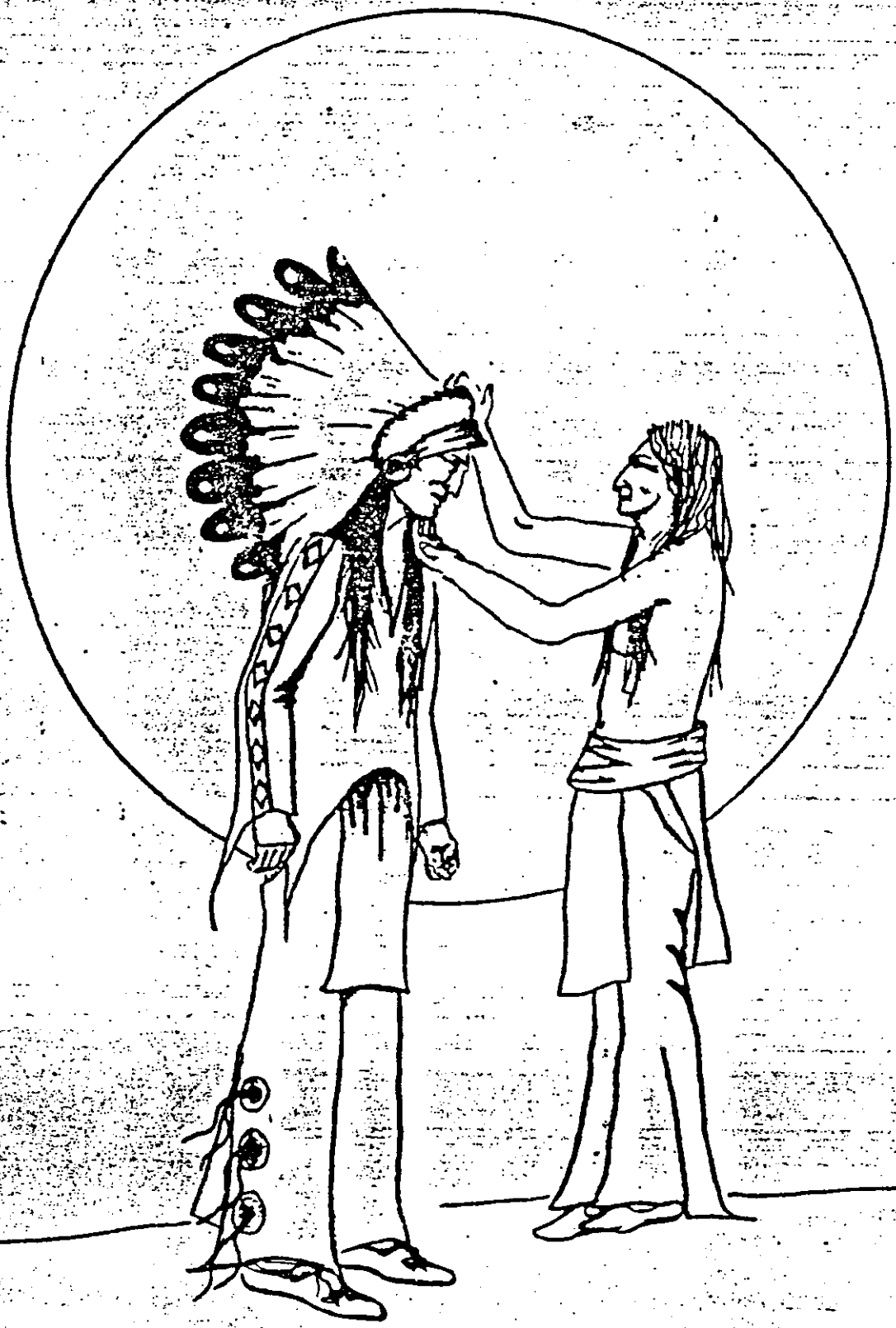
MENOMINEE TRIBAL COURT



RULES OF CRIMINAL PROCEDURE

Menominee Tribal Court

Rules of Criminal Procedure

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MENOMINEE TRIBAL COURT

AMENDED RULES OF CRIMINAL PROCEDURE

The Justices of the Menominee Supreme Court, hereby amend the established written rules of criminal procedure.

Authority to amend these rules are explicitly granted in Article V. Section 6 of the Constitution.

These rules will govern the procedure of the trial court to ensure and protect the rights of parties subject to the jurisdiction of the Menominee Indian Tribe.

