before trial. All motions shall be made no later than Twenty (20) days prior to trial, or at such other time as the Court may direct. The opposing party shall have ten (10) days within which to file a response, unless the opposing party waives response. Lack of jurisdiction may be raised at any time. An omnibus hearing will be held only if affirmatively requested in writing by either or both parties within thirty (30) days of the date of arraignment, or ordered by the Court on its own motion. The omnibus hearing shall be set at the earliest convenient date following the filing of the request but no later than twenty (20) days prior to the trial date.
- C. Effect of failure to make motions in timely manner. Any motion, defense, objection, or request not timely raised under [Rule 16.1\(B\)](#) shall be precluded, unless the basis therefor was not then known, and by the exercise of reasonable diligence could not then have been known, and the party raises it promptly upon learning of it.
- D. Finality of pretrial determinations. Except for good cause, or as otherwise provided by these Rules, an issue previously determined by the Court shall not be reconsidered.

Rule 16.2 Procedure on pretrial motions to suppress evidence

- A. Duty of Court to inform the 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 does testify at the hearing, he or she will be subject to cross-examination;
 - (3) If the Defendant does testify at the hearing, he or she does not by so testifying waive his or her right to remain silent during the trial, and
 - (4) If the Defendant does testify at the hearing, neither this fact nor his or her testimony at the hearing shall be mentioned to the jury unless he or she testifies at trial concerning the same matters.
- 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. However, whenever the defense is entitled under Rule 15 to discover the circumstances surrounding the taking of any evidence by confession, identification or search and seizure, or defense counsel was present at the taking, or the evidence was obtained pursuant to a valid search warrant, the Prosecutor's burden of proof shall arise only after the Defendant has come forward with evidence of specific circumstances which establish a prima facie case that the evidence taken should be suppressed.

Rule 16.3 Procedure at omnibus hearings

A. Scope of proceeding.

The Court shall:

- (1) Hear all motions made at or prior to the hearing;
- (2) Obtain stipulations to facts relevant to the case;
- (3) Discuss and determine any other matters which will promote a fair and expeditious trial including the imposition of time limits on trial proceedings or portions thereof, the use of juror notebooks, the giving of brief pre-voir dire opening statements and preliminary instructions, and the effective management of documents and exhibits, and
- (4) Set such further hearings for the taking of evidence or argument of motions as are needed.

- B. Form of motions. All motions may be made orally at the omnibus hearing. At the hearing, or at any time thereafter, the Court may require written memoranda from the parties on any issue involved in the case. The Court, in its discretion, may limit or deny oral argument on any motion.
- C. Rulings on motions. In reviewing with counsel the grounds offered in support of each motion, the Court shall Rule on all matters on which it concludes it can render a reasoned decision without taking additional evidence, reviewing written memoranda, or taking the matter under advisement.
- D. Taking of evidence. At the omnibus hearing, or any time before an evidentiary hearing on an issue is commenced, the parties may submit any issue to the Court for decision on the basis of stipulated evidence. All other evidence shall be taken at subsequent proceedings, unless the Court on request of the parties showing good cause, sets a specific matter for evidentiary hearing at the omnibus hearing.
- E. Record of proceedings. All proceedings at the omnibus hearing shall be recorded.
- F. Minute entry. At the conclusion of the hearing the Court shall direct a minute entry of the matters agreed upon.

Rule 16.4 RESERVED

Rule 16.5 Procedure at pretrial conference

- A. Purposes. The purposes of the pretrial conference may include:
 - (1) To provide a forum and procedure for the fair, orderly and just disposition of cases without trial;
 - (2) To permit the parties, without prejudice to their rights to trial, to engage in disclosure and conduct negotiations for dispositions without trial;
 - (3) To provide an opportunity for complying with the requirement of discovery as required by these Rules, Yavapai-Apache law and applicable federal constitutional law;
 - (4) To eliminate the need for setting for trial cases which may be disposed of without trial; or

(5) In all cases which cannot be fairly disposed of without trial, to enable the Court to set a date certain for trial.

B. Procedure. The Court may designate the types of cases to be made subject to the pretrial conference, designate the persons who are required to attend the pretrial conference, provide for sanctions in the event of failure to attend, and establish other procedures and regulations that are reasonable and necessary for the conduct of the pretrial conferences and for carrying out the purpose of the pretrial conferences.

Rule 16.6 Dismissal of prosecution

A. On Prosecutor's motion. The Court, on motion of the Prosecutor showing good cause therefor, may 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 8.](#)

B. On Defendant's motion. The Court, on motion of the Defendant, shall order that a prosecution be dismissed upon finding that the criminal 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, unless the Defendant is in custody on some other charge, and any appearance bond exonerated.

V. PLEAS OF GUILTY AND NO CONTEST

RULE 17 PLEAS OF GUILTY AND NO CONTEST

Rule 17.1 Pleading by Defendant

A. Personal appearance.

(1) Residence in the Yavapai-Apache Nation. In the Yavapai-Apache Nation Tribal Court, a plea of guilty or no contest may be accepted by the Court having jurisdiction to try the offense. Such plea shall be accepted only when made by the Defendant personally in open

Court, unless the Defendant is a corporation, in which case the plea may be entered by counsel or a corporate officer.

- (2) Out-of-Yavapai-Apache Nation residence appearance on Class 3, 4 or petty offenses. Notwithstanding [Rules 14.2](#), [17.1\(A\)\(1\)](#), [17.1\(A\)\(2\)](#), [17.2](#), [17.3](#) and [26.9](#), the Court may accept a telephonic plea of guilty or no contest to the offense when:

(1) The Defendant certifies in writing that he or she is an out-of-Yavapai-Apache Nation resident;

(2) The plea is in writing, complies with the requirements of Rule 17, and is signed by the Defendant; and

(3) A law enforcement officer in the jurisdiction of the Defendant's residence certifies that the Defendant personally appeared, signed a guilty plea form, and that the officer affixed the Defendant's fingerprint to the document.

The plea shall recite that the Defendant waives his or her constitutional rights, enters a plea of guilty or no contest to the offenses described in the complaint, and consents to judgment. The Judge shall ascertain telephonically that the Defendant understands his or her constitutional rights under any laws in regard to the plea. Such finding of guilty by the Court may be used as a prior conviction in the event of a subsequent conviction.

Pleas to Class 1 or 2 offenses shall be accepted only when made by the Defendant personally in open Court.

- B. Voluntary and intelligent plea. A plea of guilty or no contest may be accepted only if voluntarily and intelligently made. The procedures of [Rules 17.2](#), [17.3](#), and [17.4](#) shall be utilized to assure the voluntariness and intelligence of the plea.
- C. Pleas of no contest. A plea of no contest may be accepted only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.
- D. Record. A complete record shall be made of all plea proceedings.
- E. Waiver of appeal. By pleading guilty or no contest in a case, a Defendant waives the right to have the Appellate Court review the proceedings by way of direct appeal.

Rule 17.2 Duty of Court to advise Defendant of rights and of the consequences of pleading guilty or no contest

Before accepting a plea of guilty or no contest, the Court shall address the Defendant personally in open Court, informing him or her of, and determining that, he or she understands the following:

- A. The nature of the charge to which the plea is offered;
- B. The nature and range of possible sentence for the offense to which the plea is offered, including any special conditions regarding sentence, parole, or commutation imposed by law;
- C. The constitutional rights which the Defendant foregoes by pleading guilty or no contest, including his or her right to counsel at the Defendant's own expense, if he or she is not represented by counsel;
- D. The right to plead not guilty; and
- E. That by pleading guilty or no contest in a case the Defendant will waive the right to have the Appellate Court review the proceedings by way of direct appeal.

