



# NHBP TRIBAL COURT

NOTTAWASEPPI HURON BAND OF THE POTAWATOMI

2221 1 1/2 MILE RD. • FULTON, MI 49052

P: 269.729.5151 • F: 269.729.4826 - ORI NO. MIDIO077J

## COURT RULES FOR CONTEMPT OF COURT PROCEEDINGS

### CHAPTER 17

#### TABLE OF CONTENTS

Section 1. Title.....	2
Section 2. Purpose .....	2
Section 3. Definitions .....	2
Section 4. Procedures for Indirect Civil Contempt and Indirect Criminal Contempt .....	4
Section 5. Procedures for Direct Civil Contempt and Direct Criminal Contempt .....	8
Section 6. Procedures for Deferred Direct Contempt.....	9
Section 7. Standards of Proof. ....	11
Section 8. Court’s Opinion and Order .....	11
Section 9. Sanctions.....	11
Section 10. Appeals .....	12
Section 11. Short Title, Effective Date and Citation Format .....	12
<b>CERTIFICATE OF ADOPTION .....</b>	<b>13</b>

# NOTTAWASEPPI HURON BAND OF THE POTAWATOMI TRIBAL COURT

## COURT RULES FOR CONTEMPT OF COURT PROCEEDINGS CHAPTER 17

### Section 1. Title

- A. This Chapter of Court Rules shall be known as the *Court Rules for Contempt of Court Proceedings*.

### Section 2. Purpose

- A. The purpose of this Chapter of Court Rules is to provide a fair and efficient process for the Nottawaseppi Huron Band of the Potawatomi Tribal Court (“Court”), pursuant to the inherent judicial authority of the Court and pursuant to Article XI § 1 and Article XI § 3 of the Nottawaseppi Huron Band of the Potawatomi Constitution (“Constitution”), to:
1. Preserve and protect the integrity of the Court;
  2. Enforce the orders of the Court;
  3. Ensure order and respect in the court room; and
  4. Preserve and protect the rights of parties.
- B. The Court shall exercise this inherent judicial authority:
1. Pursuant to the values of the Nation as articulated in the Constitution;
  2. Pursuant to the Mission Statement of the NHBP Tribal Court Mission Statement to fully implement the delegation of Constitutional judicial authority from the people of the Tribe consistent with self-determination, the sovereign powers of the Nation, traditional values, fairness and justice;
  3. With restraint; and
  4. Only to the extent necessary to address the issue.

### Section 3. Definitions

- A. The following terms are defined as:
1. “*Affidavit*” means a written statement that is made voluntarily and sworn under oath or affirmation before a person authorized administer the oath or affirmation to be true.

2. “*Band*” and “*Nation*” and “*Tribe*” are synonymous and mean the Nottawaseppi Huron Band of the Potawatomi (NHBP).
3. “*Chief Judge*” means the Chief Judge of the Tribal Court or his or her designee.
4. “*Contemnor*” means an individual or a party accused of committing contempt of Court.
5. “*Contempt*” and “*Contempt of Court*” are synonymous and refers to an action, omission or statement that, in general, undermines the authority of the Court or disrupts the functioning of the Court. Examples of behavior that may be subject to contempt are violating an order of the Court, failing to appear in Court, and being disrespectful or disruptive in Court. Contempt of Court can be civil or criminal with the purpose of addressing the behavior defining whether it is civil or criminal, with an overview of civil contempt and criminal contempt below:
  - a. Civil Contempt: The purpose of civil contempt is to compel compliance when the contemnor has both the duty and the ability to perform. To achieve this goal, the Court may use both monetary sanctions and incarceration to compel compliance. In the context of civil contempt, the term of incarceration is unknown as the incarceration will end when the contemnor complies with the Court order. Civil contempt may be direct, meaning that it occurred in the presence of the Judge, or indirect. The Court may defer addressing direct civil contempt.
  - b. Criminal Contempt: The purpose of criminal contempt is to protect and preserve the authority, integrity and dignity of the Court by holding parties responsible for past noncompliance. With criminal contempt, the contemnor no longer has the ability to comply with the order of the Court. The Court is sanctioning the contemnor for his or her failure to comply or for the contemnor’s disrespectful or disruptive behavior. The Court may order monetary sanctions and/or incarceration. Incarceration for criminal contempt is different from incarceration for civil contempt as there will be a definite term that the contemnor will be incarcerated. Criminal contempt may be direct, meaning that it occurred in the presence of the Judge, or indirect. The Court may defer addressing direct criminal contempt.
6. “*Court*” and “*Tribal Court*” are synonymous and mean the trial court of the Tribe.
7. “*Court Clerk*” refers to the Tribal Court Administrator (TCA) or a person designated to perform such duties by the Chief Judge or the TCA.
8. “*Day*” means a calendar day.

