

UPPER SIOUX COMMUNITY JUDICIAL CODE

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TITLE I. COURTS

CHAPTER I. ESTABLISHMENT AND OPERATION

SECTION 1. ESTABLISHMENT OF COURT.

There is hereby established the Upper Sioux Community Tribal Court. The Tribal Court shall consist of a Trial Court and an Appellate Court.

SECTION 2. APPROPRIATIONS.

A. The Board of Trustees shall appropriate and authorize the expenditure of Tribal funds for the operation of the Tribal Court. The amounts to be appropriated shall be consistent with the needs of the Tribal Courts for proper administration of justice within the Reservation and for the Tribe as determined by the Board of Trustees.

B. To assist the Board of Trustees in making such appropriations, the Chief Judge of the Tribal Court shall submit proposed budgets and reports of expenses and expenditures to the Board of Trustees, at such intervals and in such form as may be prescribed by the Board of Trustees. Such budgets and reports shall include the operation of the office of the Clerk of Court.

C. Court staff shall apply for P.L. 93-638 contract funds from the Bureau of Indian Affairs, and shall seek out funding from all available sources.

D. The Board of Trustees may prescribe a system of accounting for funds received from any source by the Courts of the Tribe and the Clerk of Court.

CHAPTER II. JURISDICTION

A. The Court shall have civil jurisdiction over all matters arising out of tribal law; matters arising out of the Provisions for Governing the Upper Sioux Community, Upper Sioux Ordinances, Upper Sioux Resolutions and actions relating to membership, benefits and voting. The Court shall have jurisdiction over all persons who have sufficient contacts, or over persons who bring suit in tribal court and the controversy effects tribal or individual interests of a member.

B. The Jurisdiction of the Court shall extend to:

1. Upper Sioux Community Reservation, including all lands, islands, waters, roads and bridges or any interests therein, whether trust or non-trust status and notwithstanding the issuance of any patent or right-of-way, within the boundaries of the Reservation and such other lands, islands, waters or any interest therein hereafter added to the Reservation.

2. All persons within any geographical area referred to in subsection (1) above who are subject to the jurisdiction and governmental power of the Tribe, to the extent not prohibited by federal law.

3. All members of the Tribe, wherever located, exercising tribal rights pursuant to federal, tribal or state law.

4. All persons and property outside the exterior boundaries of the Reservation included within the jurisdiction of the Tribe pursuant to federal or tribal law, including any person who personally or through an agent does any of the following acts insofar as a cause(s) of action arises from doing of such act:

a. Transacting of business on the Reservation;

b. Committing of a tortious act on the Reservation;

c. Contracting to insure any person, property or risk located on the Reservation at the time of contracting;

d. The act of sexual intercourse on the Reservation with respect to which a child may have been conceived;

e. Living in a marital relationship on the Reservation notwithstanding subsequent departure from the Reservation, as to all proceedings authorized by law.

C. The Courts of the Upper Sioux Community shall have exclusive original and appellate jurisdiction in all matters in which the Upper Sioux Community, any Tribal entity or subdivision, whether governmental or commercial in nature, or its officers or employees are parties in their official capacities.

D. Nothing contained herein shall be construed as a waiver of the sovereign immunity of the Tribe or its officers or enterprises. Waivers may only be valid if unequivocally expressed by formal resolution of the Upper Sioux Board of Trustees.

E. The jurisdiction invoked by this Code over any person, cause of action, or subject shall be concurrent with any valid jurisdiction over the same by courts of the United States or state; provided, however, this Code does not recognize, grant or cede jurisdiction to any other political or governmental entity in which jurisdiction does not otherwise exist in law.

F. The meaning of "person", for purposes of this Code, shall include, but not be limited to any individual, entity, partnership, corporation, association or public or private organization.

CHAPTER III. COURT STAFF

SECTION 1. NUMBER OF JUDGES.

There shall be a Tribal Court consisting of a Chief Judge, and if need warrants, one or more Associate Judges.

SECTION 2. TERMS.

Each Judge of the Tribal Court shall sit for a term of two years and shall be eligible for reappointment to successive terms of two years each. A person appointed to fill an existing vacancy created by the death, resignation, or removal for cause of a Judge shall be appointed initially only for the unexpired portion of the term for which the appointment is made, subject to eligibility for reappointment for the next full term.

SECTION 3. APPOINTMENT.

All Judges of the Tribal Court shall be appointed by the Board of Trustees, with the Chief Judge specifically appointed to that office.

SECTION 4. QUALIFICATIONS.

A Judge shall have the following qualifications: A Juris Doctorate Degree in law and experience in federal Indian law. The Judge must be 25 years of age; no felony conviction; and no misdemeanor conviction that would disqualify an attorney from practicing as a licensed attorney in a state. Indian preference in hiring shall apply to all court positions.

SECTION 5. LIST OF OTHER JUDGES.

The Court is authorized to utilize other tribal court judges on cases as the need arises. The outside tribal court judges can be appointed by the Chief Judge after conferring with the Board of Trustees, or Court Clerk in the absence of the Chief Judge after conferring with the Board of Trustees. The judges from other tribal courts can serve as trial or appellate judges for the Upper Sioux Community Court.

SECTION 6. OATH OF OFFICE.

Each person, prior to assuming the office of Judge of the Tribal Court shall take the following oath before the Chairperson of the Board of Trustees:

"I swear (or affirm) that I will support and defend the Provisions for Governing the Upper Sioux Community and other laws of the Upper Sioux Community, and the Constitution of the United States, and that I will faithfully and diligently perform the duties of Judge of the Tribal Court, to the utmost of my ability, with impartiality and without improper favor, to the end that justice may be fully served."

SECTION 7. REMOVAL FROM OFFICE.

The Board of Trustees may remove any Judge of the Tribal Court for cause based upon any of the following grounds:

- a. Misconduct or incompetence in the performance of her/his duties as Judge.
- b. Personal conduct involving moral turpitude, whether or not related to judicial duties, or conduct which brings the prestige of her/his office or that of the Tribe into public disrepute.

c. Habitual neglect of her/his duties as Judge.

d. Persistent illness or other disability which renders her/him incapable or otherwise unable to regularly perform her/his duties as Judge.

Such removal shall be by an affirmative vote of two-thirds of the Board of Trustees at a valid meeting called for the purpose of considering such removal, provided that the subject Judge shall be given a full hearing and fair opportunity to present testimony and evidence in her/his behalf, and to cross-examine and rebut all witnesses and evidence considered by the Board of Trustees in support of removal. The subject Judge shall be given not less than ten (10) days written notice in advance of the hearing, which notice shall include an itemization of the charges or grounds for removal which are to be considered. Such notice shall be served by registered or certified mail, or delivered personally to her/him by a party duly authorized by the Board of Trustees.

SECTION 8. COURT CLERK AND COURT ADMINISTRATOR.

The Clerk of Court will also serve as Court Administrator. Other assistants as necessary may be appointed by the Board of Trustees. The Court Clerk shall administer the operation of the Court, maintain all records, administer oaths, prepare notices and documents, duties as assigned by the Judges and perform other duties related to the operation of the Court.

SECTION 9. BAILIFF.

Upon request of a Judge or Court Clerk, the Tribe shall provide the services of a tribal security officer to act as bailiff, who will insure that order is maintained in any proceeding of the Court. Further, a tribal security officer can be utilized to serve and enforce tribal court orders, including execution of judgments and other orders as specifically assigned by the Court. A security officer acting pursuant to Court Order, or in good faith, will not be personally liable for any money damages.

SECTION 10. LOCAL RULES AND PROCEDURES.

Tribal court will be conducted in a suitable public place, such public place may if need dictates be outside of the Upper Sioux Reservation trust land. The Chief Judge may establish local rules for Court proceedings and other internal procedures needed for efficient operation of the Court.

CHAPTER IV. COURT OF APPEALS

SECTION 1. COURT OF APPEALS.

Any party who is aggrieved by a final order, commitment or judgment of the trial court may appeal as allowed by law. In cases not raising new issues of law, appeals shall be heard by one Judge. A party may request a three Judge panel within thirty days after a final order, commitment or judgment, such motions shall be liberally granted. In cases raising significant or novel issues, a three Judge panel shall decide the case, upon certification by the Trial Judge.

SECTION 2. QUALIFICATIONS.

Any duly appointed and installed Upper Sioux Tribal Court Judge or Judges who did not hear the case in the Trial Court is/are eligible to serve as an Appellate Judge.

SECTION 3. REGIONAL APPEALS.

If the Tribe joins a Regional Appeals Court System, the rules of the Regional Court System will govern appeals and composition of the Court of Appeals.

CHAPTER V. APPLICABLE LAW

SECTION 1. TRIBAL LAW AND CUSTOM.

