

Nottawaseppi Huron Band of the Potawatomi Tribal Court

Court Rules for Recognition and Enforcement of Foreign Court Actions, Warrants and Subpoenas

Chapter 8

Section 1: Title

The name of this Chapter of Court Rules is “*Court Rules for the Recognition of Foreign Court Actions*”.

Section 2: Purpose

The purpose of this Chapter of Court Rules is to implement “*Recognition of Foreign Judgments*”, *Tribal Ordinance 11-06-07-02*, which provides for the enforcement of court actions, warrants, and subpoenas of foreign courts.

Section 3: Definitions

For the purposes of this Chapter of Court Rules, the following definitions will be used:

- A. “*Attorney*” and “*Lawyer*” are synonymous and mean an individual who is admitted to practice before the courts of any state.
- B. “*Band*” and “*Tribe*” are synonymous and mean the Nottawaseppi Huron Band of Potawatomi Indians, including its agents and enterprises.
- C. “*Court*” and “*Tribal Court*” are synonymous and mean the trial level court of the Band.
- D. “*Day*” means calendar day.
- E. “*Foreign Court*” means any court other than the Tribal Court of the Nottawaseppi Huron Band of Potawatomi Indians, including state, or tribal courts or courts of any foreign country.
- F. “*Foreign Judgment*” means any final judgment, decree or order from any foreign court regardless of whether the judgment is for money, injunctive relief, declaratory or any other relief.

- G. “*Final Judgment*” means a decision of a trial court that settles the rights and obligations of the parties and disposes of all issues in controversy preventing re-litigation of the issues.
- H. “*Party*” means a person concerned with or having been subject to a judgment, order, decree, warrant, subpoena or other judicial act of a foreign court.
- I. “*Petitioner*” means a party who has a judgment rendered in their favor.
- J. “*Rendering Jurisdiction*” means the jurisdiction in which the foreign judgment was entered.
- K. “*Respondent*” means the party against whom a judgment has been rendered.
- L. “*Subpoena*” means a judicial order commanding a person to appear before a court to testify or produce other evidence, specific documents, records or things, or to make a sworn statement at a time and place other than at a trial. A subpoena has a penalty for failing to comply with it.
- M. “*Warrant*” means a judicial order directing or authorizing someone to do an act, including directing a law enforcement officer to make an arrest, search or seizure.

Section 4: Recognition of Foreign Court Actions

- A. Validity of Court Actions.** The judgments, orders, warrants, decrees, subpoenas, records of a foreign court, and other judicial actions are presumed to be valid and will have the same effect as Tribal Court orders, judgments, decrees, warrants, subpoenas, records, and actions. All foreign court orders, judgments, decrees, warrants, subpoenas, records and actions shall be subject to the same procedures, defenses, and proceedings as those of the Tribal Court, subject to the provisions of this Chapter.
- B. Reciprocal Recognition.** The recognition described in this Chapter applies only if the foreign court provides reciprocal recognition and enforcement of Tribal Court judgments, orders, decrees, warrants, subpoenas records and other judicial acts.

C. Compliance Provision. Any person who seeks recognition of a foreign action must comply with the procedures set forth in Section 5 of this Chapter.

D. Presumption of Validity. A judgment, order, decree, warrant, subpoena, record or other judicial action of a foreign court which complies with subsection 4(B) of this Chapter is presumed to be valid.

E. Overcoming the Presumption. To overcome the presumption of validity as set forth in subsection 4(B) of this Chapter, a person objecting must demonstrate that they are subject to the foreign court action, and:

- 1) the foreign court lacked personal or subject matter jurisdiction, or
- 2) the judgment, order decree, warrant, subpoena, record or other judicial act of the foreign court:
 - a. was obtained by fraud, duress or coercion;
 - b. was obtained without reasonable notice;
 - c. was obtained without a fair hearing;
 - d. is repugnant to the public policy or laws of the Tribe; or
 - e. is not final pursuant to laws and procedures of the foreign court.

F. Foreign Court Arrest Warrants. The person seeking recognition of a foreign court arrest warrant must comply with the conditions and procedures set forth in Section 10 of this Chapter.

G. Foreign Court Search Warrants. The person seeking recognition of a foreign court search warrant must comply with the conditions and procedures set forth in Section 11 of this Chapter.

