

RULES OF CIVIL PROCEDURE

COURT OF THE SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

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RULES OF CIVIL PROCEDURE

COURT OF THE SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

Scope

1. Scope. These Rules, as they may be amended by the Court from time to time, shall govern the procedure in the Court of the Shakopee Mdewakanton Sioux Community in all suits of a civil nature. They shall be construed to secure the just, speedy, and inexpensive determination of every action. Effective May 3, 1988.

2. One Form of Action. There shall be one form of action, to be known as “civil action”.

Admission to Practice

3. Attorneys admitted to practice; Fees. Any person admitted to practice and in good standing before the bar of any State or the District of Columbia shall be deemed to be admitted to practice before the Court of the Shakopee Mdewakanton Sioux Community. Admission shall be by Motion, which shall be accompanied by a fee of one hundred dollars.

Commencement of Action; Service of Process, Pleadings, Motions, and Orders

4. Commencement of Action; Fees; Address of Court. A civil action shall be commenced by filing a complaint with the Clerk of Court. The clerk shall collect a filing fee of twenty-five dollars prior to accepting for filing any complaint which commences an action. No filing fee shall be charged for amendments to a previously filed complaint, or for the filing of other pleadings or documents contemplated by these Rules. Filing may be accomplished in person or by mailing to Ms. Jeanne A. Szulim; Clerk of Court of the Shakopee Mdewakanton Sioux Community; Suite 246, 1885 University Avenue West, St. Paul, Minnesota 55104 (Telephone (651) 644-4710, Fax (651) 644-5904)

5. Process.

(a) Summons: Issuance. Upon the filing of the complaint, the Clerk shall forthwith issue a summons and deliver the summons to the plaintiff or the plaintiff's attorney, who shall be responsible for prompt service of the summons and a copy of the complaint. Upon request of the plaintiff, separate or additional summons shall issue against any defendant.

(b) Summons: Form. The summons shall be signed by the clerk, contained the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint.

(c) Service. Service of all process shall be in accordance with the Rules of Civil Procedure of the United States District Court.

6. Service and Filing of Pleadings and Other Papers.

(a) 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, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties.

In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(b) Same: How Made. Whenever under these rules 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 himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his 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 of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

7. Time.

(a) Computation. In computing any period of time prescribed or allowed by these rules, by order or court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a legal holiday. Hen the period of time prescribed or allowed is less than 7 days, intermediate Sundays and holidays shall he excluded in the computation.

(b) Enlargement. When by these rules or by a notice given thereunder or by 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 (a) with or without motion or notice order the period enlarged if request therefore 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.

(c) For Motions - Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules 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 opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.

(d) Additional Time After Service by Mail. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.

Pleadings and Motions

8. Pleadings Allowed; Form of Motions.

(a) 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; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed.

(b) Motions and other papers.

(i) 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 therefore, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

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

8. General Rules of Pleading.

(a) 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 grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) 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.

(b) Defenses; Form of Denials; Affirmative Defenses; Effect of Failure to Deny. 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 or 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. In pleading to a preceding pleading, a party shall set forth any affirmative defense applicable to the claim. 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; but averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied.

(c) Pleadings to be Concise and Direct. Each averment of a pleading shall be simple, concise, and direct.

(d) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

10. Form of Pleadings.

(a) Caption; Names of Parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number assigned to the action by the clerk of court, and a designation as in Rule 8(a). 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.

(b) 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. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense.

11. Signing of Pleadings. Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, with his address and telephone number stated. A party who is not represented by an attorney shall sign his pleadings and state his name and address. The signature of an attorney or party 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. For a willful violation of this rule, an attorney or party may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

12. Defenses and Objections - When and How Presented - By Pleading or Motion - Motion for Judgment on Pleadings.

(a) When Presented. A defendant shall serve his answer within 20 days after the service of the summons and complaint upon him, unless the court direct otherwise. Answers to cross claims, replies to counterclaims, and answers to third-party claims also shall be served within 20 days after service of the cross-claim, counterclaim, or third-party claim.

(b) How Presented. Every defense to a claim for relief in any pleading shall be asserted in the responsive pleading thereto, 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) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, and (7) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion.

(c) 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 all parties shall be given reasonable opportunity to present all material made pertinent to such a motion.

