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TITLE V – TRIBAL JUDICIARY

ARTICLE 1 – STRUCTURE AND ADMINISTRATION

Chapter 1 – Court of Appeals

Sec. 5-1-1 Jurisdiction

A. The Court of Appeals shall have subject matter jurisdiction to hear and decide civil and criminal cases appealed from the Pueblo Contemporary Court as long as the appeal is not prohibited by Pueblo law, code, resolution or ordinance (collectively referred to hereinafter as “Santa Ana Law”).

B. Appeals from the Pueblo Traditional Tribal Court, as defined pursuant to Pueblo law, shall continue to be heard through the traditional court of appeals. The traditional appellate procedure may, but is not required to, utilize any aspect of these rules.

Enacted by Resolution Number 07-R-16, adopted May 24, 2007.

Sec. 5-1-2 Composition of the Court of Appeals

A. The Court of Appeals shall be composed of five (5) member panel. The members of the panel shall be appointed by the Tribal Council. The Tribal Council shall appoint panel members as soon as practical after an appeal is filed.

B. Any Tribal Council member is eligible to serve on the Court of Appeals, unless the Tribal Council member:

1. is related by blood or marriage in the first or second degree to any of the parties in the appeal (parent, grandparent, child, sibling, first cousin, aunt or uncle);
2. has a probable or vested financial interest in any outcome of the case; or
3. is employed by a tribal program or private employer that is a party to the appeal or that has an interest in any outcome of the case. Employees of Santa Ana Pueblo and its enterprises are not excluded unless the appeal concerns the particular entity or department for whom the employee works.

C. In its discretion, the Tribal Council may choose to hear the appeal through the appellate panel or as the Tribal Council sitting as a whole, or by designating the Southwest Intertribal Court of Appeals (“SWITCA”) to act as the Court of Appeals and referring the appeal to SWITCA. Where the Tribal Council designates SWITCA to act as the Court of Appeals, the SWITCA Rules of Appellate Procedure may be used to supplement the Rules of the Pueblo of Santa Ana Court of Appeals, provided that in the event of any conflict between the two, the Rules of the Pueblo of Santa Ana Court of Appeals shall apply.

Enacted by Resolution Number 07-R-16, adopted May 24, 2007; amended by Res. No. 2022-R-14, adopted June 7, 2022.

Sec. 5-1-3 Function of the Court of Appeals

A. Upon review of the briefs as prescribed in these Rules, the Court of Appeals can do the following:

1. affirm the decision, judgment or order of the Contemporary Court;
2. overturn the decision, judgment or order of the Contemporary Court;
3. vacate the decision of the Contemporary Court, in whole or in part, and remand the case to the Contemporary Court with specific instructions; or
4. vacate the decision of the Contemporary Court, in whole or in part, and require the Contemporary Court to hold a new hearing.

B. The Court of Appeals shall not function as a trial court to rehear a case on appeal, nor will the Court of Appeals hear new factual evidence or decide issues of fact.

Enacted by Resolution Number 07-R-16, adopted May 24, 2007.

Sec. 5-1-4 How and When to Appeal

A. A party wishing to challenge a final decision of the Contemporary Court must file a notice of appeal with the Contemporary Court Clerk within thirty (30) days after the final decision, judgment or order of the Contemporary Court. It is recommended that the appellant use the forms provided by the Contemporary Court Clerk.

B. The notice of appeal must:

1. name the party or parties filing the appeal by naming each one in the caption or body of the notice;
2. identify the other party or parties in the Contemporary Court case;
3. identify the judgment, order or part thereof being appealed;
4. state the legal reasons or basis for claiming that the decision of the Contemporary Court being appealed from was wrong; and
5. be signed by the party or parties filing the appeal or by counsel representing such party or parties.

C. If the appeal is mistakenly filed in the Governor's Office, the Governor shall send the notice of appeal to the Contemporary Court Clerk within three (3) business days after its receipt and it shall be deemed filed as of the date it was received in the Governor's Office.

D. The appellant must serve the notice of appeal on all other parties on the same date the notice is filed.

E. An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party when the intent to appeal is otherwise clear from the notice.

Enacted by Resolution Number 07-R-16, adopted May 24, 2007.

Sec. 5-1-5 Duty of the Contemporary Court Clerk to Inform Governor

The Contemporary Court Clerk must promptly send a copy of the notice of appeal and of the docket entries to the Governor. The Contemporary Court Clerk must note, on each copy, the date when the notice of appeal was filed.

Enacted by Resolution Number 07-R-16, adopted May 24, 2007.

ARTICLE 2 – JUDICIAL POWER [*Reserved*]

ARTICLE 3 – JUDICIAL RECORDS [*Reserved*]

ARTICLE 4 – APPOINTMENT AND REMOVAL OF JUDGES [*Reserved*]

ARTICLE 5 – CODE OF JUDICIAL CONDUCT; DISCIPLINE

Chapter 1 – Code of Judicial Conduct

Sec. 5-5-1 Applicability

Any person, whether or not a lawyer, who is an officer of the Contemporary Court and who performs judicial functions is a judge within the meaning of this Code, regardless of whether the person is employed by the Pueblo or is an independent contractor. All Contemporary Court judges shall comply with this Code.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 5-5-2 Definitions

The following definitions apply to this Title:

A. “Appropriate authority” means the authority with responsibility for initiation of disciplinary process with respect to the violation to be reported.

B. “Contemporary Court” means the Pueblo of Santa Ana Contemporary Court, including but not limited to the Children’s Court, the Healing to Wellness Court, and any other court established by the Pueblo, except for the Traditional Court.

C. “Court personnel” means Contemporary Court employees and does not include the lawyers in a proceeding before a judge.

D. “De minimis interest” means an insignificant interest that could not raise reasonable question as to a judge’s impartiality.

E. “Economic interest: means ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in, the affairs of a party, except that:

1. ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

2. service by a judge as an officer, director, advisor or other active participant in an education, religious, charitable, fraternal or civic organization or service by a judge’s spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

3. a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

4. ownership of government securities Is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

F. “Fiduciary” means a person, such as an executor, administrator, trustee, and guardian, who holds a legal or ethical relationship of trust with one or more other parties.

G. “Impartiality” or “impartial” means absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.

H. “Judge pro tempore” means a judge appointed to the Contemporary Court who is sitting temporarily for another judge or who has been appointed to serve as a substitute judge for a regular judge.

I. “Knowingly”, “knowledge”, “known” or “knows” means actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.

J. “Law” means Contemporary Court rules, Pueblo of Santa Ana Resolutions, Ordinances, and Codes, and decisional law binding the Contemporary Court.

K. “Member of the judge’s family” means a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship.

L. “Member of the judge’s family residing in the judge’s household” means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge’s family, who resides in the judge’s household.

M. “Nonpublic information” means information that, by law, is not available to the public. Nonpublic information may include but is not limited to information that is sealed by law or court order, impounded or communicated in camera, and contained in presentencing reports, dependency cases, or psychiatric reports.

N. “Officer of the court” means any person who has an obligation to promote justice and uphold the law, including judges, clerks, court personnel, police officers, and attorneys.

O. “Part-time judge” means a judge appointed to the Contemporary Court who works fewer than thirty hours per week in the position.