H. Full Faith and Credit. This Section does not apply to judgments or orders that federal law requires be given full faith and credit.

Section 5: Procedures for the Recognition of Foreign Court Actions Except for Subpoenas and Warrants

A. Application. In accordance with the foreign court actions recognition provisions set forth in Section 4 of this Chapter, a foreign action that is final is recognizable in the Tribal Court under the following procedure.

B. Registration of Foreign Court Action. A person seeking recognition of a foreign court action shall:

- 1) File a copy of the foreign court action with the Tribal Court. The foreign court action must be authenticated by the clerk or registrar of the foreign court in the following manner:
 - a. the clerk, registrar or administrator of the foreign court must attest in writing that:
 - i. they are the clerk, registrar or administrator of the foreign court;
 - j. they are the custodian of the records of the foreign court; and
 - k. they have compared the attached copy of the foreign court action with the original on file and of record in the foreign court and have found the copy of the foreign court action to be a true copy of the original.
 - b. Upon completion of the written attestation, as referenced above, the clerk, registrar or administrator must:
 - i. sign and date the attestation;
 - ii. affix the seal of the foreign court to the copy; and
 - iii. attach a certified copy of the original foreign court action to the attestation.
- 2) File an affidavit which includes the following:
 - a) the name and last known address of the Petitioner;
 - b) the name and last known address of the Respondent;
 - c) proof that the foreign court action to be entered is final with no appeal pending;
 - d) a statement that no subsequent orders vacating, modifying or reversing the foreign court action have been entered in the rendering jurisdiction;
 - e) proof that the person against whom the court action has been rendered (i.e. Respondent) is subject to the jurisdiction of the Tribal Court with regard to the enforcement of the foreign court action; and
 - f) a statement or other proof that the court from which the foreign court action was issued, provides or will provide, reciprocal recognition and entitlement to enforcement of the judgments, orders, decrees and other judicial acts of the Tribal Court.
- 3) Pay the filing fee for registering the foreign court action.

Section 6: Notice of Registration of Foreign Court Actions

A. Notice of Registration of Foreign Court Actions. Upon the filing of the foreign court action, attestation, affidavit and filing fee as required in Section 5 of this Chapter, the Tribal Court Administrator shall within 14 days:

- 1) mail a notice of the foreign court action, the accompanying affidavit, and the attestation to the Respondent at the address provided by the Petitioner, by first-class mail; and
- 2) complete a proof of service.

B. Contents of the Notice. The notice of the filing of the foreign court action shall include the following:

- 1) the name and address of the Petitioner or the Petitioner's attorney, if any, and;
- 2) a statement giving notice to the Respondent that an "*Order Granting Recognition of Foreign Court Action*" shall be entered by the Tribal Court unless the Respondent files a written objection, based upon the grounds set forth in Section 4(E)(3) of this Chapter, with the Tribal Court within 21 days of the date of service of the notice on the Respondent.

Section 7: Objections to the Filing of a Foreign Action

A. Time Limit for Objecting. A Respondent has 21 days after notice as required in Section 8(B)(2) of this Chapter to file a written objection to the recognition of the foreign court action. Any objection filed must include statements setting forth the basis for the objection.

B. Entry of Order Absent an Objection. If no objection is filed by the Respondent within the 21 day period set forth in Section 6 (B)(2), the Tribal Court will enter the "*Order Granting Recognition of Foreign Court Action*".

Section 8: Objection to Filing; Hearing and Entry of Order

A. Notice of an Objection. In the event that the Respondent files a written Objection pursuant to Section 7 of this Chapter, the Tribal Court Administrator shall:

- 1) send by first-class mail a copy of the Objection to the Petitioner or the Petitioner's Attorney;
- 2) set a hearing for the Objection; and
- 3) send notice of the hearing to the Petitioner, the Respondent and their respective attorneys.

B. Burden of Proof. The Respondent at the *Objection Hearing* shall have the burden of proof by clear and convincing evidence to show why the foreign court action should not be recognized by the Tribal Court. An action that complies with Section 4(B) of this Chapter is presumed valid. To overcome the presumption of validity the Respondent must meet the requirements of Section 4(E).

C. Timeliness of Order. The Court shall enter an order either granting or denying recognition as soon as practicable but no later than 7 days after the close of proofs.