Rule 17.3 Duty of Court to determine voluntariness and intelligence of the plea

Before accepting a plea of guilty or no contest, the Court shall address the Defendant personally in open Court and determine that the Defendant wishes to forego the constitutional rights of which he or she has been advised, that the plea is voluntary and not the result of force, threats or promises (other than a plea agreement). The trial Court may at that time determine that there is a factual basis for the plea or the determination may be deferred to the time for judgment of guilt as provided by [Rule 26.2\(C\)](#).

Rule 17.4 Plea negotiations and agreements

- A. Plea negotiations. The parties may negotiate concerning, and reach an agreement on, any aspect of the case. At the request of both parties, the Court may, in its sole discretion, participate in settlement discussions by directing counsel having the authority to settle to participate in a good faith discussion with the Court regarding a non-trial or non-jury trial resolution which conforms to the interests of justice. Before such discussions take place, the Prosecutor shall afford the victim an opportunity to confer with the Prosecutor concerning a non-trial or non-jury trial resolution, if they have not already conferred, and shall inform Court and counsel of any statement of position by the victim. If the Defendant is to be present at any such settlement discussions, the victim

shall also be afforded the opportunity to be present and to state his or her position with respect to a non-trial or non-jury trial settlement. The trial Judge shall only participate in settlement discussions with the consent of the parties. In all other cases, the discussions shall be before another Judge. If settlement discussions do not result in an agreement, the case shall be returned to the trial Judge.

- B. Plea agreement. The terms of a plea agreement shall be reduced to writing and signed by the Defendant, the Defendant's counsel, if any, and the Prosecutor. An agreement may be revoked by any party prior to its acceptance by the Court.
- C. Determining the accuracy of the agreement and the voluntariness and intelligence of the plea. The parties shall file the agreement with the Court, which shall address the Defendant personally and determine that he or she understands and agrees to its terms, that the written document contains all the terms of the agreement, and that the plea is entered in conformance with [Rules 17.2](#) and [17.3](#).
- D. Acceptance of plea. After making such determinations and considering the victim's view, if provided, the Court shall either accept or reject the tendered negotiated plea. The Court shall not be bound by any provision in the plea agreement regarding the sentence or the term and conditions of probation to be imposed, if, after accepting the agreement and reviewing a presentence report, it rejects the provision as inappropriate.
- E. Rejection of plea. If an agreement or any provision thereof is rejected by the Court, it shall give the Defendant an opportunity to withdraw his or her plea, advising the Defendant that if he or she permits the plea to stand, the disposition of the case may be less favorable to him or her than that contemplated by the agreement.
- F. Disclosure and confidentiality. When a plea agreement or any term thereof is accepted, the agreement or such term shall become part of the record. However, if no agreement is reached, or if the agreement is revoked, neither any resulting agreement, plea or judgment, nor statements made at a hearing on the plea, shall be admissible against the Defendant in any criminal or civil action or administrative proceeding.
- G. Automatic change of Judge. If a plea is withdrawn after submission of the presentence report, the Judge, upon request of the Defendant, shall disqualify himself or herself, but no additional disqualification of Judges under this Rule shall be permitted.

Rule 17.5 Withdrawal of plea

The Court, in its discretion, may allow withdrawal of a plea of guilty or no contest when necessary to correct a manifest injustice. Upon withdrawal, the charges against the Defendant as they existed before any amendment, reduction or dismissal made as part of a plea agreement, shall be reinstated automatically.

Rule 17.6 Admission of a prior conviction

Whenever a prior conviction is charged, an admission thereto by the Defendant shall be accepted only under the procedures of this rule, unless admitted by the Defendant while testifying on the stand.

VI. TRIAL

RULE 18 TRIAL BY JURY; WAIVER; SELECTION AND PREPARATION OF JURORS

Rule 18.1 Trial by jury

- A. By jury. All trials of offenses shall be by a jury except:
 - (1) As provided in these rules, Title 5 or other Tribal law; and
 - (2) Defendant must file a request for a jury trial within 10 days of the first pretrial conference setting.
- B. Juries shall be composed of six (6) members with one (1) alternate if an alternate juror is deemed advisable by the Court.
- C. Jurors shall be drawn from the list of eligible jurors, based upon the enrollment list of Tribal Members residing on the Nation's Reservations or within a ten (10) mile radius of the nation's Administration Office's located at 2400 W. Datsi Street, Camp Verde, Arizona. The nation's Enrollment Office shall provide a list of adult enrolled members residing on the Nation's Reservations or within a ten (10) mile radius of the Nation's Administration Office's with their addresses and phone numbers to the Court annually or quarterly if requested by the Court. This list shall be used for the Court to create a panel of eligible jurors for all jury trials.
- C. Waiver. In the event the Defendant has made a timely request for a jury trial, the Defendant may waive his or her right to trial by jury with consent of the prosecution and the Court.
 - (1) Voluntariness. Before accepting a waiver the Court shall address the Defendant personally, advise the Defendant of his or her right to a jury trial and ascertain that the waiver is knowing, intelligent and voluntary.

- (2) Form of waiver. A waiver of jury trial under this rule shall be made in writing or in open Court on the record.
- (3) Withdrawal of waiver. With the permission of the Court, the Defendant may withdraw his or her waiver of jury trial, if done in a timely fashion, but no withdrawal shall be permitted after the Court begins taking evidence.

Rule 18.2 Additional jurors

The Court may in its discretion qualify such additional jurors as it deems necessary. All jurors shall be deemed regular jurors until alternates are designated pursuant to [Rule 18.5\(H\)](#).

Rule 18.3 Jury information

Prior to the voir dire examination on the day when jury selection is commenced, the parties shall each be furnished with a list of the names of the panel of prospective jurors called for the case.

Rule 18.4 Challenges

- A. Challenges 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 be in writing, specifying the facts on which the challenge is based. They 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. Each party shall be allowed one (1) peremptory challenge.
 - (2) Upon joint trial of several Defendants. When there is more than one Defendant, each shall be allowed the number of peremptory challenges allowed to one Defendant. No additional peremptory challenges shall be allowed to the Prosecutor.
 - (3) Agreement between the parties. The parties may agree to exercise fewer than the allowable number of peremptory challenges.

Rule 18.5 Procedure for selecting a jury

- A. Swearing panel. All members of the panel shall swear or affirm that they will answer truthfully 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.
- C. Inquiry by the Court; brief opening statements. 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. It shall ask any questions which it thinks necessary touching the prospective jurors' qualifications to serve in the case on trial. The parties may, with the Court's consent, present brief opening statements to the entire jury panel, prior to voir dire. On its own motion the Court may require counsel to do so.
- D. Voir dire examination. The Court shall conduct a thorough oral examination of prospective jurors. Upon the request of any party, the Court may 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 questions to be completed by the prospective jurors, in addition to oral examination.
- E. Scope of examination. The examination of prospective jurors shall be limited to inquiries directed to bases for 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. Such a juror shall be excused and another member of the panel shall be called to take the excused juror's place in the jury box and on the Clerk's list of jurors when fewer than all of the members of the jury panel have been examined. Challenges for cause shall be made out of hearing of the jurors, but shall be of record.
- 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 his or her full number of challenges. If the parties fail to exercise the full number of challenges allowed them, the Clerk shall strike the jurors on the bottom of the list until only the number to serve, plus alternates, remain.

