

CHAPTER 9

RULES OF PROCEDURE, CIVIL AND CRIMINAL

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NOTE: NO RULES 38-50 IN OFFICIAL LAW & ORDER CODE, 1967

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CHAPTER 9

RULES OF PROCEDURE, CIVIL AND CRIMINAL

General.

Rule 1. These rules govern the procedure in the Blackfeet Tribal Court in all criminal and civil cases, and in all appeals. They shall be construed to secure the just, speedy, and inexpensive determination of every such pleadings.

Rule 2. Form of Pleadings.

A. Caption and names of parties: Every pleading shall contain a caption setting forth the name of the Court, the title of the action, and the case number. In the complaint, the title of the action shall include the names of all parties, but in subsequent pleadings it will be sufficient to state the name of the first party on each side.

B. Separate Statements: All statements of claims, charges or defense shall be made as far as practicable to a statement of a single set of circumstances. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion.

C. Size of paper: All pleadings, legal memoranda on "letter size": (8 1/2" x 11") white paper, or on forms provided by the Court.

Rule 3. Signing of Pleadings.

Every pleading of a party represented by an attorney shall be signed by the attorney. A party who is not represented by an attorney shall sign his pleading. Criminal complaints and other pleadings filed by the Tribe in criminal cases shall be signed by the Prosecutor or complaining witness. Pleadings need not be verified or accompanied by an affidavit. The signature of an attorney or a signer constitutes a

certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as a sham. For a willful violation of this rule or if scandalous or indecent matter is inserted in the pleading, an attorney or other signer may be subjected to appropriate disciplinary action. No person shall sign a blank complaint for, either criminal or civil.

Rule 4. Subpoena.

A. Attendance of witnesses. Every subpoena shall be issued by the Clerk under the seal of the Court. It shall state the person who is being subpoenaed, the name and address of the party requesting the subpoena and his attorney, if any, and shall command each person to whom it is directed to attend and give testimony on the time and place therein specified.

B. Production of documentary evidence. The subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the Court, upon motion, may quash or modify the subpoena if it is unreasonable and oppressive, ~~or~~ require the person requesting the production to advance the reasonable cost of producing the books, papers, documents, or tangible things.

C. Service. The subpoena may be served by a police officer or by an officer of the Court, or by any other person who is not a party and is not less than eighteen (18) years of age. Service of the subpoena upon a person named therein shall be made by delivering a copy thereof to such person.

Rule 5. Evidence.

A. Form and admissibility. In all trials the testimony of witnesses shall be taken orally in open Court, unless otherwise provided by these rules or by order of the Court.

B. Scope of examination and cross examination. A party may interrogate any unwilling or hostile witness by leading questions. The party may call an averse witness and interrogate him by leading questions and contradict and impeach him in all respects as if he has been called by the adverse party, and the witness thus called may be contradicted and impeached by the adverse party only upon the subject matter of his examination in chief.

C. Record of excluded evidence. In an action tried by a jury, if an objection to a question to a witness is sustained by the Court, the examining attorney may make a specific offer of what he expects to prove by the answer of the witness. This "offer of proof", should be made out of the hearing of the jury. The Court may then make a statement showing the character of the evidence, the form in which it is offered, the objective made, and the ruling thereon.

D. Evidence on motions. When a motion raises an issue fact, the Court may hear the matter on affidavits presented by the respective parties of the Court may direct that the matter be heard wholly or partly on oral testimony or depositions.

E. Interpreters. The Court may appoint an interpreter of its own selection and may affix his compensation which shall be paid out of funds provided by the Tribe or by one or more of the parties as the Court may direct, and may ultimately be taxed as costs in the discretion of the Court.

F. Proof of official records. An official record kept within the United States, on any Indian Reservation in the United States or Canada, or in any state, district, commonwealth, territory or insular possession, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy presented by the officer having the legal custody of the record, or by his deputy, and accompanied by a certificate that such officer has the original in his custody.

A written statement that after diligent search no record or entry of the specific type has been found in the official records, is admissible evidence that the records contain no such record or entry.

Rule 6. Relief from Judgments.

A. Motion for new trial. A new trial may be granted by the Court to all or any of the parties and on all or part of the issue where justice so requires.

B. Clerical mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors resulting from oversight or omission may be corrected by the Court at any time on its own initiative or a motion of any party.

C. Newly discovered evidence, etc. On motion and upon such terms as are just, the Court may relieve the party or his legal representative from a final judgment or order for the following reasons:

- (1) mistake, inadvertance, surprise, or excusable neglect;
- (2) newly, discovered evidence which by due diligence could not have been previously discovered;

- (3) fraud, misrepresentation or other misconduct or an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; or
- (6) any other reason justifying relief from the operation of the judgment.

A motion shall be made within a reasonable time and for reasons (1), (2), and (3), not more than one year after the judgment or order was entered. This rule does not limit the power of the Court to entertain an independent action to relieve a party from a judgment or order, or to grant relief to a defendant not actually personally notified, or to set aside a judgment for fraud upon the Court.

D. Hamless error. No error in either the admission or the exclusive of evidence and no error or defect in any ruling or order or anything done or omitted by the Court or by any of the parties is grounds for granting a new trial or for setting aside a verdict or vacating, modifying or otherwise disturbing a judgment unless refusal to take such action appears to the Court inconsistent with substantial justice and fairness. The Court at every stage of the proceedings should disregard any error or defect in the proceedings which does not affect the substantial rights of the parties.

Rule 7. Time.

A. Computation. In computing any period of time, the day for which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs

until the end of the next day which is not a Saturday, Sunday, or a legal holiday. When the period of time prescribed or allowed is less than ten (10) days, Saturdays, Sundays, and legal holidays shall be excluded in the computation. "Legal Holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Christmas Day, Labor Day, Veteran's Day, Thanksgiving Day, and any other day appointed as a holiday by the President of the United States, by Congress of the United States, or by the Blackfeet Tribal Business Council.

