

TRIBAL CODE

CHAPTER 81:

CIVIL JURISDICTION AND PROCEDURE

CONTENTS:

SUBCHAPTER I: JURISDICTION

81.101 Purpose and Authority	81-3
81.102 Definitions	81-3
81.103 Civil Jurisdiction.....	81-4
81.104 Sovereign Immunity.....	81-5
81.105 Law Applicable to Civil Actions	81-5

SUBCHAPTER II: PROCEDURE

81.201 Federal Rules of Civil Procedure.....	81-5
81.202 Commencement of Civil Action	81-5
81.203 Summons; Issuance and Form	81-5
81.204 Service of Summons and Complaint.....	81-6
81.205 Time Limit for Service.....	81-7
81.206 Answer; Time and Form	81-7
81.207 Complaint.....	81-7
81.208 Counterclaim, Cross-claim and Impleader	81-8
81.209 Fees	81-8
81.210 Scheduling Conference	81-8
81.211 Discovery	81-8
81.212 Trial.....	81-9
81.213 Burden of Proof.....	81-9
81.214 Rules of Evidence	81-9
81.215 Judgment.....	81-9
81.216 Costs.....	81-9
81.217 Implied Consent.....	81-9

HISTORY NOTE:

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TRIBAL CODE

CHAPTER 81:

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SUBCHAPTER I: JURISDICTION

81.101 Purpose and Authority.

This Chapter is enacted pursuant to Article VII, Section 1(g) of the Sault Ste. Marie Tribe of Chippewa Indians Constitution and Bylaws. The purpose of this Chapter is to define the jurisdiction of the Sault Ste. Marie Chippewa Tribal Court.

81.102 Definitions.

(1) Board of Directors means the Board of Directors of the Sault Ste. Marie Tribe of Chippewa Indians.

(2) Indian means any person who is:

(a) a member of the Tribe; or

(b) any other person who would be subject to the jurisdiction of the United States as an Indian under 18 U.S.C. 1153 .

(3) Tribal Court shall mean the Sault Ste. Marie Chippewa Tribal Court.

(4) Tribal entity means any entity created or owned by the Tribe for business, economic development or governmental purposes and any entity which is controlled by the Board of Directors. An entity shall be deemed to be controlled by the Board of Directors if a majority of the persons serving on the body which governs the entity are chosen by the Board of Directors or are required to be members of the Board of Directors; provided that such entity is not a corporation or limited liability company organized under state law. Tribal entities include, but are not limited to, the Building Authority, Economic Development Commission, tribal enterprises, and other organizations entitled or denominated authority, enterprise, agency, commission, committee, corporation, task force or terms of like import, including all branches, programs and services of the Tribal government.

(5) Tribal lands means:

(a) all land within the limits of the Tribe's reservation, including trust land, fee patented land and rights of way running through the reservation; and

(b) all land outside the boundaries of the Tribe's reservation held in trust by the United States for individual members of the Tribe or for the Tribe; and

(c) all other land considered "Indian country" as defined by 18 U.S.C. 1151 that is associated with the Tribe.

(6) Tribe means the Sault Ste. Marie Tribe of Chippewa Indians

81.103 Civil Jurisdiction.

The Tribal Court shall have jurisdiction of actions:

(1) Except as otherwise provided by federal law and unless waived in accordance with Tribal Code Chapter 44, where the defendant is:

(a) The Sault Ste. Marie Tribe of Chippewa Indians.

(b) A Tribal entity as defined in Tribal Code Chapter 85.

(c) An officer or employee as defined in Tribal Code Chapter 85 and the action arises from a Tribal function as defined in Tribal Code Chapter 85.

(2) Where the Tribe or a Tribal entity claims an interest in any real or personal property located on Tribal lands which is the subject of the action.

(3) Where the Plaintiff is the Tribe or Tribal entity.

(4) As provided in any other chapter of the Tribal Code.

(5) Where the transaction or occurrence giving rise to the cause of action arose or occurred within the Tribal lands; and

(a) The defendant is a tribal member, a tribal member owned business, or an Indian or business owned by an Indian.

(b) The defendant does business upon Tribal land with the Tribe, a tribal member, or

a tribal member owned business.

(c) The property involved in the action is located on Tribal land.

81.104 Sovereign Immunity.

Nothing contained herein shall constitute a waiver of the sovereign immunity enjoyed by the Tribe, any Tribal entity, officer, employee or agent. Any such waiver must be made pursuant to Chapter 44 of the Tribal Code.

81.105 Law Applicable to Civil Actions.

(1) In all civil cases the Tribal Court shall apply the laws of the Tribe, any laws of the United States that may apply,

(2) In the absence of applicable federal or tribal law, the law of the State of Michigan.

(3) The Tribal Court shall apply the law of any jurisdiction which the parties have agreed upon in a choice of law provision of a contract.

SUBCHAPTER II: PROCEDURE

81.201 Federal Rules of Civil Procedure.

In the absence of a specific rule governing proceedings brought pursuant to this Chapter, the Federal Rules of Civil Procedure shall govern to the extent that they are not inconsistent with this Chapter.

81.202 Commencement of Civil Action.

An action is commenced by the filing of a complaint with the Clerk of the Tribal Court, together with the requisite filing fee.

81.203 Summons; Issuance and Form.

(1) Upon the filing of a complaint, the Clerk shall immediately issue a summons and provide it to the plaintiff or plaintiff's counsel for service on the named defendant(s), together with a copy of the complaint.

(2) The summons shall be signed by the Clerk, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, and otherwise the plaintiff's address, and the time specified in this Chapter within which the defendant is required to appear and defend and shall notify the defendant that in the event that defendant shall fail to do so, judgment by default will be rendered against the defendant for the relief requested in the complaint.

81.204 Service of Summons and Complaint.

It shall be plaintiff's responsibility to ensure service on the defendant pursuant to this Chapter:

(1) Service of the summons and complaint on the defendant may be by:

(a) Personal service, by which is meant delivering a copy of the summons and complaint to the individual personally or by leaving copies thereof at the individual's dwelling or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized to receive service of process.

(b) Mailing a copy of the summons and complaint by first class mail, postage prepaid, to the person to be served together with two copied of a notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. If no acknowledgment of service is received by the sender within 20 days after the date of mailing, service shall be made as prescribed under other provisions of this subsection.

(c) Any other process permitted under the laws of the State of Michigan.

(2) Service can be made by:

(a) Any person not a party to the action who is at least 18 years of age.

(b) A law enforcement officer.

(3) Service of process shall be made on the following:

(a) Upon an individual as listed above.

(b) Upon a minor or incompetent person, by serving the summons and complaint in the manner prescribed by the law of the State of Michigan for service on such person.

(c) Upon the Tribe or an entity, by delivering a copy of the summons and complaint to an officer, a managing or general agent or to any other agent authorized by appointment

or law to receive service of process, as well as mailing a copy to the defendant.

(4) An affidavit of service shall be filed with the Clerk attesting that service of process has been made on the defendant within the time period provided by this Chapter. If service is made pursuant to (1)(b) of this section, the return shall be made by the sender's filing with the Clerk the acknowledgment received pursuant to that subsection.

81.205 Time Limit for Service.

Service of the summons and complaint must be made upon a defendant within 90 days after the filing of the complaint. Failure to effectuate service within said period without good cause shown to the Court for lack of service shall result in dismissal of the action without prejudice, on the Court's own motion.

81.206 Answer; Time and Form.

(1) The defendant shall have 30 days after service within which to file a response to the complaint.

(2) The answer may be in the form of a factual and legal response to the complaint, a motion to dismiss or other responsive pleading. A copy of the answer shall be served by mail on plaintiff by defendant.

81.207 Complaint.

A complaint, counterclaim, cross-claim or third party complaint must contain the following:

(1) A statement of the facts, without repetition, on which the pleader relies in stating the cause of action with the specific allegations necessary reasonably to inform the adverse party is called in to defend; and

(2) A demand for judgment for the relief that the pleader seeks. If the pleader seeks an award of money, a specific amount must be stated if the claim is for a sum certain or a sum that can by computation be made certain. Otherwise, a specific amount may not be stated, and the pleading must include allegations that show that the claim is within the jurisdiction of the court. Declaratory relief may be claimed in cases of actual controversy. Relief in the alternative or relief of several different types may be demanded.

81.208 Counterclaim, Cross-claim and Impleader.

(1) A defendant may file a counterclaim against the plaintiff if the claim arises out of the

same transaction or occurrence that is the subject matter of the plaintiff's claim.

(2) In a proceeding with more than one defendant, a cross-complaint may be filed if it meets the jurisdictional requirements and the claim arises out of the transaction or occurrence that is the subject matter of plaintiff's claim.

(3) A defendant may implead a third party if the third party meets the jurisdictional requirements and the claim arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim.

(4) A counterclaim, cross-claim or motion for impleader shall be filed on or before the time for answer. The clerk shall collect the filing fee at the time of filing.

81.209 Fees.

The Chief Judge of the Tribal Court shall set the filing fee and the cost of any other fees.

21.210 Scheduling Conference.

Upon the filing of an answer or other responsive pleading, or upon the expiration of the time for filing an answer in the event that one is not filed, the Tribal Court shall call a scheduling conference with the parties to determine the time period for conducting pretrial matters and to schedule a trial. Notice of such conference shall be transmitted by mail by the clerk to counsel for the parties, or to the parties themselves if no appearance has been filed on behalf of a party.

81.211 Discovery.

Parties may obtain pre-trial discovery pursuant to Rules 26, 30, 33, 34 and 36 of the Federal Rules of Civil Procedure. Additional or alternative discovery may be authorized by the Tribal Court upon petition of the requesting party. If the request is opposed, the Tribal Court shall conduct a hearing as soon as practicable on the request.

81.212 Trial.

All trials shall be conducted to the Tribal Court, without a jury. The trial judge shall serve as the fact finder.

81.213 Burden of Proof.

It shall be the plaintiff's burden to prove by a preponderance of the evidence that he is entitled to the relief sought in the complaint. The party who has filed a counter-claim or cross-claim must also prove by a preponderance of the evidence that relief sought in such claim is warranted. Failure to carry the burden of proof shall result in a dismissal of the claim.

81.214 Rules of Evidence.

The Federal Rules of Evidence shall govern all proceedings brought pursuant to this Chapter to the extent that they are not inconsistent with any rules of evidence as may be adopted by the Tribal Court.

81.215 Judgment.

The Tribal judge shall issue written findings of fact, conclusions of law and judgment. No default judgment shall issue without the plaintiff having proven, by a preponderance of the evidence, that he is entitled to the relief sought in the complaint.

81.216 Costs.

As part of the judgment, the trial judge may assess against the losing party the costs to the prevailing party of prosecuting the case. Such costs shall be itemized and transmitted to the Clerk of the Court within 15 days of entry of judgment. Permitted costs are witness fees, postage, reproduction, telephone, and pre-trial discovery fees.

81.217 Implied Consent.

Entry upon Tribal land without the permission of the Tribe is prohibited. Such permission when given is expressly conditioned upon the consent of the person so entering to the jurisdiction of the Tribe. Any person who enters upon Tribal land shall be deemed to have given consent to the jurisdiction of the Tribe as provided in this Code.