

TITLE SEVEN

CRIMINAL PROCEDURE

Chapter 1 - Rules of Criminal Procedure

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RULES OF CRIMINAL PROCEDURE

I. SCOPE

These rules govern the procedure in the Courts of the Rosebud Sioux Tribe in all criminal proceedings. The term "proceedings" includes all steps in a criminal case from its inception to judgement and sentence.

II. PURPOSE

The purpose of these rules is to simplify criminal procedure and to eliminate outmoded rules and practices on the Rosebud Reservation and to cover the entire field of criminal proceedings with the exception of proceedings against juveniles as the same are provided for in other sections of this code.

III. CONSTRUCTION

It is the intention of the Judiciary Committee that these rules be construed to provide simplicity in procedure, fairness in administration and to eliminate expense and delay.

IV. PRELIMINARY PROCEEDINGS

A. The Complaint

1. The complaint shall be a written statement of the essential facts constituting the offense charged and shall be made upon oath before a notary public or a Judge or Magistrate of the Tribal Court, or be accompanied by a sworn affidavit.
2. The Complaint must state:
 - a. The names of the person accused, if known, or some other name, if not known, plus whatever description of the person accused is known.
 - b. The general location where the offense was committed.
 - c. The general name and code designation of the offense.
 - d. A short, concise statement of the specific acts of omissions to act complained of.
 - e. The person against whom or against whose property the offense was committed, if known, otherwise no statement need be made.
 - f. The date and approximate time of the commission of the offense, if known.
 - g. The name of the person filing the complaint.

3. No minor omission from or error in the form of the complaint shall be grounds for dismissal of the case unless some significant prejudice against the defendant can be shown to result therefrom.

4. It shall not be necessary to charge a specific class (Class A, B, or C) of an offense which depends for the degree of punishment upon factual findings such as the value of the property taken in a theft offense.

5. The Judge or Magistrate issuing the complaint shall examine such complainant under oath to ascertain his knowledge as to the facts alleged in the complaint and determine if probable cause exists to issue such complaint. If it appears from the complaint and the examination of the complainant that probable cause exists to believe that an offense has been committed, the Judge or Magistrate will issue the complaint by affixing his signature thereto.

B. Arrest - Warrant or Summons

1. Upon the issuance of the complaint, a warrant of arrest or a summons shall be issued to bring the defendant in the complaint before a Judge or Magistrate of the Tribal Court. The warrant or summons shall specify the Court before which the defendant is to appear.

2. Whenever it is provided that a warrant may be issued for the arrest of a person charged with the commission of a Class B or C offense, the Judge or Magistrate shall issue or cause to be issued a summons instead of a warrant, unless he has reasonable grounds to believe that the person will not appear upon a summons, in which case he shall issue a warrant of arrest. A warrant of arrest shall be issued in all cases in which a Class A offense is charged.

3. The warrant of arrest shall be signed by the Judge or Magistrate issuing such and shall contain the name of the defendant, or, if such is not known, some other name plus a reasonable description of the defendant, if known. It shall describe the offense charged and it shall command that the defendant be arrested and brought before the Judge or Magistrate to enter a plea.

4. When a summons is issued, it shall name the defendant, specify the offense charged and order the defendant to appear before a specified Judge or Magistrate and set the time and place of such appearance. In the event the defendant fails to appear as directed by the summons, a warrant shall be issued for his arrest.

5. Warrants and summonses shall be served by any officer authorized to make arrests on the Rosebud Reservation, or by any other person designated by the Tribal Courts or by the Judiciary Committee to perform such functions.

a. The service of warrants and summons may be accomplished anywhere within the exterior boundaries of the Rosebud Indian Reservation and the time and place of such service or arrest and the name of the person serving the same shall be

endorsed thereon and the original returned to the Court and a copy containing said endorsement shall be left with the person served.

b. An officer need not have the warrant in his possession at the time of arrest, but if he does not, he shall inform the defendant that a warrant has been issued, the nature of the charge, and shall provide the defendant with a copy of the arrest warrant and complaint not later than at the time of appearance before the Court. If reasonably possible, a properly endorsed copy of the summons or warrant plus a copy of the complaint shall be given to the defendant at the time of service or arrest.

c. In the event a defendant refuses service of a summons or a defendant cannot be located after a reasonable search, a warrant shall be issued for his arrest.

