Prairie Island Indian Community
Rules of Civil Procedure[1]

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[1] Note of Adoption and Amendment: The Community Council adopted Title 2 of the Judicial Code (later renamed the Prairie Island Indian Community Rules of Civil Procedure) on December 12, 1992, by Resolution Number 92-157. The Community Council amended this ordinance on September 14, 2022, by Resolution Number 22-09-14-154 to add Notes of Amendment summarizing the legislative history of this Title. The notes of amendment are for convenience only and should not be relied on as mandatory authority. The Community Council reformatted and restated the ordinance on January 25, 2023, by Resolution Number 23-1-25-11 to increase the usability of this ordinance.

Rule 1. Short Title and Scope of Rules.

a. This Ordinance shall be known and may be cited as the Prairie Island Indian Community Rules of Civil Procedure.

b. Except when different rules prescribed in this ordinance specifically apply, these rules govern the procedure in the trial and appellate courts of the Prairie Island Mdewakanton Dakota Community (the "Tribal Court"), in all actions, suits and proceedings of a civil nature, in all special proceedings established by law, and in criminal matters to the extent no different rule is specified.

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

d. There shall be one form of action, except in criminal cases, known as a "civil action."

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

Rule 2. Commencement of Action and Preliminary Matters.[2]

a. A civil action is commenced by filing a complaint or petition and serving a copy of such on the defendant or respondent as provided herein. The Court shall have jurisdiction from such time as the complaint or petition and summons are filed. The complaint or petition must be properly served upon the defendant or respondent and a return of service must be filed with the Clerk. A party commencing an action may opt to receive electronic service by completing a Method of Service Form, available on the Court's website, and filing with their complaint. If a party does not consent to electronic service, they will be served by and must accept service by U.S. mail.

b. Parties may commence an action by any method described in this rule. If a responding party does not agree to accept electronic service under Rule 2(d)(3), then the commencing party must commence the action by a method described in Rule 2(d)(1) or (2).

c. The party initiating an action must serve on the responding party the summons, complaint or petition, and the Method of Service Form (the "Commencing Documents").

   To demonstrate adequacy of service of process, the party initiating an action must file with the clerk a Method of Service Form or a proof of service that includes the name of the person serving and the date, time, and place of service. Service upon a person

[2] Note of Amendment: The Community Council added this rule on September 14, 2022, by Resolution Number 22-09-14-154 to clarify procedures for service of process. The Community Council amended Rule 2 on January 25, 2023, by Resolution Number 23-1-25-11 to incorporate procedures for optional electronic service and to reorganize the service rule for better readability.

otherwise subject to the jurisdiction of the Prairie Island Mdewakanton Dakota Community Tribal Court may be made anywhere in the United States.

d. Service of process may be accomplished by any of the following methods:

   1. Personal service: delivery of the Commencing Documents by any law enforcement officer so authorized by the Court or any other person, not a party, 18 years of age or older to the party or upon some person of suitable age and discretion over 16 years old at the party's home or principal place of business, or on an officer, managing agent oremployee, or partner of a non-individual party. If a person personally refuses to accept service, it shall be deemed performed if the person is informed of the purpose of the service and offered copies of the papers served.

   2. Service by publication: upon order of the Court for good cause shown, publishing the contents of the summons in a local newspaper of general circulation at least once per week for three weeks and by leaving an extra copy of the Commencing Documents with the Court for the party.

   3. Electronic service with consent: electronic delivery of the Commencing Documents with a copy of a Method of Service Form by any person, not a party, 18 years of age or older to the party or on an officer, managing agent or employee, or partner of a non-individual party if, but only if, the defendant or respondent returns an executed Method of Service Form to the commencing party.

e. The return of service shall be endorsed with the name of the person serving and the date, time, and place of service and shall be filed with the clerk.

f. 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.

g. Except as otherwise provided in this ordinance, every order required by its terms to be served, every pleading after the original complaint or petition, 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 must be served upon each of the parties or their attorneys of record.

   1. Filing with the Court by facsimile may be allowed with permission of the Court.[3] The Court consents to and encourages parties to use electronic filing by emailing documents to the Clerk of Court at the email address listed on the Court's website.

   2. Service by facsimile upon other parties is not allowed.

[3] Notes of Amendment: The Court amended this Rule by a November 9, 1994, General Order of the Court.

3. Electronic service upon other parties is only allowed if the receiving party has agreed that they will accept electronic service on a Method of Service Form, and the document is not one listed in Rule 2(g)(4).

