

ZUNI TRIBAL COURT

RULES OF CRIMINAL PROCEDURE



*Approved by the Zuni Tribal Council on March 11, 2014
Resolution No. M70-2014-Q020*

March 2014

GENERAL PROVISIONS

Rule 1. Scope, Construction and Title.

A. **Scope.** These rules shall govern the procedure in all criminal proceedings in the Zuni Tribal Court.

B. **Construction.** These rules are intended to provide for the just determination of every criminal proceeding. 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 cited by rule number, as in ZTC, Rule _____.

Rule 2. Entry of Appearance.

A. **Writing Required.** Whenever an attorney or lay counsel undertakes legal representation of a defendant in any criminal action, he shall file a written entry of appearance in the cause. For the purpose of this rule, the filing of any pleading signed by legal counsel constitutes an entry of appearance.

B. **Continuation of Representation.** Any attorney or lay counsel who has entered an appearance or who has been appointed by the court shall continue such representation until relieved by the court.

Rule 3. Service and Filing of Pleadings and other documents.

A. **Service; When Required.** Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the initial criminal complaint, every order entered in open court, every document relating to discovery required to be served on the other 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 document shall be served on 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 or lay counsel, the service shall be made upon the attorney or lay counsel unless service upon the party is ordered by the court. Service upon the attorney or lay counsel or the party shall be made by delivering a copy to attorney, lay counsel or party, or by mailing a copy to the attorney, lay counsel or party at the attorney's or lay counsel's or party's last known address, or, if no address is known, by leaving it with the clerk of the court. Service by mail is complete upon mailing.

C. **Definitions.** As used in this rule:

(1) “delivery of a copy” means:

(a) handing it to the attorney or lay counsel, or to the party;

(b) sending a copy by facsimile to the attorney, lay counsel, or party; or

(c) leaving it at the attorney or lay counsel’s office with a clerk or other person employed by the attorney or lay counsel.

(2) “mailing a copy” means sending a copy by first class mail with proper postage.

D. **Filing Certificate of Service.** All papers after the criminal 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 ten days after service.

E. **Filing of Pleadings by a Party Represented by Counsel.** The Clerk of the Court shall not file a pleading or other document of a defendant who is represented by an attorney or lay counsel, unless the pleading or document is a request to dismiss the attorney, or lay counsel or to appear *pro se*. If the pleading or document is a request to dismiss the attorney or lay counsel or to appear *pro se*, the Clerk of the Court shall serve a copy of the pleading or document on all counsel of record in the proceeding.

F. **Proof of Service.** Proof of service of pleadings and documents shall be made by the certificate of service indicating the date and method of service signed by the attorney or lay counsel 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 document required to be served.

Rule 4. Failure to Observe Rules.

An attorney or lay counsel who willfully fails to observe the requirements of these rules, including prescribed time limitation, may be held in contempt of court and subject to disciplinary action.

Rule 5. Conduct of Court Proceedings.

A. **Judicial Proceedings.** Judicial proceedings shall be conducted with fitting dignity and decorum, in a manner conducive to undisturbed deliberation, indicative of their importance to the Zuni Tribe and to the parties before the court, 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 be photographed and recorded with the permission and under the supervision of the court.

Rule 6. Record; Exhibits.

A. **Record of Proceedings.** With the exception of Customary Pretrial Conferences, a verbatim record shall be made of all court proceedings, including:

- (1) arraignment;
- (2) release proceedings;
- (3) motion hearings;
- (4) habeas corpus proceedings;
- (5) extradition proceedings; and
- (6) the trial.

B. **Return of Exhibits.** Unless otherwise ordered by the court, after notice to the parties or their legal counsel in the manner set forth by this rule, all exhibits delivered to the clerk may, upon, written request, be returned to the party or legal counsel tendering the exhibit as evidence.

C. **Notice of Disposition of Exhibits.** Prior to returning the exhibits to the party or the legal counsel tendering the exhibit as evidence, the Clerk of the Court shall give written notice to all parties or their legal counsel that, unless otherwise ordered by the court, the exhibits in custody of the clerk will be returned to the legal counsel or party tendering the exhibit or otherwise disposed of after the expiration of sixty days from the date of mailing of such notice. The clerk shall give the written notice required by this paragraph:

- (1) within ninety days after final disposition of the case, or
- (2) if an appeal is filed and a new trial has not been ordered, within thirty days after the filing of the mandate in the Tribal Court.

E. **Preservation of Exhibits.** Upon motion, the court may order any exhibit to be preserved by the court or disposed of in the manner ordered by the court.

Rule 7. Motions.

A. **Writing Required.** 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 and shall state with particularity the grounds therefore, and shall set forth the relief or order sought.

B. **Unopposed Motions.** The moving party shall determine whether or not the motion will be opposed. If the motion will not be opposed, an order signed or approved by opposing counsel shall accompany the motion.

C. **Opposed Motions.** The motion shall state that concurrence of opposing counsel was requested or shall specify why no such request was made. The moving party 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 voluntarily dismiss a petition or complaint;
- (2) motion to suppress evidence;
- (3) motion for new trial;
- (4) motion for judgment notwithstanding the verdict; or
- (5) motion to modify a sentence.

The moving party may file with any opposed motion a brief or supporting points with citations and authorities. Affidavits, statements, depositions or other documentary evidence may be filed in support of the motion.

D. **Response.** A written response shall be filed within ten calendar days after service of the motion. Affidavits, statements, depositions or other documentary evidence in support of the response may be filed with the response.

Rule 8. Orders Preparation and Entry.

