

WHITE MOUNTAIN APACHE

JUDICIAL CODE

Effective August 26, 2009

**WHITE MOUNTAIN APACHE
JUDICIAL CODE**

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WHITE MOUNTAIN APACHE JUDICIAL CODE

[NOTE: Chapter One was derived from Ordinance 118, and amended by Ordinance 179, enacted July 1, 1992, and Ordinance 185, enacted November 4, 1993.]

CHAPTER ONE GENERAL PROVISIONS

SECTION 1.1 DEFINITIONS

In this Code, unless the context otherwise requires, or unless otherwise defined for a particular purpose herein:

- A. **"Adult"** means an person who is eighteen (18) years of age or older.
- B. **"Attorney"** means a person who has graduated from an accredited law school and passed a state sponsored bar examination and is a member in good standing with the appropriate State Bar Association.
- C. **"Code"** or **"Tribal Code"** means the White Mountain Apache Tribal Code, as adopted by the White Mountain Apache Tribal Council.
- D. **"Council"** or **"Tribal Council"** means the White Mountain Apache Tribal Council duly assembled.
- E. **"Counsel"** means either an attorney or lay advocate when representing someone before the Tribal Court.
- F. **"Indian"** means any person of Indian descent who is a member of a federally recognized Indian Tribe according to the laws of that Tribe, and any other person recognized by federal law as an Indian for any purpose, and denotes both the singular and the plural.
- G. **"Lay Advocate"** means a person who is not an attorney but is licensed or certified to practice and represent persons before a Tribal Court.
- H. **"Member"** means an enrolled member of the White Mountain Apache Tribe.
- I. **"Non-Member"** means any person who is not a member.
- J. **"Non-Indian"** means a person who is not an Indian.
- K. **"Person"** means a natural person, Indian or non-Indian, and where relevant, a corporation, partnership, or unincorporated association.

- L. **"Property"** means both real and personal property.
- M. **"Reservation"** means the area within the exterior boundaries of the Fort Apache Indian Reservation
- N. **"Tribal Court"** means the Court of the White Mountain Apache Tribe.
- O. **"Tribal Judge"** means a judge of the Tribal Court of the White Mountain Apache Tribe and includes regular and visiting judges of the trial court, the juvenile court, and the Court of Appeals.
- P. **"Tribe"** means the White Mountain Apache Tribe, an unincorporated association organized under Section 16 of the Indian Reorganization Act, 25 U.S.C. §476, *et seq.* (48 Stat. 984) its enterprises, subdivisions, and departments, and its agents acting within the scope of their authority.
- Q. **"Visiting Judge"** means a Judge of another Indian Tribe, a former Judge of the White Mountain Apache Tribe, or a state or federal Court Judge, magistrate, or justice of the peace who has been designated by the Chief Judge of the Tribal Court to hear and determine a case.
- R. **"Signature"** means the name of a person in his handwriting or printing, or his mark or thumbprint witnessed by two persons who sign their names as witnesses to his making of the mark or thumbprint.

SECTION 1.2 PRINCIPLES OF CONSTRUCTION

The following principles of construction apply to the Tribal Code unless a different construction is obviously intended or is necessary to obtain a reasonable result:

- A. Masculine words shall include the feminine, and singular words shall include the plural, and vice versa..
- B. Words shall be given their plain meaning and technical words shall be given their usually understood meaning where no other meaning is specified.
- C. This Code shall be construed as a whole to give effect to all its parts in a logical, consistent manner.
- D. If any provisions of this Code or the application of any provision to any person or circumstance is held invalid, the remainder of this Code, and its application to any other person or circumstance shall not be affected thereby and to this end the provisions of this Code are severable.
- E. All other issues of construction shall be decided using generally accepted principles of construction to effect the underlying principles and purposes of this Code.

SECTION 1.3 AUTHORITY

This compilation of the laws of the White Mountain Apache Tribe, which is to be known as the White Mountain Apache Tribal Code, is adopted pursuant to the authority vested in the White Mountain Apache Tribal Council by virtue of its inherent tribal sovereignty and the Constitution and Bylaws of the White Mountain Apache Tribe.

SECTION 1.4 REFERENCES TO THE TRIBAL CODE

This Code may be referred to as the White Mountain Apache Tribal Code, or where the context suitably identifies it, as the Tribal Code. Subdivisions of this Code which are identified by a name referring to the particular body of law they contain may be identified by that name, for example, Game and Fish Code.

SECTION 1.5 PRIOR ORDINANCES REPEALED

All prior ordinances are hereby repealed. Any and all resolutions or other enactments of the Tribal Council which conflict with the provisions of the Tribal Code are hereby repealed to the extent of such conflict.

SECTION 1.6 AMENDMENTS

This Code may be amended by the adoption of ordinances by the Tribal Council. Amendments shall become a part of this Code for all purposes and shall be codified and incorporated in the Code in a manner consistent with its numbering and organization.

SECTION 1.7 SOVEREIGN IMMUNITY

The White Mountain Apache Tribe, as a sovereign government, is absolutely immune from suit, and its Tribal Council, officers, agents, and employees shall be immune from any civil or criminal liability arising or alleged to arise from their performance or non-performance of their official duties. Nothing in this Code shall be deemed to constitute a waiver of the sovereign immunity of the White Mountain Apache Tribe except as expressly provided herein or by action of the Tribal Council.

SECTION 1.8 ADOPTION OF FOREIGN LAW BY REFERENCE OR INCORPORATION

A. The adoption of any law or other document into this Code by reference or incorporation shall not constitute a waiver or cession of any sovereign power of the White Mountain Apache Tribe to the jurisdiction whose law is adopted, or in any way diminish such sovereign power, but shall result in law becoming the law of the White Mountain Apache Tribe.

B. Whenever a law or other document of another jurisdiction is adopted by reference or incorporation as White Mountain Apache law, the omission of any part of that law from the portion adopted shall not be construed as a negative statement regarding the principles embodied in the omitted part, unless such a negative statement is expressly made.

C. Whenever a law or other document of another jurisdiction is adopted by

reference or incorporation as White Mountain Apache law, the decisions of the courts of that jurisdiction interpreting such law or other document shall not be binding on the White Mountain Apache Tribal Courts unless this Code expressly so provides, but shall be considered as merely advisory.

CHAPTER TWO JUDICIAL SYSTEM

[NOTE: Chapter Two was derived from Ordinance Nos. 96, 112, 118 as amended by Ordinance Nos. 174 and 179.]

SECTION 2.1 JURISDICTION

A. The Tribal Court of the White Mountain Apache Tribe may exercise subject matter and personal jurisdiction on any basis consistent with the inherent sovereign immunity and the Constitution and laws of the White Mountain Apache Tribe; provided, however, that the Tribal Court shall only exercise jurisdiction in a case in which at least one of the parties is a member of the White Mountain Apache Tribe, or an Indian, or the White Mountain Apache Tribe itself, or any of its agents, subdivisions, enterprises, or property, or when the parties consent to the jurisdiction of the Court.

PERSONAL JURISDICTION

- B. Bases for personal jurisdiction shall include, but are not limited, to:
- (1) Presence, domicile, or residence on the reservation;
 - (2) Membership in the Tribe;
 - (3) Consent, whether by contract, implication or otherwise, including marriage to a tribal member;
 - (4) Appearance in Tribal Court, other than a special appearance for the sole purpose of contesting jurisdiction;
 - (5) Contracting or attempt to contract to insure any person, property, or risk located within the Reservation;
 - (6) Doing business or attempting to do business on the Reservation, including entering or attempting to enter into a contract for the sale, lease, or purchase of any property or services, when such contract is entered into or is to be performed within the exterior boundaries of the Reservation;
 - (7) Using or attempting to use, or purchasing or attempting to purchase any resource or service of the Tribe or the Reservation;
 - (8) Engaging in an act on the Reservation;
 - (9) Causing a foreseeable effect on the Reservation by an act or omission elsewhere;
 - (10) Ownership, use, or possession of real or personal property on the Reservation.

C. Tribal Court jurisdiction shall extend to corporations, partnerships, associations, and governmental entities as well as to natural persons, and the word person as used in this Code includes all of the above.

SUBJECT MATTER JURISDICTION

D. Except as to those matters which Tribal law provides shall be within the exclusive jurisdiction of the Land Board, the Tribal Court shall have jurisdiction over all real and personal property located on the Reservation to determine the ownership thereof, or rights therein, or to determine the application of such property to the satisfaction of a claim relating to the property.

E. Subject to the limitations of subsection A of this section, the Tribal Court shall have subject matter jurisdiction over all civil causes of action, regardless of whether the parties are Indian or non-Indian.

F. The Tribal Court shall have subject matter jurisdiction over all criminal actions in which an Indian is alleged to have violated the criminal provisions of this Code. In civil expulsion actions, the Tribal Court shall have subject matter jurisdiction to determine whether or not the non-member defendant, whether Indian or non-Indian, has violated the criminal provisions of this Code, whenever, pursuant to tribal law, such violation would be grounds for expulsion.

G. (1) The Tribal Court shall have jurisdiction to grant a divorce, separation, annulment, or protective injunction or restraining order to a party to a marriage, based on jurisdiction over the marriage, even without the presence before the Court of the other party, if either party to the marriage is a bona fide resident of the Reservation, and is an Indian, and if the civil notice requirements of this Code have been met.

(2) The Tribal Court may exercise jurisdiction to grant a custody order with respect to a child:

- (a) who is enrolled in the Tribe; or
- (b) who qualifies for enrollment; or
- (c) in whom the Court has an interest pursuant to the Indian Child Welfare Act; or
- (d) who is present on the Reservation.

H. The Tribal Court shall not exercise jurisdiction over any person unless there is proof on file with the Court that the person has been given notice of the proceedings in a manner which conforms with the requirements of the White Mountain Apache Rules of Civil Procedure or Rules of Criminal Procedure.

I. Except as otherwise provided by Tribal law, the White Mountain Apache Tribal Court shall have exclusive and original jurisdiction to adjudicate all complaints for

the exclusion or removal of persons from the White Mountain Apache Reservation.

J. Except as otherwise provided by Tribal law, the Tribal Court shall have exclusive original jurisdiction, and the Tribal Court of Appeals shall have exclusive appellate jurisdiction, to construe the meaning of Tribal laws, and to determine the legality, under the Constitution and laws of the White Mountain Apache Tribe, and the Indian Civil Rights Act, 25 U.S.C. §1301 *et seq.*, of any action or enactment of the Tribal Council, or any other agent, department, officer, or enterprise of the Tribe and the application of any such action or enactment to any person or situation. This subsection shall not be construed to effect a waiver of sovereign immunity.

SECTION 2.2 BASES FOR JUDICIAL DETERMINATIONS OF LAW

A. The Tribal Constitution shall be the supreme law of the White Mountain Apache Tribe.

B. Tribal law shall consist of the White Mountain Apache Constitution, the enactments of the Tribal Council, and tribal common law.