- H. Selection of jury. 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 alternates. The alternate, or alternates, upon being physically excused by the Court, shall be instructed to continue to observe the admonitions to jurors until they are informed that a verdict has been returned or the jury 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, choosing from among the alternates in the order previously designated, unless disqualified, to join in the deliberations. If an alternate joins the deliberations, the jury shall be instructed to begin deliberations anew.

Rule 18.6 Preparation of jurors

- A. Handbook. Prior to commencing service, each juror may be provided a juror's handbook, approved by the Yavapai-Apache Nation Tribal Court.
- B. 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 (so help you God)?
- C. Preliminary instructions. Immediately after the jury is sworn, the Court shall instruct the jury concerning its duties, its conduct, the order of proceedings, the procedure for submitting written questions of witnesses or of the Court as set forth in Rule 18.6(E), and the elementary legal principles that will govern the proceeding.
- D. Note taking; access to juror notes and notebooks. The Court may 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.

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

RULE 19 TRIAL

Rule 19.1 Conduct of trial

- 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 Defendant may then make an opening statement if it was deferred, and offer evidence in his or her defense.
- (6) Evidence in rebuttal shall then be offered unless the Court upon a showing of good cause allows a case-in-chief to be reopened.
- (7) The parties may present arguments, the Prosecutor having the opening and closing.
- (8) The Judge shall then charge the jury. With the permission of the Court, the parties may agree to any other method of proceeding.

C. **RESERVED**

D. **RESERVED**

Rule 19.2 Presence of Defendant at trial

The Defendant has the right to be present at every stage of the trial, including the impaneling of the jury, the giving of additional instructions pursuant to [Rule 22](#), and the return of the verdict.

Rule 19.3 Evidence

- A. General rule. The law of evidence relating to civil actions shall apply to criminal proceedings, except as otherwise provided. The Federal Rules of Evidence are the codified rules of evidence used by the Yavapai-Apache Nation Tribal Court.
- B. Prior inconsistent statements. No prior statement of a witness may be admitted for the purpose of impeachment unless it varies materially from the witness' testimony at trial.
- C. Prior recorded testimony.
 - (1) Admissibility. Statements made under oath by a party or witness during a previous judicial proceeding or a deposition under [Rule 15.3](#) shall be admissible in evidence if:
 - (a) The party against whom the former testimony is offered was a party to the action or proceeding during which a statement was given and had the right and opportunity to cross-examine the declarant with an interest and motive similar to that which the party now has (no person who was unrepresented by counsel at the proceeding during which a statement was made shall be deemed to have had the right and opportunity to cross-examine the declarant, unless such representation was waived) and
 - (b) The declarant is unavailable as a witness, or is present and subject to cross-examination.
 - (2) Limitations and objections. The admissibility of former testimony under this section is subject to the same limitations and objections as though the declarant were testifying at the hearing, except that the former testimony offered under this section is not subject to:
 - (a) Objections to the form of the question which were not made at the time the prior testimony was given.
 - (b) Objections based on competency or privilege which did not exist at the time the former testimony was given.

Rule 19.4 Separation and detention of jurors

The Court in its discretion may permit jurors to separate or, on motion of any party, may require them to be sequestered in charge of a proper officer whenever they leave the jury box. The Court shall admonish the jurors not to converse

among themselves or with anyone else on any subject connected with the trial, or to permit themselves to be exposed to news accounts of the proceeding, or to form or express any opinion thereon until the action is finally submitted to them. If the jurors are permitted to separate, they shall also be admonished not to view the place where the offense allegedly was committed.

Rule 19.5 Death, illness or other incapacity of Judge

If the Judge before whom a trial or other criminal proceeding is pending dies, becomes ill, or in any other way becomes incapacitated, any other Judge may take the Judge's place. If no other Judge of the Yavapai-Apache Nation Tribal Court is available, the Clerk shall recess the Court until such time as a Judge becomes available and at which time the Judge shall continue the trial. 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 Nation or a Defendant, the Judge shall order a new trial proceeding.

Rule 19.6 Presence of Minor victim or incapacitated victim representative

If a representative of a minor victim or incapacitated victim wishes to be recognized during trial he or she shall communicate with the Prosecutor, who shall so inform the Court out of the presence of the jury. Any consultation by such representative with the Court during the course of the trial shall be conducted in the presence of the parties, or counsel, and in the absence of the jury.

RULE 20 JUDGMENT OF ACQUITTAL

- A. Before verdict. On motion of a Defendant or on its own initiative, the Court shall enter a judgment of acquittal of one (1) or more offenses charged in a 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 reversed, but shall be made with all possible speed.
- B. After verdict. A motion for judgment of acquittal made before verdict may be renewed by a Defendant within 10 days after the verdict was returned.

RULE 21 INSTRUCTIONS

Rule 21.1 Reserved

Rule 21.2 Requests for instructions and forms of verdict

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

Rule 21.3 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 of his or her objection.
- D. Jurors' copies. The Court's preliminary and final instructions on the law shall be in written form and a copy of the instructions shall be furnished to each juror before being read by the Court

RULE 22 DELIBERATIONS

Rule 22.1 Retirement of jurors

- A. Retirement. After instructing the jury, the Court shall appoint or instruct the jurors to elect a foreman. 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, and giving the admonitions of [Rule 19.4](#).

Rule 22.2 Materials used during deliberation

Upon retiring for deliberation the jurors shall take with them:

- A. Forms of verdict approved by the Court, which shall not indicate in any manner whether the offense described therein is a felony or misdemeanor unless the law upon which the charge is based directs that the jury make this determination.
- B. All jurors' copies of written instructions;
- C. Their notes; and
- D. Such tangible evidence as the Court in its discretion shall direct.

Rule 22.3 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 played back or give appropriate additional instructions. The Court may also order other testimony played back or instructions given only after notice to the parties.

Rule 22.4 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 jurors' response, if any, the Judge may direct that further proceedings occur as appropriate.

Rule 22.5 Discharge

The Court shall discharge the jurors when:

- A. Their verdict has been recorded as set forth in [Rule 23](#); or
- B. 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
- C. A necessity exists for their discharge.

RULE 23 VERDICT

Rule 23.1 Time and form of verdict

- A. Form of verdict. The verdict of the jury shall be in writing, signed by the foreman, and returned to the Judge in open Court.
- B. Sealed verdicts. The Court may instruct the jurors that if they agree upon a verdict during a temporary adjournment of the Court, the foreman may sign the verdict, seal it in an envelope and deliver it to the officer in charge, whereupon they may separate and reassemble in the jury box at a specified time. The officer shall deliver the sealed verdict to the Clerk as soon as convenient. When the jurors have reassembled, the envelope shall be opened and the verdict returned.

When the Court authorizes a sealed verdict, it shall admonish the jurors not to make any disclosure concerning it nor to speak with other persons concerning the case until the verdict has been returned and the jury discharged.

Rule 23.2 Types of verdict

- 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 guilty except insane, the verdict shall so state.
- 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. When the verdict is guilty of an offense which is divided into degrees, the verdict shall specify the degree of which the Defendant has been found guilty.

Rule 23.3 Conviction of necessarily included offenses

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

Rule 23.4 Poll

After the verdict is returned and before the jury is discharged, it 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.