A. **Preparation of Orders.** Upon announcement of the court's decision in any matter, the court shall:

- (1) 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
- (2) 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, on the request of a party, issue findings of fact specifically. Such findings may be oral. If an opinion or memorandum 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, opposing counsel shall be afforded a reasonable opportunity to examine the form of order or judgment and make suggestions or objections thereto before the court signs any order or judgment.

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

INITIATION OF PROCEEDINGS

Rule 9. Initiation of Proceedings.

A. **Parties.** All criminal proceedings shall be prosecuted in the name of the Pueblo of Zuni, Plaintiff, against the person charged with an offense who shall be referred to as the defendant.

B. **Commencement of Prosecution.** A prosecution shall be commenced by the filing of a criminal complaint.

C. **Complaint.** A complaint is a written statement of the essential facts, the common name of the offense and, if applicable, the specific section number of the Zuni Tribal Code which defines the offense.

D. **Essential acts to be stated in Complaint.** A complaint must state:

(1) The name of the person accused, if known, or some other name if not known plus whatever description of the person accused is known;

(2) The date and approximate time of the commission of the offense, if known;

(3) The general location of where the offense was committed;

(4) The common name of the offense and code designation of the offense;

(5) A short and concise statement of the specific acts or omissions to act complained of;

(6) The person against whom or against whose property the offense was committed, if known; and

(7) The name and signature of the person filing the complaint.

E. **Defects, errors, and omissions.** A complaint shall not be dismissed, nor shall the trial, judgment or other proceeding be stayed, or in any manner affected, because of any defect, error, or omission therein which does not prejudice the substantial rights of the defendant upon the merits. The court may at any time prior to a verdict cause the complaint to be amended in

respect to any such defect, error, or omission, if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

F. **Traffic Offense Citations.** Uniform Traffic Citations that are approved by the Chief Tribal Judge may be issued and take the place of the complaint in cases involving traffic offenses. In cases involving persons driving under the influence of liquor or drugs, the Uniform Traffic Citation shall be supplemented with a Complaint that conforms with the requirements of paragraphs C and D, above.

G. **Fish & Wildlife Offenses.** Zuni Tribal Rangers shall file the original of the Uniform Citation that was issued to the defendant with the Court supplemented with a Complaint that conforms with the requirements of paragraphs C and D, above.

H. **Filing of Complaint.** Upon the filing of a complaint signed by the Tribal Prosecutor, a full-time and commissioned tribal, state or county law enforcement officer, or Tribal Ranger, the court shall docket the action.

Rule 10. Joinder; Severance.

A. **Joinder of Offenses.** Two or more offenses shall be charged in one complaint with each offense stated in a separate count, if such offenses are of the same or similar character, or are based on the same act or transaction or constitute parts of a common scheme or plan.

B. **Joinder of Defendants.** Two or more defendants may be charged in the same complaint if they are alleged to have participated in the same act or transaction constituting an offense. Such defendants may be charged in one or more counts together or separately and all of such defendants need not be charged on each count.

C. **Motion for Severance.** If it appears that a defendant or the Pueblo of Zuni may be prejudiced by a joinder of offenses or of defendants, the Court may order separate trials of offenses, grant severance of defendants, or provide whatever other relief justice may require.

Rule 11. Issuance of Warrant for Arrest and Summons.

A. **Time.** Upon the docketing of any criminal complaint, the court may issue a summons or arrest warrant to bring the defendant named in the complaint before a judge of the tribal court.

B. **Basis for Warrant.** A warrant of arrest may issue in cases in which a Class A offense is charged. A person charged with the commission of a Class B or Class C offense shall be issued criminal summons, unless the court has reasonable grounds to believe that the person will not appear upon being served with a summons.

C. **Form of Warrant.** A warrant of arrest shall be signed by the presiding judge and shall contain the name of the defendant or, if his name is not known, any name and a reasonable description by which the defendant can be identified with reasonable certainty. It shall describe the offense charged and shall command that the defendant be arrested and brought before the court to enter a plea to the charge.

D. **Form of Summons.** The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the court within five days from the date of service to enter a plea

Rule 12. 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 authorizes service by mail. A copy of the complaint shall be attached to the summons. Service by mail is complete upon mailing

B. **Failure to Appear.** If a defendant fails to appear in person, or by legal counsel when permitted by rules of the court, at the time and place specified in the summons, the court shall issue a warrant for the defendant's arrest.

Rule 13. Arrests Pursuant to Warrant; Without Warrant.

A. **Duty Upon Arrest.** Whenever a defendant is arrested pursuant to an arrest warrant, the defendant shall be brought before the court without unnecessary delay to enter a plea.

B. **Service of Warrant.** Service of an arrest warrant may be accomplished at any place within the exterior boundaries of the Zuni Reservation. If the arresting officer has the arrest warrant in his possession at the time of the arrest, a copy shall be served upon the defendant upon his arrest. If the officer does not have the warrant in his 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 office shall file a return of service of the arrest warrant with the court within 24 hours of the defendant's arrest. The date, time, and place of service or arrest shall be stated on the warrant or summons together with the name of the person who may have served the warrant or summons. A copy of the warrant or summons endorsed by the person serving the same shall be provided to the defendant.

D. **Arrests Without a Warrant.** If a defendant is arrested without a warrant, a criminal complaint shall be prepared and a copy shall be given to the defendant prior to the defendant's

release from custody or prior to the defendant's arraignment. If the defendant is in custody and the court is open for business, a criminal complaint shall be immediately filed with the court. If the court is not open and the defendant remains in custody, the complaint shall be filed on the next business day of the court.

Rule 14. Search Warrants.

A. **Issuance.** A search warrant may be issued by a Tribal Judge on the request of the Tribal Prosecutor, a full-time salaried tribal police officer, tribal ranger, or any officer of the United States authorized to enforce or assist in enforcing any federal law. A warrant may be issued to search for and to 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 alleged to be a victim of a crime, or for whom an arrest warrant has been issued or for an alleged fugitive from justice.