4. Parties may not in any case electronically serve any of the following documents: a motion to terminate parental rights, a motion to make changes to child custody, a divorce petition, a motion for a temporary restraining order, a petition for conservatorship, a petition to impose a per capita restriction, or a petition to impose an involuntary commitment.

h. All papers filed or served by mail will be deemed filed or served on the date the paper was deposited with the U.S. Mail.[4] All papers filed or served by electronic mail will be deemed filed or served on the date the document was sent by electronic mail, provided that the sender does not receive an error message or similar "bounce back." If a party chooses to receive electronic and traditional mail service, the document will be deemed served on the date the party sent it by electronic mail, and the traditional mail copy will be deemed a courtesy copy. The Court encourages all parties who file and serve documents electronically to use read receipts to confirm electronic delivery of documents. The Court will presume that any document that is electronically sent is delivered if: 1) it was sent to the Clerk at the email address listed on the Court's website or to a party at the electronic address provided by that party on their most recent Method of Service Form in the case; and 2) there is no evidence of a "bounce back" or other error message. Any party who agrees to email service may request that the sending party also transmit courtesy paper copies of the document(s) at no cost to the receiving party.

i. An action must be commenced by filing a complaint or petition with the Clerk of Court. The Clerk must collect the filing fee listed on the Approved Court Fees schedule posted on the Court's website for filing any complaint or petition which commences an action, except as provided in Rule 2(j). No filing fee shall be charged for amendments to a previously filed complaint, or for the filing of other pleadings or documents contemplated by this ordinance. Filing may be accomplished by mailing to the Clerk of Court at the address listed on the Community's website.[5]

j. No filing fee shall be required to file a complaint, motion, or petition under the Prairie Island Indian Child Welfare Ordinance.[6]

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[4] Note of Amendment: The Court added Rule 2(d) by a November 9, 1994, General Order of the Court.

[5] Note of Amendment: The Court added Rule 2(f) (formerly 2(e)) by a November 9, 1994, General Order of the Court. The Community Council amended it again on January 10, 2001, by Resolution Number 01-1-10-1 to eliminate the filing fee in child welfare cases. The Community Council amended it again on September 14, 2022, by Resolution Number 22-09-14-154 to direct litigants to the Court's website for filing information.

[6] Note of Amendment: The Community Council amended this subsection January 25, 2023, by Resolution Number 23-1-25-11 to update the reference to the Child Welfare Ordinance.

Rule 3. Time.

a. In computing any period of time set forth herein, the day from which the period is to commence shall not be counted and the last day of the period shall be counted; provided, however, that any time period under seven (7) days will not include intermediate Saturdays, Sundays, or legal holidays in the period and any period which would otherwise end on a Saturday, Sunday, or legal holiday will extend to end of the next day which is not a Saturday, Sunday or legal holiday.

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

c. Whenever service is accomplished by mail, three days shall be added to the prescribed period of time, but such addition shall not cause Saturdays, Sundays, or legal holidays tobe counted in the time period if they would not otherwise have been counted.[7]

Rule 4. Pleadings, Motions, and Orders.

a. There shall be a complaint and an answer or petition and response. A responsive pleading shall be allowed whenever, by cross claim, counterclaim or otherwise, a party is first claimed against unless the Court shall otherwise order. The Court may grant additional leave to plead in the interest of narrowing and defining issues or as justice mayrequire.

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

c. An order includes every direction of the Court whether included in a judgment or not, and may be made with or without notice to adverse parties and may be vacated or modified with or without notice.

d. A motion or hearing on an order shall be automatically continued if the judge before whom it was to be heard is unable to hear it on the day specified and no other judge isavailable to hear it.

Rule 5. Motions Practice.[8]

a. Scope and Application. This rule governs all civil motions. Motions are either dispositive or non-dispositive, and are defined as follows:

1. Dispositive motions are motions which seek to dispose of all or part of the claims or parties, except motions for default judgment. They include motions to dismiss a party or claim, motions for summary judgment, and motions under Rule 17(b).

[7] Note of Amendment: The Court deleted what was formerly Rule 3(c) by a November 9, 1994, General Order of the Court. That change moved timing of motions to Rule 5. Motions Practice.

[8] Note of Amendment: The Court added Rule 5 by a November 9, 1994, General Order of the Court to replace what was formerly Rule 3(c) regarding timing of motions. All subsequent Rules were renumbered due to the addition of this new Rule 5.

2. Non-Dispositive motions are all other motions, including but not limited to discovery, third party practice, temporary relief, intervention or amendment of pleadings.

b. Obtaining Hearing Date; Notice to Parties. A hearing date and time shall be obtained from the Clerk of Court or an Assistant Clerk of Court. A party obtaining a date and time for a hearing on a motion or for any other calendar setting, shall promptly give notice advising all other parties who have appeared in the action so that cross motions may, insofar as possible, be heard on a single hearing date.

c. Dispositive Motions.[9]

1. Motion. No motion shall be heard until the moving party serves a copy of the following documents on opposing counsel and files a copy with the Clerk of Court at least 28 days prior to the hearing:

   A. Notice of motion and motion;

   B. Proposed order;

   C. Any affidavits and exhibits to be submitted in conjunction with the motion; and

   D. Memorandum of law.

2. Response. The party responding to the motion shall serve a copy of the following documents on opposing counsel and shall file the originals with the Clerk of Court at least 9 days prior to the hearing:

   A. Memorandum of law; and

   B. Supplementary affidavits and exhibits.

3. Reply. The moving party may submit a reply memorandum, limited to new legal or factual matters raised by an opposing party's response toa motion, by serving a copy on opposing counsel and filing a copy with theClerk of Court at least 3 days before the hearing.

