TITLE VI - RULES OF THE CONTEMPORARY COURT

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ARTICLE 1 – GENERAL RULES OF PROCEDURE

Rule 6-1-101 Jurisdiction: Cases that Can Be Brought in the Contemporary Court

A. The Contemporary Court may hear all matters arising within the Pueblo's jurisdiction set forth at Title I, Article 4 of this Code, unless the matter is committed to the exclusive jurisdiction of the Traditional Court.

B. The Traditional Court has exclusive jurisdiction over the following matters:

1. Traditional land assignments;

2. Traditional adoptions;

3. Traditional problems for which a criminal complaint is not filed; and

4. Matters related to traditional activities.

C. The Contemporary Court cannot hear disputes relating to the matters listed above. A person should go directly to the Traditional Court with traditional disputes.

D. The Contemporary Court shall have exclusive jurisdiction over criminal cases. Criminal cases are those defined by criminal statute and contained in a criminal complaint. Traditional Court cannot hear criminal cases.

Enacted by Resolution Number 07-R-54, approved November 8, 2007.

Rule 6-1-102 Transfers to Traditional Court

A. Transfers with Shared Jurisdiction. Sometimes, a matter involves both Traditional Court issues and Contemporary Court issues. In those cases, the Contemporary Court will send the case to Traditional Court after having decided those issues that may be decided by the Contemporary Court.

B. Permissive Transfers. A person may have civil issues that he or she would want to be heard in Traditional Court. Civil disputes may be transferred to Traditional Court if both parties agree to the transfer.

Enacted by Resolution Number 07-R-54, approved November 8, 2007.

Rule 6-1-103 Attorneys, Advocates and Individuals Appearing Before the Court

A. A person can file or defend a complaint in Contemporary Court by himself or herself.

B. This is called *pro se*, which means that a person represents himself or herself.

C. A party may be represented by an attorney or an advocate in Contemporary Court,

D. provided that the advocate or attorney is admitted to practice in the Santa Ana Courts. The mandatory admission form and requirements are available from the Contemporary Court Clerk.

Enacted by Resolution Number 07-R-54, approved November 8, 2007.

Rule 6-1-104 Counting Time

When counting the time within which any response, filing or action must be done, the day of the act or event from which the time period begins to run shall not be counted. If the last day of the time period falls on a Saturday or Sunday or federal or Pueblo holiday, the due date shall be the next day on which the Court is open for business. If the time period is fewer than eleven days, intervening Saturdays, Sundays and tribal holidays shall not be counted.

Enacted by Resolution Number 07-R-54, approved November 8, 2007.

Rule 6-1-105 Motions

A. A party may request an order from the Contemporary Court by filing a motion in writing. A motion is a written request that states what the party wants the Contemporary Court to do, why the party believes the Contemporary Court should take the action requested, and any principle or rule of law that the party believes supports the request. A motion may be accompanied by a longer written explanation, or brief, stating the reasons, facts and law supporting the requested action. If the establishment of certain facts is a necessary predicate for the relief sought in the motion, the party shall also accompany the motion with one or more affidavits or other sworn testimony or evidence establishing the necessary facts. A motion must contain the caption of the case in which it is filed.

B. A party who files a motion on a procedural or other non-substantive matter shall determine prior to filing whether any other party opposes the motion and shall state in the motion whether it is opposed.

C. A party who opposes a motion may file a written response to the motion within fifteen (15) days after the date of service of the motion, together with such legal argument or sworn factual material as such party deems relevant to the response. The party who filed the motion shall have ten (10) days after the date of service of the response to file a reply to the response. No other filings shall be allowed without leave of the court.

Enacted by Resolution Number 07-R-54, approved November 8, 2007.

Rule 6-1-106 All Documents Must be Signed and Served

A. Every document filed in the Contemporary Court shall be signed by the party submitting the document or that party's attorney or advocate. The address and phone number of the individual signing must follow the signature. By signing, the party, attorney or advocate submitting the document certifies that to the best of that person's knowledge, and after investigating the matter, the document is not submitted for an improper purpose, and is factually accurate and is or can be supported by admissible evidence, and that the claims are supported by existing law or, if existing law is unclear, by what the person believes in good faith the law

should be. If a party is represented by an attorney or advocate, only the attorney or advocate may file papers.

B. After the filing of the complaint, every document filed by any party shall be served on every other party named in the case, or if the party is represented, that party's attorney or advocate. The party filing the document must certify at the end of the document the date on which the document was served, to whom it was served, and the manner of service.

C. A party may make service of a document by any of the following means:

1. By personal delivery;

2. By U.S. mail;

3. By third-party commercial carrier for delivery within no more than three days; or,

4. By facsimile transmission.

D. Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by facsimile is complete on successful transmission, unless the party making service is notified that the document was not received by the party served.

Enacted by Resolution Number 07-R-54, approved November 8, 2007.

Rule 6-1-107 Fees

The Contemporary Court shall set and post the fees for filing of a lawsuit, service of process, admission to practice, copies, appeals, and other costs that must be paid by the responsible party. Fees shall be paid to the Contemporary Court.

Enacted by Resolution Number 07-R-54, approved November 8, 2007.

Rule 6-1-108 Discretion of the Court

The rules set out here do not address every matter that may arise in a proceeding in the Contemporary Court. The Contemporary Court, in its discretion, may look to the federal or New Mexico Rules of Civil or Criminal Procedure for guidance in addressing matters not covered by these rules. If the Contemporary Court determines that additional formal rules are necessary to properly adjudicate matters regularly presented to the Contemporary Court, it shall recommend such rules to the Tribal Council for adoption.

Enacted by Resolution Number 07-R-54, approved November 8, 2007.

Rule 6-1-109 Forms

The Contemporary Court has developed forms that the parties may use when filing petitions, complaints, motions or answers. The forms are available from the Clerk of the Court. The Contemporary Court has the discretion and authority to modify these forms and create new

forms to assist parties in court proceedings. The use of these forms is not mandatory as long as the parties comply with the requirements of the Rules of Procedure of the Contemporary Court.

Enacted by Resolution Number 07-R-54, approved November 8, 2007.

Rule 6-1-110 Filings, Court Clerk and Docket

A. The Contemporary Court Clerk shall open and maintain a docket for every case filed with the Contemporary Court. The docket shall contain the name and address of each party, the name and address of each attorney or advocate, if applicable, and an entry for every document filed in the matter with the Contemporary Court, showing the title of the document and the date of filing. The docket shall also show the date and outcome of any hearing or trial in the matter.

B. Every document filed with the Contemporary Court must be filed directly with the Contemporary Court Clerk. No document shall be considered filed if it is left with any other employee of the Pueblo.

C. The Clerk shall stamp the front of the first page of each document filed with the court, with a stamp showing the date and time of filing. If a party wishes to receive a copy of the document showing the filing stamp, the party must provide the Clerk with a copy of the document at the time it is filed, and if filing by mail, must include a pre-addressed envelope bearing adequate postage to cover the cost of returning the file-stamped copy to the party by first-class mail.

Enacted by Resolution Number 07-R-54, approved November 8, 2007.

Rule 6-1-111 Record

The record of an action in the Contemporary Court shall consist of all documents filed and entered into the docket. Live court proceedings presently are not recorded. If any party desires to make a recording, the party shall seek leave of the Contemporary Court to make the recording and shall make copies of the recording available to the Contemporary Court and to every other party involved in the case.

Enacted by Resolution Number 07-R-54, approved November 8, 2007.

Rule 6-1-112 Cooperation with Other Courts and Jurisdictions

A. The Contemporary Court shall serve as the Santa Ana Tribal Court for the purpose of ruling on requests from other jurisdictions for the recognition and enforcement of orders issued by those jurisdictions. For the purposes of this Rule, the term “order” means a child support order, a protection order, a child custody order, an extradition order, an arrest warrant or a search warrant, and similar orders and warrants.

B. Unless the Contemporary Court is required to give full faith and credit to an order from another jurisdiction, it shall apply the principles of comity to determine whether to recognize and/or enforce such order. The Contemporary Court may refuse to recognize or enforce an order that was obtained through a process that the Contemporary Court determines

was fundamentally unfair, that was issued by a court that lacked jurisdiction, or that violates a strongly held public policy of the Pueblo.

C. The Contemporary Court shall give full faith and credit to:

1. the public acts, records, and judicial proceedings of the United States, every State, every territory or possession, and every tribe, applicable to Indian child custody proceedings under the Indian Child Welfare Act (25 U.S.C. § 1911(d));

2. protection orders issued consistent with the Violence Against Women Act (18 U.S.C. § 2265);

3. child support orders issued consistent with the Child Support Enforcement Act (28 U.S.C. § 1738B); and

4. as otherwise required by federal or Pueblo law.

D. A person seeking recognition and enforcement of an order may file a Petition to Recognize and Enforce a Foreign Order, in accordance with the Rules of Civil Procedure.

E. A judgment creditor seeking to execute on a foreign judgment against personal property located on Pueblo land or the income of any person employed by a Pueblo Entity on Pueblo lands must follow the procedure set forth in Title XI, Article 7 of the Pueblo of Santa Ana Tribal Code.

Enacted by Resolution Number 07-R-54, approved November 8, 2007.

Rule 6-1-113 Role of Custom and Tradition

The Pueblo retains its inherent rights of sovereignty, including its power to adjudicate disputes arising within its territory among persons subject to its jurisdiction in accordance with its own laws. Over the centuries, the Pueblo has applied its unwritten customs and traditions to the adjudication of disputes. The written rules set forth in this Article are intended to inform the public of the procedures that will be followed so that there is an orderly adjudication of civil and criminal issues that come before the Contemporary Court. The customs and traditions of the Pueblo that inform the adjudication of disputes will be incorporated into these written procedures as is appropriate. They provide a historic continuum of the administration of justice that can be recognized and respected by the Pueblo community. In this sense, custom and tradition help form the Pueblo's common law.

Enacted by Resolution Number 07-R-54, approved November 8, 2007.

Rule 6-1-114 Appeals

Appeals shall be filed in accordance with the Pueblo Rules of the Tribal Court of Appeals. The fees for filing an appeal shall be set by and published along with all other fees of the Contemporary Court.

Enacted by Resolution Number 07-R-54, approved November 8, 2007.

Rule 6-1-115 Orders of the Contemporary Court

Written orders of the Contemporary Court, warrants, and sentencing orders may only be modified, quashed or withdrawn by the Contemporary Court or as may be ordered by the Pueblo Tribal Court of Appeals.

Enacted by Resolution Number 07-R-54, approved November 8, 2007.

Rule 6-1-116 Order to Show Cause; Contempt of Court

The Contemporary Court shall have the power to issue orders to show cause and to find persons in contempt of court, to compel parties to appear when required, and to comply with court orders. The Contemporary Court will ordinarily impose the least restrictive measures the Court believes is appropriate to coerce a person in civil contempt of court to comply with the Court's order, including but not limited to a fine, compensatory remedies, community service, or incarceration or detention for a period of up to one year. Criminal contempt of court shall be handled pursuant to Rule 6-3-108 of the Rules of Criminal Procedure for the Contemporary Court.

Enacted by Resolution Number 07-R-54, approved November 8, 2007.

Rule 6-1-117 Notice to the Pueblo in Certain Cases

Whenever a party to an action in the Contemporary Court in which the Pueblo is not a named party, raises an issue involving tribal sovereign immunity, or a question of whether the Pueblo or the Contemporary Court has jurisdiction over the party or the subject matter of the action, the Clerk of the Court shall promptly give written notice of such issue to the Office of the Governor of the Pueblo. The Pueblo may, within fifteen (15) days of receiving such notice, file a brief in the action, as a friend of the Court, expressing the Pueblo's views on the issue.

Enacted by Resolution Number 07-R-54, approved November 8, 2007.

Rule 6-1-118 Court Interpreters

The use of qualified interpreters is authorized in judicial proceeding involving hearing impaired and/or non-English speaking individuals. All interpreters serving in a legal proceeding, whether certified or uncertified, shall abide by the following rules:

A. An interpreter who violates any of the provisions of this Rule is subject to a citation for contempt, or any other sanction that may be imposed by law.

B. An interpreter, like an officer of the court, shall maintain high standards of personal and professional conduct that promote public confidence in the administration of justice.

C. An interpreter shall interpret or translate the material thoroughly and precisely, adding or omitting nothing, and stating as nearly as possible, what has been stated in the language of the speaker, giving consideration to the variations of grammar and syntax for both languages involved.

D. An interpreter shall use a level of communication that best conveys the meaning of the source and shall not interject the interpreter's personal moods or attitudes.

E. When an interpreter has any reservation about his or her ability to satisfy an assignment competently, the interpreter shall immediately convey that reservation to the parties and to the court. If the communication mode or language of the non-English speaking person cannot be readily interpreted, the interpreter shall notify the appointing authority or the court.

F. No interpreter shall render services in any matter in any matter in which the interpreter is a potential witness, associate, friend or relative of a contending party unless a specific exception is allowed by the court for good cause noted on the record. Neither shall the interpreter serve in any matter in which the interpreter has an interest, financial or otherwise, in the outcome. Nor shall any interpreter serve in a matter where the interpreter has participated in the choice of counsel.

G. Except in the interpreter's official capacity, no interpreter shall discuss, report or comment upon a matter in which the person serves as interpreter. Interpreters shall not disclose any communication that is privileged by law, without the written consent of the parties to the communication, or pursuant to court order.

H. A language interpreter shall report immediately to the court any solicitation or effort by another to induce or encourage the interpreter to violate any law.

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

Rule 6-1-119 Guardian Ad Litem

A. The Contemporary Court may appoint a guardian ad litem for a person involved in a proceeding before the court when such person is not adequately able to represent himself or herself because of incapacity, or in the case of a party represented by a next friend or guardian, when the next friend or guardian appears to the court to have an interest adverse to the party.

B. Procedure for Appointment.

1. The Contemporary Court may appoint a guardian ad litem on the motion of any party or on its own initiative.

2. An appointment must be made by written order.

3. Any party may object to the appointment of a guardian ad litem.

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

Rule 6-1-120 Role of Guardian ad Litem.

A. A guardian ad litem acts as an officer and advisor to the Contemporary Court.

B. A guardian ad litem must determine and advise the Contemporary Court whether a party's next friend or guardian has an interest adverse to the party.

C. When an offer has been made to settle the claim of a party represented by a next friend or guardian, a guardian ad litem has the limited duty to determine and advise the Contemporary Court whether the settlement is in the party's best interest.

D. A guardian ad litem:

1. may participate in mediation or a similar proceeding to attempt to reach a settlement;

2. must participate in any proceeding before the Contemporary Court whose purpose is to determine whether a party's next friend or guardian has an interest adverse to the party, or whether a settlement of the party's claim is in the party's best interest;

3. must not participate in discovery, trial, or any other part of the litigation unless:

a. further participation is necessary to protect the party's interest that is adverse to the next friend's or guardian's, and

b. the participation is directed by the Contemporary Court in a written order stating sufficient reasons.

E. Communications Privileged. Communications between the guardian ad litem and the party, the next friend or guardian, or their attorney are privileged as if the guardian ad litem were the attorney for the party.

F. Compensation.

1. A guardian ad litem may be reimbursed for reasonable and necessary expenses incurred and may be paid a reasonable hourly fee for necessary services performed.

2. At the conclusion of the appointment, a guardian ad litem may file an application for compensation. The application must be verified and must detail the basis for the compensation requested. Unless all parties agree to the application, the Contemporary Court must conduct an evidentiary hearing to determine the total amount of fees and expenses that are reasonable and necessary. In making this determination, the court must not consider compensation as a percentage of any judgment or settlement.

3. The Contemporary Court may impose on a party as court costs a guardian ad litem's compensation.

4. A guardian ad litem may not receive, directly or indirectly, anything of value in consideration of the appointment other than as provided by this rule.

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

Rule 6-1-121 Appeal.

A. Any party may appeal an order appointing a guardian ad litem or directing a guardian ad litem's participation in the litigation, and any party and a guardian ad litem may appeal an order awarding the guardian ad litem compensation, in accordance with the Rules of the Tribal Court of Appeals.

B. On motion of the guardian ad litem or any party, the court must sever any order awarding a guardian ad litem compensation to create a final, appealable order.

C. Appellate proceedings to review an order pertaining to a guardian ad litem do not affect the finality of a settlement or judgment.

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

ARTICLE 2 – RULES OF CIVIL PROCEDURE

The effective date of Title 6, Article 2 is July 1, 2023. Resolution No. 2023-R-04.

Rule 6-2-101 Commencement of Action; Definition of "Party"

A. A civil action is commenced in the Contemporary Court by the filing of a complaint, which shall state the names of all plaintiffs and all defendants, and shall set forth, in numbered paragraphs, a concise and clear statement of the facts underlying the claim or claims and the nature of the claim or claims asserted by the plaintiff against each defendant, in accordance with the provisions of Rule 6-2-105. A complaint shall be signed by the plaintiff or by an attorney or advocate representing the plaintiff and shall be accompanied by payment of such fee as the Contemporary Court may set from time to time for the filing of civil complaints. The Court shall establish forms and procedures, and training for its staff, to assist unrepresented persons in filing and pursuing actions in compliance with these rules.

B. As used in these rules, the terms "plaintiff," "defendant," or "party," refer to the individuals or entities named as parties in the caption of the complaint, or, if any such party is represented by an attorney or lay advocate admitted to practice before the Contemporary Court, to such counsel, unless otherwise required by the context. The use of the singular shall include the plural, and reference to any party by gender shall include both genders as well as genderless entities.

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

Rule 6-2-102 Filing of Complaint; Issuance and Service of Summons

A. Upon the plaintiff's filing of a complaint and payment of the required filing fee, the Clerk shall place on the face of the complaint a stamp showing that the document has been filed with the Court, and showing the date and time of filing, and shall give the action a docket number in accordance with the numbering system adopted by the Contemporary Court, and the Clerk shall issue a summons to each defendant named in the caption of the complaint, on a form approved by the Court. If the plaintiff is represented by counsel, the summons may be prepared by counsel and presented to the Clerk for issuance at the time of filing of the complaint.

B. Each summons shall contain:

1. the name of the Court;

2. a caption, containing the names of the parties;

3. the docket number that has been assigned to the action;

4. a statement informing the defendant that the attached complaint has been filed against him or her, and that the defendant must file, and serve upon the plaintiff or plaintiff's counsel, a written answer to the complaint within 20 days after service of the summons and complaint on the defendant (except that a defendant who is served outside of the territorial jurisdiction of the Court shall have 30 days within which to file an answer), and that in case of a failure to file such answer the plaintiff may seek a default judgment against the defendant for the relief requested in the complaint;

5. the name and address of the plaintiff or, if the plaintiff is represented by counsel, of the plaintiff's counsel; and

6. the signature of the Clerk. The Clerk shall deliver the issued summons to the plaintiff at the time the complaint is filed.

C. The plaintiff shall cause the summons, attached to a copy of the complaint, to be served upon the defendant (or, in the case of an action having more than one defendant, upon each defendant), in any of the following ways:

1. By personal service, which shall mean delivering the summons and complaint to the defendant personally, or by leaving copies at the defendant's house or usual place of abode with a person who is at least 16 years of age who resides therein.

2. Upon a corporation, partnership, business or association, by delivering a copy of the summons and complaint to an officer, managing partner, or general agent, or any other agent authorized by appointment or by law to receive service of process for such defendant, and by contemporaneously mailing a copy thereof by certified mail, return receipt requested, to said defendant at its last known address.

3. Upon the Pueblo, by personal service of a copy of the summons and complaint on the Governor, or by leaving such copies at the office of the Governor with the Governor's secretary or administrative assistant, and by contemporaneously mailing a copy by certified mail, return receipt requested, to the Office of the Governor; but provided that nothing herein shall be deemed to imply any waiver of the Pueblo's sovereign immunity from suit, where applicable.

D. Service may be made by any person over the age of 18 years of age who is not a party or an employee of any party or any party's counsel; or by any law enforcement officer who is commissioned in the jurisdiction where service is made.

E. The person making service of process shall sign and file with the Clerk of the Court a return of service, setting forth the date, time, manner and place of service of the

summons and complaint on the defendant. Such return shall be prima facie evidence of the service of the summons and complaint upon the defendant as set forth therein; but provided that failure to file a return of service does not affect the validity of service that has otherwise been properly made as provided herein.

F. A defendant who is personally confronted by a process server but who refuses to accept delivery of the complaint and/or summons shall be deemed to have been served if the process server leaves a copy of the complaint and summons at the place where service was attempted, and files with the Clerk of the Court an affidavit stating that service was made, with the information required by paragraph (C), above, and stating that the defendant refused to accept the summons and complaint.

G. Service may be made in any manner described in paragraph (C), above, on a defendant who is situated outside of the territorial jurisdiction of the Court, if such defendant:

1. has transacted any business, or committed any act, within the territorial jurisdiction of the Court, from which business or act the action arises;

2. owns property that is situated within the territorial jurisdiction of the Court, from which property the action arises or to which it is related; or

3. has entered into a consensual relationship, by means of contract or otherwise, with the Pueblo or with an entity that is owned or controlled by the Pueblo, or with one or more Pueblo members, for the provision of goods to, or the performance of services at, a location within the territorial jurisdiction of the Court, and from which consensual relationship, or the performance thereof, the action arises.

H. Service on a defendant situated outside the territorial jurisdiction of the Court shall also be valid if made in a manner permitted by the law of the jurisdiction in which the defendant is situated; but provided further that nothing herein shall be deemed to determine, limit or impair any defense asserted by any defendant as to the Court's jurisdiction to hear a case against such defendant.

I. If the plaintiff has not caused valid service of summons and complaint to be made upon a defendant within 120 days after the filing of the complaint, and cannot show good cause why such service was not made within such a period, the Court may, on its own initiative, dismiss the action without prejudice as to that defendant.

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

Rule 6-2-103 Form, Filing and Service of Documents; Entry of Appearance

A. After the filing and service of the complaint as provided herein, every other document filed by any party in such action with the Clerk shall show the name of the Court, the caption of the case (containing the names of the plaintiff and defendant, designated as such), and the docket number, and shall contain a title identifying the nature of the document; and shall be signed by the party on whose behalf it is filed. Contemporaneously with its filing, each such document shall be served upon every other party who has entered an appearance in the action, by

courier, by U.S. mail or by electronic means, to the party's or the attorney's last known mailing or electronic address, or by personal delivery, and proof of such service (showing upon whom such service was made, and the manner and date of service) shall be endorsed upon each such paper filed with the Clerk.

B. A party enters an appearance in an action by the filing of any pleading or other document in the action, signed by the party or by the party's counsel. No formal entry of appearance is required, but such a pleading will be accepted by the Clerk if filed by an attorney on behalf of a party. The filing of a general entry of appearance is not a waiver of a defense of lack of jurisdiction over the person, if such defense is otherwise asserted in a timely fashion as provided in Rule 6-2-107.

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

Rule 6-2-104 Computation of Time; Enlargement of Deadlines

A. In computing any period of time prescribed or allowed by these rules or by any order of the Court, unless otherwise specified, if the last day of the time period would fall on a Saturday, a Sunday, or a holiday recognized by the Contemporary Court, the last day shall be deemed to be the next succeeding day that is not a Saturday, Sunday or holiday recognized by the Contemporary Court. In calculating any time period that is ten (10) days or less, Saturdays, Sundays and recognized holidays shall not be counted as part of the period. When service of any document by a party on other parties, pursuant to Rule 6-1-106, is made by mail, and the document requires a response, three days shall be added to the time allowed by these rules for the response.

B. The parties to an action may, by written agreement among themselves, extend the time period for filing a responsive pleading, under Rule 6-2-105, or the time for responding to a motion or replying to a response to a motion, under Rule 6-2-106, or the time for responding to discovery, under Rule 6-2-109. Any other time periods or deadlines established by these rules or by order of the Court may be extended by the Court, on motion showing good cause or agreement of the parties, which motions shall be liberally granted in the interest of justice; except that an extension of the time period for filing a notice of appeal from a final judgment may only be granted in the manner and to the extent provided by law or by the Rules of the Court.

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

Rule 6-2-105 Claims for Relief and Responsive Pleadings; Amendments

A. Complaints, counterclaims, cross-claims, and third-party complaints are pleadings containing claims for relief. Responsive pleadings include an answer to a complaint, an answer to a counterclaim, an answer to a cross-claim, and a third-party answer to a third-party complaint. No other pleadings shall be allowed except by order of the Court.

B. Each claim for relief shall contain:

1. a short and plain statement of the grounds upon which the Court's jurisdiction is based;

2. a short and plain statement of the facts giving rise to the action;

3. a short and plain statement of the nature of the claim, showing that the pleader is entitled to relief as a matter of law; and

4. a request for judgment, describing the relief to which the pleader seeks, but relief in the alternative or of several different types may be demanded.

C. Claims may be set forth in alternative or different forms, either in one count or in separate counts. A party may set forth in the same pleading as many separate claims as he or she may have against a defendant, regardless of consistency and whether based on legal or equitable grounds.

D. In answering a claim for relief, a party shall state in short and plain terms his or her response to each allegation of each claim asserted, and any defenses to each claim asserted. The party may state as many separate defenses as he or she may have, whether going to matters of procedure or on the merits, regardless of consistency and whether based on legal or equitable grounds.

E. When a party mistakenly designates a defense as a counterclaim or designates a counterclaim as a defense, the Court may, if justice so requires, treat the pleading as if the matter had been properly designated.

F. In any responsive pleading, a party shall admit or deny either specifically or generally the specific assertions upon which the adverse party relies in its claim, or, if the party is without sufficient knowledge to form a belief as to the truth of an assertion, he or she shall so state, which has the effect of a denial.

G. The plaintiff may file an amended complaint as a matter of right at any time prior to the filing of a responsive pleading or motion by any defendant. Thereafter, no pleading may be amended except by order of the Court, on motion, but leave to amend pleadings should be freely granted, except where such amendment is patently unwarranted or would constitute undue prejudice to any other party.

H. Pleadings shall be liberally construed by the Court in the interests of justice. The Court shall give special deference in favor of pleadings filed by parties appearing *pro se*, which shall be interpreted insofar as is reasonable to be in compliance with these rules.

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

Rule 6-2-106 Motions

A. Any application to the Court for an order shall be by motion, which shall be in writing unless made during a hearing or trial in open Court. Each written motion shall state with specificity the relief sought, and the grounds warranting such relief, and, if the motion is opposed, may include legal arguments supporting such grounds, and may be accompanied by affidavits or other competent evidence as may be required to establish the factual basis for the relief sought in the motion.

B. Each non-moving party to an action shall have 15 days within which to file a written response to a motion, which response may include opposing affidavits or other competent evidence. The movant may file a written reply within 10 days of the filing of any response to the motion. At the time of filing the reply, the movant shall also file a notice advising the Court that briefing on the motion is completed, and that the motion is ready for hearing or decision.

C. A party filing a motion directed at minor procedural matters shall, prior to filing, determine whether any party opposes the motion, and if it is determined that the motion is not opposed by any party, that shall be stated in the title and body of the motion, and the movant in such case shall submit to the Clerk at the time the motion is filed a proposed order granting the relief requested, which shall show that the form of such order has been approved by each other party to the action.

D. Following the completion of briefing on an opposed motion, the Court may set a hearing on the motion, and receive oral argument thereon, or may proceed to decide the motion on the written material submitted by the parties, but in either event the Court shall issue a written order announcing its decision as to each motion filed in an action. With respect to motions that may affect the scope of issues to be decided or evidence to be received at trial, or whether a trial should be had in a matter, the Court shall issue its decision sufficiently in advance of the trial setting so as not to prejudice the parties' ability to prepare for trial.

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

Rule 6-2-107 Filing of Responsive Pleadings

A. An answer or other response to a complaint must be filed within 20 days after service of the complaint, except that a defendant who is served with the summons and complaint outside of the territorial jurisdiction of the Court must file his or her response within 30 days after service. If an answer contains a counterclaim, an answer to the counterclaim must be filed by the plaintiff within 20 days following service of the answer containing the counterclaim.

B. Prior to filing an answer to a complaint or a reply to a counterclaim, a party may assert any of the following defenses to such pleading by motion:

1. Lack of jurisdiction over the subject matter.

2. Lack of jurisdiction over the person.

3. Insufficiency of process or of service of process.

4. Failure to state a claim upon which relief can be granted.

5. Failure to join a party whose presence is required for adjudication of the matter.

If the motion relies upon facts that are not already of record, the movant shall submit affidavits or other admissible evidentiary material in support of such motion.

C. A party does not waive a defense by joining it with one or more other defenses or objections. However, the defense of lack of jurisdiction over the person shall be deemed to be waived if not asserted in the first motion or responsive pleading filed in the action by the party asserting the defense.

D. In the event the Court rejects all defenses asserted by motion prior to the filing of an answer, the defendant shall file an answer within twenty (20) days after entry of the Court's written order rejecting such defenses.