RULE 1 - COMPLAINT

(a) All criminal prosecutions for violation of the Tribal Law and Order Code shall be initiated by formal complaints. A complaint is a written statement sworn to by the complaining witness and charging that a named individual(s) has committed a particular criminal offense.

(b) Formal complaints shall contain:

(1) The signature of the complaining witness sworn to before the tribal prosecutor or an individual designated by the Chief Justice, and;

(2) A written statement by the complaining witness describing in ordinary language the nature of the offense committed, including the time and place as nearly as may be ascertained, and;

(3) The name or description of the person alleged to have committed the offense, and;

(c) When an accused has been arrested without a warrant, a complaint shall be filed with the court and in no instance shall a complaint be filed later than at the time of arraignment.

RULE 2 - REQUIREMENT OF AFFIDAVIT.

An affidavit alleging violation of tribal laws shall be incorporated into the formal complaint.

RULE 3 - RECEIPT OF FORMAL COMPLAINT.

After the complaint is filed it shall be submitted to the Chief Judge for assignment to a judge. Either a warrant or summons will be issued.

RULE 4 - ARREST.

(a) Arrest is the taking of a person into police custody for the purpose of detaining to answer a criminal charge.

(b) No Tribal law enforcement officer shall arrest any Indian for a criminal offense set out in the Tribal Law and Order Code except when:

(1) The officer shall have a warrant signed by a judge commanding the arrest of such Indians,or the officer knows for a certainty that such a warrant has been issued, or;

(2) The offense shall occur in the presence of the arresting officer, or;

(3) The officer shall have probable cause to believe that the Indian to be arrested has committed an offense.

RULE 5 - ARREST WARRANTS.

(a) Every judge of the court shall have authority to issue Warrants to Arrest and such warrants shall be issued only upon a showing of probable cause in sworn statements. The judge shall deny the issuance of a warrant if he finds that there is not probable cause to believe that the offense charged has been committed by the named accused.

(b) The Arrest Warrant shall contain the following information:

(a) Name or description and address if known, of the person to be arrested.

(b) Date of issuance of the warrant.

(c) Description of the offense charged.

(d) Signature of the issuing judge.

RULE 6 - NOTIFICATION OF RIGHTS AT TIME OF ARRESTS.

Upon arrest the suspect shall be advised of the following rights:

(1) That he has the right to remain silent.

(2) That any statements made by him may be used against him in court.

(3) That he has the right to obtain counsel at his own expense.

RULE 7 - SUMMONS IN LIEU OF WARRANTS.

(a) A judge may in lieu of a arrest warrant, issue a summons commanding the accused to appear before the Tribal Court at a stated time and place and answer to the charge.

Amendment Note, 10-05-05: Rule 7 (b) and (c) was amended to allow the Tribal Prosecutor to issue a summons.

(b) Upon issuance of a complaint, the Tribal Prosecutor may issue a summons in lieu of requesting the issuance of a warrant. The complaint shall then be filed with the clerk of court.

(c) If a person summoned fails to appear in response to a summons by the prosecutor, the prosecutor may proceed to file a complaint as provided in Rule 1 and shall endorse upon the complaint the fact that the accused failed to respond to the summons.

RULE 8 - SEARCH WARRANT-DEFINED.

A Search Warrant is a written order, signed by a judge, and directed to a tribal law enforcement officer authorizing him to conduct a search and seize items or property specified in the warrant. A warrant shall describe the property or place to be searched and shall describe the items to be seized.

RULE 9 - ISSUANCE OF SEARCH WARRANT.

(a) Every Tribal judge shall have the power to issue warrants for the search and seizure of property and premises of any person under the jurisdiction of the court.

(b) No warrant of search and seizure shall be issued except upon probable cause that a search will discover: stolen, embezzled, contraband or otherwise criminally possessed property which had been or is being used to commit a criminal offense; or property which constitute evidence of the commission of a criminal offense. Such probable cause shall be supported by a sworn statement based upon reliable information.

(c) No warrant for search or seizure for a person shall be issued except upon probable cause that such search will discover the person named in the order. Such probable cause shall be supported by a sworn statement based upon reliable information.

RULE 10 - EXECUTION AND RETURN OF SEARCH WARRANT.

Warrants for search and seizure shall only be executed by tribal law enforcement officers. Upon execution of such orders, officers shall return the warrant to the Tribal Court within the time limit shown on the face of the warrant, which in no case shall be longer than five (5) days from the date of issuance. Warrants not returned within such time limits shall be void.

