

**RESOLUTION NO. 39-04
OF THE GOVERNING BODY OF THE
YAVAPAI-APACHE NATION**

Approving the Enactment of the Yavapai-Apache Judicial Code

WHEREAS: The Yavapai-Apache Tribal Council ("Council") is empowered to represent the Yavapai-Apache Nation ("Nation") and act on all matters that concern the health and welfare of the Nation, and to make decisions not inconsistent with or contrary to the Constitution of the Yavapai-Apache Nation; and

WHEREAS: The Council is the legislative body of the Nation empowered to enact laws, ordinances and resolutions incidental to the exercise of legislative powers as provided by Article V(v) of the Nation's Constitution; and

WHEREAS: The Yavapai-Apache Tribal Council ("Council") is the Legislative body of the Yavapai-Apache Nation ("Nation") and is empowered pursuant to Article V, (i), (k), (o), (q), (u), and (v) of the Constitution of the Nation to enact laws for the administration and structuring of the Nation's Judicial branch of government within the Constitutional Provisions of Article VI entitled "The Judiciary";

WHEREAS: At Council Meetings and Work Sessions, the Council has addressed the need for a structure for the judicial branch and has reviewed and revised the Judicial Code, which is attached hereto, and after careful and thoughtful deliberation has determined that this Judicial Code should be enacted;

NOW THEREFORE, BE IT RESOLVED THAT: the Yavapai-Apache Nation Tribal Council hereby adopts the Judicial Code as Title 3 of the Yavapai-Apache Nation's Code, to be entitled "Judicial Code", effective today, May 6, 2004;

BE IT FURTHER RESOLVED THAT: the original of this Code shall be filed with the Secretary of the Tribe, the Clerk of the Court, and the Attorney General.

BE IT FURTHER RESOLVED: that this Code controls the operation of the Nation's Courts from its effective date. The effective date is May 6, 2004. The date of enactment is the date of this Resolution.

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MAY 14 2004

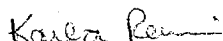
BIA Truxton Canon
Valentine, AZ

CERTIFICATION

I hereby certify that the foregoing resolution was adopted by an affirmative vote of the Tribal Council, presented for approval on May 6, 2004, by a vote of 6 in favor, 0 opposed and 0 abstaining, pursuant to the authority contained under the Constitution of the Yavapai-Apache Nation.


Jamie Fullmer, Chairman

ATTEST:


Karla Reimer, Council Secretary

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BIA Truxton Canon
Valentine, AZ



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WESTERN REGIONAL OFFICE
P.O. BOX 10
PHOENIX, ARIZONA 85001



IN REPLY
REFER TO:

Tribal Government Services
(602) 379-6786

JUL 29 2004

Through: Superintendent, Truxton Canon Agency

Honorable Jamie Fullmer

Chairman, Yavapai-Apache Tribal Council

Dear Chairman Fullmer :

On May 6, 2004, the Yavapai-Apache Nation enacted Tribal Resolution No. 39-04, which adopted the Title 3 Judicial Code.

A technical and legal review has been completed and we find the subject ordinance to be legally sufficient within the context of applicable Federal law and Article V and VI of the Tribe's Constitution and Bylaws.

Our review of the subject ordinance also revealed some technical concerns that the Tribe may choose to address.

First, the statement in Section 106, Probate Jurisdiction, which purports to extend tribal court jurisdiction over "all of the real and personal property located within the jurisdiction of the court at the time of death." This statement appears confusing, in that it used the term "located within" but referring to jurisdiction. Normally, that phrase would refer to the exterior boundaries of the reservation property located within them, not to jurisdiction of the court. Second, we find that no mention is made of a tribal prosecutor, who plays a key role in tribal judiciaries.

The Tribe may choose to make the above recommended changes and resubmit at a later date. However, we see nothing that would preclude a recommendation of approval. Therefore, by the authority delegated to the Regional Director, I hereby approve the Yavapai-Apache Nation's Tribal Resolution No. 39-04, which adopts Title 3 Judicial Code, which is in full force and effect as of the date of this letter.

Sincerely,

Regional Director

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TITLE 3
JUDICIAL CODE

CHAPTER ONE: GENERAL PROVISIONS: YAN 3-1-101 *et seq.*

Section 101. ENABLING PROVISIONS

(a) Pursuant to Article V, of the Yavapai-Apache Nation's Constitution the Yavapai-Apache Tribal Council acting in its legislative capacity and for the purpose of enabling the Nation to insure the administrative procedures for the Nation's Courts, and to enhance the performance of the Nation's judicial system and to insure a stable administrative structure for the Nation's Judiciary, hereby enacts this Code and repeals any and all other Codes, Ordinances, Resolutions, and other matters legislated at a prior time, concerning the Judicial branch of the Nation.

(b) This Code is to provide the legislative ordinance to fully implement the Judiciary required by Article VI of the Nation's Constitution, and specifically to avoid the duplication of administrative staff and functions within the Judiciary. All terms of this Code are to be administrative in nature, and to be interpreted as such, with the administration of the Courts being handled the same as all of the other governmental employees of the Nation, and specifically providing that all of the Judiciary personnel shall comply to the administrative procedures, policies, codes, ordinances, rules and regulations, including but not limited to the Nation's Employees' Policies, Budgeting Procedures, Benefits Packages, and other administrative matters, notwithstanding the statements made herein the Judges shall be a Constitutional appointment positions, not an at will employees, possessing full judicial immunities.

(c) Nothing herein shall be interpreted or construed to deprive or conflict with the impartial and independent separation of the Court from the legislative and executive branches of the Nation on cases being heard by the Judiciary.

(d) There is hereby established, ordained and legislated, pursuant to the Constitution of the Nation, the Judicial Code for the Nation's Courts in full compliance with the mandates of the Nation's Constitution.

(e) All provisions of this Code shall be liberally construed to carry out the intent of the Code as stated in this Section 3-101, and in the event that any section or provision of this Code is

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unenforceable for any reason, then the remainder of the Code shall remain in full force and effect absent the unenforceable provision.