Section 9: Post-Judgment Proceedings

Following the entry of an "*Order Granting Recognition of Foreign Court Action*" the Petitioner may enforce that order in any manner legally available to the Petitioner, including post-judgment proceedings.

Section 10: Procedures for the Presentation of Foreign Court Arrest Warrants

A. Presentation of Foreign Court Arrest Warrant. A duly authorized law enforcement officer seeking recognition and enforcement of a foreign arrest warrant shall present the original, a copy, or a confirmed electronically valid warrant to the Tribal Police.

B. Warrant Requirements. Any arrest warrant that is presented to the Tribal Police for enforcement shall:

- 1) contain the signature of the issuing judge or magistrate; and
- 2) clearly set forth probable cause:
 - a. to believe that an offense has been committed; and
 - b. that the person named has committed the offense.

Section 11. Procedures for Presentation of Foreign Court Search Warrants

A. Warrant Requirements. Any search warrant that is presented to the Tribal Court for enforcement shall:

- 1) contain the signature of the issuing foreign court judge or magistrate;
- 2) clearly set forth probable cause that a search will discover:
 - a. stolen property, embezzled property, contraband or otherwise unlawfully possessed property;
 - b. property which has been or is being used to commit a criminal offense;
 - c. property which constitutes evidence of the commission of a criminal offense; *See Chapter 3(b) of "Title III Criminal Procedure Code of the Nottawaseppi Huron Band of Potawatomi Indians Law and Order Code";*
 - d. other evidence of a crime;
 - e. a person for whom an arrest warrant has been issued or will be issued contemporaneously with the issuance of the search warrant;and
- 3) reasonably describe the property to be seized and the place to be searched.

B. Presentation of Foreign Court Search Warrant. A duly authorized law enforcement officer seeking recognition and enforcement of a foreign court search warrant shall present the original or a copy of the search warrant to the Tribal Court.

C. Issuance of Tribal Court Order for Recognition and Enforcement of Foreign Court Search Warrant. The Court shall authorize execution if a search warrant if the conditions in Section 11(A) of this Chapter are met and if the following circumstances are complied with:

- 1) Before any foreign court search warrant affecting governmental or property interest of the Nottawaseppi Huron Band is executed upon, notice and opportunity to object shall be provided to the Band.
 - a. Upon the filing of a foreign court search warrant that involves a governmental or property interest of the Band, the Tribal Court shall, as soon as reasonably possible, fax and mail, by first class mail, a notice of the filing of the foreign court search warrant, along with a copy of said warrant to the Tribal attorney and the Respondent and shall complete a proof of service. The notice of the filing of the foreign court search warrant shall include the following:
 - i. The name and mailing address of the Petitioner and the Petitioner's attorney, if any; and
 - ii. A statement giving notice that an *Order Granting Recognition of Foreign Court Search Warrant*" shall be entered unless the Tribal attorney, or the custodian of the government property, papers or records files a written objection based upon the grounds set forth in Section 4 (E) with the Tribal Court within 3 business days from the date of service of the notice on the Tribal attorney and the Respondent.
 - b. The Tribal Court must, as soon as reasonably possible, fax and mail by first-class mail, a notice to the Petitioner, Respondent, Respondent's attorney and the Tribal Attorney that states that the Tribal attorney has 3 business days from the date of service of the notice, to file any written objection to the recognition of the foreign court search warrant. Any objection filed must include a statement if the basis for the objection.
 - c. The Court may grant an extension of time to file a written objection for good cause.
 - d. In the event that the Tribal Attorney , or such attorney designated, does not file any written objection within the three (3) business day period or within the extension of time granted by the Court, an *Order Granting Recognition of Foreign Court Search Warrant* shall be entered by the Tribal Court.