RULE 11 - SEARCH WITHOUT A WARRANT.

No Tribal law enforcement officer shall conduct any search without a valid warrant except:

(1) Incident to making a lawful arrest, or:

(2) With consent of the person being searched, or:

(3) When he has probable cause to believe that the person searched may be armed and dangerous, or:

(4) When the search is of a moving vehicle and the officer has probable cause to believe that it contains contraband, stolen or embezzled property.

RULE 12 - ARRAIGNMENT.

(a) Arraignment is the bringing of an accused before the court, informing him of his rights and of the charge against him, receiving his plea, and setting bail as appropriate in accordance with bail-bond schedule.

(b) Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody and in no instance shall arraignment be later than the next regularly scheduled session of court.

RULE 13 - RIGHTS OF ACCUSED AT ARRAIGNMENT.

Before an accused is required to plead to any criminal charge the judge shall:

(1) Read to the accused and determine that he understands the complaint and the section of the tribal code which he is charged with violating, including the maximum authorized penalty, and;

(2) Advise the accused that he had the right to remain silent, to be tried by a jury; and to be represented by counsel at his own expense and that the arraignment will be postponed, should he desire to consult with counsel.

RULE 14 - RECEIPT OF PLEA AT ARRAIGNMENT.

(a) If the accused pleads "not guilty" to the charge, the judge shall then inform him of a trial date and set conditions for bail prior to trial.

(b) If the accused pleads "guilty" to the charge, the judge shall determine that the plea is made voluntarily and that the accused understands the consequences of the plea, including the rights which he is waiving by the plea. The judge may then impose sentence or determine sentencing for a

reasonable time and order to obtain any information he deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to inform the court of facts in mitigation to the sentences.

(c) If the accused pleads "No Contest" to the charge, the judge shall enter a plea of guilt for the defendant and find the defendant guilty as charged.

(d) If the accused refuses to plead, the judge shall enter a plea of not guilty on his behalf.

RULE 15 - BAIL-RELEASE PRIOR TO TRIAL.

Every person charged with a criminal offense before the Court shall be entitled to release from custody pending trial under which one or more of the following conditions is deemed necessary to reasonably assure the appearance of the person at anytime lawfully required, unless there is probable cause to believe that his liberty will constitute an unreasonable danger to himself or the public.

(1) Release on personal recognizance upon execution by the accused of a written promise to appear at trial and all other lawfully required times

(2) Release to the custody of a designated person or organization agreeing to assure the accused's appearance.

(3) Release with reasonable restriction on the travel,association, or place of residence of the accused during period of release.

(4) Release after deposit by the accused or a bondsman of bond in either cash or other sufficient collateral in an amount specified by the judge or a bail schedule. The judge, in his discretion, may require that the accused post only a portion of the total bond, the full sum to become due if the accused fails to appear as ordered.

(5) Release after execution of a bail agreement by two (2) responsible members of the community.

(6) Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as requires.

RULE 16 - BAIL-RELEASE PENDING APPEAL.

Every person who has been convicted of a tribal offense and who had filed an appeal or a petition for a Writ of Habeas Corpus shall be treated in accordance with the provisions of Rule 15, above, unless the judge has substantial reason to believe that no conditions of release will reasonably assure the appearance of the accused or that release of the accused is likely to pose a danger to the community, to the accused or to any person. If the judge, by hearing finds such to be the case, he may order detention of the accused.

RULE 17 - WITHDRAWAL OF GUILTY PLEA.

The court may, in it's discretion, allow a defendant to withdraw a plea of guilty whenever it appears that the interest of justice and fairness would be served by doing so.

RULE 18 - STANDARDS GOVERNING APPEARANCE OF ATTORNEYS AND COUNSELOR.

(a) No defendant in a criminal proceeding shall be denied the right to counsel at his expense.

(b) The Supreme Court may prescribe in writing standards governing the admission and practice in Tribal Court of professional attorneys and lay-counselors.

RULE 19 - ISSUANCE OF SUBPOENAS.

(a) Upon request of any party to a case or upon the Tribal Court's own initiative, the Court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence which is relevant, necessary to the determination of the case and an undue burden on the person producing the evidence. The Clerk of Court may act on behalf of the Court and issue subpoenas which have been signed by a tribal judge and which are to be served within the confines of the reservation.

(b) A subpoena shall bear the signature of a judge of the trial court and it shall state the name of the court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

RULE 20 - SERVICE OF SUBPOENA.

