

TITLE FOUR

CIVIL PROCEDURE

Chapter 1 -- Rules of Civil Procedure

Chapter 2 -- Limitation of Actions and Sovereign Immunity

Chapter 3 -- Amendments to Law and Order Code

CHAPTER ONE

RULES OF CIVIL PROCEDURE GENERAL PROVISIONS

RULE 1 Scope of Rules

This Chapter governs the procedure in the Tribal Courts of the Rosebud Sioux Tribe in all actions of a civil nature, except where different rules are specifically prescribed in this Code. These rules shall be liberally construed to secure a just, speedy and inexpensive determination of every civil action.

RULE 2 One Form of Action

The distinctions between actions at law and suits at equity and the common law forms of all such actions and suits are hereby abolished in the Tribal Courts. All actions to which these rules apply will be known as civil actions.

RULE 3 Commencement of Action

(a) A civil action is commenced by filing a written Complaint and Summons with the Clerk of the Tribal Court and by delivery of copies of the Summons and Complaint by the Plaintiff or his attorney to the appropriate officials for purpose of service on the Defendants.

(b) The Summons shall be legibly signed by the Plaintiff or his attorney and directed to the Defendant and shall require the Defendant to answer the Complaint and serve a copy of his Answer on the person signing the Summons at a place within this State specified in the Summons at which there is a post office within 30 days after service of the Summons and Complaint exclusive of the day of service. The Summons shall further notify the Defendant that in case of his failure to file an Answer, judgment by default may be rendered against him for the relief requested in the Complaint.

RULE 4 Service of Process

(a) Summons and Complaint may be served within the exterior boundaries of the Rosebud Indian Reservation by any law enforcement officer or Tribal member who is a resident of the Rosebud Indian Reservation of the age of 18 years or older and who is not a party to the litigation. Service of Summons and Complaint upon any party outside the boundaries of the Rosebud Indian Reservation may be made in the manner prescribed for service of process in that jurisdiction.

(b) The Summons and Complaint shall be served by delivering copies thereof. Service in the following manner shall constitute personal service:

(1) If the action is against a corporation, service shall be made on the President, Secretary, Cashier, Treasurer, a Director, or managing or registered agent thereof and such service may be made within or outside this jurisdiction. In case the process server shall return the Summons with his certificate that no such officer, director or agent can

conveniently be found, service may be made by leaving a copy of the Summons and Complaint at any office of the corporation with the person in charge of such office.

(2) If the action be against a minor, service shall be made on a parent or person having custody and if the minor be over the age of 14 years, then also upon the minor personally, and in any event, on the legally appointed general guardian if one exists. If a guardian ad litem has been appointed, service shall also be made on the guardian ad litem.

(3) If the action is against a person judicially declared to be of unsound mind or who is an inmate of any institution or mentally incompetent or for whom a general guardian has been legally appointed, service shall be made on such guardian and upon the superintendent of such institution or person having custody of the Defendant and also upon the incompetent Defendant.

(4) Whenever the manner of service of process is specified in any statute or rule specifically relating to the action, remedy or special proceeding, the manner of service there specified shall be followed.

(5) In all other cases on the Defendant personally.

(c) Service in the following manner shall also constitute personal service. If the Defendant cannot be conveniently found, service may be made by leaving a copy of the Summons and Complaint at the Defendant's dwelling house and delivered to a member of the Defendant's family or household over the age of 14 years.

(d) Proof of the regular service of a Summons and Complaint or any other legal document must state the time, place and manner of such service and must be made as follows:

(1) If served by a law enforcement officer or other process server, his certificate thereof.

(2) If served by any other person, his affidavit thereof.

(3) If admitted by the party upon whom service may have been made, then by the written admission of such party or his attorney, or

(4) If served by publication, by the affidavit of the publisher of the newspaper or other employee showing such regular publication and an affidavit of the party or his attorney showing regular mailing of copies to the party to be served at his last known post office address.

(e) Personal service shall be deemed completed if the person to be served is informed of the purpose of the service and provided copies of the papers being served and said copies are either received by the person to be served or left within his reach. Whether the person accepts or refuses to accept said copies is immaterial.

(f) If the Plaintiff can establish to the satisfaction of the Court by affidavit that he has made a diligent effort to obtain personal service as provided by these rules upon a Defendant both within and without this jurisdiction, and that despite such diligent effort, personal service cannot be obtained on a Defendant, then and in such event, the Court may authorize service by publication of the Summons. Service by publication shall constitute publishing the contents of the Summons in a local newspaper of general circulation at least once a week for four consecutive weeks and by mailing by first class mail, postage prepaid, a copy of the Summons and Complaint to the Defendant at his last known post office address.

(g) The Court may in its discretion on such terms as it deems proper at any time allow any Summons or other process or proof of service to be amended unless it clearly appears that the substantial rights of the person against whom the process was issued would be prejudiced thereby.

RULE 5 Service and Filing of Pleadings and Other Papers

(a) Except as otherwise provided by these rules, every Order required by its terms to be served, every pleading subsequent to the original Complaint, every motion other than one which may be heard ex parte and every written notice, appearance, demand, offer of judgment and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against Defendants in default shall be served upon them in the same manner as provided for service of Summons and Complaint.

(b) Whenever service of a legal document other than the Summons and Complaint is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the Court. Service upon the attorney or upon a party shall be made either by service in the manner provided for Summons and Complaint or by mailing a copy of the legal document to the party or his attorney at the last known post office address. Service by mail shall be by first class mail and is complete upon mailing. An attorney's certificate of service, the written admission of service by the party or his attorney, or an affidavit of mailing shall be sufficient proof of service. The provisions of this Rule 5 are not intended to change the rules for Service of Summons and Complaint. Further, any process or other legal paper designed or with the purpose to bring a party into contempt shall be served by personal service only.

(c) In any action in which there are unusually large numbers of Defendants, the Court may order that service of documents between Defendants upon each other and replies thereto may be made in some summary fashion other than by service by each Defendant on each other Defendant. A copy of any such order of the Court shall be served upon all parties in such manner and form as the Court directs.

(d) The originals of all papers served upon a party or presented to any Court or to any Judge shall either be filed with the Court prior to service or filed with the Court together with the proof of service immediately upon service. If such papers are not to be served, they must be filed with the Court at the time of their presentation to the Court for action or consideration. In the event of failure to file any paper required to be filed under this rule, the adverse party shall be entitled without notice to an order requiring such paper to be filed within a reasonable time as specified by

the Court. The Court may likewise order that upon failure to file such paper, the action or proceeding shall be dismissed without prejudice and no new action or proceeding may be commenced without payment of reasonable terms to be fixed by the Court. If any such process or other paper has been lost or withheld by any person, the Court may authorize a copy thereof to be filed and substituted for the original. A legal document is deemed filed with the Court as required by this Chapter if the same has been presented to the Clerk of Court or to the Judge assigned to handle the proceeding. The Clerk or the Judge will note thereon the filing date and assure that the document is placed in the original Court file.

RULE 6 Time

(a) In computing any period of time set forth in these rules, the day the time period is to commence shall not be counted and the last day of the period shall be counted, provided however, that any period which would otherwise end on a Saturday, Sunday, or a legal holiday will be deemed to end on the next day which is not a Saturday, Sunday, or a legal holiday.

(b) Whenever under these rules or by an Order of the Court an act is required to be done or a notice given within a specified time, the Court may for good cause shown, in its discretion at any time, with or without motion or notice, enlarge the time period if a request is made for enlargement before the expiration of the period originally prescribed or as extended by a previous order. If the time as originally prescribed or as previously enlarged has expired, the Court shall require written motion for enlargement of the time and appropriate notice be given to the adverse party. If the time period has expired prior to the application being made, the Court should not enlarge the time if such action will do substantial prejudice to the adverse party. Nothing in this rule shall be deemed to authorize the Court to enlarge the time for making motions for judgment notwithstanding the verdict, motions for new trial, or motions for relief from a final judgment or Order except under such circumstances as are set forth in those specific rules.

