

ORIGINAL

ENTERED

UPPER MATTAPONI TRIBE
RESOLUTION NO. 013

CIVIL PROCEDURE ACT OF 2023

At a duly called Regular Meeting of the Council held this 28th day of October, 2023, the following Resolution and Law were adopted.

WHEREAS; the Council is vested with the legislative power of the Upper Mattaponi Tribe (“Tribe”) and has the authority to enact laws pursuant to Article VI, Section 4(a) of the Constitution of the Tribe (“Constitution”); and,

WHEARAS; the Constitution establishes a judicial branch, comprised of a Trial Court and a High Court; and,

WHEREAS; Article X the Constitution provides for an Election Commission to conduct all elections of the Tribe, including the First Election pursuant to Article X, Section 6; and,

WHEREAS; In September 2023, the Council enacted the First Election Law of 2023 wherein, *inter alia*, the decisions of the Election Commission are final and, therefore, immediately appealable; and,

WHEREAS; Article II, Section 1(p) of the Constitution states that every person is entitled to due process under the laws of the Tribe, which includes the right to appeal from a decision of a governmental entity of the Tribe, including the Election Commission; and,

WHEREAS; Article VII, Section 4(a) and Article II, Section 1(n) of the Constitution authorizes the Council to enact laws including laws relating to civil procedures for the Tribe; and,

WHEREAS; the Council therefore has prepared the attached “Civil Procedure Act of 2023” to provide for due process and the orderly handling of any appeals from any final decision of the Election Commission in the First Election.

NOW THEREFORE IT BE IT RESOLVED that the Council hereby enacts the attached law entitled, “**CIVIL PROCEDURE ACT OF 2023**”.

CERTIFICATION

The foregoing resolution was duly voted upon by the Council on October 28th, 2023, at a Regular Meeting with a vote of 5 in favor and 0 opposed, 0 abstaining, and 2 absent, pursuant to the authority vested in the Council by the Constitution of the Tribe.



Speaker of the Council

COUNCIL - RESOLUTION NO. 013:

SPONSOR: Joseph Adams

CO-SPONSOR(S): Steven Tupponce

REPRESENTATIVES	YES	NO	ABSTAIN	ABSENT
<u>Rob Adams</u>	<u>X</u>			
<u>Low Wratclifford</u>	<u>X</u>			
<u>Desiree Dyer</u>	<u>X</u>			
<u>Steven Tupponce</u>				<u>X</u>
<u>Al Tupponce</u>				<u>X</u>
<u>Lenny</u>	<u>X</u>			
<u>Joseph Adams</u>	<u>X</u>			

ASSISTANT CHIEF: (Authorized to break tie votes only): _____

DELIVERY OF THE RESOLUTION AND LAW TO THE CHIEF

Resolution No. 013 was presented to the Chief of the Upper Mattaponi Tribe on the 28th day of October 2023, pursuant to the Article VII, Section 5(f) of the Constitution of the Upper Mattaponi Tribe, and will become effective after signature by the Chief or veto override by the Council.



Speaker of the Council

CHIEF'S ACTION:

APPROVED

VETO - RETURNED TO COUNCIL WITH EXPLANATION:

On this 28 day of October, 2023.

W. Frank Adams
Chief

Presented by the Chief to the Council on the ___ day of _____, 20__.

COUNCIL'S ACTION:

Override of Chief's veto:

YES

NO

REPRESENTATIVES	YES	NO	ABSTAIN	ABSENT

CERTIFICATION

The foregoing resolution was duly voted upon by the Council on this ____ day of _____, 20____, at a meeting with a vote of _____ in favor and _____ opposed, and _____ abstaining, and _____ absent pursuant to the authority vested in the Council by the Constitution of the Upper Mattaponi Tribe.

Speaker of the Council

Section 101. Short Title.

This enactment shall be known as the Civil Procedure Act ("Act").

Section 102. Purpose.

The purpose of the Act is to establish baseline civil procedures to ensure the orderly administration of civil justice and the provision of due process to every person.

Section 103. Findings.

The Council hereby finds and declares that:

- (a) establishing civil procedures will fulfill the Constitutional requirement to provide due process; and,
- (b) establishing rules of civil procedure will enable any person to vindicate their rights under the Constitution of the Upper Mattaponi Tribe.

Section 104. Rules of Civil Procedure and Rules of Evidence.

- (a) The Federal Rules of Civil Procedure and Evidence shall apply to all civil (non-criminal) matters brought before the Trial Court; and,
- (b) The Federal Rules of Appellate Procedure shall apply to all matters before the High Court.
- (c) In matters where a party appears *pro se*, the Judge may in his or her discretion relax the requirements of procedure to ensure the equitable administration of justice.

Section 105. Applicable Law.

In the absence of a binding contract to the contrary, the following shall be the choice of laws for all civil matters brought before the Trial Court in order of priority:

1. Prior decisions of the High Court;
2. Laws enacted by the Council of the Tribe;
3. Treaties and Agreements between the Tribe and any other government recognized by the Tribe;
4. Prior Decisions of the Trial Court;
5. In the absence of such legal authority as provided above, then the Trial Court and the High Court shall, in their discretion, look for persuasive legal authority from any of: the laws, judicial decisions, rules, or administrative decisions of the United States of America, the laws of any other tribe, any of the fifty states, or of any foreign nation.

Section 106. Challenges to the Final Decisions of the Election Commission.

Only final decisions of the Election Commission including the certification of the results of an election may be appealed by the filing of a Complaint with the Trial Court within ten (10) days of the publication of the decision by the Election Commission. Publication by the Election Commission shall occur when its decision is posted on the inside of the front window of the Sharon Indian School such that it can be read from outside. In counting days for the timeliness of an appeal, the first day shall be the day immediately after posting in the window of the Sharon Indian School has occurred.

In an election challenge the Trial Court shall uphold the Final Decision of the Election Commission, unless the appellant can establish by clear and convincing evidence that the irregularities forming the basis of the challenge would have changed the outcome of the election.

In any other challenge to a Final Decision of the Election Commission, the Trial Court shall review the matter *de novo* as to both the law and the facts.

Section 107. Pro tempore Judicial Appointments.

Any person meeting the substantive requirements to serve as a Trial Judge may be appointed by the Chief Justice of the High Court to serve in a temporary capacity as a judge *pro tem* to hear any challenges to Final Decisions of the Election Commission relating to the First Election. *Pro tem* Judicial appointments shall be remunerated with a stipend of \$2,000 per day of service. A day of service shall include travel, where necessary. All costs and expenses of a *pro tem* judge shall be reimbursed at the costs incurred.