In all civil actions the Court shall apply this Code of Laws, with amendments, and customs and traditions of the Tribe. As necessary, the Court may request the advice of tribal members with knowledge of tribal customs and traditions.

SECTION 2. APPLICATION OF OTHER LAWS.

When a matter is not addressed in the Code of Laws, or tribal customs, the Court may apply laws of any Tribe, state or federal government. Application of such law is not deemed an adoption of that law.

SECTION 3. FEDERAL LAWS.

The Indian Gaming Regulatory Act, 25 USC Section 2701 et seq., and Indian Civil Rights Act, 25 USC Section 1301 et seq., shall apply to civil actions before this Court. Applications of these and other laws shall not be deemed to waive the sovereign immunity of the Upper Sioux Community. Applying a federal or state law shall not be deemed acceptance of federal or state jurisdiction over any civil matter, where such jurisdiction does not otherwise exist.

CHAPTER VI. ATTORNEYS

SECTION 1. ATTORNEY LICENSING.

An attorney licensed by a state is eligible to practice in Tribal Court, upon Application and Affidavit certifying that person is a licensed attorney in good standing. A license fee will be collected on a yearly basis.

SECTION 2. APPLICATION.

The Application must state the attorney is familiar with tribal laws, Title 25 United States Code and include an Affidavit verification.

SECTION 3. PRO HOC VICE.

An attorney may appear for one case only, provided the attorney associates with a tribal licensed attorney and pays a fee upon written application.

SECTION 4. TRIBAL ADVOCATE.

A tribal advocate is eligible to practice law, provided the advocate has a high school degree, has not been convicted of a felony, and has paralegal or other experience in Indian law. Written Application and Affidavit is required before a license will issue.

SECTION 5. DISCIPLINE.

An attorney or advocate may have their license suspended or revoked for good cause, upon hearing. An attorney suspended or disbarred by another Court is subject to similar discipline in this Court, upon notice and hearing as necessary. An attorney may be disciplined for false statements, improper conduct or for acts that would subject a state licensed attorney to Court discipline.

CHAPTER VII. CONTEMPT OF COURT

SECTION 1. DEFINITION.

Contempt of Court is conduct that disrupts, obstructs, resists or otherwise interferes with Court processes in an unreasonable manner, and as defined by case law.

SECTION 2. PRESENCE OF COURT.

Contempt in the presence of a Judge may be summarily punished. An Order will recite the facts of contempt, reasons why the person

is in contempt and punishment or sanction.

SECTION 3. OUTSIDE PRESENCE OF COURT.

When it appears that contempt may have been committed outside the presence of Court, a Summons may issue to the person so charged. The Summons shall contain the notice of charges and set a time and place for hearing. If the person fails to appear, the Court can conduct a hearing. If the person is found in contempt of Court, an Order shall be made containing the punishment or sanction.

CHAPTER VIII. COSTS, FEES AND FINES

SECTION 1. COSTS.

The prevailing party will be awarded payment of costs, upon submission of verified statement. Attorney fees will be awarded only where provided by contract or other agreement, or award pursuant to Rule 11 of the Federal Rules of Civil Procedure, or as otherwise provided by law.

SECTION 2. APPEALS.

In addition to the requirements of the Rules of Civil Procedure, a cash deposit or bond may be required to pay for the cost of a transcript, copies, storage, or other related costs.

SECTION 3. FEE SCHEDULE.

Fees for various matters are set forth below and may be amended by the Court as necessary.

SECTION 4. CHILD SUPPORT.

Child support funds shall be paid to the Court Clerk, who shall distribute the funds to the party who is entitled to receive said funds.

The exception will be if a Court Order provides for a different method of payment.

CHAPTER IX. STATUTE OF LIMITATIONS

SECTION 1. GENERAL LIMITATIONS.

An action or claim can only be commenced within the time stated in this part, unless a different time is specified by law. The time within which the action may be commenced starts from the time of injury or acts which are the basis of the claim.

SECTION 2. TIME LIMITS.

In contract claims the claim must be commenced within six years from the time the claim accrued. In tort claims the claim must be commenced within three years from the time the claim accrued.

CHAPTER X. NOTICE OF TRIBE AND MISCELLANEOUS

SECTION 1. NOTICE TO TRIBAL ATTORNEY.

Any challenge to a tribal law or tribal court jurisdiction shall include a copy of the pleading to the Tribe's attorney. The notice shall be sent to the Clerk of Court, Upper Sioux Community, P.O. Box 147, Granite Falls, MN 56241. The Clerk will promptly forward or fax the pleading to the Tribe's attorney. If a party omits the notice, the clerk shall forward the pleading to the Tribe's attorney. The Tribe's attorney can intervene or file an amicus brief or other appropriate response to represent the Tribe's interest.

SECTION 2. SEVERABILITY.

If any part of this title, or the application thereof, to any person, business, corporation or state government or any political subdivision is held invalid, all valid parts are severable and remain in effect.

TITLE 2 - RULES OF CIVIL PROCEDURE

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RULE 1. SCOPE OF RULES

a. Except when different rules prescribed in this Code specifically apply, these Rules shall govern the procedure in the Trial and Appellate Courts of the Upper Sioux Community, in all actions, suits and proceedings and in all special proceedings established by law.

b. These Rules shall be liberally construed to secure a just, speedy and inexpensive determination of every action.

c. There shall be one form of action known as a "civil action."

d. Any procedure or matter not specifically set forth herein shall be addressed in a manner substantially similar to the Federal Rules of Civil Procedure insofar as such are not inconsistent with these Rules, and with general principles of fairness and justice as prescribed and interpreted by the Court. The citation of the Federal Rules of Civil Procedure herein shall not be deemed an action deferring to federal jurisdiction of any matter where such jurisdiction does not otherwise exist.

RULE 2. COMMENCEMENT OF ACTION AND PRELIMINARY MATTERS

a. A civil action is commenced by filing a Complaint or Petition and serving a copy on the Defendant or Respondent as provided herein. The Court shall have jurisdiction from such time as the Complaint/Petition and Summons are filed. The Complaint/Petition must be properly served upon the Defendant/Respondent and a return of service filed with the Clerk.

b. Service of process shall consist of delivering to the Defendant/Respondent a copy of the Complaint/Petition and Summons [issued by the Clerk] advising the Defendant/Respondent (s)he is required to answer the Complaint/Peti-

tion within twenty days or a default judgment will be entered against him/her.

(1) The return of service shall be endorsed with the name of the person serving and the date, time and place of service and shall be filed with the Clerk.

(2) Service may be made on a party by delivering the required papers to the party or upon some person or suitable age and discretion over 16 years of age at the party's home or principal place of business, or on an officer, managing agent or employee, or partner of an associated party.

(3) Service by publication may be made upon an Order of the Court for good cause shown by publishing the contents of the Summons in a local newspaper of general circulation at least once per week for three consecutive weeks and by leaving a copy of the Complaint/document with the Court for the party.

(4) Service may be made by certified mail, return receipt requested, with the return as proof of service.

(5) Service may be made by any law enforcement officer so authorized by the Court or other person, not a party, 18 years of age or older.

(6) If a person refuses to accept service, it shall be deemed performed if the person is informed of the purpose of the service and offered copies of the papers served.

(7) Service upon a person otherwise subject to the jurisdiction of the Upper Sioux Community Tribal Court may be made anywhere in the United States.

c. All papers required to be filed shall be served under this Rule or, except for the Complaint/Petition, may be

served on the counselor or attorney of a party. Service of all papers except the Complaint/Petition may be made by mail, first class postage, and properly addressed.

d. All papers required to be filed, except for the Complaint/Petition, may be filed with the Court by facsimile provided the original is received by the Court within four working days from receipt of the facsimile.

RULE 3. TIME

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

b. The Court for good cause shown may enlarge the prescribed period of time within which any required act may be done.

c. Written Motions and Notice of Motion, other than ones which may be heard ex parte, shall be served not later than five days prior to the time specified for hearing.

d. Whenever service is accomplished by mail, three days shall be added to the prescribed period of time, but such addition shall not cause Saturdays, Sundays or legal holidays to be counted in the time period if they would not otherwise have been counted.

RULE 4. PLEADING, MOTIONS AND ORDERS

a. There shall be a Complaint and an Answer or a Petition and Response. A responsive pleading shall be allowed whenever, by crossclaim, counterclaim or otherwise, a party is first claimed against unless the Court shall otherwise order. The Court may grant additional leave to plead in the interest of narrowing and defining issues or as justice may require.

b. An application to the Court for an Order shall be made by Motion and shall be in writing, unless made orally during a hearing or trial, and shall set forth the relief or order sought and the grounds therefor stated with particularity. A Motion and Notice of Motion may be set forth together.

c. A Motion or hearing on an Order shall be automatically continued if the Judge before whom it was to be heard is unable to hear it on the day specified and no other Judge is available to hear it.

