

**SISSETON-WAHPETON OYATE
OF THE LAKE TRAVERSE RESERVATION
RULES OF APPELLATE PROCEDURE**

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RULE 1 GENERAL PROVISIONS

- (a) **Promulgation of Rules.** These rules establish the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation Supreme Court (óSupreme Courtô). These rules govern procedure in appeals to the Supreme Court and shall be known as the Sisseton-Wahpeton Oyate Rules of Appellate Procedure (óSWO RAPô).
- (b) **Definitions.** The following terms shall have the following meanings:
- (1) óAppellantô means the party filing the appeal.
 - (2) óSupreme Courtô means the appellate level court of the Tribe.
 - (3) óDay(s)ô means Monday through Friday with the exception of New Year's Day, Martin Luther King Jr.'s Birthday, Treaty Day, Good Friday & Easter Day, Memorial Day, Independence Day, Labor Day, Native American Day, Veteran's Day, Thanksgiving Day, Christmas Day, Sisseton-Wahpeton Oyate Administrative Leave Day(s), Saturday or Sunday.
 - (4) óJusticeô means a judge appointed to the Supreme Court.
 - (5) óAppelleeô means the party responding to the appeal.
 - (6) óTribal Courtô means the trial level court of the Tribe.
 - (7) óTribeô means the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation.
- (c) **Construction.** These rules shall be liberally construed to secure a swift, fair, and inexpensive adjudication of every appeal.
- (d) **Other Rules.** Matters and proceedings not specifically set forth in the Rules shall be handled in accordance with the Federal Rules of Appellate Procedure and the Federal Rules of Civil Procedure, so long as they do not conflict with the existing SWO RAP, Sisseton-Wahpeton Oyate Code of Laws, or in the absence of formal rules, the customs and traditions of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation. As a new court, amendments to these rules may be necessary and shall only be effective in resolution form approved by the Tribal Council.

RULE 2 SISSETON-WAHPETON OYATE COURT OF APPEALS

- (a) **Establishment of the Sisseton-Wahpeton Oyate Supreme Court.** In accordance with Article III, Section 5(d) of the Sisseton-Wahpeton Oyate Constitution and Chapter 21 of the Code of Laws, the Tribal Council creates and authorizes the Sisseton-Wahpeton Oyate Supreme Court to serve as the exclusive appellate forum of the Tribe. The Supreme Court shall have jurisdiction over appeals from any final judgment of the Tribal Court. The Northern Plains Intertribal Court of Appeals shall no longer function in any capacity as an appellate forum of the Tribe.
- (b) **Exclusive Jurisdiction.** The Supreme Court shall have exclusive jurisdiction to

review decisions of the Tribal Court. Interlocutory appeals may be taken as described in Rule 4(e). Advisory opinions may only be issued pursuant to Rule 4(c).

(c) **Lack of Original Jurisdiction.** The Supreme Court shall not have original jurisdiction over any case or controversy.

(d) **Interlocutory Appeals.**

(1) When a Tribal Judge, in making an order not otherwise appealable, shall be of the opinion that such order involves a controlling issue of law for which there is substantial differences of opinion and where a determination will materially advance the ultimate resolution of the case, he/she shall certify the question for interlocutory appeal. The Supreme Court may, in its discretion, permit the appeal to be taken.

(2) Interlocutory appeals may be taken independent of Rule 2(e)(1) when an order determines rights separable from, but collateral to, rights asserted in the action, such as the sovereign immunity of the Sisseton-Wahpeton Oyate.

(e) **Scope of Court's Review.** In reviewing a matter on appeal, the Supreme Court may:

(1) affirm, modify, vacate, set aside, or reverse any judgment, order, or decision of the Tribal Court;

(2) remand the case to the Tribal Court and direct entry of an appropriate judgment, order or decision, or require such further proceedings as may be just and equitable under the circumstances.

(f) **SWO Constitution.** The Supreme Court shall adhere to the Sisseton-Wahpeton Oyate Revised Constitution and Bylaws.

(g) **SWO Code of Law, Traditions and Customs.** The Supreme Court shall consider and apply the Sisseton-Wahpeton Oyate Code of Laws and administrative procedures, as well as Oyate traditions and customs in all judicial proceedings, including those involving the Indian Civil Rights Act.

