

**SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY
10005 East Osborn Road
Scottsdale, Arizona 85256**

ORDINANCE NUMBER: SRO-435-2014

TO ENACT AN ORDINANCE THAT ESTABLISHES THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY (“COMMUNITY”) JUDICIAL CONDUCT AND DISCIPLINE COMMISSION TO REVIEW, INVESTIGATE AND WHEN APPROPRIATE ADJUDICATE ALLEGATIONS OF MISCONDUCT REGARDING JUDGES WHO SERVE IN THE COMMUNITY’S COURT. THIS ORDINANCE IS TO BE EFFECTIVE UPON THE APPOINTMENT OF COMMISSION MEMBERS BY THE COUNCIL.

Therefore Be It Enacted that Section 4-25 of the SRPMIC Code of Ordinances is hereby repealed and replaced with the following:

Section 4-25a. Name

The Judicial Conduct and Discipline Commission, an independent commission, is hereby established by the Community Council.

Section 4-25b. Policy & Purposes

- (a) The Council has the authority pursuant to Article VII, Section 1(c)(2) of the Constitution of the Community to establish a Community Court system and as such, the Council has the authority to oversee the conduct and discipline of the judges of the Community Court System.
- (b) The Council desires to enhance the public confidence in the Community Court by providing a fair, impartial and expeditious forum to investigate and hear complaints or grievances regarding the conduct and behavior of judicial officials.
- (c) The establishment of an independent commission strengthens the judiciary by encouraging judges to maintain high standards of professional and personal conduct.
- (d) It is also the policy of the Council to ensure that complaints against judicial officials are investigated and heard in an objective and non-partisan forum.

- (e) The Council, through the provisions of this ordinance, hereby delegates to the Commission certain authority to receive complaints, investigate, deliberate, and if appropriate, sanction judges for misconduct in office.

Section 4-25c. Scope

- (a) The Commission shall have the authority to review and adjudicate allegations of judicial misconduct pertaining to all elected, appointed and other judges (including pro temp and appellate judges) of the Community Court.
- (b) The Commission shall have the authority to investigate and hear matters that relate to the following instances of judicial misconduct:
 - (1) willful misconduct in office;
 - (2) willful or persistent failure to perform the duties of a judge;
 - (3) mental or physical incapacity that adversely affects the judge's ability to perform judicial functions;
 - (4) violations of the Community's judicial code of conduct; or
 - (5) conduct that brings the judiciary into disrepute.
- (c) The Commission's primary focus is judicial behavior, not judicial decisions. The Commission is not a court and cannot change a judge's decision, intervene in a pending case, remove a judge from a case, or award damages or other monetary relief to litigants.
- (d) Filing a complaint with the Commission does not remove a presiding judge from an existing case pending before the Community Court, and a complaint filed before the Commission is not a substitute for a motion to remove or change a judge from a pending case.
- (e) Even if a complaint is filed with the Commission against a presiding judge, a Complainant's underlying court case should not be delayed or suspended, and a complaint with the Commission is separate and independent from the case pending before the Community Court.

Section 4.25d. Definitions

- (a) *Attorney-Work Product* means writings, notes, memoranda, reports on conversations with clients or witnesses, research and/or confidential materials that reflect an attorney's impressions, conclusions, opinions, or legal research.
- (b) *Clear and Convincing* means proof that the truths of the facts asserted are highly probable or reasonably certain to have occurred.
- (c) *Commission* means the Judicial Discipline and Conduct Commission established pursuant to this ordinance.
- (d) *Complainant* means the individual who files a written complaint regarding the conduct of a judge of the Community Court.
- (e) *Council* means the Salt River Pima-Maricopa Indian Community's governing body.
- (f) *Ex Parte Communication* means a communication between counsel and the court when opposing counsel is not present regarding a pending issue before the court.
- (g) *Misconduct* means that a judicial official is alleged to or has committed an improper, unethical, or unlawful act.
- (h) *Privileged* means written or unwritten information that is prepared by an attorney or a member of the Commission in anticipation of litigation or a judicial disciplinary proceeding.
- (i) *Respondent* means the judge whom a person has filed a complaint against, and this complaint is before the Commission.

