

INSTRUCTIONS FOR COMPLETING PROOF OF SERVICE IN CIVIL CASES

These instructions serve as a guide only. For further information on service and proof of service, please see the Rules of Civil Procedure, 4.103 – 4.107. It is recommended that you contact an attorney if you have questions or need further legal advice.

A person filing a document with the court must serve a copy of the document on all interested parties to the case.

Proof of Service may be included at the end of a filing, or it may be filed as a separate document. It must be filed promptly and at least at or before a hearing to which the paper relates. (*see CR 4.107(D)*)

Service in civil actions may be served by any legally competent adult who is NOT a party or an officer of a corporate party (*see CR 4.103(A)*).

Service that requires seizure of property may only be served by:

- 1) An LRBOI Department of Public Safety officer, a sheriff or deputy sheriff, or a bailiff or court officer appointed by the court for that purpose;
- 2) An officer of the Michigan Department of State police in an action in which the State of Michigan is a party; or
- 3) A police officer of an incorporated city or village in an action in which the city or village is a party.

Service of Summons & Complaint

Proof of Service on a Summons & Complaint may be made by:

- 1) Written acknowledgement of receipt of a summons & copy of complaint, dated and signed by the person to whom the service is directed (or other authorized person under the Civil Rules of Procedure);
- 2) Certificate stating the facts of service (including the manner, time, date, and place of service, who completed service, and who was served); or
- 3) Affidavit stating the facts of service (including the manner, time, date, and place of service, who completed service, and who was served).

Service and Filing of Pleadings and other Papers (*see Court Rule 4.107*)

Every party who has filed a pleading, an appearance, or a motion must be served with a copy of every paper later filed in the action, except:

- 1) A non-party who has filed a motion or appeared in response to a motion need only be served with papers that relate to that motion.
- 2) A party against whom a default has been entered

If an attorney has filed an appearance on behalf of a party, then service shall be made upon the attorney. If two or more attorneys represent the same party, service of papers on one of the attorneys is sufficient. If a party represents him/herself, service shall be made upon the party.

Service on a party must be by one of these three methods:

1) Delivery to Attorney:

- a. Handing it to the attorney personally
- b. Leaving it at the attorney's office with the person in charge or by leaving it in a conspicuous place
- c. If the attorney has no office or the office is closed, leaving it at the attorney's residence with some person of suitable age and discretion residing there.

2) Delivery to Party:

- a. Handing it to the party personally
- b. Leaving it at the party's residence with some person of suitable age and discretion residing there

3) Mailing: Mailing a copy by enclosing it in a sealed envelope with first class postage fully prepaid, addressed to the person to be served, and depositing the envelope in the US mail.

The Tribal Court has Proof of Service forms available on the Tribal Court website under "Court Forms." They are also available for pickup at the Tribal Court office or via email upon request.

***Note on Electronic Service:** The Rules of Civil Procedure are silent on electronic service; however, if all parties agree to electronic service, the Court will accept Proofs of Service that indicate that method of service.

***SAMPLE PROOF OF SERVICE LANGUAGE:**

If including a Proof of Service at the end of a filing pursuant to CR 4.107(D), this is a sample of proof of service language that may be used:

Service by USPS mail:

PROOF OF SERVICE

I hereby attest that I served a copy of this document upon all other parties in this matter at their respective mailing addresses pursuant to Tribal Court Rule 4.100 on the date indicated below.

Date

(Signature of Serving Party)
Name of Serving Party

Service by Email

PROOF OF ELECTRONIC SERVICE

All parties having submitted an Electronic Service Consent Form to the Court, I hereby attest that I served a copy of this document upon all other parties in this matter at their respective email addresses on the date indicated below.

Date

(Signature of Serving Party)
Name of Serving Party

Court address	Court telephone no.
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2. I served _____ as follows:
(specify the titles of the papers served)

[illegible]

NAME	PLACE OF SERVICE	DATE AND TIME

NAME	REASON

Signature _____

LITTLE RIVER BAND OF OTTAWA INDIANS TRIBAL COURT	CERTIFICATE OF SERVICE/ NONSERVICE To be completed by Process Server	CASE NO.
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Court Address
3031 Domres Road, Manistee, MI 49660

Court Telephone No.
(231) 398-3406

In the Matter of: _____

NAME OF DOCUMENTS TO BE SERVED: *

(*Required: This line must be completed by the person requesting service or this form will be returned for completion.)

