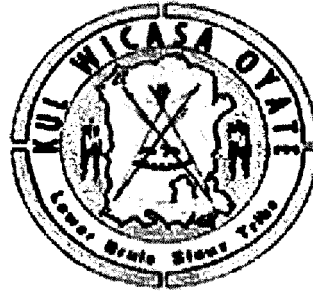


LOWER BRULE SIOUX TRIBAL COURT
LAW AND ORDER CODE
RULES OF CRIMINAL PROCEDURE



Updated: June 2024

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LOWER BRULE SIOUX TRIBE RULES OF CRIMINAL PROCEDURE

1-01 APPLICABILITY

Rule 1. SCOPE

These rules govern the procedure in all criminal proceedings in the Lower Brule Sioux Tribal Court and all preliminary, supplementary, and special proceedings as specified herein. Every proceeding in which a person is charged with an offense of any degree and brought to trial to be punished, if convicted, by a fine or jail sentence is a criminal proceeding. If a charge is brought pursuant to the Lower Brule Sioux Tribal Court's Special Tribal Criminal Jurisdiction the provisions of that Code supplement the provisions of the Lower Brule Sioux Tribal Court Rules of Criminal Procedure.

Rule 2. PURPOSE AND CONSTRUCTION

These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

1-02 PRELIMINARY PROCEEDINGS

Rule 3. THE COMPLAINT

1. The complaint is a written statement of the essential facts constituting the offense charged. Except as provided in Rule 5, it shall be made upon oath before a Judge or Clerk of the Lower Brule Sioux Tribal Court.
2. Summons and Complaint

A summons and complaint may be issued by a law enforcement officer for an offense constituting a violation of the Tribal Criminal Code:

- a. if committed in the officer's presence;
- b. if not committed in the officer's presence, where the officer has probable cause to believe it was committed by the person charged. A copy of the summons and complaint shall be filed immediately with the Tribal Court before which appearance is required, and a second copy shall be made available to the Tribal prosecutor, if any;

c. the complaint or summons and complaint shall contain:

1. the name of the person accused, if known, or some other name if not known, plus a description of the person, if known;
2. the general location where the offense was committed;
3. the name and number of the section of the Tribal Code alleged to be the subject of the complaint;
4. a short, concise statement of the specific acts or omissions to act complained of;
5. the person against whom or against whose property the offense was committed, if known; otherwise no statement needs to be made;
6. the date and approximate time of the commission of the offense;
7. the name of the person filing the complaint or summons and complaint and the source of that person's knowledge.

3. Arrest followed by a complaint

If a law enforcement officer makes an arrest without a warrant for a person for an offense, the person arrested shall be taken without unnecessary delay before the Tribal Judge. Thereafter, a complaint shall be filed in the Tribal Court and a copy thereof be given to the defendant at or before arraignment. The defendant may be admitted to bail prior to the filing of the complaint.

4. Summons

A summons may be issued by the Clerk of the Tribal Court if a sworn complaint has been filed. The summons shall include the time and place of appearance of the defendant. A copy of the complaint shall be attached to and served with the summons.

Rule 4. ARREST WARRANT OR SUMMONS UPON COMPLAINT

1. Issuance

If it appears from the complaint, or from an affidavit or affidavits filed with the complaint that there is probable cause to believe that an offense has been

committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized to execute it. A summons may issue on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall issue.

2. Form

a. Warrant

A warrant shall be signed by the Judge or the Clerk and shall contain the name of the defendant or if the defendant's name is not known, any name by which the defendant can be identified with reasonable certainty. It shall describe the offense charged in the complaint. It shall command that the defendant be arrested and brought before the Tribal Judge without unnecessary delay.

b. Summons

The summons shall be in the form above set forth in Rule 4-2a, requiring the defendant to appear before the Tribal Court at the time and place stated.

3. Execution or service; and Return

a. By whom:

The warrant shall be executed by the police department or law and order section of the Tribe.

The summons may be served by any person over the age of 18 who is not a witness or party to the action and may be served by giving a copy to the defendant personally or by leaving a copy at the defendant's usual place of abode with some person over the age of 18 years residing therein. Personal service may also be accomplished by mailing a copy to the defendant's last known address. If the address of the defendant is at a location on the Reservation, it shall be mailed not less than 10 days prior to the time the defendant is required to appear before the Tribal Court. Service by mail shall be complete upon the return of the receipt signed by the defendant.

The officer need not have the warrant in his/her possession at the time of arrest; but upon request of the defendant, shall show the warrant to the

defendant as soon as possible. If the officer does not have the warrant in possession at the time of the arrest, the officer shall then inform the defendant of the offense charged and the fact that the warrant has been issued.

b. Return

The officer executing the warrant or the person serving the summons shall make return thereof to the Tribal Court by making a short statement of how the service was accomplished and the point where the service was accomplished. If service is accomplished by mailing of a summons, the return receipt shall be attached to the return.

Rule 4.1. COMPLAINT, WARRANT OR SUMMONS BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS

In lieu of, or in addition to, a written affidavit, or affidavits, as provided in Rule 3.1 above, the Tribal Court judge may take an oral statement under oath which shall be recorded on tape, wire or other comparable method.

1. This statement may be given in person to the Tribal Court judge or by telephone, radio, or other means of electronic communication.
2. This statement is deemed to be an affidavit for the purposes of issuance of a search warrant.
3. The recorded statement shall be transcribed at the request of the court or either party, certified by the Tribal Court judge, and filed with the court.

1-03 ARRAIGNMENT AND PREPARATION FOR TRIAL

Rule 5. ARRAIGNMENT

1. Subject to the provisions in paragraph 2., below, where practicable, the arraignment shall be conducted in open court by the judge or the clerk of court reading to the defendant the complaint filed with the court. The defendant shall be given a copy of the complaint at this time if the defendant has not already received one.
2. Notwithstanding the requirements in paragraph 1. above, the court may use two-way interactive video technology to conduct the following proceedings between the

courtroom and a defendant located at a prison, jail, or other location: initial hearing on a warrant or complaint; arraignment; bail hearing; pretrial conference; extradition hearing; and referral for determination of competency.

Rule 6. BAIL

1. Every defendant shall be released pending and during trial on his/her own recognizance, unless the court determines, based upon findings of fact made at the arraignment under Rule 5, or a later hearing to modify the conditions of release, that such release will not reasonably assure the defendant's appearance for all future hearings or the safety of the community.
2. No defendant shall be held without bail unless the court determines, based upon findings of fact made at the arraignment, or at a later hearing to modify the conditions of release, that there is a risk that the defendant, while released, will commit a crime or will flee the jurisdiction, or will intimidate or otherwise threaten any witness.
3. Every person entitled to release under the terms of this section shall be entitled to release from custody pending and during trial under whichever one or more of the following conditions is deemed by the judge to be the least restrictive alternative which will reasonably assure the appearance of the person at any lawfully required hearing:
 - a. Release on personal recognizance upon signing by the accused of a written promise to appear at trial and at all other lawfully required times.
 - b. Release to the custody of the designated person or organization agreeing to assure the accused's appearance.
 - c. Release with reasonable restrictions on the travel, association, or place of residence of the accused during the period of release.
 - d. Release after execution of a bail agreement by two responsible members of the community.