C. Tribal common law consists of the decisions of the Tribal Court and Tribal Court of Appeals and the customs and traditions of the White Mountain Apache people.

D. Both the enactments of the Tribal Council and tribal common law shall be considered in the resolution of every legal question; when no enactment of the Tribal Council addresses a particular question, tribal common law shall be determinative.

E. The Tribal Court shall apply the provisions of this Code in such a way as to give effect to the intent of the Tribal Council as expressed in its enactments.

F. The Trial Court shall render decisions in accordance with precedent established by the White Mountain Apache Court of Appeals.

G. In deciding any matter of tribal common law which involves consideration of tribal custom, the Tribal Court shall determine the custom primarily by reference to the Journal of the Apache Custom Advisory Panel, but may consider such other sources of information as the judge deems necessary under the circumstances, including the judge's own personal knowledge of tribal custom. In the case of a custom not yet discussed in the Journal of the Apache Custom Advisory Panel, the Tribal Court shall determine the relevant custom in the manner prescribed by Section 2.3B.

H. Questions of tribal customs are questions of law, and not questions of fact.

I. The White Mountain Apache Tribal Court shall not be bound by the law of any other jurisdiction unless so required by federal law, this Code or Tribal Court of Appeals precedent. Except as otherwise provided in this Code, in any case in which existing White Mountain Apache law is not decisive of a question of law, the Tribal court may consider, and upon the request of a party shall consider, for advisory purposes, the law of any other jurisdiction, and the general principles of American law, and may apply them to the case, if to do so would be in the interest of justice, and would not be

inconsistent with tribal law.

SECTION 2.3 DETERMINATION OF TRIBAL CUSTOM; APACHE CUSTOM ADVISORY PANEL; JOURNAL

A. Establishment and Function.

In order that the ancient wisdom, teachings and ways of the White Mountain Apache people may live on and continue to guide the people in their daily lives, there shall be established an Apache Custom Advisory Panel, whose functions it shall be:

(1) To meet at the call of, and under the direction of, the Tribal Council to discuss and record in a Journal their knowledge of the customs and traditions of the White Mountain Apache people.

(2) To be available to the Tribal Court as advisors in matters of tribal custom.

B. Use of Journal.

The Journal of the Apache Custom Advisory Panel shall be used by the Tribal Court in its determination of the custom aspect of questions of Tribal common law. The Journal shall be presumed to be an accurate statement of tribal custom, but since the facts of each case are likely to present questions which were not specifically addressed by the Apache Custom Advisory Panel, the Court may consider such other sources of information as it deems necessary to determine the applicable tribal custom.

C. Determine customs questions not addressed in the Journal; alternatives; Apache Custom Advisory Panel.

(1) Apache Custom Advisory Panel; voluntary binding consultation. If in a particular case there arises a question of custom which has not been addressed in the Journal of the Apache Custom Advisory Panel, the parties may, if they so choose, agree to the appointment of any three members of the Apache Custom Advisory Panel to hear the facts of the case and decide the question. Once such a Panel announces their decision of that question their decision is final for that case. In arriving at its final decision in the case, the Court shall apply the custom as determined by the Panel.

(2) The decision of the Apache Custom Advisory Panel members on a particular question of custom in an individual case shall not be determinative of any case other than the one for which the determination was made; provided, however, that if such a case is appealed, the decision of the Court of Appeals shall have the same binding precedent effect as would any other Court of Appeals decision.

(3) Panel of custom experts. If the parties cannot or choose not to agree to the selection of three members of the Apache Custom Advisory Panel to

form a Panel for their case, the parties may each provide to the Court one person whom they believe to be an expert on matters of tribal custom, and those two experts shall select a third person to complete a panel of custom experts to advise the Court. The Court shall consider the advice of the members of the Panel of Custom Experts, and any other information it deems necessary, and shall decide the custom question accordingly.

(4) The parties may agree to the use of fewer than three members of the Apache Custom Advisory Panel or custom experts in their case, or they may agree that the Court may decide the question of custom without the advice of the Advisory Panel or experts, or they may agree to any other method of resolving the question of custom. If the parties are unable to agree on any method of resolving a custom question which has not been addressed in the Journal of the Apache Custom Advisory Panel, the Court shall choose any of the methods, or any combination of the methods, described in this section, 1.9B, to resolve the question.

D. Appointment of Apache Custom Advisory Panel.

(1) Each member of the Tribal Council shall appoint one person to the Apache Custom Advisory Panel to represent his or her district. A member of the Apache Custom Advisory Panel shall be a person who is respected in his or her community as one who is wise, honest, ethical, and especially knowledgeable about human relations and White Mountain Apache culture, including language, history, teachings, tradition, values, and customs.

(2) Members of the Apache Custom Advisory Panel shall serve for life, or until they resign or are unable to serve.

(3) Members of the Apache Custom Advisory Panel are entrusted with the sacred duty of preserving the White Mountain Apache culture, and as such, subsection (2) notwithstanding, may be removed from the Panel by a two-thirds vote of the Tribal Council for any unethical or illegal activity which indicates a breach of that trust.

E. Expenses and Compensation.

(1) Members of the Apache Custom Advisory Panel shall be reimbursed by the Tribal Council for their necessary expenses while serving at meetings of the Panel and shall be compensated for their contribution to the preservation of White Mountain Apache culture in an amount to be determined by the Tribal Council from time to time.

(2) When members of the Apache Custom Advisory Panel or expert custom witness participate on a Panel or act alone to advise the Tribal Court on a matter of custom in an individual case, the parties to the case shall provide their reimbursement for expenses and their compensation.

SECTION 2.4 TRIBAL COURT

The judicial power of the White Mountain Apache Tribe of the Fort Apache Indian Reservation shall be vested in the White Mountain Apache Tribal Court, which shall consist of the Court of Appeals, the Trial Court, the Juvenile Court, and such other courts as the White Mountain Apache Tribal Council may from time to time establish.

SECTION 2.5 TRIAL COURT

There is hereby established the White Mountain Apache Trial Court, which shall have exclusive original jurisdiction over all matters arising under Trial law, except as otherwise provided in this Code. The Trial court shall have the power to promulgate Rules of Court to assist in its orderly and effective operation.

SECTION 2.6 JUVENILE COURT

There is hereby established the White Mountain Apache Juvenile Court, which shall have exclusive original jurisdiction over all matters arising under the White Mountain Apache Juvenile Code, except as otherwise provided in this Code. The Juvenile Court shall have the power to promulgate Rules of Court to assist in its orderly and effective operation.

SECTION 2.7 COURT OF APPEALS

A. There is hereby established the White Mountain Apache Court of Appeals, which shall be the final tribal judicial forum for the review of the decisions of the Trial Court and Juvenile Court of the White Mountain Apache Tribal Court.

B. The Court of Appeals shall have jurisdiction to:

- (1) review any final decision or order of the Trial Court or Juvenile Court.
- (2) issue any order in aid of its jurisdiction as it deems necessary, including orders to the Trial and Juvenile Courts.
- (3) promulgate Rules of Court to assist in its orderly and effective operation.

SECTION 2.8 COMPOSITION OF COURTS

A. The Trial Court of the White Mountain Apache Tribe shall be composed of a Chief Judge and two or more Associate Judges. The Chief Judge shall preside over the Trial Court, provided that in his or her temporary absence, disability or disqualification, or for such other reasons as he or she deems necessary, the Chief Judge may appoint an Associate Judge or a visiting Judge to act in his or her place.

B. The Court of Appeals shall be composed of a Chief Justice and two Associate Justices, none of whom is currently serving as a trial court judge. The Chief Justice shall preside over the Court of Appeals, provided that in his or her temporary

absence, disability or disqualification, or for such other reasons as he or she deems necessary, the Chief Justice may appoint an Associate Justice or Justices to act in his or her place or to comprise a panel to decide an especially difficult or important case.

C. The Juvenile Court shall be composed of one Juvenile Court Judge.

SECTION 2.9 JUDGES

[NOTE: Section 2.9 was amended by Ordinance No. 193, enacted September 7, 1994.]

A. **Selection:** The Chief Judge and the Associate Judges of the trial court, and the Chief Justice and the Associate Justices of the Court of Appeals, and the Juvenile Court Judge shall each be selected by a majority vote of the Tribal Council to serve a term of four (4) years, subject to the Forfeiture and Removal provision of this Chapter.

B. **Selection Procedures:** The Tribal Council shall select judges at regular meetings or at other public meetings specially called for that purpose.

(1) Any person who meets the requirements of the section of this Code entitled Qualifications for Judges shall be eligible to be nominated for and to fill a vacancy on the Court.

(2) The selection of judges shall begin with the opening of the floor to nominations by the Council; any adult tribal member may then nominate any eligible person as a candidate for Tribal Judge.

SECTION 2.10 QUALIFICATIONS FOR JUDGES

A. Any person who meets the requirements of this section shall be eligible to serve as a Judge of the White Mountain Apache Tribal Court.

B. A Tribal Judge must:

(1) Be an enrolled member of the White Mountain Apache Tribe; and must

(2) Be 25 years of age or older; and must

(3) Be able to read, write, speak, and understand English fluently, and speak and understand Apache fluently; and must

(4) Never have been convicted of a felony in any Court, nor convicted of bribery, embezzlement, extortion, fraud, forgery, perjury, theft, or drunk and disorderly conduct within one year prior to his election, nor dishonorably discharged from any Military Service; and must

(5) Have a diploma from an accredited high school or have the equivalent thereof; and must

(6) Not be a candidate for the office of the Chairman, Vice-Chairman or Council Member; and must

(7) Not hold the office of Chairman, Vice-Chairman, or Council Member.

SECTION 2.11 MULTIPLE TERMS

Any person holding a position of Tribal Court Judge may be reappointed to that office.

SECTION 2.12 FORFEITURE AND REMOVAL

A. Any person holding the position of Tribal Court Judge under the provisions of this Ordinance shall automatically forfeit said position for any of the following reasons:

(1) Conviction of a felony in any Court;

(2) Conviction of any offense involving moral integrity in any Court. The following crimes and no others shall be considered crimes involving moral integrity: bribery, embezzlement, extortion, fraud, forgery, perjury, theft, and drunk and disorderly conduct;

(3) Seeking election to the office of Chairman, Vice-Chairman, or Council Member. The term of any Judge who must forfeit his position under this section shall end:

(a) when he applies for a Nomination Petition Form seeking nomination to one of the listed offices, or

(b) 60 days prior to the election in which the Judge seeks to be elected to one of the listed positions, whichever comes first.