RULE 5. GENERAL RULES OF PLEADING

a. A pleading which sets forth a claim for affirmative relief shall contain:

(1) A short, plain statement of the grounds upon which the Court's jurisdiction depends, unless the Court already has jurisdiction over the matter;

(2) a short, plain statement of the claim showing that the pleader is entitled to relief; and

(3) A demand for judgment for the relief to which the pleader considers herself/himself entitled. Such claim for relief can be in the alternative or for several types of relief.

b. A party shall state in plain, concise terms the grounds upon which (s)he bases their defense to claims pleaded against him/her, and shall admit or deny the claims and statements upon which the adverse party relies. If (s)he is without information or knowledge regarding a statement or claim, (s)he shall so state and such shall be deemed to be a denial. Denials shall fairly meet the substance of the claim or statement denied and may be made as to specified parts but not all of a claim, statement or averment. A general denial shall not be made unless the party could in good faith deny each and every claim covered thereby. A claim to which a responsive pleading is required, except for amount of damages, shall be deemed admitted unless denied; if no responsive pleading is allowed the claim of the adverse party shall be deemed denied.

c. Claims and defenses shall be simply, concisely and directly stated, but may be in alternative or hypothetical form, on one or several counts or defenses, need not be consistent with one another, and may be based on legal or equitable grounds or both.

d. Matters constituting an affirmative defense or avoidance shall be affirmatively set forth. When a party has mistakenly designated a defense as a counterclaim or vice versa, the Court may treat the pleading as if it had been properly designated if justice so requires.

e. All pleading shall be construed so as to do substantial justice.

RULE 6. FORM OF PLEADING

a. Every pleading shall contain a caption heading, the name of the Court, the title of the action, the Court file number (if known) and a designation as to what kind of pleading it is. All pleading shall contain the names of the parties except the name of the first party on each side may be used on all pleading except the Complaint. See Appendix of Forms.

b. All averments of claim or defense shall be set forth in separate numbered paragraphs each of which is limited, as nearly as possible, to a single circumstance. Claims or defenses founded upon separate transactions or occurrences should be set forth in separate counts or defenses.

c. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any Motion. A copy of a written instrument which is an exhibit to a pleading is a part thereof for all purposes.

d. Insofar as is possible, pleading and other papers filed in any action shall be on 8½ x 11 paper, double spaced, except for matters customarily single spaced, contain at least a two inch top margin and a one inch left and right side margin, with the Court file number on the first page thereof. Substantial compliance with this rule will be sufficient for all parties not represented by a professional attorney.

RULE 7. DEFENSES AND OBJECTIONS

a. A Defendant or other party against whom a claim has been made for affirmative relief shall have twenty days from the date of service to answer or respond to the claim.

b. Motions to Dismiss or to make the opposing party's pleading more definite may be made prior to answering a claim and an answer will not be due until ten days after the disposition of the Motion by the Court.

RULE 8. COUNTERCLAIM OR CROSSCLAIM

a. A party against whom a claim is made may assert in their answer any claim (s)he has against the party claiming against him/her and both claims shall be resolved at trial.

b. A party against whom a claim is made may assert any claim (s)he has against a co-party and have such claim resolved at trial.

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

RULE 9. AMENDMENT OF PLEADING

a. A party may amend a pleading once before the opposing party has replied or if no reply is required, not less than twenty days before the case is scheduled for trial. The opposing party may respond, if appropriate, and the trial date may be delayed if necessary. Other amendments shall be allowed only upon Motion and Order of the Court.

b. When issues or evidence not raised in the pleading are heard at trial, the judgment may conform to such issues or evidence without the necessity of amending the pleading.

RULE 10. PARTIES

a. Every action shall be prosecuted in the name of the interested party, except a personal representative or other person in a fiduciary position can sue in their own name without joining the party for whose benefit the action is maintained.

b. When an infant, or an insane or incompetent person who has not had a guardian/conservator appointed is a party, the Court shall appoint a guardian ad litem to represent such person in the suit or action. A guardian ad litem is considered an officer of the Court to represent the interests of the infant, insane or incompetent person, in the litigation.

c. To the greatest extent possible all interested parties in a particular action may be joined in the action, but failure to join a party over whom the Court has no jurisdiction will not require dismissal of the action unless it would be impossible to reach a just result without such party; otherwise, the failure to join a party may be taken into account to assure that justice is done.

RULE 11. INTERVENTION

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

RULE 12. SUBSTITUTION OF PARTIES

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

RULE 13. DISCOVERY

a. A party may submit written Interrogatories or Request for Admissions to any other party who shall answer them in writing, under oath, within thirty days of receipt.

b. A party may take the oral deposition of an adverse party or non-party witness under oath upon not less than ten days notice, specifying the time and place where such will occur.

c. A party may request another party to produce documents or things in their custody or possession for inspection or copying or request permission to enter and inspect property reasonably related to the case, and the opposing party shall within thirty days reply as to whether such will be allowed and if not, why not.

d. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the pending action, whether or not such would be admissible at trial, if such appears reasonably calculated to lead to the discovery of admissible evidence. The work product of a party's counselor or attorney is not discoverable.

e. A party against whom discovery is sought may move the Court for a protective Order to prevent undue annoyance, harassment, embarrassment, oppression or undue burden or expense, and the Court may order that the discovery cease or proceed only upon specified conditions.

f. If a party fails to respond or appear for discovery as provided in this Rule, the opposing party may move for an Order to compel the defaulting party to perform and the Court may award costs to the non-defaulting party. If a party fails to perform after being ordered to do so by the Court, the Court may, upon Motion, Order that a certain fact, claim or defense be deemed established or strike part of a claim or defense, or dismiss or render a judgment by default against the non-complying party in an aggravated case.

g. Answers to Interrogatories and depositions may be used in a Motion, hearing or at trial to impeach or contradict the testimony of the person discovered, or by an adverse party for any purpose.

h. Discovery documents need not be filed with the Court.

RULE 14. JURY TRIALS

a. Trials of all actions shall be to the Tribal Court without a jury unless a party to the action files a request for a jury trial with a fee of \$75.

b. A jury request must be made within twenty days of filing by the Plaintiff or if made by the Defendant, within twenty days after service. No late jury request will be allowed. A jury request may be withdrawn with consent of the Court.

c. Unless the requesting party specifies otherwise, all factual issues properly triable by a jury shall be decided by the jury at trial. A party requesting a jury trial may specify only those issues (s)he wants tried to the jury and any other party may specify, not less than five days before the date scheduled for trial, any other issues (s)he wishes to be so tried. Once any or all issues of a case have been requested for a jury trial, such request may not be withdrawn without the consent of all of the parties.

d. A Judge may, upon her/his own motion, order a trial by a jury of any or all of the factual issues of a case regardless of whether the parties have requested such.

e. A Judge may, upon motion of any party or its own initiative, find that some or all of the issues designated for jury trial are not properly triable to a jury, and order that no jury trial be held on such issues.

f. A Judge may hear and decide an issue(s) without a jury if either party to an issue fails to appear at trial, regardless of any request made for a jury trial on such issues.

RULE 15. ASSIGNING CASES FOR TRIAL

a. The Chief Judge shall determine which Judge shall hear a case and shall provide by rule for the placing of cases on the Court Calendar with or without the request of any party, provided all parties are given adequate notice of trial dates.

b. Upon Motion of a party, the Court may, in its discretion and upon such terms as it deems just, including the payment of any cost occasioned by such postponement, postpone a trial or proceeding upon good cause shown.

RULE 16. DISMISSAL OF ACTIONS

a. Prior to the responsive pleading of a party against whom a claim has been made, or Motion to Dismiss or Motion for Summary Judgment, the party making the claim may file a Notice of Dismissal and his claim shall be deemed dismissed without prejudice. In all other circumstances a party may move the Court to dismiss his own claim and the Court shall do so either with or without prejudice as is just and proper, given the stage of the proceeding. However, if a crossclaim or counterclaim has been filed against the moving party, the Judge shall dismiss the claim only with the consent of the adverse party or only if it appears the other party can prosecute his claim independently without undue additional hardship.

b. A party against whom a claim has been made may move the Court to dismiss the claim of the adverse party upon any of the following grounds:

(1) Failure of the adverse party to pursue prosecution of his claim;

(2) Failure of the adverse party to comply substantially with these rules;

(3) Failure of the adverse party to comply with an Order of the Court; or

(4) At the close of the presentation of the other party's evidence and without prejudicing his own right to present evidence, failure of the opposing party to establish a right to relief based on the facts and law presented; or

(5) Whenever dismissal appears proper based upon a failure to prove a claim, such dismissal shall be deemed an adjudication of the merits of the issue dismissed unless the Court shall, for good cause shown, order otherwise. The Court may postpone ruling on a Motion to Dismiss for failure to establish a right to any relief until the close of all the evidence.

