



# **WHITE MOUNTAIN APACHE TRIBE**

A Sovereign Tribal Nation

**(Enactment of Ordinance No. 277, Amending Rules 1.4, 2.5, 3.9, 3.11, 3.19, 4.3, 5.1, 5.2, 6.1, 7.3 and 7.6 of the Rules of Criminal Procedure of the White Mountain Apache Tribe)**

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**WHEREAS,** the Tribal Council of the White Mountain Apache Tribe ("Tribe") is entrusted by the Tribe's Constitution, Article IV, Section 1(q) to act in all matters that concern the welfare of the Tribe, including but not limited to, the amendment of codes through the adoption of ordinances; and

**WHEREAS,** Ordinance No. 277 proposed changes to Rules 1.4, 2.5, 3.9, 3.11, 3.19, 4.3, 5.1, 5.2, 6.1, 7.3 and 7.6 of the Rules of Criminal Procedure; and

**WHEREAS,** on June 3, 2015 the Tribal Council authorized the posting of Ordinance No. 277 in Resolution No. 06-2015-106, pursuant to Article XV of the Constitution of the White Mountain Apache Tribe and it was posted on June 9, 2015. Since that time, the Office of the Tribal Council Secretary has received no comments regarding the proposed changes; and

**WHEREAS,** the Council has reviewed Ordinance No. 277 carefully, and considered the recommendations and implications thereof in great detail and finds the adoption of the amendments to the Rules of Criminal Procedure, as set forth in Ordinance No. 277 to be in the best interest of the White Mountain Apache Tribe.

**BE IT ENACTED** by the Tribal Council of the White Mountain Apache Tribe that it hereby adopts Ordinance No. 277, attached hereto and incorporated by reference, which amends Rules 1.4, 2.5, 3.9, 3.11, 3.19, 4.3, 5.1, 5.2, 6.1, 7.3 and 7.6 of the Rules of Criminal Procedure.

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

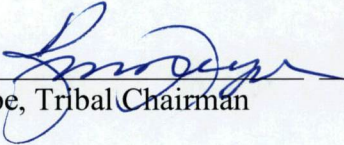
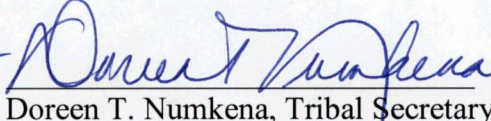
**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event this Resolution directly conflicts with the Tribal Constitution, Tribal Ordinances or Federal Laws, or any material facts concerning the issues presented are later found to be 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.

***Resolution No. 08-2015-160***

*Ordinance No. 277*

The foregoing resolution was on **AUGUST 4, 2015** duly adopted by a vote of **EIGHT** for, **ZERO** against, and **ZERO** abstentions 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).

	<i>8/11/15</i>		<i>8-11-2015</i>
Ronnie Lupe, Tribal Chairman	Date	Doreen T. Numkena, Tribal Secretary	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. 277, amending White Mountain Apache Rules of Criminal Procedure, Rule 1.4, 2.5, 3.9, 3.11, 3.19, 4.3, 5.1, 5.2, 6.1, 7.3 and 7.6 as follows:

**RULE 1.4 ALL ORDERS SHALL BE IN WRITING**

No order of the Tribal Court shall be valid unless it is in writing, dated with the date it is written, and signed by the judge issuing the order. The written order may be on a pre-printed form or in any other legible writing.

**RULE 2.5 DISPOSITION OF SEIZED PROPERTY**

A. Any ~~tribal law enforcement agency, an officer of which~~ peace officer that seizes property by warrant or otherwise, shall make an inventory of all property seized, record the property seized on the property invoice, and any peace officer shall give or mail a copy of the property invoice ~~and a copy of such inventory shall be given~~ to the person from whom the property was ~~taken~~ seized. The property invoice form may be filled out where the property is seized or at the White Mountain Apache Police Department.

1. "Inventory" means a peace officer taking a count of the number of items seized and then recording the number of items seized on the property invoice.

2. "Peace Officer" means any police officer or other law enforcement officer of the White Mountain Apache Tribe Police Department, Department of Public Safety or Game and Fish Department or any other officer vested by law with a duty to maintain public order and/or make arrests. This includes reserve officers while authorized to engage in official law enforcement duties on behalf of the White Mountain Apache Tribe.

B. Any peace officer, whether primary or assisting officer, shall take the seized and inventoried property to the White Mountain Apache Police Department evidence locker to be logged in and labeled.

1. "Logged In" means when any peace officer or evidence technician completes the Property Invoice form for the seized and inventoried property.

2. “Labeled” means when any peace officer or evidence technician places a label or tag on the seized and inventoried property or places the seized and inventoried property in a storage package. The tag, label, or storage package shall describe the item(s) seized, who it was removed from, and the DR number.

BC. 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.

CD. 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.