B. A Tribal Court Judge may also be removed from his position by majority vote of the Tribal Council at a validly called meeting for abuse of office, neglect of duty, or gross misconduct. A breach of the standards of conduct for judges set forth in Section 2.17 of the Judicial Code or a conviction of the offenses set forth in Section 2.12 of this Code shall constitute evidence of abuse of office, neglect of duty, or gross misconduct. The Judge whose removal is being attempted shall be given a full and fair opportunity to confront his accusers, to present evidence, and to reply to any and all charges at a designated public Tribal Council meeting, regular or special. The accused Judge shall be given written notice of all charges against him at least ten (10) days before the meeting.

SECTION 2.13 FILLING VACANCIES

In the event of an interim vacancy in a Tribal Court Judge position from any cause whatsoever, it shall be the duty of the Tribal Council to assemble as soon as possible, and select a person who qualifies hereunder to fill the vacancy; provided, however, that in the

case of a vacancy in the position of Chief Judge, the Council shall select an Associate Judge to fill the vacancy and the vacancy created thereby in the position of Associate Judge shall be filled as otherwise specified herein. Any appointments required by this section may be for the duration of the regular term of office of the position filled or in the discretion of the Tribal Council, may be temporary only, pending a regular or special Council meeting called to select a Judge to finish the vacated term.

SECTION 2.14 COMPENSATION; EXPENSE REIMBURSEMENT

A. Tribal Court Judges, including visiting judges, shall be paid at rates established by the Tribal Council, and a Judge's pay shall not be lowered during his or her term as Judge.

B. Expenses, including costs for food, travel and lodging, which are incurred by a Tribal Court or Visiting Judge in the performance of judicial duties shall be reimbursed by the Tribe on a per diem basis, at a rate established by the Tribal Court and approved by the Tribal Council.

SECTION 2.15 DISQUALIFICATION OF JUDGE TO HEAR A CASE; CAUSE

A. Any Judge of the Tribal Court shall be disqualified or shall disqualify himself or herself from hearing any case, or determining any matter in a case, in which the Judge has a bias, prejudice or direct interest in the outcome.

B. Unless both parties stipulate to retaining the judge on their case, a Tribal Court Judge shall be disqualified or shall disqualify himself or herself from hearing any case wherein a party or counsel for a party is one of the following relatives to the Judge:

- (1) Spouse;
- (2) Uncle or Aunt;
- (3) Niece or nephew;
- (4) Grandparent or grandchild;
- (5) Brother or sister;
- (6) Mother or father;
- (7) Son or daughter;
- (8) A spouse of one of the preceding.

C. The relationships requiring disqualification in subsection B above shall apply whether based on the whole blood, half blood, adoption or marriage.

D. Conflicts of Interest. In addition to the grounds set forth herein for disqualification or refusal, unless both parties stipulate to retaining the judge on their

case:

(1) A Judge shall disqualify himself or herself from hearing a case in which a close relative is a party or witness.

(2) A Judge shall disqualify himself or herself from hearing a case in which the Judge has interests which may be affected by the outcome, has formed an opinion about the merits of the case, or has personal knowledge of the facts which would prevent him or her from considering all sides impartially.

E. Any party to a legal proceeding may request that a different judge be assigned to hear the matter. The request may be "for cause" or "of right" and shall be made according to Rule 42(f) of the White Mountain Apache Formal Rules of Civil Procedure, unless on informal request the Judge voluntarily disqualifies himself or herself.

F. Any Judge of the Tribal Court who disqualifies himself or herself from any case or from determining any matter in a case shall state in writing the basis for that disqualification, and shall file that statement in the Court's file for the case, and provide a copy to the parties.

SECTION 2.16 APPOINTMENT OF VISITING JUDGES AND JUDGES PRO TEMPORE

[NOTE: Section 2.16 was amended by Ordinance No. 193 enacted September 7, 1994.]

A. **Visiting Judges:** In any case in which, due to recusal, disqualification, or any other cause, including stipulation of the parties, the Chief Judge determines that there is no tribal judge available to hear the matter, the Chief Judge, in consultation with the associate judges and in accordance with the Rules of Court governing such matters, may appoint a visiting judge to hear the case.

B. **Judges Pro Tempore.** The Tribal Council may provide for the appointment of members of the Arizona Bar to serve as judges pro tempore of the White Mountain Apache trial, juvenile and appellate courts. When serving, any such person shall have all the judicial powers of a regular appointed judge of the court to which said person is appointed. A person who has been a judge pro tempore should not act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

C. **Compensation.** Visiting judges and judges pro tempore shall be compensated for their services, and reimbursed for the expenses necessarily arising from such services, according to Section 2.14 of this Code.

SECTION 2.17 STANDARDS OF CONDUCT OF JUDGES

The following rules shall govern all judges of the Tribal Court:

A. Contracts Outside Court.

(1) Except in open Court, a Judge shall not discuss a case which is or may be before the Court, or any judicial business related to such a case, with a party to that case, a party's representative, or any person who has an interest in the case.

(2) A Judge shall avoid informal contacts with tribal law enforcement personnel in which judicial business is discussed.

(3) A Judge may obtain the advice of a disinterested expert on the law applicable to a proceeding.

(4) A Judge shall avoid any communication with members of the Tribal Council in respect to any pending litigation before the Tribal Court, unless the Tribal Council Member has been ordered to testify or appear in Tribal Court by court order, subpoena or as a witness for one of the parties to the litigation.

B. Ex Parte Contact. Except as authorized by Tribal law, a Judge shall not discuss any matter which is or may be before the Court with a party to such matter or that party's counsel, unless the opposing party or his or her counsel is also present. This prohibition applies both in and out of court.

C. Fairness and Diligence.

(1) A Judge shall respect and comply with the law and always conduct himself or herself in such a way as to promote respect for the law.

(2) A Judge shall not let social relationships, his or her political or religious views, or criticism or praise influence the decisions he or she makes in Court.

(3) A Judge shall be patient, courteous, careful and conscientious in the performance of all official duties.

(4) A Judge shall maintain order in the courtroom.

D. Independence.

(1) A tribal Judge shall not engage in outside activity which would be inconsistent with his or her judicial duties.

(2) A Judge shall not be swayed by public criticism or clamor regarding his or her official actions.

(3) A Judge shall make no public comment on matters pending before the Court except in the course of official proceedings.

SECTION 2.18 RULES OF COURT

A. The Chief Judge of the Tribal Court, in consultation with the Associate Judges, shall promulgate Rules of Court to govern the proceedings and operation of the Trial court, subject to the approval of the Tribal Council.

B. The Chief Justice of the Court of Appeals, in consultation with the Associate Justices, shall promulgate Rules of Court to govern the proceedings and operation of the Court of Appeals, subject to the approval of the Tribal Council.

C. The Judge of the Juvenile Court shall promulgate Rules of Court to govern the proceedings and operation of the Juvenile Court, subject to the approval of the Tribal Council.

D. Rules of Court shall not abridge any rights of parties to actions before the Court, and shall not conflict with procedural provisions of this Code.

E. Any rules submitted for approval to the Tribal Council shall become effective immediately upon such approval, or sixty (60) days after their submission to the Tribal Council if not disapproved by the Tribal Council within that time.

SECTION 2.19 ADDITIONAL COURT POWERS

The Tribal Courts shall have the following powers, which they may use in addition to any other powers granted to them by the Tribal Council to assure that they can effectively administer justice:

Any tribal Judge may:

A. Preserve order when engaged in the performance of official duties;

B. Compel compliance with lawful orders of the Court;

C. Issue subpoenas, summons, and arrest warrants in the manner provided by law to compel the presence of persons to testify in proceedings and to compel the production of documents or other evidence.

D. Administer oaths;

E. Punish for contempt to assure the effective exercise of judicial powers.

SECTION 2.20 CONTEMPT OF COURT

A. The following acts and omissions may be punished as contempt of Court:

(1) A breach of the peace, or other disorderly or insulting behavior toward the Court during judicial proceedings which interrupts the proceedings, undermines the dignity of the Court, or otherwise interferes with the administration of justice;

(2) Willful neglect or violation of duty, or abuse of office by an officer

of the Court;

(3) Deceit or abuse of process or proceedings of the Court;

(4) Disobedience of a lawful judgment, order, or process of the Court;

(5) impersonating an officer of the Court;

(6) Interfering with or threatening a party, witness, officer of the Court, member of a jury, or counselor, in or out of Court, in such a way as to obstruct the administration of justice by the Court.

(7) Refusing to be sworn as a witness, or to testify in a judicial proceeding when ordered by the Judge to do so, except in the case of a defendant in a criminal proceeding, or a person holding any other privilege against compelled testimony recognized by this Code.

B. Imposition of sanctions for contempt of Court is a civil matter if its purpose is to compel obedience to a Court order or judgment and if the sanctions imposed terminate when the person complies with the judgment or order.

C. Imposition of sanctions for contempt of Court is a criminal matter if its purpose is to punish the person who is in contempt or if the sanctions imposed continue in effect past the time of compliance with the order of judgment, or the termination of the act of contempt.

D. Both civil and criminal contempt may be sanctioned by imprisonment and monetary sanctions. No person shall be imprisoned for an act of contempt, either civil or criminal, for more than thirty days, nor subject to monetary sanctions of more than \$150.00.

E. A direct contempt is one committed in the presence of the Court or so near to it as to be disruptive of the Court proceedings, and may be adjudged and punished immediately by the Judge presiding over the hearing.

F. All other contempt shall be adjudged at a hearing at which the person accused of contempt is given notice and an opportunity to be heard.

SECTION 2.21 COURT SESSIONS

A. Sessions of the Trial Court and the Court of Appeals shall be held at the Courthouse in Whiteriver on weekdays during regular working hours, or in exceptional circumstances, at such other reasonable places, days, and times as the Chief Judge may designate.

B. Sessions of the Juvenile Court shall be held in the Juvenile Court on weekdays during regular working hours, or in exceptional circumstances, at such other reasonable places, days, and times as the Juvenile Court Judge may designate.

SECTION 2.22 OFFICERS OF THE COURT

[NOTE: Section 2.22 were amended by Ordinance 174 enacted October 3, 1991.]

Officers of the Tribal Courts shall include:

A. The Tribal Court Administrator, court clerks, probation officers, and court counselors;

B. Tribal police officers or other persons carrying out orders of the Court;

C. Counsel representing parties before the Court, including the tribal prosecutor, tribal attorney, and Juvenile Court presenting officer;

D. Bailiffs and process servers; and

E. Members of the Apache Custom Advisory Panel acting in their official capacity;

SECTION 2.23 TRIBAL COURT ADMINISTRATOR; COURT CLERKS

[NOTE: Sections 2.23 through 2.28 were amended by Ordinance No. 179 enacted July 1, 1992.]