9. “*Deferred Contempt*” involves the decision of the Court to decline to address and sanction direct contempt later in the case and not at the time the contemnor engaged in the behavior in the presence of the Judge. An example of deferred contempt is a Judge declining to address and sanction a party at the time the contemnor was disruptive, such as yelling at the Judge, during a Court hearing. The decision of the Court to hold contempt proceedings after the behavior was observed by the Judge triggers due process requirements including, but not limited to: notice of the alleged contempt; an opportunity to prepare a defense; notice of and right to a show cause hearing where the contemnor may refute the allegations, cross-examine witnesses, testify, and present witnesses; and, in some cases, be appointed counsel. The Court may defer both direct civil contempt and direct criminal contempt.
10. “*Direct Contempt*” involves an act of contempt that has occurred in the presence of the Judge. Direct contempt may be civil or criminal. The Court may immediately hold the contemnor accountable for his or her actions, including ordering sanctions, when contemnor’s behavior is an immediate necessity to protect and preserve the authority, integrity and dignity of the Court. An example of behavior that creates this immediate necessity to protect and preserve the authority, integrity and dignity of the Court is when an individual disrupts a court proceeding by yelling. The process of immediately holding a person accountable is also referred to as “summary contempt proceedings”. Summary sanctioning of contempt does not violate the due process rights of the contemnor when the contempt was committed in the presence of the Judge. The Court should use the least punitive sanctions possible to hold the contemnor accountable and to protect and preserve the authority, integrity and dignity of the Court.
11. “*Ex Parte Communications*” means any communications, either oral or in writing, made to a judge, outside the presence of the parties or their lawyers or without their prior knowledge, concerning a pending or impending matter before the Tribal Court.
12. “*Tribal Supreme Court*” means the appellate court of the Tribe.
13. “*Willful*” means an action, omission or statement with deliberate intent

#### **Section 4. Procedures for Indirect Civil Contempt and Indirect Criminal Contempt**

- A. Indirect Civil Contempt and Indirect Criminal Contempt require a hearing to provide the contemnor with:
  1. Proper notice of the charges of contempt;
  2. A reasonable opportunity to prepare a defense or explanation;
  3. An opportunity to challenge evidence, including cross-examine witnesses;

4. An opportunity to testify; and
  5. An opportunity to present evidence, including witnesses.
- B. Indirect Civil Contempt and Indirect Criminal Contempt may be initiated upon filing of a Motion or upon Judicial Notice.
1. Filing Required.
    - a. A Motion must be filed in writing, along with payment of the filing fee, unless the fee is waived by the Court, to initiate the action.
    - b. The Court may take Judicial Notice of facts giving rise to Indirect Civil Contempt or Indirect Criminal Contempt.
      - i. An example of when it is appropriate for the Court to initiate contempt proceedings by Judicial Notice is when a party fails to file their brief as ordered in a scheduling order.
      - ii. For actions initiated by Judicial Notice, the facts shall be stated in the Order to Show Cause.
  2. Contents of Motion
    - a. The name of the individual bringing the Motion
    - b. The status of the individual filing the Motion
    - c. The following individuals may file a Motion for Indirect Civil Contempt or Indirect Criminal Contempt
      - i. A party in a civil case;
      - ii. An interested person, Probation Officer or Presenting Officer in juvenile case;
      - iii. An interested person in guardianship or conservatorship case;
      - iv. An interested person, Probation Officer or Presenting Officer in an Elder protection case
      - v. A Probation Officer, Prosecuting Attorney or other individual as authorized by the Court in a criminal case.
    - d. The name of the alleged Contemnor
    - e. The status of the Contemnor

- f. A statement of the specific facts from personal knowledge or affidavit from the individual with personal knowledge, providing the basis for the claim of contempt
- g. For Indirect Civil Contempt, the statement must include:
  - i. The Contemnor's act that was forbidden or the Court Order with which the Contemnor failed comply;
  - ii. When the Contemnor committed the act or failed to comply with the Court's order
  - iii. That the Contemnor is under a present duty to comply with the Court's order
  - iv. That the Contemnor is in present violation of the Court's order
  - v. That it is still possible for the Contemnor to:
    - (1) Perform the act ordered by the Court; or
    - (2) Grant the relief originally sought by the Court order
  - vi. The impact of the act committed by the Contemnor or the Contemnor's failure to comply with the Court's order; and
  - vii. The remedy requested
    - (1) If requesting damages, the Motion must include the basis for the damages request; and
    - (2) Damages must be proven at the hearing.
- h. For Indirect Criminal Contempt, the statement must include:
  - i. The Contemnor's act that was forbidden or the Court order with which the Contemnor failed comply;
  - ii. That the Contemnor committed the forbidden act or failed to comply with the Court's order with willful intent;
  - iii. That the forbidden act or failure to comply with the Court order undermines the authority of the Court or disrupts the functioning of the Court;
  - iv. When the Contemnor committed the act or failed to comply with the Court's order:

- v. That the act was committed outside the presence of the Court; and
  - vi. The remedy requested
    - (1) If requesting damages, the Motion must include the basis for the damages request; and
    - (2) Damages must be proven at the hearing.
3. The Tribal Court Administrator shall forward the Motion to the presiding Judge within seven (7) days.
4. Upon receipt of a Motion for Indirect Civil Contempt or Indirect Criminal Contempt, the Court shall:
- a. Appoint counsel if the Contemnor does not have counsel or has previously declined counsel in a criminal case
  - b. Issue an Order to Show Cause that:
    - i. States the accused Contemnor is required to appear at the hearing to show cause why she or he should not be found in contempt of court or an arrest warrant may be issued;
    - ii. States the type of contempt alleged;
    - iii. States the date and time set for the Show Cause Hearing;
      - (1) The Court may set the date and time for the hearing with the parties during related Court proceedings
    - iv. States that the accused Contemnor shall have the opportunity to:
      - (1) Provide a defense or explanation;
      - (2) Challenge evidence, including cross-examine witnesses;
      - (3) Testify; and
      - (4) Present evidence, including witnesses.
    - v. Attaches the Motion for Contempt of Court and any accompanying documents, including an affidavit if the person filing the Motion does not have personal knowledge of the facts alleged; or

- c. Issue an arrest warrant for the Contemnor, if there is a sufficient foundation of competent evidence contained in the Motion, affidavit or the Court's own records for the arrest, that must state:
  - i. That an arraignment is required before release; or
  - ii. That the Contemnor may be released without arraignment if she or he pays a specific bond with acknowledgement that appearing at the Arraignment is required.

5. Upon receipt of the Order to Show Cause and confirmation of the Hearing to Show Cause, the Court Clerk shall:

a. Provide notice:

- i. By mail a minimum of fourteen (14) days in advance of the hearing; or
- ii. By personal service a minimum of seven (7) days in advance of the hearing

b. Shall include a copy of the Motion, including any attachments, and Order with the notice.

C. At the Hearing on Indirect Civil Contempt or Indirect Criminal Contempt

- 1. The moving party may present witnesses, cross-examine witnesses, introduce evidence and make arguments to the Court; and
- 2. The Respondent or Defendant may present witnesses, cross-examine witnesses, introduce evidence, testify and make arguments to the Court.

## **Section 5. Procedures for Direct Civil Contempt or Direct Criminal Contempt**

A. Summarily Addressing Direct Contempt of Court.

- 1. When an act of contempt has occurred in the presence of the Judge, the Court may immediately hold the contemnor accountable for his or her actions, including ordering sanctions. This process is also referred to as "summary contempt proceedings".
- 2. The Court shall limit summary contempt proceedings to when addressing the behavior is an immediate necessity to protect and preserve the authority, integrity and dignity of the Court.
  - a. An example of immediate necessity is when action by the Court is needed to restore order in the courtroom.



3. The Court should use the least punitive sanctions possible to hold the contemnor accountable and to protect and preserve the authority, integrity and dignity of the Court.
  4. Summary sanctioning of contempt does not violate the due process rights of the contemnor when the contempt was committed in the presence of the Judge.
- B. To conduct summary contempt proceedings, the contempt must have occurred in the presence of the Judge.
1. To proceed, the Judge must have personal knowledge of all necessary facts.
- C. Upon motion of a party or upon Judicial Notice, the Court may defer addressing direct civil contempt or direct criminal contempt.
1. If the Court defers contempt proceedings, the contemnor is entitled to procedural due process.

#### **Section 6. Procedures for Deferred Direct Contempt**

- A. Deferred Civil Contempt and Deferred Criminal Contempt requires a hearing to provide the contemnor with:
1. Proper notice of the charges of contempt;
  2. A reasonable opportunity to prepare a defense or explanation;
  3. An opportunity to challenge evidence, including cross-examine witnesses;
  4. An opportunity to testify; and
  5. An opportunity to present evidence, including witnesses.
- B. When a Judge defers a decision on Direct Civil Contempt or Direct Criminal Contempt, it waives summary proceedings and shall at a later time, upon Judicial Notice:
1. Issue an Order to Show Cause that:
    - a. States the accused Contemnor is required to appear at the hearing to show cause why she or he should not be found in contempt of court or an arrest warrant may be issued;
    - b. States the type of contempt alleged;
    - c. States the actions, omissions or statements that were made in the presence of the Judge that gave rise to defer direct civil contempt proceedings or direct criminal contempt proceedings

