

CHAPTER 4

STOCKBRIDGE-MUNSEE TRIBAL LAW PEACEMAKER ORDINANCE

Part 1. GENERAL PROVISIONS

Section 4.10 Purpose & Construction

(A) These rules are meant to provide formal support, structure and enforcement to traditional Mohican methods of resolving disputes through mediation and the use of traditional ways.

(B) These rules shall be interpreted liberally and informally with the goal of providing a fair, informal, inexpensive and traditional means of resolving disputes. The rules shall be used and applied in as close an accordance with Mohican tradition and custom as possible.

(C) The guiding principles for the Peacemaker System are as follows:

(1) HARMONY PRINCIPLE

Positive relationships between parties are valuable and should be preserved.

(2) NON-COERCION PRINCIPLE

The most constructive way to preserve a positive relationship and settle a dispute is through the voluntary participation of the parties and not through the use of force from an outside source.

(3) COMMUNITY HEALTH PRINCIPLE

The health of the community at large depends on recognizing the connectedness of all things and the responsibility that we all have to each other.

(4) SACRED JUSTICE PRINCIPLE

Sacred justice is found when the importance of restoring understanding and balance to relationships has been acknowledged.

Section 4.11 Establishment.

The Peacemaker System of the Stockbridge-Munsee Community is hereby established as part of the Tribal Court System. While a part of the Tribal Court System, the Peacemaker System will be independent from the Tribal Court judges. The Peacemakers may use the Tribal Court as a resource and infrastructure for purposes of supporting and maintaining the Peacemaker System.

Section 4.12 Subject Matter Jurisdiction; Personal Jurisdiction; Attorneys

(A) A judge of the Tribal Court may appoint a Peacemaker where the matter in dispute is within the jurisdiction of the Tribal Court according to its jurisdictional requirements.

(B) The Peacemaker System does not have the power to compel persons within the jurisdiction of the Stockbridge-Munsee Community to appear and participate in Peacemaker System proceedings nor to compel the attendance of parties. Peacemakers shall not have authority to decide a disputed matter unless all parties to the dispute consent to such authority in writing.

(C) Members of the Stockbridge-Munsee Community Bar and all attorneys are prohibited from participating in any proceedings of the Peacemaker System unless they have been called as witnesses or are parties and except to the extent they may assist persons with respect to protective orders, complaints, judgments or appeals as provided in Parts Four, Five and Six.

(D) Nothing in this Ordinance shall prevent Peacemakers from mediating disputes or providing Peacemaking services to entities other than the Stockbridge-Munsee Tribal Court.

Part 2. PEACEMAKERS

Section 4.20 Appointment and Qualifications

(A) General Qualifications - Any Stockbridge-Munsee tribal member who is over the age of 35 and who has the respect of the Stockbridge-Munsee Community, an ability to work with Reservation residents and Tribal members, a reputation for integrity, honesty, humanity and an ability to resolve local problems shall be eligible to be appointed as Peacemaker, except that no person while a member of the Tribal Council or while a Tribal Judge shall be eligible for appointment.

(B) Appointment

(1) The Stockbridge-Munsee Community Tribal Council may select and certify the names of individuals as proposed Peacemakers. The individuals selected must agree in writing or by oath administered by a judge or the Clerk of Tribal Court to work in accordance with the Guiding Principles. The Clerk of Court shall maintain a roll of Peacemakers. Peacemakers shall be appointed from that roll. The Stockbridge-Munsee Tribal Council may add or delete names to or from the list from time to time.

(2) Although a roll of Peacemakers shall be maintained in accordance with this section, this section shall not prevent individuals or parties from selecting another individual to conduct Peacemaking, as long as the selection is done in a manner consistent with this Ordinance.

(3) Peacemakers are encouraged, but not required, to participate in training programs for Peacemakers.

(C) Action where no appointment - If the Tribal Council fails to certify Peacemakers, the Court may appoint a Peacemaker from among persons known to it to be qualified.

