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INTRODUCTION

This book of Model Tribal Court forms has been compiled by Wisconsin Judicare, Inc., for the benefit of tribal court practitioners. Since these forms are generic, we highly recommend consulting with the rules of the tribal court in which you are practicing so that you can tailor the form to fit the court's requirement. These forms are also available on disks to save you time and energy in drafting the forms you use in court. If you did not receive a disk with copies of the forms on it, please contact us and we will get you a disk as soon as possible. We can be reached at (800) 472-1638 or locally at (715) 842-1681.

Like the forms, the text that explains the use of the forms is generic and has not been tailored to fit the specific rules and requirements of any tribal court. Always remember to consult the proper tribal code and court rules before filing any documents in tribal court.

This material is intended for general information purposes and does not constitute legal advice.

** Smaller than normal fonts were used on some of these forms to fit more material onto a single page in order to save space. When drafting forms specific to a case, make sure you check the applicable court rules to determine whether the court requires you to use certain fonts, character sizes, and margins.*

TRIBAL COURTS IN WISCONSIN

Bad River Tribal Court

P.O. Box 39
Odanah, WI 54861
Phone: (715) 682-7111
Fax: (715) 682-7118

Forest County Potawatomi Community Court

P.O. Box 340
Crandon, WI 54520
Phone: (715) 478-5850
Fax: (715) 478-5805

Ho-Chunk Nation Trial Court

P.O. Box 70
Black River Falls, WI 54615
Phone: 800-434-4070
Fax: (715) 284-3136

Lac Courte Oreilles Tribal Court

Route 2
P.O. Box 2700
Hayward, WI 54843
Phone: (715) 634-8934
Fax: (715) 634-4797

Lac Du Flambeau Tribal Court

P.O. Box 217
Lac Du Flambeau, WI 54538
Phone: (715) 588-9600
Fax: (715) 588-9240

Menominee Tribal Court

P.O. Box 429
Keshena, WI 54135
Phone: (715) 799-3348
Fax: (715) 799-4061

Oneida Tribal Court

P.O. Box 19
Oneida, WI 54155
Phone: (920) 497-5800
Fax: (920) 497-5805

Red Cliff Tribal Court

P.O. Box 529
Bayfield, WI 54814
Phone: (715) 779-3725
Fax: (715) 779-3704

St. Croix Tribal Court

P.O. Box 287
Hertel, WI 54845
Phone: (715) 349-2195
Fax: (715) 349-2975

Sokaogon Tribal Court

Route 1
P.O. Box 625
Crandon, WI 54520
Phone: (715) 478-2604, ext. 15
Fax: (715) 478-5275

Stockbridge-Munsee Tribal Court

N8476 Moh He Con Nuck Road
Bowler, WI 54416
Phone: (715) 793-4111
Fax: (715) 793-4880

SECTION 1. FORM OF PLEADINGS

Tribal courts require that each party to a contested civil action state a position on the factual issues in a pleading, which must be filed with the court and served on all other parties.

Only two pleadings are normally required or allowed, the plaintiff's complaint and the respondent's answer. If a defendant's answer clearly states a counterclaim, the petitioner then, but only then, must file a reply. If additional parties enter the case, they are permitted to file pleadings appropriate to their status.

Most tribal courts require the following formal requirements for pleadings: a caption giving the name of the court; the title of the action (name of litigants and their status as plaintiffs, defendants, etc.); the number of the action; and designation of the pleading type (complaint, answer, third-party complaint, third-party answer, etc.). Tribal courts also require the attorney or advocate to sign the pleading. If the party does not have an attorney or an advocate, then the party must sign the pleading. In some instances, the courts may require the party to sign initial pleadings even if the party has an advocate or attorney. These formal caption requirements should be followed on all other court filings, unless the court's rules require a different caption style.

Pleadings should be written in such a fashion that they are clear and easy to understand. The use of numbered paragraphs should be used to help separate claims, defenses, facts, and elements.

1.1 COMPLAINTS

A complaint's main purpose is to advise the court and the opposing party or parties of the claim or claims relied on by the plaintiff to obtain the relief sought. The complaint is important because it constitutes the groundwork and foundation of the plaintiff's claim.

In drawing up the complaint, follow the formal requirements laid out in Section 1.

Since the complaint is essential for conferring jurisdiction upon the court to enter judgment against the defendant, make sure the complaint accurately states the basis of the tribal court's jurisdiction over the parties and the subject matter.

In the body of the complaint you should include a short, plain statement of the claim. This statement should identify the occurrence or transaction from which the claim arises. In addition, it should show that the plaintiff is entitled to the relief requested.

The body of the complaint should contain a demand for judgment that details the relief the plaintiff is seeking. In addition, the complaint can detail any alternative or different reliefs the plaintiff might be demanding.

This form and discussion is also applicable to cross claims and counterclaims. Be sure the document caption states the type of pleading being filed.

Plaintiff, **COMPLAINT**

v.

Defendant.

Docket No.

Case No.

1. This court has jurisdiction over the subject matter and parties in this action pursuant to Article _____ of the Constitution of the _____ Tribe and Sections _____ of the tribal code (*or jurisdiction may also be conferred via 18 USC 1151, 18 USC 1153, 25 USC 1302 et. seq. and/or case law*).
2. That Plaintiff, [type Plaintiff's Name here], resides at [type Plaintiff's Address here].
3. That Defendant, [type Defendant's Name here], resides at [type Defendant's Name here].

Upon information and belief, the plaintiff alleges the following:

- WHEREFORE, Plaintiff prays judgment against Defendant for damages in the amount of [type dollar amount here], for costs incurred by commencing this litigation and for such other and further relief as the Court may deem just and proper.

, Plaintiff

[Advocate's Address]
[Advocate's City, State Zip]
[Advocate's Phone]

TRIBAL COURT

,
Plaintiff,
v.

AFFIDAVIT OF MAILING

,
Defendant.

Docket No.
Case No.

I, _____, secretary for _____ of _____, being duly sworn, am not an interested party to the above-captioned action and state that on _____, I mailed properly, enclosed in a postage-paid envelope, and true and correct copy of the ANSWER to the following at the addresses listed.

[Name of Party1]
[Address]
[City, State Zip]

[Name of Party2]
[Address]
[City, State Zip]

[Print Name]

Subscribed and sworn to before me on
this _____ day of _____ 20____.

[Type Notary's name here], Notary Public
County, State of Wisconsin.
My Commission Expires: _____.

1.2 ANSWER

In general, the purpose of an answer is to inform the court and the plaintiff of all the matters of defense on which the defendant intends to rely. Court rules typically require that the answer must assert every defense, both in law and in fact. However, some court rules do provide for the raising of specified defenses at any time during the action, so it is important to familiarize yourself with the court rules concerning when specific defenses can be raised. For example some courts allow the defendant to raise a lack of jurisdiction defense even before the defendant answers the complaint.

The answer must be filed with the court within the time allowed by the court's rules. So it is imperative that the court's rules are consulted for determining the amount of time the defendant has to answer.

In drawing up the answer, follow the formal requirements laid out in Section 1.

In the body of the answer, the defendant must admit, deny, or claim insufficient knowledge as to each and every allegation in the complaint on which the plaintiff relies. The defendant must answer the allegations in good faith, and defendants can rarely, if ever, answer with a general denial. A denial should be directed specifically at an allegation and should deal with the substance of the allegation. If only a part of the allegation is being denied, the defendant can only deny that part and must either admit the rest of the allegation or claim insufficient knowledge as to the rest of the allegation.

The court's rules may require that certain defenses be raised affirmatively, rather than in a denial; therefore, make sure the body of the answer properly details these defenses. Keep in mind that the list of defenses in the court rules which must be raised affirmatively is not always exhaustive.

In addition, the court rules may require the defendant to make any and all counterclaims in the body of the answer, and if they are not made, then the defendant may lose the ability to raise them again. Therefore, it is important to check the court rules on counterclaims.

This form and discussion are also applicable to answers to cross claims, answers to counterclaims, and third-party answers. Be sure the document caption states the type of pleading being filed.

Plaintiff, ANSWER

v.

Defendant. Docket No.
Case No.

1. Admits that the parties are residents of the Indian reservation, and therefore, the court has jurisdiction over the parties and the subject matter in this action pursuant to Article of the Constitution of the Tribe and Sections of the Tribal Code.
2. Admits each and every allegation contained in paragraphs 2, 3, and 4.
3. Admits the allegation in paragraph only as it alleges that defendant but denies the rest of the allegations contained in paragraph .
4. Denies each and every allegation contained in paragraphs .

Dated this day of 20 .

[Advocate's Name]
Advocate for the Defendant
[Advocate's Address]
[Advocate's City, State Zip]
[Advocate's Phone]

TRIBAL COURT

,

Plaintiff,

AFFIDAVIT OF MAILING

v.

,

Defendant.

Docket No.

Case No.

I, _____, secretary for _____ of _____, being duly sworn, am not an interested party to the above-captioned action and state that on _____, I mailed properly, enclosed in a postage-paid envelope, and true and correct copy of the ANSWER to the following at the addresses listed.

[Name of Party1]

[Address]

[City, State Zip]

[Name of Party2]

[Address]

[City, State Zip]

[Print Name]

Subscribed and sworn to before me on
this _____ day of _____ 20____.

[Type Notary's name here], Notary Public

County, State of Wisconsin.

My Commission Expires: _____.

1.3 NOTICE AND STATEMENT OF CLAIM

This form is utilized by the Lac du Flambeau Tribal Court and is similar to the complaint shown in Section 1.1. Like a complaint, this form is filed by a plaintiff and initiates a legal action. This form is similar to an affidavit and is designed so that laymen can understand it and use it with ease.

The plaintiff must include the names of the defendants and a brief but specific description of the claim, i.e. how the matter arose, the nature of the damages, and the amount of the plaintiff's claim. Before filing, the plaintiff must sign the claim and have it notarized.

,

V.

,

Docket No.
Case No.

PLAINTIFF'S STATEMENT OF CLAIM

1. resides at [Address], [City, State].

3. Defendant [Name of 2nd Defendant] is employed as [Position or Title] at [Employer & Employer's Address].

On the space provided on the following pages, tell what specific incidents occurred which lead you to believe that you have a cause of action against the defendant(s). The nature and the amount of the claim shall be stated in concise, non-technical language and shall give the date or dates when the claim arose. IT IS IMPORTANT THAT THE ALLEGATIONS BE BRIEF, BUT SPECIFIC.

[illegible]

[illegible]

Under oath, I state that the above complaint is true, except as to those matters stated upon information and belief, and as to those matters, I believe them to be true.

Signature of Attorney/Plaintiff	Date	Address:
[Type Attorney/Plaintiff Name here]		Phone:

Subscribed and sworn to before me
on this day of 20 .

[Type Notary's Name here], Notary Public
County, Wisconsin
My commission expires ____.

1.4 SMALL CLAIMS NOTICE AND STATEMENT OF CLAIM

This form is based on the form that the Lac du Flambeau Tribal Court uses for Small Claims actions. This form is used by the plaintiff to initiate a small claims action. Like the form in Section 1.3, this affidavit-style form is designed so that a layman can use it with ease.

The plaintiff must include the names of the parties and choose whether they are seeking money damages or the return of property. There is space provided for the plaintiff to give a brief statement of the facts surrounding this action, and the plaintiff can attach additional information as needed. The plaintiff must sign the form and have it notarized.

If the tribal court you are practicing in handles small claims actions, be sure to check the court rules and applicable tribal code to determine whether the court requires additional information for the filing of a small claims action.

TRIBAL COURT

[Plaintiff Name]
[Plaintiff Address]

,

PLAINTIFF,

v.

[Defendant Name],
[Defendant Address]

,

DEFENDANT.

NOTICE AND STATEMENT OF CLAIM

WHEN TO APPEAR:

Date: _____

Time: _____

Place: Tribal Courtroom

Docket No.

Case No.

TO THE DEFENDANT: You are being sued as described below.

If you wish to dispute this matter:

1. You must appear at the time and place stated on this form.
2. You may file a written answer on or before the date and time stated on this form. (A duplicate copy must be provided to the plaintiff/attorney.)

PLAINTIFF'S STATEMENT OF CLAIM

State of Wisconsin)
) SS
County of)

The Plaintiff states the following claim against the Defendant:

1. Plaintiff demands judgment for:
☐ Money;
☐ Return of property (replevin), plus interest, costs, attorney fees, if any, and such other relief as the court deems proper.

-
2. Brief statement of dates and facts:

☐ Mark box if additional information is attached.

Under oath, I state that the above complaint is true, except as to those matters stated upon information and belief, and as to those matters, I believe them to be true.

Signature of Attorney/Plaintiff [Type Attorney/Plaintiff Name here]	Date	Address: Phone:
--	------	------------------------

Subscribed and sworn to before me
on this day of 20 .

[Type Notary's Name here], Notary Public
County, Wisconsin
My commission expires _____.

SECTION 2. USE OF AFFIDAVITS

Affidavits are used to furnish the court with facts necessary for its decision on certain requested actions. Courts often treat the contents of an affidavit as evidence, but because affidavits typically lack some of the essential safeguards of live testimony, affidavits are accepted only in selected situations to perform limited and well-defined functions that vary according to necessity and the court's rules.

Statements in affidavits should concern personal knowledge; if the statements are not made on the basis of personal knowledge, the statements can be rejected as hearsay.

Affidavits should be attached to and filed with the motion or other paper they support, and copies must be served upon all other parties at the same time and in the same manner.

2.1. FORM OF AFFIDAVIT

The title of the affidavit must be the same as any other document filed in the action: court's name, the action's title, the number of the action, and the type of document.

