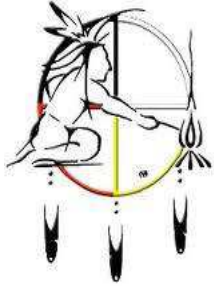


FOREST COUNTY POTAWATOMI MEDIATION ORDINANCE

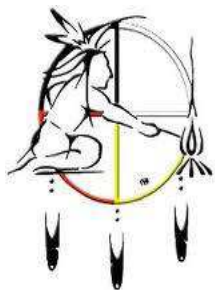
CHAPTER 2-5 (05/09/2015)



FOREST COUNTY POTAWATOMI MEDIATION ORDINANCE

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FOREST COUNTY POTAWATOMI MEDIATION ORDINANCE

§ 1. General

1.1. Purpose

The purpose of this ordinance is to provide a non-adversarial alternative to contemporary court. Mediation encourages people to settle their disputes by seeking counsel and advice of a trusted third party. Persons who have a pending Tribal Court matter or persons who may be considering commencing an action will be encouraged to involve themselves in Mediation. The goal is to resolve conflict by assisting people to accept responsibility for their actions and encourage traditional and culturally appropriate outcomes.

1.2. Authority

The Forest County Potawatomi General Council enacts this ordinance pursuant to its authority under the Tribal Constitution, Article IV, §1(d).

1.3. Effective Date and Title

This ordinance shall take effect upon the Majority approval of the Forest County Potawatomi General Council and it shall be known as the Forest County Potawatomi Mediation Ordinance.

1.4. Sovereign Immunity

The Tribe, by adoption of this ordinance, does not waive its Sovereign Immunity in any respect.

1.5. Amendment or Repeal

This ordinance may be amended or repealed only by a Supermajority vote of the Forest County Potawatomi General Council.

1.6. Interpretation

The provisions of this ordinance shall govern when provisions contained in any other of the Tribe's ordinances, codes, or resolutions conflict with or impose greater restrictions than those contained herein.

§ 2. Definitions

For the purpose of this ordinance, the following words and phrases shall have the meanings given to them in this Section and by law:

“Abuse” shall mean the physical, emotional or sexual Abuse of a Child.

“Advocate” shall mean a lay person who is admitted to practice law in the Tribal Court.

“Cause” shall mean but is not limited to any one or more of the following: breaching confidentiality, engaging in coercion or biased behavior, failing to appear for a scheduled Mediation session, failing to conduct Mediation sessions in a timely fashion, conviction of any offense which is punishable by imprisonment and/or failing to recuse their person from a matter in which he or she has a conflict of interest.

“Child” or “Children” shall mean a person who has not attained the age of eighteen (18) years.

“Mediation” shall mean an informal dispute settlement process run by a Mediator. Mediation is intended to bring two (2) parties together to clear up misunderstandings, find out concerns, and reach a resolution. The Mediation process is voluntary and confidential.

“Mediator” shall mean a person with special skills and training in Mediation. Tribal Court shall set the minimum requirements to qualify as a Mediator.

“Neglect” shall mean the failure or delay to provide adequate shelter, safety, supervision, or nutritional needs of a Child.

“Supermajority” shall mean seventy five percent (75%) of the annually established quorum of the Forest County Potawatomi General Council.

“Tribal Court” shall mean the Forest County Potawatomi Tribal Court.

“Tribe” shall mean the Forest County Potawatomi Community.

§ 3. Establishment

The Forest County Potawatomi Community Mediation Ordinance is hereby established as part of the Tribal Court system.

§ 4. Mediators

4.1. Qualifications

Mediators shall have the following qualifications:

- (A) An enrolled member of a federally recognized tribe.
- (B) Twenty-five (25) years of age or older.

- (C) Some demonstrable experience or training in Mediation.
- (D) No use of illegal drugs or abuse of alcohol.

4.2. Training

Mediators shall receive training to augment their services to the Court. The Chief Judge shall develop and maintain training requirements. The Chief Judge may require specific training prior to a Mediator being assigned to a case.

4.3. Appointment and Supervision

Mediators shall be appointed and supervised by the Chief Judge. There shall be a roster of at least three (3) Mediators at all times, each of whom shall have a contract for services with the Tribe which shall include monetary compensation, travel and training to be determined by the Chief Judge. At least one Mediator shall be fifty-five (55) years or older and an enrolled member of the Forest County Potawatomi Community. The Chief Judge shall select Mediators with a diversity of backgrounds and experiences. Prior to appointment, a Mediator shall take an oath to uphold this ordinance and its intent.

4.4. Background Check

Prior to appointment, the proposed Mediator shall submit to and pass the equivalency of a federal caregiver background check.

4.5. Responsibilities

Mediators shall have the following responsibilities:

- (A) To conduct Mediation sessions as assigned.
- (B) To complete case follow up and proper case management.
- (C) To assist the parties in reaching a resolution, which may be memorialized in written form and submitted to the Tribal Court for disposition of the matter pending before the Court.
- (D) To participate in ongoing trainings.
- (E) To be timely for all meetings.
- (F) To maintain strict confidentiality for all information that he or she learns during the course of carrying out Mediation responsibilities.
- (G) To disqualify themselves from participating in any matter in which they have a conflict of interest.

