

Amendments to Title 2 of the Turtle Mountain Band of Chippewa Code

Judicial Procedure

2.0402 Complaint.

1. The complaint shall be filed with a Clerk of the Tribal Court, who shall mark thereon the date of the filing or the date of service of the summons.
2. The action shall be deemed to have started as of the time the complaint is so filed and marked or at the time of service of the summons.
3. The case shall be deemed pending until judgment or dismissal.
4. The complaints shall be captioned, "In the Turtle Mountain Tribal Court of the Turtle Mountain Jurisdiction". It shall state the name of the plaintiff and of the defendant and be further identified as a "complaint".
5. If the defendant's true name be unknown, he may be designated by any name until his true name be ascertained, at which time the complaint shall be corrected accordingly.
6. The complaint shall state clearly and briefly in plain language the grievance for which relief is sought and shall further state the relief desired.
7. When the filing of the complaint is used to start the cause of action, it must be served with the summons.
8. **"In rem" actions may be commenced without regarding to subparagraph "4" in the event a party seeks a determination on the status of condition of property, included in the bundle of rights associated with property.**

2.0408 Definition of Defendant or Respondent. As used in this rule, "defendant or respondent", whether or not a citizen or domiciliary of this Tribe and whether or not organized under the laws of this Tribe, includes:

- (1) an individual, executor, administrator or other personal representative;
- (2) any other fiduciary;
- (3) any two or more persons having a joint or common interest;
- (4) a partnership;
- (5) an association;
- (6) a corporation; and
- (7) any other legal or commercial entity.

2.0504 Appearance; Time allowed parties; Default decisions.

1. Non-Appearance.

A. If the defendant fails to answer the complaint within forty (40) days or otherwise defend, plaintiff is entitled to default judgment upon motion.

B. A natural person may appear pro se (represent himself or herself), but all other entities must appear by a licensed attorney.

Attorney herein means state licensed attorney or advocate.

C. An appearance or answer by an attorney who is not admitted under Title 2 and ~~licensed under Title 18 is void (non-appearance)~~ **and licensed properly as set forth by the**

Constitution. When an attorney is not licensed, the opposing party shall be entitled to dismissal or default upon a party's motion or complaint and is not entitled to notice of default hearing.

2. Time to Answer

A. In all regular civil proceedings, except foreclosure, the defendant shall have 40 days to answer a complaint after lawful service of summons.

B. In a foreclosure action a defendant shall have 20 days to answer a complaint after lawful service of summons.

C. Any action against the Turtle Mountain Band of Chippewa or one of its subsidiaries the Tribe or the entity shall have 60 days to answer after lawful service of summons.

3. Appearance.

A. If the defendant has appeared by answer or otherwise, the Defendant must be given at least eight (8) days notice of hearing.

B. No default may be entered against an infant or incompetent person unless represented by a guardian or licensed attorney.

C. The fault rules apply to counter-claims, cross-claims and third-party plaintiffs' suits.

4. Hearing. Upon request of a party or attorney, the clerk shall secure a hearing date.

5. When an appearance has been made, notice of hearing shall be given by the clerk or attorney.

6. The court, before entering default, may:

A. Set damages when a claim is sum certain;

B. Hold a hearing on the evidence and assess damages; or

C. Submit an issue of fact to a jury.

7. Setting aside default.

A. The court may on such terms as may be just and upon payment of costs by defendant, relieve a party from a default decision taken because of inadvertence or excusable neglect by a defendant or attorney.

B. The defendant's motion must be made within thirty (30) days after entry of default and supported by good cause.

C. The failure of an attorney to get timely licensed is not excusable neglect or good cause to set aside a default.

D. This rule does not limit the power of a court to consider relief from the judgment upon other grounds (new evidence, fraud, satisfied judgment).

8. Judgment against Tribe.

A. No default judgment may be entered against the Tribe, agency or official acting within the scope of their duties.

B. The Tribe, agency or official sued in their official and individual capacity shall have sixty (60) days to answer, unless time shortened by the Court.

C. The Tribe's General Counsel shall be served a copy of the summons and complaint in all actions against the Tribe or any of its entities or agencies.

9. Attorney's fees for baseless claims.

A claim against a party, including the Tribe, agency or official, that is not supported by facts or law shall entitle the opposing party to attorney's fee and costs under Rule 11 standards which are:

“(c) SANCTIONS.

(1) *In General.* If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) *Motion for Sanctions.* A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) *On the Court's Initiative.* On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) *Nature of a Sanction.* A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.” Fed. R. Civ. Pro. 11.

10. Continuance.

A. A case may be postponed or continued upon motion with good cause shown.

B. A party must first contact the opposing party or attorney on whether the party objects to the motion or agrees.

C. The motion must state the attempt or result of talking with the opposing party, or reason why contact should not be made.

2.0505 Special Time limits in foreclosure actions.

The Court shall schedule any matters in a foreclosure action to be completed within ninety (90) days of the filing of the answer or date of default.

2.0506 TIME

(1) Definitions for Court deadlines.