Section 4-25e. Commission

- (a) The Commission shall be comprised of the following three (3) members who are as follows:
 - (1) One sitting, retired or former federal, state or tribal judges (who is not currently a sitting judge of the Community Court);

- (2) One licensed attorney, admitted to and in good standing with the Arizona State Bar Association or other state bar association, who does not practice before the SRPMIC Court, but has experience in Federal Indian law and working with Indian tribal communities;
- (3) One Community member with or without legal, advocate or judicial experience (who is not a current sitting judge of the SRPMIC Court).
- (b) The Council shall appoint each member of the Commission for a four (4) year term. One (1) of the initial commissioners shall serve only an twenty-four (24) month term in order to ensure that the Commission will have staggered terms.
- (c) No Commission members shall have ever been convicted of a felony, or convicted of two or more misdemeanors (other than non-criminal traffic tickets) in the past seven (7) years. Prior to appointment to the Commission, candidates will be required to disclose whether or not they have a criminal history, what that criminal history is, and then submit to a criminal history background check administered by the Human Resources Department.
- (d) Two (2) of the commissioners shall constitute a quorum for the transaction of business.
- (e) The Commission shall meet only when necessary to conduct the business of the Commission.
- (f) Staff support services shall be provided to the Commission by the SRPMIC Office of General Counsel. Budget support services shall be provided to the Commission by the Office of Budget and Records.

Section 4-25f. Commission Protocols

- (a) *Burden of Proof.* The complainant bears the burden of proof. The standard of review for any proceeding before the Commission shall be clear and convincing evidence.
- (b) *Right to Counsel.* The respondent and the complainant shall be entitled to retain counsel and to have the assistance of counsel at every stage of the proceeding.
 - 1. Parties shall be responsible to pay for their own legal fees and costs.
 - 2. If the complaint against the respondent is determined to be unfounded, the Council may consider reimbursing the respondent for reasonable attorney or advocate fees/expenses.
- (c) *Ex Parte Communications.* Members of the Commission shall not engage in ex parte communications with the respondent or the complainant.

(d) *Confidentiality.*

- (1) Before the filing and service of formal charges, all proceedings and information relating to the complaint shall be confidential unless the Commission determines that a disclosure of information is necessary to protect a person, or the public.
- (2) All information relating to a complaint that has been dismissed without formal charges being filed shall be held confidential by the Commission.
- (3) Any attorney-work product, commission deliberations and records of the Commission's deliberations shall not be disclosed.
- (4) After the filing and service of formal charges, all proceedings of the Commission shall be public, unless they pertain to matters involving a minor child.

(e) *Immunity from Civil Suits.*

- (1) Communications and testimony to the Commission, Commission legal counsel and staff relating to judicial misconduct shall be privileged, and no civil law suit predicated thereon may be instituted against any complainant or witness.
- (2) Members of the Commission, Commission legal counsel, and staff shall be immune from civil suit for their conduct in the course of their official Commission duties.

(f) *Service of Process.* Service upon the respondent of formal charges in any disciplinary proceeding shall be made by personal service upon the judge or the judge's counsel. All other papers may be served by standard and registered/certified mail.

(g) *Oaths & Subpoena Power.*

- (1) Oaths and affirmations may be administered by the Commission.
- (2) The Commission may compel by subpoena the attendance of a respondent or witness and the production of pertinent books, papers and documents for purposes of the investigation, deposition or hearing into the complaint.

(h) *Interim Suspension.* Upon the receipt of sufficient evidence demonstrating that a respondent poses a substantial threat of serious harm to the public or the administration of justice, the Commission may recommend to the Council that the Respondent be placed on

administrative leave with pay. Such administrative leave shall not exceed 60 days without further Council action.

Section 4-25g. Commission Review & Formal Hearing Process

(a) Filing of a Complaint.

