



# Tribal Court

RULES  
OF  
CIVIL PROCEDURE

MISCELLANEOUS:

SOLDIERS - SAILORS  
RELIEF ACT  
(Cont'd)

(4) If any judgment shall be rendered in any action or proceeding governed by this section against any person in military service during the period of such service or within thirty days thereafter, and it appears that such person was prejudiced by reason of his military service in making his defense thereto, such judgment may, upon application, made by such person or his legal representative, not later than ninety days after the termination of such service, be opened by the court rendering the same and such defendant or his legal representative let in to defend; provided it is made to appear that the defendant has a meritorious or legal defense to the action or some party thereof. Vacating, setting aside, or reversing any judgment because of any of the provisions of this Act (said sections) shall not impair any right or title acquired by any bona fide purchaser for value under such judgment. Oct. 17, 1940, c. 888, s 200, 54 Stat. 1180.

Ehlke, Will of (Ramlow v. Wolf) 246 Wis. 654, NW (1943)

The Soldiers and Sailors Civil Relief Act, 50USCA, Sec. 521 provides:

"At any stage thereof any action or proceeding in any court in which a person in military service is involved, either as plaintiff or defendant, during the period of such service or within sixty days thereafter may, in the discretion of the court in which it is pending, on its own motion, and shall, on application to it by such person or some person on his behalf, be stayed as provided in this act, unless, in the opinion of the court, the ability of the plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service."

The purposes of the Soldiers' and Sailors' Civil Relief Act are to preserve the rights of those in the armed service while serving their country in time of war and to enable them to devote their energy to their military duties. But it was not the intent of congress to allow a protracted delay in disposing of actions where no possible advantage could be secured to the serviceman by being present at the trial of the action. Here no prejudice to such rights resulted.

MISCELLANEOUS:

SOLDIERS - SAILORS  
RELIEF ACT

United States Code Annotated, Title 50, 510-548 consists of general provisions, annotations, and explanations from pages 511 through 622 and paragraphs 560-590; the same from pages 624 through 640. However, paragraph 520 on page 533, ARTICLE II - GENERAL RELIEF provides:

520. Default judgments; affidavits, bonds, attorneys for persons in service--

(1) In any action or proceeding commenced in any court, if there shall be a default of any appearance by the defendant, the plaintiff, before entering judgment shall file in the court an affidavit setting forth facts showing that the defendant is not in military service. If unable to file such affidavit plaintiff shall in lieu thereof file an affidavit setting forth either that the defendant is in the military service or that plaintiff is not able to determine whether or not defendant is in such service. If an affidavit is not filed showing that the defendant is not in the military service, no judgment shall be entered without first securing an order of court directing such entry, and no such order shall be made if the defendant is in such service until after the court shall have appointed an attorney to represent defendant and protect his interest, and the court shall on application make such appointment. Unless it appears that the defendant is not in such service the court may require, as a condition before judgment is entered, that the plaintiff file a bond approved by the court conditioned to indemnify the defendant, if in military service, against any loss or damage that he may suffer by reason of any judgment should the judgment be thereafter set aside in whole or in part. And the court may make such other and further order or enter such judgment as in its opinion may be necessary to protect the rights of the defendant under this Act (Sections 501-548 and 560-590 of this Appendix).

(2) Any person who shall make or use an affidavit required under this section, knowing it to be false, shall be guilty of a misdemeanor and shall be punishable by imprisonment not to exceed one year or by fine not to exceed \$1,000, or both.

(3) In any action or proceeding in which a person in military service is a party if such party does not personally appear therein or is not represented by an authorized attorney, the court may appoint an attorney to represent him; and in such case a like bond may be required and an order made to protect the rights of such person. But no attorney appointed under this Act (said sections) to protect a person in military service shall have power to waive any right of the person for whom he is appointed or bind him by his acts.