[History: PUBLIC LAW #YAN 3-1-101, May 6, 2004]

Section 102. Definitions

The following words have the meanings given below when used in this title, unless a different meaning is obvious from the context:

(a) "Chief Judge" shall mean the Chief Judge of the Tribal Trial Court, which position may be referred to as Chief Tribal Court Judge. Chief Judge may also refer to the Court of Appeals Chief Judge depending on context.

(b) "Clerk" shall mean the Clerk of the Court, which can be the Trial or Appellate Court depending on context.

(c) "Code" shall mean this Code or when used with another specific term, the Code specified. The term "Code" has the same meaning as Ordinance as stated in the Constitution. Code, Ordinance and Statute are interchangeable terms.

(d) "Constitution" shall mean the Constitution of the Yavapai-Apache Nation as amended.

(e) "Court of Appeals" shall mean the Court of last resort to which appeals may be taken from the Tribal Trial Court, and the judicial decisions of the Court of Appeals are final and are not subject to further appeal. Court of Appeals may also be referred to as the Appellate Court.

(f) "He," "him," and "his," shall mean the masculine, feminine and neuter forms as appropriate, unless a particular masculine, feminine or neuter form is a necessary for the phrase to have meaning.

(g) "Jurisdiction" shall mean the power to hear the case.

(h) "Judge" shall mean the Chief Judge or associate judge of the Tribal Court or Appellate Court depending on context.

(i) "Personal Jurisdiction" shall mean the power to hear the matter and impose Court orders on a litigant.

(j) "Subject Matter Jurisdiction" shall mean the power to hear the controversy before the

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Court.

(k) "Territorial Jurisdiction" shall mean the Indian Country within the territorial jurisdiction of the Tribe.

(l) "Trial Court" shall mean the Tribal Trial Court.

(m) "Tribal Trial Court" shall mean the Trial Court of the Nation, and is the lower or general jurisdiction Court of the Nation

[History: PUBLIC LAW #YAN 3-1-102, May 6, 2004]

Section 103. Territorial Jurisdiction

The Territorial Jurisdiction of the Courts shall extend to all territory as defined in the Nation's Constitution, including the inherent sovereignty of the Nation, and to all territory described as Indian Country within the meaning of 18 USC 1152, as amended, over which the Tribe has authority, including tribal or individual, trust, non-trust and restricted land, and including all land owned by tribal agencies in their own name, all waters, mineral and wildlife, and any other such land, or interest in land, which may be subsequently acquired by virtue of Executive Order, a declaration or regulation of the United States Department of Interior, a declaration or order of a Court of competent jurisdiction, by purchase, gift, relinquishment, or by any other lawful means. All land within the parameters of the Nation's designated Reservations is inherently within its sovereign jurisdiction.

[History: PUBLIC LAW #YAN 3-1-103, May 6, 2004]

Section 104. Civil Jurisdiction

The Courts shall have general civil jurisdiction, including the inherent sovereignty of the Nation, over all civil actions arising under the Constitution, laws or treaties of the Tribe including the tribal common law, over all general civil claims which arise within the Tribal jurisdiction, and over all transitory claims in which the litigants may be served within the tribal jurisdiction or under the Nation's long arm statute. Personal jurisdiction shall exist over all litigants served within the territorial jurisdiction of the Court or served anywhere in cases arising within the territorial jurisdiction of the Tribe, and over all persons consenting to such jurisdiction. The act of entry within the territorial jurisdiction of the court shall be considered consent to the jurisdiction of the court with respect to any civil action arising out of such entry.

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The act of entry upon the territorial jurisdiction by an extraterritorial seller, merchant or their agent(s) shall be considered consent by the seller or merchant to the jurisdiction of this Court for any dispute arising out of any sale or commercial transaction regardless of where the sale or transaction was entered into or took place.

[History: PUBLIC LAW #YAN 3-1-104, May 6, 2004]

Section 105. Criminal Jurisdiction

The Courts shall have original jurisdiction, including the inherent sovereignty of the Nation, over all criminal offenses enumerated and defined in any ordinance adopted by the Nation insofar as not prohibited by tribal or federal law. The Courts have full authority to take all reasonable and necessary action to protect the health, safety, and welfare of the Nation, its people, residents, visitors, and assets.

[History: PUBLIC LAW #YAN 3-1-105, May 6, 2004]

Section 106. Probate Jurisdiction

To the extent permitted by federal law, the Courts shall have probate jurisdiction over all of the real and personal property located within the jurisdiction of the Court at the time of death, and the personal property, wherever located, of any person who is domiciled within the boundaries of the jurisdiction of the Court at the time of death.

[History: PUBLIC LAW #YAN 3-1-106, May 6, 2004]

Section 107. Juvenile Jurisdiction

The Juvenile Division of the Tribal Court shall have exclusive original jurisdiction in all proceedings and matters affecting dependent or neglected children, children in need of supervision, children under the age of eighteen (18) accused of crime, and status offenders when such children are found within the territorial and/or subject matter jurisdiction of the court, or when jurisdiction is transferred to the court pursuant to law. The Court of Appeals shall hear appeals in juvenile cases as in other civil actions.

[History: PUBLIC LAW #YAN 3-1-107, May 6, 2004]

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Section 108. Law to be Applied

(a) The Courts shall apply the Constitution and the provisions of all Tribal statutory law heretofore or hereafter adopted by the Nation. In matters not covered by Tribal Statute, the court shall apply traditional tribal customs and usages, which shall be called Common Law.

(b) When in doubt as to the Tribal Common Law, the court shall hold an evidentiary hearing to ascertain the same. The Court in its discretion can subpoena experts, including elders, to assist the Court in this determination. The Court can conduct this hearing as an informal hearing.

(c) In any dispute not covered by the Constitution, Tribal Statute, or Tribal Common Law, the Court may apply any laws of other Tribes or United States, in that order, which would be cognizable thereto.