P. “Political organization” means a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office.

Q. “Pueblo” means the Pueblo of Santa Ana.

R. “Require” means, when used in the context of a rule prescribing a judge to “require” certain conduct of others, that a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge’s direction and control.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 5-5-3 Integrity and Independence of the Judiciary

A. A judge shall uphold the integrity and independence of the judiciary.

B. An independent and honorable judiciary is indispensable to justice in our community. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

C. A judge shall not participate in legislative or executive decision making.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 5-5-4 Impropriety and the Appearance of Impropriety

A. A judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities.

B. A judge shall respect and comply with the law and Pueblo custom and tradition and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

C. A judge shall not allow his/her family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

D. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, sexual orientation, religion or national origin.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 5-5-5 Impartiality and Diligence

A. A judge shall perform the duties of judicial office impartially and diligently.

B. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law and Pueblo custom and tradition. In the performance of these duties, the standards the following sections shall apply.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 5-5-6 Adjudicative Responsibilities.

A. A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

B. A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism and should resist influences on the Contemporary Court by Pueblo officials, governmental officials, or any other person attempting to improperly influence the Court.

C. A judge shall require order and decorum in proceedings before the judge. The judge should not interfere in the proceedings except where necessary to protect the rights of the parties. A judge should not take an advocate's role. Similarly, a judge should rely on only those procedures prescribed by applicable laws and Pueblo customs and tradition.

D. A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

E. A judge shall perform judicial duties without bias or prejudice and shall require staff, court officials and others subject to the judge's direction and control to do so as well.

F. A judge shall require lawyers in proceedings before the judge to refrain from displaying improper bias or prejudice by words or conduct.

G. A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

1. where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided: a) the judge reasonably believes that no party will gain procedural or tactical advantage as a result of the ex parte communication, and b) the judge promptly notifies all other parties or their advocates of the substance of the ex parte communication and allows them an opportunity to respond;

2. a judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice and affords the parties reasonable opportunity to respond;

3. a judge may consult with other judges or with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities;

4. a judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge;

5. a judge may initiate or consider any ex parte communications when expressly authorized by law to do so;

6. a judge may initiate, permit, or consider ex parte communications expressly authorized by law or rule, such as when serving on therapeutic or problem-solving courts, mental health courts, healing to wellness courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers; and others.

H. a judge shall dispose of all judicial matters promptly, efficiently and fairly.

I. A judge shall not, while a proceeding is pending or impending in the Contemporary Court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any non-public comment that might substantially interfere with a fair trial, hearing, or decision. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining from public information the procedures of the court.

J. A judge shall not, with respect to cases, controversies or issues that are likely to come before the Contemporary Court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

K. A judge shall not commend or criticize jurors for their verdict, but may express appreciation to jurors for their service to the judicial system and the community.

L. A judge should neither engage in, nor tolerate, workplace conduct that is reasonably interpreted as harassment, abusive behavior, or retaliation for reporting such conduct. The duty to refrain from retaliation includes retaliation against former as well as current judiciary personnel. Harassment encompasses a range of conduct having no legitimate role in the workplace, including harassment that constitutes discrimination on impermissible grounds and other abusive, oppressive, or inappropriate conduct directed at judicial employees or others.

M. A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 5-5-7 Administrative Responsibilities

A. A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration and should cooperate with other judges and court officials in the administration of court business.

B. A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

C. A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 5-5-8 Disciplinary Responsibilities

A. A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.

B. A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the rules of professional conduct should take appropriate action. A judge having knowledge that a lawyer has committed a trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.

C. Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by this Section are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 5-5-9 Disqualification or Recusal

A. A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

1. The judge has a personal bias or prejudice concerning a party or party's lawyer, or has personal knowledge of disputed evidentiary facts concerning the proceeding;

2. The judge served as lawyer, advocate, or personal representative in the matter before the Contemporary Court or another court or a person with whom the judge has been associated in a professional capacity served as a lawyer, advocate or personal representative concerning the matter;

3. The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding;

4. The judge or the judge's spouse or a person within the first, second, or third degree of relationship to either of them, or the spouse of such a person:

a. is a party to the proceeding, or an officer, director or trustee of a party;

b. Is acting as a lawyer in the proceeding;

c. Is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding; or

d. Is to the judge's knowledge, likely to be a material witness in the proceeding;

5. The Judge has made a public statement that commits, or appears to commit, the judge with respect to:

a. An issue in the proceeding; or

b. The controversy in the proceeding.

B. A judge shall keep informed about the judge's personal fiduciary economic interests and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-5-10 Waiver of Disqualification

A judge disqualified by the terms of Section 5-5-9 shall disclose on the record the basis of the judge's disqualification and, notwithstanding Section 5-5-6(A), may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the

judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-5-11 Extra-Judicial Activities

A judge shall conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-5-12 Extra-judicial Activities in General

A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- A. cast reasonable doubt on the judge's capacity to act impartially as a judge;
- B. demean the judicial office; or
- C. interfere with the proper performance of judicial duties.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-5-13 Governmental, Civic, or Charitable Activities

Subject to the requirements of this Code, a judge may:

- A. Speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice, and nonlegal subjects; and
- B. Appear before the Tribal Council and confer with the Governor and/or the Lt. Governor, on general matters concerning Pueblo law, the Contemporary Court, and the administration of justice.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-5-14 Financial Activities

- A. A judge shall not engage in financial and business dealings that:
 - 1. May reasonably be perceived to exploit the judge's judicial position, or
 - 2. Involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the Contemporary Court.
- B. A judge pro tempore or part-time judge may accept other employment and participate in the operation of a business, legal or otherwise in nature, subject to the following:

1. They shall not practice law either as a lawyer or an advocate in the Contemporary Court or any appellate court having jurisdiction over appeals from the Contemporary Court; and

2. They shall not act as a lawyer or advocate in any proceeding in which they have judicially served, or in any related proceeding.

C. A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activity.

D. A judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except for:

1. a nominal gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

2. a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

3. ordinary social hospitality;

4. a gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

5. a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification of the judge, provided that the receipt of such gift, bequest, favor, or loan shall be disclosed to the parties if the judge asks the parties to waive the conflict pursuant to Section 5-4A-5(G);

6. a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

7. a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

8. any other gift, bequest, favor or loan, but only if the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge.

Sec. 5-5-15 Fiduciary Activities

A. A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

B. A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the Contemporary Court.

C. The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-5-16 Service as Arbitrator or Mediator

A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity in cases pending or impending before the Contemporary Court.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-5-17 Practice of Law

A judge shall not practice law either as a lawyer or an advocate in the Contemporary Court or any appellate court having jurisdiction over appeals from the Contemporary Court.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-5-18 Political Activity

A judge shall not engage in any Pueblo political activity except on behalf of measures to improve Pueblo law, the Contemporary Court system, or the administration of justice.

Chapter 2 - Discipline and Removal of Judges

Sec. 5-5-19 Purpose

The purpose of this Chapter is to provide an effective and fair process to investigate allegations against a judge of willful misconduct in office, persistent failure or inability to perform judicial duties, alcohol or drug abuse, or disability that seriously interferes with the performance of the judge's duties, and/or violations of the Code of Judicial Conduct.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-5-20 Applicability

A. This Chapter applies to all judges who are subject to the Code of Judicial Conduct.

B. The disciplinary procedures contained in this Chapter shall not be used to alter or attempt to alter in any way an order, judgment, or ruling issued by a judge, and complaints made or investigations conducted pursuant to this Chapter shall have no effect on any order, judgment, or ruling issued by a judge.

