TITLE 4
RULES OF CIVIL PROCEDURE

CHAPTER 1
GENERAL PROVISIONS

Section 4-1-1. Purpose: The purpose of this title is to provide rules for the efficient, just, speedy and inexpensive adjudication of all civil causes of action within the jurisdiction of the Flandreau Santee Sioux Tribal Court.

Section 4-1-2. Application: Unless otherwise specifically provided by law, the Flandreau Santee Sioux Tribal Rules of Civil Procedure shall apply to all suits and proceedings of a civil nature within the Tribal Court. The court in its discretion may waive a rule when a party is unrepresented by council and the rights of the other party are not substantially affected by such waiver.

Section 4-1-3. One form of action: There shall be one form of action to be known as a "civil action".

CHAPTER 2
COMMENCEMENT OF ACTIONS
SERVICE OF PROCESS

Section 4-2-1. Commencement of Action: A civil action is commenced as to each defendant when the summons and complaint are served upon him, or on a co-defendant who is a joint contractor or otherwise united in interest with him.

Section 4-2-2. Attempted commencement of action by delivery of summons to law enforcement - Publication or service following attempt: An attempt to commence an action is deemed equivalent to the commencement thereof when the summons and complaint are delivered , with the intent that it shall be actually served, to a law enforcement in the county in which the defendants or one of them, usually or last resided; or if a corporation be defendant, to the sheriff or other law enforcement officer of the county in which such corporation was established by law, or where its general business was transacted, or where it kept an office for the transaction of business. Such an attempt must be followed by the first publication of the summons, or the service thereof, within sixty days.

Section 4-2-3. Summons-form: The summons shall be legibly subscribed by the plaintiff or his attorney and directed to the defendant, and shall require him to answer the complaint and serve a copy of his answer on the subscriber at a place to be specified within thirty days after the service of the summons, exclusive of the day of service, and shall notify him that in case of his failure to answer, judgment by default may be rendered against him as requested in the complaint.

Whenever the form of the summons is specified in any tribal statute or rule relating to any action, remedy or special proceeding, the form so specified shall be used.

Section 4-2-4. Service of Summons: The summons and complaint shall be served together. The summons and complaint may be served by a tribal law enforcement officer or any other person not a party to the action who at the time of the making of such service is a resident of the reservation when the defendant resides or is located within the reservation. If the defendant does not reside or is not located within the reservation service shall be made by the Sheriff of the county where the defendant resides or may be found. The service shall be made and the summons returned with proof of the service, with due diligence, to the plaintiff's attorney, if any, otherwise to the plaintiff. The plaintiff or his attorney may by endorsement on the summons fix a time for the service thereof, and the service shall be made accordingly.

Section 4-2-5. Personal service of summons- manner of making: The summons and complaint shall be served by delivering a copy thereof. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) Upon an individual other than an incompetent person or a minor, by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person fourteen years of age or over then residing therein or by delivering a copy of the summons to an agent authorized by appointment or by law to receive service of process. If Service is made by delivering a copy of the summons and complaint upon some individual other than the defendant at the defendant's dwelling house, the plaintiff shall advise the clerk that service has been made in this manner and the clerk shall promptly post copies of the summons and complaint at the tribally designated legal notice board.

(2) Upon a minor or incompetent person, by serving the summons and complaint upon a parent or person having

custody, and if the minor be over the age of fourteen years, then also upon such minor personally, and in any event upon the legally appointed general guardian, if there be one.

(3) Upon a corporation, partnership or other unincorporated association, by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant

(4) Upon the Tribe, by delivering a copy of the summons and complaint to the President of the Tribe, or in her absence, to the Secretary of the Tribe. Service shall be made on the reservation.

(5) Upon an officer, employee, or entity or subdivision of the Tribe, whether governmental or commercial in nature, by serving the Tribe and by serving the officer, employee, or entity or subdivision of the Tribe. Service shall be made on the reservation. If the entity or sub-division is a corporation service shall be made as provided in paragraph (3) of this section.

(6) Whenever the manner of service of process is specified in any other provision of this code relating to any action, remedy or special proceedings the manner of service so specified shall be followed.

Section 4-2-6. Proof of service: Proof of service of the summons or of any pleading, process, or other paper must state the time, place and manner of such service or of publication and mailing and must be as follows:

(1) If served by a law enforcement officer, his certificate thereof;

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

(3) The written admission of the party or his representative upon whom service might have been made for such party; or

(4) In the case of publication, by affidavit of the printer or his authorized representative or the publisher of the newspaper showing the same and an affidavit of mailing of copies as required by law.

Section 4-2-7. Service-when required: Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the Court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the Court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar papers shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in this chapter.

Section 4-2-8. Service-manner: Whenever under this chapter service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party personally is ordered by the Court. Service upon the attorney or upon a party shall be made by delivering a copy to the party or by mailing it to the parties attorney at the attorney's last known address or, if no address is known, by leaving it with the Clerk of Courts. Service under this section may also be made by facsimile transmission as provided in this chapter. Delivery of a copy under this section means: handing it to the attorney or to the party; or leaving it at the attorneys office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person at least fourteen years of age then residing therein. Service by mail shall be by first class mail and is complete upon mailing. Service by facsimile transmission is complete upon receipt by the attorney receiving service. An attorneys certificate of service, the written admission of service by the party or his attorney or an affidavit shall be sufficient proof of service. In the case of service by facsimile transmission, proof of service shall state the date and time of service and the facsimile transmission number or identifying symbol of the receiving attorney.

Section 4-2-9. Service-numerous defendants: In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any

cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

Section 4-2-10. Filing of pleadings and papers: The original of all papers, excluding trial briefs or copies thereof, served upon a party or presented to any court or judge in support of any application or motion and including the summons, all pleadings, notices, demands, offers, stipulations, affidavits, written motions and orders shall, if not filed before service, be filed with the court, together with proof of such service, forthwith upon such service. The foregoing requirement of filing applies to the notice of filing of an order and the notice of entry of a judgment together with proof of service thereof, both of which shall be filed forthwith; if not filed within ten days after service thereof, the time of service shall be deemed to be the date of filing of the notice and proof of service.

Any paper may be filed with the Court by facsimile transmission and the facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner and with same force, effect, authority and liability as an original. Any facsimile transmitted directly to the Court shall be accompanied by a cover sheet which states the title of the document, case number, number of pages, identity and voice telephone number of the transmitter and any instructions. Filing shall be deemed complete at the time that the facsimile is received by the Court and the filed facsimile shall have the same force and effect as the original. Facsimile filings shall be accepted for filing until 4:30 p.m. on days when the clerk of courts office is open for business.

Within five business days after the date of the facsimile transmission, the party filing the document shall file with the Court the original document, a certificate signed by the attorney, stating that the original document is identical to the facsimile previously filed, and a ten dollar transmission fee for each document or one dollar per page, whichever is greater. The fee will be deposited into the Tribal Court general account.

Failure to comply with the requirements for facsimile filing as set forth herein shall authorize the Court to apply appropriate sanctions, including but not limited to, the striking of the pleading or paper which was received by facsimile transmission.

If such papers are not to be served they must be filed with the Court at the time of their presentation to the Court for any action or consideration.

In the event of failure to file any paper required to be filed as herein specified, the adverse party upon proof of the omission so to file shall be entitled without notice to an order requiring such papers to be filed within a time to be specified in the order, and such order may likewise provide that

upon such failure so to file such papers, the action or proceedings shall be dismissed without prejudice and that no new action or proceeding may be commenced without payment of reasonable terms to be fixed by the Court.

If any process, original pleading, or any other paper, be lost or withheld by any person, the Court may authorize a copy thereof to be filed and used instead of the original.

No action or proceeding may be dismissed for failure to file forthwith pursuant to this section.

Section 4-2-11. Filing with the court defined: The filing of pleadings and other papers with the Court as required by this chapter shall be made by filing them with the clerk of courts, except that a tribal court judge may permit the papers to be filed with him, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk.