Practically all affidavits are sworn before notaries public, a simple procedure. Almost all tribal offices and banks have a notary public available for notarizing documents for the public.

TRIBAL COURT

,

Plaintiff,

AFFIDAVIT

v.

,

Docket No.
Case No.

Defendant.

State of Wisconsin)
) SS
County of)

, being first duly sworn states the following:

1. I, , reside at .
2. [State facts to be sworn to]
3. [State facts to be sworn to]
4. [State facts to be sworn to]
5. This concludes my statement.

[Type Name here]

Subscribed and sworn to before me on
this day of 20 .

[Type Notary's Name here], Notary Public
County, State of Wisconsin
My Commission expires: _____

SECTION 3. FORM OF ORDER

Orders are acts of the court. Attorneys, advocates, and litigants rarely have a legal right to participate in their formulation. In practice, however, the clerical function of drafting an order for a judge's signature is normally delegated to the attorney or advocate requesting the order. It is standard procedure for an attorney or advocate filing a written motion to prepare an order granting the motion and to have the order available at the hearing on the motion. If the judge rules in that attorney's or advocate's favor, the order can be signed and made part of the case record immediately.

Orders should conform as nearly as possible to the other documents in the case file; in other words, the titles, headings, and other formal portions should be made identical to other documents filed in the case.

TRIBAL COURT

,

Plaintiff,

ORDER

V.

,

Docket No.
Case No.

Defendant.

THIS MATTER coming on for hearing on _____'s Motion and in consideration of the affidavits given by _____, and the testimony given by _____, it is hereby

ORDERED, ADJUDGED, AND DECREED that

- 1.
- 2.
- 3.

Dated this day of 20 .

[Type Judge's Name]
Tribal Court Judge

SECTION 4. JUDGMENTS

A judgment is the final determination of the rights of the parties in an action or proceeding and can include any decree or order from which an appeal lies. A judgment is also viewed as the document that records the court's final decision and award.

The use of a document to record the court's judgment is based on the premise that the court's ultimate determination should be reduced to writing and become part of the permanent record. Written judgments are useful for avoiding present or future misunderstandings about the final disposition of the case. In addition, the judgment provides the factual basis for deciding post-trial motions and appeals. The entry of the judgment into the court's record also signifies the beginning of time periods for the appeal of the judgment.

Most courts treat the framing and recording of the judgment as a mechanical task, to be performed in all normal situations by the court or the clerk.

A judgment, like all other court orders, is an act of the court with which attorneys and advocates typically have no right to interfere. However, courts can, and often do, direct the prevailing party to draft a judgment in accordance with the court's findings of fact and conclusions of law.

Judgments should conform as nearly as possible to the other documents in the case file; in other words, the titles, headings, and other formal portions should be made identical to other documents filed in the case.

TRIBAL COURT

,

Plaintiff,

JUDGMENT

v.

,

Defendant.

Docket No.
Case No.

This action came before the court for on , 20 . The issues were **HEARD** and a decision rendered. It is hereby

ORDERED, ADJUDGED, AND DECREED, by the facts in evidence, that

Dated this day of 20 .

[Type Judge's Name]
Tribal Court Judge

SECTION 5. PROCESS AND SERVICE OF PROCESS

A civil action is commenced by filing a complaint with the court, but the court does not have jurisdiction to hear and determine the cause until the petitioner has served process on THEIR adversary and has filed adequate proof with the court that process has been served.

“Process” is a general term covering all authorized methods of conveying notice to a party against whom an action is filed that the action has been filed and that a response must be submitted or the party will lose by default.

The issuance of a summons is an act of the court, usually done by the clerk, but the petitioner or the petitioner’s attorney or advocate is responsible for making sure that the summons is issued. The petitioner or the attorney or advocate must furnish the person serving process with all of the copies of the complaint and summons necessary to accomplish service on all respondents.

,

V.

,

Defendant.

[Type Judge's Name]
Tribal Court Judge

RETURN OF SERVICE

I received this Summons on the day of 20 .

☐ I served the Defendant on the day of 20 , at [AM or PM].

☐ I was unable to serve the Defendant because .

Police Officer

5.1 AFFIDAVIT OF PERSON SERVING PROCESS

Where service of process is made by a person other than a designated officer, proof of service should be made by affidavit. Service should be made by a person over the age of 18 and not involved in the case. The affidavit should include a statement that the person was qualified to perform service of process and the time, date, place, and manner of the service.

TRIBAL COURT

	,	
	Plaintiff,	AFFIDAVIT OF SERVICE
v.		
	,	Docket No.
		Case No.
	Defendant.	

I, , being first duly sworn, state the following:

1. That I am over the age of 18 years and am not a party to the above entitled action.
2. That I served the attached Summons upon , whom I know to be the person named as defendant in the complaint in this action and to be the person intended to be served, by delivering to [him/her] copies of this Summons and the Complaint upon which it was issued.

[Type Name here]

Subscribed and sworn to before me on
this day of 20 .

[Type Notary's Name here], Notary Public
County, State of Wisconsin
My Commission expires: _____

5.2 SUBPOENA

When notice has been given to all parties that the deposition of a non-party witness is to be taken, and proof of service of that notice has been filed, the Clerk of Court may issue a subpoena for attendance of the witness.

A subpoena is an official order of the court and is the process used for requiring the attendance of the witness. An advocate or attorney must use the form adopted by the tribal court and, if necessary, alter it to his needs by striking out or inserting words in the printed form. Because the subpoena is a form of process, it must be served personally upon the witness in a manner similar to that of a summons on a party.

If the subpoena is served by someone other than an official, the original is filed with an affidavit of service (see Section 5.1).

TRIBAL COURT

,
Plaintiff,
v.
,
Defendant.

SUBPOENA

Docket No.
Case No.

The Tribe sends Greetings to .

You are ordered to appear before the Honorable Judge at Tribal Courthouse
at [AM/PM] on , 20 , then and there to testify in the above entitled action now
pending in the Tribal Court of the Tribe.

Disobedience of this order may be punished as contempt of said court.

By the order of the Honorable , Judge of the Tribal Court, this day of
20 .

ATTEST, my hand the seal of said Court, the day and year last above written.

Clerk of the Tribal Court

Deputy

5.3 CERTIFICATE OF SERVICE

This form is based on one used by the Lac du Flambeau Tribal Court. It is a Certificate of Service form used when it is an officer who is serving the defendant.

On this form, the officer performing service should provide the name of the person who was served and detail what forms or paperwork were served on the person. In addition, the officer must notate the date and time of service. The officer needs to specify whether the defendant was personally served or whether it was left at the defendant's residence with a family member who the officer knows is older than 14. However, be sure to check the applicable tribal court rules, they may require this latter form of service to be made by serving an older family member. In addition, the officer may be able to perform service by serving the defendant's legal representative or agent.

The officer should list the number of attempts made to serve the defendant and should sign and date the certificate of service.

CERTIFICATE OF SERVICE

The undersigned officer hereby certifies, under oath, that [he/she] served with an authenticated copy of _____ in the matter of _____ vs. _____ on the _____ day of _____ 2013, at _____ [AM/PM].

OTHER:

☐ Personally giving it to the defendant: _____

☐ Leaving it at the defendant's residence with a family member I know is at least 14 years old: _____, having informed [him/her] of the contents.

☐ Giving it to a legal representative or agent of the defendants: _____

ATTEMPTS WERE MADE TO PERSONALLY SERVE THE DEFENDANT AS FOLLOWS:

1.

2.

3.

4.

Dated this _____ day of _____ 20____.

[Title]

Service Fee:

Travel/mileage:

5.4 CERTIFICATE OF SERVICE (II)

Like the form in Section 5.3, this is a certificate of service form which is based on one used by the Lac du Flambeau Tribal Court. However, this form is meant to be used when papers are being served by the Clerk of Court by mailing the papers to the interested parties.

The clerk must sign this form and state that he/she is an employee of the court and is competent to serve papers. The clerk must state the date he/she mailed the papers, detail what papers were mailed, and state to whom the papers were mailed.

IN THE TRIBAL COURT

In the matter of:

vs.

CERTIFICATE OF SERVICE

I, _____, hereby certify that I am an employee of the _____ Tribal Court and am a person of such age and discretion as to be competent to serve papers.

On _____, 20____, I served a copy of the _____ through ordinary mail to all interested parties, namely _____.

Clerk of Tribal Court

SECTION 6. DISCOVERY

The forms and procedures used in the discovery process differ somewhat from those used in pleading and motion practice because very few of them are directed to the court or require court action. Discovery is a process designed to be carried out by the attorneys and advocates and to function without the need of outside intervention or supervision. The court is normally called upon only when one party requests protection from improper demands made by another party or needs help in securing material to which it is rightfully entitled.

Instead of using motions directed to the court, discovery functions mainly through notices or requests made directly by one party to another. Requests and compliances are usually exchanged and performed by mutual agreement, but discovery documents must be served, recorded, and filed in the manner required by the court's rules.

Titles, captions, and other matters of form are the same on discovery documents as on all others in the action.

6.1 SUBPOENA *DUCES TECUM*

This form of subpoena is used to compel the production of items like documents, objects, etc., for inspection by a party to a lawsuit. If such a subpoena is issued to a nonparty witness, this fact should be disclosed and a list of the materials to be demanded should be included in the Notice of Deposition which is served on all parties as a necessary prerequisite to the issuance of the subpoena by the Clerk of Court.

The person served with the subpoena is typically allowed to file written objections to the production of the requested documents. The filing of written objections prevents any inspection by the demanding party unless, upon motion served on the deponent, the party seeking the documents secures a court order requiring the objecting party to turn over the documents or allow the inspection of the documents. The court may also, on proper application, quash or modify the subpoena and require the demanding party to advance the costs of production.

Documents or objects produced by subpoena may be annexed to the deposition of the witness, marked and returned to the deponent by the officer conducting the deposition, or have verified copies substituted for them.

Like the subpoena for personal appearance, the subpoena *duces tecum* is a court order, and the court may have adopted a standard printed form. If the court has its own printed form, it should be used and adapted to the circumstances.

TRIBAL COURT

,
Plaintiff, **SUBPOENA DUCES TECUM**
v.
,
Defendant. Docket No.
Case No.

The Tribe sends Greetings to .

You are ordered to produce before Honorable Judge at Tribal Courthouse at
, on , 20 , then and there to testify in the above entitled action now pending in
the Tribal Court of the Tribe. You are further instructed to bring with you and produce
the following items:

Disobedience of this order may be punished as contempt of said court.

By the order of Honorable , Judge of the Tribal Court, this day of
20 .

ATTEST, my hand the seal of said Court, the day and year last above written.

[Type Name here]
Clerk of the Tribal Court

[Type Name here]
Deputy

6.2 NOTICE OF TAKING DEPOSITION

The notice of taking deposition frequently serves two separate purposes: (1) it is the formal notice to the party to be deposed that he must appear at the item and place stated; and (2) it gives any additional parties to the lawsuit notice of the proceeding, at which they have a right to attend and participate in.

The notice for taking the deposition of a non-party witness is identical or similar in form to the notice for deposing a party, but it serves a somewhat different function and must be supplemented by subpoena to be effective. A notice is not sufficient, in and of itself, to compel the attendance of a non-party deponent. The purposes of this notice are (1) to inform the other parties to the action that the witness is to be deposed and of their right to be present and participate, and (2) to authorize issuance of a subpoena to the deponent which will compel his attendance.

The parties, by filing the complaint or being served with process, have come under the jurisdiction of the court and must comply with all the commands of the court's rules. A witness who is not a party is brought within the court's jurisdiction only by a direct order to her by the court - a subpoena. No subpoena to a non-party can be issued until the notice of taking his deposition has been served on all parties and proof of this fact has been made to the clerk of court.

Unless and until the non-party witness is served with a subpoena and/or a subpoena *duces tecum*, they are under no obligation to appear or produce anything. When they have been served, however, they are required to appear and produce the required documents; failure to do so may be punished as a contempt of court.

Although witnesses, like parties, are frequently willing to appear for deposition voluntarily, the notice to all parties must be given, and the necessary subpoenas should be served for the protection of both the witness and the party calling the witness.

TRIBAL COURT

,
Plaintiff,
v.
,
Defendant.

**NOTICE OF
TAKING DEPOSITION**

Docket No.
Case No.

To: [Name] [Address1] [Address2] [City, State Zip]	[Name] [Address1] [Address2] [City, State Zip]
---	---

Take notice that Defendant will take the oral deposition as set forth below.

Witness:	[Name] _____
	[Address1] _____
	[Address2] _____
	[City, State Zip] _____

Date:	_____, 20
Time:	_____ AM / PM

Place:	Offices of _____

Dated this day of 20 .

[Name of Advocate/Attorney]
[Address of Firm]

[Phone Number]

I certify that on , 20 ,
I served the within document by mail,
postage prepaid.

[Document] _____

[Name]

6.3 INTERROGATORIES

Court rules usually allow any party to serve interrogatories on any other party. A copy of the interrogatories should usually be filed with the court, depending on the court's rules. Interrogatories may concern any matter which is relevant to the subject matter involved in the filed action and need not be restricted to information that would be admissible at the trial. A party can usually inquire about anything that is reasonably calculated to lead to the discovery of admissible evidence.

Interrogatories can be used separately or in combination with other discovery devices, and the frequency of their use is usually not limited by the court's rules unless it becomes burdensome or oppressive to the other party.

Courts typically require the filing of interrogatories. This protects the party serving the interrogatories if the other party refuses to answer them. Proof of service is usually required.

