

**SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY**
10,005 East Osborn Road
Scottsdale, Arizona 85256

ORDINANCE NUMBER: SRO-516-2020

AN ORDINANCE TO REPEAL AND REPLACE CHAPTER 4 OF THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY CODE OF ORDINANCES TO REORGANIZE THE COMMUNITY COURT'S STRUCTURE AND UPDATE THE ROLES AND RESPONSIBILITIES OF THE COURT AND ITS JUDGES; AND ALSO PROVIDE TECHNICAL CONFORMING AMENDMENTS TO CHAPTERS 3, 10, 11, 16, 17 and 20.

Chapter 4 COURTS GENERALLY

ARTICLE I. - IN GENERAL

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ARTICLE I. IN GENERAL

Sec. 4-1. Jurisdiction.

- (a) *Court of original and appellate jurisdiction.* The Salt River Pima-Maricopa Indian Community Court is the court of original and appellate jurisdiction within the Community.
- (b) *Subject matter jurisdiction limited by council action.* The Community court shall have jurisdiction in all cases involving disputes in contract, tort, and the exercise of the power of eminent domain over any land located within the boundaries of the reservation and shall determine such cases upon the

customary law of the Community as may be augmented by the common law as understood in the state to the extent that the court requires, in order to do substantial justice to the parties in the dispute. In all other respects the jurisdiction of the Community court is limited to the subject matter of those cases, causes, disputes and prosecutions which the Community Council by enactment accords to the court.

(c) *Criminal jurisdiction over persons.*

- (1) The court of the Community shall have jurisdiction over all offenses enumerated in this Community Code of Ordinances when committed by any person otherwise subject to the jurisdiction of the Community court.
- (2) Any person otherwise subject to the jurisdiction of the Community court who enters upon the Community shall be deemed to have consented to the jurisdiction of the Community court.
- (3) The Community shall be taken to include all territory within the reservation boundaries, including fee-patented lands, rights-of-way, roads, water, bridges and land used for schools, churches or agency purposes.

(d) *Civil jurisdiction over persons.* The Community court shall have jurisdiction in all cases wherein:

- (1) The defendant is a member of the Community;
- (2) The defendant is domiciled or residing within the Community;
- (3) The defendant has caused an event to occur within the Community out of which the claim which is the subject matter of the complaint arose;
- (4) The counter-defendant has filed an action in Community court against the counterclaimant arising out of the subject matter of such action, and which counterclaim might be brought under the federal rules of civil procedure;
- (5) The defendant is a real party in interest to a lease of land and/or improvements within the Community and then as to matters involving such leasehold interests; or
- (6) The defendant is a real party in interest regarding the ownership of land and/or improvements located within the reservation boundaries and sought to be acquired pursuant to the powers of eminent domain.

In all the events or circumstances set out in subsections (d)(2) through (6) of this section, the defendants or counter-defendants are deemed to have waived any objection they might have otherwise had to the jurisdiction of the Community court as a result of the status or event described in said subsections. No judgment shall be given on any suit unless the defendant has actually received notice of such suit. Evidence of receipt of the notice shall be kept as a part of the record in the case. In all civil suits, except actions for eminent domain, divorce, separate maintenance or annulment, the complainant may be required to deposit with the clerk of the court a fee for security in a reasonable amount to cover costs and disbursements in the case. In actions of divorce, annulment or separate maintenance, a complainant and the counter-complainant, if there be such, shall be required to deposit with the clerk of the court the sum of \$40.00.

Sec. 4-2. Court administrator.

- (a) *Selection.* The position of court administrator shall be filled in accordance with the Community's established guidelines for hiring. Applicants for this position shall be chosen solely on the basis of qualification and merit.
- (b) *Duties.* The court administrator shall have general administrative responsibility for the operation of the Community court. The court administrator's duties shall include the preparation of the court's budget for submission to the Community manager, oversight in regard to the budget, hiring of all personnel, operation of the clerk's office, supervising the receipt, creating and filing of all court records and the issuance of all necessary court documents, assisting the department of public safety and other departments of Community government as well as members of the Community in the proceedings of the court, administering oaths and collecting and accounting for fines and court fees. The duties of the

court administrator may be undertaken by assistant administrators, clerks or other personnel under the supervision of the court administrator.

Sec. 4-3. Court records.

The clerk of the Community court shall keep for inspection a record of all proceedings of the court which record shall reflect the title of the case, the names of the parties, the substance of the complaint, the names and addresses of all witnesses, the date of the hearing or trial, by whom conducted, the findings of the court, the judgment and all other appropriate facts or circumstances.

Sec. 4-4. Professional attorneys and lay advocates.

