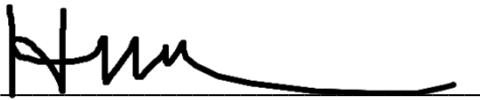




**Rules of Civil Procedure**  
**Shakopee Mdewakanton Sioux Community Tribal Court**

The Court has determined that certain amendments to Rules 28 and 33 are appropriate and so, by this General Order of the Tribal Court, the Court amends the Rules of Civil Procedure of the Shakopee Mdewakanton Sioux Community Tribal Court as follows, effective March 3, 2023. Amended Rule 33 shall govern motions filed on or after March 3, 2023.

Dated: February 22, 2023

  
Henry M. Buffalo, Jr., Chief Judge

  
Vanya S. Hogen, Judge

  
Leah R. Sixkiller, Judge

**Rules of Civil Procedure**  
**Shakopee Mdewakanton Sioux Community Tribal Court**  
**(Amended Effective March 3, 2023)**

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**Rules of Civil Procedure**  
**Shakopee Mdewakanton Sioux Community Tribal Court**  
**(Last Amended Effective March 3, 2023)**

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**Scope**

1. *Scope.* These Rules, as they may be amended by the Tribal Court from time to time, shall govern the procedure in the Tribal Court of the Shakopee Mdewakanton Sioux Community (the “Community”) in all suits of a civil nature, except those specifically governed by other procedural rules set forth in Community law. If an action is governed by another set of procedural rules, but those rules are silent with regard to a subject covered by these Rules, these Rules shall apply. These Rules shall be construed to secure the just, speedy, and inexpensive determination of every action.<sup>1</sup>

Note of amendment: Rule 1 was amended effective March 31, 2016 to clarify that these rules apply in all actions except those specifically governed by other procedural rules set forth in Community law.<sup>2</sup>

2. *One Form of Action.* There shall be one form of action, to be known as “civil action.”

**Admission to Practice**

3. *Attorneys Admitted to Practice; Fees.* Any person admitted to practice and in good standing before the bar of any state or the District of Columbia may be licensed to practice in the Tribal Court upon compliance with the following:
  - (a) Application for Admission. Each applicant for admission or renewal shall file an affidavit with the Clerk of Tribal Court attesting that he or she:
    - (1) is admitted to practice and in good standing with the highest court of a state or the District of Columbia;

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<sup>1</sup> Rules 1-31 of the Rules of Civil Procedure were originally adopted on May 3, 1988.

<sup>2</sup> The Court has included clarifying notes for all amendments that include substantive changes, but has not included notes for technical amendments such as changing references from “court” to “Tribal Court” (or vice versa) or “9” to “nine.”

- (2) has reviewed and is familiar with the Constitution of the Community, these Rules of Civil Procedure, and the laws and ordinances of the Community that are available through the Clerk's office;
  - (3) will uphold the Constitutions of the United States and the Community, will treat the Tribal Court and its judicial officers with respect, and will not bring or defend any claim that is not supported by existing law or a nonfrivolous argument for extending, modifying, or revising existing law or for establishing new law;
  - (4) will not seek to mislead the Tribal Court by any artifice, false statement, or misrepresentation of fact or law;
  - (5) will employ the highest degree of ethics and moral standards with which the legal profession is charged in his or her practice before the Tribal Court;
  - (6) will not impugn the morals, character, honesty, good faith, or competence of any person, nor advance any fact prejudicial to the honor or reputation of any person, unless required by the justice of the cause with which he or she is charged.
- (b) Fees. The admission fee is \$100 and admission must be renewed annually. Any person admitted before March 31, 2016 who wishes to remain licensed to practice in the Tribal Court shall, when notified by the Clerk, renew his or her license to practice by paying the renewal fee and filing an affidavit complying with Rule 3(a). If a lawyer has not renewed his or her license within 60 days of the deadline for doing so set by the Clerk, he or she will be removed from the Clerk's list of attorneys licensed to practice in the Tribal Court until he or she reapplies and is granted admission.
- (c) Order for Admission. Upon receipt of an application for licensure and payment of the required fee, a judge of the Tribal Court shall review the application and, if it complies with this Rule 3, shall issue an order licensing the lawyer in question to practice before the Tribal Court. The Clerk may review and process license renewals.
- (d) Suspension or Revocation. A license issued by the Tribal Court may be revoked or suspended by the Tribal Court upon the Tribal Court's own motion or the written motion of another. The Tribal Court will only revoke or

suspend a license to practice in the Tribal Court after issuing written notice of the motion to the licensee and holding a hearing before a Judge of the Tribal Court. The Tribal Court may suspend or revoke a license to practice upon a finding that the licensee (1) has been disbarred or suspended from the practice of law by any court of the United States, any state, or any Tribe, (2) has filed a false affidavit with the Tribal Court (including the affidavit to become licensed), (3) has engaged in conduct that would be subject to sanction in any other jurisdiction in which he or she is licensed to practice, or (4) has been held in contempt of court by the Tribal Court. An order suspending or revoking a license may be appealed under Rule 31.

