

TITLE II

CIVIL PROCEDURES

Ordinance No. 319-15

Standing Rock Sioux Tribal Code of Justice



Resolution No. 516-15

Approved
December 1, 2015

BY

Standing Rock Sioux Tribal Council

ORDINANCE NO. 319-11

NOW THEREFORE BE IT RESOLVED, that **TITLE II – CIVIL PROCEDURES** of the Code of Justice of the Standing Rock Sioux Tribe, be and the same is hereby amended.

[DOCUMENT ATTACHED 16 PAGES]

RESOLUTION NO. 516-15

WHEREAS, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indians, having accepted the Indian Reorganization Act of June 18, 1934 [48 Stat. 984], with the exception of Section 16; and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council; and

WHEREAS, the Standing Rock Sioux Tribal Council, pursuant to the amended Constitution of the Standing Rock Sioux Tribe, Article IV, Section 1[c], 1[m], and Section V, are authorized to promote and protect the health, education and general welfare of the members of the Tribe, to engage in any business that will further the economic development of the Tribe and its members, and to propose and enact ordinance, provided they posted for not less than ten [10] days prior to final adoption by the Tribal Council; and

WHEREAS, on March 3, 2015, the Tribal Council moved to post, and thereafter posted, for 60 days, amendments to **TITLE II – CIVIL PROCEDURES** of the Standing Rock Sioux Tribal Code of Justice;

NOW THEREFORE BE IT RESOLVED, that pursuant to the power vested in the Standing Rock Sioux Tribal Council under Article IV and Article VII of the Constitution of the Standing Rock Sioux Tribe, that **TITLE II – CIVIL PROCEDURES** of the Code of Justice, be and the same is hereby further amended and replaced with the attached new **TITLE II – CIVIL PREDCURES**; and

BE IT FURTHER RESOLVED, that the Chairman and Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

CERTIFICATION

We, the undersigned, Chairman and Secretary of the Standing Rock Sioux Tribe, hereby certify that the Tribal Council is composed of 17 members, of whom 15 constituting a quorum, were present at a meeting duly and regularly called, noticed, convened and held on the 1st day of **DECEMBER, 2015**, and that the foregoing resolution was duly adopted by the affirmative vote of 14 members, with 0 opposing, and with 1 not voting. **THE CHAIRMAN'S VOTE IS NOT REQUIRED EXCEPT IN CASE OF A TIE.**

DATED THIS 1st DAY OF DECEMBER, 2015.

ATTEST:



Adele M. White, Secretary
Standing Rock Sioux Tribe



Dave Archambault II, Chairman
Standing Rock Sioux Tribe

[OFFICIAL TRIBAL SEAL]

Meeting Date: 12/01/2015
Motion No. 51

TITLE II - CIVIL PROCEDURES

Table of Contents

Chapter 1 – Pre-Trial and Trial Procedures	Page No.
2-101. Complaint.....	II-1
2-102. Service of Process.....	II-1
2-103. Hearing.....	II-2
2-104. Issuance of Subpoenas	II-2
2-105. Service of Subpoenas	II-3
2-106. Failure to Obey Subpoena	II-3
2-107. Witness Fees and Expenses	II-3
2-108. Trial Procedure	II-3
2-109. Consolidated and Separate Trials	II-4
2-110. Intervention	II-4
2-111. Substitution of Parties	II-4
 Chapter 2 – Judgments	
2-201. Council Statement on Provisions Regarding Debts and Money Judgements.....	II-4
2-201.1. Judgments.....	II-5
2-202. Judgment by Default.....	II-6
2-203. Proof of Satisfaction.....	II-6
2-204. Execution.....	II-6
2-205. Judgment Constitutes a Lien.....	II-8
2-206. Life of Judgment.....	II-8
2-207. Renewal of Judgment.....	II-8
2-208. Stay of Judgment.....	II-8
2-209. Costs and Attorney Fees.....	II-8
2-210. Property Exempt from Judgments for Money.....	II-8
2-211. Garnishment of Wages for satisfaction of Judgment.....	II-9

