

TITLE 5

RULES OF CIVIL PROCEDURE

RULE 1. SCOPE OF THE RULES.

These rules shall govern the procedures in the Crow Tribal Court in all suits of a civil nature. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

RULE 2. COMMENCEMENT OF A CIVIL ACTION.

A civil action is commenced by filing a written complaint, copies of the complaint for each named defendant and the court, and payment of \$10.00 filing fee with the Clerk of the Crow Tribal Court.

RULE 3. FORM OF THE CIVIL COMPLAINT.

All civil complaints must include the name of the court, the names and addresses of all parties to the action, and introductory statement setting forth the type of civil action involved, a jurisdictional statement, factual allegations, claims, relief sought, and certification of the complaint that all statements are true and correct.

RULE 4. SERVICE OF PROCESS.

- (a.) Summons: Issuance—Upon filing of a civil complaint, the Clerk of the Crow Tribal Court shall issue a summons and present the summons to the plaintiff for service upon the named defendant (s) together with a conformed copy of the complaint. A “conformed copy” is one which is a duplicate of the original complaint filed with the Clerk, bearing the stamp or writing of the Clerk and indicating the case number assigned and the date and time the complaint was filed.
- (b.) Same: Form—The summons issued by the Clerk of the Crow Tribal Court shall include the name of the court, the names of all parties, be directed to the named defendant(s), state the name of the plaintiff and the name of the plaintiff's legal representative. The summons shall also clearly state the time and date the named defendant(s) must appear, defend, and answer the complaint, either in person in open court or by written document. The summons shall also state in bold print that defendant's failure to appear, defend, and answer at the time and date set forth will cause a judgment by default to be rendered against him for the relief demanded by plaintiff.
- (c.) Complaint—A true and correct conformed copy of the complaint shall be delivered to the defendant along with the applicable civil summons.
- (d.) Service of Process—
 - (1) Defendants within the exterior boundaries of the Crow Indian Reservation: If the named defendant(s) is within the exterior boundaries of the Crow Indian Reservation, the summons and complaint shall be served, as provided in Rule 5 A, on such defendant(s) either personally by handing the defendant a copy of the summons and complaint wherever the defendant may be found, or at his dwelling house or usual place of abode by leaving copies of the summons and complaint with some person of suitable age and discretion residing at that same place.
 - (2) Defendants outside the exterior boundaries of the Crow Indian Reservation: If a named defendant or his property is subject to the jurisdiction of the Crow Tribal Court, but he is outside of the exterior boundaries of the Crow Indian Reservation, a copy of the summons and complaint shall be mailed by the plaintiff or plaintiff's agent, certified/return receipt requested, to his home and/or business address so as to give the named party reasonable notice of the action and a reasonable-opportunity to be heard.
 - (3) Defendants of unknown whereabouts: If, after careful investigation, a named defendant who comes within the jurisdiction of the Crow Tribal Court cannot be located, then the Crow Tribal Court shall direct that service of process be accomplished by publication. Notice of the civil action shall be published by the plaintiff or plaintiff's agent in a local newspaper of general circulation in Big Horn County, Montana, for three (3) consecutive issues.

- (e.) Service of Process: Return—The person serving the summons and complaint on the named defendant(s) shall promptly provide the Crow Tribal Court with proof that service was made. If service of process is made either by mail or publication, the Clerk of the Crow Tribal Court shall collect and retain the appropriate materials showing such service was made. All proof of service documents shall be made part of the applicable case file.

RULE 5. SERVICE OF OTHER PLEADINGS AND MOTIONS.

- (a.) General. Every pleading or motion, other than plaintiff's original complaint, ex parte motions, or third party demands, shall be served upon each of the parties to the action and filed with the Clerk.
- (b.) Time. Motions shall be served and filed no less than five (5) days before hearing the movant's demand. Incidental demands, except third-party demands, shall be served and filed within the time set out in Rule 8; answers shall be served and filed within the time prescribed in Rule 6.
- (c.) Manner of Service. Service shall be made upon each attorney of record and each party not represented by an attorney through certified mail or by delivery to the attorney's office or the party's residence. Each pleading or motion filed with the Clerk shall be accompanied by an affidavit verifying compliance with this rule.

RULE 5A. METHODS OF SERVICE AND PROOF.

- (a) Who May Make Service. Any person not a party to the action who is at least 18 years of age may serve process or other pleadings.
- (b) Methods of Proof. The person making service must prepare a proof of service for filing with the Clerk. The party on whose behalf service was made is responsible for making sure the proof of service is filed. Proof of service may be in any form which includes the identification of the case, the document served, the party served, the manner of service (personal, or by mail, or by publication, or by leaving with a responsible person residing at the defendant's place of residence), the date and time of service, together with the name, address and phone number or other location information of the person making service.
- (c) False Proof of Service. Any person making proof of service is subject to prosecution for false swearing and may be held in contempt of court and fined if the proof of service is intentionally erroneous in any material respect.
- (d) Acknowledgement of Service. The signature of the person to be served, acknowledging receipt of the complaint, pleading or other notice, is adequate proof of service when filed with the Clerk and may be requested by or on behalf of the party responsible for service.
- (e) Request for Service by Publication. In any case where service by publication is not provided for by statute, a party may file a motion requesting authority to serve by publication for good cause shown.
- (f) Filing with the Court Defined. Filing is accomplished by presenting documents to the Clerk of the Tribal Court. Papers may be filed in person or by mail. Papers may be presented electronically or by facsimile or using other technology, provided, however that the original document must be presented to the Clerk within five business days of the original filing, in which case the date of filing shall be the date the copy was originally presented. If the original document is not presented within time, the filing date shall be the date the original is received by the Clerk.