Note of amendment: Rule 3 was amended effective March 31, 2016 to require annual licensing, to require attestation, and to include terms of suspension and revocation.

### **Commencement of Action; Service of Process, Pleadings, Motions, and Orders**

#### **4. *Commencement of Action; Fees; Address of Tribal Court.***

- (a) Commencing an Action. A civil action shall be commenced by filing a complaint with the Clerk of Tribal Court.
- (b) Filing Fee. The filing fee for commencing an action is \$200, and the Clerk shall collect this fee before accepting any complaint that commences an action for filing. The Community is exempt from filing fees. No filing fee is required for amendments to a previously filed complaint, or for the filing of other pleadings or documents contemplated by these Rules, except appeals under Rule 31.
- (c) Where and How to File. Filing may be accomplished in person, by facsimile (952-233-4259), by email (melissa@smsccourt.org), or by mailing to Clerk of Tribal Court, 2330 Sioux Trail N.W., Prior Lake, MN 55372 (telephone 952-233-4246). Filings are accepted between 8:00 a.m. and 4:30 p.m. on business days. Except as provided in Rule 4(d), any filing received after 4:30 p.m. shall be deemed filed on the following business day.
- (d) Emergency Filings. The Tribal Court may, in its discretion, accept emergency filings after hours or on holidays in cases where the filer obtains prior consent from the Clerk (which may be by phone or email) to do so. "Emergency" filings include those involving a person or her property at risk of adverse action without immediate Tribal Court action. Unless they involve such a

situation, filings in support of motions governed by Rule 33 will not be considered “emergency” filings.

- (e) Retaining Originals. If documents are filed by email or fax, the filer shall retain the originals during the pendency of the matter and any appeal therefrom.

Note of amendment: Rule 4 was amended effective March 31, 2016 to permit filing by email, to update the Clerk’s contact information, to specify the Court’s hours and the consequences for filing outside those hours, to allow for emergency filings, and to require parties who do not file original documents with the Court to retain them during the pendency of the action.

5. *Process.*

- (a) Summons: Issuance. Upon the filing of the complaint, the Clerk shall forthwith issue a summons and deliver the summons to the plaintiff or the plaintiff’s attorney, who shall be responsible for prompt service of the summons and a copy of the complaint. Upon request of the plaintiff, separate or additional summons shall issue against any defendant.
- (b) Summons: Form. The summons shall be signed by the Clerk, contain the name of the Tribal Court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff’s attorney, if any, otherwise the plaintiff’s address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint.
- (c) Service. Service of all process shall be in accordance with the Federal Rules of Civil Procedure applicable at the time the rules are to be applied (the “then-current Federal Rules of Civil Procedure”).

Note of amendment: Rule 5(c) was amended effective March 31, 2016 to clarify that the Federal Rules of Procedure to which the Tribal Court references in these rules is are those in effect at the time they are to be applied. This change to referencing the “then-current Federal Rules of Civil Procedure” also applies to Rules 18, 20, 21-24, and 26-30.



6. *Service and Filing of Pleadings and Other Papers.*

- (a) Service: When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint, every written motion other than one that may be heard *ex parte*, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties.

In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made before the filing of an answer, claim or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

- (b) Same: How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the Tribal Court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address, or by emailing it to him. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

Note of amendment: Rule 6(b) was amended effective March 31, 2016 to permit service by email.

7. *Time.*

- (a) Computation. In computing any period of time prescribed or allowed by these rules, by order or Tribal Court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or Tribal Court holiday, in which event the period runs until the end of the next day that is neither a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Sundays and Tribal Court holidays shall be excluded in

the computation, except when counting back from a hearing date under Rule 33.

- (b) Enlargement. When by these rules or by a notice given thereunder or by order of Tribal Court an act is required or allowed to be done at or within a specified time, the Tribal Court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.
- (c) Court Holidays. The Tribal Court shall be closed on all holidays observed by the Community. Those include: New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, the Fourth of July (or the business day closest to it), Labor Day, Native American Day (celebrated on the same day as the federal "Columbus Day" holiday), Thanksgiving and the day after Thanksgiving, and Christmas Eve and Christmas Day (or the business days closest to them).
- (d) Additional Time after Service by Mail. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three days shall be added to the prescribed period.

Note of amendment: Rule 7(a) was amended effective March 31, 2016 to add the exception to excluding weekends and holidays when counting backward under Rule 33. Former Rule 7(c) regarding timing of motions was deleted because it was superfluous after the addition of Rule 33, and the new Rule 7(c) specifying the Court's holidays was added.

## **Pleadings and Motions**

### **8. *Pleadings Allowed; Form of Motions.***

- (a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed.

(b) Motions and Other Papers.