(c) Any written motion, other than one which may be heard ex parte, and notice of hearing thereon or an Order to Show Cause shall be served not less than five days before the time specified for the hearing unless a different time period is fixed by these rules or by an Order of the Court. Application for an Order to fix a hearing date may be made ex parte. Whenever any motion is supported by an affidavit, the affidavit shall be served with the motion except as otherwise provided in these rules. Responding or opposing affidavits may be served not later than one day before the hearing unless the Court permits by Order affidavits to be served at some other time.

(d) Whenever a party has the right or is required to do some act within a specified period after the service of a notice of other paper upon him, or whenever such service is required to be made a specified period before a specific event, and the notice or paper is served by mail, three days shall be added to the prescribed period.

RULE 7 Pleadings and Motions

(a) The pleadings which shall be allowed shall be a Complaint and an Answer, a Counterclaim, a Crossclaim, a reply to a Counterclaim, an answer to a Crossclaim if the Answer con-

tains a Crossclaim, a third party Complaint, and a third party Answer if a third party Complaint is served. No other pleadings shall be allowed except that the Court may order a reply to an Answer or a third party Answer.

(b) All applications to the Court for an Order shall be made by motion which shall be in writing and shall state with particularity the grounds therefore and shall set forth the relief or Order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of a hearing on the motion. The Court may also allow oral motions during the course of a hearing or a trial. The rules applicable to captions, signing, and other matters of the form of pleadings apply to all motions and other papers provided for in these rules.

RULE 8 General Rules of Pleading

(a) Any pleading which sets forth a claim for relief whether it be called a Complaint, a Counterclaim, a Crossclaim, or a Third Party Claim shall contain a short, plain statement of the claim showing that the pleader is entitled to relief and a demand for judgement for the relief to which the pleader deems himself entitled. Relief in the alternative or of several different types may be demanded.

(b) A party shall state in plain, concise terms the grounds upon which he bases his defense to claims pleaded against him and shall admit or deny the claims and statements upon which the adverse party relies. If he is without information or knowledge regarding a statement or claim, he shall so state. Such shall be deemed a denial. Denials shall fairly meet the substance of the claim or statement denied and may be made as to specific parts but not all of a claim or statement. 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 the amount of damages shall be deemed admitted unless denied. If no responsive pleading is required, the claims of the adverse party shall be deemed denied.

(c) In responding to a pleading, a party shall set forth affirmatively all matters constituting an avoidance or affirmative defense including accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, and waiver. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the Court, if justice so requires, shall treat the pleadings as if the designation had been a proper one.

(d) Each paragraph of a pleading shall be simple, concise, and direct. A party may set forth two or more statements of claim or defense alternatively or hypothetically, either in one count or in separate counts. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based upon legal or on equitable grounds or both.

(e) All pleadings shall be construed so as to do substantial justice.

RULE 9 Pleading Special Matters

(a) A party need not plead or prove the existence, status or capacity of the following matters unless the same are called into issue by the responsive pleading or timely motion of the adverse party, namely:

- (1) Capacity to be sued or to sue in an individual or in a representative capacity;
- (2) The legal existence of a corporation or organized association of persons being made a party;

(b) All allegations of fraud or mistake must be pled factually and with particularity. Malice, intent, knowledge, or other state of mind of a person may be alleged generally.

(c) The performance of a condition precedent may be pled generally. The non-performance of a condition precedent must be pled specifically and with particularity.

(d) In pleading an official document or official act, it is sufficient to allege that the document was issued or the act done in compliance with the law. In pleading any statute or ordinance, it is sufficient to refer to the statute by its number and the ordinance by its title or number and the date of its approval.

(e) In pleading a judgment or decision of a Court or a judicial or quasi-judicial body or of a board or hearing officer, it is sufficient to allege the judgment or decision without setting forth any matters showing the jurisdiction to render it.

(f) For the purpose of testing the sufficiency of a pleading, allegations of time and place are material and shall be considered like all other allegations of material matters.

(g) When items of special damage are claimed, they should be specifically alleged.

(h) When a party is ignorant of the name of an opposing party, and so alleges in his pleading, the opposing party may be designated by any name, and when his true name is discovered, the process and all pleading in the action shall be amended by substituting the true name.

(i) In any action for libel or slander it shall not be necessary to allege any facts for the purpose of showing the application to the Plaintiff of the defamatory matter upon which the cause of action is based, but it shall be sufficient to state generally that the same was published or spoken concerning the Plaintiff. If such allegation be controverted, the Plaintiff shall be bound to establish at trial that the matter was published or spoken.

RULE 10 Form of Pleadings

(a) Every pleading shall have a caption setting forth the name of the Court, the title of the action, and an identification of the type of pleading. In the Complaint, the title of the action shall include the names of all the parties, but in all subsequent pleadings, it is sufficient to state the name of the first party on each side with an appropriate indication that other parties are involved.

(b) All allegations of name or defense shall be made in numbered paragraphs, the contents of each paragraph to be limited in as far as is practical to a statement of a single set of circumstances. A paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than a denial shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters alleged.

(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 any written instrument which is an exhibit to a pleading is a part of the pleading for all purposes.

RULE 11 Signing of Pleadings

Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name whose address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address except when otherwise specifically provided by rule or statute. Pleadings need not be verified or accompanied by affidavits. The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief, there is good ground to support it, and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and action may proceed as though the pleading had not been served.

RULE 12 Defenses and Objections

(a) A Defendant shall serve his Answer within 30 days after the service of the Complaint and Summons upon him. Any party served with a pleading stating a counterclaim or crossclaim against him shall serve an Answer within 20 days after service of the Answer, or if a reply is ordered by the Court, within 20 days after service of the Order unless modified by the Court. The service of any motion permitted under Rule 12 alters these periods of time as follows unless a different time is fixed by order of the Court:

(1) If the Court denies the motion or postpones a decision until the trial on the merits, the responsive pleadings shall be served within 10 days after notice of the Court's action.

(2) If the Court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

(3) If an appeal is taken from an Order sustaining a motion to dismiss and such Order is thereafter reversed, the responsive pleading shall be served within 20 days after the judgment or Order of reversal is filed in the trial Court.

(b) Every defense to a claim for relief in any pleading whether a Complaint, Counterclaim, Crossclaim, or Third Party Claim shall be asserted in the responsive pleading if one is required, except that the following defenses may at the option of the pleader be made prior to

the filing of a responsive pleading by motion, namely, lack of jurisdiction over the subject matter, lack of jurisdiction over the person, insufficiency of process, insufficiency of service of process. failure to state a claim upon which relief may be granted, failure to join a party under Rule 19. If the Court is presented a motion for failure to state a claim upon which relief can be granted and matters outside the pleadings are presented to the Court and not excluded, the Court may treat the motion as one for summary judgment, if all parties are provided a reasonable opportunity to present all material pertinent to such motion.

(c) After the pleadings are closed but within such time as to not delay trial, any party may move for judgment on the pleadings. If during a hearing for judgment on the pleadings, matters outside the pleadings are presented and not excluded by the Court, the Court may treat the motion as one for summary judgment and dispose of the same in that fashion if all parties had been given a reasonable opportunity to present any material pertinent to such a motion.

(d) Any of the defenses raised either by pleading or by motion and listed in Rule 12 (a), (b), (c) shall be heard and determined before trial upon application of one of the parties unless the Court orders such hearings to be deferred until the time of trial.

(e) If a pleading to which a responsive pleading is permitted is so vague or ambiguous that the opposing party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before filing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the Order of the Court is not obeyed within 10 days after notice of the Order or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or make such other Order as is deemed appropriate.

(f) Upon a motion made by a party before responding to a pleading, or if no responsive pleading is permitted upon motion made by a party within 20 days after service of the pleading upon him or upon the Court's own initiative at any time, the Court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived if not raised pursuant to motion under Rule 12 or if not included in a responsive pleading or an amendment thereto as permitted or allowed by these rules. A defense of failure to state a claim upon which relief may be granted, a defense to join an indispensable party, or an objection of failure to state a legal defense to a claim may be raised at the trial on the merits even though not previously raised under Rule 12 or on a responsive pleading. Whenever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.

Rule 13 Counterclaims and Crossclaims

(a) A responsive pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader had against the opposing party if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the Court cannot acquire jurisdiction. The pleader need not state the claim if at the time the action was commenced the claim was the subject of another pending action or the opposing party brought suit on his claim by attachment or other process by

which the Court did not acquire jurisdiction to render a personal judgment on the claim, and the pleader is not stating any counterclaim under Rule 13 or if the claim is not one over which the Court would have jurisdiction if brought as an original action.

