

## **TITLE 4C**

### **SMALL CLAIMS PROCEDURE**

**Section 4C-1-1. Small claims action.** There shall exist an action in the tribal court which shall be known as a small claims action to provide for a simple, informal, and inexpensive procedure for the determination according to the substantive rules of law, of claims in the nature of contract or tort, other than defamation, in which the plaintiff does not claim as debt or damages more than four thousand dollars.

**Section 4C-1-2. Alternative to action begun by summons and complaint.** The small claims action shall not be exclusive but shall be an alternative to the formal procedure for actions begun by summons and complaint.

**Section 4C-1-3. Small claims forms- Procedure for bringing small claims action.** There shall be a small claims form which shall be approved by the Chief Judge of the Tribal Court. The form shall include the following information for the plaintiff to complete:

- (1) The plaintiff's name, address, home phone, business phone, and attorney, if any;
- (2) The defendant's name(s), address, home phone, place of employment and business phone;
- (3) A statement of the claim and the facts upon which the claim is based;
- (4) The amount of the claim; and
- (5) The signature of the plaintiff.

The plaintiff initiating the action or his attorney shall complete the information on the small claims form and pay to the clerk the fee as provided in Section 4C-1-4. Upon completion of the form and payment of the fee by the plaintiff, the clerk shall docket the action and assign it a small claims case number. The form shall be accompanied by any supporting documents. The docketing by the clerk shall be deemed the beginning of the action.

**Section 4C-1-4. Filing fee set in accordance with the amount of the claim.** There shall be a fee for the filing of a small claims action payable to the tribal court. Filing fees shall be set in accordance with the amount of the claim as follows:

- (1) Claims up to one thousand dollars: ten dollars;

- (2) Claims up to two thousand dollars: fifteen dollars;
- (3) Claims up to three thousand dollars: twenty dollars;
- (3) Claims up to four thousand dollars: twenty-five dollars.

**Section 4C-1-5. Defendant required to file answer.** The defendant, upon notice as proscribed in Section 4C-1-6, shall file an answer to the plaintiff's claim, either in writing or by telephone call to the clerk of courts within ten working days of the date of receipt of the notice. The defendant shall set out any defenses to the claim in the answer. If the defendant denies the claim the clerk shall schedule the matter for hearing. If the defendant fails to provide an answer as required by this section, the Court may enter a default judgment against the defendant as provided in Section 4C-1-11.

**Section 4C-1-6. Notice to defendant.** The clerk of courts shall provide notice to the defendant(s) by registered or certified mail, return receipt. Notice shall be valid although refused by the defendant and, therefore, not delivered. If the notice is returned undelivered, without refusal by the defendant, or if in any other way it appears that notice has not reached the defendant, the clerk shall issue, at the expense of the plaintiff, and with the plaintiff's authority, such other and further notice as the court may order. The form of the notice shall be as proscribed at the end of this Title.

**Section 4C-1-7. Rules of procedure.** The judges of the tribal court shall proscribe rules, including procedural and evidentiary rules, for the disposition of small claims actions. The rule making capacity includes the power to modify the tribal rules of civil procedure and rules of evidence for small claims actions.

**Section 4C-1-8. Time of hearing on claim.** The clerk shall fix the time set for hearing which shall not be less than ten days from the beginning of the action. The time fixed shall be sufficient to enable registered or certified mail, return receipt, by regular course to reach the defendant and to enable the defendant to answer before the time fixed for the hearing.

**Section 4C-1-9. Jury trial and appeal waived by plaintiff- right to jury trial if action removed by the defendant.** A plaintiff beginning an action under this Title shall be deemed to have waived a trial by jury and his right to appeal to the appellate court unless said action shall be removed from the small claims court to the tribal court as hereinafter provided, in which case the plaintiff shall have the same right to claim a trial by jury as if the action had begun in the tribal court.

**Section 4C-1-10. Claim of trial by court or jury by defendant- Affidavit- Entry fee.** No party to an action under this Title may appeal to the appellate court. In lieu thereof, defendant may, two days prior to the time upon which he is notified to answer, file with the court a claim of trial by court or jury and his affidavit that there are issues and questions of fact being litigated that are so complex or important that the parties cannot be adequately protected without the procedure of a formal trial, with specification of the same, and that such trial is intended in good faith. The sum of twenty-five dollars for the entry of the action for trial in the tribal court shall accompany the claim and affidavit.

**Section 4C-1-11. Default of defendant failing to comply with requirements.** A defendant, unless the court shall otherwise order, shall be defaulted unless he shall, personally or by attorney, file an answer to the complaint as provided in Section 4C-1-5.

**Section 4C-1-12. Set-off or counterclaim stated by defendant- Notice to plaintiff and postponement of hearing.** The defendant within the time for answer may, in the manner provided in by section 4C-1-3, claim any setoff or counterclaim within the tribal court's jurisdiction. Upon the making of such claim by the defendant, the clerk shall give notice to the plaintiff, at the expense of the defendant, and shall postpone the hearing of the original claim until the time set for hearing on the defendant's claim, and shall notify the parties accordingly. The defendant's claim shall be answered within the time and in the manner provided by Sections 4C-1-5, and the penalties upon the defendants provided by Section 4C-1-11 shall apply to plaintiffs in respect to claims by a defendant. The original claim and the claim of setoff or counterclaim shall be deemed one case. This section shall not be deemed as establishing a compulsory counterclaim provision.

**Section 4C-1-13. Amendment of claim or answer.** The court may at any time allow any claim or answer to be amended.

**Section 4C-1-14. Disposition of claim on failure to appear for hearing.** If the plaintiff does not appear at any set time for hearing, the court may dismiss the claim for want of prosecution or enter a finding on the merits for the defendant or make such other disposition as may be proper.

