

**RESOLUTION OF THE  
WHITE MOUNTAIN APACHE TRIBE OF THE  
FORT APACHE INDIAN RESERVATION**

- WHEREAS,** the Tribal Council of the White Mountain Apache Tribe wishes to amend Section 2.26 of the White Mountain Apache Judicial Code (renumber 2.27), to mandate that attorneys who desire to practice before the Tribal Court of the White Mountain Apache Tribe, be in good standing licensed by and a member of the State Bar of Arizona; and
- WHEREAS,** Section 2.26 (renumbered as 2.27) is further amended to mandate that non-member lay advocates who wish to practice before the Tribal Court be (1) a member of a federally recognized Indian Tribe which is located in Arizona, (2) a resident of the State of Arizona, and (3) be licensed to practice in another Indian Tribal Court in the State of Arizona; and
- WHEREAS,** the Tribal Council further wishes to amend the Judicial Code to provide that Court employees, i.e., court clerks, Court Administrator, Bailiffs, Probation Officers, etc., are not allowed to practice or represent parties before the Tribal Court, nor give legal advice while in the employ of the Tribal Court due to the inherent conflict of interest this type of situation creates; and
- WHEREAS,** the Tribal Court concludes that Tribal Council Members should not be permitted to practice or represent parties before the Tribal Court due to the inherent and potential conflicts which would be created between the judicial and legislative branches of the Tribal Government; and
- WHEREAS,** the amendments attached hereto and incorporated by reference herein are necessary to ensure that licensed attorneys and lay advocates practicing before the White Mountain Apache Tribal Court are familiar with the laws of Arizona, as the White Mountain Apache Tribe has incorporated and adopted sections of the Arizona Revised Statutes into the White Mountain Apache Law and Order Code and to otherwise regulate persons appearing as Counselors before the Court; and

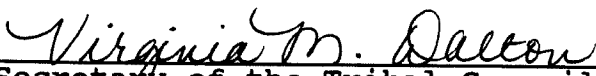
**WHEREAS,** Section 2.26 (F) (renumbered 2.27 (F)) is to be amended to provide that the Tribal Court Administrator process and maintain attorney and lay advocate applications and a list thereof rather than the Court Clerk, in that maintenance of the list is an administrative duty and should be delegated to the Court Administrator; and Section 2.23 should be amended to clarify the duties of the Court Administrator and to ensure that the Court Administrator acts under the supervision and direction of the Chief Judge of the Tribal Court.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that the Judicial Code be amended pursuant to the attached Proposed Ordinance.

**BE IT FURTHER RESOLVED** that the Secretary of the White Mountain Apache Tribal Council is hereby directed to post the proposed amendments to the Judicial Code as provided in the attached Proposed Ordinance for a period of ten (10) days in each district, as required by the Tribal Constitution and Bylaws.

The foregoing resolution was on June 15, 1992, duly adopted by a vote of seven for and zero against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1 (q) (s) of the Amended Constitution and Bylaws of the Tribe, ratified by the Tribe June 27, 1958 and approved by the Secretary of the Interior on May 29, 1958 pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

  
\_\_\_\_\_  
Chairman of the Tribal Council

  
\_\_\_\_\_  
Secretary of the Tribal Council

**RECEIVED**

JUN 17 1992

FORT APACHE INDIAN AGENCY  
WHITERIVER, ARIZONA

PROPOSED ORDINANCE OF THE  
WHITE MOUNTAIN APACHE TRIBE OF THE  
FORT APACHE INDIAN RESERVATION

**WHEREAS,** The Tribal Council of the White Mountain Apache Tribe wishes to amend the White Mountain Apache Judicial Code, as follows:

**SECTION 1.1 DEFINITIONS**  
[definitions to be added to this section]

"Attorney" means a person who has graduated from an accredited law school and passed a state sponsored bar examination and is a member is good standing with the appropriate State Bar Association.

"Counsel" means either an attorney or lay advocate when representing someone before the Tribal Court.

"Lay Advocate" means a person who is not an attorney but is licensed or certified to practice and represent persons before a Tribal Court.

**SECTION 2.23 TRIBAL COURT ADMINISTRATOR; COURT CLERKS**

[Revision of Ordinance No. 96: CHAPTER I; PART VIII. TRIBAL TRIAL COURT. Amended by Ordinance 174.]