13. Counterclaim and Cross - Claim.

(a) Compulsory Counterclaims. A pleading shall state as a counterclaim 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, except that such a claim need not be so stated if at the time the action was commenced the claim was the subject of another pending action.

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

(c) Cross-Claim Against Co-Party. A pleading may state as a cross-claim 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.

(d) Additional Parties May Be Brought In. When the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counterclaim or cross-claim, the court shall order them to be brought in as defendants as

provided in these rules, if jurisdiction of them can be obtained and their joinder will not deprive the court of jurisdiction of the action.

14. Third-Party Practice.

(a) When Defendant May Bring in Third Party. Before the service of his answer, a defendant may move ex parte or, after the service of his answer, on notice to the plaintiff, for leave as a third-party plaintiff to serve a summons and complaint 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. If the motion is granted and the summons and complaint are served, the person so served, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim as provided in Rule 12, and his counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses that the third-party plaintiff has to 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 Rule 12 and his counterclaims and cross-claims as provided in Rule 13. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant.

(b) 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 that, under this rule, would entitle a defendant to do so.

15. Amended and Supplemental Pleading.

(a) Amendments. 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 not been placed upon the trial calendar, he may so amend it any time within 20 days after it 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 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) 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 so 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.

(c) Relation Back of Amendments. 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.

(d) 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. If the court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefore.

16. Pre-Trial Procedure; Formulating Issues. In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider

- (1) The simplification of the issues;
- (2) The necessity or desirability of amendments to the pleadings;
- (3) The possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof;
- (4) The limitation of the number of witnesses;
- (5) Such other matters as may aid in the disposition of the action.

Parties

17. Parties Plaintiff and Defendant; Capacity.

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, 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.

(b) Capacity to Sue or Be Sued. The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of Minnesota. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized.

(c) Infants or Incompetent Persons. Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative he may sue by his next friend or 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.

18. Joinder of Claims and Remedies, Etc.; Interpleader; and Class Actions. The Rules of the Court pertaining to Joinder of Claims and Remedies, including the Rules relating to Necessary and Permissive Joinder, Misjoinder and Nonjoinder, and Interpleader and Class Actions shall be the same as those in Rules 18, 19, 20, 21, and 22 of the Federal Rules of Civil Procedure.

19. Intervention.

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) When an ordinance or resolution of the Shakopee Mdewakanton Sioux Community, or a statute which creates a cause of action that may be heard by the Court of the Shakopee Mdewakanton Sioux Community, confers an unconditional right to intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so

situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the Court or an officer thereof.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when an ordinance or resolution of the Shakopee Mdewakanton Sioux community, or a statute which creates a cause of action that may be heard by the Court of the Shakopee Mdewakanton Sioux Community, confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. 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.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon all parties affected thereby. The motion shall state the grounds therefore and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. When an ordinance or resolution of the Shakopee Mdewakanton Sioux Community is challenged on the grounds of its consistency with the Community's Constitution or Bylaws, the Court shall notify the Chairman of the Community of the existence and nature of the challenge.

20. Substitution of Parties. The provisions in Rule 25 of the Federal Rules of Civil Procedure relating to substitution of parties shall apply to parties before the Court of the Shakopee Mdewakanton Sioux Community, except that the provisions of Rule 25(d) shall be deemed to relate only to officers of the Community, and the references therein to the Constitution of the United States shall instead be considered to references to the Constitution and Bylaws of the Community.

Depositions and Discovery

21. Depositions Pending Action; Depositions Before Action or Pending Appeal; Stipulations Regarding the Taking of Depositions; Depositions Upon Oral Examination; Depositions of Witness Upon Written Interrogatories; and Effect of Errors and Irregularities in Depositions. The provisions of Rules 27, 28, 29, 30, 31 and 32 of the Federal Rules of Civil Procedure concerning depositions shall apply to the Court of the Shakopee Mdewakanton Sioux Community. The references in Rule 26(d) to other judicial proceedings shall be deemed to include other proceedings before the Court of the Shakopee Mdewakanton Sioux Community; and the

references in rule 27 to courts of the United States and to district courts of the United States shall be interpreted to be references to the Court of the Shakopee Mdewakanton Sioux Community.