VII. POSTVERDICT PROCEEDINGS

RULE 24 POST-TRIAL MOTIONS

Rule 24.1 Motion for new trial

- A. Power of the Court. When the Defendant has been found guilty by a jury or by the Court, the Court on motion of the Defendant, or on its own initiative with the consent of the Defendant, may order a new trial.
- B. Timeliness. A motion for a new trial shall be made no later than ten (10) days after the verdict has been rendered.

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

- (1) The verdict is contrary to law or to the weight of the evidence;
- (2) The Prosecutor has been guilty of misconduct;
- (3) A juror or jurors have been guilty of misconduct by:
 - (a) Receiving evidence not properly admitted during the trial;
 - (b) Deciding the verdict by lot;
 - (c) Perjuring himself or 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 other way;
 - (e) Becoming intoxicated during the course of the deliberations; or
 - (f) Conversing before the verdict with any interested party about the outcome of the case;
- (4) The Court has erred in the decision of a matter of law, or in the instruction of the jury on a matter of law to the substantial prejudice of a party;
- (5) For any other reason not due to the Defendant's own fault the Defendant has not received a fair and impartial trial.

D. Admissibility of juror evidence to impeach the verdict. Whenever the validity of a verdict is challenged under [Rule 24.1 \(C\)\(3\)](#), the Court may receive the testimony or affidavit of any witness, including members of the jury, which relates to the conduct of a juror, official of the Court, or third person. No testimony or affidavit shall be received which inquires into the subjective motives or mental processes which led a juror to assent or dissent from the verdict.

Rule 24.2 Motion to vacate judgment

A. Grounds for motion. Upon motion made no later than 60 days after the entry of judgment and sentence but before the Defendant's appeal, if any,

is perfected, the Court may vacate the judgment on any of the following grounds:

- (1) That it was without jurisdiction of the action;
- (2) That newly discovered material facts exist and such facts probably would have changed the verdict or sentence. Newly discovered facts exist if:
 - a. The newly discovered material facts were discovered after the trial.
 - b. The defendant exercised due diligence in securing the newly discovered material facts.
 - c. The newly discovered material facts are not merely cumulative or used solely for impeachment, unless the impeachment evidence substantially undermines testimony which was of critical significance at trial such that the evidence probably would have changed the verdict or sentence.
- (3) That the conviction was obtained in violation of the Defendant's constitutional rights.

B. Previous rulings. The Court may deny any such motion on the grounds that the matter has already been decided.

C. Motion filed after notice of appeal. When a motion is made under this section after a Notice of Appeal has been filed, the Clerk shall immediately send a copy to the Clerk of the Appellate Court in which the appeal has been filed.

Rule 24.3 Modification of sentence

The Court may correct any unlawful sentence or one imposed in an unlawful manner within 60 days of the entry of judgment and sentence but before the Defendant's appeal, if any, is filed.

Rule 24.4 Clerical mistakes

Clerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission, may be corrected by the Court at any time after such notice, if any, as the Court orders.

RULE 25 PROCEDURE AFTER VERDICT OR FINDING OF NOT GUILTY BY REASON OF INSANITY

The Court, after a finding of not guilty by reason of insanity or guilty except insane, shall take appropriate steps to have the Defendant committed to a secure

mental health facility for further psychological evaluation and treatment as required.

RULE 26 JUDGMENT, PRESENTENCE REPORT, PRESENTENCE HEARING, SENTENCE

Rule 26.1 Definitions; scope

- 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 non-jury 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 guilty.
- C. Determination of guilt. The term determination of guilt means a verdict of guilty by a jury, a finding of guilt by a Court following a non-jury trial, or the acceptance by the Court of a plea of guilty or no contest.
- D. Scope. Rule 26 shall not apply to minor traffic offenses unless requested by the Court.

Rule 26.2 Time of rendering judgment

- A. Upon acquittal. When a Defendant is acquitted of any charge, or of any count of any charge, judgment pertaining to that count or to that charge shall be pronounced and entered immediately.
- B. Upon conviction. Upon a determination of guilt on any charge, or on any count of any charge, judgment pertaining to that count or to that charge shall be pronounced and entered together with the sentence.
- C. Factual determination. In the event the trial Court did not make an affirmative finding of a factual basis for the plea pursuant to [Rule 17.3](#), 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: statements made by the Defendant; police reports; Reporter's transcripts of other factual proceedings such as a probable cause hearing; and other satisfactory information.

Rule 26.3 Date of sentencing; extension

- A. Tribal Court. Upon a determination of guilt, the Court may set a date for sentencing or with agreement of the parties, pronounce the sentence immediately. The Court on its own motion or upon request of a party or

the victim may order a pre-sentence report be done. Unless good cause is shown, sentence shall be imposed not more than 30 days after determination of guilt.

- B. Extension of time. If a pre-sentencing hearing is requested under [Rule 26.7](#), or if good cause is shown, the trial Court may, in its own discretion, reset the date of sentencing.

Rule 26.4 Pre-sentence report

- A. The Court may require a pre-sentence report in all cases. A pre-sentence report shall not be prepared until after the determination of guilt has been made or the Defendant has entered a plea of guilty or no contest.
- B. The pre-sentence report should be delivered to the Sentencing Judge at least two (2) days before the date set for sentencing.

Rule 26.5 Diagnostic evaluation and mental health examination

At any time before sentence is pronounced, the Court may order the Defendant to undergo mental health examination or diagnostic evaluation. Reports under this section shall be due at the same time as the pre-sentence report unless the Court orders otherwise.

Rule 26.6 Disclosure of the pre-sentence, diagnostic, and mental health reports

- A. Disclosure to the parties. The Court shall permit the Prosecutor and defense counsel, or if without counsel, the Defendant, to inspect all presentence, diagnostic and mental health reports. A portion of any report not made available to one party shall not be made available to any other. Once the pre-sentence report is made available to the Defendant, the Court shall permit the victim to inspect it upon request by the Prosecutor except those parts excised by the Court or made confidential by law.
- B. Date of disclosure. Reports ordered under [Rules 26.4](#) and [26.5](#) shall be made available to the parties at least 2 days prior to the date set for sentencing. Reports ordered under [Rule 26.7 \(C\)](#) shall be made available no more than 2 days after delivery to the Court and no less than 2 days prior to the pre-sentencing hearing unless agreed otherwise by the parties.
- C. Excision. The Court may excise from the copy of the pre-sentence, diagnostic and mental health reports disclosed to the parties:
 - (1) Diagnostic opinions which may seriously disrupt a program of rehabilitation,

- (2) Sources of information obtained on a promise of confidentiality and,
- (3) Information which would disrupt an existing police investigation. When a portion of the pre-sentence report is not disclosed, the Court shall inform the parties and shall state on the record its reasons for making the excision.

D. Disclosure after sentencing.

- (1) After sentencing, all diagnostic, mental health and pre-sentence reports, other than those portions excised under (C)(2) and (C)(3), may, in the discretion of the Court, be furnished to persons having direct responsibility for the custody, rehabilitation, treatment and release of the Defendant. The unexcised reports shall be made available to a reviewing Court when a relevant issue has been raised and to a Court sentencing the Defendant after a subsequent conviction.
- (2) Neither a pre-sentence report nor any statement made in connection with its preparation shall be admissible as evidence in any proceeding bearing on the issue of guilt.