**A. Tribal Court Administrator**

The Tribal Court Administrator shall be appointed by the Tribal Chairman and, ~~under the supervision of the Chief Judge of the Tribal Court,~~ shall exercise the following powers and duties **under the supervision and direction 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 the prompt and 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, 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 a ~~written or~~ **tape or stenographicly** 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 its 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 filling 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 LEGAL ADVISE**

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 ~~2-25~~ 2.26 REPRESENTATION BEFORE THE TRIBAL COURT**

[Revision of Ordinance No. 96: CHAPTER I; PART VII. TRIBAL COURT OFFICIALS]

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 means 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 ~~2-26~~ 2.27.

C. Except for the White Mountain Apache Tribe, and its departments and sub-entities, 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 2-26 2.27      LICENSES TO PRACTICE LAW; FEES; ROLE OF  
COUNSEL; STANDARDS OF CONDUCT**

**[Revision of Ordinance No. 96:    CHAPTER I; PART VII. TRIBAL  
COURT OFFICIALS]**

All members of the White Mountain Apache Tribe may apply to the Tribal Court for a license to practice law on the Fort Apache Indian Reservation and before the White Mountain Apache Tribal Courts, provided that each person, attorney or lay advocate, completes an application and complies with the requirements of Section 2.26 and the applicable Rules of Court.

**A. Attorneys**

No non-member attorney shall be granted a license to practice law before the White Mountain Apache Tribal Court unless he or she is an attorney ~~licensed to practice before the highest Court in any state,~~ in good standing, licensed by and a member of the State Bar of Arizona, provided that this rule shall not impair the ability of an attorney to practice before the White Mountain Apache Tribe if he or she is admitted to practice in the State of Arizona pursuant to Rule 33 (e) [full-time law school faculty], Rule 38(d) & (e) [Clinical law school Professors and law students], and Rule 40 [attorneys working full-time for approved legal services organizations], Rules of the Supreme Court of Arizona. ~~provided, however, that any person who is licensed to practice in any Indian Tribal Court may petition the White Mountain Apache Tribal Court for permission to represent a client in a particular case.~~

**B. Lay Advocates**

Any non-attorney who is (1) a member of a federally recognized tribe located in Arizona, (2) a resident of Arizona, and (3) is licensed to practice in any other Indian Tribal Court in Arizona, may petition the White Mountain Apache Tribal Court for permission to represent a client in a particular case.

**C. B-** The Chief Judge of the Trial 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 such 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. Any person granted a license to practice law in the Tribal Court thereby becomes a member of the Tribal Court Bar.

**D. G.** The Chief Judge of the Trial 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.

**E. D-** 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 Trial 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.

**F. E-** A fee, the amount of which shall be determined by Rules of Court, shall be paid to the Clerk of the Trial Court before any license to practice law is issued.

**G. F-** ~~The Clerk of the Trial Court~~ Tribal Court Administrator shall maintain a roll of attorneys and lay advocates licensed to practice before the Tribal Court.

**SECTION 2-27 2.28 DISCIPLINE OF COUNSEL LICENSED TO PRACTICE BEFORE THE TRIBAL COURT**

**A.** 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 the standards of conduct and professional responsibility, or ~~upon a showing to the Chief Judge 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 10 days of receipt of the notice and shows cause why he or she should not be suspended.

**B.** 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 as in subsection A, above.

**C.** Any counsel who is ordered to appear 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.

**D. G-** Any counsel who is ordered to appear 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 that counsel is guilty of misconduct which requires the imposition of disciplinary action, he or she 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.

**E. D-** Any final order sanctioning legal counsel may be appealed to the Court of Appeals.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that the proposed changes to the Judicial Code have been posted by the Secretary of the Tribal Council for ten (10) days as required by the Constitution and Bylaws, the Judicial Code shall be amended as provided herein.

The foregoing Ordinance was on \_\_\_\_\_, 1992 duly adopted by a vote of \_\_\_\_\_ for and \_\_\_\_\_ against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article \_\_\_\_\_, Section \_\_\_\_\_ of the Amended Constitution and Bylaws of the Tribe, ratified by the Tribe June 27, 1958 and approved by the Secretary of the Interior on May 29, 1958 pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

\_\_\_\_\_  
Chairman of the Tribal Council

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Secretary of the Tribal Council