Section 4-2-12. Service by facsimile transmission to parties represented by attorney: Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, such service may be made by facsimile transmission pursuant to the following conditions:

(1) The attorney upon whom service is made has the necessary equipment to receive such transmission;

(2) The attorney has agreed to accept service by facsimile transmission or has served the serving party in the same case by facsimile transmission; and

(3) The time and manner of transmission comply with the requirements of 4-2-13, unless otherwise established by the court.

Section 4-2-13. Computation of time: In computing any period of time prescribed or allowed by this chapter, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included, unless it is a Saturday, a Sunday or tribally recognized holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or tribal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturday, Sundays, and tribal holidays shall be excluded in the computation.

Service by facsimile transmission must be completed by 5:00 o'clock p.m., receiver's time, on a weekday, which is not a legal holiday, or service

shall be deemed to be made on the following weekday, which is not a legal holiday.

Section 4-2-14. Enlargement of time: When by this chapter or by a notice given thereunder or by an order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion

(1) with or without motion or notice, order the period enlarged if request thereof is made before the expiration of the period originally prescribed or as extended by a previous order; or

(2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect ,

but it may not extend the time for taking any action under section 4-12-2, 4-4-16-1, and 4-16-9, except to the extent and under the conditions stated therein.

Section 4-2-15. Time for motions-affidavits. A written motion, other than one which may be heard ex parte and notice of the hearing thereof or an order to show cause shall be served not later than five days before the time specified for the hearing, unless a different period is fixed by this chapter or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion and, except as otherwise provided in 4-16-1, opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at some other time.

Section 4-2-16. Additional time after service by mail-facsimile transmission exempt: Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him, or whenever such service is required to be made a prescribed period before a specified event, and the notice or paper is served by mail, three days shall be added to the prescribed period.

Service by facsimile transmission shall not be deemed service by mail for purposes of this section.

CHAPTER 3
PLEADINGS AND MOTIONS

Section 4-3-1. Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provision of 4-5-9; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

Section 4-3-2. Motions and other papers.

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by this chapter.

Section 4-3-3. Claims for relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third-party claim, shall contain

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

(2) a demand for judgment for the relief to which he deems himself entitled.

Relief in the alternative or of several different types may be demanded.

Section 4-2-4. Defenses-Forms of denials. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge of information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated, averments or paragraphs as he expressly admits; but, when

he does so intend to controvert all its averments, he may do so by general denial.

Section 4--3-5. Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

Section 4-3-6. Effect of failure to deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

Section 4-3-7. Pleading to be concise and direct-consistency.

(1) Each averment of a pleading shall be simple, concise and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or equitable grounds or on both. All statements shall be made subject to the obligations set forth in section 4-3-18.

Section 4-3-8. Pleading capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

Section 4-3-9. Pleading, fraud, mistake, condition of the mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

Section 4-3-10. Pleading conditions precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularly.

Section 4-3-11. Pleading official document or act. In pleading an official document or official act, it is sufficient to aver that the document was issued or the act done in compliance with law; and in pleading any statute or ordinance, it is sufficient to refer to the statute by its number and the ordinance by its title or number and the date of its approval.

Section 4-3-12. Pleading special damage. When items of special damage are claimed, they shall be specifically stated.

Section 4-3-13. Unknown party-how designated in pleadings and process. When a party is ignorant of the name of an opposing party and so alleges in his pleading, the opposing party may be designated by any name, and when his true name is discovered the process and all pleadings and proceedings in the action shall be amended by substituting the true name.

Section 4-3-14. Complaint in action for defamation. In an action for defamation, it shall not be necessary to state in the complaint any extrinsic facts, for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of a action arose, but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff, and if such allegation be controverted, the plaintiff shall be bound to establish, on trial, that it was so published or spoken.

Section 4-3-15. Caption-Names of parties. Every pleading shall have the following caption: "In the Flandreau Santee Sioux Tribal Court" and contain the title of the action, and a designation as in section 4-2-15. In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

Section 4-3-16. Paragraphs-Separate statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or

occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

Section 4-3-17. Adoption by reference-Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

Section 4-3-18. Signing of pleadings. Every pleading of a party represented by an attorney or lay counselor shall be signed by at least one attorney of record in his individual name or the lay counselor, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or lay counselor constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a willful violation of this section an attorney or lay counselor may be subjected to appropriate sanctions. Similar action may be taken if defamatory, culturally unacceptable or unsubstantiated opinion matter is inserted.

Section 4-3-19. Amendment to pleadings. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has neither been placed upon the trial calendar, nor an order made setting a date for trial, he may so amend it at any time within twenty days after its is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten days after service of the amended pleading, which ever period may be longer, unless the court otherwise orders.

Section 4-3-20. Amendments to conform to the evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by

the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

Section 4-3-21. Relation back of amendments to pleadings. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted may be related back if the foregoing provision is satisfied and , within the period provided by law for commencing the action against him, the party to be brought in by amendment

(1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and

(2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

Section 4-3-22. Supplemental pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

CHAPTER 4
ANSWERS, DEFENSES AND OBJECTIONS

Section 4-4-1. Answer-Time for presenting defenses and objections. A defendant shall serve his answer within thirty days after the service of the complaint upon him, except when otherwise provided by statute or rule. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within twenty days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within twenty days after service of the answer or, if a reply is ordered by the court, within twenty days after service of the order, unless the order otherwise directs. The

service of a motion permitted under this section alters these periods of time as follows, unless a different time is fixed by order of the court:

(1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten days after notice of the court's action;

(2) If the court grants a motion for a more definite statement, the responsive pleading shall be served within ten days after the service of the more definite statement;

(3) If an appeal is taken from an order sustaining a motion to dismiss and such order is thereafter reversed, the responsive pleading shall be served within twenty days after the judgment or order of reversal is filed with the court.

Section 4-4-2. Manner of presenting defenses and objections. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

(1) Lack of jurisdiction over the subject matter;

(2) Lack of jurisdiction over the person;

(3) Insufficiency of process;

(4) Insufficiency of service of process;

(5) Failure to state a claim upon which relief can be granted;

(6) Failure to join a party under section 4-15-13.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (5) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided for in chapter 15, and all

parties shall be given reasonable opportunity to present all material made pertinent to such a motion by chapter 15.

Section 4-4-3. Motion for judgment on the pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded

by the court, the motion shall be treated as one for summary judgment and disposed of as provided in chapter 15, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by chapter 15.

Section 4-4-4. Preliminary hearings. The defenses specifically enumerated (1)-(6) in 4-4-2, whether made in a pleading or by motion, and the motion for judgment mentioned in 4-4-3 shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

Section 4-4-5. Motion for more definite statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within ten days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

Section 4-4-6. Motion to strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within twenty days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

Section 4-4-7. Consolidation of defenses in motion. A party who makes a motion under section 4-4-3 may join with it any other motions herein provided for and then available to him. If a party makes a motion under section 4-4-3 but omits therefrom any defense or objection then available to him which section 4-4-3 permits to be released by motion, he shall not thereafter make a motion based on the defense or objection so omitted,

except a motion as provided in subdivision (2) of 4-4-8 on any of the grounds there stated.

Section 4-4-8. Waiver or preservation of certain defenses.

(1) A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived (a) if omitted from a motion in the circumstances describe in 4-4-6, or (B) if it is neither made by motion under section 4-4-5 nor included in a responsive pleading or an amendment thereof permitted by section 4-3-19 to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under 4-3-1, or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

CHAPTER 5
COUNTER-CLAIMS, CROSS-CLAIMS, THIRD PARTY PRACTICE, JOINDER, INTERVENTION, INTERPLEADER

Section 4-5-1. Compulsory counterclaim. A pleading shall state as a counterclaim and be denominated as such,any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if

(1) at the time of the action was commenced the claim was the subject of another pending action, or

(2) the opposing party brought suit upon his claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under section 4-15-3, or

(3) if the claim is not one over which the court would have jurisdiction if brought as an original action.

