

YOUR DAY IN COURT

Understanding the Court Process

Are you filing a case or named in one?

You are here to use the court process. The following information will help you understand the court system and the important role you have in your case.

Reading this carefully will help you represent yourself by providing general information on preparing and presenting your case.

Mailing Address of Court:

**Clerk of Tribal Court 307 Meskwaki Rd., Tama IA
52339**

Telephone: (641) 484-9300

Fax: (641) 484-2221

Form Approved by the Judiciary of the Tribal Court

July 2018

THE ROLES

The Judge: An appointed person with experience in many different areas of law who will be the neutral listener in your case; s/he will direct your case as it proceeds through the legal system and make decisions based on the information you provide and on the law. **Clerk of Court:** Clerks maintain records of all documents filed with the court and of court proceedings. They also collect various fees, fines, and forfeitures. Clerk staff are your first contact with the court and they can answer most general questions about court procedures and rules; they **cannot give legal advice.**

Attorney: A person who has specialized training and has a license to practice law; they act as an advocate and can give advice to the individual s/he represents.

Petitioner/Plaintiff: The person starting the case with the court; this person is the one who files the paperwork which begins the case.

Respondent / Defendant: The person responding to the case that was started by the Petitioner.

THE GUIDANCE: LAWS AND RULES

Rules and procedures: The court has special rules and procedures that govern everyone's behavior - see the Meskwaki Tribal Court Web site (www.meskwakicourt.org) for more information about court rules.

These are called "Rules of Procedure".

Civil v. Criminal: Criminal cases involve the potential loss of liberty as a punishment (i.e. jail or prison time). Civil cases involve payment of fines and sometimes specific behavior restrictions as punishment.

Different rules and procedures govern criminal and civil cases.

Tribal Code: The Tribe's Code (laws) are posted on the Tribe's Web site (www.meskwaki.org).

Courtroom behavior: *Be responsible!* Please comply with the following:

Arrive on time

Wear clean and appropriate clothing

Be polite to the judge and the other party - *Don't* interrupt

Be calm and logical - *Don't* yell or object on the grounds that the other side is lying

Speak only when asked to - *Don't* talk unless the judge instructs you to do so

Be prepared. Have your witnesses and paperwork ready

Tip #1

Be careful to answer the questions on the forms with specific information.

Include dates, times, and a clear description of events.

Example: The form asks for the reason you want a Domestic Abuse Restraining Order.

Answer: "My Spouse abuses me."

Better answer: "For the last six months, my Spouse has come home drunk after work almost every night and punched me in the face."

The Beginning

The Clerk of Court's Office has some available forms and information you may need to begin a court case. Go there first.

Not all matters have pre-made forms. You can modify existing forms to suit your needs, but there is the possibility that a pre-made form does not exist for the type of action you desire. Most attorneys generate their own petitions to best serve the interests of their clients.

Fill out the forms completely; any information you leave out could reduce your chances of getting what you want.

File your Petition with the Clerk of Courts Office. Check/money order payable to "Clerk of Court", or Cash. No debit or credit cards

Service of Process

In most cases, you must "serve," or deliver, the papers you filed with the court to the other party.

Usually, people choose to use the Meskwaki Nation Police Department for service within the Meskwaki Settlement, or the Sheriff's Department of the county in which the other party lives.

The Petitioner can also use private "process servers" that can be found in the Yellow Pages.

After the Respondent has been served, s/he has 20 days to respond by filing an "Answer" with the Clerk of Courts. This "Answer" explains where the Respondent disagrees with the Petition filed against him/her.

Temporary Orders

People usually come to an agreement on temporary arrangements on their own while the case is pending.

If the parties cannot resolve temporary arrangements, a party must file the forms for a Temporary Order and hearing at which the judge will decide what temporary arrangements will be in place.

Discovery and Investigation

Negotiation: If the parties do not agree on all of the issues in the case, the court may order the party to go to mediation in some cases.

Investigation and use of experts: This is the time to gather evidence about your case and the other side's position. The court may order an expert appointed to your case in some instances.

Mediation: The time where a neutral third party, who is not ANY part of the case, listens to both sides and helps the parties reach agreement or settlement. The judge may order mediation, or the parties themselves may request mediation to work out their differences without long, costly court proceedings.

Guardian *ad litem*: Appointed to represent children and give the judge recommendations about the children in a divorce case where the legal custody or physical placement of the children is in dispute. **The parties to the case must pay for the cost of the Guardian *ad litem*.**

Status conference: The time the court has the parties meet to see how far along the case is, and to see if the parties have reached an agreement or settlement on all or most of the issues in the case.

Tip #2

Find documents, other people (witnesses), or photographs that help the credibility of your version of the facts.

You may not use people, letters, or notes that say they heard something from someone else, unless the "someone else" is the opposing party to your case.

Witnesses should stick to the facts of specific things they saw and heard, not talk about how they feel.

Settlement or Trial?

Settlement: Most cases reach settlement, or agreement, through compromise (such as a stipulated agreement) and common sense. Otherwise, parties may spend a lot of time and money fighting their case. **Trial:** This is the time the parties bring their evidence into court for the judge or jury to consider. A trial is in four parts:

Opening statement: The time to tell the judge or jury briefly what your case is about and what you are asking for - be brief; this is not the time for opinions or arguments.

Direct examinations: This is where your witnesses give testimony. Ask witnesses clear and direct questions one at a time; ask questions that help bring out the facts you want the judge or jury to hear. **Cross-examinations:** This is the time you have to question the other party's witnesses. Ask short, clear questions; do not argue with, yell at, or harass the witness. Your goal is to ask questions that will get answers that point out inconsistencies in the other side's story.

Closing argument: This is your last chance to speak to the court. Give your opinion about the case using an argument based on the evidence presented.

Judgment or Decision Point

After considering all the evidence, a judge or jury will come to a decision.

The decision, or judgment, will detail how the case should be resolved.

This can include:

Payment/collection of money: One party may be ordered to pay the other party a specified amount of money. It is not the responsibility of the court to collect the money. The party awarded the money is responsible for collection.

Assignment of responsibilities: The court may assign certain responsibilities to one or both parties, including what behavior isn't allowed in the future.

Change assigned responsibilities: The court may change the responsibilities assigned in earlier proceedings based on a current decision.