A. **Tribal Court Administrator:** The Tribal Court Administrator shall be appointed by the Tribal Chairman and shall exercise the following powers and duties under the supervision of the Chief Judge of the Tribal Court:

(1) Compile and maintain records and statistics of pending cases and other business of the court;

(2) Assign all motions, pretrials, trials, and other matters for disposition, and maintain and publish all assignments and calendars;

(3) Advise the parties or their attorneys of the status of various calendars;

(4) Coordinate with and supervise the clerks of the courts to accomplish and prompt an orderly disposition of the business of the court;

(5) Make suitable courtroom and personnel arrangements for visiting judges as directed by the Chief Judge;

(6) Supervise the clerks of the court and all other court personnel assigned thereto except judges;

(7) Perform such other duties as the Chief Judge shall direct.

B. Clerks of the Tribal Courts: The Chief Judge of the Trial Court, the Chief Justice of the Court of Appeals, and the Judge of the Juvenile Court shall each appoint a person who speaks Apache fluently, and who reads and writes and speaks English fluently to serve as the Clerk of his or her Court. Court Clerks may be hired on a full-time or part-time basis. The Tribe shall pay to all Court Clerks a salary to be determined by the presiding judge of the court for which they work, and approved by the Tribal Council.

C. The Clerk of the Court is charged with the duty of assisting the functioning of the Court under the direction of the Tribal Court Administrator. The duties of the Clerk of the Court shall include, but are not limited to, the following:

(1) Keeping all records, files, dockets and other information required to be kept by this Code, Rules of Court, or orders of the presiding Judge.

(2) Maintaining tape or stenographically recorded record of Court proceedings as required by the court or requested by the parties.

(3) Administering oaths.

(4) Collecting and accounting for all fines, bail or bond money, filing fees, and such other money or property as may accrue to the Court, and disbursing such money or property as required by law and as directed by the Court.

(5) Aiding the public in their dealings with the Court.

(6) Providing Court forms to the public upon request and providing assistance, but not legal advice, to persons who need help filing them out.

(7) Accepting and marking for filing all pleadings and other Court documents.

(8) Maintaining the Court calendar under the supervision of the Tribal Court Administrator.

SECTION 2.24 COURT RECORDS AND LIBRARY

A. A complete record shall be kept of all matters which are in any way brought before the Tribal Court. This record shall include the files of all cases which are or have been before the Court.

B. Each case file shall be stored in a manner which makes it possible for the Clerk of the Court to locate it by the name of either the plaintiff or the defendant, or the Court number.

C. Each file shall contain all pleadings, motions, orders, and other documents which have been filed by the parties and the Court in that case. The file shall also contain a Transcript Index, which shall indicate for each courtroom proceeding whether or not a transcript or recording of the proceeding has been prepared, and if so, the location of that transcript or recording. Each transcript or recording shall be filed in such a manner as to make it possible for the Clerk of the Court to locate it using the information on the relevant Transcript Index.

D. Each file shall also contain an Appearance and Filing Docket in which the Clerk shall enter:

(1) The date of each Court hearing which occurs in the case, a brief description of the purpose and the outcome of the hearing, a list of the parties, counsel, and witnesses participating in the hearing, and the name of the judge presiding.

(2) The date on which each document is filed in the case, and the name of the document, and the name of the party of Judge who filed it.

E. The files and records of the Tribal Court, except for the internal working documents not relating to specific cases, shall be public record and open for public inspection during Court business hours except as otherwise provided by this Code.

F. Files and records of the Juvenile Court and those relating to adoptions shall be available only to the parties and their counsel except as specifically provided by Tribal Court order in particular cases. Such files shall be conspicuously marked, or filed in a separate place to avoid accidental public release.

G. The Tribal Court shall be provided with or have access to all tribal, federal, and state laws and regulations of the Bureau of Indian Affairs applicable to the conduct of persons within the Reservation. To the extent resources permit, the Tribal Council shall provide such materials.

H. There shall be kept available for public inspection during regular business hours at the office of the Clerk of the Trial Court, copies of the Tribal Code of the White Mountain Apache Tribe, and all amendments to it, and a copy of the Rules of Court, and all laws which have been incorporated by reference from other jurisdictions into this Code.

I. It shall be the duty of the Clerks of the Tribal Court to implement the provisions of this section.

SECTION 2.25 LEGAL ADVICE

No court clerk or Court Administrator, or other court staff shall give legal advice or represent anyone before the Tribal Courts while employed by the Court.

SECTION 2.26 REPRESENTATION BEFORE THE TRIBAL COURT

A. Any person may represent himself or herself before the Tribal Court or may be represented by an attorney or by a lay advocate at his or her own expense, subject to the provisions of subsections B and C of this section. The word "counsel", as used in this Code mean both "attorney" and "advocate", and no distinction shall be made between the two regarding their rights, privileges, and responsibilities in Tribal Court.

B. No person may practice law in Tribal Court without first having obtained a license to practice law in the White Mountain Apache Tribal Court, as provided in Section 2.27.

C. Except for the White Mountain Apache Tribe, and its departments and subentities, and its officers and agents, acting in their official capacities, no person shall be represented in Court in a civil case by counsel unless all other parties to the action are either represented in Court by counsel, or have given their consent to all other parties being represented. All associations, corporations, and other legal entities which are not natural persons, and are therefore not capable of appearing other than through a representative, shall, if prohibited under this section from appearing in Court through counsel, appear through an officer or employee designated by the organization. This section shall not be construed to prohibit any person from obtaining the assistance of licensed counsel to any extent that does not involve the appearance of counsel in Court.

D. No Tribal Court employee, including but not limited to Court Clerks, Court Administrator, Bailiff and Probation Officers shall be allowed while in the employ of the Tribal Court to represent any party before the Tribal Court or to accept compensation for giving legal advice to parties before the Tribal Court.

E. No Tribal Council Member shall be allowed to represent or appear on behalf of a party before the Tribal Court while sitting on the Tribal Council.

SECTION 2.27 LICENSE TO PRACTICE LAW; FEES; ROLE OF COUNSEL; STANDARDS OF CONDUCT

[NOTE: Section 2.27 was amended by Ordinance No. 239, enacted August 26, 2009.]

A. **License Required.** No person shall practice law within the Fort Apache Indian Reservation or before the courts of the White Mountain Apache Tribe except as an attorney or advocate licensed by the Court. All such persons shall be subject to the provisions of this Code, including Section 2.26, and all duly enacted Court rules, including the White Mountain Apache Tribe Rules of Professional Ethics. Failure to maintain compliance with applicable Court rules and this Code may result in the imposition of sanctions, including monetary sanctions, as well as suspension or disbarment. For the purpose of this Section, an "advocate" is a person who would be

eligible to practice law pursuant to Section 2.27B, but is not a graduate of an ABA accredited law school; an “attorney” is a person who is a graduate of an ABA accredited law school with a juris doctor degree or equivalent and who would be eligible to practice law pursuant Section 2.27C.

B. Licensing Standards for Advocates.

(1) **Tribal Members.** Any adult member of the Tribe may apply to the Tribal Court for a license to practice law as an advocate, provided such person submits a completed application and complies with the provisions of this Code and all duly enacted Court rules.

(2) **Non-Tribal Members.** Any adult non-member of the Tribe who is employed by the Tribe or a public defender organization approved by the Tribe for the prosecution or defense of criminal cases, child welfare and delinquency cases, civil Game and Fish Code cases, or enforcement of other Tribal laws may apply to the Tribal Court for a license to practice law as an advocate, provided that such person submits a completed application and complies with the provisions of this Code and all duly enacted Court rules. To be eligible for licensing as an advocate, the non-member must also be licensed to practice law by, and in good standing with, at least one other tribal jurisdiction. The license issued pursuant to this paragraph shall be restricted to the practice of law before the courts of the White Mountain Apache Tribe for the limited purpose of the performance of the advocate’s employment obligations on behalf of the Tribe or public defender organization approved by the Tribe.

C. Licensing Standards for Attorneys. Any attorney who is licensed to practice law in the courts of at least one state may be licensed to practice law, provided such attorney submits a completed application and complies with the provisions of this Code and all duly enacted Court rules. Attorneys licensed by a recognized state bar association within the United States who are employed by the White Mountain Apache Tribe to act as attorneys for and on behalf of the Tribe are deemed admitted to practice before the White Mountain Apache Judicial Court and permitted to practice law on the Fort Apache Indian Reservation.

D. Exception for Law Students. Notwithstanding the provisions of Section 2.27A, a student enrolled in a juris doctor program or its equivalent at an ABA accredited law school may appear in Tribal Court for the prosecution or defense of criminal cases, child welfare and delinquency cases, civil Game and Fish Code cases, or enforcement of other Tribal laws on behalf of the Tribe or a public defender organization approved by the Tribe. Any person who has graduated from an ABA accredited law school not more than 24 months prior to the court appearance, shall upon request, be eligible to appear in Court as a law student pursuant to this Subsection. In order to appear in court a law student must:

(1) Work under the supervision of a licensed attorney;

(2) Certify in writing that he or she has read and will comply with the White Mountain Apache Tribe Rules of Professional Conduct and all applicable

provisions of this Code and duly enacted Court rules; and

(3) Have successfully completed legal studies amounting to at least three semesters, or the equivalent if the school is on some basis other than a semester basis.

E. License Renewal.

(1) All licenses to practice law before the Tribal Court must be renewed annually on or before February 1 of each year.

(2) Attorneys renewing their license to practice before the White Mountain Apache Tribal Court must file with the Tribal Court a certificate certifying compliance with the Constitution, Amendments, and Law and Order Code of the White Mountain Apache Tribe and pay a fee, the amount of which shall be determined by the Court, to the Clerk of the Tribal Court before any license to practice is renewed. Any license not renewed shall expire on February 2.

(3) Any expired license may be renewed by submitting a new application to practice before the Tribal Court and pay a fee, the amount of which shall be determined by the Court, to the Clerk of the Tribal Court.

F. The Chief Judge of the Tribal Court shall establish standards and procedures for the licensing of attorneys and lay advocates, and the granting of petitions of non-member lay advocate counsel licensed in the Courts of other Indian Tribes to appear in particular cases, and shall make the final decision as to the granting of each license or petition. Any applicant denied a license or a petition to practice before the Tribal Court may appeal to the Tribal Court of Appeals within thirty (30) days of a written order denying his or her application or petition. The order of the Tribal Court of Appeals shall be final in respect to either granting or denying the license or petition to practice in the Tribal Court thereby becomes a member of the Tribal Court Bar.

G. The Chief Judge of the Tribal Court shall establish, as part of the Rules of Court, standards of conduct and professional responsibility for legal counsel, which shall apply to all branches of the Tribal Court.

H. Every applicant for a license to practice law in the Tribal Court shall, as a pre-condition to receiving such license, demonstrate to the satisfaction of the Chief Judge of the Tribal Court a general working knowledge of the Tribal law and the Rules of Court. Each applicant shall also affirm in writing that he or she has read and agrees to be bound by the Rules of Court relating to the standards of conduct and professional responsibility for legal counsel.