(b) A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) A counterclaim may diminish in part or defeat totally the recovery sought by the opposing party. It may claim relief exceeding an amount or different in kind from that sought in the pleading of the opposing party.

(d) A claim which either matured or was acquired by the pleader after serving his responsive pleading may, with the permission of the Court, be presented as a counterclaim by a supplemental pleading.

(e) When a pleader fails to set up a counterclaim through oversight, inadvertance, or excusable neglect or when justice requires, he may with the permission of the Court set up a counterclaim by amendment of his pleading.

(f) A pleading may state as a crossclaim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim or relating to any property that is the subject matter of the original action. Such crossclaim may include a claim that the party against whom it is asserted is or may be liable to the crossclaimant for all or part of a claim asserted in the action against the crossclaimant.

(g) Persons other than those made parties to the original action may be made parties to a counterclaim or crossclaim in accordance with the provision of Rule 19 and Rule 20.

(h) If the Court orders separate trials pursuant to these rules, then and in such event judgment on a counterclaim or crossclaim may be rendered when the Court has jurisdiction to do so even if the claim of the opposing party has been dismissed or otherwise disposed of.

RULE 14 Third Party Practice

At any time after commencement of an action and within 10 days of filing an original answer, a defending party may without permission of the Court cause Summons and Complaint to be served upon any person not a party to the action who is or may be liable to the defending party for all or part of the Plaintiff's claim against him. After 10 days from service of the original answer, the defending party must obtain permission of the Court to join a third party. Any person so served with Summons and Complaint shall be called a third party Defendant and shall be allowed to file responsive pleadings including answers, counterclaims, and crossclaims as provided in Rule 12 and 13. A third party Defendant may also proceed under Rule 14 against any person not a party to the claim made in the action against the third party Defendant. The Court may render such judgments, one or more in number, as may be suitable. When a counterclaim is asserted against a Plaintiff, he may cause a third party to be brought in under such circumstances which would entitle a Defendant to do so under this rule.

RULE 15 Amended and Supplemental Pleadings

(a) A party may amend his pleadings once as a matter of right before the opposing party has replied, or, if no reply is required, within 20 days after the pleading was served. Other amendments shall be allowed only upon motion and order of the Court or permission of the adverse party. Any party served with an amended pleading has an additional 10 days from the service date or the original expiration date for the answering, whichever is longer, within which to respond to the amended pleading.

(b) When issues not raised in the pleadings are presented at trial and tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. The Court may allow amendments of the pleadings at trial such as may be necessary to cause them to conform to the evidence and the issues actually raised at trial. An issue presented and tried may not be represented and retried in a subsequent proceeding even though it was not raised in the pleading.

(c) All amendments of pleadings related back to the date of the original pleading.

(d) The Court may upon motion and notice permit a party to serve a supplemental pleading setting forth occurrences or events which have happened since the date of the pleading sought to be supplemented. If such permission is granted to file supplemental pleadings, the Court shall fix the response time for the adverse party.

RULE 16 Pretrial Conferences

In any action, the Court may in its discretion direct the attorneys or the parties or appear before it in a conference to consider the following:

- (1) Simplification of issues
- (2) Amendments to the pleadings
- (3) Stipulations as to facts or admissibility of documents
- (4) The limitation of numbers of expert and other witnesses
- (5) Jury instructions
- (6) Any other matters which may aid in the disposition of the action

Following a pretrial conference the Court may make such Orders with relationship to the conference as is appropriate.

RULE 17 Parties

(a) Every action shall be prosecuted by the real party in interest except that a personal representative or other person in a fiduciary capacity may sue in his own name without joining the party for whose benefit the action is being maintained.

(b) When two or more persons associated in business together and transacting such business under a common name are sued by such common name, the Summons and Complaint in such case may be served on one or more of the associates but need not be served upon all. A judgment in such action shall bind the joint property of all the associates and the individual property of the party

or parties actually served a Summons and Complaint in the same manner as if all have been named Defendants and have sued upon their joint liability. This section will not apply to corporations.

(c) When an infant or other incompetent person without a general guardian is made a party to a lawsuit, the Court shall appoint a guardian ad litem to represent such person in the proceeding. Unless the Court otherwise orders, no guardian ad litem shall be permitted to receive any money or other property from the ward. Such guardian ad litem may settle or compromise the litigation only with the approval of the Court and shall make application to the Court for payment of any fees or expenses incurred by him, which fees and expenses shall be the responsibility of the ward.

RULE 18 Joinder of Claims and Remedies

(a) Any party asserting a claim to relief as an original claim, counterclaim, crossclaim, or third party claim may join either as independent or as alternate claims as many claims either legal or equitable as he has against an opposing party.

(b) Whenever a claim is one cognizable only after another claim has been prosecuted to a successful conclusion, the two claims may be joined in a single action, but the Court shall grant relief in said action only after determining that the right to relief has been established in the proper manner and in the proper order. For example, a Plaintiff may state a claim for money damages and a claim to have set aside a fraudulent conveyance as to him without first having obtained a judgment establishing the claim for money damages.

RULE 19 Joinder of Persons Needed for a Just Adjudication

(a) Certain persons shall be made parties to pending litigation if possible. Those persons are as follows: persons in whose absence complete relief cannot be accorded among those persons already parties; or persons who claim an interest in the subject of the action and are situated so that the disposition of the action in their absence may impair their ability to protect their interest or leave one of the parties subject to a substantial risk of incurring multiple or inconsistent obligation. If such person exists, the Court shall order that he be made a party.

(b) If any person described in Rule 19(a) above cannot be made a party because he is beyond the jurisdiction of the Court or otherwise, then and in such event, the Court shall determine whether the absent person is indispensable. If the Court determines that the person is indispensable, the Court shall dismiss the action. If not, the Court shall allow the action to proceed and take such protective measures by the shaping of relief or appropriate provisions of the judgment as will protect the rights of the person not joined and those persons who are parties to the lawsuit.

RULE 20 Permissive Joinder of Parties

(a) All persons may join in one action as Plaintiff if they assert any right to relief jointly, severally, or in the alternative, arising out of the same transaction, occurrence, or series of transactions, and if any question of law or fact is common to all those persons and will arise in the proceeding. All persons may be joined in one action as Defendants if the common element exist as to all Defendants as stated in the previous sentence. Judgment may be given for one or more of the Plaintiffs according to their respective rights to relief and against one or more of the Defendants according to their respective liabilities.

(b) The Court may make such orders as will prevent the party from being embarrassed, delayed, or put to additional expense by the inclusion of a party against whom he asserts no claim or who asserts no claim against him. The Court may order separate trials or make other Orders to prevent delay or prejudice.

RULE 21 Misjoinder and Non-joinder of Parties

Misjoinder of parties is not grounds for dismissal of an action. Parties may be dropped or added by order of the Court on motion of any party or on its own initiative at any stage of the proceeding and on such terms as are just. Any claim against any party may be severed and proceeded with separately by Court Order.

RULE 22 Interpleader

Any party to a lawsuit who believes that he is or may be exposed to double or multiple liability may make application to the Court for permission to join as parties those people whom he believes expose him to inconsistent or multiple liability by way of interpleader. Interpleader will be liberally granted by the Court to the extent that it does not deprive the Court of Jurisdiction over the proceeding.

RULE 23 Class Actions and Stockholder Actions

No class action shall be allowed to be brought in the Tribal Court without prior permission of the Tribal Council. No stockholder derivative action may be brought in Tribal Court without prior permission of the Tribal Council.

RULE 24 Intervention

Upon timely application, any person shall be permitted to intervene in an action if he was otherwise qualified to be a party to the proceeding pursuant to Rule 19, Rule 20, or Rule 22. Any person desiring to intervene shall serve a motion to intervene upon the parties, which motion shall state the grounds for intervention and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. Upon hearing or stipulation of the parties, the Court shall determine whether or not intervention will be allowed.

RULE 25 Substitution of Parties

If a party dies and the claim is not thereby extinguished or if a party becomes incompetent or transfers his interest or separates from some official capacity, the Court may allow substitute parties to be joined in the proceeding as justice requires.