- (1) An application to the Tribal Court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.
- (2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

9. *General Rules of Pleading.*

- (a) Claims for Relief. A pleading that sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the Tribal Court's jurisdiction depends, unless the Tribal Court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.
- (b) Defenses; Form of Denials; Affirmative Defenses; Effect of Failure to Deny. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. In pleading to a preceding pleading, a party shall set forth any affirmative defense applicable to the claim. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied; but averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied.
- (c) Pleadings to be Concise and Direct. Each averment of a pleading shall be simple, concise, and direct.
- (d) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

10. *Form of Pleadings.*

- (a) Caption; Names of Parties. Every pleading shall contain a caption setting forth the name of the Tribal Court, the title of the action, the file number assigned to the action by the clerk of Tribal Court, and a designation as in Rule 8(a). In the complaint, the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.
- (b) Paragraphs; Separate Statements. All averments of claim or defenses shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense.

11. *Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions.*

- (a) Signature. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The Tribal Court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.
- (b) Representations to the Court. By presenting to the Tribal Court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
  - (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
  - (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) Sanctions.

- (1) *In General.* If, after notice and a reasonable opportunity to respond, the Tribal Court determines that Rule 11(b) has been violated, the Tribal Court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.
- (2) *Motion for Sanctions.* A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the Tribal Court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the Tribal Court sets. If warranted, the Tribal Court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.
- (3) *On the Court's Initiative.* On its own, the Tribal Court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).
- (4) *Nature of a Sanction.* A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into Tribal Court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(5) *Limitations on Monetary Sanctions.* The court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) *Requirements for an Order.* An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(d) Inapplicability to Discovery. This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Federal Rules 26 through 37.

Note of amendment: Rule 11 was amended effective March 31, 2016 to conform to Federal Rule 11.

12. *Defenses and Objections—When and How Presented—by Pleading or Motion—Motion for Judgment on Pleadings.*

(a) When Presented. A defendant shall serve an answer within 20 days after the service of the summons and complaint upon him, unless the Tribal Court directs otherwise. Answers to cross-claims, replies to counterclaims, and answers to third-party claims also shall be served within 20 days after service of the cross-claim, counterclaim, or third-party claim.

(b) How Presented. Every defense to a claim for relief in any pleading shall be asserted in the responsive pleading thereto, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, and (7) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Tribal Court, the motion shall be treated as one for summary judgment, and all parties shall be

given reasonable opportunity to present all material made pertinent to such a motion.

- (c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Tribal Court, the motion shall be treated as one for summary judgment, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion.

13. *Counterclaim and Cross-claim.*

- (a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim which, at the time of serving the pleading, the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties over whom the Tribal Court cannot acquire jurisdiction, except that such a claim need not be so stated if at the time the action was commenced the claim was the subject of another pending action.
- (b) Permissive Counterclaims. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.
- (c) Cross-claim against Co-party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action.
- (d) Additional Parties May be Brought in. When the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counterclaim or cross-claim, the Tribal Court shall order them to be brought in as defendants as provided in these rules, if jurisdiction of them can be obtained and their joinder will not deprive the Tribal Court of jurisdiction over the action.

14. *Third-party Practice.*

- (a) When Defendant May Bring in a Third Party. Before the service of his answer, a defendant may move *ex parte* or, after the service of his answer, on notice to the plaintiff, for leave as a third-party plaintiff to serve a summons and complaint upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him. If the motion is granted and the summons and complaint are served, the person so served, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim as provided in Rule 12, and his counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses that the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third party defendant thereupon shall assert his defenses as provided in Rule 12 and his counterclaims and cross-claims as provided in Rule 13. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant.
- (b) When Plaintiff May Bring in Third Party. When a counterclaim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances that under this rule would entitle a defendant to do so.

15. *Amended and Supplemental Pleadings.*

- (a) Amendments. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of Tribal Court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the Tribal Court otherwise orders.



- (b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the Tribal Court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be served thereby and the objecting party fails to satisfy the Tribal Court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The Tribal Court may grant a continuance to enable the objecting party to meet such evidence.
- (c) Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleadings arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.
- (d) Supplemental Pleadings. Upon a motion of a party the Tribal Court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events that have happened since the date of the pleading sought to be supplemented. If the Tribal Court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefor.

16. *Pre-trial Procedure; Formulating Issues*. In any action, the Tribal Court may, in its discretion, direct the attorneys for the parties to appear before it for a conference to consider:

- (a) The simplification of the issues;
- (b) The necessity or desirability of amendments to the pleadings;
- (c) The possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof;

- (d) The limitation of the number of witnesses;
- (e) Such other matters as may aid in the disposition of the action.

### **Parties**

#### 17. *Plaintiff and Defendant; Capacity; Public Officers*

##### (a) Real Party in Interest.

(1) *Designation in General.* An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

(A) an executor;

(B) an administrator;

(C) a guardian;

(D) a bailee;

(E) a trustee of an express trust;

(F) a party with whom or in whose name a contract has been made for another's benefit; and

(G) a party authorized by law.