I. A fee, the amount of which shall be determined by Rules of Court, shall be paid to the Clerk of the Tribal Court before any license to practice law is issued or renewed.

(1) The Clerk of the Tribal Court shall maintain a roll of attorneys and lay advocates licensed to practice before the Tribal Court.

**SECTION 2.28 DISCIPLINE OF COUNSEL LICENSED TO PRACTICE BEFORE
THE TRIBAL COURT**

[NOTE: Section 2.28 was amended by Ordinance No. 212, enacted February 13, 1998.]

A. The Chief Judge of the Tribal Court shall appoint a Disciplinary Committee which shall consist of five attorneys licensed to practice before the Tribal Court, three of which shall serve as regular members of the Committee and two shall serve as alternates in the event of a conflict of interest or the inability of a regular Committee member to serve. No Disciplinary Committee member shall hear a complaint arising out of a case in which the Committee member has an interest or is representing or has represented a party in said case.

(1) Each appointment to the Disciplinary Committee shall be for a term of three years, except that a member shall continue to serve until a successor is duly appointed. Appointments to fill a vacancy shall be for the unexpired portion of the term and be filled in the same manner as the original appointment.

(2) For good cause shown, the Chief Judge may remove a member of the Committee.

(3) A member of the Committee may resign for any reason with written notice to the Chief Judge.

B. Upon the receipt by the Chief Judge of the Trial Court of a verified complaint alleging that a licensed counsel has acted unethically, or improperly, or violated a Rule of Court relating to standards of conduct and professional responsibility, or alleging that there are reasonable grounds to believe that any counsel admitted to practice before the Tribal Court has been disbarred, suspended from practice, or disciplined relating to his practice of law in any other jurisdiction, such counsel shall immediately be served with notice that he or she will be suspended from the practice of law in the Tribal Court unless he or she appears before the Chief Judge within five (5) days of receipt of the notice and shows cause why he or she should not be ordered to appear before the Disciplinary Committee. If the Chief Judge finds that counsel should appear before the Disciplinary Committee, the matter shall be referred to the Disciplinary Committee within ten (10) days.

C. Any Judge who finds a licensed counsel in contempt of Court may, in addition to imposing any other sanctions provided by this Code, order the counsel to appear pursuant to subsection B. of this section.

D. Any counsel ordered to appear before the Disciplinary Committee pursuant to this section may be requested to provide an accounting of monies received and expended on behalf of the client, and to justify the accounting.

E. Any counsel ordered to appear before the Disciplinary Committee pursuant to this section shall be afforded a full and fair hearing, with the rights to confront his or her accuser, to present evidence, and to subpoena and call witnesses. If

after the hearing the Chief Judge finds on the basis of the evidence presented to the Disciplinary Committee, that counsel is guilty of misconduct which requires the imposition of disciplinary action, the Chief Judge may:

(1) Verbally censure counsel.

(2) Issue a written reprimand to counsel, which shall be recorded on the Roll of Counsel maintained by the Clerk.

(3) Suspend counsel for a specific period of time from the practice of law before the Tribal Court.

(4) Suspend counsel for an indefinite period of time, setting a date for review of the matter to determine the necessity of continued suspension.

(5) Disbar counsel permanently from practicing before the Tribal Court.

F. Any final order sanctioning legal counsel may be appealed to the Court of Appeals.

CHAPTER THREE
WHITE MOUNTAIN APACHE TRIBE TORT CLAIMS ACT

[NOTE: Chapter Three was derived from Ordinance No. 177, enacted May 7, 1992.]

SECTION 3.1 **TITLE**

This Chapter shall be known and cited as the White Mountain Apache Tribe Tort Claims Act.

SECTION 3.2 **EFFECTIVE DATE**

The effective date of this ordinance shall be May 7, 1992. This Ordinance shall affect all lawsuits filed after the effective date. In addition, this Ordinance, except Sections 3.7, 3.8, 3.9 and 3.13, shall affect any lawsuits pending before the tribal Court which have not proceeded to trial on or before the effective date of this Ordinance.

SECTION 3.3 **PURPOSE OF CHAPTER**

The White Mountain Apache Tribe hereby adopts rules of law applicable to tort claims against the White Mountain Apache Tribe. This Chapter codifies existing Tribal law and custom as it applies to civil tort claims against the Tribe.

SECTION 3.4 **AUTHORIZATION FOR SUIT**

The Tribe may be sued in the White Mountain Apache Tribal Court only when explicitly authorized by either (1) ordinance or resolution of the Tribal Council, or (2) applicable federal law.

SECTION 3.5 **LIMITATIONS ON LIABILITY**

A. Except for contracts of insurance issued to the Tribe, as the named insured, any exception to Tribal sovereign immunity and assumption of liability by the Tribe pursuant to this Ordinance does not apply in circumstances where such liability is assumed by any third party, including other governmental bodies or agencies, whether by indemnification agreement or otherwise.

B. The liability assumed by the Tribe pursuant to this Ordinance shall not extend to any party as a third party beneficiary or otherwise, other than the party(ies) to whom such liability is expressly assumed, and then only to the extent expressly specified.

SECTION 3.6 **DEFINITIONS**

As used in this Chapter, the following words and phrases shall have the meanings given to them in this section unless the context clearly indicates otherwise.

A. Act means acts and omissions.

- B. Assumption of the Risk means knowingly accepting the risks and dangers associated with any act.
- C. Contributory Negligence means the negligence of a plaintiff.
- D. Defendant means the person against whom a claim is made in a lawsuit and includes counterdefendants and crossdefendants.
- E. Duty exists when a person is legally required to conduct himself in a particular manner at the risk that if he does not do so he may be liable to another to whom the duty is owed for injury suffered by such other person.
- F. Fault means the failure to fulfill a legal duty. It includes acts proximately causing or substantively contributing to injury or damages sustained by a person, and includes intentional acts, negligence in all of its degrees, contributory negligence, assumption of risk, strict liability, breach of express or implied warranty of a product, products liability and misuse, modification or abuse of a product.
- G. Gross Negligence means conduct which involves negligence plus knowledge of facts which would lead a reasonable person to realize: (1) that the conduct creates an unreasonable risk of physical harm to another or to the actor, and (2) that such risk of physical harm is substantially greater than that which is necessary to make the actor's conduct negligent. Gross negligence of an actor requires a reckless disregard for the safety of the actor or others. See paragraph M Negligence, below.
- H. Injury means the invasion of any legally protected interest of a person or a loss of any kind to a person. Injury includes death, personal injury or other injury to a person, damage to or loss of property or any other injury that a person may suffer that is actionable and is compensable by the payment of money damages.
- I. Intentional Tort means torts where the actor desires to cause the consequences of his act, or where the actor knows or should know that the consequences are substantially certain to result from the act.
- J. Invitee means either a public invitee or a business visitor. A public invitee is a person who is invited to enter or remain on land as a member of the public for a purpose for which the land is held open to the public. A business visitor is a person who is invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of the land.
- K. Licensee means a person who is allowed to enter or remain on land only because of the possessor's consent.
- L. Member means the person who is an enrolled member of the White Mountain Apache Tribe.
- M. Negligence means conduct which falls below the standard established by law or custom for the protection of others against unreasonable risk of injury or harm. The standard of conduct to which a person must conform to avoid being negligent is that

of a reasonable person under similar circumstances. Negligence includes both acts and omissions.

N. Non-Member means a person who is not an enrolled member of the White Mountain Apache Tribe.

O. Occurrence means an event, including continuous or repeated exposure to conditions, which results in personal injury, bodily injury, wrongful death or property damage.

P. Person means any individual, partnership, corporation, association, or private organization of any kind other than the White Mountain Apache Tribe.

Q. Plaintiff means a person who makes a claim against another in a lawsuit and includes counterplaintiffs and crossplaintiffs.

R. Possessor of Land means a person who occupies land or who last occupied land with the intent to control it; or a person who is entitled to immediate occupation of the land, so long as no other person is occupying the land. A possessor of land includes an owner including the Tribe, a renter, a lessee, or a squatter.

S. Products Liability means the liability of a manufacturer or seller of a product for damages for bodily injury, death or property damage caused by or resulting from the manufacture, construction, design, formulation, installation, preparation, assembly, testing, packaging, labeling, sale, use or consumption of any product; the failure to warn or protect against a danger or hazard in the use or misuse of the product; or the failure to provide property instructions for the use or consumption of any product.

T. Self-Insurance Program means that underlying layer of financial responsibility established by written form in the overlying insurance contracts in force at the time of any occurrence; or such specimen insurance contracts approved and adopted pursuant to the laws of the White Mountain Apache Tribe; or such other self-insurance program which is in force at the time of any occurrence. In no event shall the term "self-insurance program" be construed to mean that the Tribe provides layers of financial responsibility over and beyond layers of financial responsibility established in formal written insurance contracts approved by the Tribe.

U. Strict Liability means liability without fault arising from an abnormally dangerous condition or activity.

V. Torts include intentional torts, negligent torts or torts arising in strict liability. The injury or harm caused by a tortious act must be capable of being compensated by the award of a sum of money to be actionable.

W. Trespasser means a person who enters or remains upon the land of another without permission or right to do so created by the possessor's consent or otherwise.

X. Tribal Employee means a person who is an employee, servant, agent or attorney of the White Mountain Apache Tribe. Tribal Employee also includes elected and

appointed officials of the Tribe.

Y. White Mountain Apache Tribe means that federally recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934, (48 Stat. 984) 25 U.S.C. Section 476 *et seq.* and includes the Tribe, its employees, servants, agents and attorneys, its enterprises, political subdivisions and its funded programs unless such programs would be subject to the Federal Tort Claims Act, 28 U.S.C.A. Section 1346 and related sections.

SECTION 3.7 LIMITATION OF ACTIONS

- A. A civil lawsuit in Tribal Court must be commenced within one (1) year.
- B. The time within which a civil lawsuit must be filed shall be counted from the date on which the injury occurred, or when the injury was or reasonably should have been discovered by the injured party.
- C. For the purpose of meeting the limitations deadline set in this Rule, a civil suit is commenced when the complaint is filed with the Clerk of the Court.
- D. There shall be no tolling of the statute of limitations for any reason, including equitable reasons other than disability of a person as defined by Section 3.8 below. Neither filing a notice of claim as set forth in Section 3.9, below, nor filing a lawsuit in another jurisdiction shall interrupt the running of the statute of limitations.

SECTION 3.8 PERSONS UNDER DISABILITY

If a person entitled to commence an action under this Chapter is at the time the cause of action accrues either under 18 years of age, or of unsound mind or a person who has been judged by the court to be an incompetent person, the period of such disability shall not be deemed a portion of the period limited for commencement of the tort action. Such person shall have the same time after removal of the disability which is allowed to others.