RULE 6. ANSWER BY THE DEFENDANT.

- (a.) General. All defendants named in the complaint shall respond by written answer or by filing an appropriate motion in accordance with Rule 7(a).
- (b.) Time. Defendant, including a defendant to any incidental demand, shall answer within fifteen (15) days of the service of process upon him or within ten (10) days of denial by the court of a motion filed pursuant to Rule 7(a). For purposes of these rules, the day of service shall not be included. The last day of the period shall be included unless it is Saturday, Sunday, or a Legal Holiday, in which case, the period shall end on the next day which is not a Saturday, Sunday, or Legal Holiday.

- (c.) Contents. Defendant shall affirm or deny every allegation or claim made by plaintiff in his complaint, provided that failure to affirm or deny any allegation or claim shall be deemed an affirmation of that allegation or claim. Defendant shall assert each and every defense, set-off, or compulsory counterclaim pursuant to Rule 8(a), provided that failure to assert any defense, set-off, or compulsory counterclaim shall be deemed a waiver thereof. Nothing in this rule shall prevent the assertion of two or more defenses in the alternative, even though the factual or legal bases thereof may be inconsistent or mutually exclusive.

RULE 7. PRE-TRIAL MOTIONS.

- (a.) Preemptory Motions. Defendant shall assert any preemptory defense to plaintiff's claim in his answer or by motion filed with the Clerk prior to expiration of the period allowed for answer. Preemptory defenses shall be limited to the following:
- (1) Lack of jurisdiction over the subject matter;
 - (2) Lack of jurisdiction over the person;
 - (3) Insufficiency of process or of service of process;
 - (4) Failure to state a claim on which relief can be granted; or,
 - (5) Dissolution of attachment where quasi in rem jurisdiction is asserted.

If defendant chooses to assert any preemptory defenses by motion he shall be deemed to have waived any preemptory defense he fails to assert in that motion. Defendant shall not be deemed to have submitted himself to the jurisdiction of the court if he incorporates a preemptory motion in his answer. Service of defendant's motion shall be made in accordance with Rule 5.

- (b.) Other Pre-Trials Motions. Any other application for an order of the court prior to trial shall be made in the form of a motion. All motions shall be in writing, shall state the specific grounds and reasons the motion should be granted, and shall set forth the exact relief or order sought. Service of any motion shall be made in accordance with Rule 5.

RULE 8. INCIDENTAL DEMANDS.

- (a.) Compulsory Counterclaim. Defendant shall assert as counterclaim any cause of action that arises out of the transaction or occurrence that is the subject matter of the opposing party's claim, provided that adjudication of defendant's counterclaim does not require the presence of parties or parties not subject to the court's jurisdiction. Defendant need not assert claims that have not arisen at the time that answer is required pursuant to Rule 6, or claims that are the subject of pending litigation.
- (b.) Permissive Counterclaim. Defendant may assert as a counter claim any cause of action against an opposing party not arising out of the same events that gave rise to the opposing party's claim.
- (c.) Cross-Claims. Any party may assert against a co-defendant to an original complaint or incidental demand a claim arising out of the same events that gave rise to the opposing party's claim.
- (d.) Delay for Asserting Counterclaims and Cross-Claims. Counterclaims and cross-claims shall be served on the opposing party and filed with the Clerk within the delay allowed to answer the plaintiff's complaint in accordance with Rule 6. "Complaint", as used in this section shall include counterclaims or cross-claims asserted against the cross-claimant. "Plaintiff" as used in this section shall include cross-claimants or counterclaimants.
- (e.) Third-Party Practice. At any time after commencement of the action, any defending party may cause service of process to be issued against any third party subject to the jurisdiction of the court who is or may be liable to him for all or part of the plaintiff's claim against him. Third party defendants shall be served in the manner prescribed in Rule 4 for service of original complaints. All forms of third-party practice allowed by Rule 4 of the Federal Rules of Civil Procedure, as amended, shall be allowed in the Crow Tribal Court where not inconsistent with these Rules.
- (f.) Intervention. The court shall allow intervention by a third party at any time prior to trial if (1) an ordinance of the Crow Tribe provides a right of intervention, or (2) adjudication of the claims before the court without the intervening party would impair or impede his ability to protect some right or interest he asserts. After the trial has begun, the court may allow intervention, provided that any person asserting an interest in property seized by writ of execution shall be allowed to intervene prior to distribution of the proceeds of sale. The court may

also permit intervention before trial when the third party's claim or defense and the original or main action have a question of law and fact in common. Application for intervention shall be served on all parties in the manner prescribed in Rule 5(c).

