

STOCKBRIDGE-MUNSEE
TRIBAL COURT

RULES
OF
PROCEDURE

Mission Statement

The Stockbridge-Munsee Tribal Court pledges to preserve the sovereignty of the Mohican Nation and to maintain the peace and unity of its people through the administration of justice. The Court endeavors to be the "cornerstone of the existence of the Mohican Indian."

Civil Claims

§ 1 Filing a Claim

(A) **CONTENTS.** The statement of a claim, by which a proceeding is instituted in the trial court, shall include in the caption at the top of the first page the words "Stockbridge-Munsee Tribal Court," the name of the plaintiff, the name of the defendant and any co-defendants. The nature and the amount of the claim shall be stated in concise, non-technical language, and shall give the date or dates when the claim arose.

(B) **SIGNATURE.** The statement of claim shall be signed by the plaintiff or his guardian, if the plaintiff is an individual; by any one of the partners, if the plaintiff is a partnership; by any fulltime employee having knowledge of the facts, if the plaintiff is a corporation. If the plaintiff is represented by counsel, the statement of claim may be signed by the plaintiff's counsel.

(C) All claims shall be filed with the Stockbridge-Munsee Clerk of Court.

(D) The filing fee for all civil claims shall be \$30.00, except where the Tribe is filing a forfeiture action for a violation of tribal code, in which case there shall be no filing fee.

(E) At the moment of filing the Clerk of Court shall:

- (1) stamp the complaint or petition with the day, date and time of filing. The receiving clerk shall initial the original copy of the complaint or petition;
- (2) assign a docket number to the case. The docket number shall be written on the complaint;
- (3) Record the case name and docket number in a civil docket book or other appropriate place for recording;

(4) collect the appropriate fee from the filing party. The clerk shall issue the filing party a receipt.

(5) provide the filing party with a notice of suit which the filing party shall serve on the defendant or defendants in accordance with section 19.

(F) Any fees due as a result of the filing of a claim shall be paid to the clerk at the time of filing.

§ 2 Notice to Defendant; Answer

(A) NOTICE OF SUIT. Upon the filing of the statement of claim, the clerk shall issue a notice of suit to which shall be attached a copy of the complaint directing the defendant to appear before the court to answer the complaint at the time and place specified. The plaintiff shall be responsible for serving the notice of suit and complaint on the defendant in accordance with section 19.

(B) ANSWER.

(1) Any notice of suit in a civil case seeking either damages or injunctive relief, or both, shall require that a written answer be served on the plaintiff and the court within not more than thirty (30) days from the date of service of the summons and copy of the complaint.

(2) The answer shall admit or deny each of the allegations of the complaint and shall assert any affirmative defense, any counterclaims and any third-party claims.

(C) NOTICE NOT SERVED. If it shall appear to the trial court that the defendant did not personally obtain notice of the claim against him, the court shall dismiss the action.

(E) TRIAL DATE. Upon the filing of defendant's answer the trial court shall set a date for trial not more than 60 days after the date the answer was filed.

§ 3 Settlement Form

(A) At any time prior to a final judgment, the parties may make a settlement upon such terms as they may agree. The settlement shall be in writing and signed by both parties. Upon filing with Clerk of Court, the settlement shall be considered the judgment upon approval of the Tribal Court.

§ 4 Discovery

(A) DISCOVERY METHODS. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; and requests for admission. Unless the court orders otherwise under (b), the frequency of use of these methods is not limited.

(B) PHYSICAL AND MENTAL EXAMINATIONS. A party to an action may make a motion for any person to submit to a physical or mental examination or both. A hearing on such a motion shall be a closed hearing. At such hearing:

(1) The moving party must show a legitimate need for the examination.

(2) The court shall consider the type of action and the stated need for the examination. The request for the examination shall be presumed valid. If the court finds that the request is frivolous and not based on a legitimate need, it shall deny the motion.

(C) SCOPE OF DISCOVERY. Unless otherwise limited by order of the court in accordance with the provisions of this chapter, the scope of discovery is as follows:

(1) Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(D) PROTECTIVE ORDER. Upon a motion by a party or by the person from whom discovery is sought, and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including but not limited to one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

- (3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery-
- (4) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
- (5) That discovery be conducted with no one present except persons designated by the court;
- (6) That a deposition after being sealed be opened only by order of the court;
- (7) That a trade secret, or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;
- (8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

Forfeiture Actions

§ 5 Initiating an action

(A) All actions to recover forfeitures for violations of Tribal Code are civil actions in the name of the Stockbridge-Munsee Tribe, and shall be heard in the Stockbridge-Munsee Tribal Court.