The times prescribed shall not be automatically enlarged merely because service was by mail.

B. Extensions of time. The Court may at any time in its discretion with or without motion or notice, order the period enlarged if a request therefore is made before the expiration of the original period. If the time has been expired, the Court may, on motion and with notice to the other side, permit the act to be done if the failure to act within the original time period was the result of excusable neglect.

Rule 8. The record of proceedings.

If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the Court may direct the prevailing party to prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on all other parties who may file objections or proposed amendments shall be submitted to the Court for settlement and approval and the settled and approved statement shall be considered to be the official record of the proceedings held in Tribal Court.

Rule 9. Clerk of Court.

A. Hours of operation. The Court shall be open on Monday, through Friday, except holidays, from 9:00 A/M, until 5:00 P/M from September through May, and from 8:00 A/M, to 4:00 P/M, from June through August.

B. Books and records kept by the Clerk.

(1) The Clerk must keep a book entitled "Register of Civil Actions" in which must be entered the title and number of the action, the object of the action or proceedings, the names of the parties, the sum of money claims, if any, and a reference to each and every paper filed and the date filed. Two indexes must be maintained, one to be kept of the plaintiffs in alphabetical order, and the other of the defendants in alphabetical order.

(2) The Clerk must keep a book entitled "Register of Criminal Actions", in which must be entered the title and number of the action, the charge, and a reference to every paper filed and the date filed. It must include an index of the defendants in alphabetical order.

(3) The Clerk must keep a book entitled "Register of Juvenile Actions", in which must be entered all juvenile delinquent, dependent and neglected children, and adoption matters. The child, the nature of the proceedings, and a reference to every paper filed and the date filed. An index must be kept of the juveniles of alphabetical order. This register and all file folders on juvenile matters must be maintained confidential records and may not be examined by any person without the consent of the Tribal Judge.

(4) The Clerk must keep a file folder for each action filed. The folder shall bear the same number that is assigned to that action in the Register and each folder shall be filed in numerical order in a filing cabinet. All papers filed in the cause, all process issued and returned, all order, verdicts, judgments, and any other written papers applicable to the action shall be placed in the file folder. All papers in each folder should be fastened together to prevent loss.

(5) The Clerk must act as Clerk during Court proceedings whether in open Court or in chambers and must keep a minute book, which must contain the daily proceedings of the Tribal Court. The minutes should reflect the title of every action heard, that day by the Court, a summary of the matters heard, the names of witnesses, the date of the hearing, the name of the presiding judge, the findings, if any, other order or judgment issued by the judge. The minutes should also contain any other fact or circumstances signed by the Clerk and presented to the Tribal Judge for approval. After approval, the Tribal Judge, shall sign the minutes and they shall be placed in the individual file folder of that particular action.

In lieu of the above, there may be kept an accurate transcript of each action, taken verbatim by the Court Reporter and filed in the individual file folder of that particular action.

C. Fees, Fines, Forfeitures, and Bail. It shall be the duty of the Clerk to:

(1) Collect all fees and fines, issue a receipt number in a "Fee Register". The money must then be deposited as required by Tribal Ordinance.

(2) receive and hold all bail bonds deposited with the Court pending further order of the Court.

(3) receive and hold all cash bail which must be held separate and apart from all other funds in a special bail trust account located in a local bank. A receipt shall be issued for such bail funds and the amount and receipt number recorded in a "Bail Register". Thereafter, the Clerk must, upon order of the Court, either return the cash bail to the depositor or dispose of it as ordered by the Court on forfeiture of the bail. All bail declared forfeit by the Court shall be deposited and handled in the same manner as fines.

D. Certified copies of records. The Clerk must, on demand and upon payment of the required fees, issue certified copies of any Court records, except that certified copies of Juvenile records cannot be issued without an order of a Tribal Judge.

E. Power to issue process. The Clerk of Court shall have the power and duty to issue process, in the name of the Tribal Court, when ordered to do so by the Court. Without prior order of the Court the Clerk shall have the power to issue:

- (1) summons after a complaint is filed in a civil action;
- (2) subpoenas in civil actions;
- (3) subpoenas in criminal actions;
- (4) notice of hearing civil and criminal matters.

F. Power to administer oaths. The Clerk of the Court shall have the power to administer oaths in a proceeding pending in Court and to take and certify the proof and acknowledgment of any written instrument or affidavit in the same matter as a notary public. The Clerk must administer oaths during Court proceedings to the following:

- (1) Jury panel;
- (2) Trial Jury;
- (3) All witnesses;
- (4) Interpreter;
- (5) Bailiff, before jury deliberation.

G. Preparation of pleadings. It shall be the duty of the Clerk to assist any member of the tribe, who desires to have the tribal Court hear a matter, in the preparation of proper pleadings. After a pleading is filed, the Clerk, shall not assist or counsel the party regarding the handling of the litigation except to inform the party of the date of any hearing and such other matters as are required by the Court.

H. Witness and juror fees. The Clerk must keep a record of all witnesses and jurors called to report to the Court and shall make payment to those entitled to be paid from Tribal funds or to those to be paid from monies deposited with the Clerk for that purpose by a party to the action.

I. Other books and records. The Clerk shall also keep such other books and records as may be acquired from time to time by the Chief Judge of the Tribal Court.

Rule 10. Attorneys and Counselors.

