

**SISSETON-WAHPETON OYATE
LAW AND ORDER CODE
CHAPTER 21**

JUDICIAL CODE

21-01-01 ESTABLISHMENT OF A TRIBAL COURT OF LAW

21-01-02 In accordance with Article III, Section 5 (d) of the Tribal Constitution, it is hereby ordained by the governing body of the Sisseton-Wahpeton Oyate that in order for members of the Tribe, and persons under the jurisdiction of the Tribe, to have available a legal forum for the purposes of redress in both Civil and Criminal conflicts, these rules of operation, Rules of Civil Procedure and Rules of Alternative Dispute Resolution for the Tribal and Appellate Courts are established.

21-01-03 The Sisseton-Wahpeton Oyate Constitution, Article III, Section 5, provides:

- (a) There shall be a judicial branch comprised of a Tribal Court consisting of one Chief Judge and two Associate Judges with support staff and an Appellate court;
- (b) Judges shall be appointed by two-thirds (2/3) vote of the Tribal Council for a term of four (4) years;
- (c) Upon appointment, Judges may be removed only by provision of recall and impeachment procedures by Tribal Ordinance;
- (d) Rules of Operation shall be provided by the Tribal Ordinance.

21-01-04 Tribal judicial powers shall be vested in an Appellate Court and a Tribal Court.

21-01-05 The powers delegated to the judicial branch shall not be exercised by the Tribal Council nor shall any court of the judicial branch exercise those inherent and delegated executive and legislative powers of the Tribal Council.

21-01-06 The Tribal and Appellate Courts shall be charged with interpreting and following the laws of the Sisseton-Wahpeton Oyate.

21-01-07 Wherever the formal designation "Tribe" appears in this Judicial Code, such designation shall refer to the Sisseton-Wahpeton Oyate. Any reference to Tribal Code shall mean Sisseton-Wahpeton Oyate Code of Laws.

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21-02-01 **THE APPELLATE COURT**

21-02-02 There is hereby established the Sisseton-Wahpeton Oyate Tribal Court of Appeals. This Chapter establishes an Appellate Court to hear appeals from the Tribal Court. The Appellate Court shall guarantee to those persons who are under the jurisdiction of the Tribe their rights under the Sisseton-Wahpeton Oyate Revised Constitution and By-laws. This Court shall consider and apply Sisseton-Wahpeton Oyate Tribal traditions and customs in all judicial proceedings before it, including those involving the Indian Civil Right Act.

21-02-03 The Tribal Council shall determine if the Appellate Jurisdiction of the Tribe shall be entrusted to a Tribal Court of Appeals or to the Northern Plains Intertribal Court of Appeals. The Tribal Council may designate either forum but the two fora may not exist simultaneously as the Tribe's appellate court.

21-02-04 The Sisseton-Wahpeton Oyate appellate forum shall abide by the rules and procedures established in Rule 39 of this Chapter or of the Northern Intertribal Court of Appeals (NITCA) when the Tribe is a participating member.

21-02-05 The decisions of the Tribe's appellate forum, whether the Sisseton-Wahpeton Appellate Court or the NITCA, shall be the final decision of the Sisseton-Wahpeton Oyate Tribal judicial system on matters that come before it. All decisions of the appellate level Court shall be binding on the Sisseton-Wahpeton Oyate Tribal Court and followed as prevailing law.

21-03-01 **THE TRIBAL COURT**

21-03-02 This Court shall be known as the Sisseton-Wahpeton Oyate Tribal Court.

21-03-03 The Tribal Court shall provide opportunity for dispute resolution through the process of trial, or, upon agreement of the parties, alternative dispute resolution, for those persons who are under the jurisdiction of the Tribe. Alternative dispute resolution shall be conducted pursuant to 21-15-01 *et seq* of this Chapter.

21-03-04 This Court shall consider and apply Sisseton-Wahpeton Oyate Tribal traditions and customs in all judicial proceedings before it, including those involving the Indian Civil Rights Act.

21-03-05 Judges of the Tribal Court shall consist of three (3) persons appointed by the Tribal Council by two-thirds (2/3) vote of voting members.

21-03-06 The Chief Judge shall be appointed to serve a term of four (4) years.

21-03-07 The First Associate Judge shall be appointed to serve a term of four (4) years.

- 21-03-08 The Second Associate Judge shall be appointed to serve a term of four (4) years.
- 21-03-09 Thereafter, when a vacancy occurs, the Tribal Council shall appoint the Judge for a four-year term.
- 21-03-10 In the event of temporary illness of the Chief Judge, the more senior Associate Judge will have the authority to carry out the duties of Chief Judge. In the event of resignation, death, incapacitating illness, suspension, or removal of the Chief Judge, the more senior Associate Judge shall be the acting Chief Judge until a new Chief Judge is appointed.
- 21-03-11 In the event of a vacancy due to resignation, incapacitating illness, death, suspension, or removal of one of the Associate Judges, the Judicial Committee shall appoint a temporary Associate Judge, provided that person meets the criteria of Section 6 of this Chapter, until the Judicial Committee can perform its responsibilities listed in Sections 21-05-01 and 21-06-06.
- 21-03-12 In the event the Appellate Court disbands or is not functioning, and the Tribe does not participate in the NITCA, the Judicial Committee shall recommend three nominees as Judges to the Tribal Council for its approval and appointment.
- 21-03-13 The procedure in Tribal Court for all suits of a civil nature shall be governed by the Sisseton-Wahpeton Oyate Rules of Civil Procedure, Section 14 of this Chapter. They shall be construed to secure the just, speedy, and inexpensive determination of every civil action.
- 21-03-14 In the event that an issue arises in an action which is not addressed by this Code, all amendments thereto, all tribal laws enacted and all traditions and customs, the court may apply the legal concepts of statutes, regulations and case law of any tribe, any state or the federal government. Application of such law shall not be deemed an adoption of such law or an action to defer to the jurisdiction from which that law originates.
- 21-04-01 **JUDICIAL COMMITTEE**
- 21-04-02 There is established a Judicial Committee which shall consist of three (3) members appointed by a two-thirds (2/3) vote of the Tribal Council. Members of Tribal Council, Tribal Judges, tribal court personnel, felons, and persons owing a delinquent debt to the Tribe are not eligible for appointment.
- 21-04-03 The terms of the initial appointment of the Judicial Committee shall allow for staggered terms with one member serving a two (2) year term, one member serving a three (3) year term, and one member serving a four (4) year term. Judicial Committee members shall serve a term of four (4) years from the date of appointment thereafter.

- 21-04-04 The Judicial Committee members must have the following minimum qualifications to serve on the Committee:
1. An associates degree or two (2) year degree from an accredited college or university,
 2. Familiarity with Acts of Congress and U.S. Supreme Court decisions dealing with Indian Tribes and individual Indians, and the Tribe's own codes of law.
- 21-04-05 Judicial Committee members may be removed for cause, including a violation of the Tribal Code of Ethics, by a two-thirds (2/3) vote of the Tribal Council.
- 21-05-01 **DUTIES OF THE JUDICIAL COMMITTEE**
- 21-05-02 The Judicial Committee shall present qualified candidates to the Tribal Council for appointment to Judicial positions.
- 21-05-03 The Judicial Committee shall administer the process for accepting applications for Judicial positions and determining the most qualified candidates.
- 21-05-04 The Judicial Committee may initiate, draft, review, and propose any new laws or amendments to the current laws of the Sisseton-Wahpeton Oyate to the Tribal Council.
- 21-05-05 The Judicial Committee will review and recommend any changes to any proposed legislation upon request by the Tribal Council. The Judicial Committee does not have the authority to prevent the Tribal Council from enacting legislation.
- 21-05-06 The Judicial Committee may establish and implement a system for keeping records of written decisions and opinions decided by the Appellate and Tribal Courts and for maintaining original Legislative enactments pertaining to the Tribal Codes.
- 21-05-07 The Judicial Committee shall not engage in partisan politics. Members who engage in political activities are strictly prohibited from representing themselves as Judicial Committee members while so engaged.
- 21-05-08 The Judicial Committee shall serve in a liaison function between the Tribal Court and the Tribal Council. The Judicial Committee shall meet with the Chief Judge of the Tribal Court at least quarterly each year and is authorized to confer with the Chief Judge more frequently when issues of mutual interest and concern arise.

- 21-05-09 The Judicial Committee shall invite comment from the Chief Judge on all proposed new laws or amendments to current laws before making recommendations to the Tribal Council pursuant to 21-05-04 herein.
- 21-05-10 The Judicial Committee shall confer with the Chief Judge of the Tribal Court in establishing the systems mandated by 21-05-06 of this Chapter.
- 21-06-01 **SELECTION OF JUDGES**
- 21-06-02 The Judicial Committee shall screen applicants according to Subsection 06-07 herein. The criteria in Subsection 06-07 shall comprise base qualifications.
- 21-06-03 The Judicial Committee may interview applicants for judge after review of each applicant's resume to determine if base qualifications are present.
- 21-06-04 Applicants not meeting qualifications will be rejected. If no applicant meets base qualifications, the position shall be re-advertised.
- 21-06-05 The Code of Ethics outlined in the Tribal Constitution and By-laws of the Sisseton-Wahpeton Oyate shall be applied where applicable in the review of applicants.
- 21-06-06 Tribal members shall be given preference when other qualifications are equal.
- 21-06-07 The Judicial Committee shall use a point system which shall include the following base qualifications.

