

RESOLUTION NO. 92 -2000  
OF THE YAVAPAI-APACHE TRIBAL COUNCIL

*Amends  
2.1  
Amendment  
eff. 5/23/00*

**Approving Amendments to Chapter 2, Section 2.1 of the Yavapai-Apache Nation Code**

**WHEREAS:**

1. The Tribal Council ("Council") of the Yavapai-Apache ("Nation") is empowered to enact laws, ordinances and resolutions necessary or incidental to the exercise of its legislative powers pursuant to Article V of the Nation's Constitution; and
2. The current language of Chapter 2, Section 2.1 of the Yavapai-Apache Nation Code provides that the tribal court shall not have jurisdiction over non-Indian defendants in civil matters, unless said non-Indian shall have submitted himself to said jurisdiction; and
3. The language of Chapter 2, Section 2.1 is inconsistent with Article 1 of the Nation's Constitution, which provides that the Nation shall have jurisdiction over all "...persons ... and activities occurring within the boundaries of the reservation or on other lands within the jurisdiction of the Tribe .." and
4. In order to ensure consistency with the Nation's Constitution and with the Yavapai-Apache Nation Code as a whole, the Council finds it is in the best interest of the Nation to amend Chapter 2, Section 2.1 as set forth in Exhibit "A".

**NOW, THEREFORE, BE IT RESOLVED:**

The Council hereby approves the amendments to Chapter 2, Section 2.1 of the Yavapai-Apache Nation Code as set forth in Exhibit "A" with additions underlined and deletions strikethrough.

**CERTIFICATION**

I hereby certify that the foregoing resolution was adopted by an affirmative vote of the Yavapai-Apache Tribal Council by a vote of 7 in favor, 0 opposed and 0 abstaining, presented for approval on May 23, 2000.

Attest: Karla Reimer  
Karla Reimer, Secretary

Vincent E. Randall  
Vincent E. Randall, Chairman

## EXHIBIT "A"

### CHAPTER 2

#### CIVIL ACTIONS

##### Section 2.1 Jurisdiction

The Yavapai-Apache Tribal Court shall have jurisdiction of all suits wherein the defendant is a member of the ~~tribe or tribes within its jurisdiction~~ Nation, and of all other suits between members and non-members which are brought before the Court, ~~provided that the tribal court shall not have jurisdiction over non-Indian defendants in civil matters, unless said non-Indian shall have submitted himself to said jurisdiction. Submission of jurisdiction shall be by written stipulation or oral stipulation in open court or by filing an action in tribal court against an Indian.~~ No judgment shall be given on any suit unless the defendant has had notice and reasonable opportunity to appear in court in his defense. Evidence of the receipt of the notice shall be kept as part of the record in the case. In all civil ~~suites~~ suits, the complainant may be required to deposit with the Clerk of Court a fee or other security in a reasonable amount to cover costs and disbursements in the case.

##### Section 2.1 Jurisdiction

The Yavapai-Apache Tribal Court shall have jurisdiction of all suits wherein the defendant is a member of the Nation, and of all suits between members and non-members which are brought before the Court. No judgment shall be given on any suit unless the defendant has had notice and reasonable opportunity to appear in court in his defense. Evidence of the receipt of the notice shall be kept as part of the record in the case. In all civil suits, the complainant may be required to deposit with the Clerk of Court a fee or other security in a reasonable amount to cover costs and disbursement in the case.

TABLE OF CONTENTS

CHAPTER TWO

CIVIL ACTIONS

<u>Section</u>	<u>Title</u>	<u>Page</u>
2.1	Jurisdiction	22
2.2	Law Applicable to Civil Actions	22
2.3	Judgments in Civil Actions	23
2.4	Damages	23
2.5	Civil Actions	23
2.6	Mitigated Damages	23
2.7	Costs in Civil Actions	23 - 24
2.8	Payment of Judgments from Individual Indian Moneys	24
2.9	Commencement of Action	24 - 25
2.10	Preparations of Claim	25
2.11	Service of Process	25 - 26
2.12	Form of Claim, Verification and Notice	26 - 29
2.13	Judgment by Default	29
2.14	Memorandum to Plaintiff	30
2.15	Trial - Pretrial Settlement	30