- (a) *Professional attorneys.* Any person appearing before the Community court shall have the right to have the assistance of a professional attorney in eminent domain matters, provided that this must be at his or her own expense, and provided that any professional attorney making an appearance before the Community court must be admitted to practice pursuant to the rules of the Community court. Professional attorneys shall not be permitted to practice before the court in civil matters other than the eminent domain. If the Community court determines that the civil rights of any person appearing before the court in a juvenile proceeding include the right to have the assistance of a professional attorney, or if the juvenile chapter of this Community Code of Ordinances so requires, the court shall permit a professional attorney to represent that person. In all criminal matters, a person shall be appointed the assistance of counsel in accordance with the rules of criminal procedure, which rules may be amended from time to time.
- (b) *Lay advocates.* Any person appearing before the Community court shall have the right at his or her own expense to have the assistance of a lay advocate. The term "lay advocate" means any member of the Community who is duly admitted to practice before the Community court pursuant to the rules of the Community court.
- (c) *Insurance carriers; advocates for the Community.*
 - (1) *Cooperative agreements with insurance carriers.* The Community manager may, on behalf of the Community, enter into written agreements with insurance carriers who have issued policies of insurance in favor of the Community for specified risks which will allow the insurance carriers to have the assistance of the Community in the defense of actions filed in Community court for claims insured by such policies of insurance and which will ensure the full coverage of the policies of insurance and the defense of the insured parties. Any such agreement will specify the assistance to be rendered by the Community to the insurance carrier and that such assistance is consistent with and will not constitute a breach or modification of the agreements or conditions of the policies of insurance. The assistance that may be agreed to by the Community manager will consist of the services of a lay advocate employed in the office of the Community's staff attorney and working under the supervision of the Community's staff attorney. The extent of the services will be a subject of the agreement. The agreement will provide for the payment by the insurance carrier of all costs for the services rendered.
 - (2) *Designation of lay advocate.* The Community manager shall designate a lay advocate employed in the office of the Community's staff attorney to have the responsibility to represent the Community, its divisions, departments, officers and employees in any civil action filed in the Community court in which any of them is a:
 - a. Defendant and when such case involves an official action of the Community or any of its divisions or departments; or an alleged action or breach of duty of any officer or employee of the Community or any of its divisions or departments acting in his or her official capacity, and when the claim asserted is not insured against, by the Community, or if the claim is insured against, only after an agreement satisfying the requirements of subsection (c)(1) of this section is entered into; and

- b. Plaintiff or nominal plaintiff in a civil action brought by or on behalf of the Community or any of its divisions.
 - c. Such designated lay advocate shall work under the supervision of the staff attorney.
- (3) The enactment of subsections (c)(1) and (2) of this section does not waive the sovereign immunity of the Community against suit beyond any amount for which the Community, its officers and employees and its divisions and their officers and employees are insured and any judgment is satisfied.

Sec. 4-5. Consecutive sentencing.

Judges of the Community court have the authority and such judicial discretion as needed to impose consecutive sentences upon criminal defendants convicted of multiple offenses of this Code of Ordinances.

Sec. 4-6. Reserved.

Sec. 4-7. Time limitations for civil matters.

- (a) *Definition.* "Cause of action" shall mean the point of occurrence or of discovery with due diligence which gives a person a right of legal redress or remedy, and the point of breach or default as to contract injuries.
- (b) *General civil matters.* Except as otherwise provided by law, a cause of action including a tort or civil traffic matter must be commenced within two years from the time the cause of action accrues.
- (c) *Contract.* Causes of action arising under contract for which no limitation is otherwise prescribed shall be brought within three years from the time the cause of action accrues.
- (d) *Tolling of the statute of limitations .*
 - (1) When a person against whom there is civil cause of action is outside of the Community at the time the cause of action accrues or at any time which the action might have been maintained, such action may be brought against the person once they return to the Community. The time of such absence shall not be counted or taken as part of the time limited by the provisions of this section 4-7.
 - (2) If a person entitled to bring a cause of action is at the time the cause of action accrues under the age of 18, adjudicated as being of unsound mind or otherwise mentally incompetent, or imprisoned and thereby unable to discover his or her right to bring the action, the period of such disability shall not be deemed a portion of the period limited for commencement of the action.
 - (3) *Exemption.* The Community shall not be barred by the limitations prescribed in this section 4-7.

Sec. 4-8. Time limitations for criminal offenses.

- (a) *Criminal matters.* Prosecution for any criminal offense committed within the jurisdiction of the Community shall be commenced within the following time limitations:
 - (1) A prosecution for any Class A offense for which no limitation is otherwise prescribed shall be brought within five years.
 - (2) A prosecution for any Class B offense for which no limitation is otherwise prescribed shall be brought within three years.
 - (3) A prosecution for any Class C offense for which no limitation is otherwise prescribed shall be brought within two years.