- e. Release upon any other condition deemed by the judge to be reasonably necessary to assure the appearance of the accused as required.

4. Conditions of Release

- a. At the arraignment before a judge, a determination of the conditions of release shall be made. The defendant shall have the opportunity to be heard by the court with respect to the conditions of release. The court shall issue an order containing the conditions of release and shall inform the accused of the conditions, the possible consequences of their violation, and that a warrant for the defendant's arrest may be issued immediately upon report of a violation.
- b. Every order of release on bond or defendant's own recognizance shall require that the defendant:
 - 1. Appear to answer and submit to the orders and process of the court;
 - 2. Refrain from committing any criminal offense;
 - 3. Not depart from the reservation without permission of the court;
 - 4. If released after judgment and sentence pending appeal, shall diligently prosecute the appeal.

5. Modification and Revocation of Release

- a. Any person remaining in custody may move for reexamination of the conditions of release based upon the existence of material facts not previously presented to the court.
- b. The court may, on its own initiative, at any time modify the conditions of release, after giving the parties an opportunity to respond to the proposed modification.
- c. Prosecutor's motion:

(1) Upon petition by the prosecutor stating facts or circumstances constituting a breach of the conditions of release, the court may issue a warrant or summons to secure the defendant's presence in court. A copy of the petition shall be served with the warrant or summons.

(2) Hearing. If after a hearing on the matters set forth in the petition, the court finds that the person released has not complied with the conditions of release, the court may modify the conditions or revoke release.

A Form for a Bond Receipt is attached as Appendix A.

Rule 7. Reserved

Rule 8. JOINDER OF OFFENSES OR DEFENDANTS

1. Joinder of Offenses—The defendant may be charged in separate counts with two or more offenses if the offenses charged are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan.
2. Joinder of defendants—Two or more defendants may be joined for trial if they are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses. The defendants may be charged in one or more counts together or separately. All defendants need not be charged in each count.

Rule 9. Reserved

Rule 10. Reserved

Rule 11. PLEAS

1. Alternatives

A defendant may plead not guilty, guilty, not guilty by reason of insanity, or no contest. If the defendant refuses to plead, the court shall enter a plea of not guilty on behalf of the defendant.

2. Advice to defendant

Before accepting a plea, the court will address the defendant in open court and inform the defendant and determine that he/she understands the following:

- a. the nature of the charge to which the plea is offered and the possible penalty should the defendant be found guilty or plead guilty;
- b. that the defendant has a right to be represented at the defendant's own expense;
- c. that the defendant has a right to have the trial to a jury of at least six persons with the right to the assistance of counsel, and has a right to be confronted by the witnesses against him/her and to cross-examine those witnesses;
- d. that the defendant has a right to testify or to not testify since the defendant has a right not to be compelled to testify;
- e. that if the defendant pleads guilty or no contest, there will not be a formal trial and in effect, the defendant has waived the right to a trial by such a plea; and further that any statement the defendant makes either to the court or to an officer or other persons concerning the violation charged can be used against him/her either in the proceedings or in any future prosecution.

3. No contest

A defendant may plead no contest only with the consent of the judge. Such a plea shall be accepted by the court only after due consideration of the views of the victim and the interest of the public in the effective administration of justice.

4. Not Guilty by Reason of Insanity

- a. Form of plea raising defense. A defendant in a criminal case raising the defense of insanity shall, at arraignment, specially plead "not guilty and not guilty by reason of insanity."

- b. If a defendant intends to introduce expert testimony relating to mental illness or insanity relevant to the issue of whether the defendant had the mental state required for the offense charged, the defendant shall, not less than thirty days prior to the date set for trial or at any later time as the court may direct, notify the prosecuting attorney in writing of that intention and file a copy of the notice with the clerk of the court. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make any other order as is appropriate.

- c. In an appropriate case the court shall, upon motion of the prosecuting attorney, order the defendant to submit to a psychiatric examination by a psychiatrist designated for this purpose by the prosecuting attorney in an order of the court. The court may also appoint medical experts and require that the defendant submit to examination by such court-appointed medical experts. No statement made by the defendant in the course of any examination provided for by this section, whether the examination was with or without the consent of the defendant, shall be admitted in evidence against the defendant on the issue of guilt in any criminal proceeding except for the purpose of impeaching the defendant.

- d. If the defendant fails to give notice when required, or to submit to an examination when ordered pursuant to this Rule, a court shall exclude the testimony of any witness offered by a defendant on the issue of the defendant's mental state.

- e. If, during the trial of a criminal case, where the plea of "not guilty and not guilty by reason of insanity" has not been made, a court deems that a substantial suggestion of a defendant's sanity was raised as a defense, the defendant shall be deemed to have consented to a mistrial. Former jeopardy may not attach on a subsequent trial of the same case. In those circumstances, a second trial shall be had as soon as is practical and the court shall, in advance of the second trial, require the defendant to submit to an examination as prescribed by Rule 11.4.c above.

- f. Subject to court approval, the defendant may be examined by a psychiatrist of the defendant's own choosing at the defendant's expense

or, if indigent, at the tribe's expense. Examination of the defendant shall be on the issue of the defendant's sanity when the offense occurred. Notice of the independent examination shall be given to the prosecuting attorney at least five days before the examination date. A psychiatrist who examines an indigent defendant may receive a reasonable fee.

5. Guilty Plea--Ensuring that the plea is voluntary

The court shall not accept a plea of guilty or no contest without first talking to the defendant personally in open court to determine that the plea is voluntary and is not the result of force or threats, or of a promise apart from any plea agreement which may have been entered into between the Tribe or Tribal prosecutor and the defendant.

6. Guilty Plea agreement procedure:

a. In general:

The attorney for the Tribe and the attorney for the defendant, if there are attorneys, or the defendant acting pro se, may engage in discussion with a view toward reaching an agreement that, upon entering a plea of guilty or no contest to a charged offense or to a lesser or related offense, the Tribe will do any of the following:

(1) Not bring or will move for dismissal of other charges; or

(2) make a recommendation, or agree not to oppose the defendant's request, for a specific sentence, with the understanding that such recommendation or request shall not be binding on the judge; or

(3) agree that a specific sentence is the appropriate disposition of the case.