C. A complaint or formal charge against a judge under this Chapter that seeks to alter an order, judgment, or ruling issued by a judge shall be dismissed.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-5-21 Authority of Lt. Governor

A. The Lt. Governor of the Pueblo shall have the sole authority to receive complaints, conduct investigations, conduct informal conferences and formal hearings, resolve complaints by stipulation, subpoena documents and witnesses, take testimony under oath, impose discipline on a judge as set forth in this Chapter, recommend removal of a judge to the Tribal Council, and take all other actions authorized under this Chapter.

B. Notwithstanding subsection A of this Section, if the complaint has been made by the Lt. Governor or a member of his family, then the Governor shall appoint a person familiar with the Code of Judicial Conduct (who shall not be a current member of the Tribal Council) to perform the functions of the Lt. Governor under this Chapter, and that person shall have the authority delegated to the Lt. Governor by this Chapter.

C. In the event that a complaint arises out of a case that has been appealed, the Lt. Governor shall not participate in any way in the appeal.

D. In handling a complaint pursuant to this Chapter, the Lt. Governor (and anyone acting in his stead) may consult with the Pueblo's attorney, unless the attorney is in any way involved in the complaint, in which case, the Lt. Governor may consult with any other attorney approved by the Governor.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-5-22 Filing of a Complaint

A. A complaint against a judge shall be made in writing and signed by the person making the complaint (the "complainant"). The complaint shall be delivered to the Lt. Governor in person or by mail or email.

B. The Lt. Governor shall assign a unique alphanumeric identifier to each complaint received and shall write or stamp that identifier and the date the complaint was received on the first page of each complaint.

C. The Lt. Governor shall promptly acknowledge, in writing to the complainant, receipt of each complaint.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-5-23 Screening

A. The Lt. Governor shall review the complaint to determine whether the complaint raises only issues for appeal, asserts that the judge made a legal error, or attempts to alter any order, judgment, or ruling issued by the judge. If the complaint does any of the foregoing, then the Lt. Governor shall summarily dismiss the complaint. If the facts asserted in the complaint, even if true, would not subject the judge to discipline, the Lt. Governor shall summarily dismiss a complaint. For all complaints that are summarily dismissed, the Lt. Governor shall notify the complainant of the dismissal in writing and shall inform the judge in writing of the nature of the complaint and its summary dismissal.

B. If the complaint raises allegations that, if true, would be willful misconduct in office or persistent failure or inability by the judge to perform the judge's duties, or would be evidence of alcohol or drug abuse or a disability that seriously interferes with the performance of the judge's duties, then the Lt. Governor shall conduct an investigation.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-5-24 Investigation

A. Within ten (10) days after the Lt. Governor determines that an investigation is needed, he shall provide the judge a written notice of investigation that sets forth specific statement of the allegations being investigated and, as applicable, the section(s) of the Code of Judicial Conduct allegedly violated.

B. The judge shall respond, completely and truthfully, in writing within ten (10) days after receiving the notice of investigation.

C. If requested in the notice of investigation, the judge shall provide copies of documents that are material to the complaint. Information that is by law either protected from disclosure or confidential may be redacted from documents. If the Lt. Governor determines such information is material to the investigation, he shall notify the judge. Such confidential information shall be provided to the Lt. Governor along with a notice of the applicable law(s) protecting the information and the Lt. Governor shall maintain the confidentiality of that information and shall use the protected or confidential information only in connection with his duties under this Chapter.

D. The Lt. Governor may interview any person likely to have information relevant to the complaint, including but not limited the complainant and court staff, and may issue subpoenas to obtain testimony or evidence.

Sec. 5-5-25 Disposition after Investigation

Upon conclusion of an investigation, the Lt. Governor may take any of the following actions:

A. If the Lt. Governor finds that the allegations in the complaint against the judge are without merit, the Lt. Governor shall dismiss the complaint, with written notice to the complainant.

B. If the Lt. Governor finds the allegations in the complaint against the judge are well founded but not of sufficient gravity to recommend the discipline or removal of the judge, the Lt. Governor may summon the judge and advise the judge of the findings. This shall be documented in writing in the Lt. Governor's file, and the Governor shall notify the complainant in writing of the outcome. The matter shall be closed but may nevertheless be considered with any other future complaints against the judge.

C. If the Lt. Governor finds the allegations in the complaint against the judge to be well founded and of sufficient gravity to constitute the basis to recommend to the Tribal Council to discipline or remove the judge, the Lt. Governor shall either attempt to resolve the matter by stipulation of the judge pursuant to Sec. 5-5-30, or proceed with formal charges pursuant to Sec. 5-5-26.

Sec. 5-5-26 Formal Charges

A. Within ten (10) days after the Lt. Governor determines to proceed with formal charges, he shall provide the judge and the Tribal Council a written notice of formal charges that sets forth the basis or bases for the formal charges. Within ten (10) days after receiving a notice of formal charges, the judge shall file a written response with the Tribal Council.

B. If the formal charges raise only issues for appeal or assert that the judge made a legal error, then the Council shall summarily dismiss the complaint. If the facts asserted in the formal charges, even if true, would not subject the judge to discipline, the Tribal Council shall summarily dismiss the formal charges. For any summary dismissal by the Tribal Council, the Lt. Governor shall notify the complainant and the judge in writing of the Tribal Council's dismissal.

C. If the Tribal Council does not summarily dismiss the formal charges, the Tribal Council shall promptly schedule the matter for a hearing and shall provide written notice of the date and time of the hearing to the Lt. Governor and to the judge.

D. The Lt. Governor shall provide the Tribal Council and the judge copies of all relevant documents obtained during the investigation, including but not limited to the judge's written response to the notice of investigation, and the names of any witnesses to be called during the formal proceeding. The Lt. Governor shall advise the Tribal Council whether any information provided is by law either protected from disclosure or is confidential, and the Tribal

Council shall maintain the confidentiality of that information and shall use the protected or confidential information only in connection with its duties under this Chapter.

E. The judge shall have the right and reasonable opportunity at the hearing to defend against the charges by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses.

F. The Lt. Governor shall present the case in support of discipline or removal of the judge. The Lt. Governor may be represented by counsel and shall have the right to examine and cross-examine witnesses.

G. All witnesses shall be placed under oath.

H. The Tribal Council may determine that the formal charges against the judge have been proven only if the evidence of the formal charges is clear and convincing.

I. At the close of the hearing, the Tribal Council shall deliberate. The affirmative vote of a simple majority of Tribal Council members present at the hearing is required to find that the formal charges against the judge have been proven. In all cases where the formal charges have not been proven, the Tribal Council shall dismiss the formal charges and the Lt. Governor shall provide notice to the complainant of the Tribal Council's dismissal.

J. If the Tribal Council determines that the formal charges have been proven by clear and convincing evidence, it shall determine whether to impose discipline or remove the judge from office, considering the factors set forth in Sec. 5-5-27.