- (4) A prosecution for any Class D offense or Class E offense for which no limitation is otherwise prescribed shall be brought within one year.
 - (5) A prosecution for any offense for which no class designation has been made shall be brought within two years.
 - (6) A prosecution for any homicide in violation of section 6-52, or for aiding and abetting such offense in violation of section 6-2, or facilitation of such offense in violation of section 6-12, may be commenced at any time.
 - (7) A prosecution for any Class A offense committed against a child shall be brought within ten years after the victim reaches the age of 18 years. For purposes of this section, "child" means a person under the age of 18 years.
 - (8) A prosecution for any Class B offense committed against a child shall be brought within five years after the victim reaches the age of 18 years. For purposes of this section, "child" means a person under the age of 18 years.
 - (9) A prosecution for sexual assault or aggravated sexual assault in violation of section 6-65 shall be brought within ten years.
- (b) *Time of offense.* Unless otherwise noted, time begins to run at the time an offense is committed, except that the period of limitation does not run during any time when the identity of the person who commits the offense or offenses is unknown.
 - (c) *Tolling of the statute of limitations.* The period of limitation does not run for any Class A offense during any time when the person who commits the offense:
 - (1) Is absent from the Community; or
 - (2) Has no reasonably ascertainable place of abode within the Community.
 - (d) *Prosecution commenced.* For purposes of this section, prosecution is commenced when a criminal complaint is filed.
 - (1) If a criminal complaint filed before the period of limitation has expired is dismissed for any reason, a new prosecution may be commenced:
 - a. At any time before the expiration of the period of limitation; and
 - b. Within six months after the dismissal becomes final, even if the period of limitation has expired at the time of dismissal or will expire within six months of the dismissal.
 - (e) *Enactment and enforcement.* The amendments made by this act shall apply:
 - (1) To all crimes committed after July 8, 2015; and
 - (2) To all crimes committed before July 8, 2015, for which no statute of limitations provided under pre-existing law has run as of July 8, 2015.

Secs. 4-9—4-30. Reserved.

ARTICLE II. JUDGES

Sec. 4-31. Generally.

- (a) *Judges of the trial court.* The Community court shall be composed of a presiding judge, associate judges, licensed judges as are authorized by the Community Council.
 - (1) All judges shall hear cases in which the Community court has jurisdiction.
 - (2) Salaries for judges shall be determined by the council, consistent with the Community's human resources policies.

- (3) Licensed judges shall hear all cases assigned to them, all tort claim and patron dispute cases filed against the Community government or one of its enterprises, and all criminal cases in which a defendant is charged with at least one Class A Offense or where the maximum punishment could exceed one year of incarceration.
- (4) The court shall have at least two qualified enrolled community member judges with knowledge of the Onk Akimel O'odham or the Xalychidom Piipaash people, culture and values.

Sec. 4-31a. Presiding Judge Responsibilities.

- (a) The Council shall by majority vote appoint a presiding judge pursuant to their own procedures, and this presiding judge shall have the authority to:
 - (i) assign cases among the associate and licensed judges;
 - (ii) provide administrative management of the other trial court judges;
 - (iii) develop an internal process for litigants or parties to file any complaint they have about a judge;
 - (iv) assist in the annual performance appraisals of the associate and licensed judges (performance appraisals for the judges shall be overseen by the human resources department);
 - (v) develop a training plan for all associate and licensed judges;
 - (vi) develop internal Court protocols and timeframes to ensure that cases are heard in a timely manner, and that the court is accountable to the Community;
 - (vii) provide an annual accountability report to the Community regarding the number and type of new cases filed in the court that year, the number of cases completed to resolution that year, the number of cases each associate and licensed judge was assigned and completed that year, the number of continuances that were granted that year, the number of jury trials that were held that year, a report on the number of cases heard and decided by the appellate court, how many complaints were received about the judge's and how they were resolved, and anything else the presiding judge feels is noteworthy;
 - (viii) in consultation and coordination with the Court Administrator, the Presiding Judge may propose rules for the governance of the court and for the procedure to be followed in matters before the court so long as such rules are not contrary to the Code of Ordinances or the Community's Constitution, and court practitioners are provided notice and an opportunity to comment on the rule before it is finalized;
 - (ix) appoint judges pro tempore to preside over trial court cases when necessary;
 - (x) hear cases; and
 - (xi) Any other responsibility that is assigned in writing by the Council to assist in the proper administration of justice at the Community Court.

Sec. 4-32. Qualifications of judges.

The qualifications of judges of the Community shall be as follows:

(a) *Intentionally left blank.*

(b) *Associate judge.* The qualifications of an associate judge are as follows:

- (1) 30 years of age or older;
 - (2) Possess a two-year degree (Associate of Arts, certificate, etc.) or higher preferably in a law related field (e.g., law degree, criminal justice, administration of justice, Police Science, paralegal) or have at least three years consecutive bench experience within the past five years of appointment to the bench;
 - (3) Preference will be given to enrolled members of the Salt River Pima-Maricopa Indian Community,
 - (4) Has never been convicted of a felony in any jurisdiction, and has not been convicted of a misdemeanor within five years of the date of the judicial application filed with the Community Council. A misdemeanor shall be conviction of the type of behavior proscribed in chapters 6 and 10 and sections 16-231 through 16-236, dealing with DWI and reckless driving, whether committed on the Community or in another jurisdiction;
 - (5) Is of good moral character, and in determining character, council shall consider, among other things, the laws, customs and traditions of the Community;
 - (6) Consents to undergo such training as the Community Council, president, or presiding judge may specify in order to obtain and/or maintain the competence needed as a judge;
 - (7) Must pass a test administered to persons applying to practice before the Community court and/or other applicable tests;
 - (8) Shall serve a one-year probationary period;
 - (9) Has never been removed for good cause from a judge position in any jurisdiction;
 - (10) All applicants must provide all past discipline that they received in the role as a judge, attorney or advocate;
 - (11) Shall be subject to all Community personnel and administrative policies regarding employees except for those that conflict with Chapter 4 of the Code of Ordinances as it pertains to the judges, including section 4-35 which applies to the removal or suspension of judges;
 - (12) Shall be subject to the Community court rules of professional conduct, section 2, judicial rules of professional conduct and as these rules may be amended;
 - (13) For any judge who is reappointed without a break in service, the council may, in its discretion, waive subsections (b)(7) and (b)(8) of this section;
- (c) *Licensed judge.* The qualifications of a licensed judge are as follows:
- (1) Must be at least 30 years of age;
 - (2) Must have graduated from an accredited law school, and have practiced law for at least 3 years;
 - (3) Must be licensed to practice law in a state and be in good standing with that licensing entity;
 - (4) Of good moral character and any assessment of moral character shall be consistent with the customs and traditions of the Akimel O'odham and Xalychidom Piiipaash peoples;
 - (5) Has never been removed for good cause as a judge in any jurisdiction;
 - (6) Has never been convicted of a felony in any jurisdiction and has not been convicted of a misdemeanor (not including violations that are generally considered civil traffic violations) within the past five years;
 - (7) Preference will be given to enrolled members of the Salt River Pima-Maricopa Indian Community, the Gila River Indian Community, the Ak-Chin Indian Community and the Tohono O'odham Nation, and then to other members of federally recognized Indian tribes; and
 - (8) Shall serve a one-year probationary period.

- (9) All applicants must provide all past discipline that they received in a role as a judge, attorney or advocate.

(d) *Pro tempore*. The qualifications of a judge pro tempore are as follows:

(1) A judge pro tempore must, at a minimum, meet the qualifications and standards of the court's associate judges as set forth in sections 4-32(a)(1)(2)(4)(9)(10)(11) and (12); or meet the requirements of a licensed judge; or be a sitting or former judge, in good standing, with the Community or another Indian tribe.

Sec. 4-33. Appointment of a Presiding Judge.

The council shall appoint the Presiding Judge from among the associate and licensed judges of the Community Court.

Sec. 4-34. Appointment and term of associate and licensed judges; vacancy.

- (a) Associate and licensed judges shall be appointed by a majority vote of the council from a list of recommendations. The recommendations will come from a judicial selection committee appointed by council as set forth by regulations adopted by council.
- (b) Associate and licensed judges shall have a term of office of four years.
- (c) If a judicial vacancy occurs, any judge appointed by the council to fill the vacancy shall serve a four-year term and be appointed pursuant to the requirements of subsection (a) of this section.
- (d) The judicial selection committee process may not apply (if determined by the procedures of the Council) when the Council is considering the reappointment of a trial court judge who is in good standing and has received favorable performance evaluations.

Sec. 4-34a Commercial issues.

- (a) The Community Council may, in its discretion, create a judicial seat to hear and decide issues involving commercial law.
- (b) Any Commercial Court judge must be a licensed judge as defined by Section 4-31(c).

Sec. 4-35. Judicial conduct and discipline commission.

- (a) *Name*. The judicial conduct and discipline commission, an independent commission, is hereby established by the Community Council.
- (b) *Policy and purposes*.
 - (1) 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.
 - (2) 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.

- (3) The establishment of an independent commission strengthens the judiciary by encouraging judges to maintain high standards of professional and personal conduct.
- (4) It is also the policy of the council to ensure that complaints against judicial officials are investigated and heard in an objective and nonpartisan forum.
- (5) The council, through the provisions of this section, hereby delegates to the commission certain authority to receive complaints, investigate, deliberate, and if appropriate, sanction judges for misconduct in office.

(c) *Scope.*

- (1) The commission shall have the authority to review and adjudicate allegations of judicial misconduct pertaining to all judges (including pro temp and appellate judges) of the Community court.
- (2) The commission shall have the authority to investigate and hear matters that relate to the following instances of judicial misconduct:
 - a. Willful misconduct in office;
 - b. Willful or persistent failure to perform the duties of a judge;
 - c. Mental or physical incapacity that adversely affects the judge's ability to perform judicial functions;
 - d. Violations of the Community's judicial code of conduct; or
 - e. Conduct that brings the judiciary into disrepute.
- (3) 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.
- (4) 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.
- (5) 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.