22. Interrogatories to Parties. The provisions of Rule 33 of the Federal Rules of Civil Procedure concerning interrogatories shall apply to proceedings before the Court of the Shakopee Mdewakanton Sioux Community, except that no party may serve more than a total of 50 interrogatories upon any other party unless permitted to do so by the Court upon motion, notice and a showing of good cause. In computing the total number of interrogatories each subdivision of separate questions shall be counted as an interrogatory.

23. Discovery and Production of Documents and Things for Inspection, Copying, or Photographing; Physical and Mental Examination of Persons; Admission of Facts and Genuineness of Documents. The provisions of Rules 34, 35, and 36 of the Federal Rules of Civil Procedure concerning discovery and production of documents and things for inspection, copying, or photographing; physical and mental examination of persons; admission of facts and genuineness of documents shall apply to proceedings before the Court of the Shakopee Mdewakanton Sioux Community.

24. Refusal to Make Discovery; Consequences. The provisions of Rule 37 of the Federal Rules of Civil Procedure concerning refusals to make discovery and the consequences thereof shall apply to proceedings before the Court of the Shakopee Mdewakanton Sioux Community, except that the provisions of Rule 37(e) and 37(f) shall not apply.

Trials

25. Trial by Court; Assignment; Three Judge Panel; Location of Proceedings. Unless otherwise provided by ordinance, resolution, or statute of the Shakopee Mdewakanton Sioux Community, all actions before the Court of the Community shall be tried to the Court. The Chief Judge of the Court shall assign each action to a Judge of the Court. Thereafter, any party, for reasons relating to judicial economy or to the significance of the matter, may move that the action be certified to be heard by a panel of three Judges to be selected by the Chief Judge; or the assigned Judge for similar reasons may on his or her own motion so certify the matter. A motion by a party for certification shall be heard as other motions are heard, and shall be decided by the assigned Judge in his or her sole discretion. When a matter has been certified for hearing before a three-

Judge panel, the Chief Judge shall appoint the panel, which shall include the assigned Judge, and which shall hear the matter in such manner (including by appointing a single judge to supervise particular aspects of the proceedings) as it deems appropriate. Proceedings before the Court shall be held at such times and places as may be designated by the Court upon reasonable notice to the parties.

26. Dismissal of Actions. The provisions of Rule 41 of the Federal Rules of Civil Procedure, relating to dismissal of actions, shall apply to actions before the Court of the Shakopee Mdewakanton Sioux Community.

27. Evidence and Subpoenas. The provisions of the Minnesota Rules of Evidence shall apply to the trial of actions before the Court of the Shakopee Mdewakanton Sioux Community; and the provisions of Rule 45 of the Federal Rules of Civil Procedure shall apply to the use and issuance of subpoenas in actions before the Court.

28. Findings by the Court; Judgments; Summary Judgment; Entry of Judgment; New Trial and Amendment of Judgments; Relief from Judgment; harmless Error; and Effective Date of Judgment. The provisions of Rules 52, 54, 55, 56, 58, 59, 60, 61, and 62 of the Federal Rules of Civil Procedure shall apply to findings by the Court and the judgments of the Court of the Shakopee Mdewakanton Sioux Community.

Special Proceedings and Appeals

29. Injunctions. The provisions of Rule 65 of the Federal Rules of Civil Procedure relating to preliminary and permanent injunctions and temporary restraining orders shall apply to actions before the Court of the Shakopee Mdewakanton Sioux Community.

30. Execution of Judgments. The provisions of Rule 69(a) of the Federal Rules of Civil Procedure relating to the enforcement of a judgment for the payment of money shall apply to actions before the Court of the Shakopee Mdewakanton Sioux Community.

31. Appeals. In any action before the Court of the Shakopee Mdewakanton Sioux Community where a three-Judge panel has not heard the matter, a party may appeal any decision of the assigned Judge that would be appealable if the decision had been made by a judge of a United States District Court. Such appeal shall be to the full Court of the Shakopee Mdewakanton Sioux Community, sitting en banc, and shall be heard in such manner as may be prescribed by the Court

in rules of appellate procedure or, pending the publication of such rules, in orders that are specific to the individual action before the Court. Actions that are heard by a three-judge panel of the Court shall be deemed to be the subject of a consolidated trial and appeal, and decisions of the Court in such matters shall not be the subject of further appeal.

It is ordered by this Court, on this 3rd Day of May, 1988, that the foregoing Rules of Civil Procedure be, and hereby are, adopted to govern the proceedings of the Court of the Shakopee Mdewakanton Sioux Community.