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

Rule 6-2-108 Scheduling Conference; Scheduling Order

At any time following the filing of an answer to the complaint, at the request of any party, the Court shall hold a scheduling conference to be attended by all counsel (and their clients, if ordered by the Court) and unrepresented parties, either in open Court or by teleconference, for the purpose of reaching agreement on a schedule for discovery, motions, other pre-trial matters and trial. The schedule agreed to shall be embodied in a scheduling order to be issued by the Court following the conference. Deadlines and other dates set forth in the order are subject to change, upon motion to the Court, to accommodate the reasonable needs of the parties to obtain relevant evidence, accommodate scheduling conflicts and the availability of witnesses, and otherwise to prepare for trial. The Court may at any time set a status conference to ascertain the parties' progress in preparing the case for trial and may make such adjustments in the scheduling order as the interests of justice may require. At any scheduling or status conference held in a case, the Court shall inquire whether the parties would like to explore settlement possibilities through a mediated settlement conference, and if the parties agree, the Court shall follow the procedures set forth in Rule 6-2-121, and the case schedule shall be modified as needed to allow the parties full opportunity to pursue such settlement.

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

Rule 6-2-109 Discovery

A. At any time after a defendant has entered an appearance in an action, any party may commence discovery of facts or information in the possession of another party that are or may be relevant to the claim or defense of any party, or that may lead to the discovery of relevant facts, in any of the following ways:

1. By serving written interrogatories on any other party, that must be answered by such party in writing and under oath within thirty (30) days after service thereof.

2. By taking the testimony of any party or any other witness by oral deposition, before a court reporter and notary public, upon written notice filed with the Clerk and served on each party no less than ten (10) days prior to the date of the deposition. The deposition of a party may be taken by any other party, upon the filing and service of such notice. At the request of the noticing party, the Clerk shall issue a subpoena to compel the attendance of a non-party witness at such deposition, which subpoena may also demand that such witness produce at such

deposition specified documents or things in the witness's possession or under his or her control. Any unrepresented party or attorney for a party may attend any deposition and cross-examine the witness. Depositions may be taken telephonically at the option of the noticing party, provided that all others attending can hear the witness and be heard.

3. By serving on any party a written request that such party admit the truth of certain facts, or the authenticity of specified documents, which requests must be responded to in writing and under oath within thirty (30) days of the date of service thereof.

4. By serving on any party a request for production of specified documents or things for inspection and copying, or for entry upon land for inspection, sampling, surveying, measuring, photographing or testing, which request must be responded to within thirty (30) days of service thereof.

B. Upon receipt of a proper request for discovery as set forth in paragraph (A)(1), (3) or (4), a party shall provide the information or documents or things requested, unless the party believes in good faith:

1. that the discovery requested is protected by a valid privilege or constitutes attorney work product;

2. that producing the requested discovery would be unduly burdensome relative to its potential evidentiary benefit;

3. that the requested discovery is neither relevant to any issue in the case nor reasonably likely to lead to the discovery of admissible evidence; or

4. that the request is too vague or ambiguous to be responded to.

5. In such event, the party shall object to the request for discovery in writing, within the time allowed for response, setting forth in detail the party's basis for not providing the requested discovery. If the party claims that the discovery requested is privileged, he shall identify the particular privilege claimed, and shall set forth specific facts sufficient to show the applicability of the claimed privilege. The party that submitted the discovery request may then file a motion seeking to compel the objecting party to provide responses to the discovery requested or any parts thereof.

C. Responses to discovery obtained under paragraphs (A)(1) and (3), and the deposition testimony of a party deponent under paragraph (A)(2), may be introduced and used at trial for any purpose. The deposition testimony of a non-party witness may be used at trial for impeachment purposes, and may be used for any purpose at trial if the witness is deceased, or resides and works outside of the exterior boundaries of the Santa Ana Pueblo lands, or is otherwise unavailable to attend trial and such unavailability is not attributable to the party offering the testimony.

D. Any party who believes that discovery sought by another party is unrelated to any issue in the action, or is unduly burdensome or is sought solely for purposes of harassment, or for any other reason ought to be limited, conditioned or precluded, may file a motion with the Court,

within the time for responding to such discovery, seeking appropriate relief by protective order or otherwise. The filing of such motion shall toll the time for responding to the discovery until the Court rules on the motion.

E. In the event a party fails to respond to a discovery request under the provisions of this rule, without an order of the Court excusing such response, the party seeking discovery may file a motion with the Court to compel the discovery requested, and the Court may, if it finds grounds exist to grant such motion, may also grant the movant an award of attorneys' fees for the reasonable cost of obtaining the relief sought through the motion. A party who fails to respond to any request for admission under paragraph (A)(3) of this Rule within the time allowed by that paragraph, and who persists in such failure following an order of the Court to respond, shall be deemed to have admitted such matter or matters for all purposes in the action.

F. Motions directed at discovery matters shall be decided by the Court sufficiently in advance of any trial setting in the action to enable discovery to be completed prior to the discovery deadline.

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

Rule 6-2-110 Trial by Jury

A. Trials in civil actions shall be to the Court, unless any party, by no later than ten (10) days after the answer to the complaint is filed with the Court, files a demand for trial by jury, and tenders with such demand a jury fee, in an amount to be determined by the Court from time to time; but no claim in any domestic relations suit, or in any civil action that seeks monetary relief in an amount less than $1000.00, or that seeks equitable (non-monetary) relief, even if accompanied by a claim for damages, shall be triable to a jury, and a jury demand with respect to any such claim shall be stricken by the Court on the motion of any party or on the Court's own motion. Once made, a jury demand may be withdrawn at any time by the demanding party by filing a notice of such withdrawal, but any other party shall have ten (10) days after service of such withdrawal to file a demand for jury trial, together with the required fee.

B. A jury in a civil action shall consist of six (6) persons, selected from a panel of no fewer than 20 eligible jurors. To be eligible to serve as a juror, a person (i) must be a member of the Pueblo, a spouse or partner of a Pueblo member, or a permanent resident of the Pueblo, (ii) must be 18 years of age or older, (iii) must never have been convicted in any court of a felony, (iv) must not be currently on probation for any offense in any court, (v) must not be a witness or party to the matter before the court, and (vi) must not at the time the list is made or at the time of trial, be holding the office of tribal judge or tribal police officer. Jurors shall be randomly chosen by the Clerk and subpoenaed to appear for jury selection on a date and at a time on or before the date set for trial. Jurors shall be paid a juror fee for each day of jury service at a rate established by the Contemporary Court. The panel shall be randomly chosen by the Clerk and subpoenaed to appear for jury selection on a date and at a time on or before the date set for trial. The Court shall establish reasonable procedures for voir dire of the panel members by the parties or their attorneys and selection of jurors therefrom, that will enable the parties and the Court to identify those panel members who, because of familial connections, business relations, friendship, prior

dealings, personal attitudes, scheduling conflicts, health or financial issues or other valid reasons would not be suitable as jurors in the matter and should be excused for cause. If necessary due to the number of excusals for cause, the Court may subpoena additional panel members. Following excusals for cause, each party shall have the right to strike up to three members of the panel summarily, and from those members who remain the Court shall select the persons who shall serve as jurors in the matter, and one or two alternates, in the Court's discretion, and the Court shall administer a jurors' oath to all those selected as jurors and alternates. Alternates shall attend the trial but shall only become jurors if a regular juror is disqualified or becomes unable to serve. At the end of the trial, but before the jury commences deliberations, any alternate who has not been made a regular juror shall be excused.

C. Persons selected to serve as jurors or alternates shall be entitled to be paid a fee of One Hundred Dollars ($100) for each day or portion thereof during which they are required to attend a trial, which fees shall be paid on the morning of each day of trial by the party who demanded the jury.

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

Rule 6-2-111 Witnesses and Evidence

A. Except as authorized by law or in extraordinary circumstances, where the sensitive nature of the case warrants confidentiality of the proceedings, as determined by the Court on a motion by any party, all trials shall be open to the public.

B. At the request of any party, non-party witnesses shall not be allowed to hear or observe the testimony of other witnesses prior to testifying themselves.

C. Each witness, prior to testifying, shall be sworn in by the Court or by a Court official, and must swear or affirm upon the witness's oath that he or she will testify truthfully and fully in response to all questions asked of the witness.

D. Testimony and other evidence shall be received in accordance with the rules of evidence. Any party may object to evidence offered by another party, on any ground allowed by the applicable rules, and the Court shall promptly rule on all such objections.

E. In the event any witness requires an interpreter in order to testify in English, the Court shall appoint an interpreter qualified to interpret to and from the witness's native language. The interpreter shall be paid out of the Court's budget, but such compensation may be taxed as costs to the non-prevailing party.

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

Rule 6-2-112 Subpoenas

A. Every subpoena to compel a person to testify at a deposition or at trial shall state the name of the Court, the names of the parties and the docket number of the action, the name and address of the person to whom the subpoena is directed and the name, address and telephone number of the party, or attorney for such party, at whose request the subpoena was issued, and

shall state the nature of the proceeding at which the person is commanded to appear and testify, the date, place and time at which the person's appearance is required, and if the person is required to produce at such time and place any documents or other things a detailed description of the documents or things to be produced. Each subpoena shall be signed by the Clerk and stamped with the date of issuance.

B. Subpoenas shall be issued by the Clerk at the request of any party, without order of the Court. A party represented by counsel should prepare the form of the subpoena requested and present it to the Clerk for issuance.

C. A subpoena may be served by any person who is not a party to the action and is not less than 18 years of age. If the subpoena commands the person's attendance at a deposition or trial, it must be accompanied by the fee for one day's attendance, in the amount of Fifty Dollars ($50.00), and, if the person resides more than twenty-five (25) miles from the place of deposition or trial, a mileage allowance at the rate currently allowed by the Internal Revenue Service for the full round-trip distance. The person who makes such service shall file a proof of service with the Court, stating the date and manner of service, but the validity of such service shall not be affected by whether or not such proof of service is filed or conforms to this rule.

D. A subpoena may be served anywhere within the exterior boundaries of Santa Ana Lands. A party wishing to take the deposition of a non-party witness who resides and works outside of the exterior boundaries of the Santa Ana Lands and who is unwilling to appear for such deposition voluntarily, shall file a notice thereof with the Court, and shall have a subpoena issued to such person from a Court having jurisdiction over such person, in the manner provided by the laws of that jurisdiction.

E. A person served with a subpoena who believes in good faith that compliance with the subpoena will impose undue hardship, or will require the disclosure of privileged or confidential information, or for any other reason should be limited or denied, may, within ten (10) days from the date of service or prior to the date set for appearance, whichever is earlier, serve upon the party or attorney at whose request the subpoena was issued a written objection setting forth in detail the nature and grounds for the objection. If timely objection is made, the person shall not be required to comply with those portions of the subpoena to which the objection was directed. If timely objection is made, or if no timely objection is made but the person subpoenaed fails to comply with the subpoena, the party by whom the subpoena was requested may file a motion with the Court to enforce the subpoena, a copy of which shall be served on the person subpoenaed as well as all other parties to the case and which shall be handled as any other motion to the Court. If the Court orders that the person comply with the subpoena, noncompliance with such order may be treated as a civil contempt.

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

Rule 6-2-113 Motion for Judgment as a Matter of Law

A. Any defendant, at the close of the plaintiff's case at trial, may move the Court for judgment as a matter of law on any issue presented by the plaintiff's complaint, on the ground that the plaintiff has failed to present sufficient evidence to permit a reasonable jury to find for

plaintiff on that issue. If the Court rules for the movant, that issue is conclusively decided against the plaintiff, and only the remaining issues, if any, are reserved for submission to the Court or the jury at the conclusion of trial. If the Court's ruling effectively disposes of the plaintiff's case, the Court may terminate the trial. Any such motion that is not granted initially may be renewed at the conclusion of all evidence, and again after the jury's verdict is rendered.

B. By no later than ten (10) days after entry of judgment in a case tried to a jury, the losing party may move the Court for judgment as a matter of law as to any issue decided by the jury, on the ground that the evidence was insufficient to support the jury's verdict on such issue as a matter of law. Any such motion shall toll the time for filing a notice of appeal, and such time shall not begin to run until the Court has ruled on the motion.

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

Rule 6-2-114 Jury Instructions; Verdict; Judgment

A. In a case tried to a jury, at the close of all of the evidence and after each side has had an opportunity to present closing argument, the Court shall instruct the jury on the law. The Court's proposed instructions to the jury shall have previously been submitted to each party, and each party shall have had an opportunity to object to any instruction and to offer any different or additional instructions such party deems warranted by the evidence presented at trial, but the Court shall make the final determination as to what instructions shall be given.

B. The Court, in consultation with the parties, shall prescribe a verdict form, which may be in the form of a general verdict for one side or another, and, if applicable, awarding damages in an amount determined by the jury; or, in the form of a special verdict, in which the jury is required to answer questions as to specific issues presented by the case. The Court shall include as part of its instructions to the jury an explanation of the verdict form, to enable the jury to make the required findings on each issue presented.

C. After receiving their instructions, the jurors shall retire together to a place where they can deliberate on the case in private. A jury's decision on each issue presented by the verdict form must be unanimous. The jury shall continue to deliberate, from day to day, until it has reached a verdict on every issue presented or until it concludes that it is hopelessly deadlocked, and so advises the Court.

D. The Court shall enter a written judgment on a jury verdict, in a form approved by the parties, within ten (10) days after the verdict is rendered.

E. In a case tried to the Court, following the close of evidence and closing arguments by the parties the Court may announce its decision from the bench, but in any event shall issue a written decision and judgment, ruling on each issue presented and making findings of fact and conclusions of law as necessary to support its decision, within a reasonable time after the conclusion of the trial.

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

Rule 6-2-115 Costs; Interest

A. Unless the Court rules otherwise, and except as provided herein, the prevailing party in any civil action shall be entitled to an award of costs, in addition to such other relief as the Court may award. Costs shall include the following amounts, if reasonably incurred by the prevailing party: any filing fee, fees for service of process, appearance and mileage fees paid to witnesses who testify on behalf of the prevailing party at trial, and costs of depositions of witnesses who testify at trial by deposition, the prevailing party's expert witness fees, compensation for an interpreter (which amount shall be paid to the Court), jury fees, and other fees if approved by the Court. Costs shall not include attorney's fees, unless a specific statute pursuant to which the case was brought authorizes an award of such fees, nor shall it include any internal costs incurred by an attorney or the attorney's staff. No costs shall be awarded against the Pueblo or any office or agency of the Pueblo, or against any official of the Pueblo sued in his official capacity.

B. The prevailing party shall submit a cost bill, itemizing each item of costs claimed by that party, with supporting documentation for each such item, by no later than ten (10) days after entry of judgment. The opposing party may file any objections it may have to the cost bill within ten (10) days, and the Court shall issue a ruling determining the allowable costs, which amount shall be added to and shall become part of the judgment.

C. Any portion of a judgment that is unpaid shall accrue interest from the date of the judgment at the rate of eight percent (8%) per annum, simple interest, until paid.

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

Rule 6-2-116 Default Judgment

A. When a party fails to file a responsive pleading where one is required by the provisions of Rule 6-2-107, within the time set forth in that Rule or such later time as the parties have agreed to in writing, the Court may, upon motion by the party to whose pleading the response is required, find such party to be in default, and enter judgment against the party, as set forth in this rule.

B. When a party fails to respond to a valid and proper discovery request under Rule 6-2-109, and persists in such failure after entry of an order compelling such discovery, the Court may, on motion of the party seeking such discovery, find such party in default and enter judgment against the party, as set forth in this rule, or find against such party on the issue or issues to which the discovery is directed.

C. A motion for entry of judgment by default shall be supported by affidavits and other documents establishing grounds for such default as set forth in this rule, and, if the party against whom the motion is filed has previously entered an appearance in the action, shall be served on the party or the party's attorney. The Court shall find the party in default, and enter judgment on such finding, only after holding a hearing in open Court, and finding, on the basis of admissible evidence presented at such hearing:

1. that the allegedly defaulting party failed to file a required responsive pleading, or failed to comply with a valid discovery order, as set forth in paragraphs (A) or (B) of this rule, without good cause; and

2. that the party seeking such judgment is entitled to the relief sought as a matter of law.

D. For good cause shown, a judgment entered by default may be set aside by the Court, on motion filed by the party against whom such judgment was entered within thirty (30) days after the entry of the judgment; but provided that the Court may, unless it finds mitigating circumstances, require the moving party to pay the other party's reasonable costs incurred in obtaining the judgment by default.

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

Rule 6-2-117 Summary Judgment

At any time prior to any deadline established by the Court for pre-trial motions, or, in the absence of such deadline, at least one month prior to trial, any party may move the Court to rule that such party is entitled to judgment as a matter of law on the merits of the case, or as to any legal issue presented by the case, on the ground that as to the merits or the particular issue there are no material facts in dispute, and the moving party is entitled to judgment as a matter of law. Such motion must be supported by a statement of the material facts as to which the movant claims there is no dispute, and affidavits, responses to interrogatories or deposition testimony, or other sworn, competent, relevant evidentiary material, supporting each such fact and showing the absence of any dispute as to such facts, and may not rely on mere allegations in the complaint or other unsworn or otherwise inadmissible material. Such motion shall also include, or be accompanied by, legal argument showing the grounds on which the movant claims he is entitled to the relief sought. A party opposing such motion on the ground that material facts are in dispute may not rest on denials in pleadings or arguments of counsel but must produce affidavits or other sworn testimonial or documentary evidence that would be admissible at trial demonstrating the existence of bona fide factual disputes. In ruling on the motion, the Court shall clearly set forth those facts that it finds to be undisputed as shown by the competent evidence submitted by the parties, and may enter judgment as to those issues, the material facts as to which it finds to be undisputed. In the event such judgment does not resolve all issues presented by the pleadings, the Court shall identify the issues reserved for trial.

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

Rule 6-2-118 Injunctions and Restraining Orders

A. Temporary Restraining Order. Upon motion of a plaintiff upon the filing of a complaint the Court may issue a temporary restraining order without notice to the adverse party, but only if the party seeking the order shows by affidavit or other sworn evidence that such party will suffer immediate, irreparable and non-monetary injury, loss or damage, unless such order is entered, and such party further shows that it attempted to give notice to the adverse party of its intention to seek such order from the Court. Any such order granted without notice shall remain

in force only until the time of a hearing before the Court, which shall be no more than ten (10) days after the date of the granting of the order unless the Court, for good cause shown, extends such order for a like period, at which hearing the Court shall consider whether to enter a preliminary injunction. The temporary restraining order shall be promptly served upon the adverse party, and shall state the date, time and place of the hearing on the motion for preliminary injunction.

B. Preliminary Injunction. A preliminary injunction may be issued by the Court on motion of any party, but only after notice to all parties and a hearing at which each party shall have an opportunity to be heard, or by written consent of all parties. The Court shall grant a motion for preliminary injunction over objection only where the moving party has shown, (1) a likelihood of success on the merits of that party's claims, (2) the entry of the injunction is necessary to avoid irreparable and non-monetary injury, loss or damage to the moving party prior to entry of final judgment, and (3) the entry of such injunction is not contrary to the public interest. A preliminary injunction shall remain in effect until final judgment is entered in the case, unless the Court for good cause orders otherwise.

C. As used in Paragraphs A and B of this Rule, "irreparable and non-monetary injury, loss or damage" means that the type of harm threatened cannot be corrected by monetary compensation or conditions cannot be put back to the way they were. Three examples are: cutting down shade trees, tearing down a structure and polluting a stream.

D. Contents of Restraining Order or Injunction. A Temporary Restraining Order or a Preliminary Injunction shall state the Court's findings justifying its entry, shall specifically identify the party or parties bound by it, and shall specifically describe the actions that are restrained or required by it.

E. Security. The Court may, if it deems it appropriate, issue a Temporary Restraining Order or Preliminary Injunction only on the condition that the moving party post a bond or other security sufficient to cover any costs or damages to an adverse party later found to have been wrongfully restrained or enjoined.

F. Permanent Injunction. A final judgment in a civil case may, in the interest of justice, include any permanent injunctive relief to which the Court finds the prevailing party is entitled as a matter of law.

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

Rule 6-2-119 Filing of Notice of Appeal

Any party may appeal from a final judgment of the Court, by filing, by no later than thirty (30) days after entry of the judgment in the Court record, a notice of appeal, in compliance with the Rules of the Tribal Court of Appeals, together with such fee as the Court shall establish from time to time, unless the Court on motion, filed within the time allowed for filing the notice of appeal and supported by appropriate affidavits, orders that the fee should be waived on account of the indigence of the appellant and the non-frivolous nature of the appeal.

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

Rule 6-2-120 Stay of Judgment

The filing of a notice of appeal does not automatically stay the effectiveness of a judgment, absent a specific provision of law to that effect. A party that has filed a notice of appeal may ask the Contemporary Court to stay the judgment, by filing a motion complying with the provisions of the Rules of the Tribal Court of Appeals.

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

Rule 6-2-121 Alternative Dispute Resolution

The parties shall in all cases be encouraged by the Court to pursue settlement of their dispute by mediation. Any judge of the Court other than the judge who is hearing the case may be called on by the Court or the parties to serve as a mediator, at no cost to the parties, and the parties are free to retain the services of any other person, at the parties' cost, for such purpose. Upon reasonable request by all parties, the Court will suspend further proceedings in the case for a reasonable period to accommodate a mediation process agreed to by the parties.

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

Rule 6-2-122 Procedures for Appeal in Workers' Compensation Cases

A. The Contemporary Court's rules of civil procedure will govern any appeal to the Contemporary Court, except where they conflict with the specific procedures herein.

B. Notice of Appeal. A Notice of Appeal must be filed within 30 days after the receipt of the written decision from the Administrator, as defined in the Pueblo's Workers' Compensation Code. Such notice must be filed with the Contemporary Court and copies must be served either personally or by certified mail, return receipt requested, upon the Administrator and all other parties.

C. Contents of Notice. The Notice of Appeal must set forth in full detail the grounds upon which the appealing party considers the decision of the Administrator to be in error or not in accordance with law. The notice must include every issue to be considered by the Contemporary Court. The appellant will be deemed to have waived all objections to irregularities concerning the matter on which such appeal is taken other than those specifically set forth in the Notice of Appeal.

D. Administrator's Record. The Administrator shall transmit its original records, or legible copies certified as to their accuracy, to the Contemporary Court within 10 days after receiving a Notice of Appeal.

E. Oral Argument. The Contemporary Court will schedule oral argument to take place no later than 30 days after receipt of the Notice of Appeal. The Court Clerk will send notice of the time, date, and location of the oral argument to the parties.

F. Bond. No bond will be required on appeal to the Contemporary Court.

G. No Stay of Award. The commencement of an action for review by the Contemporary Court does not relieve the Employer from payment of compensation as directed by the Administrator. If the Administrator's decision is overturned, then repayment will be governed by the Workers' Compensation Code.

H. Standard of Review. The Contemporary Court shall apply the standard of review set forth in the Workers' Compensation Code.

I. Decision. The Contemporary Court's decision will be in writing, stating the issues as they appeared to the Court and the basis of the Court's decision. Copies of the decision will be sent to all parties to the appeal. The Court will issue its decision within 30 days of the hearing. Decisions of the Tribal Court may not be appealed.

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

ARTICLE 3 – RULES OF CRIMINAL PROCEDURE

The effective date of Title 6, Article 3 is July 1, 2023. Resolution No. 2023-R-04.

Chapter 1 – General Provisions

Rule 6-3-101 Scope and Title

A. Scope. These rules govern the procedure in the Contemporary Court of Santa Ana Pueblo in all criminal proceedings.

B. Construction. These rules are intended to provide for the just determination of criminal proceedings. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

C. Title. These rules shall be known as the Rules of Criminal Procedure for the Santa Ana Pueblo Contemporary Court.

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

Rule 6-3-102 Service and Filing of Pleadings and Other Papers

A. Service; when required. Except as otherwise provided in these rules, every written order; every pleading subsequent to the initial complaint; every paper relating to discovery required to be served upon a party, unless the court otherwise orders; every written motion other than one which may be heard ex parte; and every written notice, appearance, demand, designation of record on appeal, and similar paper shall be served upon each of the parties.

B. Service; how made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party, or by mailing a copy to the attorney

or party at the attorney's or party's last known address. Service by mail is complete upon mailing.

C. Definitions. As used in this rule:

1. "Delivering a copy" means:

a. handing it to the attorney or to the party;

b. sending a copy by facsimile or electronic transmission when permitted by Rule 6-3-104 or Rule 6-3-105;

c. leaving it at the attorney's or party's office with a clerk or other person in charge thereof, or, if there is no one in charge, leaving it in a conspicuous place in the office;

d. if the attorney's or party's office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing there; or

e. leaving it at a location designated by the court for serving papers on attorneys, if the following requirements are met:

i. the court, in its discretion, chooses to provide such a location; and

ii. service by this method has been authorized by the attorney, or by the attorney's firm, organization, or agency on behalf of the attorney.

2. "Mailing a copy" means sending a copy by first class mail with proper postage.

D. Filing by a party; certificate of service. All papers after the complaint required to be served upon a party, together with a certificate of service indicating the date and method of service, shall be filed with the court within a reasonable time after service.

E. Filing of papers and pleadings by a party represented by counsel. The clerk shall not file a pleading or paper of a defendant who is represented by an attorney, unless the paper is a request to dismiss counsel, or to appear pro se. If the paper is a request to dismiss counsel, or to appear pro se, the clerk shall serve a copy of the request on all counsel of record in the proceedings. Except for a request to dismiss counsel, or to appear pro se, all documents or items received by the court from a defendant who is represented by an attorney shall be forwarded, without filing, to the defendant's attorney of record. Nothing in this paragraph shall restrict a defendant's right to file pro se post-conviction motions under Rule 6-3-802.

F. Filing with the court defined. The filing of papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. "Filing" shall include filing a facsimile copy under Rule 6-2-104. If a party has filed a paper using facsimile transmission, that party shall not subsequently submit a duplicate paper copy to the court. The clerk shall not refuse

to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules.

G. Proof of service. Except as otherwise provided in these rules or by order of court, proof of service shall be made by the certificate of service indicating the date and method of service signed by an attorney of record, or if made by any other person, by the affidavit of such person. Such certificate or affidavit shall be filed with the clerk or endorsed on the pleading, motion, or other paper required to be served.

H. Filing and service by the court. Unless otherwise ordered by the court, the court shall serve all written court orders and notices of hearing on the parties. For papers served by the court, the certificate of service need not indicate the method of service. For purposes of Rule 6-3-105C, papers served by the court shall be deemed served by mail, regardless of the actual manner of service, unless the court's certificate of service unambiguously states otherwise. The court may, in its discretion, serve papers in accordance with the method described in C.1.e of this rule.

I. Filing and service by an inmate. The following provisions apply to documents filed and served by an inmate confined to an institution:

1. If an institution has a system designed for legal mail, the inmate shall use that internal mail system to receive the benefit of this rule.

2. The document is timely filed if deposited in the institution's internal mail system within the time permitted for filing.

3. Whenever service of a document on a party is permitted by mail, the document is deemed mailed when deposited in the institution's internal mail system addressed to the parties on whom the document is served.

4. The date of filing or mailing may be shown by a written statement, made under penalty of perjury, showing the date when the document was deposited in the institution's internal mail system.

5. A written statement under Subparagraph (4) of this paragraph establishes a presumption that the document was filed or mailed on the date indicated in the written statement. The presumption may be rebutted by documentary or other evidence.

6. Whenever an act must be done within a prescribed period after a document has been filed or served under this paragraph, that period shall begin to run on the date the document is received by the party.

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

Rule 6-3-103 Service and Filing of Pleadings and Other Papers by Facsimile

A. Facsimile copies permitted to be filed. Subject to the provisions of this rule, a party may file a facsimile copy of any pleading or paper by faxing a copy directly to the court or by faxing a copy to an intermediary agent who files it in person with the court. A facsimile copy

of a pleading or paper has the same effect as any other filing for all procedural and statutory purposes. The filing of pleadings and other papers with the court by facsimile copy shall be made by faxing them to the clerk of the court at a number designated by the clerk, except if the paper or pleading is to be filed directly with the judge, the judge may permit the papers to be faxed to a number designated by the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. The court shall designate one or more telephone numbers to receive fax filings.

B. Facsimile service by court of notices, orders or writs. Facsimile service may be used by the court for issuance of any notice, order or writ or receipt of an affidavit. The clerk shall note the date and time of successful transmission on the file copy of the notice, order or writ.

C. Paper size and quality. No facsimile document shall be filed with the court unless it is on plain paper and substantially satisfies all of the requirements of Rule 6-3-113 of these rules.

D. Filing pleadings or papers by facsimile. A pleading or paper may be filed with the court by facsimile transmission if:

1. a fee is not required to file the pleading or paper;

2. only one copy of the pleading or paper is required to be filed;

3. unless otherwise approved by the court, the pleading or paper is not more than ten (10) pages in length excluding the facsimile cover page; and

4. the pleading or paper to be filed is preceded by a cover sheet with the names of the sender and the intended recipient, any applicable instructions, the voice and facsimile telephone numbers of the sender, an identification of the case, the docket number and the number of pages transmitted.

E. Facsimile copy filed by an intermediary agent. Facsimile copies of pleadings or papers filed in person by an intermediary agent are not subject to the restrictions of Paragraph D of this rule.

