

Title II

CIVIL PROCEDURE

Of the Standing Rock Sioux Tribal Code of Justice



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TITLE II. CIVIL PROCEDURE**Chapter 1. Pre-Trial and Trial Procedures****2-101. Complaint.**

A complaint is a concise written statement of the essential facts constituting the claim. All civil proceedings shall be commenced by filing a complaint with the clerk, accompanied by a filing fee of \$3.00 and the costs of service. Tribal Civil Form No. 1, or its equivalent, may be used. The complaint shall be verified before a judge, clerk or assistant clerk, or any notary public.

2-102. Service of Process.

- (a) Each defendant shall be served with a copy of the complaint.
- (b) Service shall be made in one of the following ways:
 - (1) to the defendant personally;
 - (2) to a person of suitable age and discretion at the defendant's residence or usual place of business who also resides or works there;
 - (3) to an agent authorized by appointment or by law to receive service of process;
 - (4) by registered or certified mail, return receipt requested, to the defendant's usual residence or principal place of business. If the Court orders, service may be made by publication of the required papers in the Dakota Sun or any other local newspaper of general circulation on the Reservation designated by the Court at least once per week for four weeks.
- (c) Service of process upon the Tribe or an officer of the Tribe shall be made by delivering a copy of the complaint to the Tribal Chairman, the tribal attorney and the officer named in the manner prescribed in subsection (b) above, except that service by publication is not permitted.
- (d) Service in person shall be made by any law enforcement officer or by any adult not a party to the case.
- (e) Where the Court has jurisdiction of the cause of action, service may be made anywhere within the United States.
- (f) The return postal receipt, filed in the case record, shall constitute proof of service by mail. The affidavit of service by the person making service, filed in the case record, shall constitute proof of service.

2-103. Hearing.

At the time the verified complaint is filed, the clerk shall schedule a hearing on the claim not less than fifteen (15) days after the complaint is filed. The clerk shall furnish the plaintiff with a copy of the notice showing the time and place of the hearing and shall affix such notice to the copy of the complaint to be served on each defendant. At the hearing, the presiding Judge shall ascertain whether:

- (a) The defendant has any defenses to the claim, or wishes to present any counterclaim against the plaintiff or cross-claim against any other party or person concerning the same transaction or occurrence;
- (b) Any party wishes to present evidence to the Court concerning the facts of the transaction or occurrence;
- (c) The interests of justice require any party to answer written interrogatories, produce any documents or other evidence, or otherwise engage in any pre-trial discovery considered proper by the Judge;
- (d) Some or all of the issues in dispute can be settled without a formal adjudication; and
- (e) The claim is ready for trial.
 - (1) If the claim is ready for trial, the Judge may try it immediately or set a subsequent date for trial.
 - (2) If the claim is not ready for trial, the Judge shall set a subsequent date for trial and order such preparation by the parties as he deems necessary.

2-104. Issuance of Subpoenas.

- (a) Upon request of any party or upon the Court's own initiative, the Court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence relevant to the determination of the case and not an undue burden on the person possessing the evidence. An employee of the Court may act on behalf of the Court and issue subpoenas which have been signed by a judge and which are to be served within the confines of the Reservation. Each subpoena shall be accompanied by a certified check or money order, prepaying the witness fees and expenses required by Section 2-107, and no subpoena shall be valid in the absence of such a check or money order.
- (b) A subpoena shall bear the signature of the Chief Judge or an Associate Judge of the Court and it shall state the name of the Court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

2-105. Service of Subpoenas.

A subpoena may be served in the manner prescribed in Section 2-102, except that service by publication is not permitted.

2-106. Failure to Obey Subpoena.

In the absence of a justification satisfactory to the Court, a person who fails to obey a subpoena issued and served in accordance with the provisions of this Code may be cited and held in contempt of court.

2-107. Witness Fees and Expenses.

