

S.W.S.T. CODE
 Amendment
 New Adoption
Judicial Approved
02-03-82
Council Adopted
02-03-82

SISSETON-WAHPETON SIOUX TRIBE

CHAPTER 33

CIVIL MATTERS

33-01-01 APPLICABLE LAW

Civil matters shall be governed by the laws, customs, and usages of the Tribe not prohibited by the laws of the United States. The laws of the State of South Dakota may be employed as a guide. Where doubt arises as to the customs and usages of the Tribe, the Court shall request the advice of Tribal Elders/Advisors familiar with Tribal customs and usages. Where appropriate, the laws of the State of South Dakota may be employed to determine civil matters. The laws of the State of South Dakota shall not be used as a substitute for existing Tribal laws.

33-02-01 TRIBE IMMUNE FROM SUIT

The Court shall have no jurisdiction over any suit brought against the Tribe without the consent of the Tribe, unless by specific legislation the Tribe has restricted its sovereign immunity under certain circumstances. Nothing in this Code shall be construed as consent by the Tribe to be sued.

33-03-01 LIMITATION OF ACTIONS FOR DEBT OR DAMAGES

The Court shall have no jurisdiction over any action for debt or damages brought more than two (2) years after the cause of action arose. Provided That, whenever the Tribe (as Plaintiff) maintains a civil cause of action in Tribal Court, no statute of limitations shall apply to bar such action.

33-04-01 COSTS

In civil actions, costs shall be awarded to the prevailing party as part of the final judgment unless the Court otherwise orders. No costs shall be awarded against the Tribe, or against any officer of the Tribe or members of the Tribal Council sued in his official capacity. Costs shall include filing fees, reasonable and necessary expenses of the involuntary witnesses, compensation to jurors, and such other proper and reasonable expenses, exclusive of attorneys' fees, as the Court may allow.

33-05-01 JUDGMENTS

A judgment shall be entered in each civil case. The judgment shall be for money or other relief.

33-05-02 Judgment by Default

Upon failure of any party duly served to appear at the hearing, the Court shall enter the appropriate default judgment granting relief or dismissing the case. Where the relief sought is other than for a liquidated amount, no default judgment for claimant shall be entered except upon proof.

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33-05-03 Life of Judgment

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Amendment

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06-09-88

No judgment of the Court for money shall be enforceable after five (5) years from the date of entry, unless the judgment shall have been renewed before the date of expiration by an institution of appropriate proceedings in the Court under 33-05-04, Provided That, whenever the Tribe (as Plaintiff) is seeking relief, no statute of limitations shall apply to bar such judgment.

33-05-04 Renewal of Judgment

Upon application of the judgment creditor prior to the expiration of five (5) years after the date of entry of a judgment for money, the Court shall order the judgment renewed and extended not to exceed five (5) years, unless in the discretion of the Court, the judgment should be further extended.

33-06-01 PROCEDURES IN CIVIL SUITS

S.W.S.T. CODE

Amendment

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33-06-02 Commencement of Civil Proceedings

Except as otherwise provided in this Code, all civil proceedings shall be commenced by filing a verified statement of claim with the Clerk, accompanied by a filing fee of twenty dollars (\$20.00) and the cost of service under 33-06-02. Tribal Civil Form No. 1, or its equivalent, may be used.

33-06-03 Time of Hearing

Hearing on the claim shall be scheduled for the first available date, at least fifteen (15) days after the claim is filed, if service is by mail, and at least ten (10) days after the claim is filed, if service is by personal delivery.

33-06-04 Service

The Clerk shall furnish the plaintiff with a copy of the notice showing the time and place of hearing. Each defendant shall be served with a copy of the statement of claim and a notice of the time and place of hearing on the claim. Service by mail shall be made by the Clerk by registered or certified mail, return receipt requested. Service in person shall be made by any adult not a party to the case.