(a) In this subsection, “holiday” means any day that is a holiday provided by the Tribe’s government or a federal legal holiday or both, and a full day on Good Friday.

(b) When the period of time prescribed or allowed is less than 11 days, Saturdays, Sundays and holidays shall be excluded in the computation. Notwithstanding any specific rule in computing any period of time prescribed or allowed by Title 1 and 2, by any other statute governing actions and special proceedings, or by order of court, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a day the clerk of courts office is closed.

(2) When time limits are imposed the following rules shall apply:

(a) When an act is required to be done at or within a specified time, the court may order the period enlarged but only on motion for cause shown and upon just terms.

(b) The time within which a motion challenging the sufficiency of the evidence or for a new trial must be decided shall not be enlarged except for good cause. The order of extension must be made prior to the expiration of the initial decision period.

(c) The time for initiating any appeal may not be enlarged.

(4) A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 10 days before the time specified for the hearing, unless a different period is fixed by statute or by order of the court. Such an order may for cause shown be made on ex parte motion. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at some other time. All written motions shall be heard on notice unless a statute or rule permits the motion to be heard ex parte.

(5) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party:

(a) If the notice or paper is served by mail, 3 days shall be added to the prescribed period.

(b) If the notice or paper is served by facsimile transmission or by the email and such transmission is completed between 5 p.m. and midnight, 1 day shall be added to the prescribed period.

2.0507 Restraining Orders and Injunctions.

1. The Court may issue temporary restraining orders, preliminary injunctions, and permanent injunctions upon motion by the parties.
2. The party seeking a harassment injunction may file for temporary restraining order and injunction with a motion.

- A. A temporary ex parte restraining order may issue on affidavit setting forth the immediacy of harm impending
 - B. Such temporary ex parte restraining order shall only be valid for 21 days.
3. A party seeking a restraining order against the enforcement of a government action must file a motion for restraining order and injunction and a complaint setting forth the facts.
4. This shall not amend or affect the restraining order provisions set forth in Title 37, “Domestic Violence.”

2.0510 Special Rules related to real estate.

1. **APPLICABILITY OF OTHER RULES.** These rules govern proceedings to condemn real and personal property by eminent domain, except as this rule provides otherwise.
2. **JOINDER OF PROPERTIES.** The plaintiff may join separate pieces of property in a single action, no matter whether they are owned by the same persons or sought for the same use.
3. **COMPLAINT.**
 - A. *Caption.* The complaint must contain a caption as provided in Rule 10(a). The plaintiff must, however, name as defendants both the property—designated generally by kind, quantity, and location—and at least one owner of some part of or interest in the property.
 - B. *Contents.* The complaint must contain a short and plain statement of the following:
 - (1) the authority for the taking;
 - (2) the uses for which the property is to be taken;
 - (3) a description sufficient to identify the property;
 - (4) the interests to be acquired; and
 - (5) for each piece of property, a designation of each defendant who has been joined as an owner or owner of an interest in it.
 - C. *Parties.* When the action commences, the plaintiff need join as defendants only those persons who have or claim an interest in the property and whose names are then known. But before any hearing on compensation, the plaintiff must add as defendants all those persons who have or claim an interest and whose names have become known or can be found by a reasonably diligent search of the records, considering both the property's character and value and the interests to be acquired. All others may be made defendants under the designation “Unknown Owners.”
 - D. *Procedure.* Notice must be served on all defendants as provided in Rule 71.1(d), whether they were named as defendants when the action commenced or were added later. A defendant may answer as provided in Rule 71.1(e). The court, meanwhile, may order any distribution of a deposit that the facts warrant.
 - E. *Filing; Additional Copies.* In addition to filing the complaint, the plaintiff must give the clerk at least one copy for the defendants’ use and additional copies at the request of the clerk or a defendant.

4. PROCESS.

A. *Delivering Notice to the Clerk.* On filing a complaint, the plaintiff must promptly deliver to the clerk joint or several notices directed to the named defendants. When adding defendants, the plaintiff must deliver to the clerk additional notices directed to the new defendants.

B. *Contents of the Notice.*

(1) *Main Contents.* Each notice must name the court, the title of the action, and the defendant to whom it is directed. It must describe the property sufficiently to identify it, but need not describe any property other than that to be taken from the named defendant. The notice must also state:

(i) that the action is to condemn property;

(ii) the interest to be taken;

(iii) the authority for the taking;

(iv) the uses for which the property is to be taken;

(v) that the defendant may serve an answer on the plaintiff's attorney within 21 days after being served with the notice;

(vi) that the failure to so serve an answer constitutes consent to the taking and to the court's authority to proceed with the action and fix the compensation; and

(vii) that a defendant who does not serve an answer may file a notice of appearance.

(2) *Conclusion.* The notice must conclude with the name, telephone number, and e-mail address of the plaintiff's attorney and an address within the district in which the action is brought where the attorney may be served.

C. *Serving the Notice.*

(1) *Personal Service.* When a defendant whose address is known resides within the United States or a territory subject to the administrative or judicial jurisdiction of the United States, personal service of the notice (without a copy of the complaint) must be made in accordance with Rule 4.