Rec'd 3/17/80 - S.F.A.  
- from Woods

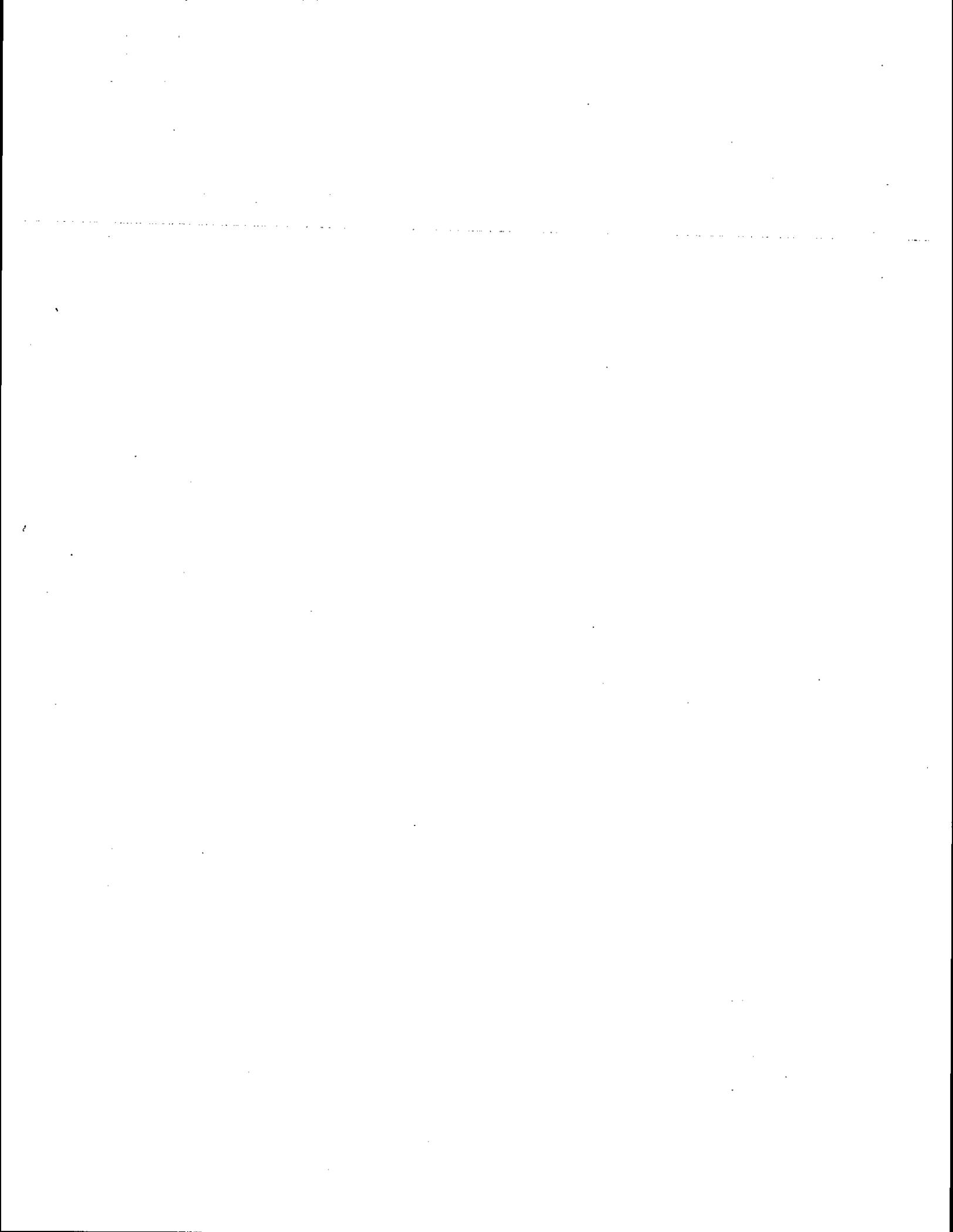


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MENOMINEE TRIBAL COURTS  
AMENDED RULES OF CIVIL PROCEDURE

By order of the Tribal Supreme Court, pursuant to the Constitution of the Menominee Indian Tribe under Article V, Section 6, These Rules of Civil Procedure are established.

Rule 1. Scope

(a) Scope.

These rules shall govern the procedure and practice in Tribal Court of the Menominee Indian Reservation in all actions, suits, and proceedings of a civil nature and in all special proceedings established by law except where different procedure is prescribed by law.

(b) Construction.

These rules shall be liberally construed to secure a just, speedy and inexpensive determination of every action and proceeding. At every stage of the proceeding, the court may disregard any technical error or defect in a failure to comply with these rules which does not affect the substantive rights of the parties particularly those not represented by professional attorneys.

Rule 2. One Form of Action.

There shall be one form of action known as a 'civil action.

Rule 3. Commencement of Action, Service of Process.

(a) Commencement of Action.

A civil action is commenced by filing a complaint with the court and serving an authenticated copy of such on the defendant or defendants as provided for herein.

(b) Service of Process.

Service of process shall consist of delivering to the party served a copy of the complaint along with a summons, which need not be issued by the judge or clerk, which advises the defendant that he is required to answer the complaint within forty (40) days or a default judgment will be entered against him.

(1) The return of service shall be endorsed with the name of the person serving and the date, time, and place of service and shall be filed with the clerk of court.

(2) Service may be made on a party by delivering the required papers to the party himself or upon some person

Amendment Note, 10-5-05: Rule 3 (b) (3) has been amended to require 3 insertion rather than 4.

of suitable age and discretion over sixteen (16) years old at the party's home or principal place of business, agent or employee, or partner of a nonindividual party.

- 3) If with reasonable diligence the defendant cannot be served as otherwise described in this section, service may be made by publication of the summons once per week for three weeks, and by mailing. The mailing may be omitted if the post office address cannot be ascertained with reasonable diligence.
- (4) Service may be made by any law enforcement officer or other person, not a party, sixteen (16) years of age or older.
- (5) Service upon a person otherwise subject to the jurisdiction of the Menominee Tribal Court may be made anywhere in the United States; otherwise, service shall be made within the exterior boundaries of the Reservation.
- (6) If a person personally refuses to accept service, service shall be deemed performed if the person is informed of the purpose of the service and offered copies of the papers served.
- (7) Service upon the Menominee Indian Tribe shall be made by delivering the required papers to the offices of the Chairman and/or Vice Chairman of the Menominee Tribal Legislature at the Tribal Headquarters during normal business hours.