E. Public disclosure of pre-sentence diagnostic and mental health reports. Reports prepared under [Rules 26.4](#), [26.5](#) and [26.7 \(C\)](#) are matters of public record unless otherwise provided by the Court or made confidential by law, but may be ordered by the Court to be kept confidential upon motion by the Prosecutor or the Defendant and good cause shown .

Rule 26.7 Pre-sentencing hearing; request, purpose, pre-hearing conference

- A. When the court has discretion as to the penalty to be imposed, it may on its own initiative or shall upon request of any party, hold a pre-sentencing hearing at any time prior to sentencing.
- B. Nature, time and purpose of the pre-sentencing hearing. A pre-sentencing hearing shall not be held until the parties have had an opportunity to examine any reports prepared under [Rules 26.4](#) and [26.5](#). At the hearing any party may introduce any reliable, relevant evidence, including hearsay, in order to show aggravating or mitigating circumstances, to show why sentence should not be imposed, or to correct or amplify the pre-sentence, diagnostic or mental health reports, the hearing shall be held in open Court and a complete record of the proceedings made.
- C. Pre-hearing conference. The Court, on its own initiative or on motion of the parties, may hold a pre-hearing conference to ascertain and limit the

matters in dispute or otherwise expedite the pre-sentencing hearing. The Court may order the Probation Officer who prepared the pre-sentence report to attend.

At such conference, the Court may postpone the date of sentencing for up to ten (10) days beyond the maximum extension permitted by Rule [26.3\(B\)](#) and delay the pre-sentencing hearing accordingly, in order to allow the Probation Officer to investigate any matter specified by the Court, or to refer the Defendant for mental health examinations or diagnostic tests. The Court shall direct a minute entry noting all decisions, agreements and orders made at a pre-hearing conference.

Rule 26.8 Notice of objections; special duty of the Prosecutor; corrections to presentence report

- A. Notice of objections. Prior to the day of the presentencing hearing, each party shall notify the Court and all other parties of any objection it has to the contents of any report prepared under [Rules 26.4](#), [26.5](#) or [26.7\(C\)](#).
- B. Special duty of the Prosecutor. The Prosecutor shall disclose any information in the Prosecutor's possession or control, 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. Ordering the original (objectionable) presentence report sealed.

Rule 26.9 Presence of the Defendant

The Defendant is entitled to be present at a pre-sentencing hearing and shall be present at sentencing.

Rule 26.10 Pronouncement of judgment and sentence

- A. Pronouncement of judgment. In pronouncing judgment, the Court shall set forth the Defendant's plea and the offense of which the Defendant was convicted or found guilty.
- 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 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 a computation of time to be credited against the sentence as required by the law of the Yavapai-Apache Nation. Time served in jail prior to the judgment and sentence while awaiting or during trial may be allowed as a credit toward any sentence of confinement, with the exception of offenses under Title 5, Chapter 11 – Domestic Violence; and
 - (5) If the sentencing Judge deems it necessary, he shall direct the Clerk of Court to send the Detention Facility, along with the sentencing order, copies of all presentence reports, probation violation reports, medical and mental health reports prepared as to or relating to the Defendant sentenced.

Rule 26.11 Duty of the Court after pronouncing sentence

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

- A. Inform the Defendant of his or her right to appeal from the judgment, sentence or both and advise the Defendant that failure to file a timely appeal will result in the loss of the right to appeal.
- B. RESERVED.
- C. Hand the Defendant a written notice of his or her right to appeal and the procedures the Defendant must follow to exercise them, receipt of which shall be shown affirmatively in the record.

Rule 26.12 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; 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 person authorized by the Court to accept payment, shall, 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 Court shall, within five (5) days, notify the Prosecutor and the sentencing Judge.
 - (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 Clerk shall give notice of such delinquency to the Defendant's Probation Officer within the time limits set under sections (C)(1) and (3).
 - (3) Time limits; Restitution. If the payment is to be made to someone other than the Court, delinquency times shall run from the date on which the payee notifies the Probation Officer of failure to pay.
 - (4) 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 bench warrant for the Defendant's arrest.

Rule 26.13 Concurrent or consecutive sentences

Separate sentences of imprisonment imposed on a Defendant for two (2) or more offenses, whether they are charged in the same criminal complaint, shall run consecutively unless the Judge expressly directs otherwise.

Rule 26.14 Re-sentencing

Where a judgment or sentence, or both, have been set aside on appeal, by collateral attack 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, or (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 sentence is the product of actual vindictiveness by the sentencing judge.

Rule 26.15 Entry of judgment and sentence; warrant of authority to execute sentence

- A. Enter of judgment and sentence. The judgment of conviction and the sentence thereon are complete and valid as of the time of their oral pronouncement in open Court.
- B. Warrant of authority. The Court or the person authorized by the Court shall forthwith enter the exact terms of the judgment and sentence in the Court's minutes. A certified copy, signed by the sentencing Judge, shall be furnished to the appropriate officer and no other authority shall be necessary to carry into execution any sentence entered therein.

If the sentence is for imprisonment, the appropriate officer shall receive the Defendant for execution of the sentence upon delivery to him or her of a signed, certified copy of the entry in the Court's docket.

RULE 27 PROBATION AND PROBATION REVOCATION

Rule 27.1 Manner of imposing probation

The sentencing Court may impose on a probationer such conditions as will promote rehabilitation. In addition, the appropriate Probation Officer or other person designated by the Court may impose on the probationer regulations which are necessary to implement the conditions imposed by the Court and not inconsistent with them. All conditions, regulations and implementations shall be in writing, and a copy of them given to the probationer.

Rule 27.2 Modification and clarification of conditions and regulations

A Probation Officer or other person designated by the Court may modify or clarify any regulation which he or she has imposed. The sentencing Court may modify any condition which it has imposed and any regulation imposed by a Probation Officer, or other person designated by the Court, after notice has been provided to the Prosecutor and the Defendant of proceedings in which the victim has the right to notice pursuant to [Rule 27.10](#). A probationer, Probation Officer, the Nation, or other person designated by the Court, at any time prior to absolute discharge, 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. The sentencing Court may, where appropriate, hold a hearing on any such request. A written copy of any modification or clarification shall be given to the probationer.

Rule 27.3 Early termination of probation

At any time during the term of probation, upon motion of the Probation Officer or on its own initiative, the sentencing Court, after notifying the Prosecutor, may terminate probation and discharge the probationer absolutely.

Rule 27.4 Order and notice of discharge

Upon expiration or early termination of a term of probation, the Court shall order the probationer to be discharged absolutely, and the Clerk of the Court shall promptly upon request furnish the probationer with a copy of the order of discharge.

Rule 27.5 Initiation of revocation proceedings; securing the probationer's presence; notice

- A. Petition to revoke probation. If there is reasonable cause to believe that a probationer has violated a written condition or regulation of probation, the Probation Officer or the Prosecutor may petition the sentencing Court to revoke probation.
- B. Securing the probationer's presence. After a petition to revoke has been filed, the sentencing Court may issue a summons directing the probationer to appear on a specified date for a revocation arraignment or may issue a warrant for the probationer's arrest.

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 immediately, and the probationer shall be taken without unreasonable delay before the issuing Judge who shall advise the probationer of his or her rights to counsel at their own expense, or the Public Defender if they are a Yavapai-Apache Tribal member, under [Rule 6](#), inform the probationer that any statement he or she makes prior to the hearing may be used against him or her, set the date of the revocation hearing, and make a release determination under Rule 7.2(B).