A. Any attorney admitted to practice before the highest Court of a State or before the Supreme Court of the United States is eligible for admission to practice in the Blackfeet Tribal Court. Each applicant shall complete and file an application prepared or approved by the Chief Judge and shall be prepared to answer a set of questions about the Tribal Law and Order Code, and Tribal Court procedure

prepared by the Chief Judge. Upon successful completion of said questions, and approval of the application, the applicant shall pay an admission fee of Twenty Five Dollars (\$25.00). This admission fee may be waived or reduced at the discretion of the Chief Judge. All funds received from such application shall be held in trust by the Clerk and dispersed by her at the direction of the Chief Judge, for such uses and purposes as will benefit of the Blackfeet Tribal Court. The Clerk shall render annually to the Chief Judge, an accounting of all such filed funds held and distributed by her.

B. The Court may admit to practice on such terms and conditions as appear appropriate, a lay advocate who shall be a member of the Blackfeet Tribe and who shall agree to represent persons appearing in the Blackfeet Tribal Court.

C. The Court in its discretion may admit any other person to appear before it as an advocate, upon successful completion of an application and questionnaire on Tribal Law prepared by the Chief Judge and upon payment of a required admission fee, except that such fee may be waived or reduced in the discretion of the Chief Judge.

Rule 10-A. Time for Objecting to Motions.

Any motion filed with the Court in a civil or criminal action must be objected to within five (5) days after service upon the opposing party. If no objection is made to the motion within this prescribed time period, the Court may allow or deny the motion without a hearing.

(This rule adopted by Ordinance 31 on February 26, 1974.)

II. CIVIL

Rule 11. Filing Fee.

A civil action is commenced by filing a complaint with the Clerk of the Tribal Court. A filing fee of Ten Dollars (\$10.00) must be paid when the complaint is filed. If the plaintiff is without funds to pay the filing fee and has filed an affidavit of poverty, the Court may waive the filing fee.

Rule 12. Service of Process.

A. When a complaint is filed the Clerk shall issue a summons or notice of action and deliver it for service to the Chief of the Tribal Police or to a person appointed by the Court issue against separately named defendants if requested by the plaintiff.

B. The summons or notice of action shall be signed by the Clerk, be under the Seal of the Court, contain the name of the Court and the names of the parties, be directed to the defendant, state the name and the address of the Plaintiff's attorney, if any, otherwise the plaintiff's named and address, and the time within which the defendant that if he fails to appear and defend the action, judgment will be entered against him for the relief demanded in the complaint.

C. Service of all process shall be made by a member of the Blackfeet Tribal Police or by anyone appointed by the Court for that purpose.

D. The summons and complaint shall be served together. The Clerk shall furnish the person making service with sufficient copies of the complaint as are necessary to serve all parties. Service shall be made as follows:

(1) Upon an individual other than a minor under the age of sixteen (16), or an incompetent person, by delivering a copy of the summons or the notice of action, and give the complaint to him personally, or by leaving copies thereof where he lives with an adult living there, or by delivering a copy of the summons or notice of action and of the complaint to an agent authorized by appointment or by law to receive service of process.

(2) Upon a minor under the age of sixteen (16), by delivering a copy of the summons or notice of action and complaint to one of his parents or to his guardian, if he has one, or to such other person or agency having custody over him. If service cannot be made upon any of the above persons, the service is to be made as provided by order of the Court.

(3) On a person who has been adjudged of unsound mind by this Court or by any other Court of competent jurisdiction, or for whom a guardian has been appointed by reason of incompetency, by delivering a copy of the summons or notice of action and complaint to his guardian, if there be a guardian by residing on the Reservation. If there be no such guardian, the Court shall appoint a guardian ad litem for the incompetent person, with or without a personal service on the incompetent, as the Court may direct. When a party is alleged to be of unsound mind, but has not been so adjudged by a Court, such party may be brought in to Court by service of process personally upon him. The Court may then stay the action pending against the person and proceed to conduct a hearing on the person's incompetency.

(4) Upon a corporation, partnership, or other unincorporated association by delivering a copy of the summons or notice of action and

complaint to an officer, director, superintendent, or manager or general agent, or partner, or associate, or any other agent authorized by appointment or by law to receive service. If the agent is authorized by law to receive service, then copies should also be mailed to the defendant. If none of the above persons can be found on the Reservation, then service may be made by leaving a copy of the summons or notice of action and complaint at the defendant's office or place of business with the person in charge.

(5) Upon a city, village, town, school district, county, or public agency or board of any such public bodies, by delivering a copy of the summons or notice of action and complaint to any commissioner, trustee, board member, mayor, or head of the legislative department thereof.

(6) Upon the Blackfeet Tribe, its Tribal Business Council, or any committee or subdivision thereof, by delivering a copy of the summons or notice of action and complaint to the Tribal Secretary, or to any member of such committee or agency and also by delivering an additional copy of the summons and complaint to the Tribal Attorney, if there is one.

Rule 13. Service by Notice and Publication.

A. A defendant who has not been served under the other provisions of this rule can be served by notice and publication in the following situations only:

(1) When the subject of the action is real or personal property located on the Reservation and the defendant owns or has an interest in the property, or if the relief demanded consists wholly or

partially in excluding the defendant from holding any interest in the property;

(2) When the action is to foreclose, redeem from or satisfy a mortgage, claim, or lien upon real or personal property located within the Reservation;

(3) When the action is for divorce or for annulment of marriage of a resident of this Reservation or for the modification of a decree of a divorce of this Court;

(4) When the defendant has property within the Reservation which has been attached or has a debtor within the Reservation who has been garnished.

When the defendant has been served by notice and publication as provided in this section, this Court may render a decree which will adjudicate any interests of such defendant in status, property or thing acted upon, but it may not bind the defendant personally.

B. Before service by notice and publication is authorized the plaintiff must file with the Clerk of Court, a pleading setting forth a claim in one of the situations described above, and an affidavit that the plaintiff attempted without success to actually serve the defendant in the manner provided for in Rule 12 above. Upon complying with these provisions, the plaintiff may obtain an order for the service of summons to be made upon the defendant by publication.