- (H) To conduct themselves with honesty and integrity.

4.6. Authority

Mediators shall have the following authority:

- (A) To mediate disputes.
- (B) To encourage the parties to acknowledge the nature of the dispute.
- (C) To encourage the parties to resolve the dispute.
- (D) To use traditional ways of Mediation and community problem solving.
- (E) To instruct individuals on the traditional Tribal teaching relevant to their problems or conduct.
- (F) To encourage other persons affected by the dispute to participate.
- (G) To refer a matter back to the Court if it is determined that no satisfactory resolution can be reached through the Mediation process.
- (H) To assist in developing innovative and alternative methods of Mediation.
- (I) To use any lawful and reasonable means to obtain the peaceful, cooperative, and voluntary resolution of a dispute. No force, violence or violation of civil rights will be permitted.

4.7. Exemption from Liability

A Mediator, in the performance of his or her official duties, shall be exempt from all personal liability for acts done under the authority of this ordinance, Tribal law, and Tribal Court rules.

4.8. Removal for Cause

The Chief Judge shall have authority to remove or terminate a Mediator for Cause.

§ 5. Appointment, Request, and Assignment of a Mediator

5.1. Appointment

The Chief Judge or their designee may appoint and the parties may stipulate to the appointment of a Mediator for:

- (A) Marital disputes, custody disputes and disputes involving family strife.

- (B) Disputes among extended or traditional family relations.
- (C) Minor disputes between neighbors as to community problems such as nuisances, animal trespass or annoyance, disorderly conduct, breaches of the peace and like matters.
- (D) Alcohol and drug use or abuse by family or neighbors.
- (E) Community business transactions involving private individuals.
- (F) Any other matter that can be resolved through the use of Mediation.

5.2. Request

The parties may verbally request the assistance of Mediation at anytime while on the record or by filing a written informal request with the Court. A formal court proceeding need not be pending to request the assistance of Mediation. Written requests may be either on a form provided by the Court or a hand written request, which gives the Tribal Court the following information:

- (A) The name and address of the person who requests the use of Mediation.
- (B) The name of the persons involved in the dispute (parties), and their mailing addresses and their places of residence.
- (C) The reason the individual wants to use Mediation and a short statement of the problem involved.
- (D) The names of and addresses of other persons who have information relevant to the matter in dispute who may be contacted by the Mediator.

5.3. Assignment of Mediator

- (A) Upon receiving a request for Mediation, the Chief Judge or their appointee shall, within five (5) working days contact and provide the necessary information to the proposed Mediator. The proposed Mediator shall immediately review the dispute and inform the Court if he or she is able to accept the matter. The clerk of court shall then inform the parties of the proposed Mediator and give them five (5) working days to accept or reject the assigned Mediator.
- (B) If one or both parties do not consent, the Chief Judge or their designee, shall recommend another Mediator or they may put the matter back on the Courts calendar, if the matter was previously filed in the Tribal Court.

- (C) If both parties consent to the recommended Mediator, the Chief Judge shall appoint the person forthwith.
- (D) The Mediator shall within five (5) working days of their appointment, under section (C), contact the parties and schedule a meeting or a series of meetings. The Court shall make available an appropriate place for each meeting. Mediation may be held in an alternative location with the consent of the Mediator and all parties.

§ 6. Mediation Process

6.1. Facilitation by Mediator

Mediation shall be facilitated by the Mediator in accordance with tribal traditions and values. Mediators will establish and explain the basic rules and procedures to participants.

6.2. Participants

- (A) Mediation shall include the primary persons involved in the dispute. It may include other interested persons as suggested by the parties. The Mediator may prepare a list of proposed non-party participants and shall consult with each party regarding the list prior to the Mediation. Mediators may assemble with individuals or subgroups of the participants.
- (B) Children under the age of twelve (12) shall be accompanied by their parent or guardian.
- (C) Lawyers or Advocates may not participate in Mediation.

6.3. Confidentiality

Communication made during Mediation shall be treated as confidential by all parties and participants. Such communication shall be privileged as settlement negotiations and shall not be admitted to court as evidence unless otherwise agreed in writing by the parties. This privilege will not apply to communications originally made for purposes other than Mediation, or made before Mediation begins. Notwithstanding any other provision of this paragraph, a Mediator must make a formal report to the appropriate government agency of any alleged Abuse or Neglect of a Child. The Court may hold a party or a Mediator in contempt of court upon a finding that the person violated the confidentiality of this section.

6.4. Terminating Mediation

Either party or the Mediator may terminate the Mediation upon signing a form provided by the Court stating the reason for the dissolution of the Mediation and the likelihood of a successful Mediation in the future. Parties may reaffirm and continue with Mediation at any time.

6.5. Agreements

Participants have the authority to settle the issue and demand the Court incorporate the agreement into a judgment or ruling. All agreements shall adhere to Tribal Law. Agreements shall have no legal force and effect until they are approved by the Court.

6.6. Records Destroyed

Upon completion of the Mediation, the assigned Mediator shall destroy all records of the Mediation notwithstanding the final agreement pursuant to §6.5.

06242010

Legislative History for the Forest County Potawatomi Mediation Ordinance



Approved by Executive Council 06/24/2010
Recommended by the Ordinance Department 06/24/2010
Approved by General Council 05/09/2015