B. **Contents.** A search warrant shall be executed by a full-time salaried tribal police officer, tribal ranger, or any officer of the United States authorized to enforce or assist in enforcing any federal law. The warrant shall contain or have attached the sworn 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 specifically identify the property and name or describe the person or place to be searched and the property to be seized. The 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 days after the date of issuance. The officer seizing property under the warrant shall give to the person from whom or whose premises the property was taken a copy of the affidavit for search warrant, and the search warrant, and a copy of the inventory of the property taken or shall leave copies of the affidavit for search warrant, and the search warrant, and a copy of the inventory at the place from which the property was taken.

D. **Return.** The return 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 they are 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.

E. **Probable Cause.** As used in this rule, “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 is 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 the affiant under oath and any witnesses he may produce to determine whether probable cause exists to issue the warrant.

F. **Search Without a Warrant.** Any law enforcement officer may stop any person in a public place if he has probable cause to believe said person is in the act of committing a criminal offense, or has committed a criminal offense or is attempting to commit a criminal offense and demand of him his name, address, and explanation of his actions, and may, if he has reasonable grounds to believe his own safety or the safety of any person nearby is endangered, conduct a frisk type search for weapons on person(s) detained.

Rule 15. Motion to Suppress.

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

B. **Time for Filing.** A motion to suppress shall be filed within 20 days after the entry of a plea, unless, upon good cause shown, the court waives the time requirement of this rule.

C. **Hearing.** The court shall receive evidence on any issue necessary to the decision of the motion. If the motion is granted the property shall be returned to the rightful owner, unless otherwise subject to lawful detention.

PRETRIAL PROCEEDINGS

Rule 16. Arraignment.

A. **Purpose.** The purpose of the arraignment is to bring the defendant before the court; to advise the defendant of the nature of the charges that have been filed against him; to advise the defendant of his rights under the law; and to ask the defendant to enter a plea.

B. **Time of Arraignment.** As soon as reasonably possible after arrest but not more than 48 hours thereafter, or within the period designated on the summons, the defendant shall appear or be brought before a Tribal Judge. At arraignment the defendant shall be informed of his right to retain legal counsel at his own expense. If the defendant desires to obtain legal counsel but does not presently have counsel, the defendant will be given reasonable time to secure legal counsel before entering his plea.

C. **Appearance by Defendant.** The defendant may appear at arraignment:

(1) by way of a two way audio-visual communication in accordance with Paragraph J of this rule; or

(2) in open court.

D. **Reading of Complaint.** The bailiff, probation officer, or Clerk of the Court shall deliver to the defendant a copy of the Complaint to the defendant, if the defendant has not already been provided with a copy. The Court will then read the complaint to the defendant and shall ask the defendant to enter a plea.

E. **Pleas.** A defendant charged with a criminal offense may enter a plea of: Guilty, Not Guilty, or No Contest.

F. **Refusal to Plea.** If the defendant refuses to enter a plea or stands mute, the Court shall direct the entry of a plea of not guilty on the defendant's behalf.

G. **Advice of 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 the defendant understands the following:

(1) the nature of the charge to which the plea is offered;

(2) the maximum penalty provided by the Sentencing Guidelines;

(3) that if the Court accepts the defendant's plea of guilty or no contest, there will not be a further trial of any kind and the defendant thereby waives his rights guaranteed by the Zuni Constitution and the Indian Civil Rights Act; and

(4) that if the defendant is charged with a crime of domestic violence, a plea of guilty will affect the defendant's constitutional right to bear arms, including receiving,

possessing or owning any firearm or ammunition, and may affect the defendant's ability to obtain government employment (tribal, state, or federal).

H. Plea Must be Made Knowingly and Voluntarily. 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 defendant is capable of knowingly making the plea (ie. sober and not under the influence of any controlled substance). The Court shall also determine that the plea is being made voluntarily and not the result of force or threats or of promises apart from a plea agreement.

I. Withdrawal of Guilty Plea. The defendant shall not be allowed to withdraw a plea of guilty unless the defendant makes a showing to the court that the plea of guilty was the result of duress, or was not made voluntarily.

J. Audio-visual Appearance. The arraignment of the defendant may be conducted through the use of two-way audio-visual communication, if the following conditions are met:

(1) the defendant and his legal counsel (if retained by the defendant) are together in one room at the time of the arraignment; and

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

K. Waiver of Arraignment. The defendant may waive formal arraignment by filing a written waiver of arraignment and plea of not guilty.

Rule 17. Plea Agreements.

A. In General. The Tribal Prosecutor or arresting officer and the defendant's legal counsel, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon entering a plea of guilty or no contest to a charged offense or to a lesser offense, the Tribal Prosecutor or arresting officer will move for a dismissal of other charges, or will recommend or not oppose the imposition of a particular sentence, or will do both. The Court shall not participate in any such discussions.

B. Notice. If a plea agreement has been reached by the parties which contemplates entry of a plea of guilty or no contest in the expectation that a specific sentence will be imposed or that other charges before the court will be dismissed, the plea agreement will be reduced to writing and filed with the court. The court shall require the disclosure of the agreement in open court at

the time the plea is offered. Thereupon the court may accept or reject the agreement, or may defer its decision to accept or reject the agreement until the court has an opportunity to consider a presentence report.

C. Acceptance of Plea Agreement. If the court accepts the plea agreement, the court shall inform the defendant that the agreement will be embodied in the judgment and commitment order to be issued by the court.