(D) Agreement as to Peacemaker - The parties to any dispute, whether in Tribal Court or not, may by mutual agreement have a specified individual serve as Peacemaker for the resolution of their dispute. In such cases, the Peacemaker need not appear on the roll of Peacemakers kept by the Court and need not be a member of the Tribe. However, the person agreed upon by the parties must be 35 years of age, and a resident of the Stockbridge-Munsee Reservation for at least 1 year.

Section 4.21 Powers of Peacemakers.

(A) Peacemakers appearing on the tribally approved roll shall have the same immunities as Tribal Court judges.

(B) Peacemakers shall have the power to:

(1) Mediate disputes among persons involved in the peacemaking process;

(2) Use Tribal religious or other traditional ways of mediation and community problem-solving;

(3) Instruct or counsel individuals on the traditional tribal teachings or values relevant to their problem or conduct;

(4) Encourage persons involved in a dispute, affected by it or in any way connected with it to meet to discuss the problem being worked on and to participate in all necessary peacemaking efforts;

(5) Use any reasonable means, in accordance with the Peacemaker Guiding Principles as stated in this ordinance, to obtain the peaceful, cooperative and voluntary resolution of a dispute subject to peacemaking. No force, violence or the violation of rights secured to individuals by the Stockbridge-Munsee Bill of Rights or Tribal law or custom will be permitted.

Section 4.22 Limitations; Peacemakers not judges; Agreed arbitration.

Peacemakers shall only have the authority to use traditional and customary methods in accordance with the Guiding Principles to mediate disputes and obtain the resolution of problems through agreement. Peacemakers shall not have the authority to decide a disputed matter unless all parties to the dispute agree to such authority in writing or before the Tribal Court. Any such decision will have the effect of a court judgment when entered by the Tribal Court.

Section 4.23 Duties of Peacemakers

Where Peacemaking sessions are conducted pursuant to a referral from Tribal Court and upon notice to an individual of his or her appointment as a Peacemaker for an individual matter, the Peacemaker shall notify the Court of (A) any disqualifications or inability to serve in the matter or (B) acceptance of the appointment. The clerk of Tribal Court may be notified in writing or by telephone notice. If the Court is not notified within a reasonable time of the mailing of the notice, another Peacemaker may be appointed. The Peacemaker will informally contact the parties to the dispute and any other persons involved and make other necessary arrangements to conduct peacemaking sessions. The peacemaker may conduct a reasonable number of sessions in an attempt to achieve peacemaking efforts using procedures and techniques which are accepted in the community. Where the parties involved accept or practice a given religious belief, discipline or teaching, the accepted methods and teaching of that religious way may be used.

Section 4.24 Reports to Tribal Court.

Where the Peacemaking sessions were pursuant to a referral from Tribal Court, either at the conclusion of the peacemaking or at such time as the Peacemaker finds there can be no resolution of the matter, the Peacemaker must report the results of his or her efforts to the Court. The reports may be informal but must be reduced to writing, either by the Peacemaker or the Tribal Court. This written record shall be maintained in the Court file.

Part 3. PROCEDURE

Section 4.30 Request for Peacemaking.

Any individual may ask the assistance of the Peacemaker System by filing a written request with the Court or by contacting a certified Peacemaker directly. A list of certified Peacemakers shall be available to the public. The request may be informal and hand-written, and it may be made either on a form provided by the court or in any writing which gives the court the following information:

- (A) The name and address of the person who requests the use of the Peacemaker System;
- (B) The names of the persons involved in the dispute (parties), and their mailing addresses and their place of residence.
- (C) The reason the individual wants to use the Peacemaker System and a short statement of the problem involved;

(D) The names and addresses of each person who should be contacted by the Peacemaker and involved in the peacemaking;

(E) Information showing the status of each of the individuals involved as either Indian or non-Indian and tribal affiliation and membership, if any.

(F) A joint declaration by the parties that they consent to participating in the Peacemaker process.

Section 4.31 RESERVED

Section 4.32 Duties of Clerk of Tribal Court

All Clerks of Court will assist parties before the Peacemaker System by providing information about the Peacemaker System, assisting individuals in filling out requests, assisting the Peacemakers in making reports, advising individuals how to obtain a protective order or file a complaint and in giving whatever kind of assistance individuals may need to make the Peacemaker System effective and to carry out the intent of these rules.