(a) A subpoena may be served by any Tribal Police Officer or other person appointed by the Court for such purpose. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his place of residence with any competent person sixteen (16) years of age or older who also resides there.

(b) Proof of service of the subpoena shall be filed with the Clerk of Court by noting on the subpoena the date, time and place that it was delivered. Proof of service shall be signed by the person who actually served the subpoena.

RULE 21 - FAILURE TO OBEY SUBPOENA.

In the absence of a justification, satisfactory to the Court, a person who fails to obey a subpoena may be deemed to be in Contempt of Court and a Bench Warrant may be issued for his arrest.

RULE 22 - WITNESS FEES.

(a) Each witness answering a subpoena shall be entitled to a fee according to the current fee schedule for each day his services are required in court. In addition, the court may order the payment of mileage expense of each witness according to the current mileage schedule.

(b) The fees and expenses provided for in this section shall be paid by the Tribe upon completion of the trial, but such expenses may be taxed as

costs against the defendant if he is found guilty provided however, that no defendant shall be incarcerated solely because of his inability to pay such costs immediately.

(c) If the Court finds that a complaint was not filed in good faith but with a frivolous or malicious intent, it may order the complainant to reimburse the Tribe for expenditures incurred under this section, and such order shall constitute a judgment upon which execution may levy.

RULE 23- TRIAL PROCEDURE.

In all trials, the testimony of witnesses shall be given under oath in open court subject to the right of cross-examination. The Federal rules of evidence are applicable in court.

RULE 24 - JURY TRIAL.

(a) Any person accused of a crime for which imprisonment is a possible penalty may be granted a jury trial, upon his or her request made at time of arraignment. A jury shall consist of six (6) members of the Tribe selected at random from a list of eligible jurors prepared each year by the Chief Justice.

(b) The judge shall instruct the jury with regard to the applicable law and the jury shall decide all questions of fact on the basis of that law.

(c) The jury shall deliberate in secret and return a verdict of guilty or not guilty. The jury shall reach a unanimous verdict. The judge shall render judgment in accordance with the jury verdict.

(d) Each juror shall be paid out of Tribal funds a fee for each day of service, according to the fee schedule plus mileage for his transportation costs to and from court.

(e) An eligible juror is an enrolled Tribal member who;

1. presently resides within the exterior boundaries of the reservation who has reached the age of eighteen (18) years;
2. has not been convicted of a felony, and;
3. is not otherwise unqualified according to standards established by the Court under its general rule making authority.

(f) Each party shall have the right to challenge an unlimited number of jurors for cause on the basis of lack of qualifications, partiality or otherwise acceptable reason. Whether or not cause exists shall be determined by the Judge in all instances. In addition, each party shall have the right to a maximum of three (3) pre-emptory challenges for jurors, for which no reasons need be given and which the Judge may not refuse to grant.

RULE 25 - SENTENCING.

(a) Any person who has been convicted in the Tribal Court of a criminal offense may be sentenced to one or a combination of the following penalties:

(1) Imprisonment for a period not to exceed the maximum permitted by the code provision defining the offense, which in no case shall be greater than six (6) months.

(2) A money fine in an amount not to exceed the maximum permitted by the code of defining the offense, which in no case shall be greater than five-hundred dollars ($500.00).

(3) Labor for the benefit of the Tribe.

(4) Rehabilitative measures.

(b) In addition to or in lieu of the penalties provided in subsection (a) above, the Court may require a convicted offender who has inflicted injury upon the person or property of another to make restitution or compensate the injured person by means of the surrender of property, payment of money damages, or the performance of any other act for the benefit of the injured party.

RULE 26 - PROBATION.

(a) Where sentence has been imposed upon any Indian who has previously been convicted of any offense, the court may in it's discretion suspend the sentence imposed and allow the offender his freedom on probation upon his signing a pledge of good conduct during the period of the sentence upon the form provided therefor.

(b) Any Indian who shall violate his probation pledge shall be required to serve the original sentence plus an additional half of such sentence as penalty for the violation of his pledge.

RULE 27 - PAROLE.

(a) ..... Parole shall be granted only by a judge of the court where the prisoner was convicted and upon the signing of the form provided thereafter.

(b) Any Indian who shall violate any of the provisions of such parole shall be punished by being required to serve the whole of the original sentence.

RULE 28 - APPEALS.