D. Rejection of Agreement. If the court rejects the plea agreement, the court shall inform the parties of this fact, advise the defendant 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 entering a guilty or no contest plea the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

E. Inadmissibility of Plea Discussions. Evidence of a plea of guilty or no contest, later withdrawn, or of an offer to plead guilty or no contest to a crime charged or to any other crime, or of statements made in connection with any of plea agreement or offers to plea shall not be admissible in any civil or criminal proceeding against the person who made the plea or offer.

Rule 18. Customary Pretrial Conference.

A. Intent. A Customary Pretrial Conference is intended to establish a means to settle criminal disputes in a traditional, customary Indian manner by discussion between the parties before a trusted, impartial trial authority prior to resorting to formal trial procedures that have been adopted from the non-Indian society. The conduct of a Customary Pretrial Conference requires that a formal proceeding be initiated by the filing of a criminal complaint, but anticipates that a great percentage of criminal cases may be settled by resorting to traditional and customary means of settling disputes by the Zuni Tribal Court. The procedures set forth in this Rule shall not be interpreted or applied to deny any person any right otherwise guaranteed by the Constitution of the Zuni Tribe or the Indian Civil Rights Act.

B. Non-Jury Trials. In all cases that are scheduled to be tried without a jury, the Court shall schedule a Customary Pretrial Conference which shall be conducted in the manner set forth in this Rule. Once the case is at issue by virtue of the defendant entering a plea of not guilty, the Court shall summon the defendant, arresting officer, complaining witness(es), and such other witnesses as either side may desire to summon to assist the Court in resolving the issues presented by the facts and law of the case and determine a just disposition of the case should the

defendant admit guilt. Such other persons may, but need not include the defendant's spouse or other family members, social workers, domestic violence counselors, probation officers or similar persons having professional training. Due to the nature and purpose of a Customary Pretrial Conference, neither party shall appear at the Customary Pretrial Conference in the company of prosecution or defense counsel or attorneys, advocates or lay counselors. A Customary Pretrial Conference shall not be open to the public.

C. Conduct of Customary Pretrial Conference. There shall be no record or transcript made of the proceedings at the Customary Pretrial Conference, nor shall any statement made by any person during the conduct of the proceeding be used for any purpose should the matter not be resolved and is scheduled for trial. If an agreement is reached on some or all of the issues presented by the case, the judge conducting the Pretrial Conference shall cause a record to be made of the settlement by means of an order or judgment entered into the record of the Court. In the event that some of the issues are not agreed upon, the judge shall cause a Pretrial Order to be prepared stating what issues have been settled and what issues remain to be tried and shall govern the conduct of any trial subsequently held. The Pretrial Order may also contain agreements, stipulations, or orders of the Court as to the witnesses to be called by the parties, the anticipated testimony of each witness, the exhibits intended to be introduced by the parties, and the conduct of discovery prior to trial.

D. Role of the Judge. The judge conducting the Customary Pretrial Conference shall listen to the positions of the parties and attempt to work out a settlement of all or some of the issues of the case. Any settlement reached during the Pretrial Conference shall be consistent with the laws, ordinances, customs and traditions of the Zuni Tribe.

E. Role of the Defendant. A defendant summoned to appear at a Customary Pretrial Conference shall be required to attend but shall not be required to testify, cooperate or otherwise participate in the Pretrial Conference. The judge conducting the Pretrial Conference shall explain these matters to the defendant at the beginning of the conference. If a settlement is reached which involves an admission of guilt by the defendant, the presiding judge shall determine the voluntariness of the agreement and determine whether the defendant understands the Constitutional rights he is giving up by agreeing to enter a plea of guilty to any or all of the charges pending against the defendant. If a defendant indicates his unwillingness to cooperate or

participate in the Pretrial Conference, no further discussion shall be held and the matter shall be scheduled for trial.

F. **Agreement of the Parties.** No settlement of any issue in a criminal case shall be made at the Customary Pretrial Conference except upon the voluntary agreement of the defendant which must be approved by the judge conducting the Pretrial Conference. The defendant shall be allowed to consult with counsel of his choosing (at at his own expense) if he so desires, prior to agreeing to any portion of a judgment or order settling the case or any issue presented by the case.

RELEASE PROVISIONS

Rule 19. Bail; Release From Custody.

A. **Right to Bail.** Except as otherwise provided herein, all persons arrested for violation of the Zuni Tribal Code and incarcerated shall be given the opportunity to make bail and released from detention pending their trial or appeal.

B. Bail Schedule.

(1) **Class B and Class C Offenses.** A bail schedule for Class B and C offenses shall be adopted by rule of the Tribal Court. A defendant may be released from detention at any time prior to arraignment by posting the amount or amounts of bail specified in the bail schedule for the offense or offenses charged; provided however, that if the arresting officer or complaining witness certifies to the arresting officer, or if the jailer certifies based on his own observation, that the defendant is at the time he is brought to the detention center unconscious or in an intoxicated condition, or for any reason does not appear to be in a conscious and sober condition, such defendant shall not be allowed to post bail according to the bail schedule for a period of 8 hours. The defendant shall be informed by the detention officer of his right to make bail at the appropriate time that such is available.

(2) **Class A Offenses.** Bail for Class A offenses may be set only by a judge upon the consideration of the factors set forth in Paragraph (4) of this rule and must be set or denied within forty eight hours following the defendant's arrest. The court may deny release on bail pending trial or appeal when a Class A offense is involved and it appears reasonably certain that the defendant will pose a serious threat to the safety and well being of any person and the community if released, or will fail to subsequently appear if released.