RULE 9. AMENDED AND SUPPLEMENTARY PLEADINGS.

Amended and supplementary pleadings may be submitted with leave of court. A motion to amend pleadings or to submit supplementary pleadings shall be filed with the Clerk and served on all parties in the manner set out in Rule 5. The motion shall be granted or denied ex parte unless the opposing parties object within three (3) days of receipt of the motion.

RULE 10. PRE-TRIAL CONFERENCE.

In order to expedite the disposition of a civil action, the court may order that a pre-trial conference be held. The judge assigned to hear the case shall call the conference, and all parties to the action and/or their legal representatives shall be required to attend. Matters to be considered at the pre-trial conference shall include:

- (1) Clarification and/or simplification of issues;
- (2) The need and/or desirability to amend pleadings;
- (3) The possibility of obtaining admissions of facts in the case; and,
- (4) Such other matters as may aid in the speedy and just disposition of the case.

If the court in its discretion should call for a pre-trial conference, it should be called within fifteen (15) days after all pleadings have been filed. Notice setting forth the time, date, and place of the conference shall be sent to each party and/or their legal representative at least seven (7) days prior to the date of the conference.

RULE 11. EVIDENCE AND DISCOVERY.

- (a.) Evidence. The rules of evidence applicable to civil actions in the Crow Tribal Court shall be the Federal Rules of Evidence, as amended.
- (b.) Discovery. Discovery shall be allowed in civil actions in the Crow Tribal Court, provided that Rules 26 through 37 of the Federal Rules of Civil Procedure, as amended, shall be the applicable rules of discovery in Tribal Court.
- (c.) Subpoenas.
 - (1) Subpoena for Hearing or Trial: At the request of any party to civil action,, subpoenas for attendance at a hearing or trial to be held by the court shall be issued by the court.
 - (2) Form: Every subpoena shall be issued under the signature of a judge of the court. Each subpoena shall state the name of the court and the title of the action and shall command each person to whom it is directed, to attend and give testimony and/or produce documentary evidence at the time and place specified in the subpoena.
 - (3) Contempt of Court: Failure by any person without an adequate and reasonable excuse to obey a subpoena served upon him may be deemed a contempt of court and punished accordingly.
 - (4) Service: Subpoenas shall be served in the manner described in Rule 4(d/e).

RULE 12. JURY TRIAL LIST.

- (a.) Procedure. Any party may demand a trial by jury by filing a written demand for a jury trial with the Clerk not less than ten (10) days prior to commencement of the trial, provided that trial by jury shall not be available in:
 - (1) A suit demanding less than one hundred dollars (\$100.00)[should read \$500] exclusive of interest and costs;
 - (2) A pre-trial motion or motion for summary judgment;
 - (3) A probate, partition, mandamus, habeas corpus, quo warranto, injunction, interpleader, guardianship, adoption, or divorce proceeding;
 - (4) A proceeding to review a Tribal or administrative decision; and,
 - (5) All cases where a jury trial is specifically prohibited by a Tribe, law or ordinance.Failure to timely demand a jury trial shall be deemed a waiver of the right to trial by jury.

- (b.) Composition. All civil trials by jury shall be heard by a jury composed of six (6) persons.
- (c.) Selection. The Crow Tribal Court may permit the parties, or their legal representatives, to conduct the examination of prospective jurors, or the Court may conduct the examination itself. If the Court conducts the examination, then the Court shall permit the parties or their legal representatives to supplement the examination by further questions as the Court deems proper.
- (d.) Challenges. In the examination of prospective jurors, each party shall have a total of three (3) preemptory challenges, or challenges without cause.
- (e.) Trial by the Court. In all civil actions in which no written demand for trial by jury has been made or in which no jury trial is permitted, the issues shall be tried by the court, provided that the court in its discretion, upon the motion of any party to an action in which juries are permissible, may order a trial by jury. Said discretion, however, is not to be exercised arbitrarily and the court should consider the dictates of general fairness to all parties in making a decision to grant such motions.

RULE 13. ASSIGNMENT OF CASES FOR TRIAL.

- (a.) General. The Crow Tribal Court shall set for trial all civil actions coming before it. The trial docket shall be set in the discretion of the Chief Judge of the Crow Tribal Court, provided that upon the application of all parties to an action, the trial date may be set as requested.
- (b.) Consolidation. The court may order consolidation of two or more lawsuits pending in Tribal Court if the suits share common questions of law or fact. The court may order a single trial for some or all of the issues presented in the separate lawsuits.
- (c.) Severance. The court may order severance of incidental demands from the original action.
- (d.) Continuance. Upon the motion of any party the court may order a continuance for good cause shown. A motion for continuance, consolidation, or severance shall be filed with the Clerk and served on all parties in the manner prescribed in Rule 5. The court shall rule on the motion ex parte unless the opposing parties object within three (3) days of receipt of the motion.
- (e.) Dismissal. An action shall be dismissed upon the motion of the plaintiff prior to answer. After answer an action may be dismissed on the joint motion of all parties or after a hearing on plaintiff's motion to dismiss. An action may be dismissed after answer without prejudice to plaintiff only upon a showing by plaintiff that justice can best be served through dismissal.

