

WHITE MOUNTAIN APACHE
RULES OF CRIMINAL PROCEDURE

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TABLE OF CONTENTS

**CHAPTER ONE
GENERAL PROVISIONS**

RULE 1.1	Scope.....	1
RULE 1.2	Purpose and Construction.....	1
RULE 1.3	Computation of Time.....	1

**CHAPTER TWO
SEARCH AND SEIZURE**

RULE 2.1	Search Warrants.....	2
RULE 2.2	Issuance of Search Warrant.....	2
RULE 2.3	Execution and Return of Search Warrant.....	3
RULE 2.4	Search Without a Warrant.....	3
RULE 2.5	Disposition of Seized Property.....	3

**CHAPTER THREE
PRELIMINARY PROCEEDINGS**

RULE 3.1	Complaint.....	5
RULE 3.2	Arrest.....	5
RULE 3.3	Arrest Warrants and Summons.....	6
RULE 3.4	Execution and Return of Warrant.....	7
RULE 3.5	Service of Summons.....	7
RULE 3.6	Defective Warrant.....	7
RULE 3.7	Notification of Rights at Time of Arrest.....	7
RULE 3.8	Cite-and-Release and Bond Schedule.....	8
RULE 3.9	Procedure Upon Arrest.....	8
RULE 3.10	Arraignment.....	8
RULE 3.11	Bail - Release Prior to Trial.....	10
RULE 3.12	Conditions of Release.....	10
RULE 3.13	Modification and Revocation of Release.....	11
RULE 3.14	Disposition of Bond.....	11
RULE 3.15	Plea Negotiations.....	12
RULE 3.16	Pretrial Conference.....	12
RULE 3.17	Plea of Guilty or No Contest.....	13

RULE 3.18	Withdrawal of Plea.....	14
RULE 3.19	Motions.....	14

**CHAPTER FOUR
RIGHTS OF THE PARTIES**

RULE 4.1	Right to Counsel.....	15
RULE 4.2	Speedy Trial; Priorities.....	15
RULE 4.3	Speedy Trial; Time Limits.....	15
RULE 4.4	Denial of Speedy Trial; Dismissal.....	16
RULE 4.5	Issuance of Subpoenas.....	16
RULE 4.6	Service of Subpoenas.....	16
RULE 4.7	Failure to Obey Subpoena.....	17

**CHAPTER FIVE
DISCOVERY**

RULE 5.1	Disclosure by Tribe.....	18
RULE 5.2	Disclosure by Defendant.....	19
RULE 5.3	Excision and Protective Orders.....	21
RULE 5.4	Continuing Duty to Disclosure.....	22
RULE 5.5	Sanctions.....	22

**CHAPTER SIX
TRIAL**

RULE 6.1	Trial Procedure; Evidence.....	23
RULE 6.2	Jury Trial.....	23

**CHAPTER SEVEN
POST VERDICT PROCEEDINGS**

RULE 7.1	Sentencing.....	24
RULE 7.2	Probation; Revocation.....	25
RULE 7.3	Parole; Revocation.....	26
RULE 7.4	Motion for New Trial.....	26
RULE 7.5	Appeal Bond.....	26

WHITE MOUNTAIN APACHE RULES OF CRIMINAL PROCEDURE

CHAPTER ONE GENERAL PROVISIONS

RULE 1.1 **SCOPE**

These rules shall govern procedure in all criminal proceedings in the White Mountain Apache Tribal Court.

RULE 1.2 **PURPOSE AND CONSTRUCTION**

A. These rules are intended to provide for the just, speedy determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unnecessary delay and expense, and to protect the fundamental rights of the individual while preserving the public welfare.

B. The determination of criminal matters shall be governed in all respects by the provisions of Title I of the Tribal Code unless otherwise expressly provided in Title I or these Rules.

RULE 1.3 **COMPUTATION OF TIME**

A. Whenever a Rule, Tribal Law, or an order of the court requires that an action be taken within a certain number of days, the day of the event from which the time limit runs shall not be counted; but the last day shall be counted unless it is a Saturday, Sunday, or tribal holiday.

B. When a time limit is counted from or to the time that notice is delivered to a person and the notice is delivered by mail rather than given directly to the person, it shall be presumed that delivery takes place three days after the notice is placed in a United States Postal Service mailbox.

**CHAPTER TWO
SEARCH AND SEIZURE**

RULE 2.1 SEARCH WARRANTS

A. A search warrant is a written order, signed by a Tribal Court Judge, and directed to a Tribal law enforcement ordering him or her to conduct a search and to seize items of property specified in the warrant, or to search for a person for whom an arrest warrant is outstanding.

B. Every search warrant shall:

(1) Identify and describe the particular property or place to be searched; and

(2) Identify and describe the items to be searched for and seized, and/or the person to be searched for; and

(3) Specify a time limit after which the warrant is void, in no case longer than ten (10) days from the date of its issuance.

RULE 2.2 ISSUANCE OF SEARCH WARRANTS

A. Every Tribal Court Judge shall have the power to issue warrants for the search and seizure of the property and premises of any person under the jurisdiction of the court.

B. No search warrant shall be issued except upon a finding by the Tribal Court of probable cause that the search to be authorized by the warrant will discover:

(1) Stolen, embezzled, contraband or otherwise criminally possessed property; or

(2) Property which has been or is being used to commit a criminal offense;
or

(3) Property which constitutes evidence of the commission of a criminal offense; or

(4) A person for whom an arrest warrant is outstanding.