RULE 26 Discovery

(a) Parties may obtain discovery regarding any matter not privileged which is relevant to the pending action, whether or not such is or may be admissible at trial, if the request appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may not be had of the work product of the party's attorney. Discovery may be had by any or all of the following methods. The frequency of use of these methods is not limited unless the Court so orders.

(b) Interrogatories--Any party may submit interrogatories to any other party who must answer the same in writing under oath within 30 days of receipt.

(c) Any party may take the oral deposition of an adverse party or any witness under oath upon not less than 10 days notice specifying the time and place when and where such deposition will occur. A deposition may be taken at any place by agreement of the parties. If no agreement as to location can be reached, such deposition will be performed at the Tribal Court building in Rosebud, South Dakota.

(d) Any party may request any other party to produce any documents or physical evidence in his custody or possession for inspection or copying or request permission to enter and inspect real property reasonably related to the case. The party to whom the request has been presented shall within 30 days reply as to whether or not such will be allowed, and if not, state the reason. If production or inspection is not agreed to, or allowed, then the party requesting the same shall move the Court for a determination by the Court of whether or not inspection or production of documents will be allowed. The Court shall order such inspection if it is reasonably relevant to the case at hand.

(e) A party against whom discovery is sought may move the Court for protective order to prevent annoyance, harrassment, embarrassment, oppression, undue burden of expense, or protection of trade secrets or other confidential material. The Court may make such orders as are reasonably necessary to protect the confidentiality of the material yet still allow such discovery as is appropriate. The Court may grant the protective order in its entirety or deny the same in its entirety or grant partial relief to either party.

(f) If a party fails to respond or appear for discovery as provided in these rules, the opposing party may move the Court for an Order to compel the non-performing party to perform. The Court may award costs or attorney fees to the non-defaulting party for the necessity of bringing the matter before the Court. If a party fails to perform after being ordered to do so by the Court, the Court may upon motion and notice order that a certain fact, claim, or defense be deemed established or strike part of a claim or defense or dismiss the action or render a judgment by default against the non-complying party in an aggravated case.

(g) Answers to interrogatories and depositions may be used at any hearing or at trial to impeach or contradict the testimony of a person deposed or discovered. The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Court finds that the witness is dead, or that the witness is outside the jurisdiction of the Court unless it appears that the absence of a witness was procured by the party offering the deposition, or that the witness is unable to attend or testify because of age, sickness, infirmity, imprisonment, or occupational commitments, or if the party offering the deposition has been unable to procure the attendance of the witness by subpoena. In the event that a deposition is offered in lieu of the testimony of a witness, the Court shall prior to allowing such deposition to be offered, review the same and make rulings on such objections to admissability of questions as are in such deposition or as are made in writing by either party. The Court shall then edit the deposition based upon such objections and the deposition as edited shall be read to the jury in lieu of the witness's testimony.

RULES 27 through 37 are reserved for future use.

RULES 38 Trials

(a) Trials of all civil actions shall be to the Court without a jury unless a party to the action files a request for a jury trial and pays a fee of \$100 at the time of filing his initial pleadings. Court will then fix the time and place for hearing the request for a jury trial which the Court may postpone until the pleadings have been completed and the issues formulated. The Court shall make the determination of whether or not a jury trial shall be granted upon whether significant issues of fact are presented which will be determinative of the issues which are inappropriate for the Court to decide. No jury trial will be allowed unless such significant factual issues are determined by the Court to exist.

(b) Unless the requesting party or the Court specified otherwise, all factual issues properly triable by a jury shall be decided by the jury at trial.

(c) A Judge may, upon his own motion, order a trial by jury of any or all of the factual issues of a case regardless of whether or not the parties have requested the same. A Judge may hear and decide any or all of the issues at trial without a jury if either party fails to appear for trial regardless of whether a jury trial was requested or ordered.

(d) The failure of a party to demand or request a jury trial at the time of filing his initial pleadings together with the appropriate filing fee shall constitute a waiver by him of any rights which he may have to trial by jury.

RULE 39 Right to Trial by Jury

No absolute right of jury trial exists in a civil case in the Rosebud Sioux Tribal Court. Whether a request for jury trial be granted is within the sound discretion of the Judge assigned to hear the case.

RULES 40 Assignment of Cases for Trial

(a) The Chief Judge shall be responsible to assign civil cases to the various Judges and shall be responsible to maintain a separate Court calendar for civil jury cases and civil Court cases. The Chief Judge shall review both calendars on a regular basis, but at least every six months to assure himself and the Tribal Judiciary Committee that all pending civil actions are being disposed of as expeditiously as possible. In the event that the Chief Judge determines that no activity has occurred in a pending civil case beyond two calendar reviews, the Court may fix a hearing time pursuant to Order to Show Cause why the action should not be dismissed without prejudice for failure to prosecute the claim. If the Court finds that no good cause exists, the Court may in its discretion, giving due regard for the interests of justice, dismiss the case without prejudice for failure to prosecute.

(b) Any party wishing to secure a trial date in a civil jury or non-jury case where a responsive pleading has been filed shall make his application for trial date by a certificate of readiness. A certificate of readiness shall be served on the opposing party or his counsel and shall contain substantially the following information.

- (1) That all responsive pleadings have been filed and that the case is ready for trial in all respects.
- (2) That all necessary discovery has been completed.

- (3) That sufficient time has elapsed to afford all parties the reasonable opportunity to be ready for trial.
- (4) The case is either for jury trial or for trial by the Court.
- (5) There either is or is not a possibility of settlement of the case.
- (6) That a pretrial conference either is or is not requested for the purpose of disposing of pretrial motions, jury instructions, or any other pertinent matter.

If the opposing party feels in good faith that the case is not in a posture for trial, he shall file a resistance to the certificate of readiness within 10 days after the receipt of the same and serve a copy of the same on all parties establishing by specific facts the reasons why the case is not ready for trial. He may request a hearing date on the question of whether or not a trial date should be set. If a hearing date is requested, the Court shall fix a hearing date on the question of whether the case is ready for trial and make appropriate Orders. If no hearing is requested, or no response or resistance is made to the certificate of readiness, the Court shall determine whether the case is ready for trial, and if so, enter an Order fixing a trial date. If the Court determines that the case is not ready for trial, the Court shall attempt to ascertain what items need to be completed before the case is ready for trial and enter an Order directed to the parties or their attorneys to complete such items within a reasonable time fixed by the Court so that the matter can be moved forward for trial. Once a case has been approved by the Court for trial and a trial date has been fixed, no other certificate of readiness need be filed in order to fix trial dates if the initial trial date is postponed for any reason. Once a certificate of readiness has been filed and the Court has fixed a trial date, no trial date shall be postponed without at the same time fixing a new trial date.

RULE 41 Dismissal of Action

(a) Any civil action may be dismissed by the Plaintiff without Order of the Court by filing a notice of dismissal at any time before service by the adverse party of a responsive pleading or of a motion for summary judgment, or by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice.

(b) Except as provided in Rule 41(a), no action shall be dismissed at the Plaintiff's request except on Order of the Court and upon such terms and conditions as the Court deems proper. If a counterclaim, crossclaim, or third party claim has been pleaded prior to the service upon such person of the Plaintiff's motion to dismiss, the action shall not be dismissed over the Defendant's objection or the third party's objection unless the counterclaim or third party claim can remain pending for independent adjudication by the Court. Unless otherwise specified in the Order, a dismissal under this paragraph is without prejudice.

(c) If the Plaintiff fails to prosecute or substantially comply with this chapter or any Order of the Court, a Defendant may move for dismissal of an action or any claim against him. After the plaintiff in an action tried to the Court has completed presentation of his case, the Defendant may move for dismissal on the grounds that upon the facts presented or the law, the Plaintiff has shown no right to relief. The Court may rule on the motion at that time or may decline to rule on the motion until the close of all the evidence. If the Court renders Judgment on the motion against the Plaintiff, the Court shall enter findings of fact and Conclusions of law establishing the reason for his ruling. A dismissal under this section, other than a dismissal for lack of jurisdiction or failure to join a party, operates as an adjudication on the merits.