RULE 14. TRIAL PROCEDURES.

- (a.) Opening Statements. At the commencement of all civil trials, parties to the action shall be afforded the opportunity to make an opening statement. The plaintiff, or his legal representative shall make the first statement, and then the defendant, or his legal representative may make an opening statement.
- (c.) Presentation of the Case. The plaintiff shall present his case first. The defendant may then present his defense.
- (d.) Oath or Affirmation. Any and all witnesses testifying in a trial held before the Crow Tribal Court shall be required to swear on their oath to tell the truth. In lieu of an oath, a witness may testify based on a solemn affirmation to tell the truth.
- (e.) Form of Testimony. In all trials held before the Crow Tribal Court, witnesses shall testify orally in open court, unless otherwise provided by rules adopted by the Crow Tribal Court.
- (f.) Procedures of Testimony. The party calling a witness to testify shall begin the examination of the witness by "direct examination". The opposing party shall then examine the witness by "cross examination". The party calling the witness, if it is desired, may then examine the witness by "re-direct examination"; the opposing party may then "re-cross examine".

- (g.) Interpreters. If the court should find that an interpreter is needed for the examination of a witness in a trial, the court may appoint a non-interested person of the court's choice to serve as an interpreter for the party or parties involved. Compensation for the interpreter's services shall be considered part of the "costs" of the proceedings.
- (h.) Final Arguments. At the end of the defendant's presentation of evidence, the court shall allow the plaintiff to present a final closing argument to the jury, if trial is by jury, or to the court. The defendant may then present his final closing argument.
- (i.) Jury Instructions. At the close of evidence and final arguments in a trial by jury, the court shall instruct the jury as to the law and the meaning of the law involved in the case under consideration. The parties or their legal representatives may file written requests that the court instruct the jury on the law as set forth in the requests. Opportunity shall be given to each party to make objections to a failure to give a requested instruction. Said opportunity shall be out of the hearing of the jury. A copy of the instructions given to the jury signed by the trial judge shall become a part of the permanent record of the trial.

RULE 15. FINDINGS BY THE COURT.

In all civil actions tried by the court without a jury, the court shall specifically decide the facts of the case and state separately its conclusions of law based on those facts. The findings of facts and conclusions of law shall be set forth in writing, signed by the trial judge, and made a part of the permanent record of the trial. The court may take the matter under advisement provided that it shall render a decision within thirty (30) days of the close of trial. Notice of judgment shall be sent by registered mail to all parties when the matter is taken under advisement.

RULE 16. JUDGMENT AND COSTS.

- (a.) Judgment. Definition—"Judgment" as used in the rules includes a decree and any order of the court from which an appeal may be taken.
- (b.) Entry of Judgment. Upon a general verdict of a jury, or upon a decision by the court that a party shall recover a sum certain and/or costs or other relief, or that all relief shall be denied, the court shall prepare, sign, and enter the judgment. Every judgment shall be set forth on a separate document and signed by the presiding judge.
- (c.) Costs. Unless otherwise directed by the court, costs shall be allowed as of course to the prevailing party. Costs shall be prepared by both parties at the close of each trial and submitted to the Clerk.
- (d.) Effect of Judgments. A final judgment or Order of the Crow Tribal Court or Court of Appeals shall be conclusive and binding upon the Crow Tribal Court and Foreign Courts, and shall bar any new action between the same parties or their privies in the same controversy for the same or different remedies in the Crow Tribal Court or any Foreign Court. A copy of the judgment or order, duly certified by the Clerk of Court, shall be conclusive proof of the judgment or order. Nothing in these Rules shall require the Crow Tribe to give effect to judgments of any other jurisdiction if that jurisdiction fails to give effect to judgments of the Crow Tribal Court or Court of Appeals.

RULE 17. DEFAULT JUDGMENTS.

- (a.) Motion and Entry of Default. A motion of default may be made against any defendant who fails to answer a civil complaint within the time prescribed in Rule 6. Default shall be entered in the minutes of the court by the Clerk upon filing of the motion.
- (c.) Judgment of Default. Plaintiff shall present sufficient evidence in open court to support a default judgment in his favor, provided judgment of default shall not be rendered less than three (3) days after filing a motion of default.
- (c.) Notice of Default Judgment. After judgment of default has been rendered by the court, the Clerk shall notify the party in default of the judgment by certified-mail.
- (d.) Setting Aside Judgment of Default. Within thirty (30) days of the judgment of default the party in default may

apply to set aside the judgment for good cause shown, provided that nothing in this section shall prevent execution of judgment in accordance with Rule 18.

RULE 18. STAY OF PROCEEDINGS TO ENFORCE JUDGMENT.