F. Time of filing. If facsimile transmission of a pleading or paper faxed is begun before the close of the business day of the court in which it is being filed, it will be considered filed on that date. If facsimile transmission is begun after the close of business, the pleading or paper will be considered filed on the next court business day. For any questions of timeliness, the time and date affixed on the cover page by the court's facsimile machine will be determinative.

G. Service by facsimile. Any document required to be served by Rule 6-3-102(A) may be served on a party or attorney by facsimile transmission if the party or attorney has:

1. listed a facsimile telephone number on a pleading or paper filed with the court in the action;

2. a letterhead with a facsimile telephone number; or

3. agreed to be served with a copy of the pleading or paper by facsimile transmission.

H. Service by facsimile is accomplished when the transmission of the pleading or paper is completed.

I. Demand for original. A party shall have the right to inspect and copy any pleading or paper that has been filed or served by facsimile transmission if the pleading or paper has a statement signed under oath or affirmation or penalty of perjury.

J. Conformed copies. Upon request of a party, the clerk shall stamp additional copies provided by the party of any pleading filed by facsimile transmission.

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

Rule 6-3-104 Electronic Service of Pleadings and Other Papers

A. Definitions. As used in these rules:

1. "electronic transmission" means the transfer of data from computer to computer other than by facsimile transmission; and

2. "document" includes the electronic representation of pleadings and other papers.

B. Service by electronic transmission. Any document required to be served by Rule 6-3-102(A) may be served on a party or attorney by electronic transmission of the document if the party or attorney has agreed to be served with pleadings or papers by electronic mail. An attorney may elect to serve documents through other methods authorized by this rule, Rule 6-3-102, or Rule 6-3-103. Electronic service is accomplished when the transmission of the pleading or paper is completed. If within two (2) days after service by electronic mail, a party served by electronic mail notifies the sender of the electronic mail that the pleading or paper cannot be read, the pleading or paper shall be served by any other method authorized by Rule 6-3-102 designated by the party to be served. The court may serve any document by electronic transmission to an attorney or to any other person who has agreed to receive documents by electronic transmission.

C. Demand for original. Original paper documents served electronically, including original signatures, shall be maintained by the attorney serving the document and shall be made available, upon reasonable notice, for inspection by other parties or the court. Attorneys shall retain original paper documents until final disposition of the case and the conclusion of all appeals.

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

Rule 6-3-105 Time

A. Computing time. This rule applies in computing any time period specified in these rules, in any court order, or in any section of the Tribal Code, unless another rule of procedure contains time computation provisions that expressly supersede this rule.

1. Period stated in days or a longer unit; eleven (11) days or more. When the period is stated as eleven (11) days or a longer unit of time

a. exclude the day of the event that triggers the period;

b. count every day, including intermediate Saturdays, Sundays, and legal holidays; and

c. include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

2. Period stated in days or a longer unit; ten (10) days or less. When the period is stated in days, but the number of days is ten (10) days or less

a. exclude the day of the event that triggers the period;

b. exclude intermediate Saturdays, Sundays, and legal holidays; and

c. include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

3. Period stated in hours. When the period is stated in hours

a. begin counting immediately on the occurrence of the event that triggers the period;

b. count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

c. if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

4. Unavailability of the court for filing. If the court is closed or is unavailable for filing at any time that the court is regularly open

a. on the last day for filing under Subparagraphs (A)(1) or (A)(2) of this rule, then the time for filing is extended to the first day that the court is open and available for filing that is not a Saturday, Sunday, or legal holiday; or

b. during the last hour for filing under Subparagraph (A)(3) of this rule, then the time for filing is extended to the same time on the first day that the court is open and available for filing that is not a Saturday, Sunday, or legal holiday.

5. "Last day" defined. Unless a different time is set by a court order, the last day ends

a. for electronic filing, at midnight; and

b. for filing by other means, when the court is scheduled to close.

6. "Next day" defined. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

7. "Legal holiday" defined. "Legal holiday" means the day that the following are observed by the judiciary:

a. New Year's Day, Martin Luther King Jr.'s Birthday, Presidents' Day (traditionally observed on the day after Thanksgiving), Memorial Day, Independence Day, Labor Day, Indigenous Peoples Day, Veterans' Day, Thanksgiving Day, or Christmas Day; and

b. any other day observed as a holiday by the judiciary.

B. Extending time.

1. In General. When an act may or must be done within a specified time, the court may, for cause shown, extend the time

a. with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

b. on motion made after the time has expired if the party failed to act because of excusable neglect.

2. Exceptions. The court shall not extend the time for a determination of probable cause, for filing a motion for new trial, for filing a notice of appeal, for filing a motion for acquittal, for filing a notice of intent to seek the death penalty, for filing petitions for writs of certiorari seeking review of denials of habeas corpus petitions by the court, or for filing a motion for an extension of time for commencement of trial, except as otherwise provided in these rules.

C. Additional time after certain kinds of service. When a party may or must act within a specified time after service and service is made by mail, facsimile, electronic transmission, or by deposit at a location designated for an attorney at a court facility under Rule 6-3-102(C)(1)(e), three (3) days are added after the period would otherwise expire under Paragraph A. Intermediate Saturdays, Sundays, and legal holidays are included in counting these added three (3) days. If the third day is a Saturday, Sunday, or legal holiday, the last day to act is the next day that is not a Saturday, Sunday, or legal holiday.

D. Public posting of regular court hours. The court shall publicly post the hours that it is regularly open.

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

Rule 6-3-106 Entry of Appearance

A. Written order. Whenever counsel undertakes to represent a defendant in any criminal action, he will file a written entry of appearance in the cause, unless he has been appointed by written order of the court. For the purpose of this rule, the filing of any pleading signed by counsel constitutes an entry of appearance.

B. Continuation of representation. An attorney who has entered an appearance or who has been appointed by the court shall continue such representation until relieved by the court.

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

Rule 6-3-107 Record

A. Definition. As used in the Rules of Criminal Procedure, "record" shall mean:

1. stenographic notes which must be transcribed when a "record" is required to be filed;

2. a statement of facts and proceedings stipulated to by the parties for purpose of review; or

3. any mechanical, electrical or other recording, including a videotape recording of any proceeding, when such method of mechanical, electrical or other recording has been approved by the court administrator.

B. Broadcast or reproduction. No broadcast or reproduction of any mechanical, electrical or other recording shall be made for any person other than an official of the court for court purposes.

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

Rule 6-3-108 Criminal Contempt

A. Scope. This rule establishes procedures to implement the inherent powers of the court to impose punitive sanctions for criminal contempt of court. This rule shall not apply to the imposition of other sanctions specifically authorized by these rules or Pueblo law, or to the imposition of remedial sanctions for civil contempt of court. This rule shall not apply to any person who is less than eighteen years old.

B. Definitions.

1. "Contempt" or "contemptuous conduct" includes but is not limited to

a. disorderly conduct, insolent behavior, or a breach of peace, noise, or other disturbance, if such behavior actually obstructs or hinders the administration of justice or tends to diminish the court's authority;

b. misconduct of court officers in official transactions; or

c. disobedience of any lawful order, rule, or process of the court.

2. "Direct contempt" means contemptuous conduct committed in the immediate presence of the court that is personally observed by the judge.

3. "Indirect contempt" means contemptuous conduct that occurs outside the presence of the court, or conduct that is not personally observed by the judge and requires further fact finding.

4. "Punitive sanction" means a sentence imposed to punish a person for committing an act of criminal contempt and may include a reprimand or unconditional fine or unconditional sentence of imprisonment.

C. Direct criminal contempt. A direct criminal contempt may be punished summarily at the time of the contempt without further evidentiary proceedings. Except in cases of flagrant contemptuous conduct, before summarily punishing a person for direct criminal contempt the judge shall give the person a warning, either orally or in writing, to no longer engage in the contemptuous behavior and shall give the person an opportunity to explain the conduct. When the judge summarily punishes a contempt defendant for direct criminal contempt, the judge shall forthwith sign and file with the clerk a written order, which shall constitute a judgment and sentence, certifying

1. the specific facts constituting the direct criminal contempt;

2. that the judge personally observed the contemptuous conduct committed in the presence of the judge without the need for further fact finding; and

3. the punishment that was summarily imposed.

D. Disposition of indirect criminal contempt on notice and hearing. Indirect criminal contempt shall be punished only after notice and hearing in accordance with this paragraph.

1. Criminal complaint. An indirect criminal contempt proceeding shall be initiated with a criminal complaint under Rule 6-3-201, which shall be served with a summons as set forth in Rule 6-3-208.

2. Appointing a prosecutor. The court shall appoint the prosecutor to prosecute the criminal contempt for the Pueblo.

3. Rules of Criminal Procedure. A charge of indirect criminal contempt shall be prosecuted in accordance with this rule and the Rules of Criminal Procedure for the Contemporary Court, to the extent that such rules are not inconsistent with this rule.

4. Judgment and sentence. If the contempt defendant is found guilty of criminal contempt, the court shall enter a judgment and sentence.

E. Docketing. Any criminal contempt proceeding commenced under this rule shall be docketed as a separate criminal matter with a new case number.

F. Appeal. Any person found guilty of criminal contempt may appeal pursuant to the Rules of Appellate Procedure governing appeals from the Contemporary Court in criminal cases.

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

Rule 6-3-109 Harmless Error; Clerical Mistakes

1. Harmless error. Error in either the admission or the exclusion of evidence and error or defect in any ruling, order, act or omission by the court or by any of the parties is not grounds for granting a new trial or for setting aside a verdict, for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take any such action appears to the court inconsistent with substantial justice.

2. 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 and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter, while the appeal is pending, may be so corrected with leave of the appellate court.

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

Rule 6-3-110 Conduct of Contemporary Court Proceedings

A. Judicial proceedings. Judicial proceedings should be conducted with fitting dignity and decorum, in a manner conducive to undisturbed deliberation, indicative of their importance to the people and to the litigants, and in an atmosphere that bespeaks the responsibilities of those who are charged with the administration of justice.

B. Nonjudicial proceedings. Proceedings, other than judicial proceedings, designed and carried out primarily as ceremonies, and conducted with dignity by judges in open court, may properly be photographed in the courtroom with the permission and under the supervision of the Contemporary Court.

C. Appearance of the defendant and witnesses before the court. A defendant shall not be required to appear before the jury in distinctive clothing that would give the appearance that the defendant is incarcerated. Except by order of the court, the defendant may not appear before the jury in any visible restraint devices, including handcuffs, chains, or stun belts, a visible bullet proof vest, or any other item which, if visible to the jury, would prejudice the defendant in the eyes of the jury. When the defendant appears in court for a jury trial in any restraint device, the court shall state on the record, outside the presence of the jury, the kind of restraint device used and the reasons why the defendant is being restrained. Before requiring a witness to appear

before the jury in prison clothing or any visible restraint the court shall balance the need for courtroom security and the likelihood of prejudice to the defendant in the eyes of the jury.

D. Telephonic hearings. Subject to the approval of the presiding judge, motions hearings may be held telephonically. Evidentiary hearings, acceptance of guilty pleas, and sentencings shall not be held telephonically.

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

Rule 6-3-111 Witness Use Immunity

A. Issuance of order. If a person has been or may be called to testify or to produce a record, document, or other object in an official proceeding conducted under the authority of the Contemporary Court, the court may issue a written order requiring the person to testify or to produce the record, document or other object notwithstanding the person's privilege against self-incrimination. The court may issue an order under this rule upon the written application of the prosecuting attorney, the accused, or upon the court's own motion. The written application shall be provided to all parties.

B. Application. The court may grant the application and issue a written order pursuant to this rule if it finds the following:

1. the testimony, or the record, document or other object may be necessary to the public interest; and

2. the person has refused or is likely to refuse to testify or to produce the record, document or other subject on the basis of the person's privilege against self-incrimination.

C. Effect of order. The use of any testimony or other evidence given pursuant to an order issued under this rule is subject to the provisions of Rule 6-4-413.

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

Rule 6-3-112 Record; Exhibits

A. Record of proceedings. A verbatim record shall be made of all court proceedings, including, but not limited to:

1. the trial;

2. arraignment;

3. release proceedings;

4. motion hearings;

5. plea agreement proceedings;

6. sentencing proceedings; and

7. habeas corpus proceedings.

B. Receipt. The court reporter or tape monitor shall deliver to the clerk of the court a copy of the record of proceedings, all tendered exhibits and a receipt listing the exhibits. Upon receipt of the record and exhibits, the clerk shall sign the receipt and file a copy in the court file.

C. Return. Unless otherwise ordered by the court, after notice to the parties or their attorneys in the manner set forth in this rule, all exhibits delivered to the clerk may be returned to the attorney or party tendering the exhibit as evidence.

D. Notice of disposition of exhibits. Prior to returning the exhibits to the attorney or party tendering the exhibit as evidence, the clerk shall give written notice to all parties or their attorneys that, unless otherwise ordered by the court, the exhibits in custody of the clerk will be returned to the attorney or party tendering the exhibit or otherwise disposed of after the expiration of sixty (60) days from the date of mailing of such notice. The clerk shall give the written notice required by this paragraph:

1. within ninety (90) days after final disposition of the case, or

2. if there is an appeal and a new trial has not been ordered, within thirty (30) days after the filing of the decision of the Pueblo of Santa Ana Court of Appeals.

The clerk shall file a notice of the final disposition of the evidence.

E. Preservation of exhibits. Upon motion, the Contemporary Court may order any exhibit preserved by the court or disposed of in the manner ordered by the court.

F. Preservation of biological and physical evidence. The court shall preserve all evidence that is secured in relation to an investigation or prosecution of a crime and that could be subjected to DNA testing, for not less than the period of time that a person remains subject to incarceration or supervision in connection with the investigation or prosecution.

G. Disposal of biological and physical evidence. The court may dispose of evidence before the expiration of the time period set forth in Paragraph F of this rule if:

1. no other law, regulation or court order requires that the evidence be preserved;

2. the evidence must be returned to its rightful owner;

3. preservation of the evidence is impractical due to the size, bulk, or physical characteristics of the evidence; and

4. the Pueblo takes reasonable measures to remove and preserve portions of the evidence sufficient to permit future DNA testing.

H. Compliance. The court may comply with the requirements of Paragraphs F and G of this rule, by returning the evidence described in those paragraphs to the appropriate representative of the Pueblo.

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

Rule 6-3-113 Form of Papers

All pleadings and papers filed in the court shall be clearly legible, shall be on good quality white paper eight and one-half by eleven (8½ x 11) inches in size, with a left margin of (1) inch, a right margin of one (1) inch, and top and bottom margins of one and one-half (1½) inches; with consecutive page numbers at the bottom; and stapled at the upper left hand corner; and, except for a cover page, shall be typed or printed using pica (10 pitch) type style or a twelve (12) point typeface. A space of at least two and one-half (2½) by two and one-half (2½) inches for the clerk's recording stamp shall be left in the upper right-hand corner of the first page of each pleading. The contents, except quotations and footnotes, shall be double spaced. Exhibits which are copies of original documents may be reproduced from originals by any duplicating or copying process which produces a clear black image on white paper. The size of any exhibits shall be their original size or any smaller size not less than eight and one-half by eleven (8½ x 11) inches.

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

Rule 6-3-114 Witnesses

Rule 6-3-510 shall apply to and govern the compelling of attendance of witnesses in criminal cases.

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

Rule 6-3-115 Motions

A. Motions and other papers. An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

B. Requirement of written motion. All motions, except motions made during trial, or as may be permitted by the court, shall be in writing and shall state with particularity the grounds and the relief sought.

C. Unopposed motions. The moving party shall determine whether or not a motion will be opposed. If the motion will not be opposed, an order initialed by opposing counsel shall accompany the motion.

D. Opposed motions. The motion shall recite that concurrence of opposing counsel was requested or shall specify why no such request was made. The movant shall not assume that the nature of the motion obviates the need for concurrence from opposing counsel unless the motion is a:

1. motion to dismiss;

2. motions regarding bonds and conditions of release;

3. motion for new trial;

4. motion for judgment notwithstanding the verdict;

5. motion to suppress evidence; or

6. motion to modify a sentence pursuant to Rule 6-3-801.

Notwithstanding the provisions of any other rule, counsel may file with any opposed motion a brief or supporting points with citations or authorities. Affidavits, statements, depositions or other documentary evidence in support of the motion may be filed with the motion.

E. Response. Unless otherwise specifically provided in these rules, a written response shall be filed within fifteen (15) days after service of the motion. Affidavits, statements, depositions or other documentary evidence in support of the response may be filed with the response. A motion to reduce bond or modify conditions of release shall not require a written response prior to hearing.

F. Reply brief. Any reply brief shall be filed within fifteen (15) days after service of any written response.

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

Rule 6-3-116 Orders; Preparation and Entry

A. Preparation of orders. Upon announcement of the Contemporary Court's decision in any matter the court shall:

1. allow counsel a reasonable time, fixed by the court, within which to submit the requested form of order or judgment;

2. designate the counsel who shall be responsible for preparation of the order or judgment and fix the time within which it is to be submitted; or

3. prepare its own form of order or judgment.

B. Trial without a jury. In a case tried without a jury the court shall make a general finding and may in addition, on request made before the general finding, find the facts specially. Such findings may be oral. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

C. Time limit. If no satisfactory form of order or judgment has been submitted within the time fixed by the court, the court shall take such steps as it may deem proper to have an appropriate form of order or judgment entered promptly.

D. Examination by counsel. In all events, before the court signs any order or judgment, counsel shall be afforded a reasonable opportunity to examine the same and make suggestions or objections.

E. Entry by court. The court must enter the judgment and order within a reasonable time after submission.

F. Filing. Upon the signing of any order or judgment it shall be filed promptly in the clerk's office and such filing constitutes entry thereof.

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

Chapter 2 – Initiation of Proceedings

Rule 6-3-201 Commencement of Prosecution

A prosecution may be commenced by the filing of a complaint. A complaint is a sworn written statement of the facts, the common name of the offense and, if applicable, the specific section number that defines the offense.

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

Rule 6-3-202 General Rules of Pleadings

A. Form. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number and a designation as to the type of pleading.

B. Adoption by reference. Statements made in one part of a pleading may be adopted by reference in another part of the same pleading.

C. Name of defendant. In any pleading, the name of the defendant, if known, shall be stated. If the name of the defendant is not known, he may be described by any name or description by which he can be identified with reasonable certainty.

D. Joinder of defendants. No complaint may charge more than one defendant. Defendants may be joined for trial pursuant to Rule 6-3-203.

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

Rule 6-3-203 Joinder; Severance

A. Joinder of offenses. Two or more offenses shall be joined in one complaint with each offense stated in a separate count, if the offenses, regardless of classification:

1. are of the same or similar character, even if not part of a single scheme or plan; or

2. are based on the same conduct or on a series of acts either connected together or constituting parts of a single scheme or plan.

B. Joinder of defendants. A separate complaint shall be filed for each defendant. Two or more defendants may be joined on motion of a party, or will be joined by the filing of a

statement of joinder by the prosecutor contemporaneously with the filing of the complaints charging such defendants:

1. when each of the defendants is charged with accountability for each offense included;

2. when all of the defendants are charged with conspiracy and some of the defendants are also charged with one or more offenses alleged to be in furtherance of the conspiracy; or

3. when, even if conspiracy is not charged and not all of the defendants are charged in each count, the several offenses charged:

a. were part of a common scheme or plan; or

b. were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of others.

C. Motion for severance. If it appears that a defendant or the Pueblo is prejudiced by a joinder of offenses or of defendants by the filing of a statement of joinder for trial, the court may order separate trials of offenses, grant a severance of defendants, or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance, the court may order the prosecutor to deliver to the court for inspection in camera any statements or confessions made by the defendants which the prosecution intends to introduce in evidence at the trial.

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

Rule 6-3-204 Amendment or Dismissal of Complaint

A. Defects, errors and omissions. A complaint shall not be deemed invalid, nor shall the trial, judgment, or other proceedings thereon be stayed, arrested, or in any manner affected, because of any defect, error, omission, imperfection, or repugnancy therein which does not prejudice the substantial rights of the defendant upon the merits. The Contemporary Court may at any time prior to a verdict cause the complaint to be amended in respect to any such defect, error, omission or repugnancy if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

B. Surplusage. Any unnecessary allegation contained in a complaint may be disregarded as surplusage.

C. Variances. No variance between those allegations of a complaint or any supplemental pleading which state the particulars of the offense, whether amended or not, and the evidence offered in support thereof shall be grounds for the acquittal of the defendant unless such variance prejudices substantial rights of the defendant. If the court finds that the defendant has been prejudiced by an amendment, the court may postpone the trial or grant other relief as may be proper under the circumstances.

D. Effect. No appeal, or motion made after verdict, based on any such defect, error, omission, repugnancy, imperfection, variance, or failure to prove surplusage shall be sustained unless it is affirmatively shown that the defendant was in fact prejudiced in the defendant's defense on the merits.

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

Rule 6-3-205 Unnecessary Allegations

A. Generally unnecessary allegations. It shall be unnecessary for a complaint to contain the following allegations unless such allegations are necessary to give the defendant notice of the crime charged:

1. time of the commission of offense;

2. means by which the offense was committed;

3. value or price of any property;

4. ownership of property;

5. intent with which an act was done;

6. description of any place or thing;

7. the particular character, number, denomination, kind, species or nature of money, checks, drafts, bills of exchange or other currency;

8. the specific degree of the offense charged;

9. any statutory exceptions to the offense charged; or

10. any other similar allegation.

B. Inclusion by Pueblo. The Pueblo may include any of the unnecessary allegations set forth in Paragraph A of this rule in a complaint without thereby enlarging or amending such complaint, and such allegations shall be treated as surplusage the same as if contained in a statement of facts.

C. Statement of facts. Upon motion of the defendant, the court may order the Pueblo to file a statement of facts setting forth any or all of the unnecessary allegations set forth in Paragraph A of this rule. Such statement of facts shall not enlarge or amend the complaint, and such allegations shall be treated as surplusage.

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

Rule 6-3-206 Signing of Pleadings

Every pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address and telephone number shall be stated. A party who is not represented by an attorney shall sign the party's pleading and state the party's address and telephone number. Except when otherwise specifically provided by rule or Pueblo law, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion or other paper and that to the best of the signer's knowledge, information and belief it is not interposed for delay. If a pleading, motion or other paper is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the pleading had not been served. If a pleading, motion or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. For a willful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted. A "signature" means an original signature, a copy of an original signature, a computer-generated signature or any other signature otherwise authorized by law.

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

Rule 6-3-207 Issuance of Warrant for Arrest and Summons

A. Time. Upon the docketing of any criminal action the court may issue a summons or arrest warrant.

B. Form for warrant. The warrant shall be signed by the court and shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall describe the offense charged. It shall command that the defendant be arrested and brought before the Contemporary Court.

C. Form for summons. The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the court at a stated time and place. A summons or arrest warrant shall be substantially in the form approved by the court.

D. Basis for warrant. The court may issue a warrant for arrest upon a sworn written statement of the facts showing probable cause for issuance of a warrant. The showing of probable cause shall be based upon substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. Before ruling on a request for a warrant the court may require the affiant to appear personally and may examine under oath the affiant and any witnesses he may produce, provided that such additional evidence shall be reduced to writing and supported by oath or affirmation. The court also may permit a request for an arrest warrant by any method authorized by Rule 6-3-210(F) for search warrants and may issue an arrest warrant remotely provided the requirements of Rule 6-3-210(F)(1) and this rule are met.

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

Rule 6-3-208 Service of Summons; Failure to Appear

A. Service. A summons shall be served in accordance with the rules governing service of process in civil actions unless the court directs service by mail. A copy of the complaint shall be attached to the summons. Service shall be made at least ten (10) days before the defendant is required to appear. Service by mail is complete upon mailing.

B. Failure to appear. If a defendant fails to appear in person, or by counsel when permitted by these rules, at the time and place specified in the summons, the court may issue a warrant for the defendant's arrest, and thereafter the action shall be treated as if the warrant had been the first process in the action.

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

Rule 6-3-209 Arrests without a Warrant; Arrest Warrants

A. To whom directed. Whenever a warrant is issued in a criminal action, it shall be directed to a full-time salaried law enforcement officer who is commissioned to enforce Pueblo law. Upon arrest the defendant shall be brought before the court without unnecessary delay.

B. Arrest. If the arresting officer has the warrant in the officer's possession at the time of the arrest, a copy shall be served on the defendant upon arrest. If the officer does not have the warrant in the officer's possession at the time of the arrest, the officer shall then inform the defendant of the offense and of the fact that a warrant has been issued and shall serve the warrant on the defendant as soon as practicable.

C. Return. The arresting officer shall make a return to the Contemporary Court.

D. Arrests without a warrant. If the defendant is arrested without a warrant, a criminal complaint shall be prepared, and a copy given to the defendant prior to transferring the defendant to the custody of the detention facility. If the defendant is in custody and the court is open, the criminal complaint shall be filed immediately with the court. If the court is not open and the defendant remains in custody, the complaint shall be filed the next business day of the court. If the defendant is not in custody, the complaint shall be filed with the court as soon as practicable.

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

Rule 6-3-210 Search Warrants

A. Issuance. A warrant may be issued by the court to search for and seize any

1. property which has been obtained or is possessed in a manner which constitutes a criminal offense;

2. property designed or intended for use or which is or has been used as the means of committing a criminal offense;

3. property which would be material evidence in a criminal prosecution; or

4. person for whose arrest there is probable cause or who is unlawfully restrained. A warrant shall issue only on a sworn written statement of the facts showing probable cause for issuing the warrant.

B. Contents. A search warrant shall be executed by a full-time salaried law enforcement officer commissioned to enforce Pueblo law. The warrant shall state the date and time it was issued by the judge and shall contain or have attached the sworn written statement of facts showing probable cause for its issuance and the name of any person whose sworn written statement has been taken in support of the warrant. A search warrant shall direct that it be served between the hours of 6:00 a.m. and 10:00 p.m., according to local time, unless the issuing judge, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at any time.

C. Execution. A search warrant shall be executed within ten (10) days after the date of issuance. The officer seizing property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the affidavit for search warrant, a copy of the search warrant, and a copy of the inventory of the property taken or shall leave the copies of the affidavit for search warrant, the search warrant, and inventory at the place from which the property was taken.

D. Return. The return of the warrant, or any duplicate original, shall be made promptly after execution of the warrant. The return shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if the person is present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be signed by the officer and the person in whose presence the inventory was taken. The court shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

E. Probable cause. As used in this rule, “probable cause” shall be based on substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished.

F. Methods for requesting warrant. A request for a search warrant may be made using any of the following methods, provided that the request should be made in writing whenever possible:

1. by hand-delivery of an affidavit substantially in the form approved by the Contemporary Court with a proposed search warrant attached;

2. by oral testimony in the presence of the judge provided that the testimony is reduced to writing, supported by oath or affirmation, and served with the warrant; or

3. by transmission of the affidavit and proposed search warrant required under Subparagraph (1) of this paragraph to the judge by telephone, facsimile, electronic mail, or other reliable electronic means.

G. Testimony, oaths, remote transmissions, and signatures.

1. Before ruling on a request for a warrant the judge may require the affiant to appear personally, telephonically, or by audio-video transmission and may examine under oath the affiant and any witnesses the affiant may produce, provided that any additional evidence shall be reduced to writing, supported by oath or affirmation, and served with the warrant.

2. If the judge administers an oath or affirmation remotely to the affiant or any witnesses the affiant may produce, the means used must be designed to ensure that the judge confirms the identity of the affiant and any witnesses the affiant may produce.

3. If the judge issues the warrant remotely, it shall be transmitted by reliable electronic means to the affiant and the judge shall file a duplicate original with the court. Upon the affiant's acknowledgment of receipt by electronic transmission, the electronically transmitted warrant shall serve as a duplicate original and the affiant is authorized, but not required, to write the words "duplicate original" on the transmitted copy. The affiant may request that the duplicate original warrant filed by the judge be sealed or lodged in accordance with Rule 6-3-117.

4. Any signatures required under this rule by the judge or affiant may be by original signature, a copy of an original signature, a computer-generated signature, or any other signature otherwise authorized by law.

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

Rule 6-3-211 Motion to Suppress

A. Property. A person aggrieved by a search and seizure may move for the return of the property and to suppress its use as evidence.

B. Suppression of other evidence. A person aggrieved by a confession, admission or other evidence may move to suppress such evidence.

C. Time for filing. A motion to suppress shall be filed no less than sixty (60) days prior to trial, unless, upon good cause shown, the trial court waives the time requirement. Any motion to suppress filed prior to trial shall be decided prior to trial to preserve the Pueblo's right to appeal any order suppressing evidence.

D. Hearing. The court shall receive evidence on any issue of fact necessary to the decision of the motion. If a motion pursuant to Paragraph A of this rule is granted, the property shall be returned, unless otherwise subject to lawful detention.