(d) *Definitions.*

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.

Clear and convincing means proof that the truths of the facts asserted are highly probable or reasonably certain to have occurred.

Commission means the judicial discipline and conduct commission established pursuant to this section.

Complainant means the individual who files a written complaint regarding the conduct of a judge of the Community court.

Council means the Salt River Pima-Maricopa Indian Community's governing body.

Ex parte communication means a communication between counsel and the court when opposing counsel is not present regarding a pending issue before the court.

Misconduct means that a judicial official is alleged to or has committed an improper, unethical, or unlawful act.

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.

Respondent means the judge whom a person has filed a complaint against, and this complaint is before the commission.

(e) *Commission.*

- (1) The commission shall be comprised of the following three members who are as follows:
 - a. One sitting, retired or former federal, state or tribal judges (who is not currently a sitting judge of the Community court);
 - b. 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;
 - c. One Community member with or without legal, advocate or judicial experience (who is not a current sitting judge of the SRPMIC Court).
- (2) The council shall appoint each member of the commission for a four-year term. One of the initial commissioners shall serve only a 24-month term in order to ensure that the commission will have staggered terms.
- (3) 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 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.
- (4) Two of the commissioners shall constitute a quorum for the transaction of business.
- (5) The commission shall meet only when necessary to conduct the business of the commission.
- (6) 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.

(f) *Commission protocols.*

- (1) *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.
- (2) *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.
 - a. Parties shall be responsible to pay for their own legal fees and costs.
 - b. 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.
- (3) *Ex parte communications.* Members of the commission shall not engage in ex parte communications with the respondent or the complainant.
- (4) *Confidentiality.*
 - a. 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.
 - b. All information relating to a complaint that has been dismissed without formal charges being filed shall be held confidential by the commission.
 - c. Any attorney-work product, commission deliberations and records of the commission's deliberations shall not be disclosed.

- d. 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.
- (5) *Immunity from civil suits.*
 - a. 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.
 - b. 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.
- (6) *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.
- (7) *Oaths and subpoena power.*
 - a. Oaths and affirmations may be administered by the commission.
 - b. 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.
- (8) *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.
- (g) *Commission review and formal hearing process.*
 - (1) *Filing of a complaint.*
 - a. All complaints received under this section 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.
 - b. The complaint form will be filed with the office of the general counsel. The complaint shall be date and time stamped.
 - c. The complaint must be filed within one 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 year of the latest incident of alleged misconduct. If the complaint is filed after one year of when the incident occurred, the commission does not have jurisdiction to hear the complaint.
 - d. Any person may file a complaint before the commission.
 - e. The complainant shall receive acknowledgement that the complaint has been received by the commission within 72 hours (excluding weekends) of the filing of the complaint.
 - 1. The commission's letter of receipt shall include a statement that the commission shall provide an initial review of the complaint within 15 business days.
 - f. 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.
 - g. 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.
 - (2) *Initial screening.*

- a. 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.
 - 1. Referral of a complaint to another governmental agency does not violate any confidentiality provisions of this section.
 - 2. 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.
 - b. 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.
- (3) *Investigator.*
- a. 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.
 - b. 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.
- (4) *Investigation.* Once the commission appoints an investigator to investigate the allegations made in the complaint, the commission shall notify the respondent of the following:
- a. 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;
 - b. The respondent's duty to cooperate and respond;
 - c. The respondent's opportunity to present before the commission if formal charges are filed by the commission; and
 - d. The name of the complainant unless the commission determines that there is good cause to withhold that information.
- (5) *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.
- (6) *Formal charges.*
- a. 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.
 - b. The council shall be provided written notice of the formal charges.
- (7) *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.
- (8) *Failure to answer or appear.*
- a. *Respondent.*
 - 1. Failure of the respondent to answer the formal charges shall constitute an admission of the factual allegations.

2. 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.
 - b. *Complainant.* Absent good cause, if the complainant fails to appear when specifically ordered by the commission, the complaint shall be dismissed with prejudice.
- (9) *Discipline by consent.*
- a. 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.
 - b. 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 section; and
 3. That the respondent's consent is free and voluntary.
 - c. 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.
- (10) *Disciplinary hearing.*
- a. 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.
 - b. The conduct of the hearing shall be as follows:
 1. All testimony shall be under oath;
 2. The investigator shall present evidence on the formal charges;
 3. The investigator may call the respondent as a witness;
 4. Both parties shall be permitted to present evidence and produce and cross-examine witnesses;
 5. The hearing shall be recorded; and
 6. 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.
 - c. 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.
 - d. 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.
- (11) *Sanctions.* The sanctions that the commission may consider are limited to the following:
- a. Recommendation to the council for removal of the respondent as a judge before the SRPMIC Court;

- b. Suspension, without pay, for up to 15 days (any proposed suspension of more than 15 days must be done by council action);
 - c. 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);
 - d. Discipline by consent as defined in subsection (g)(9) of this section.
- (12) *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.
- a. 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.
 - b. Upon the recommendation of the commission, the council may impose a single sanction covering all recommendations for discipline from the commission.
 - c. The council shall file a written decision with the council secretary.
- (h) *Annual report.*
- (1) 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:
 - a. The number of complaints that were received by the commission during the year;
 - b. The number of complaints filed against each judge;
 - c. The final outcome of the commission's review regarding all filed complaints, including complaints that were determined to not have merit; and
 - d. Any other related information that the commission deems appropriate.
 - (2) The council shall publish the commission's annual report.

