



# NHBP TRIBAL COURT

NOTTAWASEPPI HURON BAND OF THE POTAWATOMI

## Court Rules for Small Claims

### Chapter 6

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## Court Rules for Small Claims

### Chapter 6

#### Section 1: Purpose and Definitions.

**A. Purpose.** The purpose of this Chapter of Court Rules is to establish the practice and procedure for settling disputes under the jurisdiction of the Nottawaseppi Huron Band Tribal Court which provides expeditious, informal, and inexpensive adjudication of claims no greater than \$3,000.00.

**B. Definitions.** The following terms have the following meanings:

1. “*Attachment*” means the legal process of seizing another’s property in accordance with a judicial order for the purpose of securing satisfaction of a judgment in the event that a judgment is rendered against that other person.
2. “*Band*” and “*Tribe*” are synonymous and mean the Nottawaseppi Huron Band of Potawatomi Indians.
3. “*Complaint*” means a written statement of facts that asserts a claim against a party, made voluntarily, and signed by the complaining party.
4. “*Court*” and “*Tribal Court*” are synonymous and mean the trial level court of the Band.
5. “*Day*” means calendar day.
6. “*Defendant*” or “*Respondent*” means the party against whom relief or recovery is sought in an action or suit.
7. “*Garnishment*” means the legal process by which money owed to a defendant by a third party is used to satisfy a judgment.
8. “*Judgment*” means the final decision of the Court resolving the dispute and determining the rights and obligations of the parties.
9. “*Plaintiff*” or “*Petitioner*” means the person who brings an action; the party who complains or sues in a civil action and is so named on the record.
10. “*Small Claims*” means a lawsuit brought by a person on his or her own behalf in an amount no greater than \$3,000.00.

## **Section 2: Commencement of an Action.**

A small claims action may be initiated by filing a “*Small Claims Complaint*” with the Tribal Court Administrator.

**A. Filing Required.** Blank “*Small Claims Complaint*” forms shall be available at the office of the Tribal Court Administrator and may be obtained from the Tribal Court Administrator upon request. The completed “*Small Claims Complaint*” must be filed, along with payment of the filing fee unless the fee is waived, with the Tribal Court Administrator to initiate a small claims action.

**B. Content of the “*Complaint*” to be provided by Party.** The “*Small Claims Complaint*” must contain the following:

1. The name of the Plaintiff;
2. Whether the Plaintiff is a corporation, partnership, sole proprietorship, or individual, if known;
3. If the Plaintiff was acting under an assumed name or business name at the time the claim arose, the assumed name or business name shall also be given;
4. The name of the Defendant;
5. Whether the Defendant is a corporation, partnership, sole proprietorship, or individual, if known;
6. If the Defendant was acting under an assumed name or business name at the time the claim arose, the assumed name or business name shall also be given;
7. The date that the claim arose;
8. The location at which the claim arose;
9. A statement of the facts providing the basis for the claim; and
10. The amount of the claim.

**C. Notice of Right to Remove; Waiver of Rights.** The “*Small Claims Complaint*”, in boldface type, must inform both parties that:

1. They have the right to remove the small claims action from the small claims division to the general civil division of the Tribal Court no later than seven (7) days before the hearing date set forth on the “*Small Claims Summons*”; and

2. If the action is not removed from the small claims process the parties waive their right to:
  - a. Be represented by an attorney; and
  - b. Appeal of the decision of the Tribal Court.

### **Section 3: Small Claims Fees.**

**A. Filing Fee.** The Tribal Court Administrator must collect from every party that files a small claims action a filing fee as set by the *Schedule of Court Fees*.

**B. Waiver.** Only a natural person is eligible for a waiver of the small claims filing fee subject to the following:

1. If a party demonstrates by notarized affidavit that he/she is primarily supported by public assistance, the payment of fees required by law or court rule as to that party must be waived; or
2. If a party demonstrates by notarized affidavit that he/she is unable to pay the fees required by law or court rule, the Court may order those fees waived.

**C. Costs and Other Fees.**

1. **Postage Costs.** An amount equal to the prevailing postal rate for the service provided shall be charged and collected for each Defendant to whom a copy of the “*Small Claims Summons*” and “*Small Claims Complaint*” is mailed by the Tribal Court Administrator.
2. **Other Fees.** A fee shall be charged and collected for the issuance of an Order of Execution, Attachment, or Garnishment.

### **Section 4: Service; Form; Time.**

The Tribal Court Administrator must serve a copy of the “*Small Claims Complaint*” upon each Defendant with a “*Small Claims Summons*” directing the Defendant to appear before the Tribal Court Judge.