- d. States the date and time set for the Show Cause Hearing;
    - i. The Court may set the date and time for the hearing with the parties during related Court proceedings
  - e. States that the accused Contemnor shall have the opportunity to:
    - i. Provide a defense or explanation;
    - ii. Challenge evidence, including cross-examine witnesses;
    - iii. Testify; and
    - iv. Present evidence, including witnesses.
  - f. Attaches any documents provided by the Court;
2. Issue an arrest warrant for the Contemnor, if there is a sufficient foundation of competent evidence in the Court's own records for the arrest, that must state:
- a. That an arraignment is required before release; or
  - b. That the Contemnor may be released without arraignment if she or he pays a specific bond with acknowledgement that appearing at the Arraignment is required.
3. Upon receipt of the Order to Show Cause and confirmation of the Hearing to Show Cause of a party, the Court Clerk shall:
- a. Send notice
    - i. By mail a minimum of fourteen (14) days in advance of the hearing; or
    - ii. By personal service a minimum of seven (7) days in advance of the hearing; and
  - b. Shall include the Order and any documents provided by the Court with the notice.
- C. At the Hearing on Deferred Direct Civil Contempt or Deferred Direct Criminal Contempt
- 1. The moving party may present witnesses, cross-examine witnesses, introduce evidence and make arguments to the Court; and
  - 2. The Respondent or Defendant may present witnesses, cross-examine witnesses, introduce evidence, testify and make arguments to the Court.

## **Section 7. Standards of Proof**

- A. Civil Contempt. The standard of proof for Civil Contempt shall be by clear and convincing evidence.
- B. Criminal Contempt. The standard of proof for Criminal Contempt shall be proven beyond a reasonable doubt that the person engaged in a willful disregard or disobedience of the authority or orders of the Court
- C. Rules of Evidence. Rules of Evidence shall apply to all contempt proceedings except summary contempt proceedings.

## **Section 8. Court's Opinion and Order**

- A. In contempt proceedings, the Court is required to state:
  - 1. Factual findings;
  - 2. Burden of proof employed;
  - 3. Type of contempt committed;
  - 4. A conclusion as to how the contemptuous conduct undermined the authority of the Court or disrupted the functioning of the Court;
  - 5. The sanctions imposed; and
  - 6. The reasons for imposing sanctions.
- B. Civil Contempt. In civil contempt cases, the Court's order of commitment shall state that, "the incarceration shall be terminated when the person performs the act or duty or no longer has the power to perform the act or duty and pays the monetary penalty, if any".

## **Section 9. Sanctions**

- A. Civil Contempt. Following a finding of Civil Contempt, the Court may order any or all of the following sanctions:
  - 1. A conditional jail sentence to compel the contemnor to comply with an order of the Court;
  - 2. A monetary sanction, including expenses of the proceeding;
  - 3. Damages for loss due to the contemptuous conduct;
  - 4. Terms that reflect the values and traditions of the NHBP; and

5. Any combination of the above as justice so requires.
- B. Criminal Contempt. Following a finding of Criminal Contempt, the Court may order any or all of the following sanctions:
1. Treat the contemnor as a Class C Misdemeanor offender as defined in Section 2201 of the Law and Order Code, meaning the sentence may include:
    - a. Incarceration for a period not to exceed thirty (30) days;
    - b. A fine not to exceed \$500.00; or
    - c. Both.
  2. Probation;
  3. Damages for loss due to the contemptuous conduct;
  4. Sanctions that reflect the values and traditions of the NHBP; and
  5. Any combination of the above as justice so requires.

#### **Section 10. Appeals**

- A. A final judgment or order of contempt may be appealed to the NHBP Supreme Court
1. Civil Contempt. An order finding a person in civil contempt of Court is not a final order for purposes of appellate review and may only be appealed by application for leave to appeal.
  2. Criminal Contempt. Criminal contempt is a crime and an order finding a person in criminal contempt, whether that criminal contempt is direct, indirect or deferred, and imposing sanctions is a final order from which the contemnor may appeal as of right.

#### **Section 11. Short Title, Effective Date and Citation Format**

- A. Short Title. The short title for these *Rules* is “*Rules for Contempt of Court Proceedings*”.
- B. Effective Date. These *Rules* become effective when adopted by the Chief Judge of the Court.
- C. Citation. The official abbreviated citation form to these *Rules* is: NHBPCR 17.

## CERTIFICATE OF ADOPTION

The Chief Judge of the Tribal Court adopts the above Chapter of Court Rules on September 22, 2016.



Hon. Melissa L. Pope, Chief Judge (P55328)

September 28, 2016

Date of Adoption

### JUDICIAL HISTORY

The Chief Judge adopted the *Court Rules for Contempt of Court Proceedings* on September 28, 2016 after reviewing comments submitted pursuant to *Chapter 1 – Procedures for the Adoption of Tribal Court Rules*.