(d) Upon this Code becoming effective, Part 11 of Title 25 of the code of Federal Regulations, except those sections thereof which are effective when the Tribe receives certain funding from the Bureau of Indian Affairs, shall no longer be binding or enforceable as Tribal law. State law shall not be binding upon the Court unless specifically incorporated into tribal law by Tribal Statute or by a decision of the Tribal Courts adopting some federal or state law as Tribal Common Law.

[History: PUBLIC LAW #KT 3-1-108, May 6, 2004]

Section 109. Amendments

The Tribal Council, as the Nation's Legislative Body, shall have the authority to alter, amend or repeal any provision of this title or to add new sections to this Title in its discretion.

[History: PUBLIC LAW #YAN 3-1-109, May 6, 2004]

Section 110. Judges of the Tribal Trial Court

(a) The Tribal Trial Court shall consist of the Chief Judge and such Associate Judges as the Tribal Council determines appropriate. The Tribal Court Chief Judge is the Primary Administrator for this Court. All other judges of this court shall be under the Chief Judge's supervision.

(b) The Chief Judge shall have the authority to assign a pro-tem Judge to hear a matter when he is unable to hear the case or when he will be absent from the Jurisdiction, who shall be serving his place as the Chief Judge. If an Associate Judge is available a pro-tem shall not be

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assigned.

[History: PUBLIC LAW #YAN 3-1-110 May 6, 2004]

Section 111. Minimum Qualifications and limitations of Judges of Tribal Courts

A Judge shall:

(a) Be either in order of preference:

(1) An attorney, or

(2) An Indian graduate of an approved law School, or

(3) A lay advocate who has regularly practiced before the Court as a member of the Bar of the Court for a period of five (5) years, or

(4) An Indian graduate of a Paralegal program approved by the American Bar Association; and

(b) Have demonstrated moral integrity and fairness in his business, public and private life; and

(c) Have never been convicted of a felony or an offense punishable by banishment, whether or not actually imprisoned or banished, and have not been convicted of any misdemeanor offense, except traffic offenses, for a period of five (5) years next preceding his appointment. The five year period shall begin to run from the date the person was unconditionally released from supervision of any sort as a result of a conviction; and

(d) Have regularly abstained from the excessive use of alcohol and any use whatsoever of illegal drugs or psycho toxic chemical solvents; and

(e) For a Trial Court Judge be not less than twenty-five (25) years of age, and for an appellate court judge not less than thirty (30) years of age.

(f) No Judge may be a member of the Tribal Legislature or the holder of any other elective Tribal office of this Nation, or serve on any Board of the Tribe, provided, that a candidate who is a member of the Tribal Legislative Body, or the holder of some other elective or appointed Tribal Office, may be confirmed as a Judge subject to his resignation. Upon resignation from his office, he may be sworn in as and assume the duties of judicial office.

(g) If the Judge is not an attorney or law graduate as defined in (a) (1) and (2), then that

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person must also have completed at least thirty (30) semester credit hours at an accredited college or university, or at least two (2) years of previous experiences as a Judicial officer for some recognized Tribal Court.

(h) Judges shall be selected in the order of preference defined in (a) with the preference being first to an attorney, then the law graduate, then the lay advocate, and finally a paralegal graduate, provided the criteria of (b) through (g) is satisfied. Regardless of professional ranking the criteria of (b) through (g) shall apply.

[History: PUBLIC LAW #YAN 3-1-111, May 6, 2004]

Section 112. Manner of Selection of Judges

Judges of the Tribe shall be nominated by the Chairperson of the Nation with the recommendations of his executive committee and appointed and confirmed by the Nation's Legislature upon a vacancy occurring in a judicial office in the following manner:

(a) Within thirty (30) days after a vacancy occurs, the Chairperson shall cause a notice of the vacancy stating the minimum qualifications, and any other pertinent information to be published and distributed in a reasonably commercial manner to allow eligible persons to know of the vacancy and make application for the same. A reasonably commercial manner shall mean publication on the appropriate web pages including bar association web pages and Native American web pages, or any Tribal Bar Association publications or Native American Publications provided that the notice is also posted in the Administrative Offices of the Nation, and distributed to all persons requesting the same. Copies of the notice shall be posted at the Tribal Office, the nearest Agency of the Bureau of Indian Affairs, the Tribal Housing authority office, and such other places as the Chairperson shall direct. The notice must be published for at least three weeks before closing the applications. The notice shall state the closing of application date on it. The notice shall direct that inquiries, nominations and applications be directed to the Tribal Human Resources Director who shall keep a permanent record of responses to such notices.

(b) Within five (5) working days after the date on which last required notice was published or posted, the Human Resources Department shall deliver the names and files of all persons nominated or applying for the Judicial Office to the Chairperson and his executive committee, who shall commence the selection of three qualified candidates for each vacant Judicial office and place consideration of the candidate(s) on the agenda of the next regular or special meeting of the Tribal Legislature. If there are less than five (5) qualified applicants as specified in Section 3-1-111, then the position may be re-advertised at the discretion of the Tribal Council.

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(c) The Tribal Legislature shall review the qualifications of the nominees, and may interview nominees at their meetings at their discretion. In making a selection, the Tribal Legislative Body shall give preference to those candidates who:

- (1) Have more formal education and experience in the legal field.
- (2) Are familiar with the Constitution, Code and Common Laws of the Tribe.
- (3) Have demonstrated decision making ability.

(e) If the nominee(s) is not confirmed, the Chairperson shall either republish the notice to establish a new list of eligible candidates, or he may reconsider the candidates on the list gathered from the previous notice. The Chairperson nomination-Legislative confirmation process shall continue until a nominee is confirmed.

(f) Upon the expiration of a judicial term of office, the Judicial Officer is entitled upon request, filed with the Human Resources Director not less than sixty (60) days prior to the expiration of his term, to be considered for confirmation to a new term at the next meeting of the Tribal Legislative Body at which a quorum is present. If the Legislature, a quorum being present, does not confirm the outgoing judge, they shall so declare and direct the Chairperson to begin the selection process. The outgoing judge's term shall expire upon confirmation of the new Judge.