6. Any officer authorized to make arrests on the Rosebud Reservation may, without a warrant, arrest a person for any offense committed in the presence of the officer or may, upon probable cause that a Class A crime has been committed and that the person arrested committed it, arrest that person although the offense was not committed in the presence of the officer.

7. Any arresting officer:

a. Must inform the person to be arrested of his intentions to arrest him, of the cause or reason for the arrest, and his authority to make it, except when the person to be arrested is actually engaged in the commission of, or an attempt to commit, an offense, or is pursued immediately after its commission, or an escape, if such is not reasonable possible under the circumstances;

b. Must show the warrant of arrest if such exists and is demanded as soon as practicable;

c. May use only that force which is reasonably necessary to effect an arrest;

d. May break open a door or window of a building in which the person to be arrested is, or is reasonably believe to be, after demanding admittance and explaining the purpose for which admittance is desired;

e. May search the person arrested and take from him and put into evidence all weapons he may have about his person;

f. Shall, as soon as possible, do as commanded by the arrest warrant or deliver the person to jail and obtain a complaint;

g. May, if in fresh pursuit, continue such pursuit, and arrest upon capture the person pursued even if arrest would occur outside the exterior boundaries of the Reservation. All persons so arrested may be returned to the Reservation by the arresting officer if the arresting occurs in the State of South Dakota. Otherwise, the arresting person will be turned over to local police officials pending extradition proceedings.

C. ARRAIGNMENT

1. As soon as reasonably possible, but not more than 72 hours after arrest on a warrant, a defendant shall be brought before a Judge or Magistrate of the Tribal Court. In the event a summons has been issued the defendant shall appear at the time designated in the summons.
2. If the defendant does not have counsel and desires to be represented, he shall be given a reasonable time to secure counsel before entering his plea.
3. The defendant shall be provided with a copy of the complaint if he has not received one; it shall be read to him and he will be advised of his rights as follows:
 - a. The defendant has the right to appear and defend himself in person or by counsel.
 - b. In the event a defendant is determined to be indigent by the Court and wishes to be represented by counsel, the Court shall appoint counsel for the defendant with the exception that no defendant shall have the right to have appointed professional counsel at the tribe's expense.
 - c. The defendant shall have the right to confront and cross-examine all of the witnesses against him in person or by counsel.
 - d. The defendant shall have the right to have witnesses compelled by subpoena to appear and testify for him.
 - e. The defendant shall have the right to refuse to testify regarding the charge against him or to testify in his own behalf provided that once he takes the stand to testify he shall have waived the right to refuse to testify in any matter relevant to the immediate proceeding.
 - f. The defendant shall have the right to have a speedy trial by an impartial judge or jury.
4. The defendant shall enter a plea of guilty to the offense charged or not guilty and the Court shall then advise the defendant of the sentence or bail as is appropriate.

D. PLEAS

1. Upon the entering of a plea of guilty by a defendant the Court shall determine from the defendant that the plea was voluntarily made and that the defendant understood the nature of the charge and the consequences of a guilty plea. In the event the defendant refuses to plead or that the Court does not accept a plea of guilty, the Court shall enter a plea of not guilty.
 - a. The defendant may be permitted, with the consent of the Court and the prosecuting attorney, to enter a plea of guilty to a lesser offense included in the offense charged in the complaint.

2. Upon the defendant entering a plea of not guilty to the offense charged in the complaint, the Court will set a time for trial of the matter and shall determine whether the defendant desires a trial by jury or a trial to the Court.

a. Appropriate bail shall be set by the Court and the defendant released on bail or remanded to custody pending the trial of the matter in the event he is unable to post the bail as set by the Court.

b. A defendant may be released upon his own recognizance at the discretion of the Court and upon his promise to appear before the Court at the times set for such appearance.

E. JOINDER OF OFFENSES AND DEFENDANTS

1. Two or more defendants may be charged in the same complaint if they are alleged to have participated in the same act or transaction constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of such defendants need not be charged on each count.

2. Two or more defendants may be tried together if they could have been joined in a single complaint and a single defendant may be tried on more than one complaint at a single trial.

a. If it appears that a defendant or the Rosebud Sioux Tribe is prejudiced by a joinder of offenses or other defendant for trial together, the Court may order separate complaints and may order separate trials or provide such other relief justice requires.