(h) **Binding Nature of Decisions.** The decisions of the Supreme Court shall be the final decision of the Sisseton-Wahpeton Oyate judicial system.

RULE 3 ORGANIZATION AND COMPOSITION OF THE SUPREME COURT

(a) **Justices of the Supreme Court.** The Supreme Court shall consist of one (1) Chief

Justice and two (2) Associate Justices. The Chief Justice shall preside over all appeals before the Supreme Court. The Supreme Court shall meet as often as may be required and shall sit at such times and places as proper and necessary to hear and decide appeals.

(b) **Appointment.** Supreme Court Justices shall be appointed for a term of 4 years. In order to implement staggered terms of service, the initial appointment of one (1) Associate Justice shall be for a two (2) year term. The initial appointment of one (1) Associate Justice shall be for a three (3) year term. The initial appoint of the Chief Justice shall be for a four (4) year term. All subsequent appointments shall be for four (4) year terms. The appointment, retention, or replacement of Justices shall be accomplished in accordance with Chapter 21, in addition Supreme Court Justices shall be a graduate of an accredited law school and a member in good standing of a state or federal bar. There shall be no limit on the number of terms any Justice may serve.

(c) **Oath of Office.** Supreme Court Justices, prior to assuming the office of Chief Supreme Court Justice or Associate Justice, shall take the following oath before the Chairperson, or Tribal Council/Executive designee, of the Sisseton-Wahpeton Oyate Tribal Council:

ôI _____, do solemnly swear that I will support and
Defend the Revised Constitution and By-Laws of the Sisseton-
Wahpeton Oyate of the Lake Traverse Reservation and will
faithfully and impartially perform the duties of (Chief Justice,
Associate Justice) of the Sisseton-Wahpeton Oyate Supreme
Court to the best of my ability, and without improper favor, to the
end that that justice may be fully served.ô

(d) **Court Clerk.** The Clerk of the Tribal Court shall serve as the Clerk of the Supreme Court.

(e) **Disqualification of a Supreme Court Justice.** A Justice shall disqualify him/herself, upon the Justice's own motion or that of a party, from sitting on an appeal of any case in which:

- (1) the Justice has a direct personal or financial interest;
- (2) the Justice was a witness at trial; or
- (3) the Justice has a relationship with, or is related to either the Appellant or Respondent, which brings into question the Justice's ability to render an impartial decision.

RULE 4 APPEAL FROM A JUDGMENT OR ORDER OF THE TRIBAL COURT

- (a) **Who may Appeal.** Any adversely affected party may appeal:
- (1) the final judgment, order, or decision of the Tribal Court;
 - (2) A collateral order, such as one involving immunity, that conclusively determines the disputed questions, resolves an important issue separate from and collateral to the merits, and is effectively unreviewable because a right would be adversely affected if not vindicated prior to final judgment;
 - (3) an interlocutory appeal where the party has filed and the Supreme Court has granted a request for an interlocutory appeal.
- (b) **Time Period to Appeal.** An appeal to the Supreme Court must be filed no later than twenty (20) calendar days after the entry of the final written Tribal Court judgment, order, or decision. Failure to file an appeal within the time period provided in this Rule deprives the Supreme Court of subject matter jurisdiction to hear the appeal.
- (c) **Notice of Appeal.** An appeal may be taken only by the timely filing of a Notice of Appeal with the Court Clerk and the payment, or request of waiver of the one hundred dollar (\$100) filing fee. The Tribal Court shall make a ruling within three (3) business days of a request for waiver of the filing fee. The appeal period shall not begin until the request is ruled upon by the Court.
- (1) Contents of Notice. The Notice of Appeal shall bear the caption and case number of the case in Tribal Court, and shall be labeled "Notice of Appeal". It shall state the date; judge; contents of the judgment, order or decision being appealed; a brief statement of the reasons for the appeal; whether oral argument is requested; and the relief requested from the Supreme Court. The Appellant or the attorney/advocate appearing on behalf of the Appellant shall sign and date the notice.
 - (2) Defects in Notice. No appeal shall be dismissed for formal defects in the Notice of Appeal, if the matter appealed is clear from the document and it has been properly filed.
 - (3) Docketing the Appeal. Upon receipt of the Notice of Appeal and the filing fee, the Court Clerk shall notify the Justices of the pending appeal. The Chief Justice shall ensure timely docketing of the matter.
 - (4) Effect on Judgment by Filing Appeal. The filing of an appeal does not cause an automatic stay of the Tribal Court's judgment, order or decision.