C. Probable cause to issue a warrant must be supported by a written and sworn statement based upon reliable information.

RULE 2.3 EXECUTION AND RETURN OF SEARCH WARRANT

Search warrants shall only be executed by tribal law enforcement officers. The executing officer shall return the warrant to the Tribal Court within the time limit shown on the face of the warrant. Warrants not returned within such time limit shall be void.

RULE 2.4 SEARCH WITHOUT A WARRANT

No tribal law enforcement officer shall conduct any search without a valid warrant except:

- (1) Incident to making a lawful arrest, in which case the search shall be limited to the individual arrested and the immediate surroundings within his or her reach; or
- (2) With the voluntary consent of the person being searched; or
- (3) When the officer has probable cause to believe that a person suspected of criminal activity is armed and dangerous, and that a search of the suspect is necessary to protect the officer or others, in which case the search is limited to a pat-down for weapons; or
- (4) When the search is of a moving or moveable vehicle and the officer has probable cause to believe that it contains contraband, stolen, or embezzled property, or the fruits or instrumentalities of a crime and in such cases only if the vehicle or its contents could be altered or removed from the officer's custody if the officer delayed the search until a search warrant could be obtained; or
- (5) When property which the officer has probable cause to believe is contraband, stolen, or embezzled, or the fruit or instrumentality of a crime is in plain view of the officer, in which case the officer may search and seize that property.

RULE 2.5 DISPOSITION OF SEIZED PROPERTY

A. Any tribal law enforcement agency, an officer of which seizes property by warrant or otherwise, shall make an inventory of all property seized, and a copy of such inventory shall be given to the person from whom the property was taken.

B. After the entry of a judgment finally disposing of a case, a hearing shall be held by the Tribal Court to determine the disposition of all property seized by any tribal law enforcement agency in connection with that case. Upon satisfactory proof of ownership, the property shall be delivered to the owner unless such property is contraband or is to be used as evidence in a pending case.

C. Property taken as evidence, other than contraband, shall be returned to the owner after final judgment. Property confiscated as contraband shall become the property of the Tribe and may be either destroyed, sold at public auction, retained for the benefit of the Tribe, or otherwise lawfully disposed of as ordered by the court.

**CHAPTER THREE
PRELIMINARY PROCEEDINGS**

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 by the tribal prosecutor. A complaint is a written statement signed and verified by the tribal prosecutor that probable cause exists that a named individual has committed a particular criminal offense.

B. The complaint may be filed as a short-form complaint or a long-form pleading and shall include:

(1) A written statement describing in ordinary language the conduct constituting the offense committed, including the time and place as nearly as may be determined, and the name or description of the person alleged to have committed the offense; and

(2) The section of the Criminal Code allegedly violated.

C. Upon receipt of the complaint, the Tribal 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 a defendant who has been duly summoned fails to appear, or there is reasonable cause to believe he or she will fail to appear, or if the summons cannot readily be served or delivered, an arrest warrant shall issue pursuant to Rule 3.3.

E. When an accused has been arrested without a warrant, a complaint shall be filed forthwith with the court, and in all cases a complaint shall be filed no later than the time of arraignment; otherwise the defendant shall be released on his own recognizance without prejudice to the subsequent filing of a criminal complaint.

RULE 3.2 ARREST

A. Arrest is the taking of a person into custody in order that he or she may be held to answer for a criminal offense.

B. No tribal law enforcement officer shall arrest any person for a criminal offense set out in the Tribal Code except when:

(1) The officer has a warrant signed by a tribal judge commanding the arrest of such person, or the officer knows for a certainty that such a warrant has been issued; or

(2) The offense occurred in the presence of the arresting officer; or

(3) The officer has probable cause to believe that the person to be arrested has committed an offense.

RULE 3.3 ARREST WARRANTS AND SUMMONS

A. Every judge of the Tribal Court may issue warrants to arrest; provided, however, that such warrants shall be issued only upon a showing of probable cause in sworn written statements containing reliable information. No Tribal judge shall issue an arrest warrant if he or she finds that there is not probable cause to believe that the offense charged has been committed by the named accused.

B. Every arrest warrant shall command that the defendant be arrested and brought before the issuing judge, or, if he or she is unavailable, another Tribal Judge, and shall contain the following information:

(1) The name of the defendant or, if his or her name is unknown, any name or description by which he or she can be identified with reasonable certainty; and if known, the defendant's address; and

(2) The date of issuance of the warrant; and

(3) A statement of the offense with which the defendant is charged and a description of the acts which the accused committed which constitute the offense; and

(4) The signature of the issuing judge.

C. A summons shall be in the same form as a warrant except that it shall summon the defendant to appear at a stated time and place within ten (10) days of the date of summons. At the request of the prosecutor the summons shall command the defendant to report to a designated place to be photographed and fingerprinted prior to his or her appearance in response to the summons. Unless good cause for failure to report is shown, such failure shall result in defendant's arrest at the time of appearance in response to the summons, whereupon the judge shall direct the defendant to report immediately for such photographing and fingerprinting.

D. A list of warrants shall be prepared daily and any served or quashed warrants shall be struck from the warrant list daily.