(2) *Action in the Name of the Shakopee Mdewakanton Sioux Community for Another's Use or Benefit.* When a Community law so provides, an action for another's use or benefit must be brought in the name of the Shakopee Mdewakanton Sioux Community.

(3) *Joinder of the Real Party in Interest.* The Tribal Court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

(b) Capacity to Sue or Be Sued. Capacity to sue or be sued is determined as follows:

- (1) for an individual who is not acting in a representative capacity, by the law of the individual's domicile;
- (2) for a corporation, by the law under which it was organized; and
- (3) for all other parties, by the law of the Community, if the Community law by its terms applies to the party, or, if the Community has no law on the subject, by the law of the State of Minnesota, except that a partnership or other unincorporated association with no such capacity under Minnesota law may sue or be sued in its common name to enforce a substantive right existing under the Community's laws.

(c) Minor or Incompetent Person.

- (1) *With a Representative*. The following representatives may sue or defend on behalf of a minor or an incompetent person:
  - (A) a general guardian;
  - (B) a committee;
  - (C) a conservator; or
  - (D) a like fiduciary.
- (2) *Without a Representative*. A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The Tribal Court must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action.

(d) Public Officer's Title and Name. A public officer who sues or is sued in an official capacity may be designated by official title rather than by name, but the Tribal Court may order that the officer's name be added.

Note of amendment: Rule 17 was amended effective March 31, 2016 to conform to Fed. R. Civ. P. 17.

18. *Joinder of Claims and Remedies, etc.; Interpleader; and Class Actions.* The Rules of the Tribal Court pertaining to Joinder of Claims and Remedies, including the Rules relating to Necessary and Permissive Joinder, Misjoinder and Nonjoinder, and Interpleader and Class Actions shall be the same as those in Rules 18, 19, 20, 21, and 22 of the then-current Federal Rules of Civil Procedure.

Note of amendment: Rule 18 was amended effective March 31, 2016 to clarify that the references to the Fed. R. Civ. P. are to the Rules in effect at the time they are to be applied.

19. *Intervention.*

- (a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when an ordinance or resolution of the Community, or a statute that creates a cause of action that may be heard by the Tribal Court, confers an unconditional right to intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property that is in the custody or subject to the control or disposition of the Tribal Court or an officer thereof.
- (b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when an ordinance or resolution of the Community, or a statute that creates a cause of action that may be heard by the Tribal Court, confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the Tribal Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.
- (c) Procedure. A person desiring to intervene shall serve a motion to intervene upon all parties affected thereby. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. When an ordinance or resolution of the Community is challenged on the grounds of its consistency with the Community's Constitution or Bylaws, the Tribal Court shall notify the Chairman of the Community of the existence and nature of the challenge.

20. *Substitution of Parties.* The provisions in Rule 25 of the then-current Federal Rules of Civil Procedure relating to substitution of parties shall apply to parties before the Tribal Court.

Note of amendment: Rule 20 was amended effective March 31, 2016 to conform to the 2015 version of Rule 25 of the Fed. R. Civ. P., and to clarify that the reference to R. 25 is to the version in effect at the time the rule is to be applied.

## **Disclosure and Discovery**

21. *Disclosure; Depositions Pending Action; Depositions before Action or Pending Appeal; Stipulations Regarding the Taking of Depositions; Depositions Upon Oral Examination; Depositions of Witness upon Written Interrogatories; and Effect of Errors and Irregularities in Depositions.* The provisions of Rules 26, 27, 28, 29, 30, 31, and 32 of the then-current Federal Rules of Civil Procedure shall apply to the Tribal Court. The references to courts of the United States and to district courts of the United States shall be interpreted to be references to the Tribal Court.

Note of amendment: Rule 21 was amended effective March 31, 2016 to include Rule 26 of the Fed. R. Civ. Pro., to clarify that the references to the Fed. R. Civ. P. are to the versions of those Rules in effect at the time they are to be applied, and to delete outdated references to the former versions of Fed. R. Civ. P. 26(d) and 27.

22. *Interrogatories to Parties.* The provisions of Rule 33 of the then-current Federal Rules of Civil Procedure concerning interrogatories shall apply to proceedings before the Tribal Court, except that no party may serve more than a total of 50 interrogatories upon any other party unless permitted to do so by the Tribal Court upon motion, notice and a showing of good cause. In computing the total number of interrogatories, each subdivision of separate questions shall be counted as an interrogatory.

Note of amendment: Rule 22 was amended effective March 31, 2016 to clarify that the references to Fed. R. Civ. P. 33 is to the version of Rule 33 in effect at the time it is to be applied.