4. Additional Requirement for Summary Judgment and Rule 18 Motions. For summary judgment motions and factually based motions under Rule 18, the memorandum of law shall include:

   A. A statement by the moving party of the issues involved which are the grounds for the motion for summary judgment;

   B. A statement identifying all documents (such as depositions or excerpts thereof, pleadings, exhibits, admissions, interrogatory answers, and affidavits) which comprise the record on which the motion is made. Opposing parties shall identify in their responding Memorandum of Lawany additional documents on which they rely.

[9] Note of Amendment: The Court amended Rule 5(c) on September 14, 2022, by Resolution Number 22-09-14-154 to allow litigants to file copies of documents instead of originals.

C. A recital by the moving party of the material facts as to which there is nogenuine dispute, with a specific citation to that part of the record supporting each fact, such as deposition page and line or page and paragraph of an exhibit. A party opposing the motion shall, in like manner, make a recital of any material facts claimed to be in dispute. Such recitals shall be is excluded from the page limitations of this rule; and

D. The party's argument and authorities.

d. Non-Dispositive Motions.[10]

1. Motion. No motion shall be heard until the moving party serves a copy of the followingdocuments on the other party or parties and files a copy with the Clerk of Court at least 14 days prior to the hearing:

A. Notice of motion and motion;

B. Proposed order;

C. Any affidavits and exhibits to be submitted in conjunction with themotion; and

D. Any memorandum of law the party intends to submit.

2. Response. The party responding to the motion shall serve a copy of the following documents on the moving party and other interested parties and shall file the original with the court administrator at least 7 days prior to the hearing:

A. Any memorandum of law the party intends to submit; and

B. Any relevant exhibits and affidavits.

3. Reply. The moving party may submit a reply memorandum, limitedto new legal or factual matters raised by an opposing party's response to a motion, by serving a copy on opposing counsel and filing a copy with the Clerk of Court at least 3 days before the hearing.

e. Motions on Which No Hearing is Scheduled. If a motion is filed and no hearing date thereon is scheduled, the non-moving party(ies) have fifteen (15) days to respond to the motion, and the moving party shall have seven (7) days to file any reply. These time limits shall apply to all motions on which no hearing is scheduled unless otherwise agreed by the parties or ordered by the Court. The page limits set forth in Rule 5(f) apply to this rule.

f. Page Limits. No memorandum of law submitted in connection with either a dispositive or non-dispositive motion may exceed 35 pages, except with permission of the court, but this limit does not include the recital of facts required by Rule 5(c)(4)(C). For motions involving discovery requests, the moving party's memorandum shall set forth

[10] Note of Amendment: The Court amended Rule 5(d) on September 14, 2022, by Resolution Number 22-09-14-154 to allow litigants to file copies of documents instead of originals.

only the particular discovery requests and the response or objection thereto which are the subject of the motion, and a concise recitation of why the response or objection is improper. If a reply memorandum of law is filed, the cumulative total of the original memorandum and the reply memorandum shall not exceed 35 pages, except with the permission of the court.

g. Failure to Comply. If the moving papers are not properly served and filed, the hearing may be canceled bythe court. If responsive papers are not properly served and filed in a non-dispositive motion, the court may deem the motion unopposed and may grant the relief requested without a hearing. For a dispositive motion, the court, in its discretion, may refuse to permit oral argument by the party not filing the required documents, may allow reasonable attorney's fees, or may take other appropriate action.

h. Relaxation of Time Limits. If irreparable harm will result absent immediate action by the court, or if the interests ofjustice require otherwise, the court may waive or modify the time limits established by this rule, but only if requested by motion of one of the parties, which must be properly served.

i. Witnesses. No testimony will be taken at motion hearings except under unusual circumstances. Anyparty seeking to present witnesses at a motion hearing shall obtain prior consent of the court and shall notify the adverse party in the motion papers of the names and addresses of the witnesses which that party intends to call at the motion.

j. Electronic Hearings.[11] When a motion is authorized by the court to be heard electronically, the Clerk of Court will serve notice of the hearing and will facilitate the hearing. All hearings are recorded.

k. Settlement Efforts. No motion will be heard unless the parties have conferred, either in person, or by telephone, or in writing to attempt to resolve their differences prior to the hearing. The moving party shall initiate the conference. The moving party shall certify to the court, before the time of the hearing, compliance with this rule or any reasons for inability to comply, including lack of availability or cooperation of opposing counsel.Whenever any pending motion is settled, the moving party shall promptly advise the court.

l. Time limits for Injunctions and Temporary Restraining Orders. This rule does not apply to motions or applications for injunctions or temporary restraining orders. Briefing and hearing schedules for motions or applications for injunctions or temporary restraining orders shall be set by the Court on a case-by-case basis.

Rule 6. General Rules of Pleading.