SECTION 3.9 TORT CLAIMS PROCEDURES; 270 DAY NOTICE REQUIREMENT

[NOTE: Section 3.9 A was amended by Ordinance No. 200, enacted September 27, 1995.]

A. Any person who has a claim against the White Mountain Apache Tribe as authorized by this Chapter or otherwise shall file notice of such claim with the Tribal Chairman and the Tribal Attorney as provided by Rule 4(D)(6), White Mountain Apache Tribal Rules of Civil Procedure within 270 days after the cause of action accrues. This notice requirement is jurisdictional and any claim which is not filed within Two Hundred Seventy days after the cause of action accrued is barred and no action may be maintained thereon.

B. Such notices shall state the name of each prospective plaintiff, the identity of each prospective defendant, the nature of all claims, a specific description of the claimed injury and the related money damages accruing from such injury, the relief which will be sought, and the correct name, address and telephone number of each prospective

plaintiff's attorney or spokesman, if any.

C. A notice of claim against the Tribe or a Tribal Employee filed pursuant to this section is deemed denied, sixty (60) days after the filing of the notice unless the claimant is advised of the denial in writing before the expiration of the sixty (60) day period.

D. No cause of action shall be accepted for filing against the Tribe or any Tribal Employee unless the plaintiff(s) has filed proof of compliance with this section.

E. In any action against the Tribe or a Tribal Employee, the time for responding to the valid service of any Summons and Complaint shall be sixty (60) days; to valid service of any motion, not less than thirty (30) days; and to the valid service of any order to show cause, not less than thirty (30) days. Any claim against the Tribe or any Tribal Employee is deemed generally denied sixty (60) days after valid service of the Summons and Complaint, unless the plaintiff(s) or the plaintiff(s) attorney filing the Complaint is advised of acceptance or of a specific or otherwise limited denial in writing or by responsive pleading filed before the expiration of sixty (60) days, and any such claim shall otherwise proceed in the same manner as upon the filing of a general denial of the allegations of the Complaint. These time periods shall not be shortened by Rule of Court or judicial order, but shall be extended by any longer period provided by other applicable law, rule or order of the Court.

F. Any person filing a Complaint against the Tribe or a Tribal Employee shall serve a copy of the Summons and Complaint upon the Tribal Chairman and the Tribal Attorney as provided by Rule 4(D)(6), White Mountain Apache Tribe Rules of Civil Procedure, in addition to any other named defendants served pursuant to applicable rules of the White Mountain Apache Tribe Rules of Civil Procedure.

G. In any action in which any claim is asserted against the Tribe or a Tribal Employee, upon written demand of the Tribal Attorney made at or before the time of answering, and sent to the opposing party and filed with the Court where the action is pending, the place of trial of any such action shall be changed to the White Mountain Apache Tribal Court.

H. Notwithstanding subsection A, a person under 18 years of age, or of unsound mind or a person who has been judged by a court to be an incompetent person shall file a claim within 270 days after the disability ceases.

SECTION 3.10 TRIBAL GOVERNMENT LIABILITY

[NOTE: Section 3.10 was amended by Ordinance No. 209, enacted August 8, 1997.]

Notwithstanding any other provisions of this Chapter, there shall be no exception to the sovereign immunity of the Tribe or Tribal Employees and neither the Tribe nor a Tribal Employee shall be liable for personal injury, wrongful death or property damage alleged to have been caused by or sustained by:

A. Policy decisions or the exercise of discretion vested in the Tribe or a Tribal Employee;

- B. Any decision made in good faith and without gross negligence in carrying out the law;
- C. Executive, judicial, legislative or administrative action or inaction including but not limited to the adoption or failure to adopt a law or policy, or enforcement or the failure to enforce a law;
- D. Issuance, denial, suspension or revocation of, or the failure or refusal to issue, deny, suspend or revoke any permit, license, certificate, approval, order or similar authorization;
- E. Refusal, termination or reduction of benefits under any Tribal assistance program if the Tribe or Tribal Employee is authorized to determine whether or not such benefits should be issued, denied, terminated or reduced;
- F. Failure to make an arrest or failure to retain an arrested person in custody;
- G. Any escaping or escaped person or prisoner, a person resisting arrest, or injury by a prisoner to himself or herself, or to any other prisoner, except upon a showing of specific intent to cause the injury or harm;
- H. Probation, parole, furlough or release from confinement of a prisoner or from the terms and conditions of his probation, parole, furlough or release from confinement, or from the revocation of his probation, parole, furlough or release from confinement except upon a showing of specific intent to cause the injury or harm;
- I. Failure to discover violations of any provision of law requiring inspections of property except as required by Section 13 (a) 1, 2, 3 and 4 of the Tribal/State Gaming Compact but only to the extent as it applies to the Tribal Gaming Facility only;
- J. Failure to respond to a fire or to provide fire fighting services or protection;
- K. Failure to respond to medical emergencies or to provide emergency medical services, except as required by Section 13(b) of the Tribal/State Gaming compact but only to the extent the provision is applicable to the Tribal Gaming Facility;
- L. Discretionary determinations of whether to seek or provide the resources necessary to purchase equipment, to construct or maintain facilities, roads or the like, to hire personnel, or to provide governmental services of any kind;
- M. Plans or designs for construction, maintenance or improvement of Tribally, federally or state owned, controlled or maintained rights-of-way, easements, highways, roads, streets and bridges;
- N. Under any theory of Products Liability.
- O. The Tribe shall not be vicariously liable for injuries or damages resulting

from any act of a Tribal Employee unless the Tribal Employee is personally liable. Notwithstanding the foregoing, the Tribe shall not be vicariously liable for the acts of Tribal Employees who act without Tribal authorization or whose acts are otherwise outside or beyond the course and scope of the Tribal Employee's authority or employment.

P. Tribal volunteers acting within the course and scope of their authority or employment shall have the same degree of responsibility for their acts and enjoy the same immunities and defenses as Tribal Employees.

Q. In addition to the immunity and defenses provided by this Chapter, the Tribe shall be entitled to any defense which would be available to the Tribe if it was a private entity or to a Tribal member if he/she were a non-member.

R. Nothing in this section shall immunize a Tribal Employee from individual liability for the full measure of recovery applicable to a person if it is established that the Tribal Employee's conduct was outside the scope of his authority or employment and that there is no Tribal insurance coverage available.

S. The enumeration of the above immunities shall not be construed to waive any other immunities, nor to assume any liability except as explicitly provided in this Chapter.

SECTION 3.11 SUITS FOR PERFORMANCE OF DUTIES

Any Tribal Employee except members of the Tribal Council may be sued in the White Mountain Apache Tribal Court to compel him/her to perform his/her duties and responsibilities under the laws of the Tribe.

A. Relief awarded by the Tribal Court under this section shall be limited to declaratory or prospective mandamus or injunctive relief in accordance with the express provisions of the laws of the Tribe establishing the responsibility for such performance. Such relief shall not include money damages.

B. No relief may be provided under this section without actual notice to the defendant(s), nor before the time provided in this Chapter for answering complaints, motions, or orders to show cause.

SECTION 3.12 LIMITATIONS ON FORUM, DAMAGES AND CLAIMS FOR RELIEF

[NOTE: Section 3.12 was amended by Ordinance No. 209, enacted August 8, 1997.]

The Tribe may be sued only in the White Mountain Apache Tribal Court and only with respect to claimed damages which are within the express coverage, and not excluded from coverage, by either commercial liability insurance contracts carried by the Tribe or an established Tribal self-insurance program, approved and adopted pursuant to the laws of the White Mountain Apache Tribe. All claims are further subject to the following provisions and limitations.

A. Except as required by Section 13(d) of the Tribal/State Gaming Compact of 1993, no judgment, order or award pertaining to any permitted claim under this Chapter shall be for more than the lesser of:

1. The sum of \$250,000 for each individual claimant, but not exceeding the sum of \$500,000 for each accident or occurrence, or \$200,000 for wrongful death; or

2. The limits of valid and collectable liability insurance policies carried by the Tribe covering such claim or occurrence including such deductible amounts to the extent appropriated by the Tribal Council, nor for more than the amount of coverage provided for each such claim or occurrence under established claim reserves as appropriated by the Tribal Council or otherwise established pursuant to any self-insured claims program of the Tribal Government, approved and adopted pursuant to the laws of the Tribe.

B. Any such judgment, order or award may only be satisfied pursuant to the express provisions of the policy(ies) of liability insurance or established self-insurance program of the Tribe which is in effect at the time of the claim or occurrence.

SECTION 3.13 COSTS

A. Costs shall be awarded to the successful party in any tort action except as otherwise provided in this section.

B. Costs of suit shall not be awarded against the White Mountain Apache Tribe or against any Tribal Employee who was acting within the course and scope of his employment.

C. Costs shall include the reasonable amounts of money actually expended by a party including:

1. Costs of filing and service of process.

2. Costs of preserving testimony including depositions and video depositions.

3. Actual reasonable costs of travel and lodging for necessary

witnesses who actually appear and testify at trial.

4. Expert witness fees.
5. Reasonable attorney's fees.
6. Any other actual costs reasonably and necessarily incurred by a party.

D. Costs shall not include attorneys fees in any action where the prevailing party is a party to a Contingency Fee Agreement.

E. The amount of costs awarded to a successful party shall be modified in accordance with Rule 68, White Mountain Apache Tribe Rules of Civil Procedure, when invoked and applicable.

F. No person shall be jailed because he is unable to pay costs awarded against him.

SECTION 3.14 PUNITIVE AND EXEMPLARY DAMAGES; BAD FAITH DAMAGES

A. Neither the Tribe, nor a Tribal Employee acting within the scope of his employment, shall be liable for punitive or exemplary damages, or for damages arising from the tort of bad faith.

SECTION 3.15 NEGLIGENCE PER SE; VIOLATION OF ORDINANCE

A. A person who violates any Tribal ordinance, regulation or other published law governing the conduct of a person is negligent per se whether or not such person has actual knowledge of such Tribal ordinance or law. A person's ignorance of such Tribal Ordinance or law shall not be a defense.

SECTION 3.101 COMPARATIVE NEGLIGENCE

In all lawsuits involving the Tribe or a Tribal Employee, the provisions of Chapter 4, Comparative Negligence, Section 4.101 *et seq.* shall apply.

SECTION 3.201 PREMISES LIABILITY

In all lawsuits involving the Tribe or a Tribal Employee, the provisions of Chapter 4, Premises Liability, Section 4.201 *et seq.* shall apply.

SECTION 3.301 WRONGFUL DEATH

In all lawsuits involving the Tribe or a Tribal Employee, the provisions of Chapter 4, Section 4.301 *et seq.* shall apply.

SECTION 3.303 MEASURE OF DAMAGES; NONLIABILITY FOR DEBTS OF DECEDENT

In an action for wrongful death, the trier of fact (Court or jury) shall give such damages as it deems fair and just for injury to the surviving parties resulting from the death, and taking into consideration any mitigating or aggravating circumstances. The amount recovered in such action shall not be subject to debts or liabilities or the deceased, unless the action is brought on behalf of the decedent's estate. In no event shall an award in an wrongful death action exceed \$200,000.