Chapter 3 – Extraordinary Writs

2-301.	Temporary Restraining Orders Without Notice	II-12
2-302.	Preliminary Injunctions	II-12
2-303.	Security	II-12
2-304.	Habeas Corpus	II-12

Chapter 4 – Applicable Laws

2-401.	Applicable Laws	II-13
--------	-----------------------	-------

Chapter 5 – Statute of Limitations

2-501.	Limitation of Actions	II-13
--------	-----------------------------	-------

Chapter 6 – Contempt of Court

2-601.	Authority of Court	II-13
2-602.	“Contempt” Defined	II-14
2-603.	Procedure for Contempt	II-14
2-604.	Remedies for Contempt ,,.....	II-15
2-605.	Order to Show Cause/Writ of Attachment	II-16

Chapter 7. Miscellaneous Provisions

2-701.	Scope	II-16
--------	-------------	-------

TITLE II CIVIL PROCEDURE

Chapter 1. Pre-Trial and Trial Procedures

2-101. Complaint.

A complaint is a concise written statement of the essential facts constituting the claim. All civil proceedings shall be commenced by filing a complaint with the clerk. The costs of filing shall be determined by the Court, utilizing a fee schedule, as approved by the Tribal Council. Tribal Civil Form No. 1, or its equivalent, may be used. The complaint shall be verified before a judge, clerk or assistant clerk, or any notary public.

2-102. Service of Process.

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

- (f) The return postal receipt, filed in the case record, shall constitute proof of service by mail. The affidavit of service by the person making service, filed in the case record, shall constitute proof of service.

2-103. Hearing.

At the time the verified complaint is filed, the clerk shall schedule a hearing on the claim not less than thirty (30) days after the complaint is filed. The clerk shall furnish the plaintiff with a copy of the notice showing the time and place for the hearing and shall affix such notice to the copy of the complaint to be served on each defendant. At the hearing, the presiding Judge shall ascertain whether:

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

2-104. Issuance of Subpoenas.

- (a) Upon request of any party or upon the Court's own initiative, the Court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence relevant to the determination of the case and not an undue burden on the person possessing the evidence. Service of subpoenas shall be at least three (3) days prior to the scheduled court date or hearing. An employee of the Court may act on behalf of the Court and issue subpoenas which have been signed by a judge and which are to be served within the confines of the Reservation. Each subpoena shall be accompanied by a

certified check or money order, prepaying the witness fees and expenses required by Section 2-107 of this Title, and no subpoena shall be valid in the absence of such a check or money order.

- (b) A subpoena shall bear the signature of the Chief Judge or an Associate Judge of the court and it shall state the name of the Court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

2-105. Service of Subpoenas.

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

2-106. Failure to Obey Subpoena.

In the absence of a justification satisfactory to the Court, a person who fails to obey a subpoena issued and served in accordance with the provisions of the Standing Rock Sioux Tribal Code of Justice shall be cited and held in contempt of court.

2-107. Witness Fees and Expenses.

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

2-108. Trial Procedure.

- (a) The time and place of court sessions, the rules of evidence to be followed by the Court and all other details of judicial procedure shall be set out in rules of court.
- (b) All testimony of witnesses shall be given orally under oath in open court and subject to the right of cross examination. Documentary and tangible evidence shall also be received in open court.
- (c) Civil cases shall be tried before a Judge and not a jury, except that either party may request a jury trial if the amount in controversy in the claim or any

counterclaim exceeds \$5,000. If a jury trial is requested, the Court shall follow the provisions of Section 3-507 of this Title. The compensation and expenses of the jurors shall be taxed as court costs, and assessed against the parties as provided in the judgment in the case.

- (d) The case of the plaintiff shall be presented first, followed by the case of the defendant. If rebuttal is required, the plaintiff shall proceed first, followed by the defendant.
- (e) At the conclusion of the evidence, the plaintiff and defendant each in turn may summarize the proof and make final argument.

2-109. Consolidated and Separate Trials.