23. *Discovery and Production of Documents and Things for Inspection, Copying, or Photographing; Physical and Mental Examination of Persons; Admission of Facts and Genuineness of Documents.* The provisions of Rules 34, 35, and 36 of the then-current Federal Rules of Civil Procedure concerning discovery and production of documents and things for inspection, copying, or photographing; physical and mental examination of persons; admission of facts and genuineness of documents shall apply to proceedings before the Tribal Court.

Note of amendment: Rule 23 was amended effective March 31, 2016 to clarify that the references to the Fed. R. Civ. P. are to the Rules in effect at the time they are to be applied.

24. *Refusal to Make Discovery; Consequences.* The provisions of Rule 37 of the then-current Federal Rules of Civil Procedure concerning refusals to make discovery and the consequences thereof shall apply to proceedings before the Tribal Court.

Note of amendment: Rule 24 was amended effective March 31, 2016 to clarify that the references to Fed. R. Civ. P. 37 is to the version in effect at the time the rule is to be applied, and to remove outdated references to the former Fed. R. Civ. P. 37.

### **Trials**

25. *Trial by Tribal Court; Assignment; Three-Judge Panel; Location of Proceedings.*

- (a) Court Trials. Unless otherwise provided by ordinance, resolution, or statute of the Community, all actions before the Tribal Court shall be tried to the court.
- (b) How Cases are Assigned. The Chief Judge of the Tribal Court shall assign each action to a Judge of the Tribal Court.
- (c) Three-Judge Panel. Thereafter, any party, for reasons relating to judicial economy or to the significance of the matter, may move that the action be certified to be heard by a panel of three judges to be selected by the Chief Judge; or the assigned Judge for similar reasons may on his or her own motion so certify the matter. A motion by a party for certification shall be heard as other motions are heard, and shall be decided by the assigned Judge in his or her sole discretion. When a matter has been certified for hearing before a three-judge panel, the Chief Judge shall appoint the panel, which shall include the assigned Judge, and which shall hear the matter in such manner (including by appointing a single judge to supervise particular aspects of the proceedings) as it deems appropriate.
- (d) Location of Proceedings. Proceedings before the Tribal Court shall be held at such times and places as may be designated by the Tribal Court upon reasonable notice to the parties.

Note of amendment: Rule 25 was amended effective March 31, 2016 to break the text into subparts.

26. *Dismissal of Actions.* The provisions of Rule 41 of the then-current Federal Rules of Civil Procedure, relating to dismissal of actions, shall apply to actions before the Tribal Court.

Note of amendment: Rule 26 was amended effective March 31, 2016 to clarify that the reference to Fed. R. Civ. P. 41 is to the version in effect at the time the rule is to be applied.

27. *Evidence and Subpoenas.* The provisions of the Federal Rules of Evidence in effect at the time they are to be applied shall apply to the trial of actions before the Tribal Court; and the provisions of Rule 45 of the then-current Federal Rules of Civil Procedure shall apply to the use and issuance of subpoenas in actions before the Tribal Court.

Note of amendment: Rule 27 was amended effective March 31, 2016 to apply the Federal Rules of Evidence and to clarify that the reference to the Federal Rules of Evidence is to the version in effect at the time they are to be applied.

28. *Consolidation; Findings by the Tribal Court; Judgments; Summary Judgment; Entry of Judgment; New Trial and Amendment of Judgments; Relief from Judgment; Harmless Error; and Effective Date of Judgment.* The provisions of Rules 42, 52, 54, 55, 56, 57, 58, 59, 60, 61, and 62 of the then-current Federal Rules of Civil Procedure shall apply to actions before the Tribal Court.

Note of amendment: Rule 28 was amended effective March 31, 2016 to include a reference to Fed. R. Civ. P. 57, and to clarify that the reference to the Fed. R. Civ. P. is to the version in effect at the time they are to be applied. Rule 28 was amended effective March 3, 2023 to include a reference to Fed. R. Civ. P. 42.

### **Special Proceedings and Appeals**

29. *Injunctions.* The provisions of Rule 65 of the then-current Federal Rules of Civil Procedure relating to preliminary and permanent injunctions and temporary restraining orders shall apply to actions before the Tribal Court.

Note of amendment: Rule 29 was amended effective March 31, 2016 to clarify that the reference to Fed. R. Civ. P. 65 is to the version in effect at the time it is to be applied.

30. *Execution of Judgments.* The provisions of Rule 69(a) of the then-current Federal Rules of Civil Procedure relating to the enforcement of a judgment for the payment of money shall apply to actions before the Tribal Court.

Note of amendment: Rule 30 was amended effective March 31, 2016 to clarify that the reference to Fed. R. Civ. P. 69(a) is to the version in effect at the time it is to be applied.