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33-06-05 Proof of Service

The return postal receipt, filed in the case record, shall constitute proof of service by mail. The affidavit of service by the person making personal service, filed in the case record, shall constitute proof of service.

33-07-01 SMALL CLAIMS PROCEDURE

Sections 33-07-02 through 33-07-26 shall be known as small claims procedures, and is the procedure for the determination according to the rules of substantive law, of claims in the nature of contract or tort, other than slander and libel, in which the plaintiff does not claim as debt or damages more than one hundred dollars (\$100.00); and, for review of judgments upon such claims when justice so requires.

33-07-02 Entry Fee. Summons Not Required. Statement to Clerk or Justice in Lieu of Pleading

The procedure shall include the beginning of actions with an entry fee of two dollars (\$2.00), but without summons, and without requirements, except by special order of the Court, of other pleading than a statement to the Clerk of Court, who shall reduce the same to concise written form in a docket kept for the purpose.

33-07-03 Procedure. Attorneys Barred. Presentation of Evidence. Proof of items of Account. Investigation by Judge. Judgment and Orders. Actions by Assignees

1. Actions by assignees. No Attorney at Law or other person than the plaintiff and defendant shall take part in the filing or the prosecution or defense of such litigation in the small claims court.
2. The plaintiff and defendant shall have the right to offer evidence in their behalf by witnesses appearing at such hearing, or at any other time. The presence of the plaintiff or defendant, whether individual or corporate, at the hearing shall not be required to permit the proof of the items of an account. The Judge or Justice may also informally make any investigation of the controversy between the parties, either in or out of Court and give judgment and make such orders as to time of payment or otherwise as may, by him, be deemed to be right and just.
3. No claim shall be filed or prosecuted in small claims court by the assignee of such claim, unless such assignment is bona fide and for a valuable consideration. Any assignment made for collection purposes only, shall not be considered to be bona fide within the meaning of Sections 33-07-02 through 33-07-26 of this Chapter.

33-07-04 Plaintiff's Statement of Claim to Clerk. Entry in Docket. Signature. List of items in Claim.

The plaintiff shall state the nature and amount of his claim to the Clerk who, after due inquiry, shall cause the claim to be reduced to writing in the docket in concise, untechnical form, and to be signed by the plaintiff. The signature shall be deemed the beginning of the action. If the claim involved more than three items, the plaintiff shall deliver to the Clerk, a fair list of such items, numbered consecutively.

33-07-05 Addresses of Parties Stated to Clerk. Notation in Docket.

The plaintiff shall also state to the Clerk the plaintiff's and defendant's place of residence, usual place of business, and the place of employment, or such thereof as the Clerk may deem necessary, including the street and number, if any; and, the Clerk shall note the same in the docket.

33-07-06 Determination of Sufficiency of Plaintiff's Statement to make Prima Facie Case.

If the Clerk deems the statement of claim insufficient to make a prima facie case, the Court at the request of the plaintiff shall decide whether such claim shall be received.

33-07-07 Time of Hearing on Claim. Memorandum to Plaintiff.

The Clerk shall fix the time set for the hearing which shall not be less than ten (10) days from the beginning of the action. The time fixed should be sufficient to able registered or certified mail by regular course to each defendant and to enable defendant to appear in person before the Court on the day fixed for the hearing. The Clerk shall give to the person signing the claim, a memorandum of the time and place set for the hearing.

33-07-08 Notice by Mail to Defendant. Form of Notice.

The Clerk shall mail to the defendant, at one or more of the addresses supplied by the plaintiff, as the Clerk may deem necessary or proper, by registered or certified mail, return receipt requested, the expense being prepared by the plaintiff, a notice signed by the Clerk, bearing the seal of the Court and bearing teste like a writ which, after setting forth the name of the Court, shall read substantially as follows:

"To _____" (HERE INSERT NAME OF DEFENDANT).
" _____" (HERE INSERT NAME OF PLAINTIFF) ASKS JUDGMENT IN THIS COURT AGAINST YOU FOR _____ (HERE INSERT THE AMOUNT CLAIMED IN DOLLARS AND CENTS) UPON THE FOLLOWING CLAIM: _____ (HERE INSERT THE NATURE OF CLAIM AS IT APPEARS ON THE DOCKET; BUT NO LIST OF ITEMS NEED BE INCLUDED).