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

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

[11] Note of Amendment: The Court amended Rule 5(j) on September 14, 2022, by Resolution Number 22-09-14-154 to conform to the Court's updated electronic-meeting practices.

2. A short, plain statement of the claim showing that the pleader is entitled to relief; and

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

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

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

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

e. All pleadings shall be construed to do substantial justice.

Rule 7. Form of Pleadings.

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

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

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

d. Insofar as is possible, pleadings and other papers filed in any action shall be on 8 1/2" x 11" paper, double spaced, except for matters customarily single spaced, contain at least a 2-inch top margin and a 1-inch left and right side margin, and contain the Court

file number on the first page thereof. Substantial compliance with this rule will be sufficient for all parties not represented by a professional attorney.

Rule 8. Defenses and Objections.

a. A defendant or other party against whom a claim has been made for affirmative relief shall have twenty (20) days from the date of service upon her/him to answer or respond to the claim.

b. Motions to dismiss or to make the opposing parties' pleadings more definite may be made before answering a claim and an answer will not be due until 10 days after the disposition of the motion by the Court.

c. All civil actions must be commenced within six years of the accrual of the claim.[12]

Rule 9. Counterclaims and Crossclaims.

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

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

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

Rule 10. Amendment of Pleadings.

a. A party may amend pleadings once before the opposing party has replied or if no reply is required, not less than twenty (20) days before the case is scheduled for trial. The opposing party may respond, if appropriate, and the trial date may be delayed if necessary. Other amendments shall be allowed only upon motion and order of the Court.

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

Rule 11. Parties.

a. Every action shall be prosecuted in the name of the real party in interest, except a personal representative or other person in a fiduciary position can sue in her/his ownname without joining the party for whose benefit the action is maintained.

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

[12] Note of Amendment: The Community Council added Rule 8(c) on January 25, 2023, by Resolution Number 25-1-25-11 to add a statute of limitations to civil actions.

c. To the greatest extent possible all persons or parties interested in a particular action may be joined in the action, but failure to join a party over whom the Court has no jurisdictionwill not require dismissal of the action unless it would be impossible to reach a just resultwithout such party; otherwise, the failure to join a party may be taken into account to assure that justice is done.

Rule 12. Intervention.

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

Rule 13. Substitution of Parties.

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

Rule 14. Discovery.

a. A party may submit written interrogatories to any other party who shall answer them inwriting, under oath, within twenty-five (25) days of receipt of such.

b. A party may take the oral deposition of an adverse party or non-party witness under oath upon not less than ten (10) days' notice, specifying the time and place where such will occur.

c. A party may request another party to produce any documents or things in her/his custodyor possession for inspection or copying or request permission to enter and inspect property reasonably related to the case, and the opposing party shall within twenty-five (25) days reply as to whether such will be allowed and if not, why not.

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

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

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

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

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

Rule 15. Jury Trials.

a. Trials of all civil actions shall be to the Court without a jury unless a party to the action files a request for a jury trial and the fee listed on the Approved Court Fees schedule posted on the Court's website not less thantwenty-five (25) days prior to the scheduled date of trial. A judge may, upon good cause shown, waive payment of the required fee.[13]

b. Unless the requesting party specifies otherwise, all factual issues properly triable by a jury shall be decided by the jury at trial. A party requesting a jury trial may specify onlythose issues she/he wants tried to the jury, and any other party may specify, not less thanfive (5) days before the date scheduled for trial, any other issues she/he wishes to be so tried. Once any or all issues of a case have been requested for a jury trial, such request may not be withdrawn without the consent of all of the parties.

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

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

e. A judge may hear and decide an issue or issues without a jury if either party to an issue fails to appear at trial, regardless of any request made for a jury trial on such issues.

Rule 16. Assigning Cases for Trial.

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

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

Rule 17. Dismissal of Actions.[14]

a. Prior to the responsive pleading of a party against whom a claim has been made or motion to dismiss or for summary judgment of such claim, the party making the claim may file a notice of dismissal and her/his claim shall be deemed dismissed without prejudice. In all other circumstances a party may move the Court to dismiss her/his own claim and the Court shall do so either with or without prejudice as is just and

[13] Note of Amendment: The Court amended Rule 15(a) on September 14, 2022, by Resolution Number 22-09-14-154 to direct litigants to a centralized Court Fee schedule.

[14] Note of Amendment: The Court amended Rule 17 by a November 9, 1994, General Order of the Court. The amendment changed some of the bases for dismissal. The rule as amended is quite similar to Rule 12 of the Federal Rules of Civil Procedure. Rule 12 of the Federal Rules of Civil Procedure does not apply in the Prairie Island Mdewakanton Dakota Community Tribal Court, but was used as a guide for the formulation of Rule 17.

proper given the stage of the proceedings, provided, however, if a crossclaim or counterclaim has been filed against the moving party, the judge shall dismiss the claim only with the consent of the adverse party or only if it appears that the other party can prosecute her/his claim independently without undue additional hardship.