RULE 3.4 EXECUTION AND RETURN OF WARRANT

A. The warrant shall be directed to, and may be executed by, any tribal law enforcement officer.

B. A warrant shall be executed by arrest of the defendant. The officer need not have the warrant in his or her possession at the time of the arrest, but upon request shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his or her possession at the time of the arrest, he or she shall inform the defendant of the offense charged and of the fact that a warrant has been issued.

C. Return of the warrant shall be made either to the judge who issued it or to the judge before whom the defendant makes his or her initial appearance.

RULE 3.5 SERVICE OF SUMMONS

The summons may be served in the same manner as the summons in a civil action, except that service may not be by publication. A summons may be served by certified or registered mail, return receipt requested. Return of the receipt shall be prima facie evidence of service.

RULE 3.6 DEFECTIVE WARRANT

A warrant of arrest shall not be invalidated, nor shall any person in custody thereon be discharged because of a defect in form. The warrant may be amended by any Tribal Judge to remedy such defect.

RULE 3.7 NOTIFICATION OF RIGHTS AT TIME OF ARREST

Immediately upon arrest the suspect shall be advised of the following rights.

- (1) That he or she has the right to remain silent; and
- (2) That any statements made by the suspect may be used against him or her in court; and
- (3) That the suspect has the right to obtain counsel and to have counsel present during all questioning.

RULE 3.8 CITE-AND-RELEASE AND BOND SCHEDULE

A. As directed by the Chief Tribal Judge, Detention may cite-and-release persons arrested for designated minor offenses after detaining them for 8 hours. Release shall be on the person's own recognizance, with the expectation he or she will be summoned into tribal court at a later date for arraignment.

B. As authorized by the Tribal Court, Detention shall maintain a cash bond schedule which permits persons arrested to post a set cash bond for the offenses listed on the schedule. Bond shall be posted by payment of a money order to Detention, with the expectation the person shall be summoned into tribal court at a later date for arraignment.

RULE 3.9 PROCEDURE UPON ARREST

A. A person arrested shall be taken before a Tribal Judge for arraignment without unnecessary delay.

B. A person arrested shall be taken for arraignment before the first available Tribal Judge. If a complaint is not filed within 48 hours (excluding weekend days and holidays) after arrest, the defendant shall be released from jail on his own recognizance without prejudice to the subsequent filing of a criminal complaint.

C. The Chief Tribal Judge may, in his discretion, instruct Detention to cite-and-release all persons arrested for specified offenses during longer holiday periods and on other occasions when arraignments may be delayed for longer than five days.

RULE 3.10 ARRAIGNMENT

A. Arraignment shall be held in open court with the defendant present.

B. At defendant's arraignment, the judge shall:

(1) Determine the defendant's true name and address, social security number, and date of birth, and, if necessary, amend the complaint to reflect that information, and shall instruct the defendant to notify the court promptly of any change of address; and

(2) Read to the accused, and determine that he or she understands, the complaint and the section of the Tribal Code which he or she is charged with violating, including the maximum authorized penalty; and

(3) Inform the defendant of, and determine that he or she understands, his or her rights, as follows:

- (a) The right to remain silent; and
- (b) The right to counsel; and
- (c) That arraignment will be postponed if the defendant desires to consult with counsel before entering a plea, provided the defendant waives arraignment time requirements; and
- (d) The availability of any applicable public-defender services; and
- (e) The right to a trial; and
- (f) The right to plead not guilty; and
- (g) The right to a jury if accused of a crime punishable by a term of imprisonment; and
- (h) The right to confront and cross-examine his or her accusers; and
- (i) The right to subpoena witnesses; and
- (j) The right to appeal a guilty verdict after trial.

C. At arraignment the judge shall also:

- (1) Determine the defendant's plea of not guilty, guilty, or no contest. Unless the defendant pleads guilty or no contest, the court shall enter a plea of not guilty on the defendant's behalf; and
- (2) If a plea of Not Guilty is entered to any or all of the charges, the court shall set the case for pretrial and may appoint the public defender as provided in Rule 4.1; and
- (3) Advise the parties in writing of any other dates set for further proceedings and other important deadlines; and
- (4) Determine conditions of release in accordance with Rules 3.11 and 3.12.

RULE 3.11 BAIL - RELEASE PRIOR TO TRIAL

A. Every defendant shall be released pending and during trial on his or her own recognizance, unless the court determines, based upon findings of fact made at arraignment or at a later hearing to modify the conditions of release, that such a release will not reasonably assure his or her appearance for all future hearings.

B. No defendant shall be held without bail unless the court determines, based upon findings of fact made at arraignment, or at a later hearing to modify the conditions of release, that there is a grave risk that the defendant, while released, will commit a crime.

C. Every person entitled to release under the terms of this section shall be entitled to release from custody pending and during trial under whichever one or more of the following conditions is deemed by the judge to be the least restrictive alternative which will reasonably assure the appearance of the person at any lawfully required hearing:

(1) Release on person recognizance upon signing by the accused of a written promise to appear at tribal and all other lawfully required times.

(2) Release to the custody of a designated person or organization agreeing to assure the defendant's appearance.

(3) Release with reasonable restrictions on the travel, association, or place of residence of the accused during the period of release.

(4) Release after deposit by the accused in either cash or other sufficient collateral in an amount specified by the judge. The judge, in his or her discretion, may require that the accused post only a portion of the total bond, the full sum to become due if the accused fails to appear as ordered.