6.4 INTERROGATORIES TO PARTIES

Written interrogatories from one party to another are the most frequently used, most economical, and usually the most productive means of discovery. They are better adapted to discovery of facts or evidence than to preservation of testimony. The first step in preparation of a case by any party is usually the dispatch of a series of interrogatories to the opposing party or parties requesting, among other things, the identification of persons, documents, or other sources which may furnish or lead to useful information.

interrogatories are also valuable to supplement knowledge gained from other sources or by other means. Successive inquiries may be sent to the same party, limited only by the general prohibitions against oppression, annoyance, or undue burden and expense. Used alone or in combination with other discovery devices, interrogatories can furnish a lawyer or advocate with evidence usable in his own case, reveal to him the evidence that will be used by his opponent, and lead him to sources and materials of which he would otherwise be unaware.

When drafting interrogatories, keep in mind that they should deal with issues and information which are discoverable and relevant to the case at hand.

Interrogatories must be answered fully and completely, or sanctions may be imposed, according to the court's rules.

Although interrogatories are better suited to discovery of facts than to development of testimony, the answers must be made under oath and can be used to impeach the testimony of the party at the trial or for any other purpose permitted by the court's rules of evidence.

TRIBAL COURT

,
Plaintiff,
v.
,
Defendant.

**PLAINTIFF'S FIRST SET
OF INTERROGATORIES TO
DEFENDANT**

Docket No.
Case No.

To: [Defendant's Name], Defendant
c/o [Advocate's Name], Advocate for Defendant

You are required to answer under oath the interrogatories set forth below, within 30 days of the time of service.

Instructions:

- (a) You must answer each interrogatory separately and fully in writing under oath, unless it is objected to, in which event the reason for the objection must be stated in lieu of the answer.
- (b) Information to be disclosed includes that which is in the possession of you, your advocates or attorneys, investigators, agents, employees, or other representatives of you and your advocate or attorney.
- (c) Where an individual interrogatory calls for an answer which involves more than one part, each part of the answer should be clearly set out so that it is understandable.
- (d) Each interrogatory or sub-question must be repeated immediately before the answer to it. Answers must be signed by the person making them. Objections must be signed by the attorney, advocate, or unrepresented party making them.
- (e) Where the term "you," "Plaintiff," or "Defendant" are used, they are meant to include every individual party, and separate answers should be given for each person named as a party.
- (f) An evasive or incomplete answer is deemed to be a failure to answer.
- (g) You are under a continuing duty to seasonably supplement your answers to these interrogatories with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, and the identity of each person expected to be called as an expert witness at trial, or the subject matter on which he or she is expected to testify. Further, you are under a continuing duty to correct any incorrect response when you later learn that it is incorrect.

INTERROGATORIES

Name:

1. State your full name, age and place of birth.

Answer: _____

2. Have you ever been known by any other name?

Answer: _____

Residence:

3. State your present address and the times when you have lived at this address.

Answer: _____

Employment:

4. What was your business or occupation at the time of the incident referenced in the complaint? As to your business or occupation, state:

- (a) Name and address of your employer.
- (b) Position held and type of work you performed.
- (c) Were you working at the time of the incident?

Answer: _____

Crimes or Imprisonment:

5. Have you ever pleaded guilty to or been convicted of any crime other than traffic violations? If yes, please state:

- (a) The nature of the offense.
- (b) The date.
- (c) The sentence given you.
- (d) The location this took place.

Answer: _____

Traffic Violations:

6. List all violations of the motor vehicle or traffic laws or ordinances to which you have pleaded guilty or *nolo contendere* and of which you have been found guilty, the date of the offense, the court where the case was heard and the type of violation charged.

Answer: _____

Driver's License:

7. At the time of the incident referenced in the complaint, did you have a valid driver's license?

Answer: _____

Facts of the Accident:

8. State in detail how you think the incident referenced in the complaint occurred, including the speed, position, direction, and location of each vehicle involved during its approach to, at the time of, and immediately after the collision.

Answer: _____

9. Do you, the Defendant, believe or have information tending to show that the injuries claimed to have been sustained by Plaintiff were caused or contributed to by any negligent act or omission on the part of anyone not named as a defendant in this suit?

Answer: _____

10. Do you the Defendant believe or have information tending to show that Plaintiff was guilty of any negligence causally contributing to the injuries referenced in the complaint?

Answer: _____

Statements by Plaintiff:

11. Does Defendant have any information tending to establish that Plaintiff made any statement or statements in any form to any person regarding any of the events or happenings referenced in the complaint?

Answer: _____

Statements by Defendant:

12. State the full name and last known address, giving the street, street number, city and state, of every witness known to you or to your attorneys who claims to have seen or heard the Defendant driver make any statement or statements about any of the events or happenings alleged in the complaint.

Answer: _____

Identity of Witnesses:

13. State the full name and last known address, giving the street, street number, city and state, of every witness known to you or to your advocate or attorney who has any knowledge regarding the facts and circumstances surrounding the incident

referenced in the complaint or your alleged injuries, including, but not limited to eyewitnesses to the event, as well as medical witnesses and other persons having any knowledge regarding the incident.

Answer: _____

Statements of Witnesses:

14. State whether you, your advocate or attorney, your insurance carrier, or anyone acting on your or their behalf obtained statements in any form from any persons regarding any of the events or happenings that occurred at the scene of the incident referenced in the complaint immediately before, at the time of, or immediately described in the complaint:

Answer: _____

Dated this day of 20 .

[Name of Advocate/Attorney]
[Address of Firm]

[Phone Number]

SECTION 7. LACK OF JURISDICTION

The defendant or respondent can move for dismissal of the action on the basis that the court lacks either subject matter jurisdiction or lacks jurisdiction over the person. Courts are usually in a position to raise the lack of subject matter jurisdiction on their own, or the defendant can raise this issue at any point.

A court's subject matter jurisdiction often depends on the tribe's codes and ordinances. If they do not enable the court to determine a certain issue, then the court will not have subject matter jurisdiction and must dismiss any action brought which concerns an issue the court is unable to determine.

The most common situation where a tribal court's lack of personal jurisdiction would become an issue is when the defendant is a non-Indian; however, in some cases, the court will still have personal jurisdiction over a non-Indian defendant.

In determining whether or not the court has subject matter and personal jurisdiction over your case, it is important to examine the tribal code and ordinances, the court's rules, and applicable federal law and court cases.

A motion to dismiss can usually be made prior to answering the complaint. Such a motion can be made on the basis that the complaint shows a lack of jurisdiction on its face or on the basis of facts not in the complaint. If the motion is made on the basis that facts not indicated in the complaint show a lack of jurisdiction, the pertinent facts must be brought to the attention of the court. In order to bring these pertinent facts to the court's attention, it is permissible to use affidavits or declarations, and these documents should be referred to by the motion.

,

V.

,

Docket No.
Case No.

SECTION 8. SUMMARY JUDGMENT

The main purpose of a trial is to determine disputed questions of fact; however, not all disputes involve disputed questions of fact. Many of them concern disputed questions of law. If the parties to a legal action are only contesting the proper application of the law to the facts, there is no reason for a trial. Instead the party should make a motion for summary judgment.

Each party must furnish the court materials setting forth its position on each question. The legal arguments will be advanced in briefs supporting or opposing the summary judgment motion.

If the judge determines that there are no facts in dispute in the whole action, the judge can then decide the disputed legal issues and render a final judgment. If the judge finds factual disagreements on some parts but not on others, the judge may determine the uncontested parts and reserve the rest for trial. Two questions are presented to the court: (1) Is there a factual dispute? (2) If not, which party is entitled to judgment as a matter of law?

8.1 MOTION FOR SUMMARY JUDGMENT

This motion, like all written motions, must be noticed, served, and filed. If affidavits are used in support of the motion, they must be served with the motion. Proof of service is required.

,

V.

,

Docket No.
Case No.

Please take notice that plaintiff, by his advocate, _____, will appear before the presiding judge at the tribal courtroom of the _____ Tribe on _____, 20____, at _____ [AM / PM] and move the court to enter an order of summary judgment in favor of plaintiff in accordance with the motion set forth below:

MOTION

Plaintiff, by His advocate, moves the court for an order, pursuant to statute of summary judgment in favor of plaintiff on the grounds that there is no genuine issue of material fact and that plaintiff is entitled to judgment as a matter of law. The motion is based on the pleadings filed in this action and the attached affidavit of _____.

Dated this day of 20 .

[Name of Advocate/Attorney]
[Address of Firm]

[Phone Number]

SECTION 9. NOTICE OF APPEARANCE

A party may appear personally or through an attorney or advocate. By filing a notice of appearance, the court and the opposing party are put on notice that the party for whom the notice is being filed has a legal representative in this matter. By filing a notice of appearance, the other parties in the action become aware that the attorney or advocate is entitled to notification of all subsequent proceedings and to receive copies of all papers.

TRIBAL COURT

NOTICE OF APPEARANCE

,
Plaintiff,
v.
,
Defendant.

Docket No.
Case No.

To: [Advocate for Plaintiff]
[Address1]
[Address2]
[City, State Zip]

Please take notice that I am retained by, and appear for, the defendant, , in this action.

Dated this day of 20 .

[Name of Advocate/Attorney]
[Address of Firm]

[Phone Number]

9.1 CONSENT NOTICE & ORDER FOR SUBSTITUTION OF COUNSEL

The appearance of an attorney or an advocate will continue until the court issues an order of substitution of counsel. Although the general premise is that a party is free to hire and fire an attorney or advocate at will, reality can be different. Once an action has been filed in court, the party wishing to fire their counsel will need the court's permission to do so. The justification for this requirement is that the court has an interest in making sure that substitution of counsel will not create any undue hardship on the parties involved in the case. For example a court is likely to frown upon a request for substitution of counsel that is filed the day before the trial is scheduled to start.

In addition, the court's rules of professional conduct specify situations in which an attorney or advocate must withdraw from representing a party and situations in which the attorney or advocate may withdraw. Again, once the action has been filed in a court, the attorney or advocate will need the court's permission to withdraw, even in cases where the rules say the attorney or advocate must withdraw. Even in cases of mandatory withdrawal, the attorney or advocate usually must have his client sign a consent form.

Always be familiar with the rules of professional conduct applicable to the court in which you are practicing.

TRIBAL COURT

**CONSENT NOTICE
AND ORDER FOR
SUBSTITUTION OF COUNSEL**

,
Plaintiff,

v.

,
Defendant.

Docket No.
Case No.

NOTICE

The undersigned hereby consent that be substituted in place of as advocate of record for the Plaintiff, , in this action for the reasons stated in the attached affidavit, and that an order accordingly be entered.

Dated this day of 20 .

[Client's Name]

[Former Advocate/Attorney]

ORDER

Please take notice that there is now served on you a copy of the order entered on ,
20 , substituting as counsel of record for the Plaintiff, , in this action.

Dated this day of 20 .

[Name of New Advocate/Attorney]

[Address of Firm]

[Phone Number]

Based on the above consent, the court hereby permits substitution of counsel.

[Name of Judge]

9.2 NOTICE OF SUBSTITUTION OF COUNSEL

This is essentially the same as a notice of appearance but is filed by the party's new advocate or attorney. Again, the reason for filing this notice is to inform the court and other parties involved that you are now your client's legal representative in this action and are entitled to notification of all proceedings and copies of all court filings.

TRIBAL COURT

**NOTICE OF SUBSTITUTION
OF COUNSEL**

,
Plaintiff,
v.
,
Defendant.

Docket No.
Case No.

NOTICE

To: [Name of Advocate], Attorney or Advocate for, [their Client]
[Advocate's Address]
[City, State Zip]

Please take notice that there is now served on you a copy of the Order entered on
, 20 , substituting [Name of New Advocate] as counsel of record for the [Plaintiff] in
this action.

Dated this day of 20 .

[Name of New Advocate/Attorney]
[Address of Firm]

[Phone Number]

SECTION 10. PETITION FOR DIVORCE (NO MINOR CHILDREN)

A petition for divorce should set forth the names, birth dates, social security numbers, and occupations of the parties. The petition should also provide the date and place the marriage began. The facts concerning the residence of the parties should be detailed for jurisdictional purposes.

If either party to the divorce had a previous marriage, the petition should include information concerning how and when that marriage was terminated. If a previous marriage was terminated by a court judgment, the petition should include the name of the court that issued the judgment, as well as when and where the judgment was issued. In addition, the petition should include any information concerning whether either party had previously filed a petition to terminate the current marriage, especially if that action is currently pending in another court.

The petition should state any relief requested concerning maintenance or property division matters. In addition, the party filing the divorce petition must attach any written agreements concerning the maintenance of either party and property division.

Divorce laws rarely require the petition for divorce to state specific allegations of statutory grounds for granting the divorce; however, the petition usually must state that the marriage is irretrievably broke, or in the alternative, that both parties agree that the marriage is irretrievably broken. Be sure to check with the court's rules and the tribal code.

TRIBAL COURT

In re the Marriage of:

,

Petitioner,

-and-

,

Respondent.

PETITION FOR DIVORCE (NO MINOR CHILDREN)

Docket No.
Case No.

This court has jurisdiction over the subject matter and parties in this action pursuant to Article _____ of the Constitution of the _____ Tribe and Sections _____ of the tribal code.