31. *Appeals.*

- (a) Appealable Orders. In any action before the Tribal Court where a three-Judge panel has not heard the matter, a party may appeal any decision of the assigned Judge that would be appealable if the decision had been made by a judge of a United States District Court. Actions that are heard by a three-judge panel of the Tribal Court under Rule 25 shall be deemed to have been the subject of a consolidated trial and appeal, and decisions of the Tribal Court in those matters shall not be the subject of further appeal.
- (b) Filing an Appeal or a Cross-Appeal. An appeal may be taken by filing and serving a notice of appeal with the Clerk of Court within 30 days of the issuance of the appealable order. The notice of appeal must: (1) specify the party or parties taking the appeal; (2) designate the judgment, order, or part thereof being appealed; and (3) state the basis on which the judgment, order, or part thereof being appealed is appealable under Rule 31(a). The filing fee for filing an appeal is \$200. The Community is exempt from this filing fee. A cross-appeal may be filed within 15 days of the filing of a notice of appeal by filing a notice of cross-appeal that (1) specifies the party or parties taking the cross-appeal; (2) designates the judgment, order, or part thereof from which the cross-appeal is taken; and (3) states the basis on which the judgment, order, or part thereof being cross-appealed is appealable under Rule 31(a).
- (c) Who Hears Appeals. Each appeal shall be to a panel of three judges of the Tribal Court, which (1) shall not include the judge from whom the appeal is taken, and (2) when so sitting, shall constitute the Tribal Court of Appeals.
- (d) The Record on Appeal. The record in each appeal shall consist of (1) the papers and exhibits filed in the trial court; (2) the transcripts of proceedings before the trial court; and (3) a certified copy of the docket entries prepared by the Clerk of Court.
- (e) Appellate Procedure. Appeals shall be heard in such manner as may be prescribed by the Tribal Court in rules of appellate procedure or, pending the publication of those rules, in orders that are specific to the individual action before the Tribal Court of Appeals.

Note of amendment: Rule 31 was amended effective March 31, 2016 to clarify when appeals may be filed, what the filing fee is, which judges will hear appeals, and what the record on appeal consists of. Rule 31 was amended again effective November 2, 2020 to clarify what constitutes the Tribal Court of Appeals.



and to require appellants and cross-appellants to state the basis on which the judgment, order, or part thereof being appealed or cross-appealed is appealable under Rule 31(a).

32. *Disqualification of Judge.*

- (a) Any judge of the Tribal Court shall disqualify himself or herself in any proceeding, or portion of a proceeding, in which his or her opinion, his or her impartiality might reasonably be questioned.
- (b) A judge of the Tribal Court shall also disqualify himself or herself in any proceeding, or portion of a proceeding, in the following circumstances:
  - (1) where he or she has personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
  - (2) where in private practice he or she served as a lawyer in the matter in controversy, or a lawyer with whom he or she previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;
  - (3) where he or she has served in governmental employment and in such capacity participated as counsel, adviser, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;
  - (4) where the judge knows that he or she, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
  - (5) where the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
    - (A) is a party to the proceeding, or an officer, director or trustee of a party;
    - (B) is acting as a lawyer in the proceeding;

(C) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(D) is to the knowledge of the judge likely to be a material witness in the proceeding.

(c) A judge should inform himself or herself about his or her personal and fiduciary financial interests, and make a reasonable effort to inform himself or herself about the financial interests of the judge's spouse and minor children residing in the judge's household.

(d) A judge may refer the question of whether to disqualify himself or herself to another judge on the Tribal Court. In the case of such referrals, associate judges shall refer the questions concerning their disqualification to the Chief Judge for decision; the Chief Judge shall refer questions concerning his or her disqualification to the senior associate Judge for decision.

(e) In deciding questions concerning disqualification, in matters being heard by a three-judge panel under Rule 25 or Rule 31, a judge may be disqualified from participating in one portion of a matter but not all portions of a matter, if the facts and law, and the judge's position with respect to them, are substantially different in different portions of the matter.<sup>3</sup>

### 33. *Motions Practice.*

(a) Scope and Application. This rule shall govern all civil motions except those specifically governed by other Community law.

(b) Form of Motion and Moving Party's Supporting Papers. Every motion must:

(1) state the law or rule under which it is made;

(2) state whether opposing parties have been contacted about whether they will oppose the motion and if so, whether they plan to oppose the motion;

(3) state whether a hearing is requested; and

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<sup>3</sup> Rule 32 was adopted on July 8, 1988.

(4) except for those brought under Rule 33(j) (Expedited Non-Dispositive Motion Practice), must be accompanied by:

(A) a supporting memorandum and, when necessary, affidavits, declarations, or other papers; or

(B) a certificate stating that no memorandum or other supporting papers will be filed.

(c) Non-Moving Party's Response. For all motions other than those for summary judgment or those brought under Rule 33(j), any memorandum and other papers in opposition must be filed within 21 days of service of the motion. Failure to respond to the motion may result in the Court deciding the motion without further input from the parties.

(d) Reply. For all motions other than those for summary judgment or those brought under Rule 33(j), the moving party may serve a reply memorandum and other papers within 14 days from the service of the response memorandum.

