

TRIBAL CODE  
CHAPTER 81:  
SMALL CLAIMS CODE

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HISTORY NOTE:

Current Ordinance

Adopted June 1, 1988, Resolution No. 177(88).  
Secretarial approval June 10, 1988.  
Effective June 10, 1988.

Prior Ordinance

The civil provisions of the Law and Order Ordinance, Chapter II, were enacted in 1948. See History Note to Tribal Code Ch. 70.

TRIBAL CODE

CHAPTER 81:

SMALL CLAIMS CODE

81.101 Title and Purpose.

This ordinance shall be known as the Small Claims Code. The purpose of this code is to provide simple, fair and efficient procedures by which claims involving a tribal member may be adjudicated.

81.102 Relation to Tribal Court Code.

This code is intended to supplement, not supersede, the Tribal Court Code, Tribal Code Ch. 80. Except as otherwise provided herein, the general rules of practice and procedure contained in Chapter III of the Tribal Court Code, Tribal Code Ch. 80, shall apply to actions and proceedings under this code.

81.103 Jurisdiction of Tribal Court.

(1) Pursuant to Section 80.102(2), jurisdiction is hereby conferred upon the Tribal Court over all cases in which the jurisdictional conditions in sub. (2) are met and which involve civil actions where the amount at issue is \$5,000 or less and the claim is for a money judgment, replevin or garnishment.

(2) The Tribal Court shall have jurisdiction over all cases which meet the requirements of sub. (1) where the transaction or occurrence giving rise to the cause of action arose or occurred within the Lac du Flambeau Reservation and:

(a) the defendant is a tribal member, a tribal member business, an Indian person enrolled in another tribe, or a business owned by such Indian person; or

(b) the defendant does business upon the reservation with the Tribe, a tribal member, or tribal member business; or

(c) the transaction or occurrence arose or occurred upon Indian land; or

(d) the property involved in the action is located on Indian land.

(3) In this section:

(a) "Indian land" includes all land held in trust for the Tribe or an individual Indian or Indians by the United States; all land owned in fee by the Tribe, individual Indians, or Indians by the United States; all land owned in fee by the Tribe, individual Indians, Indian businesses; and all navigable waters.

(b) "Defendant" includes any natural person, partnership, association, and body politic or corporate.

(c) "Tribal member business" includes any member-owned commercial or business activity, whether a sole proprietorship, joint venture, partnership or corporation, provided that such member ownership shall constitute not less than 51 percent of the enterprise.

#### 81.104 Service of Notice.

(1) Every notice of filing of statement of claim issued by the clerk of court shall specify a return date and time. The return date shall be not less than 8 nor more than 30 days from the issue date, and service shall be made not less than 8 days prior to the return date.

(2) At the time of filing the clerk of court shall collect the filing fee and the service fee. The clerk of court shall cause to be served upon defendant the notice and a copy of the statement of claim by certified mail, return receipt requested, to the last known address as specified in the notice. If the notice and statement of claim is returned without service, the clerk of court shall attempt personal service by tribal law enforcement personnel.

#### 81.105 Answer.

(1) On the return date the defendant may answer, move to dismiss or otherwise respond to the complaint.

(2) In lieu of appearance on the return date, defendant may before the return date file a written answer, motion to dismiss, or other responsive pleading. A copy of the written response shall be served by mail upon plaintiff by defendant.

#### 81.106 Counterclaims, Cross-Complaints, Impleader.

(1) A defendant may file a counterclaim against a plaintiff if the claim meets the jurisdictional requirements of Sec. 80.103(1) and the claim arises out of the transaction or occurrence that is the subject matter of the plaintiffs' claim.

(2) In the case of more than one defendant, a cross-complaint may be filed if it meets the jurisdictional requirements of Sec. 81.103(1) and (2) and the claim arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim.

(3) A defendant may implead a third party if the third-party complaint meets the jurisdictional requirements of Sec. 81.103(1) and (2) and the claim arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim.

(4) A counterclaim, cross complaint, or motion for impleader shall be filed on or before the return date. The clerk of court shall collect the filing fee at the time of filing.

81.107 Fees.

(1) A filing fee of \$12 shall be charged and collected by the clerk of court for the filing of any statement of claim, cross complaint, third party complaint, or writ.

(2) A service fee of \$3 shall be charged the plaintiff for each defendant to be served a notice and statement of claim.

81.108 Replevin.

(1) An order directing the return of property to the plaintiff at any time before final judgment may be entered only upon a factual showing under oath that there is reason to believe that the property is in the possession of defendant and that there is a substantial risk of removal, damage to, or destruction of the property unless it is returned to plaintiff's possession pending the outcome of the case. Upon such a showing, the court may enter an order directing the return of the property which shall be executed by a tribal law enforcement officer. In lieu of ordering return to plaintiff, the court may order the property to be taken into the possession of the tribal law enforcement department for safekeeping pending the disposition of the case.

(2) Upon the trial of a replevin action the court shall find:

(a) whether the plaintiff is entitled to possession of the property involved;

(b) whether the defendant unlawfully took or detained the same;

(c) the value thereof; and

(d) the damages sustained by the successful party from any unlawful taking or unjust detention of the property to the time of trial.

(3) In any replevin action judgment for the plaintiff may be for the possession of the property, or the value thereof in case a delivery cannot be had, and of damages for the detention. If the property shall have been delivered to the plaintiff under sub. (1) and the defendant prevails, judgment for the defendant may be for a return of the property or the value thereof, at his option, and damages for taking and withholding the same.

81.109 Garnishment.

(1) A garnishment action based upon a money judgment may be brought in tribal court provided that the jurisdictional requirements of Sec. 81.103 are met.

(2) A garnishment action is a separate action. The procedure in garnishment actions shall be the same as provided in Wis. Stat. Ch.

812, except that no garnishment action shall be brought except upon a judgment.

(3) Notwithstanding any other provision of this code or any other tribal code or ordinance, a judgment creditor may maintain a garnishment action against the Tribe or any subdivision thereof with respect to wages or salary which may be owed by the Tribe or a subdivision thereof to the defendant as an employee. The sovereign immunity of the Tribe is hereby waived to that extent and that extent only. No garnishment action shall lie against the Tribe or any subdivision thereof for any other type of indebtedness to the defendant.

81.110 Sovereign Immunity.

Except as provided in Sec. 81.109(3), nothing contained in this code shall be construed as a waiver of the sovereign immunity of the Tribe, any subdivision thereof, or its officers.

81.111 Limitation of Actions.

Actions under this code may be commenced only within the periods prescribed for the analogous cause of action as provided in Wis. Stat. Ch. 893, and said periods shall be tolled or extended as provided therein.

81.112 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 as provided in this code. 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.

81.113 Relation to Summary Proceedings.

A plaintiff filing summary proceedings to recover possession of premises pursuant to Chapter III, Part Three of the Tribal Court Code, Tribal code Ch. 80, may join with that claim any other claim against the defendant arising out of defendant's possession or occupancy of the premises, provided that such claim meets the jurisdictional requirements of Sec. 81.103.

81.114 Effective Date.

This code shall take effect upon approval hereof by the Secretary of the Interior pursuant to Article VI, Section 2 of the Tribal Constitution.