- (a.) Automatic Stay. No writ of execution shall issue nor shall any proceedings be allowed, for enforcement of judgment until ten (10) days after the entry of the judgment or mailing of notice of judgment when required.
- (b.) Stay During Appeal. When an appeal of a final judgment or order of the Crow Tribal Court is taken, the court, upon appellant's motion, may grant a stay of execution of judgment, provided that appellant post a surety bond sufficient to guarantee performance of the judgment, and payment of the costs of appeal, on or before the date of filing his appeal.
- (c.) Injunction Pending Appeal. When an appeal is taken from the granting of a temporary restraining order or a final judgment, granting, dissolving, or denying an injunction, the court, in its discretion, may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as the court considers proper for the security of the rights of the adverse party.-

RULE 19. SPECIAL JUDGMENTS.

- (a.) Summary Judgment. Summary judgment may be granted in Crow Tribal Court, provided that Rule 56. of the Federal Rules of Civil Procedure, as amended, shall be the law applicable in Tribal Court for this purpose.
- (b.) Directed Verdict. In any case tried without a jury, the court may direct a verdict in favor of defendant if at the close of plaintiff's case it appears with legal certainty plaintiff cannot prove that which he claims.
- (c.) Judgment N.O.V. A judgment non obstante verdicto may be granted in Crow Tribal Court, provided that Rule 50 of the Federal Rules of Civil Procedure, as amended, shall be the law applicable in Tribal Court for this purpose.
- (d.) Declaratory Judgments. The Crow Tribal Court may grant declaratory judgments to determine rights, status, and other legal relations in any case it deems appropriate.

RULE 20. EXECUTION OF JUDGMENTS.

- (a.) General Provisions.
 - (1) Foreclosure by any creditor to enforce payment of a debt secured by a mortgage, lien, or other security interest may only be authorized by judgment of the Crow Tribal Court.
 - (2) The court may summarily issue a writ of execution, upon the application of a judgment creditor, to satisfy the terms of any judgment, provided judgments rendered by the courts of any other jurisdiction may only be made executory by a judgment of the Crow Tribal Court specifically recognizing the order of the foreign court.
 - (3) The writ shall direct the Crow Tribal Police to seize and take possession of particularly described property. The court shall refuse to issue the writ if the application does not sufficiently describe the property to be seized.
 - (4) Seizure shall be made within 90 days of the issuance of the writ, provided that successive writs may issue upon re-application of the judgment creditor.
- (b.) Preference. Seizure by writ of execution shall create a preference to the proceeds of a public sale of the thing (s) seized in favor of the judgment creditor. Security interests perfected prior to seizure are superior to the judgment creditor's preference and rank from the date of perfection. A security interest is perfected according to the law of the place the secured transaction occurred, provided that the Crow Tribal Court shall determine the validity of that security interest under the law of the place the transaction occurred.

- (c.) Return. Notice to Judgment Debtor; Injunction. Upon seizure by writ of execution the Crow Police shall return to the Clerk a written list of the things seized. The Clerk shall immediately notify the judgment debtor of the seizure and the things seized by registered mail. At any time prior to sale of the things seized the judgment debtor may apply to the court for injunctive relief for any of the following purposes:
- (1) To reduce an excessive seizure, if it can be shown that the value of the property seized exceeds the value of the seizing creditor's interest and the property is subject to division;
 - (2) To prevent the seizure of exempt property;
 - (3) To prevent the seizure if it be shown that some illegality has occurred in the proceeding prejudicial to the judgment debtor;
 - (4) To prevent the seizure if it be shown that the judgment has been satisfied.
- (d.) Public Sale. Public sale of property seized shall be conducted by the Crow Police at the time and in the manner directed by the rules of court, provided that the court may order the sale to be made at public auction under the direction of a professional auctioneer. In all cases the property to be sold shall be appraised and advertised for sale three times at weekly intervals in a newspaper of general circulation in the Crow Reservation area, provided that the court may order the immediate sale at public auction of perishable property.
- (e.) First Offering. At the time and place set for public sale the property seized may not be sold for less than its appraised value in cash. If the thing seized fails to bring its appraised value at first offering it shall be re-advertised, in the manner set out in section (d) of this Rule, and offered for sale a second time. At the second offering, the thing seized shall be sold for whatever it will bring in cash.
- (f.) Distribution of Proceeds. The proceeds from the public sale of the thing seized shall be distributed in the following manner:
- (1) The costs of sale shall be deducted from the proceeds and paid into the court's general fund;
 - (2) Payment of security interests superior to the seizing creditor's as defined in section (b) of this Rule, provided that a creditor may intervene at any time prior to distribution of the proceeds of sale to assert a superior interest, provided further that failure to assert such an interest shall be deemed a waiver of preference to the thing seized;
 - (3) Payment of the seizing creditor's interest;
 - (4) Payment of inferior security interests;
 - (5) and, payment of the remainder to the judgment debtor.