Section 4-5-2. Permissive counterclaims. A pleading may state as a counterclaim and be denominated as such, any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

Section 4-5-3. Counterclaim exceeding opposing claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

Section 4-5-4. Counterclaim against the Flandreau Santee Sioux Tribe. This chapter shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the Flandreau Santee Sioux Tribe or an officer or agency thereof.

Section 4-5-5. Omitted counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, he may by leave of court set up the counterclaim by amendment.

Section 4-5-6. Cross-claim against co-party. A pleading may state as a cross-claim and be denominated as such, any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

Section 4-5-7. Joinder of additional parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of 4-5-13 and 4-5-16.

Section 4-5-8. Separate trials-Separate judgments. If the court orders separate trials,judgment on counterclaim or cross-claim may be rendered in accordance with the terms of section 4-15-2, when the court has jurisdiction so to do, even if the claims of the opposing parties have been dismissed or otherwise disposed of.

Section 4-5-9. When defendant may bring in third party. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party

to the action who is or may be liable to him for all or part of the plaintiff's claim against him. The third-party plaintiff need not obtain leave or make the service if he serves the third-party complaint not later than ten days after he serves his original answer. Otherwise he must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim as provided in Chapter 4 and his counterclaims against the third-party defendants as provided in this chapter. The third-party defendant may assert against the plaintiff any defenses which the third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses as provided in Chapter 4 and his counterclaims and cross claims as provided in this chapter. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed or may be liable to him for all or part of the claim made in the action against the third-party defendant. The court may render such judgments, one or more in number, as may be suitable.

Section 4-5-10. When plaintiff may bring in third party. When a counterclaim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under 4-5-9 would entitle a defendant to do so.

Section 4-5-11. Joinder of claims. A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join either as independent or as alternate claims, as many claims, legal or equitable, as he has against an opposing party.

Section 4-5-12. Joinder of remedies-Fraudulent conveyances. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to him, without first having obtained a judgment establishing the claim for money.

Section 4-5-13. Persons to be joined if feasible. A person who is subject of service of process shall be joined as a party in the action if

(1) in his absence complete relief cannot be accorded among those already parties, or

(2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

Section 4-5-14. Determination by court whenever joinder not feasible. If a person as described in subdivisions (1) and (2) of section 4-5-13 cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third; whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

Section 4-5-15. Pleading reasons for nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivisions (1) and (2) of section 4-5-13 who are not joined and the reasons why they are not joined.

Section 4-5-16. Permissive joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or

defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

Section 4-5-17. Separate trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

Section 4-5-18. Misjoinder. Misjoinder of parties is not grounds for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage or the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

Section 4-5-19. Interpleader. Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this section supplement and do not in any way limit the joinder of parties permitted in section 4-5-16.

Section 4-5-20. Intervention or right. Upon timely application anyone shall be permitted to intervene in an action:

(1) When a federal or tribal law confers an unconditional right to intervene; or

(2) When the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Section 4-5-21. Permissive intervention. Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or tribal governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Section 4-5-22. Procedure for intervention. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in chapter 2. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene.

When the constitutionality of an act of the tribe affecting the public interest is drawn in question in any action to which the tribe or an officer, agency or employee of the tribe is not a party, the party asserting the unconstitutionality of the act shall notify the attorney for the tribe thereof within such time as to afford him the opportunity to intervene.

CHAPTER 6
PARTIES

Section 4-6-1. Real party in interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute of the tribe so provides, an action for the use or benefit of another shall be brought in the name of the tribe. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

Section 4-6-2. Capacity to sue or be sued. When two or more persons associated in any business, transact such business under a common name,

whether it comprises the names of such persons or not, the associates may sue or be sued by such common name, the summons in such cases being served on one or more of the associates. The judgment in the action shall bind the joint party or parties served with process, in the same manner as if all had been named defendants and had been sued upon their joint liability.

Section 4-6-3. Representation of infants or incompetent persons. Whenever an infant or incompetent person has a general guardian, such guardian may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a general guardian, he may sue by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person and may make such appointment notwithstanding an appearance by a general guardian. Unless the court otherwise orders, no guardian ad litem shall be permitted to receive any money or other property of his ward except costs and expenses allowed to such guardian ad litem by the court or recovered by the ward in the action until such guardian ad litem has given sufficient security approved by the court to account for and apply such money or property under direction of the court. Such guardian ad litem may with the approval of the court settle or compromise in behalf of his ward, the case in which he is appearing and any judgment entered therein.

Section 4-6-4. Death of party.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Chapter 2 and upon persons not parties in the manner provided in Chapter 2 for the service of a summons. Unless the motion for substitution is made not later than ninety days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

Section 4-6-5. Incompetency of party. If a party becomes incompetent, the court may upon motion served as provided in section 4-6-4, allow the action to be continued by or against his guardian or guardian ad litem.

Section 4-6-6. Transfer of party's interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in Chapter 2.

Section 4-6-7. Officer as party-Death or separation from office.

(1) When a public officer, officer of a private corporation as such, executor, administrator or trustee is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When such officer sues or is sued in his official capacity, he may be described as a party by his official title rather than by name; but the court may require his name to be added.

CHAPTER 7
CLASS ACTIONS

Section 4-7-1. Prerequisites to a class action. One or more members of a class may sue or be sued as representative parties on behalf of all only if

(1) the class is so numerous that joinder of all member is impracticable,

(2) there are questions of law or fact common to the class,

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class,

(4) the representative parties will fairly and adequately protect the interests of the class, and

(5) the suit is not against the tribe for the recovery of a tax imposed under this law and order code.

Section 4-7-2. Class actions maintainable. An action may be maintainable as a class action if the prerequisites of section 4-7-1 are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class could create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate permanent injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum;

(D) the difficulties likely to be encountered in the management of a class action.

Section 4-7-3. Determination by order whether class action to be maintained-Notice-Judgment-Action conducted partially as class actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this section may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (3) of section 4-7-3, the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude him from the class if he so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

(3) The judgment in an action maintained as a class action under subdivisions (1) or (2) of section 4-7-2, whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (3) of section 4-7-2, whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (2) of this section was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of section 4-7-1 shall then be construed and applied accordingly.

Section 4-7-4. Orders in conduct of actions. In the conduct of actions to which section 4-7-1 applies, the court may make appropriate orders:

(1) Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(2) Requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

(3) Imposing that the pleadings on the representative parties or on intervenors;

(4) Requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly;

(5) Dealing with similar procedural matters.

Section 4-7-5. Dismissal or compromise of class actions. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

CHAPTER 8
DISCOVERY

Section 4-8-1. Discovery Methods. Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise under Section 4-8-3, the frequency of use of these methods is not limited.

Section 4-8-2. Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons

having knowledge of any discoverable matter. It is not ground for objection that the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Insurance agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) Trial preparation: materials. Subject to the provisions of subdivision (4) of this section, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (1) of this section and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of subdivision (4) of Section 4-4-34 apply to award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (4) (C) of this section, concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Section 4-4-31 or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for the time spent in responding to discovery under subdivisions (4) (A) (ii) and (4) (B) of this section; and (ii) with respect to discovery obtained under subdivision (4) (A) (ii) of this section the court may require, and with respect to discovery obtained under subdivision (4) (B) of this section the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

Section 4-8-3. Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a disposition, the court may make any order which justice requires to protect a

party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time and place;

(3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the court;

(6) That a deposition after being sealed be opened only by order of the court;

(7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(8) That the parties simultaneously file specified documents of information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of subdivision (4) of Section 4-8-34 apply to the award of expenses incurred in relation to the motion.

Section 4-8-4. Sequence and timing of discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

Section 4-8-5. Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (A) he knows that the response was incorrect when made, or (B) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

Section 4-8-6. Depositions before action.

(1) Petition. A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable may file a verified petition with the court. The petition shall be entitled in the name of the petitioner and shall show:

(a) that the petitioner expects to be a party to an action cognizable in the court but is presently unable to bring it or cause it to be brought,

(b) the subject matter of the expected action and his interest therein,

(c) the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it,

(d) the names or a description of the persons he expects will be adverse parties and their addresses so far as known, and

(e) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take and depositions of the persons to be

examined named in the petition, for the purpose of perpetuating their testimony.