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Rule 4. SUBMISSION OF PAPERS OTHER THAN THE COMPLAINT.

Service of all papers under these rules except the complaint may be made by mail, first class postage prepaid and properly addressed. Service of all papers except the complaint may be made on the party's counsel if the party is using counsel. All filings sent by one party to another shall also be sent to the Court. All filings sent to the Court shall also be sent to each party.

Rule 5. TIME.

(a) Computation.

In computing any period of time set forth herein, the day that the period is to commence from shall not be counted and the last day of the period shall be counted; provided, however, that any time period under seven days will not include intermediate Saturdays, Sundays, or legal holidays in the period and any period which would otherwise end on a Saturday, Sunday, or legal holiday will be deemed to end on the next day which is not a Saturday, Sunday, or legal holiday.

(b) Enlargement.

The Court for good cause shown may enlarge the prescribed period of time within which any required act may be done.

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(c) Notice of Motions.

Written motions and notice of hearing thereon, other than ones which may be heard ex parte, shall be served not later than five days prior to the time specified for hearing, unless strong reasons are shown for a later filing.

(d) Service by Mail.

Whenever service is accomplished by mail, three (3) days shall be added to the prescribed period of time, but such addition shall not cause Saturdays, Sundays, or legal holidays to be counted in the time period if they would not otherwise have been counted.

Rule 6. PLEADINGS.

Unless the Court shall allow additional pleadings, pleadings shall consist of a complaint filed by plaintiff and an answer filed by defendant.

Rule 7. PARTIES.

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(a) Real Party in Interest.

Every action shall be prosecuted in the name of the real party in interest, except a personal representative or other person in a fiduciary position can sue in his own name without joining the party for whose benefit the action is maintained.

(b) Guardian Ad Litem.

When an infant, or insane, or incompetent person who has not had a general guardian appointed is a party, the Court shall appoint a guardian ad litem to represent such person in the suit or action.

(c) Joinder of Parties.

To the greatest extent possible given the limited jurisdiction of the Tribal Court, all persons or parties interested in a particular action may be joined in the action, but failure to join a party over whom the Court has no jurisdiction will not require dismissal of the action unless it would be impossible to reach a just result without such party; otherwise, the failure to join a party may be taken into account to assure that justice is done.

Rule 8. INTERVENTION.

- (a) Upon timely motion anyone shall be permitted to intervene in an action when the movant claims an interest relating to the property or transaction which is the subject of the action and the movant is so situated that the disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest, unless the movant's interest is adequately represented by existing parties.
- (b) Upon timely motion anyone may be permitted to intervene in an action when a movant's claim or defense and the main action have a question of law or fact in common. When a party to an

action relies for ground of claim or defense upon any statute, ordinance or executive order or rule administered by a federal or tribal governmental officer or agency or upon any regulation, order, rule, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely motion may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

- (c) A person desiring to intervene shall serve a motion to intervene upon the parties as provided in (a) and (b) above. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene.

Rule 9. SUBSTITUTION.

If a party dies or becomes incompetent or transfers his interest or separates from some official capacity, a substitute party may be joined or substituted as justice requires.

Rule 10. THE COMPLAINT.

The complaint shall consist of a short and clear written statement sufficient to advise the defendant and the Court of the nature of plaintiff's claim and of the relief sought.

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Rule 11. THE ANSWER.

- (a) Defendant shall submit an answer to the complaint within Forty Days (40) days of service unless this time is extended by a judge upon written request showing good cause.
- (b) The answer shall consist of a short and clear written statement sufficient to advise plaintiff and the Court of the nature of the defense. The answer may deny the truth of statements in the complaint, it may admit the truth of statements in the complaint, or it may deny the knowledge of the truth or falsity of statements in the complaint. The answer may also present matters not raised in the complaint which defendant believes are relevant of the case

Rule 12. ASSIGNING CASES FOR TRIAL.

- (a) Assignment of Judge and Date.

The Chief Justice shall determine which judge shall hear a case, and shall provide by policy for the placing of cases on the Court calendar with or without the request of any party provided all parties are given adequate notice of trial dates.

- (b) Postponement.

Upon written request of a party, the trial court judge may, in his/her discretion, postpone a trial or proceeding upon good cause shown.

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Rule 13. CONSOLIDATION; SEPARATE TRIALS.

(a) Consolidation.

The Court may, upon request of any party or on its own motion, order some or all of the issues of separate actions tried together when there is a common issue of fact or law relating the actions or if such will tend to avoid unnecessary cost or delay.

(b) Separate Trials.

The Court may to avoid prejudice or in furtherance of convenience, order a separate trial of a claim or issue.

Rule 14. CIVIL CASES TO BE TRIED BY TRIAL JUDGE.

(a) All civil cases shall be decided by a trial judge. There shall be no right to trial by jury in civil cases, except that as given by statute. 1/.

(b) DEMAND. Any party entitled to a trial by jury or by the court may demand a trial in the mode to which entitled at or before the pretrial conference. The demand may be made either in writing or orally on the record.