1. The petitioner, born _____, resides at _____ in the city of _____, County of _____, Wisconsin, and is an enrolled member of the _____ Tribe of Indians, residing within the exterior boundaries of the Indian Reservation; the petitioner is by occupation a _____ and has Social Security Number _____.
2. The respondent, born _____, resides at _____ in the city of _____, County of _____, Wisconsin, and is an enrolled member of the _____ Tribe of Indians, residing within the exterior boundaries of the Indian Reservation; the petitioner is by occupation a _____ and has Social Security Number _____.
3. The parties were married on _____, 20____, at [City], [State].
4. The Petitioner has been a bona fide resident of the _____ Tribe for more than _____ days immediately preceding the commencement of this action and of the state of Wisconsin for more than six months immediately preceding the commencement of this action.
5. _____ child(ren) have been born to or adopted by the parties to this marriage, namely:

Name

Birthday

Age

(Names, dates of birth, and ages of all children, including
deceased, emancipated, and adopted children)

6. Upon information and belief, the wife [is / is not] pregnant.
7. The marriage is irretrievably broken.

8. No other action for divorce, annulment, or legal separation by either of the parties has been at any time commenced or is now pending in any other court or before any judge thereof in this Tribe or elsewhere (except:).
9. The petitioner [was / was not] previously married (which marriage was terminated by in the Tribal Court or Court of County, in the State of by judgment on , 20 . The respondent [was / was not] previously married (which marriage was terminated by in the Tribal Court or Court of County, in the State of by judgment on , 20 .
10. The parties [have / have not] entered into [a / any] agreement(s) as to (maintenance/property division) (a copy of which agreement(s) (is/are) attached).
11. Pursuant to Sections of Tribal Ordinance , this action affects real property. Therefore, the court will be required to confirm or change interests in the real property that is described as follows: [type legal description of property]

THE PETITIONER REQUESTS THE FOLLOWING RELIEF:

- ☐ Divorce
- ☐ Property division.
- ☐ Maintenance.
- ☐ Advocate fees and costs.
- ☐ Income assignments.
- ☐ Restoration of legal surname.
- ☐ Such other relief as is appropriate.

YOU ARE HEREBY NOTIFIED THAT pursuant to Tribal Statutes , during the dependency of this action, both parties are prohibited from and may be held in contempt of court for:

- (1) Harassing, intimidating, physically abusing, or imposing any restraint on the personal liberty of the other party or a minor child of either of the parties.
- (2) Encumbering, concealing, damaging, destroying, transferring, or otherwise disposing of property owned by either or both of the parties, without the consent of the other party or an order of the court or family court commissioner, except in the usual course of business, in order to secure necessities or in order to pay reasonable costs and expenses of the action, including advocate fees.

These restraining orders apply until the action is dismissed, a final judgment in the action is entered, or the court orders otherwise.

A VIOLATION OF THE ABOVE RESTRAINING ORDERS MAY RESULT IN PUNISHMENT FOR CONTEMPT, WHICH MAY INCLUDE MONETARY PENALTIES, IMPRISONMENT, AND OTHER SANCTIONS.

Dated this day of 20 .

[Advocate for the Petitioner]

[Address of Firm]

[Phone Number]

10.1 PETITION FOR DIVORCE (WITH MINOR CHILDREN)

If either party has any minor children, the petition should provide the names and birthdates of the children. If the wife is currently pregnant, the petition must inform the court of this fact.

In situations involving minor children, the petition should state any relief requested that concerns custody and child support matters. In addition, the party filing the petition for divorce must attach any written agreement concerning the support, legal custody, and physical placement of the children.

In addition, this petition must also include all the information required in a Petition for Divorce (no minor children). See Section 10.

TRIBAL COURT

In re the Marriage of:

,

Petitioner,

-and-

,

Respondent.

PETITION FOR DIVORCE (WITH MINOR CHILDREN)

Docket No.
Case No.

This court has jurisdiction over the subject matter and parties in this action pursuant to Article _____ of the Constitution of the _____ Tribe and Sections _____ of the tribal code.

1. The petitioner, born _____, resides at _____ in the city of _____, County of _____, Wisconsin, and is an enrolled member of the _____ Tribe of Indians, residing within the exterior boundaries of the Indian Reservation; the petitioner is by occupation a _____ and has Social Security Number _____.
2. The respondent, born _____, resides at _____ in the city of _____, County of _____, Wisconsin, and is an enrolled member of the _____ Tribe of Indians, residing within the exterior boundaries of the Indian Reservation; the petitioner is by occupation a _____ and has Social Security Number _____.
3. The parties were married on _____, 20____, at [City], [State].
4. The Petitioner has been a bona fide resident of the _____ Tribe for more than _____ days immediately preceding the commencement of this action and of the state of Wisconsin for more than six months immediately preceding the commencement of this action.
5. (a) _____ child(ren) have been born to or adopted by the parties to this marriage, namely:

Name

Birthday

Age

(Names, dates of birth, and ages of minor children)

(b) other child(ren) have been born outside of the relationship.

<u>Name</u>	<u>Birthday</u>	<u>Age</u>
-------------	-----------------	------------

(Names, dates of birth, and ages of minor children)

(c) No other child(ren) have been born to the wife during this marriage (except:).

<u>Name</u>	<u>Birthday</u>	<u>Age</u>
-------------	-----------------	------------

(Names, dates of birth, and ages of minor children)

(d) The petitioner is a fit and proper person to have the legal custody of the minor child(ren).

6. Upon information and belief, the wife [is / is not] pregnant.

7. The marriage is irretrievably broken.

8. No other action for divorce, annulment, or legal separation by either of the parties has been at any time commenced or is now pending in any other court or before any judge thereof in this Tribe or elsewhere (except:).

9. The petitioner [was / was not] previously married (which marriage was terminated by in the Tribal Court or Court of County, in the State of by judgment on , 20 . The respondent [was / was not] previously married (which marriage was terminated by in the Tribal Court or Court of County, in the State of by judgment on , 20 .

10. The parties [have / have not] entered into [a / any] agreement(s) as to (maintenance/property division) (a copy of which agreement(s) (is/are) attached).

11. Pursuant to Sections of Tribal Ordinance , this action affects real property. Therefore, the court will be required to confirm or change interests in the real property that is described as follows: [type legal description of property]

12. The following custody information is given in compliance with Tribal Ordinance:

(a) The minor child(ren) named above presently reside(s) with the [Petitioner / Respondent] at [Address].

- (b) Within the last five years, the minor children have lived at [Address] with the _____, who currently reside at _____. *(Add additional information on another page if necessary.)*
- (c) The petitioner has not previously participated as a party, witness, or in any other capacity in other litigation concerning the custody of the above-named minor child(ren) in this or any other state (except: _____).
- (d) The petitioner is unaware of any other custody proceedings concerning the above-named minor child(ren) pending in a court of this or any other state or tribe (except: _____).
- (e) The petitioner knows of no other person not a party to this action who has physical custody of the minor child(ren) or claims to have legal custody, physical placement, or visitation rights with respect to the minor child(ren) (except: _____, who resides at _____, who has _____ rights).
- (f) The petitioner understands that as a party to this action, [he / she] has a continuing duty to inform this court of any custody proceedings brought concerning the child(ren) in this or any other state of which the petitioner obtains information during this proceeding.

THE PETITIONER REQUESTS THE FOLLOWING RELIEF:

- ☐ Divorce
- ☐ The (joint/sole) legal custody of the minor child(ren)
- ☐ Allocation of periods of physical placement of the minor child(ren) (with primary physical placement of the child(ren) awarded to the [petitioner / respondent])
- ☐ Child Support
- ☐ Property division
- ☐ Maintenance
- ☐ Family Support
- ☐ Advocate fees and costs
- ☐ Income assignments
- ☐ Restoration of legal surname
- ☐ Such other relief as is appropriate

YOU ARE HEREBY NOTIFIED THAT pursuant to Tribal Statutes _____, during the dependency of this action, both parties are prohibited from and may be held in contempt of court for:

- (1) Harassing, intimidating, physically abusing, or imposing any restraint on the personal liberty of the other party or a minor child of either of the parties.
- (2) Encumbering, concealing, damaging, destroying, transferring, or otherwise disposing of property owned by either or both of the parties, without the consent

of the other party or an order of the court or family court commissioner, except in the usual course of business, in order to secure necessities or in order to pay reasonable costs and expenses of the action, including advocate fees.

- (3) Establishing a residence with a minor child of the parties outside the reservation or more than miles from the residence of the other party within the reservation without the consent of the other party or an order of the court or family court commissioner;
- (4) Removing a minor child of the parties from the reservation for more than consecutive days without the consent of the other party or an order of the court or family commissioner;
- (5) Concealing a minor child of the parties from the other party without the consent of the other party or an order of the court or family court commissioner;

except that a violation of paragraphs (3), (4), or (5) above is not a contempt of court if the court finds that the action was taken to protect a party or a minor child of the parties from physical abuse by the other party and that there was no reasonable opportunity under the circumstances for the party to obtain an order authorizing the action.

These restraining orders apply until the action is dismissed, a final judgment in the action is entered, or the court orders otherwise.

A VIOLATION OF THE ABOVE RESTRAINING ORDERS MAY RESULT IN PUNISHMENT FOR CONTEMPT, WHICH MAY INCLUDE MONETARY PENALTIES, IMPRISONMENT, AND OTHER SANCTIONS.

Dated this day of 20 .

[Advocate for the Petitioner]
[Address of Firm]

[Phone Number]

10.2 PARENTING AGREEMENT

This form may prove useful in divorce cases where minor children are involved. Unlike most of the other forms, the only thing to fill out here is the caption. This form is more of a way to get the parents to start thinking about how the divorce will affect their children and force the parents to take into account the rights of the children and what is in the best interests of the children. This form is based on one that is used by the Lac du Flambeau Tribal Court. Refer to the rules of the court you're practicing in to determine whether this form is applicable and, if so, what changes, if any, you will need to make to the text.

TRIBAL COURT

In re the Marriage of:

,

Petitioner,

-and-

,

Respondent.

PARENTING AGREEMENT

Docket No.

Case No.

Both of the parties agree that the marriage is irretrievably broken and that a final divorce is probable. This agreement is made for the purpose of minimizing the impact of the divorce on the child(ren) and to promote (his/her/their) best interests. Therefore, both parties hereafter referred to as parents agree as follows:

I. CHILDREN'S RIGHTS

Both Parents acknowledge that their child(ren) (has/have) important rights, including the following:

- a. The right to a continuing relationship with both parents.
- b. The right to be treated as an important [Tribal Affiliation] human being(s), with unique feelings, ideas, needs, and desires.
- c. The right to continuing care and guidance from both parents.
- d. The right to know and appreciate what is good in each parent, without one parent degrading the other.
- e. The right to express love, affection, and respect for each parent, without having to stifle that love because of fear of disapproval.
- f. The right not to be a source of argument between the parents.
- g. The right not to be used as an instrument by one parent against the other for retaliation, leverage, or coercion.
- h. The right to honest and straightforward answers to questions about the changing family relationships.
- i. The right to be able to experience regular and consistent contact with both parents and to know the reason for any cancellation or change of plans.
- j. The right to have a relaxed, secure relationship with both parents without being placed in a position to manipulate one parent against the other.
- k. The right to know and have full knowledge of (his/her/their) cultural and lineal identity.

II. PARENTS' RIGHTS

Both parents agree that they each, as parents, have important rights, including the following:

- a. The right to make major decisions concerning the child(ren)'s health, social situation, morals, welfare, education, economic environment, culture and traditions, and spiritual influences.
- b. The right to reasonable access to and unhampered contact with the child(ren) upon reasonable prior notice.
- c. The right to authorize emergency medical, surgical, hospital, dental, institutional, psychiatric care, or traditional cultural healing for the child(ren).
- d. The right to be notified in case of the child(ren)'s serious illness.
- e. The right to inspect and receive the child(ren)'s medical and dental records and to consult with any physician, dentist, or traditional doctor treating the child(ren).
- f. The right to consult with school officials concerning the child(ren)'s welfare and educational status and to inspect and receive student records, pursuant to state or tribal codes that allow for such.
- g. The right to receive or have forwarded promptly from the appropriate parent or school copies of all school reports, calendars of school events, notices of parent-teacher conferences, and school programs.
- h. The right to receive or have forwarded promptly from the appropriate parent or agency copies of all evaluations of the children.
- i. The right to provide guidance to the child(ren) and to serve as their primary role model.
- j. The right to be able to provide instruction in spirituality and have direct input into the religious education of the child(ren).
- k. The right to authorize enlistment in the Armed Forces.
- l. The right to grant or withhold permission for the child(ren) to marry.
- m. The right to sponsor the child(ren) in obtaining a driver's license.
- n. The right to be the child(ren)'s legal guardian.

III. PARENTS' GUIDELINES

Both parents agree to abide by the following guidelines for the best interests of their child(ren):

- a. To provide the child(ren) with an emotional environment in which (he/she/they) (is/are) free to continue to love each parent and to spend time with each.
- b. To encourage good feelings in the child(ren) about the other parent and (his/her/their) extended family.
- c. To encourage the child(ren) to remember the other parent on special occasions, allowing (him/her/them) to write and to telephone on a reasonable basis, the time and length of phone calls to be in accordance with family rules.
- d. To communicate with the other parent openly, honestly, and regularly to avoid misunderstandings harmful to the child(ren).
- e. To plan together as parents rather than through the child(ren).
- f. To plan and consult with the other parent in advance for the time with the child(ren).
- g. To not take sides or take issue with decisions or actions made by the other parent, especially in front of the child(ren).
- h. To present a united front on the handling of any problems with the child(ren).
- i. To refrain from fighting, arguing, or degrading the other parent in the presence of the child(ren) and discourage others from doing the same.
- j. To refrain from withholding time with the other parent as a punishment to the child(ren) or to the other parent.
- k. To take a consistent and predictable role in the child(ren)'s (life/lives) and devote time to strengthening the relationship with the child(ren).
- l. To use discretion as to the time and frequency of phone calls to the child(ren).
- m. To realize that time with the child(ren) and financial support are two separate areas and that one has no legal effect on the other.
- n. Except for emergencies, to make changes in plans by mutual agreement, with reasonable notice to the child(ren) and the other parent.