(3) **Amount of Bail.** At the arraignment or other appropriate time, the court shall set bail at an amount, not to exceed twice the maximum fine payable for the offense charged, which will tend to assure the appearance of the defendant at trial or at such time as his appearance is necessary. A defendant may, at arraignment, request that any bail required by the bail schedule be reduced or that he be released on his own recognizance pursuant to the provisions of Paragraph (4), below.

(4) **Factors to be Considered in Determining Conditions of Release.** The court shall, in determining the amount of bail and which conditions of release will reasonably assure the appearance of the defendant as required by the court and the safety of any other person and the community, take into account information concerning:

- (a) the nature and circumstances of the offense(s) charged, including whether the offense is a crime of violence or involves a controlled substance;
- (b) the weight of the evidence against the defendant;
- (c) the history and characteristics of the defendant, including:
 - (i) the defendant's past and present residences;
 - (ii) any facts tending to indicate that the person has strong ties to the community;
 - (iii) the defendant's employment status, employment history and financial resources;
 - (iv) any facts indicating the possibility that the defendant will commit new crimes if released;
 - (v) the defendant's past conduct, history relating to drug or alcohol abuse, criminal history, and record of non-appearance at court proceedings;
 - (vi) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release; and
 - (vii) whether, at the time of the current offense or arrest, the defendant was on probation, or on any other type of release pending trial, sentencing, or appeal.

(5) **Additional Conditions; Conditions to Assure the Orderly Administration of Justice.** The court, upon release of the defendant or any time thereafter, may enter an order that such person's release be subject to:

(a) the condition that the defendant not commit any further violation of the Zuni Tribal Code;

(b) a condition that the defendant report on a regular basis to a designated pretrial services program or department agreeing to supervise the defendant;

(c) a condition that the defendant abide by specified restrictions on personal associations, place of abode or travel;

(d) a condition that the defendant avoid all contact with an alleged victim of the offense and with any potential witness who may testify about the offense;

(e) a condition that the defendant refrain from possessing a firearm or other dangerous weapon.

(f) a condition that the defendant undergo available medical, psychological or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;

(g) a condition that a defendant submit to a urine analysis or alcohol test upon request of a person designated by the court;

(h) a condition that the defendant satisfy any other condition that is reasonably necessary to assure the appearance of the defendant as required and to insure the safety of any other person and the community.

(6) **Violations of Federal or State Law.** Persons incarcerated in the Zuni Detention Center for violation of federal or state laws shall be subject to be released on bail by the jurisdiction under whose authority the arrest was made and according to the provision(s) of the law(s) under which the arrest was made, or pursuant to the extradition law of the Zuni Tribe. A person arrested for violation of federal law shall not be entitled to be released on bail until the prosecution of such charges has been declined by the U.S. Attorney, plus a reasonable time thereafter, not to exceed 36 hours after receipt of notification of such declination, in which charges for violation of the Zuni Tribal Code may be filed.

(7) **Form of Bail.** The required bail shall be tendered in the form of a money order or certified check payable to: Pueblo of Zuni, Post Office Box 339, Zuni, New Mexico, 87327, or bail bond executed by two or more reliable persons as sureties subject to the jurisdiction of the court and in the form which the court by rule shall direct.

(8) **Failure to Appear.** If the defendant fails to appear as required, the court shall forfeit the bond posted by the defendant or order the sureties of the bail bond to pay the designated amount to the court. The liability of the sureties may be enforced by order of the court without the necessity of an independent action or judgment.

Rule 20. Release During Trial, Pending Sentence, and Appeal.

A. **Release During Trial.** A person released upon the payment of a bond shall continue on release under the same terms and conditions as previously imposed, unless the court determines that other terms and conditions are necessary to assure the defendant's presence during trial or to assure that his conduct will not obstruct the orderly administration of justice.

B. **Release Pending Sentencing.** A person released pending or during trial may continue on release pending imposition of sentence under the same terms and conditions as previously imposed, unless the court determines that other terms and conditions or termination of release are necessary to assure:

- (1) that such person will not flee the jurisdiction of the court;
- (2) that his conduct will not obstruct the orderly administration of justice; or
- (3) that the person does not pose a danger to any other person or to the community.

C. **Release After Sentencing.** After the imposition of a judgment and sentence, the court, may upon motion of the defendant, establish conditions of release pending appeal. The court may utilize the criteria listed in Rule 18 (4) and (5), and may also consider the fact of the defendant's conviction and the length of the sentence imposed.

D. **Revocation of Bail or Modification of Conditions.** The filing of an appeal shall not deprive the court of jurisdiction to revoke bail or to modify the conditions of the defendant's release upon appeal.

DISCOVERY

Rule 21. Disclosure by the Zuni Tribe.

A. **Information Subject to Disclosure.** Within ten days of a written request made by the defendant, the Zuni Police Department or the Tribal Prosecutor 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 of Zuni, or otherwise intended to be used by the prosecution at trial;

(2) any books, papers, documents, photographs, or tangible objects, which are within the possession, custody or control of the Pueblo of Zuni and are intended to be used as evidence at trial, or were obtained from or belong to the defendant;

(3) any results or reports of physical or mental examinations, and of scientific tests or experiments, including polygraph tests made of the defendant and witnesses, made in connection with the matter before the court;

(4) a written list of the names and addresses of all witnesses which the prosecution intends to call at trial, together with any statement made by the witness;

(5) the defendant's prior criminal record, if any, as is available to the prosecution; and

(6) any material evidence which would tend to mitigate or negate the defendant's guilt as to the offense charge, or would intend to reduce his punishment thereof.

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

C. Certificate of Compliance. The prosecutor or the arresting officer shall file with the court at least ten days prior to trial a certificate stating that all information that has been requested by the defendant has been produced.