K. The Tribal Council shall issue its decision and any discipline or order of removal of a judge in writing and shall deliver a copy to the judge and the Lt. Governor.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-5-27 Factors to Consider before Imposing Discipline or Removal

The Tribal Council shall consider the following non-exclusive factors among other information before disciplining or removing a judge under this Chapter.

A. The extent of the misconduct:

1. whether it is an isolated incident or a pattern of misconduct; and
2. whether there are multiple offenses;

B. the nature of the misconduct:

1. whether the misconduct occurred during performance of the judge's official duties or in the judge's private life;
2. whether the misconduct occurred in or out of the courtroom, the judge's chambers, or on court property;

3. whether the judge exploited the judicial position to satisfy personal desires; and
 4. whether the misconduct involved criminal acts or acts of dishonesty;
- C. the judge's conduct in regard to the disciplinary investigation:
1. whether the judge expressed remorse for the misconduct and made an effort to change the conduct;
 2. whether the judge ceased the misconduct; and
 3. whether the judge cooperated with the Lt. Governor, including whether the judge was truthful in communications with the Lt. Governor;
- D. the judge's record of prior discipline and, if relevant, non-disciplinary disposition of prior allegations or formal charges;
- E. the judge's reputation;
- F. the effect the misconduct has had, or will likely have, on the integrity of the judiciary and community respect therefor; and
- G. such other factors as are relevant to the matter.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-5-28 Discipline or Removal

The Tribal Council may discipline a judge by referring the judge to appropriate training, professional counseling, mentorship, or other assistance for the judge, or may remove the judge from office. The decision of the Tribal Council shall be final and shall not be subject to appeal in any forum.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-5-29 Temporary Suspension; Mental and Physical Examination

A. While an investigation or formal charges are pending, if (1) there is sufficient evidence to indicate willful misconduct in office or persistent failure or inability by the judge to perform the judge's duties, or alcohol or drug abuse or a disability that seriously interferes with the performance of the judge's duties, and (2) the continued service of the judge is causing immediate and substantial harm to the community and is eroding the community's confidence in judicial proceedings, the Lt. Governor may suspend a judge with pay pending resolution of the investigation or formal charges.

B. When a complaint alleges or where an investigation reveals that a judge is or may be unable to perform judicial duties because of alcohol or drug abuse or physical or psychological disability, the Lt. Governor may direct the judge to undergo a physical and/or

psychological examination. The examination report shall be furnished to the Lt. Governor and the judge

C. All medical, mental health, and alcohol and drug testing records obtained by the Lt. Governor pursuant to this Section shall be kept confidential. The Lt. Governor shall notify all persons who are provided access to these records in accordance with this Chapter that these records shall be protected by the requirements of the Health Insurance Portability and Accountability Act, Public Law No. 104-191, 110 Stat. 2936 (“HIPAA”), and shall require all persons who have access to these records to keep them confidential pursuant to HIPAA.

D. Copies of all records obtained by the Lt. Governor under this Section shall be provided to the judge.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-5-30 Resolution by Stipulation

After issuance of a notice of investigation or a notice of formal charges, a matter may be resolved by stipulation. A stipulated resolution is a voluntary, written, binding agreement between the judge and the Lt. Governor that results from an informal conference between the judge and the Lt. Governor. Either party may request an informal conference. During an informal conference, the Lt. Governor and the judge shall discuss the allegations of a complaint and possible solutions. The judge may be represented by counsel at an informal conference, but no witnesses will be permitted to testify. If the judge and the Lt. Governor do not resolve the matter at an informal conference, the investigation or formal charges proceedings shall go forward.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-5-31 Record Retention; Use

A. All records related to a complaint made against a judge under this Chapter shall be maintained in the Lt. Governor’s confidential files and shall be subject to the Pueblo’s general records retention and destruction policy. A closed file may only be used in accordance with this Section.

B. A closed file may be used as evidence in a subsequent formal charges proceeding if the complaint in the closed file resulted in discipline of the judge, or if the alleged conduct at issue in the closed file is relevant in the present proceeding to show: (1) that the judge had notice that the conduct alleged in the present matter could result in discipline or removal; and/or (2) a pattern or practice of conduct by the judge.

C. Lt. Governor may, upon the request of the Tribal Council in connection with the consideration of the appointment or reappointment of a person who is or has been a Court judge, provide the Tribal Council information from closed files regarding complaints made against that person and the disposition of those complaints. Such information shall be maintained confidentially, as required under this Chapter.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

ARTICLE 6 – ADMISSION OF ATTORNEYS TO PRACTICE [*Reserved*]

ARTICLE 7 – ARBITRATION

Sec. 5-7-1 Scope of Article

This Article applies to any written contract, agreement or other instrument entered into by the Pueblo or any of its subdivisions, instrumentalities or affiliates, or an enterprise or corporation wholly owned by the Pueblo, or by any other person in a transaction that is subject to the jurisdiction of the Pueblo, in which the parties thereto agree to settle by arbitration any claim, dispute or controversy arising out of such contract, agreement or other instrument. Any prior legislation or other Tribal laws which are inconsistent with the purpose and procedures established by the Article are hereby repealed to the extent of any such inconsistency.

Enacted by Ordinance Number 01-O-01, adopted December 12, 2001.

Sec. 5-7-2 Agreements to Arbitrate are Enforceable

An agreement in any written contract, agreement, or other instrument, or in a separate writing executed by the parties to any written contract, agreement or other instrument, to settle by arbitration any claim, dispute or controversy thereafter arising out of such contract, agreement or other instrument, or any other transaction contemplated thereunder, or a written agreement between two or more persons to submit to arbitration any claim, dispute or controversy existing between them at the time of the agreement, shall be valid, irrevocable and enforceable.

Enacted by Ordinance Number 01-O-01, adopted December 12, 2001.

Sec. 5-7-3 Law to be Applied

A. In any contract, agreement or instrument described in Sec. 5-7-2 of this Article, the parties may agree upon the jurisdiction whose substantive law shall govern the interpretation and enforcement of the contract, agreement, instrument or claim, dispute or controversy. Such choice of law shall be valid and enforceable, and not subject to revocation by one party without the consent of the other party or parties thereto, provided that the subject matter of the contract, agreement, instrument or claim, dispute or controversy, or at least one of the parties thereto, shall have some contact with the jurisdiction so selected.

B. In any proceeding under this Article, whenever the contract, agreement or other instrument sets forth a choice of law provision, the arbitrators and/or Tribal Court shall apply the procedural rules of the Tribal Court, as applicable, and the substantive law of the jurisdiction selected in such choice of law provision; provided that no procedural rule of the Tribal Court shall bar, delay or impair any action, proceeding or remedy where such action, proceeding or remedy would not be barred, delayed or impaired by the procedural ruled of the courts of the jurisdiction whose substantive law applies.

C. In any proceeding under this Article, whenever the contract, agreement or other instrument does not set forth a choice of law provision, the arbitrators and/or Tribal Court shall apply the substantive law of the Pueblo, including any applicable choice of law principles.

Enacted by Ordinance Number 01-O-01, adopted December 12, 2001.

Sec. 5-7-4 Appointment of Arbitrators; Majority Action by Arbitrators

A. If the arbitration agreement provides a method of appointment of arbitrators, that method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when the arbitrator appointed fails or is unable to act and his successor has not been duly appointed, the Tribal Court on application of a party shall appoint, in the discretion of the Tribal Court, one or more arbitrators. An arbitrator so appointed shall have all the powers of one specifically named in the agreement.