Upon the written and signed return of the Crow Police or professional auctioneer stating a description of the property seized, the name of the purchaser, and the value received, and upon payment in cash, the Clerk shall distribute the proceeds accordingly.

(g.) Act of Sale. Within five days of public sale and receipt of the purchase price in cash, the Clerk shall pass an act of sale to the purchaser. The act of sale adds nothing to the force and effect of the adjudication, but is only intended to afford proof of it.

(h.) Nothing in this Rule shall prevent a seizing creditor from demanding seizure and sale of property to satisfy a debt of which all installments are not yet due.

(i.) Garnishment by writ of execution.

- (1) The judgment creditor may petition the court for seizure of property belonging to the judgment creditor but under the control of a third person, including any amount of money the third person may be indebted to the judgment debtor.
- (2) Annexed to the petition shall be interrogatories directed at establishing what interest of the judgment debtor the garnishee has in his custody. The petition and interrogatories shall be served in the manner provided in Rule 5 and answer shall be made in the manner provided in Rule 6.
- (3) Failure to answer shall be cause for issuance of a subpoena to the garnishee demanding his presence at a hearing on the judgment creditor's petition. Costs of the hearing, including reasonable attorney's fees shall be assigned against the garnishee.
- (4) If the garnishee admits in his answer, or it is found at the hearing on plaintiff's petition, that he has in his custody property belonging to the judgment debtor, the court shall order delivery of the property to the Clerk for distribution.

(j.) Examination of Judgment Debtor. To aid execution of a judgment the court may, upon the motion of a judgment creditor, order the judgment debtor to appear personally in court and produce any books, papers, and other documents relating to his property as described in the motion. The date for examination of the judgment debtor shall be not less than ten (10) days exclusive of legal holidays after service of the motion and order of the court in accordance with Rule 5.

(k.) Exemptions. The following items shall be exempt from seizure by writ of execution:

- (1) Clothing and apparel;
 - (2) Dishes, utensils, pots and pans;
 - (3) Beds and bed sheets and blankets;
 - (4) Books and musical instruments;
 - (5) Dining tables, stoves, refrigerators, heating apparatus and a single radio in good repair;
 - (6) Traditional Indian things, including but not limited to clothing, beadwork, teepee poles, etc.;
- provided, that no property shall be exempt from seizure to satisfy the debt incurred for purchase of that property.
- (7) 25% of the debtor's net wages per week or \$70.00 per week in net wages, whichever is greater, shall be exempt, provided that 35% of the debtor's net wages per week or \$100.00 per week in net wages, whichever is greater, shall be exempt if the debtor supports himself and one or more dependents who cannot work.

(l.) Foreclosure of mortgages and mortgaged leasehold interests are governed by Title 15, Chapter 1, Finance Protection and Procedures Act5

RULE 21. ATTACHMENT.

(a.) General. Prior to judgment in an action to recover money, the court may issue a writ of attachment against any property subject to a writ of execution. The petition shall be accompanied by affidavit(s) showing that one of the following conditions exists:

- (1) The defendant has done or is about, to do some act that will place property subject to a writ of execution beyond the reach of his creditors or give an unfair preference to one or more of them; or
- (2) The defendant is not subject to the personal jurisdiction of the court.

Nothing in this rule shall be construed to allow "self-help" repossession prior to judgment of property encumbered by a security interest.

- (a.) Dissolution of writs. Defendant may move to dissolve the writ of attachment and recover damages and/or wrongful attachment without submitting himself to the jurisdiction of the court. The reasonable value of attorney's fees incurred through the motion to dissolve may be awarded as an element of damages. At the hearing on defendant's motion it shall be plaintiff's burden to prove that grounds for attachment exist.
- (b.) Release. Defendant may obtain release of property subject to a writ of attachment by depositing with the court an amount equal to the appraised value of the thing seized. Security shall be returned to defendant if and when a judgment on the merits in his favor is final.
- (c.) property may not be sold subject to a writ of attachment until a judgment in favor of plaintiff is rendered and final and a writ of execution has issued, provided that the sale of perishables prior to judgment may be ordered in accordance with Rule 20, section (d.).
- (d.) Special Rules Applicable.
 - (1) Attachment shall create a preference in favor of plaintiff that shall rank from the date of attachment according to the provisions of Rule 20, section (b.), provided that there shall be no preference if writs of attachment are dissolved in accordance with section (b.) of the Rule.
 - (2) Notice to the defendant that attachment has been made shall be served by the Clerk by registered mail after return of the Crow Police in accordance with Rule 20, section (c.).
 - (3) Garnishment by writ of attachment may be ordered in accordance with Rule 20, section (i.).

RULE 22. INJUNCTION.

