



GILA RIVER INDIAN COMMUNITY

SACATON, AZ 85147

ORDINANCE GR-05-13

THE GILA RIVER INDIAN COMMUNITY COUNCIL HEREBY AMENDS THE 2009 GILA RIVER INDIAN COMMUNITY CODE BY AMENDING CERTAIN SECTIONS OF TITLE 4, COURTS AND PROCEDURE

WHEREAS, the Gila River Indian Community Council (the “Community Council”) is the governing body of the Gila River Indian Community (the “Community”), a federally recognized and sovereign Indian tribe; and

WHEREAS, the Community Council is authorized by Article XV, Section 1(a)(9) of the Constitution and Bylaws of the Community (March 17, 1960) (the “Constitution”) to promote and protect the health, peace, morals, education, and general welfare of the Community and its members; and

WHEREAS, the Community Council is authorized by Article XV, Section 1(a)(17) of the Constitution to provide for the maintenance of law and order and the administration of justice by establishing a Community Court and police force and defining the powers and duties thereof; and

WHEREAS, the Community Council is authorized by Article XV, Section 1(a)(19) of the Constitution to pass ordinances necessary or incidental to the exercise of any of their powers authorized by Article XV, Section 1(a) of the Constitution; and

WHEREAS, the power to enact laws and ordinances is an inherent function of self-government which the Community has exercised over the years; and

WHEREAS, on July 6, 2011, the Community Council directed the implementation of enhanced sentences (up to three years per criminal offense and up to nine years per criminal proceeding) as authorized under the TLOA; and

WHEREAS, a workgroup comprised of representatives from Community departments and other organizations (Gila River’s Office of the General Counsel, Office of the Prosecutor, Defense Services Office, Police Department, Department of Rehabilitation and Supervision, Judicial Department, Probation, Tribal Social Services; and GRHC Behavioral Health, Four Rivers Indian Legal Services, and Tribal Court Advocate), which included Community members, met on a monthly basis during 2011 and most of 2012 to revise the Criminal Code, including enhanced sentences under TLOA; and

WHEREAS, the Community Council is considering enacting a revised Criminal Code to include felony offenses and enhanced sentencing, including sentencing up to three years per criminal offense and up to nine years per criminal proceeding as provided under the TLOA; and

WHEREAS, the Community Council is also considering approving rules of evidence and rules of criminal procedure for the Community Court; and

WHEREAS, it is necessary to amend Title 4, Courts and Procedures, Chapter 1, § 4.106 to provide for the proper qualifications of any judges pro tempore appointed to criminal cases where a defendant might be subject to a sentence greater than one year and to expand the appointment time for judges pro tempore; and in Chapter 3, § 4.302 and § 4.311, to reflect the proper application of the Community's Constitution and laws and to reflect the application of the Community's Rules of Evidence; and

WHEREAS, the Community Council also desires to amend the Dismissal of Action, Title 4, Chapter 3, § 4.310, to include and clarify grounds for dismissal under delay and to consider the advice of health care professionals when dismissing mental health cases;

WHEREAS, the amendments to Title 4, Courts and Procedure, have complied with pre-adoption notification procedures pursuant to Title Eight, Chapter Seven, Section 8.703 of the Gila River Indian Community Law and Order Code by publication in the Gila River Indian Community News and posting at all seven district service centers. Additionally, the amendments to the Courts and Procedure were presented at all seven district meetings during March, 2013 and April, 2013; three public hearings for Community member employees on March 21, 2013; and one public hearing for Community member employees on March 28, 2013; and

WHEREAS, the Legislative Standing Committee recommends the enactment of the amendments to Title 4, Courts and Procedure.

NOW, THEREFORE, BE IT ENACTED, the Community Council hereby amends Title 4, Courts and Procedure, Chapter 1, § 4.106; Chapter 3, § 4.302, § 4.310 and § 4.311, as attached.

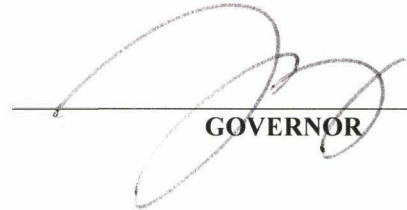
BE IT FURTHER ENACTED, that the amendments to Title 4, Courts and Procedure, shall become effective January 1, 2014.

BE IT FINALLY ENACTED, that the Governor, or in the Governor's absence the Lieutenant Governor, is hereby authorized to take all steps necessary to carry out the intent of this enactment.