POINT RANGE

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|----|-----------------------|--------|
| 1. | Education background | 1 - 10 |
| 2. | Employment background | 1 - 10 |

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| 3. | Judicial experience (special scrutiny will be given to criminal jurisdiction and decisions affecting a sovereign Tribe) | 1 - 15 |
| 4. | Familiarity with acts of Congress, United States Supreme Court decisions dealing with Tribes and individual Indians (Indian Civil Rights Act, Indian Child Welfare Act, Indian Land Consolidation Act, Indian Education and Self-Determination Act, hunting and fishing rights, Treaty Rights) | 1 - 15 and |
| 5. | Administrative experience | 1 - 10 |
| 6. | Professional character (adherence to Judicial Code of Conduct, ability to respect confidentiality and privacy, bondability) | 1 - 10 |
| 7. | Moral character (high standards of personal conduct, history of sobriety, history of drug abstinence) | 1 - 10 |
| 8. | Record of criminal convictions | 1 - 10 |
| 9. | Willingness to learn and understand the laws and traditions of the Sisseton-Wahpeton Oyate | 1 - 10 |
| 10. | Honorable Discharge from military | 10 |
| 11. | Identity as SWST member or member of other Indian Tribe | 10 |
| 12. | Financial Stability | 1 - 10 |
| 13. | Demeanor and presentation | 1 - 5 |

21-07-01 **REMOVAL PROCEDURES**

Judges may be removed by provisions of recall or by provisions of impeachment pursuant to the Sisseton-Wahpeton Oyate Tribal Constitution.

Article 1, Section 4, Subsections (a), (b), (c), (d), of the Constitution provide:

"Section 4. Code of Ethics for all elected or selected officials. Gross neglect and improper conduct of ARTICLE VI, Vacancies, Removal and Recall from office should be interpreted by the Tribal Council in accordance with these definitions:

- (a) Gross Neglect: As evidenced through any or all of the following:
 - 1. Gross incompetency; unable or unwilling to perform the duties of the office.
 - 2. Inability to handle private affairs as evidenced through garnishment proceedings or court actions or ordering payments of delinquent loans or debts.
 - 3. Abandonment of office: not attending three consecutive District meetings or moving out of the area or District elected from.
 - 4. Excessive absenteeism: five days of unexcused absence in any thirty (30) day period.

- (b) Improper Conduct: Determined by Tribal Council or District Chairman's Association.
 - 1. Converting Tribal property or monies without authorization through omission or misrepresentation of facts.
 - 2. Misuse of office: unauthorized personal use of tribal equipment, manpower or materials.
 - 3. Public conduct so as to question the integrity of the Sisseton-Wahpeton Oyate.
 - 4. Malfeasance of office: including gross partiality or oppression.

- (c) Improper Conduct, Conviction by courts:
 - 1. Conviction of a felony.
 - 2. Three low-misdemeanor convictions within a twelve (12) month period.
 - 3. Crimes in office: Corruption, extortion, fraudulent claims for: compensation, salary, mileage and per diem or an unaccountable period of time.
 - 4. Contempt of Court.
 - 5. Any high-misdemeanor, including but not limited to malicious mischief, statutory rape, hit and run, assault, battery, or assault and battery.
 - 6. Driving while under the influence of alcohol.
- (d) Improper Conduct: Alcohol and drug-free lifestyle while in office.
 - 1. Failure to promote and live an alcohol and drug-free life style.
 - 2. Failure, while in office, to abstain from the use of alcohol and/or illegal drugs.
 - 3. Failure, while in office, to submit to random alcohol and drug testing.

The mandate and prohibitions set forth above shall also guide and constrain the conduct of Tribal Judges.

21-08-01 PROCEDURE FOR RECALL

21-08-02 A petition for a recall vote signed by ten percent (10%) of the registered voters of each District of the Tribe as certified by the REB must be presented to the a three person commission (Recall/Impeachment Commission) appointed by the Tribal Council for the purposes of recall and impeachment proceedings only. The petition must specify allegations of violations of 21-07-01 above to cause a recall vote. The three person commission appointed by the Tribal Council for these purpose only may, in its discretion, call for documentation and witnesses before determining whether or not sufficient cause exists for a recall vote. If the commission finds sufficient cause, it shall notify Tribal Council, which shall notify registered voters of a recall vote. All registered voters will be eligible to cast a ballot for the retention or removal of the Judge.

Upon Council action for a recall vote, the Judge in question shall be suspended with pay until the ballots are tabulated. If the vote results in favor of retaining the Judge, she/he shall automatically be restored normal responsibilities.

21-09-01 PROCEDURE FOR IMPEACHMENT

21-09-02 Documentation, including a signed and notarized statement of witnesses, and any other documents charging a judge with any violation of 21-07-01, shall be presented by a Tribal member to a three person commission (Recall/Impeachment Commission) appointed by the Tribal Council at a regularly scheduled Council meeting for the purposes of recall and impeachment proceedings only.

21-09-03 If the three person commission appointed by the Tribal Council for the purposes of recall or impeachment proceedings only determines by a majority vote grounds exist to conduct a hearing to adjudge whether the judge should be removed have been shown, the Tribal Council shall appoint a non-member law-trained person to conduct said hearing.

21-09-04 The person appointed to conduct the impeachment hearing shall then set a date and time for the hearing and notice shall be served on all parties involved. The hearing shall be held at a site other than the Tribal courtroom or the Tribal Council chambers.

21-09-05 The Judge against whom the charges have been brought shall be allowed at least ten (10) working days to review all allegations and supporting documentation of wrongdoing prior to the hearing.

21-09-06 Upon decision of a three person commission, appointed by the Tribal Council for the purposes of recall and impeachment proceedings only, to have an impeachment hearing conducted, the Judge against whom the charges of impeachment have been brought shall be relieved of duty with pay, until such time as the hearing is completed and a determination has been made that the charges of impeachment have been substantiated.

21-09-07 The appointed Judge or other law trained person having heard the impeachment hearing shall make Findings of Fact and Conclusions of Law determining whether clear and convincing evidence supports the charges of violations of the 21-07-01 within twenty (20) calendar days.

21-09-08 In the event it is adjudged that the judge should be removed, he/she shall be immediately and permanently relieved of all duties and shall not have the right to appeal.

21-09-09 In the event it is adjudged that the judge, against whom the charges of impeachment have been brought should not be removed, he/she shall immediately resume his/her duties.

21-10-01 **TRIBAL COURT SUPPORT STAFF**

21-10-02 There shall be a clerk of court and deputy clerks. They shall execute all ministerial duties assigned by the Chief Judge herein and shall have no authority to substitute judges for those appointed by the Tribal Council or the Judicial Committee for any reason. Neither shall the clerk of court nor the deputy clerks decide cases or issue orders affecting the rights of any person within the jurisdiction of this Court.

21-10-03 The duties of the clerk of court and deputy clerks shall include but shall not be limited to the following:

1. Maintaining records of all Tribal Court proceedings to include identification of the title and nature of all cases, the names of the parties, the substance of the complaints, the names and addresses of all witnesses, the dates of hearings and trials, names and addresses of all parties and witnesses appearing at all hearings and trials, all Tribal Court rulings and jury decisions, findings, orders and judgments, and any other facts or circumstances decided by the judges of the Tribal Courts or deemed of importance by the Tribal Court Judges.
2. Maintaining all pleadings, documents, and other materials filed with the Tribal Court, including an index of plaintiffs and defendants in all juvenile, civil, and criminal cases.
3. Maintaining all evidentiary materials, transcripts, and records of testimony filed with the Tribal Court.
4. Transmitting the docket entries and trial record to the court of appeals upon notice of filing of appeal.
5. Collecting and accounting for fines and other monies and properties taken into custody by the Tribal Court. All money received or collected as court ordered child support shall be distributed to the court ordered recipient no later than three (3) days after receipt by the Tribal Court.
6. Preparing and serving notices, summons, subpoenas, warrants, rulings, findings, opinions, and orders as prescribed by this Code and as may be designated by the Judges of the Tribal Court.
7. Assisting persons in the drafting and execution of complaints, petitions, answers, motions and other pleadings and documents for Tribal Court proceedings; provided, however, the court administrator and her/his assistants

shall not give advice on questions of law, nor shall they appear or act on behalf of any person in any Tribal Court proceedings.

8. Administering oaths and witnessing execution of documents.
9. Maintaining a supply of blank forms to be prescribed by the Tribal Court for use by all persons having business before the Tribal Court.
10. Providing copies of documents in Tribal Court files to other persons upon request, and upon receipt of a charge therefore to be prescribed by the clerk of court and deputy clerks to cover the costs of such services; provided, however, there shall be no charge for such service to the Judges of the Tribal Court, and provided further, no copies of documents or material shall be provided from files which are to be kept confidential or unavailable for public inspection pursuant to any provisions of this Code or other ordinance of the Tribal Council, or if prohibited by any court order.
11. Providing security for all files, documents and materials filed with or in the custody of the Tribal Court, and insuring that they are not removed from the Tribal Court except upon the specific instructions of a Judge of the Tribal Court.
12. Performing such other duties related to the operation of the Court, other than those specifically performed by a judge, as the Tribal Council shall designate through legislation.
13. Accounting to the Tribal Council for any Tribal Court funds entrusted to them by the Chief Judge in accordance with policies and procedures established by the Tribal Council.

21-11-01 RECORD RETENTION

21-11-02 The Court shall keep a record of all proceedings of the Court showing:

1. Title of the cases;
2. The names and addresses of the parties;
3. Attorneys and witnesses;
4. The original copy of the complaint and all other witnesses;
5. The original copy of the complaint and all other written documents pertaining to the proceedings;

6. The date of the hearing or trial;
7. The name of the Judge;
8. The findings of the Court or verdict of the Jury and the Judgment; together with any other facts of circumstances deemed of importance to the case.