Editor's note— Ord. No. SRO-435-2014, adopted Feb. 12, 2014, replaced the former § 4-35 with the provisions set out herein. The former § 4-35 pertained to removal or suspension of judges. Ord. No. SRO-435-2014 is effective upon the appointment of commission members by the council.

Sec. 4-36. Request for change of judge; judge recusal; conflict of interest.

- (a) *Request for change.*
- (1) In any civil action pending in the Community court, the parties are entitled as a matter of right to a change of judge. The right may be exercised by either party. A party wishing to exercise the right to change of judge shall file a pleading entitled "Notice of Change of Judge." The notice shall be signed by the party, it shall state the name of the judge to be changed, and it shall neither specify grounds nor be accompanied by an affidavit. The request for change of judge shall be immediately honored.
 - (2) In any criminal action pending in the Community court, the prosecutor or the defendant shall, prior to trial or a hearing, be entitled to a change of judge if the assigned judge cannot conduct a fair and impartial hearing or trial without prejudice or bias. All change of judge requests shall be in accordance with Rule 10 of the rules of criminal procedure (as may be amended).

- (b) *Conflict of interest.* No judge shall be qualified to act in any case wherein he or she has an interest in the outcome or where he or she is a relative to the first degree by marriage or blood whatsoever to any party.
- (c) *Self disqualification; filing of affidavit.* A judge may remove himself or herself from acting in a case if he or she is not qualified to act under the provision of subsection (b) of this section, or a party may cause the judge to be removed if he or she is not qualified to act under the provisions of subsection (b) of this section, if the party files an affidavit that the judge is not qualified under the provision of subsection (b) of this section or is biased against the party filing the affidavit or in favor of the other party in the action. The judge against whom the affidavit has been filed shall hold a hearing within ten days after the affidavit has been filed to determine whether the affidavit correctly states the facts. If the judge determines that the affidavit correctly states the facts, then the judge shall be disqualified. If the judge determines that the affidavit does not correctly state the facts and that the judge is not disqualified under the provisions of subsection (b) of this section, then the judge shall continue to act in the case. The determination of qualification shall be made at the conclusion of the hearing.
- (d) *Time limit upon requests, filing.* No requests for change of judge and no affidavit of disqualification or bias shall be filed more than five days after the date on which the answer to the complaint is to be filed. No request for change of judge or affidavit of disqualification or bias shall be filed after the assigned judge has ruled on any substantive matter in the proceedings or has ruled in an earlier related case or proceeding.

Secs. 4-38—4-84. Reserved.

ARTICLE III. APPEALS

Sec. 4-85. Appellate division.

The appellate division of the Community court shall consist of appellate justices of the Community court approved by the Community Council. No justice shall sit on a court of appeals in a case in which the original proceedings were tried by that justice or if that justice was disqualified pursuant to this Community Code of Ordinances.

Sec. 4-85a Effect of Appeal Being Filed.

Upon the acceptance of an appeal by the appellate court, the trial court shall place a stay on the matter and the trial court shall refrain from making any further decisions until the completion of the appeal, unless directed otherwise by the appellate court.

Sec. 4-86. Jurisdiction of the court of appeals.

The court of appeals has jurisdiction to decide the following:

- (1) Appeals from all final judgments or final orders of the Community court in civil matters;
- (2) Appeals from all judgments of conviction of the Community court in criminal matters;
and
- (3) Special actions as defined by the Rules of Civil and Criminal Appellate Procedure.

Sec. 4-87. Appellate justices.

- (a) *Appointments.* The court of appeals shall consist of no less than three justices appointed by the Community Council. The Community Council may appoint additional justices to serve in a pool of justices to enable the presiding justice to select panels of three available justices when needed. Justices appointed to the court of appeals must meet the qualifications set forth in section 4-88.
- (b) *Burden of establishing qualifications.* Applicants for judicial appointment have the burden of establishing that they satisfactorily meet the qualifications set forth in section 4-88. Appointment decisions by Community Council are not subject to review or appeal or any grievance process.
- (c) *Compensation.* Justices will be compensated as directed by the Community Council and in accordance with Community human resources department policies and procedures, except that such compensation will not be diminished during a justice's term in office.

Sec. 4-88. Composition of the court of appeals.

