

# SOUTH DAKOTA TRIBAL COURT HANDBOOK

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## **PREFACE TO THE ORIGINAL HANDBOOK PUBLISHED IN 1988**

Publication of The South Dakota Tribal Court Handbook represents the culmination of a two-year project of the Indian Law Committee of the State Bar of South Dakota to prepare an informative booklet concerning the history, requirements for practice, and jurisdictional parameters of the nine tribal courts in South Dakota. The Handbook is designed to provide an informative and ready resource for the practicing bar in this state as well as for the tribal and statewide community at large. The overarching objective of this effort is to facilitate ongoing communication, understanding, and respect for tribal courts and tribal court personnel. The Committee believes that this Handbook is the first of its kind in the country and that it marks a significant accomplishment within the State.

Appreciation and special thanks are in order to the members of the Indian Law Committee for their hard work, research, and enthusiastic support for the project. The members of the Committee are Steven Aberle, Krista Clark, Mikal Hanson, Albert Jones, and Jeff Viken. The Committee also wants to thank the many tribal court judges who have taken time to assist in checking research and in reviewing an earlier draft of this work. The tribal judges include Judge Sherman Marshall of Rosebud Sioux Tribal Court, Judge Leroy Greaves of the Cheyenne River Sioux Tribal Court, Judge Lorraine Rousseau of the Sisseton-Wahpeton Sioux Tribal Court, and Judge Bertha Two Bulls of the Crow Creek Sioux Tribal Court.

The Committee also gratefully acknowledges a grant from the South Dakota Bar Foundation to assist in the printing and distribution of the Handbook as well as its deep appreciation for the graceful and attractive artwork of Clarence Two Eagle of the Rosebud Reservation.

Frank Pommersheim  
Chair, Indian Law Committee  
Professor of Law  
University of South Dakota School of Law  
March 1988

## **PREFACE TO THE REVISED EDITION OF THE HANDBOOK PUBLISHED IN 1992**

In the Spring of 1991, South Dakota was selected by the National Center for State Courts and the State Justice Institute as a Forum state to conduct a series of four statewide meetings to address jurisdictional concerns shared by state and tribal courts. South Dakota's participation in the Forum Project built on its past accomplishments within the state. In the past two years, for example, the South Dakota judiciary under the leadership of Chief Justice Robert A. Miller hosted a Joint Judicial Conference of State-Tribal Judges, created a joint State-Tribal Judicial Liaison Committee to be an ongoing body to explore tribal-state judicial issues, and instituted a policy of inviting tribal judges to the annual training session for circuit court judges and the tribal probation officers to the court services officers' training.

The South Dakota Tribal-State Forum appointed by Chief Justice Miller consists of three chief tribal (trial) court judges namely Judge Rochelle Lawrence of the Cheyenne River Sioux Tribal Court, Judge Pat Lee of the Oglala Sioux Tribal Court, and Judge Sherman Marshall of the Rosebud Sioux Tribal Court; three circuit court judges namely, Judge Pat McKeever of Pierre, Judge Merton Tice of Rapid City, and Judge David Gilbertson of Sisseton; Supreme Court Justice Robert A. Amundson. Frank Pommersheim, law professor at the University of South Dakota School of Law and a tribal appellate judge at both Rosebud and Cheyenne River, was named project consultant. Chief Justice Miller best summarized the overall goal of the South Dakota Forum Project, when he stated that "I am excited about the Forum's opportunity to build on the mutual respect of state and tribal judges to explore ways in which we can build a consensus that will result in a better understanding of each other and will enhance our working relationship."

One of the specific projects of the Forum was to prepare a Revised Edition of the *South Dakota Tribal Court Handbook*. The original *Handbook* was the first of its kind in the nation and served as a model for other Forum projects in such states as Arizona, Washington, and Oklahoma. Since publication of the *Handbook* in 1988 there have been important changes in federal (and South Dakota state) Indian law, but more significantly there has been the continued growth and development of tribal law. The purpose of the Revised Edition of the *Handbook* is to incorporate changes that have taken place since 1988, as well as adding a completely new section on the Indian Child Welfare Act. More broadly, the goal is to make the practicing bar and the general Indian and non-Indian public aware of these changes. In addition, the *Handbook* seeks to reflect the growth and enhanced stature of tribal courts in South Dakota and throughout Indian country.

I want to offer my own special thanks to the members of the Forum Committee listed above

(including Dan Schenk and Terri Adams) for their hard work and commitment, as well as the pleasure of their company. I also owe a special debt of gratitude to Debbi Dubray, third year (class of '93) Native American law student, for her invaluable research work in updating changes, her close proofreading of the text, and her enthusiasm.

Finally, special praise is due to Chief Justice Miller for his leadership and breadth of vision about the necessity to advance respect for tribal courts and his concomitant willingness to support tribal-state judicial cooperation.

Frank Pommersheim  
December 1992

**PREFACE TO THE NEW REVISED EDITION OF THE HANDBOOK  
PUBLISHED IN 2006**

The most notable change in the *South Dakota Tribal Court Handbook* since the revised edition of 1992 is the continued growth and development of the tribal courts on all nine reservations in the state. This includes, for example, the change of Flandreau Santee Sioux Tribal Court and the Yankton Sioux Tribal Court from ‘CFR’ courts organized under 25 C.F.R. §11.1 to full fledged tribal courts established pursuant to their respective tribal constitutions. Tribal appellate courts continue to be active in making important decisions that firmly establish rules as to such diverse matters of jurisdiction, evidence, burdens of proof, and the enforcement of judgments, as well as individual rights within both the civil and criminal context.

There also has been a general growth of civil law enacted by Tribal Councils in matters ranging from commercial law to family law to tort and contract law. There has also been a concomitant growth of United States Supreme Court jurisprudence that has primarily focused on the range of tribal civil authority over non-Indians. In cases such as *South Dakota v. Bourland*, 508 U.S. 679 (1983), *Strate v. A-1 Contractors*, 520 U.S. 438 (1997) and *Nevada v. Hicks*, 533 U.S. 353 (2001), the Supreme Court has continued to construe tribal authority in this area in quite narrow terms. It is also true however that Congress recognized inherent tribal authority to have criminal jurisdiction over non-member Indians. See 25 U.S.C. §1301(2). This Act of Congress, in the form of an amendment to the Indian Civil Rights Act of 1968, was upheld by the Supreme Court in its decision in *United States v. Lara*, 541 U.S. 193 (2004).

There is no doubt that much will continue to develop at the federal, tribal, and state levels in the dynamic field of Indian law. While litigation will continue to be prominent, there is also the concurrent possibility of more tribal-state cooperation in such areas as cross-deputization, extradition, and taxation. This more cooperative approach has been championed by the South Dakota Supreme Court itself in its 2004 decision of *South Dakota v. Cummings*, 679 N.W.2d 484 (SD 2004). The best solutions are likely to come by working with, rather than against, each other and hopefully the time is ripe to more fully explore such possibilities.

This New Revised Edition owes a special thanks to two people: Chief Justice David Gilbertson of the South Dakota Supreme Court who commissioned and directed this undertaking and Janet Routzen, a member of the Rosebud Sioux Tribe and a 2006 graduate of the University of South Dakota School of Law, who did all the research to bring the materials of each tribe up to date. My thanks and gratitude to both of them.

Frank Pommersheim  
March 2006

## INTRODUCTION

Tribal courts are of growing significance and importance throughout Indian country and particularly here in South Dakota. This is especially true in light of the recent United States Supreme Court's decisions in *National Farmers Union Ins. Co. v. Crow Tribe of Indians*<sup>1</sup> and *Iowa Mutual Ins. v. LaPlante*<sup>2</sup> which held that tribal courts are the primary forums for adjudicating civil disputes<sup>3</sup> that arise on the reservation. As Justice Marshall wrote in *Iowa Mutual*, "tribal courts play a vital role in tribal self-government . . . and the Federal Government has consistently encouraged their development."<sup>4</sup>

Despite these developments, which also include the necessary corollary of an increasing volume of litigation in tribal courts, the practicing bar in most states, including South Dakota, is poorly informed about the nature of tribal courts including such things as their history, requirements for practice, and jurisdictional parameters. In light of this situation, the Indian Law Committee of the State Bar of South Dakota decided to prepare a Tribal Court Handbook. The *Handbook* will serve as a ready resource to the practicing bar and the statewide community at large and inform them of the basic practice requirements and jurisdictional parameters that exist within each tribal court system in the state. Besides the practical use and application of the *Handbook*, the Indian Law Committee also considers the *Handbook* as a significant attempt to foster greater understanding and appreciation for tribal courts and tribal court personnel in South Dakota.

There are nine reservations in South Dakota and all of them have vital, functioning tribal courts. All of these courts<sup>5</sup> are tribal courts which have their roots in a tribal sovereign authority which predates the United States Constitution.<sup>6</sup> This does not mean that these courts are not subject to congressional authority,<sup>7</sup> but only that they are not, in the first instance, creatures of the federal government.<sup>8</sup> None of these courts are 'C.F.R.' courts<sup>9</sup> which are direct successors to the federally created Courts of Indian Offenses<sup>10</sup> and are much more restricted in their authority. All of the tribal

courts in South Dakota have some form of appeal; whether through their own tribal court of appeals or participation in the Northern Plains Intertribal Court of Appeals.<sup>11</sup>

For each tribal court in the state, the Committee has compiled the following information:

1. Attorney rules and fees for admission to practice;
2. Tribal Court Advocate<sup>12</sup> rules and fees for admission to practice;
3. Suspension and disbarment;
4. Appeals to tribal court of appeals or the Intertribal Court of Appeals;
5. Territorial jurisdiction;
6. Personal jurisdiction;
7. Subject matter jurisdiction;
8. Available relief;
9. Enforcement of judgments;
10. Comity and full faith and credit provisions;
11. Commercial Codes; and
12. Extradition.

Note that the usual caveat obtains. As with any rules of law, they are subject to future modification, and even abrogation, by appropriate (tribal council) legislative action or (tribal court) judicial interpretation. All of this must be further calibrated against actions within the Indian law activity.<sup>13</sup> Despite the ever present possibility of change, the Committee believes that the *Handbook* provides a much needed and valuable asset to the practitioners and people of South Dakota.

### **BACKGROUND, CRIMINAL JURISDICTION, AND RELATED MATTERS**

Some discussion and elucidation of the background and context of tribal courts in South Dakota are necessary in order to provide an understandable and reasonable perspective from which to analyze and think about the functioning and purview of these courts in South Dakota – and indeed nationally – that are generally less than fifty years old. This youthfulness is a fact that must be remembered when comparing these forums to the state and federal systems, which generally possess more complete, more codified, and more organized systems of procedure for locating, reporting, and identifying the appropriate law. Tribal courts are evolving rapidly, but ought not be invidiously compared to other systems, which may be more than one hundred and fifty years older.



The development of tribal courts is also refracted through history and a cultural system which may not readily reflect all of the assumptions that undergird the federal and state systems. For example, notions of individual and contributory fault and the importance of money may be less critical than concepts of mediation and the avoidance of shame and embarrassment. Of course, such matters are never black and white and are mentioned only to suggest the possibility of shaded variations and the need for cultural and social sensitivity. Tribal courts are developing institutions and they will continue to advance, in part, in accordance with the quality of the skills, insight, and understanding of those who practice before them.

The *Handbook* deals almost exclusively with the issue of civil jurisdiction. This is so because it is the area of most uncertainty, most significance, and most involvement with the private, practicing bar. Nevertheless, a review of the definition of ‘Indian country’ and the allocations of criminal jurisdiction of Indian country is helpful to provide both a more complete picture and the relevant context for understanding issues of civil jurisdiction.

**A. Indian country, 18 U.S.C. §1151**

The definition of ‘Indian country’, which was codified in 1948, states as follows:

The term ‘Indian country’ as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same. 18 U.S.C. §1151.

This definition is part of a criminal statute but the United States Supreme Court has found that it “generally applies as well to questions of civil jurisdiction.”<sup>14</sup> The importance of the term for jurisdictional purposes is that it defines the *geographical* area encompassed within possible federal and tribal jurisdiction.

**B. Criminal Jurisdiction in Indian country**

Two major federal statutes govern the primary allocation of criminal jurisdiction in Indian country. They are the General Crimes Act,<sup>15</sup> 18 U.S.C. §1152, and the Major Crimes Act, 18 U.S.C. §1153.

**1. General Crimes Act, 18 U.S.C. §1152**

This statute provides for federal, not state, jurisdiction as follows:

Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to Indian country.

This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulation, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively. 18 U.S.C. §1152.

The reference to “local law of the tribe” permits concurrent tribal jurisdiction<sup>16</sup> and although the statute, on its face, makes no exception for crimes committed by one non-Indian against another non-Indian, such an exception was carved out in *United States v. McBratney*, 104 U.S. 621 (1882). As a result the statute essentially governs interracial criminal activity in Indian country.

## **2. The Major Crimes Act, 18 U.S.C. §1153**

In 1883, in *Ex Parte Crow Dog*, 109 U.S. 556, the United States Supreme Court ruled that tribes had exclusive jurisdiction over crimes among Indians; that is in any situation involving Indians as both perpetrators and victims. This rule was abrogated by Congress two years later when it enacted the Major Crimes Act in 1885. The Act mandated federal jurisdiction over seven major crimes and made no provision for state jurisdiction. It has been amended several times and now enumerates a total of sixteen major crimes.

### **The Major Crimes Act now reads:**

Any Indian who commits against the person or property of another Indian or other person of any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and a felony under §661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses within the exclusive jurisdiction of the United States.

As used in this section, the offenses of burglary and incest shall be defined and punished in accordance with the laws of the state in which such offense was committed and were in force at the time of such offense.

In addition to the offenses of burglary, incest, and other of the above offenses which are not

defined and punished by Federal law in force within the exclusive jurisdiction of the United States, shall be defined and punished in accordance with the law of the state in which such offense was committed and were in force at the time of such offense. 18 U.S.C. §1153, as amended by Pub. L. 99-646, §87(c) (5), Nov. 10, 1986, 100 Stat. 3623.

The Major Crimes Act applies only when the perpetrator/defendant is Indian. Despite the occasional applicability of state law, all prosecutions are federal proceedings in federal court. It is unsettled whether the Major Crimes Act divests the tribal courts of concurrent jurisdiction.

The Assimilative Crimes Act, 18 U.S.C. §13, is a general law of the United States made applicable to Indian country through the General Crimes Act, 18 U.S.C. §1152, and permits federal prosecutions by ‘assimilating’ state criminal law as a ‘gap filling’ device, when there is no applicable federal substantive criminal law. This seems unwarranted in light of the ability of the tribal court to punish minor crimes involving Indian perpetrator/defendants. Nevertheless, the application of the Act is undisputed.

Tribal courts have exclusive criminal jurisdiction over Indian perpetrator/defendants of all crimes not covered by the General Crimes Act or the Major Crimes Act and concurrent jurisdiction over matters involving the former, and possibility the latter, of these statutes. Tribal courts do not have any criminal jurisdiction over non-Indians.<sup>17</sup> Presumably, this does not adversely affect a tribe’s traffic offense jurisdiction over non-Indians.

### **3. Criminal Procedure**

The rules of criminal procedure in a tribal court are largely governed by the Indian Civil Rights Act, 25 U.S.C. §§1301-1303 (ICRA), which provides the general guarantees found in the Bill of Rights Amendments to the United States Constitution. The statutory provisions are as follows:

#### **§1301. Definitions**

For purposes of this subchapter, the term-

- (1) ‘Indian tribe’ means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;
- (2) ‘Powers of self-government’ means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of

Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;

- (3) 'Indian court' means any Indian tribal court or court of Indian offense; and
- (4) 'Indian' means any person who would be subject to the jurisdiction of the United States as an Indian under section 1153 of Title 18 if that person were to commit an offense listed in that section in Indian country to which that section applies.

### **§1302. Constitutional Rights**

No Indian tribe in exercising powers of self-government shall-

- (1) Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;
- (2) Violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
- (3) Subject any person for the same offense to be twice put in jeopardy;
- (4) Compel any person in any criminal case to be witness against himself;
- (5) Take any private property for a public use without just compensation;
- (6) Deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;
- (7) Require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and a fine of \$5,000, or both;
- (8) Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
- (9) Pass any bill of attainder or ex post facto law; or
- (10) Deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

### **§ 1303. Habeas Corpus**

The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

These rules are often amplified and extended by particular provisions of tribal constitutions and tribal codes and it is therefore necessary to carefully study and scrutinize these documents for additional guidance.