- o. To be flexible in arranging dates and times with the child(ren), so these plans do not interfere with the other parent's important family events or prior planned activities.
- p. To strictly observe time schedules with the child(ren) and call ahead if unable to adhere to the schedules.
- q. To refrain from burdening the child(ren) with adult worries, whether financial, occupational, or social.
- r. To behave discreetly with other people in the child(ren)'s presence.
- s. To treat the child(ren) as (a) unique person(s) with respect to feelings and needs.

10.3 PETITIONER'S NOTICE OF MOTION & MOTION FOR IMMEDIATE TRIAL

In some divorce cases, your client may wish to have the trial process expedited. Tribal courts often provide for expedited trial process. For example, you may need to utilize such a process when your client's or your client's children's health and safety will be jeopardized if the matter isn't resolved quickly. This sample form is based on the form used in the Lac du Flambeau Tribal Court and is a petition requesting an immediate trial.

In the petition, the petitioner should cite the rule they are relying on for this request and leave room for the court to fill in the date and time for a hearing on this motion. In addition, the petitioner should provide the court with a brief account of why his motion for immediate trial should be granted.

Since this form is also set up to serve as a notice, it might be necessary to supply the court with several copies to be served on the other parties once the hearing time and date have been set.

TRIBAL COURT

In re the Marriage of:

,

Petitioner,

-and-

,

Respondent.

**PETITIONER'S NOTICE OF
MOTION AND MOTION
FOR IMMEDIATE TRIAL**

Docket No.
Case No.

To:

[Address]
[City], WI [ZIP]

1. The petitioner moves for an order for immediate trial, pursuant to Section .

2. This motion will be heard as follows:

BEFORE:

PLACE: TRIBAL COURT
COURT BUILDING

DATE: , 20

TIME: [AM / PM]

3. Unless an immediate trial is ordered, the health and safety of the petitioner or his/her children will be jeopardized because:

[Or]

An order for an immediate trial should be granted because an emergency exists, namely .

Dated:

PETITIONER

10.4 ADOPTION

When preparing a petition for adoption, one of the most important elements to cover is the court's jurisdiction. The main way to make sure your petition clearly shows the court's jurisdiction over this adoption is by making it clear that the child is either a tribal member or is eligible for enrollment, or by showing that at least one of the child's parents is either enrolled or eligible for enrollment.

In addition to the information necessary for ensuring the court's jurisdiction over this matter, the petition should include the name, birth date, and residence of the child. The petition should also state the name, address, birth date, telephone number, and tribal affiliation of the petitioner, as well as the nature of any relationship between him and the child, i.e. relatives, stepparent, foster parent, etc. Along with everything else, the name, address, birth date, telephone number, and tribal affiliation of the petitioner's spouse should be included on the petition, as well as information concerning the relationship between the child and the petitioner's spouse.

The petition should also inform the court of the current status of the parental rights of the child's parents. If the parental rights of either or both parents have been terminated, a copy of the termination order should be attached to the petition for adoption. The petition should also include the name of the child's current guardian and inform the court of whether the guardian has or is likely to consent to the adoption. If the guardian has consented to the adoption, a copy of the consent should be attached to the petition.

If the child has been residing with the petitioner, the petition should state when this arrangement began. If the petitioner wants the child's name changed upon adoption, the petition should inform the court of this and state what the new name the petitioner is proposing for the child.

TRIBAL COURT

IN THE MATTER OF THE
ADOPTION OF:

PETITION FOR ADOPTION

[Name or Initials of Child]

Date of Birth

Docket No.
Case No.

Under oath, I petition the court for an order for adoption of this person, and state that:

1. The name of the child is .
2. The child's date of birth is .
3. The residence of the child is .
4. The child is a tribal child because
 - ☐ A. The child is enrolled, enrollment number .
 - ☐ B. The child is eligible for enrollment.
 - ☐ C. The child is the child of an enrolled member and eligible for adoption.
5. I am
 - ☐ a relative of the child by blood.
 - ☐ the child's stepparent.
 - ☐ a proposed adoptive parent with whom the child has been placed.

My address is .

My telephone number is .

My birth date is .

My tribal affiliation is .

6. If there is a spouse, my spouse's name is .

My spouse is

 - ☐ a relative of the child by blood.
 - ☐ the child's stepparent.
 - ☐ a proposed adoptive parent with whom the child has been placed.

My spouse's address is .

My spouse's telephone number is .

My spouse's birth date is _____ .
My spouse's tribal affiliation is _____ .

7. The parental rights of the mother

- ☐ were terminated, and a certified copy of the Order Terminating Parental Rights is attached.
☐ will be terminated on _____ in _____ court.
☐ Other: _____

8. The parental rights of the father

- ☐ were terminated, and a certified copy of the Order Terminating Parental Rights is attached.
☐ will be terminated on _____ in _____ court.
☐ Other: _____

9. The guardian is _____ , and the consent

- ☐ is attached.
☐ will be provided prior to the hearing.

10. The child has lived in my home since _____ .

11. The adoption is in the best interests of the child.

12. The child's name should be changed to _____ .

Subscribed and sworn to before me on _____
, 20____ .

Notary Public
County, Wisconsin
My commission expires: _____

, Petitioner

Date

, Petitioner

Date

10.5 GRANDPARENT VISITATION

In order to preserve family ties and bonds, some tribes have made it possible for grandparents to ask the court for an order allowing them visitation rights with their grandchildren. If the tribe provides for grandparent visitation and you have a client who has been unable to visit her grandchildren, you might be able to assist them by filing a brief petition requesting visitation rights. At a minimum, this petition should state the petitioner's name and address; the name and birth date of the child; the names and addresses of the child's parents; the law or rule under which the petition is being filed; and it should state that the petitioner has not been able to visit their grandchildren. In some courts, it might be necessary to state which of the parents is the petitioner's son or daughter.

TRIBAL COURT

In Re:

[Name or Initials of Child]

**PETITION FOR
GRANDPARENT VISITATION**

Date of Birth

Docket No.
Case No.

Pursuant to _____, I make the following petition:

1. I am the grandmother/grandfather of _____.
2. I have not been allowed visitation with my grandchild.
3. I request that the court schedule a hearing for the purpose of entering an order allowing me reasonable visitation rights.
4. The parents of my grandchild are:

Mother:
Address:

Father:
Address:

Dated this _____ day of _____ 20____.

, Petitioner
[Petitioner's Address]
[City, State ZIP]
[Phone]

10.6 CHANGE OF NAME

A notice and petition for requesting a change of name is typically a simple and straightforward form. The basic information needed in one of these forms is the petitioner's current name, address, and phone number; the new name that the petitioner wants to adopt; a statement that the petitioner is of legal age to change their name; and the tribal ordinance under which the petition is being filed. Since the form included here is both a petition and notice, it provides for a space in which the court can state the date and time of a hearing concerning the petitioner's change of name request.

If your client has a minor child and is seeking a change of name for the child, you may be able to adopt this form for that purpose. Refer to the applicable tribal code or court rules to determine if this is possible.

TRIBAL COURT

In Re the Name Change of:

[Name]

NOTICE OF PETITION FOR CHANGE OF NAME

Docket No.

Case No.

NOTICE IS HEREBY GIVEN that a hearing on the following petition shall be held at the TRIBAL COURT, [Address], [City], Wisconsin [ZIP], on:

DATE:

TIME: [AM / PM]

This petition is being filed pursuant to § , Tribal Ordinances, and the petitioner alleges as follows:

1. The above-named is an adult tribal member living on the Reservation.
2. The legal name of the petitioner is: .
3. The petitioner requests that the court enter an order changing his/her legal name to:

Dated this day of 20 .

, Petitioner
[Petitioner's Address]
[City, State ZIP]
[Phone]

10.7 PATERNITY PETITION

Paternity petitions are most likely to occur in cases where the mother is seeking child support or the enrollment of her child; however, in some cases the action may be brought by another interested party, including a child support or social services agency.

The petition should include the name of the petitioner; the name, birth date, and residence of the child; the name of the child's mother; and the name of the alleged father. In addition, the petition should state why the tribal court has jurisdiction over this case.

The petitioner is also required to inform the court of her interest in the case. The petitioner should also include the names and addresses of any interested parties - sometimes this will include tribal and county agencies.

TRIBAL COURT

In the Matter of the Paternity of:

[Name]

NOTICE TO DETERMINE PATERNITY, SEC

Date of Birth

Docket No.
Case No.

It is hereby requested that the paternity of the above-named individual be determined.

In support of this petition the following information is alleged:

1. _____, d.o.b. _____, presently resides with _____;
2. The individual is subject to the jurisdiction of this court because: _____;
3. The mother of this individual is _____ of [City], WI;
4. The alleged father of this individual is _____ of [City], WI;
5. Names and addresses of all interested parties are:

Tribe
Office of the Tribal Secretary
P.O. Box
_____, WI [ZIP]

County Child Support Agency
P.O. Box
_____, WI [ZIP]

6. The petitioner's interest in this case is _____.

Subscribed and sworn to before me on
_____, 20____.

_____, Petitioner

Notary Public
_____, Wisconsin
My commission expires: _____

Date

SECTION 11. DOMESTIC VIOLENCE FORMS

These forms are based on the Domestic & Family Violence Model Civil Code for Wisconsin Public Law 280 Tribes. As of this date, this code has been adopted by the Stockbridge-Munsee Band of Mohicans and is being considered by several other tribal councils.

In 1994, Congress passed the Violence Against Women Act which contains provisions requiring states, as well as tribes, to enforce tribal protection orders as if that order came from their own courts. In other words, federal law mandates that state courts must enforce any and all domestic violence protection orders issued by tribal courts. Therefore, these forms must show the basis of the tribal court's jurisdiction to hear the case and issue the requested protection orders.

11.1 PETITION FOR A PROTECTION ORDER

A petition for a civil protection order can be filed by a victim of domestic violence and can be filed against a family or household member who commits an act of domestic violence.

The petition should include the necessary information to establish the court's jurisdiction; the petitioner's name and address at the time of the incident; the petitioner's relationship to the respondent; a description of the specific facts and circumstances justifying the relief requested; the relief requested; and the current known location of the respondent. In addition, the petition should give a physical description of the respondent, including date of birth, sex, race, height, weight, hair color, and eye color. The petition should also state the nature of any other legal matters pending which deal with the petitioner or respondent, i.e., criminal charges, divorce, child protection proceedings, etc.

Be sure to check with the tribal court clerk about the proper title for this form, as some courts title this document as a "Petition for Temporary Restraining Order and/or Injunction."

If the victim is a minor, then a parent, guardian, or other representative may file the petition against a family or household member who commits an act of domestic violence.

TRIBAL COURT

PETITION FOR A PROTECTION ORDER

,
Petitioner,
vs.

,
Respondent.

Docket No.
Case No.

This court has jurisdiction over the subject matter and parties in this action pursuant to Article
of the Constitution of the Tribe and Sections of the tribal code.

Respondent

<i>Date of Birth</i>	<i>Sex</i>	<i>Race</i>	<i>Height</i>	<i>Weight</i>	<i>Hair Color</i>	<i>Eye Color</i>

Under oath, I petition the Court for a Protection Order against the Respondent under Tribal Ordinance based on the following:

1. That Petitioner, , is an enrolled member of the Tribe of Indians residing within the Territorial Jurisdiction of the Reservation in Wisconsin.
2. That Respondent, , is subject to jurisdiction of the Tribal Court because Respondent is an enrolled member of the Tribe of Indians residing within the Territorial Jurisdiction of Reservation in Wisconsin.
3. Our residences/premises are as stated above.
4. We are:
 - ☐ adults and/or minors who are current or former spouses;
 - ☐ adults and/or minors who have a child, including an unborn child, in common;
 - ☐ adults and/or minors who are living together or have lived together and who have engaged in a sexual relationship;
 - ☐ adults and/or minors who are involved or have been involved in a sexual or otherwise intimate, ongoing relationship, including persons who are identified in the community as boyfriend and girlfriend; or
 - ☐ adult relatives who are living together or who have lived together.

5. Mark any that apply.
- ☐ Respondent owns the property on which I am living.
- ☐ I have no legal interest in this property.
6. I ☐ am ☐ am not in imminent danger of physical harm.
7. I ☐ have ☐ have not previously filed for an injunction against the Respondent.
8. The Respondent and Petitioner have the following additional legal matters pending:
9. Attached as part of the petition is a statement of facts indicating that the Respondent has engaged in or might engage in domestic abuse. *(Describe when, where, and what happened. You may attach a statement of facts if needed.)*

I REQUEST THAT THE COURT: *(mark any of the following boxes that apply)*

1. ☐ prohibit the Respondent from threatening to commit or committing acts of domestic or family violence against the Petitioner;
2. ☐ prohibit the Respondent from harassing, telephoning, contacting, or otherwise communicating with the Petitioner directly, indirectly, or through others;
3. ☐ remove and exclude Respondent from Petitioner's residence, or if Respondent owns or leases the residence and the Petitioner has no legal interest in the residence, then the Court may order the Respondent to avoid the residence for a reasonable length of time until the Petitioner relocates;
4. ☐ remove and exclude Respondent from Petitioner's place of employment at any time Petitioner is present;
5. ☐ remove and exclude Respondent from other specified locations frequented by Petitioner;
6. ☐ remove and exclude Respondent from specified public social events and activities;
7. ☐ limit or prohibit contact with minor children of Respondent where necessary to protect the safety of the Petitioner or child;

8. ☐ refer minors who are family or household members for assessments and services through the Indian Child Welfare Office, mental health program, or other tribal program;
9. ☐ require Respondent to participate in alcohol and other assessments and to participate in treatment where the treatment program meets the State of Wisconsin's batterer's treatment standards;
10. ☐ limit or prohibit Respondent from using or possessing a firearm or other weapon as specified by the Court;
11. ☐ require Respondent to reimburse the Petitioner or any other person for any expenses associated with the domestic or family violence, including but not limited to medical expenses, counseling, shelter, and repair or replacement of damaged property;
12. ☐ require Respondent to participate in community service, such as cutting wood or providing other services for elderly members of the Tribe;
13. ☐ require that notice of Respondent's act(s) of domestic and family violence be publicly posted;
14. ☐ any other relief as the Court deems necessary to protect and provide for the safety of the Petitioner and any designated family or household member.