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

RULE 17. PRETRIAL MEETINGS

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

During such meetings the parties and the Tribal Judge may consider any matters which will aid in the simplification, clarification or disposition of the case. The parties and the Tribal Judge may develop procedures to be followed at the trial. The Tribal Judge may encourage the parties to explore the possibility of settling their dispute and the Tribal Judge

may participate in settlement discussions to the extent that his impartiality at any eventual trial will not be affected.

If it appears to the Tribal Judge that the case is highly complex or involves a sum of money in excess of \$1,000,000, the Tribal Judge may, at the request of a party or on his own Motion, provide for the use of discovery techniques to aid in the fair and efficient administration of justice. Such discovery techniques may include Interrogatories, Production of Documents, depositions or any other means of discovery noted in the Federal Rules of Civil Procedure. To the extent practicable, the Tribal Judge shall encourage the parties to use informal methods of discovery, but the Tribal Judge shall have the power to order use of formal discovery techniques under the supervision of the Court.

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

RULE 18. CONSOLIDATION; SEPARATE TRIALS

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

b. The Court may, to avoid prejudice or in furtherance of convenience, order a separate trial of a claim or issue.

RULE 19. EVIDENCE

a. At all hearings and trials, the testimony of witnesses shall be taken orally under oath, unless otherwise provided in these Rules. All evidence admissible under the Federal Rules of Evidence or as specified in this Tribal Code shall be admissible and the competency of witnesses to testify shall be similarly determined.

b. A party may use leading questions against an adverse party or hostile witness or whenever such appears reasonably necessary to elicit testimony from witnesses of tender years or poor ability to communicate.

c. A party may call any person to be a witness and examine any witness so called on any matter relevant to the action. A party may impeach his/her witness.

d. Cross examination shall be limited to the general scope of direct examination, provided, however, that full examination of all witnesses shall be allowed on direct or cross examination to assure complete development of all relevant facts.

e. Written documents and other physical evidence shall be received upon being identified, authenticated and a showing of relevance to the action.

f. Official documents or an official law, record or copy thereof may be admitted into evidence upon the testimony

of any official having custody or official knowledge thereof or without such testimony if the document, record or copy thereof is accompanied by a certificate identifying such thing and stating that it is a true and correct representation of what it purports to be.

g. In an action tried to a jury, excluded evidence may, upon request, be included in a record for purposes of appeal and excluded oral testimony shall be put into evidence by means of an offer of proof made out of the hearing of the jury. In an action tried only to the Court, the Judge may receive such excluded testimony into the record.

RULE 20. SUBPOENAS

a. Subpoenas for attendance of witnesses or production of documents or things shall be issued and served as provided elsewhere in the Tribal Code.

b. A person who has been properly served with a subpoena and fails to appear or produce may be deemed in contempt of Court and amenable to civil sanctions of Title 1, Chapter VII.

c. A person present in Court, or before a judicial officer, may be required to testify in the same manner as if (s)he were in attendance upon a subpoena.

RULE 21. JURORS

a. Any enrolled member of the Community between the ages of eighteen and seventy-five, who has not been convicted of a felony and who resides on the Reservation, shall be eligible to be a juror. Judges and other officers or

employees of the Court shall not be eligible to be jurors while thus employed. The Chief Judge may by rule adopt procedures whereby non-Indians may be summoned for jury duty in cases on which one or more non-Indian parties are involved.

b. There shall be six jurors chosen to hear a case and the Court may allow one additional juror to be chosen as an alternate juror. In the event an alternate juror is chosen and hears the case, (s)he shall be dismissed prior to jury deliberation if not needed, and treated like a regular juror if needed.

c. A jury foreperson will be chosen by a majority vote of the jury panel.

d. The Court shall permit the parties or the attorneys to conduct the examination of prospective jurors and may itself examine the jurors.

e. A challenge is an objection made to a potential trial juror. Either party may challenge jurors but where there are several parties on either side, they must join in a challenge before it can be made.

f. Challenges to jurors are either peremptory or for cause. Each party or side shall be entitled to three peremptory challenges.

g. Challenges for cause shall be made against a potential juror on the grounds that (s)he is not entitled or qualified to

be a juror, (s)he is familiar with the case or has formed an opinion regarding the case, or if, for any other reason, it appears likely or reasonably possible that a juror will not be able to render a fair and impartial verdict. The Judge may take evidence relative to a challenge for cause and shall in any event render a decision thereon.

h. The Clerk shall draw lots to determine potential jurors and shall replace jurors for whom a challenge is sustained until a full panel is completed. Upon completion, the Clerk shall administer the oath to the jurors, the form of which shall be prescribed by rule of the Court.

i. If, after the proceedings begin and before a verdict is reached, a juror becomes unable or disqualified to perform his/her duty, the alternate juror shall take his/her place; if there is no alternate juror, the parties may agree to complete the action with the other jurors. If no agreement can be reached, the Judge shall discharge the jury and the case shall be tried with a new jury.

j. The Court may, for good cause shown, allow the jury to view the property or place of occurrence of a dispute or otherwise relevant event.

k. Any time prior to their verdict when the jurors are allowed to leave the courtroom, the Judge shall admonish them not to converse with or listen to any other person on the subject of the trial and further admonish them not to form or express an opinion on the case until the case is submitted to the jury for their decision.

l. Once the case is submitted to them, the jury shall retire to deliberate in private under the charge of an officer of the Court who will refrain from communicating with them except to inquire whether they have a verdict and he shall

prevent others from improperly communicating with the jury.

m. The jury may take with them, when deliberating, any of the following:

- (1) The Court's instructions;
- (2) Papers or things received in evidence as exhibits;
- (3) Notes taken by the jurors themselves, but not notes taken by non-jurors.

n. If after the jury retires, there is some question on an instruction or other point of law or disagreement regarding the testimony, the jury may request additional instructions from the Court, such to be given on the record after notice to the parties or their counsel.

o. If the jury is discharged before rendering their verdict or for any reason prevented from giving a verdict, the action may be retried.

p. When all of the six jury members agree on a verdict, they shall so inform the officer who shall notify the Court. This jury shall be conducted into the courtroom and the Clerk shall call the jury roll; the verdict shall be given in writing to the Clerk and then read by the Clerk of the Court; inquiry shall be made by the Court to the jury foreperson as to whether such is their verdict. Either party may have the jury polled individually to determine if such is, in fact, their verdict. If insufficient jurors agree with the verdict, the jury shall be sent out again to reconsider; otherwise, the verdict is complete and the jury shall be dismissed. If the verdict is read or recorded incorrectly by the Clerk or foreperson, the jury shall retire to correct the verdict.

RULE 22. SPECIAL VERDICTS AND INTERROGATORIES

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

RULE 23. INSTRUCTIONS TO THE JURY; ARGUMENTS

a. At the close of the evidence or at such earlier time as the Court may direct, any party may file written requested instructions for the Court to give to the jury. The Court shall inform the parties or their counsel of the instructions it intends to give and hear arguments thereon out of the hearing of the jury.

b. Final arguments for the parties shall be made before or after the jury has been instructed. The Court shall not comment on the evidence of the case and, if it should restate any of the evidence, it shall inform the jury that they are the sole triers of the fact.

RULE 24. MOTIONS FOR DIRECTED VERDICT AND FOR JUDGMENT NOTWITHSTANDING THE VERDICT

a. A party who moves for a directed verdict at the close of the evidence offered by the opposing side may offer evidence as if no Motion had been made in the event that the Motion is denied. A Motion for directed verdict shall state the grounds therefore and may be granted by the Court

without the assent of the jury.

b. A party who has made a Motion for a directed verdict at the close of all the evidence, which Motion has been denied may, within ten days after entry of judgment, move to have the verdict and any judgment entered thereon set aside and entered according to the Motion or directed verdict; or if there has been a verdict, the party may so move within ten days after the jury has been discharged. A Motion for a new trial may be made in the alternative. The Court shall enter judgment or make any Order consistent with its decision on the Motions.

RULE 25. FINDINGS BY THE COURT

a. In cases tried without a jury, except in cases where a party defaults, fails to appear or otherwise waives such, findings of fact and conclusions of law shall be made by the Court in support of all final judgments. Upon its own Motion or the Motion of any party within ten days of the entry of judgment, findings may be amended or added to and the judgment may be amended accordingly. Upon receipt of a Motion to amend judgment, the non-moving party wishing to file a response shall do so within ten days, but shall not be required to file a response. [See Rule 30(e).]