E. Rule 2.5 shall become effective retroactively as of July 1, 2009.

**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~~ seventy-two (72) hours (excluding weekend days, ~~and~~ holidays, and the day of arrest) 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 or her 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 (5) days.

**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 without committing additional criminal offenses, except that a defendant who is~~

~~being held for an offense which has resulted in death or disability of another that is predicted by a medical professional to last six (6) months or longer may be held without bond pending a resolution of the proceedings.~~

A. At every defendant's arraignment or initial appearance before the court, the court shall set conditions of release. The court may either: (1) release the defendant on his/her own recognizance ("O.R."), subject to the defendant's lawful conduct and appearance at future proceedings; (2) set a bond in an amount which the court finds likely to ensure the defendant's future law-abiding conduct and appearance at future court proceedings; or (3) order the defendant to be held in custody without bond. In determining which of these three conditions to impose, and the amount of bond (if any) to set, the court shall consider the following:

1. The defendant's criminal history, including, but not limited to, probation status or release status at the time the offense(s) under consideration were committed; and any prior failures of the defendant to appear in court when ordered; and

2. The seriousness of the offenses charged as well as the nature of prior offenses charged, both those adjudicated and those pending, and the potential danger to the victim or the community of the defendant's release; and

3. The condition, situation, concerns, and wishes of the alleged victim, if known; and

4. No defendant who has been arrested pursuant to a valid Bench Warrant or Warrant to Apprehend may be released on his/her own recognizance.

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

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

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

~~(4)~~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)~~5. Release upon any other condition deemed by the judge to be reasonably necessary to assure the appearance of the accused as required.

**RULE 3.19**      **MOTIONS**

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

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

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

~~(3)~~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.**      **Motion Procedure:**

1.      The moving party shall serve the motion upon the opposing party within forty-eight (48) hours of filing the motion. Inmate motions may be served upon the Office of the Tribal Prosecutor by the Court or by the Department of Corrections.

2.      The non-moving party shall have ten (10) business days (excluding Saturdays, Sundays and Tribal or Federal holidays) in which to file and serve a response to the motion.

3.      Upon receipt of the non-moving party's response, or after twelve (12) business days have passed since the filing of the motion (whichever occurs later), the Court may set the motion for hearing no sooner than five (5) business days after the filing of the response, or after the passage of twelve (12) business days from the date of filing, if no response is filed.

~~E~~D.      A response to a motion must be filed within ten (10) business days of receipt, unless good cause is shown for a later response by the non-moving party. Such time does not include Saturdays, Sundays, or holidays. If the non-moving party fails to

file a response within fifteen (15) days after service of the motion without good cause, that party may be deemed to have waived any objections thereto.

E. Except as provided in this Subsection, no motion may be ruled upon prior to fifteen (15) business days (excluding Saturdays, Sundays and holidays) after service of the motion upon the non-moving party, and then only after the setting of a hearing with a minimum of five (5) days advance written notice to both parties. An exception may be made for motions to which the non-moving party has filed a response stating "no objection" to the motion prior to the ten (10) day response period, in which case the motion may be granted summarily without a hearing upon the filing of the "no objection" response.

F. Any ruling on a motion issued in violation of the time limits or other provisions herein shall be null, void, and of no effect.

**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 eighty (180)~~ two hundred twenty (220) days of his or her arraignment, or as soon thereafter as the court may schedule a trial, but in any case no later than ~~two hundred twenty (220)~~ three hundred sixty-five (365) days after his or her arraignment.

**B. Defendants in Custody.** If a defendant is in custody, he or she shall be tried within one hundred ~~twenty (120)~~ eighty (180) days of his or her arraignment, or as soon thereafter as the court may schedule a trial, but in any case no later than ~~one hundred eighty (180)~~ two hundred twenty (220) days after his or her arraignment.

**F. Waiver.** A defendant or his or her counsel shall be deemed to have waived his or her right to speed trial by doing or failing to do any of the following:

~~(1)~~1. Failing to appear at any court appearance;

~~(2)~~2. Any continuance requested by defendant or defense counsel;

~~(3)~~3. Failing to notify the court and the tribe in advance of any impending speedy trial deadline as required by Rule 4.2D;

~~(4)~~4. Any motion filed by or on behalf of the defendant, but only for the amount of time required to calendar, hear and adjudicate the motion;

~~(5)~~5. Request for a visiting judge; and

~~(6)~~6. Agreement by the parties to set a case for trial outside of the speedy trial limits, but only for such time as the trial date set exceeds those limits.

**RULE 5.1      DISCLOSURE BY THE TRIBE**

A.    Matters relating to guilt, innocence or punishment. No later than ~~ten~~ ~~(10)~~ twenty (20) days after the arraignment, and in any event before the date of the Case Conference, 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)~~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)~~2. All statements of the defendant and of any person who will be tried with the defendant; and

~~(3)~~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)~~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)~~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)~~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)~~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)~~2. Whether a search warrant has been executed in connection with the case; and

~~(3)~~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.