[History: PUBLIC LAW #YAN 3-1-112, May 6, 2004]

Section 113. Term of Office

All Judges of the Tribal Courts, with the exception of the Chief Judge of the Appellate Court, shall serve two (2) year terms of office beginning from the date of their confirmation and until their successors take office, unless removed for cause as specified in Article VI, Sect. 11, or by death or resignation. The Chief Judge of the Appellate Court is a three (3) year term. All Judges are constitutionally appointed by the Nation

[History: PUBLIC LAW #YAN 3-1-113, May 6, 2004]

Section 114. Oath of Office

Before assuming office, each Judge shall take an oath to support and protect the Constitution of the Tribe and to administer justice in all causes coming before him with integrity and fairness, without regard to the persons before him to be administered by the Chief Judge of the respective court to which that judge is being appointed or the Chairperson if the vacancy

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being filled is a Chief Judge. Reappointment of a judge to consecutive term(s) does not require the re-administration of the oath of office.

[History: PUBLIC LAW #YAN 3-1-114, May 6, 2004]

CHAPTER TWO: TRIBAL TRIAL COURT PROVISIONS:

YAN 3-2-201 *et seq.*

Section 201. Duties and Powers of Trial Court Judges

All Judges of the Tribal Trial Court shall have the duty and power to conduct all court proceedings and issue all orders and papers incident thereto, in order to administer justice in all matters within the jurisdiction of the Court. In doing so, the Court shall:

- (a) Be responsible for creating and maintaining procedural rules of the Court that implement and do not conflict with the Tribal Code or Constitution regulating conduct in the Tribal Trial Court, for the orderly and efficient administration of justice. Such rules must be filed in the offices of the Tribal Secretary and the Trial Court Clerk before becoming effective.
- (b) Hold Court regularly at a designated time and place. Unless conditions make it impractical, the Tribal Trial Court shall set all motions for hearing before the Court within five (5) days of filing with the hearing be in a reasonable amount of time.,
- (c) Have the power to administer oaths, conduct hearings and otherwise undertake all duties and exercise all authority of a judicial officer under the law.
- (d) Hear and decide all cases properly brought before the Court.
- (e) Enter all appropriate orders and judgments.
- (f) Issue all appropriate warrants and subpoenas.
- (g) Keep all court and other records as may be required.
- (h) Perform the duties of the Clerk in his absence.

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- (i) Perform marital ceremonies, including issuance of a Certificate of Marriage duly filed with the Court.
- (j) All other duties inherent in the office to which the Judge is appointed.
- (k) Maintain the confidentiality of the matters not yet of public record.
- (l) Prepare a semi-annual and annual report on the administration of the Court.
- (m) Supervise all Tribal Trial Court Judges and personnel, including all duties of a director of the Administration of the Nation.

[History: PUBLIC LAW #YAN 3-2-201, May 6, 2004]

Section 202. EVALUATION OF TRIBAL COURT SYSTEM:

The Tribal Council shall evaluate the administration of the both the Trial Court and Appellate Court based on the semi-annual and annual reports of the Courts made by the Chief Judges of the Courts to the Tribal Council at the first Tribal Council meeting February and August of each year. Quarterly reports shall be required by the Tribal Trial Court.

The evaluation of the Courts shall include the number of cases heard, the number resolved, the classification of the cases, the recidivism rate of litigants, the case loads of the Judges, and other general case information to give the Tribal Council an overview of the cases being adjudicated in the Tribal Courts. The Chief Judges may add additional statistical information to assist in the evolution of their respective Courts.

[History: PUBLIC LAW #YAN 3-2-202, May 6, 2004]

Section 203. Special Appointments

Whenever, due to vacancies in office, disqualification or recusal of Judges, for the cause, a trial cannot be convened from the available Judges, the Chairperson shall recommend a special judge and convene the Legislature within forty-eight (48) hours to address the appointment of a Special Judge to serve until the matter causing the disqualification is resolved. The Special from among the members of the Bar of the Court to act as a Special Judge, until the vacancy is filled

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or the Special Judge is no longer needed. No special procedure need be followed in making such appointments provided that the Special judges meet the qualification of Section 102.

[History: PUBLIC LAW #YAN 3-2-203, May 6, 2004]

Section 204. Compensation of Judges

(a) The compensation of all Judges of the Tribal Trial Court shall be set by appropriate legislation of the Tribal Legislative Body. No Judge shall have his compensation diminished during his term in office.

(b) Nothing in this section shall prohibit the Tribal Legislature from authorizing a general fund amount for the entire budget of the Nation and delegating the specific budgets with line items to the Executive Department. Unless otherwise specified, the Executive Department shall administer the Courts' budgets

(c) All aspects of the Judicial budget are subject to the same Tribal laws, codes, policies, rules, regulation, resolutions and executive orders as other Tribal Agencies or departments.

[History: PUBLIC LAW #YAN 3-2-204, May 6, 2004]

Section 205. Removal of Judges

(a) The Judges of the Tribal Courts shall be removed only for cause by the Tribal Legislative Body as provided for in Article VI, Section 11. For purposes of comity, the term "cause" shall include any reason sufficient for disbarment of an attorney under the Model Rules of Professional Conduct of the National American Indian Court Judges Association. For cause also includes any reason that is specified as "for cause" under the Nation's Employees' Policies.

[History: PUBLIC LAW #YAN 3-2-205, May 6, 2004]

Section 206. Disqualifications, Recusal, Conflict of Interest

(a) No Judge shall hear any case when he has a direct financial, personal or other interest in the outcome of such case or is related by blood or marriage within the first degree of lineage. A Judge should attempt to prevent even the appearance of partiality or impropriety.

(b) Any or all parties of interest in a case, or the Judge, may raise the question of conflict of interest. Upon decision by the Judge concerned or the Court of Appeals that disqualification is appropriate, another Judge shall be assigned to hear the matter before the Court.

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(c) Any Judge otherwise disqualified because he is related to one or more of the parties in one of the relationships enumerated in subsection (a) of this section, may hear a case if all parties are informed of the blood or marriage relationship on the record in open Court and of their right to have a different Judge hear the case, and consent to further action by that Judge in the case in open Court upon the record, or in a writing filed in the record, in spite of the conflict of interest.