(e) Additional Requirement for Summary Judgment Motions. Motions for summary judgment must comply with Fed. R. Civ. P. 56 and Rule 33(b). In addition, the following must be met:

(1) *Moving Party's Principal Materials in Support of Motion*. With each motion for summary judgment, the moving party must file:

(A) a memorandum of law;

(B) a statement setting forth any material facts to which all parties have stipulated;

(C) a statement of proposed material facts as to which the moving party contends there is no genuine issue and that entitle the moving party to a judgment as a matter of law;

(i) the statement shall consist of short, numbered paragraphs, each containing a single material fact, including within each paragraph specific references to the affidavits, declarations, parts of the record, and other supporting materials relied upon to support the fact described in that paragraph;

- (ii) a moving party may not file more than 150 separately numbered statements of fact;
- (iii) failure to submit such a statement constitutes grounds for denial of the motion; and

(D) any affidavits, declarations, and other materials referred to in Fed. R. Civ. P. 56(c).

(2) *Opposing Party's Materials in Opposition.* Each party opposing a motion for summary judgment must file within 30 days of service of the motion and the materials required by Section 33(e)(1) above:

(A) a memorandum of law;

(B) a concise response to the moving party's statement of facts that must contain:

- (i) a reproduction of each numbered paragraph in the moving party's statement of facts followed by a response to each paragraph, including, in the case of any disagreement, specific references to the affidavits, declarations, parts of the record, and other supporting materials relied upon, and
- (ii) a statement, consisting of short, numbered paragraphs, of any additional facts that require the denial of summary judgment, including references to the affidavits, declarations, parts of the record, and other supporting materials relied upon to support the facts described in that paragraph. A non-moving party may not file more than 100 separately numbered statements of additional facts. Each separately numbered paragraph shall be limited to one material fact; and

(C) any opposing affidavits, declarations, and other materials referred to in Fed. R. Civ. P. 56(c).

(3) *Moving Party's Materials in Reply.* A moving party may file within 14 days of the service of the opposing party's materials under subsection (e)(2) above:

(A) a reply memorandum;

- (B) a reply to any additional facts submitted by the opposing party under subsection (e)(2) above, in the form prescribed in subsection (e)(2)(B)(i) above; and
- (C) any affidavits, declarations, and other materials referred to in Fed. R. Civ. P. 56(c) submitted in reply.
- (4) *Effect of Uncontroverted Statements of Fact.* The Court will deem uncontroverted statements of material fact admitted solely for the purpose of deciding summary judgment.
- (5) *Stipulated Facts.* Parties are encouraged to stipulate to facts. Facts so stipulated will not count against any party's allotment of proposed facts and do not require references to evidentiary support.
- (6) *Citations to Facts in Memoranda.* Assertions of fact in the parties' supporting memoranda must refer to the corresponding numbered paragraph of the statement of facts, statement of additional facts, or statement of stipulated facts.
- (7) *Prior Leave of Court Required to Increase the Number of Statements of Fact or Statements of Additional Fact.* A party may not file any proposed statements of material fact or statements of additional fact in excess of the limit set forth in this rule unless the Court previously has granted leave upon a showing that an increase is warranted.
- (f) Sanction for Noncompliance. Failure to comply with the briefing requirements in Rule 33 (b),(c), or (e) may result in sanctions up to and including the Court denying or granting the motion. Sanctions remain available under Rule 11.
- (g) Hearing. The Court will hold a hearing on any motion at its discretion. Hearings may be held in person, by phone, or by videoconference.
- (h) Length of Memoranda. Except with prior permission of the Court, and subject to the limitations of Rule 33(j), the principal memorandum in support of, or in opposition to, any motion must not exceed 30 pages and reply briefs must not exceed 15 pages (excluding any caption, cover page, table of contents, table of authorities, and signature block). The text in all memoranda, affidavits, and declarations shall be double-spaced, and the font in all memoranda, affidavits, and declarations must be at least 12 points in proportionally sized font or 10

points in monospaced font. Block quotations and footnotes may be single-spaced, but should be used sparingly (unless footnotes are being used for citations).

