



WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

(Approving Posting of Ordinance No. 261, Amending the Domestic Relations Code of the White Mountain Apache Tribe)

WHEREAS, pursuant to Article IV, Section 1(q) of the Tribal Constitution, the Tribal Council may enact ordinances 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, the Office of the Attorney General has this day proposed revisions to the Domestic Relations Code as set forth in Ordinance No. 261 attached hereto; 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 Ordinance No. 261 carefully, and considered the recommendations and the implications thereof in great detail and finds the posting of Ordinance No. 261 to be in the best interest of the Tribe.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that proposed Ordinance 261 attached hereto, which amends the Domestic Relations Code, is hereby recommended for posting by the Tribal Council.

BE IT FURTHER 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 this resolution and Ordinance No. 261, in each district for at least ten (10) days before final action by the Council. In addition, notices of the proposed ordinance shall be sent in the form of a press release to KNNB-FM and the Apache Scout.
2. Any and all comments concerning Ordinance No. 261 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 as well as the Attorney General's Office and to report any public comments to the Tribal Council, and schedule a meeting thereof for final action.

Resolution No. 07-2015-128

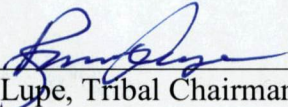
Ordinance No.261

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 any material facts concerning the issues presented are later found to be false, this Resolution shall be deemed null and void and have no legal effect.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Chairman, or in his absence, the Vice-Chairman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution.

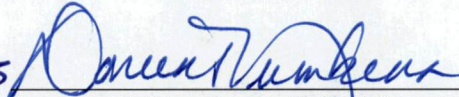
The foregoing resolution was on JULY 8, 2015 duly adopted by a vote of NINE for, ZERO against, and ONE abstention by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it under the enumerated powers listed in Article IV, Section 1 of the WMAT Constitution, so ratified on September 30, 1993, and federally recognized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).



Ronnie Lupe, Tribal Chairman

7/29/15

Date



Doreen T. Numkena, Tribal Secretary

7-29-2015

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. 261, amending White Mountain Apache Domestic Relations Code as follows:

DOMESTIC RELATIONS CODE

~~Historical~~ Note: Except as otherwise noted, the Domestic Relations Code is derived from Ordinance 96, enacted May 1, 1974; amended in 1987 by Resolution Nos. 01-1987-31 and 02-1987-61; and amended by Ordinance No 261, enacted _____.

**CHAPTER ONE
MARRIAGE AND DIVORCE**

SECTION 1.1 MARRIAGES

The White Mountain Apache Tribal Court may issue marriage licenses to proper persons, one of whom is a member of the Tribe, or a member of a federally recognized ~~Tribe, such marriage licenses to be recorded in the County.~~ Any ~~Tribal custom~~ traditional marriage not so licensed shall not be recognized as valid. The Trial Court is hereby authorized and instructed to issue marriage certificates to all these persons known to be living together as husband and wife previous to August 26, 1938. Marriage certificates issued shall become a matter of record in the Trial Court, copies of which shall be furnished to the Agency and Tribal Council Secretary.

SECTION 1.2 RECORDING OF MARRIAGES AND DIVORCES

All Indian marriages and divorces, whether consummated in accordance with ~~s~~State laws, or any legal agency having authority to issue marriage and divorce certificates, or in accordance with Tribal law, shall be recorded within thirty (30) days with the White Mountain Apache Tribal Court and copies shall be furnished to the Agency office by the Court.

SECTION 1.3 MARRIAGE

Marriage is a personal relation arising out of civil contract, to which the consent of parties capable of making it is necessary. Consent alone will not constitute marriage but must be followed by a solemnization.

SECTION 1.4 SOLEMNIZATION OF A MARRIAGE

A marriage may be solemnized by any recognized clergyman or other official

authorized to perform the ceremony by the laws of the State of Arizona, or the laws of the White Mountain Apache Tribe pursuant to Section 1.16 of this Code, but only after issuance of a license.

