

**RESOLUTION NO. 69-94
OF THE GOVERNING BODY OF THE
YAVAPAI-APACHE TRIBE**

(Yavapai-Apache Code)

WHEREAS, the Yavapai-Apache Law & Order Code originally adopted in 1978 has been amended on several occasions to reflect the current needs of the Tribe; and,

WHEREAS, the current 1978 Law & Order Code contains numerous provisions which are not necessarily "Law & Order" matters; and,

WHEREAS, the Yavapai-Apache Tribal Council finds it in the Tribes best interests to adopt a comprehensive Code for the efficient administration of government; and,

WHEREAS, the new Code contains all previous chapters contained in the original Law & Order Code, as amended, as well as new provisions recently adopted by the Tribal Council.

NOW THEREFORE BE IT RESOLVED that the Yavapai-Apache Tribal Council hereby adopts the attached Code including but not limited to Chapters 2, 3, 4, 6, 7, 8, 9, 12 and 17 until such time as this Code and these Chapters may be amended by subsequent enactments; and,

BE IT FURTHER RESOLVED that this Code shall be referred to as the "Yavapai-Apache Code" and shall be cited as the "YAC."

CERTIFICATION

I, the undersigned, hereby certify that a duly called meeting of the Yavapai-Apache Tribal Council on Sept. 28, 1994, the Tribal Council voted to adopt this Resolution by an affirmative vote of a quorum of Tribal Council Members.


Theodore Smith, Sr., Chairman

ATTEST:

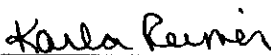

Secretary

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CHAPTER 3
DOMESTIC RELATIONS, DISSOLUTION OF MARRIAGE
AND CHILD CUSTODY AND CONCILIATION

Sec. 3.1 Marriages

Section 1 (0), Article VI, Amended Constitution and Bylaws of the Yavapai-Apache Tribe, provides that all marriages in the future shall be in accordance with the State laws. It is recognized that the powers of the tribe are limited by this provision, but it is further recognized that the limitation is for the best interests and welfare of the tribe in cases of future inheritance problems or possible future State benefits.

State marriage licenses may be secured at the office of any County Court.

All marriages and divorces of members of the Yavapai-Apache Tribe shall be recorded within thirty (30) days with the Truxton Canon Agency and Tribal Court.

Sec. 3.2 Procedure for Dissolution of Marriage or Legal Separation

Any person applying for dissolution of Marriage or Legal Separation shall deposit with the Yavapai-Apache Tribal Court thirty dollars (\$30.00) at time of the action or petition. In case the defendant files a cross complaint, the Court may require the defendant to pay into the court a fee of like amount.

Sec. 3.3 Definitions:

A. The Tribal Court is vested with original jurisdiction to hear and decide all matters arising pursuant to this chapter.

B. A proceeding for dissolution of marriage or legal separation shall be entitled, "In Re the Marriage of _____ and _____."
"A custody or support proceeding shall be entitled "In Re the (Custody) (Support) of _____."

C. The initial pleading in all proceedings under this chapter shall be denominated a Petition. A responsive pleading shall be denominated a Response.

D. A Decree of Dissolution or of legal separation, if made shall not be awarded to one of the parties, but shall provide that it affects the status previously existing between the parties in the manner decreed.

Sec. 3.4 Dissolution of Marriage; Findings Necessary

The Court shall enter a Decree of Disolution of Marriage if it finds each of the following:

1. That one of the parties, at the time the action was commenced was domiciled in this Community for ninety days.
2. The marriage is irretrievably broken.
3. To the extent it has jurisdiction to do so, the Court has considered, approved, and made provision for child custody, the support of any, natural or adopted, child common to the parties of the marriage entitled to

support, the maintenance of either spouse and the disposition of property.

Sec. 3.5 Decree of Legal Separation; Findings Necessary

The Court shall enter a Decree of Legal Separation if it finds each of the following:

1. That one of the parties at the time the action commenced was domiciled in this Community.
2. The marriage is irretrievably broken.
3. The other party does not object to a decree of legal separation.

If the other party objects to a decree of legal separation, the Court shall upon one of the parties meeting the required domicile for dissolution of marriage direct that the pleadings be amended to seek a dissolution of the marriage.