THE COURT WILL GIVE A HEARING UPON THIS CLAIM AT _____ (HERE INSERT THE LOCATION OF THE COURTHOUSE AND THE ROOM THEREIN, OR THE OFFICE OF THE JUSTICE, AS MAY BE NECESSARY) AT _____ A.M./P.M. (HERE INSERT THE TIME AND CIRCLE A.M./P.M. AS THE CASE MAY BE) _____ (HERE INSERT THE DATE, INCLUDING THE DAY OF THE WEEK AS MAY BE PRESCRIBED BY GENERAL OR SPECIAL ORDER OF THE COURT.

IF YOU DENY THE CLAIM, IN WHOLE, OR IN PART, YOU MUST, NOT LATER THAN _____ (HERE INSERT THE DATE, INCLUDING THE DAY OF THE WEEK, OF THE DATE SET FOR THE HEARING), PERSONALLY STATE TO THE CLERK, ORALLY OR IN WRITING, YOUR FULL AND SPECIFIC DEFENSE TO SAID CLAIM, AND YOU MUST ALSO APPEAR AT THE HEARING. UNLESS YOU DO BOTH, THE JUDGMENT MAY BE ENTERED AGAINST YOU BY DEFAULT. IF YOUR DEFENSE IS SUPPORTED BY WITNESSES, ACCOUNT BOOKS, RECEIPTS, OR OTHER DOCUMENTS, YOU SHOULD PRODUCE THEM AT THE HEARING. SUBPOENAS FOR WITNESSES, IF REQUESTED, WILL BE ISSUED BY THE CLERK, WITHOUT FEE.

IF YOU ADMIT THE CLAIM, BUT DESIRE TIME TO PAY, YOU MUST, NOT LATER THAN _____ (HERE INSERT THE DATE, INCLUDING THE DAY OF THE WEEK OF THE DATE SET FOR HEARING), PERSONALLY STATE TO THE CLERK, ORALLY OR IN WRITING, THAT YOU DESIRE TIME TO PAY, AND YOU MUST ALSO APPEAR AT THE HEARING AND SHOW YOUR REASONS FOR DESIRING TIME TO PAY."

- 33-07-09** Docket entries on Notice to Defendant
The Clerk shall note in the docket the mailing date and address, the date of delivery shown by the return receipt and the name of the addressee or agent signing the receipt.
- 33-07-10** Notice Valid though Refused by Defendant. Further Notice on Failure of Delivery.
If the notice is returned undelivered, without refusal by the defendant, or if in any other way it appears that the notice has not reached the defendant, the Clerk shall issue, at the expense of the plaintiff, such other or further notice as the Court may order.
- 33-07-11** Jury Trial and Appeal Waived by Plaintiff
A plaintiff beginning an action under the procedure shall be deemed to have waived a trial by jury.
- 33-07-12** Court Order Required for Attachment or Garnishment. Form of Process.
No process of attachment or garnishment shall issue under this procedure, except upon the order of the Court. Such order shall state the amount of the attachment or garnishment and the property or credits to be attached. The form of the process shall be substantially that required for supplementary process in ordinary civil action.
- 33-07-13** Docket Entry as to Defense - Contents of Entry
The Clerk shall enter the substance of the defendant's defense in the docket, and the docket entry shall be deemed the answer. The answer shall state fully and specifically, but in concise and untechnical form, what parts of the claim are contested, and the grounds of such contest. Demurrers, dilatory pleas, and the answer of general denial are prohibited.
- 33-07-14** Set-Off or Counterclaim Stated by Defendant. Notice to Plaintiff and Postponement of Hearing. Answer by Plaintiff.
The defendant, within the time for answer, may in the manner provided in 33-07-04, claim any set-off or counterclaim within the jurisdiction of the Court in civil cases. Upon the making of such claim by the defendant, the Clerk shall give notice to the plaintiff, at the expense of the defendant, similar to that provided in 33-07-08 and shall postpone the hearing of the original claim until the time set for hearing the defendant's claim, and shall notify the parties accordingly. The defendant's claim shall be answered in the manner provided by 33-07-06. The original claim and the claim of set-off or counterclaim shall be deemed one case.
- 33-07-15** Amendments of Claim or Answer.
The Court may at any time allow any claim or answer to be amended.

