

JANUARY 2005 CROW TRIBAL LEGISLATURE

BILL NO. CLB05-05

INTRODUCED BY CARL E. VENNE, CHAIRMAN
CROW TRIBAL EXECUTIVE BRANCH

A BILL FOR AN ACT ENTITLED

“AN ACT TO AMEND TITLE 5, RULES OF CIVIL PROCEDURE, OF THE CROW
LAW AND ORDER CODE TO PROVIDE FOR SERVICE OF PROCESS AND
COMPUTATION OF TIME.”

WHEREAS, the Crow Tribal Court has advised that the current provisions of the Crow Law and Order Code dealing with service of process and computation of time are confusing and inefficient; and

WHEREAS, the clarity and effectiveness of the Crow Law and Order Code is important to serve the needs of the Crow people; and

WHEREAS, the interests of the Crow Nation will be served by adoption of the following amendments to the Crow Law and Order Code;

NOW, THEREFORE, BE IT ENACTED BY THE CROW TRIBAL
LEGISLATURE:

Section 1. The Crow Law and Order Code is amended as follows:

Title 5, Rules of Civil Procedure, Rule 4, is amended as follows:

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.) **Summons: 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

01.20.05

ADOPTED
Bill to Amend Rules of Civil Procedure
Page 1 of 5

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 5A, 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.

(f.) It shall be the responsibility of the plaintiff to cause service of process to be made on the named defendant(s), including the hiring of a process server if the plaintiff deems it necessary. The Tribal Court and the Clerk shall not be responsible for service of process.

01.20.05

- (g.) A person who makes service pursuant to these Rules shall be deemed to be acting as an officer of the Court entitled to the protections afforded to tribal officials by the Crow Law and Order Code.

Title 5, Rules of Civil Procedure, is amended to add the following Rule 5A.

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 or certificate of service 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,

01.20.05

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.

Title 5, Rules of Civil Procedure, is amended to add the following Rule 28:

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

01.20.05

and whether or not the Crow Tribal Court is closed.

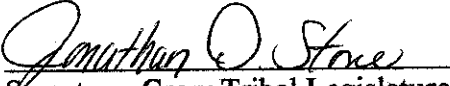
Section 2. Upon enactment of this Bill by the Crow Tribal Legislature and approval of the Chairman of the Executive Branch, the foregoing amendments are hereby adopted, with an immediate effective date.

CERTIFICATION

I hereby certify that this Bill: "AN ACT TO AMEND TITLE 5, RULES OF CIVIL PROCEDURE, OF THE CROW LAW AND ORDER CODE TO PROVIDE FOR SERVICE OF PROCESS AND COMPUTATION OF TIME", was duly enacted by the Crow Tribal Legislature with a vote of 12 in favor, 1 opposed, and 1 abstained and that a quorum was present on this 20th day of January, 2005.


Speaker of the House
Crow Tribal Legislature

ATTEST:


Secretary, Crow Tribal Legislature


EXECUTIVE ACTION

I hereby

approve

veto

this Bill: "AN ACT TO AMEND TITLE 5, RULES OF CIVIL PROCEDURE, OF THE CROW LAW AND ORDER CODE TO PROVIDE FOR SERVICE OF PROCESS AND COMPUTATION OF TIME," pursuant to the authority vested in the Chairman of the Crow Tribe by Article V, Section 8 of the Constitution and Bylaws of the Crow Tribe of Indians, on this 25 day of January, 2005.


Carl E. Venne, Chairman
Crow Tribal Executive Branch

01.20.05

ADOPTED
Bill to Amend Rules of Civil Procedure
Page 5 of 5

Bill #5

Service of Process

Bill or Resolution Number ABCSOS Introduced by: Executive Date of Vote 1-20-05
Representative

	Yes	No	Abstain
B. Cloud	<u>X</u>	<u> </u>	<u> </u>
C. Goes Ahead	<u>X</u>	<u> </u>	<u> </u>
O. Costa	<u>X</u>	<u> </u>	<u> </u>
V. Crooked Arm	<u>X</u>	<u> </u>	<u> </u>
R. Iron	<u>X</u>	<u> </u>	<u> </u>
J. Stewart	<u>X</u>	<u> </u>	<u> </u>
E. Fighter	<u> </u>	<u> </u>	<u> </u>
L. Costa	<u>X</u>	<u> </u>	<u> </u>
L. Hogan	<u> </u>	<u> </u>	<u> </u>
D. Old Elk	<u>X</u>	<u> </u>	<u> </u>
K. Real Bird	<u>X</u>	<u> </u>	<u> </u>
E. Pease	<u> </u>	<u>X</u>	<u> </u>
S. Medicine Horse	<u>X</u>	<u> </u>	<u> </u>
L. Not Afraid	<u> </u>	<u> </u>	<u>X</u>
P. Real Bird	<u> </u>	<u> </u>	<u> </u>
D. Wilson	<u> </u>	<u> </u>	<u> </u>
J. Stone <i>Secretary of the House</i>	<u>X</u>	<u> </u>	<u> </u>
W. Plain Feather <i>Speaker of the House</i>	<u>X</u>	<u> </u>	<u> </u>
Totals:	<u>12</u>	<u>1</u>	<u>1</u>

Results of Vote:

Passed

Not Passed

Tabled

Veto Override

Signature of Officer: Wm Plain Feather Date: 1-21-05