1/ See Appendix B, page 30.

(c) WAIVER. The failure of a party to demand in accordance with sub.(b) a trial in the mode to which entitled constitutes a waiver of trial in such mode. The right to trial by jury is also waived if the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

Rule 15. EVIDENCE.

The trial judge may consider all evidence presented by the parties and give such evidence the weight he deems proper under all the circumstances.

Rule 16. SUBPOENAS.

(a) Issuance.

Subpoenas for attendance of witnesses or, production of documents or things may be issued and served as provided for elsewhere in these rules.

(b) Failure to Appear.

A person who has been properly served with a subpoena and fails to appear or produce may be deemed in contempt of court and/or the court may order his arrest for the offense of Failure to Obey a lawful Order of the Court.

(c) Subpoena Unnecessary.

A person present in court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpoena.

Rule 17. PRETRIAL MEETINGS.

Upon written request of either party or upon his own motion, the trial judge may schedule a pretrial meeting between the parties, and their counsel, if any. Such meetings may be held or requested either before or after the case is scheduled for trial.

During such meetings the parties and the trial Judge may consider any matters which will aid in the simplification, clarification, or disposition of the case. The parties and the trial judge may develop procedures to be followed at the trial. The trial judge may encourage the parties to explore the possibility of settling their dispute and the trial judge may participate in settlement discussions to the extent that his impartiality at any eventual trial will not be affected.

If it appears to the trial judge that the case is highly complex or involves a sum of money in excess of \$1,000.00, the trial judge may, at the request of a party or on his own motion, provide for the use of discovery techniques to aid in the fair and efficient administration of justice. Such discovery techniques may include interrogatories, production of documents, depositions, or any other means of discovery provided for in the Federal Rules of Civil Procedure. To the extent practicable, the trial judge shall

encourage the parties to use informal methods of discovery, but the trial judge shall have the power to utilize formal discovery techniques under the supervision of the Court.

The trial Judge shall prepare a written memorandum of each pretrial meeting setting forth the actions taken at the meeting. Copies of this memorandum shall be distributed to the parties.

Rule 18. TRIAL PROCEDURE.

The trial judge may develop procedures through pretrial meetings or otherwise to secure a fair and efficient trial in each case. No such procedures shall deprive any party of the opportunity to present fairly his case nor shall any such procedures deprive any party of the right of cross-examination nor shall any such procedure allow any party or witness to testify except under oath.

In the absence of unusual circumstances, the procedure outlined below (Rules 19-23) shall constitute a guideline for trial procedure. The procedure, however, may be varied by the trial judge in appropriate cases as the interests of justice may require.

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GUIDELINES FOR TRIAL PROCEDURERule 19. PLAINTIFF'S CASE.

(1) The plaintiff, after being duly sworn, shall be allowed to make a statement of his case. If plaintiff is represented by counsel, counsel may elicit the statement by means of questions. Plaintiff shall provide the Court with copies of any documents or evidence on which he relies and these shall be available for inspection and copying where possible by the other side. After plaintiff has presented his statement and evidence, plaintiff shall be subject to cross-examination by defendant or defendant's counsel.

(2) Plaintiff may then call his witnesses to testify under oath. Witnesses may rely on exhibits or documents which shall be available for inspection or copying as aforesaid. Witnesses may testify by direct statement or by answering questions posed by plaintiff or plaintiff's counsel. After a witness has testified, the witness shall be subject to cross-examination by defendant or defendant's counsel.

(3) After plaintiff and plaintiff's witnesses have been examined and cross-examined, plaintiff shall rest his case.

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Rule 20. DEFENDANT'S CASE

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(1) Defendant, after being duly sworn, shall be allowed to make a statement of his case. Defendant may be represented by counsel who may elicit the statement by means of questions. Defendant shall provide the Court with copies of any documents or exhibits on which he relies and these shall be available for inspection and copying where possible by the other side. After defendant has presented his case, defendant shall be subject to cross-examination by the plaintiff or counsel for plaintiff.

(2) Defendant may then call witnesses to testify under oath. Witnesses may rely on exhibits or documents which shall be available for inspection or copying aforesaid. Witnesses may testify by direct statement or by answering questions posed by defendant or by defendant's counsel. After a witness has testified, the witness shall be subject to cross-examination by plaintiff or by plaintiff's counsel.

(3) After defendant and all defendant's witnesses have testified and have been cross examined, defendant shall rest his case.

Rule 21. TRIAL JUDGE'S RIGHT TO QUESTION TESTIFYING INDIVIDUALS

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During the trial, the trial judge shall have the right to ask questions of any testifying individual in order to develop more fully the facts of the case.

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Rule 22. CONTINUANCE OF TRIAL

If upon conclusion of any trial proceeding it appears that further testimony or opportunity to examine documents is required, the trial judge may order and schedule a continuance of trial. A continuance may be requested by any party or it may be granted by the trial judge on his own motion. Procedures for any continuance of trial shall be the same as those used during the trial where practicable. The trial judge may limit the nature of the factual matters to which testimony is to be addressed during a continuance of trial.

