

# Chapter IV

## RULES FOR CIVIL CASES

### 401. LAW APPLICABLE TO CIVIL ACTIONS

- A. Laws applied - In all civil actions, the Tribal Court shall apply the applicable laws of the United States, any authorized regulations of the Department of the Interior which may be applicable, any ordinance of the Bay Mills Indian Community, and any custom of the Chippewa Tribe not prohibited by the laws of the United States.
- B. Tribal customs - Where doubt arises as to the customs and usages of the Chippewa Tribe, the Tribal Court shall request the advice of persons familiar with these customs and usage's.
- C. Michigan Law - Any matters that are not covered by applicable laws of the United States, or authorized regulations of the Department of the Interior, or tribal custom, shall be decided by the Tribal Court according to the laws of the State of Michigan.

### 402. COSTS

- A. Civil Actions - The Court may assess the accruing costs of the case against the party or parties against whom judgment is given. Such costs shall consist of the expenses for voluntary witnesses for which either party may be responsible under Section 302 (D), and any further incidental expenses connected with the procedure before the Court as the Court may direct.
- B. Enforcement - Costs where allowed shall be included as part of the final judgment and enforced in the same manner.

### 403. JUDGMENTS IN CIVIL ACTIONS

- A. In all civil cases, judgments shall consist of an order of the Tribal Court awarding money damages to be paid to the plaintiff or directing the performance of an act for the benefit of the plaintiff.

- B. In all cases in which the injury inflicted was the result of carelessness of the defendant, the judgment shall fairly compensate the injured party for the loss he has suffered.

#### **404. LIMITATION ON ENFORCEMENT OF JUDGMENT**

- A. Limitations - No judgments of the Court for money in a civil action shall be enforced after five (5) years from the date of entry, unless the judgment shall have been renewed before the date of expiration by institution of appropriate proceedings in the Tribal Court under the following Section.
- B. Renewal of Judgment - If during the period of five (5) years from the entry of a judgment for money, the judgment creditor shall file with the Court a motion to renew and extend the judgment, the Court shall order the judgment extended for an additional five (5) years, but only one renewal shall be allowed.

#### **405. LIMITATIONS OF FILING OF AN ACTION**

- A. Actions based on injury to persons or property - No person may bring any action to recover damages for injuries to persons or property unless, he/she commences the action within two (2) years after the claim first accrued to him/herself or to someone through whom he/she claims.
- B. Actions to recover damages for breach of contract - No person may bring any action to recover damages or sums due for breach of contract, or to enforce the specific performance of any contract unless he/she commences the action within one (1) year after discovery of the breach of the claimant or by someone through whom he/she claims.

#### **406. STATEMENT OF CLAIM**

- A. Contents - The statement shall be in the form of an affidavit, the form for which will be provided by the Clerk of the Court. The nature and 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 affidavit shall be signed by the plaintiff or his/her guardian, if the plaintiff is an individual; by any one of the partners, if the plaintiff is a partnership; or by any full-time

employee having knowledge of the facts, if the plaintiff is a corporation

- C. Names - The full and correct names of the parties shall be given, and the claim shall state whether a party is a corporation or a partnership. If any party was acting under an assumed name when the claim arose, such assumed name shall be given.

#### **407. NOTICE TO DEFENDANT; ANSWER**

- A. How served - Upon filing of the statement of claim, the plaintiff shall cause a copy thereof to be served upon each defendant residing on the reservation, together with a notice prepared by the Clerk of Court to each defendant to appear and answer before the Court. It shall also be the plaintiff's responsibility to serve copies of the statement of claim and notice to each defendant not residing within the exterior boundaries of the reservation.
- B. Contents - The notice issued by the Clerk of Court shall inform the defendant that suit has been instituted against him/her in the Bay Mills Tribal Court and specify that he/she must file his/her answer to the claim against him/her within the proper time period as specified herein or have a default judgment entered against him/her.
- C. Answer - A defendant shall file his/her answer within twenty (20) days after service of the notice and a copy of the statement of claim upon him on the reservation. When service is made on a defendant residing outside the reservation boundaries, the defendant shall have thirty (30) days within which to file his/her answer. The defendant must furnish the plaintiff with a copy of his/her answer.
- D. Notice not served - If it shall appear to the Trial Court that the defendant did not personally obtain notice of the claim against him/her, the Court shall dismiss the action.
- E. Trial date - Upon filing of the defendant's answer, or upon the expiration of the time period within which defendant must answer, the Trial Court shall set the case for trial.