The leading case interpreting the contours of the ICRA of 1968 is *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978), which held that the sole federal remedy under the Act is the habeas corpus provision found at 25 U.S.C. §1303; that the Act creates no independent federal cause of action; and that the Act does not waive sovereign immunity but does change the law that must be applied in tribal courts.<sup>18</sup>

### **C. Public Law 280<sup>19</sup> in South Dakota**

P.L. 280 is a federal statute enacted by Congress in 1953 which permitted (and in some cases mandated)<sup>20</sup> states to assume civil and criminal jurisdiction in Indian country within their borders. South Dakota is one of the ‘optional’ states and it has made several attempts<sup>21</sup> to secure portions of this jurisdiction. These efforts were all contingent on securing federal reimbursement for the additional costs involved. All of these attempts failed to secure any federal commitment for reimbursement and never became law. Attempts to secure only part of the available P.L. 280 offer of jurisdiction were ruled contrary to the intent of the statute in the case of *In re Hankins Petition*, 125 N.W.2d 839 (S.D. 1964).

The final P.L. 280 attempt in South Dakota was placed before the people in a 1964 referendum. It was soundly defeated.<sup>22</sup> In 1968, as part of the ICRA of 1968,<sup>23</sup> P.L. 280 was amended to require that any state assertion of P.L. 280 be approved by a tribal referendum. There have been no tribal referendums approving P.L. 280 jurisdiction in South Dakota.

Despite this history, South Dakota began in 1986 to assert P.L. 280 jurisdiction over both Indians and non-Indians on ‘highways’<sup>24</sup> in Indian country. The South Dakota Supreme Court approved this approach in *State v. Onihan*.<sup>25</sup> The reasoning of this decision was premised largely on a reading of *Washington v. Confederated Bands and Tribes of Yakima Nation*<sup>26</sup> and a proviso in the 1963 state legislation not making ‘highway’ jurisdiction conditional on federal reimbursement.

This decision was subsequently overturned by the Eighth Circuit Court of Appeals in *Rosebud Sioux Tribe v. South Dakota*.<sup>27</sup> The federal appeals court held South Dakota’s attempt to secure partial P.L. 280 jurisdiction invalid because it was unresponsive to the law enforcement concerns of P.L. 280, limited to the most financially attractive aspect of P.L. 280 jurisdiction, and

needlessly increased (rather than decreased) jurisdictional complexity. P.L. 280 would now seem nugatory - that is of no actual or potential force - in South Dakota.

#### **D. 'C.F.R.' Courts**

Previous editions of the *Handbook* indicated that one or more tribal courts in South Dakota were 'C.F.R.' courts governed by the federal regulations found at 25 C.F.R. §11. *et. seq.* (2005). That is no longer true. All nine tribal courts in South Dakota are currently established pursuant to authority set out in each Tribe's constitution.

#### **E. Note on Extradition**

Currently all but two of the nine Tribes in South Dakota have laws within their codes that contain procedures for the extradition of tribal members who are wanted in courts outside the reservation.<sup>28</sup> The common theme among the various codes is that tribes are not willing to hide persons who have committed crimes outside the reservations. But what is demanded from other governments requesting extradition is respect and comity for tribal sovereignty.

In general, the tribal codes call for a request from the chief executive<sup>29</sup> of the sovereign seeking extradition to present such request for extradition in writing, along with documentation, such as arrest warrants and complaints, to a tribal court, a tribal chairperson, or the tribal council. Some of the codes allow for the tribal judge to determine if there is probable cause, and require the executive authority who is requesting extradition to present its evidence in tribal court. Other codes allow for the Tribal Chairperson to determine if an extradition should be granted. Only three of the Tribes have the prerequisite requirement of a compact between the sovereigns in order for an extradition to go forward.<sup>30</sup>

The State of South Dakota requires a mutual and formal extradition compact with a tribe before a tribal offender held in state custody or otherwise present in the state, is subject to extradition.<sup>31</sup> The tribe must present to the Attorney General a request, in writing, with a copy of any arrest warrant, a copy of a judgment of conviction or sentence, and a sworn statement by the reservation judicial officer that the person charged is wanted.<sup>32</sup> The Attorney General in his discretion may either commence extradition proceedings on tribal demand or hold the individual under state law.<sup>33</sup> The request will then be sent to a circuit court judge who will decide if a warrant will be issued and whether the extradition demand will be honored.<sup>34</sup> If a tribe requests the extradition of a person, a circuit court judge may require the Attorney General to investigate and report the situation and circumstances of the person demanded.<sup>35</sup> Extradition proceedings will be conducted between a circuit court presiding judge and a tribal judge or magistrate.<sup>36</sup>

## **F. Note on Fresh Pursuit**

In 2004, the South Dakota Supreme Court decided *State v. Cummings*.<sup>37</sup> In this case the State appealed the decision of the circuit court's granting of a motion to suppress evidence concerning a tribal member/defendant who had fled from a state law enforcement officer and was pursued across the border of the Pine Ridge Reservation. The State tried to assert that *Nevada v. Hicks*<sup>38</sup> applied to the facts of this case and therefore the decision of the circuit court to suppress evidence was incorrectly decided.

The South Dakota Supreme Court distinguished *Hicks*, holding that the question in *Hicks* was "whether a tribal court may assert jurisdiction over civil claims against state officials who entered tribal land to execute a search warrant against a tribe member suspected of having violated state law outside the reservation."<sup>39</sup> The question in *Cummings* was "whether a state officer may pursue a tribal member onto a reservation for a traffic offense without a warrant or tribal permission."<sup>40</sup> The South Dakota Supreme Court held that its prior precedent in *State v. Spotted Horse*,<sup>41</sup> requiring the suppression of the evidence "the officer had obtained after he entered the reservation," would be controlling in *Cummings* because the fact situation was similar.

In *Spotted Horse*, the Indian defendant was pursued by a state law enforcement officer who attempted to stop him because his license plates were not valid.<sup>42</sup> Spotted Horse refused to stop and crossed the Standing Rock Reservation line, where the state enforcement office followed him and subsequently beat and arrested him.<sup>43</sup> The South Dakota Supreme Court held that evidence used in Spotted Horse's arrest was inadmissible because it was a product of an illegal arrest and constituted a constitutional violation of Spotted Horse's rights.<sup>44</sup> In both *Spotted Horse* and *Cummings*, evidence seized on the reservation was suppressed as to the off-reservation offenses. However, in both cases, the state Supreme Court upheld the basic jurisdiction of the state court to try the reservation defendant for the off-reservation offenses.

## **G. Northern Plains Intertribal Court of Appeals**

Currently, the following South Dakota tribes participate in the Northern Plains Intertribal Court of Appeals: the Crow Creek Sioux Tribe and the Sisseton-Wahpeton Sioux Tribe. Other tribes may participate upon proper authorization of their governing bodies. Despite continuing funding problems, in its short history this Court has established a significant breakthrough in establishing a multi-tribal court of appeals in South Dakota and a fledgling body of written appellate decisions.<sup>45</sup>

The Intertribal Court of Appeals is governed by a comprehensive Uniform Code and Court

Rules. The Court is overseen by an Appellate Court Policy Board comprised of two members from each member reservation. These representatives are selected by the respective tribal presidents and may not be tribal judges. The Board has review and approval authority of all annual budget and operational matters of the court system. The Board also approves all personnel policies and procedures and generally insures compliance with adopted policies and reports to all participating tribal governing bodies. Sec. XVIII Uniform Code of the Intertribal Court of Appeals of South Dakota (1988) (hereinafter Uniform Code (1988)).

The Appellate panel of this Court is to be made up of one judge (and one alternate) from each participating reservation including at least one lay judge or person who is a member of a participating tribe and is familiar with Indian customs and traditions and at least one professional attorney. If no professional attorney is on a particular panel, one may be so appointed. Sec. IV Uniform Code (1988). The Uniform Code contains no rules concerning who may practice before it.

Appeals are authorized in both civil and criminal cases. Sec. X Uniform Code (1988). The Court of Appeals is a Court of Record Sec. VI Uniform Code (1988) and shall issue written memorandums of decision. Sec. X Uniform Code (1988).

The jurisdiction of the Court extends to civil and criminal appeals from member tribal courts which are taken from:

- (1) A judgment;
- (2) An order affecting a substantial right, made in any action, that determines the action and prevents a judgment from which an appeal might be taken;
- (3) An order which grants, refuses, continues, dissolves, or modifies any of the remedies of arrest and bail, claim and delivery, injunction, attachment, garnishment, receivership, or deposit in court; or
- (4) Any other order which in the Court's discretion is allowed by the Court as provided by Court Rules when the Court considers that the ends of justice will be served.

Sec. XI Uniform Code (1988).

In determining cases before it, the Court shall apply the substantive law of the member Tribal Code from which the case originated and all applicable Federal laws and statutes. Sec. XI Uniform Code (1988). On any procedural issues arising within the Court, it may, in its discretion, consult and apply, in turn: (1) applicable Federal law; and (2) applicable State law. Sec. X Uniform



Code (1988).

The Court of Appeals may reverse, affirm, or modify any order of judgment appealed from. It may order the lower court to add to, modify, or complete the findings to make the same conform to the issues presented and the facts as the facts were found by the Tribal Court from the evidence, and the findings when corrected, or may order a new trial or order that further proceedings be held. All decisions shall be by the majority, in writing, and signed by the participating Appellate Judges. If no majority is reached on a decision, then the decision of the Tribal Court is upheld. Sec. X Uniform Code (1988).

Each member Tribal Government and Tribal Court must grant full faith and credit to all decisions and rulings of the Intertribal Court of Appeals. Sec. XI Uniform Code (1988).

## **CIVIL JURISDICTION**

### **A. Introduction**

Civil jurisdiction in Indian country, in contrast to criminal jurisdiction, is not largely governed by federal statutes and therefore its contours are often less clear. This complexity has further been advanced by the explicit holding in *National Farmers Union* that rejected any extension of *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978) (holding no tribal *criminal* jurisdiction over non-Indians), into the civil jurisdiction area and the corollary recognition articulated in *Iowa Mutual* that “tribal authority over the activities of non-Indians on reservation lands is an important part of tribal sovereignty.”<sup>46</sup> All of this is further highlighted by the increasing volume of civil litigation in most tribal courts. It is also important to note in this regard that all South Dakota tribes have juvenile or children’s courts to deal with minors, including matters under the Indian Child Welfare Act, 25 U.S.C. §1901-1963 (1983) (ICWA).

Matters of civil jurisdiction are further complicated by issues of tribal sovereign immunity when someone brings suit against the tribe or one of its sub-entities. Such lawsuits raise difficult questions of when and under what circumstances the tribe or one of its sub-entities may be sued.<sup>47</sup>

Ultimately, any issue of civil jurisdiction must be fully scrutinized within the parameters of the particular tribe’s own law including its treaties, constitution, code, and decisional law, as well as any other tribally enumerated source of authority, and then filtered through the backdrop of federal Indian law. There is no other reliable or responsible way to analyze these critical and absorbing issues.

### **B. Diminishment**

A number of reservations in South Dakota have been diminished. This means that their original boundaries as established by treaty or agreement were reduced by later agreements or unilateral acts of Congress and were subsequently ratified by federal court decisions. Diminished reservations in the state include Sisseton-Wahpeton,<sup>48</sup> Rosebud,<sup>49</sup> Pine Ridge,<sup>50</sup> and Yankton.<sup>51</sup> As a result of diminishment, there often continues to be both tribal and individual Indian trust land located outside the diminished boundaries of a particular reservation.

Diminishment is often a salient fact in considering issues of jurisdiction. This off reservation trust land as well as any ‘dependent Indian community’<sup>52</sup> is still part of ‘Indian country’ as defined at 18 U.S.C. §1151 and therefore within the purview of possible tribal court jurisdiction. Geography becomes important and tribal jurisdiction does not automatically end at a (diminished) reservation’s boundaries. Jurisdictional analysis must therefore be flexible and responsive to the unique legal history of any particular reservation.

### **C. Tribal Courts Established Pursuant to Tribal Authority**

#### **CHEYENNE RIVER SIOUX RESERVATION**

The Cheyenne River Sioux Tribal Court is located in Eagle Butte, South Dakota, and was established pursuant to Art. IV, § 1(k) of the Cheyenne River Sioux Tribal Constitution.

##### **a. Attorney Rules and Fees for Admission to Practice**

In order to be admitted to practice law in the Cheyenne River Sioux Tribal Court, a professional attorney must: (1) be an active member in good standing of the South Dakota Bar or be eligible to practice before the Supreme Court of another state or the Supreme Court of the United States; (2) make written application to practice in the Cheyenne River Sioux Tribal Court; (3) take an oath to abide by the standard of professional conduct specified in the Cheyenne River Sioux Tribal Code and agree to represent indigent clients without compensation or at a reduced level of compensation. Cheyenne River Sioux Tribal Code, § 1-5-4 (1978).

After the application has been filed with the Cheyenne River Sioux Tribal Court, the application is screened by the Chief Judge of the Court and is then approved or disapproved. If the applicant is dissatisfied with the decision made by the Chief Judge, the decision may be appealed to the Cheyenne River Sioux Tribal Council. Cheyenne River Sioux Tribal Code, § 1-5-4 (1978).

The fee to practice in the Cheyenne River Sioux Tribal Court is two-hundred and fifty dollars (\$250.00). Thereafter, an attorney must pay an annual renewal fee of two-hundred and fifty dollars (\$250.00). Cheyenne River Sioux Tribal Court Resolution No. 152-83-CR- Chapter V. § 1-

5-4.

**b. Tribal Court Advocate Rules and Fees for Admission to Practice**

The Cheyenne River Sioux Tribal Code is silent as to the qualifications to become a tribal court advocate or lay counsel.

**c. Suspension and Disbarment**

The Cheyenne River Sioux Tribal Code provides that both attorneys and tribal advocates are subject to the same standards of professional responsibility and ethical conduct. The Code of Professional Responsibility, as adopted by the American Bar Association, is incorporated by reference as setting out the guiding principles for professional conduct. Cheyenne River Sioux Tribal Code, § 1-5-6 (1978).

All disciplinary matters are decided by the Chief Judge of the Cheyenne River Sioux Tribal Court. Disciplinary sanctions include suspension and disbarment. Disciplinary action may be commenced either by the filing of a complaint with the Court or a judge acting on his or her own initiative. Cheyenne River Sioux Tribal Code, § 1-5-5 (1978).

**d. Appeals**

The Cheyenne River Sioux Tribe has its own Court of Appeals. Appeals are governed by the Cheyenne River Sioux Tribe Rules of Civil Procedure which closely parallel the Federal Rules of Civil Procedure. Rule 37, Cheyenne River Sioux Tribe Rules of Civil Procedure (1978); Revised Rule 84, 85, 86 governing appeals Chapter XII (1993).

**e. Territorial Jurisdiction**

The Cheyenne River Sioux Tribe asserts territorial jurisdiction over the entire Cheyenne River Sioux Reservation in accordance with the original boundaries as established as part of the Great Sioux Agreement of March 2, 1889, 25 Stat. 888. This includes both fee simple (deeded) and trust land. Cheyenne River Sioux Tribal Code, § 1-4-2 (1978).

**f. Personal Jurisdiction**

Unless there is a federal law to the contrary, the Cheyenne River Sioux Tribal Code asserts jurisdiction over all actions where the persons are present or residing within the boundaries of the Cheyenne River Sioux Reservation. This includes corporate entities transacting business or possessing property on the Reservation. Cheyenne River Sioux Tribal Code, § 1-4-3 (1978).

The tribal courts shall have jurisdiction over claims and disputes arising on the reservation. Cheyenne River Sioux Tribe By-Laws Art. V § 1(c) (1992).