- (a.) General. A permanent injunction shall issue in cases where irreparable injury, loss, or damage may otherwise result to the applicant, or in other cases specifically provided by law. During the pendency of an action for permanent injunction the court may grant a temporary restraining order, a preliminary injunction, or both.
- (b.) Temporary Restraining Order.
 - (1) Issuance. A temporary restraining order may be granted without written or oral notice to the adverse party, or his legal representative, only if the facts shown by the applicant's verified complaint indicate that immediate and irreparable injury, loss, damage, or harm will result to the applicant before the adverse party or his legal representative can be heard in opposition.
 - (2) Form. Every temporary restraining order shall set forth the name of the court, the names of the parties involved, the time and date of the issuance of the order, and shall state the injury to be incurred and why it is irreparable, and why the order was granted without notice to the adverse party.
 - (3) Duration. Each temporary restraining order shall expire by its terms within the time set by the order. Said time shall not exceed ten (10) days, unless extended by the court for good cause shown.
- (c.) Preliminary Injunction. Upon filing of a written motion for preliminary injunction by any party, the court shall order that a hearing be held not less than three (3) nor more than ten (10) days from the date the motion was filed. Notice of the hearing shall be sent to all parties by the Clerk. An order for preliminary injunction shall issue when it appears that irreparable harm or injury will result before trial of the petition for permanent injunction if the motion is not granted. An appeal may be taken by either party within ten (10) days of the court's decision.
- (d.) Security. No temporary restraining order or preliminary injunction shall issue except upon the posting of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by the party who is found to have been wrongfully restrained or enjoined.

RULE 23. EXTRAORDINARY REMEDIES.

- (a.) General Provisions. Upon plaintiff's petition for writ of habeas corpus, quo warranto, or mandamus, the court shall order the named defendant(s) to show cause why a writ should not issue.
- (1) A hearing on plaintiff's motion shall be held not less than three (3) nor more than ten (10) days, exclusive of legal holidays, after the issuance of the order.
 - (2) Defendant shall answer in writing before the hearing.
 - (3) The court shall render a written decision within forty-eight (48) hours of the hearing. If the court decides that a writ should issue, failure to comply shall be cause for issuance of a contempt citation against defendant.
 - (4) Appeal of the court's decision shall not suspend the execution of the writ.
- (b.) Habeas Corpus. A writ of habeas corpus shall command defendant who has custody or physical control of another person to release that person to the court. Any interested party may file a petition for writ of habeas corpus.
- (c.) Mandamus. A writ of mandamus shall
- (1) Direct a public officer to perform duties required by law, or
 - (2) Compel a corporation or officer thereof to perform duties required by the corporate charter or by-laws, or
 - (3) Compel a corporation or officers thereof to recognize the rights of corporate members or share holders.
- The term "public officer" as used in this section and section (d.) of this Rule shall include former public officers and their heirs.
- (d.) Quo Warranto. A writ of quo warranto shall order a public officer or officers of a corporation to cease exercise of the powers of office where no such authority exists.

RULE 24. EVICTION.

- (a.) General. Notice to vacate. When an owner or lessor of real property wishes to evict the occupant therefrom, after the right to occupancy has ceased, the owner or lessor or his agent, shall first cause a written notice to vacate the property to be delivered to the occupant. The notice shall allow the occupant ten (10) days from its delivery to vacate the premises, provided that the owner or lessor shall give notice to a lessee at least ten (10) days before the end of the month if the lease has no definite term.
- (b.) Order To Show Cause. If the occupant fails to comply with a notice of eviction given accordance with section (a.), of this Rule, the court upon the motion of the owner or lessor, shall order the occupant to show cause not earlier than three (3) days, exclusive of legal holidays, after the service of the order upon him why he should not be evicted. The written motion shall include the specific reasons for eviction and shall be verified by the notarized affidavit of the owner or lessor.
- (c.) Order of Eviction. If the court finds that the motion of owner or lessor should be granted, the court shall order the occupant to leave the premises within twenty-four (24) hours of issuance. Failure to comply with the order shall be cause for the issuance of a warrant to the Crow Police for physical eviction of the occupants.
- (d.) Appeal. Either party may appeal the court's ruling on owner or lessor's motion, but appeal shall not suspend the execution of the court's order.

RULE 25. PARTIES.

- (a.) Real Party in Interest. Every action in the Crow Tribal Court shall be prosecuted in the name of the real party in interest, except that an executor, administrator, guardian, bailee, trustee, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may bring suit in his name without joining the party for whose benefit the action is brought.
- (b.) Capacity.
- (1) Minors. Parents or guardians of persons under eighteen years of age shall sue or be sued on behalf of the minor in their custody.

- (2) Incompetents. Persons adjudged incompetent of managing their affairs or caring for their physical needs shall sue or be sued through their guardians.
 - (3) Guardians ad litem. Minors or incompetents who do not have a parent or guardian may sue by his next friend or by a guardian ad litem.
- (c.) Joinder. Joinder of claims, remedies, and parties shall be allowed in the Crow Tribal Court, provided that Rules 18, 19, 20, 21, and 22 of the Federal Rules of Civil Procedure, as amended, shall be the law applicable in Tribal Court for this purpose.
- (d.) Class Actions. The Crow Tribal Court may entertain class actions provided that Rules 23, 23.1, and 23.2 of the Federal Rules of Civil Procedure, as amended, shall be the law applicable in Tribal Court for this purpose.
- (e.) Substitution. It shall be within the discretion of the Crow Tribal Court to order substitution of parties in any action before the court.