(End of Guidelines for Trial Procedure)

Rule 23. COURT REPORTER

The proceedings or portions of proceedings shall be transcribed verbatim by the clerk of court or court reporter as requested by the appellate court or parties of interests in a given case.

Rule 24. TRIAL JUDGE TO DECIDE CASE

At the conclusion of a trial, the trial judge shall take the case under advisement. A written opinion shall be made including findings of fact, conclusions of law, judgment and order. The written judgment shall grant relief as the trial judge deems appropriate pursuant to Rule 25.

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Rule 25. JUDGEMENT; COSTS

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(a) Definition. A judgment includes any final order from which an appeal is available. No special form of judgment is required.

(b) Types of Relief Which may be Granted.

(1) Generally.

(a) Except in the case of a default judgment, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if such relief is not demanded in the pleadings. It may be given for or against one or more of several claimants; and it may, if justice so requires, determine the ultimate rights of the parties on each side as between or among themselves.

(b) Judgment may consist of an order of the court:

1. awarding money damages to be paid to the injured party;
2. directing the surrender of certain property to the injured party;
3. directing the performance of some act or the ceasing and desisting from performance of some act for the benefit of the injured party;
4. granting any other relief which the Court deems appropriate.

(2) Judgment by Default. A judgment by default shall not be different in kind from, or exceed in amount, that specifically prayed for in the judgment.

(c) Costs. The Court may, in its discretion, assess the accruing costs of the case against the party or parties against whom judgment is given.

(d) Attorney's Fees. The Court shall award attorney's fees in a case where such has been specifically provided by contract or agreement of the parties under dispute, unless it has been clearly and convincingly shown that the case has been prosecuted in bad faith for purposes of harassment only, and that there was no reasonable expectation of success on the part of the affirmatively claiming party. Attorney's fees shall be awarded when provided by statute.

Rule 26 ENTRY OF JUDGMENT

(a) Judgment. Judgments shall be signed by the judge and filed with the Clerk (or Chief Justice if there is no clerk).

(b) Effectiveness: Recordation. A judgment is complete and shall be deemed entered for all purposes when it is signed and filed as provided herein. The Clerk shall immediately make a notation of the judgment in the register of actions and the judgment docket.

(c) Death of a Party. If a party dies after a decision upon any issue of fact and before judgment, judgment may nevertheless be entered thereon.

(d) Satisfaction of Judgment. A judgment may be satisfied, in whole or in part, as to any or all of the judgment debtors by the owner thereof or his attorney of record executing under oath and filing an acknowledgement of satisfaction specifying the amount paid and whether such is a full or partial satisfactions of judgment and note the amount thereof in the register of actions and the judgment docket.

(e) Effect of Satisfaction : Limitation. A judgment satisfied in whole, with such fact being entered in the judgment docket, shall cease to operate as such. A partially satisfied judgment or unsatisfied judgment shall continue in effect for eight years or until satisfied. An action to renew the judgment remaining unsatisfied may be obtained any time prior to the expiration of eight years and will extend the limitations an additional eight years and may be thereafter further extended by the same procedure.

Rule 27. DEFAULT

(a) Entry of Default. When a party against whom a judgment for relief is sought has failed to plead or otherwise defend, his/her default may be entered by the Clerk and judgment by default granted. Once the default is entered, no further notice to the defaulting party of any action taken or to be taken need be given.

(b) Judgment by Default. Judgment by default may be entered by the Clerk if a party's claim against the opposing party is for a sum of money which is or can by computation be made certain, and if the opposing party has been personally served on the Reservation. Otherwise, judgment by default can be entered only by the Court upon receipt of whatever evidence the Court deems necessary to establish the claim. ~~No judgment by default shall be entered against the Menominee Indian Tribe.~~

(c) Setting Aside Default. The Court may, for good cause shown, set aside either an entry of default or default judgment.

Rule 28. RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes. Clerical mistakes in judgment, orders, or other parts of the record and errors herein arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party and after such notice as the Court may direct; mistakes may be corrected before an appeal is docketed in the Supreme Court, and thereafter while the appeal is pending may be corrected with leave of the Supreme Court.

Rule 29. HARMLESS ERROR.

No error in either the admission or the exclusion of evidence, and on error or defect in any ruling or order or in anything done or omitting by the Court or by any of the parties,

is ground for granting a new trial or otherwise disturbing a judgment or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of the proceeding shall disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Rule 30. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

(a) Stay Upon Entry of Judgment. Save for unusual circumstances, proceedings to enforce a judgment should ordinarily be stayed during the period in which any party is allowed to appeal to the Supreme Court. During this period, the trial court may establish such conditions as are necessary to protect the interests of any party in receiving judgment.

(b) Stay Upon Appeal. A party may obtain a stay when he appeals from the decision of the trial court by posting a bond or giving adequate assurance to the trial judge that he will satisfy the judgment if it is affirmed. Upon fulfillment of these conditions, the Judge shall grant the stay. When a party has obtained a stay, the judgment of the trial judge shall not be executed until final disposition of the case by the full Court. In its discretion the Supreme Court may also issue a stay pending appeal upon written request or upon its own motion.