The judge shall not participate in any plea agreement discussions.

b. Notice of such agreement:

If a plea agreement has been reached by the Tribe and the defendant, the court shall on the record require the disclosure of the agreement in open court or, on a showing of good cause, in chambers. The court may accept or reject the agreement or may defer a decision as to the acceptance or rejection until there has been an opportunity to consider a presentence report, if any is to be made.

c. Acceptance of a plea agreement:

If the judge accepts the plea agreement, the judge shall inform the defendant that the disposition provided for in the plea agreement will be embodied in the judgment and sentence.

d. Rejection of a plea agreement:

If the judge rejects the plea agreement, the court shall, on the record, inform the defendant and the Tribe of this fact, and advise the defendant personally in open court or, on a showing of good cause, in chambers, that the court is not bound by the plea agreement. The court shall afford the defendant an opportunity to then withdraw the plea, and the court shall advise the defendant that if the defendant persists in the guilty plea or plea of no contest, the disposition of the case may be less favorable to the defendant than contemplated by the plea agreement.

e. Time of plea agreement procedure:

Except for good cause shown, the judge of the Tribal Court shall be notified of the plea agreement at the time of arraignment or as soon thereafter as possible, but in all cases prior to trial.

f. Inadmissibility of pleas, offers of pleas and related statements:

Any evidence of a plea of guilty, later withdrawn, or a plea of no contest to the offense charged or any other offense or of statements made in connection therewith, is not admissible in any other criminal proceeding or

in any civil case against the defendant who made the plea or offer. However, evidence of a statement made in connection with or relevant to a plea of guilty, later withdrawn, or a plea of no contest to the offense charged or any other offense is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath and on the record and in the presence of an attorney.

7. Determining the accuracy of a plea of guilty or no contest:

The judge shall not enter a judgment on a tendered plea of guilty or no contest without first making an inquiry that there is a factual basis for the plea, and being satisfied that there is such a factual basis.

8. Record of the proceedings:

A verbatim record of the proceedings at which the defendant enters a plea of guilty or no contest shall include the court's advice to the defendant, the inquiry into the voluntariness of the plea, including any plea agreement, and inquiry into the accuracy of the plea.

Rule 12. PLEADINGS AND MOTIONS BEFORE TRIAL: DEFENSE AND OBJECTIONS

1. Pleadings in criminal proceedings shall consist of the complaint and the plea of guilty, not guilty, not guilty by reason of insanity, or no contest. Pleas and motions shall be made in accordance with these rules.
2. Motions raising defenses and objections may be made as follows:
 - a. any defenses or objections which are capable of determination other than at trial may be raised before trial by motion;
 - b. defenses and objections based on defects in the institution of the prosecution of the complaint other than that it fails to show jurisdiction in the court or fails to charge an offense may be raised on motion only before trial or such shall be deemed waived, unless the court for good cause shown grants relief from such waiver. Lack of jurisdiction or failure to charge an offense may be raised as defenses or noticed by the court on its own motion at any stage of the proceedings;

- c. such motions shall be made in writing and filed with the court before trial. Such motions will be argued when the court directs. Decisions on such motions shall be made by the judge and not by the jury;
- d. if a motion is decided against a defendant, the trial shall proceed as if no motion were made. If a motion is decided in favor of a defendant, the judge shall alter proceedings or enter judgment as is appropriate in light of the decision.

Rule 12.1. NOTICE OF ALIBI DEFENSE

The prosecutor may request in writing or in electronic format that the defendant provide notice of any intended alibi defense. The prosecutor must provide the date, time and place of the alleged offense. The defendant must respond in writing or in electronic format, providing the location the defendant claims to have been at the time of the alleged offense, and providing the name of any witness on whom the defendant intends to rely. In response to the defendant's notice, the government must respond with the name of any witness the government intends to call to establish defendant's presence at the scene of the alleged crime, and any rebuttal witness to the defendant's alibi defense. The prosecution and defense have a continuing duty to disclose this information.

Rule 13. TRIAL TOGETHER ON COMPLAINTS

The court may order two or more defendants tried together if they could have been joined in a single complaint or may order a single defendant tried on more than one complaint at a single trial.

Rule 14. RELIEF FROM PREJUDICIAL JOINDER

If it appears that a defendant or the prosecution is prejudiced by a joinder of offenses or of defendants in a complaint or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants, or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance, the court may order the attorney for the Tribe to deliver to the court for inspection in camera any statements or confessions made by the defendant which the Tribe intends to introduce in evidence at the trial.

Rule 15. DEPOSITIONS

1. When taken:

Whenever due to exceptional circumstances in the case, it is in the interest of justice that the testimony of a prospective witness be taken and preserved for use at trial or when said witness has been committed to custody for failure to appear at the time of trial for hearing in response to a subpoena, the court on motion of the witness or either party, may direct the taking of a deposition. After the deposition has been subscribed by the witness, the court may discharge the witness.

2. Notice of taking:

The time and place of taking of the deposition shall be determined by the court at the time of granting the taking of the deposition. The defendant shall be present at the time and place set forth for examination but may in writing agree to be present remotely or waive the right to be present. The defendant or the defendant's attorney may cross-examine the witness at the time of taking the deposition or may examine the witness if the defendant has called the witness.

3. How taken:

The deposition shall be taken by tape recorder or other means as is used in the court for reporting purposes or as agreed upon by the parties. Objections to testimony shall be made at the time of the deposition and shall be ruled upon by a judge at the earliest convenient time. Cross-examination shall be allowed the same as would be allowed in the trial itself. A defendant may not be deposed without that defendant's consent.

4. Payment of expenses:

The expense of taking a deposition shall be made at the expense of the person taking the deposition. If a deposition is requested to be taken off the Reservation, the party requesting the taking beyond the Reservation boundaries shall bear the expense of transportation to and from said point of taking the deposition.

5. Use:

At the trial or upon any hearing, all or any part of the deposition may be used the same as if it were testimony offered before the court and the witness is unavailable as defined by Rule 804(a) of the Federal Rules of Evidence. If only a part of the deposition is offered by a party, the adverse party may require all of the deposition which is relevant to be offered.

6. Deposition by agreement:

Nothing in this rule shall preclude the taking of a deposition orally or upon written questions or the use of a deposition by agreement of the parties with the consent of the court.

Rule 16. DISCOVERY AND INSPECTION

1. Disclosure of evidence by the prosecution.

a. Information subject to disclosure:

(1) Statement of the defendant:

Upon request of a defendant, the Tribe shall permit the defendant to inspect and copy or photograph any relevant written or recorded statements made by the defendant or any co-defendant, or copies thereof within the possession, custody, or control of the Tribe, the existence of which is known to the attorney for the Tribe.

(2) Defendant's prior record:

Upon request of the defendant, the Tribe shall furnish to the defendant a copy of his/her prior record with the Tribe, if any. If the prosecution intends to use any federal, tribal, or state record of the defendant, that record must be furnished to the defendant.

(3) Documents and tangible objects:

Upon request of the defendant, the Tribe shall permit the defendant to inspect and copy any photographs, books, papers, documents, tangible objects, buildings or places, or copies or portions thereof which are in the possession, custody, and control of the Tribe and which are material and relevant to the defense of the defendant.

(4) Reports of examinations and tests:

Upon request of the defendant, the government shall permit the defendant to inspect and copy or photograph any results or reports of physical or mental examination or of scientific tests or experiments which are within the custody and possession of the Tribe.

b. List of witnesses:

The Tribe shall, upon request of the defendant, deliver to the defendant a list of witnesses and their known addresses which the Tribe intends to call in connection with the prosecution of the case. However, failure of the Tribe to call any witness on said list shall not be grounds for comment by the defendant for failure to call said witness.