21-11-03 A record of all proceedings shall be kept at the Tribal Court for three (3) years, unless specifically exempted by the Code. At the end of three (3) years, records may be retired to a safe, dry storage area. The records of the Court shall be public, with the exception of juvenile offenses/juvenile custody cases or other matters that are made confidential by Tribal or federal law. Administrative rules on release of Court files shall be prepared by the Chief Judge.

21-11-04 The Court shall seal all records of adoption cases. Tribal Court adoption cases may be opened only upon order of the Tribal Court upon a finding that the safety and well-being of the adopted child, birth parents and adoptive parents will not be endangered.

21-12-01 **PERSONNEL POLICY AND ADMINISTRATION**

21-12-02 Tribal personnel policies shall apply to all employees of the Tribal court with the exception of the judges.

21-12-03 The Chief Judge shall approve administrative matters such as time and attendance, training, travel and evaluation of all Tribal Court support staff, including any Tribal employees assigned to the position of clerk of court.

21-13-01 **FUNDING POLICY**

21-13-02 The Chief Judge shall be responsible to prepare the annual operating fiscal year budget request by May of each year. The budget will be submitted to the Tribal Council for negotiation with appropriate agencies.

21-13-03 Court budget shall include, but is not limited to, the following line items:

1. Jury costs,
2. Subpoena of Witnesses,
3. Prosecutor representatives,
4. Outside Judge expenses,
5. Equipment not covered by other contracts.

21-13-04 Upon approval of the Operating Budget by the Tribal Council, the Chief Judge will be responsible to insure that all expenses are within the line items.

- 21-13-05 All budget modifications shall be prepared and submitted by the Chief Judge to the Tribal Treasurer for review and submission to the appropriate funding agency (refer to Chapter 38, Section 38-16-03).
- 21-13-06 Court fines and fees shall be considered as Tribal Court revenue for Trial Court budgeting consideration. All Court revenues will be remitted to the Tribal Treasurer on a weekly basis for deposit to the Tribal Court account.
- 21-13-07 Tribal Court revenues in excess of budget authorization for prior Court budget may be appropriated to subsidize the Court Services Contract.
- 21-13-08 An additional \$10.00 Law Enforcement Fee shall be added onto all court costs/fines and submitted directly to the Tribal Treasurer on a weekly basis for deposit into a Law Enforcement Fund.

21-14-01 **RULES OF CIVIL PROCEDURE - TABLE OF CONTENTS**

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21-14-02 **RULES OF CIVIL PROCEDURE**

RULE 1. SCOPE OF RULES

- (a) Except when different rules prescribed in this Code specifically apply, these rules shall govern the procedure in the trial and, if the Sisseton-Wahpeton Oyate is not a member of the Northern Plains Intertribal Court of Appeals, in the appellate courts of the Sisseton-Wahpeton Oyate, in all actions, suits and proceedings of a civil nature, in all special proceedings established by law, and in criminal matters to the extent no different rule is specified.
- (b) These rules shall be liberally construed to secure a just, speedy, and inexpensive determination of every action.
- (c) There shall be one form of action, except in criminal cases, known as a "civil action."
- (d) Any procedures or matters not specifically set forth herein shall be addressed in a manner substantially similar to the Federal Rules of Civil Procedure insofar as such are not inconsistent with these rules, and with general principles of fairness and justice as prescribed and interpreted by the Court. The citation of the Federal Rules of Civil Procedure herein shall not be

deemed an action deferring to federal jurisdiction of any matter where such jurisdiction does not otherwise exist.

- (e) These rules shall supersede and replace all provisions of Chapter 33 which address requirements of filing and procedures in civil matters presented to the Tribal Court.

RULE 2. COMMENCEMENT OF ACTION AND PRELIMINARY MATTERS

- (a) A civil action is commenced by filing a complaint or petition and serving a copy of such on the defendant or respondent as provided herein. The Court shall have jurisdiction from such time as the complaint or petition and summons are filed. The complaint or petition must be properly served upon the defendant or respondent and a return of service must be filed with the Clerk.
- (b) Upon proper filing of a complaint or petition and answer or response, the Court shall immediately notify the parties of the availability of Alternative Dispute Resolution 21-16-01.
- (c) Service of process shall consist of delivering to the party served a copy of the complaint or petition and summons, issued by the Clerk, which advises the defendant or respondent that she/he is required to answer the complaint or petition within 20 days or a default judgment will be entered against her/him.
 - (1) The return of service shall be endorsed with the name of the person serving and the date, time, and place of service and shall be filed with the clerk.
 - (2) Service may be made on a party by delivering the required papers to the party or upon some person of suitable age and discretion over 16 years old at the party's home or principal place of business, or on an officer, managing agent or employee, or partner of a non-individual party.
 - (3) Service by publication may be made upon order of the Court for good cause shown by publishing the contents of the summons in a local newspaper of general circulation at least once per week for three weeks and by leaving an extra copy of the complaint or paper with the Court for the party.
 - (4) Service may be made by any law enforcement officer so authorized by the Court or other person, not a party, 18 years of age or older.

- (5) Service upon a person otherwise subject to the jurisdiction of the Sisseton-Wahpeton Oyate Tribal Court may be made anywhere in the United States.
- (6) If a person personally refuses to accept service, it shall be deemed performed if the person is informed of the purpose of the service and offered copies of the papers served.
- (d) Except as otherwise provided in these Rules, every order required by its terms to be served, every pleading subsequent to the original complaint or petition, every written motion other than one which may be heard *ex parte*, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties or their attorneys of reference.

In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

Service by facsimile upon other parties is not allowed. Filing with the Court by facsimile may be allowed with permission of the Court.

- (e) All papers required to be filed or served shall be deemed filed or served on the date of mailing via U.S. Mail (with the exception of those papers requiring personal service as provided in these Rules or by order of the Court), or on the date of facsimile with court permission, in which case originals must be received by the Court within five (5) days.
- (f) An action shall be commenced by filing a complaint or petition with the Clerk of Court. The Clerk shall collect a filing fee of twenty-five dollars (\$25.00) for filing any complaint or petition which commences an action. No filing fee shall be charged for amendments to a previously filed complaint, or for the filing of other pleadings or documents contemplated by these Rules. Filing may be accomplished in person or by mailing to Clerk, Sisseton-Wahpeton Oyate Tribal Court, P.O. Box 568, Agency Village, South Dakota 57262.

RULE 3. TIME

- (a) In computing any period of time set forth herein, the day *from* which the period is to commence shall not be counted and the last day of the period shall be counted; provided, however, that any time period under seven (7) days will not include intermediate Saturdays, Sundays, or legal holidays in the period and any period which would otherwise end on a Saturday, Sunday, or

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legal holiday will extend to end of the next day which is not a Saturday, Sunday or legal holiday.

- (b) The Court for good cause shown may enlarge the prescribed period of time within which any required act may be done.
- (c) Whenever service is accomplished by mail, three days shall be added to the prescribed period of time, but such addition shall not cause Saturdays, Sundays, or legal holidays to be counted in the time period if they would not otherwise have been counted.

RULE 4. PLEADINGS, MOTIONS AND ORDERS

- (a) There shall be a complaint and an answer or petition and response. A responsive pleading shall be allowed whenever, by cross claim, counterclaim or otherwise, a party is first claimed against unless the Court shall otherwise order. The Court may grant additional leave to plead in the interest of narrowing and defining issues or as justice may require.

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- (b) An application to the Court for an order shall be by motion and shall be in writing, unless made orally during a hearing or trial, and shall set forth the relief or order sought and the grounds therefore stated with particularity. A motion and notice of motion may be set forth together.
- (c) An order includes every direction of the Court whether included in a judgment or not, and may be made with or without notice to adverse parties and may be vacated or modified with or without notice.
- (d) A motion or hearing on an order shall be automatically continued if the judge before whom it was to be heard is unable to hear it on the day specified and no other judge is available to hear it.

RULE 5. MOTIONS PRACTICE

(a) *Scope and Application*

This rule shall govern all civil motions.

Motions are either dispositive or non-dispositive, and are defined as follows:

- (i) Dispositive motions are motions which seek to dispose of all or part of the claims or parties, except motions for default judgment. They include motions to dismiss a party or claim, motions for summary judgment, and motions under Rule 17(b).
- (ii) Non-Dispositive motions are all other motions, including but not limited to discovery, third party practice, temporary relief, intervention or amendment of pleadings.

(b) *Obtaining Hearing Date; Notice to Parties*

A hearing date and time shall be obtained from the Clerk of Court or an Assistant Clerk of Court. A party obtaining a date and time for a hearing on a motion or for any other calendar setting, shall promptly give notice advising all other parties who have appeared in the action so that cross motions may, insofar as possible, be heard on a single hearing date.