**g. Subject Matter Jurisdiction**

The Cheyenne River Sioux Tribal Code asserts jurisdiction over all civil claims arising on the reservation. Specifically mentioned actions include: marriage (§ 8-1-1); divorce (§ 8-3-1); separate maintenance (§ 8-4-1); guardianship (§ 8-6-1); probate (§§ 9-3-1 through 9-6-1); removal and exclusion (§ 11-1-1); foreclosure of secured obligations (§ 10); and recovery of possession of real property (§ 10-2-1). Cheyenne River Sioux Tribal Code (1978). Other common law causes of action in such areas as contract and tort law are well recognized even though they are not specifically enumerated.

**h. Available Relief**

Specific types of enumerated relief include money damages, declaratory relief, injunctive relief, extraordinary writs, and execution. Cheyenne River Sioux Rules of Civil Procedure, Rules 25, 34, 35, 36, (1978). Remedies also include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies. Cheyenne River Sioux Rules of Civil Procedure, Rule 64 (1978).

The Cheyenne River Sioux Tribe has adopted a specific section on motor vehicle repossession. Cheyenne River Sioux Tribal Code § 10-4-1 (1993). The Code specifically calls for the end to any self help actions. Title X, Part Four (Amendment to Law and Order Code Adopted by Tribal Council (1993)).

**i. Enforcement of Judgments**

The Cheyenne River Sioux Tribal Code provides that the tribal court can issue writs of execution directed to the Cheyenne River Sioux Tribal Police Department for the enforcement of judgments. Cheyenne River Sioux Rules of Civil Procedure, Rule 69 (a) & (b) (1978). The Cheyenne River Sioux Tribal Code, however, prohibits self-help remedies. Cheyenne River Sioux Rules of Civil Procedure, Rule 36 (1978).

**j. Comity and Full Faith and Credit<sup>53</sup>**

The Cheyenne River Sioux Tribe has adopted by Executive resolution that the judgment of or comity to another jurisdiction will be recognized if the party seeking recognition has proven by clear and convincing evidence in Tribal Court the following:

1. The tribal court had jurisdiction over both the subject matter and the parties;
2. The order or judgment was not fraudulently obtained;
3. The order or judgment was obtained by a process that assures the requisite of an impartial administration of justice;

4. The order or judgment complies with the laws of the jurisdiction in which it was obtained;
5. The order or judgment does not contravene public policy of South Dakota.

Executive Resolution #E-233-97-CR

**k. Uniform Commercial Code**

The Cheyenne River Sioux Tribe adopted South Dakota's version of Article 9 of the Uniform Commercial Code, which covers secured transactions. Cheyenne River Sioux Tribe Uniform Commercial Code (2001).

**l. Extradition**

The Cheyenne River Sioux Tribe has deemed that if a person who has either been charged or convicted of a felony or any crime that would constitute a Class A offense by the Cheyenne River Sioux Tribe, extradition may be requested. It must be formally brought to a Tribal Judge of the Cheyenne River Sioux Tribe, with a certified copy of the complaint, information, indictment or conviction along with a request addressed to the Court or Tribal Council. The request must come from an executive authority of any Tribal or State government. If submitted to the Court, the Judge shall notify the Tribal Council of the request and basis for the request in writing. The Tribal Council shall direct the Court to issue a warrant if it chooses to do so. Cheyenne River Sioux Tribal Code, Title II, Criminal Procedure Rules, Rule 18(a) (1978).

Any person who is arrested under this section may request a hearing before a Judge of the Cheyenne River Sioux Tribe and probable cause must be shown in order for the extradition to proceed. Cheyenne River Sioux Tribal Code, Title II, Criminal Procedure Rules, Rule 18(b) (1978).

**CROW CREEK RESERVATION**

The Crow Creek Sioux Tribal Court is located in Fort Thompson, South Dakota and was established pursuant to Art. VI § 1(i) of the Crow Creek Sioux Tribal Constitution.

**a. Attorney Rules and Fees for Admission to Practice**

Any attorney who is an active member in good standing of the South Dakota State bar, or any attorney certified and eligible to practice before the highest court of any other state or of the United States Supreme Court is eligible to be admitted to practice before the Crow Creek Sioux Tribal Court. Crow Creek Sioux Tribal Code, § 7-1-3 (1997).

An attorney from another state may make an appearance for one specific case if he or she is

associated with an attorney admitted to practice before the Crow Creek Tribal Court. Crow Creek Sioux Tribal Code, § 7-1-4 (1997).

Any professional attorney seeking admission to practice before the Court must tender an admission fee of one hundred dollars (\$100.00) along with a written application. The Judge shall review and decide on admissions. If admitted, the attorney must pay a one hundred dollar (\$100.00) yearly renewable fee and take an oath. If a person is denied admission they shall have a right to appeal. (There are no specifics in the code on who they would appeal too.) Crow Creek Sioux Tribal Code, § 7-1-5 (1997).

**b. Tribal Court Advocate Rules and Fees for Admission to Practice**

Tribal Court Advocates must meet the following requirements: 1) be at least 21 years of age; and 2) have not been convicted of a felony. The admission fee for advocates is fifty dollars (\$50.00) and must be submitted with a written application. The fee is to be renewable yearly. Tribal advocates shall be subject to the same ethical obligation as a professional attorney. Crow Creek Sioux Tribal Code, § 7-1-1 (1997).

**c. Suspension and Disbarment**

The Tribal Court may disbar or suspend from practice an attorney or tribal court advocate on any of the following grounds:

- (i) False swearing;
- (ii) Conviction of a felony;
- (iii) Disbarment by a Federal or State court;
- (iv) Conduct unbecoming an officer of the court.

Crow Creek Tribal Code, § 7-1-6 (1997)

**d. Appeals**

The Crow Creek Sioux Tribal Court participates in the Northern Plains Intertribal Court of Appeals. Crow Creek Sioux Tribal Code, § 8-1-39 (1997). All appeals must be submitted in writing and filed within thirty days of the trial court's decision. Crow Creek Sioux Tribal Code, § 8-1-39(B) (1997).

**e. Territorial Jurisdiction**

The jurisdiction of the Crow Creek Sioux Tribe shall extend to the territory within the original confines of the diminished reservation boundaries, which are described by the Great Sioux Agreement of 1889, Act of March 2, 1889, 25 Stat. 888. This includes trust allotments without the herein mentioned boundaries and such lands as may be hereafter added thereto under any law of the

United States, except as otherwise provided by law, including roads, waters, bridges and land used for agency purposes. Crow Creek Sioux Tribal Code, § 2-1-1 (1997).

**f. Personal Jurisdiction**

Crow Creek Sioux Tribe shall have civil jurisdiction, subject to any contrary provisions in the tribal constitution, federal law or expressly stated in the Tribal code, over the following persons: a) general original jurisdiction over Indians and non-Indians in all matters of a civil nature arising within the territorial jurisdiction of the court; b) any person engaged in business or activity within the reservation or there personally or through an agent or representative. The cause of action must arise from such business or activity; and c) any person who commits a tortious act or engages in tortious conduct. Crow Creek Sioux Tribal Code, § 2-1-2(B)(2) (1997).

“Person” is defined in the Code for the purpose of jurisdiction as any individual, company, firm or corporation. Crow Creek Sioux Tribal Code, § 2-1-2(A) (1997).

**g. Subject Matter Jurisdiction**

There is a specific section that calls for the Tribal Court to have jurisdiction over any real or personal property located within the reservation to determine ownership or the application of such property to satisfaction of claims for which the owner would be liable. Crow Creek Sioux Tribal Code, § 2-1-3 (1997).

The Tribe also asserts jurisdiction over any employees of the Federal government and Indian Health Services for civil and criminal actions. Crow Creek Sioux Tribal Code, § 2-1-6 (1997).

**h. Available Relief**

Available relief includes damages (including punitive damages), declaratory relief, and the return of personal property. Crow Creek Sioux Tribal Code (1997).

The Court may order a restraining order or preliminary injunction. Crow Creek Sioux Tribal Code, § 8-1-38 (1997).

The plaintiff in an action to recover possession of personal property may at the time of issuing the summons or at any time before the answer, claim the immediate delivery of such property as provided for under the Code. Crow Creek Sioux Tribal Code, § 8-2-1 (1997). Before any possession of property may be taken by the plaintiff, they must furnish sufficient security in cash or sureties and the amount shall be double the amount of the property. Crow Creek Sioux Tribal Code, § 8-2-3 (1997).

A person may be found to be in contempt of court if there is disobedience to a lawful judgment, order, or process of the Court. Crow Creek Sioux Tribal Code, § 4-1-1(4) (1997). Civil

contempt may include a fine payable to the court or imprisonment to secure compliance or both. Crow Creek Sioux Tribal Code, § 4-1-2(2) (1997). All persons accused of being in contempt shall be determined at a hearing at which time the accused shall have been given notice and an opportunity to be heard. Crow Creek Sioux Tribal Code, § 4-1-4(2) (1997).

The Court will award costs to the prevailing party if so prayed for within five days of the entry of judgment and service upon the opposing party. Crow Creek Sioux Tribal Code, § 8-1-30(D) (1997). Attorney fees shall not be awarded unless such has been specifically provided for by contract or agreement of the parties or unless the case has been prosecuted for harassment only or there was no reasonable expectation of success on the part of the affirmatively claiming party. Crow Creek Sioux Tribal Code, § 8-1-30(E) (1997).

**i. Enforcement of Judgments**

The Code does not contain a codified provision for enforcement of judgments. It does however provide for stay of proceeding to enforce a judgment. Crow Creek Sioux Tribal Code, § 8-1-36(A-E) (1997).

**j. Comity and Full Faith and Credit**

The Crow Creek Sioux Tribal Code has no provision for the recognition of judgments from any other tribal, state or federal court.<sup>54</sup>

**k. Commercial Code**

There are no specific Commercial Code provisions in the Crow Creek Sioux Tribal Code.

**l. Extradition**

The Code states that it is the duty of the Crow Creek Sioux Tribal Court to order delivery to the proper authorities of the federal government or any other tribe or reservation, for prosecution, of any offender, if the Tribe establishes an agreement with said authorities. Crow Creek Sioux Tribal Code, § 2-1-4 (1997).

In all instances where Indians commit criminal violations outside the exterior boundaries of the Crow Creek Indian Reservation and return thereto, law enforcement agencies are authorized to arrest and return them to the appropriate state and/or county or tribal enforcement agency, provided a Compact Agreement with said agency is established through a Resolution by the Crow Creek Sioux Tribe. Crow Creek Sioux Tribal Code, § 9-1-28 (1997).

A warrant must be submitted to the agency branch of Law and Order and then delivered to the Tribal Judge for review of validity. Crow Creek Sioux Tribal Code, § 9-1-28 (1997). The accused shall have a right to a hearing to determine identity and not the criminal charge itself. The



warrant will be considered by the Tribal Court as prima facie evidence to substantiate the charge. Crow Creek Sioux Tribal Code, § 9-1-30 (1997).

## **FLANDREAU SANTEE SIOUX RESERVATION**

### **There will be major changes in the Flandreau Santee Sioux Tribal Code in 2006**

The Flandreau Santee Sioux Tribal Court is located in Flandreau, South Dakota, and is a Tribal Court with supplementary laws adopted pursuant to the authority of the Flandreau Santee Sioux Tribal Constitution. Flandreau Santee Sioux Tribal Constitution Art. VIII §1 (f) (1984).

#### **a. Attorney Rules and Fees for Admission to Practice**

Any attorney who is an active member in good standing of the South Dakota Bar, or any attorney certified and eligible to practice before the highest court of any other state or of the Supreme Court of the United States is eligible to be admitted to practice before the Courts of the Flandreau Santee Sioux Tribe. Flandreau Santee Sioux Tribal Code, Ch. 5, § 1-5-3 (1996).

An attorney shall apply by oath, either verbally or in writing that they are a member in good standing, is willing to take a required oath of the Law and Order Code for Attorneys, and be bound. Flandreau Santee Sioux Tribal Code, Ch. 5, § 1-5-4 (1) & (2) (1996). In order for admission to proceed, the attorney must submit a twenty-five dollar (\$25.00) admission fee. The fee shall be waived for attorneys employed by the Tribe and for others upon tribal council resolution. Flandreau Santee Sioux Tribal Code, Ch. 5, § 1-5-4 (1996).

Any Tribal Judge may waive the formal admission procedure and payment of the fee as required in case of an attorney, not a resident of the State of South Dakota, making an appearance for the limited purpose of a single, specific case and if attorney is associated in such case with an attorney or counselor who is formally admitted to practice before the tribal court. Flandreau Santee Sioux Tribal Code, Ch. 5, § 1-5-8 (1996).

#### **b. Tribal Court Advocate Rules and Fees for Admission to Practice**

Lay counselors shall be subject to the same ethical obligations of honesty and confidentiality towards clients and the court as would a licensed attorney. They will be subject to disciplinary authority of the court in all matters relating to their representative capacity. Flandreau Santee Sioux Tribal Code, Ch. 5, § 1-5-1 (1996).

Any person appearing as lay counsel for another may be suspended from further appearance as such for misconduct or improper behavior by any Judge upon same conditions of notice and hearing provided professional attorneys. Flandreau Santee Sioux Tribal Code, Ch. 5, § 1-5-5 (1996).

**c. Suspension and Disbarment**

If an attorney who was admitted to practice before the tribal court has been disbarred or suspended from the practice of law in the State of South Dakota or other state to which reference for admission to practice before the tribal court was made, he shall be suspended from practice before the tribal court. Unless the attorney appears within five days and shows good cause why such an order should not be made, the suspension shall be made indefinitely. If a judge should find attorney to be in contempt of Court, the attorney may appear within ten days and show good cause why he should not be suspended. In addition the court may impose other sanctions. Flandreau Santee Sioux Tribal Code, Ch. 5, § 1-5-5 (1996).

The Chief Judge may, upon receiving a written, verified complaint which indicates that an attorney has acted in an unethical or otherwise improper manner, order an attorney to defend himself at a hearing. The Judge may order the suspension of an attorney if it appears reasonable necessary or appropriate. All suspensions shall be for an indefinite period unless specifically ordered otherwise by the Judge. Flandreau Santee Sioux Tribal Code, Ch. 5, § 1-5-5 (1996).

An attorney who has been suspended may petition the Court for permission to re-apply to practice at the end of one year or at the end of the specified period of suspension at a hearing. If the attorney who was suspended or disbarred has been reinstated the Judge may allow him to apply for readmission to practice before the Court. Flandreau Santee Sioux Tribal Code, Ch. 5, § 1-5-5 (1996).

**d. Appeals**

The Tribal Appellate Court shall have the authority to hear civil and criminal appeals from the Tribal Court. Flandreau Santee Sioux Tribal Code, Ch. 1, § 4A-1-2 (1996). The civil and criminal rules of procedure are set out in Chapters 2 and 3, of Title 4A of the Code. (1996).

**e. Territorial Jurisdiction**

The territorial jurisdiction of the Tribal Court shall extend to the Flandreau Santee Sioux Tribal Reservation as defined in Title I, Chapter 8, Section 8, of the code, including all lands, islands, waters, roads, and bridges or any interest therein, whether trust or non trust status and notwithstanding the issuance of any patent or right of way within the boundaries of the Reservation and such other lands, islands, waters or any interest therein hereafter added to the Reservation. Flandreau Santee Sioux Tribal Code, Ch. 4, § 1-4-1 (1996).

**f. Personal Jurisdiction**

The Tribal Court shall have jurisdiction over the following:

1. All persons within the geographical area referred in Section 1-4-1, who are subject to the jurisdiction and governmental power of the Tribe, to the extent not prohibited by federal Law;
2. All members of the Tribe, wherever located, exercising tribal rights pursuant to federal, tribal, or state law;
3. Any person residing, located or present within the reservation for any civil cause of action;
4. Any person who transacts, conducts or performs any business or activity within the reservation, either in person or by agent or representative for any civil cause of action;
5. Any person who owns, leases, uses or possesses any property within the reservation, for any civil cause of action ... out of the code or other ordinances of the Tribe arising from such ownership, or use or possession;
6. Any person who commits a tortious act or engages in tortious conduct within the reservation, either in person or by agent of representative, for any civil cause of action arising from such act of conduct;
7. Any person who contracts to insure any person, property, or risk, either in person or by agent or representative, located on the reservation at the time of the contract; or
8. Any person who engages in sexual intercourse on the reservation with respect to which a child may have been conceived.

