

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

- WHEREAS, the Tribal Council of the White Mountain Apache Tribe is a federally recognized Indian Tribe organized under the Indian Reorganization Act of 1934, 25 U.S.C. 476, et seq., and
- WHEREAS, the White Mountain Apache Tribal Council pursuant to 25 U.S.C. §476, enacted the White Mountain Apache Amended Constitution and By-Laws which were approved by the United States Secretary of the Interior on May 29, 1958, and
- WHEREAS, once so approved, said Constitution and By-Laws became law, and
- WHEREAS, Section 21.1 of the White Mountain Apache Law and Order Code, adopted pursuant to Article V, Section 1, paragraph (g) of the Constitution entitled "jurisdiction" declares, inter alia, that the Tribal Court of the White Mountain Apache Tribe shall have jurisdiction over all civil suits wherein an Indian or a member of the White Mountain Apache Tribe is a party, and
- WHEREAS, Section 11.1(4) and (6) of the White Mountain Apache Law and Order Code defines "Indian" and "Person" respectively, to mean and include where relevant, an unincorporated association, such as the White Mountain Apache Tribe, and
- WHEREAS, the White Mountain Apache Tribe is an "Indian" and Person within the meaning of Section 21.1, 21.2, 11.1 (4) and (6) of the Law and Order Code of the White Mountain Apache Tribe, and
- WHEREAS, the White Mountain Apache Tribe is not an entity separate and apart from its members, nor a corporation pursuant to 25 U.S.C. §476, et seq., but rather is an unincorporated association, and
- WHEREAS, the United States Supreme Court in Wilson v. Omaha Indian Tribe, 442 U.S. 653, 612. Ed2d 153, 99 S. Ct. 2529 (1979) and other Federal Courts and statutes have held that an Indian Tribe is an Indian and that the term "Indian" importing the singular includes and applies to several persons and parties, and

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Fort Apache Indian Agency  
Whittier, Arizona

WHEREAS, the Tribal Council has been advised that the United States District Court for the District of Arizona in Tucson, Arizona in a criminal proceeding entitled United States of America v. Kayle Adams, CR 80-202-GLO-JAW, has dismissed the indictment against defendant Kayle Adams on the grounds that the White Mountain Apache Tribe was an entity separate and apart from its members, and did not qualify as an Indian within the meaning of Sections 21.1 and 21.2 of the White Mountain Apache Law and Order Code, which confers jurisdiction, and

WHEREAS, the Tribal Council of the White Mountain Apache Tribe has been advised and therefore has reason to believe that on occasion the Federal Courts and State Courts have failed to recognize and are apt to fail to recognize and respect in the future the sovereignty and comity rightfully due the Tribal Court of the White Mountain Apache Tribe and the provisions, Ordinances, and Rules of Procedure of the Law and Order Code of the White Mountain Apache Tribe, and

WHEREAS, the Tribal Council finds it necessary because of this lack of comity and respect for its duly enacted Law and Order Code and the relevant interpretations thereof regarding jurisdiction, to amend the sections pertaining to jurisdiction so as to clarify for non-tribal courts the meaning of the word "Indian" and "person" as used in Sections 21.1, 21.2, 11.1(4) and (6) of the White Mountain Apache Law and Order Code,

BE IT RESOLVED that the Tribal Council hereby enacts the following amendments by Ordinance No. 118 to the White Mountain Apache Tribe Law and Order Code in the form and text as attached and incorporated by reference herein.

The foregoing resolution was on February 17, 19 81, duly adopted by a vote of 10 for and zero against by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article V, Section 1 (i) 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).

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Fort Apache Indian Agency  
Whittier, Arizona

Lynne Cady  
Chairman of the Tribal Council

Mary L. Enfield  
Secretary of the Tribal Council

PROPOSED ORDINANCE AMENDING  
SECTIONS 11.1(4) and (6), 21.1, and 21.2 OF  
THE WHITE MOUNTAIN APACHE LAW AND ORDER CODE

BE IT ENACTED by the White Mountain Apache Tribal Council,  
that sections 11.1(4) and (6), 21.1 and 21.2 of  
the White Mountain Apache Law and Order Code,  
be amended by Ordinance No. \_\_\_\_\_ to read as  
follows:

CHAPTER I

Part 1. Definitions

SECTION 11.1

In this code, unless the context otherwise requires:

- (1) "Adult" shall mean a person who is 18 years of age or older.
- (2) "Code", "law and order code", or "tribal code" shall mean the Law and Order Code of the White Mountain Apache Tribe, as adopted by the Tribal Council.
- (3) "Council" or "Tribal Council" shall mean the White Mountain Apache Tribal Council duly assembled.
- (4) "Indian" shall mean any person of Indian descent who is a member of any recognized Indian Tribe under Federal jurisdiction. The word "Indian", as used in this code, importing the singular includes and applies to several persons, or parties.
- (5) "Non-Indian" shall mean a person who is not an Indian.
- (6) "Person" shall mean a natural person, Indian or Non-Indian, and where relevant, a corporation, partnership, or unincorporated association, such as the White Mountain Apache Tribe.
- (7) "Property" shall mean both real and personal property.
- (8) "Reservation" shall mean the area within the exterior boundaries of the Fort Apache Indian Reservation.
- (9) "Tribal Judge" shall mean the Chief Judge of the Tribal Court of the White Mountain Apache Tribe or an Associate Judge.
- (10) "Visiting Judge" shall mean a judge of another Indian Tribe, a former judge of the White Mountain Apache Tribe, a state court judge, or a justice of the peace who has been designated by the Chief Judge of the Tribal Court to hear and determine a case.

## CHAPTER II

### Part 1. Civil Actions

#### SECTION 21.1 Jurisdiction

The Tribal Court of the White Mountain Apache Tribe shall have jurisdiction over all civil suits wherein an Indian or a member of the White Mountain Apache Tribe or the White Mountain Apache Tribe is a party. In cases of divorce, the Tribal Court shall have jurisdiction where either the plaintiff or defendant is an Indian who is a bona fide resident of the Fort Apache Indian Reservation.

#### SECTION 21.2 Acts submitting to Jurisdiction; Process

- A. Any person, whether or not a member of the White Mountain Apache Tribe or a resident of the Fort Apache Indian Reservation, who in person or through an agent commits any of the acts herein-after enumerated, thereby submits such person, and, if an individual his personal representative, to the jurisdiction of the White Mountain Apache Tribe as to any cause of action arising from the doing of such acts:
- (1) the transaction of any business within the reservation;
  - (2) the commission of a tortious act within the reservation;
  - (3) the use or possession of any real estate situated within the reservation;
  - (4) contracting to insure any person, property or risk located within the reservation at the time of contracting;
  - (5) Contracting with a resident member of the White Mountain Apache Tribe or the White Mountain Apache Tribe for the sale or purchase of any goods or ~~merchandise~~ services knowing such contract is to be performed on or from within the Fort Apache Indian Reservation.
- B. Service of process upon any person who is subject to the jurisdiction of the Courts of the White Mountain Apache Tribe, as provided in this section, may be made by personally serving the summons upon the defendant outside this reservation with the same force and effect as though summons had been personally served within the reservation.
- C. Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.

E.

This section shall not be construed to extend the jurisdiction of the Tribal Court to suits wher no party to the case is an Indian or a member of the Tribe or the White Mountain Apache Tribe itself.