TO PROCESS SERVER: You must serve the documents listed below and file this Certificate of Service/Nonservice with the Tribal Court. If you are unable to complete service, you must return all unserved copies to the Tribal Court.

(Please check one of the following boxes:)

I have attempted to serve a copy of the documents listed above and have been unable to complete service.

I have served a copy of the documents listed above upon the following individual(s):

Name of Person To Be Served	Date and time of service
Place or address of service:	

I am a sheriff, deputy sheriff, LRBOI Public Safety officer, bailiff, appointed court officer or attorney for a party.

I am a legally competent adult who is not a party to this case or an officer of a corporate party. I declare under the penalties of perjury that this certificate of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature of Process Server

Name (type or print)

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the documents listed above on:

Date: _____

Signature of Person Accepting Service

Printed Name of Person Accepting Service

Rule 4.103 Process; Who May Serve.

(A) Service Generally. Process in civil actions may be served by any legally competent adult who is not a party or an officer of a corporate party.

(B) Service Requiring Seizure of Property. A writ of restitution or process requiring the seizure or attachment of property may only be served by

(1) a Little River Band of Ottawa Indians Public Safety officer, a sheriff or deputy sheriff, or a bailiff or court officer appointed by the court for that purpose,

(2) an officer of the Michigan Department of State Police in an action in which the State of Michigan is a party, or

(3) a police officer of an incorporated city or village in an action in which the city or village is a party.

A writ of garnishment may be served by any person authorized by subrule (A).

(C) Service in a Governmental Institution. If personal service of process is to be made on a person in a governmental institution, hospital, or home, service must be made by the person in charge of the institution or by someone designated by that person.

(D) Process Requiring Arrest. Process in civil proceedings requiring the arrest of a person may be served only by a Little River Public Safety officer, a sheriff, deputy sheriff, or police officer, or by a court officer appointed by the court for that purpose.

Rule 4.104 Process; Proof of Service.

(A) Requirements. Proof of service may be made by

(1) written acknowledgment of the receipt of a summons and a copy of the complaint, dated and signed by the person to whom the service is directed or by a person authorized under these rules to receive the service of process;

(2) a certificate stating the facts of service, including the manner, time, date, and place of service, if service is made within the State of Michigan by

(a) a Little River Band Public Safety Officer,

(b) a sheriff, a deputy sheriff or bailiff

(c) an appointed court officer,

(d) an attorney for a party; or

(3) an affidavit stating the facts of service, including the manner, time, date, and place of service, and indicating the process server's official capacity, if any.

The place of service must be described by giving the address where the service was made or, if the service was not made at a particular address, by another description of the location.

(B) Failure to File. Failure to file proof of service does not affect the validity of the service.

(C) Publication, Posting, and Mailing. If the manner of service used requires sending a copy of the summons and complaint by mail, the party requesting issuance of the summons is responsible for arranging the mailing and filing proof of service. Proof of publication, posting, and mailing under Rule 4.106 is governed by Rule 4.106(G).

Rule 4.105 Process; Manner of Service.

(A) Individuals. Process may be served on a resident or nonresident individual by

(1) delivering a summons and a copy of the complaint to the defendant personally; or
(2) sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, and delivery restricted to the addressee. Service is made when the defendant acknowledges receipt of the mail. A copy of the return receipt signed by the defendant must be attached to proof showing service under subrule (A)(2).

(B) Individuals; Substituted Service. Service of process may be made

- (1) on a nonresident individual, by
- (a) serving a summons and a copy of the complaint in the State of Michigan on an agent, employee, representative, sales representative, or servant of the defendant, and
 - (b) sending a summons and a copy of the complaint by registered mail addressed to the defendant at his or her last known address;
- (2) on a minor, by serving a summons and a copy of the complaint on a person having care and control of the minor and with whom he or she resides;
- (3) on a defendant for whom a guardian or conservator has been appointed and is acting, by serving a summons and a copy of the complaint on the guardian or conservator;
- (4) on an individual doing business under an assumed name, by
- (a) serving a summons and copy of the complaint on the person in charge of an office or business establishment of the individual, and
 - (b) sending a summons and a copy of the complaint by registered mail addressed to the individual at his or her usual residence or last known address.