(2) Notice and Service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least twenty days before the date of hearing the notice shall be served within or without the state in the manner provided for service of summons, but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise.

(3) Order and Examination. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with this chapter; and the court may make orders of the character provided for by Section 4-8-27 and Section 4-8-30. For the purpose of applying this chapter to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition of such deposition was filed.

(4) Use of Deposition. If a deposition to perpetuate testimony is taken under this chapter or if, although not so taken, it would be admissible in evidence in the court, or the courts of the United States, it may be used in any action involving the same subject matter subsequently brought in the court, in accordance with the provisions of Section 4-8-20.

Section 4-8-7. Depositions pending appeal. If an appeal has been taken from a judgment of the trial court or before the taking of an appeal if the time therefor has not expired, the court may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings. In such case the party who desires to perpetuate the testimony may make a motion for leave to take the depositions, upon the same notice and service thereof as if the action was pending therein. The motion shall show:

(1) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each;

(2) the reasons for perpetuating their testimony.

If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Section 4-8-27 and Section 4-8-30, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in this Chapter for depositions taken in pending actions.

Section 4-8-8. Perpetuation of testimony by action. Section 4-8-6 does not limit the power of a court to entertain an action to perpetuate testimony.

Section 4-8-9. Disqualification to take deposition for interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

Section 4-8-10. Stipulations regarding the taking of depositions. If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions.

Section 4-8-11. When depositions may be taken. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of thirty days after service of the summons and complaint upon any defendant, except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision (2) of Section 4-8-12.

The attendance of witnesses may be compelled by subpoena as provided in chapter 11 of this title.

Section 4-8-12. Notice of examination-General requirements-Special notice-Nonstenographic recording-Production of documents and things-Deposition of organization.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice

shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go outside of the reservation, or is about to go out of the United States, or is bound on a voyage to sea, and will be unavailable for examination unless his deposition is taken before expiration of the thirty-day period, and (B) sets forth facts to support the statement. The Plaintiff's attorney shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information and belief the statement and supporting facts are true.

If a party shows that when he was served with notice under this subdivision he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) Depositions may be recorded by means other than stenographic recording at the option of either party, including by tape recording or videotape recording. The party taking the deposition shall furnish copies to any other party. Upon request, the recording shall be transcribed by the party making the recording and each party shall sign the transcribed deposition and verify its accuracy and trustworthiness.

(5) The notice to party deponent may be accompanied by a request made in compliance with Section 4-8-27 for the production of documents and tangible things at the taking of the deposition. The procedure of Section 4-8-27 shall apply to the request.

(6) A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision does not preclude taking a deposition by any other procedure authorized in these rules.

Section 4-8-13. Examination and cross-examination-Record of examination-Oath-Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subdivision (4) of Section 4-8-12. If requested by one of the parties, the testimony shall be transcribed.

All objections made at time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

Section 4-8-14. Motion to terminate or limit examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass or oppress the deponent or party, the court in which the action is pending or the court in the circuit where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition as provided in Section 4-8-3. If the order made terminates the examination, it shall be

resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of subdivision (4) of Section 4-8-34 may apply to the award of expense incurred in relation to the motion.

Section 4-8-15. Submission to witness-Changes-Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within fifteen days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor, and the deposition may then be used as fully as though signed unless on a motion to suppress under subdivision (4) of Section 4-8-23 the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

Section 4-8-16. Certification and filing by officer-Exhibits-Copies.

(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly file it with the court or send it by registered or certified mail to the clerk thereof for filing.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the

materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

Section 4-8-17. Failure to attend or to serve subpoena for deposition expense.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the amount of reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.

Section 4-8-18. Serving questions-Notice. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in chapter 11 of this title.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (2) the name or descriptive title and address of the officer whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provision of subdivision (6) of Section 4-8-12.

Within thirty days after the notice and written questions are served, a party may serve cross-examination upon all other parties. Within ten days after being served with cross-questions, a party may serve redirect questions upon all other parties. Within ten days after being served with redirect questions, a party may serve recross-questions upon all other parties. The court may for cause shown enlarge or shorten the time.

Section 4-8-19. Officer to take responses and prepare record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Section 4-8-13, 4-8-15, and 4-8-16, to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and questions received by him.

Section 4-8-20. Use of deposition. At the trial or upon the hearing of a motion or an interlocutory proceeding, and part or all of a deposition so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) the deposition of a witness, whether or not a party, may be used by a party for any purpose if the court finds:

(A) that the witness is dead; or

(B) that the witness is outside of the reservation, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(C) that the witness is unable to attend or testify because of age, sickness, infirmity, imprisonment, or occupational commitments; if the deposition was taken for purposes of use at the trial in the place of the witness' personal attendance because of such commitments; or

(D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.

Substitution of parties does not affect the right to use depositions as previously taken; and, when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

Section 4-8-21. Objections to admissibility. Subject to the provisions of subdivision (3) of Section 4-4-23, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

Section 4-8-22. Effect of taking or using deposition. A party does not make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under subdivision (2) of section 4-4-20. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

Section 4-8-23. Effect of errors and irregularities in depositions.

(1) As to notice. All errors and irregularities in the notice for taking a deposition are waived unless written objections is promptly served upon the party giving the notice.

(2) As to disqualification of officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to taking of deposition.

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objections thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Section 4-8-18 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five days after service of the last questions authorized.

(4) As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Section 4-8-17 and 4-8-18 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

Section 4-8-24. Availability-Procedures for use. Any party may serve upon any other party written interrogatories to be answered by the party served or if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of

the action and upon any other party with or after service of the summons and complaint upon that party.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections, if any, within thirty days after the service of the interrogatories, except that a defendant may serve answers or objections within forty-five days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. the party submitting the interrogatories may move for an order under Section 4-8-34 with respect to any objection to or other failure to answer an interrogatory. A party answering interrogatories must set out the interrogatory immediately preceding the answer thereto.

Section 4-8-25. Scope-Use at trial. Interrogatories may relate to any matters which can be inquired in to under Section 4-8-2, and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

Section 4-8-26. Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilation, abstracts or summaries.

Section 4-8-27. Production of documents and things for inspection, copying or photographing. Any party may serve on any other party a request

(1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records; and other data compilations from

which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Section 4-8-2 and which are in the possession, custody or control of the party upon whom the request is served; or

(2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Section 4-8-2.

Section 4-8-28. Procedure. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within thirty days after the service of the request, except that a defendant may serve a response within forty-five days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Section 4-8-34 with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

Section 4-8-29. Person not parties. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

Section 4-8-30. Physical and mental examinations. In an action in which the mental or physical condition of a party or the consanguinity of a party with another person or party is in controversy, the court in which the action is pending may order such person or party to submit to a physical or mental examination or blood test by a physician. The order may be made only on motion for good cause shown and upon notice to the person or party to be examined and to all other persons or parties involved and shall specify the

time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

Section 4-8-31. Report of examining physicians.

(1) If requested by the party against whom an order is made under Section 4-8-30 or the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that he is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if a physician fails or refuses to make a report the court may exclude his testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement, expressly provides otherwise. This subdivision does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician in accordance with the provisions of any other rule.

Section 4-8-32. Request for admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Section 4-8-2 set forth in the request that relate to statements or opinions of facts or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any

other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of forty-five days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made a reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him ot admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provision in Section 4-8-36, deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers of objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of theses orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of subdivision (4) of Section 4-8-34 apply to the award of expenses incurred in relation to the motion.

Section 4-8-33. Effect of admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Section _____ governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

Section 4-8-34. Motion for order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Application. An application for an order to a party may be made to the court.

(2) Motion. If a deponent fails to answer a question propounded or submitted under Section 4-8-12 and 4-8-18, or a corporation or other entity fails to make a designation under subdivision (6) of Section 4-8-12 or Section 4-8-18, or, a party fails to answer an interrogatory submitted under Section 4-8-34, or if a party in response to a request for inspection submitted under Section 4-8-27, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

(3) Evasive or incomplete answer. For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) Award of expense of motion. If a motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct of both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

Section 4-8-35. Failure to comply with order.