B. The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement.

Enacted by Ordinance Number 01-O-01, adopted December 12, 2001.

Sec. 5-7-5 Hearing

Unless otherwise provided by the agreement:

A. the arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail or certified mail, return receipt requested, not less than five days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and on request of a party and for good cause or upon their motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of the party duly notified to appear. In the event that the agreement of the parties does not fix a date by which an award shall be made, the Tribal Court upon application of a party, may direct the arbitrators to proceed with the hearing and determination of the controversy by a date determined by the Tribal Court;

B. the parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing;

C. the hearing shall be conducted by all the arbitrators, but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

Enacted by Ordinance Number 01-O-01, adopted December 12, 2001.

Sec. 5-7-6 Representation by Attorney

A party has the right to be represented by an attorney at any arbitration proceeding or hearing. A waiver thereof prior to the proceeding or hearing is ineffective.

Enacted by Ordinance Number 01-O-01, adopted December 12, 2001.

Sec. 5-7-7 Witnesses; Subpoenas; Depositions

A. The arbitrators may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served and, upon application to the Tribal Court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

B. On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

C. All provisions of the applicable law compelling a person under subpoena to testify are applicable.

Enacted by Ordinance Number 01-O-01, adopted December 12, 2001.

Sec. 5-7-8 Stay of Proceedings and Order to Proceed with Arbitration

A. If any action for legal or equitable relief or other proceeding is brought by any party to any contract, agreement or instrument described in Sec. 5-7-2 of this Article, the Tribal Court shall not review the merits of the pending action or proceeding but shall stay the action or proceeding until an arbitration has been had in compliance with the agreement.

B. A party to any contract, agreement or instrument described in Sec. 5-7-2 of this Article claiming the neglect or refusal of another party thereto to proceed with an arbitration thereunder may make application to the Tribal Court for an order directing the parties to proceed with the arbitration in compliance with their agreement. In such event, the Tribal Court shall order the parties to arbitration in accordance with the provision of the contract, agreement or instrument and the question of whether an obligation to arbitrate the dispute at issue exists shall be decided by the arbitrator(s).

Enacted by Ordinance Number 01-O-01, adopted December 12, 2001.

Sec. 5-7-9 Advice of the Court

At any time during an arbitration, upon request of all the parties to the arbitration, the arbitrator(s) may make application to the Tribal Court for advice on any question of tribal or state law arising in the course of the arbitration so long as such parties agree in writing that the

advice of the Court shall be final as to the question presented and that it shall bind the arbitrator(s) in rendering any award.

Enacted by Ordinance Number 01-O-01, adopted December 12, 2001.

Sec. 5-7-10 Time Within Which Award Shall be Rendered

A. If the time within which an award is rendered has not been fixed in the arbitration agreement, the arbitrator(s) shall render the award within thirty days from the date the arbitration has been completed. The parties may expressly agree to extend the time in which the award may be made by an extension or ratification thereof in writing.

B. An arbitration award shall be in writing and signed by the arbitrator(s). The arbitrator(s) shall provide written notice of the award to each party by certified or registered mail, return receipt requested.

Enacted by Ordinance Number 01-O-01, adopted December 12, 2001.

Sec. 5-7-11 Application for Order Confirming Award; Record to be Filed with Clerk of Court; Effect and Enforcement of Judgment

A. At any time within one year after an arbitration award has been rendered and the parties thereto notified thereof, any party to the arbitration may make application to the Tribal Court for an order confirming the award.

B. Any party applying for an order confirming an arbitration award shall, at the time the order is filed with the Clerk of the Tribal Court for entry of judgment thereon, file the following additional papers with the Clerk: (1) the agreement to arbitrate; (2) the selection or appointment, if any, of the arbitrator(s); (3) any written agreement requiring the reference of any question as provided in Sec. 5-7-9; (4) each written extension of the time, if any, within which to make the award; (5) each notice and other paper used upon an application to confirm; and (6) a copy of each order of the Tribal Court upon such an application.

C. Upon application of a party, the Tribal Court shall confirm an award, unless within the time limits hereafter imposed grounds are urged for vacating, modifying or correction an award, in which case the Tribal Court shall proceed as provided in Sec. 5-7-12.

D. Except as provided in Sec. 5-7-12, an arbitration award shall not be subject to review or modification by the Tribal Court but shall be confirmed strictly as provided by the arbitrator(s). The judgment confirming an award shall be docketed as if it were rendered in a civil action. The judgment so entered shall have the same force and effect in all respects as, and be subject to all the provisions of law relating to, a judgment in a civil action, and it may be enforced as if it has been rendered in a civil action in the Tribal Court. When the award requires the performance of any act other than the payment of money, the Tribal Court may direct the enforcement thereon in the manner provided by applicable law.

Enacted by Ordinance Number 01-O-01, adopted December 12, 2001.

Sec. 5-7-12 Vacating, Modifying or Correcting an Award

A. Upon application of a party, the Tribal Court shall vacate an award where:

1. the award was procured by corruption, fraud or other undue means;
2. there was evident partiality by an arbitrator appointed as a neutral arbitrator or corruption in by any of the arbitrators or misconduct prejudicing the rights of any party;
3. the arbitrator(s) exceeded their powers; or
4. the arbitrator(s) refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing as to prejudice substantially the rights of a party.

B. An application under this section shall be made within ninety (90) days after the delivery of a copy of the award to the applicant except that, if predicated upon corruption, fraud or other undue means, it shall be made within ninety (90) days after such grounds are known or should have been known.

C. On vacating the award, the Tribal Court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the Court in accordance with Sec. 5-7-4, or if the award is vacated on grounds set forth in paragraphs (3) and (4) of subsection (A) the Court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with Sec. 5-7-4. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

D. If the application to vacate is denied and no motion to modify or correct the award is pending, the Tribal Court shall confirm the award.

E. Upon application made within ninety (90) days after delivery of a copy of the award to the applicant, the Tribal Court shall modify or correct the award where:

1. there was an evident miscalculation of figures or a substantial mistake in the description of any person, thing or property referred to in the award;
2. the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
3. the award is imperfect in a matter of form not affecting the merits of the controversy.

F. If the application is granted, the Tribal Court shall modify and correct the award so as to affect its intent and shall confirm the award so modified and corrected. Otherwise, the Tribal Court shall confirm the award as made.

G. An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

H. Upon the granting of an order confirming, modifying or correcting an award, the judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree.

I. On entry of the judgment or decree, the Clerk of the Court shall prepare the judgment roll consisting to the extent filed, of the following:

1. the agreement and each written extension of the time within which to make the award;
2. the award;
3. a copy of the order confirming, modifying or correcting the award; and
4. a copy of the judgment or decree.

J. The judgment or decree may be docketed as if rendered in an action.

Enacted by Ordinance Number 01-O-01, adopted December 12, 2001.

Sec. 5-7-13 Arbitration Award Not Appealable

No further appeal may be taken from an order issued by the Tribal Court pursuant to this Article enforcing an agreement to arbitrate or confirming, vacating, modifying, or correcting an award issued by an arbitrator.

Enacted by Ordinance Number 01-O-01, adopted December 12, 2001.