, Petitioner

Date

Subscribed and sworn to before me on
, 20 .

Notary Public
County, Wisconsin
My commission expires: _____

11.2 PETITION FOR TEMPORARY RESTRAINING ORDER AND/OR INJUNCTION

This form is similar to the Petition for a Protection Order (11.1). This form is based on one that is used in the Lac du Flambeau Tribal Court. This form is a little shorter than the Petition for a Protection Order, which is based on the Model Code and its more detailed list of forms of relief.

The petition should include the necessary information to establish the court's jurisdiction; the petitioner's name and address at the time of the incident; the petitioner's relationship to the respondent; a description of the specific facts and circumstances justifying the relief requested; the relief requested; and the current known location of the respondent. In addition, the petition should give a physical description of the respondent, including date of birth, sex, race, height, weight, hair color, and eye color. The petition should also state the nature of any other legal matters pending which deal with the petitioner or respondent (i.e., criminal charges, divorce, child protection proceedings, etc.).

TRIBAL COURT

,
[Address]
[City, State Zip]

Petitioner,

vs.

,
[Address]
[City, State Zip]

Respondent.

**PETITION FOR TEMPORARY
RESTRAINING ORDER
AND/OR INJUNCTION
(Domestic Abuse)**

Docket No.
Case No.

Respondent

<i>Date of Birth</i>	<i>Sex</i>	<i>Race</i>	<i>Height</i>	<i>Weight</i>	<i>Hair Color</i>	<i>Eye Color</i>

Under oath, I petition the Court for a Temporary Restraining Order and Injunction against the Respondent under § 33.105 Tribal Codes and Ordinances, based upon the following:

1. Our residence/premises are as stated above.
2. We are adults, and the Respondent is *(mark one)*:
 - a. ☐ a spouse, former spouse, parent, child, or a person related by blood to the Petitioner.
 - b. ☐ a person currently or formerly residing in a place of abode with the petitioner.
 - c. ☐ a person with whom I have a child in common.
3. Mark any of the following that apply.
 - a. ☐ We are not married.
 - b. ☐ Respondent owns the property on which I am living.
 - c. ☐ I have no legal interest in this property.
4. I ☐ am ☐ am not in imminent danger of physical harm.
5. Stated below or attached as part of this petition is a statement of facts indicating that respondent has engaged in or might engage in domestic abuse to me.

Domestic abuse is defined in § _____, Tribal Code, as an intentional infliction of physical pain, physical injury or illness; or intentional impairment of physical condition; or sexual assault in the first, second, or third degree as defined in Wis. Stats. s. 940.225; or a threat to engage in any of the foregoing conduct. *(State when, where, what happened, and who did what to whom, attaching additional pages if necessary.)*

I REQUEST THAT THE COURT: *(Mark any of the following that apply.)*

1. ☐ Immediately issue a temporary restraining order and set a time for a hearing on an injunction requiring the Respondent to:
 - a. ☐ avoid my residence and any premises temporarily occupied by me.
 - b. ☐ avoid contacting me and causing any other person to have contact with me in any way.
 - c. ☐ refrain from committing acts of domestic abuse against me.
 - d. ☐ other _____
2. ☐ Set a time for a hearing on the petition for an injunction.
3. ☐ Grant an award in a reasonable amount for the costs of maintaining this action and attorney fees, if deemed appropriate, and such other relief as may be just and equitable.
4. ☐ Direct the sheriff to assist in placing me in physical possession of my residence.
5. ☐ Enter an order reducing the time before the hearing to serve the respondent because of: (a) the short time prior to hearing, (b) the difficulties in serving the respondent, and (c) the seriousness of this matter.
6. ☐ Enter an injunction for two years or the following shorter period: _____.

, Petitioner

Date

Subscribed and sworn to before me on _____
, 20____.

Notary Public
County, Wisconsin
My commission expires: _____

DISTRIBUTION:
1. COURT-ORIGINAL
2. PETITIONER
3. RESPONDENT
4. LAW ENFORCEMENT
5. COUNTY OF RESIDENCE

11.3 PROTECTION ORDERS

Protection orders are regular court orders, and as such, they are acts of the court. As detailed above, attorneys, advocates, and litigants rarely have a legal right to participate in their formulation, but in practice, the clerical function of drafting an order for a judge's signature is normally delegated to the attorney or advocate requesting the order.

Like the petition for a protection order, the protection order should contain a description of the respondent.

The Model Domestic Violence Code was drafted in such a way as to provide tribal courts with a broad range of remedies for handling domestic abuse situations. Several of these are listed on the enclosed form, and a blank line is available for other remedies. A more detailed list of the remedies available is included on the petition for a protection order form.

In order to ensure that this order will be enforced by state courts, make sure you clearly state the tribal court's jurisdiction to hear this case and issue this order. Some options laying out the court's jurisdiction are provided, but make sure you consult the applicable tribal ordinances and court rules.

In addition, the order should reflect how much knowledge the respondent has of this order (i.e. did he receive proper notice, was he present in court, has he been served with a copy of the order, etc.). One possible way of detailing this is included above the area for the judge's signature, but make sure you consult the applicable tribal ordinances and court rules when determining how this should be included on the order.

Be sure to check with the tribal court clerk to make sure you have the proper title for the form. These are sometimes titled "Injunction."

TRIBAL COURT

[Name],
[Address]
[City, State Zip]
Petitioner,

PROTECTION ORDER

vs.

[Name],
[Address]
[City, State Zip]
Respondent.

Docket No.
Case No.

This court has jurisdiction over the subject matter and parties in this action pursuant to Article
of the Constitution of the Tribe and Sections of the tribal code.

(And/Or)

The Petitioner, , is an enrolled member of the Tribe of Indians residing within the
exterior boundaries of the Reservation in , Wisconsin.

(And/Or)

The Respondent, , is an enrolled member of the Tribe of Indians residing within the
exterior boundaries of the Reservation in , Wisconsin.

Respondent

<i>Date of Birth</i>	<i>Sex</i>	<i>Race</i>	<i>Height</i>	<i>Weight</i>	<i>Hair Color</i>	<i>Eye Color</i>

The Petitioner having applied for a Protection Order under sec. of the Tribal Ordinances,
and after proper notice to the Respondent, the matter having been heard on the day of
20 , and based upon the evidence presented, the Tribal Court having found that
domestic abuse as defined in sec. of Tribal Ordinances, has been committed or may be
committed by Respondent upon Petitioner,

IT IS ORDERED that

- ☐ The Respondent shall refrain from committing acts of domestic abuse against
the Petitioner.

2. ☐ The Respondent shall avoid the Petitioner's residence and/or any residence temporarily occupied by Petitioner
3. ☐ The Respondent shall avoid contacting or causing any person other than a party's attorney or advocate or law enforcement officer to contact the Petitioner unless Petitioner consents in writing. Contact includes at work, school, at public places, by phone, or in writing.
4. ☐ Tribal Law enforcement officers shall, if requested, serve and assist in executing this Protection Order.
5. ☐ Tribal Law enforcement officers shall accompany Petitioner and assist in placing Petitioner in physical possession of his/her residence.
6. ☐ Other:

THIS PROTECTION ORDER SHALL BE EFFECTIVE UNTIL _____.
**VIOLATION OF THIS ORDER MAY RESULT IN IMMEDIATE ARREST AND IS
PUNISHABLE BY IMPRISONMENT NOT TO EXCEED _____ MONTHS OR A FINE
NOT TO EXCEED \$ _____ OR BOTH.**

Respondent:

- ☐ Received Proper Notice on the _____ day of _____ 20____.
- ☐ Was present at the Hearing.
- ☐ Was personally served with a copy of this order.

Dated this day of 20 .

Tribal Court
 , Tribal Court Judge

11.4 INJUNCTION (Domestic Abuse)

This Injunction form is similar to the Protection Order (11.3). The form in 11.2 is based on the Model Code, while this form is based on the form used by the Lac du Flambeau Tribal Court. Both forms ultimately serve the same purpose; they forbid the respondent from further abusing the petitioner and provide the court with the authority to punish the respondent if he violates the order. Injunctions are regular court orders, and as such, they are acts of the court. As detailed above, attorneys, advocates, and litigants rarely have a legal right to participate in their formulation, but in practice the clerical function of drafting an order for a judge's signature is normally delegated to the attorney or advocate requesting the order.

Like a protection order, the injunction should contain a description of the respondent. The injunction should also detail that the petitioner filed a petition alleging domestic abuse, that the court had jurisdiction, that respondent was properly served and had the opportunity to be heard, and that the court concluded there were reasonable grounds for issuing the injunction.

This form provides the court with several options for the type of conduct in which the respondent is not allowed to engage. In addition, this form specifies that the respondent may not possess firearms while the injunction is in effect.

This form also includes language to the effect that the injunction can be enforced and recognized by other courts and jurisdictions.

Be sure to consult the applicable tribal code when referring to statutes and available forms of relief.

TRIBAL COURT

[Name],
[Address]
[City, State Zip]
Petitioner,

INJUNCTION (Domestic Abuse)

vs.

[Name],
[Address]
[City, State Zip]
Respondent.

Docket No.
Case No.

Respondent

<i>Date of Birth</i>	<i>Sex</i>	<i>Race</i>	<i>Height</i>	<i>Weight</i>	<i>Hair Color</i>	<i>Eye Color</i>

THE COURT FINDS THAT:

1. The Petitioner has filed a petition alleging domestic abuse.
2. The Petitioner has served upon the Respondent a copy of the petition and notice of the time for a hearing on the issuance of the injunction; or the Respondent has served upon the Petitioner notice of the time for a hearing on the issuance of the injunction. The Respondent had an opportunity to be heard. This court has personal and subject matter jurisdiction.
3. Based on the hearing held on the petition, there are reasonable grounds to believe that the Respondent has engaged in or, based upon prior conduct of the Petitioner and the Respondent, might engage in, domestic abuse of the Petitioner as defined in § .

IT IS ORDERED THAT: *(Mark all that apply.)*

1. ☐ The Respondent avoid the Petitioner's residence and/or the residence temporarily occupied by the Petitioner now and in the future. If the Petitioner and the Respondent are not married, the Respondent owns the premises where the Petitioner resides, and the Petitioner has no legal interest in the premises. The Respondent is ordered to avoid the Respondent's premises for a period of (reasonable time) until the Petitioner relocates.
2. ☐ The Respondent avoid contacting or causing any other person other than a party's attorney or lay advocate to contact the Petitioner unless the Petitioner

consents to that contact in writing. (Contact includes contact at work, school, public places, by phone or in writing.)

3. ☐ The Respondent refrain from committing acts of domestic abuse against the Petitioner.
4. ☐ If requested, the law enforcement officer shall serve and assist in executing this final injunction and accompany Petitioner and assist in placing Petitioner in physical possession of his or her residence.
5. ☐ Other:

IT IS FURTHER ORDERED THAT THE RESPONDENT NOT POSSESS A FIREARM WHILE THIS INJUNCTION IS IN EFFECT.

THIS INJUNCTION SHALL BE EFFECTIVE UNTIL .

Violation of this order may result in immediate arrest, is punishable by imprisonment not to exceed 9 months or a fine not to exceed \$1,000, or both, and payment of filing and service fees. Pursuant to § 813.12(8) & (9)(a)(3), Wis. Stats., this Order is being filed with the County Circuit Court.

This injunction is entitled to full faith and credit in every civil or criminal court of the United States or any other state or Indian tribal courts (to the extent such tribal courts have personal jurisdiction over non-tribal members).

☐ The Respondent was present in Court and personally served with a copy of this order.

Tribal Court
, Tribal Court Judge

Date

DISTRIBUTION:

1. COURT-ORIGINAL
2. PETITIONER
3. RESPONDENT
4. LAW ENFORCEMENT
5. COUNTY OF RESIDENCE

11.5 NOTICE OF HEARING AND TEMPORARY RESTRAINING ORDER

In many domestic violence situations, the petition for a protection order will be filed ex-parte. The court can issue a temporary restraining order or an emergency protection order to protect the petitioner from the respondent prior to a hearing on the issue. The temporary restraining order or the emergency protection order will expire at the time of the hearing.

The notice is important because it informs the respondent that a temporary restraining order has been issued against him and that he will be punished if he violates the order. In addition, the notice tells him where and when the hearing on the issue will be held.

The respondent should be served with a notice of the hearing, along with a copy of the petition and a copy of the temporary restraining order or emergency protection order, within the time specified by the tribal court or tribal code.

In order to ensure that this order will be enforced by state courts, make sure you clearly state the tribal court's jurisdiction to hear this case and issue this order. Some options laying out the court's jurisdiction are provided, but make sure you consult the applicable tribal ordinances and court rules.

In addition, the order should reflect how much knowledge the respondent has of this order (i.e., did he receive proper notice, was he present in court, has he been served with a copy of the order, etc.). One possible way of detailing this is included above the area for the judge's signature, but make sure you consult the applicable tribal ordinances and court rules when determining how this should be included on the order.