(d) Conflict of interest shall be defined by the National American Indian Court Judges Association of Judicial Ethics, unless a Judicial Code of Ethics is enacted by the Tribal Legislature.

[History: PUBLIC LAW #YAN 3-2-206, May 6, 2004]

Section 207. Decisions

(a) Each trial final decision of the Tribal Trial Court shall be recorded in writing and include written findings of fact and conclusions of law. The written decision shall provide the date of the decision, the case number, the names of all parties, the substance of the complaint, the relevant facts found by the Court to be true, the Court's decision, and the conclusions of law supporting the Court's decision. The written decision shall be signed by the Judge entering the same and filed of record with the Clerk of the Court. All decisions shall be filed within a reasonable amount of time giving due consideration to the nature of the case.

[History: PUBLIC LAW #YAN 3-2-207, May 6, 2004]

Section 208. Records

The Tribal Courts shall be Courts of Record. To preserve such records:

(a) In all court proceedings, the Court Reporter, shall be the Clerk of the Court, and the Clerk shall record the proceedings of the Court by electronic or stenographic means. The recording shall be identified by case number and kept for five (5) years for use in appeals or collateral proceedings in which the events of the hearing are in issue. At the close of each hearing, or as otherwise specified, the Reporter shall cause a transcript to be made of the recording upon the request of any party or the Court as a permanent part of the case record. If a party requests the transcript, the Court may order the advancement of the fee to pay the costs of transcribing the same.

(b) To preserve the integrity of the electronic record, the reporter shall store the recording in a safe place and release it only to the relevant Court or pursuant to an Order of a Tribal Judge.

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(c) The Clerk shall keep in a file bearing the case name and number every written document filed in the case.

(d) All court records shall be public records except as otherwise provided by law.

(e) Five (5) years from the final decisions, including appellate review, court records except judgments, appearance, and other dockets may be reproduced on computer tape or disk, microfilm or microfiche or similar space saving record keeping methods, provided, that at least one (1) hard copy, including microfilm or microfiche, of electronically stored data shall be kept at all times.

(f) The Legislature may provide for the publication in books or web sites the decisions of its Courts.

[History: PUBLIC LAW #YAN 3-2-208, May 6, 2004]

Section 209. Files

(a) Except as otherwise provided by law, such as in juvenile cases, court files on a particular case are generally open to the public. Any person may inspect the records of a case and obtain copies of documents contained therein during normal business hours.

(b) Any persons desiring to inspect the records of a case or obtain copies thereof may inspect such files only during the ordinary working hours of the Clerk, or a Judge, and in their presence to insure the integrity of Court records. Under no circumstances shall anyone, except a Judge or a licensed advocate, attorney or the Clerk taking a file to a Judge in his chambers of a courtroom, take a file from the Clerk's office.

(c) A copy of any document contained in such a file may be obtained from the Clerk by any person for a reasonable copy fee, to be set by rule of the Chief Judge. The Clerk is hereby authorized to certify under the seal of his office that such copies are accurate reproductions of those documents on file in his office.

[History: PUBLIC LAW #YAN 3-2-209, May 6, 2004]

Section 210. Court Fund

(a) There is hereby authorized to be maintained by the Clerk under the supervision of the Chief Judge and subject to annual audit by the Nation's Treasurer through the Treasurer's

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independent auditor, a fund to be known as the "Court Fund" into which shall be deposited all fines, fees, penalties, costs and other monies authorized or required by law to be paid to the Court which are not to be distributed to any party to a case and for which no requirement is imposed by law for the deposit of such funds into a particular account. These funds shall be maintained by the Court and used exclusively to defray the non-salary expenses of the Court as shall be specifically authorized by law. The Court Fund shall not be used for the payment of salaries of regular Judges or Justices of the Trial or Court of Appeals. The balance of the fund as of December 31 of each year shall be applied to the next fiscal year's Court budget.

(b) A separate fund shall be created for deposit and payment of maintenance and child support payments. All deposits shall be accounted for under Generally Accepted Accounting Principles.

(c) All Court funds are subject to audits by the Treasurer at his discretion. These may be full audits, partial audits or spot audits.

[History: PUBLIC LAW #YAN 3-2-210, May 6, 2004]

Section 211. Payments into Court for Minors and Incompetents

Where any amount of money not exceeding Five Hundred Dollars (\$500.00) shall be deposited and paid into Court by virtue of any judgment, order, settlement, distribution or decree for the use and benefit of, and to the credit of, any minor or incompetent person having no legal guardian of his estate appointed by the Court, and no person shall within ninety (90) days thereafter become the legal and qualified guardians of the estate of such minor or incompetent the support of such minor or incompetent person or that it is otherwise for the best interest of such minor or incompetent funds to be made to any proper and suitable person as trustee for such minor or incompetent person, with bond, as the Court may direct, to be expended for the support, use and benefit of such minor or incompetent person. Such order may be made by the Court in the original cause in which the funds are credited upon the application of any interested person; and the Court may direct the Clerk of the Court to make payment of the same to be made in installments or in one lump sum as may seem for the best interests of such minor or incompetent person. If a qualified guardian has been appointed by the Court with bond, the Court shall order the money paid to the guardian for the use of the minor or incompetent person subject to such restrictions and accounting as the Court may direct.

[History: PUBLIC LAW #YAN 3-2-211, May 6, 2004]

Section. 212. Conserving Moneys Obtained for Minors or Incompetent Persons

Moneys recovered in any court proceeding by a next friend or guardian ad litem for or on

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behalf of a parch who is less than eighteen (18) years of age or incompetent in excess of Five Hundred Dollars (\$500.00) over sums sufficient for paying costs and expenses including medical bills and attorney's fees shall, by order of the Court, be deposited in a banking or savings and loan institution, approved by the Court. Until the person becomes eighteen (18) years of age or competent to again handle his affairs, withdrawals of moneys from such account or accounts shall be solely pursuant to order of the court made in the case in which recovery was had. When an application for the order is made by a person who is not represented by an attorney, the Judge of the Court shall prepare the order. This Section shall not apply in cases where a legal guardian has been appointed by the Court for the estate of the minor or incompetent person with adequate bond to secure any money released. In such cases, such money, or any portion thereof as the Court may direct, may be paid over to the guardian to be used exclusively for the support and education of such minor or incompetent person, subject to such restrictions and accounting as the Court shall direct.