**A. Contents of “*Summons*”.** The “*Small Claims Summons*” must inform the Defendant of the following:

1. When and where to appear for a hearing;
2. That the Defendant and Plaintiff are to bring all books, papers, and witnesses needed to establish any claim or defense;

3. That failure to appear may result in a judgment against the Defendant;
4. That if a settlement of the dispute is made before or at the hearing, the Defendant may be charged with costs incurred by the Plaintiff in initiating the action;
5. That, even if the Defendant does not have a legal defense, the Defendant may appear to request installment payments pursuant to Section 8(B)(2) of this Chapter;
6. That the Defendant has the right to request that the Tribal Court Judge remove the small claims action from the small claims process to the general civil process of the Tribal Court prior to the commencement of the action; and
7. That if the action remains within the small claims division of the Tribal Court the Defendant waives his/her rights to:
  - a. Be represented by an attorney; and
  - b. Appeal of the decision of the Tribal Court.

**B. Form of Service.** Service shall be considered complete upon:

1. The mailing of the “*Small Claims Summons*” and “*Small Claims Complaint*” via certified mail, return receipt requested, deliverable to addressee only, if that is unsuccessful;
2. By personal service of the “*Small Claims Summons*” and “*Small Claims Complaint*”, if that is unsuccessful;
3. By any other manner reasonably calculated the by the court to give the Defendant actual notice of the proceedings.

**C. Time.** The Defendant must be served no later than fourteen (14) days before the hearing date set forth on the “*Small Claims Summons*”.

**Section 5: Date of Hearing.**

The date for the hearing shall not be sooner than fourteen (14) days nor later than thirty-five (35) days after the date of service of the “*Small Claims Complaint*” and “*Small Claim Summons*”.

## **Section 6: Hearing Procedure.**

In all hearings commenced within the small claims process:

- A. the witnesses shall be sworn; and
- B. the Judge shall conduct the hearing in an informal manner so as to do substantial justice between the parties according to the rules of substantive law but shall not be bound by particular rules of practice, procedure, pleading, or evidence, except provisions relating to privileged communications. The sole object of such hearing is to dispense expeditious justice between the parties.

## **Section 7: Settlement; Form.**

Before or at the hearing the parties may make a settlement upon those terms as they may agree. The settlement shall be in writing and signed by both parties. Upon filing of the settlement with the Tribal Court, the Tribal Court Judge shall review the settlement and may:

- A. enter it as the "*Small Claims Judgment*"; or
- B. reject the proposed settlement if it is not in the interest of justice and require that a full hearing take place.

## **Section 8: Judgment, Contents.**

- A. **Copy of Judgment.** A copy of the Judgment shall be given in proceedings occurring in the small claims action, delivered, or mailed immediately to each Plaintiff and Defendant following entry of the Judgment.
- B. **Manner of Payment.** The Tribal Court Judge shall order that a Judgment of a small claims action be satisfied by payment to the Tribal Court Administrator or directly to the Plaintiff either in:
  - 1. A lump sum; or
  - 2. Installments in amounts and at times as the Tribal Court Judge considers just and reasonable under the circumstances.
- C. **Stay.** The Tribal Court Judge shall also provide for a stay of further proceedings to collect the Judgment while the Defendant is in compliance with the Judgment.
- D. **Warning against Nonpayment.** The Judgment shall include a warning that the Defendant's failure to pay the Judgment pursuant to its terms or any installment payment ordered may result in execution against the Defendant's property and that the Defendant may be compelled to appear for an examination of the Defendant's assets.

**E. Order Requiring Payment or Disclosure of Employer and Accounts.** If the Defendant is not present when the Judgment is entered, or is present but does not immediately pay the full amount of the Judgment when the Judgment is entered, the Judge shall order the Defendant, within twenty-eight (28) days after the date of entry of the Judgment:

1. Pay the Judgment in full; or
2. To disclose in writing to the Plaintiff and the Tribal Court his or her place of employment and the location of his or her accounts in state or federally chartered banks, savings and loan associations, and credit unions.

**Section 9: Judgment Reinstatement or Modification; Execution, Attachment, or Garnishment.**

For good cause shown, the Tribal Court Judge may reinstate an installment payment Judgment previously not performed or the Tribal Court Judge may alter the amount of installment payments and the time of payment of the Judgment and shall authorize execution, attachment, or garnishment to issue where it appears that the Defendant has not paid according to the terms of the Judgment.

**Section 10: Order of Garnishment.**

An “*Order of Garnishment*” issued by the Tribal Court in a small claims action shall remain in effect as to periodic payments for the period necessary to satisfy the Judgment.

**Section 11: Judgments; Finality.**

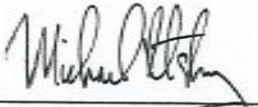
Any Judgment entered as a result of a small claims action shall be final with no right to appeal for either party.

**Section 12: Short Title, Effective Date and Citation Format.**

- A. Short Title.** These Rules are titled “*Rules for Small Claims*”.
- B. Effective Date.** These Rules become effective when adopted by the Chief Judge of the Tribal Court.
- C. Citation.** The official abbreviated citation form to these Rules is: NHBPCR Chapter 6.

## CERTIFICATION OF ADOPTION

The Chief Judge adopted the above Chapter of Court Rules on September 2, 2009.



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Hon. Michael Retoskey

### JUDICIAL HISTORY

The *Court Rules for Small Claims* were adopted by the Chief Judge on September 9, 2009.