C. Service of the summons by publication may be made by publishing three times, once each for three successive weeks, in a newspaper of general circulation on the Reservation and by posting a notice in a prominent place in the following locations: The Tribal Law

and Order Building, the Tribal headquarters, and the United States Post Office.

D. A copy of the summons or notice of action and complaint shall be mailed prior to the first publication to the defendant at his last place of residence unless the affidavit states that the residence of the defendant is unknown. If the defendant is a corporation of a copy of the summons or notice of action and complaint shall be mailed to :

(1) the manager of the office of the principle place of business of the corporation; or

(2) to an agent or attorney in fact authorized by appointment or by law to receive or accept service on behalf of said corporation; or

(3) if none of the persons mentioned can be found, then to the last known address of the corporation at its principal home office, if known, and also to the Secretary of State of the State of its incorporation. If the defendant is a corporation whose charter or right to do business has expired or has been forfeited, then copies shall be mailed to one of the persons who has become a trustee for the corporation or a stockholder or member, or if none can be found, to the last known address of the corporation at its principal home office, if known, and also to the Secretary of State of the State of its incorporation.

E. The first publication must be made within thirty (30) days to the request. If not so made, the action shall be dismissed as to any person not served within said thirty (30) day period. Service by publication is complete on the date of the last publication of the summons. The publication notice shall state in general terms the

nature of the action, and a description of any real property involved, and a statement of the object of the action.

Rule 14. Service on the Secretary of the Tribe.

Whenever the Secretary of the Blackfeet Tribe has been appointed or is deemed by law to have been appointed as the agent to receive service of process for any person or corporation, partnership, etc., the plaintiff shall file an affidavit with the Clerk of the Court stating that the Secretary of the Blackfeet Tribe is such an agent and —stating the residence and last known address of the person to be — served. In such circumstances, service on the Secretary of the Blackfeet Tribe shall be sufficient personal service upon the defendant, provided that a notice of such service and a copy of the summons or notice of action and complaint are forthwith sent by certified or registered mail by the Clerk to the party to be served at his last known address, marked "Deliver to Addressee only", and "Return Receipt Requested", and provided further that such return receipt shall be received by the Clerk, signed by the addressee or that the postal authority has advised that delivery of said registered or certified mail was refused by the addressee. The date on which the Clerk receives said return receipt or notification by the postal authority shall be deemed the date of the service. As an alternative to sending the notice and summons and complaint by registered or certified mail, the Clerk may cause notice of the service and a copy of the summons or notice of action and complaint to be served by a qualified law enforcement officer, personally upon the Secretary of the Tribe.

Rule 15. Pleadings and Motions.

A. Pleadings: There shall be a complaint and an answer; a reply to a counterclaim if there is one; an answer to a cross-claim if there is one; a third party complaint if a person who is not an original party is brought into the lawsuit; and a third party answer if a third party complaint is served. No other pleading shall be allowed except with leave of the Court.

B. Motions and other Papers: An application to the 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 therefore, and shall set forth the relief of order sought.

Rule 16. General Rules of Pleading.

A. Claims for Relief: A pleading which sets forth a claim for relief shall contain:

- (1) a short and plain statement of the claim, and
- (2) a demand for judgment for the relief of which the pleader deems himself entitled. Relief in the alternative or of several different types may be demanded.

B. Defenses and Forms of Denials: A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny those statements of fact which the adverse party relies. If he is without knowledge or information as to the truth of any fact stated by the adverse party, he shall so state and this will have the effect of a denial.

C. Affirmative Defenses: The defendant shall set forth all affirmative defenses, including: assumption of risk, contributory negligence, duress, failure of consideration, fraud, illegality,

payment, release, res judicata, statute of limitations, waiver, estoppel, statute of frauds, and any other matter constituting an avoidance or affirmative defense.

D. Effect of Failure to Deny or to Raise Affirmative Defense:

All statements of fact in a pleading, other than those as to the amount of damage, are deemed admitted if not specifically denied in the responsive pleading. Affirmative defenses not pleaded at the first opportunity will be considered waived except that the Court on a showing of excusable neglect and in the interest of justice may permit affirmative defenses to be raised at a later time.

E. Pleading to be Concise and Direct: Each factual statement of the pleading shall be simple, concise and direct. No technical forms of pleadings or motions are required. A party may state as many separate claims or defenses as he has regardless of whether or not they are consistent. All pleadings shall be so construed as to do substantial justice to the parties.

Rule 17. Defenses and Objections.

A. A defendant shall serve his answer within twenty (20) days after the service of the summons or notice of action and complaint upon him. A party served with a cross-claim shall serve an answer thereto within twenty (20) days. The plaintiff shall serve his reply to a counterclaim in the answer within twenty (20) days after service of the answer. If the Court denies a motion filed in lieu of a responsive pleading, or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten (10) days after notice of the Court's action.

B. Every defense in law or fact, or claim for relief shall be asserted in a responsive pleading except that the following defenses may be made by motion:

- (1) lack of jurisdiction over subject matter;
- (2) lack of jurisdiction over the person;
- (3) insufficiency of process or service thereof;
- (4) failure to state a claim upon which relief can be granted;
- (5) failure to join an indispensable party. - A motion making any of these defenses must be made before pleading if a further pleading is permitted.

C. Motion for more definite statement. If a pleading is so vague or ambiguous that a party cannot reasonably respond thereto, he may move for a more definite statement before filing his responsive pleading. The motion shall point out the defects complained of or the denials desired. If the motion is granted and the order is not obeyed within ten (10) days or within such other time as the Court may fix, the Court may strike the pleading or make such order as it deems just.

D. Motion to Strike. On motion made by a party or upon the Court's own initiative, the Court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter. This motion may be made by a party before responding to a pleading.