SECTION 3.401 SEVERABILITY

In the event that any section of this Chapter shall be ruled by a court of competent jurisdiction to be invalid or unconstitutional, the remainder of this Chapter shall continue in full force and effect.

**CHAPTER FOUR
GENERAL LAW OF TORTS ACT**

[NOTE: Chapter Four was derived from Ordinance No. 178, enacted May 7, 1992.]

SECTION 4.1 TITLE

This Chapter shall be known and cited as the General Law of Torts Act.

SECTION 4.2 EFFECTIVE DATE

The effective date of this ordinance shall be May 7, 1992. This Ordinance shall affect all lawsuits filed after the effective date. In addition, this Ordinance, except Sections 4.5, 4.6 and 4.8, shall affect any lawsuits pending before the Tribal Court which have not proceeded to trial on or before the effective date of this ordinance.

SECTION 4.3 PURPOSE OF CHAPTER

The White Mountain Apache Tribe hereby adopts rules of law applicable to tort claims against persons other than the White Mountain Apache Tribe and Tribal Employees as set forth in Chapter 3, Judicial Code of the White Mountain Apache Tribe. This Chapter codifies existing Tribal law and custom as it applies to civil tort claims.

SECTION 4.4 DEFINITIONS

As used in this Chapter, the following words and phrases shall have the meanings given to them in this section unless the context clearly indicates otherwise.

- A. Act means acts and omissions.
- B. Assumption of the Risk means knowingly accepting the risks and dangers associated with any act.
- C. Contributory Negligence means the negligence of a plaintiff.
- D. Defendant means the person against whom a claim is made in a lawsuit and includes counterdefendants and crossdefendants.
- E. Duty exists when a person is legally required to conduct himself in a particular manner at the risk that if he does not do so he may be liable to another to whom the duty is owed for injury suffered by such other person.
- F. Fault means the failure to fulfill a legal duty. It includes acts proximately causing or substantively contributing to injury or damages sustained by a person, and includes intentional acts, negligence in all of its degrees, contributory negligence, assumption of risk, strict liability, breach of express or implied warranty or a product, products liability and misuse, modification or abuse of a product.
- G. Gross Negligence means conduct which involves negligence plus

knowledge of facts which would lead a reasonable person to realize: (1) that the conduct creates an unreasonable risk of physical harm to another or to the actor, and (2) that such risk of physical harm is substantially greater than that which is necessary to make the actor's conduct negligent. Gross negligence of an actor requires a reckless disregard for the safety of the actor or others. See paragraph L Negligence, below.

H. Injury means the invasion of any legally protected interest of a person or a loss of any kind to a person. Injury includes death, personal injury or other injury to a person, damage to or loss of property or any other injury that a person may suffer that is actionable and is compensable by the payment of money damages.

I. Intentional Tort means torts where the actor desires to cause the consequences of his act, or where the actor knows or should know that the consequences are substantially certain to result from the act.

J. Invitee means either a public invitee or a business visitor. A public invitee is a person who is invited to enter or remain on land as a member of the public for a purpose for which the land is held open to the public. A business visitor is a person who is invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of the land.

K. Licensee means a person who is allowed to enter or remain on land only because of the possessor's consent.

L. Negligence means conduct which falls below the standard established by law or custom for the protection of others against unreasonable risk of injury or harm. The standard of conduct to which a person must conform to avoid being negligent is that of a reasonable person under similar circumstances. Negligence includes both acts and omissions.

M. Person means any individual, partnership, corporation, association or private organization of any kind other than the White Mountain Apache Tribe.

N. Plaintiff means a person who makes a claim against another in a lawsuit and includes counterplaintiffs and crossplaintiffs.

O. Possessor of Land means a person who occupies land or who last occupied land with the intent to control it; or a person who is entitled to immediate occupation of the land, so long as no other person is occupying the land. A possessor of land includes an owner including the Tribe, a renter, a lessee, or a squatter.

P. Products Liability means the liability of a manufacturer or seller of a product for damages for bodily injury, death or property damage caused by or resulting from the manufacture, construction, design, formulation, installation, preparation, assembly, testing, packaging, labeling, sale, use or consumption of any product; the failure to warn or protect against a danger or hazard in the use or misuse of the product; or the failure to provide property instructions for the use or consumption of any product.

Q. Strict Liability means liability without fault arising from an abnormally

dangerous condition or activity.

R. Torts includes intentional torts, negligent torts or torts arising in strict liability. The injury or harm caused by a tortious act must be capable of being compensated by the award of a sum of money to be actionable.

S. Trespasser means a person who enters or remains upon the land of another without permission or right to do so created by the possessor's consent or otherwise.

T. Tribal Employee means a person who is an employee, servant, agent or attorney of the White Mountain Apache Tribe. Tribal Employee also includes elected and appointed officials of the Tribe and Tribal volunteers.

U. White Mountain Apache Tribe means that federally recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934, (48 Stat. 984) 25 U.S.C. Section 476 *et seq.* and includes the Tribe, its employees, servants, agents and attorneys, its enterprises, political subdivisions and its funded programs unless such programs would be subject to the Federal Tort Claims Act, 28 U.S.C.A. Section 1346 and related sections.

SECTION 4.5 LIMITATION OF ACTIONS

A. A civil lawsuit in Tribal Court must be commenced within one (1) year.

B. The time within which a civil lawsuit must be filed shall be counted from the date on which the injury occurred, or when the injury was or reasonably should have been discovered by the injured party.

C. For the purpose of meeting the limitations deadline set in this Rule, a civil suit is commenced when the complaint is filed with the Clerk of the Court.

D. There shall be no tolling of the statute of limitations for any reason, including equitable reasons other than disability of a person as defined by Section 4.6 below. Neither filing a notice of claim as set forth in Chapter Three, Section 3.9, White Mountain Apache Tribe Judicial Code nor filing a lawsuit in another jurisdiction shall interrupt the running of the statute of limitations.

SECTION 4.6 PERSONS UNDER DISABILITY

If a person entitled to commence an action under this Chapter is at the time the cause of action accrues either under 18 years of age, or of unsound mind or a person who has been judged by the court to be an incompetent person, the period of such disability shall not be deemed a portion of the period limited for commencement of the tort action. Such person shall have the same time after removal of the disability which is allowed to others.

SECTION 4.7 SERVICE OF SUMMONS; VENUE

Service of the summons and complaint is an action authorized in Section 4.5 shall be made pursuant to the White Mountain Apache Tribe Rules of Civil Procedure.

SECTION 4.8 COSTS

A. Costs shall be awarded to the successful party in any tort action except as provided herein.

B. Costs shall include the reasonable amounts of money actually expended or owed by a party including:

1. Costs of filing and service of process.
2. Costs of preserving testimony including depositions and video depositions.
3. Actual reasonable costs of travel and lodging for necessary witnesses who actually appear and testify at trial.
4. Expert witness fees.
5. Reasonable attorneys' fees.
6. Any other actual costs reasonably and necessarily incurred by a party.

C. Costs shall not include attorneys fees in any action where the prevailing party is a party to a Contingency Fee Agreement.

D. The amount of costs awarded to a successful party shall be modified in accordance with Rule 68, White Mountain Apache Tribe Rules of Civil Procedure, when invoked and applicable.

E. The Court may use its discretion in awarding costs under this Rule and may consider any or all of the following when awarding costs to a successful party:

1. The reasonableness and necessity of the cost.
2. The relative abilities of the parties to pay costs.
3. The relative merits of each party's position.
4. The good faith or bad faith efforts of each party in pursuing the action, including the cooperation or non-cooperation of a party in the pre-litigation, discovery and trial phases of the action.
5. Any other facts the court deems relevant in assessing costs.

F. No person shall be jailed because he is unable to pay costs awarded against him.

SECTION 4.9 NEGLIGENCE PER SE; VIOLATION OF ORDINANCE

A person who violates any Tribal ordinance, regulation or other published law governing the conduct of a person is negligent per se whether or not such person has actual knowledge of such Tribal ordinance or law. A person's ignorance of such Tribal ordinance or law shall not be a defense.

COMPARATIVE NEGLIGENCE

SECTION 4.101 COMPARATIVE NEGLIGENCE

A. Contributory negligence shall not bar a recovery in any tort action by any person or his legal representative to recover damages for negligence resulting in injury or harm a person or property, provided that the contributory negligence of said person is not more than fifty percent (50%) of the total fault. Any damages allowed shall be diminished in proportion to the amount of negligence attributed to the person recovering.

B. Assumption of the risk shall not bar a recovery in any tort action by any person or his legal representative to recover damages for negligence resulting in injury or harm to a person or property, provided that the assumption of the risk of said person is not more than fifty percent (50%) of the total fault. Any damages allowed shall be diminished in proportion to the amount of negligence attributed to the person recovering.

C. In the event that a person's contributory negligence or assumption or risk is more than fifty percent (50%) of the total fault, then that person shall not recover.

D. The court may, and when requested by any party shall:

1. If a jury trial:

a. direct the jury to find separate special verdicts determining the total amount of damages and the percentage of fault attributable to each actor whether or not a party; and

b. inform the jury of the consequences of its determination of the percentages of fault; and

c. inform the jury that in the event that it finds that a plaintiff's contributory negligence or assumption of the risk is more than fifty percent (50%) of the total fault then that person shall not recover and its verdict must be for the defense.

2. If a trial to the court without a jury: make special findings of fact, determining the total amount of damages and the percentages of fault attributable to each actor whether or not a party. In the event the court finds that a plaintiff's

contributory negligence or assumption of the risk is more than fifty percent (50%) of the total fault then that person shall not recover and its finding must be for the defense.

SECTION 4.102 PRO RATA SHARES

In determining the pro rata share of tortfeasors in the entire liability:

1. Their relative degrees of fault shall be the basis for allocations.
2. If equity requires, the collective liability of some as a group may constitute a single share.

SECTION 4.103 JOINT AND SEVERAL LIABILITY ABOLISHED; EXCEPTIONS; APPORTIONMENT OF DEGREES OF FAULT; DEFINITIONS

A. In any action for personal injury, property damage or wrongful death, the liability of each defendant for damages is several only and is not joint. Each defendant is liable only for the amount of damages allocated to that defendant in direct proportion to that defendant's percentage of fault, and a separate judgment shall be entered against the defendant for that amount. To determine the amount of judgment to be entered against each defendant, the trier of fact shall multiply the total amount of damages recoverable by the plaintiff by the percentage of each defendant's fault, and that amount is the maximum recoverable against that defendant.