(1) Sanctions by court. If a deponent fails to be sworn or to answer a question after being directed to do so by the court, the failure may be considered a contempt of that court.

(2) Sanctions by court. If a party or an officer, director, or managing agent of a party or a person designated under subdivision (6) of Section 4-8-12 or Section 4-8-18 to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under Section 4-8-34 or Section 4-8-30, the court in which may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purpose of the action in accordance with the claim of the party obtaining the order.

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceedings or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination.

(E) Where a party has failed to comply with an order under Section 4-8-30 requiring him to produce another for examination, such orders as are listed in paragraphs (A) (B), and (C) of this subdivision, unless the party failing to comply shows that he is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by

the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

Section 4-8-36. Expenses on failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Section 4-8-32, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that

(1) the request was held objectionable pursuant to Section 4-8-32, or

(2) the admission sought was of no substantial importance, or

(3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or

(4) there was other good reason for the failure to admit.

Section 4-8-37. Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. If a party or an officer, director, or managing agent of a party or a person designated under subdivision (6) of Section 4-8-12 or Section 4-8-18 to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Section 4-8-24, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Section 4-8-29, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subdivisions (2) (A) (B), and (2) (C) or Section 4-8-35. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Section 4-8-3.

CHAPTER 9
DISMISSAL OF ACTIONS

Section 4-9-1. Voluntary dismissal-Effect thereof.

(1) **By Plaintiff; by Stipulation.** Except as otherwise provided elsewhere in this code, an action may be dismissed by the plaintiff without order of the court

(a) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or

(b) by filing a stipulation of dismissal signed by all parties who have appeared in the action.

Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state action based on or including the same claim.

(2) **By Order of Court.** Except as provided in subdivision (1) of this section, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

Section 4-9-2. Involuntary dismissal-Effect thereof. If the plaintiff fails to prosecute or to comply with this chapter or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in 4-13-1. Unless the court in its order for dismissal otherwise specifies, a dismissal under this section and any dismissal not provided for in this

chapter, other than a dismissal for lack of jurisdiction, or for failure to join a party, operates as an adjudication upon the merits.

Section 4-9-3. Dismissal of counterclaim, cross-claim, or third-party claim. The provisions of 4-9-1 apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of 4-9-1 (a) shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

Section 4-9-4. Costs of previously dismissed action. If a plaintiff who has once dismissed an action commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

CHAPTER 10
TRIALS

Section 4-10-1. Right of jury trial/demand. The right of trial by jury shall be preserved to the parties inviolate. Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand thereof in writing at any time after the commencement of the action and not less than ten days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party.

Section 4-10-2. Specification of issues in demand for jury trial. In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within ten days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

Section 4-10-3. Waiver of jury trial. The failure of a party to serve a demand as required by 4-10-1 constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

Section 4-10-4. Trial by jury. When trial by jury has been demanded as provided by 4-10-1, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless

(1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury, a party waives the same by failing to appear at the trial or by proceeding to trial by the court without objecting thereto; or

(2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under federal or tribal law.

Section 4-10-5. Trial by the court. Issues not demanded for trial by jury as provided in 4-10-1 shall be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issues.

Section 4-10-6. Issues-When, where and how tried. The judges of the court shall provide by order or by rule for the placing of actions upon the trial calendar in such manner as the court deems expedient. Precedence shall be given to actions entitled thereto.

Section 4-10-7. Certificate of readiness. A certificate of readiness, executed by one or more parties, must be served and filed in all contested civil cases as herein provided before such a case will be placed on the trial calendar or set for pretrial conference or trial.

If all parties join in the certificate of readiness, it shall be filed with the clerk, who shall forthwith place the case on the trial calendar, note this fact on the face of the certificate and forward a copy bearing his notation to the judge assigned to hear the case.

If the certificate is not joined in by all of the parties, the party preparing it shall forthwith serve a copy upon all nonjoining parties, note the date of service on the face of the original certificate and file it with the clerk. Any nonjoining party who objects to the certificate of readiness must serve and file his objections in writing within ten days of the service of the certificate upon him or he will be deemed to have joined in said certificate. The written objections must be accompanied by a notice of hearing thereon and shall set forth in concise language the reasons why the case is not ready for trial, what remains to be done and the time required therefor. Upon receipt of such written objections and the notice of hearing, the clerk shall file the same and forward copies thereof, together with a copy of the certificate of readiness, to the judge assigned to hear the case. An objection to a certificate of readiness will not be sustained unless the objector establishes that he is acting in good faith, has exercised due diligence, and good cause is shown.

If the objections are overruled, a written order to that effect will be filed with the clerk directing that the case be forthwith placed on the trial calendar. A copy of such order bearing a notation of the date the case is placed on the trial calendar shall immediately be forwarded by the clerk to each party and the judge assigned to hear the case.

If the objections are sustained, a written order to that effect will be entered setting forth the nature of pretrial preparation remaining to be accomplished and the time within which it shall be completed. The prevailing party shall forthwith serve copies of this order upon the other parties. Upon the expiration of that time or upon prior completion of the remaining pretrial preparation, a new certificate of readiness may be served and filed.

If no written objections are filed within ten days of the service upon all nonjoining parties, the clerk shall place the case on the trial calendar, note these facts on the face of the certificate of readiness and forward a copy of the same to the judge assigned to hear the case and to each of the parties.

A certificate of readiness shall be filed or joined in by a party until he has completed all pretrial discovery and is otherwise ready for trial and in good faith believes that the other parties to the case have completed their pretrial discovery and preparation or have had a reasonable time in which to do so.

Once a case is placed on the trial calendar, the court may set a time for a pretrial conference or trial upon application of a party or on its own motion.

Any or all of the requirements of this rule may be dispensed within any given case by the judge assigned to try it.

Court cases and jury cases shall be listed in separate groups upon the trial calendar and shall be entered in the order of time that the clerk places them thereon.

The certificate of readiness shall be in substantially the following form:

IN THE FLANDREAU SANTEE SIOUX TRIBAL COURT

(CAPTION)	)	Court File No.

CERTIFICATE OF READINESS FOR TRIAL

The undersigned hereby certify/certifies that:

1. The issues are joined and that the case is ready for trial in all respects;

2. All necessary discovery has been completed;

3. All pretrial motions have been disposed of or have been waived;

4. Sufficient time has elapsed to afford all parties reasonable opportunity to be ready for trial;

5. The case is for trial by jury upon timely demand/for trial by the court;

6. Settlement of the case has/has not been discussed;

7. A pretrial conference is/is not requested.

Dated this _____ day of _____, 19___.

_____

Attorney for:
Address
Phone:

Section 4-10-8. Consolidation of actions. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delays.

Section 4-10-9. Separate trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conclusive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury.

CHAPTER 11
JURORS/INSTRUCTIONS

Section 4-11-1. Examination of jurors. The court shall permit the parties or their attorneys to conduct the examination of prospective jurors.

Section 4-11-2. Alternate jurors. The court may direct that not more than three (3) jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to two (2) peremptory challenges in addition to those otherwise allowed by law. The additional peremptory challenges may be used against an alternate juror only and the other peremptory challenges allowed by law shall not be used against an alternate juror.

Section 4-11-3. Number of jurors. A jury shall consist of six (6) jurors. The parties may stipulate that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

Section 4-11-4. Manner of preparation and giving instructions to jury. After the close of evidence and prior to argument, the court shall charge the jury. In charging the jury the court shall instruct as to the law of the case; if it states the testimony it must in addition inform the jury that they are the exclusive judges of all questions of fact.

All instructions except those given under section 4-11-6 shall be reduced to writing before being given, and after being settled shall be read to the jury by the court without any disclosure to indicate which are and which are not requested instructions.