- (i) Modification of Provisions in Particular Cases. By order or other notice to the parties, the Court may provide that different or additional provisions regarding motion practice apply.
- (j) Expedited Non-Dispositive Motion Practice.
  - (1) Parties in civil actions may seek non-dispositive relief by expedited motion. The motion must be designated as a “Rule 33(j) Expedited Non-Dispositive Motion.” The Court may schedule the motion for hearing or may decide the motion without hearing. The Court may designate that the hearing be by phone, videoconference, or in person. The Court may order an expedited briefing schedule.
  - (2) The motion must contain the material facts and argument. The motion must not exceed five pages excluding the caption and signature block. The moving party may not file a separate memorandum with the motion. The moving party may file with the motion an affidavit or declaration for purposes of (A) attesting to facts pertinent to the motion and/or (B) authenticating documents relevant to the issue(s) raised in the motion. The moving party’s affidavit or declaration may not exceed five pages.
  - (3) The non-moving party must file any memorandum in opposition to the motion within seven days of service of the motion unless otherwise ordered by the Court. The non-moving party’s memorandum must not exceed five pages. The non-moving party may file with its memorandum an affidavit or declaration for purposes of (A) attesting to facts pertinent to the motion and/or (B) authenticating documents relevant to the issue(s) raised in the motion. The non-moving party’s affidavit or declaration may not exceed five pages.
  - (4) No reply brief is permitted absent leave of the Court.
- (k) Motions to Reconsider. Except with the Court’s prior permission, a party must not file a motion to reconsider. A party must show compelling circumstances to obtain such permission. A party who seeks permission to file a motion to reconsider must first file and serve a letter of no more than two pages requesting such permission. A party who opposes such a request may file and serve a letter of no more than two pages in response.

- (l) Affidavits and Exhibits. Parties must not file affidavits or exhibits as attachments to a memorandum that they support. Instead, such affidavits and exhibits must be filed separately. Exhibits must be accompanied by an index — either in the form of a supporting affidavit or of a separate title page — that identifies the exhibits.
- (m) Witnesses. No testimony will be taken at motion hearings except under unusual circumstances. Any party seeking to present witnesses at a motion hearing shall obtain prior consent of the Tribal Court and shall notify the adverse party in the motion papers of the names and addresses of the witnesses whom that party intends to call at the motion hearing.

Note of amendment: Rule 33 was completely revised effective March 3, 2023.

34. *Enforcement of Foreign Judgments*. An action for enforcement of a foreign judgment shall be commenced by filing a petition therefor, in a form approved by the Tribal Court, accompanied by an exemplified or certified copy of the foreign judgment and any relevant supporting documents, and accompanied by a filing fee of \$100. If the judgment is one for money damages, the petition shall be accompanied by affidavits of identification of the judgment creditor and of the judgment debtor, in forms approved by the Tribal Court. The petition and all supporting materials, including any affidavits, shall be served upon each person against whom the petitioner seeks to enforce the judgment, who shall be denominated respondents. Each respondent shall have 20 days from the date of service upon them, within which to respond to the petition. Upon the completion of service, the Tribal Court shall examine the petition and supporting materials, and any response thereto, and shall order such additional proceedings as it may deem appropriate. If no substantial question appears with respect to the jurisdiction of the foreign court and the regularity of the foreign proceedings, the Tribal Court shall enter an order enforcing the foreign judgment.<sup>4</sup>
35. *Ex Parte Communications*. Unless expressly permitted by Community law or these Rules, no party shall engage in *ex parte* communications with a Judge or the Clerk of Court regarding a pending or impending matter, except that, when circumstances require it, *ex parte* communication for scheduling, administrative, or emergency purposes is permitted, so long as the party initiating the contact (1) reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the *ex parte* communication, and (2) the party informs the

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<sup>4</sup> Rule 34 was originally adopted on October 9, 1997.

Judge or Clerk of Court of all material facts known to him or her regarding the particular issue that will enable the Court to make an informed decision, whether or not the facts are adverse to the party. The Court will promptly notify the other parties of the communication or require the party initiating the *ex parte* communication to do so, and will give the other parties the opportunity to respond.

Note of amendment: Rule 35 was added effective March 31, 2016.

36. *Withdrawal of Counsel.* An attorney may withdraw from a case in which he or she has appeared only as follows:

(a) By Notice of Withdrawal. A party's attorney may withdraw from a case by filing and serving a notice of withdrawal, effective upon filing, if:

(1) multiple attorneys have appeared on behalf of the party; and

(2) at least one of those attorneys will still be the party's counsel of record after the attorney seeking to withdraw does so.

(b) By Notice of Withdrawal and Substitution. A party's attorney may withdraw from a case by filing and serving a notice of withdrawal and substitution, effective upon filing, if:

(1) the notice includes:

(A) a statement by substituted counsel that serves as substituted counsel's notice of appearance and affirms that substituted counsel represents the party; and

(B) the names, addresses, and signatures of the withdrawing and substituted counsel;

(2) the withdrawal and substitution will not delay the trial or other progress of the case; and

(3) the notice is filed and served at least 90 days before trial.



(c) By Motion. An attorney who seeks to withdraw otherwise than under Rule 36(a) or (b) must move to withdraw and show good cause. The motion must be filed and served on the client and all parties and contain:

- (1) the client's mailing address, telephone number and email address or a certification by the attorney that the attorney made all reasonable efforts to obtain the contact information of the client without success; and
- (2) a statement that no deadlines, hearings, or trials will be automatically continued as a result of the attorney's withdrawal.

Note of amendment: Rule 36 was added effective November 2, 2020.