D. Information Not Subject to Disclosure. The prosecutor or the arresting officer shall not be required to disclose:

(1) **Informants.** The existence of or the identity of an informant who will not be called to testify where disclosure would result in substantial risk to the informant or to his effectiveness, provided the failure to disclose will not infringe on the civil rights of the defendant; or

(2) **Work Product.** The legal research, records, correspondence, or memoranda produced by the prosecutor to the extent that they contain the opinions, theories or conclusions of the prosecutor or members of his investigative staff.

E. Failure to Comply. If the Pueblo of Zuni fails to comply with any of the provisions of this rule, the court may hold the prosecutor or arresting officer in contempt or enter such other order as it deems appropriate under the circumstances.

Rule 22. Disclosure by the Defendant.

A. **Information Subject to Disclosure.** Within ten days of a written request made by the prosecutor or arresting officer, the defendant or his legal counsel shall disclose or make available to the Pueblo of Zuni:

(1) any books, papers, documents, photographs, or tangible objects, which are within the possession, custody or control of the defendant and which are intended to be introduced in evidence at trial; and

(2) a list of the names and addresses of the witnesses the defendant intends to call at trial, together with any statement made by the witness.

B. **Certificate of Compliance.** The defendant shall file with the court at least ten days prior to trial a certificate stating that all information that has been requested by the defendant has been produced.

Rule 23. Continuing Duty to Disclose.

A. **Additional Material or Witnesses.** If at any time prior to or during trial, a party discovers additional material or witnesses which he would have under a duty to produce or disclose, he shall promptly give notice to the other party or the party's legal counsel 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 his duty to disclose material or witnesses or with an order issued pursuant to the rules governing discovery, 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 hold the prosecutor, arresting officer, or legal counsel for the defendant in contempt of court.

Rule 24. Notice of Alibi; Entrapment Defense.

A. **Notice.** No less than fifteen days before trial, the defendant shall serve upon the prosecutor or the arresting officer notice in writing of the defendant's intention to introduce evidence of an alibi or evidence of entrapment. The notice of defenses shall be accompanied by a list of those witnesses that the defendant intends to call in support of each noticed affirmative defense.

B. Content of Notice. A notice of alibi or entrapment defense shall contain specific information as to the place at which the defendant claims to have been at the time of the alleged offense, as particularly as known to the defendant or defense counsel, the names and addresses of the witnesses by whom the defendant proposes to establish an alibi or raise the issue of entrapment.

C. Failure to Give Notice. If a defendant fails to serve a copy of such notice as required by this rule, the court may exclude evidence offered by the 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 the defendant or the defendant's legal counsel but was not stated in the notice.

Rule 25. Subpoena.

A. Form; Issuance. A subpoena is an order of the court issued by a Judge or the Clerk of the Court. It shall contain the name of the court, the title of the case and its criminal docket number. The subpoena shall 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 inspections of premises, at a time and place therein specified.

B. Service. A subpoena may be served by any police officer, bailiff of the court or other person authorized by the Chief Tribal Judge at any place within the territorial jurisdiction of the Zuni Tribal Court. Service shall be accomplished by delivering a copy of the subpoena to the person named therein.

C. 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 set forth in the subpoena.

(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 documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

D. Failure to Comply With Subpoena. Failure by any person without adequate excuse to obey a subpoena upon that person may be deemed a contempt of court and prosecution thereof may proceed upon order of the court. No contempt shall be prosecuted unless a return of service of the subpoena has been filed with the court which sets forth the date, time and place of service and the name of the person who served the subpoena.

TRIALS

Rule 26. Time of Commencement of Trial.

A. Time Limits for Commencement of Trial. The trial of a criminal case shall be commenced six months after whichever of the following events occurs last:

- (1) the date of the defendant's arraignment;
- (2) if a mistrial is declared or a new trial is ordered, the date such order is issued;
- (3) if the defendant is arrested or surrenders in another jurisdiction for failure to appear, the date the defendant is returned to the jurisdiction of this court;
- (4) the date the court allows the withdrawal of a plea or the rejection of a plea made pursuant to Paragraphs A to D of Rule 13.

B. Extension of Time Limit. For good cause shown, the time for commencement of trial may be continued by the court provided that the aggregate of all continuances requested by the Pueblo of Zuni may not exceed six months.

C. Effect of Noncompliance with Time Limit. In the event that the trial of any defendant does not commence within the time specified in Paragraph A of this rule or within the period of any extension granted as provided by this rule, the criminal complaint filed against the defendant shall be dismissed with prejudice.

Rule 27. Pretrial Motions, Defenses and Objections.

A. Scope. This rule shall govern the procedure to be followed between the arraignment and trial unless specifically authorized by another rule.

B. Motions and Demand to be Made Within Twenty Days of Arraignment. The following motions or demand must be made within twenty days following arraignment or shall be deemed to have been waived:

- (1) Motion to dismiss for defects in the complaint;

- (2) Motion to amend the complaint;
- (3) Motions relating to conditions of pretrial release;
- (4) Motion to recuse the presiding judge; and
- (5) Demand for jury trial.

C. **Motions to be Made Twenty Days Before Trial.** The following motions must be made at least twenty days before trial or shall be deemed to have been waived:

- (1) All discovery motions;
- (2) Motion for severance;
- (3) Motion to name additional witnesses;
- (4) Motion based on denial of a speedy trial;
- (5) Motion raising lack of mental capacity to stand trial;
- (6) All pretrial evidentiary motions, including motions to suppress; and

D. **Rebuttal of Presumption of Waiver.** A presumption of waiver due to untimeliness may be rebutted by a moving party upon the showing of good cause why the motion was not timely and why granting the late motion will be in the interest of justice.