- e. The Tribal attorney or the custodian of the governmental property, papers or records may object to the search warrant under the following conditions:
 - i. any objection must be filed in writing within the three (3) business objection period as set forth in Section 11(C) (a) (ii) unless an extension of time to file a written objection has been granted by the Court.
 - ii. the objection must set forth the reasons for the objection to the enforcement of the subpoena and may include one or more of the following grounds:
 - 1. the foreign court lacked personal or subject matter jurisdiction; or
 - 2. the search warrant of the foreign court;
 - a. was obtained by fraud, duress or coercion;
 - b. was obtained without fair notice or a fair hearing;
 - c. is repugnant to the public policy of the Band; or
 - d. is not final under the laws and procedures of the foreign court.
 - iii. the person filing the objection shall notify the foreign court that issued the search warrant of the objection as soon as reasonably possible by FAX and first-class mail within three (3) business days of the receipt of the search warrant.
 - iv. if the search warrant is for government property, papers or records then the Court shall, upon the receipt of an objection from the custodian of the governmental property, papers or records:
 - 1. notify the attorney for the Tribe that an objection has been filed; and
 - 2. allow the Tribal attorney to appear on behalf of the custodian.
- f. The Tribal Court shall schedule a hearing as soon as possible but no later than seven (7) days after a written objection is received. The Tribal Court shall:
 - i. Schedule a hearing on the objection; and
 - ii. Provide notice of the time, date and place of the hearing to the issuing court, the party requesting the search warrant, and the person objecting, as soon as reasonably possible, whether by personal service or FAX, and by first-class mailing.

- iii. at the hearing, the person objecting has the burden of persuasion that the search warrant should not be enforced.
- g. The Tribal Court shall issue an order either granting or denying recognition of the search warrant. The Tribal Court shall enter an order as soon as practicable after the hearing, but no later than seven (7) days.

2) Upon presentation to the Court, if the conditions in Section 11 (A) and (B) of this Chapter are met, the Court shall authorize execution of the search warrant.

D. Execution of Search Warrant on Tribal Trust Lands. Warrants of search and seizure shall only be executed in the presence of a Tribal Law Enforcement Officer if the place to be searched is Tribal Trust Land.

E. Maintaining a Copy of Warrant and Inventory. The Tribal Court shall receive and maintain a copy of any arrest or search warrant. Upon execution of any search warrant, a copy of the search warrant and itemized inventory of items seized shall be filed with the Tribal Court within the time limit shown on the face of the warrant, but no later than ten (10) days from the date of the issuance of the warrant, absent justifiable delay as determined by the Tribal Court.

Section 12: Procedures for the Recognition and Enforcement of Foreign Court Subpoenas

A. Recognition of Court Issued Subpoenas. The Tribal Court will only recognize subpoenas issued by foreign courts. Subpoenas issued by a party or an attorney for a party will not be recognized.

B. Tribal Court Order Required Before Service. Before any foreign court subpoena can be served on any Tribal member or person under the jurisdiction of the Tribal Court or custodian of Tribal papers and records the Tribal Court shall issue an Order allowing recognizing and enforcing the subpoena.

C. Registration of Foreign Court Subpoena. Any subpoena presented to the Court for recognition and enforcement must comply with the provisions set forth in Section 5 (B) of the Chapter.

- D. Notification of Tribal Attorney.** The Tribal Court shall notify the attorney for the Tribe, within three (3) days, when any subpoena is received requesting papers or records of the Tribe or requesting that any Tribal officer or employee testify.
- E. Notice of Registration of Foreign Court Subpoena.** Upon the filing of the foreign court subpoena and filing fee, the Tribal Court must within three (3) days mail, by first-class mail, a notice of the filing of the foreign court subpoena along with a copy of the foreign court subpoena to the Respondent, at the address provided by the Petitioner, Respondent's attorney and Tribal attorney, and complete a proof of service. The notice of the filing of the foreign court subpoena shall include the following:
- 1) The name and mailing address of the Petitioner and Petitioner's attorney, if any; and
 - 2) A statement giving notice that an "*Order Granting Recognition of Foreign Court Subpoena*" shall be entered by the Tribal Court unless the Respondent, the Respondent's attorney or then Tribal Attorney files a written objection, based upon the grounds set forth in Section 12(H) of this Chapter, with the Tribal Court within seven (7) days from the date of service of the notice for a subpoena of a person or fourteen (14) days from the date of service of the notice for a subpoena for papers or records.
- F. Notice of Deadline to File Written Objection.**
- 1) The Tribal Court must mail a notice to the Petitioner, Respondent, Respondent's attorney and the Tribal attorney that states the Respondent, Respondent's attorney or the Tribal attorney has seven (7) days from the date of service of the notice for a subpoena of a person or fourteen (14) days from the date of service of the notice for a subpoena for papers and records to file any written objection to the recognition of the foreign court subpoena.
 - 2) Any objection filed must include a statement of the basis for the objection.
- G. Entry of Order Absent Objection.** In the event that the Respondent, Respondent's attorney or the Tribal Attorney does not file any written objection within the seven (7) or fourteen (14) day period set forth in Section

13 (F) of this Chapter, an “*Order Granting Recognition of Foreign Court Subpoena*” shall be entered by the Tribal Court.