Rule 18. Service of Other Papers.

Except as otherwise provided in these Rules, all orders, all pleadings, all written motions, all notices and similar papers shall be served upon each of the parties.

Where service is to be made upon a person represented by an attorney, the service shall be made upon the attorney by mailing a copy to his office unless service upon the party himself is ordered by the Court. If the party is not represented by an attorney then service shall be in a manner as described in Rule 12. All pleadings and other papers shall be filed with the Clerk of the Court.

Rule 19. Proof of Service.

Persons serving the process shall make proof of service thereof to the Court promptly. Proof of service may be established in the following manner:

- (1) If process is served by a Tribal Police Officer or by an officer of the Court, by his certificate thereof;
- (2) If by any other person, by his affidavit thereof;
- (3) In case of publication, an affidavit of the publisher;
- (4) The written admission of the defendant showing the time and the place of service. The certificate or affidavit of service must state the time and the date, place and manner of service.

At any time in its discretion and upon such notice and terms as it deems just, the Court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of a party.

Rule 20. Amended and Supplemental Pleadings.

A. Amendments: A party may amend its pleadings as a matter of right at any time before a response to the pleading is filed; otherwise a party may amend his pleading only by leave of the Court or by written consent of the adverse party. Leave shall be freely given when justice

so requires. A party shall plead in response to an amended pleading within twenty (20) days after service of the amended pleading.

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 have been raised in the pleading. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the Court may allow the pleadings to be amended and shall do so unless the objecting party satisfies the Court that the admission of such evidence would prejudice him. The Court may grant a continuance to enable the objecting party to meet such evidence.

C. Relation back of the Amendments: Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transactions, occurrence set forth or attempted to be set forth in the original pleading, the amendments relate back in point of time to the date of the original pleading.

D. Supplemental Pleading: On motion of a party, the 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 which have happened since the date of the original pleading.

Rule 21. Capacity to Sue or be Sued.

A. Real party and interest. Every action shall be prosecuted in the name of the real party and interest. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party and interest until a reasonable time has been allowed for ratification of commencement of the action by, or joinder or substitution of, the

real party or interest. A person eighteen (18) years of age or older, unless incompetent, shall sue and be sued in his own name.

B. Infant or incompetent persons. Whenever an infant under the age of eighteen (18) years of age or an incompetent person has a representative, guardian, conservator, or other like fiduciary the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative he may sue by his next friend or by a guardian ad litem appointed by the Court for the protection of the infant or incompetent person.

Rule 22. Substitution of Parties.

A. Death. If a party dies and the claim is not hereby extinguished, the Court may order substitution of the proper parties.

B. Incompetency. If a party becomes incompetent, the Court upon motion may allow the action to be confirmed by or against his representative.

C. Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the Court upon motion, directs that the person to whom the interest has been transferred by substituted or joined with the original party.

D. Public officers. When a public officer who is a party to an action in his official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of party shall be disregarded. An order of substitution may be entered at any time but

the omission to enter such an order shall not affect the substitution. When a public officer sues or is sued in his official capacity, he may be described by his official title rather than by name.

Rule 23. Counterclaims and Crossclaims.

A. Counterclaim. A pleading may state as a counterclaim any claim against an opposing party, whether or not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim. When a pleader fails to set up a counterclaim through oversight, inadvertance, or excusable neglect or when justice requires, he may by leave of the Court, set up a counterclaim by amendment.

B. Cross claim. A pleading may state as a crossclaim, any claim by one party against a co-party arising out of the transaction or occurrence which is the subject matter either of the original action or of a counterclaim or relating to any property that is the subject matter of the original action. Such crossclaim may include a claim that the party against whom it is asserted is or may liable to the cross-claimant for all or part of the claim asserted in the action.

Rule 24. Third Party Practice.

A. At any time after commencement of the action, as defendant as a third party plaintiff, may cause a summons or notice of action and complaint to be served 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 a third party has filed its original answer, the third party complaint is filed more than thirty (30) days after the defendant has filed its original answer, the the third party complainant must obtain leave of the Court before filing and serving the third party complaint. When a counterclaim is asserted against the plaintiff, he

may cause a third party to be brought in under circumstances which would entitle a defendant to do so.

Rule 25. Joinder of Parties.

A. Persons to be joined if feasible. A person who is subject to service and process and whose joinder will not deprive the Court of jurisdiction shall be joined as party if:

(1) in his absence complete relief cannot be accorded among those already parties; or

(2) he claims an interest in relating to the subject of the action and is so situated that the disposition of the action in his absence may;

(a) as a practical matter impair or impedes his ability to protect that interest; or

(b) leave any of the persons already parties subject to a substantial risk of incurring multiple or inconsistent obligations.

If he should join as the plaintiff but refuses to do so he may be made a dependent, or in a proper case, an involuntary plaintiff.

B. Dismissal for failure to join an indispensable party. If a person described above cannot be made a party, the Court shall determine whether the action should proceed among the parties before it, or should be dismissed, the absent person being regarded as an indispensable party. The factors to be considered include;

(1) to what extent a judgment rendered in the person's absence might be prejudicial to him or to those already parties;

(2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or by other measures, the prejudice can be lessened or avoided;

(3) whether a judgment rendered in the person's absence will be adequate;

(4) whether the plaintiff will have an adequate remedy if the action is dismissed for lack of joinder of an indispensable party.

C. Permissive joinder. All persons may join in one action as plaintiffs if assert any right and if any question of law or fact common to all those persons will arise in the action. All persons may be joined in one action as the defendants if there is asserted against them any right to relief arising out of the same transaction or occurrence, and if any question of law or fact common to all defendant will arise in the action. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief and against one or more defendants according to their respective liabilities. No class actions or other representative suits will be permitted but the Court should liberally permit the joining of parties under this rule.