- (a) Each witness answering a subpoena shall be entitled to reimbursement of his mileage expenses at the current rate paid by General Services Administration, and to witness fees at the rate of \$25.00 per day except that the custodian of any public books, records, documents or other physical evidence subpoenaed shall not be entitled to witness fees. A certified check or money order for these fees and expenses shall be attached by the party issuing the subpoena to the subpoena served on the witness.
- (b) The fees and expenses provided for in this section shall be taxed as court costs, and assessed against the parties as provided in the judgment in the case.

2-108. Trial Procedure.

- (a) The time and place of court sessions, the rules of evidence to be followed by the Court and all other details of judicial procedure may be set out in rules of court.
- (b) All testimony of witnesses shall be given orally under oath in open court and subject to the right of cross examination. Documentary and tangible evidence shall also be received in open court.
- (c) Civil cases shall be tried before a Judge and not a jury, except that either party may request a jury trial if the amount in controversy in the claim or any counterclaim exceeds \$5,000. If a jury trial is requested, the Court shall follow the provisions of Section 3-507. The compensation and expenses of the jurors shall be taxed as court costs, and assessed against the parties as provided in the judgment in the case.
- (d) The case of the plaintiff shall be presented first, followed by the case of the defendant. If rebuttal is required, the plaintiff shall proceed first, followed by the defendant.
- (e) At the conclusion of the evidence, the plaintiff and defendant each in turn may summarize the proof and make final argument.

2-109. Consolidated and Separate Trials.

- (a) Consolidation. The Court may, upon motion of any party or on 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 to the actions or if such will tend to avoid unnecessary cost or delay.
- (b) Separate trials. The Court may, to avoid prejudice or in furtherance of convenience, order a separate trial of a claim or issue.

2-110. Intervention.

A person may be permitted in the discretion of the Court to intervene as a party to an action in cases where property in which he claims an interest may be substantially affected by disposition of the action or where the applicant for intervention asserts a claim or defense which presents a question of law or fact common to the main action.

2-111. Substitution of Parties.

If a party dies, becomes incompetent or transfers his interest, a substitute or successor party may be joined or substituted as justice requires.

Chapter 2. Judgments

2-201. Judgments.

A judgment shall be entered in each civil case. The judgment shall be for money or other relief or for dismissal. A judgment is complete and shall be deemed entered when it is signed by the Judge and filed with the clerk.

2-202. Judgment by Default.

Where any party, after being served with a copy of the complaint as provided in Section 2-102 in the case of a defendant, fails to appear at the hearing, at trial, or otherwise to prosecute or defend a case, the Court may enter a default judgment granting the relief sought in the complaint, upon such showing of proof by the plaintiff as the Court deems appropriate, or may dismiss the case for failure to prosecute. The Court may, for good cause shown, set aside entry of a default judgment or dismissal for failure to prosecute.

2-203. Proof of Satisfaction.

A judgment may be satisfied in whole or in part as to any or all of the judgment debtors by the owner thereof or his attorney of record executing under oath and filing an acknowledgement of satisfaction specifying the amount paid and whether it is full or partial satisfaction. The clerk shall file all satisfactions of judgment and note the amount thereof in the judgment docket.

2-204. Execution.

- (a) If any final judgment for money rendered by the Court is not satisfied within sixty (60) days of entry, or such other time fixed by the Court, the judgment creditor may apply to the Court for an order directing the judgment debtor to appear before the Court for the purpose of itemizing his property.
- (b) After giving the judgment debtor an opportunity for hearing, the Court shall determine what property is available for execution, and shall order tribal law enforcement officers to seize such property as may be necessary to satisfy the judgment. In addition, the judgment may be paid out of any funds on deposit to the credit of the judgment debtor at the Agency not exempt under Section 2-210 when such payment is authorized by the Secretary of the Interior, or his authorized representative, on such terms and conditions as the Secretary may prescribe.

2-205. Judgment Constitutes a Lien.

A judgment shall constitute a lien on any nonexempt property of the judgment debtor. Notice of this lien may be placed by the judgment creditor in the public records of any country or state where such property is located.

2-206. Life of Judgment.

No judgment of the Court for money shall be enforceable after five years from the date of entry, unless application to renew the judgment shall have been filed before the date of expiration pursuant to Section 2-207.