RULE 26. JUDGMENT, COSTS

a. A judgment includes any final order from which an appeal is available and no special form of judgment is required.

b. When more than one claim for relief is presented in an action, however designated, a final judgment may be entered on less than all of such claims only upon the Court specifically finding that such is justified. Absent such a finding, an Order or decision will not terminate the action as to any of the claims until all claims are finally decided, nor will the appeal period commence to run.

c. Except in the case of a default judgment, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if such relief is not demanded in the pleading. It may be given for or against one or more of several claimants; and it may, if justice so requires, determine the ultimate rights of the parties on each side as between or among themselves.

d. A judgment by default shall not be different in kind from, or exceed in amount, that specifically prayed for in the demand for judgment.

e. Unless the Court shall otherwise direct, the Court shall allow necessary costs and disbursements to the prevailing party or parties as a matter of course. Such prevailing party shall file with the Court a verified Memorandum of their costs and necessary disbursements within five days, they shall be deemed to be a part of and included in the judgment rendered. The Appellate Court may award costs in a like manner.

f. The Court shall not award attorney's fees in a case unless such have been specifically provided for by a contract or agreement of the parties under dispute, or unless a suit or claim is frivolous under Rule 11 standards, Federal Rules of Civil Procedure. A party including the Tribe, its entities or employees, may be awarded attorneys fees and costs under the standards of Rule 11, Federal Rules of Civil Procedure.

RULE 27. DEFAULT

a. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, default may be entered by the Clerk and judgment by default granted by the Judge. Once the default has been entered, notice to the defending party of the Order or Judgment will be sent to the defaulting parties last known address, which may be made by regular mail.

b. Judgment by default may be entered by the Clerk of a party's claim against the opposing party is for a sum of money which is, or can by computation be, made certain. Otherwise, judgment by default can be entered only by the Court upon receipt of whatever evidence the Court deems necessary to establish the claim. No judgment by default shall be entered against the Upper Sioux Community.

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

RULE 28. SUMMARY JUDGMENT

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

RULE 29. ENTRY OF JUDGMENT

a. Judgment upon a jury verdict shall be signed by the Clerk and filed. All other judgments shall be signed by the Judge and filed with the Clerk.

b. A judgment is complete and shall be deemed entered for all purposes when it is signed and filed as provided herein. The Clerk shall immediately make a notation of the judgment in the Register of Actions and the Judgment Docket. The Clerk shall provide Notice of Entry of Judgment to all parties without counsel or to all counsel if parties are so represented.

c. If a party dies after a verdict or decision upon any issue of fact and before judgment, judgment may nevertheless be entered thereon.

d. A judgment may be satisfied, in whole or in part, as to any or all of the judgment debtors by the owner thereof or his/her attorney of record executing under oath and filing an Acknowledgment of Satisfaction specifying the amount 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. The Clerk shall file all satisfactions of judgment and not the amount thereof in the Register of Actions and the Judgment Docket.

e. A judgment satisfied in whole, with such fact being entered in the Judgment Docket, shall cease to operate as such. A partially satisfied judgment or unsatisfied judgment

shall continue in effect for five years or until satisfied. An action to renew the judgment remaining unsatisfied may be maintained anytime prior to the expiration of five years and will extend the period of limitations an additional five years and may be thereafter further extended by the same procedure.

RULE 30. NEW TRIALS; AMENDMENTS OF JUDGMENT

a. Any party may petition for a new trial on any or all of the issues presented by filing and serving a Motion not later than ten days after the Entry of Judgment, for any of the following causes:

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

(2) Misconduct of the jury or jury member(s); or

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

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

(5) Error in law.

b. A new trial shall not be granted on the basis of error or irregularity which was harmless in that it did not affect substantial justice.

c. Parties may include Memoranda or Affidavits in support of their Motions to which Reply Memoranda and Affidavits shall be allowed if desired.

d. The Court may, on its own initiative, not later than ten days after entry of judgment, order a new trial on any grounds which may be asserted by a party to the action, and shall specify the reasons for so ordering.

e. A Motion to reconsider an order for judgment must be made within ten days after entry of judgment. A Motion to alter or amend a judgment shall be filed and served not later than ten days after entry of the judgment. The time for appeal does not start to run until the Motion to reconsider or amend is decided.

RULE 31. RELIEF FROM JUDGMENT OR ORDER

a. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the Motion of any party and after such notice as the Court may direct; mistakes may be corrected before an appeal is docketed in the Appellate Court and thereafter while the appeal is pending may be corrected with leave of the Appellate Court.

b. Upon Motion and upon such terms as are just, the Court may, in the furtherance of justice, relieve a party or his/her legal representative from a final judgment, order or proceeding for the following reasons:

(1) Mistake, inadvertence, surprise or excusable neglect;

(2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 30(a);

(3) Fraud, misrepresentation or other misconduct of an adverse party;

(4) When, for any cause, the Summons in an action

has not been personally served upon the Defendant and the Defendant has failed to appear in said action;

(5) The judgment is void;

(6) The judgment has been satisfied, released or discharged; or a prior judgment should have prospective application; or

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

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

RULE 32. HARMLESS ERROR

a. No error in either the admission or the exclusion of evidence, and no error or defect in any ruling, 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 judgment or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of the proceeding shall disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

RULE 33. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

a. Proceedings to enforce a judgment may issue immediately upon the entry of the judgment, unless the Court in its discretion and on such conditions for the security of the adverse party as are proper, otherwise directs.

b. In its discretion and on such conditions for the security of the adverse party as are proper, the Court may stay the execution of, or any proceeding to enforce, a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment or of a motion for relief from a judgment or order, or of a motion for judgment in accordance with a motion for a directed verdict, or of a motion for amendment to the findings or for additional findings.

c. When an appeal is taken from an interlocutory or final judgment granting, dissolving or denying an injunction, the Court in its discretion may suspend, modify, restore or grant an injunction during the pendency of the appeal upon such conditions as it considers proper for the security of the rights of the adverse party.

d. When an appeal is taken the appellant by giving a bond in an amount set by the Court, may obtain a stay, unless such a stay is otherwise prohibited by law or these Rules. The bond may be given at or within ten days after the time of filing the Notice of Appeal. The stay is effective when the bond is received and approved by the Court.

e. When an appeal is taken by the Tribe, or an officer or agency of the Tribe, and the operation or enforcement of the judgment is stayed, no bond, obligation or other security

shall be required from the appellant.

f. When a Court has ordered a final judgment on some but not all of the claims presented in the action, the Court may stay enforcement of that judgment until the entering of a subsequent judgment(s) and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

g. In all cases, the parties may, by written stipulation, waive the requirements of this Section with respect to the filing of a bond or undertaking. In all cases where an undertaking is required by these Rules, a deposit in Court in the amount of such undertaking, or such lesser amount as the Court may order is equivalent to the filing of the undertaking.

RULE 34. 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 to be performed by the Court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then the Chief Judge shall assign any other Judge regularly sitting in or assigned to the Court to perform those duties; but if such assigned Judge is satisfied that (s)he cannot perform those duties because (s)he did not preside at the trial or for any other reason, (s)he may in her/his discretion grant a new trial.

b. A Judge may be disqualified for actual bias, prejudice or if the Judge is related to a party in a case. A party or their attorney may move to disqualify by Motion or Affidavit.

The Judge will rule on the Motion for disqualification. A Judge may voluntarily excuse himself on a case.

RULE 35. INJUNCTIONS

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

b. No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon. No temporary restraining order may issue against the Upper Sioux Community or any of its governmental bodies or officials. Every temporary restraining order granted without notice shall:

(1) be endorsed with the date and hour of issuance;

(2) be filed forthwith in the Clerk's office and entered of record;

(3) define the injury and state why it is irreparable and why the order was granted without notice;

(4) expire by its terms within such time after entry, not to exceed fifteen days, as the Court fixes, unless within the time fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record.

In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and

takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for preliminary injunction and, if 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 or on shorter notice to that party as the Court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

c. Except as otherwise provided by law, no restraining order or preliminary injunction shall issue except upon the giving of security by the applicant in such sums as the Court deems proper for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States, the Upper Sioux Community or of an officer or agency of either; nor shall it be required of a married person in a suit against the other party to the marriage contract.

d. A surety upon a bond or undertaking under this Rule submits himself to the jurisdiction of the Court and irrevocably appoints the Clerk of Court as his agent upon whom any paper affecting his liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the Court prescribes may be served on the Clerk of Court who shall forthwith mail copies to the persons giving the security, if their addresses are known.

e. Every order granting an injunction and every restraining order shall be specific in terms; shall describe in reasonable detail, and not reference to the complaint or other documents, the act(s) sought to be restrained; and is binding

only upon the parties to the action, their officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

f. An injunction may be granted:

(1) When it appears by the pleading on file that a party is entitled to the relief demanded and such relief, or any part thereof, consists of restraining the commission or continuance of some act complained of, either for a limited period or perpetuity;

(2) When it appears from the pleading or by affidavit that the commission or continuance of some act during the litigation would produce irreparable injury to the party seeking injunctive relief;

(3) When it appears during litigation that either party is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party respecting the subject matter of the action, and tending to render the judgment ineffectual;

(4) In all other cases where an injunction would be proper in equity.