#### **408. CLAIMS OF ASSIGNEES OR THIRD-PARTY BENEFICIARIES - No claim shall be filed or prosecuted in the Tribal Court by an assignee of a**

claim or by a third-party beneficiary under a third-party beneficiary contract.

409. **SETTLEMENT FORM** - The parties prior to or at the hearing 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 the Clerk of Court, the settlement shall be considered the judgment of the Court.

410. **CONDUCT OF TRIAL**

A. **Appearance** - If the parties appear, the judge shall conduct the trial in an informal manner so as to do substantial justice between the parties according to the rules of substantive law adopted in Part II of this Chapter, but shall not be bound by rules of practice, procedure, pleading or evidence. A verbatim record of such proceedings need not be made.

B. **Non-appearance** - If a defendant fails to appear, judgment may be entered by default where the claim is liquidated, or upon such proof by the plaintiff as the judge may require. If the plaintiff fails to appear, the claim may be dismissed for want of prosecution, or the defendant may present his/her defense and obtain a judgment, or the case may be continued, as the judge may direct. If all parties fail to appear, the claim may be dismissed for want of prosecution, or the judge may order such other disposition as justice may require.

411. **JUDGMENTS; PROCEDURE**

A. **Conclusiveness** - All judgements of the Tribal Court shall be conclusive upon the plaintiff and defendant.

B. **Entry** - Judgment shall be entered in the judgment record at the time of the judge's pronouncement of his/her decision.

C. **Effect** - Entry of a judgment on the judgment record entitles the prevailing party to enforcement by the Tribal Court of its terms. A judgment for a sum certain may be enforced by writ of execution against property of the defendant which is located within the exterior boundaries of the Bay Mills Indian Community.

D. **Installment payments** - Upon the request of the defendant against whom a judgment has been entered, which can be made orally at the time of the hearing or by petition, and after such

inquiry as the judge deems proper, the judge may by order provide for the payments of such judgment by installments in such amounts and such times as the judge deems just and reasonable. Such order shall also provide for a stay of further proceedings to collect the judgment during compliance with the order.

- E. Stay - The filing of an appeal with the Bay Mills Appellate Court, pursuant to the requirements of Chapter II, shall prevent the enforcement of the judgment of the Tribal Court when notice of such appeal is filed with the Clerk of Court.

#### 412. COUNTERCLAIM

- A. If a defendant fails to pay the judgment according to the terms and conditions thereof and the time for appeal has expired, the Clerk of Court, on application of the plaintiff, shall certify such judgment to the Tribal Court.
- B. Filing of the Defendant's affidavit of claim shall cause both his/her claim and that of the plaintiff to be heard by the Tribal Court on the date for which hearing has been set, unless the defendant requests and is granted a continuance of the matter by the judge.

#### 413. COURT ENFORCEMENT OF JUDGMENT

- A. Failure to pay judgment - If the defendant fails to pay the judgment according to the terms and conditions thereof and the time for appeal has expired, the Clerk of Court, on application of the plaintiff, shall certify such judgment to the Tribal Court.
- B. Power of the Court - Upon receipt of the certified judgment, the Tribal Court, may issue a writ of execution, which shall command the Tribal police to collect the amount of the judgment from the defendant. The Court may instead issue a subpoena to the defendant, ordering him to appear before the Court at a time or place specified, and to testify under oath concerning his/her property, or any debts due or to become due him/her, his/her place of employment, name of employer and the amount of wages he/she received and other pertinent matters that would enable the plaintiff to collect the judgment.
- C. Writ of execution - Upon receipt of the writ of execution, the Tribal police shall serve the writ upon the defendant, and post

notice of the writ in the tribal offices. Within thirty (30) days, the Tribal police shall cause a sale of defendant's personal property, located within the exterior boundaries of the Bay Mills Indian Community, which shall have been in the custody of the Tribal police until such sale. The proceeds of the sale shall be returned to the Court within the thirty (30) days above prescribed. The Court shall then cause the proceeds to be turned over to the plaintiff and the judgment noted as satisfied, whether or not the proceeds to be turned over to the plaintiff and the judgment noted as satisfied, whether or not the proceeds are sufficient to satisfy the judgment amount. If the proceeds of the sale are in excess of the amount of the judgment against the defendant, such excess shall be turned over to the defendant.