TRIBAL COURT

[Name],
[Address]
[City, State Zip]

Petitioner,

vs.

[Name],
[Address]
[City, State Zip]

Respondent.

**NOTICE OF HEARING
AND TEMPORARY
RESTRAINING ORDER**

Docket No.
Case No.

This Court has jurisdiction of the subject matter and parties in this action pursuant to Article of the Constitution of the Tribe and Sections of the tribal code.

(And/Or)

The Petitioner, , is an enrolled member of the Tribe of Indians residing within the exterior boundaries of the Reservation in , Wisconsin.

(And/Or)

The Respondent, , is an enrolled member of the Tribe of Indians residing within the exterior boundaries of the Reservation in , Wisconsin.

The Petitioner ☐ is ☐ is not in imminent danger of physical harm.

NOTICE OF HEARING		
Date	Time	Location
	[AM / PM]	
Presiding Judge:		

FAILURE TO APPEAR could, upon proper proof, result in a final Protection Order being issued directing:

- a. That you avoid Petitioner's residence and/or premises temporarily occupied by Petitioner now and in the future;
- b. That you avoid contacting or causing any other person to contact Petitioner, unless certain conditions are met;

- c. That you refrain from doing acts of domestic abuse against the Petitioner;
- d. Any other appropriate orders.

Violation of a protection order issued at this hearing may result in your arrest and imposition of criminal penalties.

TEMPORARY RESTRAINING ORDER

The above named Petitioner, having petitioned this Tribal Court for a Temporary Restraining Order Pursuant to Tribal Ordinance _____, and based upon the evidence presented, the Court finds reasonable grounds to believe that the Respondent has engaged in, or based on the prior conduct of the Respondent, may engage in, domestic abuse of the Petitioner, and

IT IS ORDERED THAT *(only if there is a finding of imminent danger of physical harm:*

- a. ☐ Respondent is prohibited from committing or threatening to commit acts of domestic and family violence against the Petitioner and the Petitioner's family and household members;
- b. ☐ Respondent is prohibited from contacting or communicating with the Petitioner directly or indirectly;
- c. ☐ Respondent is removed and excluded from the Petitioner's residence regardless of ownership;
- d. ☐ Respondent is excluded and removed from Petitioners place of employment and other locations frequented by Petitioner;
- e. ☐ Other: _____.

THIS ORDER IS IN EFFECT UNTIL THE PROTECTION ORDER HEARING.

Respondent:

- ☐ Received Proper Notice on the _____ day of _____, .
- ☐ Was present in court.
- ☐ Was personally served with a copy of this order.

Dated this _____ day of _____ 20____.

Tribal Court
, Tribal Court Judge

11.6 NOTICE OF HEARING - TEMPORARY RESTRAINING ORDER

In many domestic violence situations, the petition for a protection order will be filed ex-parte. The court can issue a temporary restraining order or an emergency protection order to

protect the petitioner from the respondent prior to a hearing on the issue. The temporary restraining order or the emergency protection order will expire at the time of the hearing.

The notice is important because it informs the respondent that a temporary restraining order has been issued against him and that he will be punished if he violates the order. In addition, the notice tells him where and when the hearing on the issue will be held.

The respondent should be served with a notice of the hearing, along with a copy of the petition and a copy of the temporary restraining order or emergency protection order, within the time specified by the tribal court or tribal code.

This form is based on a form used by the Lac du Flambeau Tribal Court. In addition to informing the respondent of the hearing and that he is not to have specified interactions with the petitioner, it also puts him on notice that if an Injunction is issued, he will not be able to possess firearms and that the Injunction can be enforced in other courts.

TRIBAL COURT

[Name],
[Address]
[City, State Zip]

Petitioner,

VS.

```
[Name],
[Address]
[City, State Zip]
```

Respondent.

**NOTICE OF HEARING
AND TEMPORARY
RESTRAINING ORDER
(Domestic Abuse)**

Docket No.
Case No.

The Court has reviewed the petition and finds reasonable grounds to believe that the respondent has engaged in, or based on the prior conduct of the petitioner and the respondent, might engage in, domestic abuse of the petitioner.

The Petitioner ☐ is ☐ is not in imminent danger of physical harm.

IT IS ORDERED that a hearing for an injunction be held:

Date:	Time:	Location:	
		Court Address:	
		, WI	

and services of this order shall be made prior to the date of the hearing.

FAILURE TO APPEAR could result in a final injunction being issued directing:

- a. That you avoid Petitioner's residence and/or premises temporarily occupied by Petitioner now and in the future;
- b. That you avoid contacting or causing any other person to contact Petitioner, unless certain conditions are met;
- c. That you refrain from doing acts of domestic abuse against the Petitioner;
- d. Any other appropriate orders.

Violation of a protection order issued at this hearing may result in your arrest and imposition of criminal penalties.

IT IS FURTHER ORDERED THAT:

- a. ☐ Respondent is prohibited from committing or threatening to commit acts of domestic and family violence against the Petitioner and the Petitioner's family and household members;
- b. ☐ Respondent is prohibited from contacting or communicating with the Petitioner directly or indirectly;
- c. ☐ Respondent is removed and excluded from the Petitioner's residence regardless of ownership;
- d. ☐ Respondent is excluded and removed from Petitioner's place of employment and other locations frequented by Petitioner;
- e. ☐ Other: .

THIS ORDER IS IN EFFECT UNTIL THE INJUNCTION HEARING.

Violation of this order may result in immediate arrest, is punishable by imprisonment not to exceed 9 months or a fine not to exceed \$1,000, or both, and payment of filing and service fees. Pursuant to §813.12(8) & (9)(a)(3), Wis. Stats., this Order is being filed with the _____ County Circuit Court.

If an injunction is issued, the judge must order the respondent not to possess a firearm while the injunction is in effect.

This injunction is entitled to full faith and credit in every civil or criminal court of the United States or any other state or Indian tribal courts (to the extent such tribal courts have personal jurisdiction over non-tribal members).

Dated this _____ day of _____ 20____.

Tribal Court
, Tribal Court Judge

DISTRIBUTION:

- 1. COURT-ORIGINAL
- 2. PETITIONER
- 3. RESPONDENT
- 4. LAW ENFORCEMENT
- 5. COUNTY OF RESIDENCE

SECTION 12. GUARDIAN AD LITEM

A guardian *ad litem* (GAL) is typically appointed in one of the following situations:

1. An action concerning the physical placement of a child;
2. A divorce action involving the issue of legal custody or physical placement of a child;
3. A case dealing with visitation rights; or
4. An action to determine paternity.

The appointment of a GAL is the only entitlement a minor child has to participate and be represented in most actions affecting the family. Therefore, it is important that the GAL have a thorough understanding of their role, responsibilities, and duties. GALs usually have the power to call, examine, and cross-examine witnesses. However, the GAL is not the child's representative. Keep in mind that the GAL's duties do not end after the trial or hearing. These duties continue throughout the appeal process.

12.1 PETITION AND ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM

In an action involving one of the above issues, an involved party can typically petition a court for the appointment of a GAL; however, the court can also appoint a GAL even if none of the parties requested the appointment. In actions affecting the family, some courts must appoint a GAL if that court has special concerns about the welfare of a minor child.

TRIBAL COURT

[Name],
[Address]
[City, State Zip]

**PETITION AND ORDER FOR
APPOINTMENT OF
GUARDIAN AD LITEM**

Petitioner,

vs.

[Name],
[Address]
[City, State Zip]

Docket No.
Case No.

Respondent.

This court has jurisdiction over the subject matter and parties in this action pursuant to Article _____ of the Constitution of the _____ Tribe and Sections _____ of the tribal code.

That Petitioner, _____, is an enrolled member of the _____ Tribe of Indians residing within the exterior boundaries of the _____ Reservation at _____, Wisconsin.

(AND/OR)

That Respondent, _____, is an enrolled member of the _____ Tribe of Indians residing within the exterior boundaries of _____ Reservation at _____, Wisconsin.

(AND/OR)

That Child, _____, is an enrolled member of the _____ Tribe of Indians residing within the exterior boundaries of the _____ Reservation at _____, Wisconsin.

TO THE TRIBAL COURT OF THE _____ TRIBE:

The petition of _____, the (Petitioner) in this action, represents:

1. I am the [Mother / Father] of the following minor and dependent child(ren) of the parties in this action who [is / are] in need of a guardian *ad litem*:

Names and dates of birth of all minor child(ren)

Born
Born
Born
Born

(Choose appropriate paragraph.)

2. I allege that the following minor child(ren) [is / is not / are not] an issue of this marriage, namely:

Names and dates of birth of all minor child(ren)

Born

Born

(or)

2. There is an ongoing custody or placement dispute between the parties or special concern for the minor child(ren), which necessitates the appointment of a guardian *ad litem* for the following reasons:

(Insert briefly the concerns about the request for the appointment)

and (check one)

- ☐ Mediation has concluded without agreement.
☐ Mediation is inappropriate pursuant to Tribal Ordinances for the following reasons:

3. (Check one)

- ☐ No previous application has been made for the appointment of a guardian *ad litem* in this matter.
☐ The prior guardian *ad litem* was:

4. I reside at ; my home telephone number is ; my work telephone number is ; my income is approximately \$ per month; my employer is ; I am represented in this action by .

5. Upon information and belief my (former) spouse resides at ; [his / her] home telephone number is ; work telephone number is ; income is approximately \$ per month; is employed by ; and is represented in this action by .

WHEREFORE, I request that the Tribal Court appoint an attorney or advocate to act as guardian *ad litem* for said minor child(ren).

[Client's Name]

I, _____, swear that I am the Petitioner in the above-entitled action, and I have read and signed the above petition for the appointment of a guardian *ad litem*, and the allegations are true to my own knowledge.

[Client's Name]

Subscribed and sworn to before me on _____
, 20____.

Notary Public
_____, Wisconsin
My commission expires: _____

ORDER

Based upon the foregoing petition, the court finds (*select one*):

1. That _____, an attorney admitted to practice law in this state, hereby is appointed guardian *ad litem* for the minor child(ren), namely, _____.
2. The Petitioner shall deposit \$ _____ with the guardian *ad litem* as a down payment for services, which may be applied toward fees as earned.
3. The Petitioner is currently unable to pay the fees of the guardian *ad litem* and, accordingly, _____ Tribe shall pay the portion attributable to the Petitioner, and the Petitioner shall be liable for reimbursement upon a court finding of the ability to pay.

Dated: _____

Tribal Court
, Tribal Court Judge

CONSENT TO ACT

I, _____, an attorney at law or an advocate admitted to practice in this court, consent to act as guardian *ad litem* for the above-named minor child(ren) at a rate of \$ _____ per hour. I agree to provide monthly itemized billing statements to the parties for the duration of my appointment.

, Guardian *ad litem*

12.2 GUARDIAN AD LITEM'S AFFIDAVIT & REPORT

Guardian *ad litem* (GAL) typically play a crucial role in custody and placement actions. The guardian *ad litem* is appointed for the purpose of advising the court on the issue of what is in the best interests of the child that the GAL has been appointed to represent. The GAL makes recommendations to the court in a report which details the material the GAL analyzed and the people the GAL interviewed. The GAL's report should detail how the GAL's recommendation was reached. The role of a GAL is to serve as an advocate and legal representative to protect and advance the best interests of the child, but the GAL is not the child's advocate in the case itself.

The GAL's job is to present a recommendation to the court so that the court may then make an informed initial determination regarding the custody and physical placement of the child.

A GAL must be an advocate for the best interests of a minor child and must function independently in the same manner as an attorney or advocate for a party to an action. A GAL should communicate with the court and the lawyers and advocates in the same manner as a lawyer or advocate for a party.

This form has been included because many tribal courts will appoint members of its bar to serve as GALs in cases they are not otherwise involved in. Be sure to review the court rules or tribal ordinances to determine the compensation source for a GAL.

TRIBAL COURT

In the Matter of the Guardianship
Protective Placement/Protective
Services of:

GUARDIAN *AD LITEM*'S AFFIDAVIT AND REPORT

[Name of Ward]

Docket No.
Case No.

REPORT ON INVESTIGATION

1. This court has jurisdiction over the subject matter and parties in this action pursuant to Article _____ of the Constitution of the _____ Tribe and Sections _____ of the tribal code.
2. Ward's Location:
Telephone Number:
Birth Date:
3. Guardian's Name:
Address:
Telephone Number:
4. On _____, 20_____, this court appointed me to act as guardian *ad litem* for _____. I personally met with the ward on _____, 20_____, and communicated with the ward's guardian by _____ on _____, 20_____. I explained to both of them that the purpose of the upcoming review was to determine whether continuation of the protective placement or services order or of the current placement or services order or of the current placement or services was appropriate; that if either of them wished to challenge the appropriateness of the order or placement or services, a defense lawyer, other than myself, would be appointed, at _____ expense if the ward is indigent, to represent the ward's interests; that if either of them felt that the current evaluation of the ward was inaccurate or incomplete, a person would be appointed to conduct an independent evaluation, at _____ expense if the ward is indigent; and that either of them is entitled to request a full hearing before the court to present evidence about the appropriateness of the order or placement and to seek a change in either or both of them.

In addition, I provided this information to the ward in writing.