2. Disclosure of evidence by the defendant:

a. Information subject to disclosure:

(1) Documents and tangible objects:

If the defendant requests disclosure under Subsection 1. of this rule, upon request of the Tribe, the defendant shall permit the Tribe to inspect, copy or photograph books, papers, documents, and tangible objects, photographs or copies or portions thereof which are within the possession, custody and control of the defendant and which the defendant intends to introduce as evidence in chief at the trial.

(2) Reports of examinations and tests:

If the defendant requests disclosure under subsection 1 of examinations and tests by the Tribe, the defendant, upon the request of the Tribe, shall permit the Tribe to inspect and copy or photograph the results of any reports of physical or mental examinations or scientific tests or experiments made in connection with the case which the defendant intends to introduce at the time of trial as evidence in chief.

b. Information not subject to disclosure by the defendant:

The defendant shall not be required to make available to the Tribe any other memoranda or documents or names of witnesses which are statements made by the defendant except as herein provided.

3. Continuing duty to disclose

If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, the party shall promptly notify the other party, or that party's attorney, or the court of the existence of the additional material.

4. Regulation of discovery

- a. Upon proper notice and hearing, protective orders may be entered by the court to determine any controversy relative to what is subject to discovery or inspection and what is not.
- b. Failure to comply with request. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter any other order it deems just under the circumstances. The court may specify the time, place and manner of making discovery and inspection and may prescribe such terms and conditions as are just.

Rule 17. SUBPOENA

1. For attendance of witness; form, issuance

A subpoena shall be issued by the Lower Brule Sioux Tribal Court. It shall state the name of the court, the title, if any, of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. A subpoena signed and sealed, but otherwise in blank, may be issued to a party requesting it who shall fill in the blanks before it is served.

2. The cost of issuance and service of a subpoena shall be borne by the Tribe when served upon the Reservation.

3. For production of documents and objects

A subpoena may also command a person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion promptly made, may modify the subpoena if compliance would be unreasonable or oppressive.

4. Service

A subpoena shall be served by a member of the law and order division of the Tribe or any person authorized by the court to make said service who is over the age of 18 years and not related to the party requesting the subpoena within the third degree.

5. Place of service

Service of the subpoena shall be made only upon the Reservation.

6. Contempt

Failure by a person without adequate excuse to obey a subpoena served upon that person may be deemed contempt of the Lower Brule Sioux Tribal Court. Upon proper hearing, the individual may be punished for said contempt.

Rule 17.1. PRETRIAL CONFERENCE

At any time prior to trial, upon motion of either party, the court may order a conference to consider matters which will promote a fair and expeditious trial. Said hearing may be conducted in the Lakota language if appropriate. Any matters agreed upon shall be reduced to writing and signed by the defendant and the defendant's attorney. If no attorneys are involved, the writing shall be signed only by the defendant. If the Lower Brule Sioux Tribal Court is a court of record, the record shall be kept in the English language for purposes of appeal. The pretrial conference may be conducted electronically.

Rule 18. Reserved

Rule 19. Reserved

Rule 20. Reserved

Rule 21. Reserved

1-04 TRIAL

Rule 22. SPEEDY TRIAL

1. The trial of criminal cases shall have priority over the trial of civil cases. The trial of defendants in custody and defendants whose pretrial liberty may present unusual risks shall be given preference over other criminal cases.
2. Time Limits
 - a. For Class A offenses, every person against whom a complaint has been filed shall be tried within 90 days of the arrest or service of summons or notice to appear if the person is held in pretrial confinement. Any period of federal custody shall be excluded from the calculation. If the person is not in pretrial confinement, trial shall be held within 120 days.
 - b. For Class B, C and D offenses, if the person against whom a complaint has been filed is held in pretrial confinement, trial shall be held within 90 days of arrest or service of summons or notice to appear. If the person is not in pretrial confinement, trial shall be held within 150 days.
 - c. The calculation of the time limits prescribed by this section shall not include any delays caused by or on behalf of the defendant, including, but not limited to, delay caused by an examination and hearing to determine competency, the defendant's absence or incompetence, or the defendant's inability to be arrested or taken into custody on the reservation. The Court may grant a continuance where good cause has been established.
3. Denial of Speedy Trial; Dismissal

If the court determines that a speedy trial time limit established by these Rules has been violated, it shall, on motion of defendant or on its own initiative, dismiss the prosecution, with or without prejudice, as justice requires.

Rule 23. TRIAL BY JURY OR BY THE COURT

1. Trial by the court

Unless the defendant shall within 10 days after entering a plea of not guilty or not guilty by reason of insanity request a trial by a jury, the matter shall be tried by the court. The court shall make a general finding and shall in addition, upon request, make findings of fact specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

2. Trial by jury

If the defendant shall, within 10 days so request in writing, the trial of the case shall be to a jury of six or fewer as may be stipulated in writing by the defendant.

Rule 24. TRIAL JURORS

1. Examination

The court itself may conduct the examination of prospective trial jurors and thereafter may permit the attorney or prosecutor for the Tribe and the attorney or advocate for the defendant to supplement the examination by the court of each of said prospective jurors. Or the court may conduct all of the examination and ask such questions supplied by either the Tribe or the defendant as it seems proper.

2. Peremptory challenges

Each side shall have three peremptory challenges. If there is more than one defendant, one additional peremptory challenge may be granted to the defendants, to be exercised separately or jointly.

Rule 25. JUDGE; DISABILITY

1. During trial

If by reason of death, sickness or other disability, the judge before whom a jury trial has commenced is unable to proceed with the trial, any other judge regularly sitting or assigned to the court may proceed and complete the trial.

2. After verdict or finding of guilt

If by reason of absence, death, sickness or other disability the judge before whom the defendant has been tried is unable to perform duties after the verdict or finding of guilty, any other judge regularly sitting may perform those duties. If such judge is

not satisfied that he/she can perform such duties, the judge may order a new trial to be held.

Rule 26. TAKING OF TESTIMONY

In all trials, the testimony of witnesses shall be taken orally in open court under the rules of evidence of the Federal Rules of Evidence authorized for use in the Federal Court System of the United States. All trials shall be conducted in the English or Lakota language. If trials are conducted in a language other than the English language, all testimony and trial proceedings shall be reduced to writing in the English language for a record. Prior statements of the government's witnesses shall be furnished to the defense in advance of trial.

Rule 27. PROOF OF OFFICIAL RECORD

An official record or an entry therein or lack of such a record or entry may be proved in the same manner as in civil actions.

Rule 28. INTERPRETERS

The court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter. Such compensation shall be paid out of funds provided by ordinance of the Tribe.

Rule 29. MOTION FOR JUDGMENT OF ACQUITTAL

1. Motion before submission to jury

The court on motion of a defendant or on its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the complaint after the evidence on either side is closed if the evidence is not sufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of evidence offered by the Tribe is not granted, the defendant may proceed to offer evidence without having reserved the right to do so.

2. Reservation of decision on motion

If a motion for judgment of acquittal is made at the close of all of the evidence, the court may reserve decision on the motion, submit the case to the jury, and decide

the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict.