(a) An appeal may be granted to any person convicted of a violation of the Tribal Code of Law and Order who, within ten (10) days of his conviction, files a written Notice of Appeal with the court outlining substantial grounds for the granting of such a appeal.

(b) In all criminal convictions the determinations as to the sufficiency of the grounds for an appeal shall be made by the appeals body and shall be final. The appeals body shall notify the appealing party in writing whether the appeal has been granted or denied.

RULE 29 - HABEAS CORPUS PROCEDURE.

(a) Appropriate relief by habeas corpus proceedings shall be granted whenever it appears to the court that any person is unjustly imprisoned or otherwise restrained of his liberty. Upon the filing of the complaint the court shall, unless it appears from such complaint or the showing of the plaintiff that

he is not entitled to any relief, issue a writ directed to the defendant commanding him to bring the person alleged to be restrained before the court at a time and place therein specified, at which time the court shall proceed in a summary manner to hear the matter and render judgment accordingly. If the writ is not issued, the court shall state its reasons therefor in writing and file the same with the complainant, and shall deliver a copy thereof to the plaintiff, if the defendant cannot deliver a copy thereof he does not have such person in custody, the writ (and any other process issued) may be served upon anyone having such person in custody, in the manner and with the same effect as if he had been made defendant in the action.

The defendant shall appear at the proper time and place with the person designated or show good cause for not doing so and must answer the complaint within the time allowed. The answer must state plainly and unequivocally whether he then has, or at any time has had the person designated under his control and restraint, and if so, the cause thereof. If such person has been transferred, the defendant must state that fact, and to whom, and when, the transfer was made, and the reason or authority therefor. The writ shall not be disobeyed for any defect of form or misdescription of the person restrained or defendant, if enough is stated to show the meaning and intent thereof.

The person restrained may waive his right to be present at the hearing, in which case the writ shall be modified accordingly. Pending a determination of the matter the court may place such person in the custody of such individual or individuals as may be deemed proper.

(b) Habeas Corpus: Decision: In each case, the court upon determining the case, shall enter specific findings of fact and conclusion of law and judgment, in writing, and the same shall be made part of the record in the case. If the court finds in favor of the complainant, it shall enter an appropriate order with respect to judgment or sentence in the former proceedings and such further orders with respect to rearraignment, retrial, custody, bail, or discharge as the court may deem just and proper in the case.

(c) Habeas Corpus Availability. Except in cases of extraordinary injustice, habeas corpus relief shall not be available to a person incarcerated as a result of a criminal conviction where the alleged grounds for relief have been or could have been by an appeal following the conviction.

RULE 30 - APPLICABLE RULES.

(a) These rules are in addition to any procedural rules in Title 25, Code of Federal Regulations §11, which are applicable to the Menominee Indian Tribe.

Menominee Indian Tribe of Wisconsin

SUPREME COURT

P.O. Box 429
KESHENA, WISCONSIN 54135
Telephone 1-715-799-3348

CHIEF JUSTICE - WILMER J. PETERS
ASSOCIATE JUSTICE - HILARY J. WAUKAU, SR.
ASSOCIATE JUSTICE - JOSEPH LAWE

RULES OF CRIMINAL PROCEDURE

Order for Adoption and Implementation

PURSUANT TO ARTICLE V, SECTION 6, OF THE MENOMINEE TRIBAL CONSTITUTION AND BY-LAWS, THE MENOMINEE TRIBAL SUPREME COURT HEREBY ADOPTS THE FOREGOING AMENDED RULES OF CRIMINAL PROCEDURE. THE AFORESAID RULES ARE ATTACHED HERETO AND ARE NUMBERED 1 THROUGH 30, CONSECUTIVELY.

DATED THIS 03 DAY OF April, 1984.

BY THE COURT:

Wilmer J. Peters, Chief Justice

Sarah L. Skubitz, Associate Justice

Christine Webster, Associate Justice

s/e/a/l

MOTOR VEHICLE CODE
ORDINANCE NO. 80-21

PROCEDURES

The motor vehicle code and Chapters pertaining thereto were enacted by the Tribal Legislature on November 11, 1980 and made effective November 17, 1980.

Chapter VI as General Provisions, Rules relating to Civil and Criminal Liability, Chapter VI, Sec. 6 - 13, Officer's Action Before and After Arrest for Driving Under Influence of Intoxicant.

As the law presently stands, Ordinance No. 79-14, Title 2A, provisionally adopts the Code of Federal Regulations, Title 25, Part 11, Sec. 11.50ME, Traffic Violations. This section (11.50ME), applys Wisconsin State Traffic Laws (Chapter 346, Title 32 of Wisconsin Statutes).