- (d) **Service of Notice of Appeal.** A copy of the Notice of Appeal shall be served on all other parties by the Clerk of the Supreme Court. The Clerk shall also provide the Tribal Court Judges with a copy of the Notice of Appeal. Proof of service shall be filed simultaneously with the Notice of Appeal. The Clerk shall send service as required by this Rule within three (3) business days of the filing of the Notice of Appeal.
- (e) **Joint or Consolidated Appeals.** If two or more persons are entitled to appeal from a judgment or order and their interests make joinder practicable, they may file a joint Notice of Appeal or may move the Supreme Court to join in appeal after filing separate notices of appeal. The Supreme Court may join appellants by an order of the Court and appellants subject to joinder shall proceed on appeal as a single appellant.
- (f) **Bond.**
 - (1) The Tribal Court may require the appellant to deposit a bond with the Tribal Court to guarantee the judgment will be enforceable. The security required shall not be greater in value than the amount of the judgment or fine imposed, plus costs.
 - (2) After the Supreme Court has issued its opinion, it shall upon the motion of any party or upon its own motion order such disposition of the bond as it deems just and consistent with the Sisseton-Wahpeton Oyate Rules of Civil Procedure.
 - (3) If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits itself to the jurisdiction of the Supreme Court and irrevocably appoints the court clerk as its agent upon whom any papers affecting its liability on the bond or undertaking may be served. The sureties' liability may be enforced on motion.
- (g) **Request for Stay.** Upon notification of a request for stay, the Court Clerk shall file such notice with the Supreme Court. All requests for stay shall first be addressed to the Tribal Court which shall be resolved within ten (10) days. If the stay is denied or not resolved within ten (10) days the Supreme Court shall address the stay.

RULE 5 SUBSTITUTION OF PERSONAL REPRESENTATIVE OF A PARTY

The personal representative of a party who dies, is dissolved or leaves office during the proceedings may be substituted for the party upon motion.

RULE 6 CERTIFICATION OF THE RECORD; DUTY OF TRIBAL COURT; DUTY OF CHIEF JUSTICE OF THE SUPREME COURT; PARTIES TO RECEIVE COPY OF CERTIFICATION

- (a) The accuracy of the record on appeal shall be certified by the Tribal Court judge who presided over the case from which the appeal is taken.
- (b) The Clerk of the Tribal Court shall transmit by electronic mail or its equivalent the complete record and all duly numbered copies of original documents to the members of the Supreme Court within thirty (30) days of the filing of Notice of Appeal. If the Tribal Court is unable to comply with the time limit, it shall request an extension of time from the Supreme Court stating the reasons for the request.
- (c) The Chief Justice of the Supreme Court or a designate shall certify that the record of each case referred for appeal includes:
 - (1) documentation that the appeal was timely filed; and
 - (2) documentation that other parties were given notice of the appeal.
- (d) The Clerk of the Tribal Court shall serve a copy of the certification of the record on the parties.

RULE 7 RECORD ON APPEAL

- (a) **Record on Appeal.** Upon receiving the Notice of Appeal, the Clerk of the Tribal Court shall timely compile for submittal to the Supreme Court the record of the case on appeal.
 - (1) **Pleadings, Orders, and Judgments.** All written documents filed with the Tribal Court, including pleadings, reports, notices, depositions, judgments, orders and decisions as well as exhibits filed with the Tribal Court shall constitute the record of the case on appeal. The Clerk of the Tribal Court shall certify the contents as true and provide complete and correct copies of the originals to the Supreme Court.
 - (2) **Hearing Transcript.** The Appellant, Cross-Appellant, or Appellee may specify in writing which proceeding, or part of a proceeding, is required for review by the Supreme Court. The cost of the transcript shall be paid by the party who requests the transcript. Requests for transcripts may be made no later than ten (10) calendar days after filing the Notice of Appeal.
 - (3) **Notice of Record Transmittal.** The Clerk shall file a Notice of Record Transmittal, identifying each item included, together with a copy of any

transcript, on each of the parties.

