

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

WHEREAS, the Tribal Council this date has reviewed the proposed White Mountain Apache Judicial Code; and

WHEREAS, the Tribal Council wishes to amend the proposed Judicial Code as follows:

SECTION 2.2 BASES FOR JUDICIAL DETERMINATIONS
OF LAW

G. In deciding any matter of tribal common law which involves consideration of tribal custom, the Tribal Court shall determine the custom primarily by reference to the Journal of the ~~Council of Elders~~ Apache Custom Advisory Panel, but may consider such other sources of information as the judge deems necessary under the circumstances, including the judge's own personal knowledge of tribal custom. In the case of a custom not yet discussed in the Journal of the ~~Council of Elders~~ Apache Custom Advisory Panel, the Tribal Court shall determine the relevant custom in the manner prescribed by Section 2.3B.

SECTION 2.3 DETERMINATION OF TRIBAL CUSTOM;
~~COUNCIL-OF-ELDERS~~ APACHE CUSTOM
ADVISORY PANEL; JOURNAL

A. Establishment and Function.

In order that the ancient wisdom, teachings, and ways of the White Mountain Apache people may live on and continue to guide the people in their daily lives, there shall be established ~~a Council of Elders~~ an Apache Custom Advisory Panel, whose functions it shall be:

B. Use of Journal.

The Journal of the ~~Council of Elders~~ Apache Custom Advisory Panel shall be used by the Tribal court in its determination of the custom ~~element~~ aspect of questions of Tribal common law. The Journal shall be presumed to be an accurate statement of tribal custom, but since the facts of each case are likely to present questions which were not specifically addressed by the ~~Council of Elders~~

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Apache Custom Advisory Panel, the Court may consider such other sources of information as it deems necessary to determine the applicable tribal custom.

C. Determining custom questions not addressed in the Journal; alternatives: ~~Panel-of-Elders~~, Apache Custom Advisory panel-of-custom-experts.

(1) ~~Panel-of-Elders~~ Apache Custom Advisory Panel; voluntary binding consultation. If in a particular case there arises a question of custom which has not been addressed in the Journal of the ~~Council-of-Elders~~ Apache Custom Advisory Panel, the parties may, if they so choose, agree to the appointment of ~~a-Panel-of~~ any three members of the ~~Council-of-Elders~~ Apache Custom Advisory Panel to hear the facts of the case and decide the question. Once such a Panel announces their decision of that question their decision is final for that case. In arriving at its final decision in the case, the Court shall apply the custom as determined by the Panel.

(2) The decision of ~~a-Panel-of-Elders~~ the Apache Custom Advisory Panel members on a particular question of custom in an individual case shall not be determinative of any case other than the one for which the determination was made; provided, however, that if such a case is appealed, the decision of the Court of Appeals shall have the same binding precedent effect as would any other Court of Appeals decision.

(3) Panel of custom experts. If the parties cannot or choose not to agree to the selection of three members of the ~~Council-of-Elders~~ Apache Custom Advisory Panel to form a ~~Panel of-Elders~~ for their case, the parties may each provide to the Court one person whom they believe to be an expert on matters on tribal custom, and those two experts shall select a third person to complete a panel of custom experts to advise the Court. The court shall consider the advise of the members of the Panel of Custom Experts, and any other information it deems necessary, and shall decide the custom question accordingly.

(4) The parties may agree to the use of fewer than three ~~Elders~~ members of the Apache Custom Advisory

Panel or custom experts in their case, or they may agree that the court may decide the question of custom without the advise of ~~Elders~~ the Advisory Panel or experts, or they may agree to any other method of resolving the question of custom. If the parties are unable to agree on any method of resolving a custom question which has not been addressed in the Journal of the ~~Council-of-Elders~~ Apache Custom Advisory Panel, the Court shall choose any of the methods, or any combination of the methods, described in this section, 1.9B, to resolve the question.

D. Appointment of ~~Council-of-Elders~~ Apache Custom Advisory Panel.

(1) Each member of the Tribal Council shall appoint one person to the ~~Council-of-Elders~~ Apache Custom Advisory Panel to represent his or her district. A member of the ~~Council-of-Elders~~ Apache Custom Advisory Panel shall be a person who is respected in his or her community as one who is wise, honest, ethical, and especially knowledgeable about human relations and White Mountain Apache culture, including language, history, teachings, tradition, values, and customs.

(2) Members of the ~~Council-of-Elders~~ Apache Custom Advisory Panel shall serve for life, or until they resign or are unable to serve.

(3) Members of the ~~Council-of-Elders~~ Apache Custom Advisory Panel are entrusted with the sacred duty of preserving the White Mountain Apache culture, and as such, subsection (2) notwithstanding, may be removed from the ~~Council-of-Elders~~ Panel by a two-thirds vote of the Tribal Council for any unethical or illegal activity which indicates a breach of that trust.

E. Expenses and Compensation.

(1) Members of the ~~Council-of-Elders~~ Apache Custom Advisory Panel shall be reimbursed by the Tribal Council for their necessary expenses while serving at meetings of the ~~Council-of-Elders~~ Panel and shall be compensated for their contribution to the preservation of White Mountain Apache culture in an amount to be determined by the Tribal Council from time to time.