SECTION 1.5 MARRIAGE LICENSE

A. Any resident of the Fort Apache Indian Reservation, eligible by age and otherwise, as hereinafter provided may obtain a marriage license in conformity with State Law or the laws of the White Mountain Apache Tribe from the Court, and such marriages consummated by authority of such license shall be legal in every respect in the ~~State of Arizona~~ United States. A fee set by the Tribal Court shall be paid upon the issuance of a marriage license.

B. Persons under eighteen (18) years of age are to be considered minors; and whenever parents or guardians give consent to the marriage between minors, the parents or guardians shall appear before, and execute and file with the Court a form titled, "*Consent to Marriage of Minor*", and he or she thereby assumes the responsibility, in part, to provide for the minors and children born until the minor parents come of age. The assumption of this responsibility is included in the written consent.

C. A marriage license must not in any case be granted where either party is under age necessary to render the marriage absolutely valid, without previous consent of the parent or guardian of such minor, nor shall a marriage license be issued to divorcees until six (6) months after the issuance of the divorce decree.

D. ~~A certificate of health from a recognized physician of the United States Indian Service or any licensed practitioner certifying that the applicant is free from infectious and communicable diseases, shall be filed by the applicant with the Clerk of the Court at the time application is made for marriage license and no license shall be issued in the absence of a health certificate. In case a health certificate is not available and the case justifies, the Court may order the issuance of a marriage license. The marriage must be solemnized before the expiration of the marriage license.~~

SECTION 1.6 PROHIBITED VOID MARRIAGES

Marriages between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters, of the one-half as well as the whole blood, and between uncles and nieces, aunts and nephews, and between first cousins or within the maternal clan are incestuous and void.

SECTION 1.7 WITNESSES

A marriage ceremony shall be performed in the presence of at least two (2) witnesses of lawful age, and a certificate of such marriage shall be signed by at least two (2) witnesses which shall be returned by the person performing the marriage to the White

Mountain Apache Tribal Court (for recording) within a period of ten (10) days.

SECTION 1.8 CEREMONIAL MARRIAGE - ONLY RECOGNIZED

A marriage may not be performed by agreement without a marriage ceremony, and no marriage performed within this jurisdiction is valid unless a license be issued as herein provided and the marriage solemnized according to the laws of the ~~State in which it was performed~~ White Mountain Apache Tribe and a record of same filed with the White Mountain Apache Tribal Court.

SECTION 1.9 ANNULMENT OF MARRIAGE

The Court may dissolve a marriage and may decree the marriage to be null and void for any of the following causes existing at the time of the marriage:

- (1) A. ~~Where~~ the case shall be an impediment rendering such contract void~~;~~.
- (2) B. ~~That~~ the party ~~is~~ on whose behalf it is sought to have the marriage annulled was under the age of consent, and such marriage was contracted without the consent of his or her parents or guardian or person having charge of him or her, unless after attaining the age of consent such party for any time freely cohabited with the other as husband and wife~~;~~.
- (3) C. ~~The~~ husband and wife of either party is living and the marriage with such former husband or wife was then in force~~;~~.
- (4) D. ~~That~~ the consent of either party was obtained by fraud unless such party after wards freely cohabited with the other as husband and wife having knowledge of such fraud.

SECTION 1.10 DIVORCE

The Court may grant or issue a divorce from the bonds of matrimony in any of the following cases~~;~~, ~~Provided;~~ that after a divorce has been granted the parties thereto may not marry until six (6) months after the issuance of the divorce decree:

- (1) A. ~~When~~ adultery has been committed by either party.
- (2) B. ~~When~~ one of the parties was declared physically or mentally incompetent by a physician ~~at the time of~~ prior to the marriage and the same has continued to the time of the commencement of the divorce action.
- (3) ~~when one of the parties has been convicted of a felony and sentenced to imprisonment therefor and has not been convicted on the testimony of the other party, but such action may not be brought until one year after the final judgment of the~~

~~conviction; a pardon shall not be a defense to such action.~~

~~(4)~~ C. ~~When either party has willfully deserted the other; or for the habitual intemperance of either party.~~