An Indian charged for a traffic violation under C.F.R., 11.50ME is brought into court under formal criminal complaints and the proceedings continue as any criminal complaint.

Under 80-21, Chapter VI, Sec. 6 - 13, the officer making an arrest of an Indian charged with driving under the influence of an intoxicant, the officer is required to perform certain actions.

It is <u>believed</u> that an Indian who drives on the public roads of the reservation has given consent to tests of breath, blood or urine to determine the presence or quantity of alcohol or controlled substance.

PROCEDURE 1. <u>Prior to Arrest or Issuance of Citation, the Officer Request the Required Test</u>.

A law enforcement officer may request the test to be administered, however, the officer may perform a preliminary breath test.

The <u>results</u> and <u>administering</u> of the preliminary breath tests <u>shall not be admissable in any action or proceeding in which it is material to prove</u> that the person was under the influence of an intoxicant or controlled substance. (emphasis added).

(d) "An Indian who is unconsious or otherwise not capable of withdrawing consent in presumed not to have withdrawn consent, under the sub-section and if the law enforcement officer has probable cause to believe that the person has violated Chapter 7; probitions against driving under the influence of an intoxicant or controlled substance, the person may be arrested therefore and a test may be administered to the person."

Another statutory requirement of a law enforcement officer who requests a blood, breath or urine test of a person is to give information to the individual charged with the violation of this ordinance and Chapter 7, as provided in 6 - 13(4).

PROCEDURE 2. Officers Inform Procedure.

One such provision (4)(a)(2):

"That if he or she refuses to submit to any such tests, except as permitted under sub. (3)(a), his or her operating privilege shall be revoked for not less than 6 months nor more than one year under sub. (9).

PROCEDURE 3. Officers prepare 4 copies of Notices of Intent. 1-person; 2-"department"; 3-prosecutor; 4-Tribal Court.

PROCEDURE 4. Notice of Intent.

A person given the Notice of Intent to revoke driving privileges may request a hearing by mailing or delivering a written request to court, this must be done either before or during the I.A. (citation return date). (emphasis added).

Hearing on the petition to revoke driving privileges are three (3) fold.

1. Officer entitled to request a test.
2. Proper notice given, and
3. Person refused to take test.

PROCEDURE 5. Revocation.

Failure to request a hearing by the person so charged, court shall revoke operating privileges not less than 6 months and not more than 1 year.

PROCEDURE 6. Reduction of Revocation.

Person may petition court for reduction of revocation.

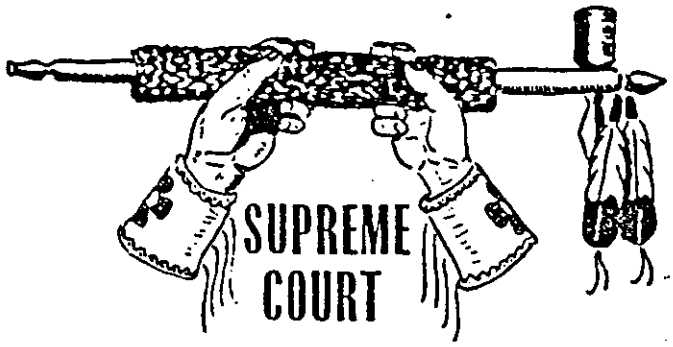
PROCEDURE 7. Filing of Copies.

The person performing the chemical tests shall file copies of the results with the; 1. "department"; 2. Tribal Police Department and to the; 3. person on whom tests were administrated.

PROCEDURE 8. If a person, given Notice of Intent to revoke driving privileges, fails to request a hearing, the court shall proceed with the Indian's Consent, order the person to submit to an assessment. If the person requests a hearing, the court shall set a time and date and the hearing shall be recorded.

APPENDIX A

Menominee Indian Tribe of Wisconsin



P.O. Box 429
KESHENA, WISCONSIN 54135
Telephone 1-715-799-3348

CHIEF JUSTICE - WILMER J. PETERS
ASSOCIATE JUSTICE - HILARY J. WAUKAU, S
ASSOCIATE JUSTICE - JOSEPH LAWE

MENOMINEE TRIBAL JUDICIARY
MENOMINEE PARA - LEGAL SERVICE
ATTORNEYS AUTHORIZED TO PRACTICE
LAW ON THE MENOMINEE RESERVATION

Any party to a legal proceeding requesting a change of assignment of Judge, shall use the Provisions, in Ordinance Number 79-14, Chapter 1, Section 1-2-10 (2) of the Tribal Judiciary and Interim Law and Order Code. The party to the action or proceeding, civil or criminal, shall make the request, within five (5) days after the initial appearance. Any rules adopted, prior to this date, to govern the procedures of this provision is hereby repealed.