- (1) All complaints received under this Ordinance must be submitted in writing in a form prescribed by the Commission. All forms must include the name and signature of the person or individuals filing the complaint. The Commission shall not accept anonymous complaints.
- (2) The complaint form will be filed with the Office of the General Counsel. The complaint shall be date and time stamped.
- (3) The complaint must be filed within one (1) year of the incident in question. If the complaint pertains to a series of actions that are alleged to be misconduct, then the complaint must be filed within one (1) year of the latest incident of alleged misconduct. If the complaint is filed after one (1) year of when the incident occurred, the Commission does not have jurisdiction to hear the complaint.
- (4) Any person may file a complaint before the Commission.
- (5) The Complainant shall receive acknowledgement that the complaint has been received by the Commission within seventy-two (72) hours (excluding weekends) of the filing of the complaint.
 - a. The Commission's letter of receipt shall include a statement that the Commission shall provide an initial review of the complaint within fifteen (15) business days.
- (6) All processes and proceedings conducted by the Commission, including a hearing, shall be conducted in as informal nature as possible while still promoting the objective of a fair and independent judicial conduct and discipline process. For example, if a hearing is held, the formal rules of evidence shall not be applied.
- (7) The Commission may make its own internal rules, regulations or policies to assist in a fair and efficient investigation, adjudication, and deliberation of any complaint before it.

(b) *Initial Screening.*

- (1) The Commission shall evaluate an initial complaint and if the complaint and any relevant information, that if true, would not constitute misconduct then the Commission shall dismiss the complaint or if appropriate, refer the matter to another agency or entity.
 - a. Referral of a complaint to another governmental agency does not violate any confidentiality provisions of this ordinance.
 - b. If in the future, additional information becomes known to the Commission regarding a complaint that has been dismissed before the filing of formal charges, the allegations may be reinvestigated by the Commission.
- (2) If the complaint and any relevant information submitted raise allegations, that if true, would constitute judicial misconduct then the Commission shall open a formal investigation and appoint an investigator within the Commission's budgeting guidelines.

(c) *Investigator.*

- (1) The Commission shall appoint an independent investigator to investigate the allegations made in the complaint. If the Commission proceeds with formal charges, the investigator shall present the case before the Commission.
- (2) The investigator shall be an Arizona licensed attorney who is not an employee of the Community or who does not practice before the Community Court. The investigator shall have experience in Federal Indian law and working with Indian tribal communities.

(d) *Investigation.* Once the Commission appoints an investigator to investigate the allegations made in the complaint, the Commission shall notify the respondent of the following:

- (1) A specific statement of the allegations being investigated and the canon or rules allegedly violated, with a provision that the investigation can be expanded, if appropriate;
- (2) The respondent's duty to cooperate and respond;

- (3) The respondent's opportunity to present before the Commission if formal charges are filed by the Commission; and
 - (4) The name of the complainant unless the Commission determines that there is good cause to withhold that information.
- (e) *Dismissal of Complaint after Initial Investigation.* After an initial investigation has been conducted, and the Commission determines that the complaint does not state a claim for which the law provides a remedy or the complaint is legally insufficient or without merit, the Commission shall issue a letter to the complainant and the respondent notifying them that the complaint has been dismissed with or without prejudice.
- (f) *Formal Charges.*
- (1) If the Commission determines that based on the information gathered in the investigation, that the alleged facts are likely true then the Commission shall file formal charges against the Respondent. The formal charges shall provide fair and adequate notice of the alleged misconduct and shall be served upon the respondent with proof of service.
 - (2) The Council shall be provided written notice of the formal charges.
- (g) *Answer to Formal Charges.* The respondent shall file a written answer with the Commission within 20 calendar days of the date of service of the formal charges. The Commission may grant an extension of time for the answer, for good cause.
- (h) *Failure to Answer or Appear.*
- (1) *Respondent.*
 - a. Failure of the respondent to answer the formal charges shall constitute an admission of the factual allegations.
 - b. If the respondent should fail to appear when specifically ordered by the Commission, the respondent shall be deemed to have admitted the factual allegations which were the subject of the appearance and also to have conceded the merits of any motion or recommendations to be considered at such appearance. Absent good cause, the Commission shall not continue or delay proceedings because of the respondent's failure to appear.

(2) *Complainant.* Absent good cause, if the Complainant fails to appear when specifically ordered by the Commission, the complaint shall be dismissed with prejudice.