Rule 27.7 Revocation of probation

- A. Revocation arraignment.

- (1) The revocation arraignment shall be held no more than 15 days after service of the summons or the probationer's initial appearance under [Rule 27.6](#) before the issuing or assigned Judge.
- (2) The Court shall inform the probationer of each alleged violation of probation and the probationer shall admit or deny each such allegation.
- (3) If no admission is made or if an admission is not accepted, the Court will set a violation hearing, unless both parties agree that a violation hearing may proceed forthwith.

B. 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, no less than two (2), and no more than sixty (60) days after the revocation arraignment, unless the Court, upon the request of the probationer, made in writing or in open Court on the record, sets the hearing for another date.
- (2) The probationer shall be present at the hearing unless the probationer has had notice of the hearing and absents himself or herself from the hearing.
- (3) A violation must be established by a preponderance of the evidence. Each party may present evidence and shall have the right to cross examine witnesses who testify. The Court may receive any reliable evidence not legally privileged, including hearsay.
- (4) If the Court finds that a violation of a condition or regulation of probation occurred, it shall make specific findings of the facts which establish the violation and shall set a disposition hearing.

C. Disposition hearing.

- (1) A disposition hearing shall be held within a reasonable time but in no event shall it be held less than two (2) or more than thirty (30) days after a determination that a probationer has violated a condition or regulation of probation, unless the probationer waives the disposition hearing.
- (2) Upon determination that a violation of a condition or regulation of probation occurred, the Court may revoke, modify or continue probation. If probation is revoked, the Court shall pronounce sentence in accordance with the procedures set forth in [Rules 26.10](#)

through [26.16](#). Probation shall not be revoked for violation of a condition or regulation of which the probationer has not received a written copy.

- D. Waiver of disposition hearing. At the time of an admission by probationer or a finding by the Court that a violation of a condition or regulation of probation has occurred, the probationer may waive the time limits imposed under Rule 27.7(C) and proceed under that rule.
- E. Disposition upon determination of guilt of subsequent offense. If there is a determination of guilty, as defined by [Rule 26.1\(C\)](#) of a subsequent criminal offense by the Court which placed a probationer on probation, no violation hearing shall be required and the Court shall set the matter down for a disposition hearing at the time set for entry of judgment on the criminal offense.
- F. Record. A complete record of the revocation arraignment, violation hearing and disposition hearing shall be made.

Rule 27.8 Admissions by the probationer

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

- A. The nature of the violation of probation to which an admission is offered.
- B. The right to counsel if he or she is not represented by counsel.
- C. The right to cross examine the witnesses who testified against him or her.
- D. The right to present witnesses in his or her behalf.
- E. 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.
- F. If the alleged violation involves a criminal offense for which he or she has not yet been tried, the probationer shall be advised that regardless of the outcome of the present proceeding he or she may still be tried for that offense, and any statement made by the probationer at the proceeding may be used to impeach his or her testimony at the trial.

The Court shall also determine that the probationer wishes to forego 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.

Rule 27.9 Revocation of probation in absentia

- A. Time for commencement. A proceeding to revoke probation in absentia shall be commenced only after the probationer's whereabouts are unknown to the Probation Officer for at least 30 days.
- B. Petition.
- (1) If he or she has reasonable cause to believe that a probationer has violated a written condition or regulation of probation, the Probation Officer responsible for the probationer's conduct or the Prosecutor of the jurisdiction in which the probationer was convicted may petition the sentencing Court to revoke probation in absentia.
 - (2) The petition shall be verified and shall include:
 - (a) Each violation of the terms and regulations of probation.
 - (b) An allegation that the whereabouts of the probationer are unknown.
 - (c) Efforts made to locate the probationer.
 - (d) The probationer's last known address.
- C. Order to show cause. If the Court finds the petition to be in proper form, it shall issue an order to show cause directing the probationer to appear at a specified date and time within not less than 10 nor more than 30 days to show cause why probation should not be revoked.
- D. Service of process. The summons may be served in the same manner as the summons in a civil action, except that service may not be by publication. A summons may be served by certified or registered mail, return receipt requested sent to the last address that the probationer provided. Return of the receipt shall be prima facie evidence of service. Inability to serve the summons at that address shall be evidence that reasonable efforts have been made to give the probationer notice of the hearing.
- E. Hearing.
- (1) Appearance of probationer. If the probationer appears at the time set for hearing, the proceeding shall continue under [Rules 27.7](#) and [27.8](#).

(2) Non-appearance of probationer. If the probationer fails to appear at the time set for the hearing and the Court is satisfied that reasonable efforts have been made to give the probationer notice, it may:

(a) Hear evidence in support of each allegation of violation;

(b) Make specific findings of each violation; and

(c) Revoke probation.

F. Record of proceedings. A complete record shall be made of all proceedings at the revocation hearing in absentia.

Rule 27.10 Victim's rights in probation proceedings

The Court shall afford the victim, as defined in Rule 37 of this Title, the opportunity to be present and to be heard at any proceeding involving:

A. The termination of probation or intensive probation; or

B. Probation revocation dispositions; or

C. Modifications of probation or intensive probation terms that will substantially impact the probationer's contact with or safety of the victim or if the modification request affects restitution or incarceration status.

RULE 28 RETENTION AND DESTRUCTION OF RECORDS AND EVIDENCE

Rule 28.1 Duties of the Clerk

A. Retention of records and evidence. The Clerk of the Court shall receive and maintain all records, papers, and documents filed, and all evidence admitted, in criminal cases.

B. Retention of original records. All original records shall be retained or destroyed in accordance with the Judicial Code.

C. Original notes of Court Reporter. Court Reporters' notes in criminal cases shall be retained.

- D. Appellate Court records. Regardless of other requirements of law, the Clerk of an Appellate Court may destroy any parts of the Appellate Court record of which the trial Court has the original.

Rule 28.2 Disposition of evidence in the custody of the Prosecutor or law enforcement agencies

- A. Discretionary disposition. The Prosecutor or a law enforcement agency may, at any time, dispose of any item, or any part or portion thereof, seized or otherwise obtained for use in a criminal prosecution, in accordance with the procedures established by these rules.
- B. Mandatory disposition. Unless otherwise prescribed by law, the Prosecutor or law enforcement agency shall dispose of such items within 30 days after the case of each person against whom the item could be used as evidence is no longer “subject to modification,”
 - (1) After the Defendant has been acquitted or the charges dismissed; or
 - (2) Sixty days after judgment and sentence have been entered, unless a notice of appeal or a post-trial motion has been filed; or
 - (3) Ninety days after denial of a post-trial motion or receipt of the mandate of the Appellate Court affirming a conviction, unless a petition for writ of certiorari has been filed with the Court.
- C. Manner of disposition. Items shall be returned to the seizing or acquiring agency for disposition. Where private possession of the item is not illegal or otherwise proscribed by law, it shall be returned to the legal owner unless the owner's whereabouts are unknown, or the owner is unwilling to accept it. When such return is not possible, the item shall be sold or otherwise disposed of in the manner prescribed by law.
- D. Record of disposal. Before disposing of any item or part thereof under [Rule 28.2\(A\) or \(B\)](#), the law enforcement agency shall notify the Prosecutor, who may:
 - (1) Cause it to be photographed, reproduced, or otherwise identified in any manner;
 - (2) Transcribe all serial numbers, identification numbers or other identifying markings;
 - (3) Prepare, or have prepared by an expert, a report identifying the item. Such record shall be certified by the persons preparing it.