- (a) Consolidated. The Court may, upon motion of any party or on its own motion, order some or all of the issues of separate actions tried together when there is a common issue of fact or law relating to the actions or if such will tend to avoid unnecessary cost or delay.
- (b) Separate Trials. The Court may, to avoid prejudice or in furtherance of convenience, order a separate trial of a claim or issue.

2-110. Intervention.

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

2-111. Substitution of Parties.

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

Chapter 2. Judgments

2-201. Council Statement on Provisions Regarding Debts and Money Judgments.

The Standing Rock Sioux Tribal Council finds that because of the expanded economic development on the Reservation, the number of services and products to members of the Tribes has increased greatly. As a result, the indebtedness of the Standing Rock members has also increased. The increase has resulted in a large number of accounts receivable owed to businesses by members, contractors, and employees. The effect of this large amount of accounts receivable is to potentially restrict further economic development and, as a result, restrict the availability of

services and products to other Tribal members, employees, and contractors. The Council finds that it is its duty to find ways to expedite the repayment of debts so that these businesses can best provide services and products for more members, employees, and contractors. Therefore, the Council finds that it must foster expeditious payment of debts to judgment creditors – regardless of whether the creditor is a business, the Tribe, a Tribal entity, an individual acting outside the course of commerce, or otherwise - through specific provisions ensuring that repayment is effective and fair.

2-201.1. Judgments.

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

- (b) Any money judgment entered – or costs taxed to a non-prevailing party pursuant to Section 2-209 - must include a payment plan, with a first payment to be due no later than 30 days of the date of judgment. The length, terms and payment amounts under such payment plan shall be within the discretion of the Court, provided that:
 - 1. For a money judgment in an amount less than one thousand dollars (\$1,000.00), the payment plan shall be structured in a way that the entire sum be paid in full within six (6) months of the date of judgment; and

 - 2. For a money judgment in an amount equal to or exceeding one thousand dollars (\$1,000.00), the judgment debtor’s payment plan must require payments calculated between whichever of the following would result in the greater monthly payment: (1) an amount no less than ten (10) percent of his or her annual disposable wages but no more than 25 percent of his or her annual disposable wages, which amount is then divided by 12 to be paid in monthly installments; or (2) 200 dollars per month.

 - 3. For the purpose of subsection (b)(2) of this Section, disposable wages means that part of the wages of an individual left after the deduction from those earnings of, if applicable, federal tax withholdings, social security withholdings, and any other amounts required by applicable law to be withheld by the employer.

- (c) If an order of garnishment is entered pertaining to a money judgment, the maximum amount of wages subject to garnishment shall supersede any amount set forth in subsection (b) of this Section if such maximum garnishment amount is greater than the amount in subsection (b) of this Section.

2-202. Judgment by Default.

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

2-203. Proof of Satisfaction.

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

2-204. Execution.

- (a) If an individual who is subject to a payment plan pursuant to any final judgment for money rendered by the Court, or a payment plan solely for the reimbursement of costs under Section 2-209 of this Title, is in default of the payment due and owed under the plan, , the judgment creditor may apply to the Court for an order directing the judgment debtor to appear before the Court for the purpose of itemizing his property, and the issuance of an execution judgment. If the Court is the creditor pursuant to a payment plan for costs under Section 2-209, it may issue such order sua sponte.
- (b) If an individual is subject to a Judgment of the Court requiring the transfer or return of property to another, and does not return or transfer said property, the individual who is entitled to possession of the property under the judgment of the Court may apply to the Court for an execution judgment.
- (c) After giving the judgment debtor an opportunity for hearing, the Court shall determine what property is available for execution- or, if the judgment debtor does not participate in the hearing and/or the Court is unable to determine what property is available for execution and/or application is made pursuant to subsection (b) of this Section - and shall order tribal law enforcement officers - or other law enforcement department if such department has been so authorized and approved by Tribal Council for such purposes - to seize such property as may be necessary to satisfy the judgment. If the Court has made a determination of property available for execution, its order shall specify what property shall be seized; however, if execution is to satisfy a judgment for money, it may also provide for the seizure of any additional non-specified, non-exempt assets if law enforcement is unable to locate or seize the specified property, or if law enforcement determines the specified property clearly holds no or nominal value in its condition. If the Court had not made a determination of property available for execution, it shall provide for the seizure of non-specified, non-exempt assets.