Section 4.33 Appointment of Peacemaker.

Upon filing by a party of a request for peacemaking, the clerk of court will present the parties making the request with a list of certified Peacemakers. The parties may choose from the list. If the parties wish, the Clerk of Court may choose a Peacemaker for them at random. In order to make a request for peacemaking, it is not required that the parties be involved in a Tribal Court case or a case in any other court.

If the parties before the Court have already agreed on a specific person as a Peacemaker or they wish to choose the Peacemaker together, the Court shall allow it.

Section 4.34 Notice to begin proceedings.

Notice of the appointment of the Peacemaker shall be provided by the Clerk of Court, who shall send copies of the request and order to the named Peacemaker by first class mail. If the Clerk of Court does not receive notification from the Peacemaker of acceptance of the appointment within a reasonable time, the clerk shall so advise the parties for the purpose of choosing another person as peacemaker. The Peacemaker is responsible to informally advise the parties, witnesses and participants of his appointment, and the copies of the request and order sent to the Peacemaker shall be evidence of his or her authority.

Section 4.35 Compensation of Peacemaker

The parties shall, at the time of making the request to use the Peacemaker System, pay into court the sum of \$40, \$20 from each party, as compensation for the Peacemaker's services. The clerk of court shall pay such sum to the Peacemaker upon his or her acceptance of appointment. Upon the completion of the peacemaking, parties

to the dispute shall, in equal shares, reimburse the Peacemaker for any actual expenses incurred in the matter.

Section 4.36 RESERVED

Section 4.37 Fees

A fee of \$10 will be charged for any protective order sought with respect to Peacemaker System proceedings.

Part 4. ACTIONS BY THE TRIBAL COURT.

Section 4.40 Protective Orders

Any party, witness or participant involved in Court ordered Peacemaking may petition the Tribal Court for a protective order ending the peacemaking process or putting limitations upon it. The grounds for protective order are:

- (A) Harassment by the Peacemaker or harassment by another which is not properly handled by the Peacemaker;
- (B) Invasion by the Peacemaker of personal privacy to an unreasonable extent;
- (C) Conduct of the Peacemaker in the peacemaking process which is degrading, inhuman, dangerous, assaultive or otherwise violative of an individual's rights.
- (D) Conduct of the Peacemaker in violation of applicable standards of Peacemaker conduct.

Section 4.41 Action by the Court

A petition for a protective order may be made in writing, and must be made in writing if the party seeking the order has counsel. Otherwise it may be made orally in open court. Upon considering the petition for a protective order, which may be heard ex parte, the Court may issue an immediate order terminating peacemaking proceedings and must issue an order for the purpose of conducting a hearing on the petition for a protective order. Upon a full hearing, following notice to the parties, the court may terminate peacemaking proceedings or place reasonable limitations upon them. The person seeking a protective order must pay a fee of \$10 to the Clerk of Court at the time of filing of the petition.

Section 4.42 Judgments

Where the parties in Peacemaking reach an agreement they wish to have confirmed and recorded by a formal judgment or order of a Court, they may present a draft judgment to the Court for its consideration. A court may enter judgment only when the following conditions have been met:

- (A) The court has jurisdiction over the parties and the subject matter of the agreement;
- (B) All necessary parties have actual knowledge of the proposed judgment and have either agreed to it or have agreed to submit the question to the Peacemaker for a decision;
- (C) The judgment contains the complete agreement of the parties and contains sufficient information regarding the full agreement so a dispute as to the provisions of the judgment is not likely to arise in the future;
- (D) The proposed judgment is otherwise proper and enforceable by the Court.

Section 4.43 Method of Presenting Proposed Judgment.

The parties need not be represented by counsel, and the Court may make its written judgment following an informal oral conference with the parties. Where necessary the Court may require a member of its staff to assist the Peacemaker in preparing a proper form of judgement.

Section 4.44 Form of Judgment.