The meaning of “person” for the purposes of this Chapter, shall include but not limited to, any individual, entity, partnership, corporation, association, or public or private organization. Flandreau Santee Sioux Tribal Code, Ch. 4, § 1-4-2 (1996).

**g. Subject Matter Jurisdiction**

The Tribal Court shall have jurisdiction over all civil matters arising within the territorial jurisdiction of the Flandreau Santee Sioux Tribe. The Court shall have exclusive jurisdiction over all actions arising under the Constitution or any law of the tribe. Flandreau Santee Sioux Tribal Code, Ch. 5, § 1-4-4 (1996).

**h. Available Relief**

Injunctions and temporary restraining orders (TRO) are allowed with notice to the adverse party. Flandreau Santee Sioux Tribal Code, Ch. 17, § 4-17-1 (1996). TRO’s will be granted *ex parte*, if without notice, it will expire within ten days. Flandreau Santee Sioux Tribal Code, Ch. 17,

§ 4-17-2 (1996). The Court by its discretion or where directed by statute shall set a security on a preliminary injunction or TRO. Flandreau Santee Sioux Tribal Code, Ch. 17, § 4-17-3 (1996).

A person may be found in contempt of the Court by disobedience to a lawful judgment or order of process of the court. Flandreau Santee Sioux Tribal Code, Ch. 3, § 1-3-1(4) (1996). Relief in a civil contempt proceeding may be coercive or compensatory in nature as to the complaining party and may include a fine payable to the court or to the complaining party. Flandreau Santee Sioux Tribal Code, Ch. 3, § 1-3-2 (1996).

**i. Enforcement of Judgments**

The Flandreau Santee Sioux Tribal Code has a section reserved for the enforcement of judgments, but has not done so. Flandreau Santee Sioux Tribal Code, Title 4D, Reserved (1996).

**j. Comity and Full Faith and Credit**

There are no provisions in the code that are aimed at comity and full faith and credit issues.

**k. Commercial Code**

There are no provisions in the code to deal with commercial transactions.

**l. Extradition**

The Flandreau Santee Sioux Tribe does not have an extradition procedure.

## **LOWER BRULE RESERVATION**

The Lower Brule Sioux Tribal Court is located in Lower Brule, South Dakota, and was established pursuant to Art. VI §1 (J) of the Lower Brule Sioux Tribal Constitution.

**a. Attorney Rules and Fees for Admission to Practice**

Attorney candidates who want to practice must certify under oath, verbally or in writing that they are 1) an active member in good standing of the South Dakota State Bar or certified and eligible to practice before any state's highest court or the Supreme Court of the United States; 2) if admitted to practice before the courts of the Lower Brule Sioux Tribe, the attorney must take the required oath and be bound by it; and 3) if admitted to practice, the attorney will accept and represent indigent clients pro bono when requested by the court. Lower Brule Sioux Tribal Code, Ch. V, § 1-5-4(a)(b)(c).

A filing fee of one hundred and fifty dollars (\$150.00) shall accompany each application for admission to the bar. Lower Brule Sioux Tribal Code, Ch. V, § 1-5-4(2) (Revised and approved by the Lower Brule Sioux Tribe Council Resolution 04-103).

If any attorney is denied admission to practice, he/she may appeal to the Tribal Council.

Lower Brule Sioux Tribal Code, Ch. V, § 1-5-4(5).

A non-resident attorney will be allowed to practice before the Lower Brule Tribal Court, upon the waiver of a Tribal Judge, for a single, specific case. Lower Brule Sioux Tribal Code, Ch. V, § 1-5-8.

**b. Tribal Court Advocate Rules and Fees for Admission to Practice**

Any person who appears before the Lower Brule Tribal Court as a lay advocate shall be subject to the same ethical obligations of honesty and confidentiality towards their clients and the Court as would a professional attorney. The attorney/client testimonial privilege shall apply in appropriate circumstance. Lower Brule Sioux Tribal Code, Ch. V, § 1-5-1(3).

Lay advocates shall be subject to the disciplinary authority of the Lower Brule Sioux Court in all matters concerning their representation of clients in the Tribal Court. Lower Brule Sioux Tribal Code, Ch. V, § 1-5-1(4).

A filing fee of one hundred and fifty dollars (\$150.00) shall accompany each application for admission to the bar. Lower Brule Sioux Tribal Code, Ch. V, § 1-5-4(2) (Revised and approved by the Lower Brule Sioux Tribe Council Resolution 04-103).

**c. Suspension and Disbarment**

The Lower Brule Tribal Court shall subject an attorney or lay counsel to disbarment or suspension if the attorney or lay counsel has been disbarred or suspended from the practice of law by the State of South Dakota or another state that was referenced as a condition to practice before the Tribal Court. Lower Brule Sioux Tribal Code, Ch. V, § 1-5-5(1).

If any attorney has been found in contempt by a Judge of the Court, they must show cause within ten days why they should not be suspended or have other sanctions imposed upon them. Lower Brule Sioux Tribal Code, Ch. V, § 1-5-5(2).

If the Chief Judge has received a written and verified complaint against an attorney or lay counsel who has acted in an unethical or improper manner, the attorney or law counsel may be suspended. All suspensions are indefinite unless specifically ordered otherwise. Lower Brule Sioux Tribal Code, Ch. V, § 1-5-5(3).

The Tribal Code has also adopted by reference the Standards of Conduct and Obligations for attorneys and lay counsel of the American Bar Association. Lower Brule Sioux Tribal Code, Ch. V, § 1-5-6(1).

**d. Appeals**

The Lower Brule Sioux Tribe has its own Court of Appeals, referred to as the Appellate court. Lower Brule Sioux Tribal Code, Ch. I, § 1-2-1.

**e. Territorial Jurisdiction**

The jurisdiction of the Lower Brule Sioux Tribe shall extend to the territory within the original boundaries of the Lower Brule Sioux Reservation as established by the Great Sioux Agreement of 1889, Act of March 2, 1889, 25 Stat. 88, and to all other lands added thereto under any law of the United States. Lower Brule Sioux Tribe's Constitution Art. 1 (1935).

**f. Personal Jurisdiction**

The Lower Brule Tribe shall have jurisdiction over all civil and criminal matters over any person resident, located or present within the reservation, except where it would be in direct conflict contained in Federal Law or Tribal Law. Lower Brule Sioux Tribal Code, Ch. IV, § 1-4-3(2)(A).

The word "person" is defined as any individual, firm, company, association or corporation. Lower Brule Sioux Tribal Code, Ch. IV, § 1-4-3(1).

The Tribe has personal jurisdiction over any person who transacts, conducts or performs any business or activity within the reservation, either in person or by appointed representative or agent. Lower Brule Sioux Tribal Code, Ch. IV, § 1-4-3(2)(B). The Tribe also asserts jurisdiction over persons who own or possess any property within the reservation for any civil cause of action that may arise. Lower Brule Sioux Tribal Code, Ch. IV, § 1-4-3(2)(C).

**g. Subject Matter Jurisdiction**

The Tribe has general subject matter jurisdiction over all matters both civil and criminal, concerning the Tribe, its officers, agents, employees, property or enterprises or a member of the tribe or a member of a federally recognized tribe. The Courts of the Lower Brule Sioux Tribe shall not assume jurisdiction over any civil or criminal matter which does not involve either the Tribe, its officers, agents, employees, property or enterprise, or a member of the tribe or a member of a federally recognized tribe, if some other forum exists for the handling of the matter and if the matter is not one in which the rights of the Tribe or its members may be directly or indirectly affected. Lower Brule Sioux Tribal Code, Ch. IV, § 1-4-5.

**h. Available Relief**

A judgment shall be entered in each civil case. The judgment shall be for money or other relief. Lower Brule Sioux Tribal Code, Ch. 11 §5 (1981).

Injunctive relief and a temporary restraining order (TRO) are available, but will not be issued unless the adverse party is given notice. Lower Brule Tribal Code, Rules of Civil Procedures,

Rule 34(a) & (b). The Code also calls for a security to be given if injunctive relief or a TRO is granted, and that it will be specified in the court's discretion. Lower Brule Tribal Code, Rules of Civil Procedures, Ch. 11, Rule 34(c).

The Lower Brule Sioux Tribal Code allows for a renewal of a judgment prior to the expiration of the statute of limitations of five years. Lower Brule Sioux Tribal Code, Ch. XI, § 5 (d).

Attorneys' fees will only be awarded if by contract or agreement by parties of the dispute, or if there are findings the suit was brought for harassment purposes or no reasonable expectation of success by the affirmatively claiming party. Lower Brule Sioux Tribal Code, Rules of Civil Procedures, Ch. 11, Rule 25 (e).

**i. Enforcement of Judgments**

Execution of judgments is allowed by the Lower Brule Tribal Code. If within thirty days after entry of a judgment awarding money damages and/or costs against a party, or within thirty days after resolution of an appeal, the court after proof that a judgment debtor is in default of judgment, and upon the motion of judgment creditor, heard *ex parte*, may order the Lower Brule Sioux Tribal Police to execute on the personal property of judgment debtor. Lower Brule Tribal Code, Ch. 11, Rules of Civil Procedures, Rule 36(a) & (b).

**j. Comity and Full Faith and Credit**

The Lower Brule Sioux Tribal Code has no provision for the recognition of judgments from any other tribe, state or federal court.<sup>55</sup>

**k. Uniform Commercial Code**

There are no provisions in the Lower Brule Tribal Code that deal with commercial transactions.

**l. Extradition**

At this time there is no information on this topic.

**OGLALA (PINE RIDGE) SIOUX RESERVATION**

The Oglala (Pine Ridge) Sioux Tribal Court is located in Pine Ridge and Kyle, South Dakota, and was established pursuant to Art. V of the Oglala Sioux Tribal Constitution.

**a. Attorney Rules and Fees for the Admission to Practice**

Attorneys may or may not be a person admitted to any state or federal bar. An attorney shall have the right to appear before the Tribal Court upon subscription to an oath and payment of two

hundred and fifty dollars (\$250.00) with the Clerk of Courts. Oglala Sioux Tribe Resolution (2006). In addition, the attorney must execute an attorney license which contains an oath that the attorney will support and defend the Constitution and By-laws of the United States and the ordinances of the Oglala Sioux Tribe. The oath further states that the attorney has studied and is familiar with the codes and ordinances of the Oglala Sioux Tribe. The attorney must pledge himself to show honor toward those persons he represents and respect toward the Oglala Sioux Tribe. Attorneys may also appear without subscribing to the oath at the discretion of the Tribal Court. Oglala Sioux Trial Code, Ch. 14, Rule 2 (1991).

**b. Tribal Advocate Rules and Fees for Admission to Practice**

Tribal advocates (non-law-trained tribal attorneys) are required to pay a fifty dollar (\$50.00) annual fee and execute an attorney license as described above. Tribal advocates are subject to the same disciplinary provisions as professional attorneys. Oglala Sioux Tribal Code, Ch. 11, Rule 2 (1991).

**c. Suspension and Disbarment**

Attorneys may be prohibited from appearing before the Tribal Court permanently, or for a stated period of time, for violating the oath, false swearing or upon commission of a serious criminal offense. Oglala Sioux Tribal Code, Ch. 14, Rule 2 (1991). The Oglala Sioux Tribal Court has had under discussion for some time the establishment of a tribal bar association and the adoption of a code of professional conduct and bar exam. At the date of publication of the *Handbook*, no bar exam has been instituted and no more specific rules of professional conduct have been adopted by the Oglala Sioux Tribal Court or Tribal Council.

The Oglala Sioux Tribal Government adopted Chapter 45 to its Code which calls for the establishment of the Oglala Sioux Tribal Bar Association. The Bar association has yet to be organized, but some of the provisions under this code are currently utilized.

The Supreme Court of the Oglala Sioux Tribe may discipline any attorney or lay advocate practicing before the Tribal Court. Oglala Sioux Tribal Code, Ch. 45, § 6 (1997).

**d. Appeals**

The Oglala Sioux Tribe has established its own Supreme Court of the Oglala Nation. Appellants must give written notice of appeal within fifteen days after the date of sentence or final judgment. A fee of twenty-five dollars (\$25.00) must be paid with the Clerk of Courts to cover costs and disbursements. A satisfactory bond must also be posted not exceeding twice the amount of the fine imposed or, in case of a jail sentence, the cash equivalent as determined by the Court.



Oglala Sioux Tribal Code, Ch. 1, §§6.5, 6.6 (1991).

**e. Territorial Jurisdiction**

Territorial jurisdiction includes “all territory within the original Reservation boundaries, including fee patent lands, roads, waters, bridges and lands used for agency purposes.” Oglala Sioux Tribal Code, Ch. 1, §1.3 (1991).

**f. Personal Jurisdiction**

The Oglala Sioux Tribal Constitution, Article V, Section 2, provides that the judicial powers shall extend to all cases involving only members of the Oglala Sioux Tribe arising under the Constitution, By-laws or ordinances of the Tribe. The Tribe shall have jurisdiction over all other cases in which all parties consent to jurisdiction. Oglala Sioux Tribal Code, Ch. 1, §1 (1991). There is an apparent conflict between what the constitution states and ordinances that were approved as to jurisdiction.

The Oglala Sioux Tribal Code provides that the Tribal Court has jurisdiction over all offenses when committed by a member of the Tribe, by non-member Indians who are members of any recognized Tribe under Federal jurisdiction, or by any other person consenting to jurisdiction. Oglala Sioux Tribal Code, Ch. 1, § 1 (Amended by Ordinance No. 91-03).

In civil actions, the Oglala Sioux Tribal Code confers jurisdiction upon the Tribal Courts in suits wherein the defendant is a member of the Oglala Sioux Tribe and for all suits between members and non-members which are brought before the Court by stipulation of both parties. Judgment cannot be given unless the defendant has actually received notice of the suit and has had ample opportunity to appear before the Court to present his defense. Oglala Sioux Tribal Code, Ch. 2, §20 (1991). The Code is silent as to residency requirements.

The Oglala Sioux Tribal Code states any person who is not a member of the Oglala Sioux Tribe shall be deemed to having consented to the jurisdiction of the Oglala Sioux Tribe, by doing so personally through an employee, through an agent or through a subsidiary of any business situated within the exterior boundaries of the Reservation. Also included are any of the following acts which include: the transaction of any business, the commission or omission of any act which results in a tort action, the ownership, use, or possession or residing of any property situated within the exterior boundaries of the Pine Ridge Indian Reservation, engaging in any employer-employee relationship, and leasing or permitting of any land or property. Oglala Sioux Tribal Code, Ch. 2 §20 (A) & (B) (1991).

The Tribe also deems to have jurisdiction over the commission of any act giving rise to

claims for spousal support, separate maintenance, child support, child custody, divorce or modification of any decree of divorce or separate maintenance proceeding. Oglala Sioux Tribal Code, Ch. 2, § 20 (A) & (B) (1991).

The Oglala Sioux Tribe has adopted a long-arm statute that provides in part: “Service of process upon any person subject to implied consent may be made by service within or without the Pine Ridge Indian Reservation in the same manner provided for services within the Pine Ridge Indian Reservation.” Oglala Sioux Tribal Code, Ch. 2, § 1 (Amended by Ordinance OST 93-12 (1993.))

**g. Subject Matter Jurisdiction**

By tribal common law and practice, both tort and contract actions are adjudicated by the Oglala Sioux Tribal Court. Sections of the tribal code concerning the award of money damages and the payment of fair compensation to an injured party support jurisdiction over these actions. Oglala Sioux Tribal Code, Ch. 2, §§22, 22.1 (1991).

Suits against the Oglala Sioux Tribe, a tribal governmental agency, official or employee are barred by the Tribal Court only after exhaustion of administrative remedies. This exhaustion of remedies requirement is strictly enforced. Oglala Sioux Tribal Code, Ch. 2, §20.1 (1991).