B. In assessing percentages of fault the trier of fact (Court or jury) shall consider the fault of all persons who contributed to the alleged injury, death or damage to property, regardless of whether the person was, or could have been named as a party to the suit. Negligence or fault of a nonparty may be considered if the plaintiff entered into a settlement agreement with the nonparty or if the defending party gives notice before trial that a nonparty was wholly or partially at fault. Assessments of percentages of fault for nonparties are used only as a means for accurately determining the total fault. Assessment of fault against nonparties does not subject any nonparty to liability in this or any other action, and it may not be introduced as evidence of liability in any action against the nonparty.

C. The relative degrees of fault of the claimant, and the relative degrees of fault of all defendants and nonparties, shall be determined and apportioned as a whole at one time by the trier of fact. If two or more claimants have independent claims, a separate determination and apportionment of the relative degrees of fault of the respective parties, and any nonparties at fault, shall be made with respect to each of the independent claims.

D. The liability of each defendant is several only and joint and several liability only applies if more than one person was acting in concert or if a person was acting as an agent, employee, or servant of another.

SECTION 4.104 RIGHT OF CONTRIBUTION

A. A right of contribution shall only be available:

1. Where more than one person was acting in concert; or
2. Toxic waste tort cases.

B. If two or more persons become jointly and severally liable in tort for the same injury to a person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them.

C. No tortfeasor shall be compelled to make contribution beyond his own pro rata share of the entire liability.

D. There shall be no right of contribution against the Tribe or a Tribal Employee acting within the course and scope of his employment.

E. There shall be no right of contribution in favor of any tortfeasor who the trier of fact finds was grossly negligent or who had intentionally, willfully or wantonly caused or contributed to the injury.

F. A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury is not extinguished by the settlement whether or not the amount paid in the settlement is in excess of what was his pro rata share or what is reasonable. Conversely, a tortfeasor who fails to enter into a settlement with a claimant shall be not entitled to a setoff or credit for settlement sums paid or promised to a claimant by a settling tortfeasor whether or not the total amounts paid to the claimant in such circumstances exceeds the total verdict or what was reasonable.

G. Nothing in this section shall be construed to impair any right or indemnity or subrogation under existing law. If one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from any obligee for any portion of his indemnity obligation.

H. This section shall not create a right of contribution against any employer or other person who has paid or who is liable for workmen's compensation in connection with an injury or death, unless the employer or other person is subject to direct suit.

SECTION 4.105 CONTRIBUTION; ENFORCEMENT

A. Whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate action.

B. If a judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one defendant against other judgment defendants by motion on

notice to all parties to the action.

C. If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, any separate action by him to enforce contribution must be commenced within six (6) months after the judgment has become final by lapse of time for appeal or after final appellate review.

D. If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, the right of contribution is barred unless:

1. The tortfeasor has discharged by payment the common liability applicable to the claimant's right of action and has commenced an action for contribution within six (6) months after payment.

2. The tortfeasor agreed while the action is pending against him to discharge the common liability and has within six (6) months after the agreement paid the liability and commenced an action for contribution.

E. The recovery of a judgment for an injury or wrongful death against one tortfeasor does not of itself discharge the other tortfeasors from liability for the injury or wrongful death unless the judgment is satisfied. The satisfaction of the judgment does not impair a right of contribution.

F. The judgment of the court in determining the liability of the several defendants to the claimant for an injury or wrongful death is binding as among the defendants in determining their right of contribution. If the claimant's case is tried, the trier of fact shall apportion and determine the respective degrees of fault of the defendants to the action.

SECTION 4.106 SETTLEMENT, RELEASE OR COVENANT NOT TO SUE

If a settlement release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death both of the following apply:

1. It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide.

2. It discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

3. A tortfeasor who fails to enter into a settlement with a claimant is not entitled to a setoff or credit for settlement sums paid or promised to a claimant by a settling tortfeasor.

SECTION 4.107 TREATMENT OF COUNTERCLAIMS AND CROSSCLAIMS

A counterclaim or crossclaim for injury to person or property or for wrongful death shall be treated as an independent claim for purposes of Section 4.103. A claim and

counterclaim shall be setoff against each other unless otherwise agreed by both parties, or ordered by the court in the interests of justice.

SECTION 4.108 SCOPE OF CONTRIBUTION AND COMPARATIVE NEGLIGENCE

A. If an action involves claims for relief alleging both negligence and strict liability in tort, comparative negligence shall be applied to the negligence and strict liability claims, and the reduction in damages under Section 4.103 shall be applied to the damages awarded against all defendants.

B. Among two or more persons strictly liable in tort, the relative degree of fault of each is the degree to which each contributed to the defect causing injury to the claimant.

C. In the event that a claimant acts intentionally or is grossly negligent, that claimant shall be presumed to be one hundred percent (100%) at fault for the injury or harm and shall not recover.

D. In the event that a claimant and one or more defendant acted intentionally or were grossly negligent, the relative degree of fault is the degree to which those persons who acted intentionally or were grossly negligent contributed to the injury or harm. This section shall not apply to the Tribe, or its employees acting within the scope of their employment.

SECTION 4.109 NEGLIGENT ENTRUSTMENT

A person who supplies directly or through a third person a motor vehicle or other chattel for the use of another whom the person knows or has reason to know to be likely, because of said person's youth, inexperience, incompetence, impairment, or otherwise, to use it in a manner involving unreasonable risk of physical harm to said person or others, is subject to liability for the injury or harm resulting.

PREMISES LIABILITY

SECTION 4.201 LIABILITY FOR CONDITION AND USE OF LAND

The purpose of this section is to outline the duties owed by a possessor of land to trespassers, licensees and invitees. There shall be no other classification or subclassification of a person who enters or remains on land.

SECTION 4.202 DUTY TO TRESPASSERS

A possessor of land shall not be liable to any trespasser for any injury or harm to that trespasser except where the possessor intentionally injures such trespasser.

SECTION 4.203 DUTY TO LICENSEE

A. A possessor of land is subject to liability to licensees for injury to harm caused to them by the possessor's failure to carry on his activities with reasonable care for their safety if, but only if:

1. The danger is not open and obvious, or

2. The possessor should reasonably expect that the licensee will not discover or realize the danger, and the licensee does not know or have reason to know of the possessor's activities and of the risks involved.

B. A possessor of land is subject to liability for injury or harm caused to a licensee by a condition on the land if, but only if:

1. The provisions of Section 4.205 do not apply, and

2. The possessor actually knows of the condition and should realize that it involves an unreasonable risk of harm to such licensees, and should reasonably expect that they will not discover or realize the danger, and

3. The possessor fails to exercise reasonable care to make the condition safe, or to warn the licensees of the condition or of the risk involved, and

4. The condition is not open or obvious and the licensee does not know or have reason to know of the condition or the risk involved.

SECTION 4.204 DUTY TO INVITEES

A. A possessor of land is subject to liability to his invitees for injury or harm caused to them by his failure to carry on his activities with reasonable care for their safety if, but only if:

1. The danger is not open and obvious, or

2. The possessor should reasonably expect that the invitee will not discover or realize the danger, and the invitee does not know or have reason to know of the possessor's activities and of the risks involved.

B. A possessor of land is subject to liability for injury or harm caused to an invitee by a condition on the land if, but only if:

1. The provisions of Section 4.205 do not apply, and

2. The possessor fails to exercise reasonable care to protect invitees against the danger if, but only if: (a) he knows or by the exercise of reasonable care would discover the condition, and should reasonably realize that it involves an unreasonable risk of harm to invitees, and (b) the possessor should expect that invitees will not discover or realize the danger, or will fail to protect themselves against it.

C. A possessor of land is not subject to liability for injury or harm to his invitees if the activities or the condition on the land is open and obvious.

SECTION 4.205 DUTY OF OWNER, LESSEE OR OCCUPANT OF PREMISES TO RECREATIONAL USERS; LIABILITY; DEFINITIONS

[NOTE: Section 4.205 was amended by Ordinance No. 209, enacted August 8, 1997.]

A. Notwithstanding any other section of this Chapter, an owner, lessee or other occupant of premises does not:

1. Owe any duty to a recreational user to keep the premises safe for such use.
2. Extend any assurance to a recreational user through the act of giving permission to enter the premises that the premises are safe for such entry or use.
3. Incur liability for any injury to persons or property caused by any act of a recreational user.

B. As used in this section:

1. "Owner, Lessee or Other Occupant" includes the Tribe.
2. "Premises" means water courses, lakes, agricultural, range, mining, forest land, natural land, and any other similar land which the Tribe or any other person makes available to recreational users, with or without a permit, along with any buildings or other structures on such lands, provided, however, that premises as defined herein shall not include the Tribal Gaming Facility as defined in the Tribal State Gaming Compact.
3. "Recreational user" means a person to whom permission has been granted or implied with or without the payment of an admission fee or other consideration to enter upon premises to hunt, fish, trap, camp, hike, ride, swim or engage in other similar recreational pursuits but does not include within this definition a patron of the Tribal Gaming Facility who is a licensee or invitee of the Tribal Gaming Facility. Provided, however, that this exception is limited to when the patron is a licensee, pursuant to Section 4.203 of this Chapter, or an invitee pursuant to Section 4.204 of this Chapter, of the Tribal Gaming Facility and then only within the exterior boundaries of the Tribal Gaming Facility.

SECTION 4.301 WRONGFUL DEATH; LIABILITY

When the death of a person is caused by the fault of another, which fault would allow the person to bring an action for damages, if death had not occurred; then an action for damages may be brought by the appropriate person as set forth in Section 4.302.

SECTION 4.302 PARTIES PLAINTIFF; RECOVERY; DISTRIBUTION

A. An action for wrongful death shall be brought by and in the name of the surviving husband or wife or the personal representative of the deceased person for and on behalf of the surviving husband or wife, children or parents, or if non of these survive,

on behalf of the decedent's estate.

B. Either parent may maintain the action for death of a child, and a guardian for death of his ward.

C. The amount recovered in an action for wrongful death shall be distributed to the parties provided for in subsection A in proportion to their damages, and if recovery is on behalf of the decedent's estate the amount shall be an asset of the estate.

D. The term "personal representative" means any person lawfully appointed by the White Mountain Apache Tribal Court to bring any action for wrongful death.

SECTION 4.303 MEASURE OF DAMAGES; NONLIABILITY FOR DEBTS OF DECEDENT

In an action for wrongful death, the trier of fact (Court or jury) shall give such damages as it deems fair and just for injury to the surviving parties resulting from the death, and taking into consideration any mitigating or aggravating circumstances. The amount recovered in such action shall not be subject to debts or liabilities of the deceased, unless the action is brought on behalf of the decedent's estate. In no event shall an award in a wrongful death action exceed \$200,000.

SECTION 4.401 SEVERABILITY

In the event that any section of this Chapter shall be ruled by a court of competent jurisdiction to be invalid or unconstitutional, the remainder of this Chapter shall continue in full force and effect.