

MENOMINEE SUPREME COURT
MENOMINEE TRIBAL COURTS
MENOMINEE INDIAN RESERVATION

REQUEST TO CHANGE CIVIL PROCEDURE RULES

SUPREME COURT ORDER

The attached Memorandum was submitted to the Supreme Court by the Menominee Tribe's Legal Department. The Memo requests that Menominee Civil Procedure Rules 3(b) and 11(a) be amended to allow for different service time frames in the event that tribal law references a different time frame.

The Menominee Supreme Court met on August 28, 2017 and decided to approve the request provided no objection was received. Thus, this Order and Memorandum will be placed on the court's website for thirty (30) days. If no objection is received, the request will be granted and Rule 3 (b) and 11 (a) shall amended as requested.

Dated this 1st day of September 2017.

BY ORDER OF THE COURT:



Chief Justice





MEMORANDUM

To: Menominee Tribal Supreme Court
CC: Lindzey Spice, Director of Menominee Legal Services Dept.
From: Starlyn Tourtillott, Assistant Tribal Attorney, Menominee Legal Service Dept.
Date: August 15, 2017
Re: Amendment to Menominee Tribal Court Rules of Civil Procedure Rules 3 (b) & 11 (a)

ACTION REQUESTED: Menominee Tribal Supreme Court should consider approving an amendment to Rule 3 (b) Service of Process to clarify that if a different time frame for answering an action filed in Tribal Court is codified in tribal law then the time frame under codified tribal law shall be applied by the Court and the parties. In absence of any codified law prescribing a timeframe, then the default shall be the 40 day timeframe as already identified in the Rule 3(b).

BACKGROUND

Currently, Menominee Tribal Court Amended Rules of Civil procedure requires 40 days for answering a complaint filed with the Tribal Court.

Rule 3 (b) states in part:

“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.”

Rule 11 (a) states in part:

“Defendant shall submit an answer to the complaint within Forty (40) days of service unless this time is extended by a judge upon written request showing good cause.”

The following proposed amendments would alleviate an appellate procedural issue from having to be deliberated regarding general rules of construction when codified tribal law prescribes a different procedural timeframe from the Menominee Tribal Court Rules of Civil Procedure. The proposed amendment to Rule 3 (b) would be as follows:

“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 other identified time frame as codified by tribal law in which case that time frame shall be clearly specified in the summons**, or a default judgment will be entered against him.”

The proposed amendment to Rule 11 (a) would be as follows:

“Defendant shall submit an answer to the complaint within Forty (40) days of service **or other identified time frame as codified by tribal law in which case that time frame shall be clearly specified in the summons** unless this time is extended by a judge upon written request showing good cause.”