The Oglala Sioux Tribal Code empowers the Tribal Court to assert jurisdiction over a wide range of topics including the following subject matter areas: criminal cases, Oglala Sioux Tribal Code, Ch. 2, §1 (1991); civil actions - “all suits”, Oglala Sioux Tribal Code, Ch. 2, §20 (1991); evictions, Oglala Sioux Tribal Code, Ch. 2, §21.1 (1991); domestic relations, Oglala Sioux Tribal Code, Ch. 3 (1991); adoptions, Oglala Sioux Tribal Code, Ch. 3, §53 (1991); guardianships, Oglala Sioux Tribal Code, Ch. 3, §53 (1991); dependent, neglected or delinquent children, Oglala Sioux Tribal Code, Ch. 4 (1991); juveniles, Oglala Tribal Code Ch. 5 (1991); heirship and probate, Oglala Sioux Tribal Code, Ch. 7 (1991); removal of non-members and trespassers, Oglala Sioux Tribal Code, Ch. 10 (1991); motor vehicle code enforcement, Oglala Sioux Tribal Code, Ch. 15 (1991); and livestock code enforcement, Oglala Sioux Tribal Code, Ch. 31 (1991).

**h. Available Remedies**

Remedies available under the Oglala Sioux Tribal Code include the awarding of money damages, the surrender of property to an injured party and specific performance. Where injury was deliberately inflicted, the Court may also impose punitive damages. Oglala Sioux Tribal Code, Ch. 2, §§22, 22.1, 22.2, 22.3 (1991).

Temporary restraining orders may be issued without notice or hearing where the plaintiff can show irreparable injury. Temporary restraining orders no longer expire after seventy-two hours, but if they are issued without notice a hearing must be set within ten days. Oglala Sioux Tribal Code, Ch. 2, §22.4 (1991). The Court may assess the costs of suit in favor of the prevailing party. Oglala Sioux Tribal Code, Ch. 2, §23 (1991). The Tribal Court may also require that a criminal offender make restitution to an injured party in addition to the payment of a fine or the imposition of a prison sentence. Oglala Sioux Tribal Code, Ch. 8, §57.2 (1991).

**i. Enforcement of Judgments**

When money damages are awarded to an injured party and the judgment debtor refuses to make payment within the time specified by the Tribal Court, the prevailing party may take steps to satisfy the judgment out of funds held to the credit of the judgment debtor at the Department of Interior Agency Office. Oglala Sioux Tribal Code, Ch. 2, §24 (1991). A judgment obtained in Tribal Court is a lawful debt in all proceedings in the distribution of decedents' estates. Oglala Sioux Tribal Code, Ch. 2, §24 (1991).

No civil order or judgment of the Tribal Court shall be valid or enforceable against any person unless the order or judgment was entered in a civil case properly instituted in accord with the provisions of the Tribal Code and the rules of Court. Further, such an order or judgment shall have no effect unless the defendant was given an opportunity to appear at a hearing in the case. Oglala Sioux Tribal Code, Ch. 2, §22.4 (1991).

Willful disobedience to a lawful order, subpoena, warrant or command duly issued by the Tribal Court or any officer thereof constitutes a criminal violation. Oglala Sioux Tribal Code, Ch. 8, §72 (1991).

**j. Comity and Full Faith and Credit**

There is a tribal ordinance on comity and full faith and credit. Oglala Sioux Tribal Code, Ch. 2, §24.4 (1989).

**k. Commercial Code**

There are no specific sections within the Tribal Code addressing a Commercial Code.

**l. Extradition**

The Oglala Sioux Tribe requires a formal request to the Oglala Sioux Tribal Court. Any extradition request must have attached to it, a certified copy of the complaint, information, indictment or conviction along with a request addressed the Tribal President who has the final

authority to act upon the request, but can at his discretion refer the matter to the tribal council, then its decision will be final. Oglala Sioux Tribal Code, Ch. 10A § 1-14 (1991).

## **ROSEBUD SIOUX RESERVATION**

The Rosebud Sioux Tribal Court is located in Rosebud, South Dakota and was established pursuant to Art. IV §1(k) of the Rosebud Sioux Tribal Constitution.

### **a. Attorney Rules and Fees for Admission to Practice**

Attorney candidates for admission to practice must make a written application, be an active member in good standing of any state bar or federal court and take the tribal bar examination. Rosebud Sioux Tribal Code, Title 9 Ch. 2 §§2-4 (1985). The admission fee is one hundred dollars (\$100.00). The fee must also be paid yearly. Rosebud Sioux Tribal Code, Ch. II, §9-2-2 (1985).

Any attorney denied admission to practice may appeal to the Rosebud Sioux Legislative Body, i.e., Rosebud Sioux Tribal Council. Rosebud Sioux Tribal Code, Title 9, Ch. 2 §5 (1985).

Attorney admittees are to accept and represent indigent clients upon Tribal Court appointment. Rosebud Sioux Tribal Code, Title 9, Ch. 2 §7 (1985).

### **b. Tribal Court Advocate Rules and Fees for Admission to Practice**

Tribal court advocate candidates for admission to practice must make written application and take the tribal bar examination. Rosebud Sioux Tribal Code, Title 9, Ch. 2, §3 (1985). The admission fee is one hundred dollars (\$100.00).

Tribal court advocate admittees must represent indigent persons upon appointment. Rosebud Sioux Tribal Code, Title 9, Ch. 2, §7 (1985).

### **c. Suspension and Disbarment**

Tribal court practitioners, both attorneys and tribal court advocates, may be suspended for contempt or acting in an unethical or improper manner after an appropriate hearing. All suspensions are indefinite unless specifically ordered otherwise. All appeals are to be heard by the Rosebud Sioux Tribe's legislative body. Rosebud Sioux Tribal Code, Title 9, Ch. 2, §§8-10 (1985).

All attorneys and tribal court advocates shall abide by a Code of Professional Responsibilities which shall be adopted by the American Bar Association. Rosebud Sioux Tribal Code, Title 9, Ch. 2, § 9-2-3 (1986)

### **d. Appeals**

The Rosebud Sioux Tribe has its own Court of Appeals. All appeals are governed by the Rules of Procedure of the Rosebud Sioux Supreme Court. Rosebud Sioux Tribal Code, Rules of

Civil Procedure, Rule 1-20 (1988).

**e. Territorial Jurisdiction**

The jurisdiction of the Rosebud Sioux Tribe shall extend to the territory within the original confines of the Rosebud Sioux Reservation boundaries as established by the Great Sioux Agreement of 1889, Act of March 2, 1889, 25 Stat. 888, and to such other lands as may hereafter be added to thereto under any law of the United States, except as otherwise provided by law. Rosebud Sioux Tribal Constitution Art. 1 (1935).

**f. Personal Jurisdiction**

The Rosebud Sioux Tribal Court will exercise civil and criminal jurisdiction over all persons within its territorial jurisdiction to the extent allowed by federal statutory law and federal court decisions. Rosebud Sioux Tribal Code, Title 4, Ch. 2, §6 (1986). The word “person” is not defined and the word “residence” is not mentioned or defined. The code also asserts personal jurisdiction over non-residents for acts committed on the reservation. Rosebud Sioux Tribal Code, Title 4, Ch. 2, §7 (1989).

**g. Subject Matter Jurisdiction**

The Rosebud Sioux Tribe tribal courts will exercise all of the civil and criminal jurisdiction over all persons allowed to it by federal statute and federal judicial court decisions. Rosebud Sioux Tribal Code, Title 4, Ch. 2, §7 (1989).

The Rosebud Sioux Tribal Code, rules on civil procedures governs in all actions of a civil nature, except where different rules are particularly prescribed in the Code. These rules shall be liberally construed to secure a just, speedy and inexpensive determination of every civil action. The distinction between actions at law and suits at equity and the common law forms of all such actions and suits are hereby abolished in the Tribal Courts. All actions to which these rules apply will be known as civil actions. Rosebud Sioux Tribal Code, Title 4, Ch. 1, Rules 1 & 2 (1986).

**h. Available Relief**

Damages and unlawful detainer and election are available remedies. Rosebud Sioux Tribal Code, Title 8, Ch. 3, §§ 8-3-1 through 8-3-11 and Ch. 6, §§ 8-6-1 through 8-6-5 (1986). Injunctive relief is specifically authorized. Rosebud Sioux Tribal Code, Title 4, Ch. 1, Rule 65 (1986). Declaratory relief is also specifically authorized. Rosebud Sioux Tribal Code, Title 4, Ch. 1, Rule 57 (1989).

Damages may be sought if the detriment is loss or harm suffered in person or property. Rosebud Sioux Tribal Code, Title 8, Ch. 6, § 8-6-1 (1986). Nominal damages are also available.

Rosebud Sioux Tribal Code, Title 8, Ch. 6, § 8-6-2 (1986). Damages may also be sought for a breach of contract for the obligation to pay money or under an agreement to sell or buy real property. Rosebud Sioux Tribal Code, Title 8, Ch. 6, §§ 8-7-1, 8-7-2, 8-7-3, 8-7-4 (1986).

Damages may also be sought for personal injuries and punitive damages will be awarded at the discretion of a jury or the Tribal Court. Rosebud Sioux Tribal Code, Title 8, Ch. 8, §§ 8-8-1, 8-8-2 (1986).

**i. Enforcement of Judgments**

Execution of judgments is permitted upon motion of the judgment creditor heard *ex parte* wherein the Court shall order the Tribal Police to levy and execute upon the personal property of the judgment debtor. Rosebud Sioux Tribal Code, Title 4, Ch. 1, Rule 64 (1986).

If a person fails to adhere to a judgment of the court, they may be cited for contempt. Relief may be in the form of a fine payable to the Court or to the aggrieved party or by imprisonment of the contemptuous party by the discretion of the Court. Rosebud Sioux Tribal Code, Title 7, Ch. 2, § 8-2-2(1) and (2) (1986).

**j. Comity and Full Faith and Credit**

There is provision for comity with respect to an order or judgment of other tribal, state, or foreign courts. Rosebud Sioux Tribal Code, Title 4, Ch. 2, §9 (1989).

**k. Commercial Code**

The Rosebud Sioux Tribe has a Commercial Code that is based upon the underlying policies and purposes of simplifying, clarifying, and modernizing the law governing commercial transactions on the Rosebud Sioux Reservation. The Code section includes general commercial provisions, sales and secured transactions. Rosebud Sioux Tribal Code, Title 14, Chapters 1 and 2 (1989).

**l. Extradition**

The Rosebud Sioux Tribe requires that all requests for extradition of a person to be taken from the Reservation be directed to the Tribal Chairman. If there is a reciprocal extradition agreement with a government agency, the Tribal Chairman shall cause such a request. The government agency shall supply certified copies of the complaint, information, or indictment and arrest warrant from the executive authority. These will be presented to the Chief Tribal Judge, who will bring the accused to the Court to be decided if they should be extradited or not. Rosebud Sioux Tribal Code, Title 7, Ch. 1, § 8-1-1 (1989).

Any person arrested for such a cause shall have a right to demand a hearing, where the Chief

Judge will determine the validity of the complaint and decide whether or not to proceed with the extradition. Rosebud Sioux Tribal Code, Title 7, Ch. 1, § 8-1-2 (1989).

### **SISSETON-WAHPETON SIOUX RESERVATION**

The Sisseton-Wahpeton Sioux Tribal Court is located in Sisseton, South Dakota, and was established pursuant to Art. III §5 of the Sisseton-Wahpeton Sioux Tribal Constitution.

#### **a. Attorney Rules and Fees for Admission to Practice**

Attorneys will be admitted to practice by a written application, before the Sisseton-Wahpeton Sioux Tribal Court. They must already be admitted to practice and a member in good standing before any State Bar or Federal Court. Sisseton-Wahpeton Sioux Tribal Code, Ch. 32, §01-01 (1998).

Attorneys must pay a one hundred dollar (\$100.00) filing fee. Upon admission, the attorney must pay the Tribal Court one hundred dollars (\$100.00) on or before the 1<sup>st</sup> day of January each year. Tribal Council Resolution No. SWST-98-074 (Revising Ch. 32, § 02-01 (1998)).

#### **b. Tribal Court Advocate Rules and Fees for Admission to Practice**

Tribal members must make written application; be 21 years of age; be an eligible voter of the Reservation for at least one-year prior to application; be a person of good moral character and integrity; have successfully completed at least two years of high school work or its equivalent; have never been convicted of a felony for which a pardon or restoration of civil rights has not been received; and pay an admission fee of twenty dollars (\$20). Tribal Council Resolution No. SWST-98-074 (Revising Ch. 32, § 02-01 (1998)).

Non-tribal members must seek a waiver of the conditions not met for tribal member court advocates from the Judicial Committee of the Tribal Council. The Judicial Committee shall examine the facts and circumstances and shall grant a waiver of a cited condition if it deems that the best interests of justice are served. Sisseton-Wahpeton Sioux Tribal Code, Ch. 32 §01-02 (1998).

#### **c. Suspension and Disbarment**

Attorneys and tribal court advocates are subject to disbarment or suspension if involved in any of the following:

- (i) False swearing;
- (ii) Conviction of a felony;

- (iii) Disbarred by a federal or state court;
- (iv) Conduct unbecoming an officer of the court; or
- (v) Failure to act as counsel for a defendant upon assignment by the Court.

Sisseton-Wahpeton Sioux Tribal Code, Ch. 32 §05-01 (1998).

**d. Appeals**

The Sisseton-Wahpeton Tribe has also developed an Appellate Court, which is to hear appeals from the Tribal Court. Sisseton-Wahpeton Sioux Tribal Code, Ch. 21, § 02-02 (1998).

**e. Territorial Jurisdiction**

The territorial jurisdiction of the Sisseton-Wahpeton Sioux Tribal Court extends to lands lying in the territory within the original confines of the Lake Traverse Reservation as described in Art. III of the Treaty of Feb. 19, 1867. Sisseton-Wahpeton Sioux Tribe Revised Constitution and By-Laws Art. 1 (1966). The Tribe with its vested authority will exercise jurisdiction over its members that are within Indian country and the Indian territory of the Lake Traverse Reservation of the 1867 Treaty. Sisseton-Wahpeton Sioux Tribal Code, Ch. 2 (also cited as Ordinance No. 79-02) (1979).

**f. Personal Jurisdiction**

The Tribal Court generally asserts personal jurisdiction over tribal members and members of other Indian tribes. Sisseton-Wahpeton Sioux Tribal Code, Ch.2 (1982).

“Non-Indian” is defined as any corporation, partnership, trust or other entity in the Civil and Criminal Jurisdiction section of this Code. Sisseton-Wahpeton Sioux Tribal Code, Ch. 20, § 2-08 (1998).

The Tribe will exercise jurisdiction over all members and non members not only in Indian country and Indian territory, which includes but is not limited to, all trust lands, rivers, lakes, and BIA roads, but also includes the cities of Sisseton and Peever and housing areas of Veblen and Waubay, in accordance with all applicable Tribal and Federal law. Ordinance No. SWST-ORD-79-02A (1989).

The Tribal Court also asserts personal jurisdiction over non-domiciliaries who in person or through an agent: (1) transact any business within the Lake Traverse Indian Reservation; and/or (2) commit a tortious act within the Lake Traverse Indian Reservation causing injury to person or property within the Lake Traverse Indian Reservation, except as to a cause of action for defamation of character arising from the act, if the person or entity regularly does business, or engages in a



persistent course of conduct or derives substantial revenue from goods or services used or consumed on the Reservation or expects or should reasonably expect the act to have consequences on the reservation and derives substantial revenue from interstate or international commerce. Sisseton-Wahpeton Sioux Tribal Code, Ch. 20, § 1-3 (1998).

Any person or entity, employed by or doing business or engaging in commerce with the Tribe, as a condition of employment, or agency, contract, license, permit, lease or other business or commerce formally consents to the civil regulatory jurisdiction of the Tribe. Sisseton-Wahpeton Sioux Tribal Code, Ch. 20, § 1-3 (1998).

**g. Subject Matter Jurisdiction**

The Tribal Court asserts subject matter jurisdiction over actions involving debts or damages, (Ch. 33 §3); marriages and divorces (Ch. 34); juvenile matters involving dependency and neglect, delinquency, children in need of supervision, and adoption, custody, and termination of parental rights (Ch. 38); guardianships (Ch. 42); probate matters involving personal property (Ch. 44); and real property (Ch. 11). Sisseton-Wahpeton Sioux Tribal Code (1998).