All requests for instructions shall be in writing and in duplicate, and shall be presented to the court on or before the time fixed for settling instructions. In requesting instructions, counsel shall number only the carbon copies. At the same time counsel shall furnish to the judge the original of each such requested instruction and such originals shall not be numbered, and shall not in any way show that they are requested instructions, but shall have at the top of each instruction a space for numbering. Such original requested instructions shall be typed, double-spaced, on letter-size, bond paper in such form that the judge can insert the original requested instruction in the set to be used by the jury in the event the instruction is adopted by the court. Such original instructions as are not adopted shall be discarded by the court. All requested instructions which are refused by the court shall be so endorsed by the court on the numbered copy. An additional numbered copy of each requested instruction shall be furnished to opposing counsel.

The court shall in no case qualify, modify, or in any manner explain to the jury any written instruction given, unless such qualification, modification,

or explanation shall first have been reduced to writing and made a part of such instruction and settled.

The court may, after the giving of instructions and at any time before verdict, recall the jury for further instructions, which, if given, shall be given in full compliance with the provisions of 4-11-4 and 4-11-5.

After the jury have retired for deliberation if there be a disagreement between them as to any part of the testimony or if they desire to be informed of any point of law arising in the case, they may require the officer to conduct them into court. Upon their being brought into court the information required, if given, must be given in the presence of, or after notice to the parties or counsel, and the instruction given shall be taken down by the court reporter.

In all cases the instructions shall be taken by the jury in their retirement, and returned into court with their verdict. No instruction taken by the jury shall be marked so as to indicate it was requested.

Section 4-11-5. Settlement of instructions. Before the giving of any written instruction it shall be settled. To that end an opportunity to examine the same, both those "requested" and those proposed by the court, shall be given, as well as an opportunity to present and argue objections to the adoption or rejection thereof. The settlement of instructions shall be outside the hearing of the jury. On such settlement each counsel, or party, shall specify and state the particular ground or grounds upon which the giving or rejecting of any instruction is objected to. It shall be insufficient to state generally that an instruction does or does not state the law, but it shall be necessary to specify clearly wherein any instruction, or part thereof objected to, is insufficient or does not state the law.

The court reporter shall be present at such settlement of instructions and shall make a full record of all objections with the reasons stated therefor, and all rulings thereon. No grounds of objection to the giving or the refusing of an instruction shall be considered either on motion for new trial or appeal, unless presented to the court upon the "settlement" of such instruction.

CHAPTER 12
DIRECTED VERDICTS/JUDGMENT NOTWITHSTANDING THE VERDICT

Section 4-12-1. Motion for directed verdict-When made-Effect. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion has not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all the parties to the action have moved for directed verdicts. A motion for a directed verdict shall

state the specific grounds therefor. The order of the court granting a motion for a directed verdict is effective without any assent of the jury.

Section 4-12-2. Motion for judgment notwithstanding the verdict-Failure to rule as denial. Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Not later than ten days after notice of entry of judgment, a party who has moved for a directed verdict may serve and file a motion to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned such party, within ten days after the jury has been discharged, may serve and file a motion for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or new trial may be prayed for in the alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

The court shall make and file the order granting or denying such judgment notwithstanding verdict within twenty days after the service and filing of such motion, unless for good cause shown, the court files an order within said twenty days extending the time for entering such order. If a motion for judgment notwithstanding verdict has not been determined by the court and no order has been entered by the court extending the time for such ruling within twenty days from the date of service and filing of such motion, it shall be deemed denied.

Section 4-12-3. Conditional rulings on grant of judgment notwithstanding verdict.

(1) If the motion for judgment notwithstanding the verdict, provided for in 4-12-2, is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reserved, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the Appellate Court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the respondent on appeal may assert error

in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the Appellate Court.

(2) The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may serve a motion for a new trial pursuant to 4-16-1 not later than ten days after notice of entry of the judgment notwithstanding the verdict.

Section 4-12-4. Denial of motion for judgment notwithstanding verdict. If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, as respondent, assert grounds entitling him to a new trial in the event the Appellate Court concludes that the trial court erred in denying the motion for judgment notwithstanding the verdict. If the Appellate Court reverses the judgment, nothing in 4-12-1 precludes it from determining that the respondent is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

CHAPTER 13
FINDINGS BY THE COURT

Section 4-13-1: Effect of findings by the court-Proposals-When unnecessary. In all actions tried upon the facts without a jury or with an advisory jury, the court shall unless waived as provided in section 4-13-2 find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to section 4-15-17; and in granting or refusing temporary restraining orders or preliminary injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a referee, to the extent that the court adopts them, shall be considered as the findings of the court. Findings of fact and conclusions of law need not be made when a temporary restraining order or preliminary injunction is entered under these rules.

A copy of the proposed findings shall be served upon the attorneys of record to the action or upon the parties of record to the action when not represented by counsel. The court may direct counsel for the prevailing party to prepare findings and counsel shall, within ten days after announcement of decision, unless otherwise ordered, prepare, serve and submit to the court with copies to opposing counsel, proposed written findings of fact and conclusions of law together with the proposed judgment or decree.

The court shall not sign any findings therein prior to the expiration of five days after service of the proposed findings during which time the parties may in writing submit to the court and serve on their adversaries their objections or additional proposals. Thereafter the court shall make or enter such findings and conclusions as may be proper.

Any action or decision of the court in making or modifying findings of fact or conclusions of law shall be deemed excepted to, but the failure of the court to make a finding or conclusion on a material issue shall not be deemed excepted to unless such finding or conclusion has been proposed to or requested from the court.

If an opinion or memorandum of decision is filed, the facts and legal conclusions stated therein need not be restated but may be included in the findings of fact and conclusions of law by reference.

Findings of fact and conclusions of law are unnecessary on decisions of motions under chapter 3 or section 4-15-9 or any other motion except as provided by 4-9-2.

Section 4-13-2. Waiver of findings and conclusions of law. Findings of fact and conclusions of law are waived by failing to appear at the trial, by consent in writing filed with the clerk, by oral consent in open court, or by entering into a stipulation of facts for consideration by the court.

CHAPTER 14
REFEREES

Section 4-14-1. Appointment and compensation of referees. A court in which any action is pending may appoint a referee therein. When a reference is made as provided by statute the fees and necessary expenses shall be ordered paid from such source as is designated therein, otherwise the compensation to be allowed to a referee shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct. The referee shall not retain his report as security for his compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the referee is entitled to a writ of execution against the delinquent party.

Section 4-14-2. Reference. A reference to a referee shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account and difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

Section 4-14-3. Powers of reference. The order of reference to the referee may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time an place for beginning and closing the hearings and for the filing of the referee's report. subject to the specifications and limitations stated in the order, the referee has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts an take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may himself examine them and may call the parties to the action and examine them upon oath. When a party so requests the referee shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations for a court sitting without a jury.

Section 4-14-4. Proceedings before referee.

(1) Meetings. When a reference is made, the clerk shall forthwith furnish the referee with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the referee shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within twenty days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the referee to proceed with all reasonable diligence. Either party, on notice to the parties and referee, may apply to the court for an order requiring the referee to speed the proceedings and to make his report. If a party fails to appear at the time and place appointed, the referee may proceed ex parte or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) Witnesses. The parties may procure the attendance of witnesses before the referee by the issuance and service of subpoenas as provided in Chapter 18. If without adequate excuse a witness fails to appear or give evidence, he may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Title 1 of this code for contempt.

(3) Statement of Accounts. When matters of accounting are in issue before the referee, he may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the referee may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as he directs.

Section 4-14-5. Report of referee.

(1) Contents and Filing. The referee shall prepare a report upon the matters submitted to him by the order of reference and, if required to make findings of fact and conclusions of law, he shall set them forth in the report. He shall file the report with the clerk of the court and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

(2) In Nonjury Actions. In an action to be tried without a jury the court shall accept the referee's findings of fact unless clearly erroneous. Within ten days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice. The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(3) In Jury Action. In an action to be tried by a jury the referee shall not be directed to report the evidence. His findings upon the issues submitted to him are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

(4) Stipulation as to Findings. The effect of a referee's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a referee's

findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(5) Draft Report. Before filing his report a referee may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

CHAPTER 15
JUDGMENTS/DEFAULTS/SUMMARY JUDGMENT

Section 4-15-1. Definition-Form of judgment. "Judgment" as used in this chapter includes a decree and means the final determination of the rights of the parties in an action or proceeding. A judgment shall not contain a recital of pleadings, the report of a referee, or the record of prior proceedings. Every direction of the court, made or entered in writing and not included in a judgment, is denominated an order.