Sec. 5-7-14 Jurisdiction of the Tribal Court Over Arbitration Agreements to which the Pueblo, or an Enterprise or Corporation Wholly Owned by the Pueblo, is a Party

A. The Tribal Court shall have jurisdiction over any action to vacate, modify, correct or enforce an agreement to arbitrate, to compel arbitration pursuant to such an agreement to arbitrate and to vacate, modify, correct or enforce an award made by an arbitrator pursuant to such agreement to arbitrate, contained in any contract, agreement or other instrument described in Sec. 5-7-2 of this Article to which the Pueblo is a party; provided that in any such actions brought against the Pueblo, the Tribal Council shall have validly and explicitly waived the defense of tribal sovereign immunity in the contract, agreement or other instrument; and provided further that such contract, agreement, or other instrument does not expressly prohibit the Tribal Court from exercising jurisdiction thereunder.

B. The Tribal Court shall have jurisdiction over any action to vacate, modify, correct or enforce an agreement to arbitrate, to compel arbitration pursuant to such an agreement to arbitrate and to vacate, modify, correct or enforce an award made by an arbitrator pursuant to such agreement to arbitrate, contained in any contract, agreement or other instrument described

in Sec. 5-7-2 of this Article to which an enterprise or corporation wholly owned by the Pueblo is a party; provided that in any such actions brought against such enterprise or corporation shall have validly and explicitly waived the defense of sovereign immunity protection in the contract, agreement or other instrument; and provided further that such contract, agreement, or other instrument does not expressly prohibit the Tribal Court from exercising jurisdiction thereunder.

C. To the extent allowed by federal law, the jurisdiction of the Tribal Court under this Article shall be concurrent with the jurisdiction of any state or federal court, the jurisdiction of which the Pueblo, or an enterprise or corporation wholly owned by the Pueblo, shall have explicitly consented in such contract, agreement or other instrument. Any consent to the jurisdiction of a state or federal court contained in a contract, agreement or other instrument described in Sec. 5-7-2 of this Article to which the Pueblo or an enterprise or corporation wholly owned by the Pueblo is a party shall be valid and enforceable in accordance with its terms.

Enacted by Ordinance Number 01-O-01, adopted December 12, 2001.

Sec. 5-7-15 No Waiver of Sovereign Immunity

Nothing in this Article shall be interpreted to provide a waiver of the sovereign immunity of the Pueblo or any of its officers, employees or agents acting within the scope of their authority. Nothing in this Article shall be interpreted to provide a waiver of the sovereign immunity protection of the enterprises and corporations wholly owned by the Pueblo or any of the officers, employees or agents of any of such enterprises and corporations acting within the scope of their authority.

Enacted by Ordinance No. 01-O-01, adopted December 12, 2001.

ARTICLE 8 – SUBPOENAING OUT-OF-JURISDICTION WITNESSES IN CRIMINAL CASES

Sec. 5-8-1 Definitions

A. “Criminal proceeding” means a grand jury proceeding, a criminal prosecution, or any other evidentiary proceeding ancillary to such prosecution at which live testimony is to be heard.

B. “Jurisdiction” means any state, Indian tribe, or territory of the United States, and the District of Columbia.

C. “Witness” means a person whose testimony is desired in any criminal proceeding.

D. “Summons” means a subpoena, order, or other notice requiring the appearance of a witness.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-8-2 Witness from this Jurisdiction Summoned to Testify in Another Jurisdiction

A. If a judge of a court of record in any jurisdiction that by its laws has made provision for commanding persons within that jurisdiction to attend and testify in a criminal proceeding in this jurisdiction certifies under the seal of such court that there is a criminal proceeding pending or about to commence in such court, that a person being within this jurisdiction is a material witness in such proceeding, and that his or her presence will be required for a specified number of days, upon presentation of such certificate to any judge of the Tribal Court, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

B. If at the hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the criminal proceeding in the other jurisdiction, and that the laws of the jurisdiction in which the criminal proceeding is pending (and of any other jurisdiction through which the witness may be required to pass by ordinary course of travel) will give to him protection from arrest and the service of civil and criminal process in connection with any matters which arose before his or her entrance into this jurisdiction under the summons, the judge shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the criminal proceeding is pending at the time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

C. If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting jurisdiction to assure his or her attendance in the requesting jurisdiction, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before the court for said hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting jurisdiction.

D. If any Indian, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of fifty four cents (\$.54) a mile for each mile by the ordinarily traveled route, round trip, from the witness's home to the court where the criminal proceeding is pending and seventy-five dollars (\$75.00) for each day that he or she is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he or she shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this jurisdiction.

E. If a non-Indian, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of fifty four cents (\$.54) a mile for each mile by the ordinarily traveled route, round trip, from the witness's home to the court where the prosecution is pending and seventy-five dollars (\$75.00) for each day that he or she is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he or she shall be subject to civil contempt proceedings for violation of a court order.

Sec. 5-8-3 Witness from Another Jurisdiction Summoned to Testify in this Jurisdiction

A. If a person in any jurisdiction that by its laws has made provision for commanding persons within its borders to attend and testify in criminal proceedings in this jurisdiction is a material witness in a criminal proceeding pending in the Tribal Court, a judge of the Tribal Court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this jurisdiction to assure his attendance in this jurisdiction. This certificate shall be presented to a judge of a court of record in the jurisdiction in which the witness is found.

B. If the witness is summoned to attend and testify in this jurisdiction, he or she shall be tendered the sum of fifty-four cents (\$.54) a mile for each mile by the ordinarily traveled route, round-trip, between the witness's home and the Tribal Court, and seventy-five dollars (\$75.00) for each day that he or she is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this jurisdiction a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If an Indian, who is such a witness, after coming into this jurisdiction, fails without good cause to attend and testify as directed in the summons, he or she shall be punished in the manner provided for the punishment of any witness who disobeys an order issued by Tribal Court. If a non-Indian who is such a witness, after coming into this jurisdiction, fails without good cause to attend and testify as directed in the summons, he or she shall be subject to civil contempt proceedings for violation of a court.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-8-4 Exemption from Arrest and Service of Process

If a person comes into this jurisdiction in obedience to a summons directing him to

A. attend and testify in this jurisdiction he or she shall not while in this jurisdiction pursuant to such summons be subject to arrest or to the service of process, civil or criminal, in connection with matters which arose before his entrance into this jurisdiction under the summons.

B. If a person passes through this jurisdiction while going to another jurisdiction in obedience to a summons to attend and testify in that jurisdiction or while returning therefrom, he or she shall not while so passing through this jurisdiction be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this jurisdiction under the summons.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-8-5 Uniformity of Interpretation

This Article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the jurisdictions which enact it.

ARTICLE 9 – HEALING TO WELLNESS COURT

Sec. 5-9-1 Establishment of Healing to Wellness Court

There is hereby established in the Contemporary Court a division to be known as the Pueblo of Santa Ana Healing to Wellness Court.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-9-2 Purposes

The purpose of the Healing to Wellness Court is to create a safer and healthier community at the Pueblo of Santa Ana by establishing a comprehensive and evidence-based treatment program for those who have been convicted of a Nonviolent Offense where alcohol or substance use or abuse was an element of the offense or a contributing factor to the commission of the offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-9-3 Definitions

The defined terms for purposes of this Article are as follows:

A. “Case Manager” means the person who, under the supervision of the Contemporary Court Judge, is responsible for overseeing referrals to the Healing to Wellness Court and is responsible for managing the case files for Participants in the Healing to Wellness Program.