(C) Discretion of the Court.

(1) On a showing that service of process cannot reasonably be made as provided by this rule, the court may by order permit service of process to be made in any other manner reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard.

(2) A request for an order under the rule must be made in a verified motion dated not more than 14 days before it is filed. The motion must set forth sufficient facts to show that process cannot be served under this rule and must state the defendant's address or last known address, or that no address of the defendant is known. If the name or present address of the defendant is unknown, the moving party must set forth facts showing diligent inquiry to ascertain it. A hearing on the motion is not required unless the court so directs.

(3) Service of process may not be made under this subrule before entry of the court's order permitting it.

(D) Jurisdiction; Range of Service; Effect of Improper Service.

(1) Provisions for service of process contained in these rules are intended to satisfy the due process requirement that a defendant be informed of an action by the best means available under the circumstances. These rules are not intended to limit or expand the jurisdiction given the Tribal courts over a defendant.

(2) There is no territorial limitation on the range of process issued by the Tribal Court.

(3) An action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within the time provided in these rules for service.

(E) Registered and Certified Mail.

(1) If a rule uses the term "registered mail," that term includes the term "certified mail," and the term "registered mail, return receipt requested" includes the term "certified mail, return receipt

requested." However, if certified mail is used, the receipt of mailing must be postmarked by the post office.

(2) If a rule uses the term "certified mail," a postmarked receipt of mailing is not required. Registered mail may be used when a rule requires certified mail.

Rule 4.106 Notice by Posting or Publication.

(A) Availability. This rule governs service of process by publication or posting pursuant to an order under Rule 4.105(I).

(B) Procedure. A request for an order permitting service under this rule shall be made by motion in the manner provided in Rule 4.105(I). In ruling on the motion, the court shall determine whether mailing is required under subrules (D)(2) or (E)(2).

(C) Notice of Action; Contents.

(1) The order directing that notice be given to a defendant under this rule must include

- (a) the name of the court,
- (b) the names of the parties,
- (c) a statement describing the nature of the proceedings,
- (d) directions as to where and when to answer or take other action permitted by law or court rule, and
- (e) a statement as to the effect of failure to answer or take other action.

(2) If the names of some or all defendants are unknown, the order must describe the relationship of the unknown defendants to the matter to be litigated in the best way possible, as, for example, unknown claimants, unknown owners, or unknown heirs, devisees, or assignees of a named person.

(D) Publication of Order; Mailing. If the court orders notice by publication, the defendant shall be notified of the action by

(1) publishing a copy of the order once each week for 3 consecutive weeks, or for such further time as the court may require, in a newspaper in the county where the defendant resides, if known, and if not, in the county where the action is pending; or if the defendant is a member of the Little River Band of Ottawa Indians, publishing a copy of the order once, or for such further time as the court may require, in the Little River Band Newsletter, and

(2) sending a copy of the order to the defendant at his or her last known address by registered mail, return receipt requested, before the date of the last publication. If the plaintiff does not know the present or last known address of the defendant, and cannot ascertain it after diligent inquiry, mailing a copy of the order is not required. The moving party is responsible for arranging for the mailing and proof of mailing.

(E) Posting; Mailing. If the court orders notice by posting, the defendant shall be notified of the action by

(1) posting a copy of the order in the courthouse and 2 or more other public places as the court may direct for 3 continuous weeks or for such further time as the court may require; and

(2) sending a copy of the order to the defendant at his or her last known address by registered mail, return receipt requested, before the last week of posting. If the plaintiff does not know the present or last known address of the defendant, and cannot ascertain it after diligent inquiry, mailing a copy of the order is not required. The moving party is responsible for arranging for the mailing and proof of mailing. The order must designate who is to post the notice and file proof of posting. Only a person listed in Rule 4.103(B)(1), (2), or (3) may be designated.

(F) Proof of Service. Service of process made pursuant to this rule may be proven as follows:

- (1) Publication must be proven by an affidavit of the publisher or the publisher's agent
 - (a) stating facts establishing the qualification of the newspaper in which the order was published,
 - (b) setting out a copy of the published order, and
 - (c) stating the dates on which it was published.

(2) Posting must be proven by an affidavit of the person designated in the order under subrule (E) attesting that a copy of the order was posted for the required time in the courthouse in a conspicuous place open to the public and in the other places as ordered by the court.