- E. Notice of disposal. At least 10 days prior to disposing of an item under this rule, the person or agency shall serve a notice of disposal, together with a copy of any record of disposal made under subsection (c), to any person, and his or her counsel, against whom the item has been or may be used as evidence. Within 10 days thereafter, such person may request a stay of disposal until after trial or request to examine, test or analyze or otherwise make his or her own record of the item. The Prosecutor may impose any reasonable conditions on such examination, testing or analysis, including an appropriate stipulation concerning chain of title.
- F. State of disposal. A Court having jurisdiction of the case may, on request of any party or on its own initiative, stay disposal of any item for a reasonable time.
- G. Use of record of disposal. All records of disposal made under this rule shall be admissible at any later Court proceeding for any purpose for which the item itself would be admissible.

Rule 28.3 Retroactive application

The provisions of this Rule shall apply to all records and evidence in the possession of the Clerk and law enforcement agencies as of the effective date of these Rules regardless of the date on which the records were made or the evidence obtained.

RULE 29 RESTORATION OF CIVIL RIGHTS OR VACATION OF CONVICTION

Rule 29.1 RESERVED

Rule 29.2 RESERVED

Rule 29.3 RESERVED

Rule 29.4 RESERVED

Rule 29.5 RESERVED

VIII. APPEAL

RULE 30 Appeals to Yavapai-Apache Nation Court of Appeals

Appeals to the Yavapai-Apache Nation Court of Appeals are defined and governed by the Nation's Constitution, the Judicial Code, and the Yavapai-Apache Nation Rules of the Appellate Court.

A. Appeal by the Defendant

The Defendant has the right to appeal from the following:

1. A final judgment of conviction and the sentence imposed thereon.
2. From an order made, after judgment and sentencing affecting his substantial rights.

B. Appeal by the Nation

The Nation has no general right to appeal in a criminal action. However, an interlocutory appeal may be taken from a decision or order of the Tribal Court prior to the beginning of trial regarding suppression or exclusion of evidence or requiring the return of seized property, or dismissal of a criminal complaint, and, after the verdict is returned, upon an order granting a new trial, or an order refusing to revoke probation or parole, or an order reducing a valid sentence previously imposed.

- C. A notice of appeal must be filed within ten (10) days of the entry of the order, final judgment and sentence or other appealable order and must be served on all parties except the party filing the appeal.

IX. POWERS OF COURT

RULE 31 CRIMINAL CONTEMPT

Rule 31.1 Definition of criminal contempt

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 Court.

Rule 31.2 Summary procedure

- A. Citation. The Court may summarily find in contempt any person who commits a criminal contempt in the actual presence of the Court, immediately 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 apprise the person of the specific conduct on which the citation is based and give the person a brief opportunity to present evidence or argument relevant to the punishment to be imposed.

No decision concerning the punishment to be imposed shall be made during the course of the proceeding at which the contempt occurs unless prompt punishment is imperative.

Rule 31.3 Disposition of other contempts; notice and hearing

Except as provided by law, a person shall not be found in criminal 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 to release under [Rule 7](#).

Rule 31.4 Jury trial; disqualification of Judge

- A. Jury trial. The Court may not punish a person under the provisions of this rule by imprisonment longer than six (6) months, unless the person has either been found guilty of contempt by a jury or has waived the right to trial by jury.
- B. Disqualification of Judge. If the disobedient 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, unless prompt punishment is imperative, the citation shall be referred to another Judge who shall hold a hearing to determine guilt and impose punishment.

RULE 32 SUBPOENAS

- A. 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 thirty (30) minutes notice, if the person can provide on the return of service a telephone number at which he or she can be reached during regular Court hours on that date.
- B. Multiple subpoenas. A person served with two (2) or more subpoenas requiring his or her simultaneous attendance in different Courts shall honor them in order, according to the date of service, except that a subpoena from the United States District Court supersedes all other subpoenas. The person shall immediately notify the party requesting a subpoena with a lower priority of his or her duty to honor another subpoena.

RULE 33 FORM, CONTENT AND SERVICE OF MOTIONS AND REQUESTS

Rule 33.1 Motions: Form, content and rights of reply

Unless otherwise specified in these rules, all motions shall be typewritten, double-spaced on 8.5 x 11 inch paper and shall contain a short, concise statement of the precise nature of the relief requested, shall be accompanied by a brief memorandum stating the specific factual grounds therefor and indicating the precise legal points, laws, and authorities relied upon, and shall be served to all other parties. Each party may within ten (10) days file and serve a response, and the moving party may within three (3) additional days file and serve a reply, which shall be directed only to matters raised in a response. Responses and replies shall be in the form required for motions. If no response is filed, the motion shall be deemed submitted on the record before the Court.

Rule 33.2 Hearing; oral argument

Upon request of any party, or on its own initiative, the Court may set any motion for hearing. The Court may limit or deny oral argument on any motion.

Rule 33.3 Requests: Form, content, right of reply and hearing

Unless otherwise specified in these rules, all requests shall be in writing, served upon all other parties, and filed with the Court.

Rule 33.4 Waiver of formal requirements

Upon request of a party, or on its own initiative, the Court may waive a requirement specified in this rule, or overlook a formal defect in a motion or request.

Rule 33.5 Service and filing

Unless otherwise specified in these rules, the manner and sufficiency of service is governed by Administrative Orders of the Court. The filing of motions shall be governed by Rule 33.

Rule 33.6 Notice of orders

Immediately upon the entry of any order in a criminal case, other than in open Court, the Clerk shall mail to all parties a copy thereof.

RULE 34 RESERVED

RULE 35 RESERVED

RULE 36 SUSPENSION OF PROSECUTION; DEFERRED PROSECUTION PROGRAM

Rule 36.1 Application for suspension order

- A. Whenever after the filing of a criminal complaint or petition, but prior to a plea of guilty or trial, the Prosecutor determines that it would serve the ends of justice to suspend further prosecution of a Defendant so that he or she could participate in a deferred prosecution program, the Prosecutor, with the consent of the Defendant, may, by written motion, apply to the Court for suspension of prosecution.
- B. The motion of the Prosecutor shall set forth facts showing that the Defendant is a person legally eligible for participation in the deferred prosecution program, and a written consent signed by the Defendant and his or her counsel, if any, agreeing to the participation by the Defendant in the program shall be filed with the motion.
- C. After the filing of a motion by the Prosecutor as provided in this rule, the Court may order that further proceedings be suspended for as long as two (2) years. If the Defendant is in custody, the Court may order him or her released.

Rule 36.2 Resumption of prosecution

- A. If the Prosecutor is not satisfied that the Defendant has fulfilled the conditions of the deferred prosecution program, he or she may file a written notice with the Court that he or she desires that the order suspending prosecution be vacated and that prosecution of the Defendant be resumed. The Prosecutor shall serve a copy of the notice upon the Defendant.
- B. Upon filing of the notice to resume prosecution, the Court shall vacate the order suspending prosecution and order that the prosecution of the Defendant be resumed. A copy of the order shall be mailed by the Court to the Defendant and his or her counsel.
- C. After prosecution is ordered resumed, the Defendant shall be tried within 90 days of the date of the order ordering the resumption of prosecution.