(d) The execution issued by the Tribal Court shall be issued in the name of the Tribe, attested in the name of the judge of the Court that entered the judgment, sealed with the seal of the Court, subscribed by the clerk of Court, and directed and delivered to law enforcement. The execution must describe the judgment, stating the date and time the judgment was filed with the clerk, any courts and counties to which the judgment has been transcribed, the names of the parties, and the last-known address of the judgment debtor. An execution based upon monetary damages must state the amount of money due to the judgment creditor, the date and time the judgment was docketed by the clerk, the rate of interest applicable to the judgment, the amount of the costs accrued on the judgment as of the date of issuance of the execution, and if the execution is being issued to a sheriff of a county, the date and time the judgment was docketed in that county. If the execution is for the delivery of the possession of property, the execution must also particularly describe the property to be delivered, identify the party entitled to possession of the property, and if the same judgment orders the judgment debtor to pay any costs, damages, or rents or profits to the party entitled to possession of the property, list the amounts due as of the date of issuance of the execution. Upon receipt of an execution, the law enforcement officer which was in charge of execution shall:

1. Satisfy the judgment with interest and accruing costs, which include reasonable law enforcement costs, out of the personal property of the judgment debtor, and if sufficient personal property cannot be found, out of the real property belonging to the debtor on the date when the judgment was docketed or at any time after that date. If property of the debtor is in the hands of a personal representative, heir, devisee, legatee, tenant of real property, or trustee, law enforcement may satisfy the judgment out of that property; or
2. If the execution is for the delivery of the possession of property, deliver the property to the party entitled to the property and satisfy any costs, damages, or rents or profits recovered by the same judgment out of the personal property of the judgment debtor and if sufficient personal property cannot be found, out of the real property of the judgment debtor on the date when the judgment was docketed or at any time after that date. If the property cannot be delivered, law enforcement may satisfy the judgment in the amount of the value of the property out of the real and personal property of the judgment debtor as if an execution had been issued.

(e) In addition to the remedies and processes available in subsection (b) of this Section, the judgment may be paid out of any funds on deposit to the credit of the judgment debtor at the Agency not exempt under Section 2-210 of this Title when such payment is authorized by the Secretary of the Interior, or his authorized representative, on such terms and conditions as the Secretary may prescribe.

2-205. Judgment Constitutes a Lien.

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

2-206. Life of Judgment.

No judgment of the Court for money shall be enforceable after 20 years from the date of entry, unless application to review the judgment shall have been filed before the date of expiration pursuant to Section 2-207 of this Title.

2-207. Renewal of Judgment.

Upon application of the judgment creditor prior to the expiration of 20 years after the date of the entry of a judgment for money, the Court shall order the judgment renewed and extended for an additional 20 years.

2-208. Stay of Judgment.

Except as provided herein, no execution or enforcement shall issue in any judgment in a civil case until the expiration of ten (10) days after its entry. When a petition for review has been filed with the Supreme Court following the judgment, the Court may stay its judgment, or may stay or grant an injunction during the pendency of the petition and any ensuing appeal on such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party, as more particularly provided in Section 1-208 of this Title.

2-209. Costs and Attorney's Fees.

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

2-210. Property Exempt from Judgments for Money.

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

- (a) Provisions and fuel necessary to supply the debtor and his immediate family for one year, or their monetary equivalent (including funds in an IIM account up to this amount);
- (b) All wearing apparel, clothing and personal effects;
- (c) All household furnishings;
- (d) One dwelling place whether it be house, cabin, trailer or other structure
- (e) One truck or other motor vehicle valued at not more than \$8,000.
- (f) To a farmer or rancher – livestock, farm equipment, machinery and seed, grain or vegetables not exceeding in value \$20,000;
- (g) To a mechanic or artisan – tools or implements necessary to carry on his trade;
- (h) All moneys, benefits, privileges or immunities in any manner growing out of any life insurance on the life of the debtor;
- (i) All retirement allowances, benefits and pensions;
- (j) All family pictures;
- (k) A pew or other sitting in any house of worship;
- (l) A lot or lots in any burial ground;
- (m) One Bible, all schoolbooks, and all other books not exceeding in value \$250;
- (n) One rifle or hand gun; and
- (o) Real property in trust by the United States.