D. Misjoinder of parties. Misjoinder of parties is not grounds for dismissal of an action as parties may be dropped or added by order of the Court on motion of any party or on its own just. Any claim by or against a party may be severed and proceeded with separately.

Rule 26. Intervention.

A. Intervention of right. Upon timely application, anyone shall be permitted to intervene in any action when the applicant claims an interest relating to the property or transaction which is the subject of the action and his is so situated that the disposition of the action may as a practical matter impair his ability to protect that interest.

B. Permissive intervention. Upon timely application, anyone may be permitted to intervene in any action when an applicant's claim or

defense and the main action have a question of law or fact in common. Since class actions and other representative suits are not permitted, the Court should liberally grant motions for leave to intervene.

C. Procedure. A person desiring to intervene shall serve a Motion to Intervene upon all parties in the action, stating the grounds therefore and accompanied by a pleading setting forth the claim or defense for which intervention is sought.

Rule 27. Discovery.

A. Methods. With leave of the Court, parties may obtain discovery by one or more of the following methods:

- (1) dispositions upon oral examination or written questions;
- (2) written interrogatories;
- (3) production of documents or things or permission to enter upon land or other property for inspection and other purposes;
- (4) physical and mental examinations; and requests for admission.

The Federal Rules of Civil Procedure (Rules 27-37) shall govern the practice and procedure for conducting discovery and depositions in Tribal Court.

B. Scope of discovery. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking its discovery or to the claim or defense of any other party. It is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

C. Insurance agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy all or part of the judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

D. Trial preparations. A party may obtain discovery of documents and tangible things prepared in anticipation of litigation or for another party or by or for that other party's attorney or other representative. Only upon a showing that the party seeking discovery has substantial need of the material in the preparation of his case and that he is unable without undue hardship to obtain the information by other means. In ordering discovery of such materials, the Court shall protect against disclosures of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of the party concerning the litigation.

E. Expert witnesses. Discovery of facts known and opinions held by experts acquired or developed in anticipation of litigation or for trial may be obtained only as follows:

(1) a party may through interrogatories request another party to identify each person whom it expects to call as an expert witness, to state the subject matter as to which the expert is expected to testify, and a summary of the grounds for each opinion;

(2) the party may discover the facts known or opinions held by an expert who has been retained or especially employed by another party in anticipation of litigation or preparation of the trial and who is not expected to be called as a witness to trial and who is not expected to be called as a witness to trial upon the showing of

exceptional circumstances under which it is unpractical for the party seeking discovery to obtain such facts or opinions by any other means.

Unless manifest injustice will result, the Court, in its discretion, may require that the party seeking discovery under this rule.

F. Protective orders. Upon motion and for good cause shown, the Court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including;

(1) that the discovery may be had only in specific terms and conditions, including a designation of time and place;

(2) that the discovery may not be had;

(3) that the discovery may be had by a method other than that selected by the party seeking discovery;

(4) that a certain matter not be inquired into or that the scope of the discovery be limited to certain matters;

(5) that the discovery be conducted with no one person except persons designated by the Court;

(6) that a deposition be sealed and only opened on order of the Court;

(7) that a trade secret or other confidential research, development, or commercial information not disclosed.

Rule 28. Masters.

A. Appointment and compensation. The Chief Judge of the Court may appoint a special master to assist in the preparation of or trial of any civil action with or without a jury. Compensation and expenses of the special master shall be fixed by the Court and shall, whenever

possible, be taxed as costs to the losing party. The Order appointing a special master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform a particular act. Subject to the conditions contained in the order appointing the special master, he has and shall exercise all the power of the Tribal Judge, and take all measures necessary or proper required in the efficient performance of his duties.

B. The master's report. The master shall prepare a report upon the matter submitted to him by the Court and if required, shall make findings of fact and conclusions of law. He shall file the report with the Clerk of the Court, who shall send a copy to all parties. Within ten (10) days after receiving the master's report, any party may serve written objection thereto upon the other party. The Court, after hearing, may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence, or may re-commit it to the Master with instructions.

Before filing his report, a Master may submit a draft thereof to counsel of all parties for the purpose of receiving their suggestions.

Rule 29. Jurors.

A. Examination of jurors. The Court may permit the parties or their attorneys to conduct the examination of perspective jurors, but the preferable practice is for the Court to conduct the examination itself. If the Court conducts the examination itself, it shall permit the parties or their attorneys to supplement the examination by submitting question in writing to the Court which, if it deems them appropriate, will use in further examination of the jury.

B. Alternate jurors. If there is substantial likelihood that the trial will last more than one day, the Court may direct to sit as alternate jurors. Alternate jurors, in the order in which they are called, shall replace jurors, who, prior to the time the jury retires to consider its verdict, become or are found to be unable to perform their duties, and hence, disqualified.

C. Special verdicts. The Court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event, the Court may submit to the jury written questions susceptible of brief answers or may submit written forms of several special findings which might be properly made under the pleadings and evidence or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate.

D. Instructions to the jury. At the close of the evidence or at such earlier time during the trial as the Court directs any party may file written requests that the Court instruct the jury on the law set forth in the request. The Court shall inform counsel of its proposed action upon the request prior to their arguments to the jury, but the Court shall instruct the jury after the arguments are completed. No party may assign error in the giving or failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds for his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

Rule 30. Trials.

A. Demand for jury trial. Any party may demand trial by jury of an issue triable of right by serving upon the other parties a demand therefore in writing as follows:

(1) by the plaintiff when the complaint is filed;

(2) by the defendant or a third party defendant when the answer is filed;

(3) by an intervener when the motion to intervene is filed.

The failure of a party to serve a demand as required by this rule constitutes a waiver by him of a trial by jury.