H. Objection. Only the person subject to the subpoena, their attorney, or the Tribal Attorney may object to the subpoena under the following conditions:

- 1) Any objection must be filed in writing with the Court within the objection period as set forth in Section 12(F).
- 2) The objection must set forth the reasons for the objection to the enforcement of the subpoena and may include one or more of the following grounds:
 - a. the foreign court lacks jurisdiction over the person subject to the subpoena;
 - b. the subpoena was obtained by fraud, duress or coercion;
 - c. the subpoena is repugnant to the public policy of the Band; or
 - d. to honor the subpoena would place the person subject to it in reasonable fear of physical harm or injury.
- 3) The person filing the objection shall by first-class mail notify the foreign court that the issued subpoena of the objection within seven (7) days of the receipt of the subpoena.
- 4) If the subpoena is for papers or records then the Court shall, upon the receipt of an objection from the custodian of the papers or records:
 - a. notify the attorney for the Tribe that an objection has been filed; and
 - b. allow the Tribal attorney to appear on behalf of the custodian.

I. Objection Hearing. The Tribal Court shall schedule a hearing as soon as possible but no later than fourteen (14) days after a written objection is received. The Tribal Court shall:

- 1) schedule a hearing on the objection;
- 2) provide notice of the time, date and place of the hearing to the issuing foreign court, the party requesting the subpoena and the person objecting, by first-class mail.
- 3) at the hearing the person objecting has the burden of persuasion that the subpoena should not be enforced.

- J. Order.** The Tribal Court shall issue an order either granting or denying recognition of the subpoena. The Tribal Court shall enter an order as soon as practicable after the hearing, but no later than seven (7) days.

Section 13: Appeal to the Supreme Court

- A. Appeal of Order Granting Recognition of a Foreign Court Action, Except a Foreign Court Subpoena.** The Respondent or the Respondent's attorney may appeal and order granting recognition of a foreign court action, except a subpoena, to the Supreme within seven (7) days of the date of service of the order upon the Respondent and the Respondent's attorney.
- B. Appeal of Order Granting Recognition of Foreign Subpoena.** The Respondent, Respondent's attorney or the Tribal attorney may appeal an order granting recognition of a foreign court subpoena to the Supreme Court within seven (7) days of the date of service of the order upon Respondent, Respondent's attorney or the Tribal Attorney.
- C. Appeal of Denial of Recognition of Foreign Court Action and Subpoena.** The Petitioner or the Petitioner's attorney may appeal the denial of recognition of a foreign court action and subpoena to the Supreme Court within seven (7) days of the date of service of the order denying recognition upon the Petitioner and the Petitioner's attorney.
- D. Stay of Execution of Tribal Court Order.** If an appeal is filed in an action any party may request a stay of execution from the Tribal Court within seven (7) days after the date of service of an order or ruling of the Tribal Court.

Section 14: Citation Form

The abbreviated citation form for this Chapter of Court Rules is 8 NHBPCR.

Section 15: Short Title and Effective Date

- A. Short Title.** These *Rules* are titled "Rules for the Recognition and Enforcement of Foreign Court Actions, Warrants and Subpoenas".

B. Effective Date. These *Rules* become effective when adopted by the Chief Judge of the Nottawaseppi Huron Band of Potawatomi Indians.

CERTIFICATION OF ADOPTION

The Chief Judge of the Tribal Court adopts the above Chapter of Court Rules as amended.

Hon. Michael Petoskey, Chief Judge

08/18/09
Dated

Judicial History

These *Court Rules for the Recognition of Foreign Court Actions* were adopted on September 30, 2008. Section 12 D (2)(a)(ii)(3) was amended to change the language to be consistent with the "*Recognition and Enforcement of Foreign Judgments Ordinance*", Section 3(2) on October 13, 2008. Sections 11,12 & 13 were amended on August 18, 2009, to simplify the procedure for the recognition of warrants and to provide separate procedures for search warrants and subpoenas. Section 14 was added to provide for appeals from orders recognizing or declining to recognize foreign court warrants and subpoenas.