(B) A forfeiture action may be commenced either by issuance of a violation notice or by a complaint and summons.

(C) Except as otherwise provided in these Rules or in the Tribal ordinances, service of a violation notice upon a suspected violator by an enforcement officer in connection with a violation shall constitute adequate process to give the Court jurisdiction over the person, provided:

(1) The violation notice is filed with the Court by the issuing officer within twenty four (24) hours or the next business day, whichever is sooner.

(2) The violation notice states which regulation has been violated, and the time and place that a hearing will be held.

(D) No complaint filed under these Rules shall be valid unless signed by the plaintiff, petitioner or advocate except as otherwise provided.

(E) Upon the filing of the complaint with the Court Clerk, the Clerk shall:

(1) Stamp the complaint or petition with the day, date and time of filing. The receiving clerk shall initial the original copy of the complaint or petition.

(2) Assign a docket number to the case. The docket number shall be written on the complaint.

(3) Record the case name and docket number in a civil docket book or other appropriate place for recording.

(4) Sign and issue a summons, directing the defendant to appear before the Court at a date, time, and place specified. The summons shall be served in accordance with section 19.

(F) The date set for a hearing in the summons or violation notice shall not be more than thirty-one (31) days from the date of service.

§ 6 Initial Appearance

(A) In accordance with section 5(F), the clerk shall set a date for a hearing to be held within 31 days from the date of service. At such hearing the following shall occur:

(1) The court shall inform or ask the defendant of the following:

(a) That the defendant has a right to an attorney or lay advocate at his or her own expense; the defendant may choose to represent himself or herself

(b) That the defendant has a right to a trial.

(c) The violation that the defendant has been charged with and the maximum penalties applicable if the defendant is convicted of the charge.

(2) If the basis for the charge against the defendant is a complaint, the defendant shall be furnished with the complaint.

(3) The defendant may enter a plea to the charge. The defendant shall enter one of the following pleas:

(a) not guilty;

(b) no contest; or

(c) guilty.

(B) If the defendant stands mute to the charge, the court shall enter a not guilty plea on the defendant's behalf

(C) Upon a plea of not guilty, the Court shall schedule the matter for trial, not to be held less than 30 days from the date of the initial appearance.

(D) Upon a plea of no contest or a plea of guilty, the Court shall adjudge the , defendant guilty of the charged offense and proceed to sentencing. At the discretion of the court, sentencing may be set as a separate date in the future or may occur immediately after judgment. The court may hear argument from both parties on the issue.

§ 7 Persons Subject to prosecution

(A) Any person who is concerned in the commission of a violation punishable under Stockbridge-Munsee Tribal Law is a principal and may be adjudged to have

committed the violation although such person did not directly commit it and although the person who did directly do so has not been subjected to the remedial provisions of Tribal Law. A person is concerned in the commission of a violation if such person:

- (1) directly commits the violation; or
- (2) aids and abets the commission of the violation; or
- (3) is a party to a conspiracy with one or more others to commit the violation or advises,
- (4) hires, counsels, or otherwise procures another to commit a violation.

§ 8 Continuing Violations

(A) In addition to assessing a monetary forfeiture the Court may, by injunction, order the defendant to perform or refrain from performing certain acts in order to minimize harm or avoid further harm to persons, resources or the environment caused by a violation or to avoid future damage.

§ 9 Deposits

(A) Those accused of a violation may be required to make a cash deposit of not less than 3/4 of the maximum of the alleged violation with the Court Clerk in lieu of a court appearance. The schedule of deposits shall include court costs in accordance with §30 of the Stockbridge-Munsee Court Code.

§ 10 Stipulation of No Contest

(A) A defendant who had made a deposit may stipulate to a plea of no contest which, if accepted by the court, shall result in a forfeiture no greater than the amount of the deposit.

(B) Such stipulation may be made by signing the violation notice in the appropriate place, or by written notification to the Court Clerk.

(C) If the Court declines to accept the no contest plea, it shall order that a summons be issued for the defendant to appear.

(D) The defendant may move to withdraw the no contest plea by notifying the Court in writing at least two (2) days prior to the scheduled court appearance, or by appearing in court at the time specified in the violation notice or summons.

Trials

§ 11 Pretrial motions

(A) At any time not less than five (5) and not more than twenty-five (25) days before trial is scheduled, any party to an action may bring pretrial motions. A party shall not be limited in the number of pretrial motions it may bring; however the Court shall in its discretion dismiss or refuse to hear motions that it finds to be frivolous, repetitive or without merit.

(B) All pretrial motions shall be filed with the clerk of court and the moving party shall cause a copy of the motion to be given to the other parties to the action.