B. Advisory jury. In all actions not triable of right by a jury or where a jury trial has not been requested, the Court may upon its own motion try any issue with an advisory jury.

C. Size of jury. A jury in a civil case shall be composed of six (6) persons unless the parties agree to a jury of three (3) persons. The agreement of a simple majority of the jury (Four jurors in a six man jury and two jurors in a three man jury) will support a verdict for Directed Verdict.

Rule 31. Motion for Directed Verdict.

A. The party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the Event that the motion is not granted. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefore.

B. Whenever a motion for a directed verdict made at the close of all the evidence is denied for any reason is not granted, the Court is deemed to have submitted the action to the jury subject to a later

determination of the legal questions raised by the motion. Not later than ten (10) days after entry of judgment, the party who has moved for a directed verdict may move to have the verdict and judgment entered thereon set aside and have judgment entered in accordance with his motion for directed verdict. A Motion for a new trial be joined with this motion.

Rule 32. Summary Judgment.

Any party may at any time move with or without supporting affidavits for summary judgment in his favor as to all or any part thereof. The motion shall be served at least ten (10) days before a hearing on the motion is held. Judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment may be rendered on an issue of liability, although there is a general issue as to the amount of damages.

Rule 33. Default Judgment.

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, the Clerk shall enter his default. The defaulting party shall be notified and shall be given five (5) days to rectify the default. If the defaulting party fails to appear and defend, judgment by default may be entered by the Court unless the party against whom the judgment by default is sought is an infant or an incompetent person, who is not represented by general guardian or such other representative.

For good cause shown, the Court may always set aside an entry of default and if a judgment by default has been entered, may likewise set it aside. If the default resulted from the negligent failure of the attorney for the defaulting party to perform an act required by these Rules or order of the Court, the default should be set aside and the attorney shall be fined an appropriate amount.

Rule 34. Dismissal.

A. Voluntary dismissal. An action may be dismissed by the plaintiff without leave of the Court by filing a notice of dismissal at any time before the defendant has filed either an answer or a motion for summary judgment; or by filing a stipulation of dismissal signed by all parties in the action. Such dismissal shall be without prejudice. All other dismissals must be on notice to all other parties and must be approved by the Court.

B. Involuntary dismissal. An action may be dismissed by the Court on its own initiative, or on motion by the defendant, for failure of the plaintiff to prosecute or to comply with these rules or any order of the Court. Unless the Court in its order for dismissal otherwise specifies, a dismissal under this rule, other than a dismissal for lack of jurisdiction, for improper venue, for failure to join an indispensable party, is "with prejudice" and operates as an adjudication upon the merits.

C. Consolidation. When actions involving a common question of law or fact are pending before the Court, it may order all of the actions consolidated, or it may make such orders as may tend to avoid unnecessary costs or delay.

D. Separate trials. The Court, to avoid prejudice, inconvenience, or unnecessary costs, may order a separate trial or any claims, crossclaims, counterclaims, or third party claims, or of any separate issue in the case.

Rule 35. Deposits in Court.

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery. A party, upon notice to all other parties and by leave of Court may deposit with the Court all or any part of such sum or thing.

Rule 36. Injunctions.

A. Preliminary injunctions. No preliminary injunction shall be issued without notice to the adverse party. The Court may order the trial of the action on the merits consolidated with the hearing on the application.

B. Temporary Restraining Order. A temporary restraining order may be granted without notice to the adverse party only if it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition to the request for a temporary restraining order. Every temporary restraining order granted without notice shall be filed immediately in the Clerk's office and shall expire by its own terms within such time after entry, not to exceed five (5) days, as the Court fixes, unless the order, for good cause shown, is extended or unless the party against whom the order is directed consents to its extension. In case a temporary restraining order is granted without

notice the motion for preliminary injunction shall be set down for hearing at the earliest possible time. When the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and if he does not do so, the Court shall dissolve the temporary restraining order at once.

On notice to the party who obtained the temporary restraining order, the adverse party may appear and move for its dissolution or determine such motions as expeditiously as possible. The Court may require the giving 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 any party who is found to have been wrongfully enjoined or restrained.

Rule 37. Judgment and Costs.

A. Demand for Judgment: A judgment by default shall not be different in kind or exceed the amount prayed for in the demand for judgment. Except as to parties against whom the judgment is entered by default, every final judgment shall grant the relief to which the party is entitled even if the party has not demanded such relief in his pleadings.

B. Costs: Cost shall be allowed to the prevailing party unless the Court directs otherwise. Costs shall be assessed by the Clerk and added to the amount of the judgment rendered by the Court.

C. Entry of Judgment: Upon a general verdict of a jury, or upon a decision of the Court, a judgment shall be entered reciting the verdict or decision of the Court and including any costs taxed in the case. The judgment may be set forth in a separate document.

D. Automatic stay of Judgment: No execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of ten (10) days after its entry. If execution of enforcement is stayed beyond the ten days, the Court may, in its discretion, require the losing party to post the bond guaranteeing payment of the judgment.

III. CRIMINAL

Rule 51. The Complaint.

The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a Tribal Judge, magistrate, or Clerk of the Tribal Court and must be approved by the Tribal Prosecutor.

Rule 52. Warrant or Summons Upon Complaint.

A. Issuance: If it appears from the complaint, from an affidavit or affidavits filed with the complaint, or from sworn statements made when the complaint is filed, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant or a summons shall be issued. If a summons is issued and the defendant fails to appear, a warrant shall be issued for his arrest.

B. Warrant: The warrant shall be signed by a Tribal Judge or magistrate, and shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall describe the offense charged in the complaint unless a copy of the complaint is attached to the warrant. It shall command that the defendant be arrested and brought before a tribal judge, or magistrate. The warrant shall be executed by a Tribal Police Officer or by any other officer authorized by law. The warrant may be executed at any place within the Blackfeet Reservation. The arresting officer need not have the warrant in his possession at the time of the arrest, but upon request shall inform the defendant of the offense charged and of the fact that a warrant has been issued and shall show the warrant to the defendant as soon as possible.