Table of Contents (Continued)  
Chapter two - Civil Actions

2.16	Trial - Procedure	30
2.17	Failure of Parties to Appear	30 - 31
2.18	Set-off or Counterclaim	31
2.19	Judgment-Stay of Entry and Execution-Installment Payment	31 - 32
2.20	Judgment for Wages-Examination Payment	32
2.21	Non-Indian Right of Claim	32
2.22	Appeals	32

Resolution NO. 14-96  
 TORT REMEDY PROCEDURES FOR  
 GAMING PATRONS

1.	Policy	1
2.	Applicability	1
3.	TRIBAL COURT JURISDICTION	1
4.	Definitions	1
5.	Limited Waiver of Sovereign Immunity (1-2)	1-2
6.	Bringing Auth. Claims against Nation/Gaming Facility	(3)
7.	Amendment; Effective Date	(3)

CHAPTER 2  
CIVIL ACTIONS

*Amended  
for Resolution  
# 92-2070*

Sec. 2.1 Jurisdiction

The Yavapai-Apache Tribal Court shall have jurisdiction of all suits wherein the defendant is a member of the tribe or tribes within its jurisdiction, and of all other suits between members and non-members which are brought before the Court, provided that the tribal court shall not have jurisdiction over non-Indian defendants in civil matters, unless said non-Indian shall have submitted himself to said jurisdiction. Submission of jurisdiction shall be by written stipulation or oral stipulation in open court or by filing an action in tribal court against an Indian. No judgment shall be given on any suit unless the defendant has had notice and a reasonable opportunity to appear in court in his defense. Evidence of the receipt of the notice shall be kept as part of the record in the case. In all civil suits the complainant may be required to deposit with the Clerk of Court a fee or other security in a reasonable amount to cover costs and disbursements in the case.

Sec. 2.2 Law Applicable to Civil Actions

In all civil cases the Yavapai-Apache Tribal Court shall apply any laws of the United States and State of Arizona Statutes that may be applicable, any authorized regulations of the Interior Department and ordinances of the tribe.

Sec. 2.3 Judgments in Civil Actions

In all civil cases, judgments shall consist of an order of the Court awarding money damages to be paid to the injured party, or directing the surrender of certain property to the injured party, or the performance of some other act for the benefit of the injured party.

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Sec. 2.4 Damages

Where the injury inflicted was the result of negligence of the defendant the judgment shall fairly compensate the injured party for the he has suffered.

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2.5 Civil Actions

Punitive damages shall not be imposed by and paid to the Court in Civil procedures. Where the injury was deliberately inflicted, the judgment shall impose an additional penalty upon the defendant, which additional penalty shall run in favor of the injured party.

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Sec. 2.6 Mitigated Damages

Where the injury was inflicted as the result of an accident, or where both the complainant and the defendant were at fault, the judgment shall compensate the party in whose favor a verdict is rendered for a reasonable part of the loss he has suffered.

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2.7 Costs in Civil Actions

The Court may assess the accruing costs including juror fees of the

case against the party or parties against whom judgment is entered.

#### Section 2.8 Payments of Judgment from Individual Tribal Monies

Whenever the Yavapai-Apache Tribal Court orders payment of money damages to an injured party, and the losing party refuses to make such payment within time set for payment by the Court, and when the losing party has insufficient funds to his credit at the Agency office to pay any part of such judgment, the Tribal Court may certify to the Commissioner of Indian Affairs or his authorized representative the record of the case and the amount of damages. If the Commissioner of Indian Affairs or his authorized representative may so direct, the disbursing agent shall pay over to the injured party the amount of the judgment or such lesser amount as may be specified by the Commissioner of Indian Affairs or his authorized representative from the account of the delinquent party.

A judgment shall be a lawful debt in all proceedings to distribute a decedent's estate.