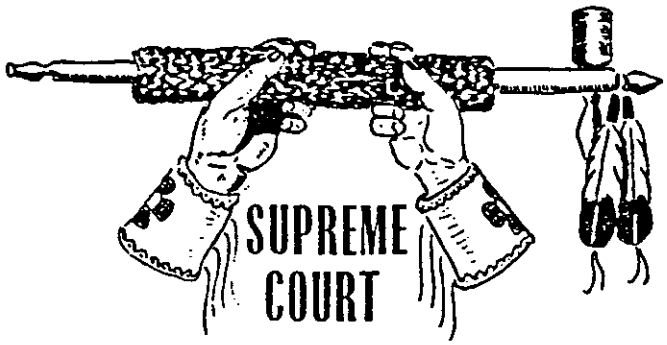
BY THE COURT:

WILMER J. PETERS
CHIEF JUSTICE

HILARY WAUKAU SR.
ASSOCIATE JUSTICE

DATED THIS 29 DAY OF January 1981.

Menominee Indian Tribe of Wisconsin



P.O. Box 429
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CHIEF JUSTICE - WILMER J. PETERS
ASSOCIATE JUSTICE - SARA L. SKUBITZ
TRIBAL JUDGE - ROBERT KITTECON
TRIBAL JUDGE - LOUIS DIXON

MEMORANDUM

FILED
MENOMINEE TRIBAL COURTS
JAN 1 1985
SHIRLEY DALY
CLERK OF COURTS

TO: ALL COURT PERSONNEL

FROM: Wilmer J. Peters, Chief Justice
Sarah L. Skubitz, Associate Justice

DATE: January 11, 1985

SUBJECT: BENCH WARRANTS ON FAILURE TO APPEAR -- PROCEDURES TO BE FOLLOWED

When an individual fails to appear as summoned or subpoenaed, the presiding Judge may issue a Bench Warrant to have that person pick-up and held.

The Bench Warrant may be prepared by the Clerk after the hearing but should not be issued until 4:00 p.m. of that same day or as soon thereafter as possible.

When a Bench Warrant is ordered to detain subject, the Prosecutor's Office shall prepare a complaint under 11:73 DISOBEDIENCE TO LAWFUL ORDERS OF COURT. The complaint shall then be processed under usual procedures, with an I.A., Bond established and hearing date set.

DATED THIS 11 DAY OF January 1985.

Wilmer J. Peters, Chief Justice

Sarah L. Skubitz, Associate Justice

§ 1-2-10. Disqualification of Judges.

(1) A Judge shall disqualify himself from hearing any matter in which he has a direct interest or in which any party to the matter is a relative by blood, to the fourth degree (first cousins), or where he feels that he will not be able to render a just decision.

(2) Any party to a legal proceeding may request a change of assignment of judges to hear the proceeding by filing a written Affidavid of Prejudice giving sufficient reasonable grounds why the judge assigned should not hear the case. Such affidavid shall be presented to the Judge assigned to hear the case who shall rule on the sufficiency of the affidavit, and, if sufficient, either disqualify himself or turn the affidavit over to the Chief Justice or some other judge for a decision as to whether a different Judge should be assigned.

§ 1-2-11. Oath of Office of Judge.

(1) Every Judge prior to taking office shall take the following oath or affirmation:

> I, _____, do hereby solemnly swear that I will support and defend the Constitution and Bylaws of the Menominee Indian Tribe of Wisconsin, that I will carry out faithfully and impartially the duties of my office to the best of my ability; and that I will promote and protect the best interests of the people of the Menominee Indian Tribe of Wisconsin.

(2) Said oath may be administered by a member of the Menominee Legislature or by a Judge of the Court.

§ 1-2-12. Court Clerk.

(1) Upon duly adopted ordinance by the Menominee Tribal Legislature appropriating funds for the employment of

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MENOMINEE TRIBAL COURTS
MENOMINEE INDIAN RESERVATION
APR 22 1981
LAURIE S. BARNES
CLERK OF COURTS

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MENOMINEE TRIBAL COURTS
MENOMINEE INDIAN RESERVATION
JAN 1 1985
SHIRLEY DALY
CLERK OF COURTS

RULES OF CRIMINAL PROCEDURE

AMENDMENT NO. 1.