Section 4-15-2. Judgment upon multiple claims or involving multiple parties. When multiple claims for relief or multiple parties are involved in an action, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Section 4-15-3. Demand for judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

Section 4-15-4. Judgment for costs. Costs and disbursements shall be allowed as provided by law. Costs and disbursements may be taxed by the clerk on two days' notice, and inserted in the judgment. The disbursements shall be stated in detail and verified by affidavit, which shall be filed, and a

copy of such statement and affidavit shall be served with the notice. The party objecting to any item shall specify in writing the ground thereof. A party aggrieved by the action of the clerk may file a notice of appeal with the clerk, who shall forthwith certify the matter to the court. The appeal shall be heard upon eight days' notice and determined upon the objections so certified.

Section 4-15-5. Judgment by default. Judgment by default may be entered as follows:

(1) By the Court. In all cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian or guardian ad litem who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least three days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by tribal law.

(2) Filing. No default judgment shall be rendered against a defendant until a complaint has been on file at least twenty days unless the complaint has been served with a summons.

(3) Service by Publication. In actions where the service of the summons was by publication before rendering judgment the court may in its discretion require the plaintiff to cause to be filed satisfactory security to abide by the order of the court touching the restitution of any estate or effects which may be directed by such judgment to be transferred or delivered or the restitution of any money that may be collected under or by virtue of such judgment in case the defendant or his representative shall apply and be admitted to defend the action and shall succeed in such defense.

Section 4-15-6. Setting aside default. For good cause shown the court may set aside a judgment by default in accordance with 4-16-9.

Section 4-15-7. Plaintiffs, counterclaims and cross-claimants entitled to default. The provisions of section 4-15-5 apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of section 4-15-3.

Section 4-15-8. Summary judgment for claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of thirty days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits, for a summary judgment in his favor upon all or any part thereof.

Section 4-15-9. Summary judgment for defending party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

Section 4-15-10. Motion for summary judgment and proceedings thereon. The motion shall be served at least ten days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

Section 4-15-11. Case not fully adjudicated on motion for summary judgment. If on motion under section 4-15-8 judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

Section 4-15-12. Form of affidavits for summary judgment-Further testimony-Defense required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be

admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in section 4-15-5, it shall set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Section 4-15-13. Opposing summary judgment when affidavits are unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated, present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

Section 4-15-14. Summary judgment affidavits made in bad faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to 4-15-8 are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Section 4-15-15. Declaratory judgments. The procedure for obtaining a declaratory judgment pursuant to Title 29, shall be in accordance with this chapter, and the right to trial by jury may be demanded under the circumstances and in the manner provided in chapter 10. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

Section 4-15-16. Entry of judgment. Subject to the provisions of 4-15-2, judgment upon the jury verdict or upon the decision of the court, shall be promptly rendered. Every judgment shall be set forth on a separate document. A judgment or an order becomes complete and effective when reduced to writing, signed by the court or judge, attested by the clerk and filed in his office. The clerk, immediately after the filing of any judgment, shall prepare the judgment roll, record the judgment in the judgment book and docket the same as provided by law. Entry of the judgment shall not be delayed for the taxing of costs.

CHAPTER 16
NEW TRIALS
AMENDMENT OF JUDGMENTS/STAY OF EXECUTION

Section 4-16-1. Grounds for new trial. A new trial may be granted to all or any of the parties and on all or part of the issues for any of the following causes:

(1) Irregularity in the proceedings of the court, or adverse party or any order of the court or abuse of discretion by which either party was prevented from having a fair trial;

(2) Misconduct of the jury; and whenever any one or more of the jurors have been induced to assent to any general or special verdict or to a finding on any question submitted to them by the court, by a resort to the determination of change, such misconduct may be proved by the affidavit of any one of the jurors;

(3) Accident or surprise which ordinary prudence could not have been guarded against;

(4) Newly discovered evidence, material to the party making the application, which he could not with reasonable diligence have discovered and produced at the trial;

(5) Excessive or inadequate damages appearing to have been given under the influence of passion or prejudice;

(6) Insufficiency of the evidence to justify the verdict or other decision or that it is against the law;

(7) Error of law occurring at the trial; provided, that in the case of claim of error, admission, rejection of evidence, or instructions to the jury or failure of the court to make a finding or conclusion upon a material issue which had not been proposed or requested, it must be based upon an objection, offer of proof or a motion to strike.

On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

When the motion be made for a cause mentioned in subparagraphs (1), (2), (3) or (4), it must be made upon affidavits attached to and made a part of the motion, unless as to a cause mentioned in subparagraph (1), the irregularity or abuse of discretion is sufficiently disclosed by the record to support such motion. When the motion is made under subparagraph (6) it shall state the particulars wherein the evidence is claimed to be insufficient.

Section 4-16-2. Time for motion for new trial-Rulings thereon-Extension of time. The motion for a new trial stating the grounds thereof shall be served and filed not later than ten days after the notice of entry of the judgment.

The court shall make and file the order granting or denying such new trial within twenty days after the service and filing of such motion, unless for good cause shown, the court files an order within said twenty days extending the time for entering such order. If a motion for new trial has not been determined by the court and no order has been entered by the court extending the time for such ruling within twenty days from the date of service and filing of such motion, it shall be deemed denied.

Section 4-16-3. Hearing and answering affidavits on motion for new trial. Upon the presentation of such motion the court shall by order fix the time and place for hearing thereof, and in such order shall fix the time for service thereof, and for answering said motion and for service of answering affidavits, if any.

Section 4-16-4. New trial on initiative of court. Not later than ten days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

Section 4-16-5. Procedure upon hearing of motion for new trial. On the hearing reference may be had in all cases to the pleadings, orders, rulings, and files of the court, and to depositions, documentary evidence, shorthand report, and transcript, if one has been made, and the court may take the testimony of witnesses as to causes enumerated in 4-16-1 (1), (2), (3) and (4), which testimony may be reduced to writing and transcribed on the request of either party and filed in the office of the clerk as part of the record.

Section 4-16-6. Motion for new trial not required as foundation for appeal in certain cases. A motion for a new trial shall not be necessary as a prerequisite to obtain appellate review as to matters specified in 4-16-1 (6) and (7), and all of such matters may be reviewed on an appeal from judgment, regardless of whether a motion for a new trial has been made, provided such matter has been submitted to the trial court as prescribed in Title 4B.

Section 4-16-7. Order granting new trial must show grounds upon which based. The court when granting a motion for new trial shall in its order specify each and every ground upon which it bases such order; all grounds urged upon such motion and not specified in the order shall be deemed to have been overruled by the court.

Section 4-16-8. Relief from clerical mistakes. 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, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the settled record is transmitted to the clerk of the Appellate Court and thereafter while the appeal is pending may be so corrected with leave of the Appellate Court.

Section 4-16-9. Relief on ground of mistake-Inadvertence-Excusable neglect-Newly discovered evidence-Fraud. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

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

(2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under 4-16-2;

(3) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(4) The judgment is void;

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

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

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this section does not affect the finality of a judgment or suspend its operation. Section 4-16-8 does not limit the power of a court to entertain an independent action to relieve a party from judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided by statute or to set aside a judgment for fraud upon the court.

Section 4-16-10. Harmless error. No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict, or for vacating, modifying 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 must disregard any error or defect in the proceedings which does not affect the substantial rights of the parties.

Section 4-16-11. Automatic stay of execution-Exception-Injunctions and receiverships. Except as stated herein or as otherwise ordered by the court for good cause shown, or upon default judgment, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of thirty days after its entry. Unless otherwise ordered by the court, temporary or permanent judgment in an action for an injunction or in a receivership action shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal.