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

Chapter 3 – Pretrial Proceedings

Rule 6-3-301 Arrest without Warrant; Probable Cause Determination; First Appearance

A. General rule. A probable cause determination shall be made in all cases in which the arrest has been made without a warrant and the person has not been released upon some conditions of release. The probable cause determination shall be made by a Contemporary Court judge promptly, but in any event within forty-eight (48) hours after custody commences and no later than the first appearance of the defendant, whichever occurs earlier. The court may not extend the time for making a probable cause determination beyond forty-eight (48) hours. Saturdays, Sundays, and legal holidays shall be included in the forty-eight (48) hour computation, notwithstanding Rule 6-3-105(A).

B. Conduct of determination. The determination that there is probable cause shall be non-adversarial and may be held in the absence of the defendant and of counsel. No witnesses shall be required to appear unless the court determines that there is a basis for believing that the appearance of one or more witnesses might lead to a finding that there is no probable cause. If the complaint and any attached statements fail to make a written showing of probable cause, an amended complaint or a statement of probable cause may be filed with sufficient facts to show probable cause for detaining the defendant.

C. Probable cause determination; conclusion.

1. No probable cause found. If the court finds that there is no probable cause to believe that the defendant has committed an offense, the court shall order the immediate personal recognizance release of the defendant from custody pending trial.

2. Probable cause found. If the court finds probable cause that the defendant committed an offense, the court shall review the conditions of release. If no conditions of release have been set and the offense is a bailable offense, the court shall set conditions of release in accordance with Rule 6-3-401. If the court finds that there is probable cause the court shall make such finding in writing.

D. First appearance; explanation of rights. Upon the first appearance of a defendant before a court in response to summons or warrant or following arrest, the court shall inform the defendant of the following:

1. the offense charged;

2. the penalty provided by law for the offense charged;

3. the right to bail;

4. the right, if any, to trial by jury;

5. the right, if any, to the assistance of counsel at every stage of the proceedings;

6. the right, if any, to representation by an attorney at state expense;

7. the right to remain silent, and that any statement made by the defendant may be used against the defendant; and

8. the right, if any, to a preliminary examination.

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

Rule 6-3-302 Arraignment

A. Arraignment. The defendant shall be arraigned on the complaint within ten (10) days after the date of the filing of the complaint or the date of arrest, whichever is later. The defendant may appear at arraignment as follows:

1. through a two-way audio-visual communication in accordance with Paragraph I of this rule; or

2. in open court.

If the defendant appears without counsel, the court shall advise the defendant of the defendant's right to counsel.

B. Reading of complaint. The prosecutor shall deliver to the defendant a copy of the complaint and shall then read the complaint to the defendant unless the defendant waives such reading. Thereupon the Contemporary Court shall ask the defendant to plead.

C. Bail review. At arraignment, upon request of the defendant, the court shall evaluate conditions of release considering the factors stated in Rule 6-3-401. If conditions of release have not been set, the court shall set conditions of release.

D. Pleas. A defendant charged with a criminal offense may plead as follows:

1. guilty;

2. not guilty; or

3. no contest, subject to the approval of the court.

E. Refusal to plead. If a defendant refuses to plead or stands mute, the court shall direct the entry of a plea of not guilty on the defendant's behalf.

F. Advice to defendant. The court shall not accept a plea of guilty or no contest without first, by addressing the defendant personally in open court, informing the defendant of and determining that the defendant understands the following:

1. the nature of the charge to which the plea is offered;

2. the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law for the offense to which the plea is offered, including any possible sentence enhancements;

3. that the defendant has the right to plead not guilty, or to persist in that plea if it has already been made;

4. that if the defendant pleads guilty or no contest there will not be a further trial of any kind, so that by pleading guilty or no contest the defendant waives the right to a trial;

5. that, if the defendant is charged with a crime of domestic violence or a felony offense under Pueblo law or an offense that would subject the defendant to imprisonment of more than one year if tried in a federal or state court, a plea of guilty or no contest will affect the defendant's constitutional right to bear arms, including shipping, receiving, possessing or owning any firearm or ammunition, all of which are crimes punishable under federal law for a person convicted of domestic violence or an offense that would subject the defendant to imprisonment of more than one year if tried in a federal or state court; and

6. that, if the defendant pleads guilty or no contest to a crime for which registration as a sex offender is or may be required, and, if the defendant is represented by counsel, the court shall determine that the defendant has been advised by counsel of the registration requirement under the Pueblo of Santa Ana Sex Offender Registration and Notification Code.

G. Ensuring that the plea is voluntary. The court shall not accept a plea of guilty or no contest without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire of the defendant, defense counsel and the prosecutor as to whether the defendant's willingness to plead guilty or no contest results from prior discussions between the prosecutor and the defendant or the defendant's attorney.

H. Record of proceedings. A verbatim record of the proceedings at which the defendant enters a plea shall be made and, if there is a plea of guilty or no contest, the record shall include, without limitation, the court's advice to the defendant, the inquiry into the voluntariness of the plea including any plea agreement, and the inquiry into the accuracy of a guilty plea.

I. Audio-visual appearance. The arraignment or first appearance of the defendant before the court may be through the use of a two-way audio-video communication if the following conditions are met:

1. the defendant and the defendant's counsel are together in one room at the time of the first appearance before the court or, if that is not possible, they must be provided with the means of private contemporaneous communication with each other during the entirety of the first appearance;

2. the judge, legal counsel and defendant are able to communicate and see each other through a two-way audio-video system which may also be heard and viewed in the courtroom by members of the public; and

3. no plea is entered by the court except a plea of not guilty.

J. Waiver of arraignment. With the consent of the court, a defendant may waive arraignment by filing a written waiver of arraignment and plea of not guilty with the court and serving a copy on the prosecutor in time to give notice to interested persons. A waiver of arraignment shall not be filed and is not effective unless signed by the Contemporary Court judge. A waiver of arraignment and entry of a plea of not guilty shall be substantially in the form approved by the Contemporary Court.

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

Rule 6-3-303 Pleas

A. Alternatives.

1. In general. The prosecutor and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or no contest to a charged offense or to a lesser or related offense, the prosecutor will move for dismissal of other charges, or will recommend or not oppose the imposition of a particular sentence, or will do both. The Contemporary Court shall not participate in any such discussions.

2. With the approval of the court and the consent of the prosecutor, a defendant may enter a conditional plea of guilty or no contest, reserving in writing the right, on appeal from the judgment, to review of the adverse determination of any specified pre-trial motion. A defendant who prevails on appeal shall be allowed to withdraw the plea.

B. Notice. If a plea agreement has been reached by the parties which contemplates entry of a plea of guilty or no contest it shall be reduced to writing substantially in the form approved by the Contemporary Court. The court shall require the disclosure of the agreement in open court at the time the plea is offered and shall advise the defendant as required by Rule 6-3-302(F). If the plea agreement was not made in exchange for a guaranteed, specific sentence and was instead made with the expectation that the prosecutor would only recommend a particular sentence or not oppose the defendant's request for a particular sentence, the court shall inform the defendant that such recommendations and requests are not binding on the court. Thereupon the court may accept or reject the agreement or may defer its decision as to acceptance or rejection until there has been an opportunity to consider a presentence report.

C. Acceptance of plea. If the court accepts a plea agreement that was made in exchange for a guaranteed, specific sentence, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement. If the court accepts a plea agreement that was not made in exchange for a guaranteed, specific sentence, the court may inform the defendant that it will embody in the judgment and sentence the disposition recommended or requested in the plea agreement or that the court's judgment and sentence will embody a different disposition as authorized by law.

D. Rejection of plea. If the court rejects a plea agreement, the court shall inform the parties of this fact, advise the defendant personally in open court that the court is not bound by the plea agreement, afford either party the opportunity to withdraw the agreement and advise the defendant that if the defendant persists in a guilty plea or plea of no contest the disposition of the

case may be less favorable to the defendant than that contemplated by the plea agreement. This paragraph does not apply to a plea for which the court rejects a recommended or requested sentence but otherwise accepts the plea.

E. Time of plea agreement procedure. Except for good cause shown, notification to the court of the existence of a plea agreement shall be given at such time, as may be fixed by the Contemporary Court.

F. Inadmissibility of plea discussions. Evidence of a plea of guilty, later withdrawn, a plea of no contest, or of an offer to plead guilty or no contest to the crime charged or any other crime, or of statements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer.

G. Determining accuracy of plea. Notwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea.

H. Form of written pleas. A plea and disposition agreement or a conditional plea shall be submitted substantially in the form approved by the Contemporary Court.

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

Chapter 4 – Release Provisions

Rule 6-3-401 Pretrial Release

A. The Contemporary Court shall impose such bail or bond and conditions of release as it deems appropriate, fair and just, and designed to ensure that the defendant will appear for trial, that the public is not exposed to any danger or likelihood of additional criminal activity, and that the defendant has such liberty as is appropriate, taking into account the nature of the offense(s) charged and the record or criminal history of the defendant, as may be applicable.

B. Bail must be set within three (3) days after arrest or on the first day the Contemporary Court is open for business after the arrest, whichever is earlier.

C. The form of acceptable bail shall be determined by the Contemporary Court. The Contemporary Court may accept cash bail provided by a bondsman, on such terms as the court deems reasonable.

D. The Contemporary Court shall take such action as it deems appropriate if the defendant violates the terms and conditions of release, including issuance of an arrest warrant, imposition of penalties, enhanced bail and additional restrictions.

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

Rule 6-3-402 Release; During Trial, Pending Sentence, Motion for New Trial and Appeal

A. Release during trial. A defendant released pending trial under Rule 6-3-401 shall continue on release under the same terms and conditions as previously imposed, unless the Contemporary Court determines that other terms and conditions or termination of release are necessary to ensure the defendant's presence during the trial or to ensure that the defendant's conduct will not obstruct the orderly administration of justice.

B. Release pending sentencing. A defendant released pending or during trial may continue on release pending the imposition of sentence under the same terms and conditions as previously imposed, unless the surety has been released or the Contemporary Court has determined that other terms and conditions or termination of release are necessary to ensure

1. that the defendant will not flee the jurisdiction of the court;

2. that the defendant's conduct will not obstruct the orderly administration of justice; or

3. that the defendant does not pose a danger to any other person or to the community.

C. Release after sentencing. After imposition of a judgment and sentence, the Contemporary Court, on motion of the defendant, may establish conditions of release pending appeal or a motion for new trial. The court may utilize the criteria listed in Rule 6-3-401(A) and may also consider the fact of defendant's conviction and the length of sentence imposed. The defendant shall be detained unless the Contemporary Court after a hearing determines that the defendant is not likely to flee and does not pose a danger to the safety of any other person or the community if released. In the event the court requires a secured bond in the same amount as that established for release pending trial, the bond previously furnished shall continue pending appeal or disposition of a motion for a new trial, unless the surety has been discharged by order of the court. Nothing in this rule shall be construed as prohibiting the judge from increasing the amount of bond on appeal.

D. Revocation of release or modification of conditions of release pending appeal. The taking of an appeal does not deprive the Contemporary Court of jurisdiction under Rule 6-3-403, and the Pueblo may file a motion for revocation of release or modification of conditions of release on appeal.

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

Rule 6-3-403 Revocation or Modification of Release Orders

A. Scope. In accordance with this rule, the Contemporary Court may consider revocation of the defendant's pretrial release or modification of the defendant's conditions of release

1. if the defendant is alleged to have violated a condition of release; or

2. to prevent interference with witnesses or the proper administration of justice.

B. Motion for revocation or modification of conditions of release.

1. The court may consider revocation of the defendant's pretrial release or modification of the defendant's conditions of release on motion of the prosecutor or on the court's own motion.

2. The defendant may file a response to the motion, but the filing of a response shall not delay any hearing under Paragraph D or E of this rule.

C. Issuance of summons or bench warrant. If the court does not deny the motion on the pleadings, the court shall issue a summons and notice of hearing, unless the court finds that the interests of justice may be better served by the issuance of a bench warrant. The summons or bench warrant shall include notice of the reasons for the review of the pretrial release decision.

D. Initial hearing.

1. The court shall hold an initial hearing as soon as practicable, but no later than three (3) days after the defendant is detained.

2. At the initial hearing, the court may continue the existing conditions of release, set different conditions of release, or propose revocation of release.

3. If the court proposes revocation of release, the court shall schedule an evidentiary hearing under Paragraph E of this rule, unless waived by the defendant.

E. Evidentiary hearing.

1. Time. The evidentiary hearing shall be held as soon as practicable. If the defendant is in custody, the evidentiary hearing shall be held no later than seven (7) days after the initial hearing.

2. Defendant's rights. The defendant has the right to be present and to be represented by counsel. The defendant shall be afforded an opportunity to testify, to present witnesses, to compel the attendance of witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. If the defendant testifies at the hearing, the defendant's testimony shall not be used against the defendant at trial except for impeachment purposes or in a subsequent prosecution for perjury.

F. Order at completion of evidentiary hearing. At the completion of an evidentiary hearing, the court shall determine whether the defendant has violated a condition of release or whether revocation of the defendant's release is necessary to prevent interference with witnesses or the proper administration of justice. The court may

1. continue the existing conditions of release;

2. set new or additional conditions of release in accordance with Rule 6-3-401; or

3. revoke the defendant's release, if the court finds by clear and convincing evidence that

a. the defendant has willfully violated a condition of release and that no condition or combination of conditions will reasonably ensure the defendant's compliance with the release conditions ordered by the court; or

b. revocation of the defendant's release is necessary to prevent interference with witnesses or the proper administration of justice.

An order revoking release shall include written findings of the individualized facts justifying revocation.

G. Evidence. The Rules of Evidence shall not apply to the presentation and consideration of information at any hearing under this rule.

H. Review of conditions. If the court enters an order setting new or additional conditions of release, the defendant may file a motion to review the conditions. If, upon disposition of the motion, the defendant is detained or continues to be detained because of a failure to meet a condition imposed, or is subject to a requirement to return to custody after specified hours, the defendant may appeal in accordance with Rule 6-3-405 and the Rules of Appellate Procedure.

I. Expedited trial scheduling for defendant in custody. The court shall provide expedited priority scheduling in a case in which the defendant is detained pending trial.

J. Appeal. If the court revokes the defendant's release, the defendant may appeal in accordance with Rule 6-3-405 and the Rules of Appellate Procedure. The appeal shall be heard in an expedited manner. The defendant shall be detained pending the disposition of the appeal.

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

Rule 6-3-404 Bail for Witness

If it appears by affidavit that the testimony of a person within the jurisdiction of the Contemporary Court is material in any felony proceeding and that it may become impracticable to secure his presence by subpoena, the court may require such person to give bail for his appearance as a witness. If the witness is not in court, a warrant for his arrest may be issued and upon return thereof the court may require him or her to give bail as provided in Rule 6-3-401 for his or her appearance as a witness. If a witness fails to give bail, he or she may be committed to jail for a period not to exceed five (5) days, within which time his or her deposition shall be taken as provided in Rule 6-3-503. The court upon good cause shown may extend the time for taking such depositions for an additional period not exceeding five (5) days. Only in a case involving a Class 1 or Class 2 felony offense under Pueblo law or an offense that would subject

the defendant to imprisonment of more than one year if tried in a federal or state court, shall any surety be required for the bail of a witness.

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

Rule 6-3-405 Appeal from Orders Regarding Release or Detention

A. Right of appeal. In accordance with the Rules of Appellate Procedure, an appeal of an order regarding release or detention may be filed under the following circumstances.

1. Order setting conditions of release. After a hearing by the Contemporary Court under Rule 6-3-401, the defendant may appeal if:

a. the defendant is detained or continues to be detained because of an inability to post a secured bond or meet a condition of release; or

b. the defendant is subject to a condition of release that requires the defendant to return to custody for specified hours following release for employment, schooling, or other limited purposes.

2. Order revoking release. After a hearing by the court under Rule 6-3-403, the defendant may appeal if the defendant is subject to an order revoking release.

3. Order granting or denying motion for pretrial detention. After a hearing by the court under Rule 6-3-408,

a. the defendant may appeal if the court has granted the prosecutor's motion for pretrial detention; or

b. the Pueblo may appeal if the court has denied the prosecutor's motion for pretrial detention.

B. Stay of proceedings. An appeal under this rule does not stay proceedings in the Contemporary Court.

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

Rule 6-3-406 Bonds; Exoneration; Forfeiture

A. Exoneration of bond. Unless otherwise ordered for good cause, a bond shall be automatically exonerated only under the following circumstances:

1. twelve (12) months after the posting of the bond if the crime is a felony offense under Pueblo law or an offense that would subject the defendant to imprisonment of more than one year if tried in a federal or state court, and no charges are pending in the Contemporary court;

2. six (6) months after the posting of the bond if the crime is not a felony offense under Pueblo law nor an offense that would subject the defendant to imprisonment of more than one year if tried in a federal or state court, and no charges are pending in the Contemporary Court;

3. at any time prior to entry of a judgment of default on the bond if the prosecutor approves;

4. upon surrender of the defendant to the court by an unpaid surety;

5. upon dismissal of the case without prejudice, unless the case involves a paid surety; or

6. upon acquittal, conviction, or dismissal of the case with prejudice.

B. Surrender of the defendant by a paid surety. If the paid surety delivers the defendant to the Contemporary Court prior to the entry of a judgment of default on the bond, the court may absolve the paid surety of responsibility to pay all or part of the bond.

C. Forfeiture. If the defendant has been released upon the execution of an unsecured appearance bond, percentage bond, property bond, cash bond, or surety bond under Rule 6-3-401, and the defendant fails to appear in court as required, the court may declare a forfeiture of the bond. If a forfeiture has been declared, the court shall hold a hearing on the forfeiture prior to entering a judgment of default on the bond. A hearing on the forfeiture shall be held thirty (30) or more days after service of the Notice of Forfeiture and Hearing on the defendant, at the defendant's last known address, and on the surety, if any, in the manner provided by Rule 6-3-407.

D. Setting aside forfeiture. The court may direct that a forfeiture be set aside in whole or in part upon a showing of good cause why the defendant did not appear as required by the bond or if the defendant is surrendered by a surety, if any, into custody prior to the entry of a judgment of default on the bond. Notwithstanding any provision of law, no other refund of the bond shall be allowed.

E. Judgment of default; execution. If, after a hearing, the forfeiture is not set aside, the court shall enter a judgment of default on the bond. If the judgment of default is not paid within ten (10) days after it is filed and served on the defendant, at the defendant's last known address, and on the surety, if any, in the manner provided by Rule 6-3-407, execution may issue thereon.

F. Appeal. Any aggrieved person may appeal from a judgment or order entered under this rule as authorized by law for appeals in civil actions in accordance with the Rules of Appellate Procedure. An appeal of a judgment or order entered under this rule does not stay the underlying criminal proceedings.

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

Rule 6-3-407 Bail Bonds; Notice

By entering into a bond in accordance with the provisions of these rules, the obligors submit to the jurisdiction of the Contemporary Court and irrevocably appoint the clerk of the court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion of the prosecutor or upon the court's own motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the obligors at their last known addresses.

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

Rule 6-3-408 Pretrial Detention

A. Scope. Notwithstanding the presumption of pretrial release under Rule 6-3-401 and this rule, the Contemporary Court may order the detention pending trial of a defendant charged with a felony offense under Pueblo law or an offense that would subject the defendant to imprisonment of more than one year if tried in a federal or state court, if the prosecutor files a written motion titled "Expedited Motion for Pretrial Detention" and proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community.

B. Motion for pretrial detention. The prosecutor may file a written expedited motion for pretrial detention at any time in the Contemporary Court. The motion shall include the specific facts that warrant pretrial detention.

1. The prosecutor shall immediately deliver a copy of the motion to

a. the detention center holding the defendant, if any;

b. the defendant and defense counsel of record.

2. The defendant may file a response to the motion for pretrial detention in the Contemporary Court, but the filing of a response shall not delay the hearing under Paragraph F of this rule. If a response is filed, the defendant shall promptly provide a copy to the court and the prosecutor.

C. Probable cause determination. If a motion for pretrial detention is filed in the Contemporary Court and probable cause has not been found under Rule 6-3-207(D) or Rule 6-3-301, the court shall determine probable cause in accordance with Rule 6-3-301. If the court finds no probable cause, the court shall order the immediate personal recognizance release of the defendant under Rule 6-3-301 and shall deny the motion for pretrial detention without prejudice.

D. Detention pending hearing; warrant. Defendant not in custody when motion is filed. If the defendant is not in custody when the motion for pretrial detention is filed, the Contemporary Court may issue a warrant for the defendant's arrest if the motion establishes probable cause to believe the defendant has committed a felony offense under Pueblo law or an

offense that would subject the defendant to imprisonment of more than one year if tried in a federal or state court, and alleges sufficient facts that, if true, would justify pretrial detention under Rule 6-3-408. If the motion does not allege sufficient facts, the court shall issue a summons and notice of hearing.

E. Pretrial detention hearing. The court shall hold a hearing on the motion for pretrial detention to determine whether any release condition or combination of conditions set forth in Rule 6-3-401 will reasonably protect the safety of any other person or the community.

1. Time.

a. Time limit. The hearing shall be held promptly. Unless the court has issued a summons and notice of hearing under Subparagraph (E) of this rule, the hearing shall commence no later than five (5) days after the later of the following events:

i. the filing of the motion for pretrial detention; or

ii. the date the defendant is arrested as a result of the motion for pretrial detention.

b. Extensions. The time enlargement provisions in Rule 6-2-105 do not apply to a pretrial detention hearing. The court may extend the time limit for holding the hearing as follows:

i. for up to three (3) days upon a showing that extraordinary circumstances exist, and justice requires the delay;

ii. upon the defendant filing a written waiver of the time limit; or

iii. upon stipulation of the parties.

2. Discovery. At least twenty-four (24) hours before the hearing, the prosecutor shall provide the defendant with all evidence relating to the motion for pretrial detention that is in the possession of the prosecutor or is reasonably available to the prosecutor. All exculpatory evidence known to the prosecutor must be disclosed. The prosecutor may introduce evidence at the hearing beyond that referenced in the motion, but the prosecutor must provide prompt disclosure to the defendant prior to the hearing.

3. Defendant's rights. The defendant has the right to be present and to be represented by counsel. The defendant shall be afforded an opportunity to testify, to present witnesses, to compel the attendance of witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. If the defendant testifies at the hearing, the defendant's testimony shall not be used against the defendant at trial except for impeachment purposes or in a subsequent prosecution for perjury.

4. Prosecutor's burden. The prosecutor must prove by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community.

5. Evidence. The Rules of Evidence shall not apply to the presentation and consideration of information at the hearing.

F. Order for pretrial detention. The Contemporary Court shall issue a written order for pretrial detention at the conclusion of the pretrial detention hearing if the court determines by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community. The court shall file written findings of the individualized facts justifying the detention as soon as possible, but no later than two (2) days after the conclusion of the hearing.

G. Order setting conditions of release. The Contemporary Court shall deny the motion for pretrial detention if, on completion of the pretrial detention hearing, the court determines that the prosecutor has failed to prove the grounds for pretrial detention by clear and convincing evidence. At the conclusion of the pretrial detention hearing, the court shall issue an order setting conditions of release under Rule 6-3-401. The court shall file written findings of the individualized facts justifying the denial of the detention motion as soon as possible, but no later than two (2) days after the conclusion of the hearing.

H. Expedited trial scheduling for defendant in custody. The Contemporary Court shall provide expedited priority scheduling in a case in which the defendant is detained pending trial.

I. Successive motions for pretrial detention and motions to reconsider. On written motion of the prosecutor or the defendant, the court may reopen the detention hearing at any time before trial if the court finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on whether the previous ruling should be reconsidered.

J. Appeal. Either party may appeal the Contemporary Court order disposing of the motion for pretrial detention in accordance with Rule 6-3-405 and the Rules of Appellate Procedure. The court's order shall remain in effect pending disposition of the appeal.

K. Judicial discretion; disqualification and excusal. Action by the Contemporary Court on any matter relating to pretrial detention shall not preclude the subsequent disqualification of a Contemporary Court judge. A judge may not be excused from presiding over a detention hearing unless the judge is required to recuse himself or herself under Pueblo law or the Code of Judicial Conduct.

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

Chapter 5 – Discovery

Rule 6-3-501 Disclosure by the Pueblo

A. Information subject to disclosure. Unless a shorter period of time is ordered by the Contemporary Court, within ten (10) days after arraignment or the date of filing of a waiver of arraignment, subject to Paragraph E of this rule, the Pueblo shall disclose or make available to the defendant:

1. any statement made by the defendant, or codefendant, or copies thereof, within the possession, custody or control of the Pueblo, the existence of which is known, or by the exercise of due diligence may become known, to the prosecutor;

2. the defendant's prior criminal record, if any, as is then available to the Pueblo;

3. any books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the Pueblo, and which are material to the preparation of the defense or are intended for use by the Pueblo as evidence at the trial, or were obtained from or belong to the defendant;

4. any results or reports of physical or mental examinations, and of scientific tests or experiments, including all polygraph examinations of the defendant and witnesses, made in connection with the particular case, or copies thereof, within the possession, custody or control of the Pueblo, the existence of which is known, or by the exercise of due diligence may become known to the prosecutor;

5. a written list of the names and addresses of all witnesses which the prosecutor intends to call at the trial, identifying any witnesses that will provide expert testimony and indicating the subject area in which they will testify, together with any statement made by the witness and any record of prior convictions of any such witness which is within the knowledge of the prosecutor; and

6. any material evidence favorable to the defendant which the Pueblo is required to produce under the due process clause of the Indian Civil Rights Act, 25 U.S.C. § 1302(a)(8).

B. Examination by defendant. The defendant may examine, photograph or copy any material disclosed pursuant to Paragraph A of this rule.

C. Depositions. The Pueblo may move the court to perpetuate the testimony of any such witness by taking the witness' deposition pursuant to Rule 6-3-503.

D. Certificate of compliance. The prosecutor shall file with the clerk of the court at least ten (10) days prior to trial a certificate stating that all information required to be produced pursuant to Paragraph A of this rule has been produced, except as specified. The certificate shall contain an acknowledgment of the continuing duty to disclose additional information. If information specifically excepted from the certificate is furnished by the prosecutor to the defendant after the filing of the certificate, a supplemental certificate shall be filed with the court setting forth the material furnished. A copy of the certificate and any supplemental certificate shall be served on the defendant.

E. Disclosures for enhanced sentences. If the Pueblo intends to use a prior criminal conviction to enhance a sentence, the Pueblo shall provide or make available to the defendant certified copies or other proof of any prior conviction to be offered during the sentencing hearing.

F. Information not subject to disclosure. The prosecutor shall not be required to disclose any material required to be disclosed by this rule if:

1. the disclosure will expose a confidential informer;

2. there is substantial risk to some person of physical harm, intimidation, bribery, economic reprisals or unnecessary annoyance or embarrassment resulting from such disclosure, which outweighs any usefulness of the disclosure to the defendant.

G. Statement defined. As used in this rule, Rule 6-3-502, and Rule 6-3-503, "statement" means:

1. a writing made by a person having percipient knowledge of relevant facts and which contains such facts, other than drafts or notes that have been incorporated into a subsequent draft or final report; or

2. any written, stenographic, mechanical, electrical or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral declaration and which is recorded contemporaneously with the making of the oral declaration.

H. Failure to comply. If the Pueblo fails to comply with any of the provisions of this rule, the Contemporary Court may enter an order pursuant to Rule 6-3-505 or hold the prosecutor in contempt or take other disciplinary action pursuant to Rule 6-3-108.

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

Rule 6-3-502 Disclosure by the Defendant

A. Information subject to disclosure. Unless a shorter period of time is ordered by the Contemporary Court, within thirty (30) days after the date of arraignment or filing of a waiver of arraignment the defendant shall disclose or make available to the Pueblo the following:

1. books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody or control of the defendant, and which the defendant intends to introduce in evidence at the trial;

2. any results or reports of physical or mental examinations and of scientific tests or experiments, including all polygraph examinations of the defendant and witnesses, made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce in evidence at the trial or which were prepared by a witness whom the defendant intends to call at trial if the results or reports relate to his testimony; and

3. a list of the names and addresses of the witnesses the defendant intends to call at the trial, identifying any witnesses that will provide expert testimony and indicating the subject area in which they will testify, together with any statement made by the witness.

B. Examination by Pueblo. The Pueblo may examine, photograph or copy any material disclosed pursuant to Paragraph A of this rule.

C. Information not subject to disclosure. Except as to scientific or medical reports, this rule does not authorize the discovery or inspection of the following:

1. reports, memoranda or other internal defense documents made by the defendant, his attorneys or agents, in connection with the investigation or defense of the case; or

2. statements made by the defendant to his agents or attorneys.

D. Obtaining expert evaluations, testing, or interviews without disclosure to the Pueblo. When the defendant is being held, pending trial, in the custody of the Pueblo at any correctional or detention facility the defendant may present to the court an ex parte motion for transport, certifying that evaluation, testing, or interviewing is reasonably necessary for the preparation of the defense. The motion shall be filed under seal.

1. Ex parte motion and order requirements. The motion, and any resulting order that grants the motion, shall specify the following:

a. the detention facility or other appropriate law enforcement agency responsible for transporting the defendant;

b. the date and time when the defendant is to be taken to a secure, but private, location for whatever evaluation, testing or interviewing is to be done; and

c. the date and time that the defendant is to be returned to the detention facility.