RULE 26. SMALL CLAIMS PROCEDURE.

- (a.) General. In cases where the amount in controversy, or the value of personal property involved, does not exceed one hundred dollars (\$100.00), [should be \$500] plaintiff may elect to invoke the small claims procedure of the Crow Tribal Court as provided in sections (b.) through (j.). The purpose of this procedure is to provide a quick and inexpensive means for persons subject to the jurisdiction of the court to assert minor claims.
- (f.) Availability. Plaintiff who is not represented by an attorney may elect to invoke the small claims procedure of the Crow Tribal Court by completing a petition form provided by the Clerk and payment of a fee of five dollars (\$5.00), provided that where the amount in controversy is less than twenty dollars (\$20.00), the amount due upon filing the petition form shall be one dollar (\$1.00).
- (g.) Restrictions. Small claims/procedures may not be invoked in the following instances:
- (1) A case asserting title to real property, involving a right to Tribal office or position, or involving a civil or political right;
 - (2) A case involving the domestic relations of husband and wife, including property, support, and alimony claims incident to marriage;
 - (3) A probate, guardianship, emancipation, partition, receivership, liquidation, habeas corpus, or quo warranto proceeding;
 - (4) A case where attachment or eviction is sought;
 - (5) A case in which the Crow Tribe is a defendant; and,
 - (6) Any other case or proceeding excepted by law.
- (h.) Commencement of Suit. Upon receipt of the petition form and filing fee, the Clerk shall set a final date and notify the plaintiff, orally or in writing. The Clerk shall notify defendant(s) by service of citation containing the following information:
- (1) The date and time of trial of plaintiff's claim and the location of the court;
 - (2) The date on which a written answer shall be filed in accordance with section (e.) of this Rule;
 - (3) The plaintiff is not represented by an attorney and that the court can award attorney's fees in accordance with section (f.) of this Rule; and,
 - (4) A copy of plaintiff's petition form.

Service of process shall be made by certified mail.

- (i.) Answer. Defendant (s) who is represented by an attorney or who intends to assert a counterclaim, third party demand, or cross claim, shall file his answer in writing with the Clerk within five (5) days, exclusive of legal holidays, after service of citation. In all other cases, defendant need not answer in writing and may state his answer to the court at the trial of the plaintiff's claim. Failure to assert an incidental demand by timely written answer shall not be deemed a waiver of defendant's cause of action, but the court may stay the proceedings to allow plaintiff, co-defendant or third-party defendant time to answer.
If defendant fails to appear at the trial and plaintiff proves his case to the satisfaction of the court, a final judgment in favor of plaintiff may be rendered without prior default.
- (j.) Attorneys. If defendant is represented by an attorney the court may stay the proceedings to allow plaintiff to obtain representation. Should judgment be rendered in favor of plaintiff, the court may in its discretion order defendant to pay plaintiff's expenses, including reasonable attorney's fees.
- (k.) Dismissal. If after answer, plaintiff fails to appear at the trial, judgment shall be rendered dismissing the suit with prejudice, at plaintiff's cost.
- (l.) Judgment. The judgment shall be in writing and signed by the Judge. Notice of judgment shall be served on a defendant against whom judgment is rendered if defendant failed to answer in writing or in person. Execution of judgment shall be carried out through the procedures enumerated in Rule 20.
- (m.) Appeal. Within ten (10) days, exclusive of legal holidays, any party wishing to appeal a decision of the Tribal Court rendered through small claims procedure shall petition the trial judge for trial de novo to be heard under the normal procedures of the Tribal Court, provided that if appellant is unsuccessful at the second trial the court shall order appellant to pay the expenses appellee incurs as a result of the appeal, including reasonable attorney's fees.

RULE 27. LIMITATIONS.

All actions upon a judgment or decree of the Crow Tribal Court shall be commenced within ten (10) years of the date it was rendered. All other actions shall be commenced within two (2) years of the date the cause of action arose.

RULE 28. COMPUTATION OF TIME.

- (a) Unless otherwise provided by applicable law, time periods shall be computed as provided in this Rule.
- (b) In computing any period of time prescribed or allowed by these rules, by order of 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 Saturday, Sunday or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have caused the office of the Clerk of the Tribal Court to be closed, in which event the period runs until the end of the next day which is not one of the excluded days.
- (c) When the period of time prescribed or allowed is ten (10) days or less, the days to be counted are business days on which the Crow Tribal Court is open, and does not include intermediate Saturdays, Sundays and legal holidays. When the period of time prescribed or allowed is eleven (11) days or greater, the days to be counted include all calendar days.
- (d) Definition of Legal Holiday: A legal holiday shall be any holiday declared to be a legal holiday by the federal government or by the Chairman of the Executive Branch. Any day declared by the Chairman to be a day of celebration, mourning, emergency, or similar important event resulting in closure of the Executive Branch shall be deemed to be a legal holiday whether so stated by the Chairman and whether or not the Crow Tribal Court is closed.