4. To the extent it has jurisdiction to do so, the Court has considered, approved or made provisions for child custody, the support of any natural or adopted child common to the parties of the marriage entitled to support, the maintenance of either spouse and the disposition of the property.

Sec. 3.6 Pleadings; Contents; Defense; Joinder of Parties

A. The verified Petition in a proceeding for Dissolution of Marriage or Legal Separation shall allege that the marriage is irretrievably broken and shall set forth:

1. The age, occupation and address of each party and his length of domicile in this Community.

2. The date of the marriage and the place at which it was performed.

3. The names, ages and addresses of all living children, natural or adopted, common to the parties and whether the wife is pregnant.

4. The details of any agreements between the parties as to support, custody and visitation of the children and maintenance of a spouse.

5. The relief sought.

B. Either or both parties to the marriage may initiate the proceeding.

C. The only defense to a Petition for the Dissolution of a Marriage or Legal Separation shall be that the marriage is not irretrievably broken.

D. The Court may join additional parties necessary for the exercise of its authority.

Sec. 3.7 Temporary order or preliminary in function; effect

A. In a proceeding for Dissolution of Marriage or for Legal Separation, or for Maintenance or support following Dissolution of Marriage by a Court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child, natural or adopted, common to the parties entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

B. As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the Court to issue a preliminary injunction for any of the following relief:

1. Restraining any person from transferring, encumbering, concealing or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures made after the order is issued.

2. Enjoining a party from molesting or disturbing the peace of the other party or of any child.

3. Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm may otherwise result.

4. Enjoining a party from removing a child from the jurisdiction of the Court.

5. Providing other injunctive relief proper in the circumstances.

C. The Court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed. No bond shall be required unless the Court deems it appropriate.

D. On the basis of the showing made, and in conformity with sections 3.10 and 3.11, the Court may issue a preliminary injunction and an order for

temporary maintenance or support in amounts and on terms just and proper in the circumstance.

E. A temporary order or preliminary injunction:

1. Does not prejudice the rights of the parties or any child which are to be adjudicated at the subsequent hearings in the proceedings.
2. May be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree.
3. Terminates when the final decree is entered or when the Petition for Dissolution of Marriage or Legal Separation is dismissed.

Sec. 3.8 Irretrievable Breakdown: Finding

A. If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the Court, after hearing, shall make a finding whether or not the marriage irretrievably broken.

B. If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the Court shall, upon hearing, consider all relevant factors as to the prospect of reconciliation, and shall either:

1. Make a finding whether or not the marriage is irretrievably broken; or
2. Continue the matter for further hearing, not more than sixty

days later. The Court, at the request of either party, or on its own motion may order a conciliation conference. At the adjourned hearing the Court shall make a finding whether or not the marriage is irretrievably broken.

C. A finding that the marriage is irretrievably broken is a determination that there is no reasonable prospect or reconciliation.

Sec. 3.9 Separation Agreement; Effect

A. To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, custody and visitation of their children.

B. In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, custody and visitation of children, are binding upon the Court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the Court, that the separation agreement is unfair.

C. If the Court finds the separation agreement unfair as to disposition of property or maintenance, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property or maintenance.

D. If the Court finds that the separation agreement is not unfair

as to disposition of property or maintenance, and that it is reasonable as to support, custody and visitation of children, the separation agreement shall be set forth or incorporated by reference in the Decree of Dissolution or Legal Separation and the parties shall be ordered to perform them. If the separatic. agreement provides that its terms shall not be set forth in the decree, the decree shall identify the separation agreement as incorporated by reference and state that the Court has found the terms as to property disposition and maintenance not unfair and the terms as to support, custody and visitation of children reasonable.

E. Terms of the agreement set forth or incorporated by reference in the decree of divorce shall be enforceable by all remedies available for enforcement of a judgment, including contempt.

F. Except for terms concerning the maintenance of either party and the support, custody or visitation of children, entry of the decree shall thereafter preclude the modification of the terms of the decree and the property settlement agreement, if any, set forth or incorporated by reference therein.