RULE 8 BRIEFING

(a) **Briefing.** Parties are encouraged to file written briefs, concerning the issue(s) on appeal, in order to assist the Supreme Court in its review. The Supreme Court may require the parties to file written briefs, in its discretion, if briefs would be helpful to the Court. The following requirements apply to the filing of a brief:

- (1) **Format of Briefs.** Briefs shall be typewritten, double spaced, on white paper 8 ½ by 11 inches in size. No brief shall exceed 30 pages in length. Four (4) bound copies of each brief shall be submitted to the Supreme Court and a copy of the brief shall be submitted to each individual party or their attorney.
- (2) **Contents of Briefs.** The first brief to be filed shall contain a short statement of the case's history, a brief summary of the facts and a listing of the issues presented on appeal and how, if at all, the issues were decided by the Tribal Court. All briefs shall contain an argument and a conclusion, and clearly state the precise action sought from the Supreme Court.

(b) Briefing Schedule

- (1) **Appellant's Brief.** Within thirty (30) days of the filing of the certified record or within such other time designated by the Supreme Court, the appellant shall file a written brief in support of his/her appeal.
- (2) **Appellee's Response Brief.** The appellee shall have thirty (30) days or such time as time as designated by the Supreme Court to file a response brief.
- (3) **Appellant's Reply Brief.** The appellant shall have fifteen (15) days or such other time designated by the Supreme Court to file a reply brief. Reply briefs must be confined to new matters raised in the brief of the appellee.
- (4) **Cross Appeals.** If a cross-appeal is filed, the party first filing the notice of appeal is deemed to be the appellant.
- (5) **Amicus Curiae.** The Sisseton-Wahpeton Oyate or its officer or agency may file an amicus brief without consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of the court. An amicus curiae brief must be filed no later than seven (7) days after the principal brief of the party being supported is filed.

RULE 9 MOTIONS

- (a) **Application for Relief.** An application for an order or other relief is made by motion unless these rules prescribe another form. A motion must be in writing unless the Supreme Court permits otherwise.
- (b) **Impending Deadline or Hearing.** A written motion shall be filed no later than twenty (20) days prior to the time specified for the hearing or time deadline which the motion addresses, unless a different period is ordered by the Supreme Court.
- (c) **Contents of a Motion.** A motion must state with particularity the grounds for the motion and relief sought and the legal argument necessary to support it.
- (d) **Responses.** Any party may file a response to a motion within ten (10) days after service of the motion unless the Supreme Court shortens or extends the period. Any reply to a response must be filed within five (5) days after service of the response. A reply must not present matters that do not relate to the response.

RULE 10 ORAL ARGUMENTS; DENIAL; WITHDRAWAL OF REQUEST; ORDER.

- (a) Oral argument must be allowed in every case unless the panel of judges have examined the briefs and record and unanimously agrees that oral argument is unnecessary for any of the following reasons:
 - (1) the appeal is frivolous;
 - (2) the dispositive issue or issues have been authoritatively decided; or
 - (3) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.
- (b) Any party may request oral argument in writing within thirty (30) days after Notice of Appeal is filed. The request must be filed with the court clerk with certification of service on the other parties.
- (c) The requesting party may withdraw the request for oral argument and shall do so in writing no later than ten (10) days before the date of the scheduled hearing.
- (d) The Supreme Court shall issue its order setting the date, location, and time allowed to each party for oral argument.

RULE 11 VOLUNTARY DISMISSAL; STIPULATION; MOTION

- (a) The Supreme Court may issue an order dismissing the appeal on the motion of the appellant and upon such terms as may be agreed upon by the parties or fixed by the court.