(5) Release upon any other condition deemed by the judge to be reasonably necessary to assure the appearance of the accused as required.

RULE 3.12 CONDITIONS OF RELEASE

A. Procedure. At arraignment or upon subsequent motion, the court shall make a determination of the conditions of release. The defendant shall have the opportunity to be heard by the court with respect to the conditions of release. The court shall issue an order containing the conditions of release and shall inform the accused of the conditions, the possible consequences of their violation, and that a warrant for his or her arrest may be issued immediately upon report of a violation.

B. Conditions. Every order of release on bond or defendant's own recognizance shall require that the defendant:

- (1) Appear to answer and submit to the orders and process of the court; and
- (2) Refrain from committing any criminal offense; and
- (3) Not depart from the reservation without permission of the court; and
- (4) If released after judgment and sentence pending appeal, shall diligently prosecute the appeal.

RULE 3.13 MODIFICATION AND REVOCATION OF RELEASE

A. Defendant's motion. Any person remaining in custody may move for reexamination of the conditions of release based upon the existence of material facts not previously presented to the court.

B. Court's motion. The court may, on its own initiative, at any time modify the conditions of release, after giving the parties an opportunity to respond to the proposed modification.

C. Prosecutor's motion.

(1) Upon verified petition by the prosecutor stating facts or circumstances constituting a breach of the conditions of release, the court may issue a warrant or summons to secure the defendant's presence in court. A copy of the petition shall be served with the warrant or summons.

(2) Hearing. If, after a hearing on the matters set forth in the petition, the court finds that the person released has not complied with the conditions of release, the court may modify the conditions or revoke release.

RULE 3.14 DISPOSITION OF BOND

A. Forfeiture. If at any time it appears to the court that a condition of an appearance bond has been violated, it shall require the parties and any surety to show cause why the bond should not be forfeited, setting a hearing thereon within ten (10) days. If at the hearing the violation is not explained or excused, the court may enter an appropriate order of judgment forfeiting all or part of the amount of the bond, which shall be enforceable by the prosecutor as any civil judgment.

B. Exoneration. At any time that the court finds that there is no further need for an appearance bond, it shall exonerate the appearance bond and order the return of any security deposited.

RULE 3.15 PLEA NEGOTIATIONS

A. The prosecutor and the defendant may negotiate concerning, and reach an agreement on, any aspect of the disposition of the case.

B. The terms of a plea agreement or deferral agreement shall be in writing and shall be signed by the defendant, his or her counsel, if any, and the prosecutor. An agreement may be revoked by any party before it is accepted by the court.

RULE 3.16 PRETRIAL CONFERENCE

A. At the pretrial conference, the parties may ask the court to set the case for trial, present a plea agreement or deferral agreement to the court, move for dismissal of the case with or without prejudice, or make other motions relevant to the case.

B. Plea agreements.

(1) The court shall address the defendant personally and determine that he or she understands and agrees to the terms of the plea agreement, that the written document contains all the terms of the agreement, and that the plea is entered in conformance with Rule 3.18.

(2) After making such determinations, the court shall either accept or reject the tendered negotiated plea. The court shall not be bound by any provision of the plea agreement regarding the sentence or the term and conditions of probation to be imposed, if, after accepting the agreement and reviewing a pre-sentence report, it rejects the provision as inappropriate.

(3) If an agreement or any provision thereof is rejected by the court, it shall give the defendant an opportunity to withdraw the plea, advising the defendant that if he or she allows the plea to stand, the disposition of the case may be less favorable than that contemplated by the agreement.

(4) When a plea agreement or any term thereof is accepted, the agreement or such term shall become part of the record. However, if no agreement is reached, or if the agreement is revoked, rejected by the court, or withdrawn or if the judgment is later vacated or reversed, neither the plea discussion nor any resulting agreement, plea or judgment, nor statements made at a hearing on the plea, shall be admissible against the defendant in any criminal or civil action or administrative proceeding.

(5) If a plea is withdrawn after submission of the pre-sentence report, the judge, upon request of the defendant, shall disqualify himself or herself.

C. Deferral agreements.

The parties may agree to deferral of prosecution upon certain conditions as described in the deferral agreement. If the court accepts the deferral agreement, and if the defendant then satisfies those conditions, the court shall dismiss the charges with prejudice. If defendant does not satisfy those conditions and/or commits a new offense during the deferral period, the court shall set a hearing to review the agreement and shall in its discretion either set new conditions or reinstate the original charges for further prosecution.

RULE 3.17 PLEA OF GUILTY OR NO CONTEST

A. A plea of guilty or no contest shall be accepted only when made by the defendant personally in open court.

B. A plea of guilty may be accepted only if voluntarily and intelligently made. Before accepting a plea of guilty or no contest, the court shall address the defendant personally in open court, informing the defendant of, and determining that he or she understands:

- (1) The nature of the charge to which the plea is offered; and
- (2) The nature and range of possible sentence for the offense to which the plea is offered; and
- (3) The rights the defendant gives up by pleading guilty or no contest, including:
 - (a) The right to counsel; and
 - (b) The right to a trial; and
 - (c) The right to plead not guilty; and
 - (d) The right to a jury if accused of a crime punishable by a term of imprisonment; and
 - (e) The right to confront and cross-examine his or her accusers; and
 - (f) The right to subpoena witnesses; and

(g) The right to appeal a trial verdict of guilty.