[History: PUBLIC LAW #YAN 3-2-212, May 6, 2004]

Section 213. Practice Before the Tribal Court

(a) No person shall be denied the right to have a member of the Bar of the Court represent him and present his case before the Courts.

[History: PUBLIC LAW #YAN 3-2-213, May 6, 2004]

CHAPTER THREE: COURT OF APPEALS

Section 301. General Provisions

The Court of Appeals may hear appeals resulting from all final orders or judgments rendered by the Trial Court, appeals of other orders of the Tribal Trial Court subject to interlocutory appeal by law, and such original actions as may be provided by tribal law, and shall render its decisions in writing to the parties of interest, file a copy thereof in the Court of Appeals Clerk's office and the Tribal Secretary's office, and, at the time of filing, submit a copy to the official reporter of the decisions of the Court. The decision of the Court of Appeals shall be final and binding upon the parties.

[History: PUBLIC LAW #YAN 3-3-301, May 6, 2004]

Section 302. Composition of the Court of Appeals

The Court of Appeals shall consist of one (1) Chief Judge and two (2) Associate Judges.

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[History: PUBLIC LAW #YAN 3-3-302, May 6, 2004]

Section 303. Duties and Powers of Justices

All Judges of the Court of Appeals, unless disqualified for conflict of interest of other cause, shall participate in the deliberations of that body and shall have the duty and power to conduct all Court proceedings, and issue all orders and papers incident thereto, in order to administer justice in all appeals brought before them from the Tribal Court. The Appeals Court has jurisdiction to hear appeals from the Tribal Court, and issue decisions. The Chief Judge of the Appellate Court shall be responsible for the administrative needs of the Court of Appeals. The Court of Appeals shall have the following appellate powers:

- (a) Be responsible for creating and maintaining rules of the Court, not contrary to the Tribal Constitution or Code, regulating conduct in appellate proceedings to provide for the orderly and efficient administration of justice and the administration of the appellate Court. Such rules shall have no effect until filed with the Clerk of the court and the Tribal Secretary.
- (b) Hear appeals from the Trial Court at a designated time and place.
- (c) Enter all appropriate appellate orders and judgments
- (d) Keep all appropriate records as may be required.
- (e) Perform any and all other duties as may be required for the operation of the Court of Appeals.
- (f) All other duties inherent in the office to which the Judge is appointed

[History: PUBLIC LAW #YAN 3-3-303, May 6, 2004]

Section 304. Decisions

(a) All decisions and opinions of the Court of Appeals shall be rendered in writing to the parties in interest, the Trial Court in appeal cases, filed in the Court of Appeals Clerk's office and the Tribal Secretary's office, transmitted to the official reporter of the decisions of the Court, and recorded in writing. The written record of the decision shall provide the recording the date of the decision or opinion, the case number, the names of the parties before the Court, the issues presented on appeal or the substance of the complaint in an action within the Court's original jurisdiction, the relevant facts upon which the decision on appeal was made or as found by the Court to be true in an original action, the Court's decision, and the legal principals and reasoning

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supporting the Court's decision. A written Court opinion containing the above information shall be filed by the majority with or without a dissent attached. If there is a dissent, the fact of the dissent must be noted, but the majority may file its opinion without the dissent attached, and the dissenting opinion can be filed as such with the required information of a majority opinion.

(b) The Chief Justice shall assign the task of writing the decision.

(c) The written decision form shall be placed in the file of the case on appeal as an official document of the case.

Decisions shall be filed within a reasonable time given due consideration to the complexity of the case.

[History: PUBLIC LAW #YAN 3-3-304, May 6, 2004]

Section 305. Rules of the Court

(a) The Court of Appeals may establish rules concerning the administration of the Court of Appeals, but Court rules shall not conflict with the codes enacted by the Legislature or the Constitution. Such rules may govern the conduct, demeanor and decorum of those in the Court as well as the form and filing of appeals, briefs, pleadings and other matters which will make the court function more efficiently provided that the Court of Appeals rules are designed to enhance and enhance the codes or Constitution of the Nation.

(b) The rules shall be only be effective when filed in the Court Clerk's office and the office of the Tribal Secretary.

[History: PUBLIC LAW #YAN 3-3-305, May 6, 2004]

Section 306. Court of Appeals' Action of Appeals

In an appeal properly before it, the Court of Appeals shall have full authority to affirm, reverse, modify or vacate any action of the Trial Court or other entity from whom the appeal is taken as authorized by law, and may enter such order as is just or remand the case for the entry of a specified judgment, for a new trial, or for such further action or orders for a fair and just resolution of the case.

[History: PUBLIC LAW #YAN 3-3-306, May 6, 2004]

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CHAPTER FOUR: COURT CLERK

Section 401. Establishment

There is hereby established a Trial Court Clerk's office to be administered by one (1) Court Clerk and such Deputy Court Clerks as may be budgeted by the Legislature. The Trial Court Clerks shall be supervised by the Chief Judge, but is an employee of the Nation, and subject to all of the Nation's administrative laws, codes, policies, rules and regulations the same as all other governmental employees of the Nation.

[History: PUBLIC LAW #YAN 3-4-401, May 6, 2004]

Section 402. Clerk to Serve Appellate and Trial Courts

The Court Clerk shall serve as the Clerk of the Court of Appeals and Clerk of the Tribal Trial Court. When service the Court of Appeals, the Clerk's title shall be "Clerk of the Court of Appeals." When serving the Tribal Trial Court, the Clerk's title shall be "Clerk of the Tribal Trial Court."