- 33-07-16** Cases not Ready for Judgment Until Time for Hearing.
No case shall be deemed ready for judgment before the time set for the hearing.
- 33-07-17** Disposition of Claim on Failure of Plaintiff to Appear for Hearing.
If the plaintiff does not appear at any time set for hearing, the Court may dismiss the claim for want of prosecution, or enter a finding on the merits for the defendant or make such other disposition as may be proper.
- 33-07-18** Subpoenas for Witnesses.
Subpoenas for witnesses, if required, will be issued by the Clerk, without fee, which may be served by either party.
- 33-07-19** Witnesses and Evidence Received on Hearing.
Witnesses shall be sworn; but the Court shall conduct the hearing in such order and form and with such methods of proof as it deems best suited to discover the facts and to determine the justice of the case.
- 33-07-20** Signature of Docket on Determination of Action.
After the determination of the action, the Judge shall affix his signature to the docket card.
- 33-07-21** Items Allowable as Costs. Costs Assessed for Delay or Vexation Claim or Defense. Judgment and Execution for Costs
The actual cash disbursement of the prevailing party for entry fee, mailing fees, witness fees, and officer's fees shall be allowed as costs. No other costs shall be allowed either party, except by special order of the Court. The Court shall have the power in its discretion to award costs, in a sum fixed by the Court, not exceeding twenty-five dollars (\$25.00), (exclusive of such cash disbursements, or in addition thereto) against any party, whether the prevailing party or not, who has set up a frivolous or vexatious claim or defense, or has made an unfair, insufficient, or misleading answer, or has otherwise sought to hamper a party or the Court in securing a speedy determination of the claim upon its merits; and to enter judgment and issue execution therefor, or set off such costs against damages or costs, as justice may require.
- 33-07-22** Court Order as to Method of Payment of Judgment. Stay of Execution During Compliance.
The Court may order that the judgment shall be paid to the prevailing party or, if it so orders, into Court for the use of the prevailing party, at a certain date or by specified installments, and may stay the issue of execution and other supplementary process during compliance with such order. Such stay shall, at all times, be subject to being modified or vacated.

33-07-23 Grounds for Vacation of Judgment and Stay of Execution. Repayment Order.

The Court may, at any time, within six (6) months after entry of judgment, upon motion, and after such notice, by mail or otherwise, as it may order, for cause shown, vacate any judgment entered under this procedure, for want of actual notice to a party, for error, or for any other cause that the Court may deem sufficient and may stay or supersede the execution. The Court may also order the repayment of anything collected under such judgment, and may enter judgment and issue execution therefor; but no order shall affect the title of any bona fide holder for value under said judgment.

33-07-24 Costs Awarded on Motion to Vacate Judgment.

Costs in an amount fixed by the Court not exceeding twenty-five dollars (\$25.00) may be awarded in the discretion of the Court, for or against either party, to a motion to vacate judgment, and judgment may be entered and execution may be issued therefor, and any action by the Court may be made conditional upon the payment of such costs or the performance of any other proper conditions.

33-07-25 Form and Contents of Docket. Preservation of Other Papers not Required.

1. The docket shall consist of cards, envelopes, or folders, and such other documents as may be incorporated therein by reference. Nothing shall be deemed part of the record except the docket entries.
2. Any written papers delivered to the Clerk shall merely be authority for the Clerk to enter the substance thereof on the docket, and such papers need not be filed or preserved.