C. Before accepting a plea of guilty or no contest, the court shall address the defendant personally in open court and determine that there is a factual basis for the plea, that the defendant wishes to give up the rights of which he or she has been advised, and that the plea is voluntary and not the result of force, threats, or promises (other than a plea agreement).

D. A plea of no contest may be accepted only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.

RULE 3.18 WITHDRAWAL OF PLEA

The court, in its discretion, may allow withdrawal of a plea of guilty or no contest when to do so would be in the interest of justice. Upon withdrawal, the charges against the defendant as they existed before any amendment, reduction or dismissal made as part of a plea agreement shall be reinstated automatically.

RULE 3.19 MOTIONS

A. At any time after the arraignment, either party may, by filing a written motion, or by making an oral motion in open court in the presence of all other parties, request that the court issue a particular order.

B. Such motions may include, but are not limited to:

(1) Motions to suppress evidence which was illegally seized, or which was the product of the fruits of an illegal search or seizure.

(2) Motions to prevent the introduction of evidence due to its unfairly prejudicial, inflammatory, or irrelevant nature.

(3) Motions to exclude witnesses from the courtroom until they are called by the judge, and to instruct them not to discuss the case.

C. A response to a motion must be filed within ten (10) days of receipt. Such time does not include Saturdays, Sundays, or holidays.

**CHAPTER FOUR
RIGHTS OF THE PARTIES**

RULE 4.1 RIGHT TO COUNSEL

A. A defendant shall be entitled to be represented by counsel at his or her expense, or as the tribal judge may appoint, in any criminal proceeding, except in those petty offenses such as traffic violations where there is no prospect of imprisonment or confinement after a judgment of guilty. The right to be represented shall include the right to consult with counsel as soon as feasible after a defendant is taken into custody, at reasonable times thereafter, and sufficiently in advance of a proceeding to allow adequate preparation.

B. Waiver. A defendant may waive the right to counsel after the court has determined that he or she knowingly, intelligently and voluntarily desires to forego that right. A defendant may withdraw a waiver of the right to counsel at any time, but will not be allowed to repeat any proceeding already held solely on the grounds of the waiver and consequent lack of counsel.

RULE 4.2 SPEEDY TRIAL; PRIORITIES

A. The trial of criminal cases shall have priority over the trial of civil cases.

B. The trial of defendants in custody and defendants whose pretrial liberty may present unusual risks shall be given preference over other criminal cases.

C. Duty of Prosecutor. The prosecutor shall advise the court of facts relevant to determining the order of cases on the calendar.

D. Duty of Defense. The defendant and/or defendant's counsel shall advise the court of the impending expiration of time limits in the defendant's case so that trial may be set within the speedy-trial limits. As may be practical, the tribal court may move other pending trials in order to afford defendant a speedy trial. Failure to do so may result in sanctions and should be considered by the court in determining whether to dismiss an action with prejudice pursuant to Rule 4.4.

RULE 4.3 SPEEDY TRIAL; TIME LIMITS

A. All Defendants. Every person against whom a complaint has been filed shall be tried within one hundred fifty (150) days of the arrest or service of summons.

B. Defendants in Custody. If a defendant is in custody, he shall be tried within ninety (90) days of his arraignment.

C. New Trial. A trial ordered after a mistrial, upon a motion for a new trial, or upon the reversal of a judgment by the Court of Appeals shall begin within ninety (90) days of the entry of the order of the Court of Appeals.

D. Calculation of Time Limits. The calculation of the time limits prescribed by this Rule shall not include any delay caused by or on behalf of the defendant, including, but not limited to, delays caused by an examination and hearing to determine competency, the defendant's failure to attend court hearings, or his or her absence from the reservation.

E. Waiver. If Defendant is given the opportunity for a trial date within the speedy-trial limits but declines that opportunities, whether by continuing the trial date beyond the speedy-trial limits, being placed on warrant status for failure to appear in court, or by violating the defense duty to inform the court about speedy trial under rule 4.2(B), Defendant waives his right to speedy trial.

RULE 4.4 DENIAL OF SPEEDY TRIAL; DISMISSAL

If the court determines that a speedy trial time limit established by these Rules has been violated, it shall, on motion of defendant or on its own initiative, dismiss the prosecution, with or without prejudice, as justice requires.

RULE 4.5 ISSUANCE OF SUBPOENAS

A. Upon the request of any party to a case or upon the Tribal Court's own initiative, the court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence which is relevant, necessary to the determination of the case and not an undue burden on the person possessing the evidence.

B. A subpoena shall bear the signature of a Tribal Judge, and it shall state the name of the court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

RULE 4.6 SERVICE OF SUBPOENAS

A. A subpoena may be served at any place within or without the confines of the Reservation, but any subpoena served outside the Reservation shall be served by a person authorized to serve subpoenas according to the law of the jurisdiction in which the subpoena is served.

B. Except as provided in subsection A. above for the service of subpoenas outside of the Reservation, a subpoena may be served by any tribal law enforcement officer or other

person appointed by the court for such purpose. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his or her place of residence with any competent person 16 years of age or older who also resides there.

C. Proof of service of the subpoena shall be filed with the Clerk of the Court by noting on a copy of the subpoena the date, time, and place that it was served and noting the name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the subpoena.