Rule 36.3 Dismissal of prosecution

- A. At the expiration of two (2) years after the entry of an order suspending prosecution, the Court may order the prosecution dismissed without prejudice.
- B. If the Defendant satisfactorily completes the terms of the deferred prosecution program, the Court, upon notice of the Prosecutor, shall order the charges dismissed with prejudice.

X. MISCELLANEOUS

RULE 37 VICTIM'S RIGHTS

A. Definitions.

- 1. Victim. As used in this rule, a "victim" is defined as a person against whom a criminal offense has allegedly been committed, or the spouse, parent, lawful representative, or child of someone killed or incapacitated by the alleged criminal offense, except where the spouse, parent, lawful representative, or child is also the accused. With regard to the rights to be notified and to be heard pursuant to this rule, a person ceases to be a victim upon the acquittal of the Defendant or upon the dismissal of the charges against the Defendant as a final disposition. If a victim is in custody for an offense, the victim's right to be heard pursuant to this rule is satisfied through affording the victim the opportunity to submit a written statement, where legally permissible and in the discretion of the Court. A victim not in custody may exercise his or her right to be heard pursuant to this rule by appearing personally, or where legally permissible and in the discretion of the Court, by submitting a written statement, an audiotape or videotape. The victim's rights of any corporation, partnership, association, or other similar legal entity are only those provided by separate legislation.
 - 2. Criminal proceeding. As used in this rule, a "criminal proceeding" is defined as a trial, hearing, (including hearing before trial), oral argument, or other matter scheduled and held before the trial Court at which the Defendant has the right to be present, or any post-conviction proceeding.
- B. Victims' rights. These Rules shall be construed to preserve and protect a victim's rights to justice and due process. Notwithstanding the provisions of any other Rule in these Rules of Criminal Procedure, a victim shall have and be entitled to assert each of the following rights:

1. The right to be treated with fairness, respect and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.
2. The right to be provided with written notice regarding those rights available to the victim under this rule and under any other provision of law.
3. Upon request, the right to be given reasonable notice of the date, time and place of any criminal proceeding.
4. The right to be present at all criminal proceedings.
5. The right to be notified of any escape of the Defendant.
6. Upon request, the right to be informed of any release or proposed release of the Defendant, whether that release be before expiration of the sentence or by expiration of the sentence, and whether it be permanent or temporary in nature.
7. Upon request, the right to confer with the prosecution, prior to trial when applicable, in connection with any decision involving the preconviction release of the Defendant, a plea bargain, a decision not to proceed with a criminal prosecution, dismissal of charges, plea or sentence negotiation, a pretrial diversion program, or other disposition prior to trial; the rights to be heard at any such proceeding and at sentencing.
8. The right to be accompanied at any interview, deposition, or judicial proceeding by a parent or other relative, except persons whose testimony is required in the case. If the Court finds, under this subsection or subsection 9 below, that a party's claim that a person is a prospective witness is not made in good faith, it may impose any sanction it finds just, including holding counsel in contempt.
9. The right to name an appropriate support person, including a victim's caseworker, to accompany the victim at any interview, deposition, or Court proceeding, except where such support person's testimony is required in the case.
10. The right to require the Prosecutor to withhold, during discovery and other proceedings, the home address and telephone number of the victim, the address and telephone number of the victim's place of employment, and the name of the victim's employer, providing, however, that for good cause shown by the Defendant, the Court

may order that such information be disclosed to defense counsel and may impose such further restrictions as are appropriate, including a provision that the information shall not be disclosed by counsel to any person other than counsel's staff and designated investigator and shall not be conveyed to the Defendant.

11. The right to refuse an interview, deposition, or other discovery request by the Defendant, the Defendant's attorney, or other person acting on behalf of the Defendant. After charges are filed, defense initiated requests to interview the victim shall be communicated to the victim through the Prosecutor. The victim's response to such requests shall also be communicated through the Prosecutor. If there is any comment or evidence at trial regarding the victim's refusal to be interviewed, the Court shall instruct the jury that the victim has the right to refuse an interview. For purposes of a pretrial interview, a peace officer shall not be considered a victim if the act that would have made him or her a victim occurs while the peace officer is acting in the scope of his or her official duties.
12. At any interview or deposition to be conducted by defense counsel, the right to condition the interview or deposition on any of the following:
 - (i) Specification of a reasonable date, time, duration, and location of the interview or deposition, including a requirement that the interview or deposition be held at the victim's home, at the Prosecutor's office, or in an appropriate location in the Courthouse.
 - (ii) The right to terminate the interview or deposition if it is not conducted in a dignified and professional matter.
13. The right to a copy of any presentence report provided the Defendant except those parts excised by the Court or made confidential by the law.
14. The right to be informed of the disposition of the case.
15. The right to a speedy trial or disposition and prompt and final conclusion of the case after conviction and sentence.
16. The right to be informed of a victim's right to restitution upon conviction of the Defendant, of the items of loss included therein, and of the procedures for invoking the right.

C. Assistance and representation.

1. The victim shall also have the right to the assistance of the Prosecutor in the assertion of the rights enumerated in this rule or otherwise provided for by law. The Prosecutor shall have the responsibility to inform the victim, as defined by these rules, of the rights provided by these Rules and by law, and to provide the victim with notices and information which the victim is entitled by these Rules and by law to receive from the Prosecutor.
 2. The Prosecutor shall have standing in any judicial proceeding, upon the victim's request, to assert any of the rights to which the victim is entitled by this rule or by any other provision of law.
 3. In any event of any conflict of interest between the Nation or any other prosecutorial entity and the wishes of the victim, the Prosecutor shall have the responsibility to inform the victim that the victim may obtain their own counsel at the victim's own expense to represent the victim's interests.
 4. In asserting any of the rights enumerated in this rule or provided for in any other provision of the law, the victim shall also have the right to engage and be represented by personal counsel of his or her choice.
- D. Victims duty to implement rights. Any victim desiring to claim the notification rights and privileges provided by this rule must provide his or her full name, address and telephone number to the entity prosecuting the case and to any other entity from which notice is requested by the victim. If the victim is a corporation, partnership, association or other legal entity and has requested notice of the hearings, that legal entity shall promptly designate a representative by giving notice thereof, including such representative's address and telephone number, to the Prosecutor and to any other entity from which notice is requested by the victim. Upon receipt of such notice, the Prosecutor shall notify the Defendant and the Court thereof. Thereafter, only such a designated representative shall be entitled to assert a claim to victims' rights on behalf of that legal entity. Any change in designation must be provided in writing to the Prosecutor and to any other entity from which notice is requested by the victim.
- E. Waiver. The rights and privileges enumerated in this rule may be waived by a victim. Failure to keep the address and telephone number current or to designate such representative of a legal entity shall be considered as a waiver of notification rights under this rule.
- F. Court enforcement of victim notice requirements. At the commencement of any proceeding which takes place more than seven (7) days after the

filing of charges by the Prosecutor and at which the victim has a right to be heard, the Court shall inquire of the Prosecutor or otherwise ascertain whether the victim has requested notice and been notified of the proceeding. If the victim has not been notified as requested, the Court should not proceed unless public policy, the specific provisions of a law, or the interests of due process otherwise require. In the absence of such considerations the Court shall have discretion to reconsider any ruling made at a proceeding of which the victim did not receive notice as requested.

- G. Appointment of victim's representative. Upon request, the Court shall appoint a representative for a minor victim or a representative for an incapacitated victim. Notice of appointment of such representative shall be given by the Court to the parties.