F. PRETRIAL CONFERENCE AND MOTIONS

1. The Court shall, upon motion of either party, or upon its own motion, hold a pretrial conference. The Court shall compel the attendance of the defendant and his counsel at the conference. The prosecution and defense may be required by the Court to exchange discoverable information at the conference. The Court shall at that time consider all pre-trial motions and the Court may issue such orders as deemed proper to regulate the conduct of trial.

2. Defenses or objections that are capable of determination other than at trial must be raised at the pretrial conference.

G. SUBPOENA

1. A subpoena is an order of Court issued by a Judge, Magistrate or the Clerk of Courts. It shall command each person to whom it is directed to attend and give testimony at a place therein specified. The Clerk may issue subpoenas, signed and otherwise complete except for the name of the person or thing subpoenaed to a defendant upon request.

2. A subpoena may be served by any police officer or any person designated by the Court or the Judiciary Committee. Service must be made by handing a copy to the person named therein and a subpoena may direct the person named to bring some object or piece of evidence before the Court. No fees or mileage allowance need be tendered with service.

3. A subpoena may be served any place within the exterior boundaries of the Rosebud Reservation. Failure, without adequate excuse, to obey a properly served subpoena may be deemed a contempt of court and prosecution thereof may proceed upon the order of the Court. No contempt shall be prosecuted unless a return of service of the subpoena has been made on which is endorsed the date, time, and place of service and the person performing such service.

V. TRIALS

A. TRIAL BY JURY OR BY THE COURT

1. All criminal trials shall be by the Court without a jury unless the defendant requests a jury trial at the time of arraignment.

There will be no Jury Trials for Class B and C crimes.

2. Juries shall have six (6) members unless a smaller number is consented to by the defendant. The Court may, at its discretion, require a full panel of six (6) jurors.

a. Jurors shall be drawn from the list of eligible jurors by the Clerk of Courts and shall be notified to appear by the Clerk in advance of the trial date.

b. All qualified electors of the Rosebud Sioux Tribe who have not been convicted of a major crime within the last two years or who have not been convicted of a misdemeanor crime in the past one year shall be eligible to serve as jurors.

3. The Court shall permit the defendant or his counsel and the prosecutor to examine the jurors and the Court itself may make such an examination.

4. Challenges regarding jury members may be taken as follows:

a. Each side shall be entitled to two (2) peremptory challenges;

b. Either side may challenge any juror for cause.

5. The Clerk of Courts shall subpoena not less than 18 persons from the eligible jurors to appear and serve whenever a jury trial is scheduled in a criminal matter.

B. EVIDENCE

The admissibility and the competence and privileges of witnesses shall be governed by the Federal Rules of Evidence, except as herein otherwise provided.

C. INTERPRETERS

The Court shall determine whether or not interpreters are needed and shall choose and appoint such persons as are needed to act as interpreters and shall place them under oath to accurately translate as required by the Court.

D. JUDGEMENT OF ACQUITTAL

1. The Court on motion from defendant or on its own motion, shall order the entry of a judgement of acquittal of one or more offenses charged in the complaint after the evidence of either side is closed if the evidence is insufficient as a matter of law to sustain a conviction of such offenses. A motion for acquittal by the defendant does not affect his right to present evidence.

2. If a motion for judgement of acquittal is made at the close of all evidence, the Court may reserve decision on the motion any time either before or after the jury returns its verdict or is discharged.

E. INSTRUCTIONS

It shall be the duty of the Court to properly instruct the jury at such time during the trial as the Court determines is appropriate. Each party may propose instructions and the Court shall rule on proposed instructions and shall then instruct the jury before closing arguments. Proposed instructions and objections thereto shall be made outside the hearing of the jury.

F. VERDICT

1. The verdict of the jury shall be unanimous. It shall be returned by the jury to the Judge in open court and in the presence of the defendant.

2. If there are two or more defendants, the jury may at any time during its deliberations return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed; if the jury cannot agree as to all, the defendants as to whom it does not agree may be tried again.