RULE 4.7 FAILURE TO OBEY SUBPOENA

A. Upon determining that any person has failed to obey a subpoena without a justification satisfactory to the court, the court may issue an Order to Show Cause why that person should not be held in contempt of court, and a bench warrant for his or her arrest, and direct that the Order and warrant be served upon the person. Willful evasion of service of a subpoena shall be considered failure to obey a subpoena.

B. Upon the arrest of the person made the subject of the Order to Show Cause, that person shall be given the opportunity to justify to the court his or her failure to obey the subpoena. In the event that the court determines that the failure to obey the subpoena was unjustified, the court may find the person in contempt of court and sentence him or her pursuant to Title I, Section 2.17 of the Tribal Code.

**CHAPTER FIVE
DISCOVERY**

RULE 5.1 DISCLOSURE BY THE TRIBE

A. Matters relating to guilt, innocence or punishment. No later than ten (10) days after the arraignment, the prosecutor shall make available to the defendant for examination and reproduction the following material and information within the prosecutor's possession or control:

(1) The names and addresses of all persons whom the prosecutor will call as witnesses in the case-in-chief together with their relevant written or recorded statements; and

(2) All statements of the defendant and of any person who will be tried with the defendant; and

(3) The names and addresses of experts who have personally examined a defendant or any evidence in the particular case, together with the results of physical examinations and of scientific tests, experiments or comparisons, including all written reports or statements made by them in connection with the particular case; and

(4) A list of all papers, documents, photographs or tangible objects which the prosecutor will use at trial or which were obtained from or purportedly belong to the defendant; and

(5) A list of all prior convictions of the defendant which the prosecutor will use to prove motive, intent, or knowledge or otherwise use at trial; and

(6) All materials or information which tends to mitigate or negate the defendant's guilt as to the offense charged, or which would tend to reduce his or her punishment therefor, including all prior felony convictions of witnesses whom the prosecutor expects to call at trial.

B. Possible collateral issues. At the same time the prosecutor shall inform the defendant and make available to the defendant for examination and reproduction any written or recorded material or information within his possession or control regarding:

(1) Whether there has been any electronic surveillance of any conversations to which the accused was a party or of his or her business or residence; and

(2) Whether a search warrant has been executed in connection with the case; and

(3) Whether or not the case has involved an informant, and if so, his or her identity; provided, however, that disclosure of the existence or identity of an informant who will not be called to testify shall not be required where disclosure or identification would result in substantial risk to the informant or to his or her operational effectiveness, unless the failure to disclose will infringe upon the rights of the accused under the Indian Civil Rights Act.

C. Additional disclosure upon request and specification. The prosecutor, upon written request, shall disclose to the defendant a list of the prior felony convictions of a specified defense witness which the prosecutor will use to impeach the witness at trial, and make available to the defendant for examination, testing, and reproduction any specified items contained in the list submitted under Rule 5.1 A(4). The prosecutor may impose reasonable conditions, including an appropriate stipulation concerning chain of custody, to protect physical evidence produced under this section.

D. Extent of prosecutor's duty to obtain information. The prosecutor's obligation under this rule extends to material and information in the possession or control of members of his or her staff and of any other persons who have participated in the investigation or evaluation of the case and who are under the prosecutor's control.

E. Disclosure by Order of the Court. Upon motion of the defendant showing substantial need in the preparation of his or her case for additional material or information not otherwise covered by Rule 5.1, and that defendant is unable without undue hardship to obtain the substantial equivalent by other means, the court in its discretion may order any person to make it available to him. The court may, upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

F. Disclosure of rebuttal evidence. Upon receipt of the notice of defenses required from the defendant under Rule 5.2 B, the prosecutor shall disclose the names and addresses of all persons whom the prosecutor will call as rebuttal witnesses together with their relevant written or recorded statements.

RULE 5.2 DISCLOSURE BY DEFENDANT

A. Physical evidence. At any time after the filing of the complaint, upon written request of the prosecutor, the defendant, in connection with the particular crime with which he or she is charged, shall:

(1) Appear for a line-up; and

- (2) Speak for identification by witnesses; and
- (3) Be fingerprinted, palm-printed, footprinted or voiceprinted; and
- (4) Pose for photographs not involving re-enactment of an event; and
- (5) Try on clothing; and
- (6) Permit the taking of samples of his or her hair, blood, saliva, urine, or other specific materials which involve no unreasonable intrusions of his or her body; and
- (7) Provide specimens of his or her handwriting; and
- (8) Submit to reasonable physical or medical inspection of his or her body, provided such inspection does not include psychiatric or psychological examination.

Defendant shall be entitled to the presence of counsel at the taking of such evidence. This rule shall supplement and not limit any other procedures established by law.

B. Notice of defenses. Within twenty (20) days after the arraignment, or within ten (10) days after the prosecutor had made the disclosures required by this Code, whichever is the longer time, the defendant shall provide the prosecutor with a written notice specifying all defenses as to which he or she will introduce evidence at trial, including, but not limited to, alibi, insanity, self-defense, entrapment, impotency, marriage, insufficiency of a prior conviction, mistaken identity, and good character. The notice shall specify for each defense the persons, including the defendant, whom the defendant will call as witnesses at trial in support thereof. It may be signed by either the defendant or defense counsel, and shall be filed with the court.