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(c) *Dispositive Motions*

- (i) No motion shall be heard until the moving party serves a copy of the following documents on opposing counsel and files the original with the Clerk of Court at least 28 days prior to the hearing:
 - (1) Notice of motion and motion;
 - (2) Proposed Order;
 - (3) Any affidavits and exhibits to be submitted in conjunction with the motion; and
 - (4) Memorandum of law.
- (ii) The party responding to the motion shall serve a copy of the following documents on opposing counsel and shall file the originals with the Clerk of Court at least 9 days prior to the hearing:
 - (1) Memorandum of law; and
 - (2) Supplementary affidavits and exhibits.
- (iii) *Reply Memoranda.* The moving party may submit a reply memorandum, limited to new legal or factual matters raised by an opposing party's response to a motion, by serving a copy on opposing counsel and filing the original with the Clerk of Court at least 3 days before the hearing.
- (iv) *Additional Requirement for Summary Judgment Motions.* For summary judgment motions, the memorandum of law shall include:
 - (1) A statement by the moving party of the issues involved which are the grounds for the motion for summary judgment;
 - (2) A statement identifying all documents (such as depositions or excerpts thereof, pleadings, exhibits, admissions, interrogatory answers, and affidavits) which comprise the record on which the motion is made. Opposing parties shall identify in their responding Memorandum of Law any additional documents on which they rely.
 - (3) A recital by the moving party of the material facts as to which there is no genuine dispute, with a specific citation to that part of the record supporting each fact, such as deposition page and line or page and paragraph of an exhibit. A party opposing the motion shall, in like manner, make a recital of any material facts claimed to be in dispute. Such recitals shall be excluded from the page limitations of this rule; and
 - (4) The party's argument and authorities. These additional requirements also apply to a motion under Rule 18 if factually based.

(d) *Non-Dispositive Motions*

- (i) No motion shall be heard until the moving party serves a copy of the following documents on the other party or parties and files the original with the Clerk of Court at least 14 days prior to the hearing:

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- (1) Notice of motion and motion;
- (2) Proposed order;
- (3) Any affidavits and exhibits to be submitted in conjunction with the motion; and
- (4) Any memorandum of law the party intends to submit; and
- (ii) The party responding to the motion shall serve a copy of the following documents on the moving party and other interested parties and shall file the original with the court administrator at least 7 days prior to the hearing:
 - (1) Any memorandum of law the party intends to submit; and
 - (2) Any relevant exhibits and affidavits.
- (iii) *Reply Memoranda.* The moving party may submit a reply memorandum, limited to new legal or factual matters raised by an opposing party's response to a motion, by serving a copy on opposing counsel and filing the original with the Clerk of Court at least 3 days before the hearing.

(e) *Motions on Which No Hearing is Scheduled*

If a motion is filed and no hearing date thereon is scheduled, the non-moving party(ies) have fifteen (15) days to respond to the motion, and the moving party shall have seven (7) days to file any reply. These time limits shall apply to all motions on which no hearing is scheduled unless otherwise agreed by the parties or ordered by the Court. The page limits set forth in Rule 5(f) shall apply to this subsection.

(f) *Page Limits*

No memorandum of law submitted in connection with either a dispositive or nondispositive motion shall exceed 35 pages, exclusive of the recital of facts required by Rule 5(c)(iv)(3), except with permission of the court. For motions involving discovery requests, the moving party's memorandum shall set forth only the particular discovery requests and the response or objection thereto which are the subject of the motion, and a concise recitation of why the response or objection is improper. If a reply memorandum of law is filed, the cumulative total of the original memorandum and the reply memorandum shall not exceed 35 pages, except with the permission of the court.

(g) *Failure to Comply*

If the moving papers are not properly served and filed, the hearing may be canceled by the court. If responsive papers are not properly served and filed in a non-dispositive motion, the court may deem the motion unopposed and may grant the relief requested without a hearing. For a dispositive motion, the court, in its discretion, may refuse to permit oral argument by the party

not filing the required documents, may allow reasonable attorney's fees, or may take other appropriate action.

(h) *Relaxation of Time Limits*

If irreparable harm will result absent immediate action by the court, or if the interests of justice require otherwise, the court may waive or modify the time limits established by this rule, but only if requested by motion of one of the parties, which must be properly served.

(i) *Witnesses*

No testimony will be taken at motion hearings except under unusual circumstances. Any party seeking to present witnesses at a motion hearing shall obtain prior consent of the court and shall notify the adverse party in the motion papers of the names and addresses of the witnesses which that party intends to call at the motion.

(j) *Telephone Hearings*

When a motion is authorized by the court to be heard by telephone conference call, the moving party shall be responsible either to initiate the conference call or to comply with the court's instructions on initiation of the conference call. If necessary, adequate provision shall be made by the court for a record of the telephone hearing.

(k) *Settlement Efforts*

No motion will be heard unless the parties have conferred, either in person, or by telephone, or in writing in an attempt to resolve their differences prior to the hearing. The moving party shall initiate the conference. The moving party shall certify to the court, before the time of the hearing, compliance with this rule or any reasons for inability to comply, including lack of availability or cooperation of opposing counsel. Whenever any pending motion is settled, the moving party shall promptly advise the court.

(l) *Time limits for Injunctions and Temporary Restraining Orders*

This Rule shall not apply to motions or applications for injunctions or temporary restraining orders. Briefing and hearing schedules for motions or applications for injunctions or temporary restraining orders shall be set by the Court on a case-by-case basis.

RULE 6. GENERAL RULES OF PLEADING

- (a) A pleading which sets forth a claim for affirmative relief shall contain:
 - (1) A short, plain statement of the grounds upon which the Court's jurisdiction depends, unless the Court already has jurisdiction over the matter;
 - (2) A short, plain statement of the claim showing that the pleader is entitled to relief; and
 - (3) A demand for judgment for the relief to which the pleader considers herself/himself entitled. Such claim for relief can be in the alternative or for several types of relief.
- (b) A party shall state in plain, concise terms the grounds upon which she/he based her/his defense to claims pleaded against her/him, and shall admit or deny the claims and statements upon which the adverse party relies. If she/he is without information or knowledge regarding a statement or claims, she/he shall so state and such shall be deemed to be a denial. Denials shall fairly meet the substance of the claims or statements denied and may be made as to specified parts but not all of a claim, statement, or averment. A general denial shall not be made unless the party could in good faith deny each and every claim covered thereby. A claim to which a responsive pleading is required, except for amount of damages, shall be deemed admitted unless denied; if no responsive pleading is allowed the claims of the adverse party shall be deemed denied.
- (c) Claims and defenses shall be simply, concisely, and directly stated, but may be in alternative or hypothetical form, on one or several counts or defenses, need not be consistent with one another, and may be based on legal or equitable grounds or both.
- (d) Matters constituting an affirmative defense or avoidance shall be affirmatively set forth. When a party has mistakenly designated a defense as a counterclaim or vice versa, the Court may treat the pleadings as if it had been properly designated if justice so requires.
- (e) All pleadings shall be construed so as to do substantial justice.

RULE 7. FORM OF PLEADINGS

- (a) Every pleading shall contain a caption heading, the name of the Court, the title of the action, the Court file number (if known) and a designation as to what kind of pleading it is. All pleadings shall contain the names of the parties except the name of the first party on each side may be used on all pleadings except the complaint.
- (b) All averments of claim or defense shall be set forth in separate numbered paragraphs each of which is limited, as nearly as possible, to a single circumstance. Claims or defenses founded upon separate transactions or occurrences should be set forth in separate counts or defenses.
- (c) Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of written instrument which is an exhibit to a pleading is a part thereof for all purposes.
- (d) Insofar as is possible, pleadings and other papers filed in any action shall be on 8 1/2" x 11" paper, double spaced, except for matters customarily single spaced, contain at least a 2-inch top margin and a 1-inch left and right side margin, and contain the Court file number on the first page thereof. Substantial compliance with this rule will be sufficient for all parties not represented by a professional attorney.

RULE 8. DEFENSES AND OBJECTIONS

- (a) A defendant or other party against whom a claim has been made for affirmative relief shall have twenty (20) days from the date of service upon her/him to answer or respond to the claim.
- (b) Motions to dismiss or to make the opposing parties' pleadings more definite may be made prior to answering a claim and an answer will not be due until 10 days after the disposition of the motion by the Court.

RULE 9. COUNTERCLAIM OR CROSSCLAIM

- (a) A party against whom a claim is made may assert in her/his answer any claims she/he has against the party claiming against her/him and both claims shall be resolved at trial.
- (b) A party against whom a claim is made may assert any claim she/he has against a co-party and have such claim resolved at trial.

- (c) A party against whom a claim is made may complain against a third party who is or may be liable for payment or performance of the claim of the opposing party and have such complaint resolved at trial.

RULE 10. AMENDMENT OF PLEADINGS

- (a) A party may amend pleadings once before the opposing party has replied or if no reply is required, not less than twenty (20) days before the case is scheduled for trial. The opposing party may respond, if appropriate, and the trial date may be delayed if necessary. Other amendments shall be allowed only upon motion and order of the Court.
- (b) When issues or evidence not raised in the pleadings are heard at trial, the judgment may conform to such issues or evidence without the necessity of amending the pleadings.

RULE 11. PARTIES

- (a) Every action shall be prosecuted in the name of the real party in interest, except a personal representative or other person in a fiduciary position can sue in her/his own name without joining the party for whose benefit the action is maintained.
- (b) When an infant, or an insane or incompetent person who has not had a general guardian appointed is a party, the Court shall appoint a guardian ad litem to represent such person in the suit or action. A guardian ad litem is considered an officer of the Court to represent the interests of the infant, insane or incompetent person, in the litigation.
- (c) To the greatest extent possible all persons or parties interested in a particular action may be joined in the action, but failure to join a party over whom the Court has no jurisdiction will not require dismissal of the action unless it would be impossible to reach a just result without such party; otherwise, the failure to join a party may be taken into account to assure that justice is done.

RULE 12. INTERVENTION

A person may intervene and be treated in all respects as a party to an action in cases in which property in which she/he has an interest may be affected or a question of law or fact common to a claim of hers/his may be litigated.

RULE 13. SUBSTITUTION OF PARTIES

If a party dies or becomes incompetent or transfers her/his interest or separates from some official capacity, a substitute party may be joined or substituted as justice requires.