(d) The Court on its own motion may dismiss any action where the records of the Clerk of Courts indicate that the case has been inactive for a period of two years.

RULE 42 Consolidation or Severance of Trials

(a) The Court may, upon motion of any party or upon its own initiative, order any 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 consolidation will tend to avoid unnecessary cost or delay.

(b) The Court may to avoid prejudice or in furtherance of convenience, order severance or separate trials of any claims or issues which are pled in one action.

RULE 43 Evidence

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 as admissible under Tribal law shall be admissible. The competency of witnesses to testify shall be similarly determined.

RULE 44 Proof of Official Records

(a) An official record kept within the United States or any territory thereof or any State thereof or any entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested or certified by the officer having the legal custody of the record or his deputy together with a certificate that such officer has custody of the original record. The certificate may be made by any public officer having a seal of office and having official duties in the political subdivision in which the record is kept, authenticated by the seal of his office. It may also be proved by the testimony of the official having custody of the record.

(b) In any 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 outside the hearing of the jury. In actions tried to the Court, the Judge may receive such excluded evidence and testimony into the record for appeal purposes.

(c) A written statement that after diligent search, no record or entry of a specified tenor is found to exist in the records designated by the statement and authenticated as provided in Rule 44 (a) is admissible as evidence that the records contain no such record or entry.

RULE 45 Subpoenas

(a) The Clerk of Courts or any Tribal Judge upon application of any party or their attorney in a civil case may issue a subpoena for a witness or witnesses to attend any hearing or trial or for the purpose of taking a deposition pursuant to the discovery rule.

(b) A subpoena shall state the name of the Court, title of the action, and shall command the person to whom it is directed to attend and give testimony or produce documents, books, papers, or other tangible pieces of evidence stated in the subpoena at a time and place specified in the subpoena. It shall state the name of the party or parties for whom the testimony or documents are required.

(c) A subpoena may be served by any officer or person qualified to make service of a Summons and Complaint. A subpoena shall be served in the same manner as a Summons and Complaint is served except that no service by publication is allowed. A subpoena must be served sufficiently in advance of the date when the appearance of the witness is required to enable the witness to reach the appearance place by the ordinary or usual method of transportation which he may use.

(d) Any person requesting the issuance of subpoenas shall tender to the Clerk or Judge the sum of \$5 for each and every subpoena which he requests be served, which sum shall be deemed to cover the cost of the service fees to the process servers. The person requesting the subpoena shall at the same time tender to the Clerk or Judge the sum of \$10 which sum shall be tendered to the witness fees for one day's attendance at Court pursuant to the subpoena. If such fees are not paid at the time of the request for issuance of the subpoenas, the Clerk of Courts or the Tribal Judge shall not issue such subpoena. At the commencement of each day of trial or hearing after the first day, a witness under subpoena may demand an additional daily fee from the party who subpoenaed him for each subsequent day's attendance, and if the same is not paid immediately, the witness shall not be required to remain. When any subpoena is requested to be issued on behalf of the Rosebud Sioux Tribe or any of its political or official subdivisions or any officer of agency thereof, no fees for service or fees for attendance on such subpoenas shall be required to be paid, but such subpoena shall be issued and attendance pursuant to those subpoenas shall be required.

(e) A person who has been properly served with a subpoena and fails to appear or produce such documents as were required may be deemed in contempt of Court and punished accordingly.

(f) A person present in Court or before a judicial officer may be required to testify in the same manner as if he had been served with a subpoena even though no subpoena has actually been issued for him.

RULE 46 Exceptions

Formal exceptions to rulings or Orders of the Court are unnecessary for the purposes of appeal, but for all purposes where an objection is proper and the party has an opportunity to object to a ruling or Order at the time it is made, such party should do so in order to assure that such objection or ruling is preserved for appeal purposes.

RULE 47 Juries

(a) Each year, preferably in January, but in any event, as soon after the first of the year as can reasonably be done, the Judiciary Committee of the Tribal Council or such other committee as the Council may direct shall compile from the Rosebud Sioux Tribe Tribal census rolls a list of not less than 50 persons who shall be designated as the jury list for that year until their successors are selected. The committee selecting the jury list shall select resident members of the Rosebud Sioux Tribe at least 18 years of age who in the opinion of the committee shall be able to regularly attend Court as required and shall not have been convicted of any felony. When the jury list is completed, the list shall be delivered to the Chief Judge and the Clerk of Courts. The Clerk shall then notify in writing each member of the jury list that they have been selected for jury duty for that year and advise them to be prepared for jury service during the succeeding year.

(b) At any time when a jury trial has been scheduled and a trial date has been fixed, at least one week prior to the date fixed for trial, the Clerk shall draw by lot from the jury list the names of 20 jurors which 20 jurors shall be deemed the jury panel for the succeeding jury trial which is scheduled. Those persons shall be notified at least seven days prior to the date set for trial by first class mail that their presence is required at the time and place fixed for said jury trial and that they may be punished as being in contempt of Court for their wilful failure to appear.

(c) Jurors shall be paid the sum of \$10 plus road trip mileage at the prevailing tribal rate per day for each day that they are required to appear and do appear for jury service.

(d) The Court shall permit the parties or their counsel, but not both, to conduct an examination of prospective jurors. The Court may also examine the prospective jurors for the purpose of establishing challenges.

(e) A challenge is an objection made to a potential juror. Challenges are of two types, namely, challenges for cause or preemptory challenges. Challenges for cause must be based upon statements or status of the potential juror that the juror is familiar with the case, has formed an opinion regarding the outcome, is sufficiently related to one of the parties or one of the witnesses that it would be impossible or difficult for the juror to render a fair and impartial verdict, or for any other reason that the juror could not render a fair and impartial verdict. The Judge shall immediately rule on any challenges for cause. Preemptory challenges are challenges made for no reason. Each side of a case shall have three preemptory challenges. Where there are multiple Plaintiffs or multiple Defendants, the Plaintiffs and the Defendants must divide the preemptory challenges among them or work out some other agreeable arrangement for exercising of the challenges. No more than three preemptory challenges will be exercised on each side.

(f) The Clerk shall draw lots and seat 12 potential jurors from the panel and shall replace jurors for whom a challenge for cause is allowed until a full panel of 12 is passed for cause. The parties shall then exercise preemptory challenges. Each side must exercise the full three preemptory challenges allowed to them. After exercise of the preemptory challenges, the Clerk shall administer an oath to the jury selected for the trial that they will fairly deliberate on the case before them and render a true verdict according to the Court's instructions.

(g) The Court may allow an alternate juror or jurors to be chosen in such manner as the Court may direct. If after the proceedings begin but before the case is submitted to the jury for their verdict, a juror becomes unable or disqualified to perform his duties, and alternate juror shall take his place. If no alternate juror had been selected, the parties may agree to complete the action with the remaining jurors. If no agreement can be reached, the Judge shall declare a mistrial, discharge the jury, and the case shall be tried with a new jury.

(h) The Court may, in its discretion, allow the jury to view a location or piece of property or place of occurrence of a disputed or otherwise relevant fact or event.

(i) At 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 any opinions on the case until the case is submitted to them for their decision.

(j) Once the case is submitted to the jury, they shall retire to deliberate in private under the charge of an officer of the Court called the bailiff. He will refrain from communicating with them or allowing any other person to communicate with them except to inquire whether they have reached a verdict and he shall prevent others from improperly communicating with the jury.

(k) The jury may take into the jury room during deliberation the Court's instructions, all documents received in evidence, and any notes taken by the jurors themselves.

(l) If the jury has any questions on an instruction or other point of law or other area of inquiry, the jury may request additional instructions of the Court. Such questions shall be answered by the Court after notice to the parties or their counsel.

(m) If the jury is unable after a reasonable length of time to reach a verdict under these rules, the Court shall declare a mistrial and set the action for a new trial.

RULE 48 Jury Verdicts

(a) There shall be six jurors chosen to hear a case. In addition, the Court may allow the selection of one or more alternate jurors in the event the Court anticipates a lengthy trial. In the event an alternate juror is chosen and hears the case, he shall be dismissed at the time the case is submitted to the jury if he is not needed.