**h. Available Relief**

Available relief includes money judgments with cost, exclusive of attorney's fees, as the Court may allow (Ch. 33); restraining orders and other injunctive relief (Ch. 33); annulments and divorces (Ch. 34); involuntary commitment of mentally ill persons (Ch. 37); termination of parental rights and adoptions (Chapters 39 and 43); guardianship (Ch. 42); probate (44); eviction (Ch. 7); and foreclosure of real estate mortgages (Ch. 11). Sisseton-Wahpeton Sioux Tribal Code (1998).

**i. Enforcement of Judgments**

There are no explicit post judgment enforcement mechanisms. Note, however, that the Tribal Code provides that:

civil matters shall be governed by the laws, customs, and usage of the Tribe not prohibited by the laws of the United States, applicable federal laws and regulations and decisions of the Department of Interior. The laws of the State of South Dakota may be employed as a guide. Where doubt arises as to the customs and usage of the Tribe, the Court shall request the advice of Tribal Councilors familiar with Tribal customs and usages. Where appropriate, the laws of the State of South Dakota may be employed to determine civil matters. The laws of the State of South Dakota shall not be used as a substitute for existing Tribal laws.

Sisseton-Wahpeton Sioux Tribal Code, Ch. 33 §01-01 (1998). Therefore, there exists the possibility of employing South Dakota procedures for the enforcement of judgments.

The Sisseton-Wahpeton Sioux Tribal Code allows for renewal of judgments for money if

filed prior to the original statute of limitations of five years. Sisseton-Wahpeton Sioux Tribal Code, Ch. 33 §05- 04 (1998).

**j. Comity and Full Faith and Credit**

There is no provision for comity or full faith and credit with any other tribal, state or federal court.<sup>56</sup>

**k. Commercial Code**

In 1995, the Sisseton-Wahpeton Sioux Tribal Council adopted the 1995 version of the Uniform Commercial Code. The Code is incorporated into the Tribal Code under Chapter 69. The Code includes Section III on Sales, Section IV on Secured Transactions, Sales of Accounts, and Chattel Paper. Chapter 69 also provides for the power of the tribal police to execute judgments that are entered into by an order of the Sisseton-Wahpeton Sioux Tribal Court. Sisseton-Wahpeton Sioux Tribal Code, Ch. 69 §23-01 (1998).

**l. Extradition**

The Sisseton-Wahpeton Sioux Tribal Code Chapter 30, Joint Exercise of Powers Agreement Reciprocal Extradition Ordinance, sets out procedures and rules governing the issue of extradition. It provides that the Tribal Chairman may enter into an agreement with the executive authority of any reservation, state or federal Government. Sisseton-Wahpeton Sioux Tribal Code, Ch. 30, §01-02 (1998).

The Ordinance has explicit definitions of executive authority, to include a federally recognized Indian Tribe, Governor of any State or a United States Attorney representing any Federal District. Sisseton-Wahpeton Sioux Tribal Code, Ch. 30 §01(02)(03)(04) (1998).

The extradition demand must be made in writing and needs to be accompanied by: 1) an indictment/complaint; 2) an affidavit from the Executive Authority, that includes a statement that the person has committed the offences claimed; 3) copy of a warrant signed by a judge; and, 4) copy of a judgment, or conviction or sentenced imposed or probation, parole or bond violation. Sisseton-Wahpeton Sioux Tribal Code, Ch. 30, §02- 02 (1998).

The Tribal Chairman shall then determine the circumstances of the person so demanded, and can sign a warrant of arrest. Sisseton-Wahpeton Sioux Tribal Code, Ch. 30, §03- 01 (1998).

The accused shall then have a right to a hearing before the Tribal Court that will not include the guilt or innocence. Sisseton-Wahpeton Sioux Tribal Code, Ch. 30 §10-01. If the accused is confined to jail, the hearing must be within seventy-two hours and the accused has a right to bail or a right to habeas relief. Sisseton-Wahpeton Sioux Tribal Code, Ch.30, §§ 09-01, 08-01 (1998).

## **STANDING ROCK SIOUX RESERVATION**

The Standing Rock Sioux Tribal Court is located in Fort Yates, North Dakota, and was established pursuant to Art. IV § N of the Standing Rock Sioux Tribal Constitution.

### **a. Attorney Rules and Fees for Admission to Practice**

In order to be admitted to practice before the Standing Rock Sioux Tribal Court, an attorney must make written application and be a member in good standing of the bar of any state or federal court. Standing Rock Sioux Tribal Code, Ch. 6 §1-601(a) (1991).

### **b. Tribal Court Advocate Rules and Fees for Admission to Practice**

Any Indian of the Reservation shall be admitted to practice before the Court as a counselor upon application accompanied by proof satisfactory to the Court: (1) that he/she is at least 21 years of age; (2) that he/she is a person of good moral character and integrity; (3) that he/she has successfully completed at least two years of high school or its equivalent; (4) that he/she has never been convicted of a felony for which he/she has not received a pardon or restoration of civil rights; (5) that he/she has not been dishonorably discharged from the Armed Services; and (6) he/she is not a member of the Tribal Council or Judge or employee of the Tribal Court. Standing Rock Sioux Tribal Code, Ch. 6 §1-601(b) (1991); and (7) that the tribal advocate or lay counselor shall have completed a basic tribal advocacy course offered by Dakota Plains Legal Services, Standing Rock Community College, the American Indian Lawyer Training Program for Tribal Advocates, or training program approved by the Judicial Committee of the Standing Rock Sioux Tribe. Such a course shall be at least twenty hours in duration and shall include instruction in Trial procedure.

### **c. Suspension and Disbarment**

The Tribal Court or Tribal Supreme Court may disbar an attorney or lay counselor from practice before the Courts, or impose suspension from practice for such time as the Court deems appropriate on any of the following grounds:

- (a) False swearing;
- (b) Conviction of a felony;
- (c) Disbarment by a federal or state court;
- (d) Conduct unbecoming an officer of the Court;
- (e) Behavior in violation of the Code of Professional Responsibility.

Standing Rock Sioux Tribal Code, Ch. 6 §§1-604 (1991).

### **d. Appeals**

Any party who is aggrieved by any final order of judgment of the Standing Rock Sioux Tribal Court may file a petition requesting the Standing Rock Sioux Supreme Court to review the order or judgment. Standing Rock Sioux Tribal Code, Ch. 1 §1-206(b) (1991).

**e. Territorial Jurisdiction**

The jurisdiction of the Standing Rock Sioux Tribe shall extend to the territory within the boundaries of the Standing Rock Reservation, as defined by the Great Sioux Agreement of March 2, 1889, 25 Stat. 888, and to such other lands as may be hereafter added thereto under any law of the United States. Art. 1 of Constitution of the Standing Rock Sioux Tribe; Art. 1 of Standing Rock Sioux Tribal Code.

**f. Personal Jurisdiction**

The court shall have civil jurisdiction over any matter where one party to the action shall be a member or resident, or a corporation or entity owned in whole or in part by any Indian or Indian tribe, or a corporation or entity chartered by an Indian tribe. Standing Rock Sioux Tribal Code, Ch. 1 §1-107 (1991).

**g. Subject Matter Jurisdiction**

The court shall have civil jurisdiction over any matter where (a) the cause of action arises under the Constitution, custom, or laws of the Standing Rock Sioux Tribe, or (2) the transaction or occurrence giving rise to the cause of action occurs on the Standing Rock Indian Reservation. Standing Rock Sioux Tribal Code, Ch. 1 §1-107 (1991).

**h. Available Relief**

A judgment shall be entered in each civil case. The judgment shall be for money or other relief. Standing Rock Sioux Tribal Code, Ch. 2 §2-201 (1991).

**i. Enforcement of Judgments**

If a final judgment for money is not satisfied within sixty days of entry, a judgment creditor may apply to the court for an order directing the judgment debtor to appear. After a hearing, the Court shall determine what property is available for execution and shall order tribal law enforcement officers to seize such property as may be necessary to satisfy the judgment. Standing Rock Sioux Tribal Code, Ch. 2 §2-204(a) and (b) (1991).

**j. Comity and Full Faith and Credit**

There is no provision for comity or full faith and credit with any other tribal, state or federal court.<sup>57</sup>

**k. Commercial Law**

The Standing Rock Sioux Tribe has adopted a version of the Uniform Commercial Code. It includes general definitions and principles of construction and interpretation, sale of goods, negotiable instruments, bank deposits and collections, letters of credit and secured transactions. Specifically, it does not permit any self-help repossession of personal property. Standing Rock's code requires a secured party who repossess personal property to have written permission of the property owner at the time of the repossession or court order authorizing repossession. Standing Rock Sioux Tribal Code, Ch. 20, §§ 24-102 and 24-75 (1999).

The Code's commercial law section on repossession of personal property provides that the property must be in the possession of Indians or on trust land on the reservation, by persons who hold a security interest in the property. Personal interest is defined as "an interest in personal property which secures payment or performance of an obligation". Standing Rock Sioux Tribal Code, Ch. 1, § 24-101 (1995).

A person bringing suit in Tribal Court submits himself or herself to the jurisdiction of the Tribal Court for the whole transaction, whether or not it occurred on the Reservation. Standing Rock Sioux Tribal Code, Ch. 1, § 24-103 (1995).

**l. Extradition**

There are no provisions for extradition under the Standing Rock Sioux Tribal Code.

**YANKTON SIOUX RESERVATION**

The Yankton Sioux Tribal Court is located in Marty, South Dakota, and was established pursuant to Art. XII, § 1 of the Yankton Sioux Constitution (1975).

**a. Attorney Rules and Fees for Admission to Practice**

Attorney candidates who want to practice must certify under oath, verbally or in writing that they are 1) an active member in good standing of South Dakota State Bar or certified and eligible to practice before any state's highest court or the Supreme Court of the United States; 2) if admitted to practice before the courts of the Yankton Sioux Tribal Court, the attorney must take the required oath and be bound by it; and 3) if admitted to practice, the attorney will accept and represent indigent clients pro bono when requested by the court. Yankton Sioux Tribal Code, Title I, Ch. V. § 1-5-4 (1995).

The admission fee to practice before the Yankton Sioux Tribal Code is seventy five dollars (\$ 75.00). Yankton Sioux Tribal Code, Title I, Ch. V. § 1-5-4(2) (1995).

If any attorney is denied admission to practice before the Tribal Court, he or she may appeal to the Tribal Supreme Court. Yankton Sioux Tribal Code, Title I, Ch. V. § 1-5-4(5) (1995).

**b. Tribal Court Advocate Rules and Fees for Admission to Practice**

Any person appearing before the Yankton Sioux Tribal Court may be represented by a lay counsel. The lay counsel may assist any person in preparing their case and may represent such person before the tribal court. The lay counsel is subject to the same ethical obligation of honesty and confidentiality as would a professional attorney. Attorney client privilege shall apply in appropriate circumstances. Yankton Sioux Tribal Code, Title I, Ch. V. § 1-5-1 (1995).

Lay counselors who are admitted to practice before the Yankton Sioux Tribal Court are subject to the disciplinary authority of the Court. Yankton Sioux Tribal Code, Title I, Ch. V. § 1-5-1 (1995). The admission fee is seventy-five dollars (\$ 75.00). Yankton Sioux Tribal Code, Title I, Ch. V. § 1-5-4(2) (1995).

**c. Suspension and Disbarment**

The Yankton Sioux Tribal Court shall subject an attorney or lay counsel to disbarment or suspension if the attorney or lay counsel has been disbarred or suspended from the practice of law by the State of South Dakota or another state that was referenced as a condition to practice before the Tribal Court. Yankton Sioux Tribal Code, Title I, Ch. V. § 1-5-5(1) (1995).

If any attorney has been found in contempt by a Judge of the Yankton Sioux Tribal Court, they must show cause within ten days why they should not be suspended or have other sanctions imposed upon them. Yankton Sioux Tribal Code, Title I, Ch. V. § 1-5-5(2) (1995).

If the Chief Judge has received a written and verified complaint against an attorney or lay counsel who has acted in an unethical or improper manner, the Chief Judge may suspended them. All suspensions are indefinite unless specifically ordered otherwise. Yankton Sioux Tribal Code, Title I, Ch. V. § 1-5-5(4) (1995).

**d. Appeals**

The Yankton Sioux Tribe has established, under the authority of the Yankton Sioux Tribal Code and its Constitution, a Yankton Sioux Tribal Supreme Court, which may be referred to as the Appellate Court. Yankton Sioux Tribal Code, Title I, Ch. II. § 1-2-1(1) (1995).

The Appellate Court consists of three law-trained judges who will act as Justices. Yankton Sioux Tribal Code, Title I, Ch. II. § 1-2-1(1) (1995).

The Appellate Court will handle all appeals from the Tribal court and Tribal juvenile court as provided for by the Yankton Sioux Tribal Code. Yankton Sioux Tribal Code, Title I, Ch. II, § 1-2-1(1) (1995).

**e. Territorial Jurisdiction**

Article VI, Section 1 of the Yankton Sioux Constitution declares that the territory of the tribe extends “to all original tribal lands now claimed by the tribe under the Treaty of 1858.”

The Territorial jurisdiction of the Yankton Sioux Tribe “shall extend to the territory within the exterior boundaries as set forth in the 1858 Treaty ... and to such other lands without such boundaries as may hereafter be added to the Reservation or held in trust for the Tribe under any law of the United States or Otherwise.” Yankton Sioux Tribal Code, Title I, Ch. IV. § 1-4-2 (1995).

**f. Personal Jurisdiction**

The Yankton Sioux Tribe shall have civil and criminal jurisdiction, except by limitation of federal law over any person who resides or is located or present within the reservation. “Person” is defined as individuals, firms, companies, associations, or corporations. Yankton Sioux Tribal Code Title I, Ch. IV. § 1-4-3(1) (1995).

Personal Jurisdiction includes any person who “transacts, conducts or performs any business or activity within the Reservation.” Yankton Sioux Tribal Code, Title I, Ch. IV. § 1-4-2(B) (1995). The Tribe’s personal jurisdiction includes those persons who own, use or possess any property within the Reservation. Yankton Sioux Tribal Code, Title I, Ch. IV. § 1-4-3(C) (1995).

“Resident” is defined as a person whose domicile is the Yankton Sioux Indian Reservation or Charles Mix County, South Dakota. Yankton Sioux Tribal Code, Title XI, Ch. XI § 1-05(35) (1995).

**g. Subject Matter Jurisdiction**

Accordingly, Article V, Section 3 of the Yankton Sioux Constitution vests this judicial power in the tribal membership and “upon request of five members for any cause, such cause shall be submitted at any regular tribal meeting for action.” This section as interpreted by a Bureau of Indian Affairs letter of approval dated April 24, 1963, and is understood as a method of controlling officers and committee members through such actions as reprimand, censure, suspension or removal.

The Yankton Sioux Tribe also has a Juvenile Court which has original jurisdiction over any Indian child domiciled or residing on the reservation or who has been transferred to the Tribal Court

under the provisions of the Indian Child Welfare Act. The Juvenile Court also has jurisdiction over all persons having care, custody, or control of tribal children eighteen years of age or younger. Other provisions of the Juvenile Court's duties are established in Chapter IV of the Yankton Sioux Tribal Code.

The Yankton Sioux Tribe shall have jurisdiction over all civil causes of action. Yankton Sioux Tribal Code, Title I, Ch. IV, § 1-4-5 (1995). These rules shall be liberally construed to secure a just, speedy and inexpensive determination of every civil action. The distinction between actions at law and suits at equity and the common law forms of all such actions and suits are hereby abolished in the Tribal Courts. Yankton Sioux Tribal Code, Title VI, Ch. I, Rule 1(A) & (B) (1995).

The Yankton Sioux Tribe will not assume jurisdiction over any "civil or criminal matter" that does not involve the Tribe, including officers, agents, employees, property or a member of the Tribe. It otherwise will have jurisdiction over all civil and criminal matters set out in its Code, which would not exceed limitations placed upon the Court by federal law or the Tribal Constitution. Yankton Sioux Tribal Code, Title I, Ch. IV. § 1-4-5 (1995).

The Yankton Sioux Tribe asserts exclusive jurisdiction over all matters in which the Tribe or its officers or employees are parties in their official capacities. Yankton Sioux Tribal Code, Title I, Ch. IV. § 1-4-7 (1995).