E. **Motion for Continuance.** A motion to continue a scheduled hearing, pretrial conference, or trial may be granted for good cause shown. A motion to continue filed less than five days before trial will not be considered unless unforeseeable or exigent circumstances are shown and the moving party did not unreasonably delay in seeking the continuance.

F. **Response to Motions.** All motions filed pursuant to this rule shall be responded to in writing within ten days of service upon a party opponent.

G. **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 the hearing. Unless a shorter period of time is ordered by the Court each party shall submit to the other, at least five days before the hearing on the motion, the names and addresses of any witness 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.

H. **Notice of Withdrawal of Motion.** If a motion is scheduled for hearing, the moving party shall give at least five days notice of his withdrawal of the motion.

Rule 28. Mental Incompetency; Lack of Capacity.

A. Competency to Stand Trial.

(1) The issue of the defendant's competency to stand trial may be raised by motion, or upon the 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 undergo a mental health evaluation. Within thirty days after receiving an evaluation of the defendant's competency, the court, without a jury may determine the issue of competency to stand trial.

(b) If the issue of the defendant's competency to stand trial is raised during trial, the court shall stay further proceeding and order the defendant to undergo a mental health evaluation.

(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;

(4) If a finding of incompetency is made during the trial, the court shall declare a mistrial.

(5) The court may, in its discretion, dismiss the charges against any defendant adjudged incompetent at any time and order the defendant to be released from custody.

Rule 29. Jury Trial. All criminal trials shall be conducted by the court, without a jury, unless the defendant demands a jury trial within twenty days of his arraignment.

A. Composition. The jury shall be composed of six members, with at least one alternate juror. Alternate jurors, in the order in which they are impaneled, shall replace jurors who prior to

the time the jury retires to consider its verdict, become or are found to be unable or disqualified from performing their duties.

B. Findings and Conclusions; When Required. In a case tried without a jury, the court shall make a general finding of guilt or innocence and shall, upon a request of any party, make specific findings of fact and conclusions of law, which shall be embodied in a written decision within ten days of the general finding by the court, or within such time as the court may designate.

Rule 30. Pretrial Conference – Jury Trial.

A. Mandatory. When a demand for a jury trial is made, the court shall order legal counsel for the parties to appear before it for a pretrial conference, at which time the defendant shall have the right to be present. At the pretrial conference, the prosecutor and the defendant shall:

- (1) Specify what pretrial motions each party intends to file;
- (2) Finalize the list of witnesses to be called at trial together with a brief description of the intended testimony to be provided by each witness;
- (3) Finalize the list of exhibits intended to be introduced by each party;
- (4) Determine whether there will be a plea bargain. If a plea bargain is not entered into at the pretrial conference, the court shall not consider any plea bargain agreement thereafter, including the date of the jury trial; and
- (5) The prosecutor shall decide whether to dismiss any or all of the charges against the defendant.

B. Failure to Attend. If the prosecutor or the arresting officer fails to attend the pretrial conference or fails to submit the information required above, the court may dismiss the charges pending against the defendant. If the defendant or his legal counsel fails to attend the pretrial conference, the court may appropriately sanction the defendant's legal counsel or issue a bench warrant for the defendant's arrest.

Rule 31. Jurors.

A. Manner of Selection. The jury pool shall be drawn from the list of eligible jurors, prepared as provided elsewhere in this Tribal Code, by the Clerk of the Court, in advance of trial. Jurors to be empanelled shall be drawn by lot from the group of potential jurors by the judge or Clerk of the Court at trial.

B. **Examination of Jurors.** The court may permit the parties or their legal counsel to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their legal counsel to supplement the examination by such further inquiry as it deems proper.

C. **Challenges; procedure.** Challenges for good cause and peremptory challenges shall be made outside of the hearing of the jury. The party making a challenge will not be disclosed to the jury panel, but each challenge will be recorded by the clerk. The prosecutor shall accept or make any peremptory challenge as to each juror before the defense is called upon to accept or make any peremptory challenge.

D. **Challenges for Cause.** The court shall permit the parties to express in the record of trial any challenge to a juror for good cause. The court shall rule upon the challenge and may excuse any juror for good cause.

E. **Peremptory Challenges.** Each party shall be entitled to exercise three peremptory challenges.

Rule 32. 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 as provided in UJI Criminal shall be given by the court;

C. The prosecution 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 prosecution's case.

D. The prosecution shall present its case;

E. Out of the presence of the jury, the 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 shall present its case;

H. The prosecution may submit evidence in rebuttal;

I. At any time before the submission of the case to the jury, the court may for good cause shown permit the prosecution or defense to submit additional evidence;

J. Out of the presence of the jury, the court shall determine the sufficiency of the evidence, whether or not a motion for directed verdict is made;

K. The instructions to be given shall be determined in accordance with Rule 32 of these rules. The court shall then instruct the jury;

L. The prosecution may make its closing argument;

M. The defense may make its closing argument;

N. The prosecution may make a rebuttal only.

Rule 33. Instructions to the Jury.

A. **Required Instructions.** The 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 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 party or legal counsel. The original shall have a place for the court to insert a number, (e.g. No.__) but shall contain no title or other notations. The copies shall include the following information:

(1) [Plaintiff's] [Defendant's] Requested Instruction No.____;

(2) If not in UJI Criminal, authority for the tendered instruction should be given.

C. **Advisement of Parties Filing.** The court shall advise the parties of the instructions to be given and:

(1) number the originals of the instruction to be given;

(2) mark one copy of each instruction tendered as either given or refused and initial the copies; and

(3) file the marked copies as either given or refused.