RULE 14. DISCOVERY

- (a) A party may submit written interrogatories to any other party who shall answer them in writing, under oath, within twenty-five (25) days of receipt of such.
- (b) A party may take the oral deposition of an adverse party or non-party witness under oath upon not less than ten (10) days notice, specifying the time and place where such will occur.
- (c) A party may request another party to produce any documents or things in her/his custody or possession for inspection or copying or request permission to enter and inspect property reasonably related to the case, and the opposing party shall within twenty-five (25) days reply as to whether such will be allowed and if not, why not.
- (d) Parties may obtain discovery regarding any matter, not privileged, which is relevant to the pending action, whether or not such would be admissible at trial, if such appears reasonably calculated to lead to the discovery of admissible evidence. The work product of a party's counselor or attorney is not discoverable.
- (e) A party against whom discovery is sought may move the Court for protective order to prevent undue annoyance, harassment, embarrassment, oppression, or undue burden or expense, and the Court may order that the discovery cease or proceed only upon specified conditions.
- (f) If a party fails to respond or appear for discovery as provided in this rule, the opposing party may move for an order to compel the defaulting party to perform and the Court may award costs to the non-defaulting party. If a party fails to perform after being ordered to do so by the Court, the Court may, upon motion, order that a certain fact, claim, or defense be deemed established or strike part of a claim or defense, or dismiss or render a judgment by default against the non-complying party in an aggravated case.
- (g) Answers to interrogatories and depositions may be used in a motion, hearing or at trial to impeach or contradict the testimony of the person discovered, or by an adverse party for any purpose.
- (h) Discovery documents need not be filed with the Court.

RULE 15. JURY TRIALS

- (a) Trials of all civil actions shall be to the Tribal Court without a jury unless a party to the action files a request for a jury trial and a fee of twenty-five dollars (\$25.00) not less than twenty-five (25) days prior to the scheduled date of trial. A judge may, upon good cause shown, waive payment of the required fee.
- (b) Unless the requesting party specifies otherwise, all factual issues properly triable by a jury shall be decided by the jury at trial. A party requesting a jury trial may specify only those issues she/he wants tried to the jury, and any other party may specify, not less than five (5) days before the date scheduled for trial, any other issues she/he wishes to be so tried. Once any or all issues of a case have been requested for a jury trial, such request may not be withdrawn without the consent of all of the parties.
- (c) A judge may, upon her/his own motion, order the trial by a jury of any or all of the factual issues of a case regardless of whether the parties have requested such.
- (d) A judge may, upon motion of any party or its own initiative, find that some or all of the issues designated for jury trial are not properly triable to a jury, and order that no jury trial be held on such issues.
- (e) A judge may hear and decide an issue or issues without a jury if either party to an issue fails to appear at trial, regardless of any request made for a jury trial on such issues.

RULE 16. ASSIGNING CASES FOR TRIAL

- (a) The Chief Judge shall determine which judge shall hear a case, and shall provide by rule for the placing of cases on the Court calendar with or without the request of any party provided all parties are given adequate notice of trial dates.
- (b) Upon motion of a party, the Court may in its discretion, and upon such terms as it deems just, including the payment of any cost occasioned by such postponement, postpone a trial or proceeding upon good cause shown.

RULE 17. DISMISSAL OF ACTIONS

- (a) Prior to the responsive pleading of a party against whom a claim has been made or motion to dismiss or for summary judgment of such claim, the party making the claim may file a notice of dismissal and her/his claim shall be deemed dismissed without prejudice. In all other circumstances a party may move the Court to dismiss her/his own claim and the Court shall do so either

with or without prejudice as is just and proper given the stage of the proceedings, provided, however, if a crossclaim or counterclaim has been filed against the moving party, the judge shall dismiss the claim only with the consent of the adverse party or only if it appears that the other party can prosecute her/his claim independently without undue additional hardship.

- (b) A party against whom a claim has been made may move the Court to dismiss the claim of the adverse party upon any of the following grounds:
- (1) Lack of jurisdiction over the subject matter; or
 - (2) Lack of jurisdiction over the person; or
 - (3) Insufficiency of process; or
 - (4) Insufficiency of service of process; or
 - (5) Failure to join a party pursuant to Rule 11 (c); or
 - (6) Failure to state a claim upon which relief may be granted.

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Such dismissal shall be deemed an adjudication of the merits of the issue dismissed unless the Court shall, for good cause shown, order otherwise. The Court may postpone ruling on a motion to dismiss for failure to establish a right to any relief until the close of all the evidence.

If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 29, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 29.

- (c) The Court may order a moving party to dismiss her/his own claim to pay the costs of the adverse party if the proceeding has progressed beyond the pleading stage, and may order payment of costs in other circumstances where such is deemed appropriate.

RULE 18. PRETRIAL MEETINGS

- (a) Upon written request of either party or upon his own motion the Tribal Judge may schedule a pretrial meeting between the parties, and their counsel, if any. Such meetings may be held or requested either before or after the case is scheduled for trial.

During such meetings the parties and the Tribal Judge may consider any matters which will aid in the simplification, clarification, or disposition of the case. The parties and the Tribal Judge may develop procedures to be followed at the trial. The Tribal Judge may encourage the parties to explore the possibility of settling their dispute and the tribal Judge may participate in settlement discussions to the extent that her/his impartiality at any eventual trial will not be affected.

If it appears to the Tribal Judge that the case is highly complex or involves a sum of money in excess of \$1,000.00, the Tribal Judge may, at the request of a party or on her/his own motion, provide for the use of discovery techniques to aid in the fair and efficient administration of justice. Such discovery techniques may include interrogatories, production of documents, depositions, or any other means of discovery noted in the Federal Rules of Civil Procedure. To the extent practicable, the Tribal Judge shall encourage the parties to use informal methods of discovery, but the Tribal Judge shall have the power to order use of formal discovery techniques under the supervision of the Court.

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The Tribal Judge shall prepare a written memorandum of each pretrial meeting setting forth the actions taken at the meeting. Copies of this memorandum shall be distributed to the parties.

RULE 19. CONSOLIDATION; SEPARATE TRIALS

- (a) The Court may, upon motion of any party or its own motion, order some or all of the issues of separate actions tried together when there is a common issue of fact or law relating the actions or if such will tend to avoid unnecessary cost or delay.
- (b) The Court may, to avoid prejudice or in furtherance of convenience, order a separate trial of a claim or issue.

RULE 20. EVIDENCE

- (a) At all hearings and trials, the testimony of witnesses shall be taken orally under oath, unless otherwise provided in these rules. All evidence admissible under the Federal Rules of Evidence or as specified in this Tribal Code shall be admissible and the competency of witnesses to testify shall be similarly determined.
- (b) A party may use leading questions against an adverse party or hostile witness or whenever such appears reasonably necessary to elicit testimony from witnesses of tender years or poor ability to communicate.
- (c) A party may call any person to be a witness and examine any witness so called on any matter relevant to the action. A party may impeach her/his own witness.
- (d) Cross examination shall be limited to the general scope of direct examination, provided, however, that full examination of all witnesses shall be allowed on direct or cross examination to assure complete development of all relevant facts.
- (e) Written documents and other physical evidence shall be received upon being identified, authenticated, and a showing of relevance to the action.

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- (f) Official documents or an official law, record or copy thereof may be admitted into evidence upon the testimony of an official having custody or official knowledge thereof or without such testimony if the document or record or copy thereof is accompanied by a certificate identifying such thing and stating that it is a true and correct representation of what it purports to be.
- (g) In an action tried to a jury, excluded evidence may, upon request, be included in the record for purposes of appeal and excluded oral testimony shall be put into evidence by means of an offer of proof made out of the hearing of the jury. In an action tried only to the Court, the judge may receive such excluded testimony into the record.

RULE 21. SUBPOENAS

- (a) Subpoenas for attendance of witnesses or production of documents or things shall be issued and served as provided in Rule 2 of Rules of Civil Procedure.
- (b) A person who has been properly served with a subpoena and fails to appear or produce may be deemed in contempt of court and amenable to civil sanctions.
- (c) A person present in court, or before a judicial officer, may be required to testify in the same manner as if she/he were in attendance upon a subpoena.

RULE 22. JURORS

- (a) Any enrolled member of the Sisseton-Wahpeton Oyate, between the ages of 18 and 75, who has not been convicted of a felony and who resides on the Reservation, shall be eligible to be a juror. Judges and other officers or employees of the Court shall not be eligible to be jurors while thus employed. The Chief Judge may by rule adopt procedures whereby non-Indians may be summoned for jury duty in cases in which one or more non-Indian parties are involved.
- (b) There shall be six jurors chosen to hear a case and the Court may allow one additional juror to be chosen as an alternate juror. In the event that an alternate juror is chosen and hears the case, she/he shall be dismissed prior to the jury's deliberation if not needed, and treated like a regular juror if needed.
- (c) A jury foreperson will be chosen by a majority vote of the jury panel.
- (d) The Court shall permit the parties or the attorneys to conduct the examination of prospective jurors and may itself examine the jurors.

