



# WHITE MOUNTAIN APACHE TRIBE

*A Sovereign Nation Exercising Self-Governance  
Over the Fort Apache Indian Reservation*

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## **Resolution No. 05-2012-59**

### **(Authorizing the Posting of Proposed Ordinance No. 255, Amending Sections 1.1, 2.9B(2), 2.10, 2.12A&B, 2.13, 2.15B, 2.16, 2.17D(1) and 2.19 of the White Mountain Apache Judicial Code)**

- WHEREAS**, the Tribal Council of the White Mountain Apache Tribe (“Tribe”) is entrusted by the Tribe’s Constitution to act in all matters that concern the welfare of the Tribe, to manage all economic affairs and enterprises of the Tribe, and to regulate subordinate organizations for economic and other purposes; and
- WHEREAS**, in order to meet the growing needs of Tribal members and the greater White Mountain Apache Tribe, a judicial system capable of imposing swift and fair justice for the benefit of the people living and working on the Fort Apache Indian Reservation (“Reservation”) is a high priority of this Tribal Council; and
- WHEREAS**, there was a time in the Tribe’s history when it was appropriate, if not necessary for Apache speaking Tribal members to serve in a judicial capacity for the Tribe. An ability to understand and appreciate Apache history and culture is of great importance in the resolution of conflicts for Tribal members. However, the strict need to impose this at the bench creates enough risk for the miscarriage of justice, that the Tribal Council must now consider whether a change to the Judicial Code should be made; and
- WHEREAS**, the Tribal Council finds that requiring translators at the Tribal Court could equally accomplish the need of the Tribe to keep the Apache language alive and to ensure communication, and rewarding Apache speaking Tribal members with financial or other incentives at the administrative level, would also achieve the same objective as imposing a strict Apache language requirement for judges, without risking the imposition of justice on the Reservation; and
- WHEREAS**, the Tribal Council recognizes that it can no longer afford to sit idly as the number of complaints from Tribal members increases regarding alleged violations of civil rights and the Council strongly supports the idea that justice should be impartially applied and fairly imposed and the only way to achieve this goal is by focusing on the hiring of qualified law-trained judges in order to best meet the needs of the Tribe; and
- WHEREAS**, the Tribal Council has reviewed Sections 1.1, 2.9B(2), 2.10, 2.12A&B, 2.13, 2.15B, 2.16, 2.17D(1) and 2.19 of the White Mountain Apache Judicial Code and recommends an amendment set forth in Ordinance 255, 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. 255 carefully, and considered its recommendations and the implications thereof in great detail and finds that adoption of proposed Ordinance No. 255 would greatly improve the efficiency of the Tribal Court process 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. 255, 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.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event that this Resolution conflicts with a prior Resolution or Policy, this Resolution shall supersede and govern over the conflicting subject matter.

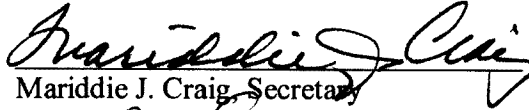
**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event this Resolution directly conflicts with the Tribal Constitution, Tribal Ordinances or Federal Laws, this Resolution shall be declared null and void and have no legal effect. This Resolution shall not be subject to Judicial Interpretation, only the Tribal Attorney, with the assistance of the Tribal Council Secretary, may opine on Tribal Council intent and the meaning of the language as used herein.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that the Chairman, or in his absence, the Acting Chairman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution. In the event that the Chairman fails to delegate signatory authority to an Acting Chairman, the Vice-Chairman may sign provided that the Tribal Secretary and a Tribal Attorney attest to the veracity of the subject matter of this Resolution.

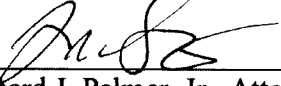
The foregoing resolution was on MAY 21, 2012 duly adopted by a vote of EIGHT for and TWO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article IV, Section 1 (a), (f), (h), (i), (q), (r), (s), (t) and (u) of the Tribal Constitution, ratified 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).

  
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Ronnie Lupe, Chairman

6-4-12  
Date

  
\_\_\_\_\_  
Mariddie J. Craig, Secretary

05-31-2012  
Date

  
\_\_\_\_\_  
Richard J. Palmer, Jr., Attorney

6/4/12  
Date

**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. 255, amending White Mountain Apache Judicial Code, Sections 1.1, 2.9B(2), 2.10, 2.12A&B, 2.13, 2.15B, 2.16, 2.17D(1), and 2.19 as follows:

**SECTION 1.1      DEFINITIONS**

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

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.

**SECTION 2.9      JUDGES**

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

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

(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~~ all requirements of this section shall be eligible to serve as a Judge of the White Mountain Apache Tribal Court.

B.      ~~A Tribal Judge must~~ No person shall be eligible for judicial office unless all of the following qualifications are met:

(1)      ~~Be an enrolled member of the White Mountain Apache Tribe~~ He/she is thirty (30) years of age or older; and ~~must~~

(2)      ~~Be 25 years of age or older~~ He/she is a graduate from high school or has obtained a GED and is proficient in reading, writing and speaking the English language; and ~~must~~

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

~~(43) He/she has Nnever have been convicted of a felony in any Ccourt in any jurisdiction and, within one (1) year of the date of an application filed with the Council, has not been convicted of a serious misdemeanor in any court of any jurisdiction. A serious misdemeanor shall be considered to be, for purposes of this section, behavior proscribed by this Code or in the Criminal Code, or equivalent proscribed behavior in any other jurisdiction including, but not limited to, 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~~

(4) He/she is of good moral character; and

(5) He/she consents to undergo such training as the Council specifies; and

(6) Any person shall be eligible to serve as Chief Judge, Associate Judge or Juvenile Court Judge, whether or not he/she is a resident of the Reservation; and

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

~~(67) Not be a candidate for the office of the Chairman, Vice-Chairman or Council Member; and must~~

~~(78) Not hold the office of Chairman, Vice-Chairman, or Council Member.~~

C. The Council shall have the power to set additional temporary qualifications for judicial office above the minimum qualifications enumerated in subsection B of this section, but shall not have the power to eliminate or modify any qualifications listed in subsection B above, without properly modifying this Code.

**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:

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 2.15 DISQUALIFICATION OF JUDGE TO HEAR A CASE; CAUSE**

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:

**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.

**SECTION 2.17 STANDARDS OF CONDUCT OF JUDGES**

D. Independence.

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

**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;
- and
- B. Compel compliance with lawful orders of the Court; and
  - 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; and
  - D. Administer oaths; and
  - E. Punish for contempt to assure the effective exercise of judicial powers; and
  - F. Shall, upon reasonable request, provide an English/Apache interpreter for any matter before the Court.