Sec. 3.10 Disposition of Property

In a proceeding for Dissolution of Marriage, or for Legal Separation, or in a proceeding for disposition of property following dissolution of marriage by a Court which proviously lacked personal jurisdiction over the absent-spouse or previously lacked jurisdiction to dispose of the pro-

perty, the Court shall assign each spouse's sole and separate property to him. It shall also divide the Community, joint tenancy and other property held in common equitably, though not necessarily in kind, without regard to marital misconduct. For purposes of this section only, property acquired by either spouse outside the Community shall be deemed to be community property if said property would have been community property if acquired in this Community. Nothing in this section shall prevent the Court from considering excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.

Sec. 3.11 Maintenance: Computation Factors

A. In a proceeding for Dissolution of Marriage or Legal Separation, or a proceeding for maintenance following dissolution of marriage by a Court which lacked personal jurisdiction over the absent spouse, the Court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

1. Lacks sufficient property, including property apportioned to him or her, to provide for his or her reasonable needs; and
2. Is unable to support himself or herself through appropriate employment or is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home.

B. The maintenance order shall be in such amounts and for such periods of time as the Court deems just, without regard to marital miscon-

duct, and after considering all relevant factors, including:

1. The financial resources of the party seeking maintenance, including marital property apportioned to him or her and his or her ability to meet his or her needs independently.

2. The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment.

3. The standard of living established during the marriage.

4. The duration of the marriage.

5. The age and the physical and emotional condition of the spouse seeking maintenance.

6. The ability of the spouse from whom maintenance is sought to meet his or her needs while meeting those of the spouse seeking maintenance.

7. Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.

Sec. 3.12 Child Support; Factors

A. In a proceeding for Dissolution of Marriage, Legal Separation, Maintenance, or Child Support, the Court may order either or both parents owing a duty of support to a child, born to or adopted by the parents, to pay an amount reasonable and necessary for his support, without regard to marital misconduct after considering all relevant factors, including:

1. The financial resources and needs of the child.

2. The financial resources and needs of the custodial parent.
3. The standard of living the child would have enjoyed had the marriage not been dissolved.
4. The physical and emotional condition of the child, and his educational needs.
5. The financial resources and needs of the non-custodial parent.
6. Excessive and abnormal expenditures, destruction, concealment, or fraudulent disposition of community, joint tenance or other property held in common.

B. In the case of a mentally or physically disabled child, if the Court, ~~after considering~~ the factors set forth in Subsection "A", deems it appropriate, the Court may order support to continue past the age of emancipation and to be paid to the custodial parent, guardian or child.

Sec. 3.13 Representation of Child by Counsel; Fees

The Court may appoint an attorney or any other person to represent the interests of a minor or dependent child with respect to his support, custody and visitation. The Court may enter an Order for costs, fees and disbursements in favor of the child's representative. The order may be made against either or both parents.

Sec. 3.14 Payment of Maintenance or Support to Courts; Records

A. Upon its own motion or upon motion of either party, the Court may order at any time that maintenance or support payments be made to the

Clerk of Court for remittance to the person entitled to receive the payments.

B. The Clerk of Court shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order.

C. The parties affected by the order shall inform the Clerk of Court of any change of address.

D. If the person obligated to pay support has left or is beyond the jurisdiction of the Court, any party may institute any other proceeding available under the Laws of this Community for enforcement of the duties of support and maintenance.

Sec. 3.15 Assignments

In the event a person obligated to pay child support is in arrears for at least two months the Court may order the person obligated to pay child support to make an assignment of a part of his periodic earnings or trust income to the person intitled to receive the payments. The assignment is binding on the employer, trustee, or other payor of the funds two weeks after service upon such person of notice that the assignment has been made. The payor shall withhold the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the Clerk of the Court. The payor may deduct from each payment a sum not exceeding one dollar as reimbursements for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section.

Sec. 3.16 Costs and Expenses

The Court from time to time, after considering the financial resources of both parties, may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defunding any proceeding under this chapter. For the purpose of this section costs and expenses may include fees of a lay advocate or attorney, deposition costs and such other reasonable expenses as the Court finds necessary to the full and proper presentation of the action, including any appeal. The Court may order all such amounts paid directly to the attorney or lay advocate, who may enforce the order in his name with the same force and effect, and in the same manner, as if the order had been made on behalf of any party to the action.