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- (e) A challenge is an objection made to a potential trial juror. Either party may challenge jurors but where there are several parties on either side, they must join in a challenge before it can be made.
- (f) Challenges to jurors are either peremptory or for cause. Each party or side shall be entitled to three peremptory challenges.
- (g) Challenges for cause shall be made against a potential juror on the grounds that she/he is not entitled or qualified to be a juror, she/he is familiar with the case or has formed an opinion regarding the case, or if for any other reason it appears likely or reasonably possible that a juror will not be able to render a fair and impartial verdict. The judge may take evidence relative to a challenge for cause and shall in any event render a decision thereon.
- (h) The clerk shall draw lots to determine potential jurors and shall replace jurors for whom a challenge is sustained until a full panel is completed. Upon completion, the clerk shall administer the oath to the jurors, the form of which shall be prescribed by rule of the Court.
- (i) If, after the proceedings begin and before a verdict is reached, a juror becomes unable or disqualified to perform her/his duty, the alternate juror shall take her/his place; if there is no alternate juror, the parties may agree to complete the action with the other jurors. If no agreement can be reached, the judge shall discharge the jury and the case shall be tried with a new jury.
- (j) The Court may, for good cause shown, allow the jury to view the property or place of occurrence of a dispute or otherwise relevant event.
- (k) Any time prior to their verdict when the jurors are allowed to leave the courtroom, the judge shall admonish them not to converse with or listen to any other person on the subject of the trial and further admonish them not to form or express an opinion on the case until the case is submitted to the jury for their decision.
- (l) Once the case is submitted to them, the jury shall retire to deliberate in private under the charge of an officer of the Court who will refrain from communicating with them except to inquire whether they have a verdict, and she/he shall prevent others from improperly communicating with the jury.
- (m) The jury may take with them when deliberating any of the following:

- (1) The Court's instructions;
- (2) Papers or things received in evidence as exhibits;

- (3) Notes taken by the jurors themselves, but not notes taken by non-jurors.
- (n) If after the jury retires, there is some question on an instruction or other point of law or disagreement regarding the testimony, the jury may request additional instructions from the Court, such to be given on the record after notice to the parties or their counsel.
- (o) If the jury is discharged before rendering their verdict or for any reason prevented from giving a verdict, the action shall be retried.
- (p) When all of the six jury members agree on a verdict, they shall so inform the officer who shall notify the Court. This jury shall be conducted into the courtroom and the clerk shall call the jury roll; the verdict shall be given in writing to the clerk and then read by the clerk to the Court; inquiry shall be made by the Court to the jury foreperson as to whether such is their verdict. Either party may have the jury polled individually to determine if such is, in fact, their verdict. If insufficient jurors agree with the verdict, the jury shall be sent out again to reconsider; otherwise, the verdict is complete and the jury shall be dismissed. If the verdict is read or recorded incorrectly by the clerk or foreperson, the jury shall retire to correct the verdict.

RULE 23. SPECIAL VERDICTS AND INTERROGATORIES

The Court may require the jury to return their verdict in the form of specific findings on specified issues or may require the jury to return a general verdict accompanied by answers to questions related to the issues under consideration.

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RULE 24. INSTRUCTIONS TO THE JURY; ARGUMENTS

- (a) At the close of the evidence or at such earlier time as the Court may direct, any party may file written requested instructions for the Court to give to the jury. The Court shall inform the parties or their counsel of the instructions it intends to give and hear argument thereon out of the hearing of the jury.
- (b) Final arguments for the parties shall be made after the jury has been instructed. The Court shall not comment on the evidence of the case and, if it should restate any of the evidence, it shall inform the jury that they are the sole triers of the facts.

RULE 25. MOTIONS FOR DIRECTED VERDICT AND FOR JUDGMENT NOTWITHSTANDING THE VERDICT

- (a) A party who moves for a directed verdict at the close of the evidence offered by the opposing side may offer evidence as if no motion had been made in the event that the motion is denied. A motion for directed verdict shall state the grounds therefore and may be granted by the Court without the assent of the jury.
- (b) A party who has made a motion for a directed verdict at the close of all the evidence, which motion has been denied or not granted, may, within ten (10) days after entry of judgment move to have the verdict and any judgment entered thereon set aside and entered according to her/his motion for directed verdict; or if there has been a verdict, the party may so move within ten (10) days after the jury has been discharged. A motion for a new trial may be made in the alternative. The Court shall enter judgment or make any orders consistent with its decision on the motions.

RULE 26. FINDINGS BY THE COURT

In cases tried without a jury, and except in cases where a party defaults, fails to appear or otherwise waives such, findings of fact and conclusions of law shall be made by the Court in support of all final judgments. Upon its own motion or the motion of any party within ten (10) days of the entry of judgment, findings may be amended or

added to and the judgment may be amended accordingly. Upon receipt of a motion to amend judgment, the non-moving party wishing to file a response shall do so within ten (10) days, but shall not be required to file a response. (See Rule 32(e)).

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RULE 27. JUDGMENT; COSTS

- (a) A judgment includes any final order from which an appeal is available and no special form of judgment is required.
- (b) When more than one claim for relief is presented in an action, however designated, a final judgment may be entered on less than all of such claims only upon the Court specifically finding that such is justified. Absent such a finding, an order or decision will not terminate the action as to any of the claims until all claims are finally decided, nor will the appeal period commence to run.
- (c) Except in the case of a default judgment, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if such relief is not demanded in the pleadings. It may be given for or against one or more of several claimants; and it may, if justice so requires, determine the ultimate rights of the parties on each side as between or among themselves.
- (d) A judgment by default shall not be different in kind from, or exceed in amount, that specifically prayed for in the demand for judgment.
- (e) The Court may allow necessary costs and disbursements to the prevailing party or parties upon the filing of a verified memorandum of her/his costs and necessary disbursements within five (5) days of the entry of judgment and serving a copy of such on the opposing party. If such are not objected to within ten (10) days, they shall be deemed to be a part of and included in the judgment rendered. The appellate court may award costs in a like manner.
- (f) The Court shall not award attorney's fees in a case unless such have been specifically provided for by a contract or agreement of the parties to the dispute, or unless it reasonably appears that the case has been prosecuted for purposes of harassment only, or that there was no reasonable expectation of success on the part of the affirmatively claiming party or if the Court determines that such award is appropriate in equity.

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RULE 28. *DEFAULT*

- (a) When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, her/his default may be entered by the clerk and judgment by default granted. Once the default is entered no further notice to the defaulting party of any action taken or to be taken need be given.
- (b) Judgment by default may be entered by the clerk if a party's claim against the opposing party is for a sum of money which is or can by computation be made certain, and if the opposing party has been personally served on the Reservation. Otherwise, judgment by default can be entered only by the Court upon receipt of whatever evidence the Court deems necessary to establish the claim. No judgment by default shall be entered against the Sisseton-Wahpeton Oyate.
- (c) The Court may, for good cause shown, set aside either an entry of default or a default judgment.

RULE 29. *SUMMARY JUDGMENT*

Any time twenty (20) days after commencement of an action, any party may move the Court for summary judgment as to any or all of the issues presented in the case and such shall be granted by the Court if it appears that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Such motions, which shall be served not less than twenty (20) days prior to the hearing on said motion, may be supported by affidavits, discovery, or memoranda, all of which must be filed with the motion. Response to such motions must be filed within ten (10) days of service of the motion.

RULE 30. *DECLARATORY JUDGMENT*

- (a) In a case of actual controversy within the jurisdiction of the Sisseton-Wahpeton Oyate, the Tribal Court may, upon the filing of an appropriate pleading, declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

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- (b) The right to a trial by jury may be demanded in accordance with Rule 17. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

RULE 31. ENTRY OF JUDGMENT

- (a) Judgment upon a jury verdict shall be signed by the clerk and filed. All other judgments shall be signed by the judge and filed with the clerk.
- (b) A judgment is complete and shall be deemed entered for all purposes when it is signed and filed as provided herein. The clerk shall immediately make a notation of the judgment in the register of actions and the judgment docket. The clerk shall provide notice of entry of judgment to all parties without counsel or to all counsel if parties are so represented.
- (c) If a party dies after a verdict or decision upon any issue of fact and before judgment, judgment may nevertheless be entered thereon.
- (d) A judgment may be satisfied, in whole or in part, as to any or all of the judgment debtors by the owner thereof or her/his attorney of record executing under oath and filing an acknowledgment of satisfaction specifying the amount paid and whether such is a full or partial satisfaction. A judge may order the entry of satisfaction upon proof of payment and failure of the judgment creditor to file a satisfaction. The clerk shall file all satisfactions of judgment and note the amount thereof in the register of actions and the judgment docket.
- (e) A judgment satisfied in whole, with such fact being entered in the judgment docket, shall cease to operate as such. A partially satisfied judgment or unsatisfied judgment shall continue in effect for eight (8) years or until satisfied. An action to renew the judgment remaining unsatisfied may be maintained anytime prior to the expiration of eight (8) years and will extend the period of limitations an additional eight (8) years and may be thereafter further extended by the same procedure.

RULE 32. NEW TRIALS; AMENDMENTS OF JUDGMENT

- (a) Any party may petition for a new trial on any or all of the issues presented by filing and serving a motion not later than ten (10) days after the entry of judgment, for any of the following causes:

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- (1) Error or irregularity which prevented any party from receiving a fair trial; or
 - (2) Misconduct of the jury or jury member(s); or
 - (3) Accident or surprise, or newly discovered evidence against which ordinary prudence could not have been found and produced at trial; or
 - (4) Damages so excessive or inadequate that they appear to have been given under influence of passion or prejudice; or
 - (5) Error in law.
- (b) A new trial shall not be granted on the basis of error or irregularity which was harmless in that it did not affect substantial justice.
 - (c) Parties may include memoranda or affidavits in support of their motions to which reply memoranda and affidavits shall be allowed if desired.
 - (d) The Court may, on its own initiative, not later than ten (10) days after entry of judgment, order a new trial on any grounds which may be asserted by a party to the action, and shall specify the reasons for so ordering.
 - (e) A motion to alter or amend a judgment shall be filed and served not later than ten (10) days after entry of the judgment.

