

5.4.401 Service of Process –

- 5.4.401.1 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.
- 5.4.401.2 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.
- 5.4.401.3 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.
- 5.4.402 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 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.
- 5.4.403 <sup>1</sup>If 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 the service of process.
- 5.4.404 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.

Rule 5. Service of Other Pleadings and Motions

- 5.5.501 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.
- 5.5.502 Time. Motions shall be served and filed no less than (5) days after hearing the movant's demand. Incidental demands, except third-party demands,

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<sup>1</sup> Amended by CLB 05-05 "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" duly enacted by the Crow Tribal Legislature on 1/20/05 and signed by Chairman Carl E. Venne on 1/25/05.

which case, the period shall end on the next day which is not a Saturday, Sunday, or Legal Holiday.

5.6.603 Contents. Defendant shall affirm or deny every allegation or claim made by plaintiff in his complaint, provided that failure to affirm or deny any allegations 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 5.8.801, provided that failure to assert each and every 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.

5.7.701 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:

- 5.7.701.1 Lack of jurisdiction over the subject matter;
- 5.7.701.2 Lack of jurisdiction over the person;
- 5.7.701.3 Insufficiency of process or of service of process;
- 5.7.701.4 Failure to state a claim on which relief can be granted; or
- 5.7.701.5 Dissolution of attachment where quasi in rem jurisdiction is asserted.

If the 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 the defendant's motion shall be made in accordance with Rule 5.

5.7.702 Other Pre-Trial 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.

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