**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)~~1. Appear for a line-up; and

~~(2)~~2. Speak for identification by witnesses; and

~~(3)~~3. Be fingerprinted, palm-printed, footprinted or voiceprinted;  
and

~~(4)~~4. Pose for photographs not involving re-enactment of an event;  
and

~~(5)~~5. Try on clothing; and

~~(6)~~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)~~7. Provide specimens of his or her handwriting; and

~~(8)~~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)~~ thirty (30) 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, ~~self-defense~~, 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)~~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)~~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)~~3. A list of all papers, documents, photographs and other tangible objects which the defense will use at 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 no sooner than two (2) months from the date of setting 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)~~ the court shall set a date for a case management conference no later than one (1) month before trial. The purpose of the case management conference shall be to advise the court and to resolve any issues necessary for the trial to proceed, including, but not limited to, evidentiary issues (motions in limine, motions to suppress, etc.), disclosure/discovery issues,

availability of witnesses and parties, etc. If hearings are needed to resolve such issues before trial, the parties and the court shall schedule such hearings. Subpoenas for witnesses shall be requested and issued as soon after the case management conference as is practicable.

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, subject to such revisions as may be adopted by the Tribal Council pursuant to duly enacted legislation.

**RULE 7.3      PAROLE; REVOCATION**

A. A Parole Board shall be instituted for the purpose of hearing and adjudicating all post-sentencing motions filed by defendants or by the Tribe. The Parole Board shall consist of three persons: the Director of the Department of Corrections (“Director”), the Supervisor of the Department of Corrections (“Supervisor”), and a third Detention Officer to be selected by the Director and the Supervisor. All Motions for Temporary Release, Motions for Early Release or Suspension of Sentence, and all motions pertaining to conditions of confinement shall be heard and adjudicated by the Parole Board.

~~A~~B. Any person sentenced by the court to detention or labor ~~shall~~ may be eligible for parole upon a showing of good behavior while serving his or her sentence, and only after serving at least two thirds (2/3) of his or her sentence, at such time and under such reasonable conditions as are set by the ~~court~~ Parole Board.

~~B~~C. Any person who violates the conditions of his or her parole may be required by the ~~court~~ Parole Board 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 7.6      EXPUNGEMENT**

A. Except as provided in Subsections B, C and D of this Section, after the passage of five (5) years from the completion of a sentence after conviction of offenses in this Code (including criminal offenses contained in Title 28 of the Arizona Revised Statutes, as adopted by the Tribe), a defendant who has committed no criminal offenses of any kind during that five (5) year period may file with the Court and serve upon the Tribal Prosecution Unit a Motion to Expunge his or her past criminal record.

B. After the passage of ten (10) years from the completion of a sentence after

conviction of certain offenses set forth in Subsection C, a defendant who has committed no criminal offenses during that ten (10) year period may file with the Court and serve upon the Tribal Prosecution Unit a Motion to Expunge his or her past criminal record.

C. The records of a defendant who was convicted of any of the following offenses may be expunged only after ten (10) years, during which the defendant shall have committed no criminal offenses of any kind:

- 2.5 Aggravated Assault
- 2.6 Assault with a Deadly Weapon
- 2.8 Assault with Intent to Cause Serious Physical Injury
- 2.33 Extortion
- 2.38 Fraud
- 2.61 Removal or Destruction of Antiquities
- 2.62 Sale of Toxic Substances to Minors
- 2.72 Arson of an Occupied Structure
- 2.74 Bootlegging (first offense only)
- 2.78 Driving Under the Influence
- 2.79 Aggravated Driving Under the Influence
- 2.80 Driving Under the Influence – Causing an Accident
- 2.81 Embezzlement
- 2.87 Fraudulent Schemes and Practices
- 2.92 Processing of Methamphetamine
- 2.93 Robbery
- 2.94 Aggravated Robbery
- 2.95 Armed Robbery
- 6.2 Any and all Domestic Violence Offenses under WMAT Crim. Code Chapter 6.
- ARS 28-622.01 Unlawful Flight from Pursuing Law Enforcement Vehicle

D. Convictions of the following offenses are not eligible for expungement at any time:

- 2.7 Assault with Intent to Commit Rape
- 2.9 Assault with Intent to Kill
- 2.43 Incest
- 2.74 Bootlegging (second or subsequent offense)
- 2.74A Aggravated Bootlegging
- 4.1-4.23 Any and all Sex Crimes under WMAT Crim. Code Chapter 4

E. In all contested hearings for the expungement of criminal records, the Tribe shall be required to prove, by a preponderance of the evidence, that the defendant has committed one or more criminal offenses during the relevant period of time for expungement. The Tribe may introduce police reports, live testimony, or any other evidence that the defendant committed a criminal offense during the relevant period of time, whether or not the alleged criminal act resulted in the filing of criminal charges or a

conviction.