2-207. Renewal of Judgment.

Upon application of the judgment creditor prior to the expiration of five years after the date of the entry of a judgment for money, the Court shall order the judgment renewed and extended for an additional five years.

2-208. Stay of Judgment.

Except as provided herein, no execution or enforcement shall issue in any judgment in a civil case until the expiration of ten days after its entry. When a petition for review has been filed with the Supreme Court following the judgment, the Court may stay its judgment, or may stay or grant an injunction during the pendency of the petition and any ensuing appeal on such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party, as more particularly provided in Section 1-208.

2-209. Costs and Attorneys Fees.

In civil actions costs shall be awarded the prevailing party as part of the final judgment unless the Court otherwise orders. No costs shall be awarded against the Tribe, or against any officer of the Tribe or member of the Tribal Council sued in his official capacity. Costs shall include filing fees, reasonable and necessary expenses of involuntary witnesses, costs associated with compensation and expenses of the jury, and such other proper and reasonable expenses, exclusive of attorneys' fees, as the Court may allow. The Court shall not award attorneys' fees to the prevailing party in a civil suit unless the Court determines that the case has been prosecuted or defended solely for harassment and without any reasonable expectation of success.

2-210. Property Exempt from Judgments for Money.

There shall be exempt from the satisfaction or payment of all judgments for money, except judgments for the support of a spouse or children, the following property of the judgment debtor or the debtor's spouse:

- (a) Provisions and fuel necessary to supply the debtor and his immediate family for one year, or their monetary equivalent (including funds in an IIM account up to this amount).
- (b) All wearing apparel, clothing and personal effects.
- (c) All household furnishings.
- (d) One dwelling place whether it be house, cabin, trailer or other structure.

- (e) Except for a farmer or rancher, one horse, saddle and bridle, one wagon, two cows and their calves, four hogs and fifty domestic fowls and feed for such animals for three months.
- (f) One truck or other motor vehicle of the value of not more than \$8,000.
- (g) To a farmer or rancher-livestock, farm equipment, machinery and seed, grain or vegetables not exceeding in value \$15,000.
- (h) To a mechanic or artisan-tools or implements necessary to carry on his trade.
- (i) All moneys, benefits, privileges or immunities in any manner growing out of any life insurance on the life of the debtor.
- (j) All retirement allowances, benefits and pensions.
- (k) All family pictures.
- (l) A pew or other sitting in any house of worship.
- (m) A lot or lots in any burial ground.
- (n) One Bible, all schoolbooks, and all other books not exceeding in value \$250.
- (o) One rifle or hand gun.
- (p) Real property in trust by the United States.

Provided, however, that such exempt property may be subject to satisfaction and payment of judgments where the judgment debtor has executed a valid and lawful mortgage or security agreement with the judgment creditor, specifically pledging such property as collateral.

2-211. Garnishment of Wages for Satisfaction of Judgment.

(a) For the purposes of the Section:

- (1) Wages means compensation paid or payable for personal services whether denominated as wages, salary, commission, bonus or otherwise.
- (2) Disposable Wages means that part of the wages of an individual left after the deduction from those earnings of, if applicable, federal tax withholdings, social security withholdings, and any other amounts required by applicable law to be withheld by the employer.
- (3) Tribe means any agency, subdivision, or instrumentality of the Standing Rock Sioux Tribe.
- (4) Judgment Creditor means any person or entity which has obtained a final money judgment by a court of competent jurisdiction.