(i) *Discipline by Consent.*

(1) At any time after the filing of formal charges and before final disposition, the respondent may agree with the Commission's charges and admit to any and all of the formal charges in exchange for a stated sanction.

(2) Discipline with the consent of the respondent must be in writing and contain the following information: 1) that the respondent consents to the discipline, 2) admits to judicial misconduct as defined by this ordinance; and 3) that the respondent's consent is free and voluntary.

(3) The Commission shall file the consent to discipline with the Council. The consent to discipline shall remain confidential until it is formally accepted by the Council.

(j) *Disciplinary Hearing.*

(1) Upon receipt of the Respondent's answer or upon expiration of the time to answer, the Commission shall schedule a public hearing (unless there is a compelling justification to hold the hearing in executive session) and notify the respondent of the date, time and place of the hearing.

(2) The conduct of the hearing shall be as follows:

a. All testimony shall be under oath;

b. The investigator shall present evidence on the formal charges;

c. The investigator may call the respondent as a witness;

d. Both parties shall be permitted to present evidence and produce and cross-examine witnesses;

e. The hearing shall be recorded; and

- f. The investigator and the respondent may submit proposed findings, conclusions and recommendations for either the sanctioning of the respondent or an order of dismissal of the complaint.
- (3) By majority vote of the Commission, the Commission shall dismiss the complaint, sanction the respondent or recommend that the Council remove the respondent from office.
 - (4) Within 15 calendar days, the Commission shall file with the Council with a copy to the respondent, a report of the proceeding setting forth a written summary, proposed findings of fact, conclusions of law, any minority opinions and the order of sanction or recommendation for removal from office.
- (k) *Sanctions.* The sanctions that the Commission may consider are limited to the following:
- (1) recommendation to the Council for removal of the respondent as a judge before the SRPMIC Court;
 - (2) suspension, without pay, for up to 15 days (any proposed suspension of more than 15 days must be done by Council action);
 - (3) private reprimand by the Commission (the Commission may recommend that the Council provide public notice of this reprimand, however the Council will determine whether public notice of such reprimand is warranted);
 - (4) discipline by consent as defined in Section 4-28g(i).
- (l) *Recommendation for Removal from Office.* If the Commission recommends removal of the respondent from their office as a judge, then the recommendation shall be provided to the Council. The Council by majority vote will determine whether to uphold the Commission's recommendation for removal. If the Council does not uphold the Commission's recommendation for removal of a judge from office, then the Council may determine the appropriate disciplinary action.
- (1) If there are further allegations filed against the respondent while the Council is reviewing the Commission's decision, the Council may wait for the Commission's determination on the new allegations before issuing a decision on whether to remove the judge from office.

(2) Upon the recommendation of the Commission, the Council may impose a single sanction covering all recommendations for discipline from the Commission.

(3) The Council shall file a written decision with the Council Secretary.

Section 4-25h. Annual Report

(a) The Commission shall file and present to Council an annual report at the end of each calendar year. This annual report shall include the following: 1) the number of complaints that were received by the Commission during the year, 2) the number of complaints filed against each judge, 3) the final outcome of the Commission's review regarding all filed complaints, including complaints that were determined to not have merit, and 4) any other related information that the Commission deems appropriate.

(b) The Council shall publish the Commission's annual report.

C E R T I F I C A T I O N

This Ordinance is hereby enacted pursuant to the authority contained in Article VII, Section 1(k) of the Constitution of the Salt River Pima-Maricopa Indian Community ratified by the Tribe, February 28, 1990, and approved by the Secretary of the Interior, March 19, 1990, and amended by the Tribe, February 27, 1996, and approved by the Secretary April 23, 1996, the foregoing Ordinance was adopted this 12th day of February, 2014, in a duly called meeting held by the Community Council in Salt River, Arizona at which a quorum of 6 members were present by a vote of 6 for; 0 opposed, 0 abstentions, and 3 excused.

**SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY COUNCIL**

Diane Enos

Diane Enos, President

ATTEST:

Erica Harvier
Erica Harvier, Council Secretary

Approved as to Form by the
Office of the General Counsel
Theresa Rosler
February 13, 2014

Theresa Rosler