(b) When all or at least five of the six jury members have agreed on a verdict, they shall so inform the bailiff who shall notify the Court. The jury shall return to the Courtroom, and the Clerk shall call the jury roll. The verdict shall then be given in writing to the Clerk who shall read the same to the Court. The Judge shall then inquire of the jury foreman as to whether the verdict just read is the true verdict of the jury. Either party may request that the jury be polled individually to determine if such, in fact, is the jury 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.

RULE 49 Special Verdicts

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

RULE 50 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 has 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 consent of the jury.

(b) A party who has moved for a directed verdict at the close of all the evidence which motion has been denied, or not ruled upon, may within 10 days after entry of judgment move to have the verdict and any judgment thereon set aside and entered according to his motion for directed

verdict or if there has been a verdict, the party may so move within 10 days after the jury has been discharged. A motion for a new trial may be made in the alternative under the same restrictions. The Court shall enter judgment or make any Orders consistent with his decision on the motions.

RULE 51 Instructions and Arguments to the Jury

(a) At the close of the evidence or at such earlier times as the Court may direct, any party may file proposed written instructions for the Court to give to the jury. Copies shall be served on the other parties. At the close of the evidence, the Court and the parties or their counsel shall settle instructions at which time out of the hearing of the jury the Court shall hear arguments on the instructions which the Court proposes to make and offer the parties the opportunity to except to the instructions of the Court. No grounds of objection or exception to the giving or the refusing of all instruction shall be considered on motion for new trial or appeal unless specifically presented to the Court upon the settlement of such instruction.

(b) Final arguments for the parties to the jury shall be made by the parties or their counsel, but not both, after the jury has been instructed. The Plaintiff, having the burden of proof, will open and close the argument. Each side shall be allotted the same amount of time for opening and closing, and the Plaintiff may not use more than half his time for closing argument. The Court shall not comment on the evidence of the case.

RULE 52 Findings by the Court

(a) In all actions tried upon the facts without a jury, the Court shall, unless otherwise provided in these rules, find the facts specially and state separately its Conclusions of Law thereon, and judgment shall thereafter be entered pursuant to Rule 58. In granting or refusing temporary restraining orders or preliminary injunctions, the Court shall similarly set forth the Findings of Fact and Conclusions of Law which constitute the grounds of its action. If an opinion or memorandum of decision is filed, the facts and legal conclusions stated therein need not be restated, but may be included in the Findings of Fact and Conclusions of Law by reference; or the Court may adopt its written decision as Findings of Fact and Conclusions of Law.

(b) Findings of Fact and Conclusions of Law are waived by failing to appear for trial, by consent in writing filed with the Clerk, by oral consent in open Court, or by entering into a stipulation of facts for consideration by the Court. Findings of Fact and Conclusions of Law are not necessary and need not be entered when granting or denying a temporary restraining order or preliminary injunction in a divorce proceeding or other domestic relations type dispute or on decisions on motions under Rule 12 or Rule 56 or any other motion except under Rule 41 for involuntary dismissal of a lawsuit.

RULE 53 Reserved

RULE 54 Judgments

(a) A judgment is any Order which finally and conclusively determines the rights of the party. When more than one claim for relief is presented in an action, however designated, a final judgment may be entered on less than of such claims. If the Court enters an Order severing such decided claims from the remaining claims, then the appeal time will commence to run as to the

claim decided in the same manner in which the appeal time would begin to run if the claim had been sued out separately. Otherwise, the appeal time will not commence to run until all of the claims in the litigation are decided.

(b) A judgment by Default shall not award relief different in kind from or exceed the amount which was specifically prayed for in the Complaint. Otherwise, every final judgment shall grant the relief to which the party in whose favor the same was rendered is entitled even if such relief was not demanded in the pleadings. It may be given for or against one or more or several persons, and it may, if justice requires, determine the ultimate rights of the parties on either side as between themselves.

(c) The Court may award costs and disbursements to the prevailing party or order that each party shall bear its own costs. The prevailing party shall file with the Court an affidavit of his costs and necessary disbursements within five days of the entry of the judgment and serve a copy on the opposing party. If such are not objected to within five days after receipt of the affidavit of costs, they shall be deemed to be part of and included in the judgment rendered. The costs which are allowable are filing fees, fees for service of process, publication fees, fees for subpoena and attendance of witnesses and costs of depositions. No other fees shall be allowed.

(d) The Court shall not award attorney's fees in any case except the Court may in its discretion award a reasonable attorney's fee in divorce or other domestic relations type cases.

RULE 55 Default Judgments

(a) When a party against whom a judgment for affirmative relief is sought has failed to make an appearance or plead or otherwise defend as provided by these rules, his default shall be proved by affidavit and judgment by default may be granted to the opposing party.

(b) If the party against whom judgment by default is sought has appeared in the action, he or his counsel shall be served with written notice of the application for default judgment at least three days prior to the hearing on such application. The same notice shall be given if the person against whom default judgment is sought is an infant or incompetent, regardless of whether he has appeared or not.

(c) Judgment by default without evidence may be entered by the Court if a party's claim against the opposition is for a sum of money which is or can by computation be made certain. Judgment by default for any other type relief shall be entered only upon receipt of such evidence as the Court may deem necessary to establish the validity and amount of the claim. Notice of an entry of a default judgment shall be served upon the party against whom it is taken and such default judgment shall not be effective until such service has been accomplished and proof thereof has been filed with the Court.

(d) The Court may, for good cause shown, set aside either an entry of default or a default judgment under this rule or under Rule 60.

RULE 56 Summary Judgment

At any time 30 days after commencement of an action any party may move the Court for summary judgment as to any or all 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 motion shall be served not less than 10 days prior to the hearing on said motion and may be supported by affidavits, discovery material, or memorandum, all of which must be made available to the opposing parties at least 10 days prior to the hearing. The opposition shall have full opportunity to respond to such motion at the time fixed for hearing.

RULE 57 Declaratory Judgments

The remedy of declaratory judgment is not available in the Tribal Court.

RULE 58 Entry of Judgment

(a) A money judgment upon a verdict of a jury shall be signed by the Clerk and filed. All other judgments shall be signed by the Judge and filed with the Clerk. A judgment is complete and shall be deemed entered and effective for all purposes when it is signed and filed as provided herein and when proof of service of notice of entry of judgment on the opposing party has been filed with the Clerk.

RULE 59 New Trials

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

- (1) Error or irregularity in the Court proceedings or misconduct by one of the adverse parties which prevented one of the parties from receiving a fair trial.
- (2) Misconduct of the jury or jury members or a finding that any question submitted to them was determined by a resort to chance.
- (3) Accident or surprise or newly discovered evidence which ordinary prudence could not have guarded against or produced at trial.
- (4) Damages so excessive or inadequate that they appear to have been given under the influence of passion or prejudice.
- (5) Insufficiency of the evidence to justify the verdict or other decision or that it is contrary to law.
- (6) Error of law occurring at the trial, provided however, that the claimed error was accompanied by an objection, an offer of proof, or a motion to strike at the time the alleged error was made.

(b) A new trial shall not be granted on the basis of any claim which is determined to be harmless in that it did not result in a substantial injustice.

(c) All requests for new trial shall be summarily dismissed unless they are accompanied by affidavits establishing the particular facts in detail upon which the motion is based. Arguments of law may also be included.

(d) The Court may on its own initiative within 10 days after entry of judgment order a new trial on any grounds assertable by a party to the action and shall specify the reasons for so doing.

(e) A motion to alter or amend a judgment shall be served with 10 days after the entry of judgment.

RULE 60 Relief from Judgments or Orders

(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 on its own initiative or on 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 appealing is pending, but only with the permission of the Appellate Court.

(b) On motion and upon such terms as are just, the Court may, in the furtherance of justice, relieve a party or his counsel from a final judgment, Order, or proceeding for the following reasons:

(1) Mistake, inadvertance, surprise, or excusable neglect.

(2) Newly discovered evidence, which, by the exercise of due diligence, could not have been discovered in time to move for a new trial.

(3) Fraud.

(4) The judgment is void.

(5) That the judgment has been satisfied, released, or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated or it is no longer equitable that the judgment should have prospective application, or,

(6) Any other reason justifying relief from the operation of the judgment.