Sec. 3.17 Decree; Finality; Restoration of Maiden Name

A. A Decree of Dissolution of Marriage or of Legal Separation is final when entered, subject to the right of appeal. An appeal from the Decree of Dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolves the marriage beyond the time for appealing from that provision, and either of the parties may remarry pending appeal. An order directing payment of money for support or maintenance of the spouse or the minor child or children, shall not be suspended or the execution thereof stayed pending the appeal.

B. The Court may upon hearing within six months after the entry of a Decree of Legal Separation, convert the decree to a Decree of Dissolution

of Marriage.

C. The Court shall upon motion of either party after expiration of six months from the entry of a legal separation, convert the decree to a Decree of Dissolution of Marriage.

D. Upon request by a wife whose marriage is dissolved or declared invalid, the Court shall order her maiden name or a former name restored.

Sec. 3.18 Independence of provisions of decree or temporary order

If a party fails to comply with a provision of Decree or Temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended, but he may move the Court to grant an appropriate order.

Sec. 3.19 Modification and Termination of Provisions for Maintenance, Support and Property disposition

A. Except as otherwise provided in subsection "F" of Section 3.9 the provisions of any decree respecting maintenance or support may be modified only as to installments accruing subsequent to the motion for modification and only upon a showing of changed circumstances which are substantial and continuing. The provisions as to property disposition may not be revoked or modified, unless the Court find the existence of conditions that justify the reopening of a judgment under the Laws of this Community.

B. Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death

of either party or the remarriage of the party receiving maintenance.

C. Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of the minor child are not terminated by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked or commuted to a lump sum payment to the extent just and appropriate in the circumstances.

Sec. 3.20 Separate trials when Custody or Visitation is an Issue

A. In all cases when custody or visitation is a contested issue, the Court shall first hear all other issues including maintenance and child support. The contested issue of custody or visitation shall not be heard at any hearing involving other issues even upon agreement of attorneys.

B. After all other issues have been decided and the amount of maintenance and child support established by the Court, then the issues of custody or visitation may be heard.

Sec. 3.21 Jurisdiction; Commencement of Proceedings

A. The Yavapai-Apache Tribal Court is vested with jurisdiction to child custody matters by initial determination or by modification of the decree, if:

1. This Community is the domicile of the child at the time of commencement of the proceeding, or had been the child's domicile within six months before commencement of the proceeding and the child is absent from this Community because of his removal or retention by a person claiming his custody

or for any other reason, and a parent or person acting as parent continues to live in this Community; or

(2) It is in the best interest of the child that a Court of this Community assume jurisdiction because the child and his parents, or the child and at least one contestant, have a significant connection with this Community, and there is available in this Community substantial evidence concerning the child's present or future care, protection, training and personal relationships; or

(3) The child is physically present in this Community and has been abandoned or it is necessary in an emergency to protect him because he has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(4) No other Court outside this Community has jurisdiction under prerequisites substantially in accordance with Paragraph 1, 2, or 3, or another jurisdiction has declined to exercise its jurisdiction on the ground that this Community is the more appropriate forum to determine custody of the child, and it is in his best interest that this Court assume jurisdiction.

B. Except under Paragraphs 3 and 4 of Subsection "A", physical presence in this Community of the child or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a Court of the Community to make a child custody determination.

C. Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

D. A child custody proceeding is commenced in the Tribal Court:

1. By a parent, by filing a Petition:

(a) For the dissolution or legal separation; or

(b) For custody of the child; or

2. By a person other than a parent, by filing a Petition for custody of the child, but only if he is not in the physical custody of one of his parent

E. Notice of a child custody proceeding shall be given to the child's parent, guardian, and custodian, who may appear, be heard, and file a responsive pleading. The Court, upon a showing of good cause, may permit intervention of other interested parties.

Sec. 3.22 Best Interest of Child; Modification of Decree; Fees

A. The Court shall determine custody, either originally or upon petition for modification, in accordance with the best interests of the child. The Court may consider all relevant factors, including:

1. The wishes of the child's parent or parents as to his custody.

2. The wishes of the child as to his custodian.

3. The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest.

4. The child's adjustment to his home, school and community.

5. The mental and physical health of all individuals involved.

B. No motion to modify a custody decree may be made earlier than one

year after its date, unless the Court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his physical, mental, moral or emotional health.

