

## Chapter III

# RULES FOR ALL ACTIONS BEFORE TRIBAL COURT

### 301. JURY TRIAL

- A. Right to jury trial - In any case in which a person is accused of an offense enumerated in Chapters VI or VIII of this Code, the accused may demand and have a jury trial. In civil cases, in which a substantial question of fact is raised, either party may demand a jury trial. There is no right to a trial by jury in a summary proceeding to recover possession of premises, as defined in Section 416 of this Code.
- B. Jury trial - A list of persons eligible for jury duty shall be prepared from the Tribal Rolls of the Bay Mills Indian Community each year by the Executive Council, or a committee thereof. To be eligible for jury duty, a person:
1. Shall be an adult member of the Bay Mills Indian Community, and
  2. Shall not be a member of the Tribal Police force, or a judge or employee of the Tribal Court.
- C. Trial Jury
1. Under the supervision of the presiding judge, a panel of twelve (12) prospective jurors shall be drawn by lot from the jury list to serve as the six-person trial jury. The panel shall be examined by the trial judge as to their personal history.
  2. After the examination of the prospective jurors is completed and before any juror is sworn, the parties may challenge any juror for cause. Every challenge for cause shall be determined by the judge; the following are grounds for challenges for cause:
    - a. That the person is not qualified to be a juror;
    - b. That the person is biased for or against a party or attorney;

- c. That the person has formed a positive opinion on the facts of the case or as to what the outcome should be;
  - d. That the person has been subpoenaed as a witness in the case;
  - e. That the person has already sat upon a trial of the same issue;
  - f. That the person has served as a juror in a criminal case based upon the same transaction;
  - g. That the person is related within the second degree of consanguinity or affinity to one of the parties or attorneys;
  - h. That the person is the guardian, ward, landlord, tenant, employer, employee, partner, or member of the family of a party or attorney; and
  - i. That the person is or has been a party adverse to the challenging party or attorney in a civil action or has complained of or been accused by him/her in a criminal prosecution.
3. After all challenges for cause have been completed, the parties shall make or waive their peremptory challenges. First the plaintiff and then the defendant may exercise one or more peremptory challenges alternatively until each party successively waives further peremptory challenges or all such challenges have been exercised. Each party in a criminal case shall be entitled to three (3) peremptory challenges. In cases involving two or more jointly tried defendants, each defendant shall be entitled to the number of peremptory challenges to which he/she would be entitled if each defendant were tried separately. Each party in cases, two or more parties on the same side are considered a single party for purpose of peremptory challenge.
  4. After a challenge for cause is sustained or a peremptory challenge exercised, another juror shall be selected and examined before further challenges are made. Such jurors shall be subject to challenge as are other jurors. If a jury cannot be selected from the panel, another panel of twelve (12) shall be taken from the jury list and the procedure shall continue until a jury of six is selected.
  5. The jury shall be sworn by the Clerk of Court substantially as follows:

*“You and each of you do solemnly affirm that you will well and truly try the issues joined in the case now here pending, and, unless discharged by the Court, a true verdict render; and that you will do so solely on the evidence introduced and in accordance with the instructions of the Court.”*

- D. Instructions to jury – At the close of the evidence or at such time during the trial as the judge directs, each party may file with the judge written instructions as to the law which the party requests the judge to deliver to the jury. The judge shall inform the party of his proposed action upon each request prior to the arguments to the jury. No party may appeal an instruction to the jury as error unless he/she makes his/her objection before the jury retires to consider its verdict, such objection being made out of the hearing of the jury.
- E. Verdict – In civil cases, the verdict of the jury need not be unanimous, but at least four of the six jurors must concur in the verdict announced. In criminal cases, the verdict of the jury must be unanimous.

### 302. WITNESSES

- A. Subpoenas – The trial judge of the Tribal Court shall have the power to issue subpoenas for the attendance of witnesses either on his/her own motion or on the request of any of the parties to the case. Such subpoena may include direction to produce records and documents in the possession or under the control of the person served with the subpoena. The subpoena shall bear the signature of the judge issuing it.
- B. Service of subpoena – Service of such subpoena shall be by a regularly acting member of the tribal police or by a member of the community appointed by the Court for that purpose.
- C. Penalty for failure to comply with subpoena – Failure to obey such subpoena shall be considered an offense as provided in Section 639 of Chapter VI of this Code.
- D. Witness fees
  - 1. Each witness answering a subpoena shall be entitled to compensation for his/her reasonable expenses actually incurred for meals, loss of wages, child care and transportation, at a maximum amount of \$20.00 for each day

that the witness is required to be present in Court. The fee shall be the responsibility of the party requesting the subpoena, unless such fee is held by the Trial Court to constitute Court costs.

2. Witnesses who testify voluntarily shall be paid by the party calling them.

**303. RECORDS OF COURT** - The Trial Court and the Court of Appeals shall keep, for public inspection, unless specifically excepted by this Code, a record of all proceedings of the Court, showing:

1. Title of case;
2. Names and addresses of parties;
3. Attorneys and witnesses;
4. The substance of the complaint;
5. Day of the Hearing of trial;
6. Name of the Judge;
7. The findings of the Court or verdict of the jury and the judgment; and
8. Any other facts or circumstances deemed of importance to the case.

**304. COOPERATION OF FEDERAL EMPLOYEES**

- A. Employees of Bureau of Indian Affairs - No employee of the Bureau of Indian Affairs shall obstruct, interfere with or control, or attempt to interfere with or control, the Tribal Court in any manner, directly or indirectly; or to influence or attempt to influence any judge of the Court or any member of the Court or jury or person appointed by the Court, either directly or indirectly.
- B. Employees of the Bay Mills Indian Community - No employee of the Bay Mills Indian Community shall obstruct, interfere with or control or attempt to interfere with or control the Court in any manner, directly or indirectly, or to any member of the Court or

jury or person appointed by the Court, either directly or indirectly.

**305. TRIBE DOES NOT CONSENT TO BE SUED** - Except as provided in Chapter XVIII of this Code, nothing in this Code shall be construed as consent by the Bay Mills Indian Community be subject to suit. In all other cases, in the absence of such consent to suit by the Bay Mills Indian Community, the Tribal Court shall have no jurisdiction over a suit brought against the Community.

**306. ATTORNEYS; ADMISSION TO PRACTICE**

- A. Practice before the Tribal Court - No attorney shall represent any person in an action before the Tribal Court unless such attorney is duly admitted to practice before the Bay Mills Tribal Court.
- B. Procedure for admission - Any attorney wishing to practice before the Tribal Court shall file a written request for admission with the Clerk of the Court, accompanied by a Certificate of Good Standing from the State Bar or Supreme Court of the State in which such attorney is duly licensed to practice law. Such request shall be accompanied by an admission fee of \$100.00. Upon filing of the required documents and fee, the Clerk of the Court shall enter the attorney's name on the roster of attorneys admitted to practice before the Bay Mills Tribal Court. Such entry shall constitute certification to practice before the Tribal Court until such time as the attorney shall file a notice of retirement, shall die or become incapacitated, or shall be suspended or disbarred from practice of the Bay Mills Tribal Court.

**306. FEES AND COSTS; WAIVER OR SUSPENSION FOR INDIGENT PERSONS**

- A. Suspension of fees and costs for persons receiving public assistance - Upon any natural persons submitted the Clerk of Tribal Court an affidavit that he/she is then receiving any form of public assistance, the payment of all fees and costs as to that person in the action, required to be paid by this Code or Court Rule, shall thereupon be suspended.
- B. Waiver or suspension of fees and costs for indigent persons - In instances where the person is not receiving public assistance, the Court shall order waiver of the payment of all fees and costs as to a person in the action or shall order the suspension of the payment of those fees or costs until the conclusion of the

litigation upon that person submitting to the Court an ex parte affidavit stating facts showing that person's inability to pay those fees and costs because of indigence.