C. Disclosures by defendant. Simultaneously with the notice of defenses submitted under Rule 5.2 B., the defendant shall make available to the prosecutor for examination and reproduction:

- (1) The names and addresses of all persons other than the defendant, whom the defense will call as witnesses at trial, together with all statements made by them in connection with the particular case; and
- (2) The names and addresses of experts to be called by the defendant at trial, together with the results of physical examinations and of the scientific tests, experiments or comparisons, including all written reports and statements, made by them in connection with the particular case; and

(3) A list of all papers, documents, photographs and other tangible objects which the defense will use at trial.

D. Additional disclosure upon request and specification. The defendant, upon written request, shall make available to the prosecutor for examination, testing, and reproduction any specified items contained in the list submitted under Rule 5.2 C (3).

E. Extent of defendant's duty to obtain information. The defendant's obligation under this rule extends to material and information within the possession or control of the defendant, and his or her defense counsel and agents.

F. Disclosure by order of the Court. Upon motion of the prosecutor showing that he or she has substantial need in the preparation of the case for additional material or information not otherwise covered by Rule 5.2, that he or she is unable without undue hardship to obtain the substantial equivalent by other means, and that disclosure thereof will not violate the defendant's rights under the Indian Civil Rights Act, the court in its discretion may order any person to make such material or information available to the prosecutor. The court may, upon request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

RULE 5.3 EXCISION AND PROTECTIVE ORDERS

A. Discretion of Court to Deny, Defer or Regulate Discovery. Upon motion of any party showing good cause the court may at any time order that disclosure of the identity of any witness be deferred for any reasonable period of time not to extend beyond five (5) days prior to the date set for trial, or that any other disclosures required by these rules be denied, deferred or regulated when it finds:

(1) That the disclosure would result in a risk of harm outweighing any usefulness of the disclosure to any party; and

(2) That the risk of harm cannot be eliminated by a less substantial restriction of discovery rights.

B. Discretion of the Court to authorize excision. Whenever the court finds, on motion of any party, that only a portion of a document or other material is discoverable under these rules, it may authorize the party disclosing it to excise that portion of the material which is nondiscoverable and disclose the remainder.

C. Protective and excision order proceedings. On motion of the party seeking a protective or excision order, or submitting for the court's determination the discoverability of any material or information, the court may permit the party to present the material or

information or the inspection of the judge outside of the presence of the jury. Counsel for all other parties shall be entitled to be present when such presentation is made.

D. Preservation of Record. If the court enters an order that any material, or any portion thereof, is not discoverable under these rules, the entire text of the material shall be sealed and preserved in the record to be made available to the Court of Appeals in the event of an appeal.

RULE 5.4 CONTINUING DUTY TO DISCLOSE

If at any time after a disclosure has been made any party discovers additional information or material which would be subject to disclosure had it then been known, such party shall promptly notify all other parties of the existence of such additional material, and made an appropriate disclosure.

RULE 5.5 SANCTIONS

If at any time during the course of the proceeding it is brought to the attention of the court that a party has failed to comply with any provisions of these discovery rules or any other issued pursuant thereto, the court may impose any sanction which it finds just under the circumstances, including, but not limited to:

- A. Ordering disclosure of the information not previously disclosed.
- B. Granting a continuance.
- C. Holding a witness, party, or counsel in contempt of court.
- D. Precluding a party from calling a witness, offering evidence, or raising a defense not disclosed.
- E. Declaring a mistrial when necessary to prevent a miscarriage of justice.

**CHAPTER SIX
TRIAL**

RULE 6.1 TRIAL PROCEDURE; EVIDENCE

A. If the parties are unable to reach agreement on a non-trial disposition of the case, the court shall set the case for trial.

B. At the time the case is set for trial, or by later motion to the court at least ten (10) days prior to trial, the parties shall advise the court of evidentiary or other issues that require a ruling by the court prior to trial. The court in its discretion may set a hearing in advance of trial to hear testimony and/or oral argument relevant to those preliminary issue(s).

C. The time and place of court sessions, and all other details of judicial procedure not determined by these Rules shall be set out in Rules of Court; provided, however, that no Rule of Court shall abridge any right granted or protected by these Rules.

D. In all trial proceedings and evidentiary hearings, the Federal Rules of Evidence shall be adopted.

RULE 6.2 JURY TRIAL

A. Any person accused of a crime for which imprisonment is specified in the Tribal Code as a possible penalty shall be granted a jury trial, upon his or her request made at the time the case is set for trial, or at least twenty (20) days before the date set for trial, whichever is later.

B. The procedures for jury selection shall be as provided in Section I-15 of the White Mountain Apache Informal Rules of Civil Procedure.

**CHAPTER SEVEN
POST VERDICT PROCEEDINGS**

[NOTE: Section 7.1 (A) amended by Ordinance No. 247, enacted December 13, 2010.]