(2) When members of the ~~Council of Elders~~ Apache Custom Advisory Panel or expert custom witness participate on a Panel or act alone to advise the Tribal Court on a matter of custom in an individual case, the parties to the case shall provide their reimbursement for expenses and their compensation.

SECTION 2.11 MULTIPLE TERMS

Any person holding a position of Tribal Court Judge may be ~~re-elected~~ reappointed to that office.

SECTION 2.12 FORFEITURE & 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:

(2) Conviction of any offense involving moral ~~turpitude~~ integrity in any Court. The following crimes and no others shall be considered crimes involving moral ~~turpitude~~ integrity: adultery, bribery, embezzlement, extortion, fraud, forgery, perjury, theft, and drunk and disorderly conduct;

(3) Seeking election to the office of Chairman, Vice-Chairman, or Council Member. The term of any Judge who must forfeit his position under this section shall end:

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 10 (ten) days before the meeting.

SECTION 2.14 COMPENSATION; EXPENSE REIMBURSEMENT

B. Expenses, including costs for food, travel and lodging, which are incurred by a Tribal Court or Visiting Judge in the performance of judicial duties shall be reimbursed by the Tribe on a per diem bases, at a rate established by the Tribal-Council Tribal Court and approved by the Tribal Council.

~~C.---Whenever-a-White-Mountain-Apache-Tribal Judge-serves-as-a-visiting-Judge-in-any-other Court,-the-time-spent-acting-in-such-capacity-shall not-be-considered-as-annual-or-administrative-leave time,-but-shall-be-considered-as-compensable-time, and-the-judge-shall-be-compensated-for-the-service as-such-by-the-White-Mountain-Apache-Tribe,-unless he-or-she-is-compensated-for-such-service-by-the Court--for-which-the-service-is-provided.---The tribal-judge-shall-be-reimbursed-by-the-Tribe-on-a per-diem-basis,-at-a-rate-established-by-the-Tribal Council,-for-expenses,-including-costs-for-food, travel-and-lodging,-which-are-incurred-in-the performance-of-duties-as-a-visiting-judge,-unless he-or-she-is-reimbursed-for-such-expenses-by-the Court--for-which-the-service-is-provided.---This section-shall-not-be-construed-to-mean-that-a-White Mountain-Apache-Judge-acting-as-visiting-judge-in another-court-is-acting-on-behalf-of-the-White Mountain-Apache-Tribe;-any-duties-performed-in-such capacity-are-performed-selely-as-an-agent-of-the Court-on-which-the-visiting-judge-is-sitting-~~

SECTION 2.17 STANDARD OF CONDUCT OF JUDGES

A. Contacts Outside Court

(4) A Judge shall avoid any communication with members of the Tribal Council in respect to any pending litigation before the Tribal Court, unless the Tribal Council Member has been ordered to testify or appear in Tribal Court by court order, subpoena or as a witness for one of the parties to the litigation.

B. Ex Parte Contact. Except as authorized by Tribal law, a Judge shall not discuss any matter which is or may be before the Court with a party to such matter or that party's counsel, unless the opposing party or his or her counsel is also

present. This prohibition applies both in and out of Court.

SECTION 2.21 COURT SESSIONS

B. Sessions of the Juvenile Court shall be held in the Juvenile Court ~~at--Fort--Apache~~ on weekdays during regular working hours, or in exceptional circumstances, at such other reasonable places, days, and times as the Juvenile Court Judge may designate.

SECTION 2.22 OFFICERS OF THE COURT

E. members of the ~~Council-of-Elders~~ Apache Custom Advisory Panel acting in their official capacity;

SECTION 2.25 REPRESENTATION BEFORE THE TRIBAL COURT

C. Except for the White Mountain Apache Tribe, and its departments and subentities, and its officers and agents acting in their official capacities, no person shall be represented in Court in a civil case by counsel unless all other parties to the action are either represented in Court by counsel, or have given their consent to all other parties being represented. All associations, corporations, and other legal entities which are not natural persons, and are therefore not capable of appearing other than through a representative, shall, if prohibited under this section from appearing in Court through counsel, appear through an officer or employee designated by the organization. This section shall not be construed to prohibit any person from obtaining the assistance of licensed counsel to any extent that does not involve the appearance of counsel in Court.

SECTION 2.26 LICENSES TO PRACTICE LAW; FEES: ROLL OF COUNSEL; STANDARDS OF CONDUCT

B. The Chief Judge of the Trial Court shall establish standards and procedures for the licensing of attorneys and lay advocates, and the granting of petitions of non-member 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 such 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. 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. Any person granted a license to practice law in the Tribal Court thereby becomes a member of the Tribal Court Bar.

;and


WHEREAS, the Tribal Council hereby approves the amendments to the proposed Judicial Code as set forth herein.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby approves the proposed amendments to the Tribal Judicial Code as set forth herein.

BE IT FURTHER RESOLVED by the Tribal Council that it hereby directs the Tribal Council Secretary to post for public comment the proposed amendments to the White Mountain Apache Judicial Code.

The foregoing resolution was on January 15, 1987, duly adopted by a vote of TEN for and ZERO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1 (i,q) of the Amended Constitution and Bylaws 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).


ACTING Chairman of the Tribal Council


Secretary of the Tribal Council