CERTIFICATION

Pursuant to authority contained in Article XV, Section 1, (a) (7), (9), (17), (18), (19), (b) (8), (10), and Section 4 of the amended Constitution and Bylaws of the Gila River Indian Community, ratified by the tribe January 22, 1960, and approved by the Secretary of the Interior on March 17, 1960, the foregoing ordinance was adopted on the 15th of May 2013, at a regular Community Council meeting held in District 3, Sacaton, Arizona at which a quorum of 14 Members were present by a vote of: 12 FOR; 2 OPPOSE; 0 ABSTAIN; 3 ABSENT; 0 VACANCIES.

GILA RIVER INDIAN COMMUNITY



GOVERNOR

ATTEST:



COMMUNITY COUNCIL SECRETARY



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4.106. Judges Pro Tempore.

A. **Authority to Appoint.** The Chief Judge of the Community Court may appoint judges *pro tempore* to preside over civil, criminal or juvenile cases before the Community Court and the Children's Court in cases where the judges of the Community Court have been disqualified from sitting on a case or when such judge has disqualified him or herself, or when necessary to facilitate the administration of justice including compliance with the Tribal Law and Order Act of 2010.

B. **Qualifications of Appointee:** Persons appointed as judge *pro tempore* shall be:

1. Appointees may be a sitting judge of any other Indian Community or tribe; or
2. A Community member whose experience demonstrates a working knowledge of the laws and ordinances of the Gila River Indian Community and knowledge of the functioning of the Community Courts, including the Children's Court; or
3. An attorney in good standing and licensed to practice law in the State of Arizona whose experience demonstrates knowledge of Indian law.

C. **Tribal Law and Order Act.** Persons appointed as judges *pro tempore* in cases in which defendants are subject to enhanced sentences of longer than one year under the Tribal Law and Order Act of 2010 shall have sufficient legal training to preside over criminal proceedings, and be licensed to practice law by any jurisdiction in the United States.

D. **Authority of Judges Pro Tempore.** A judge *pro tempore* shall have the same powers, privileges and duties as a Judge of the Community Court or the Children's Court and shall be administered an oath of office. Any and all decisions, orders and actions in cases heard before a judge *pro tempore* shall be given the same authority as those issued by a judge of the Community Court or the Children's Court.

E. **Length of Appointment.** Judges *pro tempore* may be appointed for any such term as the Chief Judge shall mandate, however no such appointment shall last longer than a period of twelve months. A judge *pro tempore* may be reappointed for another appointment before the expiration of the twelve-month period if the Chief Judge deems reappointment is necessary pursuant to section 4.106.A. Judges *pro tempore* are subject to the provisions regarding misconduct under Title 1 of the GRIC Code.

F. **Compensation.** Judges *pro tempore* shall be compensated at a rate as determined by the Judicial Department in consultation with the Human Resources Department.

4.302. APPLICABLE LAW.

In all civil cases the court shall apply the Gila River Indian Community Constitution, laws and ordinances. The court may, but is not required to, apply the traditional customs of the Community if they are relevant and not in conflict with the laws and ordinances of the Community. Where any doubt arises as to the customs and usages of the Community, the court may request the advice of those familiar with those customs and usages. In deciding any matter that is not covered by the laws, ordinances or traditional customs and usages of the Community, or by applicable federal laws or regulations, the court may look to the law of another tribal, federal or state jurisdiction for guidance.

4.311. EVIDENCE.

Unless provided otherwise under Community law, for all civil matters the court shall apply the Gila River Indian Community Rules of Evidence. In the absence of the Gila River Indian Community Rules of Evidence, the State of Arizona Rules of Evidence may be followed to the extent the State of Arizona Rules of Evidence do not conflict with this code.

4.310. DISMISSAL OF ACTION.

A. An action may be dismissed by the plaintiff without order of court by filing a notice of dismissal at any time before the defendant responds to the action, either before the court or in writing, or by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal will not prevent the later filing of the same action.

B. Except as provided in Section 4.310.A, an action shall not be dismissed by the plaintiff except upon order of the court and upon such terms and conditions as the court chooses to impose.

C. For failure of the plaintiff to prosecute or comply with these rules or any order of the court, a defendant may move for dismissal of an action or any claim against him.

D. Failure by a party or the court to satisfy any timeframes established in the Community Code will not be grounds for dismissal of the action if the judge finds that the delay is indispensable to the interests of justice and enters a written order detailing the reasons.

E. In any case where mental health is an issue, including but not limited to involuntary mental health filings, the judge shall take into consideration whether dismissal would be contrary to the advice of health care professionals and if dismissed shall enter a written order detailing the reasons for dismissal. The appropriate remedy when detention occurs beyond a statutory timeframe is to consider release during the period of improper detention and not dismissal.