The motion should be made within a reasonable time and for reasons 1, 2, and 3 not more than 30 days after the judgment order or proceeding was entered upon or taken. 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 grant relief to a Defendant not actually personally notified as provided by statute or to set aside a judgment for fraud upon the Court.

RULE 61 Harmless Error

No error in either the admission or exclusion of evidence or in any ruling or Order or in anything done or omitted by the Court or by any of the parties is grounds for granting a new trial or otherwise disturbing a judgement or Order unless refusal to grant relief appears to the Court inconsistent with substantial justice. The Court at every stage of the proceeding shall disregard any error or defect which does not adversely affect the substantial rights of the parties.

RULE 62 Stay of Proceedings to Enforce a Judgment

(a) Except as ordered by the Court for good cause shown, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 30 days after its entry unless otherwise ordered by the Court. A judgment in an action for injunction shall not be stayed during the period after its appeal and until an appeal is taken or during the pendency of an appeal. The other provisions of this rule shall govern the suspending, modifying, or restoring, or granting of an injunction during the pendency of an appeal.

(b) In its discretion and on such conditions for security of the adverse party as are proper, the Court may stay the execution of or any proceeding to enforce a judgment pending the disposition of a motion for new trial under Rule 59 or of motions under Rule 50 or 60.

(c) When an appeal is taken from a 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 deems proper for the security of the rights of the adverse party. The Court may require a cash or surety bond be posted by the appropriate parties.

(d) When an appeal is taken, the appellant by giving a bond in an amount fixed by the Court of at least an amount sufficient to pay any judgment which may be rendered against him on appeal, may obtain a stay unless such stay is otherwise prohibited by law or by these rules. The stay is effective when the bond is approved and received by the Court, but not until such time.

(e) When an appeal is taken by the Tribe or an officer or agency of the Tribe, a stay shall be granted by the Tribal Court automatically upon request and no bond or other security shall be required from the Tribe or its officers or agencies.

(f) Nothing in this rule shall be construed to limit the power of the Appellate Court to grant such stays or other proceedings or make such Orders appropriate to preserve the status quo or the effectiveness of any judgment subsequently to be entered.

(g) When a Court has ordered a final judgment on some but not all claims presented in an action, the Court may stay enforcement of that judgment until the entering of a remaining 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.

(h) No stay, injunction, or other relief from a judgment or Order pursuant to this rule shall be granted by the Court without notice to the opposing party and the opportunity to be heard.

RULE 63 Disability or Disqualification of a Judge

(a) If by reason of death, sickness, or other disability a Judge before whom an action has been tried is unable to perform the duties under these rules after a verdict is returned, or Findings of Fact and Conclusions of Law are filed, then in such event, any other Judge assigned or sitting in the Court may perform those duties. However, if such other Judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

(b) Whenever a party to an action or proceeding or his attorney shall make and file an affidavit to the effect that he believes that he may not receive a fair trial before such Judge before whom such action is pending, such Judge shall automatically disqualify himself and shall proceed no further in the matter except to call in another Judge to hear and determine the case. No reasons need be stated in the affidavit. However, an affidavit can only be filed by a party once in any proceeding.

RULE 64 Execution of Judgments

(a) At any time 30 days after entry of judgment awarding money or costs against a party, it is made to appear to the Court that the judgment debtor has been served notice of entry of judgment and has not paid the judgment in full or is not current in making installment payments in a manner agreed to by the parties in writing and filed with the Court, the Court shall, upon motion of the judgment creditor heard ex parte, order the Tribal Police to levy and execute upon the personal property of the judgment debtor as provided herein.

(b) The Tribal Police shall forthwith attempt to locate all personal property of the judgment debtor within the jurisdiction of the Court and seize the same and transport it to a safe, convenient place. The Tribal Police shall then, as soon as reasonably be done, make arrangements to sell the same at public auction. Sale of the seized property shall be at a public auction conducted by the Tribal Police after having given at least 10 days public notice posted in three conspicuous public places on the reservation together with a notice of sale published in a local newspaper of general circulation at least seven days prior to the date fixed for the sale. The property shall be sold to the highest bidder for cash at the time of the sale. The person conducting the auction may postpone such in his discretion if there is an inadequate response to the auction or the bidding and may reschedule such upon giving the required notice. The person conducting the sale shall make a return of sale to the Court including an inventory of the items taken into his possession, the amount received therefore, the person who brought the same, and deposit the proceeds thereof with the Court for distribution to the judgment creditor and to be credited against the judgment. The Tribal Police may also levy and execute upon items of personal property which cannot be conveniently moved such as bank accounts, accounts receivable, and other such items. The levy and execution shall be made by serving upon the holder of such item of personal property a copy of the Order of the Court. Upon receipt of such Order of the Court, the person in whose possession the property then is shall execute whatever legal instruments are necessary to transfer the property to the Tribal Police for either public auction sale or crediting on the judgment creditor, the Court shall order the judgment debtor to appear in Court and answer questions under oath regarding all of his personal property. The Court shall then determine what property of the judgment debtor is available for execution and order the Tribal Police to take appropriate measures to convert the property to cash and apply the same to the judgment. Failure of the judgment debtor to appear or fully answer questions shall be deemed a contempt of Court.

(c) The judgment debtor may claim as exempt from levy and execution the sum of \$1500 worth of property selected from all the property of the judgment debtor in the sole discretion of the judgment debtor. The judgment debtor may only claim the exemptions by filing with the Court an affidavit and inventory listing all the judgment debtor's property wheresoever and howsoever situated and a reasonable estimate of the value of such property and identifying in said affidavit the specific items of property claimed as exempt and the values of said property. Such affidavit and inventory

shall be filed at least five days prior to the date fixed for levy execution sale and shall be deemed waived if the same is not filed on time. The property claimed as exempt shall be offered at public auction at the time and place previously fixed. If the property claimed as exempt does not bring at public auction the amount of value as estimated by the judgment debtor, the same shall be no sold and returned to the judgment debtor. If the property claimed as exempt brings a higher bid than the value stated by the judgment debtor, then the same shall be sold and the value established by the judgment debtor in his affidavit shall be withheld from the proceeds of the sale and paid to the judgment debtor. Any such sums paid to the judgment debtor shall be exempt from levy and execution for a period of 90 days following such payments. All sales shall be subject to prior valid liens of records.

(d) A judgment may be satisfied in whole or in part by the owner thereof or his attorney executing under oath and filing an acknowledgement of satisfaction specifying the amounts paid and whether such is in 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. A judgment satisfied in whole with such fact entered in the judgment record shall cease to operate as a lien on the judgment debtor's property. A partially satisfied judgment or an unsatisfied judgment shall continue in effect and become and remain a lien upon the judgment debtor's property for a period of 10 years or until satisfied, whichever occurs first. An action to renew a judgment may be maintained anytime prior to the expiration of 10 years and will extend the period of limitations an additional 10 years and may be thereafter extended once more by the same procedure.

RULE 65 Temporary Restraining Orders and Injunctions

(a) No preliminary injunction shall be issued without written application and notice to the adverse party. Before or after the commencement of the hearing for an application for a preliminary injunction, the Court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even if this consolidation is not ordered, any evidence received on an application for a preliminary injunction which would be admissible on the trial of the merits becomes part of the record on the trial and need not be repeated at the trial. This paragraph shall be construed and applied to save the parties any rights they may have to a trial by jury.

(b) No temporary restraining order shall be granted without written or oral notice to the adverse party or his counsel unless

(1) 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 the adverse party or his attorney can be heard in opposition, and,

(2) The applicant's attorney or the applicant certifies to the Court in writing under oath the efforts, if any, which have been made to give notice or the reasons supporting his claim that notice should not be required.

Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the Clerk's office and entered of record; shall define the injury and state why it is irreparable and why the Order was granted without notice, and except in actions arising in a divorce proceeding or other domestic relations type litigation, shall expire by its terms

within 10 days after entry unless the Court fixes a shorter time period for expiration. For good cause shown, the Court may extend the temporary restraining order for an additional 10 days 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 over all matters except older matters of the same character. When the motion comes on for hearing, the party who obtained the Order shall proceed with the application for preliminary injunction. If he does not do so, the Court shall dissolve the temporary restraining order. On two days notice to the party who obtained the temporary restraining order without notice or upon such shorter notice period as the Court may prescribe, the adverse party may appear and move its dissolution and modification. In such event, the Court shall proceed to hear and determine such motion as expeditiously as possible. Temporary restraining orders by their very nature may not be appealed.