RULE 7.1 SENTENCING

A. Any person who has been convicted of a criminal offense in the Tribal Court may be sentenced to one or a combination of the following penalties:

(1) Imprisonment for a period permitted by the Tribal Code provision specifying the punishment for the offense but only if all of the following conditions have been met may the Defendant be sentenced to imprisonment greater than One (1) Year, or a fine greater than Five Thousand Dollars (\$5,000.00) for any single offense:

(a) If the Defendant has been previously convicted of the same or a comparable offense by any jurisdiction of the United States;

(b) If the offense is comparable to an offense that would be punishable by more than One (1) Year of imprisonment if prosecuted by the United States or any of the States;

(c) If the Defendant has been provided the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution;

(d) If the Tribe, at its own expense, provides indigent Defendants the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;

(e) If the judge presiding over the criminal proceedings (i) has sufficient legal training to preside over criminal proceedings, and (ii) is licensed to practice law by any jurisdiction in the United States; and

(f) If the Tribal Code was publicly available at the time the Defendant was charged, and the proceedings have been recorded pursuant to the White Mountain Apache Tribe Judicial Code, Section 2.24(C).

(2) A money fine in an amount permitted by the Tribal Code provision specifying the punishment for the offense, and in no case greater than Fifteen Thousand Dollars (\$15,000.00) for each offense.

- (3) Labor for the benefit of the Tribe.
- (4) Rehabilitative measures.

B. Civil Restitution. In addition to or instead of the penalties provided in subsection A. above, the court may require a convicted offender who has inflicted injury upon the person or property of another to make restitution or compensate the injured person by means of the surrender of property, payment of money, or the performance of any other act for the benefit of the injured party which is reasonable related to the offense committed. Testimony of the victim shall be considered in the determination of the appropriate disposition under this section.

C. Pre-sentence Reports. In determining the appropriate sentence, the judge may consider pre-sentence reports prepared by the parties, testimony of the victim, and any other factors which the judge deems relevant.

D. Indigency. If, solely because of indigency, a convicted offender is unable to pay forthwith a money fine assessed under this section, the court shall allow him or her a reasonable period of time to pay the entire sum or allow him or her to make reasonable installment payments to the court at specified intervals until the entire sum is paid. If the offender willfully defaults on such payments, the court may find the offender in contempt of court and imprison him or her accordingly.

E. Pardon. The Chairman of the Tribal Council may, in his discretion, grant a reprieve, pardon, and commutation, after sentence, except in the case of a person convicted twice of the same offense. The Chairman shall report to the Tribal Council each reprieve, pardon, and commutation granted, stating the pertinent facts and the reasons for granting it.

RULE 7.2 PROBATION; REVOCATION

A. Where a sentence of imprisonment or a fine has been imposed on a convicted offender the Tribal Court may, in its discretion, suspend the serving of such sentence or payment of such fine and release the person on probation under any reasonable conditions deemed appropriate by the court.

B. Any person who violates the terms of his or her probation may be required by the court to serve the sentence or pay the fine originally imposed or such part of it as the court may determine to be suitable giving consideration to all the circumstances; provided, that such revocation of probation shall not be ordered without a hearing before the court at which the offender shall have the opportunity to explain his or her actions.

RULE 7.3 PAROLE; REVOCATION

A. Any person sentenced by the court to detention or labor shall be eligible for parole only after serving at least two thirds of his or her sentence, at such time and under such reasonable conditions as are set by the court.

B. Any person who violates the conditions of his or her parole may be required by the court to serve the whole of the original sentence, provided that such parole revocation shall not be ordered without a hearing before the court at which the offender shall have the opportunity to explain his or her actions.

RULE 7.4 MOTION FOR NEW TRIAL

A. Power of the Court. When the defendant has been found guilty by a jury or by the court, the court on motion of the defendant, or on its own initiative with the consent of the defendant, may order a new trial.

B. Timeliness. A motion for a new trial shall be made not later than ten (10) days after the verdict has been rendered.

C. Grounds. The court may grant a new trial for any of the following reasons:

(1) The verdict is contrary to law or to the weight of evidence; or

(2) The prosecutor has been guilty of misconduct; or

(3) A juror or jurors have been guilty of misconduct; or

(4) The court erred in the decision of a matter of law, or in the instruction of the jury on a matter of law to the substantial prejudice of a party; or

(5) For any other reason not due to his own fault the defendant has not received a fair and impartial trial.

RULE 7.5 APPEAL BOND

A. At the time of sentencing, the trial court may fix the amount of bond to be posted in the event an appeal is filed, or may specify that the appeal may be taken on the defendant's own recognizance, or may deny bail. In a case in which the defendant has been sentenced to jail time, determination of the amount of bond, conditions of release, or denial of release shall be based upon a new evaluation of the case pursuant to Rules 3.12 and 3.13 of these Rules. After conviction, the burden of establishing that the defendant will not flee or pose a danger to the community rests with the defendant.

B. Execution of the sentence shall be stayed pending appeal when the defendant posts an appeal bond in accordance with the order of the trial court, or when the appeal is taken on the defendant's own recognizance.

C. If the trial court does not allow the appeal to be taken while the defendant is on his own recognizance, or determines that the defendant be held without bond, the defendant may petition the Court of Appeals, at any time after the entry of the order of the trial court setting a bond, or denying release, to stay the execution of sentence and to allow the defendant to be released upon his or her own recognizance or to set a bond, or to otherwise modify conditions of release. If the Court of Appeals denies the requested relief, the appeal may be taken, but the execution of sentence shall not be stayed until the defendant has met the conditions established by the trial court.

D. Any defendant in custody during the appeal shall receive the same benefits in the computation of the sentence as if no appeal had been taken.

E. Failure of defendant to prosecute the appeal shall result in revocation of release and execution of the sentence.