C. Fees of attorneys or lay advocate and costs shall be assessed against a party seeking modification if the Court finds that the modification action is vexatious and constitutes harassment.

Sec. 3.23 Temporary Orders

A. A party to a custody proceeding may move for a temporary custody order. This motion must be supported by pleadings as provided in Section 3.29. The Court may award temporary custody under the standards of Section 3.22 after a hearing, or, if there is no objection, solely on the basis of the pleadings.

B. If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the Court finds, after a hearing, that the circumstances of the parents and the best interests of the child require that a custody decree is issued.

C. If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any temporary custody order thereby is vacated.

Sec. 3.24 Interviews By Court: Professional Assistance

A. The Court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation.

B. The Court may seek the advice of professional personnel, whether or not employed by the Court on a regular basis. The advice given shall be in writing and shall be made available by the Court to counsel, upon request, under such terms as the Court determines. Counsel may examine as a witness any professional personnel consulted by the Court, unless such right is waived.

Sec. 3.25 Investigations and Reports

A. In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian so requests, the Court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by a social service agency, the staff of the juvenile court or any other person or agency appointed by the Court.

B. In preparing his report concerning a child, the investigator may consult any person who may have information about the child or his potential custodial arrangements.

C. The Court shall mail the investigator's report to counsel of the parties at least ten days prior to the hearing. The investigator shall make available to counsel of the parties the names and addresses of all persons whom the investigator has consulted. Any party to the proceedings may call for examination of the investigator and any person whom he has consulted.

Sec. 3.26 Custody Hearings; Priority; Costs; Record

A. Custody proceedings shall receive priority in being set for hearing.

B. The Court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the Court deems necessary to determine the best interest of the child.

C. The Court, without a jury, shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interest, the Court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the work of the Court.

D. If the Court finds that to protect the child's welfare, the record of any interview, report, investigation, or testimony in a custody proceeding should be kept secret, the Court may then make an appropriate order sealing the record.

Sec. 3.27 Visitation Rights; Exception

A. A parent not granted custody of the child is entitled to reasonable visitation rights unless the Court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral or emotional health.

B. The Court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child, but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental moral or emotional health.

Sec. 3.28 Judicial Supervision

A. Except as otherwise agreed by the parties in writing at the time

of the custody decree, the custodian may determine the child's upbringing, including his education, health, care and religious training, unless, upon motion by the noncustodial parent, the Court, after hearing, finds that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his emotional development significantly impaired.

B. If both parents or all contestants agree to the order, or if the Court finds that the child's physical health would be endangered or his emotional development significantly impaired, the Court may order a social service agency to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out.

Sec. 3.29 Affidavit; Contents

A party seeking a temporary custody order or modification of a custody decree shall submit an affidavit or verified petition setting forth detailed facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, or verified petition to other parties to the proceeding, who may file opposing affidavits. The Court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the pleadings, in which case it shall set a date for hearing on why the requested order of modification should not be granted.

Sec. 3.30 Conciliation

There shall be a conciliation division of the Yavapai-Apache Tribal Court, the purpose of which shall be to promote the public welfare by preserving,

promoting and protecting family life and the institution of matrimony, to protect the rights of children, and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies.

Sec. 3.31 Investigations

The Chief Judge of the Yavapai-Apache Tribal Court shall appoint a member of the Tribal Court staff or any other person to carry out the following duties:

1. Investigate the facts upon which to base warrants, subpoenas, or orders in actions or proceedings filed in or transferred to the conciliation division pursuant to the chapter.

2. Hold conciliation conferences with parties to proceedings under this chapter and report the results of such proceedings to the Judge of the Tribal Court.

3. Provide such supervision in connection with the exercise of the powers and duties of the conciliation division as the Chief Judge of the Tribal Court may direct.

Sec. 3.32 Jurisdiction

Whenever any controversy exists between spouses which may, unless a reconciliation is achieved, result in the legal separation, dissolution or annulment of the marriage or in the disruption of the household, and there is any minor child of the spouses or either of them whose welfare might be affected thereby, the conciliation division shall have jurisdiction over the con-

troversy, and over the parties thereto and all persons having any relation to the controversey, as further provided in this chapter.