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

   1. Lack of jurisdiction over the subject matter; or
   2. Lack of jurisdiction over the person; or
   3. Insufficiency of process; or
   4. Insufficiency of service of process; or
   5. Failure to join a party pursuant to Rule 11(c); or
   6. Failure to state a claim upon which relief may be granted.

   Such dismissal shall be deemed an adjudication of the merits of the issue dismissed unless the Court shall, for good cause shown, order otherwise. The Court may postpone ruling on a motion to dismiss for failure to establish a right to any relief until the close of all the evidence.

   If, on a motion asserting a Rule 17(b)(6) defense 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, then the motion shall be treated as one for summary judgment and disposed of as provided in Rule 29, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 29.

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

Rule 18. Pretrial Meetings.

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

b. During such meetings the parties and the Judge may consider any matters that will aid in the simplification, clarification, or disposition of the case. The parties and the Judge may develop procedures to be followed at the trial. The Judge may encourage the parties to explore the possibility of settling their dispute and the Judge may participate in settlement discussions to the extent that her/his impartiality at any eventual trial will not be affected.

c. If it appears to the Judge that the case is highly complex or involves a sum of money greater than $1,000.00, the Judge may, at the request of a party or on their own motion, provide for the use of discovery techniques to aid in the fair and efficient administration of justice. Such discovery techniques may include interrogatories,

production of documents, depositions, or any other means of discovery noted in the Federal Rules of Civil Procedure. To the extent practicable, the Judge shall encourage the parties to use informal methods of discovery, but the Judge shall have the power to order use of formal discovery techniques under the supervision ofthe Court.

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

Rule 19. Consolidation; Separate Trials.

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

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

Rule 20. Evidence.

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

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

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

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

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

f. Official documents or an official law, record or copy thereof may be admitted into evidence upon the testimony of an official having custody or official knowledge thereof or without such testimony if the document or record or copy thereof is accompanied by a certificate identifying such thing and stating that it is a true and correct representation of what it purports to be.

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

Rule 21. Subpoenas.

a. Subpoenas for attendance of witnesses or production of documents or things shall be issued and served as provided elsewhere in the Prairie Island Mdewakanton Dakota Community Judicial Code.

b. A person who has been properly served with a subpoena and fails to appear or produce may be deemed in contempt of court and amenable to civil sanctions under the Courts Ordinance.

c. A person present in court, or before a judicial officer, may be required to testify in the same manner as if they were in attendance upon a subpoena.

Rule 22. Jurors.

a. Any enrolled member of the Prairie Island Mdewakanton Dakota Community, betweenthe ages of 18 and 75, who has not been convicted of a felony and who resides on the Prairie Island Mdewakanton Dakota Community Reservation, shall be eligible to be a juror. Judges and other officers or employees of the Court shall not be eligible to be jurors while thus employed. The Chief Judge may by rule adopt procedures whereby non-Indians may be summoned for jury duty in cases in which one or more non-Indian parties are involved.

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

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

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

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

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

g. Challenges for cause shall be made against a potential juror on the grounds that she/he is not entitled or qualified to be a juror, she/he is familiar with the case or has formed an opinion regarding the case, or if for any other reason it appears likely or reasonably possible that a juror will not be able to render a fair and impartial verdict. The judge may take evidence relative to a challenge for cause and shall in any event render a decision thereon.

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

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

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

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

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

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

   1. The Court's instructions;

   2. Papers or things received in evidence as exhibits;

   3. Notes taken by the jurors themselves, but not notes taken by non-jurors.

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

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

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

Rule 23. Special Verdicts and Interrogatories.

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

Rule 24. Instructions to the Jury; Arguments.

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

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

Rule 25. Motions for Directed Verdict and for Judgment Notwithstanding the Verdict.

a. A party who moves for a directed verdict at the close of the evidence offered by the opposing side may offer evidence as if no motion had been made in the event that the motion is denied. A motion for directed verdict shall state the grounds therefor and maybe granted by the Court without the assent of the jury.

b. A party who has made a motion for a directed verdict at the close of all the evidence, which motion has been denied or not granted, may, within ten (10) days after entry of judgment move to have the verdict and any judgment entered thereon set aside and entered according to her/his motion for directed verdict; or if there has been a verdict, theparty may so move within ten (10) days after the jury has been discharged. A motion for a new trial may be made in the alternative. The Court shall enter judgment or make any orders consistent with its decision on the motions.

Rule 26. Findings by the Court.

In cases tried without a jury, and except in cases where a party defaults, fails to appear or otherwise waives such, findings of fact and conclusions of law shall be made by the Court in support of all final judgments. Upon its own motion or the motion of any party within ten (10) days of the entry of judgment, findings may be amended or added to, and the judgment may be amended accordingly.

Rule 27. Judgment; Costs.