5. In addition to contacting the ward and the guardian, I have reviewed the following documents as part of my investigation (*list here*):

6. I have interviewed the following staff members at the ward's current placement (*list here*):
7. I have interviewed the following persons who are not connected with the current placement, but who have knowledge about the ward (*list here*):

RECOMMENDATION

8. Based on my investigation of this case and in light of the standards regarding protective placement and services in ch. _____ of _____ Tribal Code, I recommend that the court make the following findings and order the following:
9. Does continue to meet the standards for a protective placement.
 - a. [He / She] [does / does not] remain incompetent as a result of developmental disabilities, chronic mental illness, infirmities of aging, or other like incapacity;
 - b. [He / She] [does / does not] continue to have a primary need for residential care and custody;
 - c. [He / She] [does / does not] continue as a result of [his / her] condition to be so totally incapable of providing for [his / her] own care and custody as to create a substantial risk of serious harm to self or others; and
 - d. [His / Her] disability [does / does not] remain permanent or likely to be permanent.
10. [He / She] [does / does not] continue to meet the standards for court-ordered protective services.
 - a. [He / She] [does / does not] remain incompetent as a result of developmental disabilities, chronic mental illness, infirmities of aging or other like incapacity;
 - b. [He / She] [will / will not] incur a substantial risk of physical harm or deterioration if the services are not provided.
11. Current placement or services [is / is not] in the least restrictive environment consistent with [his / her] individual needs.

Explanation:

12. Current placement or services [does / does not] provide [him / her] with adequate treatment, rehabilitation, and educational services appropriate to [his / her] condition.

Explanation:

13. An independent evaluation of the ward's condition and service needs [is / is not] requested.

- a. An independent evaluation [is / is not] requested by (*check all that apply*):

- ☐ The ward
☐ The guardian
☐ The guardian *ad litem*

- b. Recommendations for issues that the evaluation should address, if any, are:

- c. Recommendation as to a particular evaluator to be appointed, if any, is (*include name, address, and phone*):

14. Adversary counsel appointed to represent the ward [is / is not] requested.

- Appointment of adversary counsel is requested by (*check all that apply*):

- ☐ The ward
☐ The guardian
☐ The guardian *ad litem*

15. A full due process hearing on the issue of the continuation of the protective placement order and/or the appropriateness of the current placement [is / is not] requested.

- a. The hearing is requested by (*check all that apply*):

- ☐ The ward
☐ The guardian
☐ The guardian *ad litem*

- b. If a hearing is requested, the issues at the hearing will be:

16. I am reporting to the court that the ward has conveyed:

- ☐ [Objection / No Objection] to the finding of continued incompetency
☐ [Objection / No Objection] to the present or proposed placement or services
☐ [Objection / No Objection] to the guardian's position
☐ [Objection / No Objection] to the guardian *ad litem*'s recommendations
☐ None of the above

CASE STATUS

17. The position of the ward's guardian on any of the above recommendations is:
18. A chapter _____, annual review [was / was not] filed for the past year by the county protective services agency.
19. _____ is fiscally responsible for the ward.

, Guardian *ad litem*

Bar No.

[GAL Address]

[GAL Phone]

Subscribed and sworn to before me on
_____, 20____.

Notary Public

County, Wisconsin

My commission expires: _____

SECTION 13. AFFIDAVIT OF INDIGENCY / WAIVING FEES & COSTS

Courts will often waive filing fees and other court costs if a party can prove that they are low-income and that the paying of such fees would be burdensome. The most common way for a party to prove to the court that they are eligible for a fee waiver is to file an affidavit detailing their income, assets, and family size.

Like any affidavit, this document is signed under oath and a party who lies on the form is committing perjury.

Check with the clerk of court before filing your own affidavit. Some courts have their own forms with specific questions the party has to answer. This motion may also be referred to as an “Affidavit for Leave to Proceed in *Forma Pauperis*.”

TRIBAL COURT

[Name],

Petitioner,

AFFIDAVIT OF INDIGENCY

vs.

[Name],

Respondent.

Docket No.

Case No.

-
1. This court has jurisdiction over the subject matter and parties in this action pursuant Article of the Constitution of the Tribe and Sections of the tribal code.
 2. I am the in the above entitled action.
 3. On information and belief, I am entitled to the redress sought in this action.
 4. Because of poverty, I am unable to pay the costs of this action or to give security to those costs.
 5. My family unit consists of .
 6. My family unit has an average monthly income of \$, and the source of the income is .
 7. My family unit's average monthly living expenses are \$ in and \$ in .
 8. I own no real or personal property of more than nominal value.
 9. This Affidavit is made to secure a Court Order under Tribal Ordinance , allowing me to commence and prosecute this action without being required to give security for costs or to pay any service or clerk fee.

Dated this day of 20 .

[Name of Person Giving Affidavit]

Subscribed and sworn to before me on
 , 20 .

Notary Public
 County, Wisconsin
My commission expires:

13.1 MOTION & ORDER WAIVING COSTS & FEES

Use this form when requesting the court to issue an order waiving the costs and fees for your client. Have your client sign the motion and attach a copy of their affidavit, as well as a copy of the client's initial pleading.

As mentioned before, orders are acts of the court, and attorneys or advocates rarely have a legal right to participate in their formulation. In practice, however, drafting an order for a judge's signature is normally delegated to the attorney or advocate requesting the order.

Since your client's motion for waiving costs and fees will rarely, if ever, be challenged by another party, this tends to be a situation in which the court will make use of an order drafted by the moving party's attorney or advocate. This form is a general guide, but make sure you consult the court's rules and the tribe's code to determine the extent to which costs and fees can be waived for your client.

TRIBAL COURT

[Name],

Petitioner,

vs.

[Name],

Respondent.

**MOTION AND ORDER
WAIVING FEES AND COSTS**

Docket No.

Case No.

This court has jurisdiction over the subject matter and parties in this action pursuant to Article _____ of the Constitution of the _____ Tribe and Sections _____ of the tribal code.

MOTION

Under oath I state that because of poverty, I am unable to pay the costs of this action, proceeding, or appeal, or to give security for those costs, and request waiver of those costs. I am attaching a copy of my pleading in this matter, along with a copy of my affidavit of indigency.

I understand that if my income, financial, or economic situation changes, I must notify the Court immediately.

Dated this _____ day of _____, 20____.

[Plaintiff's Name]

[Attorney/Advocate's Name]

Subscribed and sworn to before me on _____
, 20____.

Notary Public

County, Wisconsin
My commission expires: _____

ORDER

Based on the Plaintiff's following Affidavit and on the motion of [Attorney/Advocate's Name], the Plaintiff's advocate:

IT IS ORDERED, pursuant to Tribal Ordinance _____, that the Affidavit is approved.

IT IS FURTHER ORDERED that the Plaintiff is permitted to commence and prosecute this action without being required to give security for costs or to pay any service or clerk fee.

IT IS FURTHER ORDERED that the clerk of this Tribal Court accept for filing and file all of the Plaintiff's papers without first requiring payment of any clerk fee.

Dated this _____ day of _____ 20____.

_____, Tribal Court Judge
Tribe

SECTION 14. GARNISHMENT FORMS

Garnishment actions are often brought by a creditor who has not been able to collect from a debtor. Typically, the creditor is often seeking the garnishment as a way of collecting on an unsatisfied civil court judgment that has been entered against the debtor. The action is brought against both the debtor and the garnishee, a person or entity which either possesses or controls property belonging to the debtor or is indebted to the debtor. In order to pursue a garnishment action, the creditor must have a legal right to collect a debt, the debtor must have a legal duty to pay the debt, and the garnishee must be legally liable to the debtor.

Garnishment actions are often viewed as statutory remedies, not common law remedies. In addition, they are often viewed as an extreme remedy. Therefore, make sure you carefully read the applicable tribal ordinances and determine what steps your client must take before this remedy is available to her and to determine whether there are any provisions which exempt the prospective garnishee or property from being subject to a garnishment action.

These garnishment forms are based on forms used by the Lac du Flambeau Tribal Court.

14.1 EARNINGS GARNISHMENT NOTICE

This form serves as a complaint for initiating a garnishment action. Courts typically require that this form must be served with a summons (see 14.2) on the interested parties before the garnishment action can commence.

This notice/complaint must include the names of the creditor(s), debtor(s), and garnishee(s) in the caption. The notice itself must detail the tribal law the action is being brought under, state the date of the judgment the creditor is attempting to enforce, the name of the court that issued the judgment, and the case number of the action in which the judgment was issued. In addition, the notice should detail the amount the creditor has not been able to collect, the amount of interest on this unpaid balance, the value of the property or wages that the creditor is attempting to garnish, and the total amount the creditor is seeking in the garnishment action.

The creditor should also include the addresses of the parties in the notice.

TRIBAL COURT

[Name],

Creditor

vs.

EARNINGS GARNISHMENT NOTICE

[Name],

Debtor

and

Docket No.

Case No.

[Name]

Garnishee.

To the Clerk of Tribal Court:

Please take and file this notice and complaint that the creditor has today commenced an earnings garnishment action under § , Tribal Ordinances, adopting Subchapter II of Chapter 812 of the Wisconsin Statutes, against the debtor and the garnishee to collect an unsatisfied civil judgment.

The judgment was entered on [Month and Date], 20 , by the Court, at [Address]. The case number of the action in which the judgment is entered is .

The amount of the garnishment action is based upon the following:

A.	Unpaid balance on judgment	\$
B.	Unpaid post judgment interest	\$
C.	Costs of this earnings garnishment	\$_____
	Total Amount of Garnishment Action	\$

The names and addresses last known to the creditor of the parties to this proceeding are as follows:

Debtor: [Name]
[Address]
[City, State Zip]

Creditor: [Name]
[Address]
[City, State Zip]

Garnishee: [Name]
[Address]
[City, State Zip]

Creditor's Attorney: [Name]
[Address]
[City, State Zip]

, Creditor

[Creditor's Attorney/Advocate]

14.2 GARNISHEE SUMMONS

Typically, a garnishment action does not begin until the creditor files and serves a summons to the garnishee. This summons should include the names of the creditor, debtor, and garnishee(s) in the caption. It should notify the garnishee as to how much time they have to file an answer to the complaint. Consult the applicable tribal court rules and tribal code to determine the number of days a garnishee has to respond to a complaint. In addition, it should inform the garnishee that judgment will be entered against them if they do not file an answer (unless the applicable law states otherwise).

A copy of the complaint must be served with the summons.

TRIBAL COURT

[Name],

Creditor

vs.

[Name],

Debtor

and

[Name]

Garnishee.

SUMMONS

Docket No.

Case No.

THE TRIBE, To the Garnishee:

You are hereby summoned, as garnishee of the defendant(s), and required, within _____ days after the service of this summons and the annexed complaint upon you, exclusive of the day of service, to answer whether you are indebted to or have in your possession or under your control any property belonging to the defendant.

You are further required to serve a copy of your answer to the garnishee complaint on the undersigned attorney and to file your original answer with the clerk of this court, within a _____ - day period. In case of your failure to answer, judgment will be entered against you for the amount of plaintiff's judgment against the defendant and costs, of which the defendant will also take notice.

Dated this day of 20 .

Clerk of Tribal Court

14.3 DEBTOR'S ANSWER

This is an example of a form that the debtor would use to respond to a creditor's attempt to garnish the wages of the debtor. The form provides a list of possible defenses that the debtor may use in arguing that his wages are completely exempt from garnishment. Be sure to consult the applicable tribal code to determine whether more defenses are available or if some of the listed defenses are not available.

TRIBAL COURT

[Name],

Creditor

vs.

**EARNINGS GARNISHMENT
DEBTOR'S ANSWER**

[Name],

Debtor

and

Docket No.

Case No.

[Name]

Garnishee.

To the garnishee:

My earnings are COMPLETELY EXEMPT from earnings garnishment because:

1. ☐ The judgment has been paid or is void.
2. ☐ I receive, am eligible for, or have within 6 months received, aid to families with dependent children, general relief, relief to needy Indian persons, medical assistance, supplemental security income, food stamps, or veterans benefits based on need under 38 U.S.C. 501 or 562 or section 45.351(1) pf the Wisconsin statutes.
3. ☐ At least 25% of my disposable earnings are assigned for support by court order.
4. ☐ My household income is less than the poverty line, or this garnishment would cause to happen.
5. ☐ I have another defense to this earnings garnishment (*explain briefly*).

I understand that if I claim a complete exemption or defense in bad faith, I may be held liable to the creditor for actual damages, costs, and reasonable attorney fees.

Date:

, Debtor

[Address]

[Phone]

Date received by Garnishee: _____

14.4 OBJECTION TO DEBTOR'S ANSWER & DEMAND FOR HEARING

This form is filed by the creditor if the creditor disagrees with the debtor's answer. In this form, the creditor explains why they disagree with the debtor's answer and requests the court to hold a hearing on the matter. As always, be sure to consult the applicable tribal code to determine if there are any limitations on the arguments the creditor can make to oppose the debtor's answer or if there is additional information the creditor must provide.

TRIBAL COURT

[Name],

Creditor

vs.

[Name],

Debtor

and

[Name]

Garnishee.

**EARNINGS GARNISHMENT -
OBJECTION TO
DEBTOR'S ANSWER AND
DEMAND FOR HEARING**

Docket No.

Case No.

To the Clerk of Tribal Court:

I hereby object to the debtor's answer and demand a hearing to resolve the issues in controversy. By statute, this hearing must be held as soon as practicable after this objection and demand are filed. I object to the debtor's answer for the following reasons (*explain briefly*):

Please schedule this hearing and notify all parties.

To the best of my knowledge, the debtor's current address:

☐ is the same as that stated in the notice I filed to commence this earnings garnishment.

☐ is now .

I understand that if I object to the debtor's answer in bad faith, I may be held liable to the debtor for actual damages, costs, and reasonable attorney fees.

Dated:

[Creditor or Creditor's Attorney]

[Address]

[Phone]