RULE 36. DECLARATORY RELIEF

a. A party may move for declaratory relief to declare the rights of a party. This includes insurance cases and the meaning or effect of tribal laws or ordinances.

b. A party may also seek summary judgment for declaratory relief when facts not contested, or facts stipulated by the parties.

RULE 37. EXTRAORDINARY WRITS

a. Where no other plain, speedy or adequate remedy exists, relief may be obtained by obtaining an extraordinary writ which may be granted for any one of the following grounds:

(1) Where any person usurps, intrudes into, or unlawfully holds or exercises a public office or does or permits to be done any act which by law works a forfeiture of his office; or

(2) Where an inferior tribunal, board or officer exercising judicial or ministerial functions has exceeded its jurisdiction or abused its discretion; or

(3) Where the relief sought is to compel any inferior tribunal, board or person to perform an act which the law specifically enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully excluded by such inferior tribunal, board or person; or

(4) Where relief sought is to arrest the proceedings of any tribunal, board or person, whether exercising judicial or ministerial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, board or person.

b. No extraordinary writ may issue against the Tribe,

Tribal officer or official, or any other entity owned by the Tribe in its governmental capacity absent an unequivocally expressed waiver of the Tribe's sovereign immunity from suit, or if the Court finds that the officer has exceeded his authority.

RULE 38. EXECUTION

a. If within sixty days after entry of a judgment awarding money damages and/or costs against a party, or within sixty days after final resolution of an appeal to the Appellate Court from such judgment, it is made to appear to the Court that the judgment debtor has not paid the judgment amount in full or commenced making installment payments in a manner agreed to by the parties, or is not current in such payments, the Court shall upon motion of the judgment creditor, heard ex parte, order the local law enforcement or person appointed by the Court to execute on the personal property of the judgment debtor as provided herein.

b. The Court shall order the judgment debtor to appear before it and answer under oath regarding all his personal property. The Court shall then determine what property of

such upon giving the required notice. The person conducting the sale shall give a certificate of sale to the purchaser and shall make a return to the Court reciting the details of the sale.

c. The Court shall only order seizure and sale of such property of the judgment debtor to satisfy a money judgment, the loss of which will not impose an immediate substantial hardship on the immediate family of the judgment debtor. Only property of the judgment debtor himself may be subject to execution and not property of his family.

d. A person appointed by the Court to execute a judgment shall not be held liable for damages when acting in good faith pursuant to a valid court order. A person appointed by the Court to execute any order shall not be held liable for money damages in actions for false imprisonment, wrongful detention or assault, provided the person appointed acts in good faith and pursuant to a valid court order.

e. Any order of the Court to local law enforcement officials within the Court's jurisdiction, in aid of execution of judgments, shall only be valid upon the execution of a cooperative agreement between the Tribe and the appropriate governing entity if such law enforcement is not Upper Sioux Community.

RULE 39. APPEAL

a. All appeals from the Upper Sioux Community Tribal Court shall be heard by the Upper Sioux Community Appellate Court.

b. Any party who is aggrieved by a final order, commitment or judgment of the trial court may appeal in the manner prescribed by this Rule.

c. Within thirty days from the entry of the order of judgment appealed from, the party taking the appeal must file with the trial court a written notice of appeal specifying the parties to the appeal, the order or judgment which is being appealed and a short statement of the reason or grounds for the appeal. The Clerk shall file the notice and mail copies, to be provided by the appealing party, to all other parties to the appeal at their last known address.

d. The party taking the appeal shall be referred to as the appellant; all other parties shall be referred to as the appellees. The name of the case shall be the same as that used in the Trial Court.

e. At the time of filing the Notice of Appeal, the appellant shall also file cash or a bond in an amount set by the trial court sufficient to guarantee performance of the judgment if such performance is stayed on appeal.

f. In any case in which an appeal is perfected as required by this Rule, the appellant may petition the trial court for an order staying the order, commitment or judgment rendered, conditioned upon execution of a bond to guarantee performance of the judgment, order or commitment. A stay shall be granted in all cases in which it is requested unless manifest injustice would result therefrom.

g. The Clerk of the trial court shall also serve as the Clerk of the Appellate Court. Within five days after Notice of Appeal is filed, the Clerk shall prepare, certify and file with the Appellate Court all papers comprising the record of the case appealed. A separate docket shall be maintained for the Appellate Court in which shall be recorded each stage of the proceedings on each case appealed.

h. The presiding Justice of the Appellate Court shall, when hearing a case, have the authority to compel the production of documents where such is deemed necessary to the rendition of the Court's opinion. There shall not be a new trial in the Appellate Court. The Appellate Court may review both the factual findings and conclusions of law of

the Trial Court.

i. Within thirty days of the filing of the Notice of Appeal or within such longer time as the Appellate Court shall allow, the appellant shall file a written brief, memorandum or statement in support of her/his appeal. An original and three copies shall be filed with the Clerk and one additional copy shall be served upon or mailed to each other party or her/his counselor or attorney. The appellee shall have thirty days after receipt of the appellant's brief, memorandum or statement within which to file a response memorandum or statement. A reply brief, memorandum or statement of appellant shall be allowed without leave of Court. Such reply brief shall be filed within ten days of the receipt of the appellee's response.

j. The Appellate Court shall decide all cases upon the briefs, memoranda and statements filed, plus the record of the trial court without oral argument unless either party requests oral argument and shows to the Court that such will aid the Court's decision, or unless the Court decides on its own Motion to hear oral argument.

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

RULE 40. CITATION

a. These Rules shall be known as the Upper Sioux Community Rules of Civil Procedure and may be abbreviated U.S.R.C.P.

RULE 41. SEVERABILITY

a. If any provision of this title, or the application thereof,

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

TITLE 4. CIVIL ACTIONS

SECTION 19. CLAIM DEFINED.

A civil action or claim is a suit by a person in the Upper Sioux Community Court, also referred to as the Tribal Court. A claim against the Upper Sioux Community (Tribe or Board of Trustees) for torts covered by insurance is defined separately in the application section herein.

CHAPTER X. CONTRACTS

SECTION 1. PURPOSE.

The law is designed to provide a local forum for matters that arise on the Reservation, or impact upon interests of tribal members and/or the Tribe.

SECTION 2. CONTRACTS.

The Court will apply the contract law of the State of Minnesota to contract actions to the extent applicable, and as qualified or limited in this Chapter and Code. The use of Minnesota law does not waive any legal defense of a party to an action, including the Tribe.

SECTION 3. SUIT AGAINST TRIBE - WAIVER REQUIRED.

The Tribe may be sued in Tribal Court, provided there is an express waiver of sovereign immunity from suit for money damages by resolution or ordinance, and contract. A contract signed by an official without full or valid Board authority shown by resolution or ordinance is void, and does not waive tribal immunity from suit. This part shall be strictly construed. Absent an express waiver of tribal immunity from suit by proper resolution of the Board of Trustees, the Tribe may not be sued or liable for money damages on a contract or claim in Tribal Court, or other court.

SECTION 4. USURY.

No contract for goods or services shall exceed nine percent per annum, unless a party makes a written consent upon full disclosure. A contract that exceeds the allowable percentage is voidable.

SECTION 5. PUBLIC POLICY.

A contract that violates public policy or is a contract for a criminal or prohibited act is void as against public policy.

SECTION 6. ENFORCEMENT.

A party can file suit in Tribal Court for declaratory relief to determine their rights under a contract, or whether a contract violates tribal law. In such a suit, the contract item shall not be removed from the Reservation without a Tribal Court Order. Case or surety bond must be posted before an item is removed or allowed by Court Order. An Order shall contain the non-removal requirement, unless bond is posted or the parties make a written stipulation that the item may be removed from the Reservation.

SECTION 7. REMEDY.

When the Court finds usury or other violation, the Court through its equity powers, may fashion any reasonable remedy including, but not limited to, voiding the contract, reformation of the contract to establish a lesser rate of interest and/or assessing attorney fees.

SECTION 8. APPLICATION.

This Chapter shall apply to existing contracts, any pending cases and to all pre-existing claims not otherwise barred.

CHAPTER XI. TORTS

SECTION 1. ALLOWED CLAIMS.