#### Section 2.9 Commencement of Action

Actions shall be commenced in the Yavapai-Apache Tribal Court by the filing of a claim, in concise form and free of technicalities. The plaintiff or his agent shall verify the claim by oath or affirmation in the form herein provided, or its equivalent, and shall affix his witnessed signature thereto. When a claim is filed, the Clerk of the Tribal Court shall write upon the original of it the day and hour on which it was filed and shall immediately issue a summons and deliver the original and one copy of the complaint to the Tribal Police for service of the copy of the summons and complaint upon the defendant. The summons shall be in the form prescribed by the Tribal Court and shall be signed by the Clerk and be under the seal of the Court.

#### Section 2.10 Preparation of Claim

The Yavapai-Apache Tribal Clerk shall, at the request of any individual, assist him or her in preparing the claim and other papers required to be filed in an action under this chapter.

#### Section 2.11 Service of Process

The copy of the summons and the copy of the complaint shall be served together. Service shall be made as follows:

(a) Upon any individual delivering a copy of the summons and of the complaint to him personally.

(b) If service of the summons and complaint cannot be personally made, within the jurisdiction of the Yavapai-Apache Tribal Court, a copy of the summons and complaint shall be mailed by Registered or Certified mail, Receipt Returned Requested, to the defendant's last known post office address by the Clerk of the Tribal Court. The defendant shall have thirty (30) days in which to answer the complaint from the time of the completed service.

(c) reserved

(d) Service of summons and complaint shall be arrested to by an affidavit of the officer who personally served the summons and complaint or by affidavit of the Clerk of the Court who mailed the summons and complaint. Service shall be complete at the time personal service is made (or at the time of mailing if mailing is the method of service) providing an affidavit of service or mailing is filed with the Clerk within ten (10) days after service is made.

If such an affidavit is not filed within ten (10) days after service is made, then service shall be deemed complete from the date of the filing of such affidavit.

(e) Upon the issuance of a Summons by the Clerk of the Court or upon the issuance of an Order, Notice of Hearing by a Judge of the Court, the Clerk of the Court shall deliver the Notice, Order or Summons and Complaint to the Chief Officer of the Police Department of the Yavapai-Apache Tribe or his designated agent for service of said papers.

(f) The Chief Officer of the Yavapai-Apache Tribal Police Department or his designated agent shall personally serve the Order, Notice or Summons and Complaint received from the Yavapai-Apache Tribal Court, upon the person or persons designated.

(g) Service of the Notice of Hearing must be completed at least forty-eight (48) hours prior to the scheduled hearing.

Sec. 2.12 Form of Claim, Verification and Notice



The statement of claim, verification and notice shall be in the following or equivalent form:

IN THE YAVAPAI-APACHE TRIBAL COURT  
YAVAPAI-APACHE RESERVATION, ARIZONA

\_\_\_\_\_,  
Plaintiff,  
\_\_\_\_\_,  
Defendant.

NO. \_\_\_\_\_  
(NATURE OF CLAIM)

STATEMENT OF CLAIM

(Here the plaintiff, or at this request, the Tribal Judge or his Clerk, will insert a concise statement of the facts which are the basis of plaintiff's claim.)

STATE OF ARIZONA  
County of \_\_\_\_\_ ss

\_\_\_\_\_, being first duly sworn, on oath says that the foregoing is a just and true statement of the amount owing by defendant to plaintiff, exclusive of all set-offs and just grounds of defense.

\_\_\_\_\_  
Plaintiff (or agent)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

\_\_\_\_\_  
Tribal Judge or Notary Public

N O T I C E

TO: \_\_\_\_\_  
Defendant

\_\_\_\_\_  
Home Address

You are hereby notified that \_\_\_\_\_ has made a claim and is requesting judgment against you in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), as shown by the foregoing statement. The Court will hold a hearing upon this claim \_\_\_\_\_ at \_\_\_\_\_ .M.

You are required to be present at the hearing in order to avoid a judgment by default.