Pursuant to section 4-93 and the Rules of Civil and Criminal Appellate Procedure, a panel of three justices will consider and decide the merits of any appeals, petitions, or motions. Each panel shall be comprised of two licensed justices and one associate justice as defined below.

- (1) *Licensed justices.* No less than two justices appointed to a panel of the court of appeals shall be attorneys licensed to practice law and members in good standing in all state bar associations to which they are admitted and shall meet the qualifications set forth in section 4-32(4).
 - a. Justices appointed pursuant to this section must have practiced as an attorney or judge in the area of federal Indian law and have a minimum of two years' experience in an employment or appointed capacity working with tribal governments.
 - b. Preference will be given to candidates with prior judicial experience.
 - c. Preference will be given to candidates who are members of the Salt River Pima-Maricopa Indian Community, the Gila River Indian Community, the Ak-Chin Indian Community, the Tohono O'odham Nation, or other federally recognized tribe.
- (2) *Associate justices.* One justice appointed to each panel of the court of appeals may be a non-attorney who meets the qualifications set forth in sections 4-32(2)(a), (b), (d), (e), (h), (i), and (k).
 - a. A justice appointed pursuant to this section shall be familiar with the customs and traditions of the Akimel O'odham and Xalychidom Piipaash people and how those customs and traditions can be applied to matters pending before the Community court.
 - b. A justice appointed pursuant to this section must have at least five years of judicial or law-related experience.
 - c. Preference will be given to candidates with prior tribal court judicial experience.
 - d. Preference will be given to candidates who are members of the Salt River Pima-Maricopa Indian Community, the Gila River Indian Community, the Ak-Chin Indian Community, the Tohono O'odham Nation, or other federally recognized tribe.

Sec. 4-89. Appointment to the court of appeals.

- (a) *Length of term.* Effective as of December 31, 2018, upon appointment by the Community Council, a justice of the court of appeals will serve a term of four years or thereafter until his or her successor is appointed by the Council.
- (b) *Reappointment.* Justices may serve an indefinite number of terms subject to reappointment by the Community Council. For previously serving court of appeals justices who have received no complaints

and are in good standing, the Community Council may re-appoint them for a four year term without going through the judicial selection committee process.

- (c) *Expiration.* If the term of appointment for a justice of the court of appeals expires while the justice is presiding over a case or cases, the justice may continue to preside over the case or cases until a final opinion, memorandum, or order is issued but under no circumstances will the justice continue to serve more than six months following the expiration of his or her appointment. The presiding justice is authorized to allow a justice to continue serving pursuant to this section.

Sec. 4-90. Designation and responsibilities of presiding justice.

- (a) *Designating a presiding justice.* The Community Council will designate a justice appointed pursuant to section 4-88(a) to serve as the presiding justice of the court of appeals.
- (b) *Responsibilities.* In addition to his or her role as a member of the court of appeals and other duties set forth in this article, the presiding justice will be responsible for:
 - (1) Making case assignments;
 - (2) After considering recommendations from each panel, assigning justices to author court of appeals' opinions;
 - (3) Exercising supervisory responsibility for court of appeals' members and providing judicial direction to staff;
 - (4) Directing training and professional development of appellate justices and court of appeals' staff;
 - (5) Issuing an annual report to the Community Council regarding the number of appellate cases pending, the number of cases heard by, and the number of final orders issued by the court of appeals during that past year, in addition to any other relevant information regarding the performance of the court of appeals.

Sec. 4-91. Oath of office.

Upon appointment by the Community Council, justices appointed to the court of appeals shall take an oath to uphold the Constitution, laws, and ordinances of the Community and only to the extent applicable, the Indian Civil Rights Act and other federal law.

Sec. 4-92. Advisory opinions.

The court of appeals is authorized to issue advisory opinions:

- (1) Upon request by a judge of the Community court on questions of law; and
- (2) Upon request by a state or federal court on questions of law and custom.

Sec. 4-93. Consideration of the appeal.

- (a) *Selecting a panel.* Once a notice of appeal has been filed, the presiding justice will assign the matter to a panel, which may include the presiding justice, of three appellate justices who will consider the appeal.
- (b) *Preliminary rulings.* The full panel will determine requests for oral argument and other preliminary matters and will designate a member of the panel who will be responsible for issuing preliminary orders.

Sec. 4-94. Opinions, memoranda, and orders.

Unless otherwise noted, all opinions, memoranda, and orders of the court of appeals on all matters within its jurisdiction are final.

- (1) *Request for rehearing.* Any request for a rehearing must be filed in the manner set forth in the appropriate rules of appellate procedure.
- (2) *Review of pending cases.* The justices of the court of appeals will review all pending cases no less than once each month until a final, written opinion, memoranda, or order is entered.
- (3) *Time for issuing opinions, memoranda, and orders.* All opinions, memoranda, and orders of the court of appeals will be entered within six months of oral arguments or the deadline for submission of the respondent's brief, whichever is later.
- (4) *Failure to comply.* Failure to comply with this section may constitute cause for which a justice may be removed from office.