2. Evaluation, testing or interviewing defined. As used in this rule, "evaluation, testing or interviewing" refers to performing expert consultations including but not limited to the following:

a. polygraph examinations;

b. medical, psychological or psychiatric testing;

c. evaluations and interviews; and

d. other types of forensic examinations.

3. Security considerations. The court shall give consideration to whether the location proposed by the defendant is appropriate, including whether the defendant can be appropriately secured by the transport officers without the officers being physically present while the defendant is being evaluated, tested or interviewed, and whether the defendant may have handcuffs or other restraints removed while the defendant completes the evaluation, testing or interviewing so long as the defendant is under the observation of one or more transport officers.

4. Ex parte hearing to address concerns. At any time after being presented with an ex parte motion under this paragraph, the court may conduct an ex parte hearing to address

proposed security arrangements, expense involved, or other reasonable concerns. The Pueblo's participation in ex parte proceedings under this paragraph is neither required nor allowed.

5. Motion resolved by written order; disclosure restricted. An ex parte motion filed under this paragraph shall be resolved by written order. The motion, and resulting order, shall be filed in the clerk's office by the Contemporary Court judge assigned to the case subject to the nondisclosure requirements in this subparagraph. To effectuate the nondisclosure provisions required by this subparagraph, the court's order shall comply with Rule 6-3-117(F)(3), (4), (5) and (6). Any transport order granted under this rule shall direct that the transport officers are prohibited from disclosing anything about the contents or execution of the order not directly necessary to its execution. The motion and resulting order shall remain sealed and shall not be disclosed to anyone other than court personnel, the defendant, and defense counsel except that disclosure may be permitted under the following circumstances:

a. disclosure of the evaluation, testing, or interviewing is required by this rule;

b. the evaluation, testing or interviewing is used at trial;

c. the motion, resulting order, evaluation, testing, or interviewing is relevant to a habeas corpus proceeding;

d. the motion, resulting order, evaluation, testing, or interviewing is relevant to a legal malpractice or disciplinary proceeding filed against the defendant's attorney; or

e. the motion, resulting order, evaluation, testing, or interviewing is ordered unsealed pursuant to Rule 6-3-117(H).

E. Designation of potential expert witness. At any time after the filing of a complaint the defendant may file a notice designating by name a potential expert witness. Unless and until such designated potential expert is listed by the defendant as a potential witness pursuant to Subparagraph (3) of Paragraph A of this rule, the Pueblo shall not be entitled to interview the designated potential expert regarding the case, nor obtain opinions or documents from the designated potential expert regarding the case.

F. Certificate of compliance. The defendant shall file with the clerk of the court at least ten (10) days prior to trial a certificate stating that all information required to be produced pursuant to Paragraph A of this rule has been produced, except as specified. The certificate shall contain an acknowledgment of the continuing duty to disclose additional information. If information specifically excepted from the certificate is furnished by the defendant after the filing of the certificate, a supplemental certificate shall be filed with the court setting forth the material furnished. A copy of the certificate and any supplemental certificate shall be served on the Pueblo.

G. Failure to comply. If the defendant fails to comply with any of the provisions of this rule, the court may enter an order pursuant to Rule 6-3-505 or hold the defendant or the defense counsel in contempt or take other disciplinary action pursuant to Rule 6-3-108.

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

Rule 6-3-503 Statements; Depositions

A. Statements. Any person, other than the defendant, with information which is subject to discovery shall give a statement. A party may obtain the statement of the person by serving a written "notice of statement" upon the person to be examined and upon each party not less than five (5) days before the date scheduled for the statement. The notice shall state the time and place for taking of the statement. A subpoena may also be served to secure the presence of the person to be examined or the materials to be examined during the statement. If a subpoena is served to secure a witness or materials, a copy of the subpoena shall be served upon each party.

B. Depositions; when allowed. A deposition may be taken pursuant to this rule upon:

1. agreement of the parties; or

2. order of the Contemporary Court at any time after the filing of the complaint, upon a showing that it is necessary to take the person's deposition to prevent injustice.

C. Scope of discovery. Unless otherwise limited by order of the court, parties may obtain discovery regarding any matter, not privileged, which is relevant to the offense charged or the defense of the accused person, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

D. Time and place of deposition. Counsel must make reasonable efforts to confer in good faith regarding scheduling of a deposition or statement before serving a notice of deposition or a notice of statement. Unless agreed to by the parties, any deposition allowed under this rule shall be taken at such time and place as ordered by the court. The attendance of witnesses at depositions may be compelled by subpoena as provided in these rules.

E. Notice of examination: general requirements; special notice; notice of non-appearance; non-stenographic recording; production of documents and things; deposition of organization; deposition by telephone.

1. A party taking the deposition of any person upon oral examination pursuant to court order shall give at least ten (10) days' notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

2. The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the Contemporary Court orders otherwise, it may be

recorded by sound, sound-and-visual or stenographic means, and the party taking the deposition shall bear the cost of the recording. Any party may arrange for a transcription or copy of the deposition or statement to be made from the recording of a deposition or statement at the party's expense.

3. With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the court otherwise orders. If the deposition is taken by an official court reporter, the official transcript shall be the transcript prepared by the official court reporter.

4. Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 6-3-504 and shall begin with a statement on the record by the officer that includes:

a. the officer's name and business address;

b. the date, time, and place of the deposition;

c. the name of the deponent;

d. the administration of the oath or affirmation to the deponent; and

e. an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (a) through (c) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits or concerning other pertinent matters.

5. A party may, in the party's notice and in a subpoena, name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors or managing agents or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subparagraph does not preclude taking a deposition by any other procedure authorized in these rules.

6. The parties may agree in writing or the court may, upon motion, order that a deposition be taken by telephone or other remote electronic means. For the purposes of this rule and Rule 6-3-504(A), Rule 6-3-505(A)(1), and Rule 6-3-505(B)(1), a deposition taken by such means is taken in the county and at a place where the witness is to answer questions. The officer taking the deposition must be physically present with the witness.

F. Depositions; examination and cross-examination; record of examination; oath; objections. Examination and cross-examination of witnesses in depositions may proceed as permitted at trial under the Rules of Evidence, except Rule 6-4-103 and Rule 6-4-615. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by Paragraph E(2) of this rule. All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings, shall be noted by the officer upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

G. Statements; depositions; motion to terminate or limit examination. At any time during a deposition or statement, on motion of a party, the witness or the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass or oppress the witness or the deponent, the Contemporary Court may order the examination to cease or may limit the scope and manner of the taking of the deposition or statement pursuant to Rule 6-3-508. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the Contemporary Court. Upon demand of the objecting party, the witness or the deponent, the taking of the deposition or statement shall be suspended for the time necessary to make a motion for an order.

H. Depositions; review by witness; changes; signing. If requested by the deponent or a party before completion of the deposition, the deponent shall have thirty (30) days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by Paragraph I(1) of this rule whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

I. Certification by officer; exhibits; copies; notice of transcription.

1. The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. If the deposition is transcribed, the officer shall provide the original of the deposition or statement to the party ordering the transcription and shall give notice thereof to all parties. The party receiving the original shall maintain it, without alteration, until final disposition of the case in which it was taken or other order of the court. Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may:

a. offer copies to be marked for identification and annexed to the deposition or statement and to serve thereafter as originals, if the person affords to all parties fair opportunity to verify the copies by comparison with the originals; or

b. offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

2. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

3. Any party filing a deposition shall give prompt notice of its filing to all other parties.

J. Final disposition of depositions. The original deposition may be destroyed as provided in the Contemporary Court's retention of records schedule.

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

Rule 6-3-504 Persons Before Whom Depositions May be Taken

A. Depositions taken on Pueblo lands or in New Mexico shall be taken before an officer authorized to administer oaths by the laws of the State of New Mexico or before a person appointed by the Contemporary Court. Depositions taken elsewhere shall be taken before an officer authorized to administer oaths by the place where the examination is held, or before a person appointed by the Contemporary Court. A person appointed by the Contemporary Court has power to administer oaths and take testimony.

B. Disqualification for interest. Except as agreed to by the parties pursuant to Rule 6-3-512, no deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

C. As used in this rule, an "employee" means a person who is employed in the office of the defendant, the prosecutor or an attorney representing a defendant in the proceedings.

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

Rule 6-3-505 Depositions; Failure to Make Discovery; Sanctions

A. Motion for order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery in depositions as follows:

1. An application for an order to a deponent subject to the jurisdiction of the Contemporary Court who is not a party but whose deposition is being taken at a location within

the Contemporary Court's jurisdiction or for an order to a party may be made to the Contemporary Court.

2. If a deponent fails to answer a question propounded or submitted under Rule 6-3-503, or a corporation or other entity fails to make a designation under Rule 6-3-503(E)(5), or if a party, in response to a request for inspection fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

If the Contemporary Court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 6-3-508.

3. For purposes of this paragraph an evasive or incomplete answer is to be treated as a failure to answer.

4. If the motion is granted, the Contemporary Court may, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

B. Any motion filed pursuant to this paragraph shall state that counsel has made a good faith effort to resolve the issue with opposing counsel prior to filing a motion to compel discovery.

C. If the motion is denied, the court may, after opportunity for hearing, require the moving party or the attorney advising the moving party or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

D. If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

E. Failure to comply with order.

1. If a deponent subject to the jurisdiction of the Contemporary Court fails to be sworn or to answer a question after being directed to do so by the Contemporary Court, the failure may be considered a contempt of that court.

2. If a party or an officer, director or managing agent of a party or a person designated under Rule 6-3-503 to testify on behalf of a party, who is subject to the jurisdiction of the Contemporary Court, fails to obey an order to provide or permit discovery, including an order made under Paragraph A of this rule, or if a party fails to obey an order under Rule 6-3-

508, the court in which the action is pending may make such orders in regard to the failure as are just.

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

Rule 6-3-506 Videotaped Depositions; Testimony of Certain Minors Who Are Victims of Sexual Offenses

A. When allowed. Upon motion, and after notice to opposing counsel, at any time after the filing of the complaint in the Contemporary Court charging abuse of a child, sexual exploitation of a child by child pornography or prostitution, enticement of a child, or criminal sexual penetration or criminal sexual contact of a child, the Contemporary Court may order the taking of a videotaped deposition of the victim, upon a preliminary finding that the child is likely to be unable to testify in open court in the physical presence of the defendant, jury, judge, and public for any of the following reasons:

1. The child will be unable to testify because of fear.

2. There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying in open court.

3. The child suffers a mental or other infirmity.

4. Conduct by defendant or defense counsel causes the child to be unable to continue testifying.

B. If the court finds that the child is likely to be unable to testify in open court for any of the reasons stated above, the court shall order that the child's deposition be taken and preserved by videotape. The trial judge shall preside at the videotape deposition of a child and shall rule on all questions as if at trial. The only other persons who may be permitted to be present at the proceeding are the attorney for the Pueblo; the attorney for the defendant; the child's attorney or guardian ad litem; persons necessary to operate the videotape equipment; subject to Paragraph C of this Section, the defendant; and other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child. The defendant shall be afforded the rights applicable to defendants during trial, including the right to an attorney, the right to be confronted with the witness against the defendant, and the right to cross-examine the child.

C. If the preliminary finding of inability under Paragraph A of this Section is based on evidence that the child is unable to testify in the physical presence of the defendant, the court may order that the defendant, including a defendant represented pro se, be excluded from the room in which the deposition is conducted. If the court orders that the defendant be excluded from the deposition room, the court shall order that 2-way closed circuit television equipment relay the defendant's image into the room in which the child is testifying, and the child's testimony into the room in which the defendant is viewing the proceeding, and that the defendant be provided with a means of private, contemporaneous communication with the defendant's attorney during the deposition.

D. The complete record of the examination of the child, including the image and voices of all persons who in any way participate in the examination, shall be made and preserved on video tape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court and shall be made available for viewing to the prosecuting attorney, the defendant, and the defendant's attorney during ordinary business hours.

E. If at the time of trial the court finds that the child is unable to testify as for a reason described in Paragraph A of this Section, the court may admit into evidence the child's videotaped deposition in lieu of the child's testifying at the trial. The court shall support a ruling under this subparagraph with findings on the record.

F. Upon timely receipt of notice that new evidence has been discovered after the original videotaping and before or during trial, the court, for good cause shown, may order an additional videotaped deposition. The testimony of the child shall be restricted to the matters specified by the court as the basis for granting the order.

G. In connection with the taking of a videotaped deposition under this Section, the court may enter a protective order for the purpose of protecting the privacy of the child.

H. The videotape of a deposition taken under this Section shall be destroyed 5 years after the date on which the trial court entered its judgment, but not before a final judgment is entered on any appeal. The videotape shall become part of the court record and be kept by the court until it is destroyed.

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

Rule 6-3-507 Continuing Duty to Disclose

A. Additional material or witnesses. If, subsequent to compliance with Rule 6-3-501 or Rule 6-3-502, and prior to or during trial, a party discovers additional material or witnesses which he would have been under a duty to produce or disclose at the time of such previous compliance if it were then known to the party, he shall promptly give written notice to the other party or the party's attorney of the existence of the additional material or witnesses.

B. Failure to comply. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from calling a witness not disclosed, or introducing in evidence the material not disclosed, or it may enter such other order as it deems appropriate under the circumstances, including but not limited to holding an attorney in contempt of court pursuant to Rule 6-3-108 of these rules.

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

Rule 6-3-508 Depositions; Statements; Protective Orders

A. Motion. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters

relating to a deposition or statement, the Contemporary Court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, undue burden or expense, the risk of physical harm, intimidation, bribery or economic reprisals. The order may include one or more of the following restrictions:

1. that the deposition or statement requested not be taken;

2. that the deposition or statement requested be deferred;

3. that the deposition or statement may be had only on specified terms and conditions, including a designation of the time or place;

4. that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

5. that the deposition or statement be conducted with no one present except persons designated by the court;

6. that a deposition or statement after being sealed be opened only by order of the court;

7. that a trade secret or other confidential research, development or commercial information not be disclosed or be disclosed only in a designated way; and

8. that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

B. Written showing of good cause. Upon motion, the Contemporary Court may permit the showing of good cause required under Paragraph A of this rule to be in the form of a written statement for inspection by the court in camera, if the court concludes from the statement that there is a substantial need for the in camera showing. If the court does not permit the in camera showing, the written statement shall be returned to the movant upon request. If no such request is made, or if the court enters an order granting the relief sought, the entire text of the statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

C. Denial of order. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

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

Rule 6-3-509 Notice of Alibi; Entrapment Defense

A. Notice. Upon the written demand of the prosecutor, specifying as particularly as is known to the prosecutor, the place, date and time of the commission of the crime charged, a defendant who intends to offer evidence of an alibi or entrapment as a defense shall, not less than ten (10) days before trial or such other time as the Contemporary Court may direct, serve upon

such prosecutor a notice in writing of the defendant's intention to introduce evidence of an alibi or evidence of entrapment.

B. Content of notice. A notice of alibi or entrapment shall contain specific information as to the place at which the defendant claims to have been at the time of the alleged offense and, as particularly as known to the defendant or the defendant's attorney, the names and addresses of the witnesses by whom the defendant proposes to establish an alibi or raise an issue of entrapment. Not more than five (5) days after receipt of defendant's witness list or at such other time as the Contemporary Court may direct, the prosecutor shall serve upon the defendant the names and addresses, as particularly as known to the prosecutor, of the witnesses the Pueblo proposes to offer in rebuttal to discredit the defendant's alibi or claim of entrapment at the trial of the cause.

C. Continuing duty to give notice. Both the defendant and the prosecutor shall be under a continuing duty to promptly disclose the names and addresses of additional witnesses which come to the attention of either party subsequent to filing their respective witness lists as provided in this rule.

D. Failure to give notice. If a defendant fails to serve a copy of such notice as herein required, the Contemporary Court may exclude evidence offered by such defendant for the purpose of proving an alibi, except the testimony of the defendant himself. If such notice is given by a defendant, the Court may exclude the testimony of any witness offered by the defendant for the purpose of proving an alibi or entrapment if the name and address of such witness was known to defendant or the defendant's attorney but was not stated in such notice. If the prosecutor fails to file a list of witnesses and serve a copy on the defendant as provided in this rule, the court may exclude evidence offered by the Pueblo to contradict the defendant's alibi or entrapment evidence. If such notice is given by the prosecutor, the court may exclude the testimony of any witnesses offered by the prosecutor for the purpose of contradicting the defense of alibi or entrapment if the name and address of the witness is known to the prosecutor but was not stated in such notice. For good cause shown the court may waive the requirements of this rule.

E. Admissibility as evidence. The fact that a notice of alibi was given, or anything contained in such notice shall not be admissible as evidence in the trial of the case.

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

Rule 6-3-510 Subpoena

A. Form; issuance.

1. Every subpoena shall:

a. state the name of the Contemporary Court;

b. state the title of the action and its criminal action number;

c. command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and

d. be substantially in the form approved by the Contemporary Court.

A command to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing, deposition or statement, or may be issued separately.

2. All subpoenas shall issue from the Contemporary Court.

3. The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney authorized to practice before the Contemporary Court and who represents a party, as an officer of the court, may also issue and sign a subpoena on behalf of the court.

B. Service; place of examination.

1. A subpoena may be served any place within the exterior boundaries of the Pueblo.

2. A subpoena may be served by any person who is not a party and is not less than eighteen (18) years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and, if that person's attendance is commanded:

a. if the witness is to be paid from funds appropriated for payment of Pueblo witnesses or for the payment of witnesses in indigency cases if required by the Indian Civil Rights Act, by processing for payment to such witness the fee and mileage prescribed by the Contemporary Court;

b. for all persons not described in Subparagraph (2)(a) of this paragraph, by tendering to that person the full fee for one day's expenses as set by the Contemporary Court. The fee for per diem expenses shall not be prorated. If attendance is required for more than one day, a full day's expenses shall be paid prior to commencement of each day attendance is required. When the subpoena is issued on behalf of the Pueblo, including the public defender, if applicable, fees and mileage need not be tendered.

3. A person subject to the jurisdiction of the Contemporary Court may be required to attend a deposition or statement within the exterior boundaries of the Pueblo.

4. A person subject to the jurisdiction of the Contemporary Court may be required to attend a hearing or trial in the Contemporary Court.

5. Proof of service when necessary shall be made by filing with the clerk of the court a return substantially in the form approved by the Contemporary Court.

6. A subpoena may be issued for taking of a deposition within the exterior boundaries of the Pueblo in a criminal action pending outside the exterior boundaries of the Pueblo upon the filing of a miscellaneous proceeding in the Contemporary Court. Upon the docketing of the miscellaneous proceeding, the subpoena may be issued and shall be served as provided by this rule.

7. A subpoena may be served in an action pending in the Contemporary Court on a person in another jurisdiction in the manner provided by law or rule of the other jurisdiction.

C. Protection of persons subject to subpoenas.

1. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The Contemporary Court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction.

2. A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, statement, hearing or trial.

a. Subject to Subparagraph (2) of Paragraph D of this rule, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve upon all parties written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

D. On timely motion, the Contemporary Court shall quash or modify the subpoena if the subpoena:

i. fails to allow reasonable time for compliance,

ii. requires a person who is not a party or an officer of a party to travel to a place more than one hundred (100) miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of Subparagraph (3)(b)(iii) of this paragraph, such a person may in order to attend trial be commanded to travel from any such place within the jurisdiction in which the trial is held, or

iii. requires disclosure of privileged or other protected matter and no exception or waiver applies, or

iv. subjects a person to undue burden.

b. If a subpoena

i. requires disclosure of a trade secret or other confidential research, development or commercial information,

ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

iii. requires a person who is not a party or an officer of a party to incur substantial expense to travel more than one hundred (100) miles to attend trial, the Contemporary Court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena.

E. Duties in responding to subpoena.

1. A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

2. When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

F. Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed in contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a non-party to attend or produce at a place not within the limits provided in Subparagraph (3)(a)(ii) of Paragraph C of this rule.

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

Rule 6-3-511 Service of Subpoenas and Notices of Statement

Prior to or at the same time as service of any notice of a witness statement or subpoena other than a grand jury subpoena, copies of the notice and subpoena shall be served on each party in the manner prescribed by Rule 6-3-102.

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

Rule 6-3-512 Stipulations Regarding Discovery Procedure

Unless the Contemporary Court orders otherwise, or previous orders of the court conflict, the parties may by written stipulation:

A. provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions; and

B. modify the procedures provided by these rules for other methods of discovery.

Chapter 6 – Trials

Rule 6-3-601 Pretrial Motions, Defenses and Objections

A. Defenses and objections which may be raised. Any defense, objection or request which is capable of determination without a trial on the merits may be raised before trial by motion.

B. Defenses and objections which must be raised. The following defenses or objections must be raised prior to trial:

1. defenses and objections based on defects in the initiation of the prosecution; or

2. defenses and objections based on defects in the complaint other than a failure to show jurisdiction in the Contemporary Court or to charge an offense, which objections shall be noticed by the court at any time during the pendency of the proceeding. Failure to present any such defense or objection, other than the failure to show jurisdiction or charge an offense, constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. If any such objection or defense is sustained and is not otherwise remediable, the court shall order the complaint dismissed.

C. Time for making motions. All motions, unless otherwise provided by these rules or unless otherwise ordered by the Contemporary Court, shall be made at the arraignment or within ninety (90) days thereafter, unless upon good cause shown the court waives the time requirement.

D. Evidentiary hearing. If an evidentiary hearing is required, the motion shall be accompanied by a separate written request for an evidentiary hearing, including a statement of the ultimate facts intended to be proven at such an evidentiary hearing. Unless a shorter period of time is ordered by the Contemporary Court, at least five (5) days before the hearing on the motion, each party shall submit to the other party's attorney the names and addresses of the witnesses the party intends to call at the evidentiary hearing, together with any statement subject to discovery made by the witness which has not been previously disclosed pursuant to Rule 6-3-501or Rule 6-3-502.

E. Ruling of court. All motions shall be disposed of within a reasonable time after filing.

F. Defenses and objections not waived. No defense or objection shall be waived by not being raised or made at arraignment.

G. Notice of withdrawal of motion. If a motion is scheduled for hearing, a party shall give at least five (5) days' notice of withdrawal of the motion.

Rule 6-3-602 Insanity; Incompetency; Lack of Capacity

A. Defense of insanity.

1. Notice of the defense of "not guilty by reason of insanity at the time of commission of an offense" must be given at the arraignment or within twenty (20) days thereafter, unless upon good cause shown the Contemporary Court waives the time requirement of this rule.

2. When the defense of "not guilty by reason of insanity at the time of commission of an offense" is raised, the issue shall be determined in nonjury trials by the Contemporary Court and in jury trials by a special verdict of the jury. If the defendant is acquitted on the ground of insanity, a judgment of acquittal shall be entered, and any proceedings for commitment of the defendant because of any mental disorder or developmental disability shall be pursuant to law.

B. Determination of competency to stand trial.

1. The issue of the defendant's competency to stand trial may be raised by motion, or upon the Contemporary Court's own motion, at any stage of the proceedings.

2. The issue of the defendant's competency to stand trial shall be determined by the judge, unless the judge finds there is evidence which raises a reasonable doubt as to the defendant's competency to stand trial.

a. If a reasonable doubt as to the defendant's competency to stand trial is raised prior to trial, the court shall order the defendant to be evaluated as provided by law. Within sixty (60) days after receiving an evaluation of the defendant's competency, the court, without a jury, may determine the issue of competency to stand trial; or, in its discretion, may submit the issue of competency to stand trial to a jury, other than the trial jury.

b. If the issue of the defendant's competency to stand trial is raised during trial, the trial jury shall be instructed on the issue. If, however, the defendant has been previously found by a jury to be competent to stand trial, the issue of the defendant's competency to stand trial shall be submitted to the trial jury only if the court finds that there is evidence which was not previously submitted to a jury which raises a reasonable doubt as to the defendant's competency to stand trial.

3. If a defendant is found incompetent to stand trial:

a. further proceedings in the criminal case shall be stayed until the defendant becomes competent to stand trial;

b. the court where appropriate, may order treatment to enable the defendant to attain competency to stand trial, and, upon a determination by clear and convincing evidence that the defendant is dangerous, order the defendant detained in a secure facility;

c. the court may review and amend the conditions of release pursuant to Rule 6-3-401.

4. If the finding of incompetency is made during the trial, the court shall declare a mistrial.

C. Mental examination. Upon motion and upon good cause shown, the court shall order a mental examination of the defendant before making any determination of competency under this rule. If a defendant is determined to be indigent, and if required by Pueblo law or the Indian Civil Rights Act, the court shall pay for the costs of the examination from funds available to the court.

D. Continuing judicial review. Upon committing a defendant to undergo treatment to attain competency to stand trial, the Contemporary Court, not less than once every twelve (12) months, shall review the progress of the defendant in attaining competency to stand trial.

E. Statement made during mental examination. A statement made by a person during a mental examination or treatment subsequent to the commission of the alleged crime shall not be admissible in evidence against such person in any criminal proceeding on any issue other than that of the person's sanity, ability to form specific intent or competency to stand trial.

F. Notice of incapacity to form specific intent. If the defense intends to call an expert witness on the issue of whether the defendant was incapable of forming the specific intent required as an element of the crime charged, notice of such intention shall be given at the time of arraignment or within twenty (20) days thereafter, unless upon good cause shown, the Contemporary Court waives the time requirement of this rule.

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

Rule 6-3-603 Pretrial Hearing

At any time after the filing of the complaint, the Contemporary Court may order the attorneys to appear before it for a hearing, at which the defendant shall have the right to be present, to consider:

A. the simplification of the issues;

B. the possibility of obtaining admissions of fact and documents which will avoid unnecessary proof;

C. the number of expert witnesses, character witnesses or other witnesses who are to give testimony of a cumulative nature; and

D. such other matters as may aid in the disposition of the trial.

Upon request of any party, a record shall be made of a hearing, or any part thereof, held pursuant to this rule.

The Contemporary Court shall make an order reciting the agreements made and matters determined which shall be signed by the court and the attorneys for the parties, and when entered shall control the subsequent course of the proceedings, unless thereafter modified. This rule shall not be invoked in the case of any defendant who is not represented by counsel.

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

Rule 6-3-604 Time of Commencement of Trial

The Contemporary Court shall set trials after an appropriate time has elapsed for discovery, and no later than one hundred eighty (180) days after the date of arraignment. In the event the defendant has filed motions and taken appeals prior to trial that may be dispositive of the case, the Contemporary Court shall extend the trial date as necessary.

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

Rule 6-3-605 Jury and Non-Jury Trials

A. Trial by jury; waiver. Trials shall be heard and decided by the Contemporary Court judge or by a jury. A defendant has a right to a jury trial upon request for any crime for which imprisonment is a possibility. The right exists regardless of whether a sentence or a fine or both are ultimately imposed. A defendant may waive a jury trial with the approval of the Contemporary Court and the consent of the Pueblo.

B. Jurors. A jury in a criminal action shall consist of six (6) persons, selected from a panel of no fewer than twenty (20) eligible jurors. To be eligible to serve as a juror, a person (i) must be a member of the Pueblo, a spouse or partner of a Pueblo member, or a permanent resident of the Pueblo, (ii) must be 18 years of age or older, (iii) must never have been convicted in any court of a felony, (iv) must not be currently on probation for any offense in any court, (v) must not be a witness or party to the matter before the court, and (vi) must not at the time the list is made or at the time of trial, be holding the office of tribal judge or tribal police officer. Jurors shall be randomly chosen by the Clerk and subpoenaed to appear for jury selection on a date and at a time on or before the date set for trial. Jurors shall be paid a juror fee for each day of jury service at a rate established by the Contemporary Court. The Contemporary Court shall establish reasonable procedures for voir dire of the panel members by the parties or their attorneys and selection of jurors therefrom, that will enable the parties and the Contemporary Court to identify those panel members who, because of familial connections, business relations, friendship, prior dealings, personal attitudes, scheduling conflicts, health or financial issues or other valid reasons would not be suitable as jurors in the matter and should be excused for cause. If necessary due to the number of excusals for cause, the court may subpoena additional panel members. Following excusals for cause, each party shall have the right to strike up to three members of the panel summarily, and from those members who remain the court shall select the persons who shall serve as jurors in the matter, and one or two alternates, in the court's discretion, and the court shall administer a jurors' oath to all those selected as jurors and alternates. Alternates shall attend the trial but shall only become jurors if a regular juror is disqualified or becomes unable to serve.

C. Discharge. An alternate juror who does not replace a regular juror shall be discharged before the jury retires to consider its verdict.

D. Findings and conclusions; when required. In a case tried without a jury, the Contemporary Court shall make a general finding and shall, in addition, make specific findings of fact and conclusions of law on all ultimate facts and conclusions of law upon which written requested findings and conclusions have been filed within ten (10) days after the making of the general finding by the court, or within such time as the court may designate.