- (5) Judgment Debtor means any person against whom a final money judgment has been entered by a court of competent jurisdiction.
- (b) The Court may, in a civil action for garnishment filed by a judgment creditor, order garnishment of the unpaid past or future wages of the judgment debtor for satisfaction of the judgment. No garnishment action shall be filed unless the judgment has been unsatisfied for sixty (60) days or more. In any such action the judgment debtor and the judgment debtor's employer shall be named as defendants.
- (c) The maximum amount of wages in any one workweek subject to garnishment is the lesser of:
- (1) Twenty-five percent (25%) of the judgment debtor's disposable wages for that week or the amount of the wages that exceed forty (40) times the federal minimum hourly wage prescribed by the Fair Labor Standards Act of 1938.
- (d) The garnishment order shall lapse when the judgment is satisfied or when the judgment debtor resigns or is dismissed from his/her employment; provided that if the judgment debtor is reemployed or rehired within ninety (90) days after such resignation or dismissal, the garnishment order shall continue in effect.
- (e) No employer shall discharge an employee for the reason that a judgment creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment.
- (f) Notwithstanding any other provision of law, wages paid by the Tribe to any individual, shall be subject, in like manner and to the same extent as if the Tribe were a private person, to legal process brought for the enforcement against such individual in Tribal Court of his/her legal obligations, including obligations to provide child support, or make alimony payments, or make rental or other payments to the Standing Rock Sioux Housing Authority. Service of legal process on the Tribe, brought for the enforcement of an individual's obligation to provide such payments shall be accomplished by certified or registered mail, return receipt requested, or by personal service upon the Tribal Finance Officer.
- (g) No Tribal employee shall be subject to any disciplinary action or civil or criminal liability or penalty whatsoever for, or on account of, any order of the Tribal Court pursuant to this Section.

Chapter 3. Extraordinary Writs**2-301. Temporary Restraining Orders Without Notice.**

- (a) No temporary restraining order or other injunction without notice shall be granted where the Tribe is a defendant or a tribal official is a defendant in his official capacity. Otherwise, except as provided in Subsection (c), no temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by oral testimony, affidavit or by the verified complaint that immediate and irreparable injury will result to the applicant before notice can be served and a hearing had thereon.
- (b) Except as provided in Subsection (c), in cases where 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. When the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if 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 possible.
- (c) A temporary restraining order may be granted without prior notice to any party where the Chief Judge determines that a serious breach of the peace will otherwise occur.
- (d) Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance and shall expire by its terms within such time after entry, not to exceed ten (10) days, as provided in the order.

2-302. Preliminary Injunctions.

A preliminary injunction restrains activities of a defendant until the case can be determined on the merits. No preliminary injunction shall be issued without notice to the adverse party and an opportunity to be heard, and no preliminary injunction shall be issued absent clear and convincing proof by specific evidence that the applicant will suffer irreparable harm during the pendency of the litigation unless a preliminary injunction is issued, that the applicant has a high likelihood of success on the merits, and that the balance of equities favors the applicant over the party sought to be enjoined. The Court may dissolve or modify a preliminary injunction at any time as the interests of justice require.

2-303. Security.

Except as otherwise provided by law, no temporary 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 Tribe, or of an officer, or agency, of either.

2-304. Habeas Corpus.

Relief by habeas corpus proceedings shall be granted whenever it appears to the Court that any person is unjustly imprisoned or otherwise unlawfully deprived of his liberty. Upon the filing of the complaint the Court shall issue a writ directed to the defendant commanding him to bring the person alleged to be restrained before the Court at a time and place therein specified, at which time the Court shall proceed to hear the matter and render judgment accordingly.

Chapter 4. Applicable Laws**2-401. Applicable Laws.**

In determining any case over which it has jurisdiction, the Standing Rock Sioux Tribal Court shall give binding effect to

- (a) any applicable constitutional provision, treaty, law, or any valid regulation of the United States;
- (b) any applicable provision of the tribal Constitution or any law of the Tribe not in conflict with federal law;
- (c) any applicable custom or usage of the Standing Rock Sioux Tribe not in conflict with any law of the Tribe or of the United States. Where doubt arises as to such customs and usages, the Court may request the testimony, as witnesses of the Court, of persons familiar with such customs and usages.
- (d) where appropriate, the Court may in its discretion be guided by the statutes, common law or rules of decision of the State in which the transaction or occurrence giving rise to the cause of action took place.

Chapter 5. Statute of Limitations**2-501. Limitation of Actions.**

The Standing Rock Sioux Tribal Court shall have no jurisdiction over any action brought more than two years after the cause of action arose.