D. For the habitual intemperance of either party.

~~(5)~~ E. ~~Where the husband or wife is guilty of cruel treatment or outrages toward the other, whether by the use of personal violence or other means.~~

~~(6)~~ F. ~~When either has neglected to provide the other party or family with the common necessities of life, having the ability to provide the same, or failing to do so by reason of his or her idleness, or dissipation.~~

~~(7)~~ G. ~~Prior to the marriage either party shall have been convicted of a felony or infamous crime in any state or country without the knowledge of the other party of such fact at the time of such marriage.~~

~~(8)~~ H. ~~In favor of the husband when the wife at the time of the marriage was pregnant by a man other than the husband, and without the husband's knowledge at the time of such marriage.~~

~~(9)~~ I. ~~Irreconcilable incompatibility or differences.~~

SECTION 1.11 PROCEDURE FOR ANNULMENT OR DIVORCE

A. Any person applying for annulment or divorce shall deposit with the Tribal Court a fee set by the Court at the time of the action. In case the defendant files a cross complaint, the ~~e~~Court may require the defendant to pay into the ~~e~~Court a fee of like amount. Fees may be waived upon proof of indigency satisfactory to the Court.

B. The complaining party shall file with the ~~e~~Court a verified complaint stating concisely his or her cause for action and thereupon the Court shall issue a summons in the name of the Tribal Court, to the defendant apprising him or her of the pendency of action and the summons shall concisely state the grounds upon which annulment or divorce is asked.

C. The summons when issued, together with the copy of the complaint shall be delivered to any authorized officer of the Court for service. ~~The officer shall report to the Court showing time of service of the summons.~~ Service of process shall be effectuated in accordance with the Rules of Civil Procedure, Chapter Three, Part II, Rule 4.

~~D. In case the service cannot be made upon the reservation, the summons together with a copy of the complaint shall be forwarded to the superintendent of the~~

~~reservation or law enforcement officers where the defendant is enrolled or found to be residing and there served or if outside any reservation by service of process in accordance with the Rules of Civil Procedure.~~

~~E. If the service cannot be made personally either under the jurisdiction of the Tribal Court, or on the reservation where the defendant is enrolled or residing, or in accordance with Section 1.11(D), a return shall be made to the Court showing said facts; thereupon the Court shall cause to be filed with the Court and at the Agency a copy of the summons and complaint. A copy of the summons and complaint shall be mailed by Certified Mail to the last known post office address, and service shall be deemed complete 30 days after filing said summons and complaint. The defendant shall have 30 days in which to answer the complaint from the time of the completed service. If the defendant fails to appear and answer within the time required, the case may be heard by the Judge of the Court at any time thereafter; but if the defendant answers the summons, then the trial action shall be placed on the calendar by the clerk and tried by the Court.~~

~~F~~D. The ~~e~~Court shall thereupon make and enter findings of facts and conclusions of law, and issue the decree signed by the Chief Judge or Associate Judge which shall be effective from date of signature.

SECTION 1.12 LEGITIMACY OF CHILDREN NOT AFFECTED

A divorce shall not affect the legitimacy of the children.

SECTION 1.13 PERMANENT ALIMONY, CUSTODY OF CHILDREN AND COST

A. In the final decree of divorce the ~~e~~Court may, in addition to the division of the common property of the parties, direct either party to pay the other such amounts as may be necessary for the support and maintenance of the other party and the minor children of the parties. The custody of the children may be awarded to the wife or husband as may be necessary or proper, and the Court may decree that alimony may be paid in one sum or installments, and in such decree or decree of annulment of the marriage the Court may make such disposition of and provision for their minor children, as shall be most expedient under all circumstances for their present comfort and future well being.

B. The ~~e~~Court may assess the cost to either or both parties of the suit, and may in the decree change the name of the wife if especially asked for in her pleadings.