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

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

- (a) For the purposes of the Section:
 - (1) Wages means (a) compensation paid or payable for personal services whether denominated as wages, salary, commission, bonus or otherwise;

- (b) any per capita payments made by the Tribe or one of its entities, where such payment is made under the discretion of the Tribe or one of its entities; and (c) lease income if allowed by the Bureau of Indian Affairs.
- (2) Disposable Wages means that part of the wages of an individual left after the deduction from those earnings of, if applicable, federal tax withholdings, social security withholdings, and any other amounts required by applicable law to be withheld by the employer.
 - (3) Tribe means any agency, subdivision, or instrumentality of the Standing Rock Sioux Tribe.
 - (4) Judgment Creditor means any person or entity which has obtained a final money judgment by a court of competent jurisdiction.
 - (5) Judgment Debtor means any person against whom a final money judgment has been entered by a court of competent jurisdiction.
- (b) A judgment creditor may, upon a judgment debtor defaulting on a payment plan entered under this Title, file and serve an action in Court for garnishment of the debtor's wages, including a complaint and a Notice of Garnishment Action. A judgment creditor shall not be required to pay any filing fee to bring an action for garnishment where the judgment debtor has defaulted on a payment plan entered by the Court under this Title. The debtor and his or her employer – or, if the wages to be garnished are not to be paid by an employer, the entity paying the wages - shall be named as defendants, and must both be served. The Court shall set any such matter for hearing, and if no named defendant appears at the hearing or otherwise files an objection, the Court may issue a default order for garnishment. After a hearing scheduled on garnishment, the Court may dismiss the complaint or order garnishment of the unpaid past or future wages of the judgment debtor for satisfaction of the judgment.
- (c) The maximum amount of wages in any one workweek subject to garnishment is the lesser of:
- (1) Twenty-five percent (25%) of the judgment debtor's disposable wages for that week or the amount of the wages that exceed forty (40) times the federal minimum hourly wage prescribed by the Fair Labor Standards Act of 1938.
- (d) A judgment creditor may, prior to serving a complaint and Notice as provided in this Section, serve a judgment debtor with interrogatories to discover information regarding the wages of the debtor.

- (e) The garnishment order shall lapse when the judgment is satisfied or when the judgment debtor resigns or is dismissed from his/her employment; provided that if the judgment debtor is reemployed or rehired within 90 days after such resignation or dismissal, the garnishment order shall automatically continue in effect.
- (f) No employer shall discharge an employee for the reason that a judgment creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment.
- (g) Notwithstanding any other provision of law, wages paid by the Tribe to any individual, shall be subject, in like manner and to the same extent as if the Tribe were a private person, to legal process brought for the enforcement against such individual in Tribal Court for his/her legal obligation, including obligations to provide child support, or make alimony payments, or make rental or other payments to the Standing Rock Sioux Housing Authority. Service of legal process on the Tribe, brought for the enforcement of an individual's obligation to provide such payments, shall be accomplished by certified or registered mail, return receipt requested, or by personal service upon the Tribal Finance Officer.
- (h) No Tribal employee shall be subject to any disciplinary action or civil or criminal liability or penalty whatsoever for, or on account of, any order of the Tribal Court pursuant to this Section.

Chapter 3. Extraordinary Writs

2-301. Temporary Restraining Orders Without Notice.