Sec. 3.33 Petition invoking jurisdiction or for transfer of action To Conciliation Division

Prior to the filing of any action for annulment, dissolution of marriage, or legal separation, either spouse, or both spouses, may file in the conciliation court a petition invoking the jurisdiction of the Court for the purpose of preserving the marriage by effecting a conciliation between the parties or for amicable settlement of the controversy between the spouses so as to avoid further litigation over the issues involved. In any case, when action for annulment, dissolution of marriage or legal separation has been filed, either party thereto may by petition filed therein have the cause transferred to the conciliation division where proceedings in the same manner as though no action had been instituted in the conciliation division in the first instance.

Sec. 3.34 Petition; Contents

The Petition shall:

1. Allege that a controversy exists between the spouses and request the aid of the conciliation division to effect a reconciliation or an amicable settlement of the controversy.
2. State the name and age of each minor child whose welfare may be affected by the controversy.
3. State the name and address of the petitioner or petitioners.

4. If the petition is presented by one spouse only, name and other spouse as a respondent and state the address of that spouse.

5. Name as a respondent any other person who has any relation to the controversy and state the address of the person if known to the petitioner.

6. State such other information as the conciliation court may by rule require.

Sec. 3.35 Forms

The Clerk of the Tribal Court shall provide, at the expense of the community, blank forms for petitions for filing pursuant to this chapter. The conciliation division shall assist any person in the preparation and presentation of any such petition when requested to do so.

Sec. 3.36 Fees

No fee shall be charged for filing the petition, nor shall any fee be charged by any officer for the performance of any duty pursuant to this chapter.

Sec. 3.37 Hearing; Time; Place; Notice, Citation, Witnesses

The Tribal Court shall fix a reasonable time and place for hearing on the petition, said hearing to be held within thirty days of the date of the filing of the petition unless the Court for good cause orders such hearing to be held at a different time. The Court shall cause notice of the filing of the petition and of the time and place of the hearing as it deems necessary to be given to the respondent. The Court, may when it so deems necessary, issue a

citation to any respondent requiring him to appear at the time and place stated in the citation, and may require the attendance of witnesses as in other civil suits.

Sec. 3.38 Time and Place of Holding Hearing

Hearings pursuant to this article may be held at any time and place within the Community, and may be held in chambers or otherwise, except that the time and place for hearing shall not be different from the time and place provided by law for the trial of civil actions, if any party, prior to the hearing, objects to any different time or place.

Sec. 3.39 Conduct of Hearing

A. The hearings shall be conducted informally by the conciliation division as a conference or series of conferences to affect a reconciliation of the spouses or an amicable adjustment or settlement of the issues.

B. At the conclusion of the hearing, the conciliation division shall report the results of the hearing to the Judge of the Tribal Court and, may on request of one or both of the parties, hold further hearings in pursuance with this chapter.

C. To facilitate and promote the purposes of this chapter, the Court may, with the consent of both of the parties to the action, recommend or invoke the aid of appropriate resources such as physicians, psychiatrists, social agencies, or other individuals or agencies including clergyman of the religious dominations to which the parties belong or may request, but no reports of any

such individual or agency available to the Court shall be filed with or become a part of the record of the case. Any such aid shall not be at the expense of the Court or of the Community unless the Tribal Council shall authorize such aid.

D. Hearings or conferences conducted before the conciliation division or before the Tribal Court for the purpose of effecting a reconciliation of the spouses or an amicable adjustment or settlement of issues shall be held in private and the Court shall exclude all persons except the officers of the Court, the parties, their counsel, and witnesses. Hearings or conferences may be held with each party and his counsel separately and, in the discretion of the Judge, or other persons conducting the hearing or conference, counsel for one party may be excluded when the adverse party is present. All communications, verbal or written, from the parties to the judge or other person conducting the proceedings under this chapter, shall be deemed confidential communications and shall not be disclosed without consent of the party making such communication.

Sec. 3.40 Orders; Duration of Effectiveness; Reconciliation Agreement

A. The Judge of the Tribal Court shall have full power to make, alter, modify, and enforce all order, orders for custody of children, restraining order, preliminary injunctions, and orders affecting possession of property, as may appear just and equitable, but such orders shall not be effective for more than sixty days from the filing of the petition, unless the parties mutually consent to a continuation of such time.

