



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

**(Authorizing the Posting of Proposed Ordinance No. 239, Amending
Section 2.27 of the White Mountain Apache Judicial Code)**

WHEREAS, pursuant to Article IV, 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 enact ordinances; and

WHEREAS, section 5.5(d)(1) of the Arizona Rules of Professional Conduct states, as adopted by the Arizona Supreme Court, Rule 42, provides:

“[A] lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires *pro hac vice* admission;” and

WHEREAS, this rule permits the Tribe's in-house attorneys, that are admitted in other jurisdictions, to practice in Arizona; and

WHEREAS, the Tribal Attorney has this day recommended that to better serve and represent the White Mountain Apache Tribe, and as a means to further attract and retain qualified attorneys, the Tribal Council enact Ordinance No. 239, as attached and incorporated by this reference; and

WHEREAS, Section 2.27 of the White Mountain Apache Judicial Code was enacted by Ordinance No. 185 on November 4, 2003 and currently provides as follows:

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.

(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 a member of the State Bar of Arizona.

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

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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 indigents, 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 or 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 organi-

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zation 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.

(3) 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 approved 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 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.

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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.

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

WHEREAS, the Tribal Council has reviewed Section 2.27 of the White Mountain Apache Judicial Code and recommends an amendment set forth in Ordinance 239, as attached and incorporated by this reference; and

WHEREAS, pursuant to Article XV of the Constitution of the White Mountain Apache Tribe, the proposed amendments shall be posted in each district for at least ten (10) days before final action by the Council; and

WHEREAS, the Council has reviewed proposed Ordinance No. 239 carefully, and considered its recommendations and the implications thereof in great detail and finds that adoption of proposed Ordinance No. 239 would greatly improve the efficiency of the Tribal judicial process, is a means to attract and retain qualified attorneys and is in the best interest of the Tribe.


BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe, as follows:

1. The Tribal Council Secretary is hereby authorized and directed to post Ordinance No. 239, as attached and incorporated by this reference, in each district for ten (10) days.
2. Any and all comments concerning the Ordinance proposed herein may be sent to the attention of the Tribal Council Secretary, White Mountain Apache Tribe, P. O. Box 700, Whiteriver, AZ 85941.
3. Upon completion of the posting period, the Tribal Council Secretary is further directed to submit proof of posting to the Tribal Council.

The foregoing resolution was on **JULY 8, 2009** duly adopted by a vote of **EIGHT** for and **ZERO** against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a), (q), (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



Secretary of the Tribal Council

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

BE IT ENACTED BY THE COUNCIL OF THE WHITE MOUNTAIN APACHE TRIBE Ordinance No. 239, amending White Mountain Apache Judicial Code, Sections 2.27 A. B. C. and D. as follows:

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

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.