(C) The Court shall hear arguments on the motion and make a decision on the motion any time before trial.

§ 12 Trial Procedure

(A) If the parties appear, the judge shall conduct the trial in an informal manner so as to do substantial justice between the parties. Each party shall be allowed an opening and a closing statement. Each party shall be allowed to call witnesses and offer evidence in accordance with the provisions of section 17.

(B) (1) If a defendant fails to appear, judgment may be entered by default where the claim is for a certain sum, or upon such proof by the plaintiff as the court may require.

(2) If a plaintiff fails to appear, the claim may be dismissed with or without prejudice or the defendant may present his or her defense and obtain a judgment, or the case may be continued, as the court may direct.

(3) If all parties fail to appear, the claim may be dismissed, or the court may order such other disposition as justice may require.

§ 13 Subpoena Power

(A) The Court shall have the power to issue subpoenas to compel the attendance of witnesses and the production of physical evidence.

(B) Such subpoenas shall be signed by a judge.

(C) Service of the subpoena shall be as prescribed in § 19 of these Rules, except as otherwise provided.

(D) The server shall serve a copy of the subpoena and return the original to the Clerk to be placed in the file.

(E) The server shall note the date, time and place of service on the back of the original and sign his name, which signed notation shall constitute proof of service.

(F) Absent a justification satisfactory to the Court, failure to obey a subpoena shall constitute contempt and subject the refusing witness to the Court's remedial powers which are specified in these Rules.

§ 14 Contempt Power

(A) The Court shall exercise the inherent power of a court to enforce due regard for its dignity and lawful orders by finding those who disregard them to be in contempt.

(B) Where the court shall determine that a person has willfully disregarded a subpoena, injunction or other lawful order of the Court, the Court may find that the person is in civil contempt and order the person to forfeit a stated amount for each day he continues to disregard the order, or order the person to be jailed until he purges himself of the contempt.

(C) In no case shall the Court order a forfeiture greater than five hundred dollars (\$500.00) per day, nor shall any contemtor be jailed longer than 90 days on the basis of a single contempt order.

§ 15 Witness Fees

(A) Each witness answering a subpoena shall be entitled to a witness fee of \$ 10 for each day that the witness is required to be present in court plus mileage costs at \$0.30 per mile. The fee shall be the responsibility of the party requesting the subpoena, unless such fee is held by the trial judge to constitute court costs.

(B) Witnesses who testify voluntarily shall be paid by the party calling them.

§ 16 Burden of Proof

(A) In all actions for violations of Stockbridge-Munsee ordinances the complainant must

convince the trier of fact of every element of the violation by evidence that is clear and convincing, unless otherwise provided in this code.

(B) In all general civil claims, the plaintiff must convince the trier of fact of every element of the cause of action by a preponderance of the evidence.

(C) If any part of Stockbridge-Munsee law specifies a different burden of proof other than what is stated in this section, it shall control the question of the standard of burden of proof

§ 17 Rules of Evidence

(A) In all actions in Stockbridge-Munsee Tribal Court the Rules of Evidence shall not strictly apply. The Court shall take great care to monitor the evidence being introduced. Evidence which, in the Court's estimation, is not sufficiently reliable or is repetitive, unnecessary or irrelevant shall not be admitted.

§ 18 Continuances

(A) During any hearing, either party may request a continuance. The court shall grant a continuance unless the delay would substantially prejudice or place an undue hardship on any party to the case or the court deems that the request is frivolous.

§ 19 Service

(A) A summons and complaint shall, whenever possible, be served on a defendant by personal service. Personal service shall consist of delivery of the summons and complaint to the defendant in person or to any person of apparent normal understanding over the age of 13 residing within the residence of the defendant. Any person over the age of eighteen (18), not a party to the action, may make personal service. In the case of personal service, an affidavit of service shall be returned to the Clerk and filed in the docket and shall constitute proof of personal service.

(B) When the summons and complaint cannot by reasonable diligence be personally served on the defendant, service may be made by mail. In the case of service by mail, copy of the summons and complaint shall be sent by registered or certified mail to the defendant's last known address. A return receipt for mail delivery signed by the defendant shall be returned to the Clerk and filed in the docket and shall constitute proof of service by mail.

(C) In the event the defendant cannot be served with the summons and complaint either personally or by mail in accordance with parts (a) or (b), service may be by publication. Service by publication shall mean publication of the summons once in each of two consecutive weeks in a newspaper of general circulation whose readership is primarily located in the vicinity of the

defendant. The published summons shall state the address at which the complaint may be obtained. Proof of publication of the summons shall be returned to the Clerk and filed in the docket and shall constitute proof of service by publication.