**h. Available Relief**

Available relief includes the right of the plaintiff to damages and costs if deemed appropriate by the Court. Yankton Sioux Tribal Code, Title VI, Rules of Civil Procedures, Rule 25 (1995). Attorneys' fees will only be awarded if by contract or agreement by parties of the dispute, or if there are findings the suit was brought for harassment purposes or no reasonable expectation of success by the affirmatively claiming party. Yankton Sioux Tribal Code, Title VI, Rules of Civil Procedures, Rule 25(E) (1995).

Injunctive relief and a temporary restraining order are available, but will not be issued unless the adverse party is given notice. Yankton Sioux Tribal Code, Title VI, Rules of Civil Procedures, Rule 34(A) & (B) (1995). The Code also calls for a security to be given if injunctive relief or a temporary restraining order are granted, and that the amount will be specified by the Court's discretion. Yankton Sioux Tribal Code, Title VI, Rules of Civil Procedures, Rule 34(C) (1995).

**i. Enforcement of Judgments**



Execution of judgments is allowed by the Code and can be heard *ex parte* by the judgment creditor by motion to the Court. The Court may order the Yankton Sioux Tribal Police to seize personal property of the debtor. Yankton Sioux Tribal Code, Title VI, Rules of Civil Procedures, Rule 36(A) & (B) (1995).

The Yankton Sioux Tribe also includes in its code a section that specifically includes creditor's rights and responsibilities. Yankton Sioux Tribal Code, Title IX (1995). This section specifically sets out the manner in which a creditor may obtain foreclosures on secured obligations. The code specifically limits the foreclosures to non-trust real property or non-trust personal property. Yankton Sioux Tribal Code, Title IX, § 9-1-2(A) (1995).

**j. Comity and Full Faith and Credit**

There are no explicit provisions in the Tribal Code governing matters of comity and full faith and credit.<sup>58</sup>

**k. Uniform Commercial Code**

At this time a Commercial Code has not been adopted by the Yankton Sioux Tribe to cover commercial transactions. See section i above.

**l. Extradition**

At the request of the Tribal Chairman, any Tribal Judge may cause a person who is under the jurisdiction of the Yankton Sioux Tribe, who is charged with a felony, has fled from authorities, and is using the reservation as refuge, to be extradited if:

1. The Tribal Judge has received certified copies of the complaint, information, or indictment and arrest warrant, and
2. The Tribal Judge has received a request from the executive authority requesting extradition from a Tribal, State or the Federal Government.

Yankton Sioux Tribal Code, Title II, Rules of Criminal Procedures, § 6, Rule 33(A) (1995).

A hearing may be demanded by the person to be extradited. It will be conducted before the Tribal Court, and if it is determined there is no probable cause that the person is guilty of such a crime, the Court can order release of custody. Yankton Sioux Tribal Code, Rules of Criminal Procedures, Rule 33(B) (1995).

The Tribal Council is the only entity that may request for extradition of a person who has fled the Reservation and the authority of the Yankton Sioux Tribe for a class A or Class B offence, to avoid prosecution. Yankton Sioux Tribal Code, Rules of Criminal Procedures, Rule 33(C) (1995).

## **INDIAN CHILD WELFARE ACT, 25 U.S.C. §§1901-63**

The Indian Child Welfare Act (ICWA) was enacted by Congress in 1978.<sup>59</sup> The policy underlying ICWA is to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families. ICWA provides minimum federal standards for the removal of Indian children from their families and the placement of Indian children in foster or adoptive homes.

ICWA seriously affects the way in which State courts proceed with ‘child custody proceedings’ involving ‘Indian children.’ State courts must adhere to the provisions of ICWA in child custody proceedings involving Indian children. The term ‘Indian child’ means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.<sup>60</sup> A child custody proceeding may address foster care placement, termination of parental rights, preadoptive or adoptive placement.<sup>61</sup> Custody disputes arising in the context of divorce or separation proceedings are not covered by ICWA so long as custody is awarded to one of the parents. ICWA also does not cover actions of Indian juveniles if such actions would be considered criminal if committed by an adult.<sup>62</sup> These actions are generally referred to as juvenile delinquency proceedings.

The following is a summary of the major provisions of ICWA which includes jurisdiction, transfer, intervention and placement.

An Indian tribe has exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled on the reservation.<sup>63</sup> For ICWA purposes, an Indian child is domiciled on the reservation if his or her custodial parent or parents are domiciliaries of the reservation. The definition of ‘domicile’ for ICWA purposes is derived from federal not state law. As the U.S. Supreme Court articulated in *Mississippi Band of Choctaw Indians v. Holyfield*,<sup>64</sup> an Indian child takes his or her (reservation) domicile from their Indian parents even if the parents (temporarily) go off the reservation to give birth with the express purpose of surrendering the child for adoption off the reservation. The superior interests of the tribe as recognized in ICWA require this result.<sup>65</sup>

Even when an Indian child does not reside or is not domiciled on the reservation, the tribe retains concurrent jurisdiction and the state court action must be transferred to the jurisdiction of the Indian child’s tribe if requested by one of the parents or the tribe. There are three exceptions to

the mandatory transfer of state court proceedings to tribal court: (1) if the tribe declines to accept jurisdiction; (2) if either parent objects to the transfer; or (3) if there is good cause to the contrary.<sup>66</sup> The tribe may decline to accept jurisdiction, but the tribe's right to intervene continues throughout the state court proceeding.<sup>67</sup>

When a proceeding is brought in State court, ICWA requires that notice must be given to the Indian child's parent or custodian and the Indian child's tribe at least ten days before the hearing is scheduled.<sup>68</sup>

If the action is not transferred to tribal court, the state court proceedings must include the following:

- (1) The parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement or termination proceedings. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child.<sup>69</sup>
- (2) Demonstrate that active efforts have been made to provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian family and that their efforts have proved unsuccessful.<sup>70</sup>
- (3) No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.<sup>71</sup>
- (4) No termination of parental rights may be ordered in such proceedings in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in severe emotional or physical damage to the child.<sup>72</sup>

Any 'voluntary' consent to foster care placement is revocable at will, while any 'voluntary' consent (informed or otherwise) to the termination of parental rights and/or adoption may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption.<sup>73</sup>

In addition, the United States, every state, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings.<sup>74</sup>

ICWA also contains provisions for foster care and preadoptive placement preferences and adoptive placement preferences for Indian children in state court proceedings. These preferences are as follows:

Foster care and preadoptive placement:

1. A member of the Indian child's extended family;
2. A foster home licensed, approved, or specified by the Indian child's tribe;
3. An Indian foster home licensed or approved by an authorized non-Indian licensing authority;
4. An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.<sup>75</sup>

Adoptive placement:

1. A member of the Indian child's extended family;
2. A member of the Indian child's tribe;
3. Another Indian family, subject to the approval of the Indian child's tribe.<sup>76</sup>

A tribe by appropriate resolution may adopt a different order of preference.<sup>77</sup> Where appropriate, the preference of the Indian child or parent shall be considered.<sup>78</sup>

Inevitably, successful implementation of ICWA requires appropriate knowledge, cooperation, and respect between state and tribal judges, social workers and administrators. It is hoped that such mutual efforts will continue to develop in South Dakota and throughout Indian country.

## **CURRENT TRIBAL MEMBERSHIP REQUIREMENTS**

### **CHEYENNE RIVER SIOUX TRIBE**

AMENDMENT X (1992), Cheyenne River Sioux Tribe Constitution.

ARTICLE II, MEMBERSHIP of the Constitution is amended to read as follows:

Section 1. The membership of the Cheyenne River Sioux Tribe shall consist of the following:

- (a) All persons of Indian blood whose names appear on the official census roll of the Tribe as of June 18, 1934.
- (b) All persons of Indian blood who were enrolled as members of the Cheyenne River Sioux Tribe prior to the effective date of this amendment.

- (c) All children born to any member of the Cheyenne River Sioux Tribe who is a resident of the reservation at the time of the birth of said children.

Section 2. The Tribal Council shall have the power:

- (a) To admit persons of Cheyenne River Sioux Indian blood to membership upon a two-thirds (2/3) vote of the Tribal Council.
- (b) To strike from the census roll of the Cheyenne River Sioux Tribe any person who makes application to sever his tribal relations and thereafter such person shall cease to be a member of the Cheyenne River Sioux Tribe of Indians.

### **CROW CREEK SIOUX TRIBE**

ARTICLE II, MEMBERSHIP, Constitution and By-Laws of the Crow Creek Sioux Tribe.

Section 1.

All persons of Indian blood whose names appear on the official roll of the Crow Creek Reservation as of October 3, 1962, and all persons enrolled as members between that date and the effective date of this amendment shall be members of the tribe, provided, that the tribal council shall have the power to enroll any person who meets the qualifications listed under Section 2. (Amendment No. VI, Effective June 23, 1980).

Section 2.

- (a) Any child of one-fourth (1/4) or more Indian blood, born between October 3, 1962, and the effective date of this amendment to any member who resided on the reservation at the time of the child's birth shall be entitled to membership. (Amendment No. VI, Effective June 23, 1980).
- (b) Any child of one-half (1/2) of more Indian blood born to any member of this Tribe shall be entitled to membership regardless of his parents' residence.
- (c) Any child of one-fourth (1/4) or more Sioux Indian blood born to any member of the tribe shall be entitled to membership by a majority vote of the tribal council. (Amendment I, June 21, 1961, Amendment VI, June 30, 1980 and Amendment XI, February 4, 1986).
- (d) Applications for membership shall be submitted by the applicant or his parent or guardian to a Committee on Membership, which shall pass upon them and present them to the Tribal Council for final action.

Section 3.

Vested property rights shall not be acquired or lost through membership in this organization except as provided herein.

**FLANDREAU SANTEE SIOUX TRIBE**

ARTICLE II, MEMBERSHIP, Constitution and By-Laws for the Flandreau Sioux Tribe

Section 1. Membership in the Flandreau Santee Sioux Tribe of Indians shall consist of all persons who qualify for membership in accordance with the following provisions and an enrollment ordinance to be enacted by the executive committee:

- (a) All persons of Indian blood whose names appear on the official census roll of the tribe as of June 30, 1934, and the January 1, 1935, supplement.
- (b) All children born prior to the effective date of this amendment to any member of the Flandreau Santee Sioux Tribe who was a resident of any territory of the tribe or of Moody County in South Dakota at the time of the birth of said children.
- (c) All children born to any member of the Flandreau Santee Sioux Tribe provided the child possesses one quarter (1/4) or more degree of Flandreau Santee Sioux blood.

Section 2. The executive committee shall have the power to promulgate ordinances subject to review by the Secretary of the Interior covering future membership and the adoption of new members.

**LOWER BRULE SIOUX TRIBE**

ARTICLE II, MEMBERSHIP, Constitution and By-Laws of the Lower Brule Tribe.

Section 1. The membership of the Lower Brule Sioux Tribe shall consist as follows.

- (a) All persons of Indian blood whose names appear on the official census roll of the tribe as of April 1, 1935, and, after the effective date of this amended constitution, only such other persons who are of Lower Brule Sioux Indian blood and whose names appear on the official census roll of September 2, 1958.
- (b) All children born to any member of the Lower Brule Sioux Tribe who is a resident of the reservation at the time of the birth of said children but children born to any member after the effective date of this amended constitution and possessing at least one-fourth degree Lower Brule Indian blood shall be members regardless of the residence of

their parents at the time of their birth.

Section 2. The Tribal Council shall have the power to promulgate ordinances subject to the review by the Secretary of the Interior covering future membership and the adoption of new members provided only that no person may be adopted who is not a resident of the reservation.

### **OGLALA SIOUX TRIBE**

ARTICLE II, MEMBERSHIP, Constitution and By-Laws of the Oglala Sioux Tribe of the Pine Ridge Reservation of South Dakota.

Section 1. The membership of the Oglala Sioux Tribe shall consist as follows:

- (a) All persons whose names appear on the official census roll of the Oglala Sioux Tribe of the Pine Ridge Reservation as of April 1, 1935, provided, that correction may be made in the said rolls within five years from the adoption and approval of this constitution by the tribal council subject to the approval of the Secretary of Interior.
- (b) All children born to any member of the tribe who is a resident of the reservation at the time of the birth of said children.

Section 2. The tribal council shall propose by-laws covering future membership and the adoption of new members.

### **ROSEBUD SIOUX TRIBE**

ARTICLE II, MEMBERSHIP, Constitution and By-Laws of the Rosebud Sioux Tribe.

Amendment XVI

Article II - Membership, shall be amended as follows:

Section 1. Membership of the Rosebud Sioux Tribe shall consist as follows:

- (a) All persons of Indian blood, including persons born since December 31, 1920, whose names appear on the official census roll of the tribe as of April 1, 1935.
- (b) All persons born after April 1, 1935, and prior to the effective date of this amendment, to any member of the Rosebud Sioux Tribe who was a resident of the reservation at the time of the birth of said persons.  
(Amendment No. V, effective May 2, 1966)
- (c) All persons of one-fourth (1/4) or more Sioux Indian blood born after April 1,

1935 to a member of the Tribe, regardless of the residence of the parent.

Section 2. The Tribal Council shall have the power to promulgate ordinances covering future membership and the adoption of new members.

### **SISSETON-WAHPETON SIOUX TRIBE**

ARTICLE II, MEMBERSHIP, Constitution and By-Laws of the Sisseton-Wahpeton Sioux Tribe.

Section 1. The membership of the Sisseton-Wahpeton Sioux Tribe shall consist of:

- (a) All persons of Indian blood whose names appear on the official census roll of the tribe as of January 1, 1940, which shall be the basic tribal membership roll. Corrections may be made in this roll by the tribal council, with the approval of the Secretary of the Interior.
- (b) All persons of Indian blood born after January 1, 1940, the date of the basic membership roll, and prior to October 16, 1946, the date of approval of the original Constitution, to members of the tribe.
- (c) Children born on or after October 12, 1946, the date of approval of the original Constitution, and prior to December 11, 1959, to members of the Tribe who were residents of the Lake Traverse Reservation at the time of the birth of said children.
- (d) All persons of one-eighth (1/8) degree or more Sisseton-Wahpeton Sioux Indian blood born to members on or after December 21, 1959, and prior to November 21, 1978. (As amended by Amendment No. IV, effective November 21, 1978).
- (e) All persons of one-fourth (1/4) degree or more Sisseton-Wahpeton Sioux Indian blood born to members on or after November 21, 1978. (This section added by Amendment No. IV, effective November 21, 1978).
- (f) All persons applying for membership under Article II, Section 1 (a), (b), (c), (d), must be 1/4 degree or more of Sisseton-Wahpeton Sioux Indian blood. (Amended by Amendment 11, Effective September 20, 1985).
- (g) All persons applying for membership under Article II, Section 1 (a), (b), (c), (d), (e), and (f), may be Sisseton-Wahpeton Sioux Indian blood and other Sioux Indian blood totaling 1/4 degree or more Sioux Indian blood. (Amended by Amendment 13, Effective December 28, 1990).
- (h) All persons apply for membership under Article II, Section 1 (a), (b), (c), (d), (e), (f), and (g) may be Sisseton-Wahpeton Sioux Indian blood and other Native



American blood, totaling 1/4 degree or more of Native American blood.  
(Amended by Amendment 14, Effective December 28, 1990).

### **STANDING ROCK SIOUX TRIBE**

ARTICLE II, MEMBERSHIP, Constitution of the Standing Rock Sioux Tribe.

The membership of the Standing Rock Sioux Tribe shall consist of all persons of Indian blood, who were duly enrolled on the official roll of the Tribe on June 15, 1957, IN ACCORDANCE WITH THE ORDINANCES AND PROCEDURE ADOPTED BY THE Standing Rock Sioux Tribal Council pursuant to Article IV, § 1(r), (To proscribe the qualifications and procedures governing enrollment into the Tribe.) of this Constitution, and all person of one-quarter degree or more of Standing Rock Sioux Indian blood duly enrolled subsequent to March 14, 1984; provided that any person who is rejected for enrollment as a member of the Standing Rock Sioux Tribe shall have the right to appeal to the Standing Rock Sioux Tribal Court from the decisions of the Standing Rock Sioux Tribal Council, and the decision of the Standing Rock Sioux Tribal Court shall be final, and provided further that prior to the distribution of any tribal assets to members of the Tribe, the Membership roll shall be approved the Secretary of the Interior. (Amendments through October 15, 1984.)