RULE 33. RELIEF FROM JUDGMENT OR ORDER

- (a) Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party and after such notice as the Court may direct; mistakes may be corrected before an appeal is docketed in the Appellate Court, and thereafter while the appeal is pending may be corrected with leave of the Appellate Court.
- (b) Upon motion and upon such terms as are just, the Court may, in the furtherance of justice, relieve a party or her/his legal representative from a final judgment, order, or proceeding for the following reasons:
 - (1) Mistake, inadvertence, surprise, or excusable neglect;
 - (2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 32(a);

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- (3) Fraud, misrepresentation or other misconduct of an adverse party;
- (4) When, for any cause, the summons in an action has not been personally served upon the defendant and the defendant has failed to appear in said action;
- (5) The judgment is void;
- (6) The judgment has been satisfied, released, or discharged; or a prior judgment should have prospective application; or
- (7) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1), (2), (3), or (4), not more than three (3) months after the judgment, order, or proceeding was entered or taken. A motion under subsection (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the Court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

RULE 34. HARMLESS ERROR

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in anything done or omitted by the Court or by any of the parties, is ground for granting a new trial or otherwise disturbing a judgment or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of the proceeding shall disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

RULE 35. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

- (a) Proceedings to enforce a judgment may issue immediately upon the entry of the judgment, unless the Court in its discretion and on such conditions for the security of the adverse party as are proper, otherwise directs.
- (b) In its discretion and on such conditions for the security of the adverse party as are proper, the Court may stay the execution of, or any proceedings to enforce, a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment or of a motion for relief from a judgment or order, or of a motion for judgment in accordance with a motion for a directed verdict, or of a motion for amendment to the findings or for additional findings.

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- (c) When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the Court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such conditions as it considers proper for the security of the rights of the adverse party.
- (d) When an appeal is taken the appellant, by giving a bond in an amount set by the Court, may obtain a stay, unless such a stay is otherwise prohibited by law or these rules. The bond may be given at or within ten (10) days after the time of filing the notice of appeal. The stay is effective when the bond is received and approved by the Court.
- (e) When an appeal is taken by the Tribe, or an officer or agency of the Tribe, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.
- (f) When a Court has ordered a final judgment on some but not all of the claims presented in the action, the Court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.
- (g) In all cases, the parties may, by written stipulation, waive the requirements of this Rule with respect to the filing of a bond or undertaking. In all cases where an undertaking is required by these rules a deposit in Court in the amount of such undertaking, or such lesser amount as the Court may order is equivalent to the filing of the undertaking.

RULE 36. INJUNCTIONS

- (a) No preliminary injunction shall be issued without notice to the adverse party.

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- (b) No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall:
- (1) be endorsed with the date and hour of issuance;
 - (2) be filed forthwith in the clerk's office and entered of record;
 - (3) define the injury and state why it is irreparable and why the order was granted without notice;
 - (4) expire by its terms within such time after entry, not to exceed fifteen (15) days, as the Court fixes, unless within the time fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record.

In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for preliminary injunction and, if she/he does not do so, the Court shall dissolve the temporary restraining order. On two (2) days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the Court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

- (c) Except as otherwise provided by law, no restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States, the Sisseton-Wahpeton Oyate, or an officer, or agency, of either; nor shall it be required of a married person in a suit against the other party to the marriage contract. Nothing in this section shall be construed to give the Tribal Court jurisdiction over the United States or its employees operating within the scope of their employment.

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- (d) A surety upon a bond or undertaking under this rule submits herself/himself to the jurisdiction of the Court and irrevocably appoints the clerk of the Court as her/his agent upon whom any paper affecting her/his liability on the bond or undertaking may be served. Her/his liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the Court prescribes may be served on the clerk of the Court who shall forthwith mail copies to the persons giving the security if their addresses are known.
- (e) Every order granting an injunction and every restraining order shall be specific in terms; shall describe in reasonable detail, and not reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.
- (f) An injunction may be granted:
 - (1) When it appears by the pleadings on file that a party is entitled to the relief demanded, and such relief, or any part thereof, consists of restraining the commission or continuance of some act complained of, either for a limited period or perpetually;
 - (2) When it appears from the pleadings or by affidavit that the commission or continuance of some act during the litigation would produce irreparable injury to the party seeking injunctive relief;
 - (3) When it appears during the litigation that either party is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party respecting the subject matter of the action, and tending to render the judgment ineffectual;
 - (4) In all other cases where an injunction would be proper in equity.

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RULE 37. EXTRAORDINARY WRITS

- (a) Where no other plain, speedy and adequate remedy exists, relief may be obtained by obtaining an extraordinary writ which may be granted for any one of the following grounds:
- (1) Where any person usurps, intrudes into, or unlawfully holds or exercises a public office or does or permits to be done any act which by law works a forfeiture of her/his office; or
 - (2) Where an inferior tribunal, board or officer exercising judicial or ministerial functions has exceeded its jurisdiction or abused its discretion; or
 - (3) Where the relief sought is to compel any inferior tribunal, board or person to perform an act which the law specially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which she/he is entitled and from which she/he is unlawfully excluded by such inferior tribunal, board or person; or
 - (4) Where the relief sought is to arrest the proceedings of any tribunal, board or person, whether exercising functions judicial or ministerial, when such proceedings are without or in excess of the jurisdiction of such tribunal, board or person.
- (b) No extraordinary writ may issue against the Tribe, or Tribal officer or official, or any entity owned by the Tribe in its governmental capacity absent an unequivocally expressed waiver of the Tribe's sovereign immunity from suit.

RULE 38. EXECUTION OF JUDGMENT

- (a) If within sixty (60) days after entry of a judgment awarding money damages and/or costs against a party, or within sixty (60) days after final resolution of an appeal to the appellate court from such a judgment, it is made to appear to the Court that the judgment debtor has not paid the judgment amount in full or commenced making installment payments in a manner agreed to by the parties, or is not current in such payments, the Court shall upon motion of the judgment creditor, heard ex parte, either (1) order the Tribe to seize, levy or garnish wages or per capita payments made by the Tribe as provided herein, or (2) order the local law enforcement to execute on the personal property of the judgment debtor as provided herein.
- (b) Wages of persons working for the Tribe or its economic enterprises are subject to seizure, levy or garnishment provided the amounts seized, levied or

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garnished do not exceed 20% of the individual's disposable earnings. "Disposable Earnings" means that part of the earnings of an individual remaining after deduction from those earnings of amounts required by law to be withheld. In the event the seizure, levy or garnishment is pursuant to a child support order, the full amount of the monthly child support shall be garnished and no more than 5% of the arrearage determined by the Court may be deducted on a monthly basis.

- (c) The Court shall order the judgment debtor to appear before it and answer under oath regarding all her/his personal property. The Court shall then determine what property of the judgment debtor is available for execution and order the local police department to seize as much of such property as reasonably appears necessary to pay the judgment amount. Failure of the judgment debtor to appear may be deemed a contempt of court and the Court may proceed without such appearance. Sale of the seized property shall be at public auction conducted by local law enforcement officials designated by the Court after giving at least ten (10) days public notice posted in at least three conspicuous public places. Property shall be sold to the highest bidder who shall make payment for the property at the time of sale. The person conducting the auction may postpone such in her/his discretion if there is inadequate response to the auction or the bidding, and may reschedule such upon giving the required notice. The person conducting the sale shall give a certificate of sale to the purchaser and shall make a return to the Court reciting the details of the sale. Real property is exempt from execution and seizure under this provision. This section only applies to personal property.
- (1) The Court shall only order seizure and sale of such property of the judgment debtor to satisfy a money judgment the loss of which will not impose an immediate substantial hardship on the immediate family of the judgment debtor. Only property of the judgment debtor herself/himself may be subject to execution and not property of her/his family.

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- (2) At any time within six (6) months after sale under this Rule, the judgment debtor may redeem her/his property from the purchaser thereof by paying the amount such purchaser paid for the property plus eight (8) percent interest, plus any expenses actually incurred by the purchaser, such as taxes and insurance, to maintain the property.
- (3) Any order of the Court to local law enforcement officials within the Court's jurisdiction, in aid of execution of judgments, shall only be valid upon the execution of a cooperative agreement between the Tribe and the appropriate governing entity if such law enforcement is not a law enforcement official of the Sisseton-Wahpeton Oyate.

RULE 39. APPEAL

- (a) All appeals from the Sisseton-Wahpeton Oyate Tribal Court shall be heard either by the Sisseton-Wahpeton Oyate Appellate Court, if one has been constituted by Tribal Council action, and if not, by the Northern Plains Intertribal Court of Appeals. This Rule shall not apply to appeals filed in the Sisseton-Wahpeton Oyate Appellate Court. All appeals filed with the Northern Plains Intertribal Court of Appeals shall comply with that Court's rules.
- (b) Any party who is aggrieved by a final order, commitment or judgment of the trial court may appeal in the manner prescribed by this Rule.
- (c) Within twenty (20) days from the entry of the order of judgment appealed from the party taking the appeal must file with the trial court a written notice of appeal specifying the parties to the appeal, the order or judgment which is being appealed, and a short statement of the reason or grounds for the appeal. The clerk shall file the notice and mail copies, to be provided by the appealing party, to all other parties to the appeal at their last known address.
- (d) The party taking the appeal shall be referred to as the appellant; all other parties shall be referred to as the appellees. The name of the case shall be the same as that used in the Tribal Court.