[History: PUBLIC LAW #YAN 3-4-402, May 6, 2004]

Section 403. Clerk Reports to Chief Judge of Tribal Court

(a) The Court Clerk reports directly to the Chief Judge of the Tribal Trial Court, and the Chief Judge is the supervisory administrative position of the Judicial Branch of the government with the same ranking as Department Director. The Chief Judge shall be the direct supervisor of the Court Clerk and any other personnel of the Trial Court, and the Chief Judge shall serve as the Court Administrator and shall be charged with the preparations of Courts' budgets, the acquisition of necessary supplies, the maintenance and upkeep of the Courts' law library, the custody, upkeep and maintenance of the records, papers, effects and property of the Courts, and such other matters as shall be assigned to the Court by law.

(b) The Court Clerk shall assist the Chief Judge in his administrative duties as requested by the Chief Judge, but the administrative supervision of the Court and all administrative duties including the quarterly reports of the cases of the Court and the annual budget are the ultimate responsibility of the Chief Judge of the Tribal Trial Court.

(c) The Chief Judge shall prepare a quarterly report showing the statistical information on cases processed by the Courts, both trial and appellate, for that period. The calendar quarters

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shall be used, and the quarterly reports shall be delivered the Chairperson thirty (30) days after the end of each quarter. At the end of each year, the statistics for the Court shall be compiled and reported to the Chairperson by March 1 of the next year.

(d) The Treasurer shall annually conduct an independent financial audit of the Courts. The results shall be presented to the Tribal Council by April 15 of each year.

(e) The Tribal Council may order an independent professional performance audit of the Courts.

[History: PUBLIC LAW #YAN 3-4-403, May 6, 2004]

Section 404. Powers and Duties

The Court Clerk shall have the following powers and duties:

(a) To undertake all duties and functions otherwise authorized by law, or necessary to insure that all cases filed with the Courts are properly docketed and preserved as required by law.

(b) Subject to the approval of the Chief Trial and Appellate Judges to assist with the preparation of quarterly, annual reports and the annual budgets for the Court, and supervise any Deputy Clerks, subject to the ultimate supervision by the Chief Judges.

(c) To collect all fines, fees and costs authorized or required by law to be paid to the Courts, to receipt therefore and to deliver them to deposit in the appropriate Court fund.

(d) To accept monies for the payment of civil judgments, and upon order of the Court, to pay the same by check to the party entitled to the funds as per the Court's order. For the purpose of taking such action, the Clerk is authorized to maintain a bank checking account subject to the oversight and audit of the Tribal Treasurer and to deposit and withdraw funds therefrom. This account shall be audited at least annually and the annual audit submitted to the Tribal Council no later than April 15th of each year. The annual audit may be performed by the Tribal accounting Department or an independent Certified Public Accountant, and the Clerk shall give a fidelity or performance bond to guarantee the funds deposited therein in such amount as the Treasurer deems reasonable to protect the integrity of the Court. If the annual fund deposits are less than Five Thousand (\$5,000.00), the Treasurer may waive the bond requirement.

(e) To administer oaths, issue summons and subpoenas, certify a true copy of court records, and to accurately keep each and every record of the Appellate and Trial Courts.

(f) In the absence of a Court Reporter, the Court Clerk shall accurately and completely

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record all proceedings and hearings of the Courts. If a Court Reporter is available, the Court Reporter shall have the authority to administer oaths and undertake such other Court functions as shall be provided by law.

- (g) To provide stenographic and clerical service to the Court when requested.
- (h) To act as librarian and to keep and maintain the Court's law library.
- (i) To undertake all duties assigned or delegated to the Clerk's office by Tribal law or Court rule

[History: PUBLIC LAW #YAN 3-4-404, May 6, 2004]

Section 405. Seal

The Court Clerk is authorized to have and use a seal which shall be circular in form and contain the words, "Trial Court Clerk" and the name of the Tribe around the edge thereof, and the words "Official Seal" or the official Tribal emblem in its center. When acting as the Clerk of the Court of Appeals, the Clerk's seal shall be circular in form and contain the words "Court of Appeals Clerk" and the name of the Tribe around the edge thereof, and the words "Official Seal" or the Tribal emblem in the center. The seal shall be impressed upon all warrants, subpoenas, summons, certified copies of records, judgments, orders, decrees, and similar documents, as evidence of their authenticity.

[History: PUBLIC LAW #YAN 3-4-405, May 6, 2004]

Section 406. Certification of True Copies

The Court Clerk is authorized to certify that a copy of any record in his office is a true and accurate copy of the record on file by signed stamp or writing placed on such copy, sealed with the seal of the Court Clerk's office, and in substantially the following form:

CERTIFICATE OF TRUE COPY

I hereby certify that the above and foregoing
_____ is a true, accurate
and exact copy of the original of same as it remains
of record on file in my office.

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Clerk of the Trial Court [or Court of Appeals]
Yavapai-Apache Nation

Date _____

Subject to the rules of evidence, certified copies of records shall be admissible as evidence without further authentication in all judicial and administrative proceedings of this Tribe.

[History: PUBLIC LAW #YAN 3-4-406, May 6, 2004]

Section 407. Clerk's Office and Orders by the Clerk

The Clerk's office, with the Clerk or a deputy in attendance, shall be open during business hours on all days, including evening hours when the Court is holding sessions, except Saturdays, Sundays and Tribal holidays, as specified in the Nation's Human Resource Policy Manual. All motions and applications in the Clerk's office shall be open for issuing mesne process, for issuing final process, to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require an order of the court, are grantable of course by the Court, unless the Civil Procedure Act requires previous approval by the Court, but his action may be suspended or altered or rescinded by the Court upon good cause shown.

[History: PUBLIC LAW #YAN 3-4-407, May 6, 2004]

Section 408. Notice of Orders or Judgments

Immediately upon the entry of an order or judgment, the Clerk shall serve a notice of the entry by mail upon each party or their attorney who is not in default for failure to appear, and shall make a note in the docket of the mailing. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by law, but any party may in addition serve a notice of such entry in the manner provided in the Civil Procedure Act for the service of papers. Lack of notice of the entry by the Clerk does not affect the time to appeal or relieve or authorize the Court to relieve a party for failure to appeal within the time allowed, except as permitted in the Civil Procedure Act.