(c) Stay in Favor of the Tribe, or Agency Thereof. When an appeal is taken by the tribe, or an officer or agency of the tribe, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required.

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Rule 31. DISABILITY OR DISQUALIFICATION OF A JUDGE

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(a) Disability. If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties of the Court under these rules, any other judge may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

(b) Disqualification. A judge shall disqualify himself from hearing any matter in which he has a direct interest or in which any party to the matter is a relative by blood, to the fourth degree (first cousins), or where he feels that he will not be able to render a just decision.

Any party to a legal proceeding may request a substitution of judge to hear the proceeding by filing a written affidavit of prejudice giving sufficient reasonable grounds why the judge assigned should not hear the case. The affidavit shall be presented to the judge assigned to hear the case who shall rule on the sufficiency of the affidavit, and, if sufficient, either disqualify himself or forward the affidavit to the Chief Justice for a decision as to whether a different judge should be assigned. All requests for disqualification of judge shall be made within five (5) days after the initial appearance or joinder date. No party shall be entitled in any case to file more than one affidavit; and no such affidavit shall be filed unless accompanied by a certificate of counsel of record that such affidavit and application are made in good faith.

Rule 32. EXECUTION

(a) Time. If within sixty (60) days after entry of a judgment awarding money damages and/or costs against a party, or within sixty (60) days after final resolution of an appeal to the Supreme Court from such a judgment, it is made to appear to the Court that the judgment debtor has not paid the judgment amount in full or commenced making installment payments in a manner agreed to by the parties, or is not current in such payments, the Court shall upon motion of the judgment creditor, heard ex parte, order the Menominee Indian Tribal Police to execute on the personal property of the judgment debtor as provided for herein.

(b) Procedure. The court shall order the judgment debtor to appear before it and answer under oath regarding all his personal property. The Court shall then determine what property of the judgment debtor is available for execution and order the Menominee Tribal Police to seize as much of such property as reasonably appears necessary to pay the judgment amount. Failure of the judgment debtor to appear may be deemed a Contempt of Court and the Court may proceed without such appearance. Sale of the seized property shall be at public auction conducted by the Menominee Tribal Police after giving at least ten (10) days public notice posted in at least three (3) conspicuous public places on the Reservation. Property shall be sold to the highest bidder who shall make payment for the property at the time of sale. The person conducting the auction may postpone such in his discretion if there is inadequate response to the auction or the bidding, and may reschedule such upon giving the required notice.

The person conducting the sale shall give a certificate of sale to the purchaser and shall make a return to the Court reciting the details of the sale.

(c) Exemption from Execution. The Court shall only order seizure and sale of such property of the judgment debtor to satisfy a money judgment the loss of which will not impose an immediate substantial hardship on the immediate family of the judgment debtor. Only property of the judgment debtor himself may be subject to execution and not property of his family.

(d) Redemption from Sale. At any time within six (6) months after sale under this rule, the judgment debtor may redeem his property from the purchaser thereof by paying the amount such purchaser paid for the property plus 8% interest, plus any expenses actually incurred by the purchaser, such as taxes and insurance, to maintain the property.

RULE 33. MISCELLANEOUS PROVISIONS

(a) Settlement offers.

(1) After issue is joined but at least 20 days before the trial, the defendant may serve upon the plaintiff a written offer to allow judgment to be taken against the defendant for the sum, or property, or to the effect therein specified, with costs. If the plaintiff accepts the offer and serves notice thereof in writing, before trial and within 10 days after receipt of the offer, the plaintiff may file the offer, with proof of service of the notice of acceptance, and

~~the clerk must thereupon enter judgment accordingly~~ If notice of acceptance is not given, the offer cannot be given as evidence nor mentioned on the trial. If the offer of judgment is not accepted and the plaintiff fails to recover a more favorable judgment, the plaintiff shall not recover costs but defendant shall recover costs to be computed on the demand of the complaint.

(2) After issue is joined but at least 20 days before trial, the defendant may serve upon the plaintiff a written offer that if the defendant fails in the defense the damages be assessed at a specified sum. If the plaintiff accepts the offer and serves notice thereof in writing before trial and within 10 days after receipt of the offer and prevails upon the trial, either party may file proof of service of the offer and acceptance and the damages will be assessed accordingly. If notice of acceptance is not given, the offer cannot be given as evidence nor mentioned on the trial. If the offer is not accepted and if damages assessed in favor of the plaintiff do not exceed the damages offered, neither party shall recover costs.

(3) After issue is joined but at least 20 days before trial, the plaintiff may serve upon the defendant a written offer of settlement for the sum, or property, or to the effect therein specified, with costs. If the defendant accepts the offer and serves notice thereof in writing, before trial and within 10 days after receipt of the offer, the defendant may file the offer, with proof of service of the notice of acceptance, with the clerk of court. If notice of acceptance is not given, the offer cannot be given as evidence

nor mentioned on the trial. If the offer of settlement is not accepted and the plaintiff shall recover double the amount of the taxable costs.