SECTION 1.14 MODIFICATION OF JUDGMENT AFFECTING ALIMONY AND SUPPORT OF MINOR CHILDREN

The Court may, from time to time, after the entry of the final decree or on petition of either party, amend, revise and alter such portions of the decree as relate to the payment of money for the support and maintenance of either party or the support of their

children, as may be just, and amend, change, or alter any provision therein respecting the care, custody, or maintenance of the children of the parties as the circumstances of the parents and the welfare of the children may require.

SECTION 1.15 **DETERMINATION OF PATERNITY AND SUPPORT**

The Tribal Court shall have jurisdiction of all suits brought to determine the paternity of a child and to obtain the judgment for the support of the child. A judgment of the Court establishing the identity of the father of the child shall be conclusive of the fact in all subsequent determinations of inheritance by the Court.

SECTION 1.16 **THOSE AUTHORIZED TO OFFICIATE AT A WEDDING**

A. The following are authorized to solemnize marriages between persons who are authorized to marry:

1. Duly licensed or ordained clergymen.
2. Judges of courts of record.

B. For the purposes of this Section, "licensed or ordained clergymen" includes ministers, elders or other persons who by custom or tradition, or rules and regulations of a religious society or sect are authorized or permitted to solemnize marriages or to officiate at marriage ceremonies.

SECTION 1.17 **RECORDING LICENSES**

A. The clerk of the Tribal Court shall maintain a record of all marriage licenses issued.

B. The person solemnizing the rites of matrimony shall endorse the act of solemnization on the license and shall return the license to the clerk within thirty (30) days after the solemnization. The returned marriage license shall be recorded by the clerk.

C. If the marriage license is lost before the endorsement of solemnization, the persons who wish to marry shall reapply to the Court for a marriage license and pay a fee pursuant to Section 1.5.

D. If the license that bears the endorsement of solemnization is lost, the clerk shall issue a replacement license that must be signed by the person who solemnized the marriage, the persons married and two of the witnesses to the marriage ceremony. The signed replacement license shall be returned to the clerk who shall record the license. If the persons married are unable to obtain all of the required signatures, either of them or their representative may

apply to the Court for an Order to authorize the issuance of a duplicate endorsed marriage license. The application shall be by a sworn statement that describes the circumstances of the marriage ceremony and that contains the notarized signatures of the applicant and, if possible, both persons married, the person who solemnized the marriage and at least two (2) witnesses to the marriage ceremony. If the application is submitted by a representative, the Court shall determine if the representative is an appropriate requesting party. Pursuant to a Court order, the clerk shall issue and record a duplicate endorsed marriage license.

Form No. 1

WHITE MOUNTAIN APACHE TRIBAL COURT

~~State of Arizona~~

APPLICATION FOR MARRIAGE LICENSE

IN THE MATTER OF THE APPLICATION OF)
)
_____))
)
and _____))
)
_____)

FOR A LICENSE TO MARRY

Fort Apache Indian Reservation)
County of Navajo) ss.
State of Arizona)

The undersigned, being first duly sworn, upon his (her) oath does declare, depose and certify: that _____ (Name in Full), is his (her) true name; that his (her) date of birth is _____, that he (she) is a resident of _____ (Town, County and State), that he (she) is not related to _____ (husband or wife), by blood or clan, and that he (she) has not been granted a divorce by any Court within the period of six (6) months.

(Signature of Applicant)

Subscribed and sworn to before me, this _____ day of _____, 1920.

(Tribal Court)

By: _____

(SEAL)

Book: _____
Page: _____

Form No. 2

WHITE MOUNTAIN APACHE TRIBAL COURT

~~State of Arizona~~

MARRIAGE LICENSE

To any regularly licensed or Ordained Minister of the Gospel, or any Justice of the Peace within this County:

You are hereby authorized to solemnize the

rites of matrimony

Between

~~of~~ and

County, Arizona, and endorse the name on this License and make return thereof to this office according to Tribal law, which provides that recording shall be made within a period of ten (10) days.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this ____ day of _____, ~~19~~20.

(SEAL)

(Clerk of the Court)

By: _____

(Fill out in duplicate)