[History: PUBLIC LAW #YAN 3-4-408, May 6, 2004]

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Section 409. Books and Records Kept by the Clerk and Entries Therein

(a) The Clerk shall keep a book known as the "Civil Docket" of such form and style as may be prescribed by the Chief Judge, and shall enter therein each civil action. Civil actions shall be assigned consecutive file numbers in the exact order of their filing by the Clerk. The file number of each action shall be noted on the folio of the docket whereupon the first entry of the action is made. All papers filed with the Clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be entered chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the Court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. When in a trial by jury has been properly demanded or ordered, the Clerk shall enter the work "jury" on the folio assigned to that action. All other actions shall be tried by the Court.

(b) In like fashion, the Clerk shall keep suitable dockets, indexes, calendars and judgment records for the criminal, juvenile and small claims dockets of the Trial Court, and the appeals and original action docket of the Court of Appeals.

(c) The Clerk shall also keep such other books and records as may be required from the time to time by law.

[History: PUBLIC LAW #YAN 3-4-409, May 6, 2004]

Section 410. Judgment Docket

The judgment docket shall be kept in the form of an index in which the name of each person against whom judgment is rendered shall appear in alphabetical order, and it shall be the duty of the Clerk immediately after the rendition of a judgment to enter on said judgment docket a statement containing the names of the parties, the amount and nature of the judgment and costs, and the date of its rendition, and the date on which said judgment is entered on said judgment docket; and if the judgment be rendered against several persons, the entry shall be repeated under the name of each person against whom the judgment is rendered in alphabetical order.

[History: PUBLIC LAW #YAN 3-4-410, May 6, 2004]

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Section 411. Execution Docket

In the execution docket, the Clerk shall enter all executions as they are issued. The entry shall contain the names of the parties, the date and amount of the judgment and costs, and the date of the execution. The Clerk shall also record in full the return of the Chief of the Tribal Police to each execution.

[History: PUBLIC LAW #YAN 3-4-411, May 6, 2004]

Section 412. Clerk may Collect Judgment and Costs

Where there is no execution outstanding, the Clerk of the Court may receive the amount of the judgment and costs, and receipt therefore, with the same effect as if the same had been paid to the Chief of the Tribal Police on an execution, and the Clerk shall be liable to be amerced in the same manner and amount as the Chief of the Tribal Police for refusing to pay the same to the party entitled thereto, when ordered by the Court, and shall also be liable on his official bond. All funds received by the Court to satisfy a judgment shall be paid to the party entitled thereto upon order of the Court. The Clerk shall require the party receiving the funds to sign a receipt for the same. All funds received by the Clerk shall be deposited on the same date as received in the appropriate court fund depository. No funds of a party shall be paid out of the depository fund without the appropriate Court order.

[History: PUBLIC LAW #YAN 3-4-412, May 6, 2004]

Section 413. Clerks to Issue Writs and Orders

All writs and orders for provisional remedies, and process of every kind, shall be prepared by the party or his attorney who is seeking the issuance of such writ, order or process and shall be ordered by the Court and processed for service by the Clerk. Except for summons and subpoena, the Clerk shall not order any such writ, order or process.

[History: PUBLIC LAW # YAN 3-4-413, May 6, 2004]

Section 414. Clerk to File and Preserve Papers

It is the duty of the Clerk to file together and carefully preserve in his office, all papers delivered to him for that purpose in every action or proceeding.

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[History: PUBLIC LAW #YAN 3-4-414, May 6, 2004]

Section 415. Each Case to be Kept Separate

The papers in each case shall be kept in a separate file marked with the title and number of the case.

[History: PUBLIC LAW #YAN 3-4-415, May 6, 2004]

Section 416. Endorsements

He shall immediately endorse upon every paper filed with him the date of filing it, and upon every order for a provisional remedy issued for service the day of its return to his office.

[History: PUBLIC LAW #YAN 3-4-416, May 6, 2004]

Section 417. Entry on Return of Summons

Upon the return of every summons, the Clerk shall immediately enter upon the appearance docket whether or not service has been made; and if the summons has been served, the name of the defendant or defendants summoned and the day and manner of the service upon each one. The entry shall be evidence in case of the loss of the summons.

[History: PUBLIC LAW #YAN 3-4-417, May 6, 2004]

Section 418. Material for Record

The record shall consist of the complaint, the process, the return, the pleadings subsequent thereto, reports, memorandums, briefs, verdicts, orders, judgments, evidence admitted, other court filings, and all material acts and proceedings of the Court. Evidence must be recorded in the file and noted on an evidence docket. When a case is appealed, the transcript of testimony shall be attached to the record when it is prepared.

[History: PUBLIC LAW #YAN 3-4-418, May 6, 2004]

Section 419. Memorializing Record

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It is the duty of the Court to write out, sign, and record its orders, judgments and decrees within a reasonable time after their rendition, but no later than twenty (20) days unless the case is unusually complex, in which instance the order shall be filed in a reasonable amount of time. To aid in the performance of this duty, the Court may direct counsel to journalize the same or the Court Clerk may be directed to transcribe the order dictated by the Court. The Judge hearing the case must sign and submit the written decision for filing in the Court's record.

[History: PUBLIC LAW #YAN 3-4-419, May 6, 2004]

Section 420. Clerk to Keep Court Records, Books, and Papers -- Statistical and Other Information

The Clerk shall keep the records and books and papers pertaining to the Court and record its proceedings, and exercise the powers and perform the duties imposed upon him by Tribal statute, order of the Court, or Court rule. The Clerk shall be responsible for organizing, filing and the safekeeping of all official cases and the documents filed in each case as well as all evidence admitted into evidence at any proceeding before the Court.

[History: PUBLIC LAW #YAN 3-4-420, May 6, 2004]

Section 421. Applicable to Trial and Court of Appeals

The provisions of this chapter shall apply to the Clerk of the Tribal Trial Court and the Tribal Court of Appeals insofar as they may be applicable.

[History: PUBLIC LAW #YAN 3- 4-421, May 6, 2004]