33-07-26 Forms for use in Small Claims Procedures.

The following forms are prescribed for use in small claims procedures, but failure to use or fill out completely or accurately any of the same shall not void any acts done pursuant to this Chapter, provided compliance with the preceding section is made and the information required by such sections or the following forms is substantially and accurately recorded and furnished in writing as required by this Chapter.

(Above mentioned forms on following pages.)

33-08-01 **ADJUDICATION**

If any clause, sentence, paragraph, section, or part of this code shall, for any reason be adjudicated by any Court of competent jurisdiction, to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which the judgment shall have been rendered.

MEMORANDUM TO PLAINTIFF:

To: _____

The case of yourself v. _____
will be heard on _____, 19____, at _____
o'clock _____ m., at _____

If your claim is supported by witnesses, books, of
account, or documents, they should be produced at the
hearing.

If your claim is an unliquidated claim, the amount of
damages must be proven at the hearing, whether the
defendant defends or not.

CLERK (or Justice of the Peace)

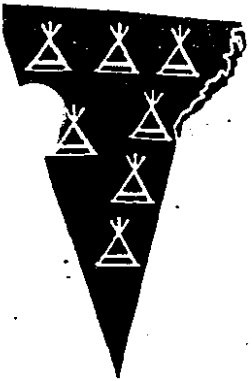
SMALL CLAIMS PROCEDURE

CLAIM:

PLAINTIFF

ANSWER:

DEFENDANT



Sisseton - Wahpeton Sioux Tribe

LAKE TRAVERSE RESERVATION

OLD AGENCY BOX 509 • AGENCY VILLAGE, SOUTH DAKOTA 57262-0509
PHONE: (605) 698-3911

TRIBAL COUNCIL RESOLUTION NO. SWST-98-074

Tribal Court Fee Schedule

WHEREAS, The Sisseton-Wahpeton Sioux Tribe is organized under a Constitution and By-Laws adopted by the members of the Tribe on August 1-2, 1966, and approved by the Commissioner of Indian Affairs on August 25, 1966; and,

WHEREAS, The Constitution and By-Laws ARTICLE VII, Section 1, that the Tribe shall be governed by the Tribal Council, and that the Tribal Council shall have the power to: (a) represent the Tribe in all negotiations with federal, state, and local governments; (c) to engage in any business that will further the economic development of the Tribe and its members and to use tribal funds or other resources for such purposes; (d) to make rules governing the relationship of the members of the Tribe, to Tribal property, and to one another as members of the Tribe; (g) to take actions by ordinance, resolution or otherwise which are reasonably necessary, through committees, boards, agents, or otherwise, to carry into effect the foregoing purposes; (h) to promote public health, education, charity and other services as may contribute to the social advancement of the members of the Sisseton-Wahpeton Sioux Tribe; and, (i) to adopt resolutions regulating the procedures of the Tribal Council, its officials and committees in the conduct of the Tribal Affairs; and,

WHEREAS, The Constitution and By-Laws governing the Tribe authorize the Tribal Council to enact criminal and civil laws governing the conduct of tribal members and other persons within the jurisdiction of the Tribe; and,

WHEREAS, The Tribal Council has previously, through the enactment of Chapter 21 of the Sisseton-Wahpeton Sioux Tribe Code, created a Tribal Court of Law in accordance with Article III, Section 5(d) of the Tribe's Constitution to make available a forum for the resolution of disputes that arise within the Tribe's jurisdiction; and,

WHEREAS, The Tribe Council, through the enactment of Rule 2(f) of Chapter 21 and Chapter 33-06-02 of the SWST Code, has set the filing fees for civil cases in the amount of twenty five dollars (\$25.00) and has also the fee for attorneys to be admitted to practice before the Tribal Court as five dollars (\$5.00) as provided for at Chapter 32-02-01 of the Tribe Code; and,