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

Rule 6-3-606 Order of Trial

The order of trial shall be as follows:

A. a qualified jury shall be selected and sworn to try the case;

B. initial instructions shall be given by the Contemporary Court;

C. the Pueblo may make an opening statement. The defense may then make an opening statement or may reserve such opening statement until after the conclusion of the Pueblo's case;

D. the Pueblo shall submit its evidence;

E. out of the presence of the jury, the Contemporary Court shall determine the sufficiency of the evidence, whether or not a motion for directed verdict is made;

F. the defense may then make an opening statement, if reserved;

G. the defense may submit its evidence;

H. the Pueblo may submit evidence in rebuttal;

I. the defense may submit evidence in surrebuttal;

J. at any time before submission of the case to the jury, the court may for good cause shown permit the Pueblo or defense to submit additional evidence;

K. out of the presence of the jury, the Contemporary Court shall determine the sufficiency of the evidence, whether or not a motion for directed verdict is made;

L. the instructions to be given shall be determined in accordance with Rule 6-3-607. The Contemporary Court shall then instruct the jury;

M. the Pueblo may make the opening argument;

N. the defense may make its argument;

O. the Pueblo may make rebuttal argument only.

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

Rule 6-3-607 Instructions to Juries

A. Required instructions. The Contemporary Court must instruct the jury upon all questions of law essential for a conviction of any crime submitted to the jury.

B. Requested instructions. At the close of the defendant's case, or earlier if ordered by the Contemporary Court, the parties shall tender requested instructions in writing. The original and such copies as may be required by the court shall be given the court, and a copy shall be served on opposing counsel. The original shall have a place for the court to insert a number (No. . . . . .) but shall contain no title or other notations. The copies shall indicate the following information:

1. [Plaintiff's] [Defendant's] Requested Instruction No. . . . . .;

2. Authority for tendered instruction should be indicated.

C. Advisement of parties; filing. The Contemporary Court shall advise the parties of the instructions to be given and:

1. number the originals of the instructions to be given;

2. mark one (1) copy of each instruction tendered as either given or refused and initial the copies;

3. file such marked copies with the court clerk.

D. Objections. Except as provided in Paragraph A of this rule, for the preservation of error in the charge, objection to any instruction given must be sufficient to alert the mind of the Contemporary Court to the claimed vice therein, or, in case of failure to instruct on any issue, a correct written instruction must be tendered before the jury is instructed. Before the jury is instructed, reasonable opportunity shall be afforded counsel so to object or tender instructions, on the record and in the presence of the court.

E. Use in jury room. Written instructions of the court shall go to the jury room, but no instruction which goes to the jury room shall contain any notation.

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

Rule 6-3-608 Submission to Jury

A. Foreperson. The Contemporary Court shall direct the jury to select one of its members as foreperson to preside over its deliberations.

B. Forms of verdict. Before the jury retires the court shall submit to it written forms of verdict for its use in returning a verdict.

C. Exhibits. Upon its request to review any exhibit during its deliberations, the jury shall be furnished all exhibits received in evidence.

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

Rule 6-3-609 Additional Instructions to Jury Following Retirement; Communications Between Court and Jury

A. Upon jurors' request. After the jurors have retired to consider their verdict, if they desire additional instructions or to have any testimony read to them, they may in the discretion of the Contemporary Court be returned to the courtroom and the court may give them such additional instructions or may order such testimony read to them. Such instruction shall be given and such testimony read only after notice to, and in the presence of, the attorneys and the defendants.

B. Recall of jurors by court. The Contemporary Court may recall the jurors after they have retired to consider their verdict to give them additional instructions, or to correct any erroneous instructions it has given them. Such additional or corrective instructions may be given only after notice to and in the presence of the attorneys and the defendants.

C. Additional evidence prohibited. After the jurors have retired to consider their verdict, the Contemporary Court shall not recall the jurors to hear additional evidence.

D. Communications; judge and jury. The defendant shall be present during all communications between the Contemporary Court and the jury unless the defendant has signed a written waiver of the right to be personally present. All communications between the court and the jury must be in open court in the presence of the defendant and counsel for the parties unless the defendant waives on the record the right to be present or unless the communication involves only a ministerial matter. Unless requested by counsel for the defendant, communications between the court and the jury on a ministerial matter may be made in writing after notice to all counsel without recalling the defendant.

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

Rule 6-3-610 Return of Verdict; Mistrial; Discharge of Jurors

A. Return. The verdict shall be unanimous and signed by the foreperson. It shall be returned by the jury to the Contemporary Court judge in open court.

B. Several defendants. If there are two or more defendants, the jury at any time during its deliberations may return a verdict with respect to any defendant as to whom it has agreed.

C. Several counts. If there are two or more counts, the jury may at any time during its deliberations return a verdict with respect to any count upon which it has agreed.

D. Conviction of lesser offense. If so instructed, the jury may find the defendant guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged, or an offense necessarily included therein. If the jury has been instructed on one or more lesser included offenses, and the jury cannot unanimously agree upon any of the offenses submitted, the Contemporary Court shall poll the jury by inquiring as to each degree of

the offense upon which the jury has been instructed beginning with the highest degree and, in descending order, inquiring as to each lesser degree until the court has determined at what level of the offense the jury has disagreed. If upon a poll of the jury it is determined that the jury has unanimously voted not guilty as to any degree of an offense, a verdict of not guilty shall be entered for that degree and for each greater degree of the offense.

E. Poll of jury. When a verdict is returned and before it is recorded, the jury shall be polled at the request of any party or upon the Contemporary Court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations.

F. Irregularity of verdict. No irregularity in the rendition or reception of verdict of which the parties have been made aware may be raised unless it is raised before the jury is discharged. No irregularity in the recording of a verdict shall affect its validity unless the defendant was in fact prejudiced by such irregularity.

G. Discharge of jury. After the jury has retired to consider their verdict the Contemporary Court shall discharge the jury from the cause when:

1. their verdict has been received;

2. the court finds there is no reasonable probability that the jury can agree upon a verdict; or

3. some other necessity exists for their discharge. The court may in any event discharge the jury if the parties consent to its discharge.

H. Mistrial; jury disagreement. An order declaring a mistrial for jury disagreement shall be in writing and shall expressly reserve the right to retry the defendant.

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

Rule 6-3-611 Presence of the Defendant; Appearance of Counsel

A. Presence required. Except as otherwise provided by these rules, the defendant shall be present at all proceedings, including the arraignment, all hearings and conferences, argument, the jury trial and during all communications between the Contemporary Court and the trial jury.

B. Waiver of personal presence. The defendant may waive the right to be personally present:

1. for a specific hearing or proceeding, by an oral waiver on the record; or

2. by executing a written waiver substantially in the form approved by the Contemporary Court. The waiver must be approved by the defendant's counsel and the court prior to the hearing.

C. Continued presence not required. The further progress of the trial, including the return of the verdict, and the imposition of sentence shall not be prevented if the defendant waives the right to be personally present or whenever a defendant who was initially present:

1. is voluntarily absent after the trial has commenced (whether or not he has been informed by the Contemporary Court of his obligation to remain during the trial); or

2. engages in conduct which the court determines, by clear and convincing evidence, to be so disruptive as to justify the exclusion of the defendant from further proceedings. If a defendant is excluded from the proceedings under this subparagraph, the court shall provide the defendant with a timely opportunity to regain the right to be personally present so long as the defendant agrees to refrain from any further disruptive conduct.

D. Presence not required. A defendant need not be present in the following situations:

1. a defendant other than a person may appear by counsel for all purposes; or

2. when the proceeding involves only a conference or hearing upon a question of law.

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

Rule 6-3-612 Conduct of Trial

A. Oath of witnesses. The Contemporary Court judge shall administer the following oath to each witness: “Do you swear or affirm that the testimony you will give in this case will be the truth, the whole truth and nothing but the truth, under penalty of law?”

B. Evidence. The Rules of Evidence for the Contemporary Court, so far as they are applicable and not in conflict with these rules, shall apply to and govern the trial of criminal cases.

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

Rule 6-3-613 Motion for New Trial

A. Motion. When the defendant has been found guilty, the Contemporary Court on motion of the defendant, or on its own motion, may grant a new trial if required in the interest of justice.

B. Evidence on motion. When a motion for new trial calls for a decision on any question of fact, the court may consider evidence on such motion by affidavit or otherwise.

C. Time for making motion for new trial. A motion for new trial based on the ground of newly discovered evidence may be made only before final judgment, or within two (2) years thereafter, but if an appeal is pending the court may grant the motion only on remand of the case. A motion for new trial based on any other grounds shall be made within ten (10) days after

verdict or finding of guilty or within such further time as the court may fix during the ten (10) day period.

D. Procedure; hearing. When the defendant has been found guilty by a jury or by the Contemporary Court, a motion for new trial may be dictated into the record, if a court reporter is present, and may be argued immediately after the return of the verdict or the finding of the court. Such motion may be in writing and filed with the clerk. Such motion, written or oral, shall fully set forth the grounds upon which it is based.

E. Waiver. Failure to make a motion for a new trial shall not constitute a waiver of any error which has been properly brought to the attention of the Contemporary Court.

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

Rule 6-3-614 Notice of Federal Restriction on Right to Receive or Possess a Firearm or Ammunition

A. Notice required. A person who is the subject of an order set forth in Paragraph B of this rule shall be given written notice that the person is prohibited under federal law from receiving or possessing a firearm or ammunition as provided by 18 U.S.C. § 922(g)(4).

B. Orders requiring notice. The notice required under Paragraph A of this rule shall be included in or made a part of an order

1. that was issued after a hearing

a. of which the defendant received actual notice; and

b. at which the defendant had an opportunity to participate with the assistance of counsel; and

2. that finds the defendant

a. incompetent to stand trial; or

b. not guilty by reason of insanity at the time of the offense.

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

Chapter 7 – Judgment and Appeal

Rule 6-3-701 Judgment; Costs

A. Judgment. If the defendant is found guilty, a judgment of guilty shall be rendered. If the defendant has been acquitted, a judgment of not guilty shall be rendered. The judgment and sentence shall be rendered in open court and thereafter a written judgment and sentence shall be signed by the Contemporary Court judge and filed. The clerk shall give notice of entry of judgment and sentence.

B. Sentencing. In the event the defendant is found guilty of an offense, the following considerations shall govern his or her sentencing:

1. The Contemporary Court shall exercise its discretion when determining a sentence but shall abide by applicable federal and tribal law.

2. Factors the Contemporary Court may consider in sentencing include, but are not limited to, whether victims are involved, the number of victims, the seriousness of the offense(s), past criminal record, recommendation of the prosecutor, statements of the victim or the victim's immediate family, and statements submitted by or on behalf of the defendant, in particular whether the defendant has expressed remorse for his or her offense.

3. The Contemporary Court may impose a sentence upon entry of a plea of guilty or no contest, upon entry of a judgment of guilty following trial or upon entry of a plea agreement. The Contemporary Court may, in its discretion, hold a separate sentencing hearing and allow the parties to present statements on recommended sentences.

C. Sentencing hearing. Except for good cause shown, the sentencing hearing shall begin within ninety (90) days from the date the trial was concluded or the date a plea was entered.

D. Judgment and sentence. Within thirty (30) days after the conclusion of the sentencing hearing, the court shall enter a judgment and sentence.

E. Costs and fees. In every case in which there is a conviction, costs and fees may be imposed as provided by law.

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

Rule 6-3-702 Advising Defendant of a Right to Appeal

At the time of imposing or deferring sentence in a case which has gone to trial on a plea of not guilty, the Contemporary Court shall advise the defendant of his right to appeal.

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

Rule 6-3-703 Predisposition Report Procedure

A. Ordering the report. The Contemporary Court may order a predisposition report at any stage of the proceedings.

B. Inspection. The report shall be available for inspection by only the parties and attorneys by the date specified by the Contemporary Court, and in any event, no later than ten (10) days prior to any hearing at which a sentence may be imposed by the court unless the parties agree to proceed with shorter notice.

C. Hearing. Before a sentence is imposed, the parties shall have an opportunity to be heard on any matter concerning the report. The Contemporary Court, in its discretion, may allow the parties to present evidence regarding the contents of the report.

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

Chapter 8 – Special Proceedings

Rule 6-3-801 Reduction of Sentence

A. Reduction of sentence. A motion to reduce a sentence may be filed within ninety (90) days after the sentence is imposed, or within ninety (90) days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within ninety (90) days after entry of any order or judgment of the appellate court on direct appeal denying review of, or having the effect of upholding, a judgment of conviction. A motion to reduce a sentence may also be filed upon revocation of probation. Changing a sentence from a sentence of incarceration to a sentence of probation shall constitute a permissible reduction of sentence under this paragraph.

B. Mandatory sentence. This rule does not apply to a mandatory sentence.

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

Rule 6-3-802 Habeas Corpus

A. Scope of rule. This rule governs the procedure for filing a writ of habeas corpus by persons in custody or under restraint by order of the Pueblo to test the legality of his or her detention.

B. Petition. The petition may be submitted using a form approved by the Contemporary Court, if any, and shall contain the following required information:

1. a concise statement of the facts and law upon which the application is based;

2. the respondent's name and title. The respondent shall be the petitioner's immediate custodian, who shall have the power to produce the body of the petitioner before the court and shall have the power to discharge the petitioner from custody if the petition is granted;

3. a brief statement naming the place where the person is confined or restrained;

4. a brief statement of the steps taken to exhaust all other available remedies; and

5. a brief statement of whether an appeal or prior petitions for habeas corpus or other relief have been filed, including a statement of the case name, the docket number of the case, the grounds upon which relief was sought, the court from which relief was sought, the result of each proceeding and, if appropriate, a statement of why the claim now being raised was not raised in such prior proceedings or how the claim now being raised differs from a claim raised in those proceedings.

C. Indigent Petitioners. If the petitioner is indigent, he or she shall attach to the petition an affidavit attesting to the petitioner's indigency and containing a statement of the petitioner's available assets and a motion for permission to proceed in forma pauperis.

D. Filing of the petition. A writ of habeas corpus will be issued only upon filing with the clerk of the court a petition on behalf of the party seeking the writ. Upon the filing of the petition, the clerk of the court shall file-stamp the petition with the date of receipt ("file-stamp" date). If the petition is filed by a petitioner who is not represented by an attorney and who is confined to an institution, the petition is deemed to be filed with the clerk of the court on the day the petition is deposited in the institution's internal mail system for forwarding to the court provided that the petitioner states within the petition, under penalty of perjury, the date on which the petition was deposited in the institution's internal mail system. A notation with a "deemed filed" date shall also be made on the petition and in the court's database.

E. Procedure. Upon presentation of the petition the Contemporary Court shall proceed in the following manner:

1. Initial Contemporary Court review. Within one-hundred twenty (120) days of the file-stamp date on the petition, the Contemporary Court shall examine the petition together

with all attachments. Within this initial one-hundred twenty (120) day court review:

a. Petitioner's opportunity to revise. If the Contemporary Court is unable to determine from the face of the petition whether the petition should be allowed to go forward on the merits or dismissed under this rule, the court may return a copy of the petition to the petitioner for additional factual information or a restatement of the legal claims. If the petition is returned to the petitioner, the court shall set a date certain within the one-hundred twenty (120)-day initial review period, but no less than forty-five (45) days from the date of returning the copy to the petitioner, for the petitioner to resubmit a revised petition. If no revised petition is filed under this subparagraph by the date specified by the court, the Contemporary Court judge may dismiss the petition.

b. Summary dismissal. If it plainly appears from the face of the petition, any attachments, and the prior proceedings in the case that the petitioner is not entitled to relief as a matter of law, the Contemporary Court shall order a summary dismissal of the petition, state the reasons for the dismissal, and promptly serve a copy of the order on petitioner or, if the petition is filed on behalf of the petitioner by private legal counsel, to that legal counsel.

c. Appointment of counsel. If, after reviewing the petition, and revised petition, if any, the Contemporary Court does not order a summary dismissal, the court may appoint counsel to represent the petitioner, if required under Pueblo law or the Indian Civil Rights Act. A copy of the order of appointment shall be provided to the petitioner and respondent;

2. Procedure; time limits. If the Contemporary Court does not appoint counsel to the petitioner, then the court shall order the respondent to file a response within thirty (30) days. If the Contemporary Court appoints counsel to the petitioner, then, within ninety (90) days after the date of appointment, counsel for the petitioner shall file either an amended petition or a notice that counsel does not intend to amend the petition and provide a copy of the amended petition or notice directly to the Contemporary Court judge. Within thirty (30) days after the filing of an amended petition or a notice of non-intent to amend the petition, the court may

dismiss some or all of the claims in the petition under Subparagraph (E)(1) of this rule. Within one-hundred twenty (120) days after filing of the amended petition or notice not to amend, the respondent shall file a response to any claims not dismissed and provide a copy of the response directly to the Contemporary Court judge, without further order of the court;

3. Preliminary disposition hearing. After the response is filed, at the request of a party or upon its own motion, the Contemporary Court may conduct a preliminary disposition hearing for the purpose of clarifying the issues and petitioner's evidence in support of the claims in the petition. At the preliminary disposition hearing, the court will attempt to resolve any of the issues presented by the petition based on the filings by the parties or their counsel. The court shall then determine whether an evidentiary hearing is required. If it appears that an evidentiary hearing is not required, the court shall dispose of the petition without an evidentiary hearing, but may ask for briefs and oral arguments on legal issues;

4. Evidentiary hearing. If an evidentiary hearing is required, the court shall conduct a hearing as promptly as practicable.

F. Second and successive petitions. If the petitioner has previously filed a petition seeking relief under this rule, the Contemporary Court shall have the discretion to

1. dismiss any claim not raised in a prior petition unless fundamental error has occurred, or unless an adequate record to address the claim properly was not available at the time of the prior petition; and

2. dismiss any claim raised and rejected in a prior petition unless there has been an intervening change of law or fact or the ends of justice would otherwise be served by rehearing the claim.

G. Discovery procedures.

1. Discovery procedures for parties represented by counsel. At any time, counsel for a party may make a formal written request to opposing counsel for production of documents and other discovery materials that are available under Rule 6-3-501 and Rule 6-3-502. The written request shall describe the good faith efforts by counsel to obtain the discovery materials from previous counsel or any other sources and shall show that these efforts were unsuccessful. Counsel for the opposing party shall comply with the request within thirty (30) days after service or notify the court in writing of any objection to the request. Any objection based on privilege should clearly identify the material withheld and the basis of the privilege claim. The court shall then hold a hearing to rule on any objection to the discovery request. The court shall grant a challenged request for discovery when the requesting party demonstrates that the materials are relevant either to advance the claims that are alleged in the petition or to defend against the claims that are alleged in the petition.

2. For purposes of this rule, "discovery materials" are

a. materials in the possession of a party; or

b. materials in the possession of law enforcement authorities to which the petitioner would have been entitled to at the time of trial.

3. Other discovery procedures. Counsel for a party may make use of any other discovery procedure under the Rules of Criminal Procedure only after notice to opposing counsel and prior written authorization from the court. In determining whether to authorize such proceedings, the court may consider any of the factors contained in Rule 6-3-508(A).

4. Discovery procedures for pro-se petitioners. Petitioners not represented by counsel shall petition the court before requesting discovery under this rule and the Rules of Criminal Procedure for the Contemporary Court. In determining whether to authorize a discovery request, the court may consider any of the factors contained in Rule 6-3-508(A).

5. Motions to compel. If the Pueblo or the petitioner fails to comply with any of the provisions of this rule, the court may enter an order under Rule 6-3-505 or Rule 6-3-108.

H. Transportation of incarcerated petitioners. If the presence of the petitioner is required at a hearing it shall be the responsibility of counsel for the petitioner to submit a transportation order for petitioners who are incarcerated. It shall be the responsibility of the respondent to facilitate the transportation of the petitioner if needed.

I. Appeal. Within thirty (30) days after the Contemporary Court's decision

1. if the writ is granted, the Pueblo may appeal as of right under the Rules of Appellate Procedure;

2. if the writ is denied, a petition for certiorari may be filed with the Pueblo of Santa Ana Court of Appeals.

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

Rule 6-3-803 Petitions for Post-Sentence Relief

A. Application. A petition to set aside a judgment and sentence may be filed in the Contemporary Court by one who has been convicted of a criminal offense, and who is not in custody or under restraint as a result of such sentence.

B. Grounds. Relief under this rule is available to correct convictions obtained in violation of the Indian Civil Rights Act.

C. Time for filing. A petition for post-sentence relief shall be filed within a reasonable time after the completion of the petitioner's sentence, unless the Contemporary Court finds good cause, excusable neglect, or extraordinary circumstances beyond the control of the petitioner that justify filing the petition beyond that time.

D. Procedure. A petition for post-sentence relief under this rule may be granted only upon filing with the clerk of the court a petition on behalf of the party seeking relief. If the petition is filed by a petitioner who is not represented by an attorney and who is confined to an

institution or other detention facility, the petition is deemed to be filed with the clerk of the court on the date the petition is deposited in the institution's internal mail system for forwarding to the court provided that the petitioner states within the petition, under penalty of perjury, the date on which the petition was deposited in the institution's internal mail system. The petition shall contain the following:

1. The respondent in proceedings under this rule, which shall be the Pueblo of Santa Ana;

2. The petitioner's full name and address, if petitioner is not represented by counsel;

3. A statement of the steps taken to exhaust all other available remedies, including a statement of the name of the case, the docket number of the case, the court from which relief was sought, and the result of each previous judicial proceeding. If a claim has been raised in prior proceedings, a statement explaining why the ends of justice require additional consideration of the petition;

4. if the petitioner has previously filed a petition seeking relief under this rule or Rule 6-3-802, a statement explaining why the petition should not be dismissed under Paragraph G;

5. a statement as to whether:

a. the petition seeks to vacate, set aside or correct the sentence or order of confinement; or

b. the petition challenges matters other than Subparagraph (a) of this subparagraph;

6. A concise statement of the facts and law upon which the application is based; and

7. a concise statement of the relief sought.

E. Papers attached to the petition. The following shall be attached to the petition:

1. any opinion, order, transcript, or other written material reasonably available to petitioner indicating any court's ruling on the petitioner's prior custody or restraint or on the issued raised in the petition, or a statement explaining why the materials are not attached;

2. a certificate of service showing service on the Pueblo.

F. Procedure for adjudicating petition.

1. Summary dismissal; return of petition. Upon receipt of a petition for post-sentence relief, the Contemporary Court shall promptly examine the petition together with all attachments. If it plainly appears from the face of the petition, any exhibits, and the prior court

proceedings in the case, that the petitioner is not entitled to relief as a matter of law, the court shall summarily dismiss the petition.

If the court is unable to determine from the face of the petition whether petitioner is entitled to relief as a matter of law, the court may return a copy of the petition to the petitioner for additional factual information or a restatement of the legal claims. If the petition is returned to the petitioner, the petitioner has forty-five (45) days to resubmit a revised petition. Upon receipt of the revised petition, the court has forty-five (45) days to examine the petition together with all attachments. If no revised petition is filed, the court may dismiss the petition.

2. Response. If the court determines that summary dismissal is not appropriate, the court shall order the Pueblo to submit a response within one-hundred twenty (120) days.

3. Preliminary disposition hearing. After the response is filed, at the request of a party or upon its own motion, the court may conduct a preliminary disposition hearing for the purpose of clarifying the issues and petitioner's evidence in support of the claims in the petition. At the preliminary disposition hearing, the court will attempt to resolve any of the issues presented by the petition based on the filings by counsel for the parties. The court shall then determine whether an evidentiary hearing is required. If it appears that an evidentiary hearing is not required, the court may dispose of the petition without a further hearing, but may ask for briefs and/or oral arguments on legal issues;

4. Evidentiary hearing. If an evidentiary hearing is ordered, the hearing shall be conducted as promptly as practicable.

G. Second and successive petitions. If the petitioner has previously filed a petition seeking relief under this rule or Rule 6-3-802, the Contemporary Court shall have the discretion to:

1. dismiss any claim not raised in a prior petition unless fundamental error has occurred, or unless an adequate record to address the claim properly was not available at the time of the prior petition; and

2. dismiss any claim raised and rejected in a prior petition unless there has been an intervening change of law or fact or the ends of justice would otherwise be served by rehearing the claim.

H. Discovery procedures.

1. Discovery procedures for parties represented by counsel. At any time, counsel for a party may make a formal written request to opposing counsel for production of documents and other discovery materials that are available under Rule 6-3-501 or Rule 6-3-502. The written request shall describe the good faith efforts by counsel to obtain the discovery materials from previous counsel or any other sources and shall show that these efforts were unsuccessful. Counsel for the opposing party shall comply with the request within thirty (30) days after service or notify the court in writing of any objection to the request. Any objection based on privilege should clearly identify the material withheld and the basis of the privilege claim. The Contemporary Court shall then hold a hearing to rule on any objection to the discovery request.

The court shall grant a challenged request for discovery when the requesting party demonstrates that the materials are relevant to advance the claims that are alleged in the petition or the materials are relevant to defend against the claims that are alleged in the petition.

2. For purposes of this rule, "discovery materials" are:

a. materials in the possession of a party; or

b. materials in the possession of law enforcement authorities to which the petitioner would have been entitled to at the time of trial.

3. Other discovery procedures. Counsel for a party may make use of any other discovery procedure under the Rules of Criminal Procedure for the Contemporary Court only after notice to opposing counsel and prior written authorization from the court. In determining whether to authorize such proceedings, the court may consider any of the factors contained in Rule 6-3-508(A).

4. Discovery procedures for pro-se petitioners. Petitioners not represented by counsel shall petition the court before requesting discovery under this rule and the Rules of Criminal Procedure for the Contemporary Court. In determining whether to authorize a discovery request, the court may consider any of the factors contained in Rule 6-3-508(A).

5. Motions to compel. If the Pueblo or the petitioner fails to comply with any of the provisions of this rule, the court may enter an order under Rule 6-3-507 or Rule 6-3-108.

I. Appeal. Within thirty (30) days after the court's decision:

1. if the petition is granted, the Pueblo may appeal as of right to the Pueblo of Santa Ana Court of Appeals under the Rules of Appellate Procedure.

2. if the petition is denied, the petitioner may appeal to the Pueblo of Santa Ana Court of Appeals under the Rules of Appellate Procedure.

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

Rule 6-3-804 Probation; Violations

A. Violation of probation. At any time during probation if it appears that the probationer may have violated the conditions of probation:

1. the Contemporary Court may issue a warrant for the arrest of the probationer. If conditions of release are provided in the warrant, the probationer may be released on bond pending an adjudicatory hearing on the charges; or

2. the Contemporary Court or the probation office may issue a notice to appear before the court to answer a charge of violation of the conditions of probation.

B. Notice of arrest without warrant. If the probationer is arrested by the probation office without a warrant the probation office shall provide the Contemporary Court with a

written notice within one (1) day of the arrest. The notice shall contain a brief description of each alleged probation violation. A copy of the notice shall be given to the probationer and filed with the court.

C. *Technical violation program*. The Contemporary Court may establish a program for sanctions for probationers who agree to automatic sanctions for a technical violation of the conditions of probation. Under the program a probationer may agree:

1. not to contest the alleged violation of probation;

2. to submit to sanctions in accordance with the program; and

3. to waive the provisions of Paragraphs D through L of this rule. For purposes of this rule, a "technical violation" means any violation that does not involve new criminal charges.

D. Conditions of release. If a probationer is arrested and not released on conditions of release, within five (5) days after the arrest of the probationer the Contemporary Court judge shall review the notice of arrest or warrant and consider conditions of release pending adjudication of the probation violation. If no conditions for release are set, the probationer may file a motion to appear before the judge to consider conditions of release.

E. Filing of report. If there is a recommendation that probation be revoked, within five (5) days of the arrest of probationer the probation office shall submit a written violation or a summary report to the prosecutor and Contemporary Court describing the essential facts of each violation. A copy of the report shall be served on the probationer and the probationer's attorney of record.

F. Prosecutor's duty. Within five (5) days after receiving the probation violation or a summary report, the prosecutor may file a motion to revoke probation setting forth each of the alleged violations, file a notice of intent not to prosecute the alleged violations, or request a hearing on the matter.

G. Initial hearing. If the probationer is in custody and an initial hearing is not timely commenced as required by this paragraph, upon its own motion or upon presentation of a release order without a hearing required, the Contemporary Court shall order the probationer immediately released back to probation supervision pending final adjudication. An initial hearing on a motion to revoke probation shall be commenced within thirty (30) days after the latest of the following events:

1. the date of the filing of a motion to revoke probation;

2. if the proceedings have been stayed to determine the competency of the probationer, the date an order is filed finding the probationer competent to participate in the revocation proceedings;

3. if an interlocutory or other appeal is filed, the date the Pueblo of Santa Ana Court of Appeals issues a decision on the appeal;

4. if the probationer is arrested or surrenders in another jurisdiction, the date the probationer is returned to the Pueblo; or

5. the date of arrest or surrender of a probationer in the Pueblo based on a bench warrant issued for failing to report.

H. Adjudicatory hearing. If the probationer is in custody and an adjudicatory hearing is not timely commenced as required by this paragraph, upon its own motion or upon presentation of a release order without a hearing required, the Contemporary Court shall order the probationer immediately released back to probation supervision pending final adjudication. The adjudicatory hearing shall commence no later than sixty (60) days after the initial hearing is conducted.

I. Discovery. The parties shall exchange witness lists and disclose proposed exhibits no later than ten (10) days after the initial hearing.