3. Motion after discharge of jury

If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed forthwith after the jury is discharged, or within such further time as the court may fix. If the verdict of guilty is returned, the court may on such a motion, set aside the verdict and enter a judgment of acquittal. If no verdict is returned, the court may enter a judgment of acquittal.

Rule 29.1. CLOSING ARGUMENTS

After the closing of evidence, the prosecution shall open the argument. The defense shall be permitted to reply. The prosecution shall then be permitted to reply in rebuttal.

Rule 30. INSTRUCTIONS

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file a written request that the court instruct the jury on the law as set forth in the request. At the same time, copies of such proposed instructions shall be furnished to adverse parties. The court shall inform counsel of its proposed action upon the request prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless the party objects before the jury retires to consider its verdict. The party must state the matter to which the party objects and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury and, on request of any party, out of the presence of the jury.

Rule 31. VERDICT

The verdict shall be unanimous. It shall be returned by the jury to the judge in open court.

1-05 POSTCONVICTION

Rule 32. SENTENCE AND JUDGMENT

1. Imposition of sentence

Sentence shall be imposed promptly following either conviction by the court or jury or upon a plea of guilty. Before imposing sentence, the court shall afford counsel an opportunity to speak on behalf of the defendant. The court also shall address the defendant personally and ask if the defendant wishes to make a statement and to present any information in mitigation of punishment. The attorney for the Tribe shall have an equal opportunity to speak to the court if the attorney so desires.

2. Order suspending imposition of sentence and placing defendant on probation

a. Upon receiving a verdict or plea of guilty for an offense by a person convicted of a crime, the court, if satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby, may, without entering a judgment of guilt, and with the consent of the defendant, suspend the imposition of sentence and place the defendant on probation for such period and upon such terms and conditions as the court may determine.

b. Eligibility

(1) The tribal court may suspend the imposition of sentence upon any defendant who has not been convicted of more than one offense in the Lower Brule Sioux Tribal Court if any sentence imposed was completed at least five years prior to the current offense of conviction.

(2) The tribal court may suspend the imposition of sentence upon any defendant who has not been convicted of more than one misdemeanor in a federal or state court if said sentence was completed at least five years prior to the current offense of conviction.

(3) A person who has previously been granted a suspended imposition of sentence is eligible to be granted a second suspended imposition of sentence if the conditions in para (2) and (3) above are met.

c. Revocation of suspended imposition of sentence--The court may revoke such suspension at any time during the probationary period and impose and execute sentence without diminishment or credit for any of the probationary period.

3. Judgment

A judgment of conviction shall set forth the plea, the verdict or findings and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk.

4. Withdrawal of plea of guilty

A motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed.

5. Probation

After conviction of an offense, the defendant may be placed on probation as provided by the law and order code of the Lower Brule Sioux Tribe.

6. Revocation of probation

The court shall not revoke probation except after hearing at which the defendant shall be present and apprised of the grounds on which such action is proposed. The defendant may be admitted to bail pending such hearing.

7. Forfeiture

Where Forfeiture is authorized as a punishment under the Lower Brule Sioux Tribe Law and Order Code, the following procedures must be followed:

- a. The prosecuting attorney for the Tribe must notify the defendant within 15 days of the filing of a Complaint that forfeiture will be sought and said notice will be filed with the Tribal Court. The notice will identify the property the Tribe seeks to forfeit.
- b. The prosecutor must prove beyond a reasonable doubt that the property sought to be forfeited is the profits, proceeds or fruits of the unlawful conduct giving rise to the allegation of forfeiture, or is contraband.
- c. If an individual claims to be an innocent owner of property sought to be forfeited, the Tribal Court will not grant the forfeiture request if the individual proves innocent ownership to a reasonable probability.

Rule 33. NEW TRIAL

The court, on motion of a defendant, may grant a new trial if required in the interest of justice. Upon completion of a trial either to the court or to a jury, and upon entry of the verdict, the defendant may request time in which to offer a motion for a new trial.

However, if not requested within 60 days after verdict, the motion for new trial shall be dispensed with and judgment entered.

Rule 34. Reserved

Rule 35. Reserved

Rule 36. CLERICAL MISTAKES

Clerical mistakes in judgments, orders, or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

Rule 37. Reserved

Rule 38. STAY OF EXECUTION AND RELIEF PENDING REVIEW

a. Imprisonment

A sentence of imprisonment may be stayed if an appeal is taken by the defendant and notice of appeal is filed with the court within 30 days after imposition of judgment.

b. Fine

A sentence to pay a fine or a fine and costs if an appeal is taken may be stayed by the court upon the filing of the notice of appeal, provided that the court may require the defendant, pending appeal, to deposit the whole or any part of the fine and costs in the registry of the court, or give bond for the payment thereof.

c. Probation

An order placing the defendant on probation may be stayed if an appeal is taken by the filing of a notice of appeal.

d. Bail

The defendant may be admitted to bail pending appeal if the sentence includes imprisonment.

Rule 39. Reserved

Rule 40. Reserved

1-06 SUPPLEMENTARY PROVISIONS

Rule 41. SEARCH AND SEIZURE

1. Authority to issue warrant

A search warrant authorized by this rule may be issued by any judge of the Lower Brule Sioux Tribal Court, upon request of any attorney for the Tribe or any Tribal law enforcement officer acting on behalf of the Tribe.

2. Person or Property which may be seized with the warrant

A warrant may be issued under this rule to search for and seize any:

- a. property that constitutes evidence of the commission of a criminal offense;
- b. contraband, the fruits of a crime, or things otherwise criminally possessed;
- c. property designed or intended for use in, or which has been used as the means of committing a criminal offense;
- d. a person.

3. Issuance and contents

The warrant shall issue only on an affidavit or affidavits sworn before the Lower Brule Sioux Tribal Court Judge and establishing the grounds for issuing the warrant.

In lieu of, or in addition to, a written affidavit, or affidavits, as provided in Rule 4 above, the Tribal Court Judge may take an oral statement under oath which shall be recorded on tape, wire or other comparable method.

- a. This statement may be given in person to the Tribal Court Judge or by telephone, radio, video or other means of electronic communication; and
- b. This statement is deemed to be an affidavit for the purposes of issuance of a search warrant; and
- c. The recorded statement shall be transcribed at the request of the court or either party, certified by the Tribal Court Judge, and filed with the court.

If the Judge is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, the Judge shall issue a warrant identifying the property and names or description of the person or place to be searched or seized. The finding of probable cause may be based upon hearsay evidence in whole or in part.

Before ruling on a request for a warrant, the Judge may require the person making the affidavit to appear personally or by remote technology and may examine, under oath, the witness or witnesses the person may produce, provided that such proceeding shall be recorded on recording equipment and made part of the affidavit.

The warrant shall be directed to any law enforcement officer on the Reservation and it shall command the officer to search for, within a specific period of time, not to exceed 10 days, the person or place named or the property specified. The warrant shall be served in the daytime unless the Judge, by appropriate provision in the warrant and for reasonable cause shown, authorizes its execution at times other than the daytime. It shall designate where the return shall be made to the Lower Brule Sioux Tribal Court.