(2) *Service by Publication.*

(i) A defendant may be served by publication only when the plaintiff's attorney files a certificate stating that the attorney believes the defendant cannot be personally served, because after diligent inquiry within the state where the complaint is filed, the defendant's place of residence is still unknown or, if known, that it is beyond the territorial limits of personal service. Service is then made by publishing the notice—once a week for at least 3 successive weeks—in a newspaper published in the county where the property is located or, if there is no such newspaper, in a newspaper with general circulation where the property is located. Before the last publication, a copy of the notice must also be mailed to every defendant who cannot be personally served but whose place of residence is then known. Unknown owners may be served by publication in the same manner by a notice addressed to “Unknown Owners.”

(ii) Service by publication is complete on the date of the last publication. The plaintiff's attorney must prove publication and mailing by a certificate, attach a printed copy of the published notice, and mark on the copy the newspaper's name and the dates of publication.

(D) *Effect of Delivery and Service.* Delivering the notice to the clerk and serving it have the same effect as serving a summons under Rule 4.

(E) *Amending the Notice; Proof of Service and Amending the Proof.* Rule 4(a)(2) governs amending the notice. Rule 4(l) governs proof of service and amending it.

5 APPEARANCE OR ANSWER.

A. *Notice of Appearance.* A defendant that has no objection or defense to the taking of its property may serve a notice of appearance designating the property in which it claims an interest. The defendant must then be given notice of all later proceedings affecting the defendant.

B. *Answer.* A defendant that has an objection or defense to the taking must serve an answer within 21 days after being served with the notice. The answer must:

- (1) identify the property in which the defendant claims an interest;
- (2) state the nature and extent of the interest; and
- (3) state all the defendant's objections and defenses to the taking.

C. *Waiver of Other Objections and Defenses; Evidence on Compensation.* A defendant waives all objections and defenses not stated in its answer. No other pleading or motion asserting an additional objection or defense is allowed. But at the trial on compensation, a defendant—whether or not it has previously appeared or answered—may present evidence on the amount of compensation to be paid and may share in the award.

6. AMENDING PLEADINGS. Without leave of court, the plaintiff may—as often as it wants—amend the complaint at any time before the trial on compensation. But no amendment may be made if it would result in a dismissal inconsistent with the Rules herein. The plaintiff need not serve a copy of an amendment, but must serve notice of the filing, as provided in within Title 2, on every affected party who has appeared on every affected party who has not appeared. In addition, the plaintiff must give the clerk at least one copy of each amendment for the defendants' use, and additional copies at the request of the clerk or a defendant. A defendant may appear or answer in the time and manner.

7. SUBSTITUTING PARTIES. If a defendant dies, becomes incompetent, or transfers an interest after being joined, the court may, on motion and notice of hearing, order that the proper party be substituted. Service of the motion and notice on a nonparty must be made as provided herein.

8. TRIAL OF THE ISSUES.

(1) *Issues Other Than Compensation; Compensation.* In an action involving eminent domain under the Tribe's law the court tries all issues.

(2) The Court shall appoint an Expert Witness to assess the value of the property at the Cost of the party seeking condemnation.

9. DISMISSAL OF THE ACTION OR A DEFENDANT.

A. *Dismissing the Action.*

(1) *By the Plaintiff.* If no compensation hearing on a piece of property has begun, and if the plaintiff has not acquired title or a lesser interest or taken possession, the plaintiff may, without a court order, dismiss the action as to that property by filing a notice of dismissal briefly describing the property.

(2) *By Stipulation.* Before a judgment is entered vesting the plaintiff with title or a lesser interest in or possession of property, the plaintiff and affected defendants may, without a court order, dismiss the action in whole or in part by filing a stipulation of dismissal. And if the parties so stipulate, the court may vacate a judgment already entered.

(3) *By Court Order.* At any time before compensation has been determined and paid, the court may, after a motion and hearing, dismiss the action as to a piece of property. But if the plaintiff has already taken title, a lesser interest, or possession as to any part of it, the court must award compensation for the title, lesser interest, or possession taken.

(B) *Dismissing a Defendant.* The court may at any time dismiss a defendant who was unnecessarily or improperly joined.

(C) *Effect.* A dismissal is without prejudice unless otherwise stated in the notice, stipulation, or court order.

10. DEPOSIT AND ITS DISTRIBUTION.

A. *Deposit.* The plaintiff must deposit with the court any money required by law as a condition to the exercise of eminent domain and may make a deposit when allowed by statute.

B. *Distribution; Adjusting Distribution.* After a deposit, the court and attorneys must expedite the proceedings so as to distribute the deposit and to determine and pay compensation. If the compensation finally awarded to a defendant exceeds the amount distributed to that defendant, the court must enter judgment against the plaintiff for the deficiency. If the compensation awarded to a defendant is less than the amount distributed to that defendant, the court must enter judgment against that defendant for the overpayment.

11. Costs may be awarded.