3. When a verdict is returned and before it is recorded, the jury shall be polled at the request of any party or upon the Court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

VI. JUDGEMENT AND SENTENCING

A. A judgement of conviction shall set forth the pleas, the verdict of findings, and the adjudication and sentence when imposed. If the defendant is found not guilty or for any other reason entitled to be discharged, judgement shall be entered accordingly. The judgement shall be signed by the Judge and entered by the Clerk.

B. Sentence shall be imposed without unreasonable delay as provided in this Code. Pending sentence, the Court may commit the defendant to jail or continue or alter the bail. Before imposing sentence, the Court shall afford counsel an opportunity to speak on behalf of the prosecution and defendant and shall address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment.

C. Sentences shall be in accordance with the Tribal Criminal Code.

VII. PROCEDURE IN MAGISTRATE COURT

A. When a defendant is brought before a Magistrate, he shall be provided with a copy of the complaint as set out in Arraignment - Section 3, and advised of his rights as provided in that section.

B. In the event a defendant enters a plea of guilty to the offense charged in the complaint the Magistrate shall enter the appropriate sentence.

C. In the event a defendant enters a plea of not guilty the magistrate shall immediately bind the defendant over for appearance before a Tribal Judge for arraignment.

1. The Magistrate shall set proper bail for the offense charged and in the event the defendant is unable to post said bail he shall be remanded to custody pending his arraignment. The Magistrate shall designate the time and place of the arraignment.

2. The Magistrate shall transmit the warrant or summons and the complaint to the Clerk of the Tribal Court along with a Magistrate's Return setting forth what proceedings were had involving the matter.

D. When a defendant appears before a Magistrate charged with an offense of a class not within the jurisdiction of the Magistrate Court, such matter shall immediately be transferred to the Tribal Court and the procedure set out in Section C above followed, including the setting of bail.

VIII. APPEAL

A. After imposing sentence in a case which has gone to trial on plea of not guilty, the Court shall advise the defendant of his right to appeal.

B. The defendant has the right to appeal from the following:

1. A final judgement of conviction;
2. From an order made, after judgement, affecting his substantial rights.

C. The Tribe has the right to appeal from the following:

1. A judgement of dismissal in favor of the defendant upon a motion to dismiss based on any procedural irregularity occurring before a trial;
2. An order arresting judgement or acquitting the defendant contrary to the verdict of the jury or before such a verdict can be rendered;
3. An order of the Court directing the jury to find for the defendant;
4. An order made after judgement affecting the substantial rights of the Tribe.

D. A notice of appeal must be filed within ten (10) days of the entry of the final judgement or other appealable order and such must be served on all parties except the party filing the appeal.

E. The Clerk of Tribal Court shall prepare and submit to the Appellate Court the records of the case appealed including a list of the exhibits introduced at the trial and shall submit

the same to the Appellate Court within thirty (30) days of the filing of the appeal. The name of the case shall be the same as used in the trial with the appealing party designated as Appellant and the responding party designated as Respondent.

F. Upon receipt of the transcript the Appellate Court shall determine what procedure shall be followed in regard to the Appeal and shall notify the parties as to the dates of any hearing.

G. Stay of Judgement and Relief Pending Review

1. A sentence of imprisonment may, in the Trial Court's discretion, be stayed if an appeal is taken and the defendant may be given the opportunity to post bail. Any defendant not making bail or otherwise obtaining release pending appeal shall have all the time spent in incarceration counted towards his sentence in the matter under appeal.

2. A sentence to pay a fine or a fine and costs, may be stayed pending appeal upon motion of the defendant, but the Court may require the defendant to pay such money subject to return if the appeal should favor the defendant and negate the requirements for paying such.

3. An order placing the defendant on probation may be stayed on motion of the defendant if an appeal is taken.

IX. SEARCH AND SEIZURE

A. A search warrant is hereby authorized and may be issued only by a Tribal Judge on request of a Tribal Prosecutor, or any police officer or other law enforcement officer authorized to make arrests on the Rosebud Reservation.

B. A warrant may be issued to search for and seize any of the following:

1. Property that constitutes evidence of the commission of the crime;
2. Contraband; the fruits of crime, or things otherwise criminally possessed;
3. Property designed or intended for use or which is or has been used, as the means of committing a criminal offense.