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

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

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

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

e. The Court may allow necessary costs and disbursements to the prevailing party or parties upon the filing of a verified memorandum of her/his costs and necessary disbursements within five (5) days of the entry of judgment and serving a copy of such on the opposing party. If such are not objected to within ten (10) days, they shall be deemed to be a part of and included in the judgment rendered. The appellate court may award costs in a like manner.[15]

f. The Court shall not award attorney's fees in a case unless such have been specifically provided for by a contract or agreement of the parties to the dispute, or unless it reasonably appears that the case has been prosecuted for purposes of harassment only, orthat there was no reasonable expectation of success on the part of the affirmatively claiming party or if the Court determines that such award is appropriate in equity.[16]

Rule 28. Default.

a. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, her/his default may be entered by the clerk and judgment by default granted. Once the default is entered no further notice to the defaulting party of any action taken or to be taken need be given.

b. Judgment by default may be entered by the clerk if a party's claim against the opposing party is for a sum of money which is or can by computation be made certain, and if the opposing party has been personally served on the Reservation. Otherwise, judgment bydefault can be entered only by the Court upon receipt of whatever evidence the Court deems necessary to establish the claim. No judgment by default shall be entered againstthe Prairie Island Mdewakanton Dakota Community.

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

Rule 29. Summary Judgment.[17]

Any time twenty (20) days after commencement of an action, any party may move the Court for summary judgment as to any or all of the issues presented in the case and such shall be granted by the Court if it appears that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Scheduling and briefing of such motions shall be governed by Rule 5.

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[15] Note of Amendment: The Court amended Rule 27(e) by a November 9, 1994, General Order of the Court to clarify when it can award costs and attorney's fees.

[16] Note of Amendment: The Court added Rule 27(f) by a November 9, 1994, General Order of the Court to clarify when it can award costs and attorney's fees.

[17] Note of Amendment: The Court amended Rule 29 by a March 19, 1997, General Order of the Court to provide that scheduling and briefing for summary judgment must follow the requirements of Rule 5.

Rule 30. Declaratory Judgment.[18]

a. In a case of actual controversy within the jurisdiction of the Prairie Island Mdewakanton Dakota Community Tribal Court, the Court may, upon the filing of an appropriate pleading, declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

b. The right to a trial by jury may be demanded in accordance with Rule 15. 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.

Rule 31. Entry of Judgment.

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

b. A judgment is complete and shall be deemed entered for all purposes when it is signed and filed as provided herein. The clerk shall immediately make a notation of the judgment in the register of actions and the judgment docket. The clerk shall provide notice of entry of judgment to all parties without counsel or to all counsel if parties are so represented.

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

d. A judgment may be satisfied, in whole or in part, as to any or all of the judgment debtors by the owner thereof or her/his attorney of record executing under oath and filing an acknowledgment of satisfaction specifying the amount paid and whether such is a full orpartial satisfaction. A judge may order the entry of satisfaction upon proof of payment and failure of the judgment creditor to file a satisfaction. The clerk shall file all satisfactions of judgment and note the amount thereof in the register of actions and thejudgment docket.

e. A judgment satisfied in whole, with such fact being entered in the judgment docket, shallcease to operate as such. A partially satisfied judgment or unsatisfied judgment shall continue in effect for eight (8) years or until satisfied. An action to renew the judgment remaining unsatisfied may be maintained any time prior to the expiration of eight (8) years and will extend the period of limitations an additional eight (8) years and may be thereafter further extended by the same procedure.

Rule 32. New Trial; Amendment of Judgment.

a. Any party may petition for a new trial on any or all of the issues presented by filing andserving a motion not later than ten (10) days after the entry of judgment, for any of the following causes:

[18] Note of Amendment: The Court added Rule 30 by a November 9, 1994, General Order of the Court.

1. Error or irregularity which prevented any party from receiving a fair trial; or
2. Misconduct of the jury or jury member(s); or
3. Accident or surprise, or newly discovered evidence against which ordinary prudence could not have been found and produced at trial; or
4. Damages so excessive or inadequate that they appear to have been given under influence of passion or prejudice; or
5. Error in law.

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

c. Parties may include memoranda or affidavits in support of their motions to which reply memoranda and affidavits shall be allowed if desired.

d. The Court may, on its own initiative, not later than ten (10) days after entry of judgment, order a new trial on any grounds which may be asserted by a party to the action, and shallspecify the reasons for so ordering.

e. A motion to alter or amend a judgment shall be filed and served not later than ten (10) days after entry of the judgment.

f. If a motion to amend judgment is filed, then the non-moving party may file any response within ten (10) days, but a response is not required.

Rule 33. Relief from Judgment or Order.

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

b. Upon motion and upon such terms as are just, the Court may, in the furtherance of justice, relieve a party or her/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 Rule 32(a);
3. Fraud, misrepresentation or other misconduct of an adverse party;
4. When, for any cause, the summons in an action has not been personally served upon the defendant and the defendant has failed to appear in said action;
5. The judgment is void;
6. The judgment has been satisfied, released, or discharged; or a prior judgment should have prospective application; or

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

c. The motion shall be made within a reasonable time and for reasons (b)(1), (2), (3), or (4), and not more than three (3) months after the judgment, order, or proceeding was entered or taken.

d. A motion under Rule 33(b) does not affect the finality of a judgment or suspend its operation.

e. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set asidea judgment for fraud upon the Court.

f. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in this ordinance or by an independent action.