(3) Mailing must be proven by affidavit. The affiant must attach a copy of the order as mailed, and a return receipt.

Rule 4.107 Service and Filing of Pleadings and Other Papers.

(A) Service; When Required.

(1) Unless otherwise stated in this rule, every party who has filed a pleading, an appearance, or a motion must be served with a copy of every paper later filed in the action. A nonparty who has filed a motion or appeared in response to a motion need only be served with papers that relate to that motion.

(2) Except as provided in Rule 4.603, after a default is entered against a party, further service of papers need not be made on that party unless he or she has filed an appearance or a written demand for service of papers. However, a pleading that states a new claim for relief against a party in default must be served in the manner provided by Rule 4.105.

(3) If an attorney appears on behalf of a person who has not received a copy of the complaint, a copy of the complaint must be delivered to the attorney on request.

(4) All papers on behalf of a defendant must be served on all other defendants not in default.

(B) Service on Attorney or Party.

(1) Service required or permitted to be made on a party for whom an attorney has appeared in the action must be made on the attorney except as follows:

(a) The original service of the summons and complaint must be made on the party as provided by Rule 4.105;

(b) When a contempt proceeding for disobeying a court order is initiated, the notice or order must be delivered to the party, unless the court orders otherwise;

(c) After a final judgment has been entered and the time for an appeal of right has passed, papers must be served on the party unless the rule governing the particular postjudgment procedure specifically allows service on the attorney;

(d) The court may order service on the party.

(2) If two or more attorneys represent the same party, service of papers on one of the attorneys is sufficient. An attorney who represents more than one party is entitled to service of only one copy of a paper.

(3) If a party prosecutes or defends the action on his or her own behalf, service of papers must be made on the party in the manner provided by subrule (C).

(C) Manner of Service. Service of a copy of a paper on an attorney must be made by delivery or by mailing to the attorney at his or her last known business address or, if the attorney does not have a business address, then to his or her last known residence address. Service on a party must be made by delivery or by mailing to the party at the address stated in the party's pleadings.

(1) Delivery to Attorney. Delivery of a copy to an attorney within this rule means

- (a) handing it to the attorney personally;
- (b) leaving it at the attorney's office with the person in charge or, if no one is in charge or present, by leaving it in a conspicuous place; or
- (c) if the office is closed or the attorney has no office, by leaving it at the attorney's usual residence with some person of suitable age and discretion residing there.

(2) Delivery to Party. Delivery of a copy to a party within this rule means

- (a) handing it to the party personally; or
- (b) leaving it at the party's usual residence with some person of suitable age and discretion residing there.

(3) Mailing. Mailing a copy under this rule means enclosing it in a sealed envelope with first class postage fully prepaid, addressed to the person to be served, and depositing the envelope and its contents in the United States mail. Service by mail is complete at the time of mailing.

(D) Proof of Service. Except as otherwise provided by Rule 4.104, 4.105, or 4.106, proof of service of papers required or permitted to be served may be by written acknowledgment of service, affidavit of the person making the service, a statement regarding the service verified under Rule 4.114(A), or other proof satisfactory to the court. The proof of service may be included at the end of the paper as filed. Proof of service must be filed promptly and at least at or before a hearing to which the paper relates.

(E) Service Prescribed by Court. When service of papers after the original complaint cannot reasonably be made because there is no attorney of record, because the party cannot be found, or for any other reason, the court, for good cause on ex parte application, may direct in what manner and on whom service may be made.

(F) Numerous Parties. In an action in which there is an unusually large number of parties on the same side, the court on motion or on its own initiative may order that

- (1) they need not serve their papers on each other;
- (2) responses to their pleadings need only be served on the party to whose pleading the response is made;
- (3) a cross-claim, counterclaim, or allegation in an answer demanding a reply is deemed denied by the parties not served; and
- (4) the filing of a pleading and service on an adverse party constitutes notice of it to all parties.

A copy of the order must be served on all parties in the manner the court directs.

(G) Filing With Court Defined. The filing of pleadings and other papers with the court as required by these rules must be with the clerk of the court, except that the judge to whom the case is assigned may accept papers for filing when circumstances warrant. A judge who does so shall note the filing date on the papers and transmit them forthwith to the clerk. It is the responsibility of the party who presented the papers to confirm that they have been filed with the clerk.