- (a) No temporary restraining order or other injunction without notice shall be granted where the Tribe is a defendant or a tribal official is a defendant in his official capacity. Otherwise, except as provided in Subsection (c), no temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by oral testimony, affidavit or by the verified complaint that immediate and irreparable injury will result to the applicant before notice can be served and a hearing had thereon.
- (b) Except as provided in Subsection (c), in cases where a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character. When the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On two (2) working days notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the Court may prescribe, the adverse party may

appear and move its dissolution or modification and in that event the Court shall proceed to hear and determine such motion as expeditiously as possible.

- (c) A temporary restraining order may be granted without prior notice to any party where the Chief Judge determines that a serious breach of the peace will otherwise occur. A “serious breach of the peace” shall include grounds for the grant of an ex parte temporary protection order under Title IV, Chapter 17 of the Standing Rock Sioux Tribal Code of Justice, provided that all hearing, duration and other requirements of such orders as enumerated in Chapter 17 shall be followed.
- (d) Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance and shall expire by its terms within such time after entry, not to exceed ten (10) working days - or a longer time period if issued pursuant to Title IV, Chapter 17 of the Standing Rock Sioux Tribal Code of Justice - as provided in the order.

2-302. Preliminary Injunctions.

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

2-303. Security.

Except as otherwise provided by law, no temporary restraining order or preliminary injunction shall be issued except upon the giving of security by the applicant, in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States, the Tribe, or of an officer, or agency, of either, or for any ex parte temporary protection order issued under Title IV, Chapter 17 of the Standing Rock Sioux Tribal Code of Justice.

2-304. Habeas Corpus.

As more fully set forth in Title III of the Standing Rock Sioux Tribal Code of Justice, relief by habeas corpus proceedings shall be granted whenever it appears to the Court that any person is unjustly imprisoned or otherwise unlawfully deprived of his liberty. Upon the filing of the complaint the Court shall issue a writ directed to the defendant commanding him to bring the

person alleged to be restrained before the Court at a time and place therein specified, at which time the Court shall proceed to hear the matter and render judgment accordingly.

Chapter 4. Applicable Laws

2-401. Applicable Laws.

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

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

Chapter 5. Statute of Limitations.

2-501. Limitation of Actions.

The Standing Rock Sioux Tribal Court shall have no jurisdiction over any civil action brought more than six (6) years after the cause of action arose.

Chapter 6. Contempt of Court

2-601. Authority of Court.

In lieu of or in addition to any other remedy under this Title, or as otherwise provided under this chapter, the Tribal Court may impose a remedial or punitive sanction for contempt of Court.

2-602. “Contempt” Defined.

“Contempt of court” means:

- (a) Intentional misconduct in the presence of the court which interferes with the court proceeding or with the administration of justice, or which impairs the respect due the court;
- (b) Intentional nonpayment of a sum of money ordered by the court to be paid in a case when execution cannot be awarded for the collection of the sum either under the law or if no law enforcement department will aid in the execution of judgments which prohibits the a party from seeking execution under this Title;
- (c) Intentional disobedience, resistance, or obstruction of the authority, process, or order of a court or other officer, including a referee or magistrate;
- (d) Intentional refusal of a witness to appear for examination, to be sworn or to affirm, or to testify after being ordered to do so by the court;
- (e) Intentional refusal to produce a record, document, or other object after being ordered to do so by the court;
- (f) Intentional behavior in derogation of any provision of a summons issued pursuant to the Standing Rock Sioux Tribal Rules of Court or applicable Tribal law; or
- (g) Any other act or omission specified in the court rules or by law as a ground for contempt of court.

2-603. Procedure for Contempt.

- (a) The court on its own motion or motion of a person aggrieved by contempt of court may seek imposition of a remedial sanction for the contempt by filing a motion for that purpose in the proceeding to which the contempt is related. Any party bringing a motion for contempt against another party for failure to comply with a Judgment of the Court shall not be required to pay any filing fee to bring such action. The court, after notice and hearing, may impose a remedial sanction authorized by this chapter. In a proceeding to impose a remedial sanction for failure to pay child or spousal support, an order to pay support is prima facie evidence the obligor has the ability to pay, and the burden of persuasion is upon the obligor to prove inability to pay the support ordered.
- (b) The prosecutor may seek the imposition of a punitive sanction by issuing a complaint charging a person with contempt of court and reciting the sanction sought to be imposed. The prosecutor may initiate issuance of the complaint or may issue the complaint on the request of a party to an action or proceeding in a court or of the judge presiding in an

action or proceeding. A judge is disqualified from presiding at the trial of an alleged contemnor if a reasonable likelihood or appearance of bias or prejudice will otherwise exist, if the contempt alleged involves disrespect or criticism of the judge, or if the judge has personal knowledge of disputed evidentiary facts. The person charged is entitled to a trial by jury.