Claims for money damages, as defined by state law, will be allowed for the following torts in Tribal Court: a) battery, b) assault, c) conversion of property, d) false imprisonment, e) nuisance, f) slander and libel, g) libel per se, h) wrongful death, i) malicious prosecution, and k) negligence [including personal injury]. This section shall be strictly construed.

SECTION 2. EMPLOYMENT CLAIMS.

The Tribe recognizes the majority rule that a person cannot sue for

discharge from "at will" employment. No "at will" employment claim against a person, including the Tribe, shall state a claim for relief in the Tribal Court.

SECTION 3. CLAIM AGAINST TRIBE.

The gaming enterprise (casino) is an economic enterprise of the Tribe, and the Tribe hereby makes a limited waiver of tribal immunity from suit for money damages to allow compensation for persons injured at the gaming enterprise. The gaming enterprise is defined as the area of the Reservation open to the public for gaming purposes, provided that such area is covered by a liability insurance policy for the gaming enterprise.

SECTION 4. DEFINITIONS.

Injury means death, harm to a person, or damage or loss of property that is a tort and expressly covered by the liability insurance of the gaming enterprise without regard to any deductible amount contained in the insurance policy. Award means money damages which the Tribal Court determines are payable to compensate for injury expressly covered by an insurance policy.

SECTION 5. LIMITS.

No law for strict liability shall be applied under this part. No punitive damages shall be applied in any claim for personal injuries. No award for loss of consortium shall be applied in any claim for personal injuries. No award for pain and suffering shall be applied, except where such award does not exceed fifty percent of actual damages sustained and provided that such award is expressly covered by the liability insurance of the gaming enterprise. An award will be paid only to the policy limits. An award that exceeds policy

limits will not be paid by the Tribe, and such an award is not to be deemed a waiver of tribal immunity for such award.

SECTION 6. OUTSIDE SCOPE.

This part does not immunize individual employees of the gaming enterprise from individual liability for damages if it is provided their conduct exceeded the scope of employment or authority, or was intentional. Claims for individual liability arising from the gaming enterprise shall be heard only in Tribal Court.

SECTION 7. EXTENT OF LIABILITY.

In any claim concerning a single occurrence, the maximum damages including court costs and interest shall be: a) for injury to one person, the amount of the liability insurance policy, and b) for injury to two or more persons, an amount in accord with the terms of the liability insurance policy. If any insurance policy lapses, is not renewed or cancelled, the Tribe shall not be deemed a self insurer and will not be liable for damages. The Tribe waives immunity specifically to the extent or period of an insurance policy as stated in its terms as to length of time and effect, and exclusion. No attachment or execution shall issue against the Tribe or gaming enterprise in any claim under this part.

SECTION 8. CLAIM PRIOR TO COURT SUIT.

All claims must be filed within 180 days. A claim shall be deemed to accrue on the date when injury is sustained. A court suit must be preceded by a written notice of claim filed with the Tribal Secretary, by the claimant or representative. Claims not filed within 180 days shall be deemed time barred, and no suit allowed for money damages. After a notice of claim is filed and no settlement is made within six months between the claimant and Tribe/insurer, a person may initiate a court suit in Tribal Court for damages. The 180 days

is jurisdictional; later claims will be dismissed as time barred. This part shall be strictly construed.

SECTION 9. NOTICE OF CLAIM.

A notice of claim shall be delivered or sent certified mail to the Tribal Secretary, Upper Sioux Community, P. O. Box 147, Granite Falls, MN 56241. The Secretary shall mark the date the notice of claim is received. Notice of claim is effective upon receipt. The Tribal Secretary shall forward a copy of the notice of claim to the Tribal Court for informational purposes. The notice of claim shall contain the following information: Name and address with phone number of claimant or attorney; statement of factual basis for claim, with description of injury; name of employee or agent involved, if known; and amount of damages requested.

SECTION 10. DAMAGES.

For injury to person or property, the measure of damages is the amount which will compensate for all detriment proximately caused thereby, except where provided otherwise by this Code. Punitive damages, except where otherwise limited, may be awarded when the Defendant is found to have acted with malice, fraud or oppression; or for willful and wanton misconduct.

CHAPTER XII. NAME CHANGE

SECTION 1. PETITION.

A person may petition for a change of name. The petition shall contain all relevant information and proof as required by the Court.

SECTION 2. NOTICE.

Notice of such petition and hearing shall be made in the local community by posting notices in public places, or by publication in a local or tribal newspaper for at least two weeks.

CHAPTER XIII. GUARDIAN, CONSERVATOR

SECTION 1. PURPOSE.

A person may request a guardian be appointed for a person not able to handle their own affairs due to health, age or other disability. A school child may have a guardian appointed for school and other purposes. A conservator can be appointed for a person who is competent, but unable to handle their own financial affairs.

SECTION 2. REPORTS.

The Court will require such reports or bonds as necessary in its discretion. A general accounting of funds should be held at least annually to make sure the person under guardianship or conservatorship is properly cared for. A person who cares for another under this section is entitled to reasonable expenses and compensation, if the funds are available.

SECTION 3. COMPLAINT.

If a person or relative has an objection to how a guardian or conservator is conducting matters, such person, including the Tribe, may file a written complaint in Tribal Court. A hearing shall be held on the complaint and an appropriate Order made. Notice of such hearing shall be made to close family or closest relative, who may

appear at the hearing if they wish.

CHAPTER XIV. WILLS AND TRUSTS

SECTION 1. WILLS.

For personal property and non-trust lands, a person can make a will or trust as defined by state law. A holographic will is allowed as a proper will, in any event.

SECTION 2. PROCEDURE.

Upon request of a family member or interested person, a will or trust will be processed by the Tribal Court. The validity of a will shall be determined by the Tribal Court for personal and non-trust property, including property or bank funds located off reservation as necessary or allowed by law.

SECTION 3. FEDERAL PROBATE.

Federal trust land belonging to an individual shall be probated under the federal probate scheme.

CHAPTER XV. MENTAL HEALTH COMMITMENT

SECTION 1. DEFINITIONS.

a. Alcoholic means an individual who has lost the power of self-control or exhibits cognitive deficiencies, general confused thinking, or other manifestations of disorientation which show an inabil-

ity to make judgments about areas of behavior that do not directly relate to his/her drinking.

b. Drug addict means an individual who has a physiological or psychological dependence on a drug(s) which (s)he used in a manner not prescribed by a physician.

c. Mentally ill individual means an individual with an organic, mental or emotional disorder which substantially impairs the capacity to use self control, judgment and discretion in the conduct of personal affairs and social relations. This term is not meant to include a mentally retarded or mentally deficient individual.

d. Individual requiring treatment means either: 1) an individual who is mentally ill, an alcoholic or a drug addict and who, as a result of such condition, can reasonably be expected within the near future to intentionally or unintentionally seriously physically harm himself, others or property, and who has engaged in an act or acts or has made significant threats that are substantially supportive of this expectation; or 2) an individual who is mentally ill, an alcoholic or a drug addict and who, as a result of such condition is unable to attend to his/her basic physical needs, such as food, clothing or shelter that must be attended to for him to avoid serious harm in the near future. Or a person who has demonstrated that inability by failing to meet those basis physical needs.

e. Respondent means the individual alleged to be mentally ill, an alcoholic or a drug addict in the proceedings. Such proceedings shall be styled as "In the Matter of: _____," with date of birth below.

SECTION 2. PETITION.

The petition for commitment shall be filed with the Court by a doctor, nurse, mental health official, social services official, alcohol counselor or interested person. Any such petitioner must have reason to believe the respondent is mentally ill, an alcoholic or a drug addict. As funds permit, the Court may retain counsel to represent the Tribe/petitioner in a civil commitment action.

SECTION 3. SUPPLEMENT.

The petition may be supplemented by a supporting statement or affidavit by an individual who has personal knowledge of the mental, alcohol or drug problem of the respondent. Such statement shall set forth the reason for the proposed treatment or hospitalization. In the case where the respondent is alleged to be of harm only to himself, the statement or report may be completed by a licensed physician, psychiatrist or psychologist. Such statement shall set forth the reasons for the proposed treatment or hospitalization.

SECTION 4. TEMPORARY DETENTION, HEARING.

Upon receipt and review of the petition and any supporting statement or affidavit, the Tribal Judge may order a tribal security or appropriate person to pickup and place such person in protective custody until a hearing can be held. Should the Judge deem an emergency exists, he shall order the detention or hospitalization of the respondent in an available facility for protection and evaluation. If the respondent is detained (not hospitalized) a probable cause hearing will be timely held to determine if cause exists to continue detention of the respondent until a full hearing can be held on the petition.

SECTION 5. AGREEMENTS.

