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**RULES OF CIVIL PROCEDURE**

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## **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 appellate courts of the Lower Sioux Community in Minnesota 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.

## **RULE 2. CITATION**

These Rules shall be known as the Lower Sioux Community in Minnesota Judicial Code Rules of Civil Procedure and may be abbreviated LSCRCP.

## **RULE 3. COMMENCEMENT OF ACTION AND PRELIMINARY MATTERS; FILING FEE**

(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 an affidavit of service or return of service must be filed with the Clerk.

(b) 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 or other person, not a party, 18 years of age or older.

(5) Service upon a person otherwise subject to the jurisdiction of the Lower Sioux Community in Minnesota 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.

(c) 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.

(d) 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.

(e) 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.

#### **RULE 4. 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 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 5. 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.

(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 therefor 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 6. 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:

(1) 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 18(b).

(2) 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.

(c) Dispositive Motions

(1) 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:

(a) Notice of motion and motion;

(b) Proposed order;

(c) Any affidavits and exhibits to be submitted in conjunction with the motion; and

(d) Memorandum of law.

(2) 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:

(a) Memorandum of law; and

(b) Supplementary affidavits and exhibits.

(3) 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.

(4) Additional Requirement for Summary Judgment Motions. For summary judgment motions, the memorandum of law shall include:

(a) A statement by the moving party of the issues involved which are the grounds for the motion for summary judgment;

(b) 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.

(c) 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

(d) The party's argument and authorities. These additional requirements also apply to a motion under Rule 18 if factually based.

(d) Non-Dispositive Motions

(1) 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:

(a) Notice of motion and motion;

(b) Proposed order;

(c) Any affidavits and exhibits to be submitted in conjunction with the motion; and

(d) Any memorandum of law the party intends to submit.

(d) 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:

(a) Any memorandum of law the party intends to submit; and

(b) Any relevant exhibits and affidavits.

(e) 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 6(f) shall apply to this subsection.

(f) Page Limits. No memorandum of law submitted in connection with either a dispositive or non-dispositive motion shall exceed 35 pages, exclusive of the recital of facts required by Rule 6(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 7. 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 8. 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. See Appendix of Forms.

(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 a 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 82 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 9. 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 10. 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 11. 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 12. 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 13. 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 14. 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 15. 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 16. TRIALS**

Trials of all civil actions shall be to the Tribal Court without a jury.

#### **RULE 17. ASSIGNING CASES FOR TRIAL**

(a) The Chief Trial 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 18. 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.

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 30, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 30.

(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 19. PRETRIAL MEETINGS**

Upon written request of either party or upon the Court's own motion a pretrial meeting may be scheduled 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 Judge may consider any matters which will aid in the simplification, clarification, or disposition of the case. The parties and the Judge may

develop procedures to be followed at the trial. The 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 Judge that the case is highly complex or involves a sum of money in excess of \$1,000.00, the 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 Judge shall encourage the parties to use informal methods of discovery, but the Judge shall have the power to order use of formal discovery techniques under the supervision of the Court.

The 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 20. 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 21. EVIDENCE**

(a) At all hearings and trials, the testimony of witnesses shall be taken orally under oath, unless otherwise provided in these rules. Evidence admissible under this Judicial Code or the Federal Rules of Evidence 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.

(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.

## **RULE 22. SUBPOENAS**

(a) Subpoenas for attendance of witnesses or production of documents or things shall be issued and served as provided elsewhere in the Lower Sioux Community in Minnesota Judicial Code.

(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 of Title 1, Chapter VI.

(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 23. FINDINGS BY THE COURT**

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 days, but shall not be required to file a response. (See Rule 33(e)).

## **RULE 24. 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 if 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.

#### **RULE 25. 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 Lower Sioux Community in Minnesota.

(c) The Court may, for good cause shown, set aside either an entry of default or a default judgment.

#### **RULE 26. 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 27. DECLARATORY JUDGMENT**

(a) In a case of actual controversy within the jurisdiction of the Lower Sioux Community in Minnesota Tribal Court, 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.

(b) 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 28. ENTRY OF JUDGMENT**

(a) 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 29. 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:

(1) Error or irregularity which prevented any party from receiving a fair trial; or

(2) Accident or surprise, or newly discovered evidence against which ordinary prudence could not have guarded produced at trial; or

(3) Damages so excessive or inadequate that they appear to have been given under influence of passion or prejudice; or

(4) 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 30. 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 33(a);

(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 31. 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 32. 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.

(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 33. DISABILITY OR DISQUALIFICATION OF A JUDGE**

If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the Court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then the Chief Trial Judge shall assign any other judge regularly sitting in or assigned to the Court to perform those duties; but if such assigned judge is satisfied that she/he cannot perform those duties because she/he did not preside at the trial or for any other reason, she/he may in her/his discretion grant a new trial.

### **RULE 34. INJUNCTIONS**

(a) No preliminary injunction shall be issued without notice to the adverse party.(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 Lower Sioux Community in Minnesota, or of 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.

(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.

**RULE 35. 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 Lower Sioux Community in Minnesota ("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 36. 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, order the local law enforcement to execute on the personal property of the judgment debtor as provided herein.

(b) 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.

(c) 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.

(d) 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.

(e) 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 by the Lower Sioux Community in Minnesota.

## **RULE 37. APPEAL**

(a) All appeals from the Lower Sioux Community in Minnesota Tribal Court shall be heard by the Lower Sioux Community in Minnesota Appellate Judge.

(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 thirty (30) 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.

(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 an amount 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) 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 Judge 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.

(h) The Appellate Judge 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.

(i) Within thirty (30) days of the filing of the Notice of Appeal or within such longer time as the Appellate Judge shall allow, the appellant shall file a written brief, memorandum or statement in support of her/his appeal. An original and one copy 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.

(j) The Appellate Judge 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.

(k) The Appellate Judge shall issue a written decision and all judgments on appeal shall be final.

#### **RULE 38. APPEALABLE ORDERS**

An appeal may be taken to the Lower Sioux Community in Minnesota Court of Appeals:

(a) from a judgment entered in the Lower Sioux Community in Minnesota Tribal Court;

(b) from an Order which grants, refuses, dissolves or refuses to dissolve an 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 Lower Sioux Community in Minnesota 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 Lower Sioux Community in Minnesota 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 for failure to state a claim upon which relief can be granted; or from an order which denies a motion for summary judgment.

#### **RULE 39. EX PARTE COMMUNICATIONS**

Ex parte communications with judges of the Lower Sioux Community in Minnesota Tribal Court are strongly discouraged. All inquiries shall be directed to the Clerk of Court, who shall confer with the judge(s).

**RULE 40. 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 title are declared severable.