D. **Objections.** Objection to any instruction given must be sufficient to alert the court to the claimed error or vice therein. In the case of failure to instruct on any issue, a correct written instruction must be tendered to the court before the jury is instructed. Before the jury is instructed, reasonable opportunity shall be afforded to legal counsel for the parties to object or tender instructions, on the record.

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.

Rule 34. Submission to Jury.

A. **Foreman.** The court shall direct the jury to select one of its members as foreman 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 request of the jury to review any exhibit admitted into evidence during trial, the jury shall be furnished with any or all of the exhibits admitted into evidence.

Rule 35. Return of Verdict; Mistrial.

A. **Return.** The verdict shall be unanimous and signed by the foreman. The verdict shall be returned by the jury to the presiding judge in open court.

B. **General Form of Verdict.** Except as otherwise specified in this rule, the jury shall in all cases render a verdict finding the defendant either guilty or not guilty.

C. **Several Counts.** If there are two or more counts or offenses that have been charged, the jury shall specify as to each count or offense of which the defendant has been found guilty or not guilty.

D. **Multiple Defendants.** If there are two or more defendants, separate verdicts shall be returned for each defendant.

E. **Poll of Jury.** When a verdict is returned and before the jury is discharged, the jury shall be polled at the request of any party or upon the court's own initiative. If upon the taking of 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. **Mistrial; Jury Disagreement.** An order declaring a mistrial for jury disagreement shall be in writing and shall expressly reserve the right to retrial the defendant.

Rule 36. Discharge of Jury. The court shall discharge the jury from the cause when:

A. their verdict has been received and recorded;

B. the court finds there is no reasonable probability that the jury can agree upon a verdict;

or

C. some other necessity exists for their discharge. The court may in any event discharge the jury if the parties consent to its discharge.

POST TRIAL MOTIONS

Rule 37. Motion for New Trial.

A. **Motion.** When the defendant has been found guilty, the 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 a new trial based on the ground of newly discovered evidence may be made only within thirty days after final judgment, but if an appeal is pending the court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within ten days after verdict or finding of guilty or within such further time as the court may fix during the ten day period.

D. **Grounds for a New Trial.** The court may grant a new trial for any of the following reasons:

- (1) the verdict is contrary to law or to the evidence;
- (2) the prosecutor has been guilty of misconduct;
- (3) a juror or jurors have been guilty of misconduct;
- (4) the court has erred as a matter of law, or in the instruction of the jury on a matter of law to the substantial prejudice of the defendant.

E. **Admissibility of Juror Misconduct to Impeach the Verdict.** When the validity of a verdict is challenged on the ground of juror misconduct, the court may receive the testimony or affidavit of any witness, including members of the jury, relating to the misconduct of a juror, court official, or third person. However, no testimony or affidavit shall be received which inquires into the subjective motives or mental processes which led a juror to assent or dissent from the verdict.

Rule 38. Motion to Vacate Judgment.

A. **Motion.** The court, on motion of a defendant made within ten days after sentencing, may vacate the judgment.

B. **Grounds.** The court may vacate the judgment if the court was without jurisdiction of the defendant or the offense charged.

Rule 39. Clerical Mistakes; Harmless Error. 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.

JUDGMENT AND APPEAL

Rule 40. Judgment and Sentence.

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 judge and entered in the official records of the court by the Clerk of the Court.

B. **Sentence.** Sentence shall be imposed without unreasonable delay. Before the imposition of sentence, the defendant shall be permitted to make a statement in his own behalf and to present any information, including hearsay evidence, in mitigation. The defendant's counsel and the prosecutor shall also be allowed to speak.

C. **Sentencing Hearing.** The court may set a date and time for sentencing and direct that a presentence report be prepared and submitted to the court by the Probation Office. Pending sentence, the court may continue bail or commit the defendant to jail.

Rule 41. Right to Appeal. After imposing sentence in a case which has gone to trial on a plea of not guilty, the court shall advise the defendant of his right to file an appeal.

A. **How Taken.** A notice of appeal must be filed with the court within twenty calendar days of the entry of the final judgment or from an order made after judgment that affects the defendant's substantial rights.

B. **Duties of the Clerk of the Court.** The Clerk of the Court, upon receipt of the bond ordered by the court, if any, will prepare and transmit to the Southwest Indian Tribal Court of Appeals the record of the case being appealed including a transcript or the record taken in all proceedings relevant to the case. The party taking the appeal shall be referred to as the appellant and the other party as the appellee. The name of the case will be the same as the name used at trial except the names of the parties not involved in the appeal may be omitted.

C. **Rules Governing Appeal.** Except as otherwise provided herein, the appeal shall be perfected pursuant to the Zuni Rules of Civil Procedure.

Rule 42. Tribal Right to Appeal. The Pueblo of Zuni shall have the right to appeal from the following:

A. A judgment of dismissal in favor of the defendant upon a motion to dismiss based on any procedural irregularity occurring before trial or during trial;

B. An order vacating judgment or acquitting the defendant contrary to the verdict of the jury or before the verdict is rendered;

C. An order of the court directing the jury to find for the defendant; or

D. An order made after judgment affecting the substantial rights of the Pueblo of Zuni.

Rule 43. Stay of Judgment and Relief Pending Review.

A. **Imprisonment.** A sentence of imprisonment may be stayed if an appeal is taken and the defendant may be given the opportunity to make bail. Any defendant not making bail or otherwise obtaining release pending appeal shall have all time spent in incarceration counted towards his sentence in the matter under appeal.

B. **Fine and Costs.** A sentence to pay a fine or a fine and costs, may be stayed pending appeal upon motion of the defendant but the court may require the defendant to post bond, subject to return, if the appeal should favor the defendant and negate the requirement for paying such.

C. **Probation.** An order placing the defendant on probation may be stayed on motion of the defendant if an appeal is taken.