(4) If there is an offer of settlement by the party under this section which is not accepted and the party recovers a judgment which is greater than or equal to the amount specified in the offer of settlement, the party is entitled to interest at the rate of 12% per annum on the amount recovered from the date of the offer of settlement until the amount is paid.

(b) Proceedings, where held; restriction as to making orders.

All trials, and all hearings at which oral testimony is to be presented, shall be held in open court. The court may make any order which a judge has power to make.

(c) Stipulations.

No agreement, stipulation, or consent between the parties or their attorneys, in respect to the proceedings in an action or special proceeding shall be binding unless made in court and entered in the minutes or recorded by the reporter or made in writing and subscribed by the party to be bound thereby or the party's attorney and recorded by the clerk of court or reporter.

(d) Copy of paper may be used, when.

If any original paper or pleading be lost or withheld by any person the court may authorize a copy thereof to be filed and used instead of the original.

(e) Borrowing court files regulated.

The clerk shall not permit any paper filed in his/her office to be taken therefrom unless upon written order of a judge of the court. The clerk shall take a written receipt for all papers so taken and preserve the same until such papers are returned. Papers so taken shall be returned at once upon request of the clerk or presiding judge, and no paper shall be kept longer than 10 days.

(f) Settlements in behalf of minors; judgments.

(1) A compromise or settlement of an action or proceeding to which a minor or mentally incompetent person is a party may be made by the general guardian, if the guardian is represented by an attorney, or the guardian ad litem with the approval of the court in which such action or proceeding is pending.

(2) A cause of action in favor of or against a minor or mentally incompetent person may, without the commencement of an action thereon, be settled by the general guardian, if the guardian is represented by an attorney, with the approval of the court appointing the general guardian, or by the guardian ad litem with the approval of any court of record. An order approving a settlement or compromise under this subsection and directing the consummation thereof shall have the same force and effect as a judgment of the court.

(3) If the amount awarded to a minor by judgment or by an order of the court approving a compromise settlement of a claim or cause of action of said minor does not exceed \$1,500 (exclusive of interest and costs and disbursements),

~~and if there is no general guardian of the ward, the court may~~  
upon application by the guardian ad litem after judgment, or  
in the order approving settlement, fix and allow the expenses  
of the action, including attorney's fees and fees of guardian  
ad litem, authorize the payment of the total recovery to the  
clerk of the court, authorize and direct the guardian ad litem  
upon said payment to satisfy and discharge the judgment, or to  
execute releases to the parties entitled thereto and enter  
into a stipulation dismissing the action upon its merits. The  
order shall also direct the clerk upon such payment to pay the  
costs and disbursements and expenses of the action and to  
dispose of the balance in one of the manners provided in  
s.880.04(2) as selected by the court.

(g) Orders: rendition and entry.

- (1) An order is rendered when it is signed by the judge.
- (2) An order is entered when it is filed in the office  
of the clerk of court.

(h) Suing by fictitious name or as unknown; partners' names  
unknown.

- (1) When the name or a part of the name of any  
defendant, or when any proper party defendant to an action to  
establish or enforce, redeem from or discharge a lien or claim  
to property is unknown to the plaintiff, such defendant may be  
designated a defendant by so much of the name as is known, or  
by a fictitious name, or as an unknown heir, representative,

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owner or person as the case may require, adding such description as may reasonably indicate the person intended. But no person whose title to or interest in land appears of record or who is in actual occupancy of land shall be proceeded against as an unknown owner.

(2) When the name of such defendant is ascertained the process, pleadings and all proceedings may be amended by an order directing the insertion of the true name instead of the designation employed.

(3) In an action against a partnership, if the names of the partners are unknown to the plaintiff, all proceedings may be in the partnership name until the names of the partners are ascertained, where upon the process, pleadings and all proceedings shall be amended by order directing the insertion of such names.

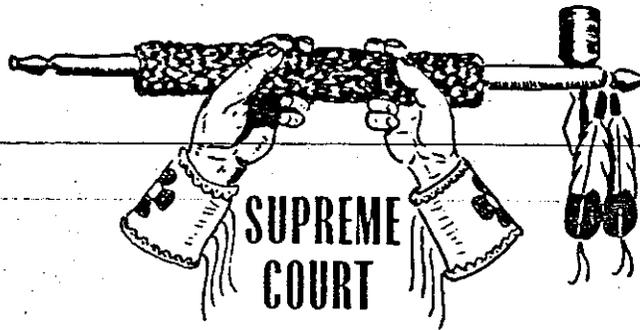
(i) Absence of a specific rule; federal rules to apply

In the absence of a specific rule in civil proceedings, and when deemed necessary, the federal rules shall be made applicable.

