

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

- WHEREAS, the Tribal Council of the White Mountain Apache Tribe pursuant to Resolution 08-93-216 directed the posting of a proposed ordinance clarifying Ordinance 179 which, amongst other provisions, would require non-member attorneys appearing before the Tribal Court to be licensed by the State of Arizona for the reasons previously expressed in Resolutions 06-92-171 and 07-92-183; and
- WHEREAS, the purpose of posting a proposed ordinance is to solicit public comments regarding the ordinance so that the Tribal Council can receive additional information and thereby assist the legislative process; and
- WHEREAS, members of the White Mountain Apache Tribe have come before the Council and have advised the Council that the ordinance as written will jeopardize their present legal representation in cases pending before the Tribal Court because their current attorney is not licensed by the State Bar of Arizona; and
- WHEREAS, the Tribal Council concludes that these and other tribal members who may be represented in pending cases by attorneys who are not licensed by the State of Arizona should be permitted to continue with their current attorney so as to protect the interests of those tribal members and concludes that a non-Arizona licensed attorney's representation of these and other similarly situated tribal members in cases now pending before the Tribal Court should be allowed to continue but that the requirement in the ordinance that non-member attorneys be licensed by the State of Arizona should also be adopted; and
- WHEREAS, the Legal Department of the White Mountain Apache Tribe suggests to the Tribal Council that any licensed attorney who is not licensed by the State Bar of Arizona and who has appeared in Tribal Court be permitted to complete his or her representation on matters presently pending before the court or which are pending as of the effective date of the proposed ordinance as modified herein and attached hereto and incorporated by reference herein.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that the proposed attorney licensing ordinance presently posted pursuant to Resolution 08-93-216 be modified as set forth below to allow a non-member licensed attorney who is presently representing parties before the Tribal Court in pending cases be permitted to complete those cases and any other case pending as of the effective date of the attorney ordinance:

"Notwithstanding the foregoing provision, any non-member licensed attorney who is not licensed by the State Bar of Arizona shall be permitted to complete legal representation on cases pending before the Tribal Court as of the effective date of this ordinance."

BE IT FURTHER RESOLVED that the currently proposed and posted attorney ordinance be modified as set forth herein to carry out the purposes of this resolution and that it be reposted in each district by the Tribal Council Secretary as required by the Constitution.

The foregoing resolution was on October 13, 1993 duly adopted by a vote of 5 for, 1 against and 3 abstentions by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1 (a), (i), (o), (q), (s), (t), and (u) of the Amended Constitution and By-laws 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).

RECEIVED

OCT 21 1993

FORT APACHE INDIAN AGENCY
WHITERIVER, ARIZ.

Acting



Chairman of the Tribal Council



Secretary of the Tribal Council

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 Section 2.27 of the White Mountain Apache Judicial Code, as follows¹:

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

[Revision of Ordinance No. 96: CHAPTER I; PART VII. TRIBAL COURT OFFICIALS. Amended by Ordinance No. 179.]

A. Members 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 such person, attorney or lay advocate, completes an application and complies with the requirements of Section 2.26 and the applicable Rules of Court.

B. Non-Member Attorneys

(1) No non-member attorney shall be granted or be permitted to retain a license to practice law before the White Mountain Apache Tribal Court unless he or she is an attorney in good standing, licensed by and a member of the State Bar of Arizona. ~~provided that~~

(2) Exceptions

(a) This rule shall not impair the ability of an attorney to practice before the White Mountain Apache Tribe if he or she is a tribal government attorney acting under the direct supervision of an attorney licensed by and a member of the State Bar of Arizona. ~~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.~~

(b) Notwithstanding the foregoing, attorneys and law students who are certified under the following provisions will be permitted to practice on the Fort

¹ Text printed in bold designates proposed new language.
~~Stricken~~ text designates proposed deletions from the current language of Judicial Code Section 2.27.

Apache Indian Reservation and before the Tribal Court:

(i) Law Students

In order to make an appearance pursuant to this rule, the law student must:

A. Either be duly enrolled in the College of Law of the University of Arizona or the College of Law of Arizona State University, or be duly enrolled in a law school approved and accredited by the American Bar Association, and be supervised by a member of the State Bar of Arizona, and be authorized by the clerk of the Tribal Court to make appearances under this rule.

B. 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.

C. Be certified by the dean of the law school as being of good character and competent legal ability, and as being adequately trained to perform as legal intern. Training shall include instruction in civil, criminal and courtroom procedure.