All judgments must contain the following information:

- (A) The names and jurisdictional information with regard to each party (i.e. residence, consent to jurisdiction, etc.);
- (B) A statement of the fact that all necessary parties to the dispute have actual knowledge of it and that they have all agreed to the proposed judgment;
- (C) If the dispute was resolved by the agreement of all the parties that it would be submitted for the Peacemaker's decision, a statement of that fact;
- (D) A statement that the judgment is based upon Peacemaker System proceedings, and the name of the Peacemaker;
- (E) A general description of the dispute;
- (F) The actual judgment of the Tribal Court.

Section 4.45 Enforcement of Judgment

A judgment of the Tribal Court upon Peacemaker System proceedings may be enforced as any other judgement of the Tribal Court may be enforced.

Part 5. CONDUCT OF PEACEMAKERS

Section 4.50 General Standards

Peacemakers shall be bound by the Code of Judicial Ethics which apply to the Judges of the Stockbridge-Munsee Tribal Court insofar as such codes are consistent with the nature and purpose of the Peacemaker System. Peacemakers shall not participate in any matter in which they have a personal or financial interest or close relation to a party, and they shall conduct themselves with honesty, integrity and in harmony with traditional and customary Tribal ways and in accordance with the Guiding Peacemaker Principles.

Section 4.51 Complaints regarding Peacemakers

Complaints against Peacemakers shall be made to the Tribal Council in writing, and such complaints shall be treated as any complaint against a court or Trial Judge.

Section 4.52 Action on Complaint.

Upon finding that a Peacemaker has violated an ethical standard, the Tribal Council may, by majority vote, suspend the name of the individual from the Peacemaker rolls. Where criminal activity is involved, the Tribal Council may refer the matter to the Tribal Prosecutor or other authority for possible prosecution. The Tribal Council shall notify in writing any Peacemaker who has been suspended from the rolls and the reason(s) therefore within 10 days. The Peacemaker shall have 14 days to appeal such suspension to the Tribal Appellate Court. Such appeals shall thereafter proceed pursuant to tribal appellate laws.

Part 6. TRANSFER OF CASES FROM TRIBAL COURT TO PEACEMAKER SYSTEM.

Section 4.60 General Policy

Any civil or criminal actions in Tribal Court may be referred to the Peacemaker System in accordance with this Part where they fall within the kinds of matters within the jurisdiction of the Peacemaker System or where it is in the interests of justice to make such a referral for good cause shown, and where all parties agree to transfer.

Section 4.61 Requests and Objections.

- (A) Any party can request referral of their case to Peacemaker System.
- (B) Any party can by objection prevent referral of their case to Peacemaker System.
- (C) The written consent of all parties must be obtained by Tribal Court prior to transfer of a case to the Peacemaker System. Parties cannot withdraw their consent to transfer absent a showing by clear and convincing evidence in Tribal Court that their consent was obtained by fraud or undue influence.
- (D) Non-parties can neither request nor prevent transfers to Peacemaker System.
- (E) When a case is referred pursuant to this section, the Tribal Court still maintains jurisdiction over the case. If the Peacemaking process does not produce an agreement or resolution, then Tribal Court proceedings may continue.

Section 4.62 Civil Matters.

Civil actions falling within the provision of Section 4.1.3 may be referred to Peacemaker System with the written stipulation of all the parties to the action.

Section 4.63 Criminal Matters.

Any criminal matter within the provisions of Section 4.1.3 may be transferred to the Peacemaker System, upon consent of the parties, where:

- (A) The case does not involve injury to person or property; or
- (B) Where the victim to the alleged offense consents; or
- (C) Where there is a plea or conviction of guilty and peacemaking would be an appropriate condition of probation for achieving harmony and reconciliation with the victim.

Section 4.64 Criminal Probation

The Tribal Court may, as a condition of criminal probation, require the defendant to submit to the Peacemaker System for traditional and customary counseling, instruction and lectures appropriate to his or her offense. The Tribal Court may require the defendant to pay the \$40 fee required of other parties before the Peacemaker System.

Section 4.65 Mandatory Referral to Peacemaker System

Notwithstanding the consent provisions of Sections 4.6.1 and 4.6.2, if the Trial Judge assigned to any civil case decides that the parties would benefit from a session with a Peacemaker, the judge may order that the parties spend at least one (1) hour in a Peacemaking session to see if the parties can resolve their case.