C. Summons: If a summons is issued, it shall be served in accordance with provisions of Rule 12 of these Rules.

Rule 53. Arraignments.

The arraignment shall be conducted in open Court and shall consist of reading the complaint to the defendant or stating the substance of the charge and calling upon him to plead thereto. The defendant must be given a copy of the complaint before he is called upon to plead. A defendant may plead "guilty" or "not guilty". Before accepting a guilty plea, the Court must make inquiry of the defendant and must make certain that the plea is being made voluntarily without threats or promises, that the defendant understands the nature of the charge and the consequences of the plea and that there is a factual basis for the plea. The Court may refuse to accept a plea of "guilty" and shall not accept a plea of "guilty" if there is any doubt that it is not being made voluntarily or if there is no basis in fact for the plea. If a defendant refuses to plead or if the Court refuses to accept a plea of "guilty", the Court shall enter a plea of "not guilty". A motion to withdraw a plea of "guilty" may be made only before sentence is imposed but to correct manifest injustice, the Court, even after judgment and sentencing, may set aside the conviction and permit the defendant to withdraw his plea of "guilty". The Court will then take a plea of "not guilty" and proceed as if the "guilty" pleas had not been entered.

Rule 54. Motions.

Any defense or objection which is capable of determination without trial may be raised before trial by motion. Objections based upon the complaint shall be made before trial.

Rule 55. Joinder.

The Court may order two or more complaints tried together if the offenses are related, unless one or more of the defendants would be prejudiced thereby.

Rule 56. Depositions.

If it appears that a prospective witness may be unable to attend or prevented from attending a trial or hearing and that his testimony is necessary, the Court may order that his testimony be taken by deposition and that any designated books, papers, documents, or tangible objects, not privileged, be produced. The party who requested the deposition shall give to all other parties reasonable written notice of the time and place for taking the deposition. The deposition shall be taken before the Clerk of the Tribal Court or her deputy, or before the Tribal Court Reporter. It shall proceed in the manner of a trial in that each witness shall be sworn and is subject to cross examination. The actual testimony shall be taken by the Clerk, her deputy or the Court reporter and then transcribed within five (5) days after the taking thereof. The deposition if otherwise admissible under the rules of evidence may be used at trial if:

- (1) the witness is dead;
- (2) the witness is off the Reservation unless his absence was procured by the party offering the deposition;
- (3) the witness is unable to attend or testify because of sickness or infirmity; or
- (4) the party offering the deposition has been unable to procure the attendance of the witness by subpoena. A deposition may

also be used to contradict or impeach the testimony of the deponent as a witness.

Rule 57. Discovery.

At the request of the defendant, the Court may order the Trial Prosecutor to permit the defendant to inspect and copy:

(1) written or recorded statements or confessions made by the defendant;

(2) results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the case; and

(3) any books, documents, or other evidence within the custody of the prosecution which would be material to the preparation of his defense. The Court shall also require the Tribal Prosecutor to disclose the names and addresses of all persons who will testify for the prosecution.

Rule 58. Trial.

All cases shall be tried to a jury unless the defendant waives a jury trial in writing with the approval of the Court and the consent of the Tribal Prosecutor. Juries shall be composed of six (6) persons unless the parties stipulate in writing with the approval of the Court, that the jury shall consist of any number less than six. The agreement of a simple majority of the jurors shall be sufficient to support a verdict.

Rule 59. Motion for Judgment of Acquittal.

The Court on motion of a defendant or upon its own motion, shall order the entry of judgment of acquittal after the evidence of either side is closed and in the opinion of the Court, the evidence is

insufficient to sustain a conviction. If a verdict of "guilty" has been returned, the Court may, within five (5) days, set aside the verdict and enter judgment of acquittal.

Rule 60. Judgment and Sentence.

Sentence shall be imposed without unreasonable delay. Before imposing sentence, the Court shall ask the defendant and his attorney, if one is present, if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment. A judgment of conviction shall set forth the plea, the verdict or findings and the adjudication and sentence, if any. The judgment shall be signed by the Tribal Judge and entered by the Clerk in the Criminal Register and in the file of the case.

Rule 61. Right to Appeal.

After imposing sentence, the Court shall advise the defendant of his right to appeal, without cost if the defendant is without funds and of his right to seek review in a United States District Court by writ of habeas corpus. If the defendant so requests, the Clerk of the Court shall prepare and file a notice of appeal and/or a petition for writ of habeas corpus on behalf of the defendant.

Rule 62. New Trial.

The Court, in its discretion, or on motion of a defendant, may grant a new trial if required in the interests of justice. A motion for a new trial based on "newly discovered evidence" must be made within six (6) months after a judgment: a motion based on any other grounds must be made within five (5) days after the verdict or decision.

Rule 63. Correction or Reduction of Sentence.

The Court may correct an illegal sentence at any time and may reduce a sentence within six (6) months of its entry. Clerical mistakes may be corrected by the Court at any time.

Rule 64. Search and Seizure.

A search warrant may be issued by a Tribal Court, or magistrate to search and seize any property:

(1) stolen or embezzled in violation of the law of the Blackfeet Tribe or of the United States; or

(2) designed for use or actually used in the commission of a criminal offense.

A warrant shall issue only upon an affidavit or sworn statement which satisfies the judge or magistrate that there is probable cause to believe that one of the grounds exist. The warrant shall describe with specificity, the property sought and the person or place to be searched. The warrant shall be executed and returned only within ten (10) days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken, a copy of the warrant and a receipt for the property taken.