4. Execution and return with inventory

The officer taking the property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property that was taken. The return shall be made promptly and shall be accompanied by a written inventory of the property taken. The inventory shall be written in the presence of the person from whose possession or premises the property was taken and shall be certified by the officer serving the search warrant. The judge shall, upon request, deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

5. Motion for return of property

A person aggrieved by an unlawful search and seizure may move the Lower Brule Sioux Tribal Court for the return of the property on the grounds that the person is entitled to lawful possession of the property which was illegally seized. The judge shall receive evidence on any issue of fact necessary to the decision on the motion. If the motion is granted, the property shall be returned to the owner thereof or to the place where it was seized. If the motion is denied, it shall remain available for use in the trial subject to a motion to suppress. A motion to suppress evidence may be made before the Lower Brule Sioux Tribal Court as provided in Rule 12.

Rule 42. CRIMINAL CONTEMPT

1. Summary disposition

A criminal contempt may be punished summarily if the Judge certifies that the Judge saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts as entered on the record by the Judge. The acts or failures to act listed at Sec. 1-3-1 of the Lower Brule Sioux Tribal Court Law and Order Code- Jurisdiction and Judiciary may constitute the conduct needed for a finding of criminal contempt.

2. Disposition upon notice and hearing

Except as provided in subdivision 1 of this rule, a criminal contempt may be entered upon notice and hearing allowing a reasonable time for the preparation of the defense and shall state the essential facts constituting a criminal contempt, which may be made in open court orally by the Judge in the presence of the defendant and any representative of the Tribe acting for the prosecution. The defendant is entitled to a trial to the court of the contempt charge which involves acts committed by the person outside the presence of the court. Upon the finding of guilty by the court, it shall enter an order fixing the punishment.

Rule 43. PRESENCE OF THE DEFENDANT

1. Presence required

The defendant shall be present at the earliest possible time after arrest to be arraigned and advised of his/her rights by a Judge of the Lower Brule Sioux Tribal Court. Thereafter, the defendant shall be present at the time of the plea, at the

beginning of the trial either to the court or to a jury, at the return of a verdict, and at sentencing, except as otherwise provided by this rule.

2. Presence not required

With the written consent of the defendant, the Judge of the Lower Brule Sioux Tribal Court may permit arraignment and other proceedings in the defendant's absence in accordance with Rule 5.1 above. However, the defendant shall have the right to be present at these stages of the prosecution and should be encouraged to exercise this right, unless conditions make exercise of the right impracticable.

3. Continued presence not required

The further progress of a trial, to and including the verdict, shall not be delayed or prevented, and the defendant shall be considered to have waived the right to be present, whenever a defendant initially present, voluntarily absents himself/herself after the trial has commenced. In addition, a defendant who, after being warned by the Judge, persists in disruptive conduct in the courtroom so as to justify exclusion from the courtroom, shall be considered to have waived the right to be present.

Rule 44. Reserved

Rule 45. TIME

1. Computation

In computing any period of time, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a legal holiday. When a period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in these rules, "legal holidays" include New Year's Day, Washington's birthday, Memorial Day, Independence Day, Labor Day, Native American Day, Veterans' Day, Thanksgiving Day, Christmas Day, Martin Luther King Day, Juneteenth, and any other day appointed as a holiday by the President or the Congress of the United States, or by the State in which the District Court is held, or by the Tribal Council of the Tribe.

2. Enlargement

When an act is required or allowed to be done at or within a specified time, the court, for cause shown, may at any time in its discretion:

- a. with or without motion or notice, order the period enlarged if the request for enlargement is made before the expiration of the period originally prescribed or as extended by a previous order or;
- b. upon motion made after the expiration of the specified period, permit the act to be done if the failure to act was the result of excusable neglect; but the court may not extend the time for taking any action under Rules 22, 32, 33 or 41 except to the extent and under the conditions stated in them.

3. For motions; affidavits

A written motion, other than one which may be heard ex parte, and notice of hearing thereof shall be served not later than 48 hours before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown, such an order may be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion, and opposing affidavits may be served not less than 24 hours before the hearing, unless the court permits them to be served at a later time.

4. Additional time after service by mail

Whenever a party has a right or is required to do an act within the prescribed period after service of a notice or other paper upon the party, and the notice or other paper is served upon the party by mail, three days shall be added to the prescribed period.

Rule 46. Reserved

Rule 47. MOTIONS

An application to the court for an order shall be by motion. All motions shall be made orally before the court unless the court permits the motion to be made in writing or electronically. The person moving shall state the grounds upon which it is made and shall set forth the relief and orders sought. The oral motion may be supported by written affidavits offered to the court at the time of the motion. If affidavits are offered

by the movant, the opposing party shall have reasonable time in which to file affidavits if required and so ordered by the court.

Rule 48. DISMISSAL

1. By the Tribe

The Tribal prosecutor may request the dismissal of a case filed by a law enforcement officer of the Tribe or by a private individual under such terms and conditions as the court may require. Costs may be assessed by the court against any private individual if there appears to be no justification for the filing of the complaint.

2. By the court

Dismissal of actions may be made by the court upon request of the complaining witness whether the person is a peace officer or a private individual. Costs may be assessed against a private individual who has filed a complaint and the request that it be dismissed; the amount of costs shall be determined by the judge.

Rule 49. SERVICE AND FILING OF PAPERS; ELECTRONIC COMMUNICATIONS; ELECTRONIC SIGNATURES

1. Service: When required

Written motions, notice of hearings and other matters heard ex parte, designations of the record on appeal, and similar papers shall be served upon each of the parties.

2. Service: How made

Service may be made by mail, or personal service, or as provided in para 5. below, authorizing electronic service. If an attorney is of record on behalf of the defendant in any criminal case, service shall be made upon the attorney in lieu of personal service upon the defendant as is done in the same manner in civil actions.

3. Notice of orders

Immediately upon entry of an order made upon a written motion subsequent to arraignment, the clerk shall mail or provide an electronic copy to each party a notice thereof and shall make a notation in the docket of the mailing. Lack of notice does not affect the time to appeal, or relieve or authorize the court to relieve a party, for failure to appeal within a time allowed by the appellate rules of the Tribe.

4. Filing

Papers required to be served shall be filed with the court. Papers shall be filed in the same manner as in civil actions.

5. Electronic communications, including email, skype and other means of communicating electronically

a. Papers may be filed, signed and verified electronically in the Lower Brule Sioux Tribal Court. The requirement of a writing is satisfied by sending of an electronic record. If the court has directed or the parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

b. Electronic service. A party who files a document electronically must serve the document by electronic means. Electronic service is not effective if the party making service learns that the attempted service did not reach the person to be served.

c. The court may electronically file and serve on registered attorneys and parties any judgments, orders, notices or other documents prepared by the court in such cases provided the attorney or party to be served has designated an e-mail address for receiving electronic service. The court may direct that such an email address be designated by an attorney.

6. Electronic signatures—The use of electronic signatures is authorized in the Lower Brule Sioux Tribal Court, as follows:

a. An electronic signature is an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. The term includes a signature that is secured through blockchain technology. An electronic signature satisfies the requirement of a signature. If a law requires a signature, an electronic signature satisfies the law.