- (c) The court may hold a hearing on a motion for a remedial sanction jointly with a trial on a complaint seeking a punitive sanction.
- (d) The judge presiding in an action or proceeding may impose a punitive sanction upon a person who commits contempt of court in the actual presence of the court. The judge shall impose the punitive sanction immediately after the contempt of court and only for the purpose of preserving order in the court and protecting the authority and dignity of the court.
- (e) An appeal may be taken to the Standing Rock Supreme Court from any order or judgment finding a person guilty of contempt. An order or judgment finding a person guilty of contempt is a final order or judgment for purposes of appeal.

2-604. Remedies for Contempt.

- (a) A court may impose one or more of the following remedial sanctions:
 - 1. Payment of a sum of money sufficient to compensate a party or complainant, other than the court, for a loss or injury suffered as a result of the contempt, including an amount to reimburse the party for costs and expenses incurred as a result of the contempt;
 - 2. Imprisonment if the contempt of court is of a type included in subsection b, c, d, e, or f of section 2-602 of this Title. The imprisonment may extend for as long as the contemnor continues the contempt or six months, whichever is shorter;
 - 3. A forfeiture not to exceed two thousand dollars for each day the contempt continues;
 - 4. An order designed to ensure compliance with a previous order of the court;
 - 5. An order for the offender to perform community service; or
 - 6. A sanction other than the sanctions specified in subdivisions (1) through (5) if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt, including but not limited to an order that the individual may not participate in or receive any tribal benefit paid for by tribally-generated funding, including casino revenue, tax dollars, lease revenues and district benefits.

- (b) A court, after a finding of contempt of court in a non-summary procedure under Section 2-603(b) of this Title, may impose for each separate contempt of court a fine not exceeding one thousand dollars, imprisonment for not more than six (6) months, or both. A court, after a finding of contempt of court in the summary procedure under Section 2-603(d), may impose for each separate contempt of court a fine of not more than five hundred dollars, imprisonment in the county jail for not more than thirty days, or both.
- (c) A punitive sanction may be imposed for past conduct that was a contempt of court even though similar present conduct is a continuing contempt of court.

2-605 Order to Show Cause/Writ of Attachment.

- (a) In addition to the procedure set out in Section 2-603, when an act punishable as contempt is not committed in the immediate view and presence of the court, the court, upon being satisfied of the commission of the offense, may:
 - 1. Order the accused to show cause at a specified time and place why the accused should not be punished for the alleged offense; or
 - 2. Issue a warrant of attachment directed to the law enforcement commanding law enforcement to arrest and bring the accused before the court at a specified time and place to answer for the alleged offense.
- (b) The order to show cause may be made in the action or proceeding in or respecting which the offense was committed, either before or after the final judgment or order therein, and is equivalent to a notice of motion. The subsequent proceedings must be taken in the action or proceeding as upon a motion made therein.
- (c) When a person accused of contempt is arrested under a warrant of attachment, a copy of the warrant and of the affidavit or report of a referee upon which it is issued must be served upon the accused.
- (d) When a person accused of contempt is produced by virtue of a warrant of attachment, or appears upon the return of such a warrant or of an order to show cause, the court shall proceed pursuant to subsection 1 of Section 2-603(a).

Chapter 7. Miscellaneous Provisions

2-701. Scope.

The provisions of this Title apply to every civil case over which the Standing Rock Sioux has jurisdiction pursuant to section 1-107 of the Standing Rock Sioux Tribal Code of Justice.