Section 4-16-12. Stay of execution on motion for new trial or for judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial made pursuant 4-16-1, or of a motion for relief from a judgment or order made pursuant to 4-16-8, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to 4-12-1.

CHAPTER 17
INJUNCTION

Section 4-17-1. Preliminary injunction. No preliminary injunction shall be issued without notice to the adverse party.

Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when consolidation is not ordered, any evidence received on an application for a preliminary injunction which would be admissible on the trial on the merits, becomes part of the record on the trial and need not be repeated at the trial. This paragraph shall be construed and applied to save to the parties any rights they may have to trial by a jury.

Section 4-17-2. Temporary restraining order without notice. Where no provision is made by statute, a temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if

(1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and

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

Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and, except in actions arising under Title 6, Chapter 7, shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so 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 over all matters except, older matters of the same character. When the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On two days' notice to the party who obtained the restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require. Temporary restraining orders by their very nature may not be appealed.

Section 4-17-3. Undertaking required on preliminary injunction or temporary restraining order-Ascertainment of damages. Where no provision is made by statute for security on a preliminary injunction or temporary restraining order, the court shall require a written undertaking on the part of the applicant with or without sureties in such sum as the court deems proper, to the effect that the applicant will pay to the party enjoined such costs and damages not exceeding the amount to be specified, as he may sustain by reason of the preliminary injunction or temporary restraining order, if the court finally decides that the applicant was not entitled thereto. The damages may be ascertained by reference or otherwise as the court shall direct. No such security shall be required of the Flandreau Santee Sioux Tribe or of an officer or agency thereof.

Section 4-17-4. Contents of order-Parties Bound. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise. In addition, and pursuant to 4-13-1, the court for preliminary injunctions shall set forth the findings of fact and conclusions of law which constitute the grounds for its action.

CHAPTER 18
SUBPOENAS

Section 4-18-1. Subpoena for attendance of witnesses-Form-Issuance. The Clerk of courts and tribal judges in any matter pending before them, upon application of any person having a cause or any matter pending in court, may issue a subpoena for the attendance of a witness or witnesses.

Any attorney of record who has been duly admitted to practice in the tribal court may issue a subpoena for a witness or witnesses, and for production, inspection and copying of records and exhibits, in any action or proceeding, or collateral hearing, civil or criminal, in which he is the attorney of record for any party. When an attorney issues a subpoena, he must forthwith transmit a copy thereof to the clerk of the court. The Clerk of Courts shall file such copy as one of the public records of the action proceeding.

A subpoena shall state the name of the court, the title of the action or proceeding, and shall command each person to whom it is directed to attend and give testimony at a time and place specified. It shall state the name of the person or party for whom the testimony of he witness is required. The seal of the court or officer, shall be affixed to the original and all copies, if

issued by the court. If the subpoena is issued by an attorney, it shall be issued in the name of the presiding officer of the court in which the matter is pending and shall be attested and signed by the attorney, designating the party for whom he is attorney of record.

Section 4-18-2. Subpoena for production of documentary evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may

(1) quash or modify the subpoena if its is unreasonable and oppressive or

(2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

Section 4-18-3. Service of subpoena. The subpoena may be served by any officer or person qualified to make service of a summons. The subpoena shall be served in the same manner as a summons is served, excepting that no service by publication is authorized. The subpoena must be served sufficiently in advance of the date upon which the appearance of the witness is required to enable such witness to reach such place by any ordinary or usual method of transportation which he may elect.

At the time of service of a subpoena, there shall be tendered to or on behalf of the person therein named the fees for one day's attendance and the mileage allowed by law. The fact of such payment, or the signed waiver thereof by the person named in the subpoena, shall be stated in the return. If such fees and mileage be not paid or waived, the witness shall not be obliged to obey the subpoena.

At the commencement of each day after the first day, a witness under subpoena may demand his fees for that day's attendance, and if the same is not paid, he shall be required to remain.

When the subpoena is issued on behalf of the Flandreau Santee Sioux Tribe or its political subdivisions or an officer or agency thereof, fees and mileage need not be tendered.

Section 4-18-4. Subpoena for taking depositions-Place of examination.

(1) Proof of service of a notice to take a deposition as provided in 4-8-12 and 4-8-18 constitutes a sufficient authorization for the issuance by any persons specified in section 4-18-1 or by the clerk of courts of subpoenas for the persons named or described

therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by 4-8-2, but in that event the subpoena will be subject to the provisions of Chapter 8 of this Title.

The person to whom the subpoena is directed may, within ten days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than ten days of service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials.

(2) A resident of the reservation may be required to attend an examination only within , or at such other convenient place as is fixed by an order of the court. A nonresident of the reservation may be required to attend only in the county wherein he is served the subpoena, or at such other convenient place as is fixed by an order of the court.

Section 4-18-5. Failure to obey subpoena. Failure by any person without adequate excuse to obey a subpoena served upon him shall be deemed a contempt of the court and such contempt shall be dealt with in accordance with Title 1 of this Code.

This Ordinance was enacted by the Flandreau Santee Sioux Tribal Executive Committee by Resolution Number 96550n September 3, 1996.

Flandreau Santee Sioux Tribe

P.O. Box 283 Flandreau, SD 57028

Ph. 605-997-3891
Fax 605-997-3878

RESOLUTION NO. 11 – 52

WHEREAS, the Flandreau Santee Sioux Tribe is a recognized Indian tribe organized pursuant to a Constitution and By-laws approved by the Secretary of Interior and Commissioner of Indian Affairs on April 24, 1936, amended February 7, 1941, and further amended November 16, 1967, and further amended November 14, 1984, and further amended May 17, 1997; and

WHEREAS, Article III of the Tribe's Constitution and By-laws provides that the governing body of the Tribe shall be the Executive Committee; and

WHEREAS, pursuant to Article VIII section 1(f) of said Constitution, the Executive Committee has the power to promulgate ordinances and regulating the conduct of all persons on the Flandreau Santee Sioux Tribe Reservation, and

WHEREAS, the Executive Committee promulgated "Title 2 - Criminal Procedure," of the Flandreau Santee Sioux Tribe Law and Order Code with the most recent amendment being August 23, 2007, and

WHEREAS, the Executive Committee promulgated "Title 4 - Civil Procedure," of the Flandreau Santee Sioux Tribe Law and Order Code by resolution number 96-55 on September 3rd, 1996, and

WHEREAS, the Executive Committee desires to amend its Law and Order Code for the purpose of changing juror requirements for Criminal Trials, and

WHEREAS, the Executive Committee desires to amend its Law and Order Code for the purpose of changing juror requirements for Civil Trials, and

WHEREAS, specifically, the Executive Committee has determined that Title 2, Chapter 15, needs to be amended to require that jurors in Tribal Criminal Court are Flandreau Santee Sioux Tribe Members, and

WHEREAS, the Executive Committee has determined that a new provision must be added to Title 4, Chapter 11, to require that jurors in Tribal Civil Court are Flandreau Santee Sioux Tribe Members, and

NOW THEREFORE BE IT RESOLVED, that the Executive Committee hereby enacts the following amendment to the Flandreau Santee Sioux Tribe Law and Order Code:

TITLE 2, CHAPTER 15, SECTION 1 (§ 2-15-1) (new language is underlined)
Qualification of jurors. All Flandreau Santee Sioux Tribe Members pursuant to Article 2 of the FSST Constitution, who are on the eligible voter's list, eighteen years of age or older, of sound mind and who are able to read, write, and understand the English language, are eligible to serve as jurors.

TITLE 4, CHAPTER 11, SECTION 6 (§ 4-11-6) (new section)
Qualification of jurors. All Flandreau Santee Sioux Tribe Members pursuant to Article 2 of the FSST Constitution, who are on the eligible voter's list, eighteen years of age or older, of sound mind and who are able to read, write, and understand the English language, are eligible to serve as jurors.

CERTIFICATION

The foregoing Resolution was duly enacted and adopted on this 12 day of July, 2011, by the Executive Committee at which a quorum was present of 6 for, 0 against, 1 not voting, and 0 absent.

Leah Fyten
Tribal Secretary

Tony Reider
Tribal President