B. Any reconciliation agreement between the parties may be reduced

to writing, and with the consent of the parties a Court order may be made requiring the parties to comply fully therewith.

Sec. 3.41 Dissolution of Marriage or Legal Separation, Annulment, Maintenance; Stay of Right to File, Jurisdiction as to Pending Actions

A. During a period beginning upon the filing of a petition for reconciliation and continuing until sixty days after the filing of the petition for conciliation, neither spouse shall file any action for annulment, dissolution of marriage, or legal separation, and upon the filing of a petition for conciliation, proceedings then pending in the tribal court shall be stayed and the case transferred to the Conciliation Division for hearing and further disposition as provided in this chapter, but all restraining, support, maintenance or custody orders theretofore issued by the Tribal Court shall remain in full force and effect until vacated or modified or until they expire by their own terms.

B. If, however, after the expiration of such period, the controversy between the spouses has not been terminated, either spouse may institute proceedings for annulment of marriage, dissolution of marriage, or legal separation by filing with the Clerk of the Tribal Court additional pleadings complying with the requirements relating to annulment of marriage, dissolution of marriage or legal separation. The conciliation provisions of this chapter may be used in regard to post-dissolution problems, concerning the maintenance, support, visitation, contempt, or for modification based on changed conditions, in the discretion of the Conciliation Court.

Upon the filing of an action for annulment, dissolution of marriage,

or legal separation and after the expiration of sixty days from the service or the acceptance of service of process upon or by the respondent, neither spouse without the consent of the other may file a petition invoking the jurisdiction of the Conciliation division, as long as such domestic relations case remain pending, unless it appears to the Court that such filing will not delay the orderly processes of such pending action, in which event the Court may accept the petition, and the filing thereof shall have the same effect as the filing of any such petition within such sixty days after service or acceptance of process.

Sec. 3.42 Subsequent Petition Filed within One Year

Once a petition by either or both of the spouses has been filed pursuant to this chapter, the filing of any subsequent petition under such section within one year thereafter by either or both of the spouses shall not stay any action for annulment, dissolution of marriage, or legal separation then pending, nor prohibit the filing of such action by either party. The filing of a subsequent petition by either or both of the spouses more than one year after the filing of any previous petition with such effect shall have the same effect toward staying any domestic relations action then pending and toward prohibiting the filing of any such action as provided in this chapter.

**RESOLUTION NO. 69-94
OF THE GOVERNING BODY OF THE
YAVAPAI-APACHE TRIBE**

(Yavapai-Apache Code)

WHEREAS, the Yavapai-Apache Law & Order Code originally adopted in 1978 has been amended on several occasions to reflect the current needs of the Tribe; and,

WHEREAS, the current 1978 Law & Order Code contains numerous provisions which are not necessarily "Law & Order" matters; and,

WHEREAS, the Yavapai-Apache Tribal Council finds it in the Tribes best interests to adopt a comprehensive Code for the efficient administration of government; and,

WHEREAS, the new Code contains all previous chapters contained in the original Law & Order Code, as amended, as well as new provisions recently adopted by the Tribal Council.

NOW THEREFORE BE IT RESOLVED that the Yavapai-Apache Tribal Council hereby adopts the attached Code including but not limited to Chapters 2, 3, 4, 6, 7, 8, 9, 12 and 17 until such time as this Code and these Chapters may be amended by subsequent enactments; and,

BE IT FURTHER RESOLVED that this Code shall be referred to as the "Yavapai-Apache Code" and shall be cited as the "YAC."

CERTIFICATION

I, the undersigned, hereby certify that a duly called meeting of the Yavapai-Apache Tribal Council on Sept. 28, 1994, the Tribal Council voted to adopt this Resolution by an affirmative vote of a quorum of Tribal Council Members.


Theodore Smith, Sr., Chairman

ATTEST:

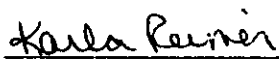

Secretary

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CHAPTER 2

CIVIL ACTIONS

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 it's 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 suites 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.

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 loss he has suffered.

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.

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.

Sec. 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 completed 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 sum 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.