Rule 34. 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 otherwise disturbing a judgment or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of the proceeding shall disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Rule 35. Stay of Proceedings to Enforce a Judgement.

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

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

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

d. When an appeal is taken the appellant, by giving a bond in an amount set by the Court, may obtain a stay, unless such a stay is otherwise prohibited by law or by this ordinance. The bond may be given at or within ten (10) days after the time of filing the notice of appeal.The stay is effective when the bond is received and approved by the Court.

e. When an appeal is taken by the Community, or an officer or agency of the Community, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

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

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

Rule 36. Disability or Disqualification of a Judge.

a. If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the Court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then the Chief Judge shall assign any other judge regularly sitting in or assigned to the Court to perform those duties; but if such assigned judge is satisfied that she/he cannot perform those duties because she/he did not preside at the trial or for any other reason, she/he mayin her/his discretion grant a new trial.

b. Whenever a party to any action or proceedings, civil or criminal, or her/his attorney shall make and file an affidavit that the judge before whom such action or proceedings is to be tried or heard has a bias or prejudice, pursuant to Section 7(g) of the Prairie Island Indian Community Courts Ordinance, either against such party or her/his attorney or in favor of any opposite party to the suit, such judge shall proceed no further therein, except to call in another judge to hear and determine the matter unless subsection (c) is invoked.

c. Every such affidavit shall comply with Section 7(g) of the Prairie Island Indian Community Courts Ordinance and shall state the facts and the reasons for the belief that such bias or prejudice exists, and shall be filed as soon as practicable after the case has been assigned or such bias or prejudice is known. If the judge against whom the affidavit is directed questions the sufficiency of the affidavit, she/he shall enter an order directing that a copy thereof be forthwith certified to another judge (naming her/him), which judge shall then pass upon the legal sufficiency of the affidavit. If the judge against whom the affidavit is directed does not question the legal sufficiency of the affidavit, or if the judge to whom the affidavit is certified finds that it is legally sufficient, another judge must be called in to try the case or determine the matter in question. No such affidavit shall be filed unless accompanied by a certificate of counsel of record that such affidavit and application are made in good faith.

Rule 37. Injunctions.

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

b. No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified

complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon.

1. Every temporary restraining order granted without notice shall:
   A. Be endorsed with the date and hour of issuance;
   B. Be filed forthwith in the clerk's office and entered of record;
   C. Define the injury and state why it is irreparable and why the order was grantedwithout notice;
   D. Expire by its terms within such time after entry, not to exceed fifteen (15) days, as the Court fixes, unless within the time fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons forthe extension shall be entered of record.
2. If a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for preliminary injunction and, if she/he does not do so, the Court shall dissolve the temporary restraining order. On two (2) 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 the ends of justice require.

c. Except as otherwise provided by law, no restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by anyparty who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States, the Prairie Island Mdewakanton Dakota Community, or of an officer, or agency, of either; nor shall it be required of a married person in a suit against the other party to the marriage contract. Nothing in this rule shall be construed to give the Prairie Island Mdewakanton Dakota Tribal Court jurisdiction over the United States or its employees operating within the scope of their employment.

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

e. Every order granting an injunction and every restraining order shall be specific in terms; shall describe in reasonable detail, and not reference to the complaint or other 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.

f. An injunction may be granted:

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

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

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

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

Rule 38. Extraordinary Writs.

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

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

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

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

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

b. No extraordinary writ may issue against the Community, any officer or official of the Community, or any entity owned by the Community in its governmental

capacity absent an unequivocally expressed waiver of the Community's sovereign immunity from suit.

Rule 39. Execution of Judgment.[19]

a. After entry of a judgment awarding money damages and/or costs against a party, or after final resolution of an appeal to the appellate court from such a judgment, a judgment creditor may move the Court to execute a judgment. The motion and supporting evidence must demonstrate that the judgment debtor has not:

   1. Paid the judgment amount in full;
   2. Commenced making installment payments in a manner agreed to by the parties; or
   3. Is not current in making installment payments if the parties agreed to such payments.

b. The Court may:

   1. Order the Community to seize, levy or garnish wages or per capita payments made by the Community to the judgment debtor as provided herein; or
   2. Order the local law enforcement to execute on the personal property of the judgment debtor as provided herein.

c. Wages of persons working for the Community or its economic enterprises are subject to seizure, levy, or garnishment, provided that:

   1. If the seizure, levy or garnishment is pursuant to a child support order, the Child Support provisions of the Domestic Relations Ordinance apply; or
   2. In all other cases, the amounts seized, levied, or garnished do not exceed 20% of the judgment debtor's disposable earnings. "Disposable Earnings" means that part of the earnings of an individual remaining after deduction from those earnings of amounts required by law to be withheld.