(c) Except as otherwise provided by law, no restraining order or preliminary injunction shall issue except by the posting of a bond by the applicant in an amount approved by the Court for the payment of such costs and damages as may be incurred by the opposing party who is found to have been wrongfully enjoined or restrained. No security shall be required of the Rosebud Sioux Tribe or any officer or agency thereof. Bond may or may not be required in a divorce proceeding or other domestic relations litigation in the discretion of the Court. Any surety upon a bond under this rule submits himself to the jurisdiction of the Court and irrevocably appoints the Clerk of Tribal Court as his agent upon whom any papers affecting his liability on the bond may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and notice of motion may be served upon the Clerk of Courts who shall forthwith mail copies to the sureties at their last known post office addresses.

(d) Every Order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not be reference to the Complaint or other documents, the acts or act sought to be restrained. It is binding only upon the parties to the action, their officers, agents, servants, employees, and counsel and upon those persons in active concert or active participation with them who receive actual notice of the Order by personal service or otherwise. In addition, the Court shall set forth the Findings of Fact and Conclusions of Law which constitute the grounds of its actions.

(e) No injunction or restraining order shall be issued unless the Court finds from the pleadings, affidavits, or testimony presented to it as follows:

- (1) That the party making application has no adequate legal remedy;
- (2) That the party making application has exhausted all administrative remedies;
- (3) That irrepairable harm will result which cannot be solved by the awarding of money damages unless the injunction or temporary restraining order is granted and,
- (4) That greater harm will be done to the party making application by the refusal of the injunctive relief than will be occasioned to the opposing party by the granting of such relief.

CHAPTER TWO

LIMITATION OF ACTIONS AND SOVEREIGN IMMUNITY

4-2-1 SOVEREIGN IMMUNITY--Except as required by federal law or the Constitution and bylaws of the Tribe or specifically waived by a resolution or ordinance of the Tribal Council making specific reference to such, the Rosebud Sioux Tribe and its officers and employees shall be immune from suit in any civil action for any liability arising from the performance of their official duties.

4-2-2 ACTIONS BY OR AGAINST THE TRIBE OR ITS OFFICERS OR EMPLOYEES--In any action otherwise authorized by or against the Tribe or its officers or employees arising from performance of their official duties, the following modifications to the rules and procedures set forth in this Code shall apply.

(1) The periods of time specified for civil cases for appeals of either a civil or criminal nature for which an answer, reply, or other pleading or response of any kind shall be required shall be double the normal period.

(2) Neither the Tribe nor its officers or employees when involved in a civil action arising from the performance of their official duties shall be liable for the payment of costs or expenses of the opposing parties.

(3) Neither the Tribe nor its officers or employees when involved in a civil action arising from the performance of their duties either as Plaintiff or Defendant shall be required to post security bond or otherwise for any purpose.

4-2-3 ADOPTION BY REFERENCE DOES NOT CONSTITUTE A WAIVER OF SOVEREIGN POWER--The adoption of any law, code or other document by reference into this Code shall in no way constitute a waiver or secession of any sovereign power of the Rosebud Sioux Tribe to the jurisdiction whose law or code is adopted or in any way diminish such sovereign power, but shall result in the law or code thus adopted becoming the law of the Rosebud Sioux Tribe.

4-2-4 STATUTE OF LIMITATIONS--Unless otherwise specifically provided in this Code, the following limitations on bringing of a civil action will apply.

(1) Any action arising against the Tribe or its officers or employees arising of their official duties must be commenced within one year of the date the cause of action accrued.

(2) Any other cause of action must be commenced within two years the cause of action accrued provided, however, that any cause of action based upon fraud or misrepresentation shall not be deemed to have accrued until the aggrieved party has discovered the facts constituting fraud or misrepresentation.

4-2-5 PRINCIPLES OF CONSTRUCTION--The following principles of construction shall apply to this Code unless a different construction is obviously intended.

(1) Masculine words shall include the feminine and singular words shall include the plural and vice versa.

- (2) Words shall be given their plain meaning and technical words shall be given their usually understood meaning where no other meaning is specified.
- (3) Whenever a term is defined for a specific part of this Code, that definition shall apply in all parts of the Code unless a contrary meaning is clearly appropriate.
- (4) This Code shall be construed as a whole to give effect to all of its parts in a logical and consistent manner.
- (5) If any provision of this Code or the application of any provision to any person or circumstance is held invalid, the remainder of this Code shall not be affected thereby, and to the extent possible, the invalid provisions of this Code are declared to be severable.
- (6) Any typographical errors or omissions shall be ignored whenever the meaning of the provision containing the error or omission is otherwise reasonably obvious to the Court.
- (7) Any other questions of construction shall be handled in accordance with the generally accepted principles of construction giving due regard for the underlying principles and purposes of this Code.

4-2-6 JURISDICTION OVER PERSONS--The Rosebud Sioux Tribal Court will exercise civil and criminal jurisdiction over all persons within its territorial jurisdiction to the extent allowed by federal statutory law and Federal Court decisions. It is recognized that decisions such as *Oliphant* (55 Lawyers Ed 2nd 209) limit the jurisdiction of this Court over certain non-Indians. However, the Rosebud Sioux Tribal Court will continue to exercise all of the civil and criminal jurisdiction over all persons allowed to it by federal statute and federal judicial Court decisions.

CHAPTER THREE

AMENDMENTS TO LAW AND ORDER CODE

4-3-1 DEFINITION OF TERMS--For the purposes of this Chapter the word "Ordinance" shall mean a permanent legislative act of the Tribal Court of the Rosebud Sioux Tribe, within the limits of its powers.

The word "resolution" as used in this Chapter shall mean any determination, decision, or direction of the Tribal Council of the Rosebud Sioux Tribe of a special or temporary character for the purpose of initiating, affecting, or carrying out its administrative duties and functions under the law and ordinances governing the Rosebud Sioux Tribe.

4-3-2 AMENDMENTS BY ORDINANCE ONLY--No amendments shall be made to this Tribal Law and Order Code of the Rosebud Sioux Tribe by resolution. The only amendments which shall be effective and recognized by the Tribal Council or the Courts of the Rosebud Sioux Tribe to this Tribal Law and Order Code shall be those amendments which are made by ordinance pursuant to this Chapter.

4-3-3 READING, PASSAGE AND PUBLICATION OF ORDINANCES--All ordinances shall be presented to the Tribal Council in writing and shall be read twice with at least seven (7) days intervening between the first and second reading. If amendments are offered to the ordinance during the reading process, such shall be offered in writing. If such amendment is allowed by the Council, the reading process must begin again. Under no circumstances shall an ordinance be effective unless it has had the two readings required by this Chapter in its final unamended form.

4-3-4 PASSAGE OF RESOLUTIONS--A resolution may be passed after one reading. It shall be recorded at length in the minutes of the meeting at which it was passed with a statement of the number of votes for and against the same. It shall be published in full as part of the minutes.

4-3-5 RECORDING OF VOTES ON ORDINANCES--The vote upon all ordinances after the second reading shall be taken individually and entered upon the minutes of the meeting.

4-3-6 PUBLICATION AND EFFECTIVE DATE OF ORDINANCES--Following the second reading and adoption of an ordinance under this Chapter, the Secretary of the Tribal Council shall within (10) days thereafter cause such ordinance to be published in a newspaper designated by the Tribal Council for that purpose. The Tribal Secretary shall also, within the same (10) day period, submit the ordinance to the agency superintendent pursuant to the Tribal Constitution if BIA approval is required for that particular ordinance, the ordinance shall become effective after publication and the completion of the approval process by the Bureau of Indian Affairs. If approval is not required, the ordinance shall become effective ten (10) days after publication.

4-3-7 RECORDING OF ORDINANCE IN ORDINANCE BOOK--After an ordinance takes effect, the Secretary of the Tribe shall record the same, together with a certificate of the date of its publication in a book to be known as the Tribal Ordinance Book and file the original Affidavit of Publication with the ordinance.