Sec. 4-95. Disqualification and removal.

- (a) *Self-disqualification.* All justices are encouraged to assess their individual qualifications to serve on a case and may disqualify themselves in any instance they deem appropriate.
- (b) *Request for removal of a justice.* Any party may file a request pursuant to section 4-36 with the presiding justice of the court of appeals to remove an individual appellate justice from a case.
 - (1) After reviewing the request, the presiding justice will issue a written order granting or denying the request and stating the reasons for the decision.
 - (2) If a party seeks to remove the presiding justice from a case, the request will be considered by the entire panel and the appellate justice assigned to author the opinion will enter the order granting or denying the request.
 - (3) This order will be final and not subject to additional appeal.
- (c) *Removal and suspension.* Justices appointed pursuant to this article are not subject to removal or suspension except for cause as determined by the Community Council after notice and an opportunity to be heard and as provided in section 4-35.

Sec. 4-96. Justices by designation.

- (a) *Appellate justices pro tempore.* If for any reason the presiding justice is unable to select three justices from the pool of justices established pursuant to section 4-87(a) to form a panel, the presiding justice will select an appellate justice pro tempore to sit on the case by designation.
- (b) *Qualifications.* Appellate justices pro tempore sitting by designation shall meet the qualifications set forth in section 4-88 depending on whether a justice is to fill a licensed or associate justice position.

Sec. 4-97. Attorneys and advocates.

Any party to an appeal filed in the court of appeals may, at their own expense, have the assistance of counsel who may be either an attorney or an advocate and who must be admitted to practice in the Community court.

Sec. 4-98 Binding on the Community Tribal Court.

1. All orders made by the court of appeals shall be binding on the trial court unless expressly stated otherwise by the appellate order, and is judicial precedent for the community court.
2. All orders made by the appellate court shall be made publically available and published on the internet.
3. Failure to follow an appellate court order, may subject a trial court judge to discipline, and possibly removal, by the judicial conduct and discipline commission process.

Sec. 4-99. Effective date.

The amendments set forth in sections 4-86 through 4-98 will govern appeals filed on or after February 1, 2015.

Secs. 4-100—4-185. Reserved.

ARTICLE IV. BONDS AND WITNESS EXPENSES

Sec. 4-186. Bonds and witness expenses.

- (a) *Criminal bond.* In a criminal case, the judge may require that a bond be posted in an amount set at the discretion of the judge.
- (b) *Civil bond.* In a civil case, the judge may require that a bond be posted in an amount equal to value of the judgment, including costs. A cash deposit for the amount of the judgment or the value of the property, plus costs, may be made in lieu of a bond.

Secs. 4-187—4-210. Reserved.

Secs. 4-212—4-231. Reserved.

ARTICLE VI. DEFENDANT'S RIGHTS

Sec. 4-232. Explanation of charges; judge to advise legal rights.

Before any defendant is asked to plead to any criminal charge, the judge before whom he or she appears shall do the following:

- (1) Read the charge and the language of the ordinance establishing the offense and fixing the penalty;
- (2) Explain the charge in language the defendant can understand; and

- (3) Advise the defendant of his or her legal rights as more particularly described in the rules of criminal procedure.

ARTICLE VII. Miscellaneous Conforming Amendments.

1. In section 3-5(b)(5) of the SRPMIC Code of Ordinances, strike “and chief judge” from the first sentence, and add “and” before council members.
2. Strike Section 3-5(d)(6) of the SRPMIC Code of Ordinances which reads, “for the position of chief Judge, write-in candidates are not authorized due to the requirements of section 4-33.”
3. In Section 3-6(b) of the SRPMIC Code of Ordinances strike “and chief judge” and add “and” before council members.
4. In Section 3-(f)(2) of the SRPMIC Code of Ordinances strike “chief judge of the court;”
5. In Section 3-7(g)(3) of the SRPMIC Code of Ordinances strike “the chief judge”
6. Repeal and Replace the term “chief judge” with “court” in Sections 10-36 (a), 10-307, 11-27(b)(1), 20-22(a), and 20-23(a) of the SRPMIC Code of Ordinances .
7. In Section 11-27(a) of the SPRMIC Code of Ordinances repeal and mark “intentionally left blank”.
8. In Section 16-1 of the SPRMIC Code of Ordinances, under the definition of “judge” amend the definition to read, “means a judge of the Community Court, including pro tempore judges as authorized in Chapter 4.”
9. In Section 17-470(a)(1) of the SPRMIC Code of Ordinances, strike “the chief judge of”.

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(c)(2) 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 4th day of March, 2020, in a duly called meeting held by the Community Council in Salt River, Arizona at which a quorum of 9 members were present by a vote of 9 for; 0 opposed, 0 abstentions, and 0 excused.

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



Martin Harvier, President

ATTEST:



Erica Harvier, Council Secretary