The Justices of the Supreme Court of the Menominee Indian Tribe, hereby amend the RULES OF CRIMINAL PROCEDURE as adopted on the 03rd day of April, 1984. The amendments are as follows:

RULE 1 - COMPLAINT AMENDMENT:

(a) All criminal prosecutions for violation of the Tribal Law and Order Code shall be initiated by formal complaints. The complaint is a written statement of the essential facts constituting the offense charged and may be made on information and belief. It shall be made upon oath before the tribal prosecutor or an individual designated by the Chief Justice. (see attached sample complaint form.)

RULE 2 - ISSUANCE AND FILING OF COMPLAINTS AMENDMENT:

(a) A complaint charging a person with an offense shall be issued only by the tribal prosecutor. A complaint is issued when it is approved for filing by the tribal prosecutor. The approval shall be in the form of a written endorsement on the complaint.

(b) After a complaint has been issued, it shall be filed with a judge and either a warrant or summons shall be issued or the complaint dismissed pursuant to Rule 3. Such filing commences the action.

(c) When an accused has been arrested without a warrant, a complaint shall be filed with the court and in no instance shall a complaint be filed later than at the time of arraignment.

RULE 3 - DISMISSAL OR WITHDRAWAL OF COMPLAINT AMENDMENT:

(a) If the judge does not find probable cause to believe that an offense has been committed or that the accused has committed the offense, the judge shall endorse such finding on the complaint and file the complaint with the clerk.

(b) An unserved warrant or summons shall, at the request of the tribal prosecutor, be returned to the judge who may dismiss the action. Such request will be in writing and shall state the reasons therefore in writing and shall be filed with the clerk.

(c) Any dismissal under this rule shall be without prejudice.

ADOPTED THIS 14 DAY OF January, ~~1984.~~ 1985

BY THE COURT:

Wilmer J. Peters, Chief Justice

Sarah L. Skubitz, Associate Justice

Doc: No.1
Disk: Rules

ENOMINEE TRIL [redacted]RT

MENOMINEE INDIAN RESERVATION

ENOMINEE INDIAN TRIBE,
Plaintiff,

s.

Defendant.

(SAMPLE)
CRIMINAL COMPLAINT

Case No. _____

_____, being duly sworn on oath says that on he _____ day of _____, 19____, at the (location) _____, on the Menominee Indian Reservation, ne Defendant did: Knowingly resist or obstruct an officer while such officer as doing any act in an official capacity and with lawful authority, to wit: he defendant did on the date and place in question refuse to be escorted to he squad car of Officer _____ and did pull his arms away from the fficer when handcuffing was attempted, and did further threaten the officer, ll of which is contrary to Section 11.70ME, 25 C.F.R. as provisionally adopted n Title 2A as part of the Law and Order Code of the Menominee Indian Tribe.

The penalty for this offense is a possible fine of $500.00 or possible mprisonment of not more than sixty (60) days, or both.

The undersigned prays that said defendant be dealt with according to law.

This complainant states that he is a sergeant with the Menominee Tribal Police Department and obtained his information during the course of those duties. This complainant states that on February 6, 1984, I received a call informing me that there was a disturbance at the home of Mrs. _____ located on Highway 47 in the village of Keshena. Upon arriving at the scene, I knocked on the door of the residence and was admitted by Mrs. _____. She directed me to a back bedroom where I found the defendant in a crouched position near the bed. I asked the defendant to accompany me to the doorway

of the residence. The defendant refused to do as directed so I placed my hand on his arm to direct him to the doorway of the residence. The defendant at this time pushed me to the floor and ran towards the doorway of the residence. I caught the defendant at the doorway of the residence and plac the defendant under arrest for resisting arrest. In attempting to put hanc cuffs on him, he repeatedly attempted to pull his arms away requiring me tc forcefully restrain him. While in the squad car enroute to the Menominee Tribal Police Department, the defendant threatened me and stated that he would take care of me when I was off duty. This complainant states that h believes this information to be a true and accurate account of the inciden as it happened on the night in question.

Subscribed and sworn to before me:

_____
Date

_____
(Investigating Officer's Signatu
Complainant

_____
Prosecutor/Assistant Prosecutor

Approved For Filing: _____