Tribal Court Fee Schedule

WHEREAS, The Tribal Court, through its Chief Judge, has proposed a fee schedule to the Council for the collection of fees for the processing of civil and criminal cases in the Tribal Court as has also proposed an annual fee for attorneys and lay advocates to practice before the Tribal Court; and,

WHEREAS, The fees proposed by the Court will assist the Court in dealing with the increased caseloads that it faces as the results of the increasing numbers of cases that are filed with the Court and will also permit the Court to get reimbursed for the service of process expenses it incurs for serving notice for private parties in civil cases; and,

WHEREAS, The fee for membership in the Tribal bar, five dollars (\$5.00) is very low compared to other tribal courts and that a more reasonable fee is called for in light of the benefits attorneys gain from being able to practice law before the Tribal court; and,

WHEREAS, The proposed fee schedule has been reviewed by the Tribal Judicial Committee which said Committee supports the adoption of the fee schedule to be implemented upon passage of this resolution.

NOW, THEREFORE, BE IT RESOLVED, That the Tribal Council of the Sisseton-Wahpeton Sioux Tribe hereby does amend Chapter 32-02-01 of the Sisseton-Wahpeton Sioux Tribal Code as follows:

32-02-01 Filing Fee: A filing fee of one hundred dollars (\$100.00) for licensed attorneys and twenty dollars (\$20) for non-attorney tribal members shall accompany each application for admission to the Bar. Upon an attorney's admission to the Bar, he shall be required to pay as an annual practice fee the amount of \$100.00 to the Tribal Court on or before the 1st day of January of each year commencing 1999.

FURTHER BE IT RESOLVED, That the Tribal Council of the Sisseton-Wahpeton Sioux Tribe does hereby repeal Chapter 33-06-02 of the Tribal Code dealing with filing fees and does further amend Rule 2(f) of the Rules of Civil Procedure containing in Chapter 21-14-02 of the Sisseton-Wahpeton Sioux Tribe Code as follows:

21-14-02 Rule 2(f): An action shall be commenced by filing a complaint or petition with the Clerk of Courts. The Clerk shall collect a filing fee of twenty-five dollars (\$25.00) and a service



fee of five dollars (\$5.00) for filing any complaint or petition which commences an action. No filing fee shall be charged a tribal entity nor shall a fee be charged for amendments to a previously filed complaint, or the filing of other pleadings or documents contemplated by the Rules except the Tribal Court may charge reasonable fees under a fee schedule approved by the Tribal Court, for the issuance of orders or the performance of other duties for the public. Filings may be accomplished in person or by mailing to Clerk, Sisseton-Wahpeton Sioux Tribal Court, P.O. Box 568, Agency Village, South Dakota 57262; and,


FINALLY, BE IT RESOLVED, That the attached fees submitted by the Tribal Court and approved by the Judicial Committee are hereby approved and can be implemented by the Tribal Court.


CERTIFICATION

We, the undersigned duly elected Chairman and Secretary of the Sisseton-Wahpeton Sioux Tribal Council, do hereby certify that the above resolution was duly adopted by the Sisseton-Wahpeton Sioux Tribal Council, which is composed of 10 members, (representing a total of 15 Tribal Council weighted votes) of whom 10 constituting a quorum, were present at a Tribal Council meeting, duly noticed, called, convened and held at the TiWakan Tio Tipi, Agency Village, South Dakota, June 10, 1998 by a vote of 15 for, 0 opposed, 0 abstained, 0 absent from vote, 3 not voting, and that said Resolution has not been rescinded or amended in any way.

Dated this 10th of June, 1998.

ATTEST:


Darrell Quinn, Sr., Tribal Secretary
Sisseton-Wahpeton Sioux Tribe


Andrew J. Grey, Sr., Tribal Chairman
Sisseton-Wahpeton Sioux Tribe

Original Copy to Tribal Court
cc: Judicial