J. Waiver of time limits. The probationer may waive the time limits for commencement of the adjudicatory hearing.

K. Extensions of time. Extensions of time for commencement of a hearing on a motion to revoke probation may be granted in the Contemporary Court's discretion upon the request of any party.

L. Sanctions for noncompliance with time limits. In addition to any release of the probationer that may be required by Paragraphs G or H of this rule, the Contemporary Court may dismiss the motion to revoke probation for violating any of the time limits in this rule.

M. Probationer who is a fugitive. If it is found that a warrant for the return of a probationer cannot be served, the probationer is a fugitive from justice. After hearing upon return, if it appears that the probationer has violated the provisions of the probationer's release, the court shall determine whether the time from the date of violation to the date of the probationer's arrest, or any part of it, shall be counted as time served on probation.

N. Applicability. Paragraphs E and F of this rule are not applicable to revocation of probation proceedings that are initiated by the prosecutor without a prior recommendation of the probation office to revoke probation.

O. Nothing in this Rule limits the authority of the Contemporary Court to schedule probation review hearings as determined by the Court.

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

ARTICLE 4 – RULES OF EVIDENCE

Chapter 1 – General Provisions

Rule 6-4-101 Scope of Rules

These rules govern proceedings in the Contemporary Court of the Pueblo of Santa Ana.

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

Rule 6-4-102 Purpose and Construction

These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination of each case.

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

Rule 6-4-103 Rulings on Evidence

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

1. if the ruling admits evidence, the party, on the record

a. timely objects or moves to strike, and

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

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

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

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

D. Preventing the jury from hearing inadmissible evidence. To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.

E. Taking notice of plain error. A court may take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved.

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

Rule 6-4-104 Preliminary Questions

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

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

C. Conducting a hearing so that the jury cannot hear it. The court must conduct any hearing on a preliminary question so that the jury cannot hear it if

1. the hearing involves the admissibility of a confession,

2. a defendant in a criminal case is a witness and so requests, or

3. justice so requires.

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

E. Evidence relevant to weight and credibility. This rule does not limit a party's right to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.

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

Rule 6-4-105 Limiting Evidence That is not Admissible Against Other Parties or for Other Purposes

If the court admits evidence that is admissible against a party or for a purpose, but not against another party or for another purpose, the court, on timely request, must restrict the evidence to its proper scope and instruct the jury accordingly.

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

Rule 6-4-106 Remainder of or Related Writings or Recorded Statements

If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part, or any other writing or recorded statement, that in fairness ought to be considered at the same time.

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

Rule 6-4-107 Comment by Court

The court shall not comment to the jury upon the evidence or the credibility of the witnesses.

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

Chapter 2 – Judicial Notice

Rule 6-4-201 Judicial Notice of Adjudicative Facts

A. Scope. This rule governs only judicial notice of adjudicative facts.

B. Kinds of facts that may be judicially noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it

1. is generally known within the court's territorial jurisdiction,

2. can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned, or

3. notice is provided for by statute.

C. Taking notice. The court

1. may take judicial notice on its own, or

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

D. Timing. The court may take judicial notice at any stage of the proceeding.

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

F. Instructing the jury. In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

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

Chapter 3 – Presumptions

Rule 6-4-301 Presumptions in Civil Cases Generally

In a civil case, unless a state statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption.

But this rule does not shift the burden of persuasion, which remains on the party who had it originally.

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

Rule 6-4-302 Presumptions in Criminal Cases

A. Scope. Except as otherwise provided by statute, in criminal cases, presumptions against an accused are governed by this rule.

B. Submission to jury. The court shall not direct the jury to find a presumed fact against the accused. When a presumed fact is an element of the offense or negates a defense, the court may submit the presumed fact for the jury's consideration only if a reasonable juror could find the presumed fact proved beyond a reasonable doubt. When the presumed fact is not an element of the offense or does not negate a defense, its existence may be submitted to the jury only if a reasonable juror could find that it is supported by substantial evidence.

C. Instructing the jury. If the presumed fact is an element of the offense or negates a defense, the court shall instruct the jury that its existence must be proved beyond a reasonable doubt. If the presumed fact is not an element of the offense or does not negate a defense, the court shall instruct the jury that it may, but is not required to, accept the presumed fact, provided the jury finds that it is supported by substantial evidence.

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

Chapter 4 – Relevancy and Its Limits

Rule 6-4-401 Test for Relevant Evidence

Evidence is relevant if:

A. it has any tendency to make a fact more or less probable than it would be without the evidence, and

B. the fact is of consequence in determining the action.

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

Rule 6-4-402 General Admissibility of Relevant Evidence

Relevant evidence is admissible unless any of the following provides otherwise: the laws of the Pueblo, these rules, or other rules prescribed by the Court. Irrelevant evidence is not admissible.

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

Rule 6-4-403 Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons

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

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

Rule 6-4-404 Character Evidence; Crimes or Other Acts

A. Character evidence.

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

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

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

b. subject to the limitations in Rule 6-4-413, a defendant may offer evidence of a victim's pertinent trait, and if the evidence is admitted, the prosecutor may

i. offer evidence to rebut it, and

ii. offer evidence of the defendant's same character trait, and

c. in a homicide case, the prosecutor may offer evidence of the victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

3. Exceptions for a witness. Evidence of a witness's character may be admitted under Rule 6-4-413.

B. Crimes, wrongs, or other acts.

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

2. Permitted uses; notice in a criminal case. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. In a criminal case, the prosecution must

a. provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial, and

b. do so before trial – or during trial if the court, for good cause, excuses lack of pretrial notice.

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

Rule 6-4-405 Methods of Proving Character

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

B. By specific instances of conduct. When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of conduct.

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

Rule 6-4-406 Habit; Routine Practice

A. Admissibility. Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

B. Method of proof. Habit or routine practice may be proved by testimony in the form of an opinion or by specific instances of conduct sufficient in number to warrant a finding that the habit existed or that the practice was routine.

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

Rule 6-4-407 Subsequent Remedial Measures

When measures are taken by a defendant that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove the following: negligence; culpable conduct; a defect in a product or its design; or a need for a warning or instruction.

But the court may admit this evidence for another purpose, such as impeachment or, if disputed, proving ownership, control, or the feasibility of precautionary measures.

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

Rule 6-4-408 Compromise Offers and Negotiations

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

1. furnishing, promising, or offering, or accepting, promising to accept, or offering to accept, a valuable consideration in order to compromise the claim; and

2. conduct or a statement made during compromise negotiations about the claim.

B. Exceptions. The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

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

Rule 6-4-409 Offers to Pay Medical and Similar Expenses

Evidence of furnishing, promising to pay, or offering to pay medical, hospital, or similar expenses resulting from an injury is not admissible to prove liability for the injury.

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

Rule 6-4-410 Pleas, Plea Discussions, and Related Statements

A. Prohibited uses. In a civil, criminal, or children's court case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:

1. a guilty plea that was later withdrawn;

2. a nolo contendere plea;

3. an admission in a delinquency case;

4. a statement made during a proceeding on any of those pleas or admissions in any court;

5. a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or resulted in a later-withdrawn guilty plea.

B. Exceptions. The court may admit a statement described in Subparagraph (A)(4) or (5) of this rule:

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

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

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

Rule 6-4-411 Liability Insurance

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

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

Rule 6-4-412 Sex Crimes; Testimony; Limitations; in Camera Hearing

A. Prohibited uses. The following evidence is not admissible in a civil or criminal proceeding involving alleged sexual misconduct:

1. evidence offered to prove that a victim engaged in other sexual behavior, or

2. evidence offered to prove a victim's sexual predisposition.

B. Exceptions. The court may admit evidence of the victim's past sexual conduct that is material and relevant to the case when the inflammatory or prejudicial nature does not outweigh its probative value.

C. Procedure to determine admissibility.

1. Motion. If the defendant intends to offer evidence under Rule 6-4-412, the defendant must file a written motion before trial. If the defendant discovers new information during trial, the defendant shall immediately bring the information to the attention of the court outside the presence of the jury.

2. Hearing. Before admitting evidence under this rule, the court shall conduct an in camera hearing to determine whether such evidence is admissible.

3. Order. If the court determines that the proposed evidence is admissible, the court shall issue a written order stating what evidence may be introduced by the defendant and stating the specific questions to be permitted. Unless the court orders otherwise, the motion, order, related materials, and the record of the hearing must remain sealed.

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

Rule 6-4-413 Use of Evidence Obtained Under Immunity Order Precluded

Testimony or evidence compelled under an order of immunity, or any information derived from such testimony or evidence, may not be used against the person compelled to testify or to produce evidence in any criminal case, except

1. in a prosecution for perjury committed during that testimony, or

2. in a contempt proceeding for failure to comply with an order of immunity.

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

Chapter 5 – Privileges

Rule 6-4-501 Privileges Recognized Only as Provided

Unless required by Pueblo law, these rules, or other rules adopted by the court, no person has a privilege to

A. refuse to be a witness;

B. refuse to disclose any matter;

C. refuse to produce any object or writing; or

D. prevent another from being a witness, disclosing any matter, or producing any object or writing.

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

Rule 6-4-502 Required Reports Privileged by Statute

A. Scope of the privilege. Should any law require a return or report to be made and the law mandating the creation of that return or report provides for its confidentiality, the person or entity, in either a public or private capacity, making the return or report has a privilege to refuse to disclose, or to prevent any other person from disclosing, the return or report.

B. Exceptions. The privilege does not cover a return or report that does not comply with the law that mandates its creation, nor actions involving perjury, false statements, or fraud in the return or report.

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

Rule 6-4-503 Lawyer-Client Privilege

A. Definitions. For purposes of this rule,

1. a “client” is a person, public officer, corporation, association, or other entity who consults with, seeks advice from, or retains the professional services of a lawyer or a lawyer’s representative;

2. a “lawyer” is a person authorized, or reasonably believed by the client to be authorized, to practice law in any tribe or state;

3. a “representative of a lawyer” is one employed to assist the lawyer in providing professional legal services; and

4. a communication is “confidential” if made privately and not intended for further disclosure except to other persons in furtherance of the purpose of the communication

and includes the act of contacting or retaining a lawyer for the purpose of seeking professional legal services if not intended to be disclosed to third persons.

B. Scope of the privilege. A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made for the purpose of facilitating or providing professional legal services to that client,

1. between the client and the client's lawyer or representative;

2. between the client's lawyer and the lawyer's representative;

3. between the client or client's lawyer and another lawyer representing another in a matter of common interest;

4. between representatives of the client or between the client and a representative of the client; or

5. between lawyers representing the client.

C. Who may claim the privilege. The privilege may be claimed by

1. the client;

2. the client's guardian or conservator;

3. the personal representative of a deceased client; or

4. the successor, trustee, or similar representative of a corporation, association, or other entity, whether or not in existence.

The lawyer of the client at the time of the communication may claim the privilege only on behalf of the client. Authority to claim the privilege is presumed absent evidence to the contrary.

D. Exceptions. There is no privilege under this rule:

1. Furtherance of crime or fraud. If the professional legal services were sought or obtained to enable or assist anyone in committing or planning to commit what the client knew or reasonably should have known to be a crime or fraud;

2. Claimants through same deceased client. For a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;

3. Breach of duty by lawyer or client. For a communication relevant to an issue of breach of duty either by the lawyer to the lawyer's client or by the client to the client's lawyer;

4. Document attested by lawyer. For a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness; or

5. Joint clients. For a communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients.

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

Rule 6-4-504 Physician-Patient and Psychotherapist-Patient Privilege

A. Definitions. For purposes of this rule,

1. a "patient" is a person who consults with or is examined by a physician, psychotherapist, or state or nationally licensed mental-health therapist;

2. a "physician" is a person authorized to practice medicine in any state or nation, or reasonably believed by the patient to be so licensed;

3. a "psychotherapist" is a person engaged in the diagnosis or treatment of a mental or emotional condition, including drug addiction, and who is

a. a physician; or

b. a person licensed or certified as a psychologist under the laws of any state or nation, or reasonably believed by the patient to be so licensed or certified.

4. a "state or nationally licensed mental-health therapist" is a person licensed or certified to provide counseling services as a social worker, marriage or family therapist, or other mental-health counselor; and

5. a communication is "confidential" if made privately and not intended for further disclosure except to other persons in furtherance of the purpose of the communication.

B. Scope of the privilege. A patient has a privilege to refuse to disclose, or to prevent any other person from disclosing, a confidential communication made for the purpose of diagnosis or treatment of the patient's physical, mental, or emotional condition, including drug addiction, between the patient and the patient's physician, psychotherapist, or state or nationally licensed mental-health therapist.

C. Who may claim the privilege.

1. The privilege may be claimed by

a. the patient;

b. the patient's guardian or conservator; or

c. the personal representative of the deceased patient.

2. The privilege may be asserted on the patient's behalf by

a. the patient's physician;

b. the patient's psychotherapist;

c. the patient's state or nationally licensed mental-health therapist; or

d. any other person included in the communication to further the patient's interests, including individuals participating under the direction of the patient's physician, psychotherapist, or state or nationally licensed mental-health therapist.

3. Authority to claim the privilege is presumed absent evidence to the contrary.

D. Exceptions.

1. Proceedings for hospitalization. If a physician, psychotherapist, or state or nationally licensed mental-health therapist has determined that a patient must be hospitalized due to mental illness or presents a danger to himself or others, no privilege shall apply to confidential communications relevant to the proceedings to hospitalize the patient.

2. By order of the court. Unless the court orders otherwise, any communications made by an individual during an examination of that individual's physical, mental, or emotional condition that has been ordered by the court are not privileged.

3. Elements of a claim or defense. If a patient relies on a physical, mental, or emotional condition as part of a claim or defense, no privilege shall apply concerning confidential communications made relevant to that condition. After a patient's death, should any party rely on a patient's physical, mental, or emotional condition as part of a claim or defense, no privilege shall apply for confidential communications made relevant to that condition.

4. Required reports. No privilege shall apply for confidential communications concerning any material that a physician, psychotherapist, state or nationally licensed mental-health therapist, or patient is required by law to report to a public employee or public agency.

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

Rule 6-4-505 Communications to Clergy

A. Definitions. For purposes of this rule,

1. a "member of the clergy" is a minister, priest, rabbi, or similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting that person;

2. a communication is "confidential" if made privately and not intended for further disclosure except to other persons in furtherance of the purpose of the communication.

B. Scope of the privilege. A person has a privilege to refuse to disclose, or to prevent another from disclosing, a confidential communication made for the purpose of seeking spiritual advice by the person to a member of the clergy.

C. Who may claim the privilege. The privilege may be claimed by

1. the person who consults with a member of the clergy;

2. the person's guardian or conservator; or

3. the person's personal representative if the person is deceased.

The privilege may be asserted on the person's behalf by the member of the clergy. Authority to claim the privilege is presumed absent evidence to the contrary.

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

Rule 6-4-506 Political Vote

Every person has a privilege to refuse to disclose the tenor of the person's vote in a political election conducted by secret ballot unless the person voted unlawfully.

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

Rule 6-4-507 Trade Secrets

A. Scope of the privilege. Unless upholding the privilege will tend to conceal fraud or otherwise work an injustice, a person or entity owning a trade secret has a privilege to refuse to disclose, or to prevent others from disclosing, the trade secret.

B. Who may claim the privilege. The privilege may be claimed by a person or entity owning the trade secret, including any agent or employee of that person or entity.

C. Protective orders. If a court orders the disclosure of a trade secret, the court must order any appropriate protective measures to safeguard the interests of the trade secret's owner or any interests that justice requires.

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

Rule 6-4-508 Communications to Juvenile Probation Officers and Social Services Workers

A. Definitions. For purposes of this rule,

1. "probation officer" means a person employed by the Pueblo social services agency who conducts preliminary inquiries pursuant to the Children's Code [Title X of the Santa Ana Tribal Code] and Children's Court Rules and Forms;

2. "social services worker" means a person employed by the Children, Youth and Families Department or successor entity who conducts preliminary inquiries pursuant to the Children's Code and Children's Court Rules and Forms; and

3. a communication is "confidential" if made privately and not intended for further disclosure except to other persons in furtherance of the purpose of the communication.

B. Scope of the privilege. A child alleged to be delinquent or in need of supervision and a parent, guardian, or custodian who allegedly neglected a child has a privilege to refuse to disclose, or to prevent any other person from disclosing, confidential communications, either oral or written, between the child, parent, guardian, or custodian and a probation officer or a social services worker which are made during the course of a preliminary inquiry.

C. Who may claim the privilege. The privilege provided in Paragraph B of this rule may be claimed by the child in a criminal proceeding or in a children's court proceeding; or by the parent, guardian, or custodian who allegedly abused or neglected a child. The claim of privilege may be asserted by the attorney, the probation officer, or the social services worker on behalf of the child, parent, guardian, or custodian.

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

Rule 6-4-509 Identity of Informer

A. Definition. An "informer" is a person who has provided information concerning a possible violation of the law to

1. a law enforcement officer;

2. a legislative committee member or staffer; or

3. an individual who has assisted with an investigation into a violation of the law.

B. Scope of the privilege. The Pueblo has a privilege to refuse to disclose the identity of an informer.

C. Who may claim the privilege. The privilege may be claimed by an appropriate representative of the Pueblo.

D. Exceptions:

1. Criminal cases. In criminal cases, the privilege shall not be allowed if the Pueblo objects.

2. Voluntary disclosure. The privilege no longer exists if the informer or a holder of the privilege discloses the informer's identity to anyone whose interests are adverse to the informer or to a holder of the privilege. Disclosure occurs when

a. the informer's actual identity is disclosed; or

b. information that is substantially certain to reveal the informer's identity is disclosed.

3. Compelled testimony.

a. Motion by a party. A party may move the court for an in camera determination of whether the disclosure of an informer's identity or ability to testify should be ordered if the Pueblo invokes the informer privilege, and the evidence suggests that the informer can provide testimony that is

i. relevant and helpful to a criminal defendant;

ii. necessary for a fair determination of the guilt or innocence of a criminal defendant; or

iii. material to the merits in a civil case in which the Pueblo is a party.

When such a motion is made, the court will provide the Pueblo an opportunity to present evidence for an in camera review addressing whether the informant can, in fact, supply such testimony.

b. In camera proof. In an ordinary case, the Pueblo may defend such a motion with affidavits. If the court determines that the issue cannot be resolved through affidavits, the court may order testimony from the informer or other relevant persons.

c. Standard governing disclosure. If the court finds a reasonable probability that the informer can provide testimony favorable to the movant, the court shall require the disclosure of the informer's identity or testimony. If the Pueblo declines to make the disclosure, the court may, upon a motion of the movant or sua sponte

i. dismiss the charges relating to the informer's testimony in a criminal case; or

ii. order any remedy that justice requires.

d. Record. If any counsel is permitted to be present at any stage of the proceedings conducted before the court, all counsel shall be given the opportunity to appear. Any evidence tendered to the court for an in-camera review that is not ordered to be disclosed shall be placed under seal and preserved for appellate review. The evidentiary record shall not be revealed without an order of the court.

4. Lawfulness of obtaining evidence.

a. Motion by a party or court. When any employee of the Pueblo relies upon information from an informer to establish the legal means to obtain evidence and the court finds that the informer's information was not reliable or credible, the court may order the disclosure of the informer's identity. Such an order may be limited to a disclosure in camera, but the court may order any disclosure that justice requires.

b. Record. If any counsel concerned with the legality of evidence obtained through an informer is permitted to be present before the court, all counsel shall be given the opportunity to appear. If the informer's identity is disclosed in camera and not ordered to be disclosed publicly, the record of that disclosure shall be placed under seal and preserved for appellate review. The evidentiary record shall not be revealed without an order from a court with jurisdiction over the case.

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

Rule 6-4-510 Waiver of Privilege by Voluntary Disclosure

A person who possesses a privilege against disclosure of a confidential matter or communication waives the privilege if the person voluntarily discloses or consents to disclosure of any significant part of the matter or communication. This rule does not apply if the disclosure is a privileged communication.

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

Rule 6-4-511 Privileged Matter Disclosed Under Compulsion or Without Opportunity to Claim Privilege

A disclosure of a privileged matter is not admissible against a holder of the privilege when the disclosure

A. was compelled erroneously; or

B. was made without the opportunity to claim the privilege.

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

Rule 6-4-512 Comment Upon or Inference from Claim of Privilege; Instruction

A. Comment or inference not permitted. Neither the court nor counsel may comment when a privilege has been claimed at any time. No inference may be drawn from any claim of privilege.

B. Claiming privilege without knowledge of jury. To the extent possible, the court shall conduct jury trials so as to allow claims of privilege to be made without the jury's knowledge.

C. Jury instruction. Upon request, any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to a jury instruction that no inference may be drawn from the claim of privilege.

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

Rule 6-4-513 News Media-Confidential Source or Information Privilege

A. Definitions. Unless a different meaning clearly appears from the context of this rule, for purposes of this rule,

1. a source who communicates information is "confidential" if the identity of the source is disclosed privately and not intended for further disclosure except to other persons in furtherance of the purpose of the communication;

2. information is "confidential" if communicated privately and not intended for further disclosure except to other persons in furtherance of the purpose of the communication;

3. "in the course of pursuing professional news activities" does not include any situation in which a news media person participates in any act of criminal conduct;

4. "news" means any written, oral, or pictorial information gathered, procured, transmitted, compiled, edited, or disseminated by, or on behalf of any person engaged or employed by a news media and so procured or obtained while such required relationship is in effect; and

5. "news media" means newspapers, magazines, press associations, news agencies, wire services, radio, television, or other similar printed, photographic, mechanical, or electronic means of disseminating news to the general public.

B. Scope of the privilege. A person engaged or employed by news media for the purpose of gathering, procuring, transmitting, compiling, editing, or disseminating news for the general public or on whose behalf news is so gathered, procured, transmitted, compiled, edited, or disseminated has a privilege to refuse to disclose:

1. a confidential source who provided information to the person in the course of pursuing professional news activities; and

2. any confidential information obtained in the course of pursuing professional news activities.

C. The provisions of this rule do not apply to radio stations unless the radio station maintains and keeps open for inspection by a person affected by the broadcast, for a period of at least one hundred eighty (180) days from the date of an actual broadcast, an exact recording, transcription, or certified written transcript of the actual broadcast.

D. The provisions of this rule do not apply to television stations unless the television station maintains and keeps open for inspection by a person affected by the broadcast, for a period of at least one year from the date of an actual telecast, an exact recording or written transcript of the actual telecast.

E. Exception. There is no privilege under this rule in any action in which the party seeking the evidence shows by a preponderance of evidence, including all reasonable inferences, each of the following:

1. a reasonable probability exists that a news media person has confidential information or sources that are material and relevant to the action;

2. the party seeking disclosure has reasonably exhausted alternative means of discovering the confidential information or sources sought to be disclosed;

3. the confidential information or source is crucial to the case of the party seeking disclosure; and

4. the need of the party seeking the confidential source or information is of such importance that it clearly outweighs the public interest in protecting the news media's confidential information and sources.

F. Procedure. If a person defined in Paragraph B claims the privilege, and the court is asked to determine whether the exception applies, a hearing shall be held in open court to consider all information, evidence, or argument deemed relevant by the court. If possible, the determination of whether the exception applies shall be made without requiring disclosure of the confidential source or information sought to be protected by the privilege.

G. If it is not possible for the court to make a determination of whether the exception applies without the court knowing the confidential source or information sought to be protected, the court may issue an order requiring disclosure to the court alone, in camera.

H. Following the in-camera hearing, the court shall enter written findings of fact and conclusions of law without disclosing any of the matters for which the privilege is asserted, and a written order identifying what, if anything, shall be disclosed.

I. Evidence submitted to the court in camera, and any record of the in-camera proceedings, shall be sealed and preserved to be made available to an appellate court in the event of an appeal. The contents of the sealed evidence shall not be revealed without the consent of the person asserting the privilege.

J. All counsel and parties shall be permitted to be present at every stage of the proceedings under this rule, except at the in-camera hearing. The person asserting the privilege and counsel for that person shall be the only persons permitted to be present during the in-camera proceedings with the court.

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

Chapter 6 – Witnesses

Rule 6-4-601 Competency to Testify in General

Every person is competent to be a witness unless these rules provide otherwise.

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

Rule 6-4-602 Need for Personal Knowledge

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to testimony by an expert witness under Rule 6-4-703.

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

Rule 6-4-603 Oath or Affirmation to Testify Truthfully

Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness's conscience.

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

Rule 6-4-604 Interpreter

An interpreter must be qualified and must give an oath or affirmation to make a true translation.

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

Rule 6-4-605 Judge's Competency as a Witness

The presiding judge may not testify as a witness at the trial. A party need not object to preserve the issue.

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

Rule 6-4-606 Juror's Competency as a Witness

A. At the trial. A juror may not testify as a witness before the other jurors at the trial. If a juror is called to testify, the court must give a party an opportunity to object outside the jury's presence.

B. During an inquiry into the validity of a verdict.

1. Prohibited testimony or other evidence. During an inquiry into the validity of a verdict, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.

2. Exceptions. A juror may testify about whether

a. extraneous prejudicial information was improperly brought to the jury's attention;

b. an outside influence was improperly brought to bear on any juror; or

c. a mistake was made in entering the verdict on the verdict form.

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

Rule 6-4-607 Who May Impeach a Witness

Any party, including the party that called the witness, may attack the witness's credibility.

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

Rule 6-4-608 A Witness's Character for Truthfulness or Untruthfulness

A. Reputation or opinion evidence. A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for untruthfulness has been attacked by opinion or reputation evidence or otherwise.

B. Specific instances of conduct. Except for a criminal conviction under Rule 6-4-609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness of

1. the witness; or

2. another witness whose character the witness being cross-examined has testified about.

By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.

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

Rule 6-4-609 Impeachment by Evidence of a Criminal Conviction

A. In general. The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

1. for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one (1) year the evidence

a. must be admitted, subject to Rule 6-4-403, in a civil case or in a criminal case in which the witness is not a defendant, and

b. must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant, and

2. for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving, or the witness's admitting, a dishonest act or false statement.

B. Limit on using the evidence after ten (10) years. This paragraph applies if more than ten (10) years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if

1. its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect, and

2. the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

C. Effect of a pardon, annulment, or certificate of rehabilitation. Evidence of a conviction is not admissible if

1. the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one (1) year, or

2. the conviction has been the subject of a pardon, annulment, or other equivalent procedure, based on a finding of innocence.

D. Juvenile adjudications. Evidence of a juvenile adjudication is admissible under this rule only if

1. it is offered in a criminal case,

2. the adjudication was of a witness other than the defendant,

3. an adult's conviction for that offense would be admissible to attack the adult's credibility, and

4. admitting the evidence is necessary to fairly determine guilt, or innocence.

E. Pendency of an appeal. A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

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

Rule 6-4-610 Religious Beliefs or Opinions

Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

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

Rule 6-4-611 Mode and Order of Examining Witnesses and Presenting Evidence

A. Control by the court; purposes. The court should exercise reasonable control over the mode and order of questioning witnesses and presenting evidence so as to

1. make those procedures effective for determining the truth,

2. avoid wasting time, and

3. protect witnesses from harassment or undue embarrassment.

B. Scope of cross-examination. Cross-examination should not go beyond the subject matter of the direct examination and matters affecting a witness's credibility. The court may allow inquiry into additional matters as if on direct examination.

C. Leading questions. Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions

1. on cross-examination, and

2. when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

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

Rule 6-4-612 Writing Used to Refresh a Witness's Memory

A. Scope. This rule gives an adverse party certain options when a witness uses a writing to refresh memory

1. while testifying, or

2. before testifying, if the court decides that justice requires a party to have those options.

B. Adverse party's options; deleting unrelated matter. Unless otherwise provided by law in a criminal case, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony. If the producing party claims that the writing includes unrelated matter, the court must examine the writing in camera, delete any unrelated portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must be preserved for the record.

C. Failure to produce or deliver the writing. If a writing is not produced or is not delivered as ordered, the court may issue any appropriate order. But if the prosecution does not comply in a criminal case, the court must strike the witness's testimony or, if justice so requires, declare a mistrial.

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

Rule 6-4-613 Witness's Prior Statement

A. Showing or disclosing the statement during examination. When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.

B. Extrinsic evidence of a prior inconsistent statement. Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This paragraph does not apply to an opposing party's statement under Rule 6-4-801(D)(2).

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

Rule 6-4-614 Court's Calling or Examining a Witness

A. Calling. The court may call a witness on its own or at a party's request. Each party is entitled to cross-examine the witness.

B. Examining. The court may examine a witness regardless of who calls the witness.

C. Objections. A party may object to the court's calling or examining a witness either at that time or at the next opportunity when the jury is not present.

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

Rule 6-4-615 Excluding Witnesses

At a party's request, the court must order witnesses excluded so that they cannot hear other witnesses' testimony, or the court may do so on its own. This rule does not authorize excluding

A. a party who is a natural person,

B. an officer or employee of a party that is not a natural person, after being designated as the party's representative by its attorney,

C. a person whose presence a party shows to be essential to presenting the party's claim or defense, or

D. a person authorized by law to be present.

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

Chapter 7 – Opinions and Expert Testimony

Rule 6-4-701 Opinion Testimony by Lay Witnesses

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is

A. rationally based on the witness's perception,

B. helpful to clearly understanding the witness's testimony or to determining a fact in issue, and

C. not based on scientific, technical, or other specialized knowledge within the scope of Rule 6-4-702.

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

Rule 6-4-702 Testimony by Expert Witnesses

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.