RULE 12 DECISIONS OF THE SUPREME COURT

(a) Standard of Review

- (1) **Clearly erroneous** ñ shall mean although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the Tribal Court to judge of the credibility of the witnesses.
- (2) **Abuse of Discretion** ñ Abuse of discretion shall be found if the Tribal Court: (1) relied on clearly erroneous factual findings, (2) made an error of law, or (3) misapplied the law to the facts. More broadly, the Tribal Court may overreach the limits of its discretion when it considers factors outside the scope of its discretionary powers or fails to consider required factors, as well as when its exercise of discretion within its authority is so bad on its own terms that the Supreme Court feels compelled to reject the actual choice. Examples of such decisions include: discovery and evidentiary rulings, injunctions, sanctions, and matters of trial administration.

When the Supreme Court reviews the Tribal Court's factual findings, the abuse of discretion and clearly erroneous standards are indistinguishable: the Supreme Court would be justified in concluding that the Tribal Court had abused its discretion in making a factual finding only if the finding were clearly erroneous.

- (3) **De Novo** ñ Appeals challenging legal conclusions are reviewed under a *de novo* standard of review. For example, dismissals on the pleadings, summary judgment, subject-matter jurisdiction, statutory interpretation and construction of unambiguous contracts. Under the *de novo* standard, the Supreme Court accords no deference to the Tribal Court's conclusions of law, but instead independently analyzes the relevant facts to arrive at its own legal conclusion.
- (4) For mixed questions of law and fact, the Supreme Court shall apply either the Clearly Erroneous or Abuse of Discretion standard to questions of fact and shall analyze legal conclusions *De Novo*.

- (b) **Appeals Decided by Majority Vote.** All appeals shall be decided by a majority vote.
- (c) **Decisions of the Supreme Court.** The decision of the Supreme Court shall be in written form, which shall state the facts, the issues decided, the rule(s) of law applied, and the reasoning of the Court. The Supreme Court shall issue an order conforming with the decision, which includes the continuance or termination of any order relating to a stay or the posting of a bond. Any member of the Supreme Court that disagrees with the majority's decision may issue a written dissent. The Supreme Court order shall be submitted to the Clerk of the Supreme Court within thirty (30) days at the close of oral argument and formal submission to the Supreme Court or the date of the final briefs filed with the Supreme Court. The Clerk of the Supreme Court shall transmit a copy of the decision to each interested party within five (5) days of issuance.

RULE 13 REQUEST FOR RECONSIDERATION

- (a) **Generally.** A request for reconsideration may be filed with the Clerk of the Supreme Court, if made within fourteen (14) days of the filing of the decision with the Clerk. A copy of the request must be served upon all other parties and on the Tribal Court.
- (b) **Content.** The request must identify the exact element of the decision, which is to be reconsidered, the reason for the request, and any authority upon which the party relies.
- (c) **Response.** Any party may file a response to a request for reconsideration within ten (10) days of service.
- (d) **Effect of Request.** A request for reconsideration shall stay all proceedings until the Supreme Court issues its decision on the matter.
- (e) **Time.** The Supreme Court shall have ten (10) days to rule on a request for consideration, which will then be filed with the Clerk and transmitted to the parties by the Clerk within five (5) days of issuance.

RULE 14 REMAND.

- (a) **Remand.** In the event of a remand the Clerk of the Supreme Court shall transmit the entire record of the Tribal Court, together with the decision and order of the Supreme Court within fifteen (15) days of the disposition of all post decision motions, if any. Upon such transmittal, jurisdiction over the case is returned to the Tribal Court from which the appeal was made.

RULE 15 COURT ADMINISTRATION

(a) Requirements of Service.

- (1) What Must be Served. Any paper, or whatever kind, which is filed with the Clerk of the Tribal Court shall be served on each individual party. Proof of that service shall be filed.
- (2) Form of Service. It is sufficient notification to other parties if service is made by first class mail. Service will be considered complete upon mailing. Personal service on any party may be done in compliance with Tribal Court Rules.
- (3) Person Served. Service shall be made upon the party's attorney, or if the party is not represented, upon the party.

(b) Practice Before the Tribal Court. Any person who is admitted to practice before the Tribal Court is thereby admitted to practice before the Supreme Court and shall be subject to the Code of Ethics and disciplinary action by the Supreme Court for violations thereof.

(c) Judicial Signatures. A judge may, by telephone or email, authorize the Clerk to affix his or her signature to any document that requires it.