- b. Attributing electronic signature to a person. An electronic signature is attributable to a person if it was the act of the person, which may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic signature was attributable.
- c. Effect of electronic signature to be determined from context. The effect of an electronic signature attributed to a person is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.
- d. Signatures of judges and court officials. The requirement that any court record or document be signed is met by the use of an electronic signature. The submission of a document signed with an "/s/ name" or electronic image of the traditional signature when filed with the login and password of a judge or court official shall constitute an original signature for all purposes. An electronic signature is considered to be the original signature upon the court record or document for all purposes under this rule and other applicable statutes or rules.
- e. Notarization of electronic signature. If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record. Notarization may be done remotely and does not require the person whose signature is notarized to sign in the physical presence of the notary, providing the remote technology is sufficient to enable the notary to verify the authenticity of the signature.

Rule 50. PROMPT DISPOSITION OF CASE

The Lower Brule Sioux Tribal Court may provide for the placing of criminal proceedings on appropriate calendars. Preference shall be given to criminal proceedings of persons confined to jail as far as practicable.

Rule 51. EXCEPTION UNNECESSARY

Exceptions to rulings or orders of the court are unnecessary and for all purposes for which an exception has been necessary, it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the objection to the action of the court and the grounds therefore. If a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice that party.

Rule 52. HARMLESS ERROR AND PLAIN ERROR

1. Harmless error

Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

2. Plain error

Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

Rule 53. REGULATION OF CONDUCT IN THE COURTROOM

The taking of photographs in the courtroom during the process of judicial proceedings or radio broadcasting of judicial proceedings from the courtroom shall not be permitted by the court.

Rule 54. APPLICATION AND EXCEPTION

1. Courts

These rules shall apply to all criminal proceedings in the Tribal Court of the Lower Brule Sioux Tribe of the Lower Brule Sioux Indian Reservation. Any provisions adopted pursuant to the exercise of Special Tribal Criminal Jurisdiction supplement these rules and should be interpreted consistently with them.

2. Exception

The juvenile court of the Lower Brule Sioux Tribe may provide for proceedings in the nature of a criminal action with rules other than these, if the Tribal Council has approved said rules.

Rule 55. RECORDS

The Lower Brule Sioux Tribal Court shall keep such records of criminal proceedings as shall be required by the chief judge of the court. Among the records required to be kept by the clerk shall be a book known as the criminal docket in which, among other things, shall be entered each order or judgment of the court. The entry of an order of judgment shall show the date the entry is made.

Rule 56. EXPUNGEMENT

1. Definition of expungement

Expungement is the sealing of all records on file with any court, detention or correctional facility, or law enforcement agency, concerning a person's detection, apprehension, arrest, detention, trial or the disposition of an offense within the criminal justice system. Expungement does not imply the physical destruction of records.

2. Motion for expungement of arrest record.

An arrested person may apply to the Lower Brule Sioux Tribal Court for entry of an order expunging the record of the arrest:

- a. After one year from the date of any arrest if no accusatory instrument was filed;
- b. After one year from the date the prosecuting attorney formally dismisses the entire criminal case on the record; or
- c. At any time after an acquittal.

A sample Motion for Expungement form is attached as Appendix B to these Rules.

3. Service of motion.

At least fourteen days before any hearing on a motion for expungement, a copy of the motion shall be served upon the office of the prosecuting attorney who prosecuted the crime or violation, or who had authority to prosecute the charge if there was no accusatory instrument filed. The prosecuting attorney may contest the

motion in writing and at the hearing on the motion.

4. Hearing on motion for expungement.

The court may fix a time and place for a hearing on the motion unless waived by the defendant, arrested person, prosecuting attorney, and victim. The court may require the filing of such affidavits and may require the taking of such evidence as it deems proper.

5. Order of expungement.

The court may enter an order of expungement upon a showing by the defendant or the arrested person by clear and convincing evidence that the ends of justice and the best interest of the public and Lower Brule Sioux Tribe, as well as the defendant or the arrested person, will be served by the entry of the order.

6. Retention.

Any order of expungement shall be retained solely for use by law enforcement agencies, prosecuting attorneys, and the Lower Brule Sioux Tribal Court in sentencing the defendant or arrested person for subsequent offenses. As part of any order of expungement, the court shall order that all official records, other than the nonpublic records to be retained by the Lower Brule Sioux Tribal Court, be sealed along with all records relating to the defendant or arrested person's arrest, detention, charge, trial, and disposition.

7. Effect of order of expungement.

The effect of an order of expungement is to restore the defendant or arrested person, in the contemplation of the law, to the status the person occupied before the person's arrest or charge. No person as to whom an order of expungement has been entered shall be held thereafter under any provision of any law to be guilty of perjury or of giving a false statement by reason of the person's failure to recite or acknowledge the person's arrest, charge, or trial in response to any inquiry made of the person for any purpose. There is no time limit for making application for expungement. A court may issue an order of expungement for arrests that occurred before, as well as those that occurred after, the adoption of these rules.

Rule 57. PARDON

1. Power of pardon

The Tribal Pardon Commission shall review all applications for pardon and make a recommendation to the Tribal Council to grant or deny any application for pardon. One member shall be designated by the Tribal Council as Chair of the Commission.

The Tribal Council has the sole and exclusive power to grant pardons after final conviction by the Lower Brule Sioux Tribal Court for any offense. The Tribal Council shall have no power to grant reprieves, commute sentences, or remit fines and forfeitures.

2. Application for pardon – Appendix C has a sample application for Pardon

A conviction shall not be eligible to be considered for a pardon until 5 years after conviction of a Class A offense, or 3 years after conviction of any Class B, C, or D offense. The time for eligibility is based on whichever of the following occurred latest in time regarding the conviction for which a pardon is being requested: no portion of the sentence remained unexecuted; the time period for appeal ended; any costs or fees including restitution were paid or the time to pay expired; all requirements of probation were satisfied including the completion of any required alcohol and/or drug evaluation and/or treatment; and the period of probation ended.

All applications for pardon shall be filed in writing with the General Counsel of the Lower Brule Sioux Tribe, who shall submit such application to the Chair of the Tribal Pardon Commission. Upon receiving an application, the Chair shall provide copies of the application to each member of the Commission and shall cause the application to be posted in public places on the reservation. This public notice shall state the place, date, and time at which the application will be considered by the Commission.

The General Counsel shall provide a copy of the application for pardon to the Chief Judge of the Lower Brule Sioux Tribe and to the tribal prosecutor.

The Chair or his/her designee shall notify the victim/complainant of the offense for which the applicant was convicted that said applicant has filed an application for a pardon, and shall include notice of the time, date, and place of the hearing on the application. The victim/complainant shall be given the opportunity to attend the hearing and to provide testimony to the Commission.