B. “Contemporary Court” means the Contemporary Court of the Pueblo of Santa Ana.

C. “Healing to Wellness Court” means the division of the Contemporary Court established under this Article.

D. “Healing to Wellness Judge” means the judge who presides over the Healing to Wellness Court as provided in this Article.

E. “Healing to Wellness Program” or “Program” means the treatment program administered and supervised by the Healing to Wellness Court pursuant to the terms of this Article.

F. “Healing to Wellness Team” means the group of individuals that oversee and administer the Healing to Wellness Program, including the Healing to Wellness Judge, the Case Manager, therapists and substance abuse counselors, and probation officers, and which may also include law enforcement, prosecutors, defense attorneys, social workers, and tribal officials, as the Healing to Wellness Judge determines to be appropriate.

G. “Nonviolent Offense” means a criminal offense that is not a Violent Offense under federal law.

H. Participant” means a person under the jurisdiction of the Healing to Wellness Court who has consented to participate in the Healing to Wellness Program and meets the eligibility requirements.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-9-4 Jurisdiction

The Healing to Wellness Court shall have jurisdiction over any case that is accepted for transfer from the Contemporary Court, or other originating court, until such time as the case is referred back to the Contemporary Court, or other originating court, for final disposition.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-9-5 Healing to Wellness Court Judge

A judge may be specifically appointed as a Healing to Wellness Judge, but if no such judge has been appointed, or if the Healing to Wellness Judge is not available, any formally-appointed Contemporary Court judge may perform the duties of a Healing to Wellness Court Judge on a full-time, part-time, or as-needed basis.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-9-6 Responsibilities of Healing to Wellness Court Judge

The Healing to Wellness Judge shall be responsible for:

A. presiding over the Healing to Wellness Court in accordance with the terms of this Article;

B. providing active and continuous judicial supervision of the progress of Participants in the Healing to Wellness Program, including holding regularly scheduled hearings with Participants and regularly scheduled meetings with the Healing to Wellness Team;

C. using incentives to reward Participants’ progress in the Program and imposing sanctions for noncompliance with Program requirements;

D. overseeing and coordinating all parties involved in the Healing to Wellness Program, including the Participants, the Healing to Wellness Team, Participants’ family members, and other community resources; and

E. considering and giving substantial weight to the customs and traditions of the Pueblo of Santa Ana in exercising the responsibilities set forth in this Article.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-9-7 Rules of the Healing to Wellness Court

The Rules of Procedure and Rules of Evidence of the Contemporary Court do not apply in the Healing to Wellness Court, which is a non-adversarial forum for providing treatment to Participants. The Healing to Wellness Judge shall have discretion to oversee proceedings in the Healing to Wellness Court in a manner consistent with this Article and with the Healing to Wellness policies and procedures. The Healing to Wellness Judge is also authorized and encouraged to have ex parte communications with members of the Healing to Wellness Team and other interested parties to manage the Healing to Wellness Program and facilitate the treatment of Participants.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-9-8 Policies and Procedures

The Healing to Wellness Judge shall, with the assistance of the Healing to Wellness Team, create and maintain up-to-date and evidence-based policies and procedures to govern the Healing to Wellness Program in accordance with the terms of this Article.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-9-9 Healing to Wellness Team

The Healing to Wellness Team shall meet regularly to discuss overall administration of the Healing to Wellness Program, create Wellness Plans, and discuss the treatment of the Participants prior to hearings. The Healing to Wellness Judge shall ensure all members of the Healing to Wellness Team attend such meetings and fulfill their responsibilities relating to the Healing to Wellness Program. The Healing to Wellness Judge shall consider recommendations from the Healing to Wellness Team, but the Healing to Wellness Judge shall make the final decision regarding Participants' treatment plans, incentives, and sanctions. The Healing to Wellness Team will provide information regarding each Participant's progress to the Case Manager, who will provide a written report for each Participant at each meeting.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-9-10 General Program Requirements

All Participants in the Healing to Wellness Program shall be required to:

- A. comply with the requirements of the Healing to Wellness Program;
- B. abstain from alcohol and drugs, including prescription medication that has not been disclosed to and approved by the Healing to Wellness Judge;
- C. participate in substance abuse treatment;
- D. participate in support groups, including but not limited to Alcoholics Anonymous and Narcotics Anonymous or their secular counterparts;

- E. appear at regularly scheduled hearings before the Healing to Wellness Judge;
- F. regularly meet with the Participant's case manager and probation officer;
- G. make a good faith effort to obtain employment or to pursue education opportunities;
- H. participate in traditional cultural activities; and
- I. complete any other requirements imposed by this Article or by the Healing to Wellness Judge.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-9-11 Phases of the Program

A. The Healing to Wellness Team will establish the requirements of all phases of the Program and shall document such requirements in the Healing to Wellness policies and procedures. Each phase shall last approximately 3 months.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-9-12 Hearings

The Healing to Wellness Judge shall hold regularly scheduled hearings with Participants and the Healing to Wellness Team to assess and supervise the Participants' progress in the program. Hearings shall be closed to the public except as to guests permitted by the Healing to Wellness Court.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-9-13 Rewards and Sanctions

The Healing to Wellness Court shall establish incentives to reward Participants' positive behavior and progress in the Healing to Wellness Program and sanctions for noncompliance with Program requirements. Incentives and sanctions shall be promptly and predictably applied. Participants shall be informed of the potential rewards and sanctions during the orientation period.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-9-14 Completion of the Program and Graduation

Participants shall graduate from the Program upon the successful completion of all of the recommended treatment phases. The Healing to Wellness Court may hold a graduation ceremony to recognize and reward those who complete the Program.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-9-15 Voluntary Termination

Participants may, at any time, choose to terminate their participation in the Program. The Healing to Wellness Judge shall then determine whether the Participant's decision to terminate is voluntarily and knowingly made.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-9-16 Involuntary Termination

A. The Healing to Wellness Judge may involuntarily terminate a Participant from participation in the Program if the Participant:

1. repeatedly fails to comply with necessary program requirements;
2. becomes ineligible for participation in the program (such as by pleading guilty or being charged or convicted of a Violent Offense, when federal funds are used for the Healing to Wellness Program);
3. becomes physically or mentally unable to participate in the Program;
4. engages in other inappropriate or dangerous conduct; or
5. as provided in the policies and procedures adopted under Section 5-9-8.

B. Prior to involuntary termination, the Healing to Wellness Judge shall consult with the Healing to Wellness Team and shall hold a hearing with the Participant to allow the Participant to discuss the reasons for termination and to give the Participant an opportunity to explain why he or she should be allowed to continue in the Program.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-9-17 Referral Back to Contemporary Court or Originating Court

Upon successful completion of the Healing to Wellness Program, or at such a time when a Participant of the Healing to Wellness Court is terminated voluntarily or involuntarily from the Program, the Healing to Wellness Court will transfer jurisdiction of the case back to the Contemporary Court, or originating court, for final disposition.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-9-18 Confidentiality

A. The Healing to Wellness Court and the Healing to Wellness Team shall comply with all laws and regulations governing confidentiality, including but not limited to the federal laws and regulations governing the confidentiality of substance use disorder records located at 42 U.S.C. §§ 290dd-2 and 42 C.F.R. Part 2.