### **YANKTON SIOUX TRIBE**

Amended Constitution of the Yankton Sioux Tribal Business and Claims Committee,

#### **AMENDMENT I**

Article IV, Membership, Section 1, of the Constitution shall be amended to read as follows:

Section 1 (a) The membership of the Yankton Sioux Tribe shall consist of the following:

1. All persons of Yankton Sioux Blood whose names appear or are entitled to appear on the October 6, 1972, Yankton Sioux Tribal Roll.
2. All children born to members whose names appear on the base roll of October 6, 1972, of the Yankton Sioux Tribe must possess at least one-fourth (1/4), degree Indian blood of which one-eighth (1/8) must be Yankton Sioux Indian blood.

Section 1 (b) The following persons shall not be eligible for enrollment with the Yankton Sioux tribe:

1. Persons who are enrolled with another Tribe of Indians and who have shared as members in allotments of land/or payments, excluding inherited interests, from

any other tribe.

2. Children of Indian Blood of other tribes and non-Indian Children who have been legally adopted by members of the Tribe.
3. Persons who are not citizens of the United States.

Section 2. The membership rolls shall be reviewed annually by the Committee in order to keep records up to date as well as make any necessary corrections, said corrections subject to the approval of the tribe.

Section 3. The active membership shall be comprised of Tribal members who are of the legal age (2 years and over).

### **CONCLUSION**

The rules of practice and the jurisdictional perimeters of the tribal courts in South Dakota are diverse, partially incomplete, and occasionally confusing. Yet, they are more often straightforward, clear, and consistent. When the picture is incomplete, inspection and review of other sources of law may provide direction and clarification. These sources include specific tribal code directives to non-tribal code sources, applicable law, uncodified tribal usage and customary law, and developing tribal common law in the form of reported tribal court decisions. For example, the Sisseton-Wahpeton Sioux Tribal Code provides that “civil matters shall be governed by the laws, customs and usage of the tribe not prohibited by the laws of the United States, applicable federal laws, and applicable regulations and decisions of the Department of Interior. The laws of the State of South Dakota may be used as a guide. Where doubt arises as to the customs and usages of the tribe, the Court shall request the advice of Tribal Counselors familiar with tribal customs and usages. Where appropriate, the laws of the State of South Dakota may be employed to determine civil matters. The laws of the State of South Dakota shall not be used as a substitute for existing tribal laws.” Sisseton-Wahpeton Sioux Tribal Code, Ch. 33 §1 (1980). The tribal code, in this instance, provides direction to other sources of laws - in both a mandatory and directory vein - to resolve tribal court issues.

It is also important to emphasize that sensitivity to uncodified tribal usage and custom can only be developed through a growing personal awareness of tribal culture and philosophy, as well as an identification and familiarity with local institutions (such as the Indian controlled reservation colleges) and individuals who are the experts and keepers of the continuing oral tradition of tribal life and culture.

Reported tribal court decisions are most often reported in the Indian Law Reporter which is published by the American Indian Lawyer Training Program in Oakland, CA. This valuable reporter is used by many Indian law practitioners and is also part of the Indian law collection at the University of South Dakota Law Library located in Vermillion, South Dakota.<sup>79</sup>

As noted in the Introduction, all of this must be analyzed and filtered through the ambit and backdrop of federal Indian law. As with any legal system, a claim of jurisdictional authority may be questioned and challenged. In some cases, supervening federal statutory or case law may be contrary to a tribal court's assertion of jurisdiction. In some other cases, there may be claims that the tribe's own organic law such as its constitution or tribal code limits the reach of jurisdiction in a particular case. Such challenges, however, may not be interposed and brought directly in federal (or state) court. In both *National Farmers Union* and *Iowa Mutual, supra*, the United States Supreme Court made it abundantly clear that such challenges must be brought in the first instance in tribal court and tribal remedies, including tribal appellate procedures, must be exhausted before there is any federal review.<sup>80</sup>

Ultimately, there can be federal review of the extent of tribal court jurisdiction in a particular case because such a challenge raises a *bona fide* federal question under 28 U.S.C. §1331. The Court in *National Farmers Union* identified the pertinent federal question in such instance as the issue of whether a tribal court has exceeded the lawful limits of jurisdiction.

The Court went on to suggest how this analysis should take place:

[T]he existence and extent of a tribal court's jurisdiction will require a careful examination of tribal sovereignty, the extent to which that sovereignty has been altered, divested, or diminished, as well as a detailed study of relevant statutes, Executive Branch policy as embodied in treaties and elsewhere, and administrative or judicial decisions.

We believe that examination should be conducted in the first instance in the Tribal Court itself. Our cases have often recognized that Congress is committed to a policy of tribal self-government and self-determination. That policy favors a rule that will provide the forum whose jurisdiction is being challenged the first opportunity to evaluate the factual and legal bases for the challenge. Moreover, the orderly administration of justice in the federal court will be served by allowing a full record to be developed in the Tribal Court before either the merits or any question concerning appropriate relief is addressed.<sup>81</sup>

The federal policy of encouraging tribal self-determination and tribal self-government has been vigorously reaffirmed by the Supreme Court decisions in the *National Farmers Union* and *Iowa Mutual* cases. Tribal courts are properly seen as vital institutions for implementing this

important national policy. As a result, tribal courts are the very visible standard bearers for charting much of the future of tribal sovereignty. As part of this mission, they need increased understanding, additional support, and continued respect as the enduring forums for rendering justice and fair play throughout Indian country in South Dakota.

## ENDNOTES

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<sup>1</sup> 471 U.S. 845 (1985).

<sup>2</sup> 480 U.S. 9 (1987).

<sup>3</sup> The rules for the allocation of criminal jurisdiction among the federal, tribal, and state courts are relatively well-established. See text at pp. 2-8.

<sup>4</sup> *Iowa Mutual*, *supra* note 2 at 14-15.

<sup>5</sup> Cheyenne River Sioux Reservation, Crow Creek Sioux Reservation, Flandreau Santee Sioux Reservation, Lower Brule Sioux Reservation, Oglala (Pine Ridge) Sioux Reservation, Rosebud Sioux Reservation, and Standing Rock Sioux Reservation.

<sup>6</sup> See, e.g., *Talton v. Mayes*, 163 U.S. 376 (1896).

<sup>7</sup> See, e.g., the ‘plenary power’ doctrine as set in *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903); see also F. COHEN, HANDBOOK OF FEDERAL INDIAN LAW (1982 ed.) 207-228.

<sup>8</sup> See, e.g., *Talton*, *supra* note 6.

<sup>9</sup> Courts whose powers are largely defined by the Code of Federal Regulations at 25 C.F.R. §11.1 *et seq.* (1987).

<sup>10</sup> Courts largely established by BIA administrative practice in the early part of the twentieth century. See e.g., W. HAGAN, INDIAN POLICE AND JUDGES 104-125 (1966).

<sup>11</sup> See discussion at text pp. 36-38.

<sup>12</sup> The term tribal court advocate is often used interchangeably with such terms as paralegal, lay advocate and tribal advocate. It refers generally to the class of individuals *licensed* to practice in any given tribal court, but who do not possess a law degree and are not licensed to practice law before any state or federal court. Requirements are set legislatively by each tribal council.

<sup>13</sup> Federal Indian law activity involves that large body of law which regulates the legal relationship between Indian tribes and the federal (and state) government. It is expressed in the separate volumes of congressional activity (25 U.S.C.) and Bureau of Indian Affairs’ administrative rules (25 C.F.R.), hundreds of opinions of the Solicitor of the Department of Interior, 380 treaties, and thousands of federal (and state) court decisions.

<sup>14</sup> *DeCoteau v. District County Court*, 420 U.S. 425, 427 n. 2 (1975).

<sup>15</sup> The statute is also sometimes referred to as the Indian Country Crimes Act or the Interracial Crime Act.

<sup>16</sup> Note, however, that federal law limits tribal court penalties to a maximum of one year in jail or a \$5,000 fine or both. 25 U.S.C. §1302 (1984), as amended by Public Law 98-570 §4217 (1986).

<sup>17</sup> *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

<sup>18</sup> For a more complete explication of these issues, see F. Pommersheim and T. Pechota’s “Tribal Immunity, Tribal Courts, and the Federal System: Emerging Contours and Frontiers,” 31 S.D. L. Rev. 533 (1986).

<sup>19</sup> 67 Stat. 588-90 (1953) (now codified as amended in scattered sections of Chapter 18, 25 and 28 U.S.C.).

<sup>20</sup> The mandated states are Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin. Note there are sometimes exceptions for particular reservations even within mandated states such as, for example, the Warm Springs Reservation in Oregon and the Red Lake Reservation in Minnesota, 18 U.S.C. §1162(a) and 28 U.S.C. §1360(a) (1986).

<sup>21</sup> See e.g., S.D.C.L. § §1-1-12 through 1-1-16 and S.D.C.L. § §1-1-18 to 1-1-21 (1985).

<sup>22</sup> The final vote was 201,389 votes against P.L. 280 jurisdiction and 58,289 votes for P.L. 280 jurisdiction.

<sup>23</sup> 25 U.S.C. § §1321, 1322, and 1326 (1983).

<sup>24</sup> The term ‘highway’ is defined at S.D.C.L. §31-1-1 and provides that “every way or place of whatever nature open to the public, as a matter of right, for purposes of vehicular travel, is a highway. The term ‘highway’ shall not be deemed to include a roadway or driveway upon grounds owned by private persons, colleges, universities, or other institutions but such term may be deemed to include a roadway or driveway upon ground owned by any state agency, college, university or institution if the governing agency, board or commission by resolution so determines and the department of transportation concurs there.”

<sup>25</sup> 427 N.W.2d 365 (S.D. 1988).

<sup>26</sup> 359 U.S. 463 (1976). The Court held, *inter alia*, that a partial assumption (in terms of geography and/or subject matter) of jurisdiction under PL 280 is permissible, at least when the particular statute provides that the state *must* assume total jurisdiction whenever a tribal request is made that it do so. Note also that this state statute was enacted (and operable) prior to the 1968 amendments to PL 280 requiring tribal referendums to ratify any state adoption of PL 280 jurisdiction. 25 U.S.C. §1326 (1983).

<sup>27</sup> 900 F.2d 1164 (8<sup>th</sup> Cir. 1990).

<sup>28</sup> The Standing Rock Sioux Tribe and Flandreau Santee Sioux Tribe do not have extradition procedures.

<sup>29</sup> Governors or other Tribal Chairpersons

<sup>30</sup> Crow Creek Sioux Tribe, Rosebud Sioux Tribe, Sisseton-Wahpeton Sioux Tribe

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- <sup>31</sup> SDCL. 23-24B-2. (1976).
- <sup>32</sup> SDCL 23-24B-3 (1976).
- <sup>33</sup> SDCL23-24B-3.1 (1976).
- <sup>34</sup> SDCL23-24B-3.2. (1976).
- <sup>35</sup> SDCL 23-24B-4.1 (1978).
- <sup>36</sup> SDCL23-24B-4. (1976).
- <sup>37</sup> 2004 SD 56, 679 N.W.2d. 484 (writ of certiorari denied, 125 S.Ct. 355 (2004)).
- <sup>38</sup> 533 U.S. 353 (2001).
- <sup>39</sup> *Cummings*, 2004 SD 56, 679 N.W.2d. 487.
- <sup>40</sup> *Id.*
- <sup>41</sup> 462 N.W.2d 463 (1990).
- <sup>42</sup> *Spotted Horse* 462 N.W.2d. at 464.
- <sup>43</sup> *Id.*
- <sup>44</sup> *Id.* at 469.
- <sup>45</sup> Many of these written appellate opinions are available at the University of South Dakota Law Library in Vermillion, S.D.
- <sup>46</sup> 480 U.S. 9, 18 (1986).
- <sup>47</sup> See e.g., F. Pommersheim and T. Pechota, *supra* at note 18. See also *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751 (1998).
- <sup>48</sup> *DeCoteau v. District County Court*, 420 U.S. 425 (1975).
- <sup>49</sup> *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 425 (1975).
- <sup>50</sup> *United States ex. rel. Cook v. Parkinson*, 525 F.2d 120 (8<sup>th</sup> Cir. 1975), *cert. denied*, 430 U.S. 980 (1977).
- <sup>51</sup> *Wood v. Jameson*, 130 N.W.2d 95 (S.D. 1964).
- <sup>52</sup> See e.g., *Weddell v. Meierhenry*, 636 F.2d 211 (8<sup>th</sup> Cir. 1980), *cert. denied*, 451 U.S. 941 (1981); and *United States v. South Dakota*, 655 F.2d 837 (8<sup>th</sup> Cir. 1981), *cert. denied*, 459 part test set out in *Weddell*.
- <sup>53</sup> The state of South Dakota recognizes tribal court judgments according to its definition of comity defined in *Mexican v. Circle Bear*, 370 N.W.2d 737 (S.D. 1985) and as subsequently modified by statute at S.D.C.L. 1-1-25 (1986).
- <sup>54</sup> *Id.*
- <sup>55</sup> *Id.*
- <sup>56</sup> *Id.*
- <sup>57</sup> *Id.*
- <sup>58</sup> *Id.*
- <sup>59</sup> 25 U.S.C. §1902.
- <sup>60</sup> *Id.* at §1903(4).
- <sup>61</sup> *Id.* at §1903(1).
- <sup>62</sup> *Id.*
- <sup>63</sup> *Id.* at §1911(a).
- <sup>64</sup> 490 U.S. 30 (1989).
- <sup>65</sup> *Id.*
- <sup>66</sup> *Supra* note 62 at §1911(b). “Good cause to the contrary” is defined as:

C.3. Determination of Good Cause to the Contrary

- (a) Good cause not to transfer the proceeding exists if the Indian child’s tribe does not have a tribal court as defined by the Act to which the case can be transferred.
- (b) Good cause not to transfer the proceedings may exist if any of the following circumstances exist:
  - (i) The proceeding was at an advanced stage when the petition to transfer was received and the petitioner did not file the petition promptly after receiving notice of the hearing.
  - (ii) The Indian child is over twelve years of age and objects to the transfer.
  - (iii) The evidence necessary to decide the case could not be adequately presented in the tribal court without undue hardship to the parties or the witnesses.
  - (iv) The parents of a child over five years of age are not available and the child has had little or no contact with the child’s tribe or members of the child’s tribe.
- (c) Socio-economic conditions and the perceived adequacy of tribal or Bureau of Indian Affairs social services or judicial systems may not be considered in a determination that good cause exists.

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(d) The burden of establishing good cause to the contrary shall be on the party opposing the transfer.

<sup>67</sup> *Id.* at §1911(c).

<sup>68</sup> *Id.* at §1012(a).

<sup>69</sup> *Id.* at §1912(b).

<sup>70</sup> *Id.* at §1912(d).

<sup>71</sup> *Id.* at §1912(e).

<sup>72</sup> *Id.* at 1912(f).

<sup>73</sup> *Id.* at 1913(b) & (c).

<sup>74</sup> *Id.* at §1911(d).

<sup>75</sup> *Id.* at §1915(b).

<sup>76</sup> *Id.* at §1915(a).

<sup>77</sup> *Id.* at §1915(e).

<sup>78</sup> *Id.*

<sup>79</sup> Another major resource is the National Indian Law Library which is part of the Native American Rights Fund located at 1505 Broadway, Boulder, CO.

<sup>80</sup> The Supreme Court did indicate in footnote number 21 that exhaustion would not “be required where an assertion of tribal jurisdiction ‘is motivated by a desire to harass or is conducted in bad faith,’ *cf. Judice v. Vail*, 430 U.S. 327, 328, 376 (1977), or where the action is patently violative of express jurisdictional prohibitions, or where exhaustion would be futile because of the lack of any adequate opportunity to challenge the Court’s jurisdiction.” *National Farmers Union*, 471 U.S. at 856.

<sup>81</sup> *Id.*, 471 U.S. at 855-56.