The application shall be sworn to by the applicant under oath or by a person authorized to act on his or her behalf. The application shall state concisely the ground upon which the pardon is sought and in addition shall contain the following facts:

- a. The name under which the applicant was convicted and every alias by which he/she has been known;
- b. the date and crime the applicant was convicted of;
- c. the date and terms of the sentence imposed against the person;
- d. the name of the trial judge who presided at the trial;
- e. if an appeal was taken from the judgment of conviction, the date of the final determination by the Supreme Court;
- f. the age, birthplace, occupation, and residence of the applicant; and
- g. a statement of all other arrests, indictments, informations, and convictions, if any, against the applicant, regardless of jurisdiction.

The applicant may provide letters of reference or other material in support of the application.

3. Hearing on Application

The Chair of the Tribal Pardon Commission shall schedule a hearing on each application for pardon on a quarterly basis. Prior to the hearing, the Commission Chair shall obtain and make available to all members of the Commission the complete record of the conviction from the Lower Brule Sioux Tribal Court, together with any recommendation by the Chief Judge of the Lower Brule Sioux Tribal Court. The Commission Chair or Commission may also issue process requiring the presence of any person subject to its jurisdiction before it, with or without books and papers deemed relevant to the hearing; the failure of such person to comply with the process shall be considered criminal contempt and shall be punished accordingly.

The applicant shall be given the opportunity to appear at the hearing and shall have the right to be represented by counsel at his or her own expense. The applicant may request witnesses to be called by the Chair.

All testimony before the Commission shall be under oath and open to the public. The tribal prosecutor shall also be allowed to testify under oath before the Commission if the prosecutor recommends denying the pardon.

4. Determination by the Commission and Tribal Council

The Commission shall, at the close of the hearing, determine whether to recommend to the Tribal Council that it grant the application absolutely, grant the application upon conditions, or deny the application.

Upon receipt of the recommendation of the Tribal Pardon Commission, the Tribal Council shall determine whether to grant the pardon application completely, grant the application upon conditions, or deny the application. The Tribal Council shall consider the evidence presented to the Tribal Pardon Commission and shall afford its recommendation great weight, although the Council is not bound by the recommendation. A pardon shall be granted only upon a clear showing that the public interest necessitates it. The decision of the Tribal Council shall be final and no appeal of the decision shall be taken.

The General Counsel shall cause a record to be kept of every application for pardon, and of the recommendation of the Tribal Pardon Commission and determination of the Tribal Council thereon.

5. Effect of Pardon

A pardon properly granted by the Tribal Council shall pardon the effects of a prior conviction and relieve the pardoned individual from all legal disabilities resulting from his or her conviction. Records of the court shall be amended or otherwise updated to recognize that the individual has been granted a pardon for the specific pardoned offense(s). A pardon does not have the same effect as the expungement of a record.

Rule 59. RULES OF THE COURT

1. Rules of the Lower Brule Sioux Tribal Court

Rules made by the Lower Brule Sioux Tribal Court for the conduct of criminal proceedings shall not be inconsistent with these rules. Copies of all rules made by the court shall, upon their promulgation, be furnished to the Tribal Council, and copies thereof shall be made available to the public.

2. Procedure not otherwise specified

If no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these rules or any applicable Tribal ordinance or any rule of the Tribe itself.

Rule 60. EFFECTIVE DATE

These rules shall take effect when duly adopted by the Lower Brule Sioux Tribal Council. They shall govern all criminal proceedings thereafter commenced and so far as practicable, all proceedings pending.

Rule 61. TITLE

These rules may be known and cited as the Rules of Criminal Procedure of the Lower Brule Sioux Tribe of the Lower Brule Sioux Reservation.

APPENDIX A— Sample Bond Receipt

Date: _____ Bond Posted for: _____

PERSON POSTING BOND

Name: _____

DOB: _____

Address: _____

Phone Number: _____

Check one:

_____ I authorize this bond to be used for payment of fines and costs.

Signature of person posting bond: _____

_____ I DO NOT authorize this bond to be used for payments of
fines and costs.

Signature of person posting bond: _____

APPENDIX B—Sample Motion Form for Expungement

In the Lower Brule Sioux Tribal Court

IN THE MATTER OF THE EXPUNGEMENT OF RECORDS RELATED TO: _____
(applicant's name)

NO: _____

MOTION FOR EXPUNGEMENT

_____ (Name of Applicant), Petitioner, hereby moves this court for entry of an order expunging the record of his/her arrest, which occurred on _____. The Criminal docket number is _____. Petitioner alleges that the ends of justice and the best interest of the public and Petitioner will be served by entering said order and (check the applicable line):

_____ It has been one year from the date of the arrest and no accusatory instrument has been filed; or

_____ The office of the prosecuting attorney formally dismissed the entire criminal case on the record against me on _____, and it has been more than a year since said formal dismissal; or

_____ I was acquitted of all charges at trial on _____.

DATED this _____ day of _____, 20____.

_____ Petitioner (Signature)

_____ Print your name

_____ Physical address

_____ City, State, ZIP code

_____ Telephone

AFFIDAVIT OF MAILING

I, _____ (full legal name of Petitioner), being sworn, state that on _____, 20_____, I served a copy of the Motion for Expungement and a copy of the Notice of Hearing for Expungement of Record on the office of the prosecuting attorney (who prosecuted or who had authority to prosecute the charges I am seeking to expunge) by placing a true and correct copy of the document in an envelope addressed to the following individual:

_____ at the following mailing address:

_____ in the City of _____, State of _____, Zip Code _____

_____ and depositing the envelope, with sufficient postage, in the United States Mail at _____ (city and state mailed from). DATED this _____ day of _____, 20_____.

_____ Signature of Petitioner (Sign only in front of a notary or Clerk of Court)

Name (Printed): _____ Address: _____
_____ City/State/Zip: _____

Telephone: (_____) _____

Sworn/affirmed before me this _____ day of _____, 20_____.

_____ (Notary Public/Clerk of Courts)

If Notary, my commission expires: _____ (SEAL)

APPENDIX C— SAMPLE APPLICATION FOR PARDON

APPLICATION FOR PARDON-- LOWER BRULE SIOUX TRIBE

TO: Tribal Pardon Commission

Lower Brule Sioux Tribal Council

DATE: _____

APPLICANT: (list current name and all previous names or aliases; if applicant was convicted under a different name, list that name in addition to current name)

APPLICANT'S ADDRESS: _____

DATE AND CRIME OF CONVICTION: _____

DATE AND SENTENCE IMPOSED: _____

NAME OF TRIAL JUDGE: _____

DATE AND OUTCOME OF ANY APPEAL FILED: _____

DATE AND LOCATION OF APPLICANT'S BIRTH: _____

APPLICANT'S OCCUPATION: _____

LIST ALL OTHER ARRESTS, INDICTMENTS, INFORMATIONS, CONVICTIONS IN ANY TRIBAL, STATE, OR FEDERAL COURT, AND THEIR DATES:

STATE WHY YOU ARE SEEKING A PARDON: _____

STATE ANY OTHER INFORMATION YOU WANT CONSIDERED IN SUPPORT OF THE PARDON APPLICATION:

Attach any letters of support or other information you desire.

Signature

Sworn/affirmed before me this _____ date of _____

_____ (Notary/Clerk of Court)

Seal of Notary/Clerk of Court

My commission expires: _____