D. neither ask for nor receive any compensation or remuneration of any kind for his services from the person on whose behalf he renders services, but this shall not prevent a lawyer, legal aid bureau, law school, public defender agency, or the Tribe from paying compensation to the eligible law student, nor shall it prevent any such lawyer, agency or the Tribe from making such charges for its services as it may otherwise properly require.

E. Certify in writing that he has read and is familiar with the Arizona Rules of Professional Conduct, Tribal Court Rules pertaining to attorney conduct, and the rules of the Supreme Court of Arizona relating to the conduct of attorneys.

(ii) Attorneys Working Full-time for Approved Legal Services Organizations

An attorney who has been admitted to practice law in any other jurisdiction for at least two years and who is employed full time by an approved legal services organization in this State which provides legal assistance to indigents in civil and criminal matters, free of charge, may be admitted to practice before the Tribal Court, subject to the

following:

A. Approval of Legal Services Organizations.

An "approved legal service organization" for the purposes of this rule is a not-for-profit legal services organization which has as one of its primary purposes the provision of legal assistance to indigent, free of charge, in civil or criminal matters. A legal services organization must be approved as such by the Tribal Council explaining:

- (1) The structure of the organization and a statement that it does not accept fees for services rendered from its clients;
- (2) The major sources of funds used by the organization;
- (3) The criteria used to determine potential clients' eligibility for legal and nonlegal services performed by the organization;
- (4) The types of legal and nonlegal services performed by the organization
- (5) The names of all persons who are employed by the organization or who regularly perform legal work for the organization; and
- (6) The existence and extent of malpractice insurance which will cover attorneys authorized to practice under this rule.

A copy of the petition for approval shall be sent by the organization to the Tribal Council, which shall file any comment which it desires to file respecting such petition with the Clerk of the Tribal Court within ten (10) days after the date of receipt of such petition. A legal services organization is not approved until an order confirming such approval is entered by the White Mountain Apache Tribal Court. A copy of the order approving the legal services organization under this rule shall be sent by the Clerk of the Tribal Court to the Tribal Council.

B. Application and Authorization. An attorney who seeks authorization to practice law under this rule shall file with the Clerk of the Tribal Court an application including:

- (1) A statement signed by an authorized representative of the approved legal services

organization that the applicant is employed full time by the organization.

(2) A sworn statement signed by the applicant that he or she:

(a) Has read and is familiar with the Arizona Rules of Professional Conduct, Tribal Court Rules pertaining to attorney conduct, the rules of the Supreme Court of Arizona relating to the conduct of attorneys and will abide by the provisions thereof;

(b) Submits to the jurisdiction of the Tribal Court for disciplinary purposes, as defined by the Rules of the Tribal Court; and

(c) Has not been disciplined by the Tribal Court or courts of any jurisdiction within the past five years.

An attorney is not allowed to practice law under this rule until the applicant has been authorized to do so by order of the Tribal Court. A copy of the order authorizing the practice of law shall be filed with the Clerk of the Tribal Court.

C. Limitation of Activities. An attorney authorized to practice under this rule shall not perform any legal services within the exterior boundaries of the Fort Apache Indian Reservation except for clients of the approved legal services organization by which the attorney is employed full-time. The attorney shall not accept any compensation for such services except such salary as may be provided to him or her by the organization.

D. Supervision. An attorney authorized to practice under this section shall be supervised by an attorney who is licensed to practice before the Tribal Court, who is employed full time by the approval legal services organization for whom the applicant attorney works, and who will act as a supervisory lawyer.

(3) Noncompliance

Any non-member attorney who is not licensed by and a member of the State Bar of Arizona shall not be permitted to practice law on the Fort Apache Indian Reservation or practice before the Tribal Court as of the effective date of this Ordinance until such time as he or she is in compliance with the requirements of this

Section. Notwithstanding the foregoing provision, any non-member licensed attorney who is not licensed by the State Bar of Arizona shall be permitted to complete legal representation on cases pending before the Tribal Court as of the effective date of this ordinance.

C. 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.

D. Lay Advocates: Any non-attorney who is (1) a member of a federally recognized tribe located in Arizona, and (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.

E. 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.

F. 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.

G. 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.

H. 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**.

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

The foregoing Ordinance was on _____, 1993, 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 V, Section (a), (o), (q), (s), (t) and (u) 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