The Tribe and social service personnel will make agreements with available facilities in Minnesota and out of state for available treatment facilities such as Veteran's Administration. State services shall be utilized as available. Additionally, the Tribe shall contract with law enforcement officials to assist in executing tribal civil commitment orders as necessary. This will supplement persons designated as tribal security officers, who shall enforce Tribal Court Orders. Child welfare workers may also be utilized to enforce Court Orders for commitment, provided they are not subjected to

unreasonable harm by a person subject to commitment.

SECTION 6. COUNSEL.

A person (respondent) shall have the right to an attorney at their own expense. If a person is indigent, counsel will be appointed for the person, subject to recoupment of fees from available sources.

SECTION 7. WAIVER OF HEARING.

The respondent shall be served with a copy of all pleading(s). The respondent can waive a hearing and voluntarily proceed to treatment. In such event, no hearing on the petition is necessary.

SECTION 8. HEARING.

A hearing shall be timely held. The Judge shall ensure a complete record of the hearing is made. The Court will consider evidence of any person, medical reports and testimony of witnesses. The standard of proof is clear and convincing evidence, in order to require in-patient treatment or hospitalization.

SECTION 9. DISPOSITION.

The Court may order any one or combination of the following dispositions:

- a. Dismissal of the petition;
- b. Commitment of the respondent to a facility located within or outside the Reservation, for the purpose of securing appropriate in-

patient treatment or hospitalization;

c. Participation by the respondent in a periodic outpatient alcoholism program, with the extent and term of such participation to be determined by the alcohol treatment center; and

d. When the Court orders in-patient treatment, hospitalization or other condition, the Court Order shall be enforced by tribal security personnel or policy through agreement (Section 5).

CHAPTER XVI. JUDGMENTS AND EXECUTION

SECTION 1. JUDGMENT.

A judgment is a final order or decree of a Court. The Tribe will honor Orders from other Courts, provided the other Court or jurisdiction honors Court Orders from the Upper Sioux Community Court. Agreements may be made with other jurisdictions concerning the enforcement of Court Orders by mutual agreement.

SECTION 2. WAGES.

Wages of persons living or working on the Reservation are subject to seizure, levy or garnishment through the Upper Sioux Community Court. Orders for levy or administrative orders for child support from other jurisdictions may not be enforced without an Order from the Upper Sioux Community Court authorizing their execution.

SECTION 3. CHILD SUPPORT.

On child support Orders from another Court or jurisdiction, the Court will enforce the Court Order. Provided, however, the Tribal

Court shall not take over sixty percent of the net income of a member working and living on the Reservation. A tribal member may request a hearing to get the amount of support reduced, upon a showing of financial hardship. If such hardship is shown, the amount of monthly support shall be reduced by the Court. Arrearages may be collected up to the amount of \$3,000; a Court Order that exceeds that amount need not be enforced in Tribal Court.

SECTION 4. TRIBAL FUNDS.

Any funds payable from the Tribe to members as per capita benefits to eligible members are not subject to seizure, levy or garnishment by a state, tribal or other court order, except as allowed in Chapter VII, Section 5.

SECTION 5. LIMITS.

The Upper Sioux Community Court may order garnishment of adult per capita benefits, upon filing of an action and hearing in Court. Provided, however, that the seizure, levy or taking of such shall not exceed ten percent or \$100 per month (whichever is greater) of an adult's per capita payment that be made by the Tribe.

SECTION 6. DEFENSES.

A person may raise any legal defense to a Court Order as allowed by law. A Court Order from another jurisdiction that is procured by fraud, oppression or violation of due process shall not be enforced by the Upper Sioux Community Court.

CHAPTER XVII. HABEAS CORPUS

SECTION 1. PETITION.

Upon petition a person alleged to be illegally detained or denied their liberty can seek a Writ of Habeas Corpus. A hearing will be timely held to determine if such relief should issue.

SECTION 2. EXHAUSTION OF REMEDIES.

Exhaustion of Tribal Court remedies is required before a person may seek in federal court habeas corpus relief.

CHAPTER XVIII. INDIAN CIVIL RIGHTS ACT

SECTION 1. PURPOSE.

All rights guaranteed to tribal members and non-members shall be protected by the Indian Civil Rights Act, 25 USC Section 1301. Claims under the ICRA shall be allowed in Tribal Court.

SECTION 2. EQUITABLE RELIEF.

The Tribal Court has the authority to issue declaratory and injunctive relief to protect individual rights, under the ICRA. No money damages will be awarded against the Upper Sioux Community, agents or employees acting within the scope of their authority. The use of the ICRA does not waive the Tribe's immunity from suit for money damages by implication or otherwise.

UPPER SIOUX COMMUNITY JUDICIAL CODE

TITLE 7 - CODE OF JUDICIAL CONDUCT

CANON 1

Judges of the Upper Sioux Community Tribal Court Shall Uphold the Integrity and Independence of the Judiciary.

An independent and honorable judiciary is indispensable to justice within the Upper Sioux Community. Judges of the Tribal Court shall participate in establishing, maintaining and enforcing high standards of conduct, and personally observe those standards in order to preserve the integrity and independence of the Tribal Court. The provisions of this Title 7 shall be construed and applied to further that objective.

CANON 2

Judges of the Upper Sioux Community Tribal Court Shall Avoid Impropriety and the Appearance of Impropriety In All of the Judge's Activities.

A. Judges of the Tribal Court shall respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the Tribal Court.

B. Judges of the Tribal Court shall not allow family, social, political or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of the office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.

CANON 3

Judges of the Upper Sioux Community Tribal Court Shall Perform the Duties of the Office Impartially and Diligently.

A. Adjudicative Responsibilities.

(1) Judges of the Tribal Court shall hear and decide promptly, efficiently and fairly matters assigned to the judge except those in which disqualification is required.

(2) Judges of the Tribal Court shall be faithful to the law and maintain professional competence in it. He or she shall be unswayed by partisan interests, public clamor or fear of criticism.

(3) Judges of the Tribal Court shall require order and decorum in all proceedings before the judge.

(4) Judges of the Tribal Court shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others dealt with in an official capacity.

(5) Judges of the Tribal Court shall perform duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice and shall not permit court personnel and others subject to the judge's discretion and control to do so.

(6) Judges of the Tribal Court shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice. This Section does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(7) Judges of the Tribal Court shall accord to every person who has a legal interest in a proceeding, or person's lawyer, the right to be heard according to law. A judge shall not initiate, permit or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding, except that:

(a) Where circumstances require ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits provided that no party will gain a procedural or tactical advantage and the judge makes provision promptly to notify all other parties of the substance of the communication.

(b) A judge may obtain the advice of a disinterested

expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(c) A judge may, with the consent of the parties confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(8) Judges of the Tribal Court shall abstain from public comment about a pending or impending proceeding in any court, and shall require similar abstention on the part of court personnel subject to the judge's direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(9) Judges of the Tribal Court shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

B. Administrative Responsibilities.

(1) Judges of the Tribal Court shall diligently discharge the judge's administrative responsibilities without bias or prejudice and shall maintain professional competence in judicial administration and shall cooperate with other judges and court officials in the administration of court business.

(2) Judges of the Tribal Court shall require court personnel and other subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge, and to refrain from manifesting bias or prejudice in the performance of their official duties.

C. Disciplinary Responsibilities.

(1) Judges of the Tribal Court shall take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(2) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by this Section are part of the judge's judicial duties.

D. Disqualification.

(1) Judges of the Tribal Court shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including, but not limited to, instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as lawyer in the matter in con-

troversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, significant other, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an interest that could be substantially affected by the proceeding; or

(d) The judge or the judge's spouse or significant other or a person within the third degree of relationship to any of them, or the spouse of such a person is a party to the proceeding, or an officer, director or trustee of a party.

(2) Judges of the Tribal Court shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse, significant other and minor children wherever residing.

E. Remittal of Disqualification

Judges of the Tribal Court disqualified by the terms of Section 3D may disclose on the record the basis of the judge's disqualification, and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. The judge may participate in the proceedings if the parties and lawyers agree that the judge

should not be disqualified.

CANON 4

Judges of the Upper Sioux Community Tribal Court Shall Conduct All Extra-Judicial Activities so as to Minimize the Risk of Conflict With Judicial Obligations.

Judges of the Tribal Court shall conduct all extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

CANON 5

Judges of the Upper Sioux Community Tribal Court Shall Refrain from Political Activity Inappropriate of Judicial Office.

A Judge of the Tribal Court shall not publicly endorse or publicly oppose a candidate for the Board of Trustees or other public office of the Upper Sioux Community and shall resign the judicial office on becoming a candidate for election to the Board of Trustees or other public office of the Upper Sioux Community.

Adopted January __, 1999