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- (e) At the time of filing the Notice of Appeal, the appellant shall also file cash or a bond in an amount set by the trial court sufficient to guarantee performance of the judgment if such performance is stayed on appeal plus, in any event, sufficient to guarantee payment of such costs or interest as the appellate court may award unless to do so would require manifest injustice.
- (f) In any case in which an appeal is perfected as required by this Rule, the appellant may petition the trial court for an order staying the order, commitment or judgment rendered conditioned upon execution of a bond to guarantee performance of the judgment, order or commitment. A stay shall be granted in all cases in which it is requested unless manifest injustice would result therefrom.
- (g) If a Sisseton-Wahpeton Oyate Tribal Court of Appeals has been constituted, the clerk of the trial court shall also serve as the clerk of the Appellate Court. Within five (5) days after a Notice of Appeal is filed, the clerk shall prepare, certify and file with the Appellate Court all papers comprising the record of the case appealed. A separate docket shall be maintained for the appellate court in which shall be recorded each stage of the proceedings on each case appealed. This subsection shall not apply if the Sisseton-Wahpeton Oyate is a member of the Northern Plains Intertribal Court of Appeals.
- (h) If a Sisseton-Wahpeton Oyate Tribal Court of Appeals has been constituted, the presiding justice of the appellate court shall, when hearing a case, have authority to compel the production of documents where such is deemed necessary to the rendition of the Court's opinion. There shall not be a new trial in the appellate court. The appellate court may review both the factual findings and conclusions of law of the Trial court. This subsection shall not apply if the Sisseton-Wahpeton Oyate is a member of the Northern Plains Intertribal Court of Appeals. This subsection shall not apply if the Sisseton-Wahpeton Oyate is a member of the Northern Plains Intertribal Court of Appeals.
- (i) If a Sisseton-Wahpeton Oyate Tribal Court of Appeals has been constituted, within thirty (30) days of the filing of the Notice of Appeal or within such longer time as the Appellate Court shall allow, the appellant shall file a written brief, memorandum or statement in support of her/his appeal. An original and three copies shall be filed with the clerk and one additional copy shall be served upon or mailed to each other party or her/his counselor or attorney. The appellee shall have thirty (30) days after receipt of the appellant's brief, memorandum or statement within which to file a response, memorandum or statement. A reply brief, memorandum or statement of appellant shall be allowed without leave of Court. Such reply brief shall be filed within ten (10) days of the receipt of the appellee's response. This

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subsection shall not apply if the Sisseton-Wahpeton Oyate is a member of the Northern Plains Intertribal Court of Appeals.

- (j) If a Sisseton-Wahpeton Oyate Tribal Court of Appeals has been constituted, the Appellate Court shall decide all cases upon the briefs, memoranda and statements filed plus the record of the trial court without oral argument unless either party requests oral argument and shows to the Court that such will aid the Court's decision, or unless the Court decides on its own motion to hear oral argument. This subsection shall not apply if the Sisseton-Wahpeton Oyate is a member of the Northern Plains Intertribal Court of Appeals.
- (k) If a Sisseton-Wahpeton Oyate Tribal Court of Appeals has been constituted, the Appellate Court shall issue a written decision and all judgments on appeal shall be final.

RULE 40. APPEALABLE ORDERS

An appeal may be taken to the Sisseton-Wahpeton Oyate Court of Appeals or, if the Tribe is a member, to the Northern Plains Intertribal Court of Appeals:

- (a) from a judgment entered in the Sisseton-Wahpeton Oyate Tribal Court;
- (b) from an Order which grants, refuses, dissolves or refuses to dissolve and injunction;
- (c) from an Order vacating or sustaining an attachment;
- (d) from an Order denying a new trial, or from an Order granting a new trial if the Sisseton-Wahpeton Oyate Tribal Court expressly states therein that the Order is based exclusively upon errors of law occurring at trial, and upon no other ground; and the Tribal court shall specify such errors in its Order or memorandum, but upon appeal, such Order granting a new trial may be sustained for errors of law prejudicial to Respondent other than those unspecified by the Sisseton-Wahpeton Oyate Tribal Court;
- (e) from an Order which, in effect, determines the action and prevents a judgment from which an appeal might be taken;
- (f) from a final Order or Judgment made or rendered in proceedings supplementary to execution; and
- (g) if the Tribal Court certifies that the question of law presented is one for which there is substantial ground for difference of opinion, wherein an immediate appeal from the order may materially advance the ultimate termination of the litigation; from an order which denies a motion to dismiss

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for failure to state a claim upon which relief can be granted; or from an order which denies a motion for summary judgment.

RULE 41. EX PARTE COMMUNICATIONS

Ex parte communications with judges of the Sisseton-Wahpeton Oyate Tribal Court are strongly discouraged. All inquiries shall be directed to the Clerk of Court, who shall confer with the judge(s).

RULE 42. CITATION

These Rules shall be known as the Sisseton-Wahpeton Oyate Rules of Civil Procedure and may be abbreviated S.W.S.R.C.P.

RULE 43. SEVERABILITY

If any provision of this title, or the application thereof, to any person, business, corporation or state government or any political subdivision or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this title which can be given effect without the invalid provisions, and to this end the provisions of this chapter are declared severable.

RULE 44. AMENDMENT

These rules may be amended by action of the Tribal Council.

21-15-01 ALTERNATIVE DISPUTE RESOLUTION

21-15-02 The Alternative Dispute Resolution (ADR) process is to encourage both parties to a dispute, and their counsel, to examine and evaluate prospects for successful settlement outside of formal litigation. It is an informal, confidential, nonadversarial process in which an impartial third person, acting as a mediator, assists the parties to resolve differences between them.

ADR shall be conducted according to the following rules:

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- RULE 1. Upon the filing of a civil complaint or petition and answer or response with the Tribal Court, the parties shall be immediately notified by the Court that an alternative dispute resolution process is available to resolve their differences before a matter is resolved by trial. The Court shall include in its notice to the parties a copy of these rules.
- RULE 2. Parties shall notify the Court in writing within ten (10) days of the Court's notice pursuant to Rule 1 whether they wish to use ADR and if they wish to designate a judge or another impartial third person who is not a judge of the Tribal Court to act as mediator.
- RULE 3. Participation in ADR is voluntary. Parties must state in the writing required by Rule 1 that their participation is voluntary.
- RULE 4. ADR shall not deny use of the judicial process. If no agreement is reached in ADR, either party can withdraw from the process and may return to court pursuant to Rule 16.
- RULE 5. An impartial third person, acting in the capacity of a mediator, may be a judge of the Tribal Court or the parties may select an impartial third person, agreed to in writing by the parties and that third person, indicating that the parties are willing, as is the third person, to attempt resolution of the dispute by ADR. If ADR is not successful and the parties return to court, a judge other than the one acting as mediator shall hear the case.
- RULE 6. The role of an impartial third person acting as mediator is to encourage and assist the parties to reach their own mutually acceptable settlement by easing communication, clarifying issues and interests, fostering joint problem-solving and exploring settlement alternatives.
- RULE 7. The impartial third person, acting as a mediator, has no authority to compel a resolution or to render a judgment on any issue. The final resolution shall be determined by the parties.
- RULE 8. The proceedings and discussions among the impartial third person and the parties include offers to compromise. If settlement is not reached, the proceedings and discussions and offers are not admissible at trial for any purpose.

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- RULE 9. Upon his/her selection, the impartial third person shall schedule a conference between the parties for the purpose of attempting to resolve the issues. This shall be designated as the initial ADR conference.
- RULE 10. The conference shall be held in person at a location chosen by the impartial third person.
- RULE 11. Ten (10) days prior to the conference required in Rule 9, the parties shall submit to the impartial third person and each other a statement of position, not to exceed ten (10) pages. Parties may attach exhibits or documents which help clarify their position. The statement of position shall explain the party's understanding of his/her rights, loss (if any) and relief each feels he/she is entitled to.
- RULE 12. In addition to the statements of position to be submitted to the impartial third person and the other party, each party may submit a separate confidential submission to the impartial third person which contains such additional information relating to his/her position regarding settlement in order to aid the ADR process. The confidential statement shall be submitted to the *impartial third person* contemporaneously with the submission required by Rule 11.
- RULE 13. If the parties to an action voluntarily select ADR, all persons with authority to settle the matter shall participate in the conference. If any insurance carrier is involved, the representative with final settlement authority for the insurance carrier must participate in the conference.
- RULE 14. The parties may agree to additional ADR conferences as needed. The number of ADR conferences shall not exceed five (5). At the conclusion of the conference(s), if a complete compromise of the case has been reached, the impartial third person and the parties shall notify the court in a report signed by the parties and impartial third person which documents that full and final settlement has been reached and the elements of that settlement.
- RULE 15. Upon notification to the Court by the impartial third person and the parties that efforts have resulted in final resolution, the Court shall dismiss the matter promptly.

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RULE 16. If at the conclusion of the ADR conference(s) no full compromise and settlement has been reached, the impartial third person and the parties shall notify the court in writing documenting that settlement could not be reached.

RULE 17. No form or information submitted to the Court advising of failure to resolve shall contain any information which relates to the parties' respective positions regarding the matter negotiated, including any discussion of settlement. The exclusive and sole purpose of the notification to the Court is to maintain an orderly process and to provide the means for returning the case to the Court for final resolution.

21-16-01 SEVERABILITY

If any clause, sentence, paragraph, section, or part of this code shall, for any reason be adjudicated by the Tribal or Appellate court, to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in this operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which the judgment shall have been rendered. Nothing in this subsection shall be deemed a waiver of the Tribe's sovereign immunity from suit or a grant of jurisdiction where such jurisdiction does not otherwise exist.

21-17-01 This Chapter may be amended by a two-thirds (2/3) vote of the Tribal Council.