If you have witnesses, books, receipts, or other writings bearing on this claim, you should bring them with you at the time of the hearing.

If you wish to have witnesses summoned, see the Clerk at once for assistance.

If you admit the claim, but desire additional time to pay, you must come to the hearing in person and state the circumstances to the Court.

\_\_\_\_\_  
Tribal Judge

Sec. 2.13 Judgment by Default

Upon failure of defendant to appear, plaintiff shall be entitled to a judgment by default without further proof if his claim is for a liquidated amount; when the amount is unliquidated, plaintiff shall be required to present proof of his claim.

Sec. 2.14 Memorandum to Plaintiff

The Tribal Judge or his Clerk shall furnish the plaintiff with a memorandum of the day and hour set for the hearing, which time shall be not less than five (5) nor more than fifteen (15) days from the date of the filing of the action.

Sec. 2.15 Trial - Pre Trial Settlement

On the return day, or such later time as the Tribal Judge may set, the trial shall be had. Immediately prior to the trial of any case, the Tribal Judge shall make an earnest effort to settle the controversy by conciliation. If the Tribal Judge fails to induce the parties to settle their differences without a trial, he shall proceed with the hearing on the merits, or set a date for hearing within thirty (30) days.

Sec. 2.16 Trial - Procedure

The parties and witnesses shall be sworn. The Tribal Judge shall conduct the trial in such manner as to do substantial justice between the parties according to the rules of substantive law.

Sec. 2.17 Failure of Parties to Appear

If the defendant fails to appear, judgment may be entered for the plaintiff by default as above provided. If the plaintiff fails to appear, the suit may be dismissed for want of prosecution, or a nonsuit may be ordered, or defendant may proceed to a trial on the merits, or the case may be contin-

ued or returned to the files for further proceedings on a later date, as the Tribal Judge may direct. If both parties fail to appear, the Tribal Judge... may return the case to the files, or order the case dismissed for want of prosecution, or make any other just and proper disposition thereof, as justice may require.

Sec. 2.18 Set-off or Counterclaim

If the defendant asserts a set-off or counterclaim, the Tribal Judge may, in his discretion, require a formal plea of set-off to be filed, or may waive the same. If plaintiff requires time to prepare his defense against such counterclaim or set-off, the Tribal Judge may, in his discretion, continue the case for such purpose, but said continuance shall be for no longer than ten (10) days.

Sec. 2.19 Judgment - Stay of Entry and Execution - Installment Payment

When judgment is to be rendered and the party against whom it is to be entered requests it, the Tribal Judge shall inquire fully into the earnings and financial status of such party and shall have full discretionary power to stay the entry of judgment, and to stay execution, except in cases involving wage claims, and to order partial payments in such amounts, over such period, and upon such terms, as shall seem just under the circumstances and as will assure a definite and steady reduction of the judgment until it is finally and completely satisfied. Upon a showing that such party has failed to meet any installment payment without just excuse, the stay of exe-

cution shall be vacated. When no stay of execution has been ordered or when such stay of execution has been vacated as provided herein, the party in whose favor the judgment has been entered shall have the right to avail himself of all remedies otherwise available in said Tribal Court for the enforcement of such judgment.

Sec. 2.20 Judgment for Wages - Examination - Payment

In all cases where the judgment is founded in whole or in part on a claim for wages or personal services the Tribal Judge shall, upon a motion of the party obtaining judgment, order the appearance of the party against whom such judgment has been entered, but not more often than once each four week for oral examination under oath as to his financial status and his ability to pay such judgment, and the Tribal Judge shall make such supplementary orders as may seem just and proper to effectuate the payment of the judgment upon reasonable terms.

Sec. 2.21 Non-Indian Right of Claim

A Non-Indian may prosecute his claim against an Indian in the Tribal Court and in the event of an action filed by a Non-Indian all provisions of this chapter are applicable to said Non-Indian as a party plaintiff.

Sec. 2.22 Appeals

Appeals from judgments in civil actions may be taken as provided in Section 1.22 to 1.26 inclusive, of this Code.