(D) Service of all papers filed in an action subsequent to the summons and complaint may be in person or by first class mail.

§ 20 Confiscation

(A) Enforcement officers may confiscate all fish and game or other natural resources in the possession of a person they are citing for violation of the Stockbridge-Munsee Natural Resources Ordinance, and which they suspect to have been taken as a result of a violation.

(B) Where feasible, such confiscated fish and game, other than alive, shall be donated to elderly feeding; or may be sold and the amount received deposited with the Court Clerk.

(C) Enforcement officers may confiscate fishing, hunting, trapping, logging, mining and/or other equipment involved in a violation, and hold such equipment as evidence for trial.

(D) Such equipment shall be returned to the defendant if the Court shall find that he or she did not commit the violation.

(E) If the defendant is found to have committed the violation, or enters a plea of no contest which is accepted by the Court, the confiscated equipment shall be returned when the forfeiture judgment is satisfied.

(F) After a forfeiture judgment has remained unsatisfied for fifteen (15) days after its due date, the Court may order the equipment sold to satisfy the judgment, unless a prior arrangement for delayed payment has been made.

§ 21 Warrants

(A) Judges of the Court shall have the power to issue warrants for the arrest of persons, and for the search and/or seizure of premises and property.

(B) An arrest warrant may be issued only after a violation notice, written complaint or contempt order has been filed.

(C) In addition to a judge's signature, an arrest warrant shall contain the name or description of the person to be arrested, his address if known, a description of the offense charged, and the date of issuance of the warrant.

(D) No search warrant shall be issued except on probable cause that a search will

discover: (1) Property taken or held in possession in violation of Stockbridge-Munsee Community law. (2) Property which has been, is being, or is about to be used to commit a violation; or (3) Property which constitutes evidence of a violation.

(E) The search warrant shall state the name or description of the person, property or premises to be searched, a description of the articles or property to be seized, the date of issuance and the time limit within the warrant is to be executed.

(F) The search warrant shall be returned to the Court Clerk within the prescribed time limit, but in no case shall any search warrant be valid after seventy-two (72) hours from the time of issuance.

(G) The enforcement officer making application for a search warrant shall support his application with an affidavit stating the grounds for probable cause. Affidavits shall comply with § 23 of this code.

(H) Only enforcement officers shall execute warrants.

(1) Interference with the execution of a lawful warrant shall constitute a contempt.

§ 22 Affidavits

(A) All affidavits required by the Court Code, by rule or order of the Court, shall consist of a written statement sworn to and signed in the presence of a tribal or state-authorized notary, who shall subscribe his or her name and affix his or her seal beneath the signature of the affiant.

Appeals

§ 23 Appeals

(A) In all actions before the Court, the defendant may appeal to a Court of Appeals consisting of two (2) judges from other tribal courts and one (1) judge from the StockbridgeMunsee Tribal Court not the trial judge.

(1) The Court of Appeals shall have discretion to hear or dismiss any appeal that comes before it.

(B) No appeal shall be taken except from a final judgment or order of the trial court.

(C) Written notice of appeal from a decision of the trial court must be filed within 20 days of the announcement of the decision in open court, or within 20 days of receiving notice of the decision.

(D) Notice of appeal shall be accompanied by a cash deposit equal to the amount of the forfeiture or judgment plus costs, and payment of the filing fee.

(E) The Chief Judge may set the filing fee for appeals. In the absence of a statement from the Chief Judge, the filing fee for any appeal shall be fifty dollars (\$50.00).

(F) The Court may order the filing fee to be waived where it is satisfied that the appellant lacks means to pay it.

(G) At its discretion the Court may postpone the provision of the cash deposit or allow alternative security to be furnished.

(H) The Court may in its discretion stay injunctive orders pending appeal.

(1) The Court may only hear appeals concerning matters of law.

(J) An appellant shall submit a written statement of the grounds for his or her appeal within twenty (20) days of filing the notice of appeal, unless the Court below or the appellate court shall deem an expedited appeal to be advisable and shall notify the appellant promptly of the reduced time limit.

(K) At the discretion of the appellate body, to aid it in reaching a wise decision or to avoid injustice to the parties, an oral hearing on the appeal of matters of law may be ordered.

(L) All appellate decisions shall be accompanied by a written opinion, briefly stating the issues as they appeared to the Court and the basis for the decision.

§ 24 Exclusive Jurisdiction

(A) The Court of Appeals shall have exclusive jurisdiction to review all decisions of the Tribal Court as provided herein. The decision of the Court of Appeals shall be final as to all such review.

(B) The jurisdiction of the Court of Appeals shall include the authority to determine the constitutionality of acts of the Tribal Council.