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

Rule 6-4-703 Basis of an Expert's Opinion Testimony

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

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

Rule 6-4-704 Opinion on an Ultimate Issue

An opinion is not objectionable just because it embraces an ultimate issue.

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

Rule 6-4-705 Disclosing the Facts or Data Underlying an Expert's Opinion

Unless the court orders otherwise, an expert may state an opinion, and give the reasons for it, without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.

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

Rule 6-4-706 Court-Appointed Expert Witnesses

A. Appointment process. On a party's motion or on its own, the court may order the parties to show cause why expert witnesses should not be appointed and may ask the parties to submit nominations. The court may appoint any expert witness that the parties agree on and any of its own choosing. But the court may only appoint someone who consents to act.

B. Expert's role. The court must inform the expert of the expert's duties. The court may do so in writing and have a copy filed with the clerk or may do so orally at a conference in which the parties have an opportunity to participate. The expert

1. must advise the parties of any findings the expert makes,

2. may be deposed by any party,

3. may be called to testify by the court or any party, and

4. may be cross-examined by any party, including the party that called the expert.

C. Compensation. The expert is entitled to a reasonable compensation as set by the court. The compensation is payable as follows:

1. in a criminal case or in a civil case involving just compensation, from any funds that are provided by law; and

2. in any other civil case, by the parties in proportion and at the time that the court directs, and the compensation is then charged like other costs.

D. Disclosing the appointment to the jury. The court may authorize disclosure to the jury that the court appointed the expert.

E. Parties' choice of their own experts. This rule does not limit a party in calling its own experts.

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

Rule 6-4-707 Polygraph Examinations

A. Definitions. As used in this rule:

1. "chart" means the record of bodily reactions by a polygraph instrument that is attached to the human body during a series of questions;

2. "polygraph examination" means a test using a polygraph instrument which at a minimum simultaneously graphically records on a chart the physiological changes in human respiration, cardiovascular activity, galvanic skin resistance, or reflex for the purpose of lie detection;

3. "polygraph examiner" means any person who is qualified to administer or interpret a polygraph examination; and

4. "relevant question" means a clear and concise question which refers to specific objective facts directly related to the purpose of the examination and does not allow rationalization in the answer.

B. Minimum qualifications of polygraph examiner. A polygraph examiner must have the following minimum qualifications prior to administering or interpreting a polygraph examination to be admitted as evidence:

1. at least five (5) years' experience in administration or interpretation of polygraph examinations or equivalent academic training; and

2. possess a current, active polygraph examiner license, in good standing, in New Mexico or in another jurisdiction with licensure standards that are equal to or greater than those in New Mexico.

C. Admissibility of results. A polygraph examiner's opinion as to the truthfulness of a person's answers in a polygraph examination may be admitted if:

1. the polygraph examination was administered by a qualified polygraph examiner;

2. the polygraph examination was quantitatively scored in a manner that is generally accepted as reliable by polygraph experts;

3. the polygraph examiner was informed as to the examinee's background, health, education, and other relevant information prior to conducting the polygraph examination;

4. at least two (2) relevant questions were asked during the examination;

5. at least three (3) charts were taken of the examinee; and

6. the entire examination was recorded in full on an audio or video recording device, including the pretest interview and, if conducted, the post-test interview.

D. Notice of examination. A party who wishes to use polygraph evidence at trial must provide written notice no less than thirty (30) days before trial or within such other time as the court may direct. Such notice must include these reports:

1. a copy of the polygraph examiner's report, if any;

2. a copy of each chart;

3. a copy of the audio or video recording of the entire examination, including the pretest interview, and, if conducted, the post-test interview; and

4. a list of any other polygraph examinations taken by the examinee in the matter under question, including the names of all persons administering such examinations, the dates, and the results of the examinations.

E. Determination of admissibility. The court shall make any determination as to the admissibility of a polygraph examination outside the presence of the jury.

F. *Compelled polygraph examinations*. No witness shall be compelled to take a polygraph examination. If notice to use a polygraph examination of a witness has been given under Paragraph D by one party, the court may, for good cause shown, compel a second polygraph examination of that witness by the other party. The results of the second polygraph

examination may be admitted if the second polygraph examination is conducted as required under this rule. Should the witness refuse to take a second polygraph examination, then the results of the first polygraph are inadmissible.

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

Chapter 8 – Hearsay

Rule 6-4-801 Definitions that Apply to this Chapter; Exclusions from Hearsay

A. Statement. "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

B. Declarant. "Declarant" means the person who made the statement.

C. Hearsay. "Hearsay" means a statement that

1. the declarant does not make while testifying at the current trial or hearing, and

2. a party offers in evidence to prove the truth of the matter asserted in the statement.

D. Statements that are not hearsay. A statement that meets the following conditions is not hearsay:

1. A declarant-witness's prior statement. The declarant testifies and is subject to cross-examination about a prior statement, and the statement

a. is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding, or in a deposition,

b. is consistent with the declarant's testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying, or

c. identifies a person as someone the declarant perceived earlier.

2. An opposing party's statement. The statement is offered against an opposing party and

a. was made by the party in an individual or representative capacity,

b. is one that the party manifested that it adopted or believed to be true,

c. was made by a person whom the party authorized to make a statement on the subject,

d. was made by the party's agent or employee on a matter within the scope of that relationship and while it existed, or

e. was made by the party's co-conspirator during and in furtherance of the conspiracy.

The statement must be considered but does not by itself establish the declarant's authority under Paragraph D(2)(c) of this rule, the existence or scope of the relationship under Paragraph D(2)(d) of this rule, or the existence of the conspiracy or participation in it under Paragraph D(2)(e) of this rule.

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

Rule 6-4-802 The Rule Against Hearsay

Hearsay is not admissible except as provided by these rules or by other rules adopted by the court or by Pueblo law.

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

Rule 6-4-803 Exceptions to the Rule Against Hearsay-Regardless of Whether the Declarant is Available as a Witness

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness.

1. Present sense impression. A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

2. Excited utterance. A statement relating to a startling event or condition, made while the declarant was under the stress or excitement that it caused.

3. Then-existing mental, emotional, or physical condition. A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

4. Statement made for medical diagnosis or treatment. A statement that

a. is made for, and is reasonably pertinent to, medical diagnosis or treatment, and

b. describes medical history, past or present symptoms, pain, or sensations, their inception, or their general cause.

5. Recorded recollection. A record that

a. is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately,

b. was made or adopted by the witness when the matter was fresh in the witness's memory, and

c. accurately reflects the witness's knowledge.

If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

6. Records of a regularly conducted activity. A record of an act, event, condition, opinion, or diagnosis if

a. the record was made at or near the time by, or from information transmitted by, someone with knowledge,

b. the record was kept in the course of a regularly conducted activity of a business, institution, organization, occupation, or calling, whether or not for profit,

c. making the record was a regular practice of that activity, and

d. all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 6-4-62 or with a statute permitting certification.

This exception does not apply if the opponent shows that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

7. Absence of a record of a regularly conducted activity. Evidence that a matter is not included in a record described in Paragraph 6 if

a. the evidence is admitted to prove that the matter did not occur or exist and

b. a record was regularly kept for a matter of that kind.

This exception does not apply if the opponent shows that the possible source of the information or other circumstances indicate a lack of trustworthiness.

8. Public records. A record or statement of a public office if it sets out

a. the office's activities,

b. a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel, or

c. in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation.

This exception does not apply if the opponent shows that the source of information or other circumstances indicate a lack of trustworthiness.

9. Public records of vital statistics. Records or data compilations of, births, deaths, or marriages, if reported to a public office in accordance with a legal duty.

10. Absence of a public record. Testimony, or a certification under Rule 6-4-902, that a diligent search failed to disclose a public record or statement if,

a. the testimony or certification is admitted to prove that

i. the record or statement does not exist, or

ii. a matter did not occur or exist, even though a public office regularly kept a record or statement for a matter of that kind, and

b. in a criminal case, a prosecutor who intends to offer a certification files and serves written notice of that intent at least fourteen (14) days before trial, and the defendant does not file and serve an objection in writing within seven (7) days of service of the notice, unless the court sets a different time for the notice or the objection.

11. Records of religious organizations concerning personal or family history. A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.

12. Certificates of marriage, baptism, and similar ceremonies. A statement of fact contained in a certificate

a. made by a person who is authorized by a religious organization or by law to perform the act certified,

b. attesting that the person performed a marriage or similar ceremony or administered a sacrament, and

c. purporting to have been issued at the time of the act or within a reasonable time after it.

13. Family records. A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.

14. Records of documents that affect an interest in property. The record of a document that purports to establish or affect an interest in property if

a. the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it,

b. the record is kept in a public office, and

c. a statute authorizes recording documents of that kind in that office.

15. Statements in documents that affect an interest in property. A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose, unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.

16. Statements in ancient documents. A statement in a document that is at least twenty (20) years old and whose authenticity is established.

17. Market reports and similar commercial publications. Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.

18. Statements in learned treatises, periodicals, or pamphlets. A statement contained in a treatise, periodical, or pamphlet, if

a. the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination, and

b. the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

19. Reputation concerning personal or family history. A reputation among a person's family by blood, adoption, or marriage, or among a person's associates or in the community, concerning the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.

20. Reputation concerning boundaries or general history. A reputation in a community, arising before the controversy, concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation.

21. Reputation concerning character. A reputation among a person's associates or in the community concerning the person's character.

22. Judgment of a previous conviction. Evidence of a final judgment of conviction if

a. the judgment was entered after a trial or guilty plea, but not a nolo contendere plea,

b. the judgment was for a crime punishable by death or by imprisonment for more than a year,

c. the evidence is admitted to prove any fact essential to the judgment, and.

d. when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

The pendency of an appeal may be shown but does not affect admissibility.

23. Judgments involving personal, family, or general history, or a boundary. A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter

a. was essential to the judgment, and

b. could be proved by evidence of reputation.

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

Rule 6-4-804 Exceptions to the Rule Against Hearsay: When the Declarant is Unavailable as a Witness

A. Criteria for being unavailable. "Unavailability as a witness" includes situations in which the declarant

1. is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies,

2. refuses to testify about the subject matter despite a court order to do so,

3. testifies to not remembering the subject matter,

4. cannot be present to testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness, or

5. is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure

a. the declarant's attendance, in the case of a hearsay exception under Subparagraphs (B)(1) or (5) of this rule, or

b. the declarant's attendance or testimony, in the case of a hearsay exception under Subparagraphs (B)(2), (3) or (4) of this rule.

But paragraph (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability in order to prevent the declarant from attending or testifying.

B. Exceptions. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

1. Former testimony. Testimony that

a. was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

b. is now offered against a party who had or, in a civil case, whose predecessor in interest had an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

2. Statement under the belief of imminent death. In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

3. Statement against interest. A statement that

a. a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability, and

b. is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

4. Statement of personal or family history. A statement about

a. the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact, or

b. another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

5. Statement offered against a party who wrongfully caused the declarant's unavailability. A statement offered against a party that wrongfully caused, or acquiesced in wrongfully causing, the declarant's unavailability as a witness, and did so intending that result.

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

Rule 6-4-805 Hearsay Within Hearsay

Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

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

Rule 6-4-806 Attacking and Supporting the Declarant's Credibility

When a hearsay statement, or a statement described in Rule 6-4-801(D)(2)(c),(d), or (e), has been admitted in evidence, the declarant's credibility may be attacked, and then supported,

by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.

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

Rule 6-4-807 Residual Exception

A. In general. Under the following circumstances, a hearsay statement is not excluded by the rule against hearsay even if the statement is not specifically covered by a hearsay exception in Rule 6-4-803 or Rule 6-4-804.

1. the statement has equivalent circumstantial guarantees of trustworthiness;

2. it is offered as evidence of a material fact;

3. it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and

4. admitting it will best serve the purposes of these rules and the interests of justice.

B. Notice. The statement is admissible only if, before the trial or hearing, the proponent gives an adverse party reasonable notice of the intent to offer the statement and its particulars, including the declarant's name and address, so that the party has a fair opportunity to meet it.

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

Chapter 9 – Authentication and Identification

Rule 6-4-901 Requirement of Authentication or Identification

A. In general. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

B. Examples. The following are examples only, not a complete list, of evidence that satisfies the requirement:

1. Testimony of a witness with knowledge. Testimony that an item is what it is claimed to be.

2. Nonexpert opinion about handwriting. A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.

3. Comparison by an expert witness or the trier of fact. A comparison with an authenticated specimen by an expert witness or the trier of fact.

4. Distinctive characteristics and the like. The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

5. Opinion about a voice. An opinion identifying a person's voice, whether heard firsthand or through mechanical or electronic transmission or recording, based on hearing the voice at any time under circumstances that connect it with the alleged speaker.

6. Evidence about a telephone conversation. For a telephone conversation, evidence that a call was made to the number assigned at the time to:

a. a particular person, if circumstances, including self-identification, show that the person answering was the one called, or

b. a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.

7. Evidence about public records. Evidence that

a. a document was recorded or filed in a public office as authorized by law, or

b. a purported public record or statement is from the office where items of this kind are kept.

8. Evidence about ancient documents or data compilations. For a document or data compilation, evidence that it

a. is in a condition that creates no suspicion about its authenticity,

b. was in a place where, if authentic, it would likely be, and

c. is at least twenty (20) years old when offered.

9. Evidence about a process or system. Evidence describing a process or system and showing that it produces an accurate result.

10. Methods provided by a statute or rule. Any method of authentication or identification allowed by a statute or a rule.

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

Rule 6-4-902 Evidence That is Self-Authenticating

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

A. Domestic public documents that are sealed and signed. A document that bears

1. a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; a federally recognized American Indian tribe or nation; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above, and

2. a signature purporting to be an execution or attestation.

B. Domestic public documents that are not sealed but are signed and certified. A document that bears no seal if

1. it bears the signature of an officer or employee of an entity named in Subparagraph A(1) of this rule, and

2. another public officer who has a seal and official duties within that same entity certifies under seal, or its equivalent, that the signer has the official capacity and that the signature is genuine.

C. Foreign public documents. A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester, or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consult general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either

1. order that it be treated as presumptively authentic without final certification, or

2. allow it to be evidenced by an attested summary with or without final certification.

D. Certified copies of public records. A copy of an official record, or a copy of a document that was recorded or filed in a public office as authorized by law, if the copy is certified as correct by

a. the custodian or another person authorized to make the certification, or

b. a certificate that complies with Subparagraphs (A), (B), or (C) of this rule a statute, or other rule.

E. Official publications. A book, pamphlet, or other publication purporting to be issued by a public authority.

F. Newspapers and periodicals. Printed material purporting to be a newspaper or periodical.

G. Trade inscriptions and the like. An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.

H. Acknowledged documents. A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.

I. Commercial paper and related documents. Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

J. Presumptions under a statute. A signature, document, or anything else that a statute declares to be presumptively or prima facie genuine or authentic.

K. Certified domestic records of a regularly conducted activity. The original or a copy of a domestic record that meets the requirements of Rule 6-4-803(6)(a) to (c), as shown by a certification of the custodian or another qualified person that complies with a statute or a rule. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record – and must make the record and certification available for inspection – so that the party has a fair opportunity to challenge them.

L. Certified foreign records of a regularly conducted activity. In a civil case, the original or a copy of a foreign record that meets the requirements of Paragraph K of this rule, modified as follows: the certification, rather than complying with a statute or rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of Paragraph K of this rule.

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

Rule 6-4-903 Subscribing Witness's Testimony

A subscribing witness's testimony is necessary to authenticate a writing only if required by the law of the jurisdiction that governs its validity.

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

Chapter 10 – Contents of Writings, Recordings and Photographs

Rule 6-4-1001 Definitions That Apply to This Chapter

In this chapter,

A. A "writing" consists of letters, words, numbers, or their equivalent set down in any form.

B. A “recording” consists of letters, words, numbers, or their equivalent recorded in any manner.

C. A “photograph” means a photographic image or its equivalent stored in any form.

D. An “original” of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, “original” means any printout, or other output readable by sight, if it accurately reflects the information. An “original” of a photograph includes the negative or a print from it.

E. A “duplicate” means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

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

Rule 6-4-1002 Requirement of the Original

An original writing, recording, or photograph is required in order to prove its content unless these rules or a statute provides otherwise.

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

Rule 6-4-1003 Admissibility of Duplicates

A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original’s authenticity or the circumstances make it unfair to admit the duplicate.

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

Rule 6-4-1004 Admissibility of Other Evidence of Content

An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if

A. all the originals are lost or destroyed, and not by the proponent acting in bad faith;

B. an original cannot be obtained by any available judicial process;

C. the party against whom the original would be offered has control of the original, was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing, and fails to produce it at the trial or hearing; or

D. the writing, recording, or photograph is not closely related to a controlling issue.

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

Rule 6-4-1005 Copies of Public Records to Prove Content

The proponent may use a copy to prove the content of an official record, or of a document that was recorded or filed in a public office as authorized by law, if these conditions are met: the record or document is otherwise admissible; and the copy is certified as correct in accordance with Rule 6-4-902(D) or is testified to be correct by a witness who has compared it with the original. If no such copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.

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

Rule 6-4-1006 Summaries to Prove Content

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. The court may order the proponent to produce them in court.

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

Rule 6-4-1007 Testimony or Statement of a Party to Prove Content

The proponent may prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.

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

Rule 6-4-1008 Functions of the Court and Jury

Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 6-4-1004 or Rule 6-4-1005. But in a jury trial, the jury determines, in accordance with Rule 6-4-104, any issue about whether

A. an asserted writing, recording, or photograph ever existed,

B. another one produced at the trial or hearing is the original, or

C. other evidence of content accurately reflects the content.

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

Chapter 11 – Miscellaneous

Rule 6-4-1101 Applicability of the Rules

A. To courts and judges. These rules apply to proceedings before the Contemporary Court and special masters, referees, and child support hearing officers appointed by the court.

B. To cases and proceedings. These rules apply in civil cases and proceedings, criminal cases and proceedings, and contempt proceedings, except those in which the court may act summarily.

C. Rules on privilege. The rules on privilege apply to all stages of a case or proceeding.

D. Exceptions. These rules, except for those on privilege, do not apply to the following:

1. the court's determination, under Rule 6-4-104(A), on a preliminary question of fact governing admissibility; and

2. miscellaneous proceedings, such as

a. extradition or rendition,

b. issuing an arrest warrant, criminal summons, or search warrant,

c. sentencing by the court without a jury,

d. granting or revoking probation or supervised release,

e. considering whether to release on bail or otherwise,

f. dispositional hearings in children's court proceedings, and

g. the following abuse and neglect proceedings:

i. issuing an ex parte custody order;

ii. custody hearings;

iii. permanency hearings; and

iv. judicial review proceedings.

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

ARTICLE 5 – RULES OF APPELLATE PROCEDURE

Rule 6-5-101 Definitions

A. "Affidavit" means a sworn statement about facts personally known to the person making the affidavit.

B. "Appellant" means the party that is asking the Court of Appeals to change the decision or order of the Contemporary Court.

C. "Docket" means the official list kept by the Court Clerk of the actions taken

and all documents filed in the case.

D. "Motion" means a written request made by a party to the Court of Appeals to take action on any aspect of the appeal. The party requesting the action is referred to as the moving party.

E. "Pro se" means a party to a case who is not represented by legal counsel.

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

Rule 6-5-102 Scope of Rules

These Rules govern procedure in the Santa Ana Pueblo Tribal Court of Appeals (hereinafter, "Court of Appeals"). These Rules are complementary to the traditions and customs that govern the appellate process in the Santa Ana court system.

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

Rule 6-5-103 How to Calculate Time for Appeal

A. The notice of appeal for both civil and criminal cases must be filed with the Contemporary Court Clerk within thirty (30) days after the Contemporary Court judgment or order appealed from is entered.

B. A notice of appeal filed after the Contemporary Court announces a decision, order or conviction, but before the entry of a judgment, order or conviction, is treated as filed on the date of the entry.

C. If one party files a notice of appeal, any other party may file a notice of appeal within fourteen (14) days after the date when the first notice was filed.

D. If a defendant in a criminal trial timely makes any of the following motions in the Contemporary Court after a decision, order or judgment of conviction by the Contemporary Court, the notice of appeal must be filed within thirty (30) days after the entry of the order disposing of the last such remaining motion. This provision applies to a timely motion:

1. for judgment of acquittal; or

2. for a new trial.

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

Rule 6-5-104 Stay or Injunction Pending Appeal

A. A party seeking:

1. a stay of the judgment or order of a Contemporary Court pending appeal; or

2. an order suspending, modifying, restoring, or granting an injunction while an appeal is pending; must first request such relief from the Contemporary Court.

B. A motion for the relief sought in Subparagraph A(1) of this rule may be made to the Court of Appeals if the motion is denied by the Contemporary Court. Such motion must:

1. state the reasons given by the Contemporary Court for its action;

2. state the reasons for granting the relief requested and the facts relied on;

3. attach originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

4. attach relevant parts of the record.

C. The requesting party must give notice of the motion to all parties on the same date the motion is filed with the Contemporary Court Clerk.

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

Rule 6-5-105 Record on Appeal

A. The following items constitute the record on appeal:

1. the original documents and exhibits filed in the Contemporary Court;

2. the transcript of proceedings, if any;

3. all court orders or entries; and

4. a certified copy of the docket entries prepared by the Contemporary Court clerk.

B. If written transcripts of the Contemporary Court proceedings exist, or if certified audio recordings were produced by the Contemporary Court, it is the duty of the party that is appealing to produce such transcripts or audio recordings. Such transcripts or audio recordings shall be accompanied by a document certified by the Contemporary Court as to authenticity.

C. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record all evidence relevant to the finding or conclusion.

D. If a written transcript or certified audio recordings are unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. Such statement must be served on the other party or parties, who may serve objections or proposed revisions within ten (10) days after being served the statement. The statement and any objections or proposed revisions must then be submitted to the Contemporary Court for settlement and approval. As settled and approved, the statement must be included by the Contemporary Court in the record on appeal.

E. In place of the record on appeal, the parties may prepare, agree, sign, and submit to the Contemporary Court a statement of the case showing how the issues presented by the

appeal arose and were decided by the Contemporary Court. The statement must set forth only those facts proved that are essential to the Court of Appeals' resolution of the issues. Once approved by the Contemporary Court, the statement must be submitted in a timely manner to the Court of Appeals, with notice to the parties.

F. A party who files a notice of appeal must do what is necessary to enable the Contemporary Court clerk to assemble the record.

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

Rule 6-5-106 Filing and Service

A. Filing:

1. The Contemporary Court Clerk shall maintain the docket for the Court of Appeals. All filings for the Court of Appeals must be filed with the Contemporary Court Clerk.

2. Filings may be accomplished by mail addressed to the Contemporary Court Clerk, but filing is not timely unless the Contemporary Court Clerk receives the papers within the time fixed for filing.

3. The filing party must, at or before the time of filing a paper, send a copy to the other parties to the appeal ("Service"). Service on a party represented by legal counsel must be made on the party's counsel.

B. Manner of Service:

1. Service may be any of the following:

a. personal, if pro se, and, if represented by legal counsel, delivery to a responsible person at the office of legal counsel;

b. by mail;

c. by third-party commercial carrier for delivery within three (3) days;

d. by facsimile transmission; or

e. by electronic mail ("e-mail")

2. Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by facsimile or e-mail is complete on successful transmission, unless the party making service is notified that the paper was not received by the party served.

C. Proof of Service:

1. A paper presented for filing must contain either of the following:

a. an acknowledgment of service by the person served; or

b. proof of service consisting of a statement by the person who made service certifying:

i. the date and manner of service;

ii. the names of the persons served; and

iii. their mailing address or facsimile number, or the address of the places of delivery, as appropriate for the manner of service.

2. When a brief is filed by mailing or dispatch according to these Rules, the proof of service must also state the date and manner which the document was mailed or dispatched to the Contemporary Court Clerk.

D. The parties are encouraged to use the forms approved by the Court of Appeals.

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

Rule 6-5-107 Computing Time

A. The following rules apply in computing any period of time specified in these Rules:

1. Exclude the day of the act, event, or default that begins the period.

2. Exclude intermediate Saturdays, Sundays and legal holidays when the period is less than eleven (11) days.

3. Include the last day of the period unless it is a Saturday, Sunday or legal holiday.

4. If the final day of the period falls on a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next business day that the Contemporary Court is open.

5. As used this rule, “legal holiday” means a federal holiday or official tribal holiday established by the Governor or Tribal Council.

B. For good cause, the Court of Appeals may extend the time prescribed by these rules or by its order to perform any act or may permit an act to be done after that time expires. But the Court of Appeals may not extend the time to file a notice of appeal. Such extension of time will be granted by order of the Court of Appeals and must be granted before expiration of the original expiration date. The Contemporary Court Clerk will serve the order on all parties.

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

Rule 6-5-108 Motions

A. In General

1. A party shall request an order or other relief by motion to the Court of Appeals unless these Rules prescribe another form. A motion must be in writing unless the Court of Appeals permits otherwise.

2. A motion must state with particularity the grounds of the motion, the relief sought, and the legal argument necessary to support it.

3. Any affidavit or other paper necessary to support a motion must be served and filed with the motion. An affidavit must contain only factual information, not legal argument. A motion seeking substantive relief must include a copy of the Contemporary Court's opinion or ruling as a separate exhibit to the motion.

4. A motion shall include the case number, the name of the court, the title of the case, identification of the parties, and a descriptive title indicating the purpose of the motion.

5. A motion or response under these Rules must not exceed twenty (20) pages, unless the Court of Appeals permits or directs otherwise.

B. Response. Any party may file a response to a motion. Such response will conform with the requirements of a motion set forth above. The response must be filed within ten (10) days after service of the motion, unless the Court of Appeals shortens or extends the time. A response may include a motion for affirmative relief. If so, the title of the response must alert the Court of Appeals to the request for affirmative relief.

C. Reply to Response. There shall be no replies to the response unless ordered by the Court of Appeals.

D. The Court of Appeals may act on a motion for a procedural order or request for extension of time to file at any time without awaiting a response. A party adversely affected by the Court of Appeals action may file a motion to reconsider, vacate, or modify the action.

E. A motion will he decided without oral argument. A ruling on a motion shall be written in an order and served on the parties in a timely manner.

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

Rule 6-5-109 Briefs

A. Contents of a Brief. A brief must contain the following:

1. a statement of the issues presented for review;

2. a statement of the case briefly indicating the nature of the case, the course of proceedings, and the disposition below;

3. a statement of facts relevant to the issues submitted for review with appropriate references to the record;

4. the argument, which must contain:

a. the party's contentions and the reasons for them, with reference to legal authority relied upon for the party's contentions; and

b. a short conclusion stating the precise relief sought.

B. Response Brief. The other party or parties may file a brief in response to the originally filed brief. A response brief will conform with the requirements of a brief set forth above, if applicable, and must contain a rebuttal to the asserted facts or arguments made by the other party.

C. Reply Brief. There shall be no reply to the response brief unless ordered by the Court of Appeals.

D. Statutes, Other Authorities. If the Court of Appeals' determination of the issues presented requires the study of statutes, regulations, ordinances, resolutions, or other authority, the relevant parts of such authority may be set out in the brief, in an addendum at the end, or may be supplied to the Court of Appeals in pamphlet form.

E. Multiple Parties. In a case involving more than two parties, including consolidated cases, any number of parties may join in a brief, and any party may adopt by reference a part of another's brief.

F. Serving and Filing Briefs. The appellant must serve and file a brief within forty (40) days after the record is filed. The responding party or parties must serve and file a response brief within thirty (30) days after the original brief is served.

G. Consequences of Failure to File. If an appellant fails to file a brief within the time provided by this rule or by court order, the other party or parties may move the Court of Appeals to dismiss the appeal. The Court of Appeals has discretion to grant such motions.

H. Briefs of pro se parties. The Court of Appeals shall not reject a brief filed by a pro se party for failing to follow formalities of form.

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

Rule 6-5-110 Oral Arguments

All motions and appeals shall be submitted on the briefs with no oral argument unless the Court of Appeals chooses in its discretion to hear argument, at which time it will issue a written order to inform the parties of the process to be followed for the oral argument.

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

Rule 6-5-111 Admission of Attorneys

All attorneys practicing before the Court of Appeals must comply with the rules of Contemporary Court regarding admission to practice.

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

Rule 6-5-112 Additional Rules

A. Nothing in these Rules divests the Court of Appeals from responding by written order to address matters not covered by these Rules.

B. The Court of Appeals may also revise these Rules or create additional rules which will be presented to the Tribal Council and will become effective upon consideration and adoption by the Tribal Council.

C. Parties may look to the Federal Rules of Appellate Procedure for additional guidance, although no other rules will be binding on the Court of Appeals.

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