d. Any payments made by the Community to its members from the net revenues of tribal gaming pursuant to the Indian Gaming Regulatory act ["per capita payments"] are subject to seizure, levy or garnishment by the Court, provided that:

   1. Any amount seized, levied or garnished does not exceed 25% of an adult's net monthly per capita payment; and
   2. An adult's net monthly per capita payment is calculated by subtracting from that adult's per capita payment:

[19] Note of Amendment: The Community Council adopted Rule 39 on July 10, 1995, by Resolution Number 95-7-10-74. Rule 39 was amended on January 14, 1997, by Order of the Court to clarify that child-support garnishments proceed under Title 3 of the Judicial Code (later renamed the Domestic Relations Ordinance). The Community Council amended Rule 39 on January 25, 2023, by Resolution Number 23-1-25-11 to ratify the linguistic changes made by the 1997 amendment, to eliminate the requirement that a judgment creditor apply for execution within 60 days after a judgment, and to cap executions against tribal per capita payments at 25% of an adult's net monthly per capita payment, consistent with the Domestic Relations Ordinance.

A. Federal income tax;

B. State income tax;

C. Social Security deductions;

D. Reasonable pension deductions;

E. Union dues;

F. Cost of dependent insurance coverage;

G. Cost of individual or group health/hospitalization coverage or an amount for actual medical expenses; and

H. A child support or maintenance order that is currently being paid.

e. The Court shall order the judgment debtor to appear before it and answer under oath regarding all her/his personal property. The Court shall then determine what property of the judgment debtor is available for execution and order the enforcement to seize as much of such property as reasonably appears necessary to pay the judgment amount. Failure of the judgment debtor to appear may be deemed a contempt of court and the Court may proceed without such appearance. Sale of the seized property shall be at public auction conducted by local law enforcement officials designated by the Court after giving at least ten days public notice posted in at least three conspicuous public places. Property shall be sold to the highest bidder who shall make payment for the property at the time of sale. The person conducting the auction may postpone such in her/his discretion if there is inadequate response to the auction or the bidding, and may reschedule such upon giving the required notice. The person conducting the sale shall give a certificate of sale to the purchaser and shall make a return to the Court reciting the details of the sale. Real property is exempt from execution and seizure under this provision. This rule only applies to personal property.

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

2. At any time within six months after sale under this rule, the judgment debtormay redeem his/her property from the purchaser thereof by paying the amount such purchaser paid for the property plus eight (8) percent interest, plus any expenses actually incurred by the purchaser, such as taxes and insurance, to maintain the property.

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

Rule 40. Appeal.[20]

[Repealed.]

Rule 41. Appealable Orders.[21]

[Repealed.]

Rule 42. Ex Parte Communications.[22]

Ex parte communications with judges of the Prairie Island Mdewakanton Dakota Community Tribal Court are strongly discouraged. All inquiries shall be directed to the Clerk of Court, who shall confer with the judge(s).

Rule 43. Citation.

These rules may be abbreviated P.I. R. Civ. Pro.

Rule 44. Severability.

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

Rule 45. Amendment.[23]

These rules may be amended by a majority of the judges of the Prairie Island Mdewakanton Dakota Community Tribal Court and Court of Appeals.

Rule 46. Enforcement of Foreign Child Support Orders.[24]

a. All the terms of a foreign child support order which this Court has ordered be given full faith and credit, and which this Court has ordered be enforced pursuant to Rule 39, shall be included in this Court's order or judgment requiring enforcement of the foreign orderincluding statutorily mandated adjustments such as cost-of-living adjustments and adjustments for arrearages. Collection of such additional amounts from Prairie Island Indian Community members or employees shall occur as it would in the jurisdiction of the foreign child support order, and no further order of this Court shall be necessary to collect such amounts.

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[20] Note of Amendment: The Community Council repealed Rule 40 on June 16, 2003, by Resolution Number 03-06-16-48, which adopted the Prairie Island Indian Community Appellate Code (later renamed the Prairie Island Indian Community Rules of Appellate Procedure).

[21] Note of Amendment: Rule 41 was added on November 9, 1994. The Community Council repealed Rule 41 on June 16, 2003, by Resolution Number 03-06-16-48, when the Council approved the Prairie Island Indian Community Appellate Code (later renamed the Prairie Island Indian Community Rules of Appellate Procedure).

[22] Note of Amendment: The Court added Rule 42 by a November 9, 1994, General Order of the Court.

[23] Note of Amendment: The Court added Rule 45 by a November 9, 1994, General Order of the Court.

[24] Note of Amendment: The Court added Rule 46 by a March 19, 1997, General Order of the Court.

b. If a foreign child support order which this Court has ordered be given full faith and credit, and which this Court has ordered be enforced pursuant to Rule 39, is modified as aresult of further proceedings in the foreign court, the modified order must be presented tothis Court for a determination as to whether it is entitled to full faith and credit and, in theevent the Court determines that full faith and credit should be given, whether the order should be enforced, just as the original order was.