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# Menominee Indian Tribe of Wisconsin



P.O. Box 429  
KESHENA, WISCONSIN 54135  
Telephone 1-715-799-3348

CHIEF JUSTICE - WILMER J. PETERS  
ASSOCIATE JUSTICE - HILARY J. WAUKAU, SR.  
ASSOCIATE JUSTICE - JOSEPH LAWE

## RULES OF CIVIL PROCEDURE

### Order For Adoption and Implementation

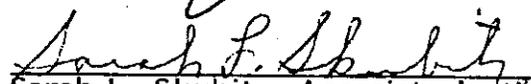
PURSUANT TO ARTICLE V, SECTION 6, OF THE MENOMINEE TRIBAL CONSTITUTION AND BY-LAWS, THE MENOMINEE TRIBAL SUPREME COURT HEREBY ADOPTS THE FOREGOING AMENDED RULES OF CIVIL PROCEDURE. THE AFORESAID RULES ARE ATTACHED HERETO AND ARE NUMBERED 1 THROUGH 33, CONSECUTIVELY.

THESE RULES AMEND AND REPLACE GENERAL RULES OF PROCEDURE IN A CIVIL SUIT ADOPTED BY THIS COURT ON SEPTEMBER 27, 1979.

DATED THIS 03 DAY OF April, 1984.

BY THE COURT:

  
Wilmer J. Peters, Chief Justice

  
Sarah L. Skubitz, Associate Justice

  
Christine Webster, Associate Justice

(SEAL)

## RULES OF PROCEDURE

## FOR USE IN CIVIL

## ORDER

## JURY TRIALS

PURSUANT TO ARTICLE V, SECTION 6 OF THE TRIBAL CONSTITUTION THE FOLLOWING RULES ARE HEREBY ADOPTED TO GOVERN THE PROCEDURE IN THE TRIBAL COURT IN ALL TRIALS BY JURY OF A CIVIL NATURE.

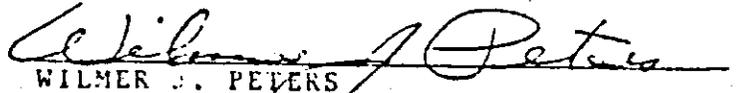
- (A) That any person accused of an offense not punishable by imprisonment, shall have such right only at such person's own expense. The jury shall not be less than six (6) persons.
- (B) There shall be a right to trial by jury in all cases involving a claim with a value of \$500.00 or more unless trial by jury is waived by the parties.
- (C) Any person entitled to a jury trial shall file with the clerk of court a written demand for a jury trial no later than ten (10) days after the answer is filed. If no demand is made within such time the case shall be tried by the court without a jury.
- (D) In cases involving one or more non-Indian parties, non-Indians may be summoned to serve as jurors whenever a jury trial is scheduled in a civil matter. The number of non-Indians summoned shall be prorated as nearly as possible with the Indian people summoned.
- (E) Non-Indian prospective jurors to be taken from the the eligible voter list of the last election in Menominee County, the eligibility requirement for jury duty will be between the ages of 18 and 70, who was not convicted of a felony or a class A offense under Wisconsin State Statutes and who resides on the Menominee Indian Reservation.

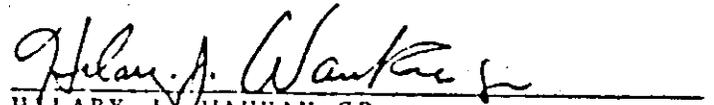
MENOMINEE SUPREME COURT  
RULES OF PROCEDURE - CIVIL JURY TRIALS (Cont'd)

APPENDIX B (Cont'd)

- (F) After the evidence is completed and the arguments heard, ~~the court shall instruct the jury and the jury shall retire for deliberation.~~ If either party request special jury instructions, the requested instruction shall be submitted to the court in writing at the beginning of the trial. If the jury wants more instructions after they have gone to the jury room, they may ask the court for them by telling the bailiff. Such additional instructions shall be given the jury in open court in the presence of the parties and their advocates. When either party asks for it, the jury may be polled by the court, by asking each juror what their verdict is. If the jury is unable to reach a unanimous verdict, verdict may be rendered by a majority vote.
- (G) If less than four (4) of the jurors agree on the verdict, the court may either send the jury back for further deliberations or discharge the jury and set the case for another trial.

BY THE COURT

  
WILMER J. PEVERS  
CHIEF JUSTICE

  
HILARY J. WAUKAU SR.  
ASSOCIATE JUSTICE

DATED THIS 21 DAY OF July, 1981 ON THE MENOMINEE INDIAN RESERVATION.

The foregoing rules shall take effect on August 1, 1981.  
Rule 13 of Title 2, provisional Menominee Indian Rules of civil  
procedure is hereby abrogated.

J U R O R S

N O N - I N D I A N

J U R O R S

Pursuant to Chapter 5, Section 1-5-1 of the Tribal Judiciary and Interim Law and Order Code.

These Rules for Procedures where-by Non-Indians may be summoned for jury duty in cases on which one or more Non-Indian parties are involved are hereby adopted.

- A. Any Non-Indian who resides on the Menominee Indian Reservation, between the ages of eighteen (18) and seventy (70), who has not been convicted of a felony shall be eligible to be a juror.
- B. The jury list shall contain as nearly as possible an equal number of names of Non-Indian and Indian persons.

BY THE COURT

  
WILMER J. PETERS  
CHIEF JUSTICE

  
HILARY W. UKAU SR.  
ASSOCIATE JUSTICE

DATED THIS 19 DAY OF Feb 19 81.