B. The Healing to Wellness Court and Healing to Wellness Team shall not share information regarding Participants' health or treatment with any person not involved with the Program except as required by law.

C. Participants may be required to sign a consent or release form allowing their confidential information to be shared among members of the Healing to Wellness Team for purposes of providing treatment under the Healing to Wellness Program. Participants may refuse or revoke this consent at any time, but such Participants may be terminated from participation in the Program.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

ARTICLE 10 – CRIMINAL JURISDICTION OVER CERTAIN NON-INDIANS

Sec. 5-10-1 Purpose; Jurisdiction

A. The purpose of this Article is to implement the Pueblo's inherent authority to exercise criminal jurisdiction over certain non-Indians, as recognized and confirmed by the Indian Civil Rights Act (25 U.S.C. § 1301, et seq.) as amended by the Violence Against Women Act of 2013 (Pub. L. 113-4, 127 Stat. 54).

B. The Contemporary Court shall have criminal jurisdiction over any non-Indian who is alleged to have committed an act of Domestic Violence/Dating Violence, or who is alleged to have violated a Protection Order, where the non-Indian is the Spouse or Intimate Partner of the victim, the victim is a member of the Pueblo or is an Indian who resides on Pueblo Lands, and the offense occurs on Pueblo Lands.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-10-2 Prerequisite to Exercising Jurisdiction

Prior to exercising the jurisdiction conferred in this Article, the Contemporary Court shall make the following publicly available via the Internet: a notice that the Pueblo has adopted this Article; the Pueblo's Criminal Code, Rules of Evidence, and Rules of Criminal Procedure; the Code of Judicial Conduct; and any interpretive documents that relate to criminal justice and criminal procedures.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-10-3 Definitions

As used in this Article:

A. "Contemporary Court" means the Pueblo of Santa Ana Contemporary Court.

B. "Indian" means a person who would be subject to the jurisdiction of the United States as an Indian under 18 U.S.C. § 1153, if that person were to commit an offense listed in that section in Indian county to which that section applies.

C. “Non-Indian” means any person who is not an Indian.

D. “Pueblo” means the Pueblo of Santa Ana.

E. “Pueblo Lands” means all lands within the exterior boundaries of the Santa Ana Pueblo Grant, the lands known as the El Ranchito Grant, and the Santa Ana Indian Reservation, as those tracts exist at the time of enactment of this Code and as enlarged or modified thereafter, whether or not such land is owned by or on behalf of the Pueblo, and any other lands owned by the Pueblo and subject to federal law restrictions against alienation, or owned by the United States of America in trust for the Pueblo.

F. “Protection Order” means any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendente lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of the person seeking protection.

G. “Spouse or Intimate Partner of the victim” means a person:

1. who is a current or former spouse of the victim;
2. who shares a child in common with the victim;
3. who is similarly situated to a spouse of the victim under the domestic- or family-violence laws of the Pueblo; or
4. who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-10-4 Domestic Violence/Dating Violence Offense; Sentencing

A. A defendant commits the offense of Dating Violence/Domestic Violence Offense by committing a criminal offense under the Criminal Code that involves the intentional or reckless use, threatened use, or attempted use of force capable of doing injury to a victim or victim’s property, regardless of whether the foregoing conduct is stated as an element of the underlying offense, when the defendant is the Spouse or Intimate Partner of the victim and the victim is a member of the Pueblo or an Indian who resides on Pueblo Lands.

B. A defendant who is convicted of a Domestic Violence/Dating Violence Offense shall be guilty of the same class of offense as the underlying criminal offense committed and shall be subject to the sentence applicable to the underlying criminal offense.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-10-5 Violation of a Protection Order; Sentencing

A. A defendant commits the offense of Violation of a Protection Order if:

1. the Protection Order was issued against the defendant by any tribal, state, county, or other court with jurisdiction over the defendant;
2. the defendant's conduct violates any portion of the Protection Order that prohibits or provides protection against violent or threatening acts of harassment against, sexual violence against, contact or communication with, or physical proximity to the person protected by the order;
3. the victim is the person specifically protection by the Protection Order allegedly violated; and
4. the Protection Order is otherwise consistent with 18 U.S.C. § 2265(b).

B. A defendant who is convicted of violating a Protection Order shall be guilty of a class 4 offense and shall be subject to the sentence applicable to class 4 offenses in accordance with the provisions of Title VIII, Article 43 (Sentencing) of the Pueblo of Santa Ana Tribal Code that do not conflict with this Article.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-10-6 Rights of Defendants

In a criminal proceeding for an offense charged under this Article, the defendant shall have the following rights:

- A. all applicable rights under the Indian Civil Rights Act (25 U.S.C. § 1301, et seq.);
- B. the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution;
- C. the right to the assistance of a defense attorney who is licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys, and if the defendant is indigent, at the expense of the Pueblo;
- D. if the defendant requests a jury, the right to an impartial jury of not less than six persons, which jury shall be drawn from sources that reflect a fair cross section of the community and do not systematically exclude any distinctive group in the community, including non-Indians; and
- E. all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the Pueblo to exercise criminal jurisdiction over the defendant.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-10-7 Record of Proceedings

The Contemporary Court shall maintain a record of all proceedings under this Article, including audio or other recording.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-10-8 Judicial Qualifications

All court proceedings under this Article shall be presided over by a judge who is a graduate of an ABA-accredited law school who is licensed to practice law by any jurisdiction in the United States and is in good standing, and has sufficient legal training to preside over criminal proceedings.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-10-9 Rules Governing Court Proceedings

All court proceedings conducted under this Article shall be governed by the Rules of Criminal Procedure for the Contemporary Court that do not conflict with this Article. If there is a conflict, this Article shall govern.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-10-10 Notice of Right to File Petition for Writ of Habeas Corpus

The Contemporary Court shall provide timely notice to a person who has been detained under this Article of the right to file a petition for a writ of habeas corpus in federal court under 25 U.S.C. § 1303 and to petition that court to stay further detention of that person by the Pueblo. The notice shall also advise that a federal court is required by 25 U.S.C. § 1304(E)(2) to grant a stay if the federal court finds that there is a substantial likelihood that the habeas corpus petition will be granted, and after giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the federal court, the petitioner is not likely to flee or pose a danger to any person or the community if released.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-10-11 Court Costs and Fees; Medical Costs

A. Any defendant convicted under this Article may be required to pay reasonable Contemporary Court or Probation Department costs and fees as ordered by the Contemporary Court.

B. Any defendant taken into custody under this Article shall be solely responsible to pay for the costs of any and all medical services, other than standard evaluations conducted at the order of the Contemporary Court, rendered to the defendant while detained at the order of the Contemporary Court. Unless the defendant is deemed indigent and unable to pay any medical expenses, all such medical expenses shall be billed to the defendant and not the Pueblo or any of its departments. This provision shall not affect or supersede the ability of a defendant to receive necessary medical treatment.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022

Sec. 5-10-12 Sovereign Immunity

Nothing in this Article shall be deemed to constitute a waiver by the Pueblo, including its departments and entities, of its sovereign immunity from unconsented suit.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022