C. A warrant shall be issued only upon sworn testimony or affidavit establishing grounds for issuing the warrant. If the Judge is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The finding of probable cause may be based on hearsay evidence either in whole or in part. Before ruling on a request for a warrant, the Judge may require the affiant to appear personally and be examined under oath. The warrant shall be directed to any police or law enforcement officer or official and shall command such person or persons to search, within a specified period of time not to exceed ten (10) days, the person or place named for the property specified. The warrant shall be served in the daytime unless the issuing Judge otherwise authorized on the warrant. The warrant shall be returned to the Judge after service or at the end of the ten (10) day period.

1. The officer taking property under a warrant shall give the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return to the issuing Judge shall be made promptly and shall be accompanied by an inventory of the property taken.

2. A person aggrieved by an unlawful search and seizure may move the Tribal Court for the return of the property on the grounds that he is entitled to lawful possession of the property illegally seized. The Judge may receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be returned and shall not be admissible at any hearing or trial.

3. No law enforcement officer shall search or seize any premises, property or person without a search warrant unless he knows or has reasonable cause to believe that the person in possession of such property is engaged in the commission of an offense or such is done incident to a lawful arrest or under such other circumstances in which it would not be reasonable to require the obtaining of a warrant prior to the search.

4. A law enforcement officer may stop any person in a public place whom he has probable cause to believe is in the act of committing an offense, or has committed an offense, or is attempting to commit an offense and demand of him his name, address, an explanation of his actions and may, if he has reasonable grounds to believe his own safety or the safety of others is endangered, conduct a frisk-type search for weapons, of such person.

5. The term "Property" is used in this Rule to include documents, books, papers, and any other tangible object. The term "daytime" as used in this Rule, shall mean the hours from 6:00 o'clock a.m. to 10:00 o'clock p.m. according to local time.

X. GENERAL PROVISIONS

A. Jury list and Fees

Not later than the 1st day of January of each year, the Clerk of Courts shall prepare a list of eligible jurors which shall contain the names of at least 225 person, prorated from each community as nearly as possible, to serve on juries for criminal trials. Each juror who serves upon a jury shall receive as a fee for each day of service the sum of ten dollars (\$10.00), or such amount as the Tribal Council shall establish from time to time by resolution. Each juror shall be paid round trip mileage at the prevailing tribal rate.

XI. DISCOVERY

A. Prosecution evidence discoverable by Defendant.

Upon written request of a defendant the prosecuting attorney shall permit the defendant to inspect and copy or photograph:

1. Any relevant written or recorded statements made by the defendant or copies thereof, within the possession, custody or control of the Tribal Prosecutor, the existence of which is known, or by the exercise of due diligence may become known, to the Tribal Prosecutor;

2. The substance of any oral statement, which the Tribal Prosecutor intends to offer in evidence at the trial, made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be an employee of a law enforcement agency; and

B. Defense Evidence Discoverable by Prosecution.

Upon written request of the prosecuting attorney, the defendant or defendant's attorney shall disclose to the prosecutor all witnesses who may be called to testify at trial, including alibi witnesses.

C. Restriction of rights of discovery or inspection.

Upon a sufficient showing the Court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion by a party, the Court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

D. Remedies on failure of party to comply with discovery requirements.

If, at any time during the course of a proceeding, it is brought to the attention of the Court that a party has failed to comply with an applicable discovery provision, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. The Court may specify the time, place and manner of making the discovery and inspection and may prescribe such terms and conditions as are just.

XII. PLEADINGS AND PRE-TRIAL MOTIONS

A. Upon motion of a defendant the court must dismiss a complaint in any of the following cases:

1. When it is not found, endorsed, and presented or filed as prescribed by this title;
2. When the names of the witnesses are not inserted at the foot of the complaint or endorsed thereon;
3. When it does not substantially conform to the requirements of this title;
4. When more than one offense is charged in a single count;

5. When it does not describe a public offense; or

6. When it contains matter which, if true, would constitute a legal justification or excuse of the offense charged, or other bar to the prosecution.

B. Defenses and objections raised by motion.

Any defense, objection or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge. The following must be raised prior to trial:

1. Defenses and objections based on defects in the institution of the prosecution;
2. Defenses and objections based upon prior conviction or acquittal;
3. Defenses and objections based on defects in the complaint;
4. Motions to suppress evidence;
5. Requests for discovery; or
6. Requests for a severance of charges or defendants.