**Section 4C-1-15. Subpoenas for witnesses.** Subpoenas for witnesses, if requested, will be issued by the clerk and served by any person qualified under the rules of civil procedure to make service of summons. The subpoena shall be served by the same manner as service of summons, except that no service of subpoena by publication is allowed. The subpoena must be served sufficiently in advance of the date upon which the

appearance of the witness is required to enable such witness to reach such place by any ordinary or usual method of transportation which he may elect.

**Section 4C-1-16. Witnesses and evidence received on hearing.** Witnesses shall be sworn; but the court shall conduct the hearing in such order and form and with such methods of proof as it deems best suited to discover the facts and to determine the justice of the case. Interrogatories shall not be filed nor depositions taken except by leave of court.

**Section 4C-1-17. Signature of docket on determination of action.** After determination of the action, the judge shall affix his signature to the docket card.

**Section 4C-1-18. Items allowable as costs.** The actual cash disbursements of the prevailing party for entry fee, mailing fees, witness fees and other fees shall be allowed costs. No other costs shall be allowed either party, except by special order of the court. The court shall have the power in its discretion to award costs, in a sum fixed by the court, not exceeding fifty dollars, against any party, whether prevailing or not, who has set up a frivolous or vexatious claim or defense, or who has made an unfair, insufficient or misleading answer, or has otherwise sought to hamper a party or the court in securing a speedy determination of the claim upon its merits; and to enter judgment and issue execution therefor, or set off such costs against damages or costs, as justice may require.

**Section 4C-1-19. Court order as to the method of payment of judgment-Stay of execution during compliance.** The court may order that the judgment shall be paid to the prevailing party at a certain date or by specified installments, and may stay the issue of execution and other supplementary process during compliance with such order. Such stay shall at all times be subject to being modified or vacated.

**Section 4C-1-20. Grounds for vacation of judgment and stay of execution-Repayment ordered.** The court may at any time after entry of judgment, upon motion, and after such notice, by mail or otherwise, as it may order, for cause shown, vacate any judgment entered under this Title, for want of actual notice to a party, for error or for any other cause that the court may deem sufficient, and may stay or superseded execution.

The court may also order the repayment of anything collected under such judgment, and may enter judgment and issue execution therefor; but no order shall affect the title of any bona fide holder of value under said judgment.

**Section 4C-1-21. Costs awarded on motion to vacate judgment.** Costs in an amount fixed by the court not exceeding fifty dollars may be awarded, in the discretion of the court, for or against either party on a motion to vacate judgment, and judgment may be entered and execution may be issued therefor, and any action by the court may be made conditional upon the payment of such costs of the performance or any other proper condition.

**Section 4C-1-22. Notice of payment.** The lienholder shall notify the clerk upon full payment of the judgment, and the clerk shall satisfy the judgment at no charge to the parties involved.

**Section 4C-1-23. Guardian ad litem.** When a minor is a party to a small claims action, a parent or legal guardian shall be considered a guardian ad litem for purpose of commencing the action or receiving service thereof.

**Section 4C-1-24. Forms for use in small claims action.**  
The following forms are proscribed for use in small claims procedure, but failure to use or fill out completely or accurately any of the same shall not avoid any acts done pursuant to this chapter, provided that compliance with the preceding sections is made and the information required by such sections or the following forms are substantially and accurately recorded and furnished in writing as required by this chapter.

IN THE TRIBAL SMALL CLAIMS COURT  
OF THE FLANDREAU SANTEE SIOUX TRIBE

NOTICE TO PLAINTIFF AND DEFENDANT  
OF  
TIME FOR HEARING

TO: \_\_\_\_\_  
PLAINTIFF

TO: \_\_\_\_\_  
DEFENDANT

The defendant has denied your claim in whole or in part.

The tribal court will hold a hearing on this claim  
on \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ M in the courtroom of the tribal  
court office at Flandreau, S.D.

If your claim is supported by witnesses, account books, receipts or other documents, you should produce them at the hearing. Subpoenas for witnesses, if requested in advance, will be issued by the Tribal Clerk of Courts.

If you have any questions you should contact the Tribal Clerk of Courts.

Dated this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Tribal Clerk of Courts

IN THE TRIBAL SMALL CLAIMS COURT  
OF THE FLANDREAU SANTEE SIOUX TRIBE

NOTICE OF SMALL CLAIMS LAWSUIT

TO: \_\_\_\_\_

\_\_\_\_\_ has made a claim against you in this Court for the following sum: \$\_\_\_\_\_.

*Description of the claim:* \_\_\_\_\_  
\_\_\_\_\_

You will lose this lawsuit and a judgment by default will be entered against you for the full amount of the claim UNLESS you notify this office within 10 days of your receipt of this notice and deny the claim in whole or in part specifying your reason for denial.

IF YOU DENY THIS CLAIM:

\_\_\_\_\_ The matter will be heard at the time and place set forth above.

\_\_\_\_\_ The Plaintiff will be notified of your denial and the matter will be set for hearing and the parties notified of the time and place.

If you make such a denial, you must appear at the hearing and should bring with you such evidence, witnesses, account books, receipts or documents upon which you rely to support your denial. Subpoenas for witnesses, if requested by you in advance of hearing, will be issued by the Clerk.

If you admit this claim but desire time to pay, you must appear on or before the above date personally or by attorney, and state to the Clerk that you desire time to pay and show your reasons therefor.

If you have any questions, you should contact the clerk of courts.

Dated this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Tribal Clerk of Courts

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone

This Ordinance was enacted by the Flandreau Santee Sioux Tribal Executive Committee by Resolution Number 96-55 on September 3rd, 1996.