

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

(Approving Revision to Rule 3.1 of Criminal Procedure)

WHEREAS, pursuant to Section 1(a) of the Constitution of the White Mountain Apache Tribe, *inter alia*, the Tribal Council has the authority to represent the Tribe and act in all matters that concern the welfare of the Tribe; and

WHEREAS, the White Mountain Apache Tribal Court dismissed the case of WMAT v. Footracer, ordering that the WMAT Traffic Ticket and Complaint ("Short Form") does not comport with Rule 3.1 of the White Mountain Apache Rules of Criminal Procedure; and

WHEREAS, the effect of the Court's order is to effectively stop all Short Form complaints; and

WHEREAS, the Prosecution Unit has this day come before the Tribal Council recommending a revision to Rule 3.1, as attached and incorporated by this reference; and

WHEREAS, after careful review and consideration, the Tribal Council finds the revision to Rule 3.1 to be in the best interests of the prosecution of crime on the lands of the Fort Apache Indian Reservation.

BE IT RESOLVED by the White Mountain Apache Tribal Council that the revised Rule 3.1 of the White Mountain Apache Rules of Criminal Procedure, as attached and incorporated by this reference, is hereby adopted effective this day, December 7, 2005.

The foregoing resolution was on DECEMBER 7, 2005 duly adopted by a vote of SIX for and ZERO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Sections 1 (a), (s), (t) and (u) of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

Chairman of the Tribal Council

Andy B. Harney

Secretary of the Tribal Council

Rule 3.1 **Complaint**

A. All criminal prosecutions for violation of the White Mountain Apache Tribal Code shall be initiated by the filing of a complaint in the Tribal Court. A complaint is a written statement attested to by the complaining witness and charging that a named individual has committed a particular criminal offense, comprising:

(1) A written statement, signed and attested to by the complaining witness, stating the offense(s) alleged to have been committed, including the time and place of the offense(s) as nearly as may be determined, the name or description of the person alleged to have committed the offense and the number of the section of the Tribal Criminal Code allegedly violated.

(a) For the purposes of this section, allegations of serious offenses shall be prepared in pleading form with the caption "Criminal Complaint" and shall include a description of the offense(s) committed and an allegation that the offense(s) were committed within the boundaries of the Whiteriver reservation. (Long form)

(b) For the purposes of this section, allegations of less serious offenses may be filed by the use of WMAT Traffic Ticket and Complaint form listing the number and title of the section of the Tribal Criminal Code allegedly violated, the time and place of the offense as nearly as may be determined, and the name or description of the person alleged to have committed the offense. (Short form)

(c) In either case, the Complaint shall be signed by the Prosecuting Attorney or an Advocate assigned to the Prosecution unit.

B. The Tribal Prosecutor may designate an individual or individuals within the Prosecution unit to assist persons in drawing up complaints and to screen complaints for compliance with the above listed requirements before submission to the Court.

C. If the Complaint, or the Complaint together with other sworn statements, is sufficient to establish probable cause that a crime has been committed by the person charged, the Court shall issue a warrant pursuant to Rule 3.3 of this Code, instructing the Tribal Police to arrest the named accused, or in the event that the accused is then in custody or there is reason to believe the accused will respond to a summons, the Court shall issue a Summons commanding the accused to appear before the Court at a specified time and place to answer the charge.

D. If an accused person who has been duly summoned fails to appear, or there is reasonable cause to believe that he or she will fail to appear, or if the Summons cannot readily be served, an arrest warrant shall issue.

E. When an accused has been arrested without a warrant, a Complaint shall be filed forthwith with the Court for review as to whether probable cause exists to hold the accused. In all cases a Complaint shall be filed no later than at the time of arraignment; otherwise the accused shall be released without prejudice to the subsequent filing of a criminal Complaint.

F. Any person who files or causes to be filed a criminal Complaint knowing the Complaint to be frivolous or without basis of fact, or only for the purpose of harassment is guilty of contempt of court and may, at the discretion of the Court, be found liable for court costs and/or fined an amount not to exceed \$100 and/or incarcerated for a period not to exceed three days.