- D. Stay of writ - The defendant may prevent the issuance of a writ of execution or of judicial sale by presenting to the Court sufficient proof that such defendant has made, or is willing to commence, payment of the judgment to the plaintiff. Upon such proof, the Court shall not issue a writ of execution and, if one has been issued, shall rescind its order.
- E. Property exempts from execution - The following property shall be exempt from levy and sale under any execution:
  - 1. All arms and accouterments required by the law of this community, the State of Michigan, or of the United States to be kept by any person, all wearing apparel of every person or family, and provisions and fuel for comfortable subsistence of each householder and his/her family for six (6) months.
  - 2. All Household goods, furniture, utensils, books and appliances, not exceeding \$1,000 in value;
  - 3. For each householder, five sheep, two cows, two swine, ten hens and two roosters, and a sufficient quantity of hay and grain, growing or otherwise, for properly keeping such animals and poultry for six (6) months;
  - 4. The tools, implements, materials, stock, apparatus, or other things to enable a person to carry on his profession, trade, occupation or business in which he is principally engaged, not exceeding \$11,000 in value.

5. A dwelling home and appurtenances thereto, owned and occupied by the judgment debtor, not exceeding \$6,000 in value. This exemption does not apply to any mortgage on the homestead which is recorded at the Agency Office of the Bureau of Indian Affairs.
6. The dwelling home of a family, after the death of the owner thereof, from the payment of his/her debts in all cases during the minority of his/her children.

#### 414. FEES

- A. Filing Fees - A fee of \$40 shall be charged and collected for the filing of the initial pleading commencing any action;
- B. Service Fees - Where the affidavit and notice to appear and answer are served by personal service on the defendant by a tribal law enforcement officer, the plaintiff shall pay a fee for such service of, plus mileage costs. The plaintiff shall file with the Clerk documentation that the service fees charged by the Law Enforcement Department have been paid, prior to the issuance of a judgment on plaintiff's claim.
- C. Other Fees - The Tribal Court may establish by administrative rule such fees as it deems reasonable and necessary for the administration of justice, including, but not limited to, issuance of writs of execution, certification of judgments and orders, and scheduling of post-judgment hearings.

### **PART TWO SUMMARY PROCEEDINGS TO RECOVER POSSESSION OF PREMISES**

#### 415. JURISDICTION OF THE TRIBAL COURT

- A. The person or corporation entitled to any premises located within the exterior boundaries of the Bay Mills Indian Community may recover possession thereof by summary proceedings in the following cases:
  1. When a person holds over any premises, after failing or refusing to pay rent due under the lease or agreement by which he holds within seven days of a written demand for possession for nonpayment of rent due;

2. When the person in possession willfully or negligently causes a serious or continuing health hazard to exist on the premises, or causes extensive and continuing physical injury to the premises which was discovered or should reasonably have been discovered by the party seeking possession not earlier than ninety (90) days before institution of proceedings under this Section, or refuses for seven days after a written demand to undertake the repair of the premises;
  3. When the person in possession occupies public housing whose tenancy or agreement has been terminated for just cause as provided by the lawful rules of the local housing commission or by federal law.
- B. Summary proceedings under this Section are the exclusive remedy of one seeking to recover possession of any leased or rented premises. Any person who makes entry into or on such premises to evict a tenant without the above proceedings may subject him/herself to the penalty for trespass provided in Section 620 of Chapter VI.
416. DEMAND FOR POSSESSION OR PAYMENT - A demand for possession or payment shall be in writing, addressed to the person in possession and shall give the address or other brief description of the premise. The reasons for the demand and the time to take remedial action shall be clearly stated. When nonpayment of rent or other sums due under the lease is claimed, the amount due at the time of the demand shall be stated. The demand shall be dated and signed by the person or corporation entitled to possession.
417. COMPLAINT
- A. Contents - The complaint shall be in the form of an affidavit, the form for which will be provided by the Clerk of Court. It shall include, where applicable, the amount of unpaid rent or other money due and remaining unpaid as of the date of the affidavit, and the dates the same become due, the rental rate and the rental period, and specific reference to local housing commission rules, or to federal law, which establish the basis for just cause for terminating a tenancy in housing operated by the community. In addition, the affidavit shall have attached thereto a copy of the notice to quit for demand for possession.



- B. **Signature** - The affidavit shall be signed by the plaintiff or his/her guardian, if the plaintiff is an individual; or by any full-time employee having knowledge of the facts, if the plaintiff is a corporation.

**418. NOTICE**

- A. **How served** - Upon filing of the affidavit, the Clerk of Court shall cause a copy thereof to be served upon each defendant together with a notice to appear and answer before the trial judge of the Court.
- B. **Contents**
  - 1. The notice shall inform the defendant when and where to appear; that he/she is to bring with him/her all books, papers and witnesses needed to establish his/her defense; and that failure to appear will result in judgment against him/her for the relief asked for in the affidavit.
  - 2. The plaintiff also shall be notified by the Clerk of Court to appear at the time and place specified and have with him/her his/her books, papers and witnesses necessary to prove his/her claim and that if he/she fails to appear, the complaint will be dismissed.
- C. **Time of notice** - The date for the appearance of the defendant provided in the notice shall be within five days of the date of the notice.

**419. DEFENSES**

- A. A judgment for possession of the premises for an alleged termination of the tenancy shall not be entered against the defendant if any of the following is established:
  - 1. That the rent allegedly due and payable has been paid to plaintiff by the defendant prior to or at the hearing;
  - 2. That the alleged termination was intended primarily as a penalty for the defendant's attempt to secure or enforce rights under the lease or agreement or under the laws of the United States; or

3. That the alleged termination was of a tenancy in housing operated by the community and was terminated without cause.

**420. CONDUCT OF TRIAL**

- A. Appearance – If the parties appear, the judge shall conduct the trial in an informal manner so as to do substantial justice between the parties. There shall be no jury nor shall a verbatim record of such proceedings be made.
- B. Nonappearance – If the defendant fails to appear, judgment for plaintiff shall be entered by default. If the plaintiff fails to appear, the complaint shall be dismissed.

**421. COUNTERCLAIMS; CLAIMS FOR MONEY JUDGMENT** – If either party has a claim for a money judgment, the trial judge may grant such party leave to file such claim and to hear evidence concerning it at the hearing, if the interest of justice are best served thereby. The rules of Part One of this Chapter apply to any such claim so filed.

**422. JUDGMENT FOR PLAINTIFF** – If the judge finds that the plaintiff is entitled to possession of the premises, judgment shall be entered in the judgment record in accordance with that finding and may be enforced by a writ of restitution as herein provided. If it is found that the plaintiff is entitled to possession of the premises, due to nonpayment of any money due him/her under the tenancy, the judge shall determine the amount due or in arrears at the time of trial and shall cause it to be stated in the judgment for possession. The statement in the judgment for possession shall only be for the purpose of prescribing the amount which, together with costs, shall be paid to preclude issuance of a writ of restitution.

**423. WRIT OF RESTITUTION** – A writ of restitution may be issued commanding the Tribal police to cause the plaintiff to be restored and put in full possession of the premises if the following conditions are met to the judge’s satisfaction:

- A. The tenant, willfully or negligently, is causing a serious and continuing health hazard to exist on the premises or is causing extensive and continued injury to the premises and is neglecting or refusing either to deliver up possessions after demand or to substantially repair the premises; or

B. The defendant has failed to comply with the judgment, or to undertake compliance, within ten (10) days after the entrance of a judgment under Section 423.

424. **JUDGMENT FOR DEFENDANT** - If the plaintiff fails to prosecute his/her complaint, or if upon trial the plaintiff is found not entitled to possession of the premises, judgment shall be rendered the defendant for his/her costs.

425. **FEES**

A. **Filing Fees** - When the complaint is for the recovery of possession only, the fee for filing an affidavit shall be \$12.00 when a claim for money judgment is joined, the plaintiff shall pay a supplement filing fee in the same amount as established by this Chapter for the filing of civil actions.

B. **Fee for writ of restitution** - A fee of \$5.00 shall be charged for each writ of restitution or execution issued.

C. **Fee for personal service** - Where the affidavit and notice to appear and answer are served by personal service on the